

**MEMORANDUM OF AGREEMENT
BETWEEN
USDA, RURAL DEVELOPMENT, RURAL UTILITIES SERVICE
AND THE
OKLAHOMA STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE PROPOSED UPGRADE OF TWO TRANSMISSION LINES
IN CADDO AND COMANCHE COUNTIES,
OKLAHOMA**

WHEREAS, the Rural Utilities Service (RUS), an agency that delivers the U.S. Department of Agriculture, Rural Development Utilities Programs, is authorized to provide assistance in the development of infrastructure in rural America; and,

WHEREAS, the Western Farmers Electric Cooperative (WFEC) has applied to the RUS for financial assistance to upgrade two (2) existing transmission lines on thirty-eight (38) miles of the Anadarko to Fletcher Power Loop in Caddo and Comanche Counties, Oklahoma (Project); and

WHEREAS, the RUS may elect to fund the Project under its Electric Program pursuant to 7 CFR Part 1794, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); and

WHEREAS, the area of potential effects (APE) for the undertaking is the thirty-eight (38) miles of right-of-way; and

WHEREAS, the RUS has determined that this undertaking may have an adverse effect on archeological site 34CD730, a property considered eligible for listing in the National Register of Historic Places and has consulted with the Oklahoma State Historic Preservation Office (SHPO), pursuant to 36 CFR Part 800; and

WHEREAS, the SHPO and the Oklahoma Archeological Survey (OAS) have entered into a cooperative agreement under which the OAS provides special services to the SHPO in fulfilling its role under 36 CFR Part 800; and

WHEREAS, OAS has participated in consultation and has been invited by the RUS to sign this Memorandum of Agreement (MOA) as a concurring party; and

WHEREAS, the WFEC has participated in consultation and has been invited by the RUS to sign this MOA as an invited signatory; and

WHEREAS, the RUS has invited the Tonkawa Tribe of Oklahoma and the Kiowa Nation to participate in consultation; and

WHEREAS, the Tonkawa Tribe of Oklahoma has participated in consultation and has been invited by RUS to sign this MOA as a concurring party; and

WHEREAS, the RUS has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect, in accordance with 36 CFR § 800.6(a)(1)(i)(C), providing the specified documentation; and

WHEREAS, the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii);

NOW THEREFORE, the RUS and the Oklahoma SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The RUS will ensure that the following measures are carried out:

I. STANDARDS

A. The treatment measures required under the terms of this MOA will be carried out by or under the direct supervision of a professional who, at a minimum meets the *Secretary of the Interior's Professional Qualification Standards* (48FR44716, September 29, 1983).

B. The treatment measures carried out under the terms of this MOA will be guided by the ACHP's guidance on conducting archeology under Section 106 (2007); the ACHP's *Policy Statement on the Treatment of Human Remains, Burial Sites and Funerary Objects* (February 23, 2007); applicable SHPO guidance; and the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48FR 44716-42, September 29, 1983).

C. Curation: The artifacts are the property of the private landowner. The WFEC will encourage the landowner to donate any artifacts recovered through implementation of this MOA to either the Museum of the Great Plains at Lawton or the Sam Noble Museum of Natural History at the University of Oklahoma, Norman. The preferred option being the facility closest to the historic property.

II. TIMING

WFEC may initiate Project construction following execution of this MOA, but will not conduct any construction activities within the area currently defined as archeological

site 34CD730 until the terms of this MOA have been carried out.

III. TREATMENT MEASURES

A. Treatment of Archeological site 34CD730

1. Treatment measures to be implemented by WFEC will be restricted to the area identified on Attachment 2 as the possible location of the 1862 Tonkawa massacre (archeological site 34CD730). No work will be necessary on the top of the ridge in the vicinity of Indian City or north of Tonkawa Creek.
2. No additional metal detector scans or shovel tests will be conducted in the right-of-way (ROW) in 34CD730 as part of treatment.
3. WFEC will ensure that the locations of the new transmission line power poles (currently proposed as three sets of two each in the existing ROW) as shown on the attached topographic map (Attachment 3) are flagged by a survey crew prior to the initiation of any treatment measures within 34CD730. The locations of and additional structures within 34CD730 deemed needed by WFEC due to project design changes or other unforeseen circumstances will be treated by WFEC in accordance with the terms of this MOA.
4. WFEC will implement the following treatment measures:
 - a. Excavation, by hand, of two by two (2x2) meter excavation units for each of the proposed locations for new transmission line poles. The units will be centered on the flagged points established under Stipulation III.A.4.
 - b. All fill will be dry screened through one-quarter inch hardware cloth.
 - c. All artifacts will be bagged by unit and level (10 cm increments unless natural stratigraphic levels can be determined and even in these instances no more than ten (10) cm depths for any one stratigraphic unit should be removed to allow for comparisons of equal volume).
 - d. Depth for screened 2x2 meter units will be one-half meter (.5 m) to allow for reasonable penetration below the anticipated level of the pre-agricultural 1862 ground surface.
 - e. If extensive modern post-1862 fill is encountered, then WFEC will increase the depth of maximum excavation. This depth will be determined by RUS in consultation with the WFEC, SHPO and the Tonkawa Tribe. All identified features will be completely excavated when their size does not exceed the limits of the 2x2 meter unit. When identified features exceed the limits of the 2x2 meter unit, RUS will consult with WFEC, SHPO and the Tonkawa Tribe to determine if complete excavation is in the public interest and appropriate under the terms of this MOA.

