

**PROGRAMMATIC AGREEMENT
AMONG
THE US ARMY CORPS OF ENGINEERS, MEMPHIS
DISTRICT
THE NATURAL RESOURCES CONSERVATION SERVICE
THE ARKANSAS STATE HISTORIC PRESERVATION
OFFICER
QUAPAW TRIBE OF OKLAHOMA
CHEROKEE NATION OF OKLAHOMA
MISSISSIPPI BAND OF CHOCTAW INDIANS
CADDO NATION OF OKLAHOMA
OSAGE NATION OF OKLAHOMA
UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN
OKLAHOMA
THLOPTHLOCCO TRIBAL TOWN
ALABAMA-QUASSARTE TRIBAL TOWN
OTHER SIGNATORY AND CONCURRING TRIBES
BAYOU METO WATER MANAGEMENT DISTRICT
THE ARKANSAS NATURAL RESOURCES COMMISSION
AND THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION
REGARDING IMPLEMENTATION OF THE
BAYOU METO BASIN ARKANSAS PROJECT
PURSUANT TO THE NATIONAL HISTORIC PRESERVATION
ACT AND OTHER AUTHORITIES**

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AND OTHER AUTHORITIES**

WHEREAS the Bayou Meto Basin Arkansas Project (BMBAP) has been authorized by the Flood Control Act of 1950, Section 204, (authorized construction for Grand Prairie Region and Bayou Meto Basin, AR), de-authorized pursuant to section 1001(b) of the Water Resources Development Act of 1986 and reauthorized in 1996 by Section 363(a) of the Water Resources Development Act of 1966, Public Law 104-303; and

WHEREAS the purpose of the BMBAP is to provide for flood control, groundwater protection and conservation, agricultural water supply, and waterfowl management and restoration in Lonoke, Prairie, Pulaski, Jefferson, and Arkansas Counties in east-central Arkansas; project features include diversion of excess water from the Arkansas River with delivery through a system of new canals, existing streams, and pipelines to the water depleted areas, channel improvements, control structures, and a pumping station; and

WHEREAS, the U.S. Army Corps of Engineers, Memphis District (Memphis District) is the lead agency of the BMBAP with responsibility for the National Historic Preservation Act (NHPA) and Executive Order 13175 consultation activities for the project. Memphis District is responsible for funds management for the entire project. Additionally, Memphis District is responsible for the

planning, design and construction of the agriculture and waterfowl management features; and

WHEREAS, The Vicksburg District of the U.S. Army Corps of Engineers (Vicksburg District) is a partnering district with responsibility for the flood control feature; and

WHEREAS, the Natural Resource Conservation Service (NRCS) is the Memphis District's on-farm agent and responsible for the design and construction of the on-farm delivery and storage system; and

WHEREAS 36 CFR Section 800.16(d) defines the area of potential effect as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character of use of historic properties, if any such properties exist; and

WHEREAS, the BMBAP's area of potential effect (APE) will pertain to private lands and a portion of state lands extending over portions of Lonoke, Prairie, Jefferson, Arkansas, and Pulaski counties in Arkansas, with no involvement of Federal lands existing or planned for; and

WHEREAS, the Memphis District has determined that the BMBAP is an undertaking that 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 to Indian tribes including burials that may contain human remains and/or associated cultural items; and

WHEREAS, the Memphis District has invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation pursuant to 36 CFR Section 800.6(a)(1) and 800.14(b) of the regulations (36 CFR Section 800 et seq.) implementing Section 106 of the NHPA, and the ACHP has chosen to participate in development of this Programmatic Agreement (PA); and

WHEREAS, because the effects on historic properties may be similar and repetitive and those effects cannot be fully determined prior to approval of the undertaking, the Memphis District has developed this PA to establish a process that meet the unique needs of the consulting parties, per 36 CFR Section 800.14(b)(1); 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 the BMBAP; and

WHEREAS, pursuant to Section 800.2(c) of the regulations (36 CFR Section 800 et seq.) implementing Section 106 of the NHPA; the Memphis District has consulted with the ACHP, the Arkansas State Historic Preservation Officer (SHPO), the NRCS, the Bayou Meto Water Management District and the Arkansas Natural Resources Commission (collectively Project Sponsors) and consulting Indian tribes; and

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

WHEREAS, the Memphis District has provided tribes 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 the Memphis District has provided tribes listed in Attachment 2 additional opportunities to consult on the BMBAP; and

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

WHEREAS, the SHPO, NRCS, ACHP, Project Sponsors and signatory and concurring tribes have been invited to be signatories and/or concurring parties to this PA;

NOW, THEREFORE, Memphis District, Arkansas State Historic Preservation Officer, Natural Resources Conservation Service, Bayou Meto Water Management District, Arkansas Natural Resources Commission, signatory and concurring tribes, and the Advisory Council on Historic Preservation agree the project will be administered in accordance with the following stipulations to satisfy Section 106 responsibilities under NHPA for all aspects of the BMBAP undertaking.

