

**MEMORANDUM OF AGREEMENT
BETWEEN
THE U.S. FISH AND WILDLIFE SERVICE
TISHOMINGO NATIONAL WILDLIFE REFUGE,
THE U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT,
AND
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE**

**REGARDING RESOLUTION OF ADVERSE EFFECTS TO HISTORIC PROPERTIES
RESULTING FROM THE CONSTRUCTION OF A VISITOR CENTER AND
MAINTENANCE FACILITIES AT TISHOMINGO NATIONAL WILDLIFE REFUGE,
JOHNSTON COUNTY, OKLAHOMA**

WHEREAS, the U.S. Fish and Wildlife Service (Service) manages the 16,464-acre Tishomingo National Wildlife Refuge (Refuge) in Johnston County, Oklahoma and conducts activities within the agency's area of management responsibility consistent with the agency's mission of "working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people..."; and

WHEREAS, the Refuge will be the federal lead agency for Section 106 compliance for this undertaking, the U.S. Army Corps of Engineers, Tulsa District (Tulsa District) owns the land on which the Refuge is located and requires a real estate approval for all construction actions; and

WHEREAS, the Refuge is located on the Washita arm of Lake Texoma (also known as Denison Dam), a large multipurpose federal reservoir on the Red and Washita Rivers in southern Oklahoma and northern Texas, and most of the Refuge is located within the flood pool of Lake Texoma, and during the course of reservoir flood operations the Refuge may become partially or almost fully inundated by flood water; and

WHEREAS, in the summer of 2015 inflows from heavy spring and early summer rain events over the Washita and upper Red River basins caused the elevation of Lake Texoma to exceed the top of flood control pool, resulting in flooding and significant damage of the Refuge Visitor Center and maintenance facilities; and

WHEREAS, following the spring/summer 2015 flood event the Refuge relocated offices and maintenance facilities to the town of Tishomingo, Oklahoma and subsequently identified a new location for a temporary Visitor Center, to be comprised of modular construction; and

WHEREAS, archaeological investigations and associated Section 106 compliance were accomplished for the temporary Visitor Center and associated utility lines in 2016, with a "no historic properties affected" determination and subsequent agreement with this determination by the Oklahoma State Historic Preservation Office (SHPO); and

WHEREAS, after the 2016 construction of the temporary Visitor Center at the Refuge, the agency began to plan for a permanent Visitor Center and maintenance facility, and in order to reduce likelihood of flooding in the future, Service engineers directed the Refuge to select a location for the permanent Visitor Center and maintenance facility 25 feet or more above the top of the reservoir flood control pool, thereby limiting alternatives within the Refuge; and

WHEREAS, the Refuge identified an Area of Potential Effect (APE) for the proposed permanent Visitor Center and maintenance facility and conducted a literature review and pedestrian archaeological investigation of that area which identified one previously identified archaeological site, 34JN114, which is associated with one historic location of Robinson's Academy and is located in close proximity to the APE, and one newly identified archaeological site, 34JN196, which is a 1920-1940s tenant farm associated with Chapman farm; and

WHEREAS, during the archaeological investigations and associated literature review several historic properties were identified in the immediate vicinity, including Harley Cemetery; Chickasaw Manual Labor Academy; Robinson's Academy; and Chapman Farm; and all have been determined eligible for listing on the National Register of Historic Places (NRHP) by consensus; and

WHEREAS, the historic locations of Chickasaw Manual Labor Academy and Robinson's Academy are not precisely known; Chapman Farm at one time comprised over 13,000 acres and encompassed much of the immediate project area as well as large portions of what is today known as the Refuge; and the extent of Chapman Farm and of smaller farm components within are not well documented; and

WHEREAS the Refuge has determined that the undertaking will have an adverse effect on the Harley Cemetery, Chickasaw Manual Labor Academy, Robinson's Academy, 34JN114, and 34JN196, which are eligible for listing in the NRHP, and has consulted with the Oklahoma 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, prior to contact with Europeans, Oklahoma was occupied by ancestors of modern-day Native American Tribal Nations and thus may retain historic properties of importance to those Nations; and the Chickasaw Nation, since the early 1800's, has had a significant historic presence in the immediate area and retains important historic ties to these NRHP-eligible properties; and

WHEREAS the Refuge has consulted with the Chickasaw Nation, for which Harley Cemetery, Chickasaw Manual Labor Academy, Robinson's Academy, 34JN114, and 34JN196, may have religious and cultural significance, and has invited the Tribe to sign this Memorandum of Agreement (MOA) as an invited signatory; and

WHEREAS, the SHPO and 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 archaeological resources and provides written comments as the SHPO's official representative; and

WHEREAS, the Refuge has consulted with the OAS regarding the effects of the undertaking on historic properties and has invited them to sign this Memorandum of Agreement (MOA) as an invited signatory; and

