

**FINDING OF NO SIGNIFICANT IMPACT
TENNESSEE VALLEY AUTHORITY**

DISPOSAL FEE OWNERSHIP OF YELLOW CREEK INDUSTRIAL PARK PROPERTIES

In 1971, the Tennessee Valley Authority (TVA) partnered with the Mississippi Agricultural and Industrial Development Board [now the Mississippi Development Authority (MDA)], Tombigbee River Valley Water Management District (TRVWMD), and the Yellow Creek State Inland Port Authority (YCPA) to plan and construct a river terminal, railroad, and industrial sites, called the Port Project, on Pickwick Reservoir in Tishomingo County, Mississippi in order to facilitate economic development under contract TV-34832A, as supplemented. In 1984, a new contract, TV-62000A (hereinafter referred to as the Contract), was executed between the original parties. The Contract superseded TV-34832A and provided for additional appropriated funding to ensure long term success of the Port Project.

TVA and all signatory parties desire resolution and changes to the Contract. The parties have formally proposed modifications to the agreement which would allow for financial settlements specific to their investments, release from liabilities, and termination of the Contract. TVA agrees that the agreement has successfully fulfilled its intended purposes and therefore believes it has reached its maturity. TVA is pursuing amendment and termination of the Contract.

TVA proposes to transfer approximately 174-acres of Yellow Creek Port (YCP) properties, including any existing improvements to the State of Mississippi (State) using section 4(k)(b) of the TVA Act, which required prior authorization from Congress. On December 18, 2014, President Barack Obama signed House Resolution 3044 into law (Public Law No. 113–248), allowing TVA to consider transfer of the Port Project properties in Tishomingo County, Mississippi, to the State for economic development purposes. The proposed action would include the following:

- Abandon TVA's interest in the railroad spur (approximately 213 acres) property that leads into YCP;
- Transfer approximately 174 acres of the Port Project property to the State under 4(k)(b) of the TVA Act;
- Issue Section 26a approval for existing port facilities; and
- Amend and terminate Contract TV-62000A.

The proposed action is the subject of an environmental assessment (EA) prepared by TVA. The EA is incorporated by reference. The EA addressed two alternatives. Under the No Action Alternative, TVA would not dispose of land and the State would not receive the Port Project properties. The subject properties would continue to be governed by the State per the Contract and TVA would retain ownership of the approximately 174 acres of the Port Project properties. TVA approval is not required for the State to enter into agreements (lease, easement) on the permanent industrial easement property (XYECCR-1IE). The State is currently responsible for development on this property and adoption of the No Action Alternative would not change this situation. The State under its easement could chose to develop these parcels. Spry Marine's term easement expired in October 2015 and it currently operates under a license agreement. In the foreseeable future, TVA would retain an outlying 15.9-acre tract and an additional 5 acres that contain sensitive resources. Although no new industries or expansions are proposed for the 76.2 currently undeveloped acres, it is likely that existing industries could expand and new facilities could be proposed. The future development or alteration of the Port Project properties would be unrelated to TVA's decision to adopt the No Action Alternative.

Under the Proposed Action Alternative, TVA would dispose of approximately 174 acres of TVA fee-owned property to the State, abandon TVA's interest in the 213-acre railroad spur property, issue 26a approval for existing port facilities and would amend and terminate the Contract. The 174 acres includes 64.5 acres encumbered by permanent easements for industrial development and roads. TVA would retain an outlying 15.9-acre tract and an additional 5 acres that contain sensitive resources. TVA would also continue to review requests for water use facilities along the reservoir shoreline under Section 26a of the TVA Act. Before the disposal of land would be completed, TVA would negotiate the State's acceptance of environmental liability spanning their 40-year occupancy with MDA. Under this alternative, the future landowners could construct and operate additional industrial facilities. In addition, parking, access, water supply, sanitary facilities, and electrical utilities would be necessary to support any industrial facility. Deed covenants would be provided to restrict the use of land for purposes consistent with 4(k)(b). Due to the identification of sensitive resources, additional deed restrictions would restrict tree removal to winter months (November through March) on XYECCR-3, notification to TVA for any land disturbance proposed on the approximately 21.4-acre portion of Parcel 3 of XTYECCR-11E, and a deed covenant on Tract XYECCR-4 stipulating that any construction below the 5.6 feet fill zone would require a Section 106 of the National Historic Preservation Act review. The Proposed Action Alternative is TVA's preferred alternative.