STIPULATIONS

I. General

The Memphis District will ensure that the following stipulations are carried out.

(A) Professional Qualifications

The principal investigators for the Memphis District and NRCS activities must meet the Secretary of the Interior's Professional Qualification Standards for Archeology (48 F.R. 44739). All archeological fieldwork and report writing will follow the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation as amended (48 FR 44716) and, the guidelines in A State Plan for the Conservation of Archeological Resources in Arkansas.

(B) Fieldwork and Reporting Standards

The Memphis District will ensure that all archeological fieldwork and reporting, including that of the 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 the guidelines for archeological fieldwork and report writing in A State Plan for the Conservation of Archeological Resources in Arkansas.

(C) Other Written Documents

The Memphis District or NRCS will provide signatories and concurring parties to this PA with explicit documentation regarding plans to identify, evaluate, and otherwise address cultural resources and historic properties including clear definition of the APE. This information will be provided prior to the award of any construction contracts awarded after the execution of this PA.

(D) Timing of Written Communications

Unless otherwise noted or agreed to by the requesting party, parties have thirty (30) days from receipt to respond to an original written communication. Should the communication relate to a situation where historic properties are in imminent danger of adverse impacts, or a situation with potential for generating high interest among the PA's signatories and concurring parties and other project stakeholders, that originating party will supplement such written communications with other expedient communication efforts, such as a phone calls.

(E) Confidentiality

The PA's signatories and concurring parties agree to maintain the confidentiality of all archeological site locations and other information

pertaining to cultural resources and 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 cultural resources and historic properties and other pertinent information including, but not limited to, site treatment plans including the disposition or curation of cultural materials. Such information and documents may be provided on a need-to-know basis as separate attachments, etc. to ensure information protection pursuant to Section 304 of the NHPA as applicable.

II. Project Roles and Responsibilities

Designated Points of Contact

Within sixty (60) days of signing this PA, each signatories and concurring party will communicate, in writing, to the Memphis District to identify their respective designated contact for their organization.

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.

(A) Memphis District

As the lead Federal agency, Memphis District will ensure that stipulations of this PA are carried out by the NRCS and the Project Sponsors. All consultation with the SHPO will be done by the Memphis District.

Memphis District will monitor compliance by: 1) hosting regularly scheduled meetings for the Vicksburg District, the 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 to the Memphis District for all activities related to this PA for that fiscal year.

Memphis District will provide an annual report to the SHPO, consulting tribes, and ACHP regarding BMBAP activities, including activities required by this PA, taken by the Memphis and Vicksburg Districts, NRCS, and the Project Sponsors. The report shall be included in the Memphis District's Annual Report.

Memphis District will in good faith, and within its legal authority, ensure that BMBAP work follows appropriate provisions of Section 106 that address the identification and evaluation of historic properties (36 CFR Section 800 et seq.), 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. The Memphis District will follow the consultation procedures set forth in 36 CFR Section 800.4 through 800.7. Where the terms of this PA conflict with the provisions of 36 CFR Section 800.4 through 800.7, 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, the terms of this PA will prevail.

(B) Natural Resource Conservation Service

The NRCS will be the Memphis District's on-farm agent for design and construction and will be responsible for construction of all on-farm delivery and storage systems.

NRCS will comply with the stipulations of this agreement in the same manner and to the same extent as the lead federal agency.

(C) Project Sponsors

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

(D) State Historic Preservation Officer

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

The SHPO's designated contact will be invited to attend PA-related consultation meetings concerning the BMBAP and this PA.

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

(E) Federally Recognized Consulting Tribes

The elected tribal leaders, or their duly authorized representatives, will sign this PA on behalf of their Tribe.

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 signatories and concurring parties to this PA.

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 the mitigation measures in a Memoranda of Agreement (MOA) discussed in Section VII .

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

During the period of BMBAP planning and construction the tribes will submit any requests for rights of entry to view impacted historic properties to the Memphis District. After Memphis District involvement ends, the tribes will coordinate any requests for rights of entry with the local Project Sponsors.

