

## **Appendix A**

**U.S. Army Corps of Engineers, Final Environmental Assessment, Statement of Findings, and Finding of No Significant Impact (File No. 200201444) – Dr. James Lee, Application for Proposed Riprap Bank Stabilization at Tennessee River Mile 157.5, Left Bank, Kentucky Lake, Decatur County, Tennessee**

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

(File No. 200201444)

Dr. James Lee

Application for Proposed Riprap Bank Stabilization at Tennessee River Mile 157.5, Left Bank,  
Kentucky Lake, Decatur County, Tennessee

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

Prepared By:

Floyd M. Carnes  
Project Manager  
U.S. Army Corps of Engineers  
Regulatory Branch  
3701 Bell Road  
Nashville, Tennessee 37214  
(615) 369-7503

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Date

## Contents

### Chapter 1.0 Proposed Activity

- 1.1 Background
- 1.2 Decision Required
- 1.3 Other Approvals Required

### Chapter 2.0 Public Involvement Process

### Chapter 3.0 Environmental and Public Interest Factors Considered

- 3.1 Introduction
- 3.2 Physical/Chemical Characteristics and Anticipated Changes
- 3.3 Biological Characteristics and Anticipated Changes
- 3.4 Human Use Characteristics and Anticipated Impacts
- 3.5 Cumulative and Secondary Impacts

### Chapter 4.0 Alternatives

- 4.1 Introduction
- 4.2 Description of Alternatives
- 4.3 Comparison of Alternatives

### Chapter 5.0 Findings

- 5.1 Section 404(b)(1) Determination
- 5.2 Water Quality Certification
- 5.3 Consideration of Public Comments
- 5.4 Findings of No Significant Impact
- 5.5 Clean Air Act General Conformity Rule Review
- 5.6 Recommended Special Conditions
- 5.7 Public Interest Determination

### Appendix A. Public Notice

- B. 404(b)(1) Guidelines Compliance Evaluation
- C. Agency Responses
- D. Special Conditions

## 1.0 Proposed Activity

1.1. Background. Dr. James Lee submitted an application for a Department of the Army (DA) permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). The proposed work consists of the placement of riprap bank stabilization at along the shoreline at Tennessee River Mile 157.5, Left Bank, Kentucky Lake, Decatur County, Tennessee. The work consists of placing approximately 11,722 cubic yards of limestone riprap along 3,100 feet of shoreline. Approximately 230 cubic yards of material would be placed along Elevation 359.0, normal summer pool elevation for Kentucky Lake. The riprap would be placed along of Kentucky Lake with a top elevation of 378.0 and a bottom elevation of 359.0. No preparation of the shoreline would be required for the proposed work. All work would be performed during winter draw down, Elevation 354.0, and in the dry.

### 1.2. Decision Required.

- **Section 10 of the Rivers and Harbors Act of 1899** prohibits the alteration or obstruction of any navigable water of the US unless authorized by the Secretary of the Army acting through the Chief of Engineers. Tennessee River Mile 157.5, right bank, is a navigable water of the United States as defined by 33 CFR Part 329.
- **Section 301 of the Clean Water Act (CWA)** prohibits the discharge of fill material into waters of the US unless authorized by the DA pursuant to Section 404 of the same Act. The proposed action includes stabilizing the bank with riprap and the associated fill is subject to the CWA. Tennessee River Mile 157.5, right bank, is a water of the United States as defined by 33 CFR Part 328.
- Approval under authority of **Section 26a of the TVA Act** is required for this action located at Tennessee River Mile 157.5, right bank, Kentucky Lake, Wayne County, Tennessee.

A DA permit is required for the work; therefore, the Corps of Engineers (CE) must decide on one of the following:

- a. issuance of a permit for the proposal

- b. issuance of a permit with modifications or conditions
- c. deny the permit

1.3. Other Approvals Required. Other federal, state and local approvals required for the proposed work are as follows:

- a. Tennessee Valley Authority (TVA) approval under Section 26a of the TVA Act.
- b. Water quality certification from the Tennessee Department of Environment and Conservation (TDEC) in accordance with Section 401(a)(1) of the CWA.

**2.0 Public Involvement Process.** On September 3, 2002, Public Notice 02-58 was issued to advertise the proposed work. All responses are included in Appendix B. A summary of the responses is as follows:

a. The Tennessee Historical Commission (Commission) responded to the public notice by letter dated September 10, 2002, stating based on the documentation submitted, there are no National Register of Historic Places listed or eligible properties affected by this undertaking. The Commission has no objections to proceeding with the project.

b. The US Fish and Wildlife Service (Service) responded to the public notice by letter dated September 24, 2002. The Service stated that based on their records and the best information available at this time, it is their belief that there are no federally-listed or proposed endangered or threatened plant or animal species in the impact area of the project, and that requirements of Section 7(c) of the Endangered Species Act of 1973, as amended, are fulfilled.

c. TDEC responded to the public notice by letter dated October 28, 2002, issuing water quality certification for the propose work.

No Comments were received from the general public.

### **3.0 Environmental and Public Interest Factors Considered**

3.1. Introduction. 33 CFR 320.4(a) states the decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. All factors that may be relevant to the proposal must be considered. Public Notice 02-58 listed factors that may be relevant to the proposal. The following sections show which factors that are relevant in this proposal, and if relevant, provide a concise description of the impacts.

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

( X ) Substrate. The placement of the riprap at the subject location would permanently impact approximately 3,230 feet of shoreline. The substrate at these locations is mostly composed of sandy silt and clay material from upland runoff. Minor impacts to the substrate at this location would result from the minor construction activity. However, because of the relatively small magnitude of the project, impacts to the substrate would be temporary and minor.

( X ) Currents, circulation or drainage patterns. The placement of the riprap would not change the existing drainage pattern of upland runoff at the proposed locations.

( X ) Suspended particulates, turbidity. Minor turbidity would be expected during the placement of the riprap. However, if the work is performed during winter pool drawdown and during dry periods of the year, turbidity would be minimal or non-existent.

( X ) Water quality (temperature, color, odor, nutrients, etc). The use of clean materials and good construction practices would reduce anticipated temporary disturbance to water quality. By nature of the proposed work, the proposed activity would be contained to the shoreline. Overall, adverse water quality impacts would be minor.

