

**Appendix F – Public Comments and Responses With Agency
Letters**

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PUBLIC COMMENTS
Received by TVA on the
Douglas and Nolichucky Tributary Reservoirs Land Management Plan
and
Draft Environmental Impact Statement
May 2010

Introduction

The draft environmental impact statement (DEIS) for the Douglas and Nolichucky Tributary Reservoirs Land Management Plan was distributed in March 2010. TVA received almost 40 comments by letters, electronic mail, and oral statements during the comment period on the DEIS from March 12, 2010, to April 26, 2010. Following release of the DEIS, TVA held an information meeting at Newport, Tennessee, on April 6, 2010, where 42 people attended. The written and oral comments were received from 21 individuals, including five interested state and federal government agencies. TVA has reviewed all of the comments.

The comments and TVA responses to them appear below. In some cases the EIS was changed because of the information or issues presented in the comments. Due to their similarity, some of the comments were summarized to provide joint responses. The names of those individuals and organizations providing comments appear after the comment text. Because the comments were summarized, the precise wording could not always be used. However, TVA tried to retain all important issues and differences among similar comments. Furthermore, commenter's names may appear in more than one comment if they identified more than one issue. Copies of original comments and letters are available from TVA upon request. Letters from agencies and some organizations providing more information appear in Appendix E (Supporting Information). Comment order of appearance has no bearing on their importance as all comments were reviewed and considered.

The largest grouping of the public responses to the DEIS focused on the types of use allocation for specific parcels of TVA-managed land, in particular the Nolichucky Reservoir. There were also comments about the NEPA process and alternative selection and stewardship of public lands. There was interest in how TVA's Land Policy is applied and in the management of various types of recreation on public lands. Several individuals made comments addressing recreation opportunities, land use, and ownership. Several commenters expressed support for the preferred alternative (Alternative C) although there was at least one who supported the No Action Alternative.

The remainder of commenters on the DEIS raised questions and provided comments on the identified environmental issues such as water quality and litter. Two individuals supported the use of the Rankin Bottoms Wildlife Management Area including changing the allocation of TVA land to more protective management zones and preservation of an abandoned coal tippie on TVA land. There were several comments on the pros and cons of hunting on TVA-managed public land including concern about the individual safety of hunters and adjacent landowners.

The Tennessee Department of Transportation reviewed the DNTRLMP but had no comment to make at this time. The Tennessee Wildlife Resources Agency (TWRA) supported TVA's preferred alternative, Alternative C, and noted that the commitments and

agreements they have with TVA on lands adjacent to these reservoirs would be honored no matter which alternative is chosen. The Tennessee Historical Commission (THC) found that the current programmatic agreement between TVA and THC satisfied TVA's Section 106 of the National Historic Preservation Act (NHPA) responsibilities and instructed TVA to contact THC if project plans change that would affect Action 106.

The U.S. Environmental Protection Agency's (USEPA) agreed with and encouraged the continued identification of Alternative C as the preferred alternative in the FEIS. USEPA expressed that its primary concern with the DNTRLMP was the uncertainty whether or not allocated lands could be reallocated by TVA to management zones with a greater potential for adverse impacts (e.g., from the Sensitive Resource Management Zone 3 to Industrial Zone 5) during site-specific reviews or public requests to the TVA Board of Directors (Board). However, assuming that Alternative C is selected and the proposed allocations are finalized, USEPA rated the draft EIS as "LO" (Lack of Objection).

The U.S. Department of the Interior (DOI) recommended that TVA contact the DOI during future site-specific reviews to evaluate the potential for future proposed projects to impact federally listed species. In the opinion of DOI, reaching a determination of "likely to adversely affect" federally listed species would be unlikely. DOI stated that the requirements of Section 7 of the ESA of 1973, as they apply to DNTRLMP, have been fulfilled. However, obligations under Section 7 of the act must be reconsidered if: (1) new information reveals that the proposed action may affect listed species in a manner or to an extent not previously considered, (2) the proposed action is subsequently modified to include activities that were not considered in the permit application, or (3) new species are listed or critical habitat designated that might be affected by the proposed action. The DOI expressed support for Alternative C.

**Comments on the Douglas and Nolichucky Tributary Reservoirs
Land Management Plan
Draft Environmental Impact Statement**

Comment 1: The Tennessee Department of Transportation has reviewed this document and has no comment to make at this time.

- Edward H. Cole, Tennessee Division of Transportation, Nashville, Tennessee

Response: Comment noted.

Comment 2: My comment and concern is specific to water quality in the Anderson Branch/Muddy Creek area of Douglas. I am a home owner on Porter Rd, in the vicinity of Dickey Rd. The area adjacent to and surrounding numerous homes in this area are used by a local cannery to eliminate their waste water. Specifically, the liquid by-products of the canning process is systematically sprayed on to lands presumably owned by the cannery. There is signage on site that indicates they have some type of permit via the EPA to eliminate waste water in this way. However, the odor of the waste water more-often-than-not is that of sewage. My concern is that runoff of these areas directly into Douglas lake will alter the water quality in a negative way. Is TVA aware of this situation? Can you comment? Can anything be done to further "filter" the waste water before it is sprayed into the lakes watershed?

- Kevin Kennard, Knoxville, Tennessee

Response: TVA is aware of the Bush Brothers and Company spray irrigation system for treated wastewater, at the company's Chestnut Hill, Tennessee, foods manufacturing facility on private land adjacent to Douglas Reservoir and three of its tributaries. The company operates the spray irrigation system under a permit and regulations from the Tennessee Department of Environment and Conservation (TDEC) Division of Water Pollution Control. This process has apparently been successfully used for several years and is monitored by TDEC; TVA understands that the process and permit are designed to exclude any direct contact with any surface waters. None of this occurs on TVA-managed land or waters.

Comment 3: Thank you for the information you mailed me regarding the above, and the related DEIS. After reading the report on the website, my family and I would like to communicate our support for Alternative C. We live and work in Greene and Hamblen Counties. We live next to Cherokee National Forest and enjoy many of the resources provided by TVA, including Kinser Park, various areas on the Nolichucky River, and Cherokee and Douglas Lakes. We would be very pleased to see Alternative C put in place.

- Karen Jacoby, Greeneville, Tennessee

Response: Comment noted.

Comment 4: As a TVA retiree and a Douglas land owner, I am concerned about doing business on Douglas "the way we have always done it." In the many years that I have lived near and on Douglas, I have watched TVA dump water far in excess of what is necessary or required for generation, maintaining channel depth, or for cooling water. I also know that dumping when the water level is 20 to 30 feet below normal when no flood is expected is also a waste. Having worked with many on the environmental side, I know that there are many bright and creative minds on the staff. How about coming up with a water management plan that would begin the fill earlier and maintain the water level through September. I will not be physically able to attend the April 6 meeting, but my neighbors will be. Please consider this request.

- James E. Barker, Dandridge, Tennessee

Response: Water levels on Douglas Reservoir were addressed in TVA's 2004 *Reservoir Operations Study (ROS) Final Programmatic Environmental Impact Statement*, which evaluated alternative ways to operate the TVA reservoir system to produce greater overall public value. Specific changes in the operation of TVA reservoirs were implemented in 2004 because of the ROS, such as using weekly average-flow requirements to limit the drawdown of Douglas Reservoir June 1 through Labor Day to increase recreation opportunities; deciding to raise winter flood guides and winter operating ranges on Douglas Reservoir based on results of flood risk analysis; and formally scheduling water releases to increase tailwater recreation opportunities.

ROS and its implementation are pertinent to the management of TVA and private lands on Douglas Reservoir, especially recreation. However, changes to it are not part of the DNTRLMP. For more information, see the link to TVA's Web site at http://www.tva.com/environment/reports/ros_eis/index.htm.

Comment 5: At your request, our office has reviewed the above-referenced Draft Environmental Impact Statement in accordance with regulations codified at 36 CFR 800 (Federal Register, December 2, 2000, 77698-777390). In accordance with our previous correspondence dated, March 3, 2009, we find the current programmatic agreement between our agencies satisfied the Tennessee Valley Authority's Section 106 responsibilities.

If project plans are (changed), please contact this office to determine what further action, if any, will be necessary to comply with Action 106 of the National Historic Preservation Act.

- E. Patrick McIntyre Jr., Tennessee Historical Commission, Nashville, Tennessee

Response: TVA agrees with the Tennessee Historical Commission.

Comment 6: TVA, I would like to see more places open to public use. Some of use can't pay the price for a campsite and we like to have a little privacy.

- Roger Jennings, Greeneville, Tennessee

Response: TVA offers a diversity of recreation opportunities, from primitive areas with free camping to developed campgrounds located on several TVA dam reservations. Numerous public and private/commercial recreation developments occur on reservoir shoreline, some of which are operated on TVA-owned property but are managed by commercial operators under contractual agreement. For primitive camping, there is a maximum 14-day stay within a 30-day period on TVA lands that support dispersed recreation. TVA lands that provide camping at developed and dispersed areas are indicated in the individual land plans. More information about recreation opportunities on TVA reservoirs is available at www.tva.com/river/recreation and online maps are available at <http://recreation.tva.com>.

Comment 7: We are losing more and more of the use of public lands because of vandalism, drug and alcohol use, litter and too much hell raising. Why they don't help these people be better stewards of these precious places I don't know. Maybe some just don't care. Maybe there would be no use, some don't learn any better.

- Roger Jennings, Greeneville, Tennessee

Response: TVA understands your concerns regarding the misuse of public lands. TVA encourages all users of public land to act responsibly and will enforce laws to protect public property. TVA manages the public lands under its stewardship for long-term benefits and to provide a balanced set of recreational experiences. Unfortunately, not all users of public land will recreate responsibly. In addition, some areas can be overused if they are popular. TVA values community involvement and partnership development in stewardship activities on public lands. Any location and circumstances of general misuse should be reported by calling the Environmental Information Center at 1-800-882-5263 on weekdays. Any public safety issue should be reported to the TVA Police at 1-800-824-3861.

Comment 8: In Greene County at Parcel 15, who sold the island to TVA and when?

- Joyce Daniels, Afton, Tennessee

Response: TVA purchased Parcels 14 and 15 from Lamon and Melba Rice in November 1983. The deed is recorded in the Greene County Courthouse in book 380 on page 14.

Comment 9: I own property adjoining one of the tracts. And my major concern is that the draft, DEIS, did not sufficiently show the impacts on adjoining landowners. I know that they said it was a non-significant impact, but there's no data to back that up and nobody can tell me how they come to that conclusion. And not only for socioeconomic but all resource areas, there's not enough data to back up a conclusion of no significant impact.