(F) Advisory Council on Historic Preservation

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

The ACHP will participate in conflict resolution assistance among parties of this PA should disputes arise in the PA's implementation.

III. Initiation of Cultural Resources and Historic Properties Consultation

The Memphis District or its agent will carry out the identification of cultural resources, including standing structures for the water delivery systems, flood damage reduction, on-farm portions, and mitigation features of this project.

(A) Historic Context Development

The Memphis District will develop a historic context and overview to provide a baseline of information about the historic and prehistoric past of the Bayou Meto Basin study area, and to assist with the NRHP evaluation of historic properties. Development of the overview will include consultation with tribes and historic preservation professionals to determine what topics and issues are significant in the prehistory and history of the BMBAP project area.

(B) Initial APE Review

Following the definition of the Area of Potential Effect (APE) for the BMBAP in Attachment 3, the APE will be delineated by the Memphis District or its agent in consultation with the Memphis District to include all areas that foreseeably may be affected by the construction of the BMBAP, including archeological sites, historic buildings, structures, and cultural landscapes.

Plans for water supply BMBAP components, both on-farm and delivery system components, 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. 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 signatories and concurring parties to this PA for review and comment. Communications to consulting parties will be in the format preferred by each party (e.g. U.S. mail, electronic mail, facsimile). The parties will have thirty (30) calendar days from the date of receipt to provide comments. Comments will be accepted in writing via facsimile, electronic mail, or postal carrier as well as by telephone.

The initial APE review conducted by the Memphis District or its agent will include a thorough pre-field investigation and archival records search. This will include, at a minimum, the NRHP, the standing structure files at the Arkansas Historic Preservation Program (AHPP), and the archeological site files at the Arkansas Archeological Survey (AAS). This pre-field investigation and archival records search will comprise the Phase I overview.

(C) Identification of Cultural Resources and Historic Properties

Following the thirty (30) day review period, the Memphis District or its agent in consultation with the Memphis District will assimilate all of the review comments on the Phase I overview. Background research and an on the ground cultural resources and historic properties inventory will then be performed for each project area using the received comments and the historic context as a guide. Identification efforts will determine the presence or absence of cultural resources and historic properties in the project APE. All identified properties will be treated as eligible for inclusion on the National Register in the absence of formal NRHP evaluation.

As part of the inventory, the Memphis District or its agent will interview landowners concerning their knowledge of the history of their land and the presence of historic cultural material.

A report of all findings, both positive and negative, will be submitted to the SHPO and consulting parties to this PA for a review period not to exceed thirty (30) calendar days from the date of receipt . All fieldwork and reports will meet the standards described in stipulation I (B) above.

Following Arkansas state law, all artifacts collected from privately owned property during the on-the-ground cultural resources inventory, excluding human skeletal burial remains and funerary objects, are the

property of the landowner. If the landowner so requests, these artifacts 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. The Memphis District or its agent will inform landowners about stewardship, site protection, and preservation and will strongly encourage landowners to donate collections to a state-approved curation facility. The Memphis District or its agent will notify the SHPO and federally recognized consulting Tribes of the return of the collections. All field notes, drawings, photographs, negatives, color slides, reports, and other records must be curated at a State approved curation facility in Arkansas.

(D) Avoiding Cultural Resources and Historic Properties for off-farm Project components

Should cultural resources or historic properties be identified on land associated with off-farm Project components, the Memphis District or its agent in consultation with the Memphis District will confer with the design engineer on ways to avoid impacts to all cultural resources and historic properties. Impacts to all cultural resources and historic properties may be avoided and a no adverse effect finding may be made 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 the Memphis District elects to alter the project and avoid the historic property, it will consult with the SHPO and tribes on this decision and application of this site protection measure.

If avoidance is not possible, and if the cultural resource or historic property is not already listed or determined to be eligible for inclusion in the NRHP, the cultural resource will be evaluated for its eligibility for inclusion in the NRHP in accordance with Section IV below.

(E) Avoiding Cultural Resources and Historic Properties for on-farm Project components.

Should cultural resources or historic properties be identified on a site associated with on-farm work, the Memphis District or its agent in consultation with the Memphis District will select a new location for work that does not impact cultural resources or historic properties. If a new location on the same farm is selected, additional cultural resources and historic properties inventories will be conducted to identify the presence of other cultural resources or historic properties. This process will be repeated until a location is found that has no cultural resources within the area of potential effect. If no acceptable location for the proposed feature can be found, the Memphis District or its agent in

consultation with the Memphis District will terminate this farm from the overall project and not provide any further technical or financial support.

