

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT,
THE CITY OF TEXARKANA, TEXAS,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER, AND
THE CADDO NATION OF OKLAHOMA
REGARDING
THE WRIGHT PATMAN ULTIMATE RULE CURVE PROJECT**

WHEREAS, the Wright Patman Lake (formerly known as Texarkana Reservoir) was constructed pursuant to the Flood Control Act of July 24, 1946 (Public Law 526, 79th Congress, 2nd Session); and

WHEREAS, Contract DACW29-68-A-0103 among the United States of America and the City of Texarkana, Texas for Municipal and Industrial Water Supply Storage Space in Texarkana Reservoir was approved by the Secretary of the Army on 11 July 1968 and was executed on 16 April 1968 (hereinafter the "Contract"), for the permanent reallocation of flood control storage to municipal and industrial water supply use under the Water Supply Act of 1958, as amended (43 U.S.C. 390b); and

WHEREAS, implementation of the Contract (hereinafter the Undertaking) is contingent on deliberate impoundment of Jim Chapman Lake and mitigation of any environmental and cultural impacts that may be necessary for implementation of the Project; and

WHEREAS, construction of Jim Chapman Lake (formally known as Cooper Reservoir) on the South Sulphur River, Texas was authorized by the Act approved 3 September 1954 (Public Law 180, 83d Congress, 2d Session), as amended by the Act approved 3 August 1955 (Public Law 218, 84th Congress, 151 Session) and deliberate impoundment of Jim Chapman Lake began in September 1991; and

WHEREAS, implementation of the Contract is a federal undertaking (henceforth referred to as the "Undertaking") subject to Section 106 of the National Historic Preservation Act; and

WHEREAS, the Contract defines the Operating Rule Curve for the End State Agreement, also referred to as the Ultimate Rule Curve (URC), as a maximum lake surface elevation of 228.64' above mean sea level (amsl) and a minimum lake surface elevation of 224.89' amsl, as well as storage for water supply designated within a minimum elevation of 220' amsl and a maximum elevation of 228.64' amsl; and

WHEREAS, the Undertaking shall not alter the design of the reservoir, the maximum flood capacity, nor the defined conservation pool of Wright Patman Lake; and

WHEREAS, the Undertaking's overall area of potential effect (APE) subject to Section 106 of the NHPA is described as the elevation of land surrounding Wright Patman Lake between 227.5' amsl and 233' amsl, as shown in the figure provided in Appendix A, that shall be impacted by the rise and fall of lake surface levels through manual controls and human action to include the withdrawal of water from the lake for municipal and industrial water supply, comprising a total of 10,066 acres; and

WHEREAS, due to the complex nature of the undertaking, a programmatic agreement governing the identification and evaluation of historic properties in the APE, as well as resolution of adverse effects from the undertaking is necessary; and

WHEREAS, the USACE has consulted with the Texas State Historic Preservation Office (SHPO) on this PA pursuant to 36 CFR § 800.14, and the SHPO has elected to sign this PA as a Signatory; and

WHEREAS, the USACE has invited the City of Texarkana, the Non-Federal Sponsor (NFS) for the Undertaking, who, under the Contract, is responsible for water withdrawal from Wright Patman Lake for municipal and industrial water supply, to be an Invited Signatory to the Agreement; and

WHEREAS, the USACE, pursuant to Section 101 (d)(6)(B) of NHPA and Executive Order 13175: *Consultation and Coordination with American Indian Tribal Governments*, invited Federally Recognized Tribes (hereafter “Tribes”), including the Caddo Nation of Oklahoma, Choctaw Nation of Oklahoma, Tonkawa Tribe of Indians of Oklahoma, Alabama-Coushatta Tribe of Texas, Coushatta Tribe of Louisiana, Delaware Nation, and the Muscogee (Creek) Nation, to consult on the Undertaking and to participate in the development of this PA via letters submitted in March 2022; and

WHEREAS, the USACE invited the Cass County Historic Commission, Dr. Tim Perttula, and Preservation Texas to participate in the development of this PA in letters submitted in October, 2022 and February 2023; and

WHEREAS, the Caddo Nation of Oklahoma has elected to sign this PA as an Invited Signatory; and

WHEREAS, the Choctaw Nation of Oklahoma, Preservation Texas, and Dr. Tim Perttula have elected to sign this PA as Concurring Parties; and

WHEREAS, the Advisory Council on Historic Preservation (ACHP) has been notified and has chosen not to participate in this Agreement; and

WHEREAS, public involvement in accordance with 36 CFR § 800.13 (c) has been provided by published public notices and a draft of this PA was available on the district’s website for review and comment from May 23, 2023 to June 23, 2023; and

