

**ENVIRONMENTAL ASSESSMENT  
STATEMENT OF FINDINGS  
AND  
FINDINGS OF NO SIGNIFICANT IMPACT**

**File No. 970011920**

**BLACK EAGLE MINERALS**

Request for a Proposed Final Expansion of an Existing Barge Loading Dock

**Tennessee River Mile 247.5, Left Bank, Pickwick Lake, in Colbert County, Alabama**

**U.S. ARMY CORPS OF ENGINEERS  
Nashville District, Regulatory Branch**

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## CHAPTER 1.0 PURPOSE AND NEED FOR ACTION.

**1.1 Background.** On May 22, 2008, this office received an application, from Black Eagle Minerals, P.O. Box 536, Tuscumbia, AL, 35674, for a Department of the Army (DA) permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA) for work proposed at Tennessee River Mile (TRM) 247.5, Left Bank, Pride Landing, Pickwick Lake, Colbert County, AL. An application was also submitted to the Tennessee Valley Authority (TVA) for a permit pursuant to Section 26a of the TVA Act.

Note: As described below, the plan in the May 2008 application was advertised under Joint Public Notice (JPN) no. 08-34; however, in order to address issues brought forward during the public interest review, the applicant submitted a revised plan in December 2008. This environmental assessment addresses the December 2008 proposal.

Over the years, several DA and TVA permits have been issued at this terminal for a conveyor loader, four mooring cells on each side of the loader, rock-filled dock/storage, and dredging activities. The terminal is authorized to moor up to 36 barges (at three wide) and load coal, steel, and rock (mined onsite – Vulcan Quarry), and general commodities which include corn and other grains, denatured fuel ethanol, and petroleum products, but excluding fertilizers. Black Eagle Minerals is requesting to expand the rock-filled dock in order to increase its work space and handle an anticipated increase in projected workload from future industrial growth in the area.

Existing Fill: In the 1950's eight mooring cells were permitted at the terminal to moor up to 36 barges total at three barges wide. In 1998, (1) Black Eagle Minerals constructed a 100' x 90' rock-filled, barge loading dock fixed to two existing mooring cells to provide a solid truck ramp for the barge loading. In 1999, (2) the dock was extended 100' x 190' behind the existing dock and 234' x 155' east of the existing dock to provide a greater area for rock storage in preparation for barge loading. In 2000, (3) the dock was extended 180' x 240' in the upstream direction, an additional cell was installed, and sheet piling was installed for the dock face. In 2002, (4) the dock was extended upstream 90' x 245'. In 2004, (5) a 100' x 245' upstream section was added. In 2006, (6) the dock was extended (140' x 250') on the downstream side of the loader for additional rock storage. The dock is filled to Elevation 423. Barge traffic would not increase.

**1.2 Description of Originally Proposed Work** (as advertised under the JPN): When the application was submitted and as advertised by JPN (See JPN 08-34, Appendix A), Black Eagle Minerals proposed to extend the rock-filled facility by 293' (L) x 264' (W) on the upstream most side of the existing fill to provide (1) access to the upstream most mooring cells for additional loading sites and (2) more storage for commodities. Under this plan, shot limestone would have filled the remainder of the shallow area beside the existing dock fill and behind the existing mooring cell line. However, during a field review, it was found that the plan would impact about 1.06 acres of mixed wetlands and emergent wetland vegetation, not previously mentioned in the application (see photographs taken during the site investigation, Appendix D).

Since the discovery of wetlands within the footprint of the proposed fill, the applicant discussed various mitigation plans that might offset the impact. The applicant discussed contacting the USFWS about possibly funding the Wheeler Wildlife Refuge an undetermined amount of dollars to aid them in onsite projects; there was also mention of placing riprap (material to come from the rock quarry onsite) along the river at sites determined by TVA as needing stabilization.

With the original request, approximately 53,815 cubic yards of material would have caused a power storage loss of 21,061 cubic yards and a flood storage loss of 32,734 cubic yards. Also under the original plan, Black Eagle Minerals requested to stabilize approximately 300 feet of shoreline along the island just upstream (to protect the island from unintended erosion) and to install fish attractors within the 300 foot protected island front (made from the trees taken onsite).

