

# RECLAMATION

*Managing Water in the West*

## Finding of No Significant Impact Final Environmental Assessment

Proposed Title Transfer of Water Delivery Facilities  
McGee Creek Project, Oklahoma



U.S. Department of the Interior  
Bureau of Reclamation  
Oklahoma-Texas Area Office

December 2006

## **Mission Statements**

The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian Tribes and our commitments to island communities.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

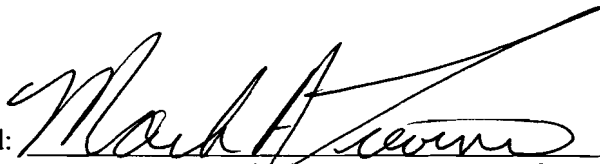
United States Department of the Interior  
BUREAU OF RECLAMATION  
Great Plains Region  
OKLAHOMA-TEXAS AREA OFFICE

FINDING OF NO SIGNIFICANT IMPACT

TITLE TRANSFER OF WATER DELIVERY FACILITIES  
McGee Creek Project, Oklahoma

FONSI NUMBER:  
07-05-OK-MC

Approved:

  
Area Manager, Oklahoma-Texas Area Office

Date:

12/14/2006



## Background

The Bureau of Reclamation (Reclamation) is considering transferring ownership of the water delivery facilities associated with the McGee Creek Project to the McGee Creek Authority (Authority). The McGee Creek Project, located in Atoka County, Oklahoma, is owned by the United States and administered by Reclamation. The Project was authorized by Congress in September, 1976, for the purposes of providing municipal and industrial water supply, flood control benefits, fish and wildlife benefits, recreation opportunities, and environmental quality.

Under the Preferred Alternative, the United States would divest ownership of the water delivery facilities associated with the McGee Creek Project. The Project land and facilities under consideration for transfer include only those associated with water delivery from the reservoir. Specifically, these include the following:

1. About 23 acres below the dam that comprise the maintenance facilities, office complex, pumping plant and surge tank. This area also includes the living quarters for the Authority's on-site Superintendent. Although the United States would no longer own this property, Reclamation would retain the right to access the property, if needed, for maintenance activities on the dam.
2. About 210 acres of easement land along the 17-mile delivery pipeline between McGee Creek Reservoir and Lake Atoka.
3. About 5 acres comprising the regulating tank on the pipeline route.

Reclamation has prepared an Environmental Assessment (EA) which analyzes the potential impacts of this and other alternatives. The Final EA is hereby made part of this finding by attachment.

## Conclusions of Fact

Based on the evidence presented in the Final EA, I have drawn the following conclusions about the potential impacts of the Preferred Alternative:

### Environmental Effects

I find that the Preferred Alternative would have insignificant environmental effects. The Preferred Alternative would not involve any construction activities or change in operations.

### Public Health or Safety

I find that public health and safety in the project area would not be affected by the Preferred Alternative. There would be no interruption of water delivery and there would be no construction sites that could potentially affect the public's safety.

#### Unique Characteristics

I find that the Preferred Alternative would not affect refuges, park lands, prime and unique farmlands, wetlands, wild and scenic rivers, rivers in the national inventory, floodplains, or ecologically critical areas. As there is no construction or change in operations, the Preferred Alternative would not affect any of these unique characteristics.

#### Controversial Effects

I find that the nature and extent of the potential effects to the quality of the human environment from the Preferred Alternative are not controversial. In August of 2006, Reclamation provided 35 Federal, State, Tribal, and private entities with an opportunity to comment on the Draft EA. During the 30-day review period, Reclamation did not receive any comments indicating controversy with the Preferred Alternative.

#### Uncertain Effects

I find that the nature and extent of the potential effects to the quality of the human environment from the Preferred Alternative are known with certainty. As there would be no change in operations, there are no uncertain or unique risks associated with any aspect of the Preferred Alternative.

#### Precedent

I find that the Preferred Alternative would not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. There are no future actions that require or depend on the Preferred Alternative being selected.

#### Cumulative Effects

I find that the Preferred Alternative is not related to other actions with individually insignificant but cumulatively significant impacts. All reasonably foreseeable actions involve normal maintenance, replacement and repair of the facilities.

#### Historical and Cultural Resources

I find that the Preferred Alternative would not significantly nor adversely affect any district, site, highway, structure or object listed in or eligible for listing in the National Register of Historic Places. Upon review of the project, the Oklahoma Historical Society and the Oklahoma Archeological Survey have determined that the Preferred Alternative would have no effect on historic or cultural resources.

#### Endangered Species

I find that the Preferred Alternative would not affect any species listed under the Endangered Species Act as threatened or endangered, nor any designated critical habitat. The effects of the Preferred Alternative would not affect the threatened bald eagle or piping plover or any habitat type they use. Upon review of the project, the U.S. Fish and Wildlife Service concurred with Reclamation's finding that the Preferred Alternative is not likely to adversely affect the endangered American burying beetle. Additionally, there is no designated critical habitat in the project area.

#### Other Laws

I find that the Preferred Alternative would be consistent with Federal, State and local laws, as well as requirements imposed for the protection of the environment. As there is no construction or change in operations, the Preferred Alternative would not violate any provision of the Migratory Bird Treaty Act, Floodplain Management Act, Wetland Protection Act, or any other Federal, State, or local laws.

#### Finding

Based on the evidence presented in the Final EA and upon the conclusions of fact presented above, I find that the Preferred Alternative would not significantly affect the quality of the human environment and the preparation of an environmental impact statement is not warranted.





# Table of Contents

Introduction.....	1
Purpose and Need .....	1
About Title Transfer .....	2
Project History .....	2
Alternatives.....	5
Preferred Alternative.....	5
No Action Alternative.....	6
Affected Environment and Environmental Consequences .....	7
Water Resources .....	7
Vegetation and Wildlife.....	8
Threatened and Endangered Species .....	9
Cultural Resources .....	10
Financial Conditions .....	11
Indian Trust Assets and Treaty Obligations .....	12
Environmental Justice Considerations.....	12
Consultation and Coordination .....	13
Public Involvement .....	13
Agency Coordination .....	13
Selected References .....	14
Report Distribution .....	15
Appendix A: Framework For The Transfer of Title to Bureau of Reclamation Projects August 7, 1995 .....	16
Appendix B: Correspondence and Comments.....	22



## **Introduction**

The Bureau of Reclamation (Reclamation) is considering transferring ownership of the water delivery facilities associated with the McGee Creek Project to the McGee Creek Authority (Authority). The McGee Creek Project, located in Atoka County, Oklahoma, is owned by the United States and administered by Reclamation. The Project was authorized by Congress in September, 1976, for the purposes of providing municipal and industrial water supply, flood control benefits, fish and wildlife benefits, recreation opportunities, and environmental quality.

Reclamation is an agency in the U.S. Department of the Interior and was established by Congress in 1902. Reclamation's mission is to manage, develop and protect water resources in the 17 western states in the interest of the American public. The McGee Creek Authority is a public trust organization formed in 1975 by the City of Oklahoma City, Oklahoma City Municipal Improvement Authority, Atoka County, City of Atoka, and Southern Oklahoma Development Trust. The Authority's purpose was to fund the construction and operation of a reservoir project, which ultimately became the McGee Creek Project.

This final Environmental Assessment (EA), prepared to comply with the National Environmental Policy Act (NEPA), documents the environmental effects which would result from the proposed change in ownership of the water delivery facilities associated with the McGee Creek Project.

## **Purpose and Need**

As part of the Federal government's National Performance Review, Reclamation has undertaken a program to transfer title of facilities that could be efficiently and effectively managed by non-Federal entities and that are not of national importance. The purpose of this proposed action is to divest the United States of interest in and responsibility of the water delivery facilities associated with the McGee Creek Project by transferring title to the McGee Creek Authority.

## **About Title Transfer**

Existing law does not authorize Reclamation to divest itself of title to any portion of the McGee Creek Project. Therefore, Congressional action would be required if title to the water delivery facilities were to be transferred by Reclamation.

In general, Reclamation's policy regarding the transfer of its land and facilities requires that the agency conduct any such activities in an open and public manner, and that proposed transfers be evaluated against six broad public interest criteria before a recommendation is made to Congress (see Appendix A). In addition, to satisfying the requirements of the National Environmental Policy Act, this EA will also compare the proposed title transfer against the following six criteria:

1. The Federal Treasury, and thereby the taxpayer's financial interest, must be protected.
2. There must be compliance with all applicable State and Federal laws.
3. Interstate compacts and agreements must be protected.
4. The Secretary of the Interior's Native American trust responsibilities must be met.
5. Treaty obligations and international agreements must be fulfilled.
6. The public aspects of the project must be protected.

## **Project History**

### **Background**

Oklahoma City was founded in 1889 with a population of about 10,000. In 1910, the State capitol was relocated from Guthrie to the new city. With the arrival of the new railroads, flour and cotton mills were established, meat processing plants were founded, and the city continued to grow. Oklahoma City is now the center of Oklahoma's rapidly developing transportation, industrial and education complex.

Agriculture became prominent in Atoka County following statehood. Some forested areas were cleared and row crops planted during the 1930's, and livestock and pasture have increased since 1940. The beef cattle industry has become the most important source of farm income, but commercial forests still cover about 50

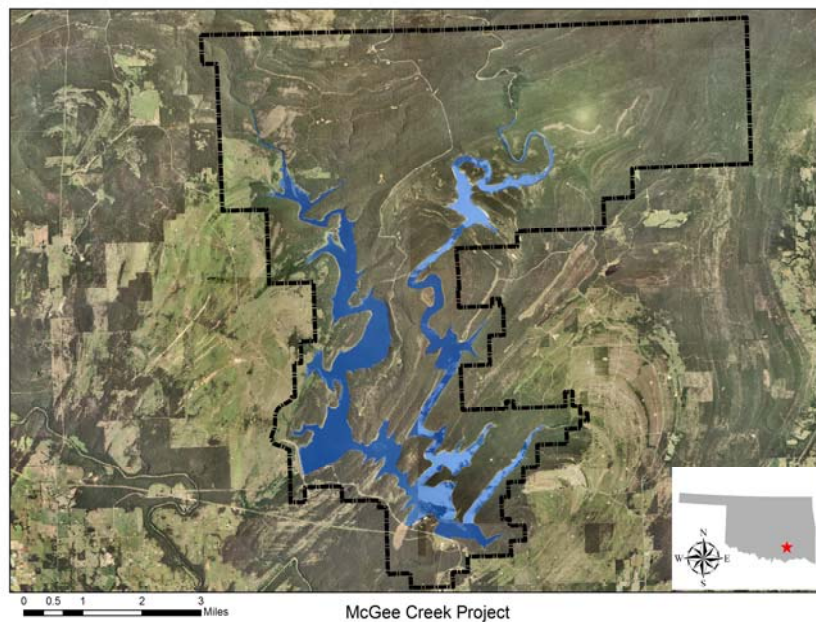
percent of Atoka County.

After completion of the construction of Lake Atoka (1959), the Atoka pipeline, and Lake Stanley Draper (1964), Oklahoma City turned its attention to long range sources of water supply. In 1967, it filed for additional water rights and storage reservoirs in southeast Oklahoma, one of which was for McGee Creek.

Cooperation between individual interests to the water right and Oklahoma City resulted in the McGee Creek Project becoming a joint effort of Oklahoma City and local interests. Officials of the Oklahoma Water Resources Board (OWRB), Southern Oklahoma Development Trust, and Oklahoma City asked the Bureau of Reclamation to study the potential of the Project. The investigation was fully supported by the City and County of Atoka and other county and State interests.