IV. Assessment of Effects, and Resolution of Adverse Effects to Historic Properties.

(A) Upon the determination that an eligible historic property cannot be avoided, the Memphis District and its agent will follow the procedures in 36 CFR 800.5 through 800.7 for the, assessment of effects, and resolution of adverse effects to historic properties. Where the terms of this PA conflict with the provisions of 36 CFR Sections 800.5 through 800.7, the terms of this PA will prevail.

(B) The Memphis District will ask consulting tribes to determine and inform the Memphis District how they would like to participate in consultation and resolution when historic properties of interest to them may be adversely affected.

The Memphis District or its agent in consultation with the Memphis District will provide the consulting tribes and SHPO with an opportunity to review and comment on the scopes of work, research designs, or mitigation plans associated with project survey, archeological data recovery or other mitigation of effects on historic properties. Should consulting tribes be “on site” and determine for any reason that work should be conducted in a different manner or location, they must present their concerns to the District Archeologist, and the contractor’s Principal Investigator or crew chief. In no case will the tribal representatives direct the field crew to work in a specific location or in a specific manner (such actions could cause unauthorized, illegal, contract modifications).

V. Operations & Maintenance Activities.

The Memphis District, in consultation and cooperation with the Vicksburg District, NRCS and the Project Sponsors will produce and provide to the Project Sponsors an Operations & Maintenance (O&M) Manual. The O&M Manual will specify how the Project Sponsors will be required to protect historic properties identified during implementation of this project. All signatories will have an opportunity to provide comments to this manual during its drafting and prior to its finalization.

The O&M Manual will be finalized by the Memphis District prior to the BMBAP cost accounting close out and transferal to the Sponsor.

VI. CONSULTATION

(A) Consultation among all signatories and concurring parties to this PA will continue throughout this PA's implementation. Consultation is a mutual dialog among all parties regarding the process of compliance and the historic properties that may be affected by the BMBAP.

(B) The Memphis District will consult with the signatories and concurring tribes on a government-to-government basis in recognition of their sovereign status throughout any activity or undertaking of the BMBAP that might affect historic properties including American Indian Cultural Sites.

(C) Consultations among all points of contact representing this PA's signatories and concurring parties may 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.

(D) 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.

(E) 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 signatories and concurring parties and other BMBAP stakeholders, that originating party will supplement such written communications with telephone and other expedient communication efforts.

VII. Unanticipated Discoveries

The Memphis District and its agent in consultation with the Memphis District will attempt to design construction plans for both on-farm and off-farm Project components to avoid known cultural resources and historic properties.

(A) Should the Memphis District or its agent, encounter a previously unknown cultural resource or historic property within the APE, work will be stopped in the area of discovery and the District Archeologist or

its agent will be notified immediately. Once the District Archeologist or the Memphis District's agent (a professional archeologist) delimits a ninety (90) meter buffer around the site construction may proceed outside the buffer. Unevaluated cultural resources will be treated as if they are eligible historic properties until eligibility is determined. During on-farm construction, the Memphis District or its agent will have inspectors (professional archeologist) present who are trained to identify cultural resources.

(B) For off-farm work, the Memphis District Archaeologist or the Memphis District's agent will investigate the discovery to determine if the cultural resource or historic property can be avoided through modifications to the construction plans. If a newly discovered cultural resource cannot be avoided, an eligibility determination will be made in consultation with the SHPO. In the event the project will have an adverse effect on a historic property, the District Archaeologist and the Memphis District's agent will consult with the SHPO, the ACHP, the project sponsors, and interested tribes to develop measures to resolve adverse effects on the historic property through minimization or mitigation.

(C) For on-farm work, the Memphis District Archaeologist or the Memphis District's agent will investigate the discovery to determine if the cultural resources or historic property can be avoided through modifications to the construction plans. At their discretion, if a site cannot be avoided, the Memphis District or its agent in consultation with the Memphis District will terminate on farm assistance to an applicant.

VIII. Treatment of Cemeteries, Human Skeletal Remains, and Funerary Objects

(A) Introduction

(1) The Memphis District recognizes that the respectful treatment of human remains and funerary objects is a paramount concern.

(2) The purpose for these procedures is to ensure the respectful treatment of human remains and funerary objects and to ensure that views of living descendants, including tribes, and other interested parties are fully considered in the decision-making process.

