

**FINAL PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL ENERGY REGULATORY COMMISSION
AND THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER
FOR MANAGING HISTORIC PROPERTIES
THAT MAY BE AFFECTED BY ISSUING A NEW LICENSE TO
GRAND RIVER DAM AUTHORITY
FOR THE CONTINUED OPERATION AND MAINTENANCE OF THE
SALINA PUMPED STORAGE PROJECT
IN MAYES COUNTY, OKLAHOMA
(FERC No. 2524-021)**

WHEREAS, the Federal Energy Regulatory Commission or its staff (hereinafter, "Commission") proposes to issue a new license to Grand River Dam Authority (hereinafter, "Licensee") for the continued operation and maintenance of the Salina Pumped Storage Project (hereinafter, "Project") as authorized by Part I of the Federal Power Act, 16 U.S.C. sections 791(a) through 825(r) *as amended*; and

WHEREAS, the Commission has determined that issuing such a license may affect properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter, "historic properties"); and

WHEREAS, the area of potential effects (hereinafter, "APE") for the Project is defined as: all lands within the Project boundary, generally following the 870-foot contour around W.R. Holway Reservoir, and encompassing the forebay canal, penstocks, substation, powerhouse, and transmission line corridor, and 973 acres between the Project boundary and the property line; and

WHEREAS, the Commission has consulted with the Advisory Council on Historic Preservation (hereinafter, "Advisory Council") and the Oklahoma State Historic Preservation Office (hereinafter, "Oklahoma SHPO"), pursuant to 36 C.F.R. section 800.14(b) of the Advisory Council's regulations (36 C.F.R. section 800) implementing section 106 of the National Historic Preservation Act (16 U.S.C. 470F; hereinafter, "section 106"); and

WHEREAS, the Oklahoma Archeological Survey (hereinafter, "OAS") has participated in the consultation and has been invited to concur in this Programmatic Agreement.

WHEREAS, the Licensee has participated in the consultation and has been

invited to concur in this Programmatic Agreement; and

WHEREAS, the Osage Nation, Muscogee (Creek) Nation, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe have participated in the consultation and have been invited to concur in this Programmatic Agreement; and

WHEREAS, the Commission will require the Licensee to implement the provisions of this Programmatic Agreement as a condition of issuing a new license for the Project; and

NOW THEREFORE, the Commission and the Oklahoma SHPO agree that the Project will be administered in accordance with the following stipulations in order to satisfy the Commission's section 106 responsibilities during the term of the Project's license.

STIPULATIONS

The Commission will ensure that, upon issuing a new license for this Project, the Licensee implements the following stipulations. All stipulations that apply to the Licensee will similarly apply to any and all of the Licensee's successors. Compliance with any of the following stipulations does not relieve the Licensee of any other obligations it has under the Federal Power Act, the Commission's regulations, or its license.

I. HISTORIC PROPERTIES MANAGEMENT PLAN

- A. Within one year of license issuance for the Project, the Licensee will file with the Commission for approval a Historic Properties Management Plan (hereinafter, "HPMP") specifying how historic properties will be managed in the Project's APE, as defined in 36 C.F.R. section 800.16(d), during the term of the license. During development of the HPMP, the Licensee will consult with the Oklahoma SHPO, OAS, Osage Nation, Muscogee (Creek) Nation, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe, as defined in 36 C.F.R. section 800.2(c).¹ The Licensee will seek the Oklahoma SHPO's concurrence on the HPMP.

¹ The Licensee must allow the consulting parties at least 30 days to respond to a request for review of a finding or determination involving the HPMP and during the interim period, pursuant to Stipulation III of this Programmatic Agreement.

- B. The Licensee will take into account the “Archeology and Historic Preservation: Secretary of the Interior’s Standards and Guidelines” (Federal Register, September 29, 1983, Vol. 48, No. 190, Part IV, pp. 44716-44740; hereinafter, “Secretary’s Standards”) and the “Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects,”² while developing the HPMP. The HPMP will be developed by, or developed under the direct supervision of, a person or persons who meet, at a minimum, the professional qualifications standards for architectural history or archaeology in the Secretary’s Standards (48 FR 44738-39). To develop the HPMP, the individual or individuals need not possess both qualifications.
- C. The HPMP will include, at a minimum, provisions for:
1. a description of the Project facilities, Project operation, and location;
 2. a description of the APE for the Project and inclusion of a map that shows the APE and the recorded archaeological and historic resources in relation to the Project boundary;
 3. a description of the historic context (time, place, and theme) of the Project area;³
 4. an evaluation of the Project’s eligibility for inclusion in the National Register of Historic Places, including an assessment of Project-related effects and a schedule for the evaluation;

² This document was issued jointly by the Commission and the Advisory Council on May 20, 2002. The document is available at <http://www.ferc.gov/industries/hydropower/gen-info/guidelines/hpmp.pdf>.