**1.3 Description of Proposed Work (Reduced from Original):** On December 18, 2008, the applicant sent modified plans in order to avoid filling the wetland area within the embayment alongside of the dock. The modified plan would still allow the applicant access to the upstream mooring cells, with barge mooring no more than three barges wide, but they would utilize other areas on the upland for storage areas. Since the modified plan was submitted in order to address public interest issues and the scope of work was generally cut in half, it was determined there was no need to re-advertise the work in a new public notice. The modifications include a solid sheet pile structure that would be constructed from cell to cell, as shown on the "Modified Plan View" drawing, Appendix C. This configuration would fill approximately 1.0 acre of lake (footprint of fill area is 396' (L) x 118' (W)), but would not encroach into the adjacent wetland areas (+/-1.06 acres). The sheet pile then turns 90 degrees inland (southwest) from the upstream cell to create a flat area for the dock platform measuring about 50' wide behind the cells. The new design would accommodate water flow (from the upstream end of the facility) into the wetland area during periods of normal pool. The water would flow unrestricted year round into the wetlands through a path around the upstream most mooring cell.

According to the new plans, the construction of the proposed terminal facility requires additional fill material in the amount of 33,619 cubic yards. The volume of material to be placed between elevations 408 and 414 MSL (Power Storage Loss) equates to 6,413 cubic yards. The volume of material to be placed between elevations 408 and 425.3 MSL (Flood Storage Loss) equates to 15,452 cubic yards. The utilization of the sheet piling, allows the ability to minimize the extent of the fill slopes, and fill volume, thereby leaving a natural channel on the upstream end of the proposed facility for ingress/egress water flow into the adjacent wetlands. A copy of the modified plans is located in Appendix C.

**1.4 Decision Required.** Section 10 of the Rivers and Harbors Act of 1899 prohibits the alteration or obstruction of any navigable water of the United States (US) unless authorized by the Secretary of the Army acting through the Chief of Engineers; TRM 247.5 is a navigable water of the US as defined by 33 CFR Part 329. Section 301 of the CWA prohibits the discharge of dredged or fill material into waters of the US unless authorized by the DA pursuant to Section

404 of the same Act; TRM 247.0 is a water of the US as defined by 33 CFR Part 328. In addition, since the proposed action is located within the Tennessee River watershed, approval pursuant to Section 26a of the TVA Act is also required.

For this reason, TVA is a cooperating agency to the Corps in the preparation of this EA. The CEQ regulations addressing cooperating agencies status (40 CFR 1501.6 & 1508.5) implement the National Environmental Policy Act (NEPA) mandate that Federal agencies responsible for preparing NEPA analysis and documentation do so in cooperation with other agencies with jurisdiction by law or special expertise (42 USC 4331(a), 4332(2)). The scope of this project includes federal actions to be taken by the Corps and TVA. TVA has reviewed the content and findings of this decision document. Permits are required; therefore, the Corps and TVA must decide on either issuance of a permit for the proposal, issuance of a permit with modifications or conditions, or denial of the permit.

**1.5 Other Approvals Required.** In addition to the Corps and TVA permits required, other federal, state, and/or local approvals may be required for the work. On July 30, 2008, the Alabama Department of Environmental Management (ADEM) issued a water quality certification for the proposed work. ADEM has been notified that the applicant has reduced the original plan. See Appendix D.

**1.6 On-Site Inspection.** The Corps and TVA have conducted periodic compliance inspections on this site since 2000, see memorandums in the file. On August 19, 2008, Lisa Morris, Regulatory Branch, conducted an inspection to view the proposed work site under consideration. During the inspection, it was determined that the originally proposed plan contained jurisdictional wetlands and wetland emergent vegetation (about 50%) and the other 50% was open water. Photographs taken are shown in Appendix E. Since the inspection, the applicant has reduced the plan to avoid impacts to the wetland area.

