

PROGRAMMATIC AGREEMENT

AMONG THE

UNITED STATES FISH AND WILDLIFE SERVICE,
THE SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICE,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING

**A PROCESS FOR COMPLIANCE WITH THE
NATIONAL HISTORIC PRESERVATION ACT
FOR UNITED STATES FISH AND WILDLIFE SERVICE
SOUTH DAKOTA PARTNERS FOR FISH AND WILDLIFE PROGRAM**

December 31, 2014

WHEREAS, the United States Fish and Wildlife Service (Service) is responsible for administering the South Dakota Partners for Fish and Wildlife (PFW) program which provides financial and technical assistance for habitat restoration, management, and protection projects (undertakings) pursuant to authority contained in the partners for Fish and Wildlife Act (P.L. 109-294), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-j), as amended; and

WHEREAS, the goal of the PFW program is to conserve, protect and enhance the native grassland and wetland habitats of South Dakota (SD) which include the historic properties imbedded within them; and

WHEREAS, the Service and South Dakota State Historic Preservation Office (SHPO) acknowledge that implementation of this program will be more effective, if pursuant to 36 CFR Part 800.14(b) an agreement is in place to define roles and responsibilities in the Section 106 review process, eliminate the need for further SHPO review of certain routine activities with no to minimal potential to affect historic properties, and promote efficiency so that the effects of undertakings on historic properties may be considered while minimizing delays to FWS delivery of technical and financial assistance to PFW undertakings; and

WHEREAS, the Service determined that the scope of the Programmatic Agreement (PA) does not apply on lands within the jurisdiction of any Tribal Historic Preservation Officer (THPO) in South Dakota including Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Flandreau Santee Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Sisseton Wahpeton Oyate, Standing Rock Sioux Tribe, and Yankton Sioux Tribe; and

WHEREAS, consultation with Indian Tribes (Tribes) is the responsibility of the Service. The Service recognizes the government-to-government relationship between the Federal Government

and Tribes pursuant to Federal law and implementing regulations, Executive Orders, and Service policies and guidelines as outlined in the Department of Interior Policy on Consultation with Indian Tribes and the U.S. Fish & Wildlife Service Tribal Consultation Handbook; and

WHEREAS, the Service consulted with the Tribal Chairpersons and THPOs for the Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Flandreau Santee Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Sisseton Wahpeton Oyate, Standing Rock Sioux Tribe, Yankton Sioux Tribe, Fort Peck Assiniboine and Sioux Tribe, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Lower Sioux Indian Community, Omaha Tribe of Nebraska, Otoe-Missouria Tribe of Indians, Ponca Tribe of Indians of Oklahoma, Ponca Tribe of Nebraska, Prairie Island Indian Community of Minnesota, Sac and Fox Nation of Missouri in Kansas and Nebraska, Sac and Fox Nation of Oklahoma, Sac and Fox Tribe of Mississippi in Iowa, Santee Sioux Tribe of Nebraska, Spirit Lake Tribe, Upper Sioux Community of Minnesota, and invited them to participate in the development of this PA, and to concur with this PA pursuant to 36 CFR Part 800.14 (see Attachment C for summarization of tribal consultation conducted); and

WHEREAS, the Service invited County Commissioners, local historical groups, State agencies, Federal agencies, and other local units of Government across the state to be consulting parties in the development of this PA; and

WHEREAS, the Service consulted with the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR Part 800.14 of the regulations (36 CFR Part 800) implementing Section 106 of the NHPA and they have decided to participate in the development of this PA and to be Signatories; and

WHEREAS, the Service has determined that the exempted undertakings in Attachment B have no to minimal potential to effect historic properties based on the nature of the undertaking and therefore require no further review by SHPO, Tribes, and other consulting parties; and

NOW, THEREFORE, the Service, the SHPO, and the ACHP agree that the activities described herein shall be implemented in accordance with the following stipulations to take into account the effect of such PFW activities on historic properties and to fulfill the Service's Section 106 responsibilities.

