

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
MARSHALL COUNTY BOARD OF PUBLIC UTILITIES, and)	DIVISION OF WATER RESOURCES
)	CASE NUMBER: WPC21-0115
)	
TENNESSEE DUCK RIVER DEVELOPMENT AGENCY,)	
<i>Petitioners,</i>)	
)	
v.)	
)	J.W. LUNA, MEDIATOR
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION,)	
<i>Respondent,</i>)	
)	
and)	
)	
TENNESSEE WILDLIFE FEDERATION and NATURE CONSERVANCY,)	
)	
<i>Intervenors.</i>)	

SETTLEMENT AGREEMENT

The Marshall County Board of Public Utilities (MCBPU), Duck River Development Agency (DRA), Tennessee Wildlife Federation (TWF), The Nature Conservancy (TNC), and the Department of Environment and Conservation (TDEC), hereby agree as follows:

1. The Department will publish a draft permit to modify Aquatic Resource Alteration Permit (ARAP) No. NRS20.177 to delete:
 - Cover sheet – “A minimum flow of 175 cubic feet per second at the USGS gage 03599240 Duck River Above Milltown, must be maintained to preserve critical habitat.”
 - Page 3 – “A minimum flow of 175 cubic feet per second at the USGS gage 03599240 Duck

River Above Milltown, must be maintained to preserve critical habitat.”

This draft permit modification will be subject to all applicable public notice and comment procedures established by the Tennessee Water Quality Control Act (the “Act”) and the rules promulgated thereunder.

2. The parties agree that the modification described above complies with all provisions of the Act, including without limitation, with Tenn. Code Ann. § 69-3-108(g). After completion of the public notice and comment period, TDEC will determine whether to issue a final permit modifying ARAP No NRS20.177 in accordance with item 1.

3. If TDEC issues a final modified ARAP No NRS20.177 in substantial conformity with item 1, the MCBPU and DRA will voluntarily dismiss their permit appeals with prejudice no later than thirty (30) days after the issuance of the final permit.

4. During the first term of ARAP No. NRS20.177, the parties will conduct or participate in the following studies:

- a. MCBPU will prepare a plan to source water during drought conditions when their withdrawal may be tapered down or ceased under a withdrawal permit and submit it to the Department for its review and approval not later than December 31, 2022. These alternatives shall include, at a minimum, off-stream storage and interconnection, and the parties agree that the feasibility of implementing alternatives depends on the availability of funding to MCBPU. TDEC and DRA agree to encourage Columbia Power and Water Systems (CPWS) to discuss an interconnection agreement with MCBPU, and will jointly facilitate such discussions if CPWS agrees to participate.
- b. DRA will update its 2013, ten-year Drought Management Plan (DMP) to address minimum flows required in the Duck River to the extent required to comply with

the Act and the Endangered Species Act for all existing and proposed withdrawals.

The studies outlined in subsection c. below will inform the preparation of the DMP.

- c. In collaboration with other government agencies including but not limited to TVA, USFWS, DRA, USGS, and/or TWRA, TDEC will participate in or perform studies necessary to determine the presence and extent of threatened and endangered mussels and other fish and aquatic life in the Duck River downstream of Lillard Mill Dam in the area impacted by the MCBPU withdrawal and flow requirements necessary to sustain these populations. These studies will include, but not be limited to, an evaluation of the efficacy of tapering MCBPU withdrawal rates gradually downward to allow mussels to adjust to changes in river flows and consideration of seasonal variation in stream flow needs. TDEC will make its best efforts to complete these necessary studies within 36 months of the execution of this agreement.

5. TDEC will evaluate the results of these and any other relevant studies to determine the appropriate methods to comply with all applicable laws, including water quality criteria for the protection of fish and aquatic life and their habitat, including water withdrawal requirements, limitations, and prohibitions based on river flow rates. TDEC will delete, modify, or retain Special Condition No. 4 to conform to the best available science from these studies, subject to all public notice and comment requirements of, and rights of appeal under, the Act and Rule Chapter 0400-40-07 and Rule 0400-40-03-.06. TDEC will make its best efforts to complete any such permit modification or renewal before MCBPU begins to withdraw water, which is currently anticipated to be in March 2026. The parties acknowledge that the principle of anti-backsliding does not apply to this permit, including

Special Condition No. 4, but that TDEC cannot issue a permit for an activity that causes a condition of pollution by itself or in combination with others.

6. Upon application and evidence of committed co-funding, TDEC will make its best efforts to provide funding for eligible activities described in this settlement, subject to all applicable laws.

Executed as of the 28th day of February, 2022.

David W Salyers

David W Salyers (Mar 1, 2022 15:07 CST)

David W. Salyers, P.E., Commissioner
Department of Environment and Conservation

Micky King

Micky King, Chairman
Marshall County Board of Public Utilities

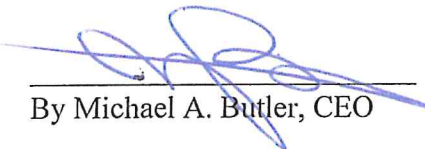
Thomas H. Peebles, IV

Thomas H. Peebles, IV (Mar 2, 2022 08:57 CST)

Tommy Peebles, Chairman
Duck River Development Authority

Signature page for Settlement Agreement in Tennessee Department of Environment and Conservation, Division of Water Resources Case Number: WPC21-115

TENNESSEE WILDLIFE FEDERATION


By Michael A. Butler, CEO

FEBRUARY 1, 2022
Date

THE NATURE CONSERVANCY

By (name) , (title)

Date


Signature page for Settlement Agreement in Tennessee Department of Environment and Conservation, Division of Water Resources Case Number: WPC21-115

TENNESSEE WILDLIFE FEDERATION

By Michael A. Butler, CEO

Date

THE NATURE CONSERVANCY



By Terry Cook, Tennessee State Director

2/3/2022
Date