

APPENDIX G:
EA COMMENTS AND RECLAMATION RESPONSES

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EA COMMENTS AND RECLAMATION RESPONSES


Fourteen comment letters/communications were received on the EA (Table G.1). Comment letters/communications and Reclamation responses are presented on the following pages.

Table G.1 Comment Letters Received on the Draft EA for the Lewis and Clark Water Supply Project, South Dakota, Minnesota, and Iowa, 2002.

Letter Number	Commentor	FONSI Section Number
1	United States Department of the Interior, Fish and Wildlife Service	G.1
2	Department of the Army, Corps of Engineers, St. Paul District	G.2
3	South Dakota Department of Game, Fish and Parks	G.3
4	State Historical Society of Iowa	G.4
5	South Dakota Department of Environment and Natural Resources	G.5
6	Minnesota Department of Natural Resources	G.6
7	South Dakota Department of Environment and Natural Resources	G.7
8	Daniel A. Neufeld	G.8
9	John H. Davidson	G.9
10	Minnesota Pollution Control Agency	G.10
11	U.S. Fish and Wildlife Service	G.11
12	Department of the Army, Corps of Engineers, Omaha District	G.12
13	National Park Service	G.13

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G.1 COMMENTOR 1 - UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

<p>ENV 6.00 Lewis + Clark Biological Assessment</p>																			
	<p>United States Department of the Interior</p> <p>FISH AND WILDLIFE SERVICE Ecological Services 420 South Garfield Avenue, Suite 400 Pierre, South Dakota 57501-5408</p>																		
<p>June 14, 2002</p>																			
<p>Mr. Richard Nelson, Chief U.S. Bureau of Reclamation Resources Management Division Dakota Area Office 515 9th Street, Room 101 Rapid City, South Dakota 57701</p>																			
<p>Re: Biological Assessment for Lewis and Clark Rural Water Supply System</p>																			
<p>Dear Mr. Nelson:</p> <p>This responds to the Biological Assessment for the Lewis and Clark Rural Water Supply System in Minnesota, Iowa, and South Dakota. The Biological Assessment concludes the following summary of effects to federally listed species:</p> <p>MAY AFFECT - BUT NOT LIKELY TO AVERSELY AFFECT</p> <table border="0"><tr><td>American burying beetle</td><td>(<u>Nicrophorus americanus</u>)</td></tr><tr><td>Bald eagle</td><td>(<u>Haliaeetus leucocephalus</u>)</td></tr><tr><td>Interior least tern</td><td>(<u>Sterna antillarum</u>)</td></tr><tr><td>Pallid sturgeon</td><td>(<u>Scaphirhynchus albus</u>)</td></tr><tr><td>Piping plover</td><td>(<u>Charadrius melodus</u>)</td></tr><tr><td>Prairie bush clover</td><td>(<u>Lespedeza leptostachya</u>)</td></tr><tr><td>Scaleshell mussel</td><td>(<u>Leptodea leptodon</u>)</td></tr><tr><td>Topeka shiner</td><td>(<u>Notropis topeka</u>)</td></tr><tr><td>Western prairie fringed orchid</td><td>(<u>Platanthera praecleara</u>)</td></tr></table> <p>The Fish and Wildlife Service has reviewed the Biological Assessment and concurs with your determinations of "may affect, but not likely to adversely affect" for the above listed species. Therefore, formal consultation is not required. If project description, routes, or activities change, the Fish and Wildlife Service should be contacted to ensure that these determinations remain valid.</p>		American burying beetle	(<u>Nicrophorus americanus</u>)	Bald eagle	(<u>Haliaeetus leucocephalus</u>)	Interior least tern	(<u>Sterna antillarum</u>)	Pallid sturgeon	(<u>Scaphirhynchus albus</u>)	Piping plover	(<u>Charadrius melodus</u>)	Prairie bush clover	(<u>Lespedeza leptostachya</u>)	Scaleshell mussel	(<u>Leptodea leptodon</u>)	Topeka shiner	(<u>Notropis topeka</u>)	Western prairie fringed orchid	(<u>Platanthera praecleara</u>)
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Western prairie fringed orchid	(<u>Platanthera praecleara</u>)																		

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COMMENTOR 1 - United States Department of the Interior, Fish and Wildlife Service, Page 2

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The Fish and Wildlife Service appreciates the opportunity to work with the Bureau of Reclamation on this project. Please contact Scott Larson if you have any questions on this concurrence at (605) 224-8693, Extension 27.

