

MEMORANDUM OF AGREEMENT

BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT

AND THE

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER

REGARDING FIVE SMALL-SCALE PILOT ENVIRONMENTAL REMEDIATION
PROJECTS IN THE VICINITY OF THE PICHER-CARDIN LEAD AND ZINC
MINING AREA, OTTAWA COUNTY, OKLAHOMA

WHEREAS the U.S. Army Corps of Engineers, Tulsa District (USACE) plans to carry out five small-scale pilot environmental remediation projects in the vicinity of the Picher-Cardin Lead and Zinc Mining Area, Ottawa County, Oklahoma, otherwise known as part of the Tri-State Mining District or the Tar Creek Superfund Site, pursuant to the Energy and Water Development Appropriation Act of 2004 (P.L. 108-137); and

WHEREAS the undertaking consists of the following five small-scale pilot remediation projects: (1) construction of a diversion channel for passive treatment of stormwater drainage; (2) installation of plugs to secure two mine shaft openings; (3) mitigation of unvegetated mining spoils between Boys and Girls Club and Picher-Cardin schools; (4) mitigation of unvegetated mining spoils by using them to fill a subsidence pond; and (5) mitigation of unvegetated mining spoils between residences and the Kenoyer chat pile by creating a "green buffer zone"; and

WHEREAS, USACE has defined the undertaking's area of potential effect (APE) as selected portions of land (see map, Attachment A) located in Sections 20, 28, and 29, Township 29 North, Range 23 East; Section 36, Township 29 North, Range 22 East; and Section 7, Township 28 North, Range 22 East, in Ottawa County, Oklahoma; and

WHEREAS, USACE and the Oklahoma State Historic Preservation Officer (SHPO) agree that information available in standard published sources establish the significance of the lead and zinc mining industry in northeast Oklahoma and that site visits to the area by USACE and SHPO representatives confirm the presence of numerous historic resources; and

WHEREAS, USACE and the SHPO agree that a formal study to identify and evaluate archeological and historic resources in the lead and zinc mining area is needed to confirm precise boundaries of one or more districts potentially eligible for the National Register of Historic Places but that the time allotted for implementation of the five pilot projects makes such a cultural resources investigation infeasible at this time, and

WHEREAS, USACE has determined that the undertaking may have an adverse effect on historic mine waste (chat) piles and the entrances to mine shafts which may be contributing elements to an as yet undefined historic district that may be eligible for listing in the National Register of Historic Places, and has consulted with the Oklahoma Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, USACE has consulted with the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Eastern Oklahoma Region, regarding the effects of the undertaking on historic properties located on federal trust lands managed by the BIA (two of the five project areas), and has invited the agency to sign this MOA as an invited signatory; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), USACE 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 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, USACE and the 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

USACE shall ensure that the following measures are carried out.

I. USACE shall utilize existing information on file for mine shaft openings and mine spoilage (chat) piles within the APE as sufficient documentation to offset the loss of these historic features. The USACE provided this documentation to the SHPO on June 25, 2004, and it is incorporated in the report "*Cultural Resources Investigations at Six Study Areas within the Tar Creek Superfund Site*" (including background material, the SHPO's "Historic Preservation Resource Identification Forms," and photographs). The SHPO accepts this documentation on file in its office as adequate mitigation of the adverse effects of the pilot projects.

II. USACE shall avoid all other historical structures and structural remains located within and/or near the APE, defined in existing documentation as sites 34OT103 through 34OT107 and standing structures 1 through 15.

III. DURATION

This MOA 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, USACE may consult with the other

signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V below.

IV. DISPUTE RESOLUTION

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

A. Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP. The ACHP shall provide USACE 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, USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. USACE 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, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

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

V. 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.

VI. 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 (or another time period agreed to by all signatories) 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, USACE 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. USACE

shall notify the signatories as to the course of action it will pursue.

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

SIGNATORIES:

U.S. Army Corps of Engineers, Tulsa District




7 SEP 04 Date

Miroslav P. Kurka

Colonel, U.S. Army District Engineer

Oklahoma State Historic Preservation Officer



9-13-04 Date

Dr. Bob Blackburn

INVITED SIGNATORY:

U.S. Department of the Interior, Bureau of Indian Affairs, Eastern Oklahoma Region

_____ Date

Ms. Jeanette Hanna, Regional Director