WHEREAS, the Refuge made the draft Environmental Assessment (EA) available for public review from October 20, 2017, through November 20, 2017. Notifications that the draft was available for review were posted at the Refuge, in the Madill and Tishomingo newspapers, Tishomingo City Hall, County Courthouse in Tishomingo, Tishomingo library and on the Service website. Email notifications were also sent to the USACE office in Denison, Texas and the Chickasaw Nation. No comments regarding the draft document were received, and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the Refuge has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and in a letter to the Refuge dated August 11, 2017, the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, a working group consisting of representatives of the Refuge, SHPO, Chickasaw Nation, Tulsa District, and OAS determined through consultation that a consulting archaeologist should produce a summary report for the proposed action which detailed previous investigations of the APE and surrounding areas, and which outlined recommendations of appropriate measures that would serve to resolve adverse effects; and

WHEREAS, the working group agreed that the recommended measures compiled by the consulting archaeologist would be considered for further development as stipulations to be accomplished within this Agreement, and that a Historic Properties Management Plan (HPMP) would also be incorporated as a stipulation; and

NOW, THEREFORE, the Refuge, SHPO, Chickasaw Nation, Tulsa District, and OAS 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

This Agreement will go into effect when signed by the Refuge, SHPO, and Tulsa District, and when an executed version is received by the Advisory Council on Historic Preservation (ACHP). Once the Agreement is in effect, the Refuge shall ensure that the following measures are carried out.

Stipulation I will be funded and accomplished at the time of construction. However, once the MOA is executed, the Refuge will request funding to accomplish Stipulations II and III described in this document. It should be noted that acquisition of Federal funds is a lengthy process, with budget requests occurring a minimum of two years before funds to complete the proposed activities would be received. Additionally, award of funds in any given year can be subject to many internal and external factors, and may not be forthcoming, or may be forthcoming only in part. Should funding be denied—in part or in whole—thus compromising the Refuge's ability to fulfill its legal obligations under the terms of this MOA, then consultation will be reopened with all signatories as per Stipulation IX.

Without historic features or cultural horizons identified as contributing resources within the project APE, it will not be possible or appropriate to conduct data recovery as a method of resolving adverse effects. Additionally, because the APE has been fully investigated – it will not be necessary for Stipulations II and III identified in this Agreement to be accomplished prior to initiation or completion of construction activities within the APE.

In contrast, this MOA outlines measures that more fully characterize and define the extent and nature of the historic properties upon which the proposed action will have an adverse effect, focusing on the area surrounding the project APE. Additionally, this MOA includes development of a management plan to address the properties' future preservation.

All work conducted under this MOA will be performed in a manner consistent with the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716-44740; September 23, 1983), as amended, or the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (36 CFR 68), as appropriate. Persons meeting the requirements of the Secretary of the Interior will conduct all work.

I. CONSTRUCTION MONITORING AND REPORTING.

A. The Refuge will conduct archaeological field monitoring during construction. The APE is delineated on the map in Appendix 1. An archaeological survey completed within the APE (shown in Appendix 1) did not identify any intact archaeological features; however, it is still possible that such deposits yet remain within the APE. The field monitor will be present to observe construction activities and document any cultural deposits that may be uncovered in the process. This area will include all staging, break areas, parking and related equipment. Three archaeological monitors will be present during ground preparation of the new construction sites within the project APE. The monitors will be authorized to halt construction activity where subsurface evidence is discovered.

A 100-foot buffer zone will be implemented around the discovery loci and construction activity will be discontinued until an evaluation of the discovery is made and SHPO and OAS have been provided an opportunity to comment. See Appendix 2 for points of contact for each organization/agency.

B. If human remains, funerary objects, and/or materials associated with a burial are observed during construction monitoring all construction activities within 300 feet of the discovery will cease. The Refuge will be notified immediately after the find. High visibility fencing will be placed to protect the area. Other protective means may be employed as necessary to protect the area. This could include the placement of protective cover and/or the placement of a person to watch the area.

The Refuge or the Tulsa District will notify county law enforcement within forty-eight hours (per Title 21-1168.4). It is understood that it is the responsibility of law enforcement to notify the Chief Medical Examiner (ME). If the remains are confirmed to be human, law enforcement in consultation with the ME 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.

Upon determination that the discovered human remains are not of forensic interest, the Refuge and Tulsa District shall evaluate the potential to leave the remains in place and avoid further disturbance to the burial(s) and associated objects. The Refuge shall then notify the State Archeologist (OAS), SHPO, and the Chickasaw Nation 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 Chickasaw Nation and request for further consultation. If it is not possible to avoid further disturbance to the remains and associated materials, then the Refuge shall consult with SHPO, OAS, and the Chickasaw Nation to determine the appropriate treatment measures. Construction would not continue in the area until an appropriate treatment plan is completed.