Sincerely,



For


Pete Gober
Field Supervisor
South Dakota Field Office

cc: FWS/ES Field Office; Bloomington, MN
(Attention: Lauri Fairchild)
FWS/ES Field Office; Rock Island, IL
(Attention: Heidi Woeber)
BOR/Dakotas Area Office; Rapid City, SD
(Attention: Faye Streier)

Comment Response - Entire Letter - Thank you for taking the time to review the BA. Your concurrence with BA determinations is noted. All potential Project development changes will be reviewed prior to implementation by the appropriate USFWS offices during IERT actions to ensure no adverse effects occur to listed species.

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**G.2 COMMENTOR 2 - DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS,
ST. PAUL DISTRICT**

	DEPARTMENT OF THE ARMY ST. PAUL DISTRICT, CORPS OF ENGINEERS ARMY CORPS OF ENGINEERS CENTRE 180 FIFTH STREET EAST ST. PAUL, MN 55101-1536	OFFICIAL FILE COPY RECEIVED JUN 25 2002
	REPLY TO ATTENTION OF	June 21, 2002

Construction-Operations
Regulatory (02-05850-DAS)

Ms. Faye Streier
Bureau of Reclamation
Rapid City Field Office
515 - 9th Street, Room 101
Rapid City, South Dakota 57701

Dear Ms. Streier:

This letter responds to your request for comments about a project of the Lewis and Clark Rural Water System, Inc. to construct a water supply pipeline as described in the Draft Environmental Assessment. The project includes work in Rock and Nobles County, Minnesota.

Underground utility lines through waters of the U.S., including wetlands, as well as navigable waters of the U. S. are regulated under Section 404 of the Clean Water Act if there is a discharge of dredged or fill material. Any discharge would require authorization by a general permit or letter of permission.


Underground lines installed by vibratory plow and directional bore method through waters of the U.S., including wetlands, do not involve a discharge and a permit is not required. However, if installation of connecting points requires excavation and backfill in waters of the U.S., including wetlands, a permit would be required.

Temporary placement of fill material into any waterbody or wetland for purposes such as bypass roads, temporary stream crossings, cofferdam construction, or storage sites may require a Department of the Army permit.

If any of the proposed projects would involve the placement of fill material, either permanent or temporary, please notify our office.

Without detailed construction plans, we cannot provide specific comments regarding the effects that the proposed activity would have on watercourse floodstages. It has been our experience that underground and overhead utility construction has negligible effects on flood stages, provided excess construction material is removed from the floodplain and additional care is taken not to disturb its hydraulic characteristics.

You may also need city, county, or State permits for the project. You should contact the appropriate agencies for their

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Commentor 2 - Department of the Army, Corps of Engineers, St. Paul District, Page 2

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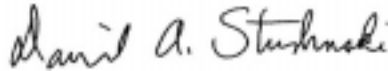
permit requirements. If the project includes the placement of dredged or fill material in a Federal regulated waterbody, we will notify the responsible State agency for water quality (401) certification.

4

You should also contact the State Historical Preservation Officer (SHPO) to determine if there are any known historic or archeological sites in the area or if any cultural resource survey would be required.

If you have any questions, contact David A. Studenski in our La Crescent office at (507) 895-2064. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,



Robert J. Whiting
Chief, Regulatory Branch

Comment Response: Entire Letter - Thank you for taking the time to review the draft EA and for providing your comments.