**2.0 Public Involvement Process.** On June 3, 2008, JPN 08-34 (Appendix A) was issued to advertise the original proposed work. All responses to the notice are included in Appendix B. No comments were received from the general public. There were no requests for public hearing.

a. In its letter dated June 16, 2008, the Shoals Economic Development Authority stated enthusiastic support of the project. They applaud Black Eagle Minerals for their foresight and support of the local community, and are in full agreement with the proposed project.

b. No comments were received from the US Fish and Wildlife Service (USFWS); even though they were sent several items of correspondence relating to this proposal. USFWS was also sent a copy of the modified plan, but has not commented. However, in its March 1, 2006, letter response to public notice 06-13 relating to the previous fill for this terminal, the USFWS stated that no known federally listed threatened or endangered species exist within the project area and they had no objections to the proposal. The fill site under consideration is within the

same general area as the previous sites. In their previous letter, the USFWS suggested best management practices be implemented to include limiting construction to periods of winter pool drawdown conditions of Pickwick Lake and the wash-water discharge from the existing plant allowed to filter through the fill materials proposed for placement and not directly piped to the Tennessee River. No significant adverse effects on fish and wildlife resources are expected to result from the proposal.

c. In its letter dated September 15, 2008, the Alabama State Historic Preservation Officer (ALSHPO) concurred with the following conditional findings of TVA and stated that should cultural resources be encountered during project activities, the work should cease; and the agencies should be consulted immediately. *(Note: This is a standard condition on DA permits).*

According to TVA, the subject shoreline was surveyed for the 1998 permit action. For the current review, TVA forwarded information to the Alabama Historical Commission, ALSHPO, stating that the proposed fill and stabilization would encompass a portion of a cultural resource that is considered potentially eligible for inclusion to the National Register of Historic Places. The archaeological deposits in the area to be covered by the proposed fill have been deflated by a combination of inundation and wave action and have been adversely affected. However, intact archaeological deposits are present in areas immediately adjacent to the proposed fill location and represent sensitive cultural resources. To ensure that sensitive cultural resources associated with site would not be adversely affected; TVA recommended that the work would be subject to the following:

- 1) All fill will be placed from the existing dock and/or from a barge;
- 2) No part of the peninsula that is located immediately north and east of the fill location shall be disturbed during the placement of the proposed fill.

### 3.0 Environmental and Public Interest Factors Considered (for the Modified Plan)

**3.1 Introduction.** 33 CFR 320.4(a) states the decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. JPN 08-34 listed factors that may be relevant to the proposal and must be considered. The following sections discuss those factors identified as relevant through the public interest review process and provide a concise description of the anticipated impacts.

**3.2 Physical/Chemical Characteristics and Anticipated Changes.** The relevant blocks are checked with a description of the impacts.

( x ) substrate - The placement of fill rock required to expand the dock area would permanently impact a little more than one acre (46,728 square feet) of existing substrate. The

original plan would have displaced about two acres of substrate. The substrate at this site is mostly composed of silt bedload from the river and clay/silt from upland runoff. The area proposed for fill is heavily impacted by the presence of industrial operations. The rock quarry operations wash-water is discharged from the existing plant and allowed to filter through the fill materials towards the river. It is not directly piped to the river. The work would be completed in the dry and during winter pool conditions, so minimizing the impacts to the substrate. The riprap banks of the dock would be stabilizing and may provide beneficial impacts to the aquatic life and habitat by providing potential refuge for fish and additional habitat for macroinvertebrates and snails. The substrate in the dock area would change to a rock bottom with voids. The substrate of the riverbed adjacent to the facility may be affected by increased tow activity (e.g., infrequent increase in local turbidity); however, the applicant has indicated that the currently authorized 36 barges total at the terminal would not need to be increased. The applicant says that they have never had the maximum number of barges at the mooring cells at any one time.

( x ) currents, circulation or drainage patterns - The expansion of the dock area would not significantly change the existing drainage pattern of the river. The presence of the existing dock creates isolated pockets of pooled areas and stagnate water. The fill would close in the areas just beside the existing dock, but summer and winter pool elevations would still flow into the wetland area behind the dock by way of the opening on the northern side. The permittee shall implement a 10-year monitoring program to maintain summer and winter elevation water flow through the open channel to the wetland in perpetuity.

