

**FINAL PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL ENERGY REGULATORY COMMISSION
AND THE
OKLAHOMA STATE HISTORIC PRESERVATION OFFICER
FOR MANAGING HISTORIC PROPERTIES
THAT MAY BE AFFECTED BY ISSUING AN ORIGINAL LICENSE TO
THE CITY OF BROKEN BOW, OKLAHOMA
FOR THE CONSTRUCTION AND OPERATION OF THE
BROKEN BOW RE-REGULATION DAM
HYDROPOWER PROJECT
IN MCCURTAIN COUNTY, OKLAHOMA**

WHEREAS, the Federal Energy Regulatory Commission or its staff (hereinafter, "Commission") proposes to issue an original license to the City of Broken Bow, Oklahoma (hereinafter, "City") to construct, operate, and maintain the Broken Bow Re-Regulation Dam Hydropower Project (hereinafter, "project") as authorized by Part I of the Federal Power Act, 16 U.S.C. sections 791(a) through 825(r) *as amended*; and

WHEREAS, the Commission has determined that issuing such a license may affect properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter, "National Register or historic properties"); and

WHEREAS, the area of potential effects (hereinafter, "APE") for the project includes (1) the lands enclosed by the project boundary which would encompass a portion of the U.S. Army Corps of Engineers (hereinafter, "Corps") existing Broken Bow Re-Regulation Dam, the proposed powerhouse, penstocks, tailrace, and transmission line; and (2) the lands outside the project boundary, including an access road and lay down/staging areas, that would be affected by project construction activities; and

WHEREAS, Appendix A of this Programmatic Agreement provides a description of the project, historic properties identified as of the date of this Programmatic Agreement, and anticipated effects as of the date of this Programmatic Agreement; and

WHEREAS, the Commission has consulted with the Oklahoma State Historic Preservation Office (hereinafter, "Oklahoma SHPO") pursuant to 36 C.F.R. section 800.14(b) of the Advisory Council on Historic Preservation's (hereinafter "Advisory Council") regulations (36 C.F.R. Part 600) implementing section 106

of the National Historic Preservation Act (16 U.S.C. 470F; hereinafter, "section 106"); and

WHEREAS, the project may affect lands important to the Choctaw Nation of Oklahoma, (hereinafter, "Choctaw Nation") and the Choctaw Nation has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

WHEREAS, the project may affect lands important to the Caddo Nation, and the Caddo Nation has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

WHEREAS, the City has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

WHEREAS, the Oklahoma State Archeologist; the U.S. Forest Service (hereinafter, "Forest Service"); and the Corps have participated in the consultation and have been invited to concur in this Programmatic Agreement; and

WHEREAS, Southwestern Power Administration (hereinafter, "Southwestern") has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

WHEREAS, the Commission will require the City to implement the provisions of this Programmatic Agreement as a condition of issuing an original license for the project.

NOW THEREFORE, the Commission and the Oklahoma SHPO agree that the project will be administered in accordance with the following stipulations in order to satisfy the Commission's section 106 responsibilities during the term of the project's license.

STIPULATIONS

The Commission, upon issuing a license for this project, will ensure that the City implements the following stipulations. All stipulations that apply to the City will similarly apply to any and all of the City's successors. Compliance with any of the following stipulations does not relieve the City of any other obligations it has under the Federal Power Act, the Commission's regulations, or its license.

I. HISTORIC PROPERTIES MANAGEMENT PLAN

- A. Within one year of license issuance for this project, the City will file with the Commission for approval, a Historic Properties Management Plan (hereinafter, "HPMP") specifying how historic properties will be managed in the project's APE, as defined in 36 C.F.R. section 800.16(d), during the term of the license. During development of the HPMP, the City will consult with the Oklahoma SHPO, the Choctaw Nation, the Caddo Nation, the Oklahoma State Archeologist, the Corps, the Forest Service, and Southwestern, as defined in 36 C.F.R. section 800.2(c).⁵ The City will seek the Oklahoma SHPO's concurrence in the HPMP.
- B. The City will take into account "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines" (Federal Register, September 29, 1983, Vol. 48, No. 190, Part IV, pp. 44716-44740; hereinafter, "Secretary's Standards") and the "Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects,"⁶ while developing the HPMP. The HPMP will be developed by, or developed under the direct supervision of, a person or persons who meet, at a minimum, the professional qualifications standards for architectural history or archaeology in the Secretary's Standards (48 FR 44738-39). To develop the HPMP, the individual or individuals need not possess both qualifications.
- C. The HPMP will include, at a minimum, provisions for:
 1. identifying the APE for the project and a map or maps that clearly show the APE in relation to the project boundary;

⁵ The City must allow the consulting parties at least 30 days to respond to a request for review of a finding or determination involving the HPMP and during the interim period prior to completion and implementation of the HPMP.

