

PROGRAMMATIC AGREEMENT

#14AG640054

AMONG

**THE BUREAU OF RECLAMATION,
THE LUGERT-ALTUS IRRIGATION DISTRICT,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
AND THE OKLAHOMA ARCHEOLOGICAL SURVEY**

REGARDING

**OPERATION AND MAINTENANCE OF THE W.C. AUSTIN IRRIGATION
PROJECT, GREER, KIOWA, AND JACKSON COUNTIES, OKLAHOMA**

WHEREAS, The Bureau of Reclamation (Reclamation) has determined that due to continued pressures from urban and agricultural growth in and around Reclamation's W.C. Austin Project (Project), modifications and system upgrades will regularly be required for operation and maintenance (O&M);

WHEREAS, Reclamation acknowledges that these activities are undertakings, as defined in 36CFR Part 800.16(y), which may have adverse effects upon the Project, a property which has been determined eligible for the National Register of Historic Places (Register) [Stipulation I.C.];

WHEREAS, Reclamation has consulted with the Oklahoma State Historic Preservation Office (SHPO) and Oklahoma Archeological Survey (OAS) pursuant to 36 CFR Part 800.14b (implementing Sections 106 and 110(f) of the National Historic Preservation Act); 16 U.S.C. 470f and 16 U.S.C. 470h-2(f));

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

WHEREAS, Reclamation shall consult with the SHPO and OAS on all O&M measures not specifically listed in Attachment 2 to this Programmatic Agreement (Agreement) in accordance with the standard case-by-case project review process outlined in the Council's regulations (36 CFR Part 800);

WHEREAS, Reclamation has determined that implementation of O&M Measures may result in Undertakings that have the potential to affect historic properties that have religious and cultural significance to federally or non-federally recognized tribes (Tribes),

and Reclamation may request that these Tribes participate as a consulting party to fulfill the requirements of the NHPA;

WHEREAS, Reclamation has notified the Advisory Council on Historic Preservation (Council) of its desire to satisfy its Section 106 responsibilities for Project O&M measures in a programmatic manner, and has invited the Council's comments and participation in the review of this Agreement, pursuant to 36CFR, Part 800. The Council has declined to formally participate in development of the Agreement or to be a signatory;

WHEREAS, As the agency primarily responsible for Project upkeep and maintenance, using federal funds received through a cost-sharing agreement with Reclamation, the Lugert-Altus Irrigation District (L-AID), Altus, OK, participated in the consultation process and has been invited to be a signatory to this Agreement; and

WHEREAS, A Programmatic Agreement among the Bureau of Reclamation, the Lugert-Altus Irrigation District, the Oklahoma State Historic Preservation Office, and the Oklahoma Archeological Survey was signed in December 2008, and has expired; and

NOW, THEREFORE, Reclamation, L-AID, the SHPO, and OAS agree that O&M measures for the Project shall be carried out in accordance with the following stipulations to satisfy Reclamation's Section 106 responsibilities for undertakings affecting the Project.

STIPULATIONS

I. APPLICABILITY AND ADMINISTRATIVE PROCEDURES

- A. This Agreement shall be in force immediately upon the date of execution and will remain in effect until terminated pursuant to the terms of this agreement.
- B. Unless otherwise agreed to by the signatories to this Agreement (e.g. Stipulation VI.), all timeframes for any signatory to respond to any request for comments shall be thirty (30) days, and all timeframes shall be measured in calendar days.
- C. The W.C. Austin Project was determined eligible for listing in the National Register of Historic Places by consensus pursuant to 36 CFR Part 800. The boundaries of this historic property are described as the Lake, the dam, the dikes, the waste-way bridge, and the main canals and their component parts. This would include all features on the main canals, but exclude all laterals, drains and their component features. The location of these features is illustrated on the map provided as Attachment 1 to this Agreement.

Furthermore, the historic property consists of numerous structures, features, and open space that contribute to its significance and character.