( x ) suspended particulates, turbidity - The majority of the work would be performed in the dry. This would significantly minimize the turbidity and suspended particulates during the construction. Any disturbance would be temporary and turbidity would quickly dissipate in the river currents. The dock expansion area would be constructed using clean, noncompactable fill material stabilized by large shot rock, unloaded from trucks on the existing dock area as they go. While equipment would not enter the water, there would be some minor turbidity and suspended particulates when the rocks are dumped into place, both when the rock hits the lake bottom and from the water/ wave action caused by the drop and weight of rocks. However, the turbidity would be minimal and quickly dissipated by normal currents. It is anticipated that the new dock would be able to handle the barge tows (4 long x 3 wide) that the mooring cells, in front of the proposed filled loading dock, currently handle. Use of the mooring cells would not change if the area behind the cells is filled with rock, there would be minimal increased effects on suspended/turbidity from the increased activity.

( x ) water quality (temperature, color, odor, nutrients) - This stretch of the river is heavily influenced by industrial terminals and barge traffic. The water quality in the main river channel should not significantly be impacted due to the construction and use of the proposed dock expansion. Performing the work during low flow conditions would reduce temporary anticipated impacts. Overall, adverse water quality impacts would be minor. ADEM issued a conditional water quality certification for the proposed work on July 30, 2008 (See Appendix D).

( x ) shore erosion and accretion patterns - Any permit issued for the work would be conditioned to require the applicant to immediately stabilize disturbed areas.

( x ) flood control functions - The dock expansion area would involve placing fill (33,619 cubic yards) below the 100-year flood elevation, Elevation 423. The volume of material to be placed between elevations 408 and 414 MSL (Power Storage Loss) equates to 6,413 cubic yards. The volume of material to be placed between elevations 408 and 425.3 MSL (Flood Storage Loss) equates to 15,452 cubic yards. According to TVA, this amount would not measurably affect the overall flood elevations of the river.

( x ) storm, wave and erosion buffers – By nature of the proposed work, the rock and sheet piling adds a buffer of wave and erosion protection along the river at this location.

**3.3 Biological Characteristics and Anticipated Changes.** The relevant blocks are checked with a description of the impacts.

( x ) special aquatic sites (wetlands, mudflats, pool and riffle areas, vegetated shallows, sanctuaries and refuges, as defined in 40 CFR 230.40-45) - Under the original plan, the proposed fill would have impacted about two acres of wetlands. Since the plan has been reduced, there would be only minimal impact to the back lying wetlands. The utilization of the sheet piling allows the ability to minimize the extent of the fill slopes, and fill volume, thereby leaving a natural channel on the upstream end of the proposed facility for ingress/egress water flow into the adjacent wetlands. In order to ensure that the new dock does not cause a barrier between the lake and the wetland area, permit conditions would require that the opening around the upstream side of the dock and the peninsula be maintained and kept open.

( x ) habitat for fish and other aquatic organisms -The deposition of fill material required for the additional docking area would have a permanently eliminate riverbed habitat and fauna (unable to swim away) inhabiting the fill footprint. This impact would have a relatively minor adverse impact on aquatic organisms. The fill would displace about one acre of substrate; the existing substrate within the area of impact is primarily silt. The voids established in the rock would be attractive as habitat for aquatic organisms, which are expected to recolonize within the voids located below water level. Sheet piling and rip rap would provide an increase in habitat for snails and macroinvertebrates.

( x ) wildlife habitat - The additional docking area and the sloped banks would provide access for animals to make their way to the river. Waterfowl may be able to use this fill for resting and in the pursuit of prey.

( x ) endangered or threatened species - TVA indicated that numerous state and federally listed species occur within a 10 mile radius of the proposed project. However, a survey of freshwater mussels and snails at the proposed site (upstream and downstream of the mouth of

Dry Creek), conducted by the Alabama Department of Conservation and Natural Resources (ADCNR) in 2008, found 16 live mussel species but no evidence of listed species. ADCNR also stated that habitat (substrate) at the proposed site would not support listed species, such as pink mucket (*Lampsilis abrupta*). In 2006, the USFWS responded to a previous permit application for this facility that no federally listed or proposed endangered or threatened species occur within the project area. Given the specific findings of the ADCNR and USFWS, TVA concluded that no federally listed species will be affected by the proposed project.

( x ) biological availability of possible contaminants in dredged or fill material - Clean material would be used for the construction of the dock expansion area. There is no evidence that contaminants above trace levels exist in the sediments found within the proposed area.