⁶ This document was issued jointly by the Commission and the Advisory Council on May 20, 2002. The document is available at <http://www.ferc.gov/foia/docs/02/hydropwr/02052002/hypropmgtplan.pdf>

2. prior to project construction, and after consultation with the Oklahoma State Archeologist, the Choctaw Nation, the Caddo Nation, and the Corps, conducting an archaeological survey within the APE, for all areas where ground surfaces would be disturbed;
3. completion, if necessary, of identifying properties eligible for listing in the National Register within the project's APE;
4. continued use and maintenance of historic properties;
5. treatment of historic properties threatened by project-induced shoreline erosion,⁷ other project-related ground-disturbing activities, and vandalism;
6. identifying and evaluating historic properties, determining effects, and identifying ways to avoid, minimize, or mitigate adverse effects;
7. considering and implementing appropriate treatment that would minimize or mitigate unavoidable adverse effects on historic properties;
8. treatment and disposition of human remains that may be discovered, taking into account any applicable State laws and the Advisory Council's "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects" (dated February 23, 2007; and compliance with the Native American Graves Protection and Repatriation Act (25 U.S.C. section 3001), if tribal or federal lands are within the project boundary;
9. discovery of previously unidentified properties during project operations;
10. public interpretation of the historic, archaeological, and traditional religious and cultural properties at the project;
11. a list of activities (i.e., routine repair, maintenance, and replacement

⁷ Project-induced shoreline erosion does not include shoreline erosion attributable to flood flows or phenomena, such as wind-driven wave action, erodible soils, and loss of vegetation due to natural causes.

in kind at the project) not requiring consultation with the Oklahoma SHPO; since these activities would have little or no potential to affect historic properties;

12. procedures to address effects during project emergencies; and
13. reviewing the HPMP by the City, the Oklahoma SHPO, the Choctaw Nation, the Caddo Nation, the Oklahoma State Archeologist, the Corps, the Forest Service, and Southwestern to ensure that the information continues to assist the City in managing historic properties and updating the HPMP based on agency and tribal consultations.

II. HPMP REVIEW AND IMPLEMENTATION

- A. The City will submit the HPMP, along with documentation of the views of the Oklahoma SHPO, the Choctaw Nation, the Caddo Nation, the Oklahoma State Archeologist, the Corps, the Forest Service, and Southwestern to the Commission for review and approval.
- B. If the Oklahoma SHPO has concurred in the HPMP, and the Commission determines that the HPMP is adequate, the Commission will forward a copy of the HPMP along with the views of the Oklahoma SHPO, the Choctaw Nation, the Caddo Nation, the Oklahoma State Archeologist, the Corps, the Forest Service, and Southwestern to the Advisory Council for filing.
- C. If the Commission finds the HPMP inadequate, the Commission will consult with the City and the Oklahoma SHPO to seek agreement on the HPMP. If concurrence is not reached within 30 days, the Commission will request that the Advisory Council enter into consultation to seek agreement on the HPMP.
 1. If agreement is reached on the HPMP, the Commission will forward a copy of the revised HPMP to the Advisory Council for filing.

2. If agreement on the HPMP cannot be reached among the Commission, the Oklahoma SHPO, the City, and the Advisory Council; the Commission or the Oklahoma SHPO will request that the Advisory Council comment pursuant to Stipulation IV.B, of this Programmatic Agreement; or the Advisory Council may terminate consultation and comment on its own.
- D. The City will file an annual report with the Oklahoma SHPO, the Choctaw Nation, the Caddo Nation, the Oklahoma State Archeologist, the Corps, the Forest Service, and Southwestern on activities conducted under the implemented HPMP. The report will contain a detailed summary of any cultural resources work conducted during the preceding year; if no work was completed, a letter from the City will be prepared to that effect, and will satisfy the intent of this stipulation.

