

MEMORANDUM OF AGREEMENT**BETWEEN THE****UNITED STATES DEPARTMENT OF AGRICULTURE – AGRICULTURAL RESEARCH SERVICE****AND THE****OKLAHOMA STATE HISTORIC PRESERVATION OFFICE****REGARDING THE REHABILITATION OF 621600S012 EXPERIMENT DAM/SPILLWAY IN WOODWARD, WOODWARD COUNTY, OKLAHOMA**

WHEREAS the Agricultural Research Service (ARS) plans to carry out the rehabilitation of the Experiment Dam/Spillway (621600S012), pursuant to the Federal Management Regulation Subchapter C, Delegation of the Department of Agriculture Part §102-75.1075; and

WHEREAS the Experiment Dam/Spillway (621600S012) is part of the early to-mid-twentieth century development of irrigation of experimental crops after the devastation of the 1930s Dust Bowl and is one of the few extant examples of the irrigation dams in this area of Oklahoma during this time period; and

WHEREAS, the Experiment Dam/Spillway (621600S012) was classified as a low hazard structure; however it has been reclassified as a high hazard due to the potential for damage to areas downstream of the dam, including loss of life, should the dam breach. The undertaking consists of reducing the risk of a dam breach and bring the dam up to current safety standards. This includes the installation of a new reinforced concrete principal spillway conduit and a concrete baffle topped drop riser. The auxiliary spillway will be 41.5 feet wide and reinforced with Roller Compacted Concrete and have the capacity to safely pass a probable storm event; and

WHEREAS, ARS has defined the undertaking's area of potential effect (APE) as the footprint of the Experiment Dam/Spillway (621600S012) that is located within the SW ¼ of NW ¼ of S35 T23N R21W, County Parcel ID 0410-35-23N-21W-1-100-00; and

WHEREAS, ARS has determined that the undertaking will have an adverse effect on the Experiment Dam/Spillway, which is eligible for listing in the National Register of Historic Places under Criteria A and C as a contributing resource to the previously determined eligible USDA ARS Grazinglands Research Station Historic District, and has consulted with the Oklahoma State Historic Preservation Officer (SHPO), pursuant to 36 C.F.R. § 800, of the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, The 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 therefore, OAS has been invited to sign this MOA as an invited signatory; and

WHEREAS, ARS has consulted with the Cheyenne Arapaho, Osage Nation, Apache, Cherokee Nation, Comanche Nation, Kiowa, and Wichita Tribes, on the undertaking. Only one response was received by Cherokee Nation, who has chosen not to participate; and

WHEREAS, ARS has consulted with the public via an Open House on September 26, 2019 at the USDA-ARS station located at 2000 18th Street, Woodward, OK, where feedback was solicited regarding the effects of the undertaking on historic properties; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), ARS has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

NOW, THEREFORE, ARS and 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

ARS shall ensure that the following measures are carried out:

I. DOCUMENTATION

Within one hundred twenty (120) days post construction project award, the Experiment Dam/Spillway (621600S012) will be recorded at the equivalent of Level II documentation as specified by the Historic American Engineering Record (HAER).

A. Provide High Quality black and white photographs or digital photographs, of the dam documenting its present appearance and major structural or decorative details, together with all negatives on archival gold CD as digital TIFF files that meet or exceed the minimum requirement for pixel depth (300dpi, 3000X2000). The photographs will be a minimum 4" x 6" and no larger than 8" x 10", and will be clearly labeled with the following information:

- a. Name of property;
- b. Location (county, city, state, and street address);
- c. Name of photographer;
- d. Date of photograph;
- e. Location of photographic negative;
- f. Indication of direction camera is pointing; and
- g. Number of photograph in series

B. The document will include photographic reproduction of selected original (as-built) construction plans and historic photographs, if they exist.

C. The document will include a preparation of a brief written technical description of the dam and historical summary.

D. All documentation will be edited, catalogued and packaged in a manner acceptable to the Oklahoma SHPO. The Oklahoma SHPO and the Library of Congress will be the repository for the documentation.

E. ARS will provide all research documentation, research materials, copies of photographs, and HAER documentation of the dam to the Oklahoma SHPO and the Library of Congress via the National Park Service within three years of execution of this MOA.

II. MOUNTED PLAQUE

ARS will contract for a mounted plaque/signage which describes the history of the dam/spillway. The signage will be placed on ARS land within the nearby park area next to the dam/spillway for public viewing.

A. ARS will receive SHPO's written concurrence of plaque verbiage prior to creation.

B. Prior to installation, ARS will consult with the SHPO regarding appropriate placement/location of plaque.

III. DURATION

This MOA will expire if its terms are not carried out within three (3) years from the date of its execution. Prior to such time, ARS may consult with the signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VI below.

IV. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties are found, the ARS shall implement the Inadvertent Discovery Plan included as Appendix A of this MOA.

V. MONITORING AND REPORTING

Annually following the execution of this MOA until it expires or is terminated, ARS shall provide the signatories a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in ARS' efforts to carry out the terms of this MOA.