WHEREAS, previous investigations of portions of the APE have identified archeological sites eligible for inclusion on the National Register of Historic Places (herein “NRHP”) and sites that are sacred to the Caddo Nation of Oklahoma, and it is anticipated that additional sites eligible for the NRHP and/or sacred to the Caddo Nation of Oklahoma shall be identified during investigations; and

WHEREAS, the USACE, SHPO, Caddo Nation of Oklahoma, and Choctaw Nation of Oklahoma have determined that the Undertaking has potential to cause adverse effects to historic properties within the APE; and

NOW THEREFORE, the USACE, the SHPO, the City of Texarkana, and the Caddo Nation agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the Undertaking on historic properties.

Stipulations

The USACE shall ensure that the following measures are carried out:

I. Framework

- A. **Qualifications and Standards.** The USACE shall ensure that all work conducted in conjunction with this PA is performed in a manner consistent with the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716-44740; September 23, 1983), as amended, and the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (36 CFR 68), and by Secretary of the Interior-qualified professionals. Archeological investigations and reporting shall adhere to the standards and guidelines established by the Council of Texas Archeologists (CTA) and the Texas Historical Commission (THC).
- B. **Definitions.** The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this PA.

II. Identification, Evaluation, Effect Determination, and Resolution of Effects to Historic Properties

- A. **Identification of Historic Properties.** The USACE shall ensure that the following steps are taken to identify historic properties within the APE:
 - (1) **Investigative Requirements for Archeological Resources.**
 - (i) **Research Design.** The USACE shall ensure development of a research design (RD) to guide the cultural resources investigations that shall be conducted within the APE. This RD shall provide background information and cultural context to support a survey methodology appropriate for the APE, and to provide a framework for the evaluation of identified archeological sites for NRHP eligibility. The RD shall summarize and synthesize current knowledge about the prehistory and history of the project area using existing records and other available sources on historic properties, including but not limited to:
 - 1. An overview of the landscape, environmental setting, and cultural context of Wright Patman Lake; a summary with references to records of previous archeological studies conducted within the APE; a summary with references of all known previously recorded archeological sites within and adjacent to the APE, to include site characteristics such as temporal assignment (if available), vertical and horizontal extent of cultural deposits, description of previous investigations at the site, and any previously made NRHP eligibility recommendations and determinations; and a summary of any identified Traditional Cultural

Places (TCPs) or Traditional Cultural Landscapes within or adjacent to the APE.

2. In consultation with the SHPO, Caddo Nation of Oklahoma and the Choctaw Nation of Oklahoma, the USACE has determined that the Native American archaeological sites located within the APE constitute a Traditional Cultural Landscape, which is eligible as an archaeological district and shall be henceforth referred to as the Sulphur River Prehistoric Archaeological District. Included in the results of the archaeological investigation, USACE shall define the nature and extent of the historic district, including contributing elements that are identified as a part of this effort.
 3. The USACE recognizes that the Epperson's Ferry site was once a critical transportation route for Euroamerican settlers. The USACE shall conduct a thorough NRHP eligibility evaluation of the Epperson's Ferry site and shall ensure that the public has an opportunity to review and comment on the survey results.
 4. Detailed maps of the APE displaying the APE boundaries, previous investigations within the APE, site centroids and site boundaries of previously recorded archeological sites within and adjacent to the APE, and any known cemeteries, historical markers, trails, and other indicators of potential cultural sites in the APE.
 5. A detailed survey strategy that conforms to Stipulation I.A. above and outlines the procedures for identification and recording of newly and previously recorded archeological resources. The strategy shall include submission of site and site revisit forms to the Texas Archeological Research Laboratory; describe how artifacts shall be documented and analyzed; describe the records and/or materials to be curated; and identify key project personnel involved in the supervision of field crews and analysis of major artifact groups. The methods shall include, but not be limited to, pedestrian survey conducted at appropriate intervals, excavation of shovel tests at appropriate intervals, and screening of excavated material.
 6. The RD shall be submitted to all Signatories for review in accordance with Stipulation IV.B.
- (ii) Phase I Survey. The USACE shall conduct a Phase I intensive cultural resources survey of the APE located between 227.5' amsl to 233' amsl, which equates to approximately 10,066 acres. Investigations shall include revisits of previously recorded sites of undetermined eligibility. The survey methodology shall be conducted per the approved RD and conform to the standards in Stipulation I.A.
- (iii) Phase I Survey Draft Report. The USACE shall ensure development of a draft report of the survey results, in accordance with Stipulation I.A., to

include eligibility recommendations and any recommendations for additional investigations. The draft report shall be submitted to all consulting parties for review and comment in accordance with Stipulation IV.B.

