

Six federally recognized tribes will sign the new Birds Point/New Madrid Floodway Programmatic Agreement (PA). Two tribes, the Quapaw Tribe and the Delaware Nation, signed the PA during a signing ceremony held at Memphis District on Nov. 20, 2012. Four more tribes will sign by mail.



This PA puts the Corps of Engineers in full compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, and the President's Advisory Council on Historic Preservation (Council) regulation 36 CFR 800. The Missouri State Historic Preservation Officer (MO SHPO) signed the new PA on Aug. 24, 2012, and the Council signed the new PA on Sept. 20. The new PA replaces the 1996 Floodway PA dealing with the specifics of the mitigative data recovery program conducted by Memphis District in the Floodway in the late 1990s and early 2000s. The 1996 PA became obsolete with the activation of the floodway during the historic record flood in 2011.

The invited signatory tribes include the Quapaw Tribe, the Osage Nation, the Delaware Nation, the Absentee Shawnee and Eastern Shawnee Tribes, and the Thlopthlocco (Creek) Tribal Town. One other tribe invited to sign, the Chickasaw Nation, has declined to do so because the Chickasaw leaders and elders object to the MO SHPO's requirement that human skeletal remains inadvertently discovered in the floodway must be photographically documented as part of the NAGPRA process.

This new PA has been in development since 2010 when a consultation meeting with eight tribes and the Missouri SHPO was held in July in Cape Girardeau, Missouri. Following the activation of the BPNM floodway in May 2011, RPEDS archaeologists Jimmy McNeil and Dr. Robert Dunn, both stationed at Memphis District, held numerous meetings with the tribes culturally and historically affiliated with the Ohio River-Mississippi River confluence and particularly with the Missouri counties (Mississippi and New Madrid) comprising the floodway. One meeting in particular held in Sikeston, Missouri, in August 2011 is particularly noteworthy.

The contentious and emotionally charged Sikeston meeting primarily focused on the damage to Native American graves caused by floodway activation. Scouring exposed the remains of not less than 25 individuals associated with a late prehistoric Mississippian component of site 23MI136 when the levee was artificially crevassed by explosives on the evening of May 2, 2011. This site was previously known as an historic 19th century homestead. No one knew the site also contained a highly significant late prehistoric component. The Mississippian graves were buried in a natural levee that became part of a private levee in the late 19th century and then were incorporated into the Corps of Engineers federal levee system in the early 20th century. When the floodwaters subsided in June 2011 these scattered remains were respectfully collected by a team comprised of Corps archaeologists and engineers, the MO SHPO senior archeologist, and members of the Osage Nation. In compliance with Missouri state law the remains were turned over to the MO SHPO in preparation for the repatriation process required by NAGPRA (Native American Graves Protection and Repatriation Act of 1990).

Following the Sikeston meeting in August the Osage Nation and the Quapaw Tribe insisted that the President's Advisory Council on Historic Preservation (Council) be brought into the consultation process for development of the new PA. The key issue to be addressed was whether the mitigative data recovery completed by Memphis District prior to floodway activation was sufficient mitigation. In the opinion of these consulting tribes, the prior data recovery (archaeological excavation of selected sites) conducted by the District was not sufficient to mitigate for the damage caused by floodway activation in 2011, or any future activation.

Following intensive consultation with the Council and the affiliated tribes Memphis District undertook a full damage assessment of the entire BPNM floodway using LIDAR imagery and on- the- ground inspection. In addition, the District committed itself to the restoration of any significant site damaged by floodwater scouring. Site restoration would include the collection and eventual reburial of exposed human remains, the filling of scour holes, the placement of geotextle fabric over the filled areas, and the placement of soil to a depth sufficient to allow future farming. This site restoration program was carried out at site 23MI136, the human remains discovery site, following site testing for National Register eligibility conducted for Memphis District by the St. Louis District MCX CMAC. No other significant site was sufficiently damaged by scouring to require site restoration.

The new BPNM Floodway PA will be in full effect for ten years. It is significant in that it is the result of an unprecedented amount of tribal consultation and input, that it involves federally recognized tribes as full partners (PA signatories) in the protection of significant cultural resources and traditional cultural properties on land that is not held in fee status by the Corps, and that it commits the Corps to a long-term program of damage assessment, and site restoration in the event of future activations or intensive levee repairs with the potential to impact Native American graves and National Register eligible sites. The signing of the new PA is clearly a success story for the Corps and the affiliated Native American Tribes.