

MEMORANDUM OF AGREEMENT

AMONG THE
OKLAHOMA ARCHEOLOGICAL SURVEY,
OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
CADDO NATION OF OKLAHOMA,
AND
U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT

REGARDING

ARCHAEOLOGICAL DATA RECOVERY AT THE PANTHER CREEK SITE,
34MC408, BROKEN BOW RESERVOIR, M^CCURTAIN COUNTY, OKLAHOMA

AND

LIMITED ARCHAEOLOGICAL SITE TESTING AT SEVERAL SITES WITHIN THE
LAKE WISTER ARCHAEOLOGICAL DISTRICT, LeFLORE COUNTY, OKLAHOMA

WHEREAS the U.S. Army Corps of Engineers, Tulsa District (hereafter, Tulsa District) owns and manages federal land around Broken Bow Reservoir in M^CCurtain County and Lake Wister in LeFlore County, southeastern Oklahoma, for the purposes of maintaining multipurpose reservoir flood pools; and

WHEREAS Tulsa District is planning to conduct data recovery at site 34MC408, Panther Creek site, at Broken Bow Reservoir to mitigate the effects of shoreline erosion from a proposed permanent pool raise and to salvage portions of the site from the adverse effects of ongoing illegal looting; and

WHEREAS Tulsa District is planning to conduct limited archaeological site testing at off-mound locations at Lake Wister in order to identify living areas, human activity features, or other non-midden mound cultural horizons in an effort to redefine the Lake Wister Archaeological District and revise the National Register Nomination for the District in the near future; and

WHEREAS these actions at Broken Bow Reservoir and Lake Wister comprise federal undertakings to be addressed under Section 106 of the National Historic Preservation Act (NHPA) of 1966 (as amended), both of which were funded by the American Reinvestment and Recovery Act (ARRA) of 2009; and

WHEREAS the Panther Creek site (34MC408) has been determined eligible by consensus for the National Register of Historic Places (NRHP), and nearly all federal land at Lake Wister is included in the Lake Wister Archaeological District which is listed on the NRHP; and

WHEREAS, prior to contact with Europeans, this region of southeastern Oklahoma in which the Panther Creek site and the Lake Wister Archaeological District are located was occupied by ancestors of the Caddo Nation and based on previous consultation history it is determined that the areas of potential effect for this proposed work may retain historic properties of importance to the Caddo Nation; and

WHEREAS Tulsa District, the Oklahoma Archeological Survey (OAS), the Oklahoma State Historic Preservation Office (SHPO), and the Caddo Nation of Oklahoma (hereafter, Caddo Nation) agree that the proposed data recovery and site testing projects could adversely affect these historic properties; and

WHEREAS Tulsa District has consulted with the SHPO, the OAS, the Caddo Nation, and the Advisory Council on Historic Preservation (ACHP) in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 (NHPA), as amended, and its implementing regulations (36 CFR Part 800.6(b)(1)) to resolve potential adverse effects on these historic properties; and

WHEREAS, the Tulsa District notified the ACHP about this project and requested that the agency participate in the development of this Memorandum of Agreement (MOA); and

WHEREAS, the ACHP declined to participate in the development of this MOA except in an advisory role if necessary; and

WHEREAS Tulsa District intends to use the provisions of this MOA to address applicable requirements of Sections 110(b) and 111 of NHPA and will file this MOA with the ACHP as part of fulfilling its Section 106 responsibilities;

NOW, THEREFORE, Tulsa District, the OAS, the SHPO, and the Caddo Nation agree that upon Tulsa District's decision to proceed with data recovery at the Panther Creek site and with limited archaeological testing at several sites within the Lake Wister Archaeological District, Tulsa District shall ensure that the following stipulations are implemented in order to take into account the effects of the Undertakings on these historic properties, and that these stipulations shall govern the project and all of its parts until this MOA expires or is terminated.

STIPULATIONS

Tulsa District shall ensure that the following stipulations are implemented:

(1). **RESOLUTION OF ADVERSE EFFECTS.** Tulsa District shall utilize information produced by the data recovery at site 34MC408 and the archaeological site testing effort at Lake Wister as sufficient documentation to offset the loss of portions of these historic properties. Final reports of these investigations will be comprehensive, addressing the

methods, analyses, and results in sufficient detail to provide a significant contribution to the study of Oklahoma prehistory. SHPO will accept the information gained as a result of these projects as adequate mitigation of the potential adverse effects of these projects.

(2). **WORK PLANS.** Tulsa District shall ensure that the data recovery and archaeological site testing methods associated with the projects at Broken Bow and Wister Reservoirs will be addressed in a separate draft work plan for each of the two tasks (data recovery at Broken Bow and archaeological testing at Wister). These draft work plans will be reviewed and circulated to the MOA signatory parties for review and comment prior to initiation of fieldwork. Comments received from the MOA signatory parties will be subsequently incorporated into the fieldwork, analyses, and report compilation to the furthest extent possible within constraints of the funded contract action.