( X ) Flood control functions. The proposed work is minor and would not cause any appreciable loss of flood storage.

( X ) Storm, wave and erosion buffers. The addition of riprap bank stabilization along the shoreline would serve as a wave and erosion buffer for the shoreline. The riprap would deflect the waves and take away the waves energy.

( X ) Shore erosion and accretion patterns. Any permit issued for the work should be conditioned to require the applicant to immediately stabilize any upland disturbed areas.

( ) Baseflow. No Issues.

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

( ) Special aquatic sites (wetlands, mudflats, pool and riffle areas, vegetated shallows, sanctuaries and refuges, as defined in 40 CFR 230.40-45). No Issues.

( X ) Habitat for fish and other aquatic organisms. The placement of the riprap would have temporary minor adverse impact on aquatic organisms until the area achieves equilibrium. The riprap would displace about 3,100 feet linear of shoreline, however, aquatic organisms would be expected to recolonize along the bottom and into the nooks and crannies of the riprap soon after completion.

( X ) Wildlife habitat. The placement of the riprap on the shoreline would provide a perch for birds and animals for resting and in the pursuit of prey. The riprap would provide a location for the wildlife, both aquatic and terrestrial, a place to search for food and provide shelter in the nooks and crannies riprap.

( X ) Endangered or threatened species. The Service stated in their September 24, 2002, letter, that based on their records and the best information available at this time, it is their belief that there are no federally-listed or proposed endangered or threatened plant or animal species in the impact area of the project, and that requirements of Section 7(c) of the Endangered Species Act of 1973, as amended, are fulfilled.

( X ) Biological availability of possible contaminants in dredged or fill material. Only clean materials would be used in the placement of the riprap. No excavation would be required for the proposed work.

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

( ) Existing and potential water supplies; water conservation. No Issue.

( ) Water-related recreation. No Issue.

( X ) Aesthetics. The placement of the riprap would have a minor impact on the aesthetics of the area. The proposed riprap would be clean quarry run limestone, which would not be out of the ordinary for this type of setting. During the placement of the riprap, there would be the presence of construction workers on-site.

( ) Traffic/transportation patterns. No Issues.

( ) Energy consumption or generation. No Issues.

( X ) Navigation. The proposed work would occur at Tennessee River Mile 157.5, left bank. There would be no impacts to recreational or commercial navigation.

( ) Safety. No Issues.

( ) Air quality. No Issues.

( X ) Noise. The placement of the riprap would be performed during daylight hours. Equipment would be limited to small machinery operating within normal ranges expected for construction equipment.

( X ) Historic properties and cultural values. The Commission stated in their September 10, 2002, letter, that the archaeological sites have been previously identified within the undertaking's area of potential effect. However, since there will be no bank reshaping and based on the documentation submitted, there are no National Register of Historic Places listed or eligible properties affected by this undertaking. The Commission has no objections to proceeding with the project.

( ) Land use classification. No Issue.

( ) Conservation. No Issue.

( X ) Economics. Placing the riprap would benefit the contractor performing the work. The landowner would have his land protected from further erosion.

( ) Food and fiber production. No Issues.

( ) General environmental concerns. No Issues.

( ) Mineral needs. No Issues.

( X ) Consideration of private property. Mr. Lee owns the property. During the construction of Kentucky Reservoir, TVA purchased a flowage easement on this property as well as compensating the property owners, their heirs and assigns, for releasing TVA and Decatur County from any and all liability for damage and /or inconvenience resulting from the loss of road access to the property.

( ) Floodplain values. No Issues.

3.5. Cumulative and Secondary Impacts. Every application must be considered on its own merits and its environmental impacts assessed in light of historical permitting activity along with anticipated future activity in this area. Given the nature of the work and the method, by which the riprap would be installed, the cumulative or secondary impacts from this proposal are considered minor.

#### **4.0 Alternatives**

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

4.2. Description of Alternatives.

a. No Action. The no action alternative equates to denial of the DA permit or the applicant's withdrawal of the request to place riprap along the shoreline of the Tennessee River at this location.

b. The Applicant's Final Proposed Action. See Section 1.1. for the applicant's final proposed action.

c. The Proposed Action with Special Conditions. This alternative would be composed of the applicant's proposal as described in section b. above with the inclusion of additional recommended special conditions that would minimize unavoidable environmental impacts.

#### 4.3 Comparison of Alternatives.

a. No Action. The no action alternative equates to denial of the DA permit or the applicant withdrawing the request to perform the proposed work. The proposed work would not be performed. The no action alternative would result in no additional impacts to the aquatic life and habitat. However, a no action would not likely meet the needs of the applicant and would continue to have erosion along the shoreline.

b. The Applicant's Final Proposed Action. This alternative would allow the applicant to place the riprap along the shoreline to control any future erosion. The work would meet the applicant's purpose and needs.

c. The Proposed Action with Special Conditions. The impacts of this proposal would be similar to the description in b. above. The addition of special conditions to the DA permit would require that the work be constructed in a manner that would minimize adverse impacts to the environment. This would include the following recommended special conditions:

1. A copy of this permit must be available at the site. All contractors must be aware of its conditions and abide by them. Justification: This ensures that all of the contractors are aware that the work to be performed conforms to the approved plans.
2. The work must be in accordance with the plans attached to this permit. Justification: To ensure that the work being performed is the work that was permitted.

3. The permittee shall institute and maintain a strict erosion and sediment control program for the life of the project and all disturbed areas shall be properly seeded, or otherwise stabilized as soon as practicable to prevent erosion. Justification: This is in the public's interest so that the disturbed material will not enter the waterway and increase sedimentation.

4. The work must be performed during expected low flow periods and all equipment must be kept out of the water. Justification: Performing the work during low flow periods will minimize the amount of turbidity in the water and will have less of an impact on the aquatic environment.

5. The disturbance to riparian vegetation must be kept to a minimum during construction to reduce bank erosion. Justification: To minimize the amount of disturbance in the work area and surrounding areas.

## **5.0. Findings**

### **5.1. Section 404 (b)(1) Determination**

**General:** The purpose of Section 404(b)(1) of the Clean Water Act is to restore and maintain the chemical and physical, and biological integrity of the waters of the United States through the control of discharges of dredged or fill material. Controls are established through restrictions placed on the discharges in Guidelines published in 40 CFR 230.