(3) The following procedures provide a plan for the treatment of marked and unmarked cemeteries, human skeletal burial remains, and associated and unassociated funerary objects that may be encountered when conducting cultural properties investigations or in the event of an inadvertent discovery of human remains and/or funerary objects as a result of activities associated with the planning, construction, and operation/maintenance of the BMBAP

These procedures are intended to be consistent with all applicable federal and state authorities including but not limited to Section 106 of the NHPA and NHPA Implementing Regulations 36 CFR Section 800 et seq.; and to comply with the spirit of ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects published February 23, 2007, U.S. Army Corps of Engineers (USACE) Engineer Regulation 1105-2-100 for conducting historic properties investigations for Civil Works projects; Executive Order 13007 and USACE Policy Guidance Letter 57; and Arkansas burial law (Act 753 of 1991 as amended).

(B) The following procedures for discoveries encountered during cultural resources investigations will be followed when human skeletal burial remains are encountered, even if such remains are in fragmentary form.

(1) Should the Memphis District or its agents encounter an unmarked burial, human skeletal remains, and/or funerary objects during the course of conducting cultural resources investigations, all work within the immediate area of the discovery will cease. Under no circumstances will the Memphis District or its agents knowingly collect human skeletal material from the field without securing a burial excavation permit from the Arkansas Historic Preservation Program (AHPP).

(2) Notification of a discovery during cultural resource investigations will be handled in the following manner:

(i) The cultural resource investigator will immediately notify the Memphis District Archeologist/COR that an unmarked burial, human skeletal remains and/or a funerary object(s) has been encountered.

(ii) The Memphis District Archaeologist/COR, or other Memphis District official so designated by the District Commander, or the Memphis District's agents will notify law enforcement and the Coroner under whose jurisdiction the remains were encountered to establish whether the remains are related to any crime scene.

(iii) The Memphis District Archaeologist will ask these officials to destroy any photographs taken in the course of their investigations if they determine the remains are unrelated to a crime and they can be clearly identified as Native American.

(iv) The results of the coroner and law enforcement findings are to be included along with general location information, the likely priority of custody, other details or written descriptions of the remains, along with a proposed time or place for other meetings in the notification to the SHPO, tribes, and any identified living descendants.

(v) The Memphis District will provide this information to the Tribes and SHPO even if the Memphis District does not plan to seek a burial excavation permit from the AHPP.

(vi) If requested by any party, electronic mail correspondence with a return notice of receipt will be considered an acceptable form of written notification to that party.

(3) The Memphis District, its agents, or the Project Sponsors will notify the landowner on whose property any unmarked burials, human skeletal remains and/or associated funerary objects are encountered.

(4) Any human skeletal remains and/or associated funerary objects identified during laboratory cleaning, cataloging, or analysis will be exempt from procedures and requirements found in VIII(B), except for the requirement that Tribes and the SHPO be notified.

(C) The following procedures for discoveries encountered during construction or maintenance will be followed when human skeletal burial remains are encountered, even if such remains are in fragmentary form.

(1) Procedures following an inadvertent discovery of human skeletal burial remains and/or associated funerary objects will, conform to the procedures described above, with the following additional provisions:

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

(ii) Within seventy-two (72) hours of notifying both law enforcement and the Coroner's office's of an inadvertent discovery, the Tribal liaison or other designated Memphis District official will provide verbal notification followed by a written notification by certified mail to the Tribes and the SHPO that an inadvertent discovery of human remains or associated funerary objects has been made.

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

(iv) Other than a crime scene, no excavation, examination, or analysis of human remains will be conducted without first securing a burial excavation permit from the AHPP.

(v) The Memphis District or its agents, in consultation with the SHPO, tribes, and other interested parties such as living descendants, may consult with a qualified physical anthropologist, forensic scientist, or other experts as may be needed to examine and assess the inadvertent discovery. Unless the remains were inadvertently removed, the evaluation will be conducted at the site of discovery if possible. The consulting expert will be allowed to draw and measure the exposed remains, analyze associated funerary objects, remove soil samples from the interior of the grave excavation and take photographs. Photographs, drawings, and other records will be curated at a state approved curation facility in Arkansas. Photographs and drawings cannot be published in any form or shown as part of scholarly presentations without the written permission of the culturally affiliated tribe, or nearest living descendent.

(vi) Upon discovery, the human remains and/or associated funerary objects will be protected from further damage, destruction, or disturbance. Appropriate and reasonable measures to protect and secure the remains, including covering, reburying, posting of security guards, fencing, or combinations of these and other techniques, may be applied as determined from consultation with the SHPO and consulting tribes.

(vii) A report of findings describing the background history leading to and immediately following the reporting of the inadvertent discovery will be prepared for each inadvertent or late discovery. This report must meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (49 F.R. 44716) and the guidelines for fieldwork and reporting in A State Plan for the Conservation of Archeological Resources in Arkansas.