STIPULATIONS

The Service shall ensure that the following measures are implemented for PFW undertakings in South Dakota:

1. Roles and Responsibilities of the Signatories

A. The Service:

- 1) PFW State Coordinator (State Coordinator) is responsible to ensure that all requirements of Section 106 are fulfilled, to ensure that government to government

consultation with Indian tribes (Tribes) is conducted, and is responsible for all findings and determinations.

- 2) The Wildlife Biologists are responsible for working with landowners to design habitat restoration and improvement projects on private land; to determine during the design process if the undertaking meets one of the exempted activities in Attachment B; and coordinate with the Service Archaeologist to carry out the Section 106 review according to 36 CFR Part 800.3 through 800.6 if the undertaking is not exempt from review.
- 3) The Service Archeologists serve as principal investigators and are responsible for the identification of historic properties. The Service Archaeologists will recommend a determination of effect to the State Coordinator. The Service Archaeologists will perform field and other investigations or will review and comment on documentation completed by a qualified consultant and will provide recommendations for avoidance, minimizing, or mitigation of the effects, if adverse, on historic properties. All Service Archaeologists working under this PA or consultants utilized in PFW program activities will meet or exceed the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61).

B. SHPO:

- 1) The SHPO will advise and assist the Service in carrying out their Section 106 responsibilities and will assist the Service Archaeologists in developing and providing training programs for the Wildlife Biologists.

2. Review Process:

- A. Exempt Undertakings: The Wildlife Biologists in coordination with the Service Archaeologists will review each undertaking to determine if it meets the definition of an Exempted Undertaking as defined in Attachment B. Exempted undertakings do not require review under Section 106, but will be documented for Quality Assurance and reporting purposes. An annual report of the exempted undertakings will be provided by the Service to the Signatories.
- B. Non-Exempt Undertakings: If the undertaking is not exempt from review as defined in Attachment B, the Service shall follow the standard Section 106 review process as set forth in 36 CFR Part 800 Protection of Historic Properties. The SHPO will have no less than 30 calendar days from receipt of the information to provide comments on the undertaking's potential to effect historic properties. The State Coordinator will ensure that SHPO is provided information consistent with Stipulation 7 for all non-exempt undertakings.
- C. Tribal Consultation for Review of Non-Exempt Undertakings: The Service recognizes the government to government relationship between the federal government and Tribes. The State Coordinator will ensure that Tribes are provided information consistent with Stipulation 7 for all non-exempt undertakings. The Tribes will have no less than 30

calendar days from receipt of the information to provide comments on the undertaking's potential to effect historic properties, including places of religious and cultural significance to Tribes.

3. General Program Consultation:

- A. On January 15th of each year, the State Coordinator will provide information to Tribes concerning the PFW program and the types of undertakings the Service provides financial and technical assistance for. Written correspondence will be sent encouraging the Tribes to contact the Service with any specific concerns they may have about the program, undertaking activities, and the geographic areas of importance to them.
- B. In order to strengthen the government to government relationship between the Service and Tribes, the State Coordinator will continue to consult with Tribes to establish mutually acceptable Section 106 consultation protocols. The Service will continue to send written and electronic correspondence and host an annual meeting with the tribes in an ongoing effort to develop such protocols.

4. General Public Consultation: The Service will seek and consider the views of the public in a manner that reflects the nature and complexity of the undertakings and their effects on cultural resources, also taking into account any confidentiality concerns. This will be completed through various presentations, sharing of PFW information, and through annual reports.

5. Training: Training is required for all Wildlife Biologists working under this PA. The purpose of the training is to increase awareness of the process and to provide additional observations in the field.

- A. The State Coordinator will assure completion of Natural Resource Conservation Service (NRCS) Cultural Resources Modules 1-9 or similar training by all Wildlife Biologists that utilize this PA. Wildlife Biologists are required to receive additional training every three years. The updated training can consist of formal classroom work, field exercises, or on-the-job training (or any combination of such).
- B. The Service Archaeologists shall assist in developing and providing the training programs for Wildlife Biologists to make sure it's applicable to the PA and approved by the SHPO.
- C. The SHPO, upon request, will provide appropriate staff to assist in the development and presentation of training programs. The SHPO will be provided an opportunity to review and comment on changes to training manuals and materials.

