
Appendix D

Cultural Resources

TABLE OF CONTENTS
APPENDIX D

D.1 Introduction..... D-1

D.2 Programmatic Agreements D-2

 D.2.1 Programmatic Agreement for Oklahoma..... D-2

 D.2.2 Programmatic Agreement for Arkansas..... D-3

APPENDIX D: CULTURAL RESOURCES

D.1 Introduction

This appendix includes the Programmatic Agreements concerning cultural resources located in the MKARNS system and associated properties. Cultural resources are prehistoric and historic sites, structures, districts, artifacts, or any other physical evidence of human activity considered important to a culture, subculture, or community for traditional, religious, scientific, or any other reason. Cultural resources are discussed in terms of archaeological sites, which include both prehistoric and historical occupations either submerged or on land, and architectural resources. Archaeological sites can become submerged when they are inundated following impoundment of rivers, and shipwrecks are a specific type of submerged archaeological site.

D.2 Programmatic Agreements

D.2.1 Programmatic Agreement for Oklahoma

The USACE, Oklahoma SHPO, and the OAS agreed that a PA was not necessary for the USACE to satisfy Section 106 and 110 responsibilities for activities proposed as part of this project. In Oklahoma, the USACE would follow normal Section 106 procedures (as detailed in 36 CFR 800) for all undertakings that may have an effect on historic properties. If necessary, mitigation of historic properties that may be adversely affected by a project activity would be determined on a case-by-case basis in consultation with the Oklahoma SHPO and the OAS.

D.2.2 Programmatic Agreement for Arkansas

PROGRAMMATIC AGREEMENT

AMONG

THE LITTLE ROCK DISTRICT U.S. ARMY CORPS OF ENGINEERS,
THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION,
THE ARKANSAS STATE HISTORIC PRESERVATION OFFICE, REGARDING THE
PROPOSED IMPROVEMENTS TO THE MCCLELLAN-KERR ARKANSAS RIVER
NAVIGATION SYSTEM, ARKANSAS

WHEREAS, the U.S. Army Corps of Engineers (USACE) has proposed improvements to the McClellan-Kerr Arkansas River Navigation System (MKARNS) in Arkansas and Oklahoma. These proposed improvement are described in a document hereafter called the Arkansas River Navigation Study (Study) (Attachment A: Study Area Map); and

WHEREAS, the alternative plans proposed in the Study include river flow management changes that are anticipated to result in changes in the river stage water in the MKARNS in Arkansas, channel dredging and channel maintenance including river-bottom dredging, construction and/or modification of dikes and revetments, and creation of new dredged material disposal locations; and

WHEREAS, the Study-specific detail concerning construction locations or which set of alternatives to be implemented have not been finalized; and

WHEREAS, the USACE has determined that Study-related activities may have an effect upon properties potentially eligible for inclusion in the National Register of Historic Places (NRHP), and has consulted with the Advisory Council for Historic Preservation (Council), and the Arkansas State Historic Preservation Officer (SHPO) pursuant to Section 800.14 (b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (NHPA)(16U.S.C. 470f); [and Section 110(f) of the same Act (16 U.S.C. 470h-2(f))]; and

WHEREAS, pursuant to Section 800.3 of the Advisory Council on Historic Preservation (Council) regulations and to meet the USACE' responsibilities under the National Environmental Policy Act (NEPA) of 1969, the USACE has contacted the Native American Tribes (Tribes) and other consulting parties (Attachment B: Consulting/Interested Parties) that may have an interest in the effects of this Study on historic properties, and whether any other traditional cultural properties or sacred sites may be potentially affected by this undertaking. Those on the Interested Party List will be provided with public meeting announcements, special releases, and notifications of the availability of report(s), including all draft agreement documentation, as stipulated by 36 CFR Part 800.14(b)(ii) of the NHPA; and such comments received by the USACE will be distributed to the consulting parties to this agreement and taken into account in finalizing plans for the undertaking; and

WHEREAS, the USACE in accordance with 36 CFR 800 Section 3(e), used the agency's procedures for public involvement under the National Environmental Policy Act (NEPA) to inform the public of the undertaking and solicit their views on historic properties, including historic properties, and has distributed the draft Environmental Impact Statement (DEIS) and final EIS to appropriate state and federal agencies, the Tribes(s) and the public;

NOW THEREFORE, the USACE and the Arkansas SHPO agree that subsequent to completion of the NEPA documentation, the Study shall be implemented in accordance with the following stipulations to satisfy the USACE' Section 106 responsibility for all individual aspects of the Study.

