

**MEMORANDUM OF AGREEMENT**  
**AMONG THE US FISH AND WILDLIFE SERVICE, WICHITA MOUNTAINS**  
**WILDLIFE REFUGE**  
**AND THE**  
**OKLAHOMA STATE HISTORIC PRESERVATION OFFICER**  
**REGARDING THE MODIFICATIONS TO THE COMANCHE DAM AT THE**  
**WICHITA MOUNTAINS WILDLIFE REFUGE, COMANCHE COUNTY,**  
**OKLAHOMA**

**WHEREAS** the US Fish and Wildlife Service (USFWS) manages the Wichita Mountain Wildlife Refuge (Refuge) in Comanche County, OK; and

**WHEREAS** the Refuge manages the Comanche Dam; and

**WHEREAS** the Refuge plans to fund and carryout improvements to the Comanche Dam pursuant to the National Wildlife Refuge System Improvement Act (16 U.S.C. 668dd et seq.); and

**WHEREAS** the Refuge is the lead federal agency for Section 106 compliance for this undertaking; and

**WHEREAS** the Refuge has determined that the undertaking may have an adverse effect on the dam. The concrete gravity dam was constructed in 1934. Due to its engineering and association with the Civilian Conservation Corps (CCC) the Comanche Dam has been determined eligible for listing in the National Register of Historic Places, in consultation with the Oklahoma State Historic Preservation Officer 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 undertaking consists of modifying the current dam structure to Comanche Dam. The dam modifications were designed to stabilize the dam and reduce the risk of a potential failure and change the hazard classification from high hazard-potential to low hazard-potential. The design includes stabilizing the existing dam with a downstream Roller Compacted Concrete (RCC) buttress. The construction approach includes maintaining the existing water surface elevation at Comanche Lake and enhancing the dam access road along the right abutment to extend up and over the dam and along the downstream face. The RCC buttress would be constructed along the downstream face with 8-foot wide RCC lifts and 12-foot wide RCC apron in the overflow section, as shown in the drawing; and

**WHEREAS**, the USFWS and WMR has defined the undertaking's area of

potential effect (APE) as the footprint of the dam as shown in Attachment 1 and us under 0.5 acres in size. The dam is approximately 400 feet long, 39 feet high with a downstream slope of 0.54H:1V (horizontal:vertical), an upstream slope of 0.073H:1V and a crest width of 21 inches and is located at N1/2, T3N R15W Sec 1; and

**WHEREAS** the WMR has consulted with the Apache Tribe of Oklahoma, Caddo Nation, Cheyenne and Arapaho Tribes, Comanche Nation, Delaware Nation, Fort Sill Apache, Kiowa Tribe, Osage Nation and Wichita and Affiliated Tribes, with no responses received; and

**WHEREAS, The Oklahoma State Historic Preservation Office (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, and therefore, OAS has been invited to sign this agreement as an invited signatory. 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 provides written comments as the SHPO's official representative; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), the WMWR has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP, via letter dated March 19, 2020 has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**NOW, THEREFORE**, the USFWS, the WMWR 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 the historic property.

## **STIPULATIONS**

**The USFWS and the WMWR** shall ensure that the following measures are carried out:

### **I. DOCUMENTATION**

Prior to the commencing the construction project, Comanche Dam 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. WMWR 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. DURATION**

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, WMWR may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

## **III. POST-REVIEW DISCOVERIES**

If potential historic properties are discovered or unanticipated effects on historic properties found, the USFWS and the WMR shall implement the discovery plan included as Attachment 2 of this MOA.

## **IV. MONITORING AND REPORTING**

Every six months following the execution of this MOA until it expires or is terminated, WMWR shall 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 WMWR's efforts to carry out the terms of this MOA.

## **V. DISPUTE RESOLUTION**

Should the signatories object at any time to any actions proposed or the manner in which

the terms of the MOA are being implemented, the WMWR shall consult with SHPO to resolve the objection. If the WMWR determines that such objection cannot be resolved, the WMWR shall:

Forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation. The ACHP shall provide the WMWR with its' advice on the resolution within thirty days of receiving adequate documentation. Before reaching a final decision on the dispute, the WMWR shall prepare a written response that takes into account the comments of the ACHP, and provide them to the SHPO. The WMWR may then proceed according to its' final decision.

If the ACHP does not provide its' advice regarding the dispute within thirty days, the WMWR may make a final decision on the dispute and proceed accordingly.

The WMWR's responsibility to carry out all other actions in the terms of the MOA that are not part of the dispute remains unchanged.

## **VI. 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.

## **VII. TERMINATION**

If either signatory determines that the terms cannot be carried out, that signatory shall consult with the other to attempt to develop an amendment. If within thirty days an amendment cannot be reached, either signatory may terminate the MOA upon written notice to the other signatory.

Once the MOA is terminated, and prior to work continuing on the modifications to the dams, the WMWR must either execute a new MOA pursuant to 36 CFR 800.6, or respond to the comments of the ACHP under 36 CFR 800.7. The WMWR shall notify the SHPO as to the course of action it will pursue.

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

**SIGNATORIES:**

**USFWS, Wichita Mountains Wildlife Refuge**

\_\_\_\_\_ Date  
**David Farmer, Refuge Manager**

**Oklahoma State Historic Preservation Office**

 \_\_\_\_\_ Date *July 15, 2020*  
**Dr. Bob Blackburn, State Historic Preservation Officer**

**Oklahoma Archeological Survey**

\_\_\_\_\_ Date  
**Dr. Kary Stackelbeck, State Archeologist**

**SIGNATORIES:**

**USFWS, Wichita Mountains Wildlife Refuge**

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FARMER  
Date: 2020.07.27 09:27:27  
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**David Farmer, Refuge Manager**

Date

**Oklahoma State Historic Preservation Office**

\_\_\_\_\_  
**Dr. Bob Blackburn, State Historic Preservation Officer**

Date

**Oklahoma Archeological Survey**

*Kary L. Stackelbeck*  
\_\_\_\_\_  
**Dr. Kary Stackelbeck, State Archeologist**

Date July 20, 2020



## Inadvertent Discovery Plan Comanche Dam Project

The U.S. Fish & Wildlife Service (USFWS) 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 USFWS 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 USFWS 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](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 USFWS and consulting parties agree that historic properties are not affected, the USFWS will document the decision and the project may proceed as planned.
- 5) When the USFWS and consulting parties agree that historic properties are affected, the USFWS 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 USFWS and consulting parties do not agree that historic properties are affected, the USFWS 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) USFWS 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 USFWS shall evaluate the potential to leave the remains in place and avoid further disturbance to the burial(s) and associated objects.
- 10) The USFWS 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 USFWS 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)

Cate Wood

Historical Archaeologist

Section 106 Program Coordinator

Oklahoma Historic Preservation Office

Phone: (405) 521-6381

Email: [cwood@okhistory.org](mailto:cwood@okhistory.org)

Oklahoma Archeological Survey (OAS)

Kary L. Stackelbeck

State Archaeologist

Oklahoma Archeological Survey

University of Oklahoma

Phone: (405) 325-7213

Email: [kstackelbeck@ou.edu](mailto:kstackelbeck@ou.edu)

US Fish and Wildlife Service (USFWS)

David Farmer

Refuge Manager

Wichita Mountains Wildlife Refuge

Phone: (580) 429-2112

Email: [david\\_m\\_farmer@fws.gov](mailto:david_m_farmer@fws.gov)