

PROGRAMMATIC AGREEMENT
AMONG THE
BUREAU OF RECLAMATION,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
AND THE OKLAHOMA ARCHEOLOGICAL SURVEY
REGARDING
NATIONAL HISTORIC PRESERVATION ACT
RESPONSIBILITIES FOR MINOR UNDERTAKINGS
ON BUREAU OF RECLAMATION PROPERTY IN OKLAHOMA

WHEREAS, the U.S. Bureau of Reclamation (Reclamation) owns lands and facilities at the Arbuckle, McGee Creek, Mountain Park, Norman, Washita Basin-Fort Cobb, Washita Basin-Foss, and W.C. Austin Projects (Projects) in Oklahoma. Reclamation has developed this Programmatic Agreement (Agreement) in cooperation with the Oklahoma State Historic Preservation Office (SHPO) and the Oklahoma Archeological Survey (OAS) to streamline the approval process for undertakings that cause no adverse effect to historic properties; and

WHEREAS, this Agreement is made under the authority of the National Historic Preservation Act (NHPA) (54 U.S.C. Section 306108), commonly known as Section 106, and its implementing regulations found at 36 CFR 800.14 which provide Federal agencies with the authority to negotiate programmatic agreements to govern the implementation of their NHPA Section 106 responsibilities for minor Agency undertakings; and

WHEREAS, the SHPO and the OAS have entered into a cooperative agreement under which OAS provides special services to the SHPO in the Section 106 review process. OAS maintains the inventory of Oklahoma's prehistoric resources and provides professional services to the SHPO in prehistoric archeology. OAS reviews federal undertakings for possible impacts on prehistoric archeological resources and provides written comments as the SHPO's official representative; and

WHEREAS, Reclamation, the SHPO, and the OAS mutually desire and intend to simplify procedural requirements, reduce unnecessary paperwork, and emphasize the common goal of planning for undertakings and managing historic properties; and

WHEREAS, this Agreement sets forth a list of undertakings that are evaluated for exemption from further review under Section 106 (see Appendix A herein incorporated by reference); and

WHEREAS, Reclamation has consulted with the SHPO and the OAS pursuant to 36 CFR Part 800.14b (implementing Sections 106 and 110(f) of the National Historic Preservation Act); and

WHEREAS, Reclamation has determined that they have a continued responsibility to engage in meaningful consultation with Tribes (See 54 USC § 302706, Executive Order 13175, and the November 5, 2009 Presidential Memorandum on Tribal Consultation) throughout the process of carrying out the stipulations of this Agreement; and

WHEREAS, Reclamation has invited the Advisory Council on Historic Preservation (ACHP) to participate and the ACHP elected to/ elected not to participate in the consultation process for this Agreement under 36 CFR 800.6; and

WHEREAS, Reclamation has invited the following water user organizations (Districts), which are also managing partners, to participate in the development of this Agreement. The invited Districts include the Arbuckle Master Conservancy District, McGee Creek Authority, Mountain Park Master Conservancy, Central Oklahoma Master Conservancy District, Fort Cobb Reservoir Master Conservancy District, Foss Reservoir Master Conservancy District, and Lugert-Altus Irrigation District; and

WHEREAS, Reclamation has invited the following Indian Tribes to participate in the development of this Agreement: The Absentee Shawnee Tribe of Indians of Oklahoma; Apache Tribe of Oklahoma; Citizen Potawatomi Nation, Oklahoma; Comanche Nation, Oklahoma; Fort Sill – Chiricahua – Warm Springs – Apache Tribe; Kiowa Tribe; The Choctaw Nation of Oklahoma; The Chickasaw Nation; The Muscogee (Creek) Nation; The Osage Nation; The Seminole Nation of Oklahoma; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma; and

NOW, THEREFORE, Reclamation, the SHPO, and OAS agree that minor Reclamation projects will be implemented in accordance with the following stipulations:

STIPULATIONS

Reclamation shall ensure that the following measures are carried out:

I. APPLICABILITY AND STANDARDS

A. This Agreement applies when Reclamation determines, using inventory standards identified in Article II, that a proposed undertaking meets any of the following review thresholds:

1. The entire proposed area of potential effects is 10 acres or less in size or less than 3 linear miles.
2. Undertakings with no ground disturbance.
3. The proposed undertaking meets any of the exemptions identified in Appendix A.

All undertakings that do not meet those applicability standards, unless exempted by another agreement, will require Reclamation consultation with the SHPO and the OAS in accordance with the standardized procedures at 36 CFR 800 prior to implementation.

