

**PROGRAMMATIC AGREEMENT  
AMONG  
THE US ARMY CORPS OF ENGINEERS FORT WORTH DISTRICT,  
THE TEXAS STATE HISTORIC PRESERVATION OFFICER,  
AND THE BRAZOS RIVER AUTHORITY (BRA)  
REGARDING COMPLIANCE WITH SECTION 106 OF THE  
NATIONAL HISTORIC PRESERVATION ACT FOR THE  
WHITNEY LAKE REALLOCATION STUDY  
BOSQUE AND HILL COUNTIES, TEXAS**

**WHEREAS**, Whitney Lake was constructed pursuant to Section 216 of the River and Harbor Act of 1970 (Public Law [P.L.] 91-611); and

**WHEREAS**, construction of Whitney Lake on the Brazos River, Texas was authorized under provisions of the Flood Control Acts approved 18 August 1941 (Public Law 228, 77th Congress, First Session) and 22 December 1944 (Public Law 534, 78th Congress, Second Session) for the control of floods, the development of hydroelectric power, and for other beneficial uses; and

**WHEREAS**, Section 4 of the Flood Control Act approved 22 December 1944, (Public Law 534, 78th Congress, Second Session), as amended, authorized the development of reservoir areas under the Department of the Army for recreational purposes; and

**WHEREAS**, the Undertaking shall not alter the design of the reservoir, or the maximum flood capacity, but will alter the defined conservation pool elevation for Whitney Lake; and

**WHEREAS**, the Undertaking's area of potential effect (APE) subject to Section 106 of the NHPA is described as the elevation of land surrounding Whitney Lake between 532.23' amsl and 531.3' amsl, as shown in the figure provided in **Appendix A**, that shall be impacted by the recession of lake surface levels during a calendar year exposing land that would otherwise be inundated; and

*Direct APE and Potential Effects:* The direct APE is the horizontal and vertical footprint of water level recession around the margins of Whitney Lake caused by the Undertaking. In terms of potential effects, three categories exist; impacts created by mechanical processes (include physical erosion and deposition processes, including wave and water motion, reservoir siltation from backshore runoff and stream inflow, wetting and drying of cultural deposits and saturation and slumping of shoreline and submerged geological strata. Impacts created by biochemical processes (affects the differential preservation and destruction of inundated cultural materials). Impacts resulting from the consequences of human activity (including vandalism, construction, recreation and continuing changes in land use) (Dunn 1996).

*Indirect APE and Potential Effects:* The Undertaking is confined to the horizontal and vertical footprint of water level recession around the margins of Whitney Lake caused by

the Undertaking. The indirect APE for the purposes of this PA is considered the same as the direct APE, with the same effects as described above.

**WHEREAS**, due to this Undertaking being entirely dependent upon variable changes in lake levels, 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**, there is potential for the lowering of the conservation pool elevation to affect historic properties within. Exposed historic properties may be affected by changing formation processes, and increased vulnerability to looting; and

**WHEREAS**, the USACE, has consulted with the Texas State Historic Preservation Officer (SHPO), pursuant to 36 CFR 800, the regulations implementing Section 106 of the NHPA in developing a PA for the implementation of the Undertaking, in accordance with 36 CFR § 800.6 and 36 CFR § 800.14(b)(1)(ii); and

**WHEREAS**, since 2023 the USACE has consulted with the Apache Tribe of Oklahoma, The Comanche Nation, The Coushatta Tribe of Louisiana, the Tonkawa Tribe of Oklahoma and the Wichita and Affiliated Tribes for which the Undertaking was believed to be in these Tribal Nations area of interest, and for which historic properties within the APE for the Undertaking are believed to have religious and cultural significance to these Tribes; and

**WHEREAS**, the Brazos River Authority (BRA) is the non-Federal sponsor with the USACE involved in the new water supply contract resulting from this Undertaking, and is thereby a consulting party to this agreement as described in 36 CFR 800.2(c)(4); and