Other alternatives considered were to modify the existing agreement with various levels of TVA participation; however, these potential actions would not fulfill the goals of TVA or the project, or were impractical, or would not achieve the purpose and need of the proposal. The other alternatives were dismissed from further review.

Under the Proposed Action Alternative, potential effects related to aquatic ecology, wetlands, groundwater, endangered or threatened aquatic species, natural areas, health and safety, and land use would be absent or minor. There would be minor, temporary effects during construction of future industrial facilities to air quality (fugitive dust), socioeconomic and environmental justice, and noise. There would also be minor, temporary short-term impacts to visual resources during construction of future facilities and minor adverse impacts during operation of future facilities.

The proposed land disposal area contains three archaeological or architectural properties potentially eligible for inclusion in the National Register of Historic Places (NRHP). Sites 22Ts1529 and 22Ts1530 are located in areas that would be retained by TVA. At this time, no additional ground disturbance is proposed on the Yellow Creek State Port parcel (XYECCR-4) where 22Ts1619 is located. However, to avoid any future potential effects to resources that may be eligible for the NRHP, TVA proposes to place a deed covenant on Tract XYECCR-4 stipulating that any construction below the 5.6 feet fill zone would require a Section 106 review. With this deed covenant in place, TVA finds that site 22Ts1619 would not be affected by this undertaking. Approximately 21.4 acres of XYECCR-11E Parcel 3 has not yet been surveyed for cultural resources. The State currently holds a permanent industrial easement over this parcel of land. Under the permanent easement, the State does not require TVA approval to enter into agreements (e.g., leases, easements) or to conduct activities on this property. A portion of this area has been previously disturbed by the construction of an industry. MDA has no current plans for any further construction on this property. As such, TVA will place a restriction in the deed conveying XYECCR-11E Parcel 3 to MDA that prohibits any land-disturbing from being conducted on this property without prior written approval from TVA. At the time a request is received for such approval, TVA will conduct a Section 106 review to assess the impact of any proposed land-disturbing activities on historic properties located under XYECCR-11E Parcel 3. In the interim, the deed restriction will ensure that historic properties are not affected. In a letter dated January 22, 2016, the Mississippi State Historic Preservation Officer concurred with TVA's findings of no effect to historic properties. Pursuant to 36

CFR Part 800.3(f) (2), TVA also consulted with federally recognized Indian tribes regarding properties that may have religious and cultural significance to their tribe and eligible for the NRHP. TVA received one response from the Choctaw Nation of Oklahoma with no objections to the undertaking.

Effects to floodplain function are insignificant and the Proposed Action Alternative is consistent with Executive Order 11988. TVA would retain the fee land below the 423-contour. Potential development subsequent to the transfer of this parcel would have no impact on floodplains. No new facilities are proposed at this time. Future facilities, structures (including fill), improvements or buildings proposed below elevation 423 would require written approval (i.e., 26a approval) from TVA prior to construction. In some parcels, TVA may retain to the 418-contour with appropriate covenants to ensure that all future development would be consistent with the requirements of the TVA Flood Control Storage Loss Guideline.

No federally listed plant species or designated critical habitat occurs on the Port properties; therefore, none would be impacted by the proposed land transfer. Suitable habitat within the project area is lacking for the federally listed gray bat, Mitchell's satyr, red-cockaded woodpecker, oldfield mouse, woodstork, and state-listed Mountain chorus frog, queen snake, and red salamander. Impacts to these species are not expected to occur as a result of proposed actions. Suitable habitat likely occurs in the project footprint for federally protected bald eagle and state listed mole kingsnake, black kingsnake and southern coal skink; however, additional suitable habitat of similar quality exists in the surrounding area. No bald eagle nests or individuals of any of these four species were seen during field reviews of the project footprint. Direct effects to individual mole kingsnake, black kingsnake, and southern coal skink may occur during future construction activities; however, impacts to populations of these species would not be anticipated. Bald eagles are not expected to be impacted by the proposed actions either based on the lack of presence of this species during field surveys. Nonetheless, it is the obligation of the entity responsible for the properties following disposal by TVA to follow all state and federal environmental laws to ensure there are no impacts to federally protected species. Additional surveys by the property owner may be required when additional development is proposed.