(viii) In the event human remains cannot be preserved and protected in place, a Memorandum of Agreement (MOA) and an archeological data recovery plan (DRP) will be developed by the signatory and concurring parties to this PA to agree to a process to mitigate the adverse effect on the human remains. The DRP must meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (49 F.R. 44716) and the guidelines for fieldwork and reporting in A State Plan for the Conservation of Archeological Resources in Arkansas. Additionally, a burial excavation permit as per the guidelines developed for the Arkansas burial law (Act 753 of 1991 as amended) must be secured from the AHPP. The MOA will be carried out subject to the availability of funds for the authorized project. Nothing in this MOA shall be interpreted as mandating and/or constituting a violation of the Anti-Deficiency Act.

(ix) Consultation meetings may be scheduled immediately following a notification of the discovery. Travel support for consulting needs will be

contingent upon BMBAP specific funding being 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.

(x) The Project Sponsors will seek a commitment from each landowner associated with the BMBAP that the landowner will allow the Memphis District to rebury, relocate, or repatriate all human skeletal remains and associated or unassociated funerary objects encountered in the APE during preconstruction and construction activities funded by NRCS, USACE, or the Project Sponsors. For on-farm construction, this reburial, relocation, and repatriation commitment will be memorialized in an agreement between the Bayou Meto Basin Water Management District and the landowner.

(xi) The Project Sponsors agree to allow the Memphis District to rebury, relocate, or repatriate any funerary objects encountered during BMBAP preconstruction and construction activities on land they own in fee.

IX. Annual Meetings

(A) The Memphis District will organize and facilitate an annual meeting of the signatories and concurring parties to review progress of project completion, compliance with pertinent laws and regulations, and to discuss needed changes or amendments.

(B) Travel support for signatories and concurring parties (SHPO, ACHP, Tribal representatives, etc.) for annual meetings will be contingent on BMBAP- specific funding being 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.

X. Dispute Resolution and PA Amendment

(A) 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 Memphis District point of contact. The Memphis District will consult with the objecting parties to resolve the concern. If the Memphis District 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 the Memphis District with recommendations that the Memphis District will take into account in reaching a final decision regarding the dispute.

If the objecting signatories or the Memphis District point of contact determine that the above thirty (30) day period of communication interchange 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.

(B) 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 Section X(A) above.

(C) 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 the Memphis District will forward all documentation relevant to the dispute to the ACHP. The ACHP will provide the Memphis District with recommendations, that the Memphis District 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.

XI. Termination

(A) Any signatory to this PA may terminate it by providing thirty (30) calendar days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendment or other actions that would avoid termination. In the event of termination, the Memphis District will comply with 36 CFR 800.4 through 800.7 with regard to the undertaking covered by the PA.

(B) Once the PA is terminated, as the lead federal agency, the Memphis District must either (a) execute a new PA pursuant to 36 CFR 800.14(b), or (b) follow the standard Section 106 consultation process pursuant to 36 CFR 800.3 through 800.7. The Memphis District shall notify the signatories as to the course of action it will pursue.

XII. Additional Provisions

(A) 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.

(B) If provisions of this PA are later determined to be inconsistent with existing laws or regulations, those provisions will be amended per the procedures outlined in Section X. In the interim, portions of the PA not related to those provisions will remain in effect.

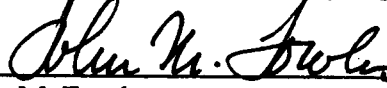
(C) Nothing in this PA prohibits or reduces any signatory's rights to full lawful remedy or recourse for failure to comply with any and all items agreed to herein.

(D) Execution and implementation of the terms of this PA evidences that the Memphis District and NRCS have taken into account the effects of their undertakings on historic properties and afforded the Advisory Council on Historic Preservation a reasonable opportunity to comment.


IN WITNESS WHEREOF, the signatories hereto have executed this Programmatic Agreement, which will become effective upon 1/13/09 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 signatories and concurring parties.