**WHEREAS**, this Undertaking is occurring completely within fee (Federal) land, with no public or private property being impacted; and

**WHEREAS**, the USACE has invited the Advisory Council on Historic Preservation (ACHP) to participate and the ACHP has chosen not to participate in a letter dated August 14, 2025; and

**WHEREAS**, public involvement in accordance with 36 CFR § 800.14 (b) has been sought by making the draft of this PA available on the district's website for the study (<https://www.swf.usace.army.mil/Missions/Civil-Works/Whitney-Lake-Reallocation-Study/>) for review and comment from October 30, 2025 to November 28, 2025; and

NOW, THEREFORE, the USACE, SHPO and BRA agree that the proposed Undertaking shall be implemented and administered in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

## STIPULATIONS

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

### I. Standard Operating Procedure (SOP)

- 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 Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716-44740; September 23, 1983), as amended, the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (36 CFR § 68), National Register Bulletin 15 "How to Apply the National Register Criteria for Evaluation" (NPS 1990), and the requirements for archaeological survey as outlined in the Intensive Terrestrial Survey Guidelines (Council of Texas Archeologists) approved in 2020, as appropriate. The USACE shall ensure that the Principal Investigator hired by BRA to conduct the work will meet the Secretary of Interior's standards and has regional experience working in Texas. The identification of possible architectural historic resources will be conducted by a qualified Architectural Historian that meets the Secretary of the Interior's Standards and Guidelines for Architectural History or Historic Architecture.
- B. Definitions. The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this PA.
- C. The APE for this Undertaking was established by USACE archaeologists, USACE Hydraulic Engineers working with local Whitney Lake District personnel and BRA personnel to define the most accurate footprint of conservation pool recession resulting from the TSP described in **Appendix A**. Due to the dynamic nature of water movement, methods such as high-water marks, georeferenced satellite imagery, multi-beam bathymetry, one meter light detection and ranging (LIDAR), historic lake levels during the period of record and any other methods deemed appropriate were used to determine the horizontal footprint of the APE, which is from 532.23' to 531.3', and totals 31.97 acres. Because portions of the APE will likely be under water hindering cultural resource survey, a PHASED APPROACH will be undertaken to ensure the APE is surveyed to identify historic properties. Portions of the APE that are not inundated will be surveyed to identify historic properties following the process in Stipulation II; a shapefile of what was surveyed will be created capturing the exact horizontal footprint of what was surveyed and given to BRA. BRA will monitor when new areas of the APE become accessible for cultural resource survey, with BRA notifying the USACE of new areas of the APE being exposed. Upon a determination of accessibility, BRA shall coordinate with the Principal Investigator to develop a Task Order that complies with this PA document. A USACE archaeologist shall approve all Task Orders before such orders are executed by BRA. No Task Order shall be executed by BRA until a USACE archaeologist approves the archaeological methods

within it and the comment process leading to a final report, with approval being provided in writing (the USACE archaeologist's comments must be incorporated in any task order executed). This process will be repeated over time until the entire footprint of the APE has been subjected to cultural resource survey, or this PA has reached the end of its 20-year term and/or terminated, whichever event occurs first.

## II. Identification, Evaluation, Effects Determination, and Resolution

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 Archaeological 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 archaeological 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 Whitney Lake; a summary with references to records of previous archaeological studies conducted within the APE; a summary with references of all known previously recorded archaeological sites within and adjacent to the APE, to include site characteristics (if available) such as temporal assignment, vertical and horizontal extent of cultural deposits, description of previous investigations at each site, and any previously made NRHP eligibility recommendations and determinations.
  2. Detailed maps of the APE displaying the APE boundaries, previous investigations within the APE, site centroids and site boundaries of previously recorded archaeological sites within and adjacent to the APE, and any known cemeteries, historical markers, trails, and other indicators of potential cultural sites in the APE.
  3. A discussion on theoretical perspectives, a discussion on chronometrics and chronology, a discussion on geomorphology and geoarchaeology, a discussion on evaluative research themes and research questions and a discussion on the NRHP

procedures for eligibility evaluations and the design of research as they all pertain to Whitney Lake.