III. INTERIM TREATMENT OF HISTORIC PROPERTIES

- A. Pending review and implementation of the HPMP pursuant to Stipulation II, the City will consult with the Oklahoma SHPO, the Choctaw Nation, the Caddo Nation, the Oklahoma State Archeologist, the Corps, Southwestern, and the Forest Service,⁸ regarding the effects of the following:
1. all project-related activities, including recreational developments, that require ground-disturbance; and
 2. non-routine maintenance, new construction, demolition, or rehabilitation of project-related structures that may be National Register-eligible; and
 3. project-induced shoreline erosion of archaeological sites not attributable to flood flows or phenomena, such as wind-driven wave action, erodible soils, and loss of vegetation due to natural causes.

⁸ The City shall consult with the Forest Service regarding the effects of project archaeological sites within the APE that are located on Forest Service lands.

- B. Consultation will be in accordance with 36 C.F.R. sections 800.4 and 800.5, with the City acting as the Agency Official. If the City and the Oklahoma SHPO agree that the activity will not adversely affect properties that may be National Register-eligible, the City may proceed in accordance with any agreed-upon treatment measures or conditions.
- C. If either the City or the Oklahoma SHPO determines that the activity will have an adverse effect, and the affected property is a National Historic Landmark, the City will submit the matter to the Commission, which will initiate the process set forth at 36 C.F.R. section 800.6. Otherwise, the City and the Oklahoma SHPO will consult to develop a strategy for avoiding or mitigating such adverse effects. If the City and the Oklahoma SHPO can reach agreement, the City will implement the agreed-upon strategy. If they disagree, the City will submit the matter to the Commission, which will initiate the process set forth at 36 C.F.R. sections 800.6 and 800.7(a) through (c)(3).

IV. DISPUTE RESOLUTION

- A. If at any time during implementation of this Programmatic Agreement and the resulting HPMP, the Oklahoma SHPO, the Choctaw Nation, the Caddo Nation, the Oklahoma State Archeologist, the Corps, the Forest Service, Southwestern, or the Advisory Council objects to any action or any failure to act pursuant to this Programmatic Agreement or the final HPMP, they may file written objections with the Commission.
 - 1. The Commission will consult with the objecting party, and with other parties as appropriate, to resolve the objection.
 - 2. The Commission may initiate, on its own, such consultation to remove any of its objections.
- B. If the Commission determines that the objection cannot be resolved, the Commission will forward all documentation relevant to the dispute to the Advisory Council and request that the Advisory Council comment. Within 30 days after receiving all pertinent documentation, the Advisory Council will either:

1. provide the Commission with recommendations, which the Commission will take into account in reaching a final decision regarding the dispute; or
 2. notify the Commission that it will comment pursuant to 36 C.F.R. section 800.7(c)(1) through (3) and section 110(1) of the National Historic Preservation Act, and proceed to comment.
- C. The Commission will take into account any Advisory Council comment, provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The Commission's responsibility to carry out all actions under this Programmatic Agreement that are not the subject of dispute will remain unchanged.

V. AMENDMENT AND TERMINATION OF THE PROGRAMMATIC AGREEMENT

- A. The Commission, the Oklahoma SHPO, or the City may request that this Programmatic Agreement be amended, whereupon these parties will consult in accordance with 36 C.F.R. section 800.14(b), to consider such amendment.
- B. The Commission or the Oklahoma SHPO may terminate this Programmatic Agreement by providing 30 days written notice to the other parties, provided that the Commission, the Oklahoma SHPO, and the City consult during the 30-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Commission will comply with 36 C.F.R. sections 800.3 through 800.7(c)(3), with regard to individual actions covered by this Programmatic Agreement.

Execution of this Programmatic Agreement and its subsequent implementation is evidence that the Commission has satisfied its responsibilities pursuant to section 106 of the National Historic Preservation Act, as amended, for all individual actions carried out under the license. Provided, however, that unless and until the Commission issues a license for the project and this Programmatic Agreement is incorporated by reference therein, this Programmatic Agreement has no independent legal effect for any specific license applicant or project.