- Ronnie Lance, Greeneville, Tennessee

Response: Existing land use patterns along the shoreline and back-lying land along Douglas and Nolichucky reservoirs have been largely determined by TVA land acquisitions, disposals, and land use agreements. In general, TVA

believes the allocation of land supports the goals of land planning (see page I-3), are beneficial to the public and stakeholders, and have insignificant adverse environmental impacts (see pages I-27 through I-29).

There may be localized impacts to individual back-lying parcels that occur as a consequence of TVA allocating land for particular uses. For example, allocating land to Zones 5 (Industrial), 6 (Developed Recreation), or 2 (Project Operations) would generally have greater adverse environmental impacts than Zones 3 (Sensitive Resource Management) or 4 (Natural Resource Conservation); consequently there could also be similar impacts to adjoining or neighboring land.

These impacts may be beneficial or adverse to adjacent landowners depending on their view and plans for their land. TVA is aware of impacts to adjoining land and wherever possible makes management decisions based on the neighboring land uses (see Section 2.1, The Allocation Process), sometimes to complement or mitigate the back-lying use; however, the intent is always to support the integrated goals of TVA, the stakeholders, and the community on a reservoir basis.

Comment 10: I represent Nolichucky View Golf Course. We would like to have a portion of Parcel 3 re-zoned from Zone 4 to Zone 6, which would be from Natural Resource Zone to a Recreational Zone, in order to install a driving range on our golf course. The total Parcel 3 is 48.9 acres, which includes the trees and things that's around the cove, that is a cove that's formed from the Nolichucky River, it's a back-up from the Nolichucky River. The only thing that we want to use, there's a portion of the Parcel 3 that is being mowed for hay right now. That portion consists of, I'm going to estimate ten to twelve acres that, like I say it's being mowed now and that portion which is the lower southwest portion of Parcel 3, would be re-zoned recreational in order to allow us to develop a driving range. We, during...the times were difficult, and we feel that if we could provide a driving range it would help us attract, you know, more players to our golf course and, you know, of course it would help us economically. It would be an incentive for, you know, we've been told that the reason we can't get a Tusculum College Tournament is because we don't have a driving range. So, it would help us, we think, tremendously, if we could have that re-zoned, that one small portion re-zoned to Zone 6, for purposes of a driving range.

- Jack Short, Greenville, Tennessee

Response: Parcel 3 has a license agreement with the Tennessee Wildlife Resources Agency (TWRA) to be managed for wildlife management, public recreation and with agreements with local farmers for the production of wildlife food crops. Therefore, any subsequent use would require the reassignment of the license by TWRA with approval from TVA. Due to the existing license agreement, this parcel must remain allocated to Zone 4, Natural Resource Conservation.

Comment 11: I would like to see TVA either do some land sales along the Nolichucky Reservoir and put the property back in the hands of the private individuals. This goes back to a couple of years ago when TVA was trying to decide

what to do with the dam as far as the flooding of non-TVA land. TVA has solved some of its problems in the past, I understand, through swaps, horse trades, whatever you want to call it. But I think that needs to be discussed here. Because I realize the problem will be the Tennessee Wildlife Resources Agency and the Department of Conservation. That I would think that in some of these circumstances they would at the very least have nothing to lose. The Nolichucky Wildlife Management Area, waterfowl Sanctuary that was put in place when the dam was shut down, has achieved none of its objectives, that is the objectives that were set for it back in 1969 and 1970. The land needs to be generating tax revenue for Greene County. It's my understanding the amount of money that TVA pays Greene County in lieu of taxes is a paltry sum.

- Daniel E. Burgne, Greeneville, Tennessee

Response: TVA recognizes that historical land transfers have contributed substantially to meeting multipurpose objectives in managing its lands: to protect the integrated operation of the TVA reservoir and power systems, to provide for appropriate public use and enjoyment of the reservoir system, and to provide for continuing economic growth in the Valley. Since 2006, when TVA instated its Land Policy, it has been TVA's policy to preserve reservoir lands remaining under its control in public ownership except where different ownership would result in significant benefits to the public.

In particular, TVA land will not be used for residential and retail use (see the TVA Land Policy, Volume I, Appendix A). TVA would consider changing a land use designation outside of the normal planning process only for water-access purposes for industrial or commercial recreation operations on privately owned back-lying land or to implement TVA's Shoreline Management Policy.

Wildlife management, public recreation, and past environmental education at Nolichucky Reservoir have contributed to the local quality of life and have brought many visitors to the area, all of which have resulted in positive economic impacts for Greene County. As described above, promoting the protection of natural resources and enhancing local economies are TVA goals.

Comment 12: Please leave it alone, I suppose that "A" is the best option. I have been threatened many times while duck hunting on the river's edge or bank after reaching it by boat. I'm glad the people who have land adjoining the river are finding out for sure that TVA owns land too. I have left areas before to avoid a bad conflict, and I knew for sure that TVA owned it per TVA maps. Some people, who do own land which joins the river, think they own to the middle of the river. This is a dangerous situation that needs clarification.

- Johnny Collins, Greenville, Tennessee

Response: Comment noted. TVA land is available for hunting, as long as the hunters abide by all state, federal, and local laws and ordinances. If you are experiencing issues on TVA land, please contact the Holston-Cherokee-Douglas Watershed Team at 423-585-2123.

Comment 13: I am a regular visitor to the upper end of Douglas Lake, and usually focus on the area known as Rankin Bottoms and parts of Douglas Lake just downstream from there. My interest is in wildlife and enjoyment of the beauty of the area, marred as it is by litter. I am an amateur photographer, and do not hunt or fish, although I believe I share much in the way of wilderness ethics with hunters and fishers.

- Ronald Shrieves, Knoxville, Tennessee

Response: In managing its public lands and resources, TVA seeks to provide efficient resource stewardship that is responsive to stakeholder interests. TVA tries to ensure that resource stewardship issues and stakeholder interests are considered and attempts to manage its public land for an optimum level of multiple uses and benefits that protect and enhance natural, cultural, recreational, and visual resources in a cost-effective manner.

Comment 14: I wish to express my preference for Alternative C of the three alternatives. I feel that conserving the additional acreage for Sensitive Resource Management is very important. It will be even more important as global warming may require various species of wildlife to adapt their migration patterns.

- Ronald Shrieves, Knoxville, Tennessee

Response: The TVA preferred alternative—Alternative C, the Modified Land Use Alternative—would provide suitable opportunities for developed recreation, conservation of natural resources, and management of sensitive resources. Under Alternative C, all parcels with identified sensitive resources would be allocated to the most protective land use zone, whereas only some of those parcels would be zoned for sensitive resource management under Alternatives A and B.

Comment 15: Under the preferred alternative, Alternative C, all parcels with identified sensitive resources would be allocated to the most protective land use zone; whereas, only some of those parcels would be zoned for sensitive resource management under Alternatives A (the no-action alternative) and B. Compared to Alternative B, Alternative C includes slightly less land in Zone 6 (Developed Recreation) and slightly more in Zone 3 (Sensitive Resource Management) and Zone 4 (Natural Resource Conservation). Alternative C, as contrasted to Alternative B, represents changes in land use zones for 15 parcels of TVA-managed land. Specifically, six additional parcels, totaling 75 acres, would be placed into Zone 3. All remaining nine parcels would be placed in Zone 4 (an additional 8 acres) under Alternative C. Due to the additional acreage included under Zone 3 and 4, which would provide added protection to federally listed species, we agree with TVA's decision to select Alternative C, as the preferred alternative.

- Gregory Hogue, U.S. Department of the Interior, Atlanta, Georgia

Response: Comment Noted. See response to comment number 14.

Comment 16: PREFERRED ALTERNATIVE: I fully support the choice of Alternative C over the others, but it doesn't go far enough. Any area that could potentially be designated as Zone 3 or 4 should be, and most areas designated as Zone 4 areas should be designated as Zones 3. The Zone 3 definition is broad enough in including wetlands, scenic areas, and "other sensitive ecological areas" to cover many areas designated as Zone 4. The upgrades are justified in that preservation and protection of existing natural qualities is the greatest overall contribution that TVA could make stakeholders in general. The Zone 3 classification comes closest to satisfying the interests and concerns of everyone using and living along the waterways under consideration.

- Michael Sledjeski, Del Rio, Tennessee

Response: Comment noted. See response to comment number 14.

Comment 17: I hope that in conjunction with the allocation of lands to "zones," greater consideration will be given to the impact of flood management on the wildlife affected by lake levels, especially in the vicinity of Rankin Bottoms.

- Ronald Shrieves, Knoxville, Tennessee

Response: The allocation of land to a management zone does not impact reservoir water levels, which consequently are not part of the scope of the preparation of this land plan. The effects of water levels on wildlife were addressed in TVA's 2004 *Reservoir Operations Study Final Programmatic Environmental Impact Statement*. Douglas Reservoir was a part of that study. See http://www.tva.com/environment/reports/ros_eis/index.htm at TVA's Web site, and refer to Section 5.10 on terrestrial ecology.

Comment 18: U.S. Environmental Protection Agency (EPA) concurs with TVA's Proposal to allocate all TVA-owned lands via an RLMP to upgrade Alternative A into Alternative B or C. We are pleased to note that TVA has identified a NEPA preferred alternative in the DEIS as opposed to deferring this decision to the Final EIS (FEIS). This presumably was feasible by gathering sufficient public comments during the scoping process prior to issuance of the DEIS, as well conducting field surveys. More importantly, we are pleased to find that Alternative C – which we believe to be the environmentally preferable alternative – was identified as the preferred alternative (pg. 1-20). EPA agrees with this decision and encourages the continued identification of Alternative C as the preferred alternative in the FEIS – and ultimately as the selected alternative in the prospective TVA Record of Decision (ROD).

- Heinz Mueller, Environmental Protection Agency, Atlanta, Georgia

Response: Comment noted.

Comment 19: EPA's primary concern with the DEIS is the uncertainty – even after prospective TVA approval of Alternative C in the TVA ROD – whether or not allocated lands could be re-allocated by TVA to environmentally lesser zones (e. g. from the Sensitive Resource Management Zone 3 to Industrial Zone 5) during site-specific reviews or public requests to the TVA Board of

Directors (Board). EPA would not concur with re-allocations to such zones due to increased potential for developmental impacts intent to entertain or reject such public requests of the Board to change proposed allocations for specific parcels of land to more developed zones. If the Board wishes to retain such discretion, the FEIS should fully discuss the expected likelihood of such re-allocations and identify any TVA policy, guidelines or rationale forming the basis for such TVA decisions as well as any thresholds (e. g. limitations in the number or kinds of acres or parcels that might be re-considered). If the TVA Land Policy (Appendix A) or TVA's Shoreline Management Policy is referenced, specific policy criteria should be related to the decision. Overall, EPA believes that if the approved (TVA ROD) allocations of Alternative C can nevertheless still be minimized by public requests approved by TVA, the meaning and value of the present EIS would be significantly diminished. We look forward to additional FEIS clarification in this regard.

