

**TRIBAL CONSULTATION PLAN
FOR THE GLEN CANYON DAM
ADAPTIVE MANAGEMENT
PROGRAM**

**INCLUDING THE PROGRAMMATIC
AGREEMENT ON CULTURAL
RESOURCES**

TRIBAL CONSULTATION PLAN

- Draft #9, January 30, 2003
- Developed by a group of tribal staff representing six of the tribes that have been engaged in the AMP – Hopi, Hualapai, Kaibab Paiute, Navajo, Shivwits Paiute, and Zuni – with input from the Bureau of Reclamation
- Hualapai Tribe has performed the lead role to date

TRIBAL CONSULTATION PLAN

- Primary draftsman, as attorney for the Hualapai Tribe –

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TRIBAL CONSULTATION PLAN

- "The Grand Canyon is a place of great religious and cultural importance for Indian tribes of the region. ... All of these tribes possess a wealth of traditional knowledge about the Grand Canyon and the Colorado River, knowledge derived over many generations."

TRIBAL CONSULTATION PLAN

- Two basic purposes –
 1. Adaptive Management Program, to be incorporated into the Strategic Plan
 2. Programmatic Agreement on Cultural Resources, to be a chapter in the Historic Preservation Plan

**Programmatic Agreement on
Cultural Resources**

- Parties to the PA that are not engaged in the AMP –

Arizona State Historic Preservation Officer
(AZ SHPO)

Advisory Council on Historic Preservation

Programmatic Agreement on Cultural Resources (PA)

- Concluded in 1993 (signatures dated from July 93 through April 94)
- Legal context – outcome of consultation process under section 106 of National Historic Preservation Act (NHPA) for proposal to change the way in which Glen Canyon Dam is operated
- PA is included in the Final EIS

TRIBAL CONSULTATION PLAN – Outline

- 13 parts, 50 pages (including 3 pages of endnotes)
- Part 1 – Scope and Purpose
- Part 2 – Legal Basics for Federal Government's Relations with Tribes
- Part 3 – Background on Tribal Government Involvement in Operations of Glen Canyon Dam

TRIBAL CONSULTATION PLAN – Outline (continued)

- Part 4 – Definition of "Consultation" for this Plan
- Part 5 – Goals and Expectations
- Part 6 – Principles for Consultation with Tribes
- Part 7 – Legal Requirements for Certain Kinds of Consultation

TRIBAL CONSULTATION PLAN – Outline (continued)

- Part 8 – Protocols for Different Types of Consultation
 - A – Ongoing Consultative Relationships
 - B – Consultation in Scheduled Meetings
- Part 9 – Protocols for Compliance on Specific Issues
 - A – Place, Resource, Action Categories
 - B – Actions subject to this Plan
 - C – Protocols for Categories of Places and Resources

TRIBAL CONSULTATION PLAN – Outline (continued)

- Part 10 – Confidentiality
- Part 11 – Funding of Tribal Participation and Consultation
- Part 12 – Measuring and Tracking Consultation
- Part 13 – Dispute Resolution

TRIBAL CONSULTATION PLAN – A Little More Detail

- Part 1 – Scope and Purpose of the Plan
 - A – Relationship of the Plan to the Adaptive Management Program (AMP)
 - B – Relationship of the Plan to the PA and Historic Preservation Plan (HPP)
 - C – Relationship of the Plan to Tribal Law

**TRIBAL CONSULTATION PLAN –
A Little More Detail**

- Part 2 – Legal Basics for Federal Government’s Relations with Tribes
 - A – Tribal Sovereignty and Trust Responsibility
Boundary Issues –
Hualapai, Navajo, Havasupai
 - B – Government-to-Government Relations

**TRIBAL CONSULTATION PLAN –
A Little More Detail**

- Part 3 - Background on Tribal Government Involvement regarding the Operations of Glen Canyon Dam
 - A – Tribal Roles in the EIS
 - B – Tribal Roles in the PA
 - C – Tribal Interests Reflected in the FEIS
 - D – Tribal Roles in the AMP
 - E – Tribal Commentaries on Experiences with Consultation

**TRIBAL CONSULTATION PLAN –
A Little More Detail**

- Part 4 – Definition of “Consultation” for this Plan
 - Two-way communication
 - “... process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement ... built upon the exchange of ideas, not simply providing information.”
 - NPS guidance for federal preservation programs

**TRIBAL CONSULTATION PLAN –
A Little More Detail**

- Part 5 – Goals and Expectations Adaptive Management Program
 - awareness of governmental status
 - respect for traditional knowledge and religious beliefs

Many cultural resource sites have not been documented as such

Biological communities and geological features have cultural and/or religious importance

**TRIBAL CONSULTATION PLAN –
A Little More Detail**

- Part 5 –Goals and Expectations PA and Historic Preservation Plan
 - Federal agencies will comply with the PA and HPP
 - For matters not addressed in PA and HPP, comply with applicable federal and tribal laws and consult with tribes (per this Plan)

**TRIBAL CONSULTATION PLAN –
A Little More Detail**

- Part 6 – Principles for Consultation with Tribes
 - A. Know the Tribes
 - B. Know the Legal Requirements
 - C. Build On-going Consultative Relationships with Tribes
 - D. Institutionalize Consultation and Collaboration Procedures

TRIBAL CONSULTATION PLAN – A Little More Detail

- Part 6 – Principles for Consultation with Tribes (continued)
 - E. Contact Tribes Early and Allow Enough Time
 - F. Establish Training Programs for Staff
 - G. Maintain Honesty and Integrity
 - H. View Consultation as Integral