### **The McGee Creek Project**

During public hearings held in 1968, Oklahoma City requested the McGee Creek Project be moved up from long range planning to short range planning. The City of Atoka, Atoka County, Southern Oklahoma Development Trust and Oklahoma City filed for the water rights on McGee Creek, which were granted by OWRB. Before Reclamation's feasibility report was complete, Congress passed Public Law 94-423 (Title VII) on September 28, 1976, authorizing construction, operation, and maintenance of the McGee Creek Project in accordance with Federal Reclamation Laws.



By law, the Project would serve the purposes of storing, regulating and conveying water for municipal and industrial use, conserving and developing fish and wildlife resources, providing outdoor recreation opportunities, developing a natural scenic recreation area, developing a wildlife management area and controlling floods. The McGee Creek Project repayment contract was signed by the McGee Creek Authority and Reclamation on October 11, 1979. Construction began in 1982 and was completed in 1987. The Project was declared officially complete in July, 1990, and responsibility for its operation and maintenance was transferred to the Authority in September.

The contract called for repayment of \$78,315,200, which are the reimbursable construction costs of the Project with interest, to the United States over a 50 year period. On November 5, 1990, Congress enacted Public law 101-514 which authorized and directed the Secretary of the Interior to enter into a contract with the McGee Creek Authority accepting a lump-sum payout of the Project by the Authority. An amendment to the contract was executed October 30, 1992, and the Authority paid out the Project on December 30, 1992. Upon receipt of payment, the amendatory contract fulfilled the Authority's obligation to the United States for the reimbursable costs of the Project's municipal and industrial water supply. The Authority continues to have operation and maintenance responsibilities for the water storage and delivery facilities under the terms of the original contract. The Authority holds no water rights in its own name, but rather it operates the dam and reservoir in which the participating entities store their water rights. These members include Oklahoma City, Atoka County, the City of Atoka, and the Southern Oklahoma Development Trust.

The Project land and facilities are managed for Reclamation by several different entities. The water delivery facilities of the project are operated and maintained by the McGee Creek Authority. These facilities include a few maintenance and office buildings below the dam, the 17-mile pipeline between the McGee Creek reservoir and Lake Atoka, and the pipeline pump station. The Wildlife Management Area of the Project is managed by the Oklahoma Department of Wildlife Conservation, while the Natural Scenic Recreation Area and the McGee Creek State Park are both managed by the Oklahoma Tourism and Recreation Department. The proposed transfer of water delivery facilities would not affect the ownership, operation or management of any other Project land or facilities.

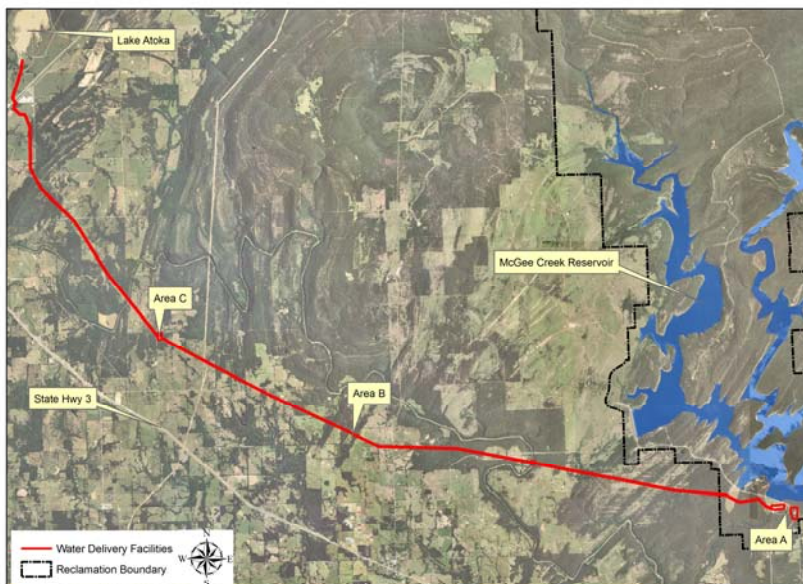
## Alternatives

Two different alternatives are evaluated in this EA: the Preferred Alternative, which is to transfer the water delivery facilities associated with the McGee Creek Project, and the No Action Alternative, which serves as a basis for evaluating and comparing the environmental consequences of the Preferred Alternative.

### Preferred Alternative

Under this alternative, the United States would divest ownership of the water delivery facilities associated with the McGee Creek Project. The Project land and facilities under consideration for transfer include only those associated with water delivery from the reservoir. Specifically, these include the following:

1. About 23 acres below the dam that comprise the maintenance facilities, office complex, pumping plant and surge tank. This area also includes the living quarters for the Authority's on-site Superintendent. Although the United States would no longer own this property, Reclamation would retain the right to access the property, if needed, for maintenance activities on the dam (Area A).
2. About 210 acres of easement land along the 17-mile delivery pipeline between McGee Creek Reservoir and Lake Atoka (Area B).
3. About 5 acres comprising the regulating tank on the pipeline route (Area C).



Project Area for Proposed Title Transfer of Water Delivery Facilities at the McGee Creek Project

The proposed transfer does not include or affect McGee Creek Dam, the reservoir, nor any other portion of the Project land. Although there are tremendous opportunities for public recreation of large portions of the McGee Creek Project, none of the water delivery facilities are open for public use. Also, the current administration of the wildlife management area, the natural scenic area and the state park would continue without change. Finally, as noted earlier, Congressional action would be required before the proposed transfer of any land or facilities could be initiated.

### **No Action Alternative**

Under the No Action Alternative, the United States would retain title to all land associated with the McGee Creek Project. The Authority would continue to operate and maintain the water delivery facilities of the Project under the existing terms and conditions of the existing agreement with Reclamation.



# Affected Environment and Environmental Consequences

## Water Resources

McGee Creek is a northern tributary of Muddy Boggy Creek, which is a major tributary of the Red River. The McGee Creek dam site is about one mile below the confluence of McGee and Potapo Creeks, and about 3.4 miles above the confluence of McGee and Muddy Boggy Creeks. The McGee Creek watershed above the dam encompasses an area of some 178 square miles. The water delivery pipeline crosses McGee, Wilson, Muddy Boggy and Rock Creeks and discharges into Lake Atoka. There are no wetlands within any of the areas being considered for transfer.

The Project has a firm yield of approximately 71,300 acre-feet per year. Of the firm yield, 60,000 acre-feet per year has been appropriated for municipal and industrial water supplies to the members of the Authority, which include Oklahoma City (40,000 acre-feet per year), Atoka County (8,000 acre-feet per year), the City of Atoka (8,000 acre-feet per year), and the Southern Oklahoma Development Trust (4,000 acre-feet per year). Approximately 8,000 acre-feet per year of the yield is dedicated for mitigation releases to maintain downstream aquatic habitat, and the remaining 3,300 acre-feet per year is presently unallocated. Each of the Authority members have marketed their appropriations from the Project to different users in the region without the involvement of Reclamation or the Federal government. There are no interstate compacts which apply to the water supplied by the McGee Creek Project.

*Preferred alternative* - Transferring title of the water delivery facilities to the Authority would not change the existing water right appropriations or allocations. Each member of the Authority would continue to market their share of the Project yield without involvement by Reclamation. There would be no impact to any wetlands or floodplains.

*No Action Alternative* - If title of the water delivery facilities were retained by the United States, there would be no change to the existing water right appropriations or allocations. Each member of the Authority would continue to retain the right to market their share of the Project yield without involvement by Reclamation.

## **Vegetation and Wildlife**

There are three basic habitat types present on land occupied by the water delivery facilities. These types include mixed forest, open or sparsely wooded grassland, and pastureland. The principal forest habitat present is bottomland forest which occurs along short segments of the pipeline that intersect with Muddy Boggy Creek. Several plant species are present, including tree species such as southern red oak, sweetgum, green ash, water oak, silver maple, river birch, water hickory, and water elm. Various bottomland understory species may include bush clover, sparges, tick seed, sunflowers, sedges, rushes, and assorted viney species.

Large areas of the pipeline easement are dominated by an oak savanna. Before the Project was constructed, much of these areas were oak-pine forest. However, with the installation and maintenance of the pipeline, most of the easement area now resembles an oak savanna, even though they are not considered true savannas. Open areas of the savanna are covered in herbaceous vegetation, being dominated by such species as big bluestem, silver bluestem, little bluestem, Indian grass, side oats grama, hairy grama, and various species of *Panicum*. Woody species associated with this savanna include sparse post oak, blackjack oak, and shortleaf pine.

Finally, pastureland habitat occurs primarily in the mowed areas immediately adjacent to the maintenance and office facilities below the dam. The dominant grass species in these areas include broomsedge bluestem, split-beard bluestem, big bluestem, little bluestem, switchgrass, purpletop, and bermuda grass. There are no prime and unique farmlands associated with project area.

Numerous wildlife species occur in these habitats on the land proposed for transfer, including birds, mammals, reptiles, and amphibians. The avian community is represented by approximately 160 bird species, which include over 50 different songbirds, several hawks and owls, and some game birds like wood ducks, wild turkey, bobwhite quail and mourning dove. In addition to birds, there are also over 50 species of mammals which may be present near the water delivery facilities. These include several species of small mammals such as moles, shrews, bats, rats and mice, as well as larger species like opossum, squirrel, raccoon, coyote, fox, chipmunk, bobcat, skunk, rabbit, armadillo, muskrat, weasel, mink, and deer. Amphibians and reptiles are represented by several species, including two turtles, 11 lizards, 31 snakes, 10 toads and frogs, and 10 different amphibians. Although wildlife may commonly be found on any of the water delivery facility land, most species occur along the pipeline

easement. There are no fisheries resources involved with the proposed title transfer of the water delivery facilities.

*Preferred alternative* - There would be no change in the operation or management of the water delivery facilities and lands. Regular maintenance activities conducted by the Authority would continue as at present, including mowing, brush clearing and other necessary measures, with little change to the vegetation and wildlife resources present on site.

*No Action Alternative* - If the United States retained title to the water delivery facilities, there would be no changes to the regular maintenance activities conducted by the Authority or to the vegetation and wildlife.

## **Threatened and Endangered Species**

The U.S. Fish and Wildlife Service has identified only three threatened or endangered species that may occur in the area containing the water delivery facilities (Service 2006). These include the threatened bald eagle (*Haliaeetus leucocephalus*), the threatened piping plover (*Charadrius melodus*) and the endangered American burying beetle (*Nicrophorus americanus*).

The bald eagle, originally listed in 1967, is a winter resident of many of the riparian ecosystems in Oklahoma. Bald eagles nest, roost, and perch in tall trees near water and feed primarily on fish, waterfowl and small mammals in or near reservoirs, lakes, rivers, and marshes. The availability of night roost sites is often an important characteristic of their wintering habitat, where they prefer the oldest and largest trees, in areas with open water and abundant fish and waterfowl.

The piping plover was listed in 1985. The species is a small to medium sized shorebird that nests on the ground and often inhabits sandy beaches and sand bars. They prefer insects and other small aquatic animals. Piping plovers occur in Atoka County as occasional migrants, predominantly during the Autumn and Spring.

The American burying beetle was listed in 1989. The American burying beetle is the largest carrion beetle in North America. They are nocturnal, live for only one year, and are dependent on carrion for food and reproduction.