FEDERAL ENERGY REGULATORY COMMISSION

By: Ann F. Miles
Ann F. Miles, Director
Division of Hydropower
Licensing

Date: 9/21/10

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE

By: 
Bob Blackburn
State Historic Preservation Officer


Date: Oct 6, 2010

CONCUR: OKLAHOMA ARCHEOLOGICAL SURVEY

By:  _____
Dr. Robert L. Brooks
Oklahoma State Archeologist

Date: 9/27/10

CONCUR: CITY OF BROKEN BOW, OKLAHOMA

By: 

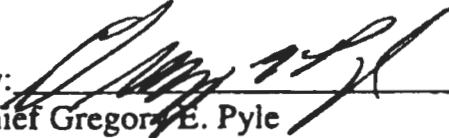
John Dean, Jr., City Manager
City of Broken Bow, Oklahoma

Date: 10/5/10

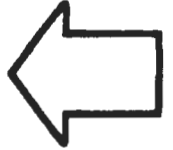
Programmatic Agreement
Project No. 12470-001 - Oklahoma

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CONCUR: CHOCTAW NATION OF OKLAHOMA

By: 
Chief Gregory E. Pyle

Date: _____



HERE

CONCUR: CADDO NATION

By: _____

Brenda Shemayme Edwards, Chairwoman
Caddo Nation

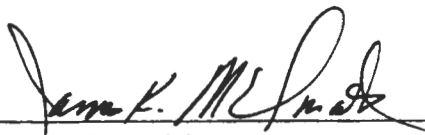
Date: _____

CONCUR: U.S. ARMY CORPS OF ENGINEERS

By: Thomas W. Kula
Thomas W. Kula
Colonel, US Army
Commanding

Date: 1 January 2011

CONCUR: SOUTHWESTERN POWER ADMINISTRATION

By: 
James McDonald
Assistant Administrator for Corporate Operations

Date: 10-7-2010

CONCUR: U.S. FOREST SERVICE

By: _____ Date: _____
Regional Forester

**Appendix A
PROGRAMMATIC AGREEMENT AMONG THE FEDERAL ENERGY
REGULATORY COMMISSION AND THE OKLAHOMA STATE HISTORIC
PRESERVATION OFFICER, FOR MANAGING HISTORIC PROPERTIES
THAT MAY BE AFFECTED BY ISSUING AN ORIGINAL LICENSE TO
THE CITY OF BROKEN BOW, OKLAHOMA FOR THE CONSTRUCTION
AND OPERATION OF THE BROKEN BOW RE-REGULATION DAM
HYDROPOWER PROJECT IN MCCURTAIN COUNTY OKLAHOMA**

THE PROJECT, HISTORIC PROPERTIES, AND ANTICIPATED EFFECTS

The purpose of this appendix is to specify the factual basis of the Programmatic Agreement. Here, relevant facts concerning the project and measures proposed by the City of Broken Bow, Oklahoma (City) under the Commission's licensing procedures are reviewed; historic properties subject to the Programmatic Agreement's stipulations are, in part, identified; and the anticipated effects of the license issuing are disclosed.

On July 26, 2006, the City filed an application for an original license with the Commission to construct, operate, and maintain the proposed 4-megawatt (MW) Broken Bow Re-Regulation Dam Hydropower Project No. 12470-001. The project would be located on the Mountain Fork River near the City of Broken Bow in McCurtain County, Oklahoma, at the U.S. Army Corps of Engineers (Corps) existing Broken Bow Re-Regulation Dam (re-regulation dam).

We, the parties to the Programmatic Agreement, anticipate that issuing an original license to construct, operate, and maintain the proposed project may pose adverse effects on historic properties. We anticipate that any adverse effects can be mitigated by executing a Programmatic Agreement requiring the City to develop and implement an HPMP, and incorporating the executed Programmatic Agreement into any license that the Commission issues for the project.

I. THE PROJECT

A. Existing Features and Operation

The proposed project would be constructed at the Corps' existing 810-foot-long, 40.5-foot-high re-regulation dam. The re-regulation dam impounds a 307-acre reservoir that extends approximately 3.7 miles upstream. The re-regulation dam consists of a concrete ogee spillway, five uncontrolled sluice windows, and four 24-inch low flow pipes. The low flow pipes were originally designed to drawdown the re-regulation dam reservoir prior to any additional discharges or releases from the Corps' upstream Broken

Bow Dam Project and to provide a minimum flow release of 100 cubic feet per second to protect fish and wildlife resources.⁹

The Corps operates the re-regulation dam to ameliorate the peaking flows discharged from the Corps' upstream Broken Bow Dam Project. Southwestern Power Administration (Southwestern) schedules power generation releases from the Broken Bow Dam Project in a peaking mode, within operational guidelines set forth by the Corps' Tulsa District. The purposes of the Broken Bow Dam Project are flood control, hydroelectric power, water supply, recreation, and fish and wildlife habitat.

