

Advisory Council On Historic Preservation

1522 K Street NW.
Washington D.C.
20005

MEMORANDUM OF AGREEMENT

WHEREAS, the Tulsa District, Corps of Engineers, operates and maintains water resources projects in the States of Oklahoma, Kansas, Texas, and Arkansas; and,

WHEREAS, the Tulsa District recognizes that these Federal lands contain properties which are included in or may be eligible for inclusion in the National Register of Historic Places, and will prepare and adopt a Cultural Resources Management Program for the Tulsa District projects, and has or will survey projects pursuant to Section 2(a) of Executive Order 11593 on a priority basis, contingent on the appropriation of funds; and,

WHEREAS, the Tulsa District plans to continue the operation and maintenance of these projects, but at the same time wishes to ensure that its activities will protect the integrity of historic and cultural properties which qualify for inclusion in the National Register of Historic Places; and,

WHEREAS, the Tulsa District in consultation with the appropriate State Historic Preservation Officers of Oklahoma, Kansas, Texas and Arkansas, has determined that continued maintenance of the operational projects could have an adverse effect upon such historic and cultural properties that are included in or may be eligible for inclusion in the National Register of Historic Places; and,

WHEREAS, pursuant to Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470f, as amended, 90 Stat. 1320) and Section 2(b) of Executive Order 11593, the Tulsa District has requested the comments of the Advisory Council on Historic Preservation (Council); and,

WHEREAS, pursuant to the regulations of the Council (36 CFR Part 800), representatives of the Council, the Tulsa District and the State Historic Preservation Officers

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of Oklahoma, Kansas, Texas, and Arkansas, have consulted and reviewed operation and maintenance activities at these projects to consider feasible and prudent alternatives to avoid or satisfactorily mitigate the adverse effect;

NOW, THEREFORE, it is mutually agreed that continued operation and maintenance of the projects in accordance with the following stipulations will avoid or satisfactorily mitigate any adverse effect.

STIPULATIONS

- I. A. The Tulsa District in consultation with the appropriate SHPO(s) will develop a Cultural Resources Management Plan (Plan) for each project. Included within that Plan would be recommendations for data recovery, preservation, interpretation, reporting, further studies, curation and storage, and nomination of sites, districts, and multiple resources to the National Register of Historic Places.
 - B. After a Plan has been agreed to by the Tulsa District and the appropriate SHPO(s), it will be submitted to the Council for review. If, after 30 days, the Council has not provided written objections, the Tulsa District may implement its Plan whenever deemed appropriate. If an approved Plan is modified, the appropriate SHPO(s) and the Council will be afforded an opportunity to review the modified Plan.
 - C. Should the Council object to a proposed Plan during the review period, the Council, the Tulsa District, and the appropriate SHPO(s) will consult further to resolve the objection. Should the parties fail to agree, the Council will be afforded an opportunity to comment in accordance with Section 800.4(d) of its regulations.
- II. Pending completion of the survey, pursuant to Section 2(a) of Executive Order 11593, "Protection and Enhancement

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of the Cultural Environment," and prior to the commencement of any ground disturbing activities at a project, the Tulsa District will:

- A. Ensure that such activities do not conflict with archaeological, architectural, historic and cultural properties included in or eligible for inclusion in the National Register of Historic Places, which may include but is not limited to archival research, ethnographic research, and oral history.
- B. Avoid by facilities design or by facility relocation, where prudent and feasible, the historic and cultural properties identified as being included in or eligible for inclusion in the National Register of Historic Places.
- C. Develop and implement, in consultation with the appropriate SHPO(s), adequate means of protecting historic and cultural properties identified as being included in or eligible for inclusion in the National Register of Historic Places. These means may include but should not be limited to fencing and patrolling sites in accordance with the advice of the appropriate SHPO(s).

III. Where it is not prudent and feasible to avoid historic and cultural properties included in or eligible for inclusion in the National Register of Historic Places in accordance with stipulation II.B. above, the Tulsa District will consult with the appropriate SHPO(s) and,

- A. If it is determined that the affected historic or cultural property is included in or eligible for inclusion in the National Register of Historic Places primarily because it may be likely to yield information important in prehistory or history, and meets the criteria detailed in Part I of the "Guidelines for Making 'Adverse Effect' and 'No Adverse Effect' Determinations for Archaeological Resources in Accordance with 36 CFR Part 800" (Guidelines), the Tulsa District will institute a data recovery program in consultation with the

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appropriate SHPO(s), in accordance with Part II of the Guidelines and the Council need not be afforded further opportunity for review and comment. (A copy of the Guidelines is attached.)

- B. If it is determined that the affected historic or cultural property is listed in or eligible for inclusion in the National Register of Historic Places primarily for criteria other than the criterion that it is likely to yield information important in the prehistory or history of the area, but is not a National Historic Landmark or National Historic Site, and it is not known to have special significance to Native Americans, the Tulsa District in consultation with the appropriate SHPO(s) will develop mutually acceptable measures to mitigate the impact of the proposed action and the Council need not be afforded further opportunity for review and comment.
- C. The Council shall be notified in writing by the Tulsa District of agreements reached with the SHPO(s) under the provisions of A. and B. of this section.
- D. If it is determined that the affected historic or cultural property is a National Historic Landmark, National Historic Site or is known to have significance to Native Americans, or agreement cannot be reached between the Tulsa District and the appropriate SHPO(s) on satisfactory mitigation measures, the comments of the Council will be requested in accordance with 36 CFR Part 800.

IV. During the implementation of any undertaking that would be covered by this agreement, should previously unknown cultural properties be discovered, the Tulsa District will cause the undertaking to be delayed until it has had an opportunity to consult with the appropriate SHPO(s) and has complied with Section 800.7 of the regulations for the "Protection of Historic and Cultural Properties."

V. The Council, the Tulsa District, and the Oklahoma, Kansas, Texas and Arkansas SHPOs may review the provisions of this Memorandum at any time to determine whether modifications or

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termination is appropriate. Should the current Cultural Resources Management Program of the Tulsa District be revised or superceded or the regulations of the Council revised, the ratifying parties will mutually determine whether the provisions of the Memorandum will continue to apply. Unless modified, the Memorandum will continue in force.

Robert A. Utter 7/27/79
Deputy Executive Director (date)
Advisory Council on Historic
Preservation

Robert S. B. 9/14/79
Tulsa District (date)
Corps of Engineers

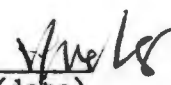

H. Glenn Jordan 9/18/79
Oklahoma State Historic (date)
Preservation Officer

Jeff L. Stone 10/10/79
Texas State Historic (date)
Preservation Officer

Wm. M. Shell 10/15, 1979
Kansas State Historic (date)
Preservation Officer

Paul W. Badridge 12-18-79
Arkansas State Historic (date)
Preservation Officer

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Chairman (date)
Advisory Council on Historic Preservation