



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

September 27, 2012

Charles Stenvall
U.S. Fish & Wildlife Service
Project Leader Mid-Columbia River National Wildlife Refuge Complex
64 Maple Street
Burbank, Washington 99323

Dear Mr. Stenvall;

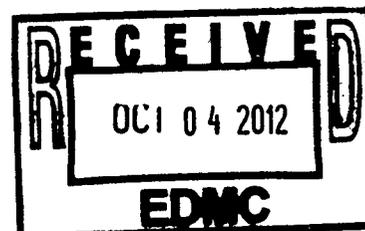
The Yakama Nation Environmental Restoration/Waste management (YN ER/WM) Program has reviewed the Section 106 Cultural Resource Review for the proposed Elk Population Control Hunt on the ALE unit in the Rattlesnake Unit of the Hanford Reach National Monument (HRNM). The U.S. Fish & Wildlife Service (USFWS) has made a finding of "No Adverse Effect", YN ER/WM does not concur with this finding.

Issues discussed in the Cultural Review such as Treaty Rights, open and unclaimed land, and hunter permits will not be addressed with these comments as they are beyond the scope of a Section 106 review. These issues have been addressed in separate correspondence (August 30, 2012 letter to Robyn Thorson from Harry Smiskin). A Section 106 review is to determine what effects (if any) a Federal undertaking will have on cultural resources, defined in National Historic Preservation Act Section 106 as, "district, site, building, structure, or object that is included in or eligible for inclusion in the National Register". The below comments will therefore only address the potential for the State Department of Fish and Wildlife Population Control Hunt on the ALE to adversely affect cultural resources.

Section 5. Tribal Consultation:

Table 1 (page 7-8) outlines all of the "consultation" according to USFWS, however it needs to be noted that although the Elk Hunt was listed as an agenda item at several of the monthly Tribal cultural meetings, Tribal cultural staff were instructed not to discuss this project at several of these meetings, pending higher level consultation with upper management and/or policy level leadership. While staff was often given additional information on the project, it was not "discussed" in any detail and should not be considered consultation.

On March 16, 2012, Anan Raymond approached Dana Miller and Rose Ferri (ER/WM cultural staff) during a poster presentation at the Northwest Archaeology conference in Pendleton, OR. He asked if he could speak with them and an unarranged general discussion took place. While there was an exchange of general ideas and thoughts this meeting, this cannot be considered consultation.



Section 6.6. Hanford Reach National Monument:

The Monument was created by Presidential Proclamation no. 7319 on June 9th 2000, under the authority given the president in the Antiquities Act of 1906 (16 USC 431-433). The primary purpose of the Antiquities Act is the protection of items of antiquity, such as archaeological sites and cultural landscapes. Although Proclamation 7319 broadens the scope of protection to include other resources, the law creating the monument should be the primary guidance, which is the protection of cultural resources.

Section 7. Identification and Evaluation of Historic Properties:

A survey of ten percent of the APE cannot be considered representative of the entire 42,000 APE. Most of the surveys were project-driven for certain projects areas and are not based on a professional archaeological research design and/or systematic survey approach. These surveys have taken place over a span of 52 years. When was the last time the sites were updated and/or monitored? It is the understanding of Yakama Nation, USFWS has not conducted any Section 110 monitoring and survey activities for close to 10 years. We request information be provided with regards to survey and monitoring, as this activity is mandated in the NHPA, Section 110.

Section 106 of the NHPA requires the Federal Agency to take into account their action on cultural resources and to determine the effects of their actions. This is not possible if you do not know the condition or location of the resources that may be affected through regular monitoring and survey, which has not happened. USFWS has not been in compliance of NHPA Section 110 for the last nine to ten years. It is not possible to know if a project will affect cultural resources if the APE has not been adequately inventoried and monitored, ten percent cannot be considered an adequate survey. Due to lack of inventory efforts (as mandated by Section 110 of NHPA) USFWS does not know what resources may be affected by the activities of this undertaking.

Roads and parking areas will experience the most use. It is imperative these areas are verified for the absence or presence of cultural resources. Grading roads can often times reveal cultural resources that were not visible before grading. Recently road work activity near the 45FR514 archaeological site revealed substantial cultural material in the road bed, clearly showing the importance of road surveys. Page 17 of the report acknowledges "If a vehicle drives over an archaeological site it has the potential to affect it by displacing artifacts and disturbing the soil". The report further states "vehicles are not expected to affect archaeological historic properties" for two reasons, first because there is an assumption archaeological material is not present, and second because all vehicles will remain on the roads and designated parking areas. The assumption that archaeological material is not present in roads is not based on any evidence, as none of the roads have been surveyed. Using the 45FR514 site as an example, it is clearly evident there is a "potential for adverse effects" within roadbeds.