4. A detailed survey strategy that conforms to Stipulation I.A. above and outlines the procedures for identification and recordation of newly identified and previously recorded archaeological resources. The strategy shall include submission of site and site revisit forms to the Texas Archaeological Research Laboratory; describe how artifacts shall be documented and analyzed; describe the records and/or materials that may 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. The strategy shall incorporate the natural formation processes occurring along the margins of the reservoir water footprint into the survey strategy to account for times of recession and the effects caused by this.

- (ii) **Intensive Cultural Resource Survey:** BRA, working with the USACE, shall have an intensive cultural resources survey conducted of the APE located between 532.2' amsl and 531.3' amsl, which equates to approximately 31.97 acres. Investigations shall include revisits of previously recorded archaeological sites to ensure site boundary accuracy and eligibility accuracy, recordation of new identified archaeological sites, buildings, structures, objects, etc. Full archaeological site boundaries will be defined and recorded when feasible, which may exceed the boundaries of the APE. The survey methodology shall be conducted per the approved RD and conform to the SOP in Stipulation I.A.
- (iii) **Intensive Cultural Resource Survey Draft Report:** BRA's Principal Investigator shall ensure development of a draft report of the survey results, in accordance with Stipulation I.A., that will include eligibility recommendations and any recommendations for additional investigations that follows the Council of Texas Archeologist Guidelines and Standards for CRM reports, to include any USACE additional reporting requirements. The draft report shall be submitted to all consulting parties for review and comment in accordance with Stipulation IV.B. No report shall go final until all comments received by SHPO and the USACE archaeologist are addressed in full. This shall be confirmed by the USACE archaeologist and acknowledged in writing.

- (iv) **Archaeological Testing Research Design:** BRA's Principal Investigator may conduct archaeological testing for sites where intensive survey identified deposits warranting additional investigation in order to determine NRHP eligibility, aid in effects analysis and determine adequate mitigation for any adverse effects to those resources determined eligible for the NRHP. 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 evaluative research themes, research questions and needs assessment that the site may answer/meet to determine eligibility for inclusion in the NRHP. Individual work plans for each site chosen for testing must lead to testing whether these data requirements are available at each site.

- (v) **Archaeological Testing Draft Report:** BRA's Principal Investigator shall develop a draft report of the testing results, to include NRHP eligibility determinations. The draft report shall be submitted to all signatories for review and comment in accordance with Stipulation IV.B.

(2) Investigative Requirements for Architectural Resources

- (i) **Research Design and Report:** BRA's Principal Investigator shall ensure development of a research design (RD) to guide the architectural 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 buildings, structures and objects (BSO's) for NRHP eligibility. The results of this survey and associated historic resource survey forms for each recorded BSO will be incorporated into the archaeological report.

- B. Evaluation of National Register Eligibility. The USACE shall determine the NRHP eligibility of cultural resources identified by BRA's Principal Investigator 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 calendar review upon receipt.

(1) Assessment of Effects.

