

DRAFT

27 December 2006

PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, MEMPHIS
DISTRICT,
THE NATURAL RESOURCES CONSERVATION SERVICE,
THE ARKANSAS STATE HISTORIC PRESERVATION
OFFICER,
CONSULTING TRIBES,
THE WHITE RIVER REGIONAL IRRIGATION WATER
DISTRIBUTION DISTRICT,
THE ARKANSAS NATURAL RESOURCES COMMISSION,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING IMPLEMENTATION OF THE
GRAND PRAIRIE DEMONSTRATION PROJECT
GRAND PRAIRIE REGION, ARKANSAS
PURSUANT TO THE NATIONAL HISTORIC PRESERVATION
ACT AND OTHER AUTHORITIES

December 27, 2006

DRAFT

27 December 2006

TABLE OF CONTENTS

1. Whereas Clauses	3
2. Stipulations	6
3. Consultation, General Protocol	13
4. Documents and Communications	14
5. Points of Contact	15
6. Dispute Resolution	16
7. Termination	17
8. Miscellaneous	18
9. Signatory Pages	19
10. Tribal Signatory Page	20
11. Concurring Parties	21
Attachment 1 — American Indian Tribes Invited to Meetings	A1
Attachment 2 — Key Reference Documents	A2
Attachment 3 — Definitions	A3
Attachment 4 — Acronyms	A4

DRAFT

27 December 2006

**PROGRAMMATIC AGREEMENT AMONG
THE U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT,
THE NATURAL RESOURCES CONSERVATION SERVICE,
THE ARKANSAS STATE HISTORIC PRESERVATION OFFICER,
CONSULTING TRIBES,
THE WHITE RIVER REGIONAL IRRIGATION WATER
DISTRIBUTION DISTRICT,
THE ARKANSAS NATURAL RESOURCES COMMISSION,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING IMPLEMENTATION OF THE
GRAND PRAIRIE DEMONSTRATION PROJECT
GRAND PRAIRIE REGION, ARKANSAS
PURSUANT TO THE NATIONAL HISTORIC PRESERVATION ACT
AND OTHER AUTHORITIES**

WHEREAS, the U.S. Army Corps of Engineers, Memphis District (USACE) is the lead agency of the Grand Prairie Demonstration Project (GPDP) with responsibility for the National Historic Preservation Act and Executive Order 13175 consultation activities for the project. USACE is also responsible for the funds management for the entire project. Additionally, USACE is responsible for the planning, design and construction of the agriculture water supply systems and mitigation lands; and

WHEREAS, Natural Resource Conservation Service (NRCS) is USACE's on-farm construction agent and is responsible for acquiring necessary rights of entry for on-farm project components and for construction of all on-farm delivery and storage systems; and

WHEREAS, the White River Regional Water Irrigation District and the Arkansas Natural Resources Commission (collectively Project Sponsors) are responsible for acquiring rights-of-entry to off-farm project lands for preliminary supportive studies and construction of project features; and

WHEREAS, USACE, has determined that the GPDP may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) including historic properties such as, but not limited to, historic properties of traditional religious and cultural importance, and Sacred Sites including burials that may contain human remains and/or associated cultural items; and

WHEREAS, the Grand Prairie Demonstration Area extends over portions of Arkansas, Lonoke, Monroe, and Prairie counties in Arkansas, and;

DRAFT

27 December 2006

WHEREAS, this project's area of potential effects (APE) will pertain to private lands and a portion of state lands, with no involvement of Federal lands existing or planned for; and

WHEREAS, applicable state laws, including pertinent Arkansas burial laws (Arkansas Act 753 of 1991, as amended and Arkansas Act 1533 of 1999), will apply to this project, including the provisions for private landowners' property rights; and

WHEREAS, all signatory parties to this Programmatic Agreement (PA) agree to work cooperatively in identifying and protecting historic properties throughout the project's APE; and

WHEREAS, pursuant to Section 800.2(c)(1) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (NHPA) USACE has consulted with the Advisory Council on Historic Preservation (ACHP), the Arkansas State Historic Preservation Officer (SHPO), the NRCS, the Project Sponsors, and the consulting Tribes; and

WHEREAS, the NRCS, SHPO, the Project Sponsors, consulting Tribes, and the ACHP participated in consultation and have been invited to be signatories and/or concurring parties to this PA; and

WHEREAS, the consulting Tribes are federally recognized sovereign Indian Nations having a government-to-government relationship with the United States; and

WHEREAS, each Tribe brings a special expertise in identifying and evaluating historic properties, Sacred Sites, or other historic properties of religious and cultural importance to that Tribe and that expertise should be used in the Section 106 process; and

WHEREAS, USACE has provided various tribes (listed in Attachment 1) the opportunity to consult on the development of this PA, and has given them an opportunity to become a signatory or concurring party to this PA; and USACE has provided various tribes (listed in Attachment 1) additional opportunities to consult on the GPDP; and

WHEREAS, USACE and a number of Tribes have executed Memoranda of Understanding (MOUs) which reflect government-to-government consultation under Executive Order 13175, "Consultation and Coordination with American Indian Tribal Governments," and these MOUs have pertinence to this PA; and

WHEREAS, this PA is being entered into per the implementing regulations for Section 106 of the NHPA.

DRAFT

27 December 2006

NOW, THEREFORE, USACE, NRCS, the SHPO, the Project Sponsors, the consulting Tribes, and the ACHP agree the project will be administered in accordance with the following stipulations to satisfy Section 106 responsibilities under NHPA for all aspects of the GPDP undertaking.