- f. Prior to the completion of investigations, following conclusion of the required screened hand excavated 2x2 meter units, a post hole digger or equivalent tool will be used to extend a single post hole in the base of one of each of the 2x2 meter units to the maximum depth fill can be extracted utilizing this manner to check for the potential of deeper, buried prehistoric deposits.
5. When the transmission pole holes are drilled WFEC will employ a professional archeologist to be on site to monitor and record any findings that result from drilling activities in the area of 34CD730.
- B. If a burial ground, human remains or burial furniture are discovered during implementation of treatment measures for archeological site 34CD730, WFEC will comply with Stipulation IV (C).

IV. POST-REVIEW DISCOVERIES

- A. The WFEC shall ensure that the requirements of Stipulation IV are included in all construction contracts.
- B. If previously unidentified historic properties or unanticipated effects to historic properties are discovered during Project construction, the construction contractor will immediately halt all activity within a one hundred (100) foot radius of the discovery, notify the WFEC of the discovery and implement interim measures to protect the discovery from looting and vandalism.
 1. Immediately upon receipt of the notification, WFEC shall inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted, clearly mark the area of the discovery, implement additional measures, as appropriate, to protect the discovery from looting and vandalism, and notify the RUS, the SHPO and the Tonkawa Tribe.
 2. Upon receipt of notification, the RUS shall treat the discovery in accordance with 36 CFR § 800.13(b)(3) and, as appropriate, (c).
- C. When a burial ground, human remains or burial furniture is discovered during implementation of construction activities anywhere in the Project right-of-way, WFEC will comply with Okla. Stat. Ann. 21 § 1161-1168.7 (Oklahoma Burial Law).
 1. Upon encountering a burial ground, human remains or burial furniture during implementation of construction activities anywhere in the Project right-of-way, the construction contractor will immediately stop work within a thirty (30) foot radius from the point of the discovery and notify WFEC. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human

remains or other items in the immediate vicinity of the discovery.

2. Immediately following receipt of such notification, WFEC will

- a. ensure that construction activities have halted within a thirty (30) foot radius of the point of the discovery;
- b. implement additional measures, as appropriate, to protect the discovery from looting and vandalism until completion of requirements under the Oklahoma Burial Law;
- c. notify the appropriate law enforcement officer in the Caddo or Comanche County, as appropriate,, the Chief Medical Examiner, the RUS, the Tonkawa Tribe, the SHPO, the OAS and the landowner.

3. Upon learning that remains are not associated with a crime, WFEC has fifteen (15) days within which to notify the SHPO and the OAS. If WFEC determines that disturbance cannot be avoided, WFEC will treat the burial site of human remains in accordance with procedures established by the SHPO and the OAS.

4. WFEC will resume construction activities in the area of the discovery upon completion of the measures authorized by the SHPO and the OAS.

V. DISPUTE RESOLUTION

A. Should any signatory or concurring party to this MOA object, in writing, at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the RUS will consult with such party to resolve the objection. If the RUS determines that the objection cannot be resolved, the RUS will forward all documentation relevant to the objection, including the RUS's proposed resolution, to the ACHP. Within thirty (30) days after receipt of all pertinent documentation, the ACHP will either:

1. Provide recommendations, pursuant to 36 CFR § 800.2(b)(2), which the RUS will take into account in reaching a final decision regarding the dispute; or
2. Notify the RUS that it will comment pursuant to 36 CFR § 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by the RUS in accordance with 36 CFR § 800.7(c)(4).

B. If the ACHP does not provide its advice regarding the dispute within thirty (30) days the RUS may make a final decision on the dispute and proceed accordingly.

C. Prior to reaching a final decision on the dispute, the RUS shall prepare a written response that takes into account any timely advice or comments regarding the dispute

from the ACHP, and the other parties to this MOA, and provide them with a copy of this written response. The RUS will then proceed according to its final decision.

D. The responsibility of RUS to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VI. DURATION

A. The term of this MOA shall be five (5) years from the date of execution by the signatories unless the signatories agree to extend its term. If its stipulations have not been carried out, and prior to work continuing on the undertaking, the RUS shall either (a) execute another agreement pursuant to 36 CFR § 800.6, or request, take into account and respond to the comments of the ACHP pursuant to 36 CFR § 800.7.

B. Six (6) months prior to the date on which the MOA will expire, the RUS shall notify the other signatories of the impending expiration. The RUS may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation VII. The RUS shall notify the signatories as to the course it will pursue.

VII. AMENDMENT

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date it is executed by all of the signatories and filed with the ACHP.

VIII. TERMINATION

A. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

B. Once the MOA is terminated, and prior to work continuing on the undertaking, the RUS must either (a) execute an agreement pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The RUS shall notify the signatories as to the course of action it will pursue.

EXECUTION of this MOA by the RUS and the Oklahoma SHPO and implementation of its terms evidence that the RUS has taken into account the effects of this undertaking

on historic properties and afforded the ACHP an opportunity to comment.

Signatories:

USDA, RURAL DEVELOPMENT, RURAL UTILITIES SERVICE

By: Mark S. Plank Date: 2/12/09

Mark S. Plank, Director
Engineering and Environmental Staff
Water and Environmental Programs

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE

By: Dr. Bob Blackburn Date: 2-13-09
Dr. Bob Blackburn
State Historic Preservation Officer

Invited signatories:

WESTERN FARMERS ELECTRIC COOPERATIVE

By: _____ Date: _____

Concurring parties:

TONKAWA TRIBE OF OKLAHOMA

By: _____ Date: _____


Don Patterson
Tribal President

OKLAHOMA ARCHEOLOGICAL SURVEY

By: _____ Date: _____
Dr. Robert Brooks
State Archeologist

Don Patterson
Tribal President

OKLAHOMA ARCHEOLOGICAL SURVEY

By: 

Dr. Robert Brooks
State Archeologist

Date: 2/14/09