6. Quality Assurances: Monitoring, quality control, and review of activities under this PA will be conducted as follows:

- A. Any Signatory or consulting party may monitor any activities carried out pursuant to this PA. The Service must be notified 10 days prior to the monitoring and will cooperate in carrying out the monitoring and review responsibilities by providing safe access and requested documentation.
 - B. All undertaking activity must be confined to the identified APE. If there are changes to the undertaking which alter the APE, those revisions must be reviewed following the procedures outlined in Stipulation 2. Work may not proceed until the review of the new APE is complete.
 - C. The Service Archaeologist will conduct field inspections of a representative sample of the types of undertakings included in Attachment B annually to verify that the terms of the PA are being carried out in the manner intended. If cultural resources are found during the field inspection, the find will be handled as an unintended discovery, see Stipulation 9. If problems are identified, the Service Archeologist will contact the State Coordinator to review the procedures outlined in the PA. A letter report will be submitted to the SHPO describing the problem identified and explaining how it will be rectified in the future. Stipulation 9 outlines the process of unintended discoveries.
 - D. The Signatories and consulting parties shall consult one year from execution of the PA to review implementation of its terms and to determine whether revisions are needed. Thirty (30) days prior to the consultation, an annual summary of activities completed under this PA will be reported by the Service to all Signatories. If revisions to the agreement are needed, the Service will develop amendments pursuant to Stipulation 11. After the initial consultation, the implementation of the PA will be reviewed by the Signatories and consulting parties no less than once every year and it can be reviewed more often if any of the parties so request. Annual reviews will take place as a personal meeting or conference call by the Signatories.
7. **Reporting and Documentation Standards:** Documentation submitted for non-exempt projects for review to the SHPO, Tribes, and other appropriate consulting parties will be consistent with the documentation standards out lined in 36 CFR Part 800.11. Archaeological surveys will conform to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-44740) and any relevant SHPO guidelines.
8. **Duration:** This PA will continue in full force and effect from the date of execution by the ACHP and remain in effect for five years unless it is terminated by any Signatory pursuant to Stipulation 12 below. The duration of this PA may be revised or extended by mutual consent of Signatories, by issuance of a written amendment signed and dated by all Signatories according to Stipulation 11 of this agreement.
9. **Unintended Discoveries:** Inadvertent discoveries shall be handled as follows:
- A. Cultural Resources. If previously undiscovered cultural resources are exposed during any activities associated with undertakings funded under the SD PFW program, work within

the area shall cease and the Wildlife Biologist will contact the Archeologist and the State Coordinator. The site will be secured and protected by the Service. Construction activities at the worksite will not resume until all activities needed to comply with 36 CFR Part 800.13(b) have been completed. The Service will consult with the SHPO and other consulting parties on its determination whether the discovery qualifies as a historic property. Based on results of the consultation, undertaking work may continue under the advisement of the Service Archaeologist.

- B. **Human Remains.** If human remains are discovered during the execution of undertaking activities, the Wildlife Biologist, contractor, landowner, or any other person involved in the undertaking shall stop the undertaking immediately. The remains will be treated as per South Dakota Codified Law 34-27-25, SDCL 34-27-28, SDCL 34-27-31, see Attachment D, and follow the guidelines in Attachment E: Procedures Following the Inadvertent Discovery of Human Remains.