STIPULATIONS

I. United States Army Corps of Engineers.

1. General

- (A) As the lead Federal agency, USACE will ensure that applicable stipulations of this PA are followed by NRCS and the Project's Sponsors.
- (i) USACE will ensure that NRCS and the Project Sponsors comply with the activities in this PA. USACE will monitor compliance by: 1) hosting regularly scheduled meetings for NRCS and the Project Sponsors to report on all activities from the previous meeting; and 2) requiring NRCS and the Project Sponsors to submit an annual report for all activities for that fiscal year.
 - (ii) USACE will provide an annual report to the SHPO, consulting Tribes, and ACHP regarding project activities, including activities required by this PA, taken by USACE, NRCS, and the Project Sponsors.
- (B) USACE will in good faith, and within its legal authority, ensure that its project work follows appropriate provisions of Section 106 that address the identification and evaluation of historic properties (36 CFR Part 800), the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation as amended (48 FR 44716) and A State Plan for the Conservation of Archeological Resources in Arkansas.
- (C) The principal investigator for these activities must meet the Secretary of the Interior's Professional Qualification Standards for archeology. All archeological fieldwork will follow the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation as amended (48 FR 44716) and A State Plan for the Conservation of Archeological Resources in Arkansas.
- (D) USACE, in consultation with the consulting Tribes, the Arkansas SHPO, and the ACHP has developed a detailed treatment plan for human remains which may be inadvertently discovered during the project construction (Attachment 5). Upon discovery, the human remains and/or associated burial furniture would be protected from further damage, destruction, or disturbance. Appropriate and reasonable measures to protect and secure the remains, including covering, reburial, posting of security guards, fencing, or combinations of these and other techniques,

DRAFT

27 December 2006

may be applied after consultation with the Tribes and SHPO. The final disposition of these remains, presumably through reburial on-site, on tribal lands, or in a “keepsafe cemetery”, will be determined only after consultation with the Tribes, or with other living descendants if the remains can clearly be identified as Euro- or African American. The underlying purpose of these procedures is to ensure the respectful treatment of all human remains and to ensure that the views of living descendants of all ethnic groups are fully considered in USACE decision-making. It is the intent of USACE to comply with Arkansas Act 753 of 1991, as amended, while at the same time complying with NHPA and other applicable laws and regulations, including those statutes governing property rights of private and state landowners, as well as USACE’s regulations. Additionally, the procedures described in the attached treatment plan were developed in light of the principles included in the ACHP’s recently revised draft “Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects” (49FR13066-13070), published March 14, 2006.

2. Construction Activities

USACE will attempt to design construction plans and the APE to avoid NRHP listed or eligible properties. During construction, should USACE or its contractors encounter a previously unknown historic property within the APE, work will be stopped in the area of discovery and the District Archeologist will be notified immediately. Once the USACE Archeologist determines the boundaries of the site through surface or subsurface investigations, a ninety (90) meter buffer will be established around the site and project work may continue outside the buffer. The USACE Archeologist will then consult with the signatory and concurring parties to this PA to develop a plan for investigating and protecting the site in accordance with the following provisions:

- (A) The USACE Archeologist will ensure that the necessary fieldwork and archival research is conducted.
- (B) USACE will submit a report of findings to the signatory and concurring parties to this PA for a review period not to exceed thirty calendar days.
- (C) If a site is determined to be eligible for inclusion in NRHP and cannot be avoided, USACE will develop a Treatment Plan for discovered buried historic properties. The Treatment Plan will be based on A State Plan for the Conservation of Archeological Resources in Arkansas and will, at a minimum, detail the environmental and cultural background of the area,

DRAFT

27 December 2006

all research questions to be addressed, the data needed to address them, proposed field and laboratory methods, and the treatment of human remains. USACE will submit the Treatment Plan to all signatory and concurring parties for a review and comment period not to exceed thirty days.

(D) Following Arkansas state law, all artifacts collected from privately owned property, excluding human skeletal burial remains, are the property of the landowner and will be returned to the landowner within thirty days (30) after the landowner has been notified that all federal interests in the collection have ended. USACE will inform landowners about stewardship, site protection, and preservation and will strongly encourage landowners to donate collections to a state-approved curation facility, museum, or federally recognized tribe. The SHPO and federally recognized Tribes consulting with the Memphis District will also be notified of the return of the collection.

(E) All Artifacts collected from state or local government-owned land, or project sponsor owned land will be returned within thirty (30) days after the state or local government has been notified that a federal interest in the collection has ended. The State Archeologist, SHPO and federally recognized Tribes consulting with the Memphis District will be notified of the return of the collection.

3. Operations & Maintenance Activities

USACE, in consultation and cooperation with NRCS, and the Project Sponsors will produce and provide to the Project Sponsors an O&M Manual. That document will specify how the Project Sponsors will protect historic properties identified during implementation of this project. Additionally, the O&M Manual will require the same procedures identified in this PA for the planning and construction of any new additions to the project. All signatories will have an opportunity to provide comments to this manual during its drafting and prior to its finalization.

II. Natural Resources Conservation Service.

1. General

(A) The principal investigator for NRCS's activities must meet the Secretary of the Interior's Professional Qualification Standards for archeology. All archeological fieldwork and report writing will follow the Secretary of the Interior's Standards and Guidelines for Archeology and Historic

DRAFT

27 December 2006

Preservation as amended (48 FR 44716) and the standards contained in Appendix B of A State Plan for the Conservation of Archeological Resources in Arkansas. All reports regarding the NCRS-GPDP affiliated historic property surveys, testing, and data recovery will follow the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation as amended (48 FR 44716), and Appendix B of "A State Plan for the Conservation of Archeological Resources in Arkansas."