7.2. Archaeological Sites

Stating that archaeological evidence of human occupation in the APE is relatively small is a misleading statement, when only ten percent of the APE has been surveyed. If in fact ten percent of the APE is a good "sample" as stated, then one could assume the 73 known sites in only ten percent of the surveyed APE could equate to a total of 730 sites for the entire APE. By these calculations there could be 651 unknown sites in the APE, for which nothing is known about. Leaving ninety percent of the APE unsurveyed. If an additional 651 sites could potentially be discovered, does the current effort constitute a "reasonable and good faith effort to carry out appropriate identification (36 CFR 800.4(b)(1)) to protect cultural resources? Is USFWS determination that

additional "field inventory is not necessary" in compliance with the NHPA or implementing 36 CFR 800. YN ER/WM would argue because USFWS intends to do **no field monitoring or inventory** for this new undertaking they are out of compliance with the NHPA and implementing 36 CFR 800, as **no reasonable effort** is being made to identify cultural resources.

How were "expected impacts" of the hunt determined? There is no reference showing data to determine hunting activities have no impact on cultural resource. On page 17 USFWS makes an assumption hunters will be focused on the elk and not artifacts or sites, while this may be true to some extent, it is likewise true hunters will be focused on evidence on the ground for the hunt such as tracks and droppings, as well as potential hazards. This being said hunters are **more** likely to notice artifacts/sites and subsequently disturb them and/or remove artifacts.

Of the 73 known archaeological sites, half have not been evaluated for eligibility. These sites need to be evaluated. Adverse effects cannot be determined if a property has not even been evaluated to determine what "the characteristics of the historic property {are} that qualify the property for inclusion in the National Register..." (36 CFR 800.5(a)(1)). Not **all** data quality is "contained, quite literally in the ground" as stated in the review. "Design, setting, materials, workmanship, feeling and association are characteristics that could be affected during contact by the general public, and not all have anything to do with the "material that contains the data (e.g., the dirt). As stated earlier, there is no evidence supporting the thought that one or more of these characteristics would not be adversely affected. It cannot be determined how much disturbance butchering activity would have, if it were performed at an archaeological site, for example.

To summarize, the USFWS does not plan any field investigation for this undertaking as it is not deemed "necessary or feasible". This "necessity" appears to be based on the evaluation of 26 sites out of 73 (roughly 35%) from only 10% of the APE. These figures simply are not acceptable for sound archaeological study. The "feasibility" of proper field investigation still needs to be defined, but is likely due to resources (i.e. budget constraints). Budget constraints should not eliminate an agency's responsibility to follow the law.

Section 8.2 Effect on Laliik Traditional Cultural Property:

Adverse affects to the Laliik TCP can only be determined by the people that place cultural value on it, therefore, the effects of this undertaking will have to be determined through Tribal consultation. Mitigation for adverse effects should be outlined through an MOA. Currently there is a potential adverse effect to the TCP with the internet publication of the boundary, the result of which still needs to be resolved through consultation.

Yakama Nation Environmental Restoration/Waste Management Suggestions:

- All known sites that have not been evaluated for eligibility should to be evaluated.
- All known eligible sites in the APE should be visited to record current conditions, this to take place after **all** sites have been fully evaluated.
- All roads and parking areas should to be surveyed as these areas will have the most impact.

- More of the APE should be surveyed, the amount should be determined in consultation with the Tribes and SHPO. USFWS has been **out of compliance** with NHPA Section 110 by **not** conducting inventory surveys. This would help serve that purpose.
- As a result of the inventory new sites need to be recorded and evaluated for eligibility to the National Register.
- There is no way of really knowing the effects of this undertaking on cultural resources. It is impossible to know the minds of the public and what they will or will not do with respect to cultural artifacts and sites. Certainly the abundance of private collections and the evidence of looting is enough to question the public's intentions. In YN ER/WM original comments it was suggested data could be gathered by updating sites, paying close attention to their condition. After the first hunt season these sites should be revisited and updated. This would provide some data to determine if sites are being adversely affected by hunting activities. After data is gathered the plan could be re-visited to determine possible mitigation if necessary.
- YN ER/WM looks forward to continued consultation with USFWS on this project. If you have any questions or concerns please contact me at 509-452-2502, or a member of my cultural staff, Dana Miller or Rose Ferri at the same number.

Sincerely,



Russell Jim
ER/WM Projects Manager

Cc

Warren Spencer	Vivian Babs George
Sam Jim Sr.	Stella Washines
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Anan Raymond US F&WS	Administrative Record