- (i) No Historic Properties Affected. The USACE shall make a reasonable and good faith effort to evaluate the effect of the Undertaking on identified and determined historic properties in the APE. The USACE may conclude that no historic properties are affected by the Undertaking if no historic properties are present in the APE, or the Undertaking will have no effect as defined in 36 CFR § 800.16(i). This finding shall be documented in compliance with 36 CFR § 800.11(d), and the documentation shall be provided to the consulting parties. The USACE shall provide information on the finding to the public upon request, consistent with the confidentiality requirements of 36 CFR § 800.11(c) and Section 304 of the NHPA.
  - (ii) Finding of No Adverse Effect. The USACE shall apply the criteria of adverse effect to historic properties within the APE in accordance with 36 CFR § 800.5. The USACE may propose a finding of no adverse effect if the Undertaking's effects do not meet the criteria of 36 CFR § 800.5(a)(1) or the Undertaking is modified to avoid adverse effects in accordance with 36 CFR § 68. The USACE shall provide documentation of this finding meeting the requirements of 36 CFR § 800.11(e) and the documentation shall be provided to the consulting parties. The USACE shall maintain a record of the finding and provide information on the finding to the public upon request, consistent with the confidentiality requirements of 36 CFR § 800.11(c) and Section 304 of the NHPA.
  - (iii) Resolution of Adverse Effect. If the USACE determines that the Undertaking will have an adverse effect on historic properties as measured by criteria in 36 CFR § 800.5(a)(1), the USACE shall consult with the consulting parties to resolve adverse effects in accordance with 36 CFR § 800.6(a). In accordance with 36 CFR § 800.6 (a)(1), the USACE shall notify the ACHP of the adverse effect finding by providing the documentation specified in 36 CFR § 800.11(e).
- a) For historic properties that the consulting parties agree will be adversely affected, the USACE shall:
- (1) Afford the public an opportunity to express their views on resolving adverse effects in a manner appropriate to the magnitude of the project and its likely effects on historic properties.
  - (2) Consult with the signatories and any additional consulting parties to seek ways to avoid, minimize or mitigate adverse effects.

(3) BRA's Principal Investigator will create a mitigation plan (prepared in consultation with BRA/SHPO/USACE if an adverse effect determination is reached) which describes mitigation measures the USACE and BRA propose to resolve the Undertaking's adverse effects and provide this mitigation plan for review and comment to all consulting parties. The mitigation plan will describe each historic property adversely effected, the ways in which each is being adversely affected and describe the ways in which the effects to each will be mitigated. All parties have 30 calendar days in which to provide written comments to the proposed mitigation plan to the USACE. Once 30 calendar days have passed any received comments will be incorporated into the mitigation plan, then reviewed by the appropriate USACE approving official. Once approved and signed by the appropriate USACE approving official, the mitigation plan will be executed. Once the steps in the mitigation plan are completed all consulting parties will be notified in writing.

- b) If the consulting parties fail to agree on how adverse effects will be resolved, the USACE shall request that the Council join the consultation in accordance with 36 CFR § 800.6 (b)(v).
- c) If the Council agrees to participate in the consultation, the USACE shall proceed in accordance with 36 CFR § 800.6 (b)(2).
- d) If, after consulting to resolve adverse effects, the Council, and the consulting parties determine that further consultation will not be productive, then procedures outlined in Stipulation VII should be followed.

### III. Unanticipated Discoveries

A. **Unanticipated Discoveries of Human Remains and/or Funerary Objects on Federal Land:** Cultural resources investigations may result in the identification of additional burial sites within the 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 Principal Investigator shall notify the USACE within twenty-four (24) hours. The Principal Investigator shall implement the following steps:

- (1) Within twenty-four (24) hours of receipt of notification of the discovery, the Principal Investigator shall:



- (i) Inspect the work site and determine the extent of the affected human remains and/or funerary objects and ensure that activities have halted.
  - (ii) Notify the appropriate law enforcement.
  - (iii) Notify all signatories to the PA of the discovery.
- (2) If it is declared a criminal matter, the Principal Investigator, BRA, and the USACE shall have no further involvement, and additional investigation shall be made by the appropriate legal authorities.
- (3) For any burials encountered that are identifiable as associated with a Native American archaeological 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. (1)(iii), 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).
- (4) If it is determined that the human remains and/or funerary objects are not Native American and the discovery is on Federal land, the Principal Investigator shall ensure the 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. BRA and the USACE shall ensure that all archaeological materials and associated records, which 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, and as applicable, the Antiquities Code of Texas (Texas Natural Resource Code, Chapter 191), the Texas Administrative Code 13 TAC §29.5, and the Council of Texas Archeologists Guidelines and Standards for Curation, except as specified in Stipulation IV for human remains. This Undertaking is occurring on Federally owned fee land. Any artifacts collected during this project must be temporally diagnostic, 100% complete and add to the prehistory and/or history of the region.
- B. Reports. BRA and the USACE shall provide copies of draft technical reports of investigations and mitigation to the signatories to this PA for a 30-day calendar review and provide copies of these reports when they go final. All consulting parties shall withhold site location information or other data that may be of a confidential or sensitive nature pursuant to 36 CFR § 800.11(c).