2. Pre-Construction

During the preconstruction phase, NRCS will proceed as follows:

- (A) Plans for each newly proposed on-farm component will be described in written format and accompanied with the associated U.S. Geological Survey (USGS) 7.5-minute topographic map showing the APE of the specific proposed work areas for the specific farm plan. A copy of the proposed work plan, map of the APE, and photographs of any affected structures will be provided to the SHPO and other signatory and concurring parties to this PA for review and comment. Communications to signatory and concurring parties will be in the format preferred by each party (e.g. U.S. mail, electronic mail, fax). The parties will have thirty (30) calendar days to provide comments.
- (B) Following the thirty day review period, the NRCS Cultural Resources Specialist (CRS) will assimilate all of the review comments. A historic properties inventory will then be performed for each project area using the received comments as a guide. Comments will be accepted in writing via fax, electronic mail, or postal carrier as well as by telephone.
- (C) Identification efforts will determine the presence or absence of historic properties in the on-farm project APE. The CRS will confer with the design engineer on ways to avoid impacts to all historic properties. Impacts to all historic properties may be avoided by moving the project to another location, changing the work limits, using an acceptable alternative practice, or modifying the design within the original APE. If a new location on the same farm is selected, additional historic properties inventories will be conducted to identify the presence of other historic properties. This process will be repeated until a location is found which does not impact historic properties. If no acceptable location for the required component can be located without affecting historic properties, NRCS will drop this farm from the overall project and will not provide any further technical or financial support that may affect the identified historic properties.
 - (i) The CRS will ensure the necessary fieldwork and archival research is conducted.

DRAFT

27 December 2006

- (ii) A report of findings will be submitted to the signatory and concurring parties to this PA for a review period not to exceed thirty calendar days

- (iii) Following Arkansas state law, all artifacts collected from privately owned property, excluding human skeletal burial remains, are the property of the landowner and will be returned to the landowner within thirty days (30) after the landowner has been notified that all federal interests in the collection have ended. NRCS will inform landowners about stewardship, site protection, and preservation and will strongly encourage landowners to donate collections to a state-approved curation facility, museum, or federally recognized tribe. The SHPO and federally recognized Tribes consulting with the Memphis District will also be notified of the return of the collection .

3. Construction

During construction, NRCS will have inspectors, trained to identify historic properties present during on-farm construction. If any unidentified historic properties, or inadvertently revealed human remains and/or associated burial furniture are discovered during construction, work in the area of discovery will stop immediately, the CRS will be contacted, and the finding will be investigated as follows:

- (i) Work in the area of discovery will cease until NRCS can consult with all signatories and concurring parties to this PA.

- (ii) The CRS will conduct a surface or subsurface survey of the APE to determine the boundaries of the historic property.

- (iii) Should the investigation determine that an eligible or potentially eligible historic property may be affected or that human remains and/or associated burial furniture may be present and cannot be avoided all signatories and concurring parties will be consulted to determine if the project should proceed or be terminated.

- (iv) If the CRS investigation leads to a conclusion that a historic property is not present the work will be allowed to resume.

- (v) Historic properties identification efforts for the on-farm components will be documented by NRCS in a report following standards contained in Appendix B of “A State

DRAFT

27 December 2006

Plan for the Conservation of Archeological Resources in Arkansas. A copy of the report will be provided to the signatories and concurring parties to this PA for a review period not to exceed thirty days.

III. Project Sponsors.

(A) Where historic properties may be affected during project planning and construction, the Project Sponsors will facilitate communications among applicable private landowners, signatories, and concurring parties to this PA. The subsequent O&M of the project will be the responsibility of the Project Sponsors after their acceptance of the completed project.

(B) The Project Sponsors will implement historic properties protection measures as part of their O&M responsibilities. As discussed in Section I (3) above, this commitment to historic property protection will be explicit in the O&M plan.

(C) The Project Sponsors will ensure that the planning and construction of any future additions to this project substantially follows the procedures identified in this PA.

IV. State Historic Preservation Officer.

(A) The SHPO's designated point of contact under this PA will communicate and consult following the procedures set forth in 36 CFR Part 800. Such communications will be copied to the contacts for all signatories and concurring parties to this PA.

(B) The SHPO's designated contact will be strongly encouraged to attend PA-related consultation meetings concerning the GPDP and this PA.

(C) The SHPO's designated contact will be strongly encouraged to actively coordinate and consult when human remains and related issues are addressed.

V. Federally Recognized Consulting Tribes

(A) The elected Tribal leaders, or their duly authorized representatives, will sign this PA on behalf of their Tribe.

(B) Tribal representatives will not act as a representative of any other Tribe who is a party to this PA without that Tribe's express authorization in writing. Copies of such authorization will be provided to all signatory and concurring parties to this PA.

DRAFT

27 December 2006

(C) Each signatory Tribe's designated point of contact(s) for this PA should make every effort to attend meetings and work on agreements, such as mitigation Memoranda of Agreement.

(D) When the Tribe aids in the identification, evaluation, assessment of effects, and treatment of historic properties its representatives, traditional cultural authorities, or other religious/traditional practitioners need not meet Federal and/or state guidelines for historic preservation or any other technical or professional discipline.