**Restrictions on the Discharge:** Section 230.10 requires that the discharge meet certain restrictions in order to be authorized. The project is to be evaluated and comply with the following restrictions: (a) there would be no other practicable alternatives to the proposal that would have less adverse impacts on the aquatic environment, (b) that the discharge would not adversely impact water quality, violate State water quality standards, toxic effluent standards, or jeopardize the continued existence of a threatened or endangered species as identified under the Endangered Species Act, (c) the discharge would not cause or contribute to the significant degradation of waters of the United States, and (d) the project would be designed in such a manner as to minimize to the extent possible the adverse impacts on the aquatic environment. Evaluation of the guidelines is attached to this document as Appendix C.

**Initial Evaluation:** An evaluation of the fill material was conducted in accordance with Part 230.61. Environmental consequences of the proposed work are primarily related to a reduction in

biological productivity from the physical displacement of aquatic habitat. The EA did not reveal any practicable alternatives that would have less adverse impacts on the aquatic environment. Since there would be no other practicable alternatives to the proposal, the adverse impacts have been minimized to the extent possible, and no other restrictions have been violated, the proposed work would comply with the restrictions in Section 230.10. In addition, there is no indication that the fill material to be used for the project would be contaminated above background levels. Therefore, the fill material is designated as a category 5 fill and, in accordance with part 230.63(a), no testing of chemical-biological interactive affect is required.

**Factual Determination:** Based on the probable impacts addressed above, compliance with the restrictions, and all other information concerning the fill materials to be used, the proposed work complies with the Guidelines and the intent of Section 404(b)(1) of the Clean Water Act.

**5.2. Water Quality Certification.** Water quality certification from the state of Tennessee in accordance with Section 401(a)(1) of the CWA is required for this activity. TDEC issued water quality certification for the proposed work on October 28, 2002.

**5.3. Consideration of Public Comments.** The comments received in response to the public notice have been considered and addressed in this Environmental Assessment and in the decision making process for a permit. No adverse comments were received in response to the public notice.

**5.4. Findings of No Significant Impact.** Based on a full consideration of the EA, information obtained from cooperating federal/state agencies, and comments received from the interested public, I have concluded that issuance or denial of the requested permit would not constitute a major federal action that would significantly affect the quality of the human environment. This constitutes a Findings of No Significant Impact (FONSI); therefore, the preparation of an Environmental Impact Statement is not required. This FONSI was prepared in accordance with paragraph 7a of Appendix B, 33 CFR 325 dated February 3, 1988 (effective March 4, 1988).

**5.5. Clean Air Act General Conformity Rule Review.** The proposed project has been analyzed for conformity applicability, pursuant to regulations implementing Section 176(c) of the Clean Air Act and it has been determined that the activities proposed under this permit will not exceed de minimis levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing

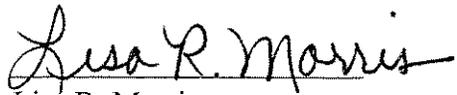
exceed de minimis levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility, and cannot be practicably controlled by the Corps, and, for these reasons, a conformity determination is not required for a permit.

**5.6. Recommended Special Conditions.** See Section 4.3.c. for the recommended special conditions. With the applicant's compliance with these special conditions, adverse environmental impacts associated with this project would be minimal.

**5.7. Public Interest Determination.** I have reviewed the application, responses to the Public Notice, and the EA. No adverse comments were received concerning the proposal. With adherence to the permit conditions, impact to waters of the United States would be minimal. The special conditions required by this permit address the adverse impacts to aquatic life and are fully justified and reasonable. Only the bottom portion of the riprap would be in the vicinity NSP Elevation 359.0. The fill into the waterway would be minimal. The proposed work would meet the applicant's purpose and needs of protecting the eroding shoreline and preventing further erosion from occurring. Having weighed these potential benefits that may be accrued against the reasonably foreseeable detrimental effects, I conclude that permit issuance would not be contrary to the public interest.

FOR THE COMMANDER:

11/1/2002  
Date

  
Lisa R. Morris  
Chief, Western Regulatory Section  
Operations Division

## APPENDIX A



**US Army Corps  
of Engineers**

Nashville District

# Public Notice

Public Notice No. 02-58

Date: September 3, 2002

Application No. 200201444

Please address all comments to:  
Floyd M. Carnes  
Nashville District Corps of Engineers, Regulatory Branch  
3701 Bell Road, Nashville, TN 37214

**JOINT PUBLIC NOTICE**  
**US ARMY CORPS OF ENGINEERS**  
**TENNESSEE VALLEY AUTHORITY**  
**AND**  
**STATE OF TENNESSEE**

**SUBJECT: Proposed Riprap Bank Stabilization**

**TO ALL CONCERNED:** The application described below has been submitted for a Department of the Army Permit pursuant to **Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA)** and a Tennessee Valley Authority (TVA) permit pursuant to **Section 26a of the TVA Act**. Before a permit can be issued, certification must be provided by the state of Tennessee, Division of Water Pollution Control pursuant to Section 401(a)(1) of the CWA, that applicable water quality standards will not be violated. By copy of this notice, the applicant hereby applies for the required certification.

**APPLICANT:** Dr. James M. Lee  
514 Joyce Street  
Orange, New Jersey 07050

**LOCATION:** Tennessee River at Mile 157.5, Left Bank, Kentucky Lake, Decatur County, Tennessee. (USGS CLIFTON, TENN. Quadrangle; Longitude: 87-59-15.9; Latitude: 35-23-33.3)

**DESCRIPTION:** The proposed work consists of placing approximately 1722 cubic yards of limestone riprap along 3,100 feet of shoreline to minimize erosion. The bottom of the riprap would be at Elevation 359, which is the Normal Summer Pool (NSP) elevation for Kentucky Lake. Approximately 230 cubic yards of that material would be placed along the NSP contour. The riprap would be placed along the shoreline from the top of the bank by using a track hoe. The existing bank would not be reshaped. The top elevation of the riprap would vary between Elevations 378.0 and 379.0 and be placed on a 3:1 slope.

Plans of the proposed work are attached to this notice.

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b)(1) of the CWA (40 CFR Part 230). A permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

An Environmental Assessment will be prepared by this office prior to a final decision concerning issuance or denial of the requested Department of the Army Permit.