## **V. Dispute Resolution**

Should any signatory to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the USACE shall consult with such party to resolve the objection. If the USACE determines that such objection cannot be resolved, the USACE will:

- A. Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP. The ACHP shall provide the USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and consulting parties, and provide them with a copy of this written response. The USACE will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the PA and provide them and the ACHP with a copy of such written response.

## **VI. Amendments**

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all the signatories is filed with the ACHP.

## **VII. Termination**

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VI, above. If within (60) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the Undertaking, the USACE must either (a) execute a new PA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The USACE shall notify the signatories as to the course of action it will pursue.

## **VIII. Anti-Deficiency Clause**

The stipulations of this agreement are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs the USACE's ability to implement the stipulations of the agreement, the USACE will consult according to the amendment and termination provisions found at Stipulations VI and VII of this agreement.

## **IX. Term of this Agreement**

The USACE intends for the term of this PA document to be in effect for 20 years or until all of the APE referenced in this PA has been surveyed, whichever occurs sooner, beginning from the date of execution of the Water Supply Contract by and between the BRA and the USACE resulting from the Lake Whitney Reallocation and Environmental Assessment Study, unless terminated earlier pursuant to Stipulation VII. After the date of execution of the Water Supply Contract by and between the BRA and the USACE, during December of every fourth calendar year the consulting parties to this PA will be formally updated on the status of where the BRA, the USACE, and the BRA's Principal Investigator are in complying with the terms of this PA.

**EXECUTION AND IMPLEMENTATION** of this PA evidences that the USACE has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORIES** include the USACE Fort Worth District and the Texas State Historic Preservation Officer. The Brazos River Authority is an Invited Signatory. Separate signature pages for each agency follow.

## **EXECUTION AND IMPLEMENTATION**

**SIGNATORIES** include the USACE Fort Worth District and the Texas State Historic Preservation Officer. The Brazos River Authority is an Invited Signatory.

### **USACE FORT WORTH DISTRICT**

Date: \_\_\_\_\_

**Calvin A. Kroeger**  
**Colonel, USACE**  
**District Commander**

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## **EXECUTION AND IMPLEMENTATION**

**SIGNATORIES** include the USACE Fort Worth District and the Texas State Historic Preservation Officer. The Brazos River Authority is an Invited Signatory.

### **TEXAS STATE HISTORIC PRESERVATION OFFICER**

\_\_\_\_\_  
Date: \_\_\_\_\_

**Mr. Joseph Bell**

**Texas State Historic Preservation Officer**

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## **EXECUTION AND IMPLEMENTATION**

**SIGNATORIES** include the USACE Fort Worth District and the Texas State Historic Preservation Officer. The Brazos River Authority is an Invited Signatory.

### **THE BRAZOS RIVER AUTHORITY**

Date: \_\_\_\_\_

**Mr. David Collinsworth, General Manager/CEO**  
**Brazos River Authority (BRA)**

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## **References Cited**

- Dunn, R.A.,  
1996 *Impacts to Historic Properties in Drawdown Zones at Corps of Engineers Reservoirs*. Environmental Impact Research Program. USACE Waterways Experiment Station. Technical Report EL-96-7. June 1996.

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