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Letter of Agreement between Plaintiffs and Defendants & Proposed Order, *TVA v. Hill et al*, No. 76-2116

Herbert S. Sanger

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TENNESSEE VALLEY AUTHORITY
KNOXVILLE, TENNESSEE 37902

FEB 11 1977

W. P. Boone Dougherty, Esq.
Suite 1200
United American Bank Building
Knoxville, Tennessee 37902

Re: Hiram G. Hill, et al. v.
Tennessee Valley Authority
Docket No. 76-2116

Dear Mr. Dougherty:

The following reflects our understanding and agreement as counsel of record for the respective parties in the captioned litigation.

The parties agree that upon the issuance of the mandate by the Sixth Circuit Court of Appeals, the attached agreed order will be presented to the district court for entry.

It is specifically agreed that the attached agreed order incorporates and sets forth the work and activity in which the Tennessee Valley Authority will be permitted to engage relative to construction of the Tellico project and that from which they will be enjoined.

It is further agreed that the work which is to be discontinued and enjoined will cease as of the end of the workday on Thursday, February 10, 1977.

It is further agreed between the parties that the plaintiffs will defer any claim for costs, expenses, and

no mention of damages.

W. P. Boone Dougherty, Esq.

FEB 11 1977

attorneys' fees until the appeal process is concluded before the Supreme Court of the United States, unless the matters at issue are otherwise prior thereto concluded.

Sincerely yours,

Herbert S. Sanger, Jr.

Herbert S. Sanger, Jr.
General Counsel

The foregoing constitutes the agreement between all of the parties in the captioned litigation.

W. P. Boone Dougherty
W. P. Boone Dougherty

Attorney of Record for all of the Plaintiffs, Hiram G. Hill, Jr., Zygmunt J. B. Plater, Donald S. Cohen, The Audubon Council of Tennessee, Inc., and The Association of Southeastern Biologists

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

HIRAM G. HILL, JR.,
ZYGMENT J. B. PLATER,
DONALD S. COHEN,
THE AUDUBON COUNCIL OF
TENNESSEE, INC., and
THE ASSOCIATION OF SOUTH-
EASTERN BIOLOGISTS

Plaintiffs

v.

TENNESSEE VALLEY AUTHORITY

Defendant

No. 3-76-48

ORDER

Upon application of the plaintiffs, it appearing to the Court that the Sixth Circuit Court of Appeals, on January 31, 1977, filed an opinion in the above action with instructions "that a permanent injunction issue halting all activities incident to the Tellico Project which may destroy or modify the critical habitat of the snail darter," and the parties having agreed upon the form of this order,

It is ORDERED by the Court that defendant Tennessee Valley Authority be, and it hereby is, permanently enjoined from the following:

1. Closing the dam and consequently creating the reservoir.
2. Engaging in any further work or activity on the dam structure or the Tellico project which may destroy or modify the critical habitat of the snail darter. Defendant is permitted to do the following:

A. Dam Area

- (1) Provide continuous cleaning of debris from sluices.
- (2) Condition canal plug for long-term service.
- (3) Stabilize canal slopes with grassing.
- (4) Complete manholes for protection on dam instrumentation.
- (5) Periodically test and operate spillway gates machinery.
- (6) Set up barricades and signs, as appropriate, for public safety.
- (7) Seeding of upstream slope of dam and reseeding downstream slopes.
- (8) Seed saddle dam areas.
- (9) Complete spillway gates and machinery painting,
- (10) Complete landscaping and site improvements in dam reservation area.

B. Roads and Reservoir

- (1) Complete cleanup and burning, and other disposition of cut timber, debris and trash in reservoir basin, provided such is done in a manner so as to minimize siltation and adverse effects upon the Little Tennessee River, the snail darter, or its habitat.
- (2) Complete work and open Tellico canal bridge to traffic (permanent canal plug and temporary canal plug shall both remain).
- (3) Protect all highway embankments with rip-rap and grass.
- (4) Complete all highway guardrails and signs.

(5) Complete all road projects, provided the work is performed so as to minimize siltation and adverse effects upon the Little Tennessee River, the snail darter, or its habitat.

(6) Repair and/or repave segments of original roadways or highways where traffic must continue until new roads are opened.

(7) Provide maintenance to keep detour roads and partially completed roads in use.

(8) Provide for erosion control where necessary in reservoir to prevent siltation.

(9) Erect warning signs and/or barricades to protect public in case low-level reservoir roads are inadvertently flooded.

(10) Rebuild Highway 72 at Clear Prong Creek and project 1101 for continued use.

(11) Continue work on Tellico Parkway and access road with bridge below the dam.

(12) Remove abandoned bridges and culverts where removal is necessary for public safety, provided such is done in a manner to minimize siltation and adverse effects upon the Little Tennessee River, the snail darter, or its habitat.

C. Other Activities

(1) Modify TASS Water Treatment Plant temporary intake for long-term use.

(2) Complete protection at all historic locations and complete restoration of Fort Loudon, Blockhouse, and Chota.

(3) Complete new electrical substation for Loudon Utilities near Vonore.

Approved for entry.

Judge

Approved for entry:

W. P. Boone Dougherty
W. P. Boone Dougherty

Attorney for all of the Plaintiffs, Hiram G. Hill, Jr., Zygmunt J. B. Plater, Donald S. Cohen, The Audubon Council of Tennessee, Inc., and The Association of Southeastern Biologists

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