(E) During the period of project planning and construction the Tribes will submit any requests for rights of entry to view impacted historic properties to USACE. After USACE involvement ends, the Tribes will coordinate any requests for rights of entry with the local Project Sponsors.

VI. Advisory Council on Historic Preservation.

(A) The ACHP's designated point of contact will be strongly encouraged to attend major consultation meetings concerning the GPDP and this PA as funding and schedules permit.

(B) The ACHP's designated point of contact will be responsive to communications it receives from any parties to this PA, or from project stakeholders.

(C) The ACHP will provide quality assurance oversight to this PA's implementation, and communicate promptly if it identifies issues of concern.

(D) The ACHP will offer leadership in conflict resolution assistance among parties of this PA should disputes arise in the PA's implementation.

DRAFT

27 December 2006

CONSULTATION, GENERAL PROTOCOL

- 1.** Consultation among all signatory and concurring parties to this PA will continue throughout this PA's implementation. Consultation is a mutual dialog among all parties regarding historic properties that may be affected by the GPDP.
- 2.** USACE will consult with the signatory and concurring Tribes on a government-to-government basis in recognition of their sovereign status throughout any activity or undertaking of GPDP that might affect historic properties including American Indian Cultural Sites.
- 3.** Consultations among all points of contact representing this PA's signatories and concurring parties will include face-to-face meetings, as well as communications by mail, electronic mail, facsimile, and/or telephone. Times and places of meetings, as well as an agenda for meetings, will be developed with mutual acceptance and done in a timely manner that is satisfactory to this PA's signatories and concurring parties. When possible, electronic mail communication is preferred by the NRCS.
- 4.** Travel support for other signatories and concurring parties (SHPO, ACHP, Tribal representatives, etc.) for consultation needs will be contingent on project-specific funding available for the pertinent Federal fiscal year. The number of Tribal representatives provided travel support will depend on the type of consultation being conducted and the availability of funds for that fiscal year.

DOCUMENTATION AND COMMUNICATIONS

1. Fieldwork and Reporting Standards. USACE will ensure that all archeological fieldwork and reporting (including that of NRCS) produced under this PA meets the requirements of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716 as amended), the Secretary of the Interior's Standards for Evaluation, and Appendix B of A State Plan for the Conservation of Archeological Resources in Arkansas.

2. Other Written Documents. USACE or NRCS will provide signatories and concurring parties to this PA with explicit documentation regarding plans to identify, evaluate, and otherwise address historic properties, including a clear definition of the APE. This information will be provided prior to the project construction phase.

3. Timing of Written Communications. Regarding written communication among signatories and concurring parties to this PA, recipients of such communications will respond to the requesting party within thirty (30) days from receipt of the original communication or request an extension before the end of thirty (30) days. Should an initial communication be linked to issue(s) where historic properties are in imminent danger of adverse impacts, or with potential for generating high interest among the PA's signatory and concurring parties and other GPDG stakeholders, that originating party will supplement such written communications with telephone and other expedient communication efforts.

4. Confidentiality. The PA's signatory and concurring parties agree to maintain the confidentiality of all information pertaining to historic properties where possible, but limited to the boundaries of applicable law. Points of contact identified under provisions of this PA will be provided confidential locations of historic properties and other pertinent information including, but not limited to, site treatment plans including the disposition or curation of cultural materials. Such information documents may be provided on a need-to-know basis as separate attachments, removable portions of reports, etc. to ensure information protection pursuant to Section 304 of the NHPA

DRAFT

27 December 2006

POINTS OF CONTACT

1. Designated Contacts. Within sixty (60) days of signing this PA, each signatory and concurring party will communicate, in writing, to all signatories and concurring parties to identify their respective designated contact for their organization.

2. Leadership Changes. The designated contacts for the signatories and concurring parties to this PA will be notified within thirty (30) days of changes in personnel of the formal signatories to this PA and of changes in designated contacts.

DRAFT

27 December 2006

DISPUTE RESOLUTION AND PA AMENDMENT

1. Should any signatory to this PA object to activities planned or conducted on historic properties under this PA, that party has thirty (30) days to communicate such concern, in writing, to the USACE point of contact. USACE will consult with the objecting parties to resolve the concern. If USACE determines that the objection cannot be resolved, it will forward all documentation relevant to the concern to the ACHP. Copies of the documentation will be provided to all signatories and concurring parties for their review and comment. The ACHP will respond within thirty (30) days after receipt of all pertinent documentation. The ACHP will provide USACE with recommendations, which USACE will take into account in reaching a final decision regarding the dispute.

If the objecting signatories or the USACE point of contact determine that the above thirty (30) day period of communication precludes timely attention to urgent matters such as the protection of historic properties, the concerned party(s) will communicate this concern at the first opportunity and request expedited responses. All signatories will agree to expedite these communications to the utmost degree possible, such as by use of telephone and electronic mail communication.

2. Any signatory to this PA may request to all signatories that the PA be amended, whereupon all signatories will consult to consider such amendment. That process of consultation will follow Item 1, above.

3. This PA will take effect on _____. This PA will remain in effect for a period of ten years from this date and may be extended every ten years thereafter with written consent of the signatory parties. USACE will take the lead in communications regarding such extensions.

DRAFT

27 December 2006

TERMINATION

1. If any signatory to this PA determines that its terms will not or cannot be carried out, that party will immediately consult with the other signatories to develop an amendment to the PA. If the signatories cannot reach agreement on an amendment within thirty (30) days the PA will remain in effect but USACE will forward all documentation relevant to the dispute to the ACHP. The ACHP will provide USACE with recommendations, which USACE will take into account in reaching a final decision regarding the dispute. The signatories may agree to extend the thirty (30) day period for developing amendments.