Comment Response 1 - The appropriate COE office will be notified prior to fill materials being placed within any water of the U.S. (including wetlands), and permits (e.g., 404) will be acquired as necessary. Appendix B of the EA provides a list of potential permit requirements.

Comment Response 2 - Specific Project plans will be available annually to COE for each phase of Project construction if waters of the U.S. are proposed for disturbance. Additionally, site-specific field reviews will be implemented during IERT investigations as outlined in Appendix A of the EA.

Comment Response 3 - All appropriate government agencies will be contacted and appropriate permits acquired prior to construction (see Comment Response 1, above).

Comment Response 4 - State Historic Preservation Offices (SHPOs) will be consulted and all appropriate surveys and clearances will be completed prior to construction (see Comment Responses 1 and 3, above).

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G.3 COMMENTOR 3 - SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS



DEPARTMENT OF GAME, FISH AND PARKS

Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

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June 24, 2002

Faye Streier
Bureau of Reclamation
Rapid City Field Office
515 9th Street,
Room 101
Rapid City, South Dakota 57701

Dear Faye:

We have reviewed the "Draft Environmental Assessment for the Lewis and Clark Water Supply Project, South Dakota, Minnesota, and Iowa". As a result of that review we have several comments to make relative to the document.

Overall, we found the document to be well written, thorough and complete. However we would like to point out some corrections that should be made.

Page 72, 3.2.2.1 – Wild Turkey is classified as Big Game in South Dakota. Therefore there should be 2 big game species and 4 upland game bird species.

Page 74, 3.2.2.1 – 3rd para – first sentence - strike five and insert in lieu thereof, four

Page 74, 3.2.2.1 – 3rd para – second sentence – strike "may no longer occur " and substitute "may occur in limited numbers"

Page 75, 3.2.2.3 – line 7. In addition to wintering, Bald eagles also nest along the Big Sioux and Missouri Rivers.

Page 78, 3.2.3.1 – 2nd para – We have Bald eagles nesting in shelter belts quite a distance from water.

Page 79, 3.2.3.1 – 3rd para – line 3 - "Kruise" should be "Kruse", "hte" should be "the" on the same line.

Commentor 3 - South Dakota Department of Game, Fish and Parks, Page 2

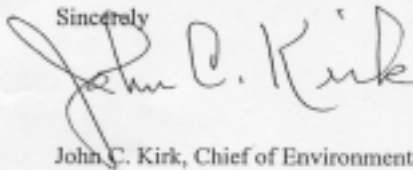
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Page 82, 3.2.3.6 – Last sentence on page, add South Dakota and Kansas to the states where American burying beetle has been found. In South Dakota they have been found in both Tripp and Gregory counties.

Page 83, 3.2.3.7 – Last sentence on page. Citation should be: Hoke, 1983 Am. Malacological Bull. 1: 71, 74. Unionoid mollusks of the Missouri River on the Nebraska border.

Thank you for the opportunity to comment on the draft assessment.

Sincerely

A handwritten signature in dark ink, appearing to read "John C. Kirk". The signature is fluid and cursive, with the first name "John" and last name "Kirk" being the most prominent parts.

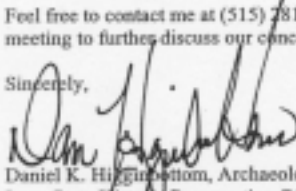
John C. Kirk, Chief of Environmental Review and Management

Comment Response: Entire Letter - Thank you for taking the time to review the draft EA and for providing your comments.

Comment Response 1 - All appropriate changes have been made to the EA.