10. Dispute Resolution: Should any consulting party object at any time to any actions proposed pursuant to this PA or the manner in which the terms of this PA are implemented, the Service shall consult with such party to resolve the objection. If the Service determines that such objection cannot be resolved, the Service will:

- A. Forward all documentation relevant to the dispute, including the Service's proposed resolution, to the ACHP. The ACHP shall provide the Service with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Service shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and consulting parties, and provide them with a copy of this written response. The Service will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Service may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Service shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and consulting parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. The Service's responsibilities to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

11. Amendments: This PA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

12. Termination: If any Signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation 11, above. If within thirty (30) days (or another time period

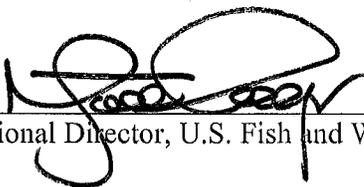
agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the PA upon written notification to the other Signatories.

Once the PA is terminated, the Service must either (a) execute a PA pursuant to 36 CFR Part 800.14 or comply with 36 CFR Part 800 for all undertakings associated with the PFW program. The Service shall notify the Signatories as to the course of action it will pursue.

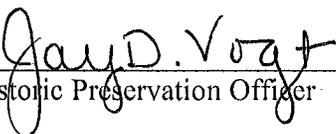
Execution of this PA by the Service, the ACHP and the SHPO and implementation of its terms are evidence that the Service has taken into account the effects on historic properties of undertakings arising from implementation of the PFW program in South Dakota and afforded the ACHP an opportunity to comment.

The duly authorized officers of the Signatories listed below have executed this Agreement on the dates shown with their respective signatures.

UNITED STATES FISH AND WILDLIFE SERVICE

By:  Date: 1-23-15
Regional Director, U.S. Fish and Wildlife Service

SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 01-28-2015
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

 By:  Date: 2/23/15
Executive Director

ATTACHMENT A

DEFINITIONS AND ACRONYMS

Adverse Effect: An adverse effect is an effect of an undertaking that “may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.” 36 CFR Part 800.5(a). This section of the ACHP regulations provides additional guidance on how to determine whether an effect is adverse and examples of adverse effects.

Advisory Council on Historic Preservation (ACHP): Established by the National Historic Preservation Act (1966). The Council is an independent executive agency that has an advisory role in a Federal agency’s decision-making process when a proposed undertaking might affect a cultural property which meets National Register criteria. The ACHP promulgates regulations which implement section 106 of the National Historic Preservation Act.

Area of Potential Effects (APE): This is “the geographic area or areas within which an undertaking may directly or indirectly cause alternations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” 36 CFR Part 800.16(d).

Avoidance: Avoidance means that no activities associated with an undertaking that may affect historic properties and unevaluated sites shall occur within their boundaries or view shed where setting is an important element to the site’s significance. Portions of undertakings may need to be modified, redesigned, or eliminated to avoid Historic Properties and Unevaluated Sites.

Cultural Resources: All eligible, unevaluated, and not eligible resources including buildings, structures, sites, objects, districts and landscapes.

Historic Property: This is “any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties and properties of traditional, religious, and cultural importance to an Indian Tribe. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register criteria.” 36 CFR Part 800.16(l)(1).

Indian Tribe: This is “an Indian Tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 36 CFR Part 800.16(m).

National Register of Historic Places (NRHP): The official Federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and or culture maintained by the Keeper of the National Register, National Park Service.

State Historic Preservation Officer (SHPO): The official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

Tribal Historic Preservation Officer (THPO): This individual is “the tribal official appointed by the tribe’s chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO [State Historic Preservation Office] for purposes of Section 106 compliance in tribal lands in accordance with Section 101(d)(2) of the act.” 36 CFR Part 800.16(w). [Note: See Section 101(d)(2), National Historic Preservation Act, 16 U.S.C. Part 470a(d)(2).]

Undertaking: An undertaking is “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval” 36 CFR Part 800.16(y).

Unevaluated Site: Any prehistoric or historic district, site, building, structure, or object that has not been evaluated for inclusion in the NRHP maintained by the Secretary of the Interior. Until their National Register status is determined, they are treated as eligible sites.

Wildlife Biologist: Service field staff responsible for designing and implementing habitat restoration and improvement undertakings on private land.