The National Register of Historic Places has been consulted and no properties listed in or eligible for the National Register are known which would be affected by the proposed work. This review constitutes the full extent of cultural resources investigations unless comment to this notice is received documenting that significant sites or properties exist which may be affected by this work, or that adequately documents that a potential exists for the location of significant sites or properties within the permit area. Copies of this notice are being sent to the office of the State Historic Preservation Officer and the U.S. Department of the Interior, National Park Service - Atlanta.

Based on available information, the proposed work will not destroy or endanger any federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act, and, therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b)(1) of the CWA (40 CFR Part 230). A permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

An Environmental Assessment will be prepared by this office prior to a final decision concerning issuance or denial of the requested Department of the Army Permit.

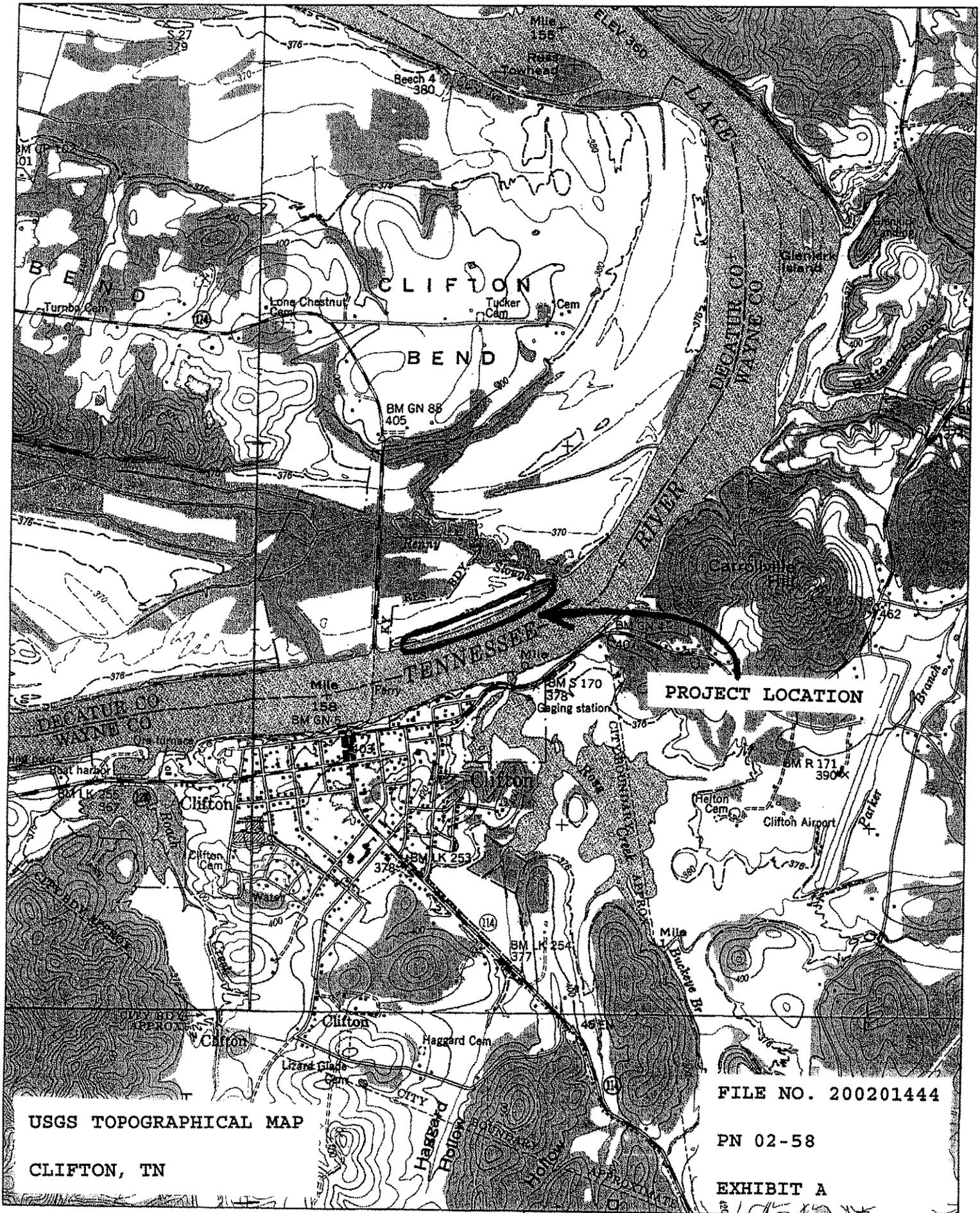
The National Register of Historic Places has been consulted and no properties listed in or eligible for the National Register are known which would be affected by the proposed work. This review constitutes the full extent of cultural resources investigations unless comment to this notice is received documenting that significant sites or properties exist which may be affected by this work, or that adequately documents that a potential exists for the location of significant sites or properties within the permit area. Copies of this notice are being sent to the office of the State Historic Preservation Officer and the U.S. Department of the Interior, National Park Service - Atlanta.

Based on available information, the proposed work will not destroy or endanger any federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act, and, therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

Other federal, state, and/or local approvals may be required for the proposed work.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

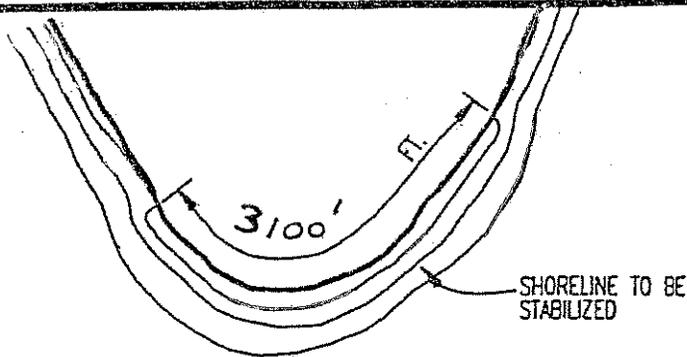
Written statements received in this office on or before **September 18, 2002**, will become a part of the record and will be considered in the determination. Any response to this notice should be directed to the Regulatory Branch, Attention: Floyd M. Carnes, at the above address, telephone (615) 369-7503. It is not necessary to comment separately to TVA since copies of all comments will be sent to that agency and will become part of its record on the proposal. However, if comments are sent to TVA, they should be mailed to Mr. Don Allsbrooks, Project Leader, Kentucky Lake Reservation, P.O. Box 280, Paris, Tennessee 38242.