STIPULATIONS

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

I. IDENTIFICATION OF CULTURAL RESOURCES

The USACE will take all measures necessary to discover, preserve, and avoid historic properties (i.e., resources listed on or eligible for inclusion in the NRHP), burials, cemeteries, or sites likely to contain human skeletal remains/artifacts and objects associated with interments or religious activities including submerged resources, and provide this information to the Arkansas SHPO through the implementation of cultural resources identification surveys.

A. The USACE will ensure that the following measures are implemented for the identification of terrestrial archaeological sites at new locations for the disposal of dredged materials:

1. The Area of Potential Effect (APE) for the dredge disposal locations are the limits of each proposed disposal location. As a result of this small APE, a 100 percent cultural resources survey will be conducted to identify prehistoric and historic archaeological sites.

B. The USACE will ensure that the following measures are implemented for the identification of submerged archaeological sites at MKARNS navigation channel dredging and maintenance locations:

1. The Area of Potential Effect (APE) for the MKARNS navigation channel dredging is within the existing river channel below the depth of 9 feet, and river bottom locations for channel maintenance activities including construction and/or modification of dikes and revetments. This APE encompasses the following types of Study activities:

a. all river bottom dredging locations with dredging greater than the existing 9 foot depth,

-
-
- b. all river bottom locations associated with the new construction and/or modification of dikes,
 - c. all river bottom locations associated with the new construction and/or modification of revetments,

As a result of the large APE that will be disturbed, the USACE will implement a phased identification approach to identify submerged prehistoric and historic archaeological sites.

- 2. The USACE shall ensure that the appropriate archival research to locate the areas likely to contain submerged cultural resources are identified. Appropriate archival research includes, but is not limited to, the following:
 - a. Historic documentation of all known shipwrecks in MKARNS using relevant records such as the *Annual Report of the Chief of Engineers* series, the Arkansas archaeological site files, the Arkansas State Historic Preservation Office resource inventory, historic newspapers and gazettes, historic maps, deeds, wills, testaments, legal actions, and inventories, and other archival sources.
 - b. Interviews with regional and local historical experts, specialists on Arkansas River navigation, and local informants.
 - c. Creation of a cultural/historical context of the study area that focuses on the types of resources likely found in the MKARNS system. This endeavor includes creating an index of historic ports landings, piers, warehouses, ferries, fords, crossings and other navigation/trade/transportation-related locations that are likely to be associated with submerged cultural resources.
 - d. Geomorphological evaluation of the APE to identify probability areas for the presence of submerged sites.
 - e. Definition of probability areas for submerged resources suitable for establishing a sampling strategy for archaeological reconnaissance, testing, and remote sensing.
- 3. The USACE in consultation with the Arkansas SHPO will evaluate the probability areas defined by the archival research and assess the cost effectiveness for the implementation of a field sampling strategy for detecting the presence of submerged cultural resources in MKARNS and the navigation channel. Field work to be considered may include, but not be limited to, remote sensing techniques such as side scan sonar and proton procession magnetometer surveys.