A total of 13.62 acres of suitable summer roosting habitat for Indiana and northern long-eared bats, within Parcel XYECCR-3, could be removed for future industrial development under the Proposed Action Alternative. Thus, TVA would require the deed, transfer, or other conveyance documents to include a covenant to limit tree clearing on XYECCR-3 to October 15 to March 31, unless the future owner either (i) demonstrates that there is no summer roosting habitat for the Indiana and northern long-eared bats prior to any tree clearing or (ii) obtains U.S. Fish and Wildlife Service (USFWS) concurrence that no impact to these species could occur at any time of year. This would remove any potential for direct effects to Indiana bat and northern long-eared bat, and ensure that indirect effects from potential loss of habitat are discountable.

Mitigation

Depending upon the specific development, its footprint on the property, and supporting activities following transfer of the property, some mitigation would likely be required by other federal, state, and local authorities in order to acquire necessary permits and other authorizations. Future owners would utilize appropriate best management practices during construction and operation of the property in order to comply with necessary permits and authorizations. TVA will establish the following transfer covenants and mitigation measures:

Undeveloped Property (Parcel XYECR-3) Transfer Covenants

1. TVA will require the deed, transfer, or other conveyance documents to include a covenant to limit tree clearing to October 15 to March 31, unless the future owners either (i) demonstrate that there is no summer roosting habitat for the Indiana and northern long-eared bats prior to any tree clearing or (ii) obtains USFWS concurrence that no impact to these species could occur at any time of year.
2. TVA retains the right to temporarily and intermittently flood to elevation 425 and will not be liable for damages resulting from flooding.

• Inland Port Transfer Covenants:

1. To avoid any future potential effects to resources that may be eligible for the National Register of Historic Places, TVA will place a deed covenant on Tract XYECR-4 stipulating that any construction below the 5.6 feet fill zone would require a Section 106 review.
2. Any future facilities or equipment subject to flood damage will be located above or floodproofed to elevation 421.6 (Flood Risk Profile elevation plus 2 vertical feet).
3. Any future development proposed within the limits of the 100-year floodplain, elevation 419.5, will require written approval from TVA prior to construction to ensure it is consistent with the requirements of Executive Order 11988.
4. All future development will require written approval from TVA prior to construction to ensure it is consistent with the requirements of the TVA Flood Control Storage Loss Guideline. The Flood Control Storage Loss Guideline applies from elevations 408.0 to 419.6 above mean sea level (msl). The TVA power storage loss zone applies from elevations 408.0 to 414.0 msl.
5. TVA will retain the right to temporarily and intermittently flood below elevation 425, and will not be liable for damages resulting from flooding.
6. Future facilities, equipment, structures (including fill), improvements or buildings proposed below the TVA Flood Risk Profile/500-year flood elevation 419.6 will require written approval from TVA prior to construction.

• State of MS - Ferrous South -Parcel XYECR-1IE-2, Ergon - Parcel XYECR-1IE-3, Parcel XYECR-1IE-4, and Highway Rights of Way (XTYCER-1H and XTYECR-9H) Transfer Covenants:

1. TVA retains the right to flood the tract as described in the permanent easement, and will not be liable for damages resulting from flooding.

• State of MS - Parcel XYECR-1IE-3 (Partial) Transfer Covenants:

1. TVA will place a restriction in the deed conveying XYECR-1IE Parcel 3 to MDA that prohibits any land-disturbing from being conducted on this property without prior written approval from TVA.
2. TVA will retain the right to flood the tract as described in the permanent easement, and will not be liable for damages resulting from flooding.

• Spry Marine (Parcel XYECR-5E) and Railroad Right-of-Way (within YCP) Transfer Covenants:

1. TVA retains the right to temporarily and intermittently flood to elevation 425 and will not be liable for damages resulting from flooding.

Conclusion and Findings

Based on the findings in the EA, TVA concludes that the proposed action of the abandonment of approximately 213 acres of railroad easement leading into YCP, transfer of approximately 174 acres of TVA fee owned land, 26a approval for existing port facilities, and amendment and termination of Contract TVA-62000A would not be a major federal action significantly affecting the environment. Accordingly, an environmental impact statement is not required. This finding of no significant impact is contingent upon adherence to the mitigation measures described above.



5/24/16

Amy Henry,
Manager, NEPA Program and Valley Projects
Environmental Permits & Compliance
Tennessee Valley Authority

Date Signed