(iv) Phase II Testing Research Design. The USACE may conduct limited Phase II testing for sites where Phase I intensive survey identified potentially significant deposits warranting additional investigation in order to confirm NRHP eligibility and determine adequate mitigation for anticipated adverse effects to those resources determined eligible for the NRHP. The sites to undergo Phase II testing shall be determined through consultation with parties to the PA. The Testing Research Design shall include at a minimum:

1. Criteria for assessing eligibility to the NRHP.
2. Testing methodology that may include, but not be limited to, additional archival research, remote sensing, and hand excavated test units, in addition to laboratory analysis.
3. Specific research themes and data requirements that the site may contribute for it to be considered eligible for the NRHP. Individual work plans for each site must be specified that shall directly lead to testing whether these data requirements are available at each site.

(v) Phase II Testing Draft Report. The USACE shall ensure development of a draft report of the testing results, to include eligibility recommendations. The draft report shall be submitted to all consulting parties for a review and comment in accordance with Stipulation IV.B.

(2) The USACE has determined that the Undertaking does not have the potential to affect above-ground historic properties. As such, the USACE shall not conduct any surveys for the identification of above-ground historic properties.

B. Evaluation of National Register Eligibility. The USACE shall determine the NRHP eligibility of cultural resources identified within the APE, in accordance with the process described in 36 CFR § 800.4 (c) and criteria established in 36 CFR § 60 and National Register Bulletin 15 “How to Apply the National Register Criteria for Evaluation” (NPS 1990). The USACE shall include these determinations in letters to accompany any survey or testing reports, which shall be provided to all consulting parties for a thirty (30) day review upon receipt.

(i) If the Signatories cannot concur regarding whether a cultural resource is eligible for the NRHP, then 36 CFR § 800.4(c)(2) shall apply.

C. Assessment of Effects. Effects to all historic properties shall be assessed in accordance with 36 CFR § 800.5. After all cultural resources investigations have concluded, a comprehensive list of historic properties that shall be affected shall be provided to all consulting parties. Signatories and consulting parties shall have thirty (30) days upon receipt to review and concur. If the consulting parties do not concur, then Stipulation V.B. of this PA shall apply.

- D. Public Involvement. The USACE shall conduct public scoping meetings in accordance with National Environmental Policy Act (NEPA) to include public notices and invitation to comment on the draft EA, which shall include a copy of this PA. Additionally, the USACE shall conduct a public scoping meeting regarding the anticipated effects to historic properties following Signatory concurrence on the list in Stipulation I.C. to include public notices and invitation to comment on any mitigation proposals regarding adverse effects to historic properties.
- E. Resolution of Adverse Effect. The USACE shall notify the SHPO and consulting parties identifying the historic properties affected and the corresponding mitigation measure that shall apply as stipulated below. Consulting parties shall have thirty (30) days upon receipt to comment and propose any alternative mitigation measures. The USACE shall conduct a public meeting and provide the public a thirty (30) day review period as well. If no response is received from the Signatories and Invited Signatories, the USACE shall assume concurrence and ensure the following stipulations are met:
- (1) The USACE shall develop a cultural resources monitoring plan in consultation with the SHPO, the United States Attorney's Office for the Eastern District of Texas, and appropriate law enforcement agencies within one (1) year of completion of the Phase I investigation. Historic properties to be monitored shall be determined in consultation with the Signatories and Invited Signatories to this PA. The monitoring plan will include but is not limited to the installation of video cameras and still photography game cameras to monitor significant site disturbance combined with periodic archaeological site visits. Three (3) years after the implementation of the URC, the study of the cameras in conjunction with the onsite field visit shall result in a report with recommendations for additional future monitoring, which shall be considered for incorporation into Wright Patman Lake's Integrated Cultural Resources Management Plan. Signatories shall have thirty (30) days upon receipt to review and comment on the future monitoring plan prior to any implementation.
 - (2) For archaeological sites that contribute to the eligibility of the Sulphur River Archaeological District and that the parties to the PA concur will be adversely affected, the USACE shall:
 - i. Develop a custom site protection design for sites within the APE, consistent with specific preservation objectives and associated challenges, that addresses connected components such as access routes and staging areas. Examples may include, but not be limited to, rip-rap or articulated concrete block hardening; soil cap emplacement; covering with chain-link fence and concrete anchors; geotextile; vegetation mats or plantings; etc. Designs shall be submitted to all Signatories and Invited Signatories for thirty (30) day review and comment prior to implementation.
 - ii. Develop a management plan for sites protected by measures determined in Stipulation (II)(E)(2)(i) that includes condition assessments every 5 years and revisions to the management plan every 10 years.