*Preferred alternative* - Reclamation has determined that the proposed transfer of title to the water delivery facilities would not affect the bald eagle or the piping plover due to a lack of suitable habitat. Reclamation determined that the proposed action would not adversely affect the American burying beetle due to the regular disturbance of the area and the dominance of unsuitable soil types for reproductive success. Through informal consultation under Section 7 of the Endangered Species Act, the U.S. Fish and Wildlife Service have concurred with this determination.

*No Action Alternative* - There would be no affect to any threatened or endangered species by the United States retaining title to the water delivery facilities of the Project.

## **Cultural Resources**

Cultural resources surveys of the 210 acres of pipeline easements in 1981 and 1982 located 13 cultural resource sites that were greater than 50 years old. Surveys of the 5 acres of acquired land containing the pipeline regulating tank, and the 23 acres of acquired land in the vicinity of McGee Creek Dam, yielded no cultural resources. Investigators used archeological testing, historical research, and oral interviews with local residents, as appropriate, to evaluate the sites.

Reclamation complied with Section 106 of the National Historic Preservation Act, and the implementing Federal regulations, 36 CFR Part 800, to consider the effects of the aqueduct on cultural resources while planning the McGee Creek Project. The agency consulted with the Oklahoma State Historic Preservation Officer, State Archeologist, and Advisory Council on Historic Preservation. The aqueduct was redesigned to eliminate the effects of construction, and subsequent operation and maintenance activities, on the following four National Register eligible sites:

1. 34AT403, Rocky Cedar site, a historic farmstead occupied from 1900/1920 until around 1950;
2. 34AT405, Hitchcock Family Plot, possible early Choctaw or Choctaw Freedman cemetery of 8 graves. Reclamation also agreed to periodically monitor the condition of the Hitchcock Family Plot to protect cemetery from disturbance by looters;
3. 34AT415, Uber Farm, a historic farm occupied from around 1900 to the late 1970's.
4. 34AT426, Veranda, a late 19th century farm still occupied at the time of construction. The pipeline was routed through a corral on the west edge of the site. No artifacts were found, and all structures and buildings were

avoided.

There are now six archeological sites which remain in the area of impact of this action. These include 34AT196, 34AT402, 34AT405, 34AT406, 34AT415, and 34AT416. None of these sites are on, or have been determined eligible for the National Register. In a letter to the Oklahoma State Historic Preservation Officer dated October 5, 2006, Reclamation found that none of these six sites are eligible for the *National Register of Historic Places*. In letters dated October 20, 2006, and October 26, 2006, the Oklahoma State Archeologist and the Oklahoma State Historic Preservation Officer concurred with Reclamation's finding.

*All Alternatives* – Since none of the six archeological sites within the area of impact are eligible for the *National Register of Historic Places*, the Preferred Alternative and the No Action Alternative would have no affect on any historic properties.

## **Financial Conditions**

Financial conditions regarding the McGee Creek Project may be separated into two issues: 1) specific conditions regarding the U.S. Treasury, and 2) those more generally regarding the local Project area. First, the McGee Creek Project repayment contract was signed by the McGee Creek Authority and Reclamation in 1979. The contract called for repayment of \$78,315,200 to the United States through the sale of water made available by the Project. As discussed previously, the Authority has satisfied its repayment obligation to the United States in 1992. The Authority continues to perform its operation and maintenance responsibilities for the water delivery facilities under the terms of the original contract.

Second, each of the Authority members have marketed their water supply allocations to customers determined without involvement by Reclamation or the Federal government. Oklahoma City has used its allocation to meet the needs of its citizens. Atoka County has focused on rural water users, while the City of Atoka and the Southern Oklahoma Development Trust have sought to provide water sufficient for the economic development of the city and the region. For the most part, it has been local demand, economics, and the geography of water transmission that have determined the present customers of Project water.

*Preferred alternative* - No effect to the U.S. Treasury would occur from the proposed transfer of the water delivery facilities because the Authority has satisfied their repayment contract. Because decisions regarding the sale and use of water from the Project, including the resulting financial effects of such sales and use, are independently determined by the members of the Authority

without any Federal involvement, transfer of ownership of the water supply facilities from Federal ownership would not affect financial conditions in the region.

*No Action* - If the United States retained title to the water delivery facilities, there would be no change to existing financial conditions in the area.

## **Indian Trust Assets and Treaty Obligations**

Reclamation has not identified any Indian trust assets involving the water delivery facilities or lands to be transferred. All land associated with the Project, including the reservoir area and the water delivery pipeline, were checked for Native American claims at the time of construction, and none were found. Reclamation has also consulted with the Bureau of Indian Affairs (BIA) to confirm this determination, and BIA concurred that there are no Indian trust assets in the Project area (BIA 1999).

## **Environmental Justice Considerations**

In February of 1994, the Administration issued Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations which provides that “*each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies and activities on minority populations and low-income populations.*”

There is only one residence on the approximate 238 acres associated with the water delivery facilities. This building is used as the living quarters for the Authority’s on-site Superintendent.

*All Alternatives* - There would be no disproportionately high or adverse human health and environmental effects on minority or low-income populations from any alternative because they are absent from the study area.

# **Consultation and Coordination**

## **Public Involvement**

The general public was provided with two opportunities to participate in scoping the draft EA. A public scoping meeting was held on October 22, 1998, at Kiamichi Vocational-Technical Auditorium in Atoka, Oklahoma. A period for submitting written comments was open from September 15 to October 31. Notices for both the public scoping meeting and written comment period were printed in general circulation newspapers 30 days before the scoping meeting at the beginning of the written comment period. In addition, a letter was sent out to several Federal, state and local agencies, as well as to many non-governmental resource groups giving notice of the meeting and inviting their participation in the scoping process.

A total of seven comments were recorded at the public scoping meeting. These seven comments raised the following two points of concern: 1) What effect would transferring ownership of the water delivery facilities have on the ultimate destination of the water? (addressed on page 7); and 2) What are the economic impacts of a transfer of ownership of the water delivery facilities? (addressed on page 12) One written comment was submitted to Reclamation during the scoping process, asking who will own the pumps and facilities that pumps the water into the line from McGee Lake to Atoka Lake? A Draft Environmental Assessment (EA) was distributed to members of the general public, non-profit organizations, as well as state and federal agencies for comment in May 1999. Reclamation did not receive any comments on the Draft EA during the 30-day comment period.

For a variety of reasons, Reclamation and the McGee Creek Authority agreed to temporarily suspend the title transfer process shortly after the Draft EA was distributed to the public in May 1999. Although there has been no change in the project scope or the proposed action in the intervening years, Reclamation redistributed the Draft EA to ensure that the public had a recent opportunity to review the proposed action and its effects.

## **Agency Coordination**

In a letter dated May 11, 2006, Reclamation requested concurrence from the U.S. Fish and Wildlife Service for Reclamation's determination of effects to threatened and endangered species as required under Section 7 of the Endangered Species Act. The U.S. Fish and Wildlife Service concurred on May 18, 2006 that the Preferred Alternative is not likely to adversely affect any threatened or

endangered species or their habitats.

In accordance with the requirements of the National Historic Preservation Act, Reclamation submitted a letter to the Oklahoma State Historic Preservation Officer dated October 5, 2006, that found none of the six sites within the project area were eligible for the *National Register of Historic Places*. In letters dated October 20, 2006, and October 26, 2006, the Oklahoma State Archeologist and the Oklahoma State Historic Preservation Officer concurred with Reclamation's finding.

The U.S. Bureau of Indian Affairs concurred with Reclamation's determination that there are no Indian trust assets in the Project area.

## **Selected References**

McGee Creek RMP Team. 1995. McGee Creek Project Resource Management Plan. Prepared for the U.S. Bureau of Reclamation, Oklahoma-Texas Area, by the McGee Creek Resource Management Plan Team, Oklahoma City, Oklahoma.

U.S. Bureau of Indian Affairs. 1999. Personal conversation with Mary Downing, Muskogee, Oklahoma, June 1999.



# Report Distribution

On August 15, 2006, Reclamation solicited comments on the Draft Environmental Assessment from the individuals listed below. Comments were accepted through September 15, 2006. During that period 4 letters were received: one from the Oklahoma Historical Society, one from the Oklahoma Archeological Survey, one from the Chickasaw Nation and one from the Bureau of Indian Affairs. All applicable changes were made in the Environmental Assessment.

## **Federal Agencies**

U.S. Fish and Wildlife Service  
U.S. Environmental Protection  
Agency  
U.S. Army Corps of Engineers  
Bureau of Land Management  
Bureau of Indian Affairs

## **Tribal Governments**

Chickasaw Nation  
Choctaw Nation

## **Oklahoma State Agencies**

Oklahoma Department of  
Environmental Quality  
Oklahoma Water Resources Board  
Oklahoma Department of Wildlife  
Conservation  
Oklahoma Department of  
Transportation  
Oklahoma State Historic  
Preservation Office  
Oklahoma Archeological Survey  
McGee Creek Authority  
McGee Creek State Park  
Atoka County Rural Water District  
No. 4

## **Organizations and Businesses**

Oklahoma Water News  
Atoka County Chamber of  
Commerce  
Cimarron Group Sierra Club  
Red Earth Group Sierra Club  
Oklahoma Wildlife Federation

Audubon Society of Central  
Oklahoma  
Historical Society  
Oklahoma Natural Heritage  
Inventory

## **Elected Officials**

Brad Henry, Governor State of  
Oklahoma  
Jay Gumm, State Senator  
Richard Lerblance, State Senator  
Jeff Rabon, State Senator  
Michael Mass, State Representative  
Paul Roan, State Representative  
James Dunegan, State  
Representative  
Randall Erwin, State Representative  
Doug Cox, State Representative  
Mayor of Antlers  
Mayor of Atoka

## **Libraries**

Antlers City Library  
Atoka County Library  
McAlester Public Library  
Robert L. Williams Public Library



# **Appendix A: Framework For The Transfer of Title to Bureau of Reclamation Projects**

## **August 7, 1995**

The criteria and guidance outlined in this document applies to "uncomplicated" projects. "Uncomplicated" projects are generally defined in the Scope of Application section following. This guidance is intended to initiate the Bureau of Reclamation's title transfer process.

This guidance does not apply to the more complicated projects, e.g., large multi-purpose projects where there is no consensus among the project beneficiaries concerning the transfer, where more than one competent beneficiary has expressed an interest in acquiring title, or where the institutional and legal concerns cannot be readily resolved.

### **Background**

The Reclamation program was founded in 1902. Its original mission was one of civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region.

The results of that work are well known in the hundreds of projects that were developed to store and deliver water. That substantial infrastructure made Reclamation the largest wholesale supplier of water in the United States, the sixth largest electric power generator, and the manager of 45 percent of the surface water in the Western United States. Many of these projects were constructed at a time when there were no local communities and utilities. Today much of the West is settled and is, in some respects, the most urbanized region of the country.

Reclamation owns and operates public utility facilities which, if located in other parts of the country, would likely be owned, operated, and funded by publicly regulated private corporations or local government agencies. While it has been Reclamation's policy for decades to transfer operation and maintenance of projects to local entities where and when appropriate, interest in the actual transfer of title (with its attendant responsibilities) is now growing.