-
-
4. The USACE will ensure that all archival research and any follow-up fieldwork are conducted in a manner consistent with the Abandoned Shipwreck Act of 1987 (43 USC 2101-2106), *A State Plan for the Conservation of Archaeological Resources in Arkansas*, and the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation (48 FR 44720-23), and take into account the National Park Service publication *Abandoned Shipwreck Act Guidelines* (54 FR13642)(National Park Service 1989).
 5. The USACE will implement the archival research and any required fieldwork on a schedule established to accommodate all archaeological field investigations and Arkansas SHPO review of the resulting cultural resources technical report prior to the initiation of construction and/or implementation.
- C. The USACE will ensure that the following measures are implemented for the identification of terrestrial archaeological sites at MKARNS locations for the construction and/or modification of dikes and revetments on the river bank, including construction roads, and access and staging areas:
1. The Area of Potential Effect (APE) for the MKARNS is the footprint of all newly constructed and/or modified dikes and revetments on the river bank, including construction roads, and access and staging areas. This APE encompasses the following types of Study activities:
 - a. all river bank locations associated with the new construction and/or modification of dikes,
 - b. all river bank locations associated with the new construction and/or modification of revetments,
 - c. all other areas indirectly and directly affected by construction, use, maintenance, and operation during the implementation of the Study, including roads, staging and access areas.
 2. As a result of this small APE for terrestrial ground disturbance, a 100 percent cultural resources survey will be conducted to identify prehistoric and historic terrestrial archaeological sites.
- D. The USACE will ensure that all survey and subsurface testing are conducted in a manner consistent with the *A State Plan for the Conservation of Archaeological Resources in Arkansas*, and the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation (48 FR 44720-23), and take into account the National Park Service publication *The Archaeological Survey: Methods and Uses* (National Park Service 1978).
- E. The USACE will implement the survey and subsurface testing on a schedule established to accommodate all archaeological field investigations and Arkansas SHPO review of the

resulting cultural resources technical report prior to the initiation of construction and/or implementation.

II. EVALUATION OF CULTURAL RESOURCES

Once cultural resources have been identified (as required in Part I), the USACE will ensure that the following measures are carried out to evaluate cultural resources for eligibility to the National Register of Historic Places (NRHP):

- A. In consultation with the Arkansas SHPO and as appropriate, the Tribes and other consulting parties, the USACE will evaluate cultural resources for eligibility to the NRHP by applying the NRHP criteria (36 CFR Part 60.4).
 - 1. For those properties that the USACE and the Arkansas SHPO agree are not eligible for inclusion in the NRHP, no further cultural resources investigations will be required and Study activities may proceed in those areas.
 - 2. If the survey results in the identification of cultural resources that the USACE and the Arkansas SHPO agree are eligible for inclusion on the NRHP (historic properties), the USACE shall treat such properties in accordance with Stipulation III below.
 - 3. If the USACE and the Arkansas SHPO do not agree on NRHP eligibility, or if the Council or the National Park Service (NPS) so request, the USACE will request a formal determination of eligibility from the Keeper of the NRHP, NPS, whose determination shall be final.
- B. The USACE will ensure all terrestrial archaeological resources identified within the APE for locations for the disposal of dredged materials will be evaluated for NRHP eligibility through standard archival research and archaeological field techniques.
- C. The USACE will ensure that the following measures are implemented for the evaluation of submerged archaeological sites at MKARNS navigation channel dredging and channel maintenance locations including the river bottom locations of newly constructed and/or modified dikes, and revetments.
 - 1. All submerged resources identified in the APE will be evaluated for NRHP eligibility through additional archival research and standard underwater archaeological techniques.
 - 2. The USACE will ensure that all archival research and underwater fieldwork are conducted in a manner consistent with *A State Plan for the Conservation of Archaeological Resources in Arkansas*, and the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation (48 FR 44720-23), and take into account the National Park Service publication *Abandoned Shipwreck Act Guidelines* (National Park Service 1989).