- Heinz Mueller, Environmental Protection Agency, Atlanta, Georgia

Response: TVA's land planning efforts, including the DNTRLMP are designed to allocate shoreline parcels to land uses based on that parcel's current land use as well as its suitability and capability for future uses. These plans serve as guidelines to direct future use of shoreline properties by TVA or by other parties under land use agreements. Under the DNTRLMP any land use request that is obviously inconsistent and incompatible with a parcel's allocation would most likely be rejected. However, TVA could consider the reallocation of a parcel under certain limited circumstances. For example, TVA's Land Policy provides that TVA will consider changing a land use designation outside of the normal planning process only for water-access purposes for industrial or commercial recreation operations on privately owned back-lying land or to implement TVA's Shoreline Management Policy. Additionally, discovery of deeded rights that were previously overlooked or misinterpreted could necessitate a possible change in allocation to accurately reflect those rights, as land plans do not take precedence over such legal rights. In such circumstances, TVA could reallocate the subject parcel, facilitating a potential change in land use. However, such a change in allocation would be subject to approval by the TVA Board of Directors or its designee, pending the completion of an appropriate environmental review. TVA would involve the public appropriately during any environmental review for a parcel reallocation.

Currently, only one industrial parcel is being considered and future industrial sites requiring water access are unlikely on the two tributary reservoirs. A reallocation in support of water-related recreation is more likely; however, no commercial sites other than the ones already considered have been identified. There could be some expectation of occasional future public ramps, access areas, and community facilities although TVA is not aware of any current need.

Comment 20: Assuming that Alternative C is selected in the TVA ROD and the proposed allocations are finalized, EPA rates this DEIS as and "LO" (Lack of Objection). Otherwise, TVA would have environmental concerns about

selection of a lesser environmental alternative and the uncertainty of potential impacts.

- Heinz Mueller, Environmental Protection Agency, Atlanta, Georgia

Response: Comment noted.

Comment 21: I am strongly in favor of Alternative C. I am an avid hunter and fisherman, spending many days a year on the Nolichucky River. Urban sprawl and development are taking more and more acres every day. I urge TVA to put this plan into action to protect as much of our great natural areas as possible.

- Barry Bales, Mosheim, Tennessee

Response: Comment noted. As a part of TVA's broad regional resource development mission, TVA reservoir properties are managed to provide multiple public benefits, including recreation, conservation, and industrial development. TVA recognizes the importance of striking a balance among the competing demands placed on the land and water resources.

Comment 22: TVA have indicated that three federally listed and a federally protected terrestrial animal species occur within three miles of the Douglas and Nolichucky reservoirs or are known from the surrounding counties. The federally listed as threatened, piping plover (*Charadrius melodus*), has been observed in two of the past five years at Rankin Bottoms Wildlife Management Area on Douglas Reservoir in September during the fall shorebird migration season.

The federally listed as endangered gray bat (*Myotis grisescens*) is known to occur in a cave approximately five miles east of Douglas Reservoir. Maternity colonies have also been recently discovered in caves upstream and downstream of Douglas Reservoir. The presence of these colonies suggests that gray bats forage throughout the study area.

Summer roosting habitat (e.g., trees with exfoliating bark), suitable for the federally listed as endangered Indiana bat (*Byotis sodalis*), exists throughout the study area, in addition to several caves, suitable for winter roosting, near Douglas and Nolichucky reservoirs. However, no Indiana bats have been found in these caves.

Bald eagles (*Haliaeetus leucocephalus*) remain federally protected under the Bald and Golden Eagle Protection Act. Bald eagles build nests on Douglas Reservoir and downstream of the dam and are observed along the Nolichucky River. Several TVA parcels on Douglas Reservoir and Nolichucky River provide suitable habitat for the species, and they have nested on TVA parcels in previous years. However, no nests are currently known on TVA lands.

TVA further indicated that a total of 19 federally listed aquatic species have been reported within the watersheds of Douglas and Nolichucky reservoirs. Many of the occurrence records for individual species are historical, and TVA determined that it is unlikely those particular aquatic species remain within either watershed. TVA concluded that two federally listed as endangered,

one federally listed as threatened and three candidates for federal listing occur near Douglas and Nolichucky reservoirs.

Federally endangered aquatic species, including the oyster mussel (*Epioblasma capsaeformis*) and the birdwing pearl mussel (*Lemiox rimosus*), have been collected in the Nolichucky River. Oyster mussels have not been found near any TVA land parcels. In 1982, TVA transplanted 1,000 birdwing pearl mussels into the Nolichucky River approximately 20 miles downstream from Nolichucky Dam; a small birdwing pearl mussel was found at the transplant site in 1995, suggesting some production.

The federally threatened snail darter (*Percina tanasi*) likely no longer occurs in the Nolichucky River. Recent surveys of that system have failed to encounter the species. A population, however, does occur in the French Broad River, downstream from Douglas Dam.

The three federal aquatic candidate species which TVA has indicated occur in the Nolichucky River near TVA lands include the spectacle case (*Cumberlandia monodonta*), slabside pearl mussel (*Lexingtonia dolabelloides*) and fluted kidneyshell (*Ptychobranthus subtentum*). However, the slabside pearl mussel has not been collected in the Nolichucky River since 1964.

- Gregory Hogue, U.S. Department of the Interior, Atlanta, Georgia

Response: Your comment regarding the current known distributions of these species is correct. Due to the low frequency with which rare mussels such as slabside pearl mussel are encountered during survey efforts and the limited amount of survey effort for freshwater mussels in the Nolichucky system, TVA has assumed that slabside pearl mussel is still present in the Nolichucky River even though it has not been recently collected.

Comment 23: TVA has determined that no federally listed plants would be affected under any of the alternatives because none are known to occur and no suitable listed plant habitat exists within five miles of Douglas and Nolichucky reservoirs.

- Gregory Hogue, U.S. Department of the Interior, Atlanta, Georgia

Response: Comment noted.

Comment 24: TVA has indicated that adoption of Alternative A may, but would not likely, impact gray and Indiana bats or listed aquatic species. They further state that under action alternative B and C, no federally listed terrestrial animals would be affected, and federally listed aquatic species would not likely be affected. According to TVA, effects to listed species would be insignificant under all alternatives, and Alternative A, would have the greatest impact to listed species. TVA further indicates that Alternative B would have lesser impacts and Alternative C the least impacts.

- Gregory Hogue, U.S. Department of the Interior, Atlanta, Georgia

Response: Comment noted.

Comment 25: Regarding listed species, TVA has indicated in the EIS that “project-specific environmental reviews on any parcel would be performed, and mitigation would be required when warranted”. We do recommend that TVA consult with the Department on individual site-specific projects in the future when details become known. If there is a potential for a “likely to adversely affect” determination to be made during site-specific consultation in the future, the Department advises that “likely to adversely affect” is the appropriate determination at the programmatic consultation level, also. However, after reviewing the EIS and discussing the DNTRLMP with TVA staff, we believe that the likelihood of reaching a determination of “likely to adversely affect” at the site specific consultation level in the future is unlikely.

In view of this, we believe that the requirements of section 7 of the Endangered Species Act (Act) of 1973, as they apply to the DNTRLMP, have been fulfilled. However, obligations under section 7 of the Act must be reconsidered if: (1) new information reveals that the proposed action may affect listed species in a manner or to an extent not previously considered, (2) the proposed action is subsequently modified to include activities which were not considered in your permit application, or (3) new species are listed or critical habitat designated that might be affected by the proposed action. Because this is a programmatic level consultation on the DNTRLMP site-specific consultations will still be needed, but can tier back to this consultation. It is incumbent upon TVA and the Department to coordinate adequately in the future to minimize the likelihood of any specific actions results in an adverse affect to listed species.

- Gregory Hogue, U.S. Department of the Interior, Atlanta, Georgia

Response: TVA would initiate Section 7 ESA consultation if a site-specific project were identified as having an adverse effect on listed species or designated critical habitat due to new species listings, discovery of new populations of listed species, or designation of critical habitat areas.

Comment 26: Parcel 29-30 faces Gray Island (Parcel 28). The Island is zoned 3 - property line is zoned 4 our property extends from the tip of the island and includes half the island. If this portion of parcel 30 could be rezoned to 3 we would be satisfied. I would be pleased to discuss this with you in the future.

- Louise Helbert, Greeneville, Tennessee

Response: TVA has reviewed the allocation of Nolichucky Parcels 29 and 30 and determined that the TVA public land fronting your property is correctly allocated to Natural Resource Conservation (Zone 4). Although the strip of shoreline vegetation on the parcels has some wetland species present, there are no high-quality wetlands or sensitive species present that would qualify them for allocation to Sensitive Resource Management (Zone 3). Parcels allocated to Zone 4 are managed to protect the function and value of the occurring natural resources; other than not having a sensitive resource present, most of the other management and recreational activities would be the same as Zone 3.

Comment: 27: Once again I find myself writing to a TVA representative in regards to TVA's zoning policy. The last time I wrote to TVA and appealed to them in regards to their zoning I was lucky enough to have caught someone's ear and the zone was changed from a Zone 6 to a Zone 4. However, the property adjacent to mine including an island was designated a Zone 3.

The Zone 3 designation was due to a maternity colony of Gray Bats and a Heronry. Both of which was brought to TVA's attention after their initial foray into said parcels by their biologists. Once these federally listed species were brought to TVA's attention they re-zoned Parcel 29 (the exact location of the bat cave and rookery) to Zone 3. However, they re-zoned parcel 30 adjacent to 29 and in some instances less than 600 feet from the rookery as a Zone 4.

In the recent Douglas-Nolichucky Tributary Reservoirs Land Management Plan and Environmental Impact Statement (Vol. III) the report states that, "Parcel 29 reflects occurrence of sensitive river corridor, wetland species as well as unique scenic qualities along the river main stem". Yet this is not included in the description of parcel 30 a natural continuation of parcel 29. Under Sensitive Resources it states "a gray bat colony occurs in a cave on the mainland portion of this parcel. The Zone 3 designation is warranted due to the close proximity of the cave on the back-lying property and the requirement of gray bats to use forested flight paths to access feeding areas over water."