## **Purpose**

As part of the second phase of the National Performance Review (REGO II), Reclamation is undertaking a program to transfer title of facilities that could be efficiently and effectively managed by non-Federal entities and that are not identified as having national importance. This effort is a recognition of Reclamation's commitment to a Federal Government that works better and costs less. The transfer of title will divest Reclamation of the responsibility for the operation, maintenance, management, regulation of, and liability for the project. The transfer of title to a project will, in effect, sever Reclamation's ties with that project.<sup>1</sup>

## **Scope of Application of Framework**

It is the intent of Reclamation to transfer title and responsibility for certain projects or facilities, when and where appropriate, to qualifying non-Federal interests. Uncomplicated projects are projects or facilities where there are no competing interests, the facilities are not hydrologically integrated with other projects, the financial arrangements are relatively simple and easily defined, and the legal and institutional concerns<sup>2</sup> associated with a transfer can be readily addressed. In other words, after meeting the requirements set forth in the Criteria section below, projects will be selected for title transfer on the basis of the transfer being achievable and able to move forward quickly.

For purposes of this document and the transfer of title to the projects, the terms "beneficiary" and "stakeholder" are defined as follows: (a) beneficiary refers to (i) contractors and others who receive direct benefits under the authorized purposes for that project and (ii) non-Federal governmental entities in the project area; (b) stakeholder is a broader term and includes the beneficiaries, as well as those individuals, organizations, or other entities which receive indirect benefits from the project or may be particularly affected by any change from the status quo.

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1 Note: Reclamation recognizes that the complete severance of the relationship between Reclamation and the transferee may not be possible in all instances.

2 Such concerns include, but are not limited to, unresolved Native American claims, endangered species considerations, international or interstate issues, absence of consensus among beneficiaries, significant disagreements raised by the stakeholders, a need to prepare an Environmental Impact Statement, and substantive objections from other governmental entities.

## **Criteria for Title Transfer**

Following are the six major criteria that must be met before any project is transferred:

- 1) The Federal Treasury, and thereby the taxpayer's financial interest, must be protected
- 2) There must be compliance with all applicable State and Federal laws
- 3) Interstate compacts and agreements must be protected
- 4) The Secretary's Native American trust responsibilities must be met
- 5) Treaty obligations and international agreements must be fulfilled
- 6) The public aspects of the project must be protected

## **General Guidance for Determining Projects Eligible for Transfer**

Reclamation Area offices will review projects nominated by an interested transferee and will pursue negotiations regarding those projects where the issues associated with transfer are relatively easy to resolve. This could include projects with multiple purposes and numerous stakeholders, but only if it is clear that outstanding issues are resolved and that there is consensus among the stakeholders.

Reclamation will not initiate negotiations on those projects where title transfer will involve a protracted process to ensure that the six criteria listed above are met.

Generally, Reclamation will not pursue transfer of powerhouses and generating facilities where power is marketed by the Power Marketing Administrations or where such power is used for purposes not directly associated with project purposes.

## **General Guidelines Applying to Transfers**

All transfers will be voluntary.

Reclamation's intent is to transfer projects to current project beneficiaries, including non-Federal governmental entities, or to entities approved by the current beneficiaries.

All transfers must have the consent of other project beneficiaries. If another beneficiary raises substantive objections which cannot be resolved, the project will remain in Federal ownership.

Reclamation will comply with National Environmental Policy Act and other applicable laws in all transfers.<sup>3</sup>

All transfers must ensure the United States' Native American trust responsibilities are satisfied. In addition, outstanding Native American claims that are directly pending before the Department and that would be directly affected by the proposed transfer will be resolved prior to transfer.

Reclamation officials will meet with representatives from all interested Federal and State agencies to consider their concerns early in the transfer process.

Potential transferees must be competent to manage the project and be willing and able to fulfill all legal obligations associated with taking ownership of that project, including compliance with Federal, State, and tribal laws that apply to facilities in private ownership and assumption of full liability for all matters associated with ownership and operation of the transferred facilities. Potential transferees must be able to demonstrate the technical capability to maintain project safety on a permanent basis and an ability to meet financial obligations associated with the project

In general, it is Reclamation's expectation that, upon the transfer of title to a project, its jurisdiction over that project will be divested. Reclamation further recognizes that in some cases the complete divestiture of jurisdiction may not be attainable because the transferee still receives water supplied from a Reclamation facility, or only a portion of the project was transferred and the rest of the project

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<sup>3</sup> Reclamation is proceeding to develop a new Categorical Exclusion (CE) for those title transfers which would not significantly impact the environment and thus could be categorically excluded from a detailed NEPA review. Generally, Reclamation would anticipate such a CE would apply on projects involving transfer of title of Reclamation projects or facilities, in whole or in part, to entities who would operate and maintain the facilities or manage the lands so that there would be no significant changes in operation and maintenance or in land and water use in the reasonably foreseeable future. It is Reclamation's expectation that a CE would apply to a relatively small number of projects, i.e. some of the small single-purpose projects where no change in use is anticipated after the transfer.

remains in Federal ownership, or there are other extenuating circumstances. The degree to which the Reclamation Reform Act of 1982 will apply following transfer will be negotiated on a case-by-case basis.

The financial interests of the Government and general taxpayers will be protected. Transferees must agree to fair and equitable terms based upon the factual circumstances associated with each project. Transferees will be expected to pay upfront the estimated transaction costs, such as costs associated with compliance with the National Environmental Policy Act, real estate boundary surveys, and so forth. Reclamation will not provide new loans to finance transfers.

No transferred Federal asset will be considered for federal assistance for project operation, maintenance, and replacement or capital construction purposes following completion of the transfer.

Prior to the initiation of detailed discussions on title transfer, Reclamation and the potential transferees will execute an agreement covering the responsibilities of all parties during the negotiations.

A base value will be determined for each project as it becomes the subject of serious negotiations for transfer. The negotiated price for the project may deviate up or down from the base value. It will be necessary for Reclamation and the interested non-Federal entity to document how the factual circumstances and equitable treatment considerations justify such adjustments. In addition, Reclamation may consider future uses on the transferred lands and waters in establishing a price.

Potentially affected State, local, and tribal governments, appropriate Federal agencies, and the public will be notified of the initiation of discussions to transfer title and will have (1) the opportunity to voice their views and suggest options for remedying any problems and (2) full access to relevant information, including proposals, analyses, and reports related to the proposed transfer. The title transfer process will be carried out in an open and public manner.

Once Reclamation has negotiated an agreement with a transferee, Reclamation will seek legislation specifically authorizing the negotiated terms of the transfer

of each project or feature.



## **Appendix B: Correspondence and Comments**



APR 30 1999

Dear Reader:

The U.S. Bureau of Reclamation (Reclamation) has prepared this draft Environmental Assessment (EA) for public review and comment. The EA evaluates environmental effects which may result from a proposed change in ownership and administration of the water delivery facilities associated with the McGee Creek Project (McGee Creek Reservoir), which is located in Atoka County, Oklahoma. The water delivery facilities of the Project are presently owned by the United States, administered by Reclamation, and operated and maintained by the McGee Creek Authority (Authority).

The results of the analysis in this draft EA, and all public comments received, will be used to determine the terms and conditions under which title transfer may occur, and may also be considered during development of legislation to authorize title transfer. In addition, the EA and public comments will be used by Reclamation to determine whether an Environmental Impact Statement (EIS) is necessary, or if a Finding of No Significant Impact (FONSI) is appropriate.

This draft EA is being made available for a 30-day review and comment period. Comments must be received by **June 1, 1999**, and may be sent by mail or fax. The mailing address is Bureau of Reclamation, ATTN: Mike Irlbeck, 300 East 8th Street, Room 801, Austin, Texas 78701, and the fax number is (512) 916-5662. A copy of the draft EA is also available from this address.

The final NEPA decision resulting from this analysis will be subject to appeal. In order to be able to appeal a decision, you must participate in the decision-making process, either by having provided comments during scoping, or by commenting on this draft EA. Guidelines for filing appeals will be provided through public notice at the time a final decision is made.

Those with questions should contact Mr. Mike Irlbeck at (512) 916-5650.

Thank you for your interest.

Sincerely,

*Donald E. Moorman*

Acting For

Elizabeth-Cordova Harrison  
Oklahoma-Texas Area Manager





MARK COLEMAN  
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

FRANK KEATING  
Governor

JUN - 7 1999

May 28, 1999

Mr. Mike Irlbeck  
Bureau of Reclamation  
300 East 8<sup>th</sup> Street  
Room 801  
Austin, TX 78701

Dear Mr. Irlbeck:

I am writing in response to your request for comments about the draft Environmental Assessment (EA) about the Proposed Title Transfer of Water Delivery Facilities for the McGee Creek Project.

We received the draft EA and have reviewed it. We appreciate the opportunity to review the draft EA and comment. However, we have no comments to make at this time.

Again, we thank you for your interest in our comments. Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon L. Craig".

Jon L. Craig, Director  
Water Quality Division





SEP - 8 2000

O/K-BB

Mr. Marshall Gettys  
2704 Villa Prom  
Shepherd Mall  
Oklahoma City OK 73107

Subject: Consultation Under Section 106 of the National Historic Preservation Act  
of 1966, as Amended, for Transfer of the McGee Creek to Atoka Aquaduct,  
in Atoka County, Oklahoma

Dear Mr. Gettys:

The Bureau of Reclamation is proposing to transfer water delivery facilities on the McGee Creek to Atoka Aqueduct, in Atoka County, Oklahoma, to the McGee Creek Authority. This will involve only facilities and land associated with water delivery from the Reservoir. They include about 23 acres of federally owned land in 3 parcels around the headquarters building, pumping plant and surge tank below the dam, about 210 acres of easements along 17 miles of pipeline, and about 5 acres of federally owned land around the regulating tank on the pipeline route (Oversize attachment 4).

The survey of the aqueduct from McGee Creek Reservoir to Atoka Reservoir was completed in Fall 1981 & December 1982, by the University of North Texas. A report on this survey was included as Appendix I, in the 1993 Vol. I report by Perttula and McGuff "A Cultural Resources Survey of the McGee Creek Project Area, Atoka County, Oklahoma". Fourteen sites were originally recorded on that survey, of which 6 were recommended for further testing. These were tested in fall & winter 1982 and reported in Vol. 2 of the same series "Testing of Archaeological Sites in the McGee Creek Project Area, Atoka County, Oklahoma" (McGuff 1993). Six of the originally recorded sites plus one from the survey of the reservoir area, fall within the final boundaries of the aqueduct right-of-way which is being transferred (Attachments 1-3). Two of these sites were recommended as not worthy of further testing.

34AT196 is the only site which is on federal land which will be transferred in this action. It is a Prehistoric habitation-lithic workshop area (Ferring 1994:67,78). Five components dating from 3,000 BP to 600 BP were defined. Lithics, ceramics and charcoal were recovered. When originally recorded in 1978, the site had been slightly disturbed by roads, and some sheet erosion.

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The site was tested in 1978 and recommended for further testing (McGuff 1980: III.116, III.119-125). It was further excavated for mitigation in the fall of 1981 (Ferring *Editor* 1994: 39-64). Much of the site area has since been disturbed during construction of a pipeline.

The remaining six sites are located on Private land, on which the federal government owns an easement for the aqueduct pipeline. None of these sites are on federally owned land.

Site 34AT401 is a very low density prehistoric lithic scatter (2 flakes 2 tools and some cobbles), of unidentified cultural affiliation (Lewis 1981, site report). No further testing was recommended for this site.

Site 34AT402 is a low density prehistoric lithic and ceramic scatter. Thirty-two 50x50 cm test units or 190 arbitrary 10 cm levels were excavated. Only 17 of these levels fell within the right-of-way corridor. (McGuff 1993:171-177).

34AT405 is a historic period cemetery associated with the Hitchcock family. There are 8 graves with head & foot stones and possibly additional unmarked graves. It was recorded in the fall of 1981 and was avoided during aqueduct construction (Perttula & McGuff 1993, Vol. I: 80).