-
-
3. The USACE will implement the archival research and underwater fieldwork on a schedule established to accommodate all archaeological investigations and Arkansas SHPO review of the resulting cultural resources technical report prior to the initiation of construction and/or implementation.
- D. The USACE will ensure that the following measures are implemented for the evaluation of terrestrial archaeological sites at Arkansas portions of the MKARNS channel maintenance locations including the river bank locations of newly constructed and/or modified dikes, and revetments, including roads, staging and access areas.
1. As a result of this small APE for terrestrial ground disturbance, a 100 percent cultural resources survey will be conducted to identify prehistoric and historic terrestrial archaeological sites. .
- E. The USACE will ensure that all subsurface testing are conducted in a manner consistent with the *A State Plan for the Conservation of Archaeological Resources in Arkansas*, the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation (48 FR 44720-23), and take into account the National Park Service publication *The Archaeological Survey: Methods and Uses* (National Park Service 1978).
- F. The USACE will implement the evaluative subsurface testing on a schedule established to accommodate all archaeological field investigations and Arkansas SHPO review of the resulting cultural resources technical report prior to the initiation of construction and/or implementation.

III. TREATMENT OF HISTORIC PROPERTIES

Those individual historic properties that the USACE and the Arkansas SHPO agree are eligible for nomination to, or that the Keeper has determined eligible for inclusion in the NRHP, will be treated by the USACE in the following manner:

- A. If the USACE determines, in consultation with the Arkansas SHPO, that no other actions are feasible to avoid and minimize effects to historic properties, then the USACE will develop a treatment plan, which may include data recovery, active protection measures and/or stabilization, or annual field monitoring.
- B. If data recovery is the agreed upon treatment, the data recovery plan will address substantive research questions developed in consultation with the Arkansas SHPO. The treatment plan shall be consistent with the *A State Plan for the Conservation of Archaeological Resources in Arkansas*, and the Secretary of the Interior's *Standards and Guidelines for Identification and Evaluation* (48 FR 44720-23), and take into account the Council's publication *Treatment of Archaeological Properties* (ACHP 1980); the National Park Service's *Guidelines for Recording Historic Ships* (National Park Service 1988), and the Secretary of the Interior's *Standards for Historic Vessel Preservation*

Projects with Guidelines for Applying the Standards (1990). It shall specify, at a minimum, the following:

1. the historic property, properties, or portions of properties where the treatment plan is to be conducted,
 2. the research questions to be addressed, with an explanation of research relevance and importance,
 3. the methods to be used, with an explanation of methodological relevance to the research questions,
 4. proposed methods of disseminating results of the work to the interested public, and
 5. a proposed schedule for the submission of progress reports and draft and final technical reports to the Arkansas SHPO.
- C. Under certain condition to be determined by the USACE in consultation with the Arkansas SHPO, stabilization of sites may be preferable to data recovery, especially if human remains or burials are present. This may entail, but not be limited to, recovering data at the margins of disturbed areas, building up or filling in areas of a site to buffer the site from erosion, and use of engineered protective strategies to halt damage to the site.
- D. The USACE shall submit the treatment plan to the Arkansas SHPO for 30 days review and comment to determine whether the measures are sufficient to avoid, reduce, or mitigate adverse effects to historic properties. The USACE will take into account the Arkansas SHPO comment, and shall ensure that the data recovery plan is implemented. Should there be a disagreement between the USACE and the Arkansas SHPO that cannot be resolved, the USACE shall contact the Council and request comment on the dispute in accordance with Section VIII of this Agreement.
- E. The USACE will ensure that the treatment plan is carried out by or under the direct supervision of an archaeologist(s), architectural historian(s) and/or other appropriate cultural resource specialist that meets, at a minimum, the Secretary of Interior's *Professional Qualifications Standards* (48 FR 44738-9).
- F. The USACE will ensure that adequate provisions, including personnel, time, and laboratory space, are available for the analysis and curation of recovered materials from historic properties.
- G. The USACE will develop and implement an adequate program in consultation with the Arkansas SHPO to secure historic properties from vandalism during data recovery.
- H. The USACE shall engage in a systematic annual program of examining the condition of historic properties that would be impacted by the Study activities. An annual report of the

conditions throughout MKARNS will be submitted to the Arkansas SHPO in accordance with Part IV.B.

IV. CURATED ITEMS

In consultation with the Arkansas SHPO, the USACE will ensure that all materials and records resulting from the cultural resources studies are curated at a repository within Arkansas in accordance with 36 CFR 79.