- D. Reclamation understands that historic properties not related to the W.C. Austin Project may be present within the boundaries cited in Stipulation 1.C. and illustrated in Attachment 1 or in other areas outside the National Register eligible property and that if such properties may be affected by an O&M measure, Reclamation shall consult with the SHPO and OAS pursuant to the standard case-by-case review process established in 36 CFR Part 800.
- E. Reclamation has determined that implementation of the O&M measures listed in Attachment 2 to this Agreement have little or no potential to effect historic properties, and, therefore, Reclamation may carry out or authorize any of the listed activities without further consultation with the SHPO and the OAS.
- F. **Emergencies and Urgent Situations:** Emergencies are those situations that present an immediate threat to life and property (for example, a wild fire approaching a campground, or a visible dam breach), while urgent situations are those situations that provide an impending threat to life and property (for example, fire or flood that is not immediately a threat). In an emergency situation, any repair or supportive work to project features, and other emergency activities, will be carried out without prior review or consultation. Reclamation and L-AID will contact SHPO concerning any emergency activities within 7 calendar days of the occurrence. Reclamation and L-AID will assess any impact to historic properties and features, and will provide a report to SHPO within 60 business days. In an urgent situation, Reclamation and L-AID will contact SHPO as soon as possible for consultation and request verbal agreement. If any urgent situation becomes an emergency, then the process outlined for Emergencies will apply. During major disasters when immediate rescue and salvage operations are necessary to preserve life and property, Reclamation and L-AID may elect to waive all or part of its Section 106 obligations, as outlined in 36 CFR 800.12(d).
- G. **Altus Air Base:** Portions of the Ozark Canal are located under runways and in restricted areas on Altus Air Base. Because access to these areas is restricted and they are controlled by a federal agency, consultation for any modifications initiated by the U. S. Air Force in these areas will be the responsibility of the Air Force.
- H. **Title Transfer of Small Tracts:** On some occasions small tracts of land owned by the government are no longer needed for project operation and become excess. These are usually returned to the owner of the surrounding land, or the person from whom the lands were originally acquired. On these occasions, the lands to be transferred will be surveyed for archeological or historic properties prior to disposal. If archeological remains or historic properties which contribute to the Districts eligibility are present, Reclamation

will consult with the SHPO prior to transfer. If no eligible historic properties are present, no further consultation with SHPO will be required prior to transferring the land.

- I. **Tribal Consultation(s)**: Reclamation, L-AID, OAS, and SHPO concur that any archaeological resource, human skeletal remains, associated grave goods, or items of cultural patrimony discovered due to fluctuations in the lake's operational levels, or any other activity on Federal lands covered by this agreement, shall be subject to provisions of the Archeological Resources Protection Act (ARPA: 16 U.S.C. 47 et. seq.), when applicable, and the Native American Graves Protection and Repatriation Act (NAGPRA: 25 U.S.C. 3001, et. seq.). Reclamation will fully consult with any tribes that may likely be affiliated with discovered remains, as required by NAGPRA and amendments to the National Historic Preservation Act. Usually these tribes would include Wichita and affiliated Tribes, the Kiowa Tribe, Comanche Tribe, and the Apache Tribe of Oklahoma, but other tribes would be consulted if possible associations were indicated. Human remains discovered on non-Federal lands and easements shall be considered under applicable state law.

II. REPORTING AND MONITORING

- A. Reclamation shall submit an annual report to the SHPO and OAS that at a minimum lists the undertakings and their respective locations carried out under this Agreement for the previous twelve (12) months. The twelve (12) month reporting period shall begin on the effective date of this Agreement for the first year and on that same date for each year the Agreement is in effect.
- B. The SHPO and the OAS may monitor any activity carried out pursuant to this Agreement. Reclamation and L-AID will cooperate with the SHPO and OAS should they request to monitor or to review project files.

III. DURATION

This Agreement will remain in effect for ten (10) years or until Reclamation, in consultation with the other signatories determines that the terms of this Agreement should be terminated pursuant to Stipulation IV. By mutual consent of the Signatories, this Agreement may be extended for a five (5) year period, not less than ninety (90) days prior to the expiration of the Agreement. Reclamation shall initiate consultation with the other Signatories to determine if the Agreement shall be extended.