³ Four historic phases are identified for the Project area: (1) possible Cherokee Freedman land allotments; (2) early 1900s European immigrant homestead farming and ranching; (3) the World War II era occupation and development of the Project area; and (4) the eventual closing of the DuPont munitions plant and the German Prisoner of War Camp, and the eventual development of the Project (letter from Melvena Heisch, Deputy State Historic Preservation Officer, Oklahoma Historical Society, Oklahoma City, Oklahoma, to Dr. Darrell E. Townsend II, Grand River Dam Authority, Langley, Oklahoma, September 25, 2013).

5. treatment and disposition of human remains that may be discovered, taking into account any applicable State laws and the Advisory Council's "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects," February 23, 2007;
6. discovery of previously undocumented properties during Project operations;
7. public interpretation of the archaeological and historic resources at the Project;
8. a list of activities (such as, routine maintenance, repair, or installation of an outdoor sign; replacement in kind at the Project) not requiring further review under section 106;
9. a procedure to address effects on historic properties in the event of a Project emergency; and
10. a review and update of the HPMP by the Licensee, Oklahoma SHPO, OAS, Osage Nation, Muscogee (Creek) Nation, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe to ensure that the information continues to assist the Licensee in managing historic properties.

*Need more
detail of
activities
Shawnee Tribe
Salina Project*

II. HPMP REVIEW AND IMPLEMENTATION

- A. The Licensee will submit the HPMP, along with documentation of the views of the Oklahoma SHPO, OAS, Osage Nation, Muscogee (Creek) Nation, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe, to the Commission for review and approval.
- B. If the Oklahoma SHPO has concurred with the HPMP and the Commission determines that the HPMP is adequate, the Commission will forward a copy of the HPMP, along with the views

of the Oklahoma SHPO, OAS, Osage Nation, Muscogee (Creek) Nation, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe, to the Advisory Council for filing.

1. If the Advisory Council does not object to the HPMP, then the Commission will proceed to ensure that the Licensee implements the HPMP.
 2. If the Advisory Council objects to the HPMP, then the Commission will consult with the Advisory Council in an effort to reach agreement on the HPMP. If agreement cannot be reached, then the Commission will request that the Advisory Council comment pursuant to Stipulation IV.B of this Programmatic Agreement.
- C. If the Oklahoma SHPO has not concurred with the HPMP, or the Commission finds the HPMP inadequate, the Commission will consult with the Licensee and the Oklahoma SHPO to seek agreement on the HPMP. If concurrence is not reached within 45 days, the Commission will request that the Advisory Council enter into consultation to seek agreement on the HPMP.
1. If agreement is reached on the HPMP, the Commission will forward a copy of the revised HPMP to the Advisory Council for filing.
 2. If agreement on the HPMP cannot be reached among the Commission, the Oklahoma SHPO, and the Licensee, then the Commission will request that the Advisory Council comment pursuant to Stipulation IV.B of this Programmatic Agreement.
- D. The Licensee will file an annual report with the Oklahoma SHPO, OAS, Osage Nation, Muscogee (Creek) Nation, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe on activities conducted under the implemented HPMP. The report will contain a detailed summary of any historic properties work conducted during the preceding year; if no work was completed, a letter from the Licensee will be prepared to that effect, and will satisfy the intent of this stipulation.

III. INTERIM TREATMENT OF HISTORIC PROPERTIES

- A. After a license for the Project has been issued, but before the HPMP has been approved by the Commission (hereinafter, "the Interim"), the Licensee will consult with the Oklahoma SHPO, OAS, Osage Nation, Muscogee (Creek) Nation, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe regarding the effects of the following actions that may be implemented in the Interim:
1. all Project-related activities, including recreational developments, that require ground-disturbance;
 2. non-routine maintenance, new construction, demolition, or rehabilitation of Project-related National Register of Historic Places-eligible structures; and
 3. Project-induced shoreline erosion of archaeological and historic resources not attributable to flood flows or phenomena, such as wind-driven wave action, erodible soil, and loss of vegetation due to natural causes.
- B. Consultation will be in accordance with 36 C.F.R. sections 800.5 and 800.6, with the Licensee acting as the Agency Official. If the Licensee and the Oklahoma SHPO agree that the activity will not adversely affect historic properties, the Licensee may proceed in accordance with any agreed-upon treatment measures or conditions.
- C. If either the Licensee or the Oklahoma SHPO determines that the activity will have an adverse effect on a historic property, and the affected property is a National Historic Landmark, the Licensee will submit the matter to the Commission, which will initiate the process set forth at 36 C.F.R. section 800.6. Otherwise, the Licensee and the Oklahoma SHPO will consult to develop a strategy for avoiding or mitigating such adverse effects. If the Licensee and the Oklahoma SHPO can reach agreement, the Licensee will implement the agreed-upon strategy. If they disagree, the Licensee will submit the matter to the Commission, which will initiate the process set forth at 36 C.F.R. sections 800.6 and 800.7(a) through (c)(3).