2. If the signatories cannot reach agreement on an amendment relating to work on, or within ninety (90) meters of the exterior boundary of a historic property, any signatory may withdraw from this PA upon written notification to the other signatories. Alternatively, if a consensus emerges that this PA should be terminated, the parties may terminate the PA. Once the PA is terminated, and prior to work continuing on the historic property(s) in dispute, USACE must either (1) execute a new PA pursuant to 36 CFR 800.14 or (2) request, take into account, and respond to the comments of the SHPO and ACHP under 36 CFR 800.3 through 800.7. USACE will notify the signatories as to the course of action it will pursue. Termination of the PA will not affect planning, design, or construction work outside of the 90 meter buffer surrounding the historic property(s) in dispute.

DRAFT

27 December 2006

MISCELLANEOUS

- 1.** This PA is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to the PA will be handled in accordance with applicable laws, regulations, and procedures.
- 2.** If provisions of this PA are later determined to be inconsistent with existing laws or regulations, those provisions will be revised. In the interim, portions of the PA not related to this concern would remain in effect.
- 3.** Nothing in this PA prohibits or reduces any signatory's right to full lawful remedy or recourse for failure to comply with any and all terms agreed to herein.

DRAFT

27 December 2006

IN WITNESS WHEREOF, the signatories hereto have executed this Programmatic Agreement, which will become effective upon _____ date. This Programmatic Agreement will remain in effect for a period of ten years from this date regardless of the date it is last signed. It may be extended every ten years thereafter with written consent of the signatory and concurring parties.

SIGNATORIES

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
Title: _____

ARKANSAS STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Title: _____

U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT

By: _____ Date: _____
Charles O. Smithers III
COLONEL, DISTRICT COMMANDER

NATURAL RESOURCES CONSERVATION SERVICE

By: _____ Date: _____
Title: _____

WHITE RIVER REGIONAL IRRIGATION WATER DISTRIBUTION DISTRICT

By: _____ Date: _____
Title: _____

ARKANSAS NATURAL RESOURCES COMMISSION

By: _____ Date: _____
Title: _____

DRAFT

27 December 2006

SIGNATORIES

TRIBE

By: _____ Date: _____
Tribal Leader

U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT

By: _____ Date: _____
Charles O. Smithers III
COLONEL, DISTRICT COMMANDER

DRAFT

27 December 2006

CONCURRING PARTIES

TRIBE

By: _____ Date: _____
Tribal Leader

ATTACHMENT 1
AMERICAN INDIAN TRIBES INVITED TO MEETINGS

1
2
3
4
5

INVITED TO MEETINGS	ATTENDED MEETINGS
ABSENTEE-SHAWNEE TRIBE	A,S,T,L
ALABAMA-QUASSARTE TRIBAL TOWN	A,S,T
CADDO NATION	T,L
CHEROKEE NATION OF OKLAHOMA	L,S
CHICKASAW NATION OF OKLAHOMA	A,L
CHOCTAW NATION OF OKLAHOMA	A,S,T
DELAWARE NATION	T
EASTERN SHAWNEE TRIBE OF OKLAHOMA	
KAW NATION	S,L
KILAEGEE TRIIBAL TOWN	T,L
KICKAPOO TRIBE IN KANSAS	
MISSISSIPPI BAND OF CHOCTAW INDIANS	A,L
MUSCOGEE (CREEK) NATION	A,S,T,L
OSAGE NATION OF OKLAHOMA	S
OTOE-MISSOURIA TRIBE OF OKLAHOMA	A,L
PAWNEE	S
PEORIA TRIBE	S,T,L
POARCH BAND OF CREEK INDIANS	
PONCA TRIBE OF OKLAHOMA	
QUAPAW TRIBE OF OKLAHOMA	A,L
SAC AND FOX NATION OF MISSOURIS	T
SAC AND FOX NATION OF OKLAHOMA	
SEMINOLE NATION OF OKLAHOMA	
SEMINOLE TRIBE OF FLORIDA	
SHAWNEE TRIBE	S
THROPTHLOCCO TRIBAL TOWN	A,S,T
TONKAWA TRIBE	
TUNICA-BILOXI TRIBE OF LOUISIANA	
UNITED KEETOOWAH BAND OF CHEROKEE INDIANS OF OKLAHOMA	A,S