- B. In cases where there is any uncertainty whether a particular undertaking meets or exceeds the Review Thresholds, Reclamation will discuss the specifics with the SHPO and OAS. If Reclamation, the SHPO, and OAS cannot come to a resolution regarding the review thresholds for the proposed undertaking, Reclamation will agree to SHPO and OAS's understanding of the review thresholds for the undertaking in question. The results of this discussion will be documented by Reclamation in the annual report as defined in Stipulation IV.
- C. Inventory standards and determinations of eligibility shall include consideration of 36 CFR 60.4, 36 CFR 800.4, Secretary of the Interior Standards and Guidelines and the Reclamation Manual.
- D. The person responsible for implementing this Agreement shall meet the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739) in the appropriate discipline. Reclamation will ensure that the work outlined in this Agreement is conducted by individuals meeting these qualification standards.
- E. Persons meeting the Secretary standards shall apply the criteria of adverse effect to historic properties according to 36 CFR 800.5.
- F. Submissions to the SHPO and OAS shall be made by the Reclamation signatory (Reclamation Official) to this Agreement.
- G. The Reclamation Official signing this Agreement shall comply with 36 CFR 800.4 to identify historic properties which may be of religious and cultural significance to Indian Tribes. The Reclamation Official will consult with Tribes regarding eligibility and effect regarding properties of religious and cultural significance.
- H. This Agreement does not cover undertakings with identified adverse effect to historic properties.

II. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

- A. **Identification:** For all undertakings covered by this Agreement, Reclamation will ensure that identification standards and determinations of eligibility shall include consideration of 36 CFR 60.4, 36 CFR 800.4, Secretary of the Interior Standards and Guidelines and the Reclamation Manual.
- B. **Evaluation:** The Reclamation Official will ensure that identified cultural resources within an undertaking's area of potential effect are evaluated for eligibility in the National Register of Historic Places (NRHP). Reclamation will consult prior to changing a previously recorded site's eligibility for listing in the NRHP.

III. THRESHOLDS THAT DO NOT REQUIRE OKLAHOMA SHPO REVIEW

The Reclamation Official will not request the SHPO review of individual NHPA Section 106 documentation related to Reclamation's efforts to identify, evaluate, and assess historic properties and the effects when the following conditions for a proposed undertaking are met:

1. The entire proposed area of potential effect is 10 acres or less in size or less than 3 linear miles; and
2. No historic properties would be adversely affected by the proposed undertaking.

IV. ANNUAL REPORTING AND COORDINATION COMMITMENTS

Reclamation will submit an annual report to the SHPO and OAS listing the number of undertakings conducted within the calendar year and the exemption that they were conducted under no later than March 31st of the following year.

Within 30 calendar days of receiving Reclamation's report, the SHPO and OAS will respond and comment in writing regarding the report; and if necessary, Reclamation will respond in writing to any SHPO or OAS comments.

V. DISPUTE RESOLUTION PROCEDURES

Should any Signatory object to implementation of this Agreement, the objecting Signatory shall provide written notice to the other Signatories of its objection with supporting justification. Upon receipt of such notice, the other Signatories shall have 30 calendar days to resolve the objection. If Reclamation determines that the objection cannot be resolved, Reclamation will forward all documentation relevant to the dispute to the ACHP. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP shall either:

1. Provide Reclamation with its recommendation to resolve the dispute. Prior to reaching a final decision on the dispute, each Signatory shall consider all timely advice provided by the ACHP and provide all other Signatories with a written finding on the dispute prior to proceeding, or
2. Not provide Reclamation with its recommendation to resolve the dispute, after which Reclamation shall make a final decision on the dispute.
3. Reclamation's responsibility to carry out all other actions subject to this Agreement that are not the subject to the dispute remains unchanged.

VI. AMENDMENTS OF THE AGREEMENT

Any Signatory to this Agreement may request that it be amended, whereupon Reclamation will consult with the other signatories to consider such amendment. Any amendment will be effective upon receipt of the signature of the last Signatory.

VII. AGREEMENT DURATION

This Agreement will remain in effect for ten (10) years. This ten-year period begins when all Signatories have signed this Agreement. After ten years the Signatories will consult and amend or terminate this Agreement.

Execution of this Agreement and implementation of its terms evidence that Reclamation has taken into account the effects of undertakings on historic properties.

VIII. TERMINATION OF THE AGREEMENT

If any Signatory to this Agreement 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 VII, above. If within sixty (60) business days (or another time agreed to by all signatories) an amendment cannot be reached, any Signatory may terminate the Agreement upon written notification to the other signatories.

If the Agreement is terminated, Reclamation will comply with Section 106 of the NHPA by following the implementing regulations at 36 CFR Part 800 for each individual undertaking.

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Signatory:

Oklahoma State Historic Preservation Office

By: _____ Date: _____

Trait Thompson

State Historic Preservation Officer

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Signatory:

Oklahoma Archeological Survey

By: _____

Date: _____

Kary Stackelbeck, PhD

State Archeologist

Oklahoma Archeological Survey

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Signatory:

Bureau of Reclamation, Oklahoma-Texas Area Office

By: _____ Date: _____

J. Travis Buttelman

Area Manager

Oklahoma-Texas Area Office

Missouri Basin and Arkansas-Rio Grande-Texas Gulf Regions

APPENDIX A

I. Actions with Little Likelihood of Adverse Effects

Reclamation has determined that the following list of items are determined to cause no adverse effects to historic properties.

