

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C. 20426

December 21, 2011

OFFICE OF ENERGY PROJECTS

Project No. 2149-152 - Washington  
Wells Hydroelectric Project  
Public Utility District No. 1 of Douglas  
County

William Dobbins, General Manager  
Public Utility Dist. No. 1 of Douglas Co.  
1151 Valley Mall Parkway  
East Wenatchee, WA 98802

Guy Moura, Acting THPO  
Confederate Tribes of the Colville Reserv.  
P.O. Box 150  
Nespelem, WA 99155

Daniel Picard, District Manager  
U. S. Bureau of Land Management  
Spokane District  
1103 N. Fancher Road  
Spokane Valley, WA 99212

Allyson Brooks, SHPO  
WA State Dept. of Arch. & Hist. Preserv.  
Suite 106  
1063 South Capitol Way  
Olympia, WA 98501

Stanley Speaks, Regional Director  
U.S. Bureau of Indian Affairs  
Northwest Regional Office  
911 NE 11<sup>th</sup> Ave.  
Portland, OR 97232

**RE: Final Programmatic Agreement for Section 106 Compliance**

Dear Addressee:

Enclosed is the final Programmatic Agreement (PA) for the Wells Hydroelectric Project, operated by Public Utility District No. 1 of Douglas County (Douglas County PUD). The project is located in Douglas, Okanogan, and Chelan Counties, Washington, and involves federal land managed by the U.S. Bureau of Land Management, the U.S. Army Corps of Engineers,<sup>1</sup> and lands of the Confederated Tribes of the Colville Reservation.

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<sup>1</sup> The U.S. Army Corps of Engineers (Corps) manages three small parcels of land totaling 6.25 acres. The Corps was contacted by Commission staff on December 13 and 14, 2011, to see if they wanted to be a part of the programmatic agreement, but they declined.

We issued a draft PA and associated historic properties management plan (HPMP) for review and comment on April 13, 2011, and asked whether the Advisory Council on Historic Preservation (Council) wanted to consult on this PA. We did not receive a response from the Council and, therefore, conclude that they choose not to participate in our final PA for this project.

In a letter filed with the Federal Energy Regulatory Commission (Commission) on April 26, 2011, the State Archeologist with the Washington State Historic Preservation Office (SHPO) recommended that we add three additional stipulations to the PA. The three stipulations are: (1) the HPMP shall be reviewed and updated every five years following license issuance date, and the review and updated HPMP for that five year period shall be filed with the Commission and all consulting parties; (2) all projects undertaken by the licensee will be reviewed according to the protocols stipulated in the HPMP; and (3) any expansion or revisions of the area of potential effects (APE) shall conform to section 106.

In a letter filed with the Commission on May 16, 2011, Douglas County PUD wanted to be assured that the second stipulation recommended by the SHPO would pertain to only those projects that may affect cultural resources. Based on the first stipulation recommended by the SHPO, Douglas County PUD also wanted to clarify that in the HPMP there already exists a clause that states the cultural resources work group (CRWG), including the SHPO, will review the HPMP every five years to identify whether any potential changes are needed.

We have reviewed the associated HPMP (dated May 2010) and conclude, as explained next, that it adequately addresses the three additional stipulations recommended by the SHPO, thus no modifications to the PA are necessary. In regard to the SHPO's first stipulation, section 5 of the HPMP states that the CRWG will review the HPMP every five years and identify whether any potential changes are needed. We conclude that this statement in the HPMP already allows for the HPMP to be reviewed and updated—if needed, which is basically equivalent to the SHPO's first stipulation. In regard to the SHPO's second stipulation, we note there are provisions in the HPMP under section 3.3.1 that provides adequate protocols for reviewing scheduled activities within the project's APE that may affect historic properties. We also note that Table 3.3.1 and Appendix F in the HPMP appropriately identify activities that do not require further review. We also note that section 3.3.2 in the HPMP provides other protocols dealing with potential effects to historic properties involving unscheduled activities where inadvertent discoveries are made and during emergency situations. Finally, with regard to the SHPO's third stipulation, section 1.2.2 of the HPMP provides an adequate description of the APE within the project boundary, including areas outside the project boundary where cultural resources may be affected by the project. Based on this description of the APE, which, in turn, conforms to the standard definition of an APE as provided in 36 CFR Part 800.16, we conclude that the HPMP already provides a basis for

the expansion or other revisions of the APE, based upon an identified project-related potential adverse effect on a historic property.