If the remains and associated materials are determined to be affiliated with the Chickasaw Nation or another Tribe, then the Refuge and Tulsa District will follow the procedures outlined by NAGPRA (43 CFR Part 10, Subpart B) and the Archeological Resources Protection Act of 1979 (43 CFR Part 7 and 18 CFR Part 1312).

C. Upon completion of the earth-moving phases, the archaeological monitors will complete a report to document their findings. The report will identify the date and location of work, including maps and photos; the report will describe the construction work accomplished as well as the field identification methods utilized. Additionally, the report will describe and characterize any archaeological sites, historic feature remains, or standing structures that are identified. The archaeological field monitors will submit a draft report to the Refuge. The Refuge will electronically share the report with signatories for review and comment. Upon completion of the review process, a hard-copy version of the final report will be submitted to the signatories.

II. DELINEATION AND CHARACTERIZATION OF HISTORIC PROPERTIES WITHIN AND IN VICINITY OF THE AREA OF POTENTIAL EFFECTS (APE).

Tasks in this stipulation are derived from historic property research recommendations outlined in the October 23, 2017, letter report “Tishomingo National Wildlife Refuge Cultural Resources Projects and Resources Summary,” which was compiled by Mr. Dean Afendras of Afendras Archaeology, LLC and which is provided as an attachment to this Agreement.

Afendras (2017) identifies a number of potential research questions related to the subject historic properties. It should be noted that these potential research questions are preliminary and are to be addressed as a part of the stipulations outlined in this MOA. These potential research questions, and others that may be identified through the work outlined here, will be addressed after the historic properties are better characterized and defined, utilizing the tasks outlined in this MOA.

The background, methods, and results of archival research and archaeological fieldwork outlined in this section shall be compiled into an archaeological investigation report that is commensurate in scope with the level of effort of the project that meets expectations outlined in *SHPO Fact Sheet Number 16, Guidelines for Developing Archaeological Survey Reports in Oklahoma and Report Components*.

A. TASK: Following completion of the HPMP by the Refuge, or 4 years after occupancy, the Refuge shall initiate archival research to address research questions outlined in Afendras (2017) to further identify, characterize, and describe historic properties, including Chickasaw Manual Labor Academy, Robinson’s Academy, Harley Cemetery, and Chapman Farm. Archival research for the Chickasaw Manual Labor Academy/Robinson’s Academy (34JN114) will include, but may not be limited to, examination of sources at the Chickasaw Nation archives, Office of Indian Affairs archives, and family oral history interviews. As a part of this archival research, the relationship between the Chickasaw Manual Labor Academy/Robinson’s Academy and Harley’s Cemetery should be reconciled and consolidated to the furthest extent possible. Archival research related to the Chapman Farm (34JN196, tenant farm complex) will include, but may not be limited to, a full examination of The Washita Farm also known as the Chapman Farm, by Letha Clark, on which a foundation for further archival sources and future research may be built. Additional potential information sources that may be examined include newspapers, land deeds, tax and census data, and family oral history interviews (Afendras 2017).

B. TASK: Following completion of archival research, or 6 years after occupancy, the Refuge shall conduct archaeological fieldwork to appropriately identify, to the furthest extent possible, the geographical location of, and/or historical extent, of Chickasaw Manual Labor Academy, Robinson’s Academy, Harley Cemetery, and Chapman Farm, which are all outside of the previously cleared APE for the undertaking. This work will build on the previous investigations summarized in Afendras (2017) and should consist of a roughly rectangular block of land measuring approximately 120 acres in area. The investigation area would exclude areas previously surveyed, as well as Harley’s Cemetery and a 100-foot buffer around it, together totaling approximately 6.4 acres. These areas are further outlined in Afendras (2017).

The most appropriate field technique for identifying artifact deposits and intact features will be pedestrian transects with systematic shovel testing (Afendras 2017). In the summary letter report, Afendras recommends a 20-meter shovel test grid for a 30-acre area immediately around building locations (excluding previously surveyed areas) and a 50-meter shovel test grid for the remainder of the larger investigation area (approximately 90 acres). Field investigations will follow guidance as described in Afendras (2017), consistent with conditions on the ground at the time of the survey.

C. TASK: Archaeological materials that may be recovered during the course of field investigations will be analyzed as appropriate, characterized, and quantified in the report of investigations, with appropriate photographic documentation. This task will be accomplished under a contract for the field investigations, with oversight by the Service Regional Archeologist and ACOE representatives. Materials will be prepared for curation according to Sam Noble Oklahoma Museum of Natural History (SNOMNH) standards. Documentation resulting from the archival research and archaeological investigations will be processed according to modern archival standards or according to SNOMNH standards, and prepared for ultimate disposition at the Museum.