I do not claim to be an expert on the gray bat, but I am pretty sure they are not stopping at the boundary line of 29 and 30 to feed. It is understandable that if Parcel 29 flowed into Parcel 30 which flowed in to 31 etc. That a line must be drawn. However, Parcel 29 and Parcel 30 are the only two parcels in that area. All the "Sensitive Resources" stated on parcel 29 are directly impacted and are part of Parcel 30. This includes Gray Island which in some instances is about 150 to 200 feet (less than the federal suggested 600 feet) from the shore line of Parcel 30. change the allocation of Parcel 30 from zone 4 to zone 3 based on contiguity and proximity to parcel 29, which is zone 3 due to a maternity colony of gray bats (federally listed) and a heronry.

- Lyza and James Pascucci, Greeneville, Tennessee

Response: Please see the response for the previous comment (26) which was similar.

In addition, as an agency, TVA must apply the zone designations in a consistent manner among the various lands planning projects. The focus for Zone 3 lands is protecting and enhancing the sensitive resource the site supports; in this case, the cave for Parcel 29. The focus for Zone 4 lands is to manage TVA public lands, including the narrow strips of shoreline, such as that which fronts your property, for wildlife, water quality, and visual qualities. Parcels allocated to Natural Resource Conservation (Zone 4) are managed to protect the function and value.

TVA does not believe that the proximity of the cave to the shoreline fronting your property will have any impact on sensitive resources associated with the cave or cave inhabitants. Gray bats forage primarily over water. The intent of placing Parcel 29 into Zone 3 is to provide a forested corridor for

gray bats to travel from their cave to their foraging habitat, the river. The forested corridor between the cave and river supports the recovery objectives for this species outlined by the U.S. Fish and Wildlife Service.

Placing Parcel 30, a forested marginal strip not located between the cave and the river, into a Zone 3 would not be appropriate. However, the Zone 4 designation is warranted, as it will keep the parcel in its current state, benefiting a host of wildlife occurring along the Nolichucky River and providing a vegetative buffer between the river and adjacent lands. Neither Zone 3 nor 4 precludes the public from accessing these areas.

TVA takes great care to place specific parcels into appropriate zones to protect endangered species. We also make sure that zones are assigned consistently throughout the Tennessee River Valley. The assignment of Zone 3 on Parcel 29 is consistent with other categorizations involving parcels between gray bat roosts and their foraging habitat throughout the Valley.

Parcels are assigned to Zone 3, among other things, to protect endangered species, or to protect parcels with combined resources such as those observed at Gray Island. Parcels having heron colonies but no other resources are routinely placed in Zone 4, as heron colonies in the Valley often move from one locality to another. The reason Gray Island was assigned a Zone 3 was to protect the combination of the heron colony *and* wetlands.

Regarding the 600-foot distance in the comment, this distance is not a federal guideline; it is a buffer zone that TVA voluntarily applies to heron colonies. Assigning Zone 3 or 4 within a buffer zone is not inconsistent with the intent of TVA's buffers placed around heron colonies, as both of these zones provide protection to natural resources. TVA appreciates your raising these issues concerning our application of zones to protect the natural resources along the Nolichucky River.

Comment 28: This is a pristine area abundant with wildlife some federally protected some just existing because of the absence of the interference by human beings. Meaning, camping, hiking, and most of all hunting. TVA has allowed hunting in their Zones 3 and 4. That is understandable when you are talking large parcels of land with much acreage to hunt on. Unfortunately this "blanket" designation is very dangerous for homeowners on these narrow strips of river front property on the Nolichucky. A misdirected bullet can do a lot of harm.

These narrow strips of land are bordered by high bluffs and hills. In many cases you cannot see a house, barn, horses, people, cattle etc. from the shore line. In the past my husband and I have had to run off several hunters who came by boat. When they were confronted by us they responded with "we didn't know a house was there." The point is, these strips of land are too narrow to allow hunting. TVA needs to adjust their designations to fit the land. My home is within 200 yards of the river. I have expensive show horses on my property, my husband and I have family and friends over, we use our outdoor space extensively. If hunters come again and they will, who is liable for the injuries, or death of people or livestock? TVA? Please do not

insult our intelligence as some TVA employees have, and tell us to call the TWRA officer or the sheriff. We all know it will be too late. The one TWRA officer is stationed in Morristown a 45 minute minimum drive from us. Obviously calling any form of law enforcement would be a waste of time, the damage is done.where TVA land that is zoned 3 or 4 abuts residential property within 300 yards post the TVA land as no hunting to prevent conflict and accidents.

- Lyza and James Pascucci, Greeneville, Tennessee

Response: Comment noted. TVA as do many land managing federal agencies supports reasonable use by the public of public-owned land for recreation. Hunting is one of a myriad of legitimate uses of public land. Likewise, TVA supports the federal, state, and local safety regulations concerning the use of such land. Hunters are responsible for their own actions in upholding the laws and regulations that pertain to them. This situation is being further addressed as part of ongoing communications with the commenter.

Comment 29: RE: Environmental Impact on the Human Condition. TN law states that shots may not be fired within 100 yards of an occupied dwelling. We have been told that TVA honors this law. The question is, why would you zone areas so that hunting is allowed that lie within 100 yards of our home? Are you going to 'post' the area as 'no hunting'? Are you going to police the area? Have you considered the liability if a hunting accident occurs because of your zoning? Please consider the zoning of the Kiker property known as Gray Island and the adjacent river lands.

- Ken Jestes and Kate Agemann, Greeneville, Tennessee

Response: Comment noted. See response to previous comment.

Comment 30: We have received and reviewed the Draft Environmental Impact Statement (DEIS) for the Douglas and Nolichucky Tributary Reservoir Land Plan in Cocke, Greene, Hamblen, Jefferson, and Sevier Counties, Tennessee. The Tennessee Wildlife Resources Agency (TWRA) has commitments and agreements with the Tennessee Valley Authority (TVA) on lands adjacent to these reservoirs and we appreciate the confirmation in the DEIS that these commitments and agreements will be honored no matter which alternative is chosen. We support TVA's preferred alternative, Alternative C.

- Robert M. Todd, TWRA, Nashville, Tennessee

Response: Comment noted. TVA and TWRA have many similar goals and practices concerning the use of public lands. TVA is happy to cooperate with other government agencies when such agreements provide benefits and management efficiencies to the public.

Comment 31: I am a property owner in Greeneville TN. This is on the Nolichucky River off St. James close to HWY 321. It is my understanding that TVA claims ownership of the river front Parcel 34, Kiker 9. There is no mention of this in the deed from the Greene county court house. What is the evidence that

you have that indicates ownership? Can I have a copy of those records for my review?

- Claes Svendsen, Greenville, Tennessee

Response: Yes, a copy of the record can be provided to you. If you have further questions regarding TVA's ownership of this parcel, please contact the Holston-Cherokee-Douglas Watershed Team at 423-585-2123.

Comment 32: There's more than adequate property available for developed recreation and industrial use. Shoreline access and should only be increased if these areas are well-managed and maintained, which is not the case at this time; law enforcement and litter control is inadequate at most access points.

Overnight camping on all sites is poorly or not at all regulated and has led to degradation of natural area. Zone 4 management provides loopholes for exploitation of resources that could negatively impact overall natural qualities.

- Michael Sledjeski, Del Rio, Tennessee

Response: In general, TVA allows informal camping on lands designated as Zone 4. The demand for informal camping is increasing, and TVA supports the sustainable use of public land for dispersed recreation. In some instances, a conflict occurs between nearby landowners and the recreating public. TVA has established protocols for measuring environmental and social damage caused by this type of use. TVA attempts to take a holistic look, through these methods and responding to landowner concerns, to achieve an equitable solution in areas where conflict occurs.

Comment 33: Complex ecosystems and natural environments protected by Zone 3 designation are necessary for sustaining game species and watchable wildlife, both valued throughout the full spectrum of public interest categories, as are the natural viewscapes. Such areas are in general decline because of commercial and real estate development along the waterways and misguided attempts by private landowners to alter natural landscapes. TVA could most benefit the general public and local economies by ensuring that natural qualities will be maintained in its small portion of areas under consideration.

- Michael Sledjeski, Del Rio, Tennessee

Response: TVA agrees that the protection and enhancement of sensitive resources is important and in the preferred alternative has designated 679 acres to Zone 3 if there are sensitive resources present. TVA also has designated 971 acres to Zone 4 to be managed for the enhancement of natural resources for human use and appreciation. In both zones, recreational and natural resource activities, such as hunting, wildlife observation, and camping on undeveloped sites, may occur.

Comment 34: PARTNERSHIPS: TVA should take the initiative in seeking out more private and public partnerships, such as the Nature Conservancy, local organizations and governments to assist in appropriate maintenance of its

holdings. TWRA seems to be its primary partner and does a fair-to-good job of monitoring and improving hunting & fishing activity, but lags behind in the areas of non-game or watchable wildlife and protection of sensitive species and complex ecosystems. I should also mention that reckless and nuisance boating, especially the wholly inappropriate use of airboats, is way out-of-hand and tighter regulations and restrictions are overdue.

- Michael Sledjeski, Del Rio, Tennessee

Response: Comment noted. TVA values cooperative agreements and partnerships with other government agencies and local organizations when such opportunities provide benefits and management efficiencies for public land. TVA's ability to regulate boating is limited, as this is primarily the responsibility of the Tennessee Wildlife Resources Agency.

Comment 35: RANKIN: I'm most familiar with the shoreline of Douglas Lake from Swann's Bridge to the mouth of the Pigeon River, more particularly with seasonal shorelines from Taylor Bend to Rankin Bridge, and especially with the Rankin area. I conducted surveys for Hill Henry's system-wide shorebird survey and monitor and report on avian populations to the TN Ornithological Society and various online listing services. The DEIS has not sufficiently evaluated holdings in the areas described, particularly in parcels adjacent or committed to the Rankin WMA. I refer you to the TOS description of the Rankin Important Bird Area, which I authored. In discussions with TWRA and TVA, I found that there was some confusion over property boundaries and the subject should be revisited and more thoroughly examined. Parcels 33 to 37, in the DEIS should certainly be designated as sensitive areas, in consideration of their contiguity with the unique, complex seasonal ecosystems of the Rankin area.

- Michael Sledjeski, Del Rio, Tennessee

Response: Comment noted. TVA's license agreement with the Tennessee Wildlife Resources Agency (TWRA) does not include land above the 1002 elevation contour; therefore, Parcels 34 and 35 are not part of the agreement for the wildlife management area. In addition, TVA has determined that the zone allocations for Parcels 34-37 would be correctly allocated to the appropriate zone. Parcel 34 is allocated to Zone 2 (Project Operations) due to the bridge abutment; however, the marginal strip adjacent to Rankin Road would continue to be managed for the enhancement of natural resources.