SIGNATORIES

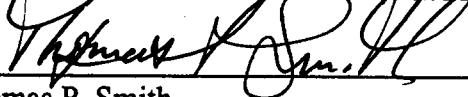
ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 12/30/08
John M. Fowler
EXECUTIVE DIRECTOR

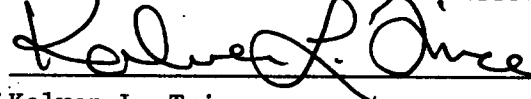
ARKANSAS STATE HISTORIC PRESERVATION OFFICER

By:  Date: 1/13/09
Cathie Matthews
Arkansas State Historic Preservation Officer


U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT

By:  Date: 1/13/09
Thomas P. Smith
COLONEL, DISTRICT COMMANDER


NATURAL RESOURCES CONSERVATION SERVICE

By:  Date: 1/13/09
Title: Kalven L. Trice
STATE CONSERVATIONIST

BAYOU METO WATER MANAGEMENT DISTRICT

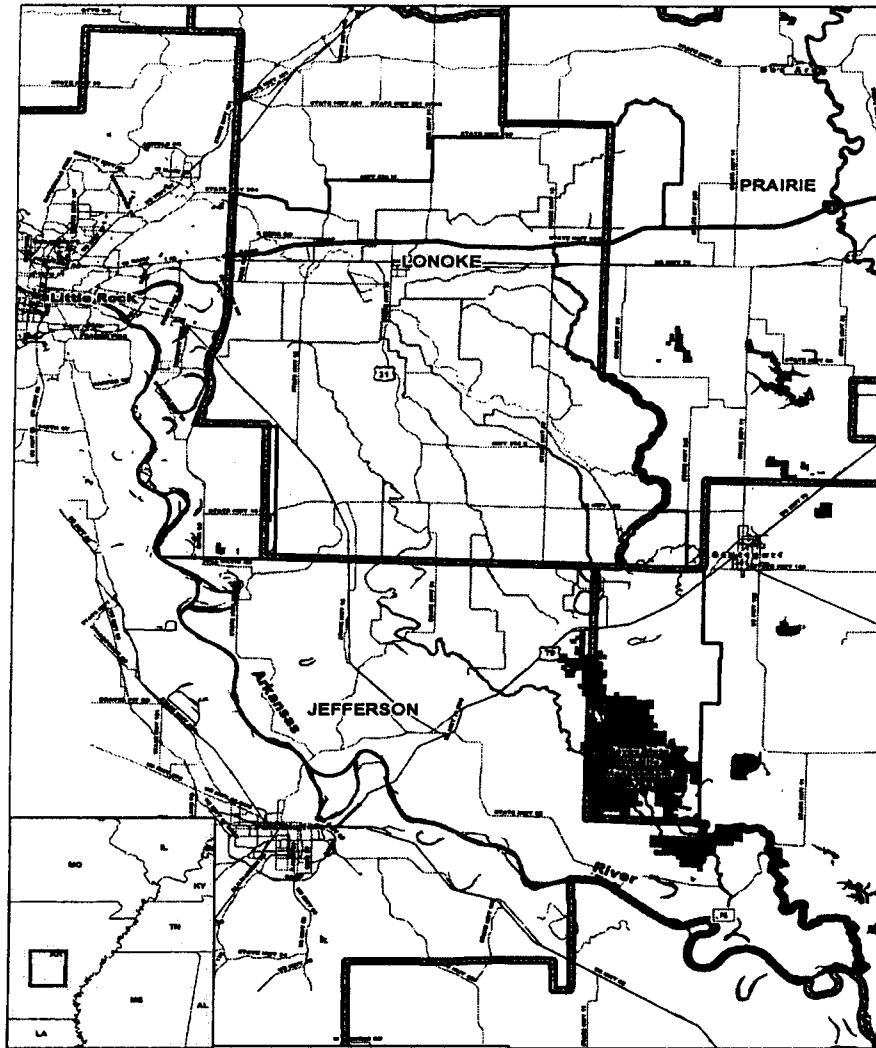
By:  Date: 1/13/09
Title: Gary Canada
PRESIDENT

ARKANSAS NATURAL RESOURCES COMMISSION







By:  Date: 1/13/09
Title: J. Randy Young
EXECUTIVE DIRECTOR

ATTACHMENT 1

PROJECT MAP




US Army Corps
of Engineers
Memphis District

-  Bayou Meto Study Area
-  Bayou Meto Wildlife Management Area
-  Pump Stations
-  Flood Control Drainage
-  counties
-  Bayou Meto Regional Irrigation Delivery System

**Bayou Meto Basin, AR
Study Area**

ATTACHMENT 2

INDIAN TRIBES CONSULTED

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

ATTACHMENT 3 DEFINITIONS

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

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

Area of Potential Effect (APE) – As defined in 36 CFR Section 800.16(d) means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character of use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Associated Funerary Object- Objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later or other items exclusively made for burial purposes or to contain human remains.

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.