D. TASK: The Refuge will provide a copy of the report and archaeological site forms to the signatories for review and comment.

III. HISTORIC PROPERTIES MANAGEMENT PLAN AND ASSOCIATED HISTORIC PROPERTY PROTECTION MEASURES.

A. TASK: The Refuge shall produce a Historic Properties Management Plan (HPMP) based on all archival and archaeological research conducted to date within four (4) years of effective date of this agreement. The HPMP shall to the fullest extent possible outline what is known about Chickasaw Manual Labor Academy, Robinson's Academy, Harley Cemetery, and Chapman Farm, and shall outline management recommendations for these historic properties to guide future federal actions in the area. The HPMP will include a Plan of Action (POA) to address vandalism and looting and will include a historic properties inadvertent discovery plan. The Refuge will provide a copy of the HPMP to the signatories for review and comment. The Refuge does not plan to initiate NRHP for these sites. Upon completion of the fieldwork and archival research, the HPMP will be amended to include these findings.

B. TASK: Once these historic properties have been appropriately characterized and delineated, avoidance measures shall be implemented as needed in order to further protect remaining sites with the knowledge that the Harley Cemetery already has an interpretive sign at its entrance. The Cemetery is open to the public but the perimeter is fenced to provide an additional layer of protection. The remainder of the refuge is closed to public access except for trails and public use areas, which should also provide additional protection for these historic properties.

C. TASK: Prior to construction the Refuge shall implement a 100-foot “no disturbance” buffer around the fenced perimeter of the Harley Cemetery (comprised of posts and area closed signs) in order to protect the historic property and any potential graves that might be located outside the fence. This will allow for additional protection and will eliminate disturbance, while also creating a visual barrier between the Cemetery and the new facilities.

IV. DURATION.

This MOA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, the Refuge may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.

V POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, the Refuge shall implement the discovery plan as outlined in Stipulation I.A and I.B of this MOA.

VI. MONITORING AND REPORTING.

Each year following the execution of this MOA until it expires or is terminated, the Refuge shall electronically provide all parties to this MOA 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 the Refuge’s efforts to carry out the terms of this MOA.

VII. ANTI-DEFICIENCY ACT.

It is understood that the implementation of this MOA is subject to Federal and State anti-deficiency statutes.

VIII. DISPUTE RESOLUTION.

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

Forward all documentation relevant to the dispute, including the Refuge’s proposed resolution, to the ACHP. The ACHP shall provide the Refuge 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, the Refuge 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.

The Refuge will then proceed according to its final decision. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, the Refuge may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Refuge 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.

The Refuge'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.

IX. 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.

X. 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 signatories to attempt to develop an amendment per Stipulation VII, above. If within thirty (30) days (or another 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, the Refuge 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. The Refuge shall notify the signatories as to the course of action it will pursue.

XI. COMPLIANCE WITH 36 CFR PART 800.

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

APPENDIX 2 – Points of Contact for Inadvertent Discovery of Artifacts

Tishomingo NWR Refuge Manager: 580-371-2402

Service Refuge Supervisor – Oklahoma and North Texas: 505-248-6908

Service Regional Chief of Visitor Services: 505-248-6632


Service Regional Archeologist: 505-248-7396

ACOE Tulsa District Archeologist: 918-669-7661

Oklahoma State Historic Preservation Office: 405-521-6249

Oklahoma Archeological Survey: 405-325-7211

SIGNATORIES


 Date 6/11/10
Mr. Aaron Archibeque, Regional Chief, National Wildlife Refuge System
Southwest Region, U.S. Fish and Wildlife Service

Rick Cantu

Date *June 5 2018*

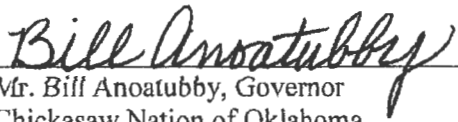
Mr. Rick Cantu, Manager
Tishomingo National Wildlife Refuge
U.S. Fish and Wildlife Service

Christopher A. Hussin Date 1 JUN 2018
Christopher A. Hussin
Colonel, U.S. Army, District Engineer

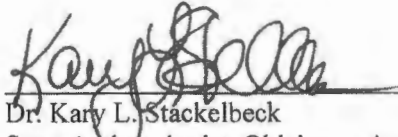
 Date 5/29/18

Dr. Bob Blackburn
Oklahoma State Historic Preservation Officer

INVITED SIGNATORIES

 Date JUN 25 2018
Mr. Bill Anoatubby, Governor
Chickasaw Nation of Oklahoma

MOA construction of Visitor Center/Maintenance Facilities at Tishomingo National Wildlife Refuge



Date 6/11/2018

Dr. Kary L. Stackelbeck
State Archaeologist, Oklahoma Archeological Survey