IV. AMENDMENT, NON-COMPLIANCE, AND TERMINATION

- A. If any signatory to this Agreement determines that the terms of the Agreement cannot be fulfilled, or that an amendment to the Agreement must be made, the

signatories will consult to seek amendment to same. The process of amending this Agreement will be the same as that exercised in creating the original Agreement.

- B. Reclamation, L-AID, the SHPO, or the OAS may terminate this Agreement by providing 30 days written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that would prevent termination. Termination of this Agreement will require Reclamation's compliance with the standard case-by-case review process set forth in 36 CFR Part 800 for all of its O&M measures.
- C. This Agreement may be terminated by the implementation of a subsequent Programmatic Agreement that explicitly terminates or supersedes this Agreement, or by Reclamation's implementation of Alternate Procedures, pursuant to 36 CFR Part 800.14(a), or of supplanting regulations.

V. DISPUTE RESOLUTION

- A. Should any party to this Agreement object, within thirty (30) days to any actions pursuant to this Agreement, Reclamation will consult with the objecting party to resolve any such objection. If Reclamation determines that the objection cannot be resolved, Reclamation will forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council shall either:
 - 1. Provide Reclamation with recommendations pursuant to 36 CFR Part 800.2(b)(2), which Reclamation will take into account in reaching a final decision regarding the dispute; or,
 - 2. Notify Reclamation that it will comment pursuant to 36 CFR Part 800.7(c), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by Reclamation in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject dispute.
- B. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the responsibility of Reclamation, L-AID, the SHPO, and the OAS to carry out other actions pursuant to this Agreement that are not the subject of the dispute will remain unchanged.
- C. If at any time during the implementation of the measures stipulated in this Agreement, an objection should be raised by an interested member of the public or any consulting party, Reclamation will take the objection into account and consult with the objecting party, other interested parties, and any signatories, as necessary, to resolve the objection.

VI. UNEXPECTED DISCOVERIES

- A. Reclamation or L-Aid will notify the SHPO and the OAS at the earliest possible time if it appears that an Undertaking will affect a previously unidentified property that may be historic or affect a known historic property in an unanticipated manner. Reclamation will require that construction activities in the vicinity of the discovery immediately cease and take all reasonable measures to avoid or minimize harm to the property until Reclamation concludes consultation with the SHPO and OAS. In the case of human remains, Reclamation or L-AID will notify the appropriate law enforcement office/agency.
- B. Reclamation or L-Aid will notify the SHPO and the OAS of the discovery within three (3) workdays and subsequently consult to develop actions to take into account the effects of the Undertaking. Reclamation or L-AID will notify the SHPO and the OAS of any time constraints and all parties will mutually agree upon timeframes for this consultation. Reclamation will provide the SHPO and the OAS with written recommendations to take into account the effects of the Undertaking.
- C. If the SHPO and the OAS do not object to Reclamation's recommendations within the agreed upon timeframe, as developed pursuant to stipulation VI.B of this Agreement, Reclamation will modify the scope of work to implement the recommendations. If the SHPO and the OAS object to the recommendations, Reclamation, L-AID, the SHPO, and the OAS will consult further to resolve this objection through actions including, but not limited to, identifying project alternatives that may result in the Undertaking having no adverse effect on historic properties or proceeding in accordance with Stipulation V.

Execution of this Agreement and implementation of its terms evidences that Reclamation has considered the effects of its undertakings on historic properties and has afforded the Council a reasonable opportunity to comment on operations and maintenance measures for the W.C. Austin Project and on the program's likely effects on historic properties.