36 CFR PART 800: Code of Federal Regulations: Protection of Historic Properties (incorporating amendments effective August 5, 2004)

Acronyms

ACHP – Advisory Council on Historic Preservation
APE – Area of Potential Effect
CFR – Code of Federal Regulations
NHPA – National Historic Preservation Act
NRHP – National Register of Historic Places
PA – Programmatic Agreement
PFW – Partners for Fish and Wildlife
SD – South Dakota
Service – United States Fish and Wildlife Service
SHPO – South Dakota State Historic Preservation Office
THPO – Tribal Historic Preservation Office

ATTACHMENT B

EXEMPTED UNDERTAKINGS

The following list of activities have no to minimal potential to adversely affect historic properties based upon the nature of the undertaking and therefore are exempt from review under Section 106. This list may be amended when such an amendment is agreed upon pursuant to Stipulation 11 in writing by all Signatories. An amendment to the exempted undertakings can take place without amending the PA.

1. Fence – New construction or replacement of fences.
2. Herbaceous Planting – Establishment of grasses and legumes with normal farming equipment as nesting cover, wildlife food plots, or soil stabilization on previously cultivated areas where planting equipment is confined to previously cultivated areas or areas disturbed by human activity.
3. Vegetation Control and Range Rehabilitation – Use of chemical spraying, mowing, haying, grazing, or removing of woody vegetation that does not involve ground disturbance, to control noxious weeds or to improve vegetative cover. This Vegetation Control and Range Rehabilitation exemption is specific to grasslands. This does not include the use of Prescribed Burning. Refer to Prescribed Burning exemption for use of treatment.
4. Prescribed Burning – Includes prescribed burns in grasslands that do not involve any soil disturbance by mechanical equipment or hand tools. Prescribed burns must take into account any nearby historic structures or rock art that may be harmed by fire if the fire were to escape – in which case the Archaeologist needs to be consulted. Prescribed Burning does not include the installation of firebreaks. Refer to Firebreak exemption for allowable implementation of firebreaks.
5. Firebreaks - Tilling strips where disturbance is limited to the area and depth of previous agricultural cultivation or disturbed areas caused by human activity. Mowing and raking strips in grassland areas with use of normal rubber tire agricultural equipment that does not disturb the ground surface. Firebreak exemption is specific to grasslands.
6. Nest Structure – Installation and maintenance of artificial nest boxes and platforms.
7. Above Ground Pipeline – Plastic livestock water pipeline placed on the ground surface to convey water from an existing water source to an existing pipeline or water tank.
8. Solar Pump – A solar powered water pump which is moved multiple times throughout the growing season and placed on the ground typically in conjunction with either an above ground

pipeline or portable livestock water tank to pump water from a water source to a livestock water facility.

9. Portable Water Tank – Water tank utilized by livestock for no more than three months that is placed on the ground surface while livestock utilize vegetation in a specific grazing area. This does not include any type of ground disturbance for the water tank placement.

10. Existing Water Tank Replacement – Replacement of 1) a permanent existing rubber tire, fiberglass, metal, concrete, or other like material water tanks, 2) the water tank base material such as gravel, clay, concrete, bentonite, etc., and 3) support structures such as metal and wood posts where disturbance is confined to a combination of the tank foot print and cattle disturbance. Borrow material for water tank bases must come from a commercial source.

11. Wetland Restoration via Ditch Plug or Fill – Restoration of a wetland by creating a ditch plug or complete ditch fill with dirt or sediment borrowed from within the wetland basin. Wetlands may also be restored by using a dike or embankment however the dike or embankment may only extend perpendicular beyond the disturbed area (ditch) 12 feet on either side. The borrow site shall be limited to no more than one foot deep. Fill dirt can also be obtained from a dugout berm where the original surface of the ground is not impacted by the removal of the material. Wetland Restoration via Ditch Plug or Fill is limited to previously cultivated areas. **This exemption does not apply in native grassland situations.**

12. Wetland Restoration via Tile Breakage – Restoration of a wetland by digging down to a tile line, removing a section of the tile, and backfilling the area with the excavated material. Wetland Restoration via Tile Breakage is limited to previously cultivated areas and to the disturbed area where the tile is located. This exemption does not apply in native grassland situations.