- iii. Where consistent with USACE Master Plan regulations re-zone areas containing sites, equipped with significant buffers, to Environmentally Sensitive Areas or Fish & Wildlife Management, to reduce likelihood of inadvertent adverse effects associated with future real estate actions.
 - iv. Develop educational materials to include but not limited to:
 - a. Updated interpretive kiosks on-site at Wright Patman regarding the cultural history of the project area. These signs would be located away from significant resources, but available in public spaces, such as trails and overlooks.
 - b. Teacher handbooks that provide a guide on the subject of cultural resources/archaeology as a whole, Caddo and Choctaw culture and history, the historical use of Wright Patman Lake prior to construction, and cultural resource laws including the effects of vandalism to sites.
 - c. Reinventory and analysis of legacy collections curated from previous excavations at Wright Patman will be conducted to create an integrated report on archeological sites and settlement in the Wright Patman Lake reservoir.
 - d. Collaborate with the federally recognized tribes with an interest in the Wright Patman Lake area to develop an informational brochure on why tribal and/or archeological resources are important to the tribes.
 - e. Design new anti-looting posters that can be distributed to all USACE lakes located in Texas and to other institutions such as museums.
- (3) Mitigation for historic aged NRHP eligible resources may also include, but shall not be limited to, data recovery and development educational materials.

III. Unanticipated Discoveries and Post Review Changes

- A. Changes in the Undertaking. If implementation of the Undertaking has not commenced and the USACE determines that it shall not conduct the undertaking as originally coordinated, the USACE shall reopen consultation pursuant to Stipulation II. of this PA.
- B. Unanticipated Discoveries of Human Remains and/or Funerary Objects. Cultural resources investigations may result in the identification of additional burial sites within the URC APE. The USACE shall develop a detailed burial treatment plan in consultation with SHPO and THPO/Tribes. All human remains encountered during fieldwork shall be treated in accordance with the Native American Grave Protection and Repatriation Act (NAGPRA, 43 CFR § 10.4) and the Advisory Council on Historic Preservation's *Policy Statement on Burial Sites, Human Remains, and Funerary Objects* (2023). In the event that human remains and/or funerary objects are discovered during historic properties investigations, the USACE shall implement the following steps:

- (i) Within twenty-four (24) hours of receipt of notification of the discovery, the USACE cultural resources personnel shall:
 - (a) Inspect the work site and determine the extent of the affected human remains and/or funerary objects and ensure that activities have halted;
 - (b) Notify the appropriate law enforcement;
 - (c) Notify all Signatories, consulting parties, and Invited Signatories to the PA of the discovery.
- (ii) If it is declared a criminal matter, the USACE archeologist shall have no further involvement and additional investigation shall be made by the appropriate legal authorities.
- (iii) For any burials encountered that are identifiable as associated with a Native American archeological site, the remains and associated funerary objects shall be recorded and reburied immediately to further secure and protect the burial. Any such sites shall be mitigated in accordance with Stipulation II.E., while the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony shall be determined in consultation with the culturally affiliated federally recognized tribe in accordance with NAGPRA (43 CFR § 10.4).
- (iv) If it is determined that the human remains and/or funerary objects are not Native American, the USACE shall ensure discovery location is flagged or fenced off and shall direct on site personnel to take measures to ensure site security. The USACE shall then consult with the SHPO, any identified descendants, and/or other interested parties regarding appropriate treatment measures, including, but not limited to, avoidance, disinterment, and re-interment plans.

IV. Curation and Disposition of Recovered Materials, Records, and Reports

- A. Curation. The USACE shall ensure that all associated records and any collected archeological materials not reinterred on site that result from identification, evaluation, and treatment efforts conducted under this PA, are accessioned into a curation facility in accordance with the standards of 36 CFR 79.
- B. Reports. Reports include, but are not limited to, research designs and technical reports of investigations, monitoring, and mitigation, and shall conform to Stipulation I.A. Within 30 days of receiving the approved draft-final, the USACE shall provide copies to all Signatories of the PA. Signatories shall submit comments to the USACE within thirty (30) days of receipt of the draft report, unless an additional 30 day extension is requested in writing. The USACE shall ensure that all Signatories' comments are addressed and provide a revised version of the report within forty-five (45) days, to be reviewed in the same manner and time frame as the first. Should any of the Signatories' comments conflict, the USACE