V. TREATMENT OF HUMAN REMAINS AND ITEMS OF RELIGIOUS AND CULTURAL IMPORTANCE

- A. If human remains are encountered either during the data recovery or during any construction activities, the USACE will comply with all provisions outlined in the appropriate state acts, statues, guidance, provisions, etc., and any decisions regarding the treatment of human remains will be made in consultation with the Arkansas SHPO (Arkansas Act 753 of 1991 and Act 1533 of 1999).
- B. If items of religious and cultural importance to Tribes are encountered or collected, the USACE will comply with all provisions outlined in the appropriate state acts, statues, guidance, provisions, etc. and any decisions regarding the treatment of items of religious and cultural importance will be made in consultation with the Arkansas SHPO, the Tribe(s) and in accordance with appropriate state laws.

VI. REPORTS

- A. The USACE will ensure that all cultural resources technical reports (e.g., identification surveys, evaluation reports, treatment plans and data recovery reports) are consistent with contemporary standards, the *A State Plan for the Conservation of Archaeological Resources in Arkansas*, and the Secretary of the Interior's Standards and Guidelines, and to the Department of the Interior's *Format Standards for Final Reports of Data Recovery* (42 FR 5377-79).
- B. The USACE will contact the Arkansas SHPO about site preservation issues as they arise. Work in the area(s) of undertaking may proceed after the USACE (after consulting with the SHPO, Tribes, and other appropriate stakeholders) determines there will be "no effect" or "no adverse effect" on properties eligible for the NRHP.
- C. The USACE will ensure that all final historic property records resulting from the actions pursuant to this Programmatic Agreement will be provided in a format acceptable to the Arkansas SHPO.
- D. If it appears that the release of this data could jeopardize the physical integrity of historic properties (i.e., through looting and vandalism), precise locations of historic properties may be provided only in a separate appendix.

-
-
- E. Precise location data of traditional cultural properties or sacred sites, consisting of architectural, landscapes, objects, or surface or buried archaeological sites, identified in accordance with the Tribe(s), will be considered to be sensitive information and pursuant to Section 304 of the NHPA. The USACE will not make this information available for public disclosure and this type of information will be safeguarded within the USACE project files on a need-to-know basis only.
 - F. The USACE will make available for publication and public dissemination the reports and associated data, minus the precise aforementioned location data and sensitive information.

VII. PROVISION FOR POST-REVIEW DISCOVERIES

- A. In accordance with 36 CFR Section 800.13, if previously undetected or undocumented historic properties are discovered during Study activities, the USACE will cease, or cause to stop, any activity having an effect and consult with the Arkansas SHPO, and the Tribes to determine if additional investigations are required.
- B. If further archaeological investigations are warranted or required, any treatment plan will be performed by the USACE in accordance with Part III, Treatment of Historic Properties; Part IV, Curation; Part V, Treatment of Human Remains and Items of Religious and Cultural Importance; and Part VI, Reports, all of this Agreement.
- C. If the USACE, the Tribes, and the Arkansas SHPO determine that further investigation is not necessary or warranted, activities may resume with no further action required. Any disagreement between the USACE and the Arkansas SHPO concerning the need for further investigations will be handled pursuant to Part VIII, Dispute Resolution of this Agreement.

VIII. DISPUTE RESOLUTION

Should the Arkansas SHPO or any reviewing party object within 30 days to any plans or actions provided for review pursuant to this Agreement, the USACE will consult with the objecting party to resolve the objection. If the USACE determines that the disagreement cannot be resolved, the USACE shall forward all documentation relevant to the dispute to the Council and will request comment from the Council in accordance with the applicable provisions of 36 CFR Part 800.7. Within 45 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

1. Provide the USACE with a staff-level recommendation, which the USACE shall take into account in reaching a final decision regarding its response to the objection; or
2. Notify the USACE that the objection will be referred for formal comment pursuant to 36 C.F.R. Section 800.7(c), and proceed to refer the objection and comment.