13. Dugout Cleanout – Removing sediment or debris from an existing dugout typically by the use of an excavator or dragline and side casting the sediment or debris on top of existing spoil piles. Ground disturbance is confined to previously disturbed areas associated with construction of existing dugout.

14. Dugout Filling – Pushing or placing existing dugout berms back into an existing dugout. This practice typically occurs where the existing dugout has been constructed in a small wetland and is having a negative hydrological effect on the wetland. The practice is used to restore the hydrology of a wetland. Ground disturbance is confined to the area previously disturbed by the construction of the existing dugout.

15. Embankment Repair – Embankment Repair is limited to four specific practices. For all practices, ground disturbance must be confined to areas previously disturbed by the construction

of the existing embankment. Borrow material for Embankment Repairs is limited to previously disturbed side slopes and pool area. Embankment Repair does not include the raising of the dam grade or construction of a new embankment. Embankment Repair does not include the raising of the dam grade in coordination with the raising of the water level which would include the raising of the primary spillway pipe, cutting a new emergency spillway, and thus the need to increase the height of the embankment grade.

- A. Pipe Installation – Installation or replacement of a primary spillway pipe in an existing embankment. Disturbance must be confined to the area associated with the construction of the existing embankment.
 - B. Emergency Spillway Repair – Repair of an existing emergency spillway that include filling eroded areas, filling gullies, and flattening of a previously excavated, non-natural spillway. Disturbance must be confined to the area associated with the construction of the existing emergency spillway.
 - C. Slope and Top of Embankment Repair – Repair of the side slopes and top of the embankment to restore the embankment grade back to 3:1 front and back slopes, the recommend amount of freeboard (typically 3.5 feet), and a 12 foot wide top. This exemption also allows the installation of a wave or splash berm and the repair or installation of wing dikes. Examples of Slope and Top of Embankment Repair include repair of wave erosion, repair of erosion caused by livestock, repair of animal burrows, tree removal, repair embankment settlement, repair embankment sliding, and debris removal (such as automobile bodies, tires, metal, rocks, wood, etc.). Disturbance must be confined to the area associated with the construction of the existing embankment.
 - D. New Emergency Spillway Cutting – This exemption is only allowable in West River with the following three caveats; 1) the existing emergency spillway is not repairable and must be filled or closed off by the extension of the current embankment, 2) the new emergency spillway disturbance area will be less than 0.2 acres, and 3) the existing embankment is farther than $\frac{3}{4}$ of a mile from any naturally occurring semi-permanent water source as identified on the National Wetlands Inventory map.
16. Signs – Installation and maintenance of information signs, including installation of sign posts.
17. Population surveys – Observations, data collection, investigations, and report writing.
18. Public Education – Classroom and outdoor education activities that do not involve soil disturbance.

19. Invasive Species Biological Control – Collection and distribution of insects used for biological control of invasive plant species. No ground disturbance occurs.

ATTACHMENT C

The following is a brief synopsis of Tribal consultation that occurred throughout the development of this Programmatic Agreement.

Over 100 phone calls and emails were made to and from various Tribes within SD in an attempt to coordinate with them and maintain an open line of communication throughout the process.