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G.4 COMMENTOR 4 - STATE HISTORICAL SOCIETY OF IOWA

The Historical Division of the Department of Cultural Affairs	
STATE HISTORICAL SOCIETY OF IOWA	
Where past meets future	
June 26, 2002	In reply refer to: R&C#: 010200001
Mr. James R. Kangas, Area Archaeologist United States Department of the Interior Bureau of Reclamation Dakotas Area Office Rapid City Field Office Rapid City, South Dakota 57701	RE: BUREC - LYON, OSCEOLA, DICKINSON, SIOUX, O'BRIEN, & CLAY COUNTIES - LEWIS & CLARK RURAL WATER SYSTEM - RURAL WATER PIPELINE DESCRIPTION AND INFORMATION - NOTIFICATION OF EA PREPARATION - DRAFT PROGRAMMATIC AGREEMENT - DRAFT EA
American Gothic House Eldon	Dear Mr. Kangas,
Blood Run NHL Larchwood	We have received the Draft Environmental Assessment for the Lewis and Clark Water Supply Project and have reviewed the sections addressing cultural resource issues and section 106 compliance (Secs. 3.4, 4.4, and Appendix E).
Centennial Building Iowa City	At this point we are unable to agree with many of the procedural, investigative, and recordation measures that the Bureau of Reclamation (BUREC) proposes in this document. The Iowa SHPO has already outlined most of its concerns regarding these issues in previous correspondence to BUREC and therefore they will not be repeated here. Please refer to our letter dated April 10, 2002 (attached).
Matthew Edol Blacksmith Shop Marshalkown	Please be advised that the Iowa SHPO is not prepared to participate in the Programmatic Agreement that appears as a draft in Appendix E. We have not yet received communication from BUREC in response to our April 10, 2002, but anticipate hearing from you in the very near future prior to the issuance of the finalized draft of the EA. We recommend that discussions to resolve these issues take place sooner than later so as to avoid delays in the project scheduling.
Abbie Gardner Cabin Arnolds Park	Feel free to contact me at (515) 281-8744 if you have any questions or if you would like to schedule a meeting to further discuss our concerns.
Iowa Historical Building Des Moines	Sincerely,  Daniel K. Higginbotham, Archaeologist Iowa State Historic Preservation Office Community Programs Bureau State Historical Society of Iowa
Montrak Governor's Home Union Sunday School Clermont Museum Clermont	Attach//
Plum Grove Governor's Home Iowa City	
Toolenboro Indian Mounds Toolenboro	
Western Historic Trails Center Council Bluffs	

IOWA HISTORICAL BUILDING
600 East Locust • Des Moines, Iowa 50319-0290
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www.uiowa.edu/~shsi/index.htm

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Commentor 4 - State Historical Society of Iowa, Page 2