6
7
8
9
10
11

A—APRIL 2004 MEETING
S—AUGUST 2004 MEETING
T—TULSA 2005 MEETING
L—LITTLE ROCK 2006 MEETING

ATTACHMENT 2
KEY REFERENCE DOCUMENTS

- 1
2
3
4 1. Advisory Council on Historic Preservation
5 2005; Letter from Mr. Don L. Klima, dated September 28, 2005, sent to Col. Charles
6 Smithers, USACE Memphis District, and Mr. Kalven L. Trice, USDA-NRCS,
7 Arkansas. Cover to copy of letter Klima sent, same date, to Mr. John Berrey, Quapaw
8 Tribe of Oklahoma; copy on file (10 pages total) USACE Memphis District.
9
- 10 2. Davis, Hester A. (editor)
11 1982; A State Plan for the Conservation of Archeological Resources in Arkansas.
12 Arkansas Archeological Survey Research Series No. 21; Arkansas Archeological
13 Survey, Fayetteville.
14
- 15 3. Prescott, Douglas, Prentice M. Thomas, Jr., Carey E. Blanchard, Joseph Meyer,
16 Michael C. Sierzchula, and Robert F. Cande
17 1999; A Comprehensive Study, Grand Prairie Demonstration Area, Arkansas, Lonoke,
18 Monroe and Prairie Counties, Arkansas, Appendix K, Intensive Survey Without Testing
19 of Proposed Reservoir, Prairie County, Arkansas. Prepared for USACE Memphis
20 District (report dated 1999 but field work conducted in 2005); copies on file, Arkansas
21 SHPO, Little Rock, Arkansas; USACE Memphis District.
22
- 23 4. Riggs, John
24 2005; Comprehensive Report of Historic properties Investigations Relating to the On-
25 Farm Water Storage Elements of the Grand Prairie Irrigation Project, Arkansas, Prairie,
26 Monroe, and Lonoke Counties, Arkansas. USDA-NRCS, Arkansas. Copies on file,
27 USDA-NRCS, Lonoke, Arkansas; Arkansas SHPO, Little Rock, Arkansas; USACE
28 Memphis District.
29
- 30 5. Thomas, Prentice M. Jr., Douglas Prescott, Carey E. Blanchard, Joseph Meyer,
31 Michael C. Sierzchula, and Robert F. Cande
32 1996; A Comprehensive Study, Grand Prairie Demonstration Area, Arkansas, Lonoke,
33 Monroe, and Prairie Counties, Arkansas. Prepared for USACE Memphis District;
34 copies on file, Arkansas SHPO, Little Rock, Arkansas; USACE Memphis District.
35
- 36 6. USACE
37 1999; Eastern Arkansas Region, Comprehensive Study, Grand Prairie Region and
38 Bayou Meto Basin, Arkansas Project, Grand Prairie Area Demonstration Project,
39 General Reevaluation Report, Volume 1, Main Report & Environmental Impact
40 Statement (FEIS), September 1999. On file, USACE Memphis District.
41
- 42 7. USACE
43 2004; Final Environmental Assessment, Grand Prairie Area Demonstration Project,
44 Post General Reevaluation Design Changes, July 2, 2004. On file, USACE Memphis
45 District.
46
- 47 8. Secretary of the Interior's Standards and Guidelines for Archeology and
48 Historic Preservation as amended (48 FR 44716).
49

DRAFT

27 December 2006

- 50 9. The State Plan for the Conservation of Archeological Resources in Arkansas
51 *available at* www.uark.edu/campus-resources/archinfo/sitereporting.html.

1
2
3 **ATTACHMENT 3**
DEFINITIONS

4 Unless otherwise provided herein, the signatories to this PA agree on the following
5 definitions:
6

7 American Indian Cultural Sites (AICS) - means historic properties, including but not
8 limited to, archeological sites, locations, and other historic properties in which features
9 are culturally important or items that are of American Indian origin, or in which there
10 are American Indian burials, or Traditional Cultural Properties and/or Sacred Sites that
11 are of religious and cultural significance to federally-recognized tribes.
12

13 Burial Furniture- As defined in the Arkansas burial laws (A.C.A. Section 13-6-
14 402), means any items which were placed with human remains at the time of
15 burial or in apparent intentional association with the burial and would include
16 burial markers, items of personal adornment, casket, and casket hardware, stone
17 and bone tools, pottery vessels, or other similar objects or materials.
18

19 Concurring Tribe – means a federally recognized tribe that attaches religious or
20 cultural significance to historic properties within all or part of the MVM and
21 has an interest in receiving information and consulting on matters of interest to
22 this PA. A Concurring Tribe assumes no responsibilities under this PA.
23

24 Consultation – as defined in 36 CFR Part 800.16(f), means the process of seeking,
25 discussing, and considering the views of other participants, and, where feasible, seeking
26 agreement with them regarding matters arising in the section 106 process. The
27 Secretary’s ‘Standards and Guidelines for Federal Agency Preservation Programs
28 pursuant to the National Historic Preservation Act’ provide further guidance on
29 consultation.
30

31 Collection – as defined under Engineer Regulation 1105-2-100 means the composite of
32 all material remains that are recovered from a historic properties study as well as the
33 associated records that are prepared or assembled in connection with that study.
34

35 Historic Properties – As defined in 36 CFR Part 60.4(a-d) means any prehistoric or
36 historic district, site, building, structure, or object included in, or eligible for inclusion
37 in, the National Register of Historic Places maintained by the Secretary of the Interior.
38 This term includes artifacts, records, and remains that are related to and located within
39 such properties. The term includes properties of traditional religious and cultural
40 importance to an Indian Tribe that meet the National Register criteria.
41

42 Signatory Tribe - means that federally-recognized tribe that attaches religious or
43 cultural significance to historic properties within all or part of the MVM and has an
44 interest in participating in the NHPA Section 106 process and consulting on matters of
45 interest. A Signatory Tribe assumes the responsibilities assigned to it under this PA.
46

47 Traditional Cultural Property (TCP) – As defined in the National Park Service, National
48 Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural
49 Properties (1990), means a property that is eligible for inclusion in the National
50 Register because of its association with cultural practices or beliefs of a living

DRAFT

27 December 2006

- 51 community that (a) are rooted in that community's history, and (b) are important in
52 maintaining the continuing cultural identity of the community.
53
54 Undertaking - means the Grand Prairie Demonstration Project.