BUREAU OF RECLAMATION

By: Mark A. Trevino Date: 7/2/14
Mark A. Trevino
Area Manager

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE

By: 

Bob L. Blackburn, PhD

State Historic Preservation Officer

Date: June 23, 2014

OKLAHOMA ARCHEOLOGICAL SURVEY

By: 

Robert L. Brooks, PhD

State Archaeologist

Oklahoma Archeological Survey

Date: June 25, 2014

LUGERT-ALTUS IRRIGATION DISTRICT

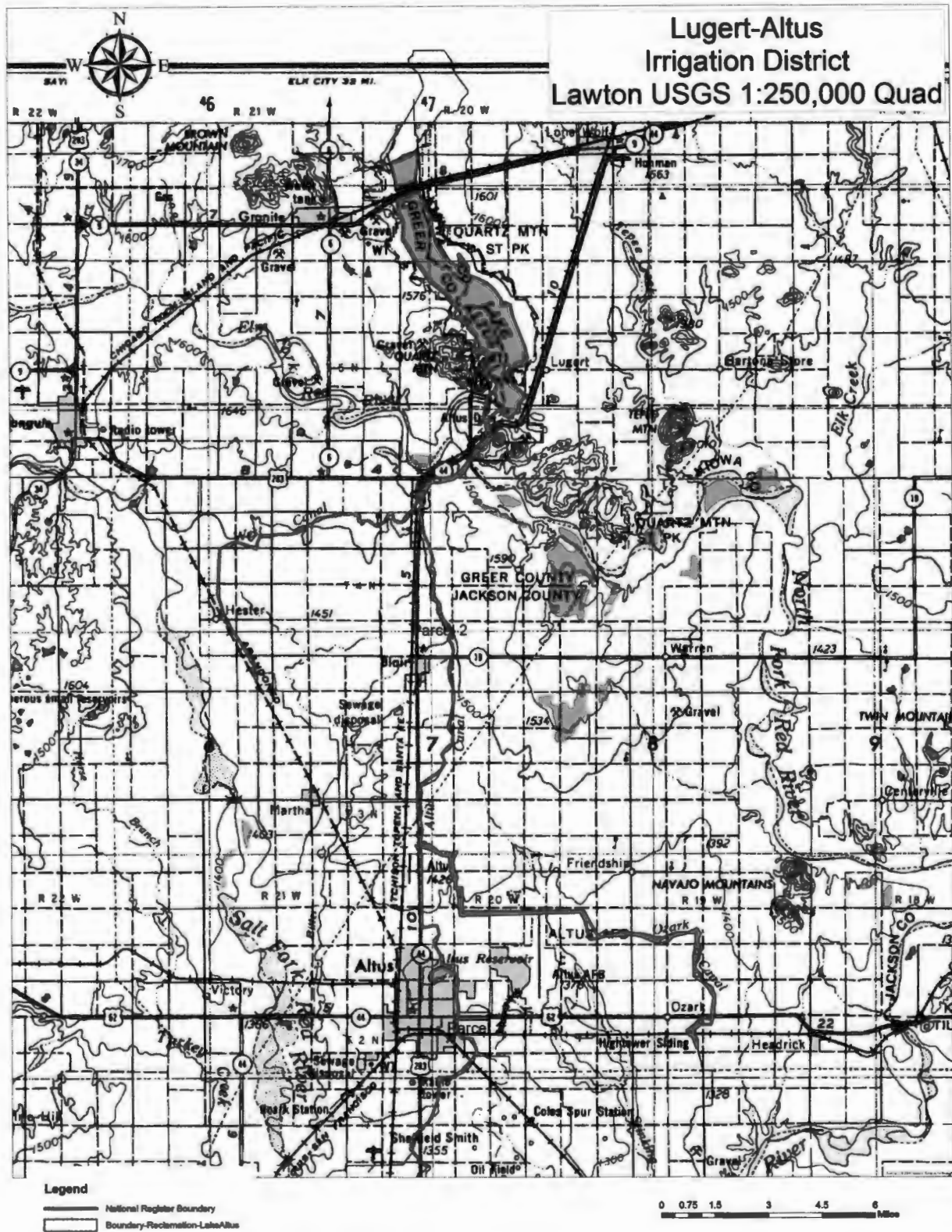
By: 

Tom Buchanan

Lugert-Altus Irrigation District

Date: 5-26-14

**ATTACHMENT 1: NATIONAL REGISTER OF HISTORIC PLACES
BOUNDARY DESCRIPTION FOR THE W.C. AUSTIN PROJECT**



ATTACHMENT 2: PROGRAMMATIC ALLOWANCES

In accordance with Stipulation I.E. of this Programmatic Agreement (Agreement), the following O&M measures for the W.C. Austin Project are exempt from standard case-by-case consultation with the State Historic Preservation Office (SHPO) and the Oklahoma Archaeological Survey (OAS). The list may be revised without amending this Agreement, with the written concurrence of Reclamation, L-AID, the SHPO, and the OAS.