<i>The Historical Division of the Department of Cultural Affairs</i>	
STATE HISTORICAL SOCIETY OF IOWA	
<i>Where past meets future</i>	
	April 10, 2002
	Mr. James R. Kangas, Area Archaeologist United States Department of the Interior Bureau of Reclamation Dakotas Area Office Rapid City Field Office Rapid City, South Dakota 57701
	In reply refer to: R&C#: 010200001 <i>COPY</i>
American Gothic House Eldon	RE: BUREC - LYON, OSCEOLA, DICKINSON, SIOUX, O'BRIEN, & CLAY COUNTIES - LEWIS & CLARK RURAL WATER SYSTEM - RURAL WATER PIPELINE DESCRIPTION AND INFORMATION - NOTIFICATION OF EA PREPARATION - DRAFT PROGRAMMATIC AGREEMENT
Blood Run NHL Larchwood	
Centennial Building Iowa City	Dear Mr. Kangas,
Matthew Edell Blacksmith Shop Marshalltown	We have received the draft programmatic agreement prepared by the Bureau of Reclamation (BOR) for the implementation of the Lewis and Clark Rural Water Supply System Project (Project). Thank you for providing the Iowa State Historic Preservation (ISHPO) with the opportunity to review and comment on this federal undertaking. We make the following comments and recommendations according to the National Historic Preservation Act (NHPA) and its implementing regulations 36 CFR 800 (revised, effective January 11, 2001).
Abbie Gardner Cabin Arnolds Park	
Iowa Historical Building Des Moines	We understand from our preliminary review that this project, as currently proposed, will entail construction in adjoining areas of South Dakota, Minnesota, and Iowa; and further, that BOR is proposing to address its compliance obligations under section 106 of NHPA by establishing alternative procedures embodied in a common programmatic agreement (PA). In addition to the BOR and ISHPO, the Minnesota State Historic Preservation Officer (MNSHPO), the South Dakota State Historic Preservation Officer (SDSHPO), the Advisory Council on Historic Preservation (ACHP), and Lewis and Clark Rural Water System, Inc. (LCRW) are named as signatories to the agreement.
Montauk Governor's Home Union Sunday School Clemmont Museum Clemmont	Members of SHPO staff have reviewed the draft and have had the opportunity to confer upon its provisions. We offer the following comments and recommendations for your consideration.
Mark Grove Gassner's Home Iowa City	
Toolesboro Indian Mounds Toolesboro	1. Item 1-3. "...the parties to this agreement recognize that the nature of this project prohibits a Level III cultural resources survey inventory of the entire undertaking area of potential effects (APEs) for the Water Supply System prior to the onset of construction;" We are not in agreement with this statement because, first, 36 CFR part 800.4(b)(2) allows for the phased identification and evaluation of historic properties on large complex projects. Second, in Iowa, entire APE's of similar projects are being considered either through total survey or through predictive modeling programs that stratify the archaeological potential of the landforms contained within the project corridors. Finally, the actual implementation of this project is far enough out that historic properties identification can still be planned and accomplished in a timely manner without jeopardizing project schedules.
Western Historic Trails Center Council Bluffs	2. Item 2.0 "The following stipulations are applicable for the life of the project and for all ground disturbing activities associated with the construction and operation and maintenance of the Water Supply System." We cannot agree with the over generalized, open-ended nature of this clause, either in terms of its duration or its applicability. The Iowa SHPO will only agree to a sunset clause that establishes specific and reasonable duration. We recommend a term no longer than 5 years. Furthermore the Iowa SHPO cannot agree to its applicability until all of the activities pertaining to construction, operation, and
IOWA HISTORICAL BUILDING 600 East Locust • Des Moines, Iowa 50319-0290 Phone: (515) 281-6412 • Fax: (515) 242-6498 or (515) 282-0502 www.uiowa.edu/~shsi/index.htm	

Commentor 4 - State Historical Society of Iowa, Page 3

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maintenance, have been defined within a more detailed project scope, which, we recommend should be included as an Appendix to the agreement.

3. Item 2-1. "Reclamation shall then consult with the appropriate SHPO for pending construction schedules and will provide copies of maps depicting the construction rights of way." All of Iowa's archaeological site location and previous survey information has been digitized in GIS format and is currently available through the Office of the State Archaeologist. Because of the time restraints placed on SHPO review staff, we will only review corridor route maps that have been superimposed on USGS 7.5 minute series topographic quads with the archaeological site and survey data overlaid. This information also allows SHPO staff to make an informed review of the project APE, thereby enabling more meaningful recommendations.

"Reclamation shall ensure that compliance and consultation activities are carried out by or under the direct supervision of a person meeting the Secretary of the Interior's Professional Qualifications Standards." The Iowa SHPO would like to review the Statement of Qualifications (SOQ) of individuals and firms that are under consideration for retainer. The Iowa SHPO would like to meet with cultural resources service vendors hired by LCRW prior to survey in order to discuss investigative procedures, documentation and reporting standards, and protocols for contact.

"Reclamation will consult with those federally recognized tribes that may have an interest in the area where construction is proposed with respect to Section 3 to NAGPRA and to identify historic properties including those of traditional religious and cultural properties." The statements under this provision are vague particularly with respect to timing. Does BOR intend to initiate consultation only after adverse effects have been identified? Tribal consultation on federal projects in Iowa is becoming much more rigorous and in our opinion if BOR plans on approaching Tribal Representatives for their comment regarding this agreement this section will require considerable fleshing out.