We also note that in a letter filed with the Commission on May 18, 2011, the Bureau of Land Management (BLM) states that no additional stipulations are recommended at this time to either the PA or associated HPMP. However, the BLM recommends that the signature block office heading, name, and title of the signer be revised. We have made these changes.

We received no other comments on the PA or associated HPMP.

Please review the enclosed final PA and sign it no later than 30 days from the date of this letter. Once we receive your signatures, we will file the signed PA with the Council.

Please send your original signed signature page to:

Frank Winchell, Archeologist  
Federal Energy Regulatory Commission  
Office of Energy Projects (PJ-11.7)  
888 First Street, NE  
Washington, D.C. 20426

And a copy of the signed signature page separately to:

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

If you have any questions, please contact Dr. Frank Winchell at (202) 502-6104.

Sincerely,

Jennifer Hill, Chief  
Northwest Branch  
Division of Hydropower Licensing

Enclosure: Final PA

Cc: Letter and final PA

John Fowler, Executive Director  
Advisory Council on Historic Preservation  
1100 Pennsylvania Ave., NW, Suite 809  
Washington, D.C. 20004

John Eddins  
Office of Planning and Review  
Advisory Council on Historic Preservation  
1100 Pennsylvania Ave., NW, Suite 809  
Washington, D.C. 20004

Cc: Mailing list  
Public Files

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL ENERGY REGULATORY COMMISSION,  
WASHINGTON STATE HISTORIC PRESERVATION OFFICER,  
AND  
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION  
TRIBAL HISTORIC PRESERVATION OFFICER  
FOR  
MANAGING HISTORIC PROPERTIES THAT MAY BE AFFECTED  
BY ISSUING A LICENSE TO PUBLIC UTILITY DISTRICT NO. 1 OF  
DOUGLAS COUNTY, WASHINGTON, FOR THE OPERATION OF THE  
WELLS HYDROELECTRIC PROJECT  
IN DOUGLAS, OKANOGAN, AND CHELAN COUNTIES, WASHINGTON  
(FERC PROJECT NO. 2149-152)**

**WHEREAS**, the Federal Energy Regulatory Commission or its staff (hereinafter, "Commission") proposes to issue a new license to Public Utility District No. 1 of Douglas County, Washington (hereinafter, "Licensee") for the continued operation of the Wells Hydroelectric Project (hereinafter, "Project") as authorized by Part I of the Federal Power Act, 16 U.S.C. sections 791(a) through 825(r) *as amended*; and

**WHEREAS**, the Commission has determined that issuing such a license may affect properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter, "historic properties"); and

**WHEREAS**, the associated *Historic Properties Management Plan, Wells Hydroelectric Project, FERC No. 2149*, dated May 2010, provides a description of the Project's area of potential effects, historic properties, and anticipated effects identified as of the date of this Programmatic Agreement; and

**WHEREAS**, the U.S. Bureau of Land Management (hereinafter, "BLM") manages lands within the Project, and has responsibilities for the issuance of permits under the Archeological Resources Protection Act (16 U.S.C. 470aa to 470ll; hereinafter, "ARPA") to the Licensee for archeological work on its lands; and

**WHEREAS**, the Commission has consulted with the Washington State Historic Preservation Officer (hereinafter, "SHPO") pursuant to 36 C.F.R. section 800.14(b) of

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the Advisory Council on Historic Preservation's (hereinafter, "Council") regulations (36 C.F.R. Part 800), implementing section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter, "section 106"); and

**WHEREAS**, the Project will affect reservation lands and other lands important to the Confederated Tribes of the Colville Reservation (hereinafter, "Colville") and the Commission has consulted with the Colville Tribal Historic Preservation Officer (hereinafter, "THPO"), pursuant to 36 C.F.R. section 800.14(b) of the Council's regulations (36 C.F.R. Part 800), implementing section 106; and

**WHEREAS**, the Licensee has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

**WHEREAS**, the U.S. Bureau of Indian Affairs (hereinafter, "BIA") has tribal trust responsibilities, and the BIA has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

**WHEREAS**, the BLM has agreed to participate in the consultation regarding the Project under the terms of this Programmatic Agreement, and has been invited to concur in the Programmatic Agreement; and

**WHEREAS**, the Commission will require the Licensee to implement the provisions of this Programmatic Agreement as a condition of issuing a new license for the Project;

**NOW THEREFORE**, the Commission, SHPO, and THPO agree that the Project will be administered in accordance with the following stipulations in order to satisfy the Commission's section 106 responsibilities during the term of the Project's license.