1. Contract actions (e.g., water service renewals, repayment contracts, Warren Act, seasonal water, short term water delivery) where existing facilities will be used with no modifications and no land use changes are proposed;
2. Wheeling agreements where existing facilities are used, and water use does not change;
3. Providing funding support for or development of water banking programs (including if-and-when contracts) as long as the water placed in a reservoir does not exceed historic water levels;
4. Providing funding toward or supporting in-stream flow releases of project waters for water quality, fishery, and other programs as long as the released water is within the historic flow range for the stream;
5. Rodent and pest control that does not involve ground disturbance;
6. Application of soil sterilants, herbicides, and insecticides that does not involve ground disturbance;
7. Terrestrial and aquatic weed removal from within earthen or lined canals or laterals;
8. Mowing, brushing, and general landscaping along roads, trails, levees, canals, laterals, ditches, and office and facility grounds;
9. Road maintenance, including repaving of existing roads or existing parking areas within previously disturbed areas;
10. Maintenance and widening of existing trails, walks, paths, and sidewalks within previously disturbed areas;
11. Small bore (less than 6" diameter) drilling in previously disturbed areas;
12. Replacement of pipelines, cables, or utility conduit entirely within previously disturbed areas where equipment access is also within previously disturbed areas;

13. Routine maintenance or investigations of dams, power plants, and other structures where there is no change to the structure;
14. Maintenance, placement, or replacement of fences within previously disturbed areas;
15. Placement or restoration of existing rip rap;
16. Clearing of sediments and non-archaeological debris immediately adjacent to dams or adjacent to or within stilling basins, forebays, canals, laterals, ditches, conduits, siphons, and drains, where the activity occurs in previously disturbed areas, and the sediment or debris is placed in previously disturbed areas;
17. Routine maintenance of canals, laterals, and ditches including: draining, grading within an existing prism; dredging, where dredged materials are deposited in previously disturbed areas, cleaning, and inspections;
18. Inclusions where there is no change in water or land use;
19. Exclusions from existing water districts;
20. Issuing use authorizations (e.g., grants, license, leases, permits, rights-of-way, or easements) where there is no ground disturbance or other physical disturbance to a Reclamation property;
21. Acquisition of land or easements for Reclamation purposes;
22. Revocation of easements where Reclamation's easement is not sufficient to have allowed for Federal "control" of the lands, and the revocation does not involve the abandonment or disposal of buildings or structures;
23. Placement of scientific equipment within the existing channel of streams or rivers where access and placement of the equipment involves no new ground disturbance;
24. Monitoring of facilities, biota, or environmental conditions where no ground or other physical disturbance occurs;
25. Obtaining soil or rock materials from existing stockpiles, or from within the confines of a previously excavated pit where there is no expansion of the pit into areas not previously used;
26. Stockpiling rocks and other materials, or placing fill in existing borrow locations, within previously disturbed areas;
27. Excavation of trenches within the confines of fill material.

28. Removing equipment or structural materials within buildings and structures when the equipment or materials are not original and do not contribute to the historic significance of the building or structure;
29. Painting and application of other protective coverings, such as sealants and epoxy, where the original coloring is maintained;
30. Installation of fire detection and suppression systems, and security alarm systems, and upgrading of HVAC systems;
31. Previously surveyed areas with no cultural resources present. This would apply where a cultural resources survey adequate to current standards was completed, and previous SHPO consultation has determined that no historic properties are present and there are no historic structures that may have the potential to become eligible. This would only apply in situations where the area of potential effect (APE) is not increased beyond the scope of the previously consulted action.