**3.4 Human Use Characteristics and Anticipated Impacts.** The relevant blocks are checked with a description of the impacts.

( x ) existing and potential water supplies; water conservation - Colbert County Commission has a raw water intake structure at TRM 244.2, Left Bank. The Black Eagle Mineral's terminal is currently located at TRM 247.5L. Because of the location, distance, and limited scope of the proposed activity, the expansion of the terminal would not impact the operation of this water intake.

( x ) water-related recreation - The current use of the site is for continued barge loading and unloading. The site is located well off the main commercial navigation channel and presently does not cause adverse impacts to recreation.

( x ) aesthetics – The proposed fill would be an expansion of an existing barge loading dock. The noncompactible fill material proposed for use would be covered with natural quarried limestone, which would not be out of the ordinary for this type setting.

( x ) traffic/transportation patterns - The applicant ships most of the rock products quarried onsite by barge, thus the need for the larger terminal. Shipping by waterway alleviates large volumes of truck traffic on the local roadways. The applicant has indicated no immediate increase in barge traffic because of the expansion. This may change in the future with an increased future focus on infrastructure rebuilding in the USA.

( ) energy consumption or generation - No Issues

( ) food and fiber production - No issues.

( x ) historic properties and cultural values - The site has been surveyed and the ALSHPO has no objections with this project, under certain conditions to protect the peninsula located upstream of the terminal. See comments from ALSHPO, Section 2.0.

( x ) noise - Work on the new dock area would be performed during daylight hours. Equipment shall be limited to small machinery operating within normal ranges expected for construction equipment. Construction activities would be short-term.

( x ) navigation and safety - The proposed work is located beside an existing barge loading dock. The existing terminal is located along the left bank of the river at this location. No increases in barge mooring at the existing mooring cells are expected because of the new fill. The proposed work would greatly enhance safety through the greater area available for trucks to maneuver and turnaround.

( x ) air quality - The proposal has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act, and it has been determined that the activities proposed under this permit will not exceed de minimus levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility, and cannot be practicably controlled by the Corps, so a conformity determination is not required for a permit.

( x ) economics – The purpose of the expansion is to support the needs of the company and likely increase the terminal’s property value by enhancing the truck turnaround area and providing additional locations for rock storage in preparation for barge loading. The construction work would provide a nominal benefit for the contractor.

( ) land use classification - No issues.

( x ) mineral needs and conservation – In addition to the support of Black Eagle Minerals activities in delivering rock and other minerals to the public, the proposed action would allow the applicant to provide services to new industries that might relocate to the area.

( x ) consideration of private property - The proposed action would occur on TVA fee-owned land allocated for commercial and industrial use in the Pickwick Reservoir Land Plan.

( x ) floodplain values - There is no published floodway on the Tennessee River in Colbert County; therefore, there would be no fill in a floodway or a need for an offsetting cut. With regards to flood control storage, the applicant has reduced the amount of storage that would be displaced. Further, the site is located within a stretch of the river that is primarily industrial in nature and would not affect any residential properties.

**3.5 Cumulative and Secondary Impacts.** This section considers what actions by the applicant and by others (including those actions completely unrelated to the action) have and will affect the same resources affected by the proposed action. Cumulative environmental effects for this action are assessed in accordance with USEPA 315-R-99-002, dated May 1999. In this case,

a subjective five-year focus period for reasonably foreseeable future actions on the river and uplands in the vicinity of the proposed action, both by the applicant and by others includes:

- More of or similar work that causes a minor displacement of flood storage
- Need for increased barge mooring at the terminal
- Competition with other businesses in the area that provide similar services
- Additional removal of rock from the quarry; continued business and employment
- Other industries with similar terminal needs locating in the immediate area
- Construction of future improvements by these companies at same location
- Growth in users of the specific section of river attracted by the new services
- Employment and related increases in population in the area

The applicant has clearly phased in the placing of fill in the lake for this terminal; however, each proposal has offered an acceptable reason for the piecemeal. After the fill action associated with the proposed alternative, the applicant has indicated that there would be no additional areas to fill. Assuming there is no direct impact on the wetland area, mitigation by avoidance would occur by virtue of requiring maintenance of the present water flow regime (positive exchange of summer and winter water). Also, there is an upland alternative for any future expansion, so the wetland on public land should be maintained in perpetuity. Given the relatively small area of impact, the limited area of fill the applicant has proposed, the previous uses of the site, and the limited physical and biological functions present in the impact area, the proposal is not anticipated to have a cumulative or secondary effect upon the existing environment.