ATTACHMENT 4
ACRONYMS

- 1
- 2
- 3
- 4
- 5 USACE—United States Army Corps of Engineers
- 6 GPDP—Grand Prairie Demonstration Project
- 7 NRCS—Natural Resource Conservation Service
- 8 APE—Area of Potential Effect
- 9 PA—Programmatic Agreement
- 10 NHPA—National Historic Preservation Act
- 11 MOU—Memorandum of Understanding
- 12 SHPO—State Historic Preservation Officer
- 13 ACHP—Advisory Council on Historic Preservation
- 14 O&M—Operations and Maintenance
- 15 WRRIWDD—White River Regional Irrigation Water Distribution
- 16 District
- 17 ANRC—Arkansas Natural Resources Commission
- 18 GRR—General Reevaluation Report
- 19 EIS—Environmental Impact Statement
- 20 CRS—Cultural Resources Specialist
- 21 NRHP—National Register of Historic Places
- 22 MOA—Memorandum of Agreement

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

ATTACHMENT 5
PROCEDURES FOR THE TREATMENT OF
UNMARKED CEMETERIES, HUMAN SKELETAL REMAINS
AND ASSOCIATED BURIAL FURNITURE
GRAND PRAIRIE DEMONSTRATION AREA PROJECT, ARKANSAS

1. Introduction.

a. The following procedures provide a plan for the treatment of unmarked cemeteries, human skeletal remains, and associated burial furniture which may be encountered when conducting historic properties investigations and in the event of an inadvertent discovery of human remains and/or associated burial furniture as a result of activities associated with the planning, construction, and operation/maintenance of the Grand Prairie Demonstration Area Project. These procedures are intended to be consistent with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended; NHPA implementing Regulations 36 CFR Part 800; U.S. Army Corps of Engineers (USACE) Engineer Regulation 1105-2-100 for conducting historic properties investigations for Civil Works projects; USACE policy on Executive Order 13007; and Arkansas Act 743 of 1991, as amended for the treatment of human skeletal remains.

b. In carrying out this plan, USACE recognizes that respectful treatment of human remains is a paramount concern for living descendants, federally recognized tribes with cultural affiliation to areas within the project's area of potential effect ("Tribes"), and other interested parties.

c. The purpose for these procedures is to ensure the respectful treatment of human remains and to ensure the views of living descendants, and Tribes are fully considered in decision-making. It is the intent of USACE to comply with Arkansas Act 753 of 1991, as amended while at the same time complying with NHPA and other applicable laws and regulations, including those statutes governing property rights of private and state landowners, as well as USACE's regulations. Additionally, the procedures described below were developed in light of the principles included in the Advisory Council on Historic Preservation's (ACHP) recently revised draft Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects (49 FR 13066-13070), published March 14, 2006.

2. Definitions.

a. Associated Burial Furniture – as defined under Arkansas Act 753 of 1991, means any items which were placed with human remains at the time of burial or in apparent intentional association with the burial and would include burial markers, items of personal adornment, casket and casket hardware, stone and bone tools, pottery vessels, or other similar objects or materials.

47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92

b. Burial Site - means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

c. Cultural Affiliation – means, absent any undisputed evidence for any lineal relationship, a demonstrated relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Native American Tribe and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence, based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion, reasonably leads to such a conclusion.

d. Human Remains - as defined under Arkansas Act 753 of 1991, means the calcified portion of a human body which remains after the flesh has decomposed.

e. Inadvertent Discovery - means the unanticipated encounter or detection of human remains and/or burial furniture occurring outside routine historic properties studies identification and evaluation efforts.

f. Late Discovery- means the unanticipated encounter or detection of human remains and burial furniture during laboratory analysis.

3. Procedures for discoveries encountered during historic properties investigations

a. Should USACE, the National Resources Conservation Service ("NRCS"), or those contractors designated by USACE encounter an unmarked burial, human skeletal remains, and/or associated burial furniture during the course of conducting sample or intensive historic properties surveys, all work within in a ninety meter radius of the remains will immediately cease. The USACE Tribal liaison will be immediately notified of the discovery, and provisions for the notification and treatment of the remains will be reviewed and initiated. Under no circumstances will USACE, NRCS, or their contractors knowingly collect human skeletal material from the field without first taking reasonable steps to determine if project activities may result in the disturbance of human remains and/or associated burial furniture.

b. Immediately after being notified that an unmarked burial, human skeletal remains and/or associated burial furniture was encountered, the USACE Tribal Liaison, Contracting Officer's Representative, or other USACE official as designated by the District Commander, will notify law

93 enforcement and the Coroner under whose jurisdiction the remains were
94 encountered to establish whether the remains are related to any crime scene.
95 The Tribal Liaison will ask these officials to destroy any photographs taken
96 in the course of their investigations if they determine the remains are
97 unrelated to a crime and they can be clearly identified as Native American.
98 The results of the coroner and law enforcement findings are to be included
99 along with general location information, the likely priority of custody, other
100 details or written descriptions of the remains, along with a proposed time or
101 place for other meetings in the notification to the SHPO, Tribes, and any
102 identified living descendants. USACE will provide this information to the
103 Tribes and SHPO even if USACE does not plan to seek a burial excavation
104 permit. If requested by any party, Electronic mail correspondence with a
105 return notice of receipt will be considered an acceptable form of written
106 notification to that party.

107
108 c. If the human remains are Native American, USACE will notify, in
109 writing, the signatory and concurring tribes to this PA before requesting, and
110 prior to obtaining an Arkansas unmarked burial excavation permit from the
111 State Historic Preservation Officer (SHPO).