Shoreline erosion
Shoreline erosion
Shoreline erosion

IV. DISPUTE RESOLUTION

- A.** If at any time during implementation of this Programmatic Agreement and the resulting HPMP, the Licensee, the Oklahoma SHPO, OAS, Osage Nation, Muscogee (Creek) Nation, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe objects to any action or any failure to act pursuant to this Programmatic Agreement or the HPMP, they may file written objections with the Commission. In the event a written objection is filed with the Commission, the Commission will follow the steps listed below.

 - 1.** The Commission will consult with the objecting party, and with other parties as appropriate, to resolve the objection.
 - 2.** The Commission may initiate, on its own, such consultation to remove any of its objections.
- B.** If the Commission determines that the objection cannot be resolved, the Commission will forward all documentation relevant to the dispute to the Advisory Council and request that the Advisory Council comment. Within 30 days after receiving all pertinent documentation, the Advisory Council will either:


 - 1.** provide the Commission with recommendations, which the Commission will take into account in reaching a final decision regarding the dispute; or
 - 2.** notify the Commission that it will comment pursuant to 36 C.F.R. sections 800.7(c)(1) through (c)(3) of the National Historic Preservation Act, and proceed to comment.
- C.** The Commission will take into account any Advisory Council comment, provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The Commission's responsibility to carry out all actions under this Programmatic Agreement that are not the subject of dispute will remain unchanged.

V. AMENDMENT AND TERMINATION OF THIS PROGRAMMATIC AGREEMENT

- A. The Commission, the Licensee, the Oklahoma SHPO, OAS, Osage Nation, Muscogee (Creek) Nation, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe may request that this Programmatic Agreement be amended, whereupon these parties will consult in accordance with 36 C.F.R. section 800.14(b) to consider such amendment.
- B. The Commission or the Oklahoma SHPO may terminate this Programmatic Agreement by providing 30 days written notice to the other parties, provided that the Commission, the Licensee, the Oklahoma SHPO, OAS, Osage Nation, Muscogee (Creek) Nation, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe consult during the 30-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Commission will comply with 36 C.F.R. sections 800.3 through 800.7(c)(3), with regard to individual actions covered by this Programmatic Agreement.

Execution of this Programmatic Agreement, and its subsequent implementation, is evidence that the Commission has satisfied its responsibilities pursuant to section 106 of the National Historic Preservation Act, *as amended*, for all individual actions carried out under the license. Provided, however, that unless and until the Commission issues a license for the Project and this Programmatic Agreement is incorporated by reference therein, this Programmatic Agreement has no independent legal effect for any specific license applicant or Project.

FEDERAL ENERGY REGULATORY COMMISSION

By: 
Vince Yearick, Director
Division of Hydropower Licensing

Date: 7-28-14

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE

By: Bob Blackburn

Date: 8/5/14

Dr. Bob Blackburn
State Historic Preservation Officer

CONCUR: OKLAHOMA ARCHEOLOGICAL SURVEY

By: 

Dr. Robert Brooks, State Archaeologist

Date: 8/5/11

CONCUR: GRAND RIVER DAM AUTHORITY

By: 

Daniel S. Sullivan, CEO/General Manager and
Director of Investments

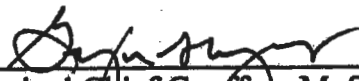
Date: 8/7/14

Board Approved:

8-13-2014

Date

CONCUR: OSAGE NATION

By: 
Principal Chief Geoffrey M. Standing Bear

Date: 10-16-14

CONCUR: MUSCOGEE (CREEK) NATION

By: _____
Principal Chief George Tiger

Date: _____

CONCUR: MIAMI TRIBE OF OKLAHOMA

By: _____
Chief Douglas G. Lankford

Date: _____

CONCUR: PEORIA TRIBE OF INDIANS OF OKLAHOMA

By: 

Chief John P. Froman

Date: 8-7-64

CONCUR: SHAWNEE TRIBE

By:

Chief Ron Sparkman

Date:

8-5-2014