S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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NASHVILLE, TENNESSEE 37243

November 16, 2000

Opinion No. 00-173

TVA/Columbia Dam Project Lands

QUESTION

Can the lands acquired by the Tennessee Valley Authority (TVA) for the Columbia Dam and Reservoir Project be returned to the original owners upon transfer to the State of Tennessee?

OPINION

The State of Tennessee can return the Columbia Project lands to the original owners only if TVA transfers the lands to the State without any deed restrictions that would preclude returning the lands, and the State determines that the lands are surplus real property with an average appraised value of less than twenty five thousand dollars ($25,000.00) in accordance with Tenn. Code Ann. § 12-2-112(a)(3) (Supp. 2000).

ANALYSIS

TVA acquired 12,800 acres of land in Maury County, Tennessee, to be part of the Columbia Dam and Reservoir. The Columbia Dam was intended to be the downstream component of the Duck River Project. However, the presence of several endangered species in the potentially affected part of the Duck River and the lack of national support for this type of project prevented the completion of the dam and reservoir. TVA proposed several alternative uses of the Columbia Project lands. In April 1999, TVA published a Final Environmental Impact Statement (FEIS) that analyzes the environmental impact associated with the alternative uses of the Columbia Project lands.

The lands acquired by TVA for the Columbia Dam and Reservoir Project can be returned to the original owners or their heirs upon transfer to the State of Tennessee only in a limited circumstance. TVA would have to transfer the lands to the State without deed restrictions that would preclude returning the lands to the original owners or their heirs, and the State would have to make a determination that the lands are surplus real property. But even then, without deed restrictions to limit the use of the lands, the State's ability to transfer or sell the property to the original owners or their heirs would be limited. Tenn. Code Ann. § 12-2-112 provides the procedure for disposal of surplus interests in state property and states in part: "[R]eal property shall not be sold in fee . . . if there is any feasible use for the property by any state

agency, as determined by the governor, the attorney general and reporter and the commissioner of finance and administration." Tenn. Code Ann. § 12-2-112(a)(1). Thus, in order for state property to be considered surplus property, the governor, attorney general and reporter, and commissioner of finance and administration must make a determination that there is no feasible use for the Columbia Project lands by any state agency prior to selling or transferring the property. Then, if the average appraised value of the surplus property exceeds twenty five thousand dollars ($25,000.00), the property must be sold by the sealed bid method with the condition that the State has the right to refuse any or all bids. Tenn. Code Ann. § 12-2-112(a)(3). Therefore, if the Columbia Project lands are valued in excess of twenty five thousand dollars ($25,000.00), the property must be sold by the sealed bid method and the State cannot return the lands to the original owners or their heirs.

It should be noted, however, that TVA selected Alternative D/C as its preferred land use alternative in the April 1999 FEIS. *See* April 1999 Final Environmental Impact Statement, *Use of Lands Acquired for the Columbia Dam Component of the Duck River Project* at 56. Alternative D/C provides that TVA transfer fee title of all the Columbia Dam Project lands to the State of Tennessee or some specific state or federal agency, after granting some specified easements. *Id*. at 45-6. The transfer of title is subject to deed restrictions that limit the type of activities that can be conducted on each of the four land use categories developed by TVA. Clearly, the deed restrictions would curtail the State's ability to sell or transfer the property to the original owners or their heirs. With the exception of 2000 acres that may be sold for mixed-use development (not including industrial development), Alternative D/C requires government management of the lands to enhance public recreational use, and to protect natural and cultural resources.

TVA addressed the proposed alternative of returning the land to the original owners or their heirs if the Columbia Dam could not be built. *Id*. at 50-1. This alternative was not further evaluated for reasons that made the alternative unfeasible. First, if TVA were to sell the lands to the public as surplus property, the Tennessee Valley Authority Act requires such a sale to be by public auction to the highest bidder. 16 U.S.C.A. § 831dd (1985). Second, other federal laws and regulations require various natural and cultural resources to continue to be protected if the land is transferred or sold out of federal ownership. Lastly, the general public comments appear to support retaining the bulk of the land in public ownership. For these reasons, TVA did not consider returning the land to the original owners or their heirs as a viable alternative. Accordingly, it is the opinion of this Office that the State can return the Columbia Project lands to the original owners or their heirs only if TVA transfers the lands to the State without any deed restrictions that would preclude the return of the lands, and then only if the State determines that the lands are surplus real property with an average appraised value of less than twenty five thousand dollars ($25,000.00), in accordance with Tenn. Code Ann. § 12-2-112(a)(3).

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