At site 34AT406, a low density lithic scatter reported to be the remains of a Choctaw Indian settlement, artifacts were concentrated in the top 10-15 cm (McGuff 1993:177-180).

Site 34AT414 is a low density lithic scatter. Fifty shovel tests (20x20x20cm) were done at 20 meter intervals. Only two were positive at the North and South extremes of the site (Jurney 1981, site report). No further testing was recommended for this site.

34AT415 is the Uber farm. This is a historic period farmstead which was avoided during construction. All buildings now lie off the federal right-of-way, though part of the farm yard does extend onto the right of way (Perttula & McGuff 1993, Vol. I: 82-83, Vol. 2: 181-187).

In consideration of the information listed above, Reclamation request concurrence on the following findings.

1. That existing field inventory and evaluations completed prior to construction of the McGee Creek project are adequate, and that no further field work is required prior to the transfer.
2. That adequate mitigation has already been completed on 34AT196, during preparation for Reservoir construction.
3. That previous work has given sufficient information to determine sites 34AT401 and 34AT414 not eligible for the National Register of Historic places.
4. Historic period Site 34AT415 could potentially be eligible for the *National Register*, but all buildings (the portions of the site which might contribute to it's eligibility) are outside of any federal easement or control. Therefore, this site does not fall within the area of potential impact of this transfer.



5. The remaining three sites 34AT402, 34AT405, and 34AT406 are located on private land, where only an easement is being transferred. While these sites are potentially eligible for the *National Register*, there is no planned land disturbing activity connected to this action which would affect the sites. Therefore a Memorandum of Agreement between the OSHPO and the McGee Creek Authority would provide adequate mitigation. This agreement would stipulate that no future activities which might affect these sites will be undertaken by the Authority without consulting with OSHPO in a manner consistent with what is currently required by the National Historic Preservation Act.

If your office concurs with these findings, Reclamation will follow up by sending your office a draft Memorandum of Agreement to define the McGee Creek Authority's cultural resource responsibilities at these sites, after the transfer is completed. If you do not concur or have any additional questions or comments, please contact Bob Blasing at the above address or phone 605-6919.

Sincerely,

Larry Walkoviak  
Area Manager

Enclosures (4 maps)

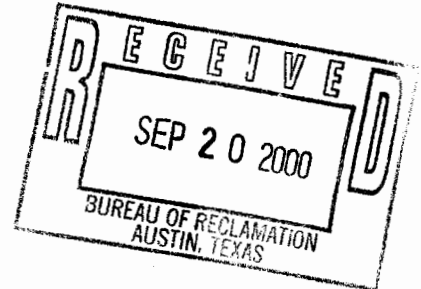
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## Oklahoma Archeological Survey

THE UNIVERSITY OF OKLAHOMA

Copy to Bob B - OKC 9/20  
MI \_\_\_\_\_  
Larry \_\_\_\_\_



September 13, 2000

Larry Walkoviak  
Area Manager  
Bureau of Reclamation  
Great Plains Region  
Oklahoma-Texas Area Office  
300 East 8<sup>th</sup> Street, Room 801  
Austin, TX 78701-8225

Re: Proposed transfer of water delivery facilities from McGee Creek to the Atoka Aquaduct. Legal Description: Origin Point - Section 7 T3S R14E; Termination Point - Section 36 T1S R11E, Atoka County, Oklahoma.

Dear Mr. Walkoviak:

I have reviewed the documentation for the above referenced project and concur with the findings of the Bureau of Reclamation. Please coordinate with the State Historic Preservation Office and myself in developing the MOA to accompany this transfer.

This review has been conducted in cooperation with the State Historic Preservation Office, Oklahoma Historical Society.

Sincerely,

Robert L. Brooks  
State Archaeologist

Cc: SHPO



## Oklahoma Historical Society

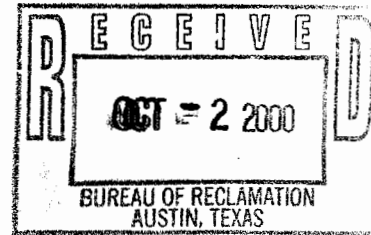
State Historic Preservation Office • 2704 Villa Prom • Shepherd Mall • Oklahoma City, OK 73107-2441

Telephone 405/521-6249 • Fax 405/947-2918

*Hand copy to Larry  
copy to MI 10/2/00*

September 28, 2000

Mr. Larry Walkoviak  
Bureau of Reclamation  
300 East 8th Street, #801  
Austin, Texas 78701



RE: File #2624-00; Transfer of McGee Creek to Atoka Aquaduct Project  
in Atoka County, Oklahoma

Dear Mr. Walkoviak:

We have received and reviewed the documentation submitted on the referenced project in Atoka County. Additionally, we have examined the information contained in the Oklahoma Landmarks Inventory (OLI) files and other materials on historic resources available in our office.

In addition to our review, you must contact the Oklahoma Archeological Survey (OAS), 111 East Chesapeake, Room #102, Norman, OK 73019-5111 (#405/325-7211), to obtain a determination about the presence of pre-historic resources that may be eligible for the National Register of Historic Places. Should the OAS conclude that there are no archaeological sites or other types of historic properties, as defined in 36 CFR Part 800.16(1), which are eligible for inclusion in the National Register of Historic Places within the project area and that such sites are unlikely to occur, we find that there are no historic properties affected within the referenced project's area of potential effect.

The OAS may conclude that an on-site investigation of all or part of the project impact area is necessary to determine the presence of archaeological resources. In the event that such an investigation reveals the presence of archaeological sites, we will defer to the judgment of the OAS concerning whether or not any of the resources should be considered "historic properties" under the Section 106 review process.

Should further correspondence pertaining to this project be necessary, the above underlined file number must be referenced. If you have any questions, please contact Mr. Marshall Gettys, Historical Archaeologist, at 405/521-6381. Thank you.

Sincerely,

*Melvena Heisch*

Melvena Heisch  
Deputy State Historic  
Preservation Officer

MH:pm

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MAY 14 2001

OK-Blasing

Dr. Bob L. Blackburn  
State Historic Preservation Office  
Oklahoma Historical Society  
2704 Villa Prom  
Shepherd Mall  
Oklahoma City, OK 73107

Subject: McGee Creek Pipeline Project, Proposed Transfer of Title from the Federal Government - Section 106 Consultation Process of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470)

Dear Dr. Blackburn:

By this letter, the Bureau of Reclamation (Reclamation) is submitting for review the attached Memorandum of Agreement (MOA). As stated in previous correspondence, the proposed transfer of the title of the McGee Creek Pipeline Project (MCP) from Federal jurisdiction to the McGee Creek Authority (MCA), would be an undertaking, as defined in 36 CFR §880.16(y), that has the potential to cause adverse effect on historic properties.

#### Background

MCA has requested that Reclamation transfer title of the lands and facilities of the McGee Creek Pipeline Project from the Federal government to the MCA. The Draft Environmental Assessment (EA) for the proposed title transfer of the MCP was sent to your office in May of 1998.

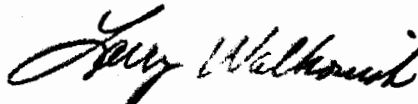
The MCP is owned by the United States, and is operated and maintained by the MCA. It is located in Atoka County, and consists of 23 acres of land around the pumping plant and surge tank, 5 acres of land around the regulating tank on the pipeline route, about 210 acres of easements across nonfederal land along the 17 miles of pipeline, and appurtenant facilities. No Indian, private, state or local government lands would be involved in the proposed transfer.

Terry Zontek, Great Plains Regional Archeologist, and Bob Blasing, Oklahoma-Texas Area Archeologist, met with Dr. Robert Brooks in January, 1999 to introduce the proposed undertaking and explain Reclamation's title transfer process and do preliminary research on site locations. A letter to initiate consultation with your office was sent on September 8, 2000, and a response was received on September 13, 2000.

This undertaking will have the potential for adverse effect on one site (34AT196) on the federal land to be transferred, and three sites (34AT402, 34AT405, and 34AT406) which are located on federal easement across private land. These sites could be adversely impacted by the removal of federal protection brought about by title transfer. However, the attached MOA would provide adequate and enforceable restrictions, which would negate any potential adverse effect.

Reclamation requests your review and comments on the attached MOA. If you find the MOA acceptable as it is, you may sign this copy, and return it along with your comments. If you have any questions, please contact Mr. Bob Blasing, Area Archeologist at 405-605-6919.

Sincerely,



Larry Walkoviak  
Area Manager

cc: McGee Creek Authority  
555 S Farris Rd  
Atoka OK 74525

Dr. Robert L. Brooks  
Oklahoma Archeological Survey  
111 East Chesapeake  
Norman, OK 73019-0575

pd n:/blasing/final 1.wpd

May 10, 2001

MEMORANDUM OF AGREEMENT  
BETWEEN THE BUREAU OF RECLAMATION,  
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER,  
AND THE MCGEE CREEK AUTHORITY  
CONCERNING  
THE TRANSFER OF LAND AND STRUCTURES OF THE  
MCGEE CREEK TO ATOKA PIPELINE  
OUT OF FEDERAL OWNERSHIP

WHEREAS, the Bureau of Reclamation's Oklahoma-Texas Area Office (Reclamation) has determined that transfer of title and easements on the McGee Creek to Atoka Pipeline (Pipeline) to the McGee Creek Authority (MCA), will have the potential for adverse effect on one site (34AT196) on the federal land to be transferred, and three sites (34AT402, 34AT405, and 34AT406) which are located on federal easement across private land. The potential affect on these 4 sites is as the result of the loss of Federal protection under the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470f). Reclamation has consulted with the Oklahoma State Historic Preservation Officer (OSHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the NHPA. The property to be transferred consists of 23 acres of land around the pumping plant and surge tank, 5 acres of land around the regulating tank on the pipeline route, about 210 acres of easements across nonfederal land along the 17 miles of pipeline, and appurtenant facilities, and;

NOW, THEREFORE, Reclamation, the OSHPO, and the MCA agree that this undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties. Further, the OSHPO and MCA agree to consult about operation and maintenance practices, any substantial alterations to Archeological and Historical Sites, and any proposed construction projects related to the McGee Creek Project, including, but not limited to future expansion of the project, according to the following stipulations.

STIPULATIONS

1. The MCA shall, pursuant to its responsibilities as a subdivision of the State of Oklahoma, protect the above mentioned archeological site locations under its jurisdiction in accordance with the Oklahoma State Register of Historic Places Act, and Attachment A to this document. The sites will receive continued protection from operation, maintenance, project land use, and construction activities by MCA following transfer of the project to the MCA.
2. The MCA shall consult with the OSHPO upon the discovery of unexpected buried cultural material, or human remains.

3. MCA will consult with Native American Tribes who have a relationship to cultural material or human remains recovered, regarding the maintenance or disposition of those items.

Execution of this Memorandum of Agreement by Reclamation and the Oklahoma OSHPO, and concurrence of the MCA, are evidence that Reclamation has taken into account the effects of the undertaking on historic properties.

**Bureau of Reclamation, Oklahoma-Texas Area Office**

By: \_\_\_\_\_  
Larry Walkoviak, Area Manager

Date: \_\_\_\_\_

**Oklahoma State Historic Preservation Officer**

By: \_\_\_\_\_  
Dr. Bob L. Blackburn, State Historic Preservation Officer

Date: \_\_\_\_\_

**McGee Creek Authority**

By: \_\_\_\_\_  
James D. Couch, General Manager

Date: \_\_\_\_\_

**Attachment A:**  
**Consultation Process Between the MCA and The OSHPO**  
**Regarding Protection of Historic Properties on the Atoka to McGee Pipeline**

This document sets forth the procedures to be followed by MCA and OSHPO, to ensure that historic properties are protected from operation and maintenance activities on the Atoka to McGee Pipeline.