TVA has reviewed the land use zone allocation for Parcel 33 and has determined that it should have been allocated to Zone 3 due to the Category 3, high-quality wetlands and function as part of the Rankin Bottoms Wildlife Management Area. The EIS has been changed to reflect the different allocation.

Comment 36: In addition, (Douglas) Parcel 31 should be classified as Zone 4, since it constitutes a dramatic river bluff and contains an unusual, untouched biological complex.

- Michael Sledjeski, Del Rio, Tennessee

Response: Comment noted. TVA has determined that Parcel 31 is correctly allocated to Zone 4 (Natural Resource Conservation). Only those parcels that contain a high-quality wetland, a sensitive species or natural resource, and critical habitat for a sensitive species or natural resource that needs protection would be allocated to Zone 3. Allocation to Zone 4 (Natural Resource Conservation) is appropriate for those parcels without sensitive resources and would still be managed for the enhancement of natural resources and scenic qualities.

Comment 37: Finally, the Rankin coal tower (tipple, or chute) has been is in the process of nomination to the National Historic Register and should be given special consideration in the DEIS, and by TVA, as part of a special Heritage Area, in conjunction with the Rankin WMA and WOA. I'll forward a summary of my nomination documents for inclusion with my comments.

- Michael Sledjeski, Del Rio, Tennessee

Response: The Rankin Coal Tipple is located on an abandoned railroad bed on the reservoir bottom near Parcel 36 of the land plan. This is TVA property that was purchased for the construction of Douglas Reservoir. This tract of TVA land is not part of the land plan, as it is located below the maximum shoreline contour. TVA appreciates the commenter's interest in preservation and has reviewed the documents submitted. Any decision by TVA to nominate historic properties to the National Register of Historic Places would follow the procedure as outlined in Section 110(a)(2) of the National Historic Preservation Act.



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

September 4, 2008

Mr. E. Patrick McIntyre, Jr.
State Historic Preservation Officer
Tennessee Historical Commission
2941 Lebanon Road
Nashville, Tennessee 37243-0442

**NORTHEASTERN TRIBUTARIES LAND MANAGEMENT PLAN, GREENE, CARTER,
AND SULLIVAN COUNTIES, TENNESSEE**

Dear Mr. McIntyre:

The Tennessee Valley Authority (TVA) is developing a Land Management Plan (LMP) for TVA lands on Beaver Creek, Boone, Cherokee, Clear Creek, Douglas, Fort Patrick Henry, Nolichucky, South Holston, Watauga, and Wilbur Reservoirs in Virginia and Tennessee.

In Tennessee, the southern portion of the Holston Reservoir extends into Sullivan County, Tennessee. South Holston, Boone, and Fort Patrick Henry Reservoirs lie on the South Fork of the Holston River near Kingsport, Tennessee. Watauga and Wilbur Reservoirs impound portions of the Watauga River which converges with the South Fork of the Holston River to form the Holston River. Cherokee Reservoir is located approximately halfway between this confluence and the city of Knoxville, Tennessee. To the south of the Holston River lies the Nolichucky Reservoir (or Davy Crockett Lake) on the Nolichucky River halfway between the headwaters and its confluence with the French Broad River. Douglas Reservoir lies on the French Broad River below the Nolichucky River to the east and above Knoxville to the west.

TVA prepares LMPs with the participation of public agencies and officials, private organizations, and the public to provide a clear statement of how TVA will manage public land. Identifying land for specific uses minimizes conflicting land uses and makes it easier to handle requests for use of public land. For the LMP currently being prepared, TVA Cultural Resources staff has identified the area of potential effects (APE) pursuant to 36 CFR Parts 800.4(a)(1) and 80.16(d) as the 880 acres on Boone, 9120 acres on Cherokee, 2055 acres on Douglas, 283 acres on Fort Patrick Henry, 1143 acres on Nolichucky, 2099 acres on South Holston, 1136 acres on Watauga, and 58 acres on Wilbur Reservoir in Tennessee. Future use of these lands is being planned or has been previously committed to specific land uses. Maps depicting the specific land parcels to be addressed by the LMP may be accessed on TVA's website at <http://www.tva.com/environment/reports/ntrlmp/index.htm>. However, if you require hard copies for your initial review, our office will be glad to furnish a set.

Mr. E. Patrick McIntyre, Jr.
Page 2
September 4, 2008

TVA has previously conducted cultural resources surveys on portions of the lands addressed by this LMP, and numerous historic properties potentially eligible for listing on the National Register of Historic Places have been identified by these surveys. TVA has also conducted a survey of certain parcels on Nolichucky, South Holston, and Watauga Reservoirs that are associated with the proposed LMP (Gage 2008). A copy of this



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

September 26, 2008

Dr. Thomas O. Maher
Tennessee Valley Authority
400 West Summit Hill Dr.
Knoxville, Tennessee, 37902-1499

RE: TVA, NORTHEAST TRIBUTARIES LAND MANAGEMENT PLAN, UNINCORPORATED,
MULTI COUNTY

Dear Dr. Maher:

Pursuant to your request, received on Tuesday, September 9, 2008, this office has reviewed documentation concerning the above-referenced undertaking. This review is a requirement of Section 106 of the National Historic Preservation Act for compliance by the participating federal agency or applicant for federal assistance. Procedures for implementing Section 106 of the Act are codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739)

Based on the information provided, we find that the current documentation adequately mitigates project effects upon properties eligible for listing in the National Register of Historic Places as stipulated in the existing Programmatic Agreement (PA).

Therefore, this office has no objection to the implementation of referenced project elements covered by the PA. Your continued cooperation is appreciated.

Sincerely,

E. Patrick McIntyre, Jr.
Executive Director and
State Historic Preservation Officer

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Preserving America's Heritage

October 11, 2005

Mr. J. Bennett Graham
Senior Archaeologist
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, TN 37902-1401

REF: Programmatic Agreement for proposed land plans in Tennessee

Dear Mr. Graham: *Bennett*

Enclosed is the executed Programmatic Agreement for the referenced program. By carrying out the terms of the Agreement, the Tennessee Valley Authority will have fulfilled its responsibilities under Section 106 of the National Historic Preservation Act and the Council's regulations.

We appreciate your cooperation in reaching this Agreement. If you have any questions, please call Dr. Tom McCulloch at 202-606-8554.

Sincerely,

[Signature]
Ddn L. Klima
Director
Office of Federal Agency Programs

Enclosure

ADVISORY COUNCIL ON HISTORIC PRESERVATION
1100 Pennsylvania Avenue NW, Suite 809 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

PROGRAMMATIC AGREEMENT
AMONG
THE TENNESSEE VALLEY AUTHORITY,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER
REGARDING THE IMPLEMENTATION OF RESERVOIR LAND MANAGEMENT PLANS IN
TENNESSEE

WHEREAS, the Tennessee Valley Authority (TVA) has proposed to develop Reservoir Land Management Plans for TVA land holdings within the State of Tennessee, these reservoirs being Boone in Sullivan and Washington Counties; Cherokee in Grainger, Hamblen, Hawkins, and Jefferson Counties; Chickamauga in Bradley, Hamilton, McMinn, Rhea, and Meigs Counties; Douglas in Cocke, Jefferson, and Sevier Counties; Fort Loudoun in Blount, Knox, and Loudon Counties; Fort Patrick Henry in Sullivan and Hawkins Counties; Great Falls in Van Buren, Warren, and White Counties; Guntersville in Marion County; Kentucky in Benton, Decatur, Hardin, Henry, Houston, Humphreys, Perry, Stewart, and Wayne Counties; Melton Hill in Anderson, Knox, Loudon, and Roane Counties; Nickajack in Hamilton and Marion Counties; Nolichucky in Green County; Normandy in Bedford and Coffee Counties; Norris in Anderson, Campbell, Claiborne, Grainger, and Union Counties; Ocoee #1, #2, and #3 in Polk County; Pickwick in Hardin County; South Holston in Sullivan County; Watauga in Carter and Johnson Counties; Watts Bar in Loudon, Meigs, Rhea, and Roane Counties; Wilbur in Carter County; and the Beech River Project consisting of Beech, Cedar, Dogwood, Lost Creek, Pin Oak, Pine, Redbud, and Sycamore Reservoirs in Henderson County, Tennessee; and

WHEREAS, TVA has determined that the implementation of the Land Management Plans has the potential to affect historic properties that are eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, TVA has consulted with the Advisory Council on Historic Preservation (Council), the Tennessee State Historic Preservation Officer (SHPO), the Eastern Band of Cherokee Indians, the United Keetoowah Band, the Cherokee Nation of Oklahoma, Chickasaw Nation, the Muscogee (Creek) Nation of Oklahoma, the Poarch Band of Creek Indians, the Alabama-Coushatta Tribe, the Alabama-Quassarte Tribal Town, the Kialegee Tribal Town, the Mississippi Band of Choctaw Indians, the Choctaw Nation of Oklahoma, the Jena Band of Choctaw Indians, the Seminole Nation of Oklahoma, the Seminole Indian Tribe, the Eastern Shawnee Tribe of Oklahoma, and the Absentee-Shawnee Tribe of Oklahoma pursuant to 36 CFR Part 800, the regulations of the Council implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the Eastern Band of Cherokee Indians, the Chickasaw Nation, the Choctaw Nation of Oklahoma, and the Muscogee (Creek) Nation of Oklahoma have been invited to be a signatory to the Programmatic Agreement; and will assist TVA in determining NRHP eligibility of historic properties and appropriateness of treatment plans for historic properties which have religious or cultural significance to the Eastern Band of Cherokee Indians, Chickasaw Nation, the Choctaw Nation of Oklahoma, and/or the Muscogee (Creek) Nation of Oklahoma that will be adversely affected by TVA Land Management Plans; and

WHEREAS, TVA has conducted complete or partial investigations to identify historic properties on portions of lands considered in the Reservoir Land Management Plans; and

WHEREAS, 36 CFR Part 800.14(b) of the regulations of the Council encourages the use of Programmatic Agreements when effects on historic properties are regional in scope and cannot be fully determined prior to the approval of the undertaking; and

WHEREAS, TVA will develop a Reservoir Land Management Plan at each of these reservoirs which will clearly identify the area of potential effect (APE) for each reservoir;

NOW THEREFORE, TVA, the Council, the SHPO, the Eastern Band of Cherokee Indians, Chickasaw Nation, the Choctaw Nation of Oklahoma and the Muscogee (Creek) Nation of Oklahoma agree that the undertaking shall be implemented in accordance with the following stipulations to satisfy TVA's Section 106 responsibilities for Reservoir Land Management Plans. The TVA Federal Preservation Officer, or the designee thereof, shall act for TVA in all matters concerning the administration of this Agreement.

