

## ClinchRiverESPEnvPEm Resource

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**From:** Davis, Jennifer  
**Sent:** Tuesday, September 25, 2018 2:05 PM  
**To:** Elizabeth Toombs  
**Cc:** Dozier, Tamsen; Kennedy, Ellen P (Ellen.Kennedy@pnnl.gov)  
**Subject:** Teleconference Summary

Ms. Toombs,

Thank you for speaking with us on Thursday, September 20, 2018, regarding comments submitted on July 13, 2018, by the Cherokee Nation Tribal Historic Preservation Officer (THPO) on the Clinch River Early Site Permit (ESP) draft environmental impact statement (EIS). We are sending this e-mail to summarize our teleconference discussion. Please let us know if we have not accurately captured the Cherokee Nation's comments and if any corrections need to be made.

At the request of the NRC staff, Ms. Toombs clarified the concerns contained in her letter. Ms. Tombs explained that she did not put all of the Cherokee Nation's concerns in her comment letter because of the public nature of draft EIS comments, but explained that her concerns were focused on certain sites identified in the EIS.

Ms. Toombs provided input on additional National Historic Preservation Act (NHPA) Section 106 concerns the Cherokee Nation have regarding the EIS.

- The Cherokee Nation's preference is that all historic properties be avoided and that archaeological site testing and data recovery not be performed as those activities would result in an adverse effect to these sites.
- The Cherokee Nation would prefer that alternatives that are the least impacting to archaeological sites be considered and consulted on prior to selecting the preferred alternative. This includes plant layout, alternative designs, technology, and alternative site selection in the planning of this project.
- The Cherokee Nation expressed concerns about invasive investigative methods proposed in TVA's Programmatic Agreement (PA) for deeply buried deposits and would prefer the use of minimally invasive technologies such as ground penetrating radar (GPR) particularly in areas where potential is high for encountering human remains.

The NRC staff explained the ESP review process, and clarified that NRC's undertaking is to issue an ESP which allows the Tennessee Valley Authority (TVA) to set aside the Clinch River Nuclear site for the future development of two or more small modular reactors. Issuance of an ESP does not authorize construction and operation of a nuclear power plant. The staff also clarified that TVA has initiated NHPA Section 106 and has executed a PA which would be implemented in the future once TVA's plans are finalized. TVA would need to submit a separate application (combined license) to the NRC in order to construct and operate a nuclear power plant. Issuance of a combined license would be a separate NRC undertaking requiring NRC to prepare a supplemental EIS and complete a separate NHPA Section 106 review and consultation.

NRC also provided a brief overview of the NRC's alternative sites analysis. The following points were made:

- NRC regulations require an applicant for an ESP to evaluate alternative sites to determine whether there is any obviously superior alternative to the site proposed.
- In the first stage of the review, the staff determines whether there are environmentally preferable sites among the alternatives. If environmentally preferable sites are identified, the second stage of the review considers economic, technological, and institutional factors for the environmentally preferred sites to see if any of the sites is obviously superior to the proposed site. If an alternative site is found to be obviously superior to the proposed site, the review team would recommend denial of the permit or license.

- The alternative sites analysis for historic and cultural resources are only subject to NEPA analysis and not NHPA Section 106 analysis. For these reasons, the EIS has NHPA Section 106 level data analysis for the preferred site and only reconnaissance level information for the alternative sites. Impacts were concluded to be moderate to large at all of the alternative sites including at the CRN site as historic and cultural resources are present at all sites and have the potential to be impacted.