**I. Project Specific Consultation Process**

OSHPO shall have 30 days to respond at each step outlined below. MCA may address multiple steps where OSHPO agrees it is appropriate. All interested parties and the public shall have a reasonable opportunity to express their views. Existing management programs for other resources shall be evaluated to identify adverse impacts on cultural resources. Measures to eliminate or reduce adverse impacts, and reasonable opportunities to modify existing management activities to maintain and enhance cultural resources values will be identified and adopted; for example, field burning initiated by MCA might be expanded to nearby archeological sites threatened by root damage from woody growth.

**A. MCA shall:**

1. notify the OSHPO of any planned ground disturbing activity, and shall submit an application and scope of work for a survey permit if the area has not already been surveyed by a qualified archeologist;
2. request comments from OSHPO on the survey report and assessments of historical significance of sites in the proposed project area;
3. determine the effect of proposed projects in consultation with OSHPO;
4. consult with OSHPO on measures to eliminate or reduce effects, if effects would occur;
5. negotiate a project-specific scope-of-work with OSHPO that spells out mitigation, and;
6. assure that the project and associated mitigation are implemented in accordance with such scope-of-work.

**B. OSHPO shall:**

1. respond within 30 days to any consultation correspondence from MCA.
2. include the scope-of-work in stipulation I.A.6 in any permit it issues under the Oklahoma State Register of Historic Places Act.

**II. Cultural Resources discovered after project planning.** If cultural resources are discovered or unanticipated effects are identified after MCA has completed consultation under stipulation I, or if vandalism or natural damage is discovered, MCA shall:



- A. stop MCA activities that are affecting the resource, and take reasonable measures to prevent further damage;
- B. develop a resources protection plan in consultation with OSHPO, and;
- C. implement the plan.

**III. Discovery of human remains and associated funerary objects.** If human remains, or suspected remains, or cultural materials associated with human remains are discovered during project implementation, or are exposed by erosion, vandalism, or other agent, MCA shall:

- A. Protect the remains from further damage and contact appropriate law enforcement agencies.
- B. If law enforcement agencies determine that the remains are not subject to criminal investigation, contact the OSHPO within 48 hours to determine disposition of the remains.
- C. Determine whether or not the remains must be moved, due to land management requirements or instability of the landform.
- D. If the remains must be removed, ensure that they are removed by proper archeological excavation.
- E. If remains are Native American, make a good faith effort to identify affiliation with any Federally recognized Indian tribe. If affiliation can be reasonably established, consult with the Tribal government, or officially authorized representative, to determine if the Tribe will claim the remains and associated funerary objects. If the tribe does not claim and accept the remains, consult with the OSHPO about curation.
- F. If after consultation with the OSHPO the remains or associated funerary goods are to be retained, they will be curated in a facility that meets the standards set forth in 36 CFR Part 79, Curation of Federally Owned Archeological Collections, or the standards of the American Association of Museums. Remains shall be curated in secure area, and shall not be put on public display. MCA will then determine final disposition of the remains in accordance with the Oklahoma state law (§21-1168). If Native American remains, associated funerary objects, sacred objects, or objects of cultural patrimony are curated under the control of either MCA or OSHPO, then they would likely fall under the jurisdiction of the Native American Graves Protection and Repatriation Act (104 STAT. 3048, PUBLIC LAW 101-601), and the disposition standards of that act.

**IV. Amendments.** If additions or amendments to any other aspect of this agreement, are recommended by MCA or OSHPO after signing this document, the parties shall consult with each other to consider such an amendment. If each party agrees, the amendment can be executed.

**V. Resolving Objections.**

- A. Should OSHPO object to any action carried out or proposed by the MCA with respect to the Pipeline, or implementation of this MOA, MCA shall consult with the OSHPO to resolve the objection. If MCA determines that the objection can not be resolved through consultation, MCA and the OSHPO shall submit the issue to a mutually agreed on disinterested third party for mediation. In no case shall the mediation result in less protection for the archeological resource than that which would have been provided under the National Historic Preservation Act.
- B. Should mediation fail to produce agreement, MCA and the OSHPO shall submit the issue to a mutually agreed on arbitrator for final resolution. The parties to this agreement shall implement the arbitrator's decision.
- C. MCA shall carry out all actions under this agreement that are not the subjects of the objection.

Implementation of this consultation process by MCA and OSHPO evidences that MCA has afforded the OSHPO an opportunity to comment on MCA management, operation and maintenance of the Pipeline, and has taken into account the effects on historic sites.



# Oklahoma Historical Society

Founded May 27, 1893

State Historic Preservation Office • 2704 Villa Prom • Shepherd Mall • Oklahoma City, OK 73107-2441

Telephone 405/521-6249 • Fax 405/947-2918

June 12, 2001

Mr. Larry Walkoviak  
Bureau of Reclamation  
300 E. 8th St., Room 801  
Austin, Texas 78701-8225

**COPY**

RE: File 1851-01: BOR Proposed Transfer of Title to McGee Creek Authority, MOA

Dear Mr. Walkoviak:

We cannot proceed with a review of the submitted draft MOA on the transfer of property to the McGee Creek Municipal Authority as outlined in your letter dated May 14, 2001, because of a lack of information concerning the four archeological sites addressed in your cover letter and MOA.


What criteria were utilized to arrive at the stated conclusion presented on Page 14 of the May 1999 Draft Environmental Assessment report that Sites 34AT403, 34AT405, 34AT415 and 34AT426 are eligible for the National Register?

Also why is only one of the sites listed in the 1999 document (Site 34AT405, the Hitchcock Family Plot) carried forth in the latest MOA? Your letter of May 14, 2001 and accompanying MOA lists Sites 34AT196, 34AT402, 34AT405 and 34AT406. Are sites 34AT196, 34AT402 and 34AT406 eligible as well?

It needs to be mentioned that the Hitchcock Family Plot, Site 34AT405 mentioned in both documents as a historic cemetery, will have to exhibit special conditions or circumstances to be considered to be eligible for National Register listing.

If you have any questions, please call me at 405/521-6381. Thank you.

Sincerely,

  
Charles Wallis, RPA  
Historical Archaeologist

CW:pm

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Control No.		
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JUL 18 2006

OK-RB

Mr. Charles Wallis  
State Historic Preservation Office  
Oklahoma Historical Society  
2704 Villa Prom  
Shepherd Mall  
Oklahoma City, OK 73107

Subject: McGee Creek Pipeline Project, Proposed Transfer of Title from the Federal Government - Section 106 Consultation Process of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470)

Dear Mr. Wallis:

By this letter, the Bureau of Reclamation is submitting for review the enclosed DRAFT Memorandum of Agreement (MOA). This is a re-initiation of correspondence that took place in 2000 and 2001. As stated in the earlier correspondence, the proposed transfer of the title of the McGee Creek Pipeline Project (MCP) from Federal jurisdiction to the McGee Creek Authority (MCA), would be an undertaking, as defined in 36 CFR §880.16(y), that has the potential to cause adverse effect on historic properties.

#### Background

MCA has requested that Reclamation transfer title of the lands and facilities of the MCP from the Federal government to the MCA. The Draft Environmental Assessment (EA) for the proposed title transfer of the MCP was sent to your office in May of 1998.

The MCP is owned by the United States, and is operated and maintained by the MCA. It is located in Atoka County, and consists of 23 acres of land around the pumping plant and surge tank, 5 acres of land around the regulating tank on the pipeline route, about 210 acres of easements across nonfederal land along the 17 miles of pipeline, and appurtenant facilities. No Indian, private, state or local government lands would be involved in the proposed transfer.

Terry Zontek, Great Plains Regional Archeologist, and Bob Blasing, Oklahoma-Texas Area Archeologist, met with Dr. Robert Brooks in January, 1999 to introduce the proposed undertaking, explain Reclamation's title transfer process, and conduct preliminary research on site locations. The first letter to initiate consultation with your office was sent on September 8, 2000, and a response was received on September 13, 2000. A revised version of the MOA was then sent on May 14, 2001.

This undertaking will have the potential for adverse effect on one site (34AT196) on the Federal land to be transferred, and five sites (34AT402, 34AT405, 34AT406, 34AT415, and 34AT416) which are located on Federal easement across private land. These sites could be adversely impacted by the removal of Federal protection brought about by title transfer. However, the enclosed MOA would provide adequate and enforceable restrictions, which would negate any potential adverse effect.

Reclamation requests your review and comments on the enclosed DRAFT MOA. If you have any questions, please contact Mr. Bob Blasing, Area Archeologist at 405-606-2919.

Sincerely,

**MICHAEL IRLBECK**

Michael Irlbeck  
Supervisory Program Coordinator

Enclosures - 3

cc: Marsha Slaughter  
General Manager  
McGee Creek Authority  
420 W Main Suite 500  
Oklahoma City, Oklahoma 73102  
(w/encls-3)

Robert L. Brooks  
Oklahoma Archeological Survey  
111 East Chesapeake  
Norman, Oklahoma 73019-0575  
(w/encls-3)

WBR:RBlasing:pd:07\_17\_06  
Filename: July 14MOULetter

July 14, 2006

MEMORANDUM OF AGREEMENT  
BETWEEN THE BUREAU OF RECLAMATION,  
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER,  
AND THE MCGEE CREEK AUTHORITY  
CONCERNING  
THE TRANSFER OF LAND AND STRUCTURES OF THE  
MCGEE CREEK TO ATOKA PIPELINE  
OUT OF FEDERAL OWNERSHIP

WHEREAS, the Bureau of Reclamation's Oklahoma-Texas Area Office has determined that transfer of title and easements on the McGee Creek to Atoka Pipeline (Pipeline) to the McGee Creek Authority (MCA) will have the potential for adverse effect on one site (34AT196) on the Federal land to be transferred, and five sites (34AT402, 34AT405, 34AT406, 34AT415, and 34AT416) which are located on Federal easement across private land. The Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 407f). Reclamation has consulted with the Oklahoma State Historic Preservation Officer (OSHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the NHPA. The property to be transferred consists of 23 acres of land around the pumping plant and surge tank, 5 acres of land around the regulating tank on the pipeline route, about 210 acres of easements across nonfederal land along the 17 miles of pipeline, and appurtenant facilities, and:

NOW, THEREFORE, Reclamation, the OSHPO, and the MCA agree that this undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties. Further, the OSHPO and MCA agree to consult about operation and maintenance practices, any substantial alterations to Archeological and Historical Sites, and any proposed construction projects related to the McGee Creek Project including, but not limited to future expansion of the project, according to the following stipulations.

STIPULATIONS

1. The MCA shall, pursuant to its responsibilities as a subdivision of the State of Oklahoma, protect the above mentioned archeological site locations under its jurisdiction in accordance with the *Oklahoma State Register of Historic Places Act*, and Attachment A to this document. The sites will receive continued protection from operation, maintenance, project land use, and construction activities by MCA following transfer of the project to the MCA.
2. The MCA shall consult with the OSHPO upon the discovery of unexpected buried cultural material, or human remains.

3. MCA will consult with Native American Tribes who have a relationship to cultural material or human remains recovered, regarding the maintenance or disposition of those items.

Execution of this Memorandum of Agreement by Reclamation and the Oklahoma OSHPO, and concurrence of the MCA, is evidence that Reclamation has taken into account the effects of the undertaking on historic properties.