1. On June 6th, 2013 an initial certified letter was mailed to the Tribal Chairpersons and THPOs in SD and to Tribes identified as having an interest in undertakings in SD. The intent of the letter was to: 1) inform the Tribes early in the process that the Service intended to pursue development of a PA, 2) provide general information about the PFW program, and 3) explain that the Service would be consulting with the Tribes throughout the development of the PA and seek their input. A total of 24 tribes were contacted including the Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Flandreau Santee Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Sisseton Wahpeton Oyate, Standing Rock Sioux Tribe, Yankton Sioux Tribe, Fort Peck Assiniboine and Sioux Tribe, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Lower Sioux Indian Community, Omaha Tribe of Nebraska, Otoe-Missouria Tribe of Indians, Ponca Tribe of Indians of Oklahoma, Ponca Tribe of Nebraska, Prairie Island Indian Community of Minnesota, Sac and Fox Nation of Missouri in Kansas and Nebraska, Sac and Fox Nation of Oklahoma, Sac and Fox Tribe of Mississippi in Iowa, Santee Sioux Tribe of Nebraska, Spirit Lake Tribe, and Upper Sioux Community of Minnesota.
2. Between July 25th, 2013 and September 11th, 2013 Service staff held individual meetings with the Cheyenne River Sioux, Lower Brule Sioux, Rosebud Sioux, Sisseton Wahpeton Oyate, Standing Rock Sioux, and Yankton Tribes to discuss the PA. The primary audience sought in the meetings was the THPOs and their staff. All meetings included office visits and some field visits. The goals of the meetings were to follow up on the initial letter and solicit comments on the proposed development of a PA. On September 19th, 2013 an outline of the PA was sent via certified mail to the Tribal Chairpersons and THPOs of the 24 Tribes. A cover letter was attached stating the Service was in the early stages of developing the PA. The letter reiterated the goals of the PFW program and requested comments on the PA outline.
3. On November 21st, 2013 an initial draft copy of the PA was sent via certified mail to the same Chairpersons and THPOs of the 24 Tribes. The cover letter requested Tribal input into the development of the agreement.

4. On February 4th, 2014 a second draft copy of the PA was mailed via certified mail to the same Tribal Chairpersons and THPOs. The cover letter requested comments on the draft agreement.
5. Based on comments received by the Sisseton Wahpeton Oyate Tribe, a meeting was held to discuss the PA. On April 8th, 2014 a certified letter was sent to the Tribal Chairpersons and THPOs within SD inviting them to attend a meeting at the Cultural Heritage Center in Pierre, SD. The Tribal Chairpersons and THPOs were also invited to attend via emails on March 19th, 2014 and May 8th, 2014. The meeting was held May 13th, 2014.
6. On May 13th, 2014 representatives from the Standing Rock Sioux and Sisseton Wahpeton Oyate Tribes attended the meeting. A Number of comments were provided and integrated into the document.
7. On October 17th, 2014 a third draft copy of the PA was mailed via certified mail to the same Tribal Chairpersons and THPOs of the 24 Tribes. The cover letter requested comments on the draft agreement.

ATTACHMENT D

SOUTH DAKOTA BURIAL LEGISLATION

34-27-25. Reporting discovery of human skeletal remains--Failure to report as misdemeanor. Any person who encounters or discovers human skeletal remains or what he believes may be human skeletal remains in or on the ground shall immediately cease any activity which may disturb those remains and shall report the presence and location of such human skeletal remains to an appropriate law enforcement officer. Willful failure to report the presence or discovery of human skeletal remains or what may be human skeletal remains within forty-eight hours to an appropriate law enforcement officer in the county in which the remains are found is a Class 2 misdemeanor.

34-27-28. Notification to landowner and coroner--Notification to state archaeologist and tribal officials--Time limits. If a law enforcement officer has reason to believe that the skeletal remains, reported pursuant to § 34-27-25, may be human, he shall promptly notify the landowner and the coroner. If the remains reported under § 34-27-25 are not associated with or suspected of association with any crime, the state archaeologist shall be notified within fifteen days. The state archaeologist shall thereupon follow the procedure set out in § 34-27-31, except that the skeletal remains shall be turned over to the attorney general or any state's attorney should either request the remains for further investigation.