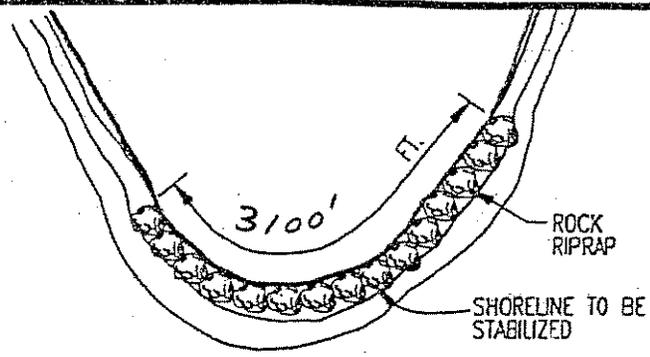
PROJECT LOCATION

USGS TOPOGRAPHICAL MAP  
CLIFTON, TN

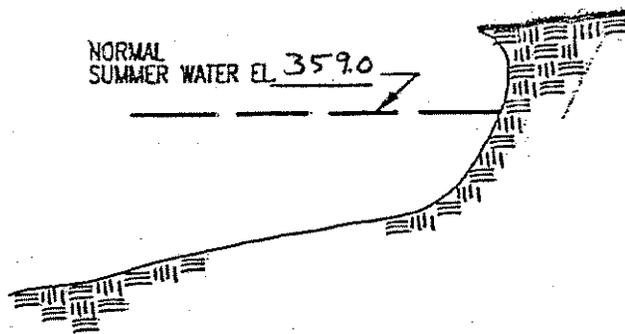
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PN 02-58  
EXHIBIT A



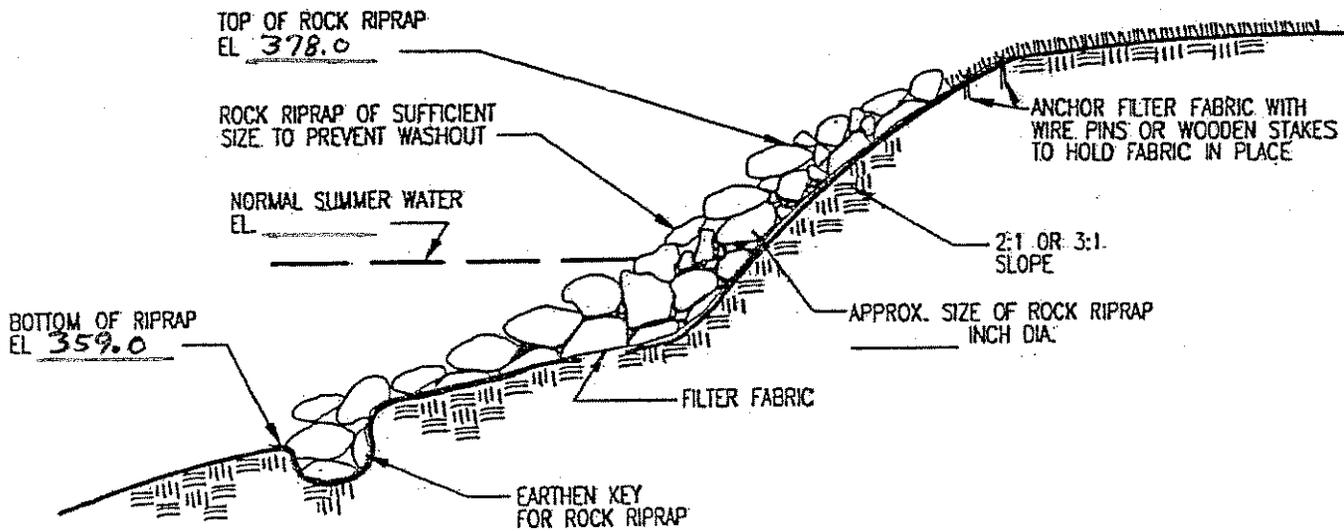
**PLAN SHOWING EXISTING SHORELINE**



**PLAN SHOWING STABILIZED SHORELINE**



**SECTION SHOWING EXISTING SHORELINE**



**SECTION SHOWING STABILIZED SHORELINE**

THE NORMAL SUMMER WATER LEVEL IS:

FILE NO. 200201444

PN 02-58

EXHIBIT B



**TYPICAL SHORELINE ROCK RIPRAP**

PROJECT LOCATION INFORMATION:

STREAM NAME \_\_\_\_\_ SUBMISSION NAME \_\_\_\_\_  
 RESERVOIR NAME KY LOT NUMBER \_\_\_\_\_  
 MILE MARKER 157.9L MAP NO. 244D

(APPLICANT'S NAME)

DR. JAMES M. LEE

## APPENDIX B

APPENDIX B

404(B)(1) GUIDELINES COMPLIANCE EVALUATION (RESTRICTIONS ON DISCHARGE, 40 CFR 230.10): (A check in a block denoted by an asterisk indicates that the proposal does not comply with the guidelines.)

This evaluation pertains to the discharge of fill material associated with the filling of Resha Lake and the construction of a new stream channel for the unnamed tributary to Mill Creek

I. Alternatives test.

- A. Are there available, practicable alternatives having less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharges into "waters of the United States" or at other locations within these waters? [Yes(\*) \_\_\_ No x ]
- B. If the project is in a special aquatic site and is not water-dependent, has applicant clearly demonstrated that there are no practicable alternative sites available? [Yes x No(\*) \_\_\_ ]

II. Special restrictions. Will the discharge:

- A. violate state water quality standards? [Yes(\*) \_\_\_ No x ]
- B. violate toxic effluent standards (under Section 307 of the Act)? [Yes(\*) \_\_\_ No x ]
- C. jeopardize endangered or threatened species or their critical habitat? [Yes(\*) \_\_\_ No x ]
- D. violate standards set by the Department of Commerce to protect marine sanctuaries? [Yes(\*) \_\_\_ No x ]
- E. Evaluation of the physical/chemical and biological characteristics and anticipated changes indicates that the proposed discharge material meets testing exclusion criteria for the following reason(s). [Yes x No \_\_\_ ]