**Bureau of Reclamation, Oklahoma-Texas Area Office**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark A. Treviño, Area Manager

**Oklahoma State Historic Preservation Officer**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dr. Bob L. Blackburn, State Historic Preservation Officer

**McGee Creek Authority**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Marsha Slaughter, General Manager

**Attachment A:**  
**Consultation Process Between the MCA and The OSHPO**  
**Regarding Protection of Historic Properties on the Atoka to McGee Pipeline**

This document sets forth the procedures to be followed by MCA and OSHPO, to ensure that historic properties are protected from operation and maintenance activities on the Atoka to McGee Pipeline.

**I. Project Specific Consultation Process**

OSHPO shall have 30 days to respond at each step outlined below. MCA may address multiple steps where OSHPO agrees it is appropriate. All interested parties and the public shall have a reasonable opportunity to express their views. Existing management programs for other resources shall be evaluated to identify adverse impacts on cultural resources. Measures to eliminate or reduce adverse impacts, and reasonable opportunities to modify existing management activities to maintain and enhance cultural resources values will be identified and adopted; for example, field burning initiated by MCA might be expanded to nearby archeological sites threatened by root damage from woody growth.

**A. MCA shall:**

1. notify the OSHPO of any planned ground disturbing activity, and shall submit an application and scope of work for a survey permit if the area has not already been surveyed by a qualified archeologist;
2. request comments from OSHPO on the survey report and assessments of historical significance of sites in the proposed project area;
3. determine the effect of proposed projects in consultation with OSHPO;
4. consult with OSHPO on measures to eliminate or reduce effects, if effects would occur;
5. negotiate a project-specific scope-of-work with OSHPO that spells out mitigation, and;
6. assure that the project and associated mitigation are implemented in accordance with such scope-of-work.

**B. OSHPO shall:**

1. respond within 30 days to any consultation correspondence from MCA.
2. include the scope-of-work in stipulation I.A.6 in any permit it issues under the Oklahoma State Register of Historic Places Act.

**II. Cultural Resources discovered after project planning. If cultural resources are discovered or unanticipated effects are identified after MCA has completed consultation under stipulation I, or if vandalism or natural damage is discovered, MCA shall:**



- A. stop MCA activities that are affecting the resource, and take reasonable measures to prevent further damage;
  - B. develop a resources protection plan in consultation with OSHPO, and;
  - C. implement the plan.
- III. Discovery of human remains and associated funerary objects. If human remains, or suspected remains, or cultural materials associated with human remains are discovered during project implementation, or are exposed by erosion, vandalism, or other agent, MCA shall:
  - A. Protect the remains from further damage and contact appropriate law enforcement agencies.
  - B. If law enforcement agencies determine that the remains are not subject to criminal investigation, contact the OSHPO within 48 hours to determine disposition of the remains.
  - C. Determine whether or not the remains must be moved, due to land management requirements or instability of the landform.
  - D. If the remains must be removed, ensure that they are removed by proper archeological excavation.
  - E. If remains are Native American, make a good faith effort to identify affiliation with any Federally recognized Indian tribe. If affiliation can be reasonably established, consult with the Tribal government, or officially authorized representative, to determine if the Tribe will claim the remains and associated funerary objects. If the tribe does not claim and accept the remains, consult with the OSHPO about curation.
  - F. If after consultation with the OSHPO the remains or associated funerary goods are to be retained, they will be curated in a facility that meets the standards set forth in 36 CFR Part 79, Curation of Federally Owned Archeological Collections, or the standards of the American Association of Museums. Remains shall be curated in secure area, and shall not be put on public display. MCA will then determine final disposition of the remains in accordance with the Oklahoma state law ('21-1168). If Native American remains, associated funerary objects, sacred objects, or objects of cultural patrimony are curated under the control of either MCA or OSHPO, then they would likely fall under the jurisdiction of the Native American Graves Protection and Repatriation Act (104 STAT. 3048, PUBLIC LAW 101-601), and the disposition standards of that act.
- IV. Amendments. If additions or amendments to any other aspect of this agreement are recommended by either party after signing this document, the parties shall consult with each other to consider such an amendment. If each party agrees, the amendment can be executed.
- V. Resolving Objections.
  - A. Should OSHPO object to any action carried out or proposed by the MCA with respect to the Pipeline, or implementation of this MOA, MCA shall consult with

the OSHPO to resolve the objection. If MCA determines that the objection can not be resolved through consultation, MCA and the OSHPO shall submit the issue to a mutually agreed on disinterested third party for mediation. In no case shall the mediation result in less protection for the archeological resource than that which would have been provided under the National Historic Preservation Act.

- B. Should mediation fail to produce agreement, MCA and the OSHPO shall submit the issue to a mutually agreed on arbitrator for final resolution. The parties to this agreement shall implement the arbitrator's decision.
- C. MCA shall carry out all actions under this agreement that are not the subjects of the objection.

Implementation of this consultation process by MCA and OSHPO evidences that MCA has afforded the OSHPO an opportunity to comment on MCA management, operation and maintenance of the Pipeline, and has taken into account the effects on historic sites.



## Oklahoma Historical Society

Founded May 27, 1893

### State Historic Preservation Office

Oklahoma History Center • 2401 North Laird Ave. • Oklahoma City, OK 73105-7914  
(405) 521-6249 • Fax (405) 522-0816 • [www.okhistory.org/shpo/shpom.htm](http://www.okhistory.org/shpo/shpom.htm)

MI  
Bot. OKC  
8/28

August 23, 2006

RECEIVED COPY  
AUG 28 2006  
Bureau of Reclamation  
Austin, TX

Mr. Michael Irlbeck  
Supervisory Program coordinator  
Bureau of Reclamation  
5316 Highway #290 West, #510  
Austin, TX 78735

RE: File #2259-06; McGee Creek Pipeline and Transfer of Title Project,  
Atoka County, Oklahoma (Formerly File #1851-01)

Dear Mr. Irlbeck:

We are in receipt of your correspondence and Draft Memorandum of Agreement concerning the proposed transfer out of title, certain properties (McGee Creek Pipeline) under the control of your agency to the McGee Creek Authority.

Before we can consider the MOA, your agency needs to address the questions outlined in our letter dated June 12, 2001 (copy attached). We do not have enough information to formulate an opinion about the eligibility of the archeological sites discussed in your letter for the National Register of Historic Places. If none of the properties meet the National Register criteria, then an MOA will not be necessary. Additionally, if there are eligible properties that will be affected, your agency will need to notify the Advisory Council on Historic Preservation and determine whether or not they will participate in the consultation. We cannot enter into an MOA, if one is necessary, until the steps outlined in 36 CFR Part 800 are addressed.

When assessing eligibility of historic farmsteads dating from the period of time indicated for these five properties, we encourage the party submitting documentation, review and evaluate properties accordingly to criteria outlined in our Fact Sheet #12 (copy enclosed).

If you have any questions, please call Charles Wallis, RPA, Historical Archeologist, at 405/521-6381. Please reference the above underlined file number when responding. Thank you.

Sincerely,

Melvena Heisch  
Deputy State Historic  
Preservation Officer

MH:pm

Attachment/Enclosure



1111 MM  
DB

## Oklahoma Archeological Survey

THE UNIVERSITY OF OKLAHOMA

August 24, 2006

Michael Irlbeck  
Supervisory Program Coordinator  
Bureau of Reclamation  
Oklahoma-Texas Area Office  
5316 Highway 290 West, Suite 510  
Austin, TX 78735-8931

1 2006

Re: Proposed transfer of title for the McGee Creek Pipeline Project:  
from the Bureau of Reclamation to the McGee Creek Authority,  
Atoka County, Oklahoma.

Dear Mr. Irlbeck:

This letter is in response to a request for comment on a proposed memorandum of agreement for the above referenced action. There are a number of issues with the currently proposed memorandum. First, there is no means for the State Historic Preservation Office or myself to deal with issue of deed conveyance to a municipal entity. We also lack sufficient information on the sites within the area (34AT196, 402, 405, 406, and 417) in respect to their potential eligibility to the National Register and an assessment of affect. At least four of these sites were investigated (34AT196, 402, 406, and 415) but there were no eligibility determination that I could find. (The survey that was originally conducted for this project is apparently missing from our files as well as the Oklahoma City BOR office.) **There may be additional issues concerning sites with historic materials (3AT405, 415) that the historic archaeologist with the State Historic Preservation Office may wish to address. This is especially true of the small historic cemetery at 34AT405.** The Memorandum of Agreement does not indicate whether the Advisory Council has been provided the opportunity to comment on or participate in the MOA which should be a standard for any MOA. Under 36CFR Part 800, an MOA should also involve as consulting parties, Native American tribes that may be affected by this action. This consultation process is also absent from the draft agreement. Finally, as this document would entail transfer out of federal ownership to a municipality, the State Archaeologist should be a signatory to the memorandum of agreement.

This review has been conducted in cooperation with the State Historic Preservation Office, Oklahoma Historical Society.

Sincerely,

Robert L. Brooks  
State Archaeologist

Cc: SHPO  
B. Blasing, BOR

OCT - 5 2006

TX-MI

Mr. Charles Wallis  
State Historic Preservation Office  
2401 North Laird Avenue  
Oklahoma City, Oklahoma 73105

Subject: McGee Creek Pipeline Project, Proposed Transfer of Title from the Federal Government - Section 106 Consultation Process of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470)

Dear Mr. Wallis:

In response to your letter of August 23, 2006 and a letter from State Archeologist, Bob Brooks, on August 24, 2006, we are providing the following additional information, and revised findings on this project.

The following is a summary of the sites involved with this action.

1. Archeological Sites 34AT401, 34AT403, 34AT414 and 34AT426 had been mentioned in earlier consultation documents, but references to these sites were in error. These four sites do not fall within the Area of Potential Effect for this project. These errors were due to a refined project boundary relative to earlier plans and consultation, and to a typographical error in an earlier document.
2. There are now six sites which fall within the Area of Potential Effect. These include 34AT196, 34AT402, 34AT405, 34AT406, 34AT415, and 34AT416. None of these sites are currently on, or have been determined eligible for, the *National Register of Historic Places*.
  - a. Archeological Site 34AT196 is the only site affected by this action that falls on federally owned land. This was a multi-component prehistoric lithic workshop and a probable prehistoric habitation site. In a consultation letter dated September 8, 2000, Reclamation found that adequate mitigation has already been completed on 34AT196, during preparation for Reservoir construction. In a letter dated September 13, 2000, State Archeologist Bob Brooks, "in cooperation with the State Historic Preservation Office", concurred with that Reclamation finding. The site is described in McGuff 1980: III-119, and the mitigation is described in Ferring 1994, Vol. V, Part 1: 39.