34-27-31. Discovery of human remains or funerary objects by state educational institution or museum--Contact state archaeologist--Notice to tribal officials--Tribal request--Disposition of remains or objects. If any state supported educational institution or state supported museum comes into possession of human skeletal remains or associated funerary objects from South Dakota following July 1, 1990, the institution or museum shall contact the state archaeologist within fifteen days of the find. Within a reasonable period of time from contact by the institution or museum, but not to exceed one year, the state archaeologist shall identify the remains or objects. If review by the state archaeologist demonstrates to his satisfaction that the remains or objects are not directly related to a tribal group, the state archaeologist is responsible for their final disposition after consultation with the director of the State Office of History. If review by the state archaeologist demonstrates to his satisfaction that there is a direct relationship of the remains or objects to a tribal group, the state archaeologist shall notify the director of the State Office of History and shall initiate contact with officials of that tribal group as designated by the Office of Indian Affairs. If, within one year of the first contact with the tribal group as set forth in this section, the tribal group requests return of the remains or objects, the state archaeologist shall turn over to the tribal group the remains or objects. If, within one year of the first contact with the tribal group as set forth in this section, the tribal group has not requested the return of the remains or objects, the state archaeologist is responsible for their final disposition after consultation with the director of the State Office of History.

ATTACHMENT E

PROCEDURES FOLLOWING THE INADVERTENT DISCOVERY OF HUMAN REMAINS

Unanticipated discovery of unmarked human burials and human remains on non-Federal lands:

1. When unmarked human burials or human remains are discovered during construction activities, the Service shall comply with South Dakota State Law Chapter 34-27.
2. The Service will immediately halt construction activities and implement measures to protect the discovery from looting and vandalism until the Archeologist, the South Dakota State Archaeologist and other consulting parties have been notified. Human remains and any other items in the immediate vicinity are to be left in place and are not to be removed or disturbed by the Service, including hand digging or picking up bone or objects.
3. The Service shall notify the local law enforcement agency, the Archeologist, the South Dakota State Archaeologist, and other consulting parties, including Indian tribes, within forty-eight (48) hours of the discovery.
4. If local law enforcement determines that the remains are not associated with a crime, the Service shall determine if it is prudent and feasible to avoid disturbing the remains. If the Service determines that disturbance cannot be avoided, the Service shall consult with South Dakota State Archaeologist and other consulting parties, including Indian tribes, to determine acceptable procedures for the removal, treatment and disposition of the burial or remains. The Service shall implement the plan for removal, treatment and disposition of the burial or remains as authorized by the South Dakota State Archaeologist.
5. The Service may resume construction activities in the area of the discovery upon completion of the plan authorized by the South Dakota State Archaeologist.

Unanticipated discovery of unmarked human burials and human remains on Federal lands:

1. The appropriate Federal agency will be responsible for compliance with the provisions of NAGPRA on Federal land.

Contact Information:
State Archaeologist
South Dakota State Historical Society
Archaeological Research Center
PO Box 1257
Rapid City, SD 57709
(605) 394-1936

Signatures of Concurring Parties

By: (Print name) _____

Title: _____

Party Represented: _____

Signature Date

List of Consulted Parties

- | | |
|---|--|
| Cheyenne River Sioux Tribe | Sac and Fox Nation of Oklahoma |
| Crow Creek Sioux Tribe | Sac and Fox Tribe of Mississippi in Iowa |
| Flandreau Santee Sioux Tribe | Santee Sioux Tribe of Nebraska |
| Fort Peck Assiniboine and Sioux Tribe | Sisseton-Wahpeton Oyate |
| Iowa Tribe of Kansas and Nebraska | Spirit Lake Tribe |
| Iowa Tribe of Oklahoma | Standing Rock Sioux Tribe |
| Lower Brule Sioux Tribe | Upper Sioux Community of Minnesota |
| Lower Sioux Indian Community | Yankton Sioux Tribe |
| Oglala Sioux Tribe | |
| Omaha Tribe of Nebraska | |
| Otoe-Missouria Tribe of Indians | |
| Ponca Tribe of Indians of Oklahoma | |
| Ponca Tribe of Nebraska | |
| Prairie Island Indian Community of Minnesota | |
| Rosebud Sioux Tribe | |
| Sac and Fox Nation of Missouri in Kansas and Nebraska | |