(3). **INADVERTENT DISCOVERY OF HUMAN REMAINS.** If Tulsa District at any time unintentionally discovers or seeks to intentionally excavate human remains, the Agency will follow procedures outlined in Section 3, Native American Graves Protection and Repatriation Act (NAGPRA). Tulsa District will immediately notify appropriate Native American Tribes as directed in 43 CFR Part 10, the implementing regulation for NAGPRA. Activities in the vicinity of the site shall cease until such time as the appropriate tribal NAGPRA officials and Tulsa District cultural resource representative can arrange for a mutual inspection of the site and its proper disposition. Tulsa District shall ensure that human remains and cultural items, including associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony, are handled in accordance with the provisions of NAGPRA and its implementing regulations. Analysis of the NAGPRA remains and objects will consist of only those observations and assessments that aid in NAGPRA reporting (i.e., sex, age, minimum number of individuals, condition, and preservation). No detailed or destructive analyses will be conducted on human skeletal remains. Transfer of custody of human remains will subsequently follow the process identified in 43 CFR Part 10.

(4). **CURATION.** Tulsa District will ensure that all material remains resulting from National Register evaluations and data recovery are analyzed, and subsequently processed for curation according to modern museum guidelines. Tulsa District will ensure that all records relating to correspondence, background research, fieldwork, analysis, and data presentation are processed according to modern archival standards and duplicated on acid-free paper. Tulsa District will ensure that all materials and records that may result from site evaluations and/or data recovery are curated at the Sam Noble Oklahoma Museum of Natural History in Norman (SNOMNH), which meets the standards outlined in 36 CFR Part 79, Curation of Federally-Owned or Administered Archeological Collections.

(5). **MEETINGS.** At the request of any party to this agreement, Tulsa District shall ensure that a meeting or meetings are held to facilitate review and comment, to resolve questions, or to resolve adverse comments. Based on this review, the signatories to this

agreement shall determine whether this agreement shall continue in force, be amended, or be terminated.

(6). DISPUTE RESOLUTION.

(A). Should the SHPO, OAS, or Caddo Nation object to the manner in which the terms of this Agreement are implemented, Tulsa District will consult further with the SHPO, OAS, or Caddo Nation to resolve the objection. If Tulsa District determines that such objection cannot be resolved, the District will forward all documentation relevant to the dispute to the ACHP including Tulsa District's proposed response to the objection. Within 30 calendar days after receipt of all pertinent documentation, the ACHP will either:

(i). Advise Tulsa District that it concurs in the District's proposed response, whereupon the Tulsa District will respond to the objection accordingly, or

(ii). Provide Tulsa District with recommendations, which the District will take into account in reaching a final decision regarding the dispute, or

(iii). Notify Tulsa District that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment on the subject in dispute. Any ACHP comment provided in response to such a request will be taken into account by Tulsa District in accordance with 36 CFR 800.7(c)(4) with reference only to the subject of the dispute, and Tulsa District's responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

(B). Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute, and the responsibility of Tulsa District to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged. Tulsa District may implement that portion of any Undertaking covered by this Agreement that is subject to dispute under this Stipulation after complying with 36 CFR 800.7(c)(4).

(C). If the ACHP fails to provide recommendations or to comment within the specified time period, Tulsa District may implement that portion of the Undertaking subject to dispute under this Stipulation in accordance with the documentation submitted to the ACHP for review.

(D). At any time during the implementation of the measures stipulated in this Agreement, should an objection to any measure or its manner of implementation be raised by a member of the public, Tulsa District shall take the objection into account and consult as needed with the objecting party, SHPO, OAS, or Caddo Nation or the ACHP to address the objection.

(7). **DURATION.** This Agreement will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, Tulsa District may consult with the other signatories to reconsider the terms of the Agreement and amend in accordance with the appropriate Stipulation in this Agreement.

(8). **AMENDMENTS AND NONCOMPLIANCE.** If any signatory to the MOA determines that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to the Agreement pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the final date that a copy is signed by all of the original signatories. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the Agreement in accordance with the appropriate Stipulation in this Agreement.

(9). **ADDITIONAL SIGNATORIES.** Additional parties may become signatories to this Agreement in the future through an amendment to the Agreement per stipulation 8.

(10). **ANTI-DEFICIENCY ACT.** It is understood that the implementation of this Agreement is subject to applicable Federal and State anti-deficiency statutes.

(11). **TERMINATION.** If the MOA is not amended following the consultation set out in the appropriate Stipulation, the Agreement may be terminated by any signatory party. Within 30 days following termination, the Tulsa District shall notify the signatories if it will initiate consultation to execute the MOA with the signatories under 36 CFR 800.6(c)(1) and proceed accordingly.

Execution of this MOA by Tulsa District, Oklahoma Archeological Survey, Oklahoma State Historic Preservation Office, and Caddo Nation and implementation of its terms is evidence that Tulsa District has afforded OAS and SHPO an opportunity to comment on the Undertaking and its effects on historic properties, and that the Tulsa District has taken into account the effects of the Undertaking on historic properties.

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE

By:  Date: *July 12, 2010*

Dr. Bob L. Blackburn

Oklahoma State Historic Preservation Officer

OKLAHOMA ARCHEOLOGICAL SURVEY

By: _____ **Date:** _____

Dr. Robert L. Brooks
Oklahoma State Archeologist

CADDO NATION

By: _____ **Date:** _____

Brenda Shemayne Edwards
Chairperson

U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT

By: _____ **Date:** _____

COLONEL Anthony C. Funkhouser

Commander, U.S. Army Corps of Engineers, Tulsa District