"If the project design or undertaking is amended, but Reclamation determines the amendment does not result in a material addition or revision, a consultation is not required." Once again this is too broad and open-ended. What constitutes a material addition or revision? And what criteria will be applied by BOR in determining whether further consultation will be needed? Further clarification is required.

4. Item 2-2. File and record searches should be performed early in the project development and engineering in order to accommodate possible alternatives such as avoidance of recorded sites and structures. Furthermore, background research restricted to the boundaries of the project APE is extremely limited in its usefulness because it will not identify site distribution and location patterns that may occur adjacent to or in the immediate vicinity of the project. GIS site file searches conducted through the Office of the State Archaeologist query a 1-mile buffer zone around the project APE. Timing of background research has been addressed above at Item 2-1.

"Reclamation and each SHPO have agreed that the following areas and conditions are exempt from pedestrian field survey inventories." We do not agree with exemptions for urban ROW, soils in areas that have been thoroughly disturbed, inundated areas, contemporary dumps and landfills, commercial feedlots and granaries for the following reasons.

- Urban ROW. It is becoming increasingly apparent that activities associated with urbanization, such as in-filling and capping can in fact result in the preservation of significant archaeological resources. This has recently been demonstrated in downtown Des Moines with the discovery of prehistoric houses and features and features associated with Fort Des Moines #2 and the early city of Fort Des Moines. It is our opinion that the unqualified exemption of project activities occurring within urban

Commentor 4 - State Historical Society of Iowa, Page 4

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- rights of way has considerable potential to result in adverse effects to historic properties; and that the out of hand disqualification of these areas does not constitute a reasonable and good faith effort.
- Thoroughly disturbed soils. This needs further clarification using the vertical dimension of the project APE as a point of reference. For instance the centerline of a road may occur on a grade that has been built on top of a natural surface containing intact, culture-bearing soil horizons. If the road grade is 4 feet in depth and intact A horizons occur at 7 and 10 feet below the surface, which is not unusual for northwestern Iowa, and the vertical APE is 15 feet, then construction along this centerline has the potential to adversely affect significant deposits. The same holds true for agricultural grounds, contemporary dumps and landfills, railroad grades, and urban areas to name only a few. We could agree with a categorical exclusion of all areas within the APE, in which it can be demonstrated that the horizontal and vertical parameters of the APE have been profoundly disturbed through natural or human events. Profound disturbance is defined as a level of disturbance that has compromised the stratigraphic integrity of cultural deposits in such a way that the recovery of and accurate synthesis of patterned site data is precluded.
 - Inundated areas. Archaeological sites are known to occur in currently and previously inundated areas in the Prairie Pothole region of northern Iowa. I refer in particular to the recent discovery of extensive artifact deposits in submerged contexts at Five Island Lake in Emmetsburg, Palo Alto County. Exemption of wetland areas must be qualified and based on geomorphologic and soils information.
 - Commercial feed lots and granaries. The rationale, by which to substantiate disqualification, has not been provided.
5. Item 2-3. Resource Documentation. There is no mention of a final technical report(s) or of the standards for report preparation in this or any other section of the agreement. Does BOR intend to require a final report of cultural resources investigations? It is our opinion that the annual reports proposed in section 2.9 will not satisfy the Secretary of Interior Standards or meet the recommendations set forth in the *Guidelines for Archaeological Investigations in Iowa*. Please clarify.
6. Item 2-4. Evaluation. Without further qualification of each, the Iowa SHPO does not agree that the following property types cannot be historic: windmills, wells, isolated historic artifacts, foundations and/or parts of buildings, highways, modern roads, old bridge piers, isolated buildings – non-permanent or semi-permanent utilitarian structures, and historic markers and bench marks. This is not consistent with the recordation procedures established for the state of Iowa.
7. Item 2-5. 'Unless the SHPO and Council object within 30 days of receipt of the plans, Reclamation shall ensure that these plans are implemented' add 'provided that they have taken the concerns of other parties into account.'
8. Item 2-6. The Iowa SHPO does not agree with the BOR policies regarding the collection and disposition of archaeological material recovered. This is not consistent with procedures established by other agencies performing similar types of undertakings and does not follow recommended procedures outlined in the Iowa SHPO's *Guidelines for Archaeological Investigations in Iowa*. By leaving the raw data in the field or in the hands of the landowner, this policy denies the archaeologist a reasonable opportunity to conduct more detailed analyses, which, in turn, can seriously effect the evaluation and interpretation of an archaeological site. The BOR, LCRW, and consulting archaeologist should encourage private landowner's donation of artifact assemblages recovered during project survey. If the landowner refuses transfer of property rights then the consultant should request temporary release of the material for the purposes of analysis and recordation and controlled conditions.