112
113 d. Following notification by USACE, NRCS or White River Regional Water
114 Irrigation District and the Arkansas Natural Resources Commission
115 (collectively Project Sponsors) will notify the landowner on whose property
116 any unmarked burials, human skeletal remains and/or associated burial
117 furniture is encountered.

118
119 e. Any human skeletal remains and/or associated burial furniture identified
120 during laboratory cleaning, cataloging, or analysis will be exempt from
121 procedures and requirements found in section 3, except for the requirement
122 that Tribes be notified.

123
124 f. If the inadvertent or late discovery consists of a single human tooth,
125 apparently out of primary context, and an investigation reveals that the tooth
126 is not affiliated with a burial, no further treatment plan, monitoring plan, or
127 protective measures shall be required. If however, the tooth can be clearly
128 identified as Native American (e.g. a shovel-shaped incisor) USACE will
129 consult with the signatory and concurring parties to the PA and develop a
130 treatment plan.

131
132 4. Procedures for evaluation, data recovery, and site monitoring phase.

133
134 The procedures under this section will remain consistent with the
135 consultation requirements and procedures provided under the implementing
136 regulations for Section 106 (36 CFR Part 800). If after consulting with Tribes,
137 the SHPO, and any other interested party, USACE determines that it is not
138 feasible or practical to avoid an unmarked cemetery, human skeletal remains

139 and/or associated burial furniture, USACE will, after further consultation with
140 the SHPO, Tribes, and the ACHP, develop a treatment plan for the human
141 remains and associated burial furniture. When appropriate, provisions for
142 conducting investigations across project phases should be described in the
143 treatment plans. Additionally, recommendations for temporary storage,
144 permanent curation, reburial, repatriation, etc., should be presented in the
145 treatment plans. Any treatment plan will be implemented by a Memorandum of
146 Agreement (MOA), in accordance with 36 CFR Part 800 and the terms of this
147 PA.

148

149 5. Procedures for discoveries encountered during construction or maintenance.

150

151 a. Procedures following an inadvertent discovery of human skeletal burial
152 remains and/or associated burial furniture will, for the most part, conform to
153 the procedures described above, with the following exceptions:

154

155 (1) All work leading to and surrounding the inadvertent discovery
156 will cease. Upon establishing a ninety (90) meter buffer around
157 the remains, construction may be allowed to proceed outside of
158 the buffer area.

159

160 (2) Within seventy-two (72) hours of notifying both law enforcement
161 and the Coroner's office's of an inadvertent discovery, the Tribal
162 liaison or other designated USACE official will provide verbal
163 notification followed by a written notification by certified mail to
164 the Tribes and the SHPO that an inadvertent discovery of human
165 remains or associated burial furniture has been made.

166

167 (3) Parties receiving notification will respond verbally followed by
168 written response via U.S. mail or electronic mail. The response
169 should specify the party's intention to conduct or decline further
170 consultation.

171

172 (4) USACE, in consultation with the SHPO, Tribes, and other
173 interested parties, may consult with a qualified physical
174 anthropologist, forensic scientist, or other experts as may be
175 needed to examine and assess the inadvertent discovery. Unless
176 the remains were inadvertently removed, the evaluation would be
177 conducted at the site of discovery. The consulting expert will be
178 allowed to draw and measure the exposed remains, measure
179 exposed associated burial furniture, and remove soil samples
180 from the interior of the grave excavation. No photographs will be
181 taken by USACE, NRCS, or their contractors.

182

183 (5) Upon discovery, the human remains and/or associated burial
184 furniture would be protected from further damage, destruction, or

185 disturbance. Appropriate and reasonable measures to protect and
186 secure the remains, including covering, reburying, posting of
187 security guards, fencing, or combinations of these and other
188 techniques, may be applied as determined from consultation with
189 the SHPO and Tribes.
190

191 (6) A report of findings describing the background history leading to
192 and immediately following the reporting of the inadvertent
193 discovery will be prepared for each inadvertent or late discovery.
194 If discovery is made during construction, and avoidance is not
195 possible in the sole determination of USACE, the removal of the
196 remains may proceed after USACE has consulted with the SHPO,
197 Tribes, and other interested parties and acquired the necessary
198 burial excavation permit. If the discovery is made after
199 construction has been completed, then the sponsor will be
200 responsible for requesting and executing a burial excavation
201 permit, after notifying the consulting Tribes or other interested
202 parties.
203

204 b. Consultation meetings will be scheduled immediately following a
205 notification of the discovery.
206

207 c. Consultation with the SHPO, Tribes, and other interested parties may
208 result in a treatment plan that will be carried out as long as it is consistent
209 with governing laws and regulations and subject to the availability of funds.
210

211 d. Per Arkansas State law (Arkansas Act 753 of 1991) burial furniture or
212 artifacts found in apparent intentional association with human remains will
213 not be conveyed or repatriated without the landowner's permission. USACE
214 shall strongly encourage landowners to release any interest they hold in the
215 burial furniture or artifacts and allow them to stay with the human remains.
216 If however, the landowner requests return of any of the burial furniture or
217 artifacts, USACE will notify the SHPO, Tribes, and landowners once the
218 Federal interest in the burial furniture has ended. USACE will prepare a
219 Memorandum for Record documenting the transfer and will provide copies
220 to the SHPO, consulting tribes, Project Sponsors, and landowners within
221 thirty (30) days from the date of the transfer.
222

223
224