shall notify the Signatories within ten (10) days of the comment period deadline. The USACE and the Signatories shall attend a virtual meeting to discuss the conflicting comments within ten (10) days of notification of conflicting comments. If a Signatory does not attend the virtual meeting, the USACE shall assume that Signatory's concurrence with the determinations made during the meeting, and the USACE shall submit a summary of the determinations to all Signatories within ten (10) days of the meeting. The USACE shall have thirty (30) days from the date of the virtual meeting to provide a revised Final final version of the report to all parties of the PA. All consulting parties shall withhold site location information or other data that may be of a confidential or sensitive nature pursuant to 16 U.S.C. §470hh.

V. PA Amendments, Disputes and Termination

- A. Amendments. Any party to the PA may propose to the other parties that it be amended, whereupon the parties shall consult in accordance with 36 CFR § 800.6(c)(7) to consider such an amendment. The amendment shall be effective on the date a signed copy executed by the Signatories and Invited Signatories is filed with the ACHP.
- B. Disputes. Disputes regarding the completion of the terms of this PA shall be resolved in writing by the Signatories and Invited Signatories.
 - (1) If the Signatories and Invited Signatories cannot agree regarding a dispute, they may request the participation of the ACHP in resolving the dispute in accordance with the procedures outlined in 36 CFR § 800.9.
 - (2) If the dispute Within fifteen (15) calendar days of such a request, the USACE shall forward to the ACHP, and all Signatories and Invited Signatories all documentation relevant to the dispute, including the USACE's proposed resolution of the dispute. The USACE shall take any recommendations or comments from the ACHP into account in resolving the dispute. In the event that the ACHP fails to respond to the request within forty-five (45) calendar days of receiving all documentation, the USACE may assume the ACHP's concurrence with its proposed resolution and proceed with resolving the dispute.
- C. Termination of PA. Signatories and Invited Signatories to this PA may terminate it by providing a sixty (60) calendar day notice to the other parties, provided that the parties shall consult during the period prior to the termination to seek agreement on amendments or other actions that shall avoid termination. In the event of termination of this PA the USACE shall comply with the provisions of 36 CFR § 800, Subpart B.

VI. Term and Status of this PA

- A. This Programmatic Agreement shall remain in force for a period of fifteen (15) years from the date of its execution by all Signatories and Invited Signatories or such time as the USACE completes all mitigation activities, which include maintenance and stabilization actions, unless terminated pursuant to Stipulation

IV.C. Sixty (60) calendar days prior to the conclusion of the fifteen (15) year period. The USACE shall notify all parties in writing of the end of the fifteen year period to determine if they have any objections to extending the term of this PA. If there are no objections received prior to expiration, the PA shall continue to remain in force for a new fifteen (15) year period.

- B. Execution of this PA and implementation of its terms evidences that the USACE has taken into account the effects of the Undertaking and fulfilled Section 106 responsibilities regarding the undertaking.

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Signature page for the U.S. Army Corps of Engineers, Fort Worth District.

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Execution of this agreement and Implementation of its terms provides confirmation that the USACE has afforded all parties an opportunity to comment on the Undertaking and its effects on historic properties, and that the USACE has taken into account the effects of the Undertaking on historic properties.

Signatories include the USACE, SHPO, and the City of Texarkana. **Invited Signatories** include the Caddo Nation of Oklahoma. **Concurring Parties** include the Choctaw Nation of Oklahoma, Dr. Tim Perttula and Preservation Texas. Separate signature pages for each agency follow.

**Signatory
U.S. Army Corps of Engineers**

Date: _____

Colonel, EN
Commanding
U.S. Army Corps of Engineers, Fort Worth District

Signature page for the City of Texarkana.

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**Signatory
City of Texarkana**

Date: _____

David Orr
City Manager

Signature page for the Texas State Historic Preservation Office.

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Signatory
Texas State Historic Preservation Office

Date: _____

Mark S. Wolfe
Texas State Historic Preservation Officer

Signature page for the Caddo Nation of Oklahoma.

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**Invited Signatory
Caddo Nation of Oklahoma**

Date:_____

Bobby Gonzalez
Chairman

Signature page for Preservation Texas.

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**Concurring Party
Preservation Texas**

Name
Title

Date: _____

Signature page for Dr. Tim Perttula.

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**Concurring Party
Dr. Tim Perttula**

Date: _____

Dr. Tim Perttula
Archaeologist

APPENDIX A

**to the
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DRAFT

Wright Patman Ultimate Rule Curve Area of Potential Effect