## **STIPULATIONS**

The Commission will ensure that upon issuing a license for this Project, the Licensee will implement the following stipulations. All stipulations that apply to the Licensee will similarly apply to any and all of the Licensee's successors. Compliance with any of the following stipulations does not relieve the Licensee of any other obligations it has under the Federal Power Act, the Commission's regulations, or its license.

### **I. FINAL HISTORIC PROPERTIES MANAGEMENT PLAN**

- A. Upon issuing a new license for this Project, the Licensee will implement the Historic Properties Management Plan (hereinafter, "HPMP").
- B. The Licensee will, within 30 days of every anniversary of the issuance date of the license, file a report with the SHPO, THPO, BLM, and BIA of activities conducted under the implemented HPMP. The report will contain a detailed summary of any cultural resources work conducted during the preceding year; if no work was completed, a letter from the Licensee will be prepared to that effect, and will satisfy the intent of this stipulation.

### **II. DISPUTE RESOLUTION**

- A. If at any time during implementation of this Programmatic Agreement and the HPMP, the SHPO, THPO, BLM, BIA, or the Council object to any action or any failure to act pursuant to this Programmatic Agreement or the HPMP, they may file written objections with the Commission.
  - 1. The Commission will consult with the objecting party, and with other parties as appropriate, to resolve the objection. The Commission may initiate on its own such consultation to remove any of its objections
- B. If the Commission determines that the objection cannot be resolved, the Commission will forward all documentation relevant to the dispute to the Council

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and request that the Council comment. Within 30 days after receiving all pertinent documentation, the Council will either:

1. Provide the Commission with recommendations, which the Commission will take into account in reaching a final decision regarding the dispute; or
  2. Notify the Commission that it will comment pursuant to 36 C.F.R. section 800.7(c)(1) through (c)(3) and section 110(a)(1) of the National Historic Preservation Act, and proceed to comment.
- C. The Commission will take into account any Council comment provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The Commission's responsibility to carry out all actions under this Programmatic Agreement that are not the subject of dispute will remain unchanged.

### **III. AMENDMENT AND TERMINATION OF THIS PROGRAMMATIC AGREEMENT**

- A. The Commission, SHPO, THPO, BLM, BIA, or Licensee may request that this Programmatic Agreement be amended, whereupon these parties will consult in accordance with 36 C.F.R. section 800.14(b) to consider such amendment.
- B. The Commission, SHPO, or THPO may terminate this Programmatic Agreement by providing 30 days written notice to the other parties, provided that the Commission, SHPO, THPO, BLM, BIA, Licensee, and the Council consult during the 30-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Commission will comply with 36 C.F.R. sections 800.3 through 800.7(c)(3), with regard to individual actions covered by this Programmatic Agreement.



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Execution of this Programmatic Agreement evidences that the Commission has satisfied its responsibilities pursuant to section 106 of the National Historic Preservation Act, *as amended*, for all individual actions carried out under the license. Provided, however, that unless and until the Commission issues the license for the Project and this Programmatic Agreement is incorporated by reference therein, this Programmatic Agreement has no independent legal effect for any specific license applicant or Project.

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**FEDERAL ENERGY REGULATORY COMMISSION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Ann F. Miles

Director, Division of Hydropower Licensing

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**WASHINGTON STATE HISTORIC PRESERVATION OFFICER**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Allyson Brooks, Ph.D.

Deputy State Historic Preservation Officer

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**CONFEDERATED TRIBES OF THE COLVILLE RESERVATION TRIBAL  
HISTORIC PRESERVATION OFFICER**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Guy Moura  
Acting Tribal Historic Preservation Officer

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**CONCUR: PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY,  
WASHINGTON**

By: \_\_\_\_\_ Date: \_\_\_\_\_

William C. Dobbins  
General Manager

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**CONCUR: U.S. BUREAU OF LAND MANAGEMENT, SPOKANE DISTRICT  
OFFICE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Daniel C. Picard  
District Manager

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**CONCUR: BUREAU OF INDIAN AFFAIRS, NORTHWEST REGIONAL  
OFFICE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Stanley Speaks  
Regional Director

Document Content(s)

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