Stipulations

TVA will ensure that the measures outlined below are a part of all Reservoir Land Management Plans developed by TVA within the state of Tennessee, and that these provisions relating to identification, evaluation, and treatment of historic properties are carried out within the APE prior to the commencement of any ground-disturbing activities or activities that may have visual or other effects on a historic property. This Agreement allows phased identification, evaluation, and treatment of the historic properties located within the APE.

1. CONSULTATION:

TVA will seek comments from all appropriate consulting parties as defined at 36 CFR 800.2(c), and from signatories to this agreement on any undertaking proposed pursuant to a Reservoir Land Management Plan. All comments received in response to such requests for comments will be taken into consideration by TVA in its decision to proceed with such undertaking.

2. AREA OF POTENTIAL EFFECT (APE):

The APE is defined as all TVA fee lands described in the Reservoir Land Management Plan and those private or other non-TVA lands which may be affected by an undertaking on TVA fee land.

3. IDENTIFICATION:

A. TVA shall conduct surveys to identify all historic properties within the APE for each Reservoir Land Management Plan. Previous inventories of TVA lands have identified some but not necessarily all historic properties eligible and potentially eligible for listing in the NRHP.

B. The surveys will be carried out in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Identification* (48 FR 44720-23) and the Tennessee SHPO Standards and Guidelines for Architectural and Archaeological Resource Management Studies. Survey Plans will be provided to all signatories for thirty (30) days for review and comment, and TVA shall take all comments into account prior to implementation. A written report of the survey shall be submitted to the SHPO, Indian tribes, and the other signatories for thirty (30) days for review and comment. Existing information such as previous survey data, photographs, maps, drawings, building plans, descriptions, sketches, etc. shall be used along with new data.

4. EVALUATION:

A. TVA, in consultation with the SHPO, Indian tribes, and the other signatories to this Agreement, shall evaluate the National Register eligibility of properties identified through the surveys in accordance with 36 CFR Part 800.4(c). For properties that have been determined to be potentially eligible for listing in the NRHP, TVA shall conduct evaluation studies in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Identification and Evaluation* (48 FR 44720-26) and the Tennessee SHPO Standards and Guidelines for Architectural and Archaeological Resource Management Studies. The SHPO, Indian tribes, and the other signatories shall review and comment on the scope of work (SOW) prior to the evaluation. The evaluations shall be conducted in consultation with the SHPO, Indian tribes, and the other signatories, and a written report shall be submitted to all signatories for thirty (30) days for review and comment.

B. Properties which have been evaluated and have been found to meet National Register criteria shall be considered historic properties. Should a dispute arise on the eligibility of a historic property, TVA will consult with the SHPO to resolve the objection. If TVA and the SHPO do not agree with the determination of eligibility, or if the Council or the Secretary of the Interior (Secretary) so request, TVA shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR Part 63. If an Indian tribe that attaches religious and cultural significance to a property off tribal land does not agree with the determination of eligibility, it may ask the Council to request the TVA Federal Preservation Officer to reassess the determination of eligibility.

5. TREATMENT PLANS:

A. AVOIDANCE, PROTECTION, AND MAINTENANCE:

- (1) TVA, in consultation with the SHPO, Indian tribes, and the other signatories, shall ensure that historic properties determined eligible for listing in the NRHP are, to the extent prudent and feasible as determined by the consultation process, avoided and preserved in place while conducting activities that could affect the characteristics of such property. In the implementation of the Reservoir Land Management Plans, alternatives to avoid adversely affecting historic properties eligible for the NRHP will be considered. All eligible historic properties, that are avoided, will be protected by a buffer zone established in consultation with the SHPO, Indian tribes, and the other signatories.
- (2) TVA will develop a protection and maintenance plan for historic properties on a particular reservoir within two (2) years of the completion of a Reservoir Land Management for that reservoir as specified under Stipulation 10.B. of this Agreement. This plan will be consistent with the standards for archaeological resources set forth in *Treatment of Archaeological Properties* (Advisory Council on Historic Preservation 1989), and with the recommended approaches to rehabilitation of historic structures set forth in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (U.S. Department of the Interior, National Park Service, 1983). Furthermore, this plan will be developed in consultation with the SHPO, Indian tribes, and the other signatories. TVA will seek and consider the views of other consulting parties pursuant to 36 CFR Part 800.3(f).

B. DATA RECOVERY:

- (1) When historic properties eligible for the NRHP will be adversely affected by unavoidable physical destruction or damage and all avenues of avoidance have been considered, and a treatment plan for data recovery is found through consultation with the signatories to this Agreement and Indian tribes having a cultural affiliation with the historic properties to be the appropriate treatment, data recovery will be implemented. In such an instance, TVA shall develop a data recovery plan in consultation with the SHPO, Indian tribes, and the other signatories for the recovery of historic and archaeological data from properties that are determined to be eligible for inclusion in the NRHP.
- (2) The data recovery plan shall be developed in accordance with 36 CFR Part 800.5 and 800.16 and will be consistent with 36 CFR Part 800 and the standards set forth in *Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines*. The data recovery plan shall specify, at a minimum:
 - (a) the property, properties, or portions of properties where data recovery is to be carried out;
 - (b) any property, properties, or portions of properties that will be destroyed without data recovery;
 - (c) the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 - (d) the field and laboratory methods to be used, with an explanation of their relevance to the research questions;
 - (e) the methods to be used in analysis, data management, and dissemination of data, including a schedule;
 - (f) the proposed disposition of recovered materials and records. The proposed location of this material will be at the University of Tennessee, McClung Museum except for items specified under Stipulation 9 below;
 - (g) proposed methods for involving the interested public in data recovery;
 - (h) proposed methods for disseminating results of the work to the interested public;
 - (i) a proposed schedule for the submission of progress reports to the SHPO; and
 - (j) a plan, developed in consultation with the SHPO, Indian tribes, and the other signatories, delineating the manner in which historic properties, human remains, and associated funerary objects discovered subsequent to the ratification of this Agreement document would be treated.
- (3) TVA shall provide all signatories an opportunity to monitor the implementation of the data recovery plan.

6. POST REVIEW DISCOVERIES:

Previously unidentified historic properties discovered during the implementation of the Reservoir Land Management Plans will be subject to the evaluation process under Stipulation 4 and treated according to the process under Stipulation 5.

Should historic properties be discovered on TVA lands, the discovered historic properties shall be protected and stabilized to prevent any further disturbance until TVA can make an informed decision about further steps to take to meet Federal agency obligations under Section 106 and the terms of this Agreement.

7. REPORTS:

TVA shall ensure that all historical and archaeological investigations undertaken for compliance with this Agreement are recorded in formal written reports that meet the *Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines* and the Tennessee SHPO Standards and Guidelines for Architectural and Archaeological Resource Management Studies. The SHPO, Indian tribes, and the other signatories shall be afforded thirty (30) days to review and comment on any archaeological or historical reports submitted under this Agreement.

8. SHORELINE STABILIZATION:

Consistent with its obligations under Section 110 of the NHPA, TVA will monitor reservoir shorelines to determine whether any historic properties are being affected by reservoir operation and/or vandalism. TVA will implement appropriate measures, in consultation with the SHPO, Indian tribes, and the other signatories to protect eligible historic properties that are determined to be adversely affected by such causes.

Since fiscal year 1999, TVA has been pursuing a systematic effort in identifying the most significant and endangered archaeological sites along its reservoir shorelines and stabilizing/protecting them. All stabilization to date has been coordinated with the requisite SHPO and Indian tribes.

9. TREATMENT OF HUMAN REMAINS:

A. TVA shall ensure that the treatment of any human remains discovered within the APE complies with all State and Federal laws, including the Native American Graves Protection and Repatriation Act (NAGPRA), concerning archaeological sites and treatment of human remains. Regarding human remains identified on State lands, TVA shall ensure that the remains be treated in a manner that is consistent with the Advisory Council of Historic Preservation's *Policy Statement Regarding the Treatment of Human Remains and Grave Goods* (1988), and in accordance with Tennessee Code Annotated (T.C.A.) 46-4-101 et seq. "Termination of Use of Land as a Cemetery," and T.C.A. 11-6-116b, "Notification and Observation," and T.C.A. 11-6-119 "Reinterment" with implementing Tennessee Rules and Regulations Chapter 0400-9-1 "Native American Indian Cemetery Removal and Reburial." Should human remains be encountered during historic properties investigations or post-review discovery, all ground disturbing activities in the vicinity of the human remains will be ceased immediately. TVA will notify signatories within three (3) business days and invite them to comment on any plans developed to treat the human remains.

B. After consultation with signatories and culturally affiliated Indian tribes in accordance with the provisions of NAGPRA, if any Native American human remains and/or associated funerary objects are excavated during the survey, evaluation, or data recovery of historic properties, TVA shall ensure that these remains and associated objects will be repatriated in accordance with the provisions of NAGPRA within sixty (60) days of completion of any investigations specified in the research design. The temporary curation of the human remains and associated funerary objects will be at the University of Tennessee, McClung Museum during this interim.

10. TIMETABLES FOR COMPLIANCE:

A. Consistent with Stipulation 11 that allows phased compliance, TVA shall ensure that the commitments in this Agreement are met prior to commencement of any ground-disturbing activities. In the event that previously unidentified historic properties should be encountered during the implementation of any ground-disturbing activities, consultation with the SHPO, Indian tribes, and the other signatories will be conducted to determine where work can resume while the effects to the historic property are addressed.

B. Within two (2) years of completion of a Reservoir Land Management plan in Tennessee, TVA will develop a plan for protection and maintenance of historic properties at that particular reservoir. The plan will be submitted to the SHPO, Indian tribes, and the other signatories for review pursuant to Stipulation 5.A(2).

C. Throughout this agreement, unless otherwise stated, the SHPO, Indian tribes, and the other signatories shall have thirty (30) days to review and comment on all reports concerning investigations of historic properties and proposed data recovery plans provided by TVA. Comments received from the signatories shall be taken into consideration in preparing final plans. A copy of the final reports and data recovery plans shall be provided to the signatories.

11. PHASED COMPLIANCE:

Consistent with 36 CFR Part 800.4(b)(2), this Agreement allows phased identification, evaluation, and treatment of historic properties in order to meet the requirements of Section 106 of the National Historic Preservation Act (NHPA).