(x ) based on available information, the material is not a carrier of contaminants

- ( ) the levels of contaminants are substantially similar at the extraction and disposal sites and the discharge is not likely to result in degradation of the disposal site and pollutants will not be transported to less contaminated areas
- ( ) acceptable constraints are available and will be implemented to reduce contamination to acceptable levels within the disposal site and prevent contaminants from being transported beyond the boundaries of the disposal site

III. **Other restrictions.** Will the discharge contribute to significant degradation of "waters of the U. S." through adverse impacts to:

- A. human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife, and special aquatic sites? [Yes(\*) \_\_\_ No x ]
- B. life stages of aquatic life and other wildlife? [Yes(\*) \_\_\_ No x ]
- C. diversity, productivity, and stability of the aquatic ecosystem, such as loss of fish or wildlife habitat, or loss of the capacity of wetland to assimilate nutrients, purify water, or reduce wave energy? [Yes(\*) \_\_\_ No x ]
- D. recreational, aesthetic and economic values? [Yes(\*) \_\_\_ No x ]

IV. **Actions to minimize potential adverse impacts (mitigation).** Will all appropriate and practicable steps (40 CFR 230.70-77) be taken to minimize the potential adverse impacts of the discharge on the aquatic ecosystem? [Yes x No(\*) \_\_\_ ]

The mitigation measures included in the proposed action together with the standard erosion and sedimentation controls included in the DA permit conditions would adequately minimize pollution or adverse effects to the affected ecosystem.

## APPENDIX C



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

September 10, 2002

Mr. Floyd Carnes  
U.S. Army Corps of Engineers, Nashville District  
Regulatory Branch  
3701 Bell Road  
Nashville, Tennessee 37214

SEP 16 2002

RE: COE-N, PN# 02-58/BANK STAB./TRM 157.5L, UNINCORPORATED,  
DECATUR COUNTY

Dear Mr. Carnes:

The Tennessee State Historic Preservation Office has reviewed the above-referenced undertaking received on Thursday, September 5, 2002 for compliance by the participating federal agency or applicant for federal assistance with Section 106 of the National Historic Preservation Act. The Procedures for implementing Section 106 of the Act are codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739).

Archaeological sites have previously been identified within the undertaking's area of potential effect. However, provided that no bank reshaping is conducted, and considering the documentation submitted, it is our opinion that there are no National Register of Historic Places listed or eligible properties affected by this undertaking. This determination is made either because of the location, scope and/or nature of the undertaking, and/or because of the size of the area of potential effect; or because no listed or eligible properties exist in the area of potential effect; or because the undertaking will not alter any characteristics of an identified eligible or listed property that qualify the property for listing in the National Register or alter such property's location, setting or use. Therefore, this office has no objections to your proceeding with the project.

If you are applying for federal funds, license or permit, you should submit this letter as evidence of compliance with Section 106 to the appropriate federal agency, which, in turn, should contact this office as required by 36 CFR 800. If you represent a federal agency, you should submit a formal determination of eligibility and effect to this office for comment. You may direct questions or comments to Jennifer M. Barnett (615) 741-1588, ext. 17. This office appreciates your cooperation.

Sincerely,

*HLH*  
Herbert L. Harper  
Executive Director and  
Deputy State Historic  
Preservation Officer

HLH/jmb



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

446 Neal Street  
Cookeville, TN 38501

September 24, 2002

Lt. Colonel Steven W. Gay  
District Engineer  
U.S. Army Corps of Engineers  
3701 Bell Road  
Nashville, Tennessee 37217

Attention: Mark Carnes, Regulatory Branch

Subject: Public Notice No. 02-58. Application by Dr. James Lee to place riprap for shoreline stabilization, Tennessee River Mile 157.5, Kentucky Lake, Decatur County, Tennessee.

Dear Colonel Gay:

Fish and Wildlife Service (Service) personnel have reviewed the subject public notice. The project would involve placement of approximately 1,722 cubic yards of riprap along 3,100 feet of shoreline. The following constitute the comments of the U.S. Department of the Interior provided in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Endangered species collection records available to the Service do not indicate that federally listed or proposed endangered or threatened species occur within the impact area of the project. We note, however, that collection records available to the Service may not be all-inclusive. Our data base is a compilation of collection records made available by various individuals and resource agencies. This information is seldom based on comprehensive surveys of all potential habitat and thus does not necessarily provide conclusive evidence that protected species are present or absent at a specific locality. However, based on the best information available at this time, we believe that the requirements of Section 7 of the Endangered Species Act of 1973, as amended, are fulfilled. Obligations under Section 7 of the Act must be reconsidered if (1) new information reveals impacts of the proposed action that may affect listed species or critical habitat in a manner not previously considered, (2) the proposed action is subsequently modified to include activities which were not considered during this consultation, or (3) new species are listed or critical habitat designated that might be affected by the proposed action.

SEP 26 2002

We do not anticipate significant adverse impacts to fish and wildlife or their habitats as a result of this project. Therefore, the Service has no objection to the issuance of a permit to conduct the work described in the subject public notice.

Thank you for this opportunity to review the subject notice. Please contact David Pelren of my staff at 931/528-6481 (ext. 204) if you have questions about these comments.

Sincerely,

  
for Lee A. Barclay, Ph.D.  
Field Supervisor

NOV 04 2002



DEPARTMENT OF ENVIRONMENT & CONSERVATION  
Division of Water Pollution Control  
401 Church Street  
7th Floor, L & C Building  
Nashville, TN 37243-1534

28 October 2002

Dr. James M. Lee  
514 Joyce Street  
Orange, New Jersey 07050

SUBJECT: §401 Water Quality Certification/  
General Permit for Bank Stabilization Activities  
Tennessee Aquatic Resource Alteration Permit  
Joint Public Notice No. 02-58  
State of Tennessee Application # NRS 02.355  
Decatur County

Dear Dr. Lee:

Pursuant to §401 of the Federal Clean Water Act (33 U.S.C. §1341), the State of Tennessee is required to certify whether the activity described below will violate applicable water quality standards. Accordingly, the Division of Water Pollution Control requires reasonable assurance that the activity will not violate provisions of The Tennessee Water Quality Control Act of 1977 (T.C.A. § 69-3-101 et seq.) or of §§ 301, 302, 303, 306 or 307 of The Clean Water Act.