Commentor 4 - State Historical Society of Iowa, Page 5

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9. Item 2-7. 'Ground disturbing activities in areas considered by Reclamation to have a high potential for buried paleosols and cultural deposits, as defined by files and record searches and by the pedestrian field survey will be monitored by a professionally qualified archaeologist.' The Iowa SHPO does not agree with this procedure because it is not consistent with testing and sampling strategies recommended in the *Guidelines for Archaeological Investigations in Iowa*. First, the statement implies that only pedestrian reconnaissance survey will be performed across the project's APE. The *Guidelines* allow for reconnaissance-level survey in areas exceeding 25% ground surface visibility (GSV). Systematic subsurface testing is recommended in areas whose GSV is below 25%. Secondly, files, record searches and surface level field observations are not likely to provide adequate indices for paleosols and archaeological deposits that occur in deeply buried contexts. Deep site potential should be evaluated by a professional geomorphologist early in project planning and well in advance of construction so that potential alternatives such as avoidance can be entertained. Failure to address the issue of deeply buried sites until the last minute unnecessarily opens the project to the risks of project shutdown or delay, cost overruns, and mitigation. In addition, construction impacts resulting under the monitoring scenario proposed by BOR may result in an adverse effect if they could have been avoided in the first place. We feel that proactive planning in this area will pay dividends down the road.
10. Item 2-8. 'If a previously undiscovered cultural resource site is encountered during construction per 36 CFR Part 800.13 work within a minimum distance of 100 feet of the discovery will cease, except as necessary to secure and protect the discovery' change to read 'If a previously undiscovered cultural resources site is encountered during construction.....the boundaries of the site will be established and no work will occur within a 100-foot exclusion of the boundary line except as necessary to secure and protect the discovery.' 'If the discovery is on federal lands, Reclamation will consult with the appropriate federal land management agency, appropriate SHPO, Tribes and other consulting parties, as appropriate, and the Council.....' 'With acceptable planning for site treatment and avoidance and further avoidance of the site, work can continue in the project area provided that the 100-foot exclusion zone is respected.'

Regarding the unanticipated discovery of human remains, we think that it would be prudent for BOR to include the legal citations and established procedures for the individual states either within the body of the agreement or as an appendix. Provided below is some standard language that we commonly use in legal agreements to deal with discoveries of human remains on projects:

All human burials in the state of Iowa are protected by law. Ancient remains are also protected under Chapter 263B and 716.5 of the Iowa Code and the provisions of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 through 3005). In the event that human remains or burials are encountered during archaeological investigations or construction activities, the (responsible parties) shall cease work in the area, take appropriate steps to secure the site, and notify officials at the Burials Program at the Office of the State Archaeologist or the Iowa Department of Health. If the remains appear to be ancient (i.e., older than 150 years), the Burials Program at the Office of the State Archaeologist shall have jurisdiction to ensure Iowa law, NAGPRA and the implementing regulations (43CFR10) are observed. In keeping with the policy and procedures of the Burials Program, the deposition of the remains will be arranged in consultation with the culturally affiliated tribe(s) or the Indian Advisory Committee if the affiliation is not known. If the remains appear to be less than 150 years old, the burial would be legally protected under Chapter 566 of the Iowa Code and would fall under the jurisdiction of the Iowa Department of Health.