12. LAND TRANSFER OF PROPERTY RIGHTS:

The instrument of conveyance for the transfer, lease or sale, of any parcel containing or that may contain a historic property from the Federal Government to a third party will include provisions to ensure that all requirements of Section 106 of the NHPA and its implementing regulations (36 CFR Part 800) are met. The instrument of conveyance shall contain, when necessary to protect historic properties, a legally binding preservation covenant for the protection of such properties prepared in consultation with the SHPO, Indian tribes, and the other signatories. TVA may release the grantee from the preservation covenant in whole or in part, as appropriate, pursuant to the terms of the covenant and after consultation with the SHPO, Indian tribes, and the other signatories. The covenant may be enforced by TVA or the United States of America.

13. ADMINISTRATIVE CONDITIONS:

A. If Stipulations 1 - 12 have not been implemented within ten (10) years, this Agreement shall be considered null and void, unless the signatories have agreed in writing as provided in Paragraph 13.B. below to an extension for carrying out its terms. If no agreement is reached on an extension at the end of this 10-year period, TVA and the SHPO will resume consultation pursuant to 36 CFR Part 800.

B. If Stipulations 1 - 12 have not been implemented within nine (9) years from the date of this Agreement's execution TVA and the SHPO shall review the Agreement to determine whether the Agreement should be extended. If an extension is deemed necessary, TVA, the Council, and the SHPO and other signatories will consult to make appropriate revisions to the Agreement.

C. The signatories to this Agreement shall consult at least once every year to review implementation of the terms of this Agreement. Prior to the reviews, TVA shall provide to the signatories a report detailing how it has carried out its obligations pursuant to this Agreement.

D. The Council, SHPO, Indian tribes and the other signatories may monitor activities carried out pursuant to the Agreement, and the Council will review such activities if so requested. TVA will cooperate with the Council, SHPO, Indian tribes and the other signatories in carrying out their monitoring and review responsibilities.

E. The signatories to this Agreement may agree to amend the terms of the Agreement. Such amendment shall be effective upon the signatures of all signatories to this Agreement, which shall be appended to the Agreement as an attachment.

F. Should the SHPO, Indian tribes and the other signatories object within thirty (30) days after receipt of any plans, specifications, contracts, or other documents provided for review pursuant to this Agreement, TVA shall consult with the SHPO to resolve the objection. If TVA determines that the objection cannot be resolved, TVA shall request the further comments of the Council pursuant to 36 CFR Part 800. Any Council comment provided in response to such a request will be taken into account by TVA in accordance with 36 CFR Part 800 with reference only to the subject of the dispute; TVA's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

G. In the event the SHPO is unable to fulfill its responsibilities pursuant to this Agreement, TVA shall consult with the Council on an appropriate course of action for implementing the terms of this Agreement.

H. If the Council determines that the terms of this Programmatic Agreement are not being carried out, or if this Agreement is terminated, TVA shall comply with subpart B of 36 CFR Part 800 with regard to individual Reservoir Land Management Plans covered by this Agreement.

I. TVA shall ensure that public involvement in addition to its outreach to the signatories to this Agreement is conducted pursuant to 36 CFR Part 800.14 by inviting comment through Public meetings, Public notices, or other appropriate mechanisms as may be agreed upon by the signatories.

Execution and implementation of this Programmatic Agreement evidences that TVA has taken into account the effects on historic properties resulting from its action to develop Reservoir Land Management Plans in Tennessee and TVA has thereby complied with its obligations under Section 106 of National Historic Preservation Act for these actions..

SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John W. Jordan Date: 10/11/05
[]

TENNESSEE VALLEY AUTHORITY

By: [Signature] Date: 7.20.05
[]

TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By: Herbert L. Hagen, DSHPO Date: 8/23/05
[]

CONCURRING PARTIES:

EASTERN BAND OF CHEROKEE INDIANS

By: _____ Date: _____
[]

CHICKASAW NATION

By: _____ Date: _____
[]

CHOCTAW NATION OF OKLAHOMA

By: _____ Date: _____
[]

MUSCOGEE (CREEK) NATION OF OKLAHOMA

By: _____ Date: _____
[]

By: _____ Date: _____
[]

By: _____ Date: _____
[]



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

March 29, 2010

Mr. A. Eric Howard
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1499

RE: TVA, DRAFT ENVIRONMENTAL IMPACT STATEMENT, DOUGLAS AND
NOLICHUCKY TRIBS LMP, UNINCORPORATED, MULTI COUNTY

Dear Mr. Howard:

At your request, our office has reviewed the above-referenced Draft Environmental Impact Statement in accordance with regulations codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739). In accordance with our previous correspondence dated, March 3, 2009, we find the current programmatic agreement between our agencies satisfies the Tennessee Valley Authority's Section 106 responsibilities.

If project plans are, please contact this office to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act.

Your continued cooperation is appreciated.

Sincerely,

A handwritten signature in black ink that reads "E. Patrick McIntyre, Jr." in a cursive style.

E. Patrick McIntyre, Jr.
Executive Director and
State Historic Preservation Officer

EPM/jmb

Douglas and Nolichucky Tributary Reservoirs Land Management Plan



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA GEORGIA 30303-8960

Agency EIS Administrative Record

Index Field: Agency Comment

Project Name: Douglas-Nolichucky Trib. LM

Project No.: 2008-32

April 19, 2010

Recd. 4-21-2010

Ms. Amy B. Henry
NEPA Specialist
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902

Subject: EPA NEPA Review Comments on TVA's DEIS for "Douglas and Nolichucky Tributary Reservoirs Land Management Plan"; Cocke, Greene, Hamblen, Jefferson and Sevier Counties, TN; CEQ #20100067; ERP #TVA-E65088-1N

Dear Ms. Henry:

The U.S. Environmental Protection Agency (EPA) has reviewed the subject Tennessee Valley Authority (TVA) Draft Environmental Impact Statement (DEIS) in accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. In this DEIS, TVA proposes to develop a Douglas and Nolichucky Tributary Reservoirs Land Management Plan (DNTRLMP, RLMP or Plan) to guide land use decisions for approximately 3,191 acres of public lands under TVA's control located around Douglas Reservoir (French Broad River) and Nolichucky Reservoir (Nolichucky River) in northeastern Tennessee.

Alternatives

Of the 3,191 acres of land being considered around Douglas and Nolichucky Reservoirs, 2,734 acres have been previously (and will continue to be) committed by TVA since 1965, while 457 acres of land remain uncommitted with no RLMP. Alternative A (*No Action Alternative*) would continue this current approach while action Alternative B (*Proposed Land Use Alternative*) and Alternative C (*Modified Proposed Land Use Alternative*) would establish an RLMP for the Douglas and Nolichucky Tributary Reservoirs and allocate the remaining 457 acres (28 parcels) to various allocation zones. Similar to other TVA RLMPs, the zones available are: Zone 2 (Project Operations); Zone 3 (Sensitive Resource Management); Zone 4 (Natural Resource Conservation); Zone 5 (Industrial); Zone 6 (Developed Recreation); and Zone 7 (Shoreline Access). In addition to land allocations, TVA would conduct site-specific environmental reviews under all alternatives before TVA approval of any development or activity on the public lands (pg. 1-21).

It is noteworthy that Alternative A would not propose any parcels of land for Sensitive Land Management (Zone 3). In contrast, Alternatives B and C are more

environmentally responsible than A since they do propose allocation to Zone 3 as well as more parcels to Zone 4 and less to Zone 6. However, Alternatives B and C do not propose changes to Zones 2, 5 and 7 which would remain the same as for Alternative A (1,078 ac for Zone 2; only 3 ac for Zone 5; and 13 ac for Zone 7). Specifics for Alternatives B and C are as follows:

* Alternative B (Proposed Land Use Alternative) – Alternative B would allocate the remaining 28 parcels to Zones 2, 3, 4 or 6. This would result in some 50% of these parcels being allocated to Sensitive Resource Management (Zone 3) or Natural Resource Conservation (Zone 4), and some 16% allocated to Developed Recreation (Zone 6).

* Alternative C (Modified Proposed Land Use Alternative) – As a modification of Alternative B, Alternative C would allocate 15 parcels to more environmentally responsible zones than B would, resulting in some 53% being allocated to Sensitive Resource Management (Zone 3) or Natural Resource Conservation (Zone 4), and only 13% to Developed Recreation (Zone 6). Specifically, six parcels of land containing high quality wetlands that are allocated to Zones 4 or 6 under Alternative B would instead be allocated to Zone 3 under C. As such, Alternative C would be the most protective alternative of the three offered, since more lands would be allocated to Sensitive Resource Management (Zone 3: 696 ac for C vs. 621 ac for B) and Natural Resource Conservation (Zone 4: 988 ac for C vs. 980 ac for B), and less lands allocated to Developed Recreation (Zone 6: 413 ac for C vs. 496 ac for B) with its moderate development.

EPA Conclusions & Recommendations

EPA concurs with TVA's proposal to allocate all TVA-owned lands via an RLMP to upgrade Alternative A into Alternative B or C. We are pleased to note that TVA has identified a NEPA preferred alternative in the DEIS as opposed to deferring this decision to the Final EIS (FEIS). This presumably was feasible by gathering sufficient public comments during the scoping process prior to issuance of the DEIS, as well conducting field reviews. More importantly, we are pleased to find that Alternative C – which we believe to be the environmentally preferable alternative – was identified as the preferred alternative (pg. 1-29). EPA agrees with this decision and encourages the continued identification of Alternative C as the preferred alternative in the FEIS – and ultimately as the selected alternative in the prospective TVA Record of Decision (ROD).

EPA's primary concern with the DEIS is the uncertainty – even after prospective TVA approval of Alternative C in the TVA ROD – whether or not allocated lands could be re-allocated by TVA to environmentally lesser zones (e.g., from the Sensitive Resource Management Zone 3 to Industrial Zone 5) during site-specific reviews or public requests to the TVA Board of Directors (Board). EPA would not concur with re-allocations to such zones due to the increased potential for developmental impacts

intent to entertain or reject such public requests of the Board to change proposed allocations for specific parcels of land to more developmental zones. If the Board wishes to retain such discretion, the FEIS should fully discuss the expected likelihood of such re-allocations and identify any TVA policy, guideline or rationale forming the basis for such TVA decisions as well as any thresholds (e.g., limitations in the number or kinds of acres or parcels that might be re-considered). If the TVA Land Policy (App. A) or TVA's Shoreline Management Policy is referenced, specific policy criteria should be related to the decision. Overall, EPA believes that if the approved (TVA ROD) allocations of Alternative C can nevertheless still be minimized by public requests approved by TVA, the meaning and value of the present EIS would be significantly diminished. We look forward to additional FEIS clarification in this regard.