VI. DISPUTE RESOLUTION

Should any of the signatories object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, ARS shall consult with the signatories to resolve the objection. If ARS determines such objection cannot be resolved, ARS will:

A. Forward all documentation relevant to the dispute, including the ARS' proposed resolution, to the ACHP. The ACHP shall provide ARS with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, ARS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and provide them with a copy of this written response. ARS will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, ARS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, ARS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA, and provide them and the ACHP with a copy of such written response.

C. ARS' responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VII. AMENDMENTS

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 a copy signed by all of the signatories is filed with the ACHP.

VIII. TERMINATION

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 V, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, ARS must either (a) execute an MOA 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. ARS shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the ARS and SHPO, and implementation of its terms, is evidence that ARS has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

United States Department of Agriculture, Agricultural Research Service

LINDA WURZBERGER Digitally signed by LINDA WURZBERGER
Date: 2020.12.03 11:17:01 -05'00'

12/3/2020

Dr. Linda B. Wurzberger, Federal Preservation Officer

Date

State Historic Preservation Office



Dr. Bob Blackburn, State Historic Preservation Officer

Nov 29 2020
Date

INVITED SIGNATORY

Oklahoma Archeological Survey

Kary L. Stackelbeck

Dr. Kary Stackelbeck, State Archaeologist

December 3, 2020

Date

Appendix A

Inadvertent Discovery Plan

The ARS recognizes that historic properties may be discovered or unanticipated effects on historic properties may be identified after the completion of the Section 106 process. Upon such a discovery during project implementation, the ARS will follow these procedures in accordance with 36 CFR Part 800.13:

- 1) The SHPO, THPO(s), OAS, and other consulting parties will be notified by the ARS within forty-eight (48) hours upon discovery that archaeological deposits have been discovered during an undertaking.
 - a. The initial notification shall be completed by phone call or email, with the expectation that additional documentation will be provided via email attachment(s). Such additional documentation must include (but is not limited to): text-based description of the nature, location, and context of the inadvertent discovery; photographs of the materials discovered (*in-situ* if possible); approximation of project completeness; and current status of project.
 - b. The relevant Point of Contact (POC) for each party is listed below.
 - c. If a POC cannot be reached via phone or email, arrangements shall be made to determine the preferred communication method.
- 2) If the undertaking has not been completed at the time the effect is discovered, all activities within one hundred (100) feet of the discovery shall cease, and reasonable efforts shall be taken to avoid or minimize further damage.
- 3) A qualified-heritage professional will evaluate the discovery, assess the effects, develop possible treatment recommendations and implement additional protection measures as necessary until the re-opened consultation process has been completed.
 - a. The qualified professional must meet or exceed the Secretary of the Interior's Professional Qualification Standards for archeology, which may be found at: https://www.nps.gov/history/local-law/arch_stnds_9.htm.
 - b. The resulting assessment shall be provided via email to the points of contact for the SHPO, THPO(s), OAS, and other consulting parties, unless other communication methods have been specified.
- 4) When the ARS and consulting parties agree that historic properties are not affected, the ARS will document the decision and the project may proceed as planned.
- 5) When the ARS and consulting parties agree that historic properties are affected, the ARS and consulting parties will develop a Memorandum of Agreement (MOA) to mitigate adverse effects to historic properties. The ACHP will be invited to participate in the development of the MOA.
 - a. In this scenario, the consultation process shall include consideration regarding the extent to which elements of the project may proceed upon approval by all consulting parties with appropriate provisions in place to guard against further impacts to the historic property.
- 6) When the ARS and consulting parties do not agree that historic properties are affected, the ARS shall seek a formal NRHP-eligibility determination from the Keeper and then revisit items #4 and #5 above with the consulting parties.

If the inadvertent discovery includes human remains, funerary objects, and/or materials associated with a burial:

- 7) All construction activities within 300 feet of the discovery will cease and steps will be taken to secure the location.
- 8) ARS will notify the appropriate law enforcement agency with jurisdiction within forty-eight hours. If the remains are confirmed to be human, law enforcement will determine whether they are of forensic interest or otherwise associated with a crime scene, in which case they would assume responsibility for ensuing treatment measures.
- 9) Upon determination that the discovered human remains are not of forensic interest, the ARS shall evaluate the potential to leave the remains in place and avoid further disturbance to the burial(s) and associated objects.

- 10) The ARS shall then notify the State Archeologist (OAS), SHPO, and any other interested Tribes who may assert affiliation with the remains. The evaluation of avoidance shall be included as part of the notification of discovery to the SHPO, OAS, and the Tribes and request for further consultation per procedure 1(a-c) above.
- 11) If it is not possible to avoid further disturbance to the remains and associated materials, then ARS shall consult with SHPO, OAS, and Tribes to determine the appropriate treatment measures.
- 12) Construction shall not continue in the area until an appropriate treatment plan is executed.

Points of Contact:

State Historic Preservation Office (SHPO)
Catharine M. Wood
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