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

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

Cultural Affiliation – absent any undisputed evidence for any lineal relationship, the term denotes a demonstrated relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day group of people and an identifiable earlier group. Cultural affiliation is established when the preponderance of evidence (geographical, kinship, biological, archaeological, linguistic, folklore, oral

tradition, historical evidence, or other information or expert opinion) leads to such a conclusion.

Culturally Affiliated Tribe- means that federally-recognized tribe that attaches religious and cultural significance to historic properties within all or part of the MVM and has an interest in participating in the NHPA Section 106 process and consulting on matters of interest.

Cultural Resource- means prehistoric or historic archeological sites and historic and architectural properties. Cultural Resources may be eligible for inclusion in the National Register of Historic Places.

Historic Properties – means “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe that meet the National Register criteria.” 36 CFR Section 60.4(a-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.

Unassociated Funerary Objects- items exclusively made for burial purposes or to contain human remains.

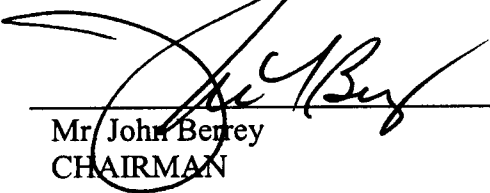
Undertaking – The term is defined in 36 CFR Section 800.16(y) as “a project, activity, or programs funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by on behalf of a Federal agency; those requiring a Federal permit, license, or approval, and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.” For this Programmatic Agreement the term denotes the Grand Prairie Demonstration Area Project.

ATTACHMENT 4 ACRONYMS

USACE—United States Army Corps of Engineers
BMBAP—Bayou Meto Basin Arkansas Project
NRCS—Natural Resource Conservation Service
APE—Area of Potential Effect
PA—Programmatic Agreement
NHPA—National Historic Preservation Act
MOU—Memorandum of Understanding
SHPO—State Historic Preservation Officer
ACHP—Advisory ACHP on Historic Preservation
O&M—Operations and Maintenance
BMWMD—Bayou Meto Water Management District
ANRC—Arkansas Natural Resources Commission
GRR—General Reevaluation Report
EIS—Environmental Impact Statement
CRS—Cultural Resources Specialist
NRHP—National Register of Historic Places
MOA—Memorandum of Agreement

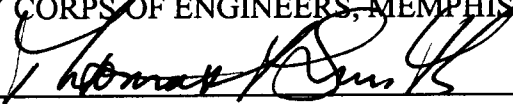
SIGNATORIES

QUAPAW TRIBE OF OKLAHOMA

By:  _____
Mr. John Berrey
CHAIRMAN

Date: 1/13/09

U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT

By:  _____
Thomas P. Smith
COLONEL, DISTRICT COMMANDER

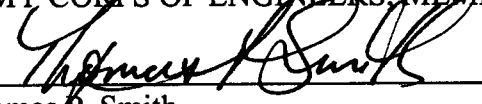
Date: 1/13/09

SIGNATORIES

CADDO NATION OF OKLAHOMA

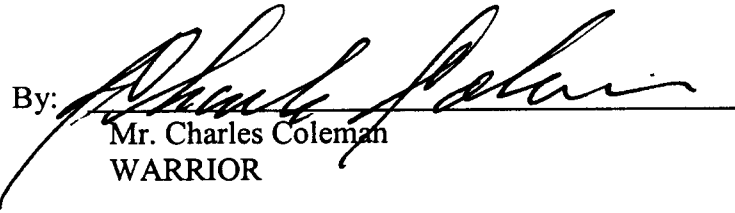
By:  Date: 1-13-09
Ms. La Rue Martin Parker
CHAIRPERSON

U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT

By:  Date: 1.13.09
Thomas P. Smith
COLONEL, DISTRICT COMMANDER

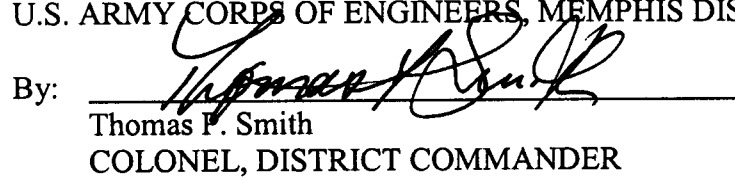
SIGNATORIES

THLOPTHLOCCO TRIBAL TOWN

By: 
Mr. Charles Coleman
WARRIOR

Date: 1-13-09

U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT

By: 
Thomas F. Smith
COLONEL, DISTRICT COMMANDER

Date: 1-13-09