## CHAPTER 4.0 ALTERNATIVES

**4.1 Introduction.** This section discusses alternatives as required by 33 CFR 320.4(a)(2). The relevant environmental issues identified in Chapter 3.0 were used to formulate the alternatives. The alternatives that were given detailed consideration are listed below.

### **4.2 Description of Alternatives.**

**a. No Action.** This alternative would result in denial or withdrawal of the applicant's request to expand the dock area at their existing terminal.

**b. The Applicant's Proposed (Reduced) Action.** At this time, Black Eagle Minerals proposes to extend the facility 396' (L) x 118' (W) on the upstream northern most side of the existing fill. The fill material would be composed of shot limestone from the adjacent Vulcan Materials Rock site. Under this plan, the area to the east of the dock and behind the peninsula would be covered by the lake year round. The lake would flow unrestricted into the wetlands around the upstream most mooring cell. The modifications include a solid sheet pile structure that would be constructed from cell to cell, as shown on the "Modified Plan View" drawing, Appendix B. The sheet pile then turns 90 degrees inland (southwest) from the upstream cell to

create a flat area for the dock platform measuring about 50' wide behind the cells. This configuration would fill of approximately 1.0 acre of lake (footprint of fill area is 396' (L) x 118' (W)). According to the applicant, these modifications were incorporated to prevent encroachment of fill material into the adjacent wetland areas (1.06 acres); and to accommodate water flow (from the upstream end of the facility) into the wetland area.

According to the plans, the construction of the proposed terminal facility requires fill material in the amount of 33,619 cubic yards. The volume of material to be placed between elevations 408 and 414 MSL (Power Storage Loss) equates to 6,413 cubic yards. The volume of material to be placed between elevations 408 and 425.3 MSL (Flood Storage Loss) equates to 15,452 cubic yards. The utilization of the sheet piling, allows the ability to minimize the extent of the fill slopes, and fill volume, thereby leaving a natural channel on the upstream end of the proposed facility for ingress/egress water flow into the adjacent wetlands. The terminal is authorized to moor up to 36 barges (at three wide) and load coal, steel, and rock (mined onsite – Vulcan Quarry), and general commodities which include corn and other grains, denatured fuel ethanol, and petroleum products, but excluding fertilizers. Plans of the modified work were forwarded to this office on December 18, 2008, Appendix C.

c. **Alternatives.** Use of materials other than rock (such as full metal dock) might be considered.

d. **Applicant's Proposed Action with Special Conditions.** This alternative would be composed of the applicant's proposal as described in b. above with the inclusion of additional special conditions (described in Section 5.3) that would minimize and mitigate unavoidable adverse impacts.

#### 4.3 Comparison of Alternatives.

a. **No Action.** This alternative consists of denying or withdrawing the applicant's request to perform the proposed work. The applicant would continue loading rock at this existing terminal; however, safety and storage needs of the applicant would not be met.

b. **Applicant's Proposal.** This alternative would allow the applicant to construct the additional dock expansion area in order to access and facilitate loading and unloading from the upper most mooring cells. The applicant has reduced the amount of fill to avoid impact to wetlands. They determined that there was another location on their property that could be utilized for storage of materials. Property values would likely increase. Adverse impacts could occur if the applicant does not follow proper erosion techniques.

c. **Other Alternatives.** Other alternatives that would meet the applicant's purpose are limited. According to the applicant, while a metal dock platform would serve the basic purpose and need of the applicant, it would not meet the weight requirements needed.

**d. Applicant's Proposal with Special Conditions.** The impact of this proposal would be similar to the description in b. above. The addition of special permit conditions would require that the dock expansion area be constructed in a manner that would minimize adverse impacts to the environment. Several conditions to avoid erosion to the upstream island would be incorporated in the permits conditions along with requiring a conservation easement on the wetland area that is being preserved under the modified plan. Some conditions, which might apply to this type of work, would include using only clean materials, performing the work during winter pool stabilizing any disturbed areas, and keeping all equipment out of the water. This alternative would have the least adverse impacts of the four options under consideration.