EPA DEIS Rating

Assuming that Alternative C is selected in the TVA ROD and the proposed allocations are finalized, EPA rates this DEIS as an "LO" (Lack of Objection). Otherwise, EPA would have environmental concerns about selection of a lesser environmental alternative and the uncertainty of potential re-allocations to environmentally lesser zones with attendant developmental impacts.

EPA appreciates the opportunity to review the DEIS. Should TVA have questions regarding our comments, please feel free to contact Chris Hoberg of my staff at 404/562-9619 or hoberg.chris@epa.gov.

Sincerely,



Heinz J. Mueller
Chief, NEPA Program Office
Office of Policy and Management



TENNESSEE WILDLIFE RESOURCES AGENCY

ELLINGTON AGRICULTURAL CENTER
P. O. BOX 40747
NASHVILLE, TENNESSEE 37204

April 20, 2010

Amy Henry
TVA NEPA Compliance
400 West Summit Hill Drive, WT 11D
Knoxville, TN 37902

Re: Draft Environmental Impact Statement (DEIS) – Douglas and Nolichucky Tributary Reservoirs Land Plan – Cocke, Green, Hamblen, Jefferson, and Sevier Counties, Tennessee

Dear Ms. Henry:

We have received and reviewed the Draft Environmental Impact Statement (DEIS) for the Douglas and Nolichucky Tributary Reservoirs Land Plan in Cocke, Green, Hamblen, Jefferson, and Sevier Counties, Tennessee. The Tennessee Wildlife Resources Agency (TWRA) has commitments and agreements with the Tennessee Valley Authority (TVA) on lands adjacent to these reservoirs and we appreciate the confirmation in the DEIS that these commitments and agreements will be honored no matter which alternative is chosen. We support TVA's preferred alternative, Alternative C.

Thank you for the opportunity to review and comment on this document.

Sincerely,

A handwritten signature in cursive script that reads "Robert M. Todd".

Robert M. Todd
Fish and Wildlife Environmentalist
NEPA Coordinator

cc: Rob Lindbom, Region IV Habitat Biologist
John Gregory, Region IV Manager

The State of Tennessee

IS AN EQUAL OPPORTUNITY, EQUAL ACCESS, AFFIRMATIVE ACTION EMPLOYER

Douglas and Nolichucky Tributary Reservoirs Land Management Plan



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
Environmental Division
Suite 900 - James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243-0334

Doc. Type: EIS-Administrative Record
Index Field: Agency Comment
Project Name: Douglas-Nolichucky Tributary LMP
Project No.: 2008-32

①

March 22, 2010

Ms Linda B. Shipp, Senior Manager
NEPA Compliance
Environmental Permits and Compliance
Environment and Technology
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, TN 37902-1499

Subject: DEIS For Douglas and Nolichucky Tributary Reservoir Island Management Plan. Cocke, Greene, Hamblen, Jefferson, and Sevier Counties, Tennessee

Dear Ms Shipp:

The department is in receipt of your letter regarding the above mentioned subject. Thank you for the opportunity to review the Draft EIS for this management plan.

The Tennessee Department of Transportation's Environmental Division has reviewed this document and has no comment to make at this time.

Again, we appreciate being given the opportunity to comment. If the department can be of any assistance to you, please contact Ms. Suzanne Herron, Director of our Environmental Division at 615-741-2612.

Sincerely,

Edward H. Cole
Chief of Environment & Planning

EHC:sbh:jrk

Cc: Suzanne B. Herron

Jim Ozment

Rec'd
3/22/10



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30303



ER 10/246
9043.1

April 26, 2010

Doc. Type: EIS Admin. Record
Index Field: Agency Comment
Project Name: Douglas Nolichucky LMT
Project No.: 2008-32

Amy Henry
TVA NEPA Compliance
400 West Summit Hill Drive, WT 11D
Knoxville, Tennessee 37902

Re: Comments for the Review of Draft Environmental Impact Statement (DEIS) for the Douglas and Nolichucky Tributary Reservoirs Land Plan

Dear Ms. Henry:

The Department of the Interior (Department) has reviewed the Draft Environmental Impact Statement (DEIS) for the Douglas and Nolichucky Tributary Reservoirs Land Management Plan (DNTRLMP) and provide the following comments. The DEIS describes a reservoir land management plan to guide land use decisions on TVA owned and managed reservoir lands, surrounding the Douglas and Nolichucky reservoirs on the French Broad and Nolichucky rivers, in east Tennessee. The DNTRLMP is designed to guide land use approvals, private water use facility permitting, and resource management decisions on these TVA public lands. TVA's Holston-Cherokee-Douglas Watershed Team would use the proposed DNTRLMP along with TVA policies and guidelines to manage resources and to respond to requests for the use of TVA public lands. All lands under TVA ownership on these two reservoirs, a total of 3,191 acres, are under consideration in this planning process. TVA has identified three alternatives for managing public land under its control around the two tributary reservoirs, including the proposed actions.

Under the preferred alternative, Alternative C, all parcels with identified sensitive resources would be allocated to the most protective land use zone; whereas, only some of those parcels would be zoned for sensitive resource management under Alternatives A (the no-action alternative) and B. Compared to Alternative B, Alternative C includes slightly less land in Zone 6 (Developed Recreation) and slightly more in Zone 3 (Sensitive Resource Management) and Zone 4 (Natural Resource Conservation). Alternative C, as contrasted to Alternative B, represents changes in land use zones for 15 parcels of TVA-managed land. Specifically, six additional parcels, totaling 75 acres, would be placed into Zone 3. All remaining nine parcels would be placed in Zone 4 (an additional 8 acres) under Alternative C. Due to the additional

acreage included under Zone 3 and 4, which would provide added protection to federally listed species, we agree with TVA's decision to select Alternative C, as the preferred alternative.

TVA have indicated that three federally listed and a federally protected terrestrial animal species occur within three miles of the Douglas and Nolichucky reservoirs or are known from the surrounding counties. The federally listed as threatened, piping plover (*Charadrius melodus*), has been observed in two of the past five years at Rankin Bottoms Wildlife Management Area on Douglas Reservoir in September during the fall shorebird migration season.

The federally listed as endangered gray bat (*Myotis grisescens*) is known to occur in a cave approximately five miles east of Douglas Reservoir. Maternity colonies have also been recently discovered in caves upstream and downstream of Douglas Reservoir. The presence of these colonies suggests that gray bats forage throughout the study area.

Summer roosting habitat (e.g., trees with exfoliating bark), suitable for the federally listed as endangered Indiana bat (*Myotis sodalis*), exists throughout the study area, in addition to several caves, suitable for winter roosting, near Douglas and Nolichucky reservoirs. However, no Indiana bats have been found in these caves.

Bald eagles (*Haliaeetus leucocephalus*) remain federally protected under the *Bald and Golden Eagle Protection Act*. Bald eagles build nests on Douglas Reservoir and downstream of the dam and are observed along the Nolichucky River. Several TVA parcels on Douglas Reservoir and Nolichucky River provide suitable habitat for the species, and they have nested on TVA parcels in previous years. However, no nests are currently known on TVA lands.

TVA further indicated that a total of 19 federally listed aquatic species have been reported within the watersheds of Douglas and Nolichucky reservoirs. Many of the occurrence records for individual species are historical, and TVA determined that it is unlikely those particular aquatic species remain within either watershed. TVA concluded that two federally listed as endangered, one federally listed as threatened and three candidates for federal listing occur near Douglas and Nolichucky reservoirs.

Federally endangered aquatic species, including the oyster mussel (*Epioblasma capsaeformis*) and the birdwing pearlymussel (*Lemiox remosus*), have been collected in the Nolichucky River. Oyster mussels have not been found near any TVA land parcels. In 1982, TVA transplanted 1,000 birdwing pearlymussels into the Nolichucky River approximately 20 miles downstream from Nolichucky Dam; a small birdwing pearlymussel was found at the transplant site in 1995, suggesting some production.

The federally threatened snail darter (*Percina tanasi*) likely no longer occurs in the Nolichucky River. Recent surveys of that system have failed to encounter the species. A population, however, does occur in the French Broad River, downstream from Douglas Dam.

The three federal aquatic candidate species which TVA has indicated occur in the Nolichucky River near TVA lands include the spectaclecase (*Cumberlandia monodonta*), slabside

pearlymussel (*Lexingtonia dolabelloides*) and fluted kidneyshell (*Ptychobranchus subtentum*). However, the slabside pearlymussel has not been collected in the Nolichucky River since 1964.

TVA has determined that no federally listed plants would be affected under any of the alternatives because none are known to occur and no suitable listed plant habitat exists within five miles of Douglas and Nolichucky reservoirs. TVA has indicated that adoption of Alternative A may, but would not likely, impact gray and Indiana bats or listed aquatic species. They further state that under action alternative B and C, no federally listed terrestrial animals would be affected, and federally listed aquatic species would not likely be affected. According to TVA, effects to listed species would be insignificant under all alternatives, and Alternative A, would have the greatest impact to listed species. TVA further indicates that Alternative B would have lesser impacts and Alternative C the least impacts.

Regarding listed species, TVA has indicated in the EIS that “project-specific environmental reviews on any parcel would be performed, and mitigation would be required when warranted”. We do recommend that TVA consult with the Department on individual site-specific projects in the future when details become known. If there is a potential for a “likely to adversely affect” determination to be made during site-specific consultation in the future, the Department advises that “likely to adversely affect” is the appropriate determination at the programmatic consultation level, also. However, after reviewing the EIS and discussing the DNTRLMP with TVA staff, we believe that the likelihood of reaching a determination of “likely to adversely affect” at the site specific consultation level in the future is unlikely.

In view of this, we believe that the requirements of section 7 of the Endangered Species Act (Act) of 1973, as they apply to the DNTRLMP, have been fulfilled. However, obligations under section 7 of the Act must be reconsidered if: (1) new information reveals that the proposed action may affect listed species in a manner or to an extent not previously considered, (2) the proposed action is subsequently modified to include activities which were not considered in your permit application, or (3) new species are listed or critical habitat designated that might be affected by the proposed action. Because this is a programmatic level consultation on the DNTRLMP site-specific consultations will still be needed, but can tier back to this consultation. It is incumbent upon TVA and the Department to coordinate adequately in the future to minimize the likelihood of any specific actions results in an adverse affect to listed species

If you have question or need further assistance, please contact Todd Shaw on (931) 528-6481, extension 215. I can be reached on (404) 331-4524 or at gregory_hogue@ios.doi.gov.

Sincerely,



Gregory Hogue
Regional Environmental Officer

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