Subject to conformance with approved plans, specifications, and other information submitted in support of the referenced application, the State of Tennessee hereby certifies the proposed activity pursuant to 33 U.S.C. 1341. This shall serve as authorization pursuant to T.C.A. § 69-3-101 et seq.

LOCATION: Tennessee River at Mile 157.5, Left Bank, Kentucky Lake,  
Decatur County, Tennessee. (USGS CLIFTON, TENN.  
Quadrangle; Longitude: -87.9884; Latitude: 35.3922)

DESCRIPTION: The applicant proposes to place approximately 1722 cubic yards of limestone riprap along 3,100 feet of shoreline to minimize erosion. The bottom of the riprap would be at Elevation 359, which is the Normal Summer Pool (NSP) elevation for Kentucky Lake. Approximately 230 cubic yards of that material would be placed along the NSP contour. The riprap would be placed along the shoreline from the top of the bank by using a track hoe. The existing bank would not be reshaped. The top elevation of the riprap would vary between Elevations 378.0 and 379.0 and be placed on a 3:1 slope.

Dr. James M. Lee  
28 October 2002  
Page 2

EFFECTIVE DATE: 28 October 2002  
EXPIRATION DATE: 28 October 2007

### General Terms and Conditions

The following general terms and conditions apply to all bank stabilization activities authorized by this general permit.

- 1) The unnecessary removal of living trees and other riparian vegetation which help comprise the integrity of the stream bank or which help provide canopy or shade to the waters; or, the placement of fill which would otherwise injure or damage stream side vegetation is not authorized by this general permit.
- 2) Grading, sloping, dredging or reshaping of the stream banks or bed shall be limited to the minimum necessary to accommodate stabilization and armoring materials.
- 3) The placement of riprap is limited to 300 linear feet of stream bank. Vegetative or bioengineering methods of bank stabilization are not subject to this restriction.
- 4) Material may not be placed in such location or manner so as to impair surface water flow into or out of any wetland area.
- 5) The activity may not be conducted in a manner that would permanently disrupt the movement of aquatic life.
- 6) Materials used in stabilization shall include clean rock, riprap or anchored trees or other non-erodible materials found in the natural environment. **Except for activities covered by item one of the notification section**, stabilization materials shall not include gravel, sand, sediments, chert, soil, or other materials that are likely to erode. Materials used in bank stabilization projects shall be free of contaminants, including toxic pollutants, hazardous substances, waste metal, construction debris, organic materials, etc.
- 7) Streams shall not be used as transportation routes for heavy equipment. Crossings must be limited to one point and erosion control measures must be utilized where the stream banks are disturbed. Where the streambed is not composed of rock, a pad of clean rock must be used at the crossing point. Clean rock is rock of various type and size, depending upon application, that contains no fines, soils, or other wastes or contaminants. All temporary fill must be completely removed after the work is completed.
- 8) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills must be reported to the appropriate emergency management agency, and measures shall be taken immediately to prevent the pollution of waters of the state, including groundwater.

Dr. James M. Lee  
28 October 2002  
Page 3

- 9) Vegetation and debris disturbed by activity at the construction site shall be removed from the site to such a location so as to prevent reentry into the waterway.
- 10) Upon achievement of final grade, all disturbed soil areas must be stabilized and re-vegetated within 30 days by sodding or seeding and mulching. Seed to be utilized shall include a combination of annual grains and grasses, legumes, and perennial grasses. Lime and fertilizer shall be applied as needed to achieve a vegetative cover.
- 11) Adverse impact to formally listed state or federal threatened or endangered species or their critical habitat, or to cultural, historical, or archeological features or sites is prohibited.

This does not obviate requirements of other federal, state or local laws. In particular, work shall not commence until the applicant has received the federal §404 permit from the U. S. Army, Corps of Engineers or §26a permit from the Tennessee Valley Authority where necessary.

The State of Tennessee reserves the right to modify or revoke this permit or to seek modification or revocation should the State determine that the activity results in more than an insignificant violation of applicable water quality criteria or violation of the Act. Failure to comply with permit terms may result in penalty in accordance with § 69-3-115 of the Act.

An appeal of this action may be made to the Water Quality Control Board. In order to appeal, a petition requesting a hearing before the Board must be filed within 30 days after receipt of the permit action. In such petition, each contention should be stated in numbered paragraphs that describe how the proposed activity would be lawful and the action of the state is inappropriate. The petition must be prepared on 8½" by 11" paper, addressed to the Water Quality Control Board and filed in duplicate at the following address: Paul E. Davis, Director, Division of Water Pollution Control, 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Any hearing would be in accordance with T.C.A. §69-3-110 and 4-5-301 et seq. Questions concerning this certification should be addressed to Mr. Dorsey Horne at 615-532-0715.

Sincerely,

  
Paul E. Davis  
Director

cc: Tom Welborn, U.S. Environmental Protection Agency, Atlanta, GA.  
Lee Barclay, U.S. Fish & Wildlife Service, Cookeville, TN  
Dan Sherry, Tenn. Wildlife Resources Agency, Nashville, TN  
Floyd Carnes, Nashville District Corps of Engineers, Nashville, TN  
Pat Patrick, Water Pollution Control Div., Jackson Environmental Asst. Center  
Harold Draper, Tennessee Valley Authority, NEPA Administration

## APPENDIX D

## SPECIAL CONDITIONS

1. A copy of this permit must be available at the site. All contractors must be aware of its conditions and abide by them.
2. The work must be in accordance with the plans attached to this permit.
3. The permittee shall institute and maintain a strict erosion and sediment control program for the life of the project and all disturbed areas shall be properly seeded, or otherwise stabilized as soon as practicable to prevent erosion.
4. The work must be performed during expected low flow periods and all equipment must be kept out of the water.
5. The disturbance to riparian vegetation must be kept to a minimum during construction to reduce bank erosion.