## 5.0 Findings

**5.1 Consideration of Public Comments.** No comments were received from the general public or adjacent property owners. The USFWS, SHPO, and ADEM had no objections to the proposal. There were no requests for public hearings.

**5.2 Water Quality Certification.** In accordance with Section 401(a)(1) of the CWA, ADEM issued a conditional water quality certification dated July 30, 2008. Among the conditions required by the certification was the use of temporary erosion and sediment control measures during construction and general use of best management practices. A copy of the certification, Appendix D, would be made a part of any permit issued for the proposed work, by reference.

**5.3 Section 404 (b)(1) Determination.** The purpose of Section 404(b)(1) of the CWA is to restore and maintain the chemical, physical, and biological integrity of the waters of the US through the control of discharges of fill material, as published in 40 CFR 230. Section 230.10 requires that the discharge of fill material into waters of the US associated with the proposed work meet certain restrictions in order to be authorized. Based on the probable minimal impacts addressed in this document, compliance with the restrictions, and information concerning the fill materials to be used, the proposed work complies with the Guidelines and the intent of Section 404(b)(1) of the CWA. An evaluation of the guidelines is attached in Appendix F.

**5.4 Special Permit Conditions.** The following special permit conditions, when applicable, are typically included in most DA permits, and are necessary to comply with federal law, while affording appropriate and practicable environmental protection:

- The work must be in accordance with final plans attached to the permit.
- A copy of the permit must be available on-site and the permittee must ensure that all contractors are aware of its conditions and abide by them.

- Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.
- The work must be performed during the period of winter pool drawdown of Pickwick Lake in order to minimize adverse impacts to the aquatic environment.
- All fill will be placed from the existing dock and/or from a barge and shall consist of non-erodible materials obtained from an upland source.
- The permittee shall institute and maintain a strict erosion and sediment control program for the life of the project and all disturbed areas shall be properly seeded, mulched, or otherwise stabilized as soon as practicable to prevent erosion.
- Disturbance to riparian vegetation shall be kept to a minimum during construction.
- No part of the peninsula that is located immediately north and east of the fill location shall be disturbed during the placement of the proposed fill.
- The permittee shall implement a 10-year monitoring program to maintain summer and winter elevation water flow through the open channel to the wetland in perpetuity.

**5.5 Findings of No Significant Impact (FONSI).** Based on a full consideration of the EA, information obtained from cooperating federal/state agencies, and comments received from the interested public, the USACE and TVA have concluded that issuance or denial of the requested permit would not constitute a major federal action that would significantly affect the quality of the human environment. This constitutes a FONSI; therefore, the preparation of an Environmental Impact Statement is not required. This FONSI was prepared in accordance with paragraph 7a of Appendix B, 33 CFR 325 dated February 3, 1988.

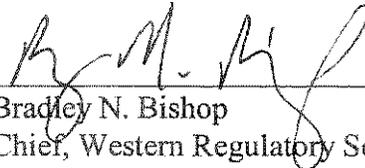
**5.6 Public Interest Determination.** I have reviewed the application, responses to the JPN, and the environmental assessment. No adverse comments were received concerning the proposal. The applicant has reduced the amount of fill in the lake and loss of power storage. In addition, the applicant has avoided the impact to the wetland. No historical or cultural resources would be affected. No federally-protected species would be affected. The proposed work would be conducted during Pickwick Lake's winter pool elevations. We have determined that construction of the dock expansion area is warranted to allow access to the upstream mooring cells and for increase in storage area for new commodities. Pertinent environmental concerns that were identified during the review have been researched and addressed. The fill would provide new habitat for aquatic organisms and minor benefits to waterfowl and wildlife. The dock, constructed in accordance with recommended special conditions, is fully justified and

reasonable and meets the applicant's purpose and need. Having weighed these potential benefits that may be accrued against the reasonably foreseeable detrimental effects, I conclude that permit issuance would not be contrary to the public interest.

FOR THE COMMANDER:

2/20/09

Date



Bradley N. Bishop  
Chief, Western Regulatory Section  
Operations Division