- b. Archeological Site 34AT402 is a prehistoric site with Woodland and Early Caddoan occupations indicated. It is entirely located on private land, but a Reclamation owned easement would be transferred to the McGee Creek Authority under this action. About half of one of the five areas of concentration at this site extends across the easement which is being transferred. The one area of the site affected was reported to have the lowest artifact density, and has been heavily disturbed during pipeline construction and burial. While the site as a whole may have potential to be eligible for the *National Register of Historic Places*, Reclamation believes that the portion of the site within the easement no longer has the integrity necessary to contribute to that potential eligibility. This site is described in McGuff 1993, Vol. II: 171.
- c. 34AT405 Hitchcock Family Plot, a possible early Choctaw or Choctaw Freedman cemetery of eight graves. This site also includes a sparse prehistoric lithic scatter. The site is located entirely on private land, and the Reclamation owned easement extends across a small portion of the site. This site is described in Pertulla and McGuff 1993, Vol. I: 80. Reclamation believes that neither the historic cemetery, nor the prehistoric lithic scatter are eligible for the *National Register of Historic Places*, under any of the four criteria. The site can not be identified with an important specific event or person, does not exhibit distinctive construction characteristics, and is not likely to yield important information in prehistory or history.
- d. 34AT406 is a low density prehistoric lithic scatter. Late Archaic to Early Woodland affiliation is indicated. It is located entirely on private land, but a portion of the site extends onto an easement which is being transferred. It is described in McGuff 1993, Vol. II: 177. Reclamation believes that based on the data provided in the reference that the site is not eligible for the *National Register of Historic Places*, under any of the four criteria.
- e. 34AT415 Uber Farm, a historic farm occupied from around 1900 to 1977. It is located entirely on private land, but a portion of the site extends onto an easement which is being transferred. It is described in Pertulla and McGuff 1993, Vol. I: 83, and in McGuff 1993, Vol. II: 181. Reclamation believes that based on the data provided in the reference that the site is not eligible for the *National Register of Historic Places*, under any of the four criteria.
- f. 34AT416 is a fairly dense prehistoric lithic scatter. No subsurface cultural material was found during testing at this site. The site is located entirely on private land, but a portion of the site extends onto an easement which is being transferred. It is described in McGuff 1993, Vol. II: 187. Reclamation believes that based on the data provided in the reference that the site is not eligible for the *National Register of Historic Places*, under any of the four criteria.

Because of the above information, Reclamation finds that this undertaking does not adversely affect any historic property. We request your concurrence on this finding. If you have any questions, please contact Mr. Bob Blasing, Area Archeologist at 405-606-2919.

Sincerely,

**MICHAEL IRLBECK**

Michael Irlbeck  
Supervisory Program Coordinator

cc: McGee Creek Authority  
Robert L. Brooks  
Oklahoma Archeological Survey  
111 East Chesapeake  
Norman, OK 73019-0575

bc: TX-Blackburn

Oklahoma City Field Office  
Attn: OK-Allard, OK-Blasing

WBR:MIrlbeck:pd:9\_4\_06  
Filename:Draft consultation\_Council\_TribalSHPO



## Oklahoma Archeological Survey

THE UNIVERSITY OF OKLAHOMA

October 20, 2006

OCT 20 2006

Michael Irlbeck  
Supervisory Program Coordinator  
Bureau of Reclamation  
Oklahoma-Texas Area Office  
5316 Highway 290 West, Suite 510  
Austin, TX 78735-8931

Re: Proposed transfer of lands and easement from the Bureau of  
Reclamation to the McGee Creek Authority, Atoka County,  
Oklahoma.

Dear Mr. Irlbeck:

I have re-examined the proposed land transfer based upon the documentation provided in your letter of October 5, 2006. As noted, only six sites are now identified as within the area of potential effect. These are 34MCAT196, 34AT402, 34AT405, 34AT415, and 34AT416. It is my opinion that 34AT196 has received sufficient data recovery from efforts during the McGee Creek project to mediate affects to the site by this subsequent undertaking. I also concur that the area of 34AT402 within the aqueduct easement does not hold potential for National Register eligibility. In fact, the site in general may lack sufficient content for further National Register consideration. I also agree with the assessment that 34AT406 and 34AT416 do not hold the necessary content for National Register eligibility. **I defer comment on 34AT405 and 34AT415 to the Historic Archaeologist with the State Historic Preservation Office.** However, I might add that there are complicating factors with 34AT405. The National Historic Preservation Act as amended in 1992 provides greater clarification on traditional properties and the status of the Hitchcock family cemetery may need additional consultation with the Choctaw Nation. Furthermore, I am unclear as to the status of the Native American Graves, Protection, and Repatriation Act where easement lands are involved. The cemetery would also need to be addressed in this agreement in respect to treatment procedures as cemeteries are protected under state law.

This review has been conducted in cooperation with the State Historic Preservation Office,  
Oklahoma Historical Society.

Sincerely,

Robert L. Brooks  
State Archaeologist

Cc: SHPO





# Oklahoma Historical Society

Founded May 27, 1893

## State Historic Preservation Office

Oklahoma History Center • 2401 North Laird Ave. • Oklahoma City, OK 73105-7914  
(405) 521-6249 • Fax (405) 522-0816 • [www.okhistory.org/shpo/shpom.htm](http://www.okhistory.org/shpo/shpom.htm)

October 26, 2006

Mr. Michael Irlbeck  
BOR Supervisory Program Coordinator  
5316 Highway 290 West, Suite 510  
Austin, TX 78735

OCT 28 2006

RE: File #0049-07; McGee Creek Pipeline and Transfer of Title  
Project (formerly File #2259-06)

Dear Mr. Irlbeck:

Your latest documentation concerning the above referenced project, dated October 5, 2006 and received on October 10, 2006, has been reviewed. Our comments only pertain to those archeological sites that date from the Historic Period. We defer to Dr. Robert Brooks regarding those sites that date from prehistoric times (34AT196, 34AT402, 34AT406 & 34AT416).

We concur with your opinion that sites 34At405 (Hitchcock Family Plot) and 34AT415 (Uber Farm) dating from the Historic Period are not eligible for listing in the National Register of Historic Places.

Thank you for the opportunity to review this project. If you have any questions, please call Charles Wallis, RPA, Historical Archeologist, at 405/521-6381. Please reference the above underlined file number when responding. Thank you.

Sincerely,

Melvena Heisch  
Deputy State Historic  
Preservation Officer

MH:pm

cc: Robert Brooks, State Archeologist

AUG 15 2006

TX-DB

Dear Reader:

The U.S. Bureau of Reclamation has prepared this draft Environmental Assessment (EA) for review and comment. The EA evaluates environmental effects which may result from a proposed change in ownership and administration of the water delivery facilities associated with the McGee Creek Project (McGee Creek Reservoir), which is located in Atoka County, Oklahoma. The water delivery facilities of the Project are presently owned by the United States, administered by Reclamation, and operated and maintained by the McGee Creek Authority.

The results of the analysis in this draft EA, and all comments received, will be used to determine the terms and conditions under which title transfer may occur, and may also be considered during development of legislation to authorize title transfer. In addition, the EA and comments will be used by Reclamation to determine whether an Environmental Impact Statement (EIS) is necessary, or if a Finding of No Significant Impact (FONSI) is appropriate.

This draft EA is being made available for a 30-day review and comment period. Comments must be received by **September 15, 2006**, and may be sent by mail or fax. The mailing address is Bureau of Reclamation, ATTN: Deborah Blackburn, 5316 Hwy 290 W. Ste-510, Austin, Texas, 78735, and the fax number is 512-899-4179. A copy of the draft EA is also available from this address.

If you have any questions or need additional information, please contact Ms. Deborah Blackburn at 512-899-4156. Thank you ahead of time for your review.

Sincerely,

**MARK A. TREVIÑO**

Mark A. Treviño  
Area Manager

WBR:DBlackburn:pd:8\_7\_06  
Filename:McGee\_EA\_Review\_Letter

DL DB



OFFICE OF THE GOVERNOR

The Chickasaw Nation  
Post Office Box 1548 • Ada, Oklahoma 74821  
(580) 436-2603 • Fax (580) 436-4287  
<http://www.chickasaw.net/~cnation>

BILL ANOATUBBY  
GOVERNOR

September 11, 2006

Ms. Deborah Blackburn  
Bureau of Reclamation  
5316 Highway 290 West  
Suite 510  
Austin, TX 78735

Dear Ms. Blackburn:

We have been provided with a copy of the Draft Environmental Assessment on the proposed title transfer of water delivery facilities at McGee Creek Project, Oklahoma. There is one erroneous finding in the Assessment which we wish to call to your attention. On page 12 under the subtitle, "Indian Trust Assets and Treaty Obligations," the finding is made that, "Reclamation has not identified any Indian trusts assets in the area of the water delivery facilities."

Over the years, the Choctaw and Chickasaw nations have had substantial legal research done regarding tribal water rights in Southeastern Oklahoma. The researchers have arrived at the conclusion that these two Indian tribes own the right to exercise dominion over all water in the area of their treaty domains, i.e., 23 counties in Southeastern Oklahoma, including Atoka County.

We can provide you with a more detailed basis for our claims but for the purpose of this letter we will give a brief synopsis of it. When these two tribes were removed to Oklahoma from east of the Mississippi river in the early 1800s, they entered into treaties with the United States which resulted in a patent being issued by the United States covering the area referred to above. This was not a mere reservation of lands for Indian tribes from the public domain, but a complete transfer of title. In addition, promises were made in the treaties by the United States concerning the protection of our new domains. Further, the Oklahoma Enabling Act required Oklahoma to disclaim any rights to property of Indian tribes.

Although most of our lands were allotted to individual tribal citizens under the Dawes Act, these nations have never relinquished their governmental right to exercise dominion and authority over water. Likewise, Congress has never divested us of those rights.

Heretofore, we have not objected to Oklahomans using reasonable amounts from the streams of our areas. However, a few years ago when Oklahoma proposed a sale and transfer of water from Choctaw

Ms. Deborah Blackburn

2

September 11, 2006

and McCurtain counties, we did object. As a result, the Texas municipalities proposing to purchase the water refused to enter into a purchase agreement unless these tribes were included and made a party to the transaction.

We bring this to your attention because we did not want the Bureau of Reclamation to be unaware of our position. If you would like a more detailed paper on this, you should contact our attorney, Mr. Bob Rabon, Post Office Box 726, Hugo, Oklahoma 74743

Sincerely,

*Bill Anoatubby*  
Bill Anoatubby, Governor  
The Chickasaw Nation

Reclamation Response:

The Chickasaw Nation's position has been noted. Language in the Final EA has been modified to clarify Reclamation's finding.



# United States Department of the Interior

## BUREAU OF INDIAN AFFAIRS

Eastern Oklahoma Regional Office

P.O. Box 8002

Muskogee, OK 74402-8002

IN REPLY REFER TO:

Division of Environmental  
Safety and Cultural Resources

Mr. Mark A. Trevino  
Bureau of Reclamation  
Oklahoma-Texas Area Office  
5316 Highway 290 West, Suite 510  
Austin, Texas 78735-8931

SEP 15 2006

Dear Mr. Trevino:

On August 17, 2006, the Bureau of Indian Affairs (BIA), Eastern Oklahoma Regional Office (EORO), received a draft Environmental Assessment (EA) from the Bureau of Reclamation (BOR) regarding a proposed change in ownership and administration of the water delivery facilities associated with the McGee Creek Project (McGee Creek Reservoir), located in Atoka County, Oklahoma. The EORO has no comments regarding the proposed change of ownership.

The McGee Creek Project is located within the jurisdictional area of the Choctaw Nation of Oklahoma, a Federally recognized Tribe, which has been provided the draft EA by copy of this letter. As the Tribe may have environmental and/or cultural resources concerns relating to the ownership transfer, it is recommended that the BOR coordinate directly with the Tribe on any of its concerns. The contact address is:

Honorable Gregory E. Pyle  
Chief, Choctaw Nation of Oklahoma  
P.O. Drawer 1210  
Durant, Oklahoma 74702-1210

If any additional information is required, please contact Mr. Bob Coleman, Division Chief, Division of Environmental, Safety and Cultural Resources, EORO, at (918) 781-4660.

Respectfully,

Regional Director