B. Proposed Project Features

The City proposes to construct three 93.5-foot-long penstocks at the eastern portion of the existing re-regulation dam to direct the flows from the re-regulation dam reservoir into the intakes of the proposed three turbine-generator units with an installed capacity of 4.0 MW at the proposed powerhouse. The new powerhouse would be 112-foot-wide by 129-foot-long. A 170-foot-long tailrace would be constructed just below the powerhouse and would return the flows from the powerhouse back into the Mountain Fork River. A 1,891-foot-long, 13.8-kilovolt primary transmission line would be constructed parallel to the downstream face of the dam, cross the Mountain Fork River, and tie into an existing distribution line. Commission staff recommends that the City operate the proposed project in tandem with the Corps and Southwestern scheduled releases from the upstream Broken Bow Dam Project. The proposed project would have an average annual generation of 17,500 megawatt-hours.

C. Proposed Project Boundary

The proposed project boundary encloses a portion of the Corps' existing re-regulation dam, the proposed powerhouse, penstocks, tailrace, and transmission line. The project would occupy about 8.21 acres of federal lands administered by the Corps.

D. The City's Proposed Environmental Measures

Prior to any land-disturbing activities, the City proposes to conduct an archaeological survey of all areas where ground surfaces would be disturbed to identify any historic properties. The City also proposes to coordinate with the Oklahoma Archeological Survey prior to the implementation of the survey.¹⁰

⁹ See EA at 10-11.

¹⁰ The City proposes various protection, mitigation, and enhancement measures for project-related environmental resources. See EA at 81-82.

II. HISTORIC PROPERTIES IDENTIFIED

A. Area of Potential Effect

The area of potential effects (APE) for the project includes (1) the lands enclosed by the project boundary which would encompass a portion of the Corps' existing re-regulation dam, the proposed powerhouse, penstocks, tailrace, and transmission line; and (2) the lands outside the project boundary, including an access road and lay down/staging areas, that would be affected by project construction activities.

B. Historic Properties

In a letter to the City dated March 30, 2005, the Oklahoma Archeological Survey commented that based on the topographic and hydrologic setting of the project, archaeological materials are likely to be present in the vicinity of the project and that an archaeological field survey would be necessary prior to construction.

In a letter to the City dated April 26, 2005, the Oklahoma State Historic Preservation Office (Oklahoma SHPO) stated that although there are no known historic properties within the APE affected by the proposed project, the City must obtain a determination from the Oklahoma Archeological Survey about the presence of prehistoric resources that may be eligible for the National Register of Historic Places (National Register or historic properties) within the project's APE. The Oklahoma SHPO stated that if an archaeological survey reveals the presence of prehistoric archaeological sites, it would defer to the Oklahoma Archeological Survey to determine whether the sites are considered historic properties. If a survey revealed sites dating from the historic period, additional assessments from the Oklahoma SHPO would be necessary to determine if the site was an historic property.

In a letter filed July 15, 2010, the Oklahoma SHPO concurred with Dr. Robert Brooks, Oklahoma State Archeologist, that archeological surveys should be conducted within the project's APE.

III. ANTICIPATED EFFECTS

A. Archaeological Resources

The proposed issuance of an original license to the City for the Broken Bow Re-Regulation Dam Hydropower Project could have adverse effects on archaeological historic resources in the project's APE.

Although there are no known archaeological resources in the project's APE, there is a possibility that as-yet-unknown archaeological resources would be encountered during project-related ground disturbing activities. Thus, as the Oklahoma State Archeologist recommends, and the City proposes, archaeological survey of all areas where ground surfaces would be disturbed would be conducted prior to project construction to identify any archaeological resources that may exist in the project's APE.

The Historic Properties Management Plan (HPMP) would provide for an archaeological survey, prior to project construction, for all areas within the APE where ground surfaces would be disturbed, and for the: (1) evaluation of archaeological resources that may be found, including those of religious and cultural significance to Indian tribes; (2) determination of potential effects on historic properties; and (3) consideration of reasonable alternatives for avoiding, minimizing, or mitigating adverse effects to those resources. The HPMP would also provide for appropriate treatment and disposition of human remains that may be discovered, and for compliance with the Native American Graves Protection and Repatriation Act.

B. Previously Undiscovered Historic Properties

Although an archaeological survey of the project's APE would be conducted prior to any ground disturbing activities, there remains a possibility that historic and archaeological resources not discovered during the survey could still be encountered during project construction and operation. Therefore, the HPMP would address discovery of previously unidentified properties during project construction and operation.