## DEPARTMENT OF THE ARMY PERMIT

**PERMITTEE:** Dr. James Lee

**PERMIT NUMBER:** 200201444

**ISSUING OFFICE:** Nashville District Corps of Engineers

**NOTE:** The term you and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

### PROJECT DESCRIPTION:

The proposed work consists of placing approximately 1,722 cubic yards of limestone riprap along 3,100 feet of shoreline to minimize erosion. The bottom of the riprap would be at Elevation 359, which is the Normal Summer Pool (NSP) elevation for Kentucky Lake. Approximately 230 cubic yards of that material would be placed along the NSP contour. The riprap would be placed along the shoreline from the top of the bank by using a track hoe. The existing bank would not be reshaped. The top elevation of the riprap would vary between Elevations 378.0 and 379.0 and be placed on a 3:1 slope.

**PROJECT LOCATION:** Tennessee River at Mile 157.5, Left Bank, Kentucky Lake, Decatur County, Tennessee

### PERMIT CONDITIONS:

#### GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on 11/15/2007. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you must make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you may obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.

(33 CFR 325 (Appendix A))

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:      SEE SPECIAL CONDITIONS

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

( X ) Section 10 of the Rivers and Harbors Act Of 1899 (33 U.S.C. 403).

( X ) Section 404 of the Clean Water Act (33 U.S.C. 1344)

(   ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

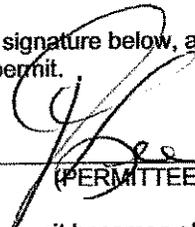
b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

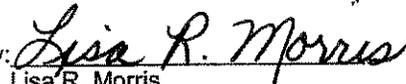
X   
\_\_\_\_\_  
(PERMITTEE)

X 11/7/02  
\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Steven W. Gay, LTC Corps of Engineers  
\_\_\_\_\_  
(DISTRICT COMMANDER)

11/15/2002  
\_\_\_\_\_  
(DATE)

By:   
Lisa R. Morris.  
Chief, Western Regulatory Section  
Operations Division

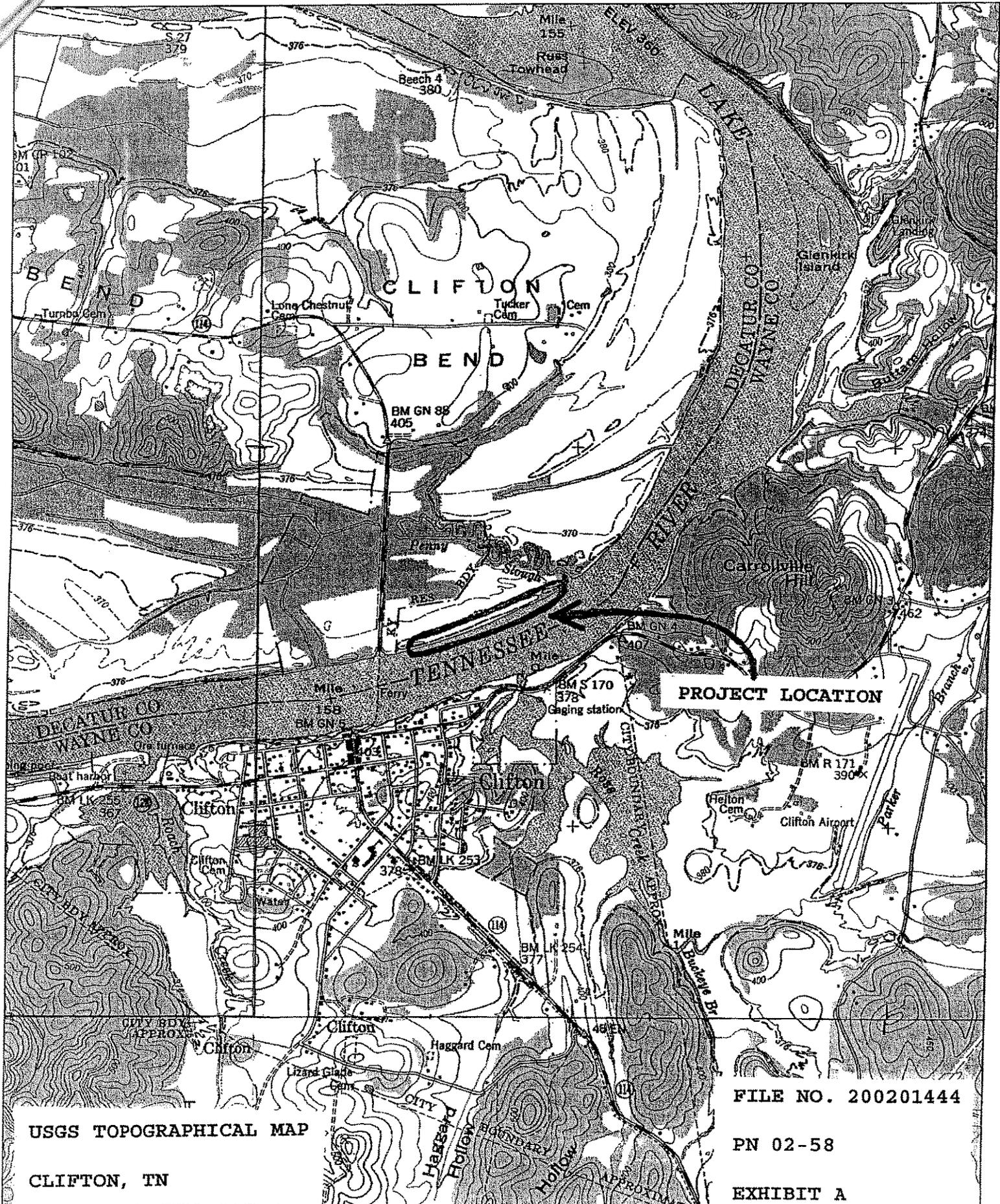
When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)

## SPECIAL CONDITIONS

1. A copy of this permit must be available at the site. All contractors must be aware of its conditions and abide by them.
2. The work must be in accordance with the plans attached to this permit.
3. The permittee shall institute and maintain a strict erosion and sediment control program for the life of the project and all disturbed areas shall be properly seeded, or otherwise stabilized as soon as practicable to prevent erosion.
4. The work must be performed during expected low flow periods and all equipment must be kept out of the water.
5. The disturbance to riparian vegetation must be kept to a minimum during construction to reduce bank erosion.



PROJECT LOCATION

USGS TOPOGRAPHICAL MAP

CLIFTON, TN

FILE NO. 200201444

PN 02-58

EXHIBIT A