TRIBAL CONSULTATION PLAN – A Little More Detail

- Part 7 – Legal Requirements for Consultation
 - A. NEPA – some requirements in the CEQ regulations for EISs, very little guidance for EAs – seeking involvement of concerned tribes is generally advisable

Use of Categorical Exclusions may be subject of consultation

Part 7 – Legal Requirements for Consultation

- National Historic Preservation Act
Statutory Right to be consulting party when federal actions affect off-reservation historic properties with religious & cultural significance – NHPS §101(d)(6)
- Advisory Council's regulations, 36 CFR 800
- Two tribes – Hualapai and Navajo – have approved THPO programs (have taken over SHPO functions) within reservation boundaries

Part 7 – Legal Requirements for Consultation

- Native American Graves Protection and Repatriation Act (NAGPRA)
Notice and consultation for inadvertent discovery of human remains and "cultural items" (funerary objects, sacred objects, object of cultural patrimony)
- Right of custodial control vests in tribe with cultural affiliation
- Within Rez boundaries, tribal control

Part 7 – Legal Requirements for Consultation

- Archaeological Resources Protection Act (ARPA)
Notice prior to excavation of archaeological resources on federal lands
Tribal consent on "Indian lands"
- Endangered Species Act (ESA)
Secretarial Order #3206 (1997)

Part 7 – Legal Requirements for Consultation

- Tribal Law
Three reservations within the Canyon – Havasupai, Hualapai and Navajo – that can be accessed from the River.
- Hualapai and Navajo include lands within the Colorado River corridor (tribal positions – Interior disagrees regarding boundary location)

Part 8 – Protocols for Different Types of Consultation

- A. On-Going Consultative Relationships
 - Annual meeting of all federal agencies and all tribes.
 - Four meetings/year of GCMRC and tribes
 - Annual meeting of all tribes
 - Annual meeting of each agency with each tribe (at tribal offices every other year)
 - Annual meeting of parties to the PA

Part 8 – Protocols for Different Types of Consultation

- B. Consultation in Regularly-Scheduled Meetings
 - AMWG meetings
 - TWG meetings
 - AMWG and TWG work groups
 - PA work group

Such meetings are generally not sufficient for consultation, but may be steps in consultation process.

Part 9 – Protocols for Consultation for Compliance on Specific Issues

- A. Categories of Places/Resources and Actions
 - General to specific
 - NEPA (environmental impacts)
 - NHPA (historic places)
 - NAGPRA (human remains, cultural items)
 - ARPA (archaeological resources)
 - Sacred sites and religious practices

Part 9 – Protocols for Consultation for Compliance on Specific Issues

- B. Kinds of Federal Actions that Trigger consultation under the Plan
 - actions subject to NEPA documents
 - actions not addressed in the HPP are treated as "undertakings" for NHPA
 - endangered species actions
 - actions funded, approved or promoted by AMP
 - any river trip (requires NPS permission)

Part 9 – Protocols for Consultation for Compliance on Specific Issues

- C. Categories of Places and Resources
 - (a) NEPA
 - (b) and (c) NHPA (historic properties)
 - (d) NAGPRA (human remains, cultural items) – inadvertent discoveries
 - (e) NAGPRA – intentional excavations
 - (f) and (g) archaeological resources
 - (h) sacred sites

Part 9 – Protocols for Consultation for Compliance on Specific Issues

- NHPA consultation – protocol (c)
 - (c-1) Provide notice with information
 - (c-2) Tribal request for consultation
 - (c-3) Conduct consultation – may be a short form of 36 CFR part 800 – minimum requirements set out
 - (c-4) Reservation or disputed status lands
 - (c-5) Outcome – generally an MOA, a tribe that object may ask ACHP to engage

Part 9 – Protocols for Consultation for Compliance on Specific Issues

- Protocol (d) – NAGPRA inadvertent discoveries
 - (d-1) Notice of discovery
 - (d-2) Cease activity and protection measures
 - (d-3) NPS responsibilities for federal lands
 - (d-4) Tribal responsibilities on tribal lands
 - (d-5) Reservation status of lands disputed
 - (d-6) Resumption of activity

Part 9 – Protocols for Consultation for Compliance on Specific Issues

- Protocol (e) – NAGPRA intentional excavations
 - (e-1) Applicability of ARPA permit rules
 - (e-2) Excavations on federal lands
 - (e-3) Tribal consent on tribal lands
 - (e-4) Reservation status subject to dispute
 - (e-5) Disposition of items from fed land
 - (e-6) Disposition of items from tribal land

Part 10 - Confidentiality

- Contradictions between mandates for dissemination of information and tribal traditions, particularly regarding religious information
- Authority in NHPA and ARPA to withhold information from disclosure not adequate
- No real resolution – just recognition of a problem.

Part 11 – Funding of Tribal Participation and Consultation

- Federal funding to tribes is through separate cooperative agreements – issues regarding funding are not addressed in the Tribal Consultation Plan

Part 12 – Measuring and Tracking Consultation

- An initial approach – each federal agency and each tribe is to record the number of consultation events that occur, including dates.
Each tribe and agency to evaluate how satisfactory each event was with a four-point scale, focusing on process.
Each tribe and agency to exchange reports and discuss in regular meetings.

Part 13 – Dispute Resolution

- AMP activities – options for the Secretary's designee –
 - Express concurrence with a party's objection
 - Provide recommendations
 - Engage a mediator or other third party
- Objecting party can file a minority report.