



Meeting: **Reservoir Committee & Authority Board**
Agenda Item 2.1

May 16, 2025

Subject: **Cultural Resources – Section 106**

Requested Action:

Reservoir Committee and Authority Board consider authorizing the Executive Director to sign the National Historic Preservation Act (NHPA) Section 106 Programmatic Agreement.

Detailed Description/Background:

This staff report provides an overview of Section 106 compliance efforts to date and the commitments in the Programmatic Agreement. Multiple drafts of the Programmatic Agreement have been circulated with Section 106 consulting parties for review and comment. The Authority's agents, cultural resources technical staff, and legal team have reviewed and commented on the Programmatic Agreement drafts. Currently, the Authority is awaiting the final Programmatic Agreement from Reclamation for review and signature, which is expected before the end of May 2025.

Section 106 of the NHPA requires federal agencies to consider the effects of their actions on historic properties. Historic properties are cultural resources listed in or eligible for listing in the National Register of Historic Places and can consist of sites, districts, objects, buildings, or structures that meet these requirements. Places of traditional cultural significance to Native American tribes also qualify as historic properties.

Reclamation is the lead federal agency responsible for Section 106 compliance for the Project and will address compliance needs for both Reclamation's and the U.S. Army Corps of Engineers' actions related to the Project. The Programmatic Agreement also has provisions, such that other federal agencies may utilize this agreement document to satisfy their Section 106 compliance requirements later in time (i.e., after its initial execution). Compliance with Section 106 is necessary prior to Reclamation signing a Record of Decision for the Project and prior to resubmittal of the Project's Clean Water Act Section 404 permit application.

For the Project, the Section 106 process will be completed through execution of the Programmatic Agreement. The Programmatic Agreement identifies a process for identifying historic properties once land access is obtained, assessing the effects of the Project on these properties, and resolving any adverse effects. As

currently drafted, the Programmatic Agreement works in conjunction with (would have functionally the same requirements as) the Final Environmental Impact Statement/Environmental Impact Report (EIR/EIS) Cultural Resources mitigation measures and the two would be implemented at the same time. The Final EIR/EIS Tribal Cultural Resources mitigation measures would largely also be implemented at the same time; however, some measures in the Tribal Cultural Resources section are expected to go beyond those called for in the Programmatic Agreement as the Authority complies with AB 52 and State law. The Programmatic Agreement further adds specificity to timelines for future consultation activities once site-specific information is developed.

Though Reclamation is ultimately responsible for ensuring the stipulations in the Programmatic Agreement are implemented, the Authority will largely be the one responsible for completing many of the provisions and developing many of the documents called for in the Programmatic Agreement.

The Programmatic Agreement is considered fully executed when Reclamation, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation have signed it. The Authority will be an invited signatory. Other Section 106 consulting parties will be invited to sign as either invited signatories or concurring parties.

As previously mentioned, the Authority staff, team and legal counsel have reviewed and provided comments on previous drafts of the Programmatic Agreement. To date, the activities and commitments in the Programmatic Agreement parallel those in the Final EIR/EIS and the Authority's team feels they are reasonable and implementable. Reclamation is expected to release the final draft of the Programmatic Agreement before the end of May 2025. As the Programmatic Agreement is a condition precedent to the resubmittal of the Clean Water Act Section 404 permit application, and as the Section 404 permit application needs to be re-submitted before end of June, staff is requesting the authority for the Executive Director to sign the Programmatic Agreement as long as the terms and conditions parallel the mitigation measures in the Final EIR/EIS. If the terms and conditions are substantially different, staff will return to the Authority Board and Reservoir Committee for guidance prior to the Executive Director's signature.

Prior Action:

October 2023: Received an update on the Project's Section 106, cultural resources compliance efforts

Fiscal Impact/Funding Source:

Costs to implement the Programmatic Agreement will be phased and will follow the phasing of Project implementation and construction activities, in that compliance requirements for the Programmatic Agreement will largely need to be completed for each Project phase ahead of and/or during construction. These costs are being factored into the Authority's effort to update the overall Project costs.

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