The list indicates that a specific exemption would apply when the undertaking occurs within previously disturbed areas. The definition for “previously disturbed areas” means an area where past construction or operation and maintenance activity is sufficient in severity and extent to have destroyed the physical nature and integrity of an historic property, assuming such properties are, or were, present prior to the disturbance. Furthermore, the implementation of any exempted activity will not change the design of the feature.

In accordance with this Agreement, the following undertakings on Reclamation Projects are exempt from standard case-by-case consultation with the State Historic Preservation Office (SHPO) and the Oklahoma Archeological Survey (OAS). The list may be revised without amending this Agreement, with the written concurrence of Reclamation, the SHPO, and the OAS.

Administrative Actions

1. Renewal of permits, or other administrative actions that require no new permits;
2. Contract actions (e.g., water service renewals, repayment contracts, Warren Act, seasonal water, short-term water delivery) where existing facilities will be used and where no modifications and no land use changes are proposed.
3. Agreements where existing facilities are used to transport power or water, and use does not change;
4. Providing funding support for, or development of, water banking programs (including if-and-when contracts) if the water placed in a reservoir does not exceed historic water levels.
5. Providing funding toward, or supporting, in-stream flow releases of project waters for water quality, fishery, and other programs if the released water is within the historic flow range for the stream.
6. Inclusions where there is no change in water or land use.
7. Exclusions from existing water districts.
8. Issuing use authorizations (e.g., grants, license, leases, permits, rights-of-way, or easements) where there is no ground disturbance or other physical disturbance to a Reclamation property.
9. Acquisition of land or easements for Reclamation purposes.
10. Revocation of easements where Reclamation’s easement is not sufficient to have allowed for Federal “control” of the lands, and the revocation does not involve the abandonment or disposal of Federally owned buildings or structures.

Pest and Vegetation Control

11. Rodent and pest control that does not involve ground disturbance.
12. Application of soil sterilant, herbicides, and insecticides that do not involve ground disturbance.
13. Terrestrial and aquatic weed removal from within earthen or lined canals or laterals.
14. Mowing, brushing, and general landscaping along roads, trails, levees, canals, laterals, ditches, and office and facility grounds.

Maintenance, Repair and Replacement

15. Road maintenance, including repairing existing roads, guardrails, or parking areas, within previously disturbed areas. All repairs must not significantly alter their appearance.
16. Maintenance and widening of existing trails, walks, paths, and sidewalks within previously disturbed areas. All repairs must not significantly alter their appearance.
17. Replacement of pipelines, cables, metal or concrete culverts, or utility conduit entirely within previously disturbed areas where equipment access is also within previously disturbed areas.
18. Replacing existing sensors in existing pipelines or residential neighborhoods (e.g. sprinkler heads and measuring devices).
19. Routine maintenance or investigations of dams, power plants, and other structures where there is no change to the exterior of the structure, or exterior features thereof.
20. Maintenance, placement, or replacement of fences within previously disturbed areas.
21. Placement or restoration of existing rip rap, or placement of additional rip rap on top of existing rip rap, when using the same type of materials and maintaining original design criteria, and when the undertaking does not occur on a structure or a prehistoric site.
22. Clearing of sediments or debris immediately adjacent to dams or adjacent to or within stilling basins, forebays, canals, laterals, ditches, conduits, siphons, and drains, where the activity occurs in previously disturbed areas, and the sediment or debris is placed in previously disturbed areas.
23. Routine maintenance, cleaning and inspections of canals, laterals, and ditches including draining, grading within an existing prism; dredging, where dredged materials are deposited in previously disturbed areas, cleaning and inspections.

Miscellaneous Actions

24. Placing sensors in existing water control infrastructure [Supervisory control and data acquisition (SCADA)]. The SCADA must be easily removed with minimal damage to the infrastructure.
25. Placing sensors in existing waterlines in residential neighborhoods (e.g. sprinkler heads and measuring devices) when installed within an existing box or placed flush with the ground.
26. Small bore (8 inches or less in diameter) drilling.

27. Placement of scientific equipment within the existing channel of streams or rivers where access and placement of the equipment involve no new ground disturbance.
28. Monitoring of facilities, biota, or environment conditions where no ground or other physical disturbance occurs.
29. Obtaining soil or rock materials from existing stockpiles, or from within the confines of a previously excavated pit where there is no expansion of the pit into areas not previously used.
30. Stockpiling rocks and other materials, or placing fill in existing borrow locations, within previously disturbed areas.
31. Excavation of trenches within the confines of previously disturbed areas.
32. Removing equipment or structural materials within buildings and structures when the equipment or materials are not original and do not contribute to the historic significance of the building or structure.
33. Painting and application of other protective coverings, such as sealants and epoxy, where the original coloring is maintained.
34. Placement or replacement of non-historic canal or aqueduct features, such as head gates, manholes, and culverts.
35. Installation of fire detection and suppression systems, and security alarm systems, and upgrading of HVAC systems.
36. Vegetative planting in previously disturbed areas.
37. Conservation activities, enhancements, and practices that occur within existing tilled soils, croplands, or areas of surface disturbance, provided that the existing depth of tillage or previous disturbance is not exceeded.