In its present form this document is not consistent with the policies and recommended procedures of our office. Nor is BOR's proposal for the identification of historic properties consistent with the procedures currently being implemented in Iowa on similar federal undertakings. However, we trust that our comments

Commentor 4 - State Historical Society of Iowa, Page 6

will assist you in future revisions. It may be advisable to develop separate agreements if the BOR finds that the disparities existing between the MNSHPO, SDSHP, and ISHPO policies and procedures are contradictory or are too broad and complex to be accommodated within a single document. Particularly if the other two states are willing to accept the current version or versions not addressing the Iowa SHPO's concerns.

Again, thank you for providing us with the opportunity to participate in the preparation of this document and if you have any questions or require further assistance please contact Daniel K. Higginbottom (515) 281-8744.

Sincerely,

COPY


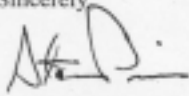
Lowell Soike
Deputy State Historic Preservation Officer
Community Programs Bureau
State Historical Society of Iowa

Comment Response: Entire Letter - Thank you for taking the time to review the draft EA and for providing your comments.

Comment Response 1 - Your concerns regarding the Draft Programmatic Agreement have been noted. Since the South Dakota and Minnesota SHPO offices and the Advisory Council on Historic Preservation have found that the Programmatic Agreement in its current form is acceptable, Reclamation has elected to go forward with the Programmatic Agreement in South Dakota and Minnesota without your participation. However, should your office decide to become a party to the Agreement in the future, Reclamation will consider your request. In the absence of your participation in the Programmatic Agreement, cultural resources will be protected in Iowa in adherence with the *National Historic Preservation Act* (NHPA) Section 106 process as identified on a site-specific basis during consultations with your office.

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G.5 COMMENTOR 5 - SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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<p>July 16, 2002</p> <p>Faye Streier Rapid City Field Office Bureau of Reclamation 515 9th Street, Room 101 Rapid City, South Dakota 57701</p>																																
<p>Dear Ms. Streier:</p> <p>The Department of Environment and Natural Resources has reviewed Lewis and Clark Rural Water Supply Project's draft Environmental Assessment prepared by the Bureau of Reclamation Dakotas Area Office. No significant issues were identified by the department to prevent the Bureau from preparing and issuing a final Environment Assessment and Finding of No Significant Impact.</p>																																
<p>South Dakota has identified the Lewis and Clark Rural Water Supply project as a priority water development objective and authorized the construction of its South Dakota features. The authorization also provides a state cost share commitment of up to \$18,585,540 in grant assistance for the project. The Lewis and Clark project will provide a needed, quality water supply in southeastern South Dakota, northwestern Iowa, and southwestern Minnesota.</p>																																
1	<p>As pipeline routes, facility locations, and treatment alternatives are identified, final plans and specifications are required to be submitted to the department for review and approval. I have designated David Ryan, Division of Financial and Technical Assistance as the department's contact person on the Lewis and Clark project. Mr. Ryan can be reached by mail at 523 E. Capitol, Pierre, SD 57501, or by phone at (605) 773-4216.</p>																															
<p>Please continue to provide the department with corrections or changes to the draft Environmental Assessment and contact Mr. Ryan with any questions. Thank you for the opportunity to review and comment.</p>																																
<p>Sincerely,</p>  <p>Steven M. Pirner Secretary</p>																																
<p>cc: Pam Bonrud, Lewis and Clark Rural Water, Sioux Falls, SD</p>																																

Comment Response: Entire Letter - Thank you for taking the time to review the draft EA and for providing your comments.

Comment Response 1 - Mr. Ryan will be contacted for participation in the IERT process (see EA, Appendix A).