The USACE shall take into account the Council's comments in reaching a final decision regarding its response to the objection. The USACE's responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

IX. TERMINATION

Any of the signatories to this Agreement may request a reconsideration of its terms or revoke the relevant portions of this Agreement upon written notification to the other signatories, by providing 30 days notice to the other signatories, provided that these signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the advent of termination, the USACE will comply with 36 CFR Parts 800.3 through 800.7 with regard to individual undertakings covered by this Agreement.

X. AMENDMENTS

Any signatories to the Agreement may request that it be amended, whereupon the other signatory parties will consult in accordance with 36 CFR Part 800.14(b) and 36 CFR Part 800.6(c)(7), to consider such amendment.

XI. PERIODIC REVIEW

The USACE shall review the necessity of this Agreement after a period of ten years from the date of the USACE signature in order to determine whether it should be reissued or allowed to expire. If the Agreement requires reissue, the USACE shall consult with the Arkansas SHPO in order to insure compliance with the most current version of the Federal regulations (36 CFR Part 800) implementing Section 106 of the NHPA (16 U.S.C. 470f); [and section 100(f) of the same Act (16 U.S.C. 470h-2(f)].

XII. EXECUTION AND IMPLEMENTATION

- A. Nothing in this Agreement is intended to prevent the USACE from consulting more frequently with the Arkansas SHPO or the Council concerning any questions that may arise or on the progress of any actions falling under or executed by this Agreement.
- B. The undersigned concur that the USACE had satisfied its Section 106 responsibilities for all individual undertakings through this Agreement regarding the implementation of Study activities.

XIII. SIGNATORIES TO THIS AGREEMENT

- A. LITTLE ROCK DISTRICT, U.S. ARMY CORPS OF ENGINEERS

BY: _____ Date: _____

B. ARKANSAS STATE HISTORIC PRESERVATION OFFICER

BY: _____ Date: _____

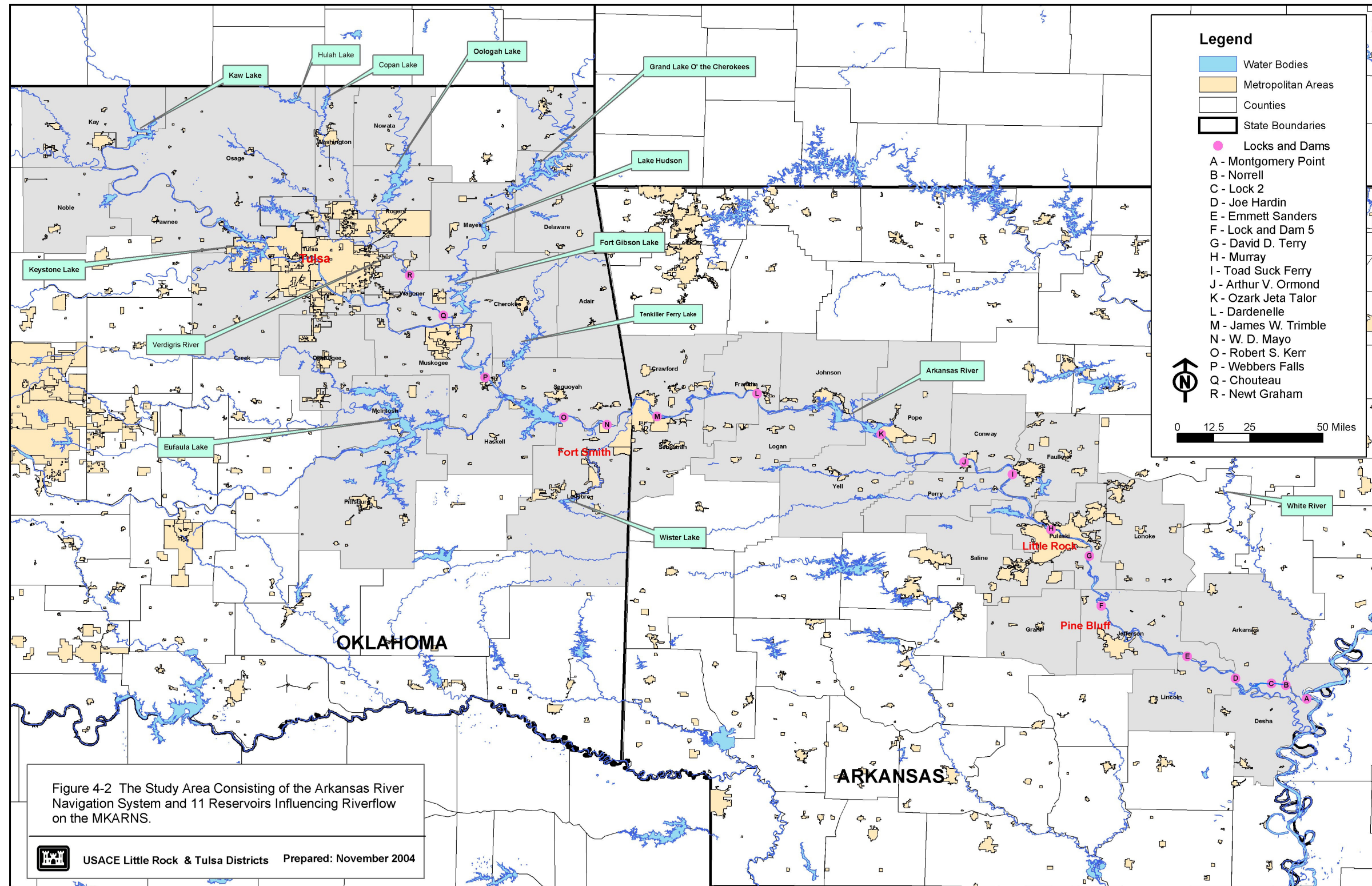
Ms. Cathie Matthews
Arkansas State Historic Preservation Officer
Department of Arkansas Heritage

C. THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION

BY: _____ Date _____

XX
YY
Advisory Council For Historic Preservation

ATTACHMENT A



ATTACHMENT B
Consulting/Interested Parties
Arkansas River Navigation Study

Ms. Cathie Matthews, SHPO

Department of Arkansas Heritage
323 Center Street
Suite 1500
Little Rock, AR 72201
Phone: 501-324-9150
Fax: 501-324-9154
E-mail: cathie@arkansasheritage.org

Dr. Ann M. Early, State Archaeologist

Arkansas Archeological Survey
2475 N. Hatch Ave.
Fayetteville, AR 72704
479-575-3556
Fax: 479-575-5453
amearly@uark.edu

Mr. John Berry, Chairperson

Quapaw Tribal Business Committee
P.O. Box 765
Quapaw, OK 74363
918-542-1853
918-542-4694 fax

Mr. Gary McAdams, President

Wichita & Affiliated Tribes
P.O. Box 729
Anadarko, OK 73005
405-247-2425
405-247-2430 FAX
wtep@tanet.net

Ms. La Rue Parker, Chairperson

Caddo Nation of Oklahoma
P.O. Box 487
Binger, OK 73009
405-656-2344
405-656-2892 fax

Mr. Jim Roan Gray, Principal Chief

Osage Tribal Council
P.O. Box 779
Pawhuska, OK 74056
918-287-1085
918-287-2257

Mr. Chadwick Smith, Principal Chief

Cherokee Nation of Oklahoma
P.O. Box 948
Tahlequah, OK 74465-0948
918-456-0671
918-458-5580 fax

Mr. Dallas Proctor, Chief

United Keetoowah Band of Cherokee Indians
P.O. Box 746
Tahlequah, OK 74465
918-431-1818
918-431-1873 fax

Mr. Bill Anoatubby, Governor

Chickasaw Nation, Oklahoma
P.O. Box 1548
Ada, OK 74821-1548
580-436-2603
580-436-4287

Mr. Gregory E. Pyle, Chief

Choctaw Nation of Oklahoma
P.O. Drawer 1210
16th & Locust
Durant, OK 74701-1210
580-924-8280
580-924-1150 FAX