NRC staff requested clarification on the Cherokee Nation's request for a separate NHPA Section 106 consultation as described in its July 13, 2018, letter. Ms. Toombs clarified that the comments provided in the letter were NEPA-related and not NHPA Section 106-related comments, and to consider the comments discussed during the teleconference as related to NHPA Section 106 process. NRC staff clarified that NRC is coordinating its NHPA Section 106 consultation through the NEPA process per 36 CFR 800.8(c) for the ESP and that NRC staff welcomes all comments on the EIS as it is the mechanism for receiving input on both NRC's NHPA Section 106 and NEPA findings. To that end, NRC will document all NHPA Section 106-related consultation in the final EIS, to serve as the administrative record for NRC's NEPA and NHPA Section 106 compliance. Ms. Toombs stated that she would ask that the Cherokee Nation's NHPA Section 106 comment be a preference for avoidance of impacts to archaeological sites and that the site selection process consider the option that will have the least impact to archaeological sites.

The NRC staff stated that they would provide Ms. Toombs a summary of the teleconference for her review to ensure that the staff have accurately captured the Cherokee Nation's NHPA Section 106 comments. Per the Cherokee Nation's request, the staff will transmit the unredacted versions of the cultural resource survey reports and TVA's executed PA to you in the near future.

A summary of TVA's NHPA Section 106 cultural resources identification efforts and relevant cultural resource survey reports is presented below.

Between 2011 and 2015, TVA conducted five historic and cultural resource investigations as part of its NHPA Section 106 compliance responsibilities for its proposed project (Barrett et al. 2011 [draft], Barrett et al. 2011 [final]; Hunter et al. 2015; Karpynek 2011; TVA 2015). These investigations, taken together with the field efforts completed by Stanyard et al. in 2003 and Leigh 1999, resulted in an updated and complete inventory of archaeological and architectural resources located within the onsite direct- and indirect-effects areas of potential effect (APE).

In order to facilitate your review, we are providing you links to the redacted versions of the cultural resource reports available in Agencywide Documents Access and Management System (ADAMS), NRC's official recordkeeping system.

Below are links to the redacted reports:

Leigh 1999 – [ML17296A408](#)

Stanyard et al. in 2003 – [ML17296A412](#)

Barrett et al. 2011 [draft] – ADAMS No. [ML17284A317](#)

Barrett et al. 2011 [final] – ADAMS No. [ML17284A318](#) and [ML17284A319](#)

Karpynek 2011 – ADAMS No. [ML17298A063](#)

Hunter et al. 2015 – ADAMS No. [ML17296A405](#)

TVA 2015 – ADAMS No. [ML18036A936](#)

Between 2015 and 2016, TVA developed and executed a PA in consultation with Tennessee Historical Commission and American Indian Tribes to address how TVA would comply with ongoing NHPA Section 106 requirements associated with its proposed project. The PA also includes stipulations that address inadvertent discovery and deeply buried deposits. Stipulation 1A of the PA states that if project plans include activities that would disturb soils or sediments greater than the maximum depth investigated previously during the archaeological surveys of the APE (approximately 80 cm or 31 inches), in areas with potential for deeply buried cultural deposits, the APE will be enlarged in the vertical dimension. Link to the PA: TVA 2016 (see [ML17296A399](#)).

During our teleconference, you explained that the Cherokee Nation did not provide all of its concerns within its comment letter because of the public nature of draft EIS comments. NRC staff is sensitive to these concerns, and while the EIS will document its NHPA Section 106 consultation for the purposes of the administrative record, this documentation can be done in a manner that captures at a high-level the Cherokee Nation's NHPA Section 106 concerns. If your office has specific comments on TVA's undertaking, cultural resource survey reports, and the PA, those comments would need to be addressed by TVA as part of its ongoing NHPA Section 106 process. If those comments are also provided to the NRC, we will provide them to TVA (Ms. Shuler).

We appreciate your time and look forward to hearing from you.

Sincerely,

Jennifer

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**Hearing Identifier:** ClinchRiver\_ESP\_EnvDocs\_Public  
**Email Number:** 53

**Mail Envelope Properties** (BL2PR09MB1089AC133A4CD034AEF6CD5185160)

**Subject:** Teleconference Summary  
**Sent Date:** 9/25/2018 2:05:23 PM  
**Received Date:** 9/25/2018 2:05:24 PM  
**From:** Davis, Jennifer

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