



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Division of Ecological Services

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In Reply Refer To:  
FWS/R2/OKES/  
2009-FA-0016

December 2, 2008

Steve Nolen  
U.S. Army Corps of Engineers  
CESWT-PE-E  
1645 South 101st East Avenue  
Tulsa, Oklahoma 74128-4629

Dear Mr. Nolen:

The U.S. Fish and Wildlife Service (Service) is providing preliminary comments for scoping activities related to the Denison Land Conveyance Environmental Impact Statement (EIS). Similar comments were previously submitted to you via an email (enclosed) from Kevin Stubbs dated October 14, 2007. The EIS would address alternatives and impacts associated with conveyance of approximately 900 acres of U.S. Army Corps of Engineers (Corps) lands to the city of Denison, Texas. Our understanding is that the City of Denison proposes to sell the property to a private developer. Development plans include a hotel/conference center, a yacht club, single and multi-family housing, wastewater treatment facility, recreational trails and possibly a golf course.

The Service is pleased that the Corps is preparing an EIS for this proposed conveyance of federal land. We believe that the National Environmental Policy Act (NEPA) requires an EIS for projects of this magnitude. Existing NEPA documents concerning the Lake Texoma Project are outdated and do not address the proposed action. The 1976 Lake Texoma EIS, 1978 Master Plan and 1996 Shoreline Management Plan did not consider any land sales for private developments. A more recent Environmental Assessment (EA) in 2005, for a similar and recent sale of 564 acres of Lake Texoma Project lands to the state of Oklahoma, failed to include an alternative with private development. These 564 acres were re-sold for private development including housing and a golf course. The Corps EA for that land conveyance stated that the land would become a state park and did not provide any mitigation for the impacts to fish and wildlife habitat and recreational use. We recommend that the proposed Denison Land Conveyance EIS include appropriate alternatives, potential and cumulative effects, and mitigation to address any environmental impacts related to the proposed land sale and private development.

Typically, once the land is sold, the Corps has relatively little control over future land uses. The lack of control over future uses makes it difficult for the Corps to fully evaluate appropriate alternative actions in the proposed EIS. We believe it is important that the EIS provides the public with a full range of potential actions and effects that could result from the proposed sale. Any mitigation required by the sale and development of Corps lands should be defined and secured prior to the sale.

### COMPLIANCE WITH THE FISH AND WILDLIFE COORDINATION ACT (FWCA)

The impacts of selling 2,480 acres for private development and leasing another 3,106 acres for private use goes well beyond any actions that reasonably could have been considered or anticipated when the state and federal resource agencies coordinated with the Corps during evaluation of project impacts and mitigation needs associated with the Lake Texoma project. The proposed and assumed uses of Texoma project lands were originally factored into the estimated mitigation requirements and now the uses and ownership of those lands are being dramatically changed. The FWCA requires the Corps to consult with the Service and state natural resource agencies to re-negotiate mitigation recommendations when any significant changes to the project are proposed. The proposed action and cumulative effects of other sale and leasing actions do not appear to comply with existing NEPA documents or the FWCA. Therefore, we recommend that the Corps ensure compliance with these federal laws by preparing a comprehensive EIS and consulting with the Service, Texas Parks and Wildlife Department, and Oklahoma Department of Wildlife Conservation (through a FWCA report) in the development of appropriate mitigation.

### COMPLIANCE WITH THE ENDANGERED SPECIES ACT (ESA)

The proposed sale and development has the potential to adversely impact the endangered American burying beetle (ABB). The project area is at the edge of their known range and we recommend that surveys be conducted for the presence or absence of this species prior to proceeding with the sale and any significant soil disturbance. Our agencies have developed relatively standard procedures for addressing Corps actions that may impact the ABB and these should be applied to the proposed sale of land at Lake Texoma.

### SPECIFIC COMMENTS

The proposed action conflicts with the existing Shoreline Management Plan (SMP) and, in our opinion, constitutes a significant change from the original project and EIS. Development is planned or potentially will be allowed throughout the entire shoreline area including the zones labeled Public Boat Ramp/Public Open Space and Natural Forest Preserve/Passive Open Space Uses. Additionally, up to 20 percent of the shoreline could be converted to private boat docks under these plans while specifically prohibited by the SMP (4-02-c) over a significant portion of this same area. The proposed developments are clearly not in compliance with the existing Shoreline Management Plan and we urge the Corps to honor the existing SMP or provide appropriate mitigation for impacts to shoreline habitat and public recreation.

We support the comments provided by the Oklahoma Department of Wildlife Conservation (ODWC) in an October 13, 2008, letter and want to emphasize particularly our concerns with the potential loss of recreational hunting and fishing opportunities by the general public. If the existing 900 acres are conveyed from public to private use, as proposed, access to adjacent public lands and public hunting opportunities could be impacted as well. Hunting activities, including the discharge of firearms, on adjacent lands may pose public safety concerns for new developments and the increased human activity associated with such development. We believe

that future conflicts between the interests of private landowners and hunting activities would result in a loss of recreational opportunity for Lake Texoma sportsmen. The docks, marinas, and high densities of boats that likely would result from the proposed action also affects boater and angler access to, and use of, public waters. Ultimately, we are concerned about hunting and fishing opportunities being disproportionately displaced by private ownership and shoreline development. We believe that all project related impacts to current and future recreational uses should be addressed by the EIS and appropriate mitigation provided for any unavoidable environmental impacts.

Another concern is the potential privatization of shoreline near the bottom of the flood control pool (619 msl). We support ODWC's recommendation for limiting the land conveyance to elevations above the historic 645 msl boundary and maintaining Corps easements for the entire flood pool. Although we assume the Corps would retain flowage easements for the lands sold, monitoring and enforcement of easements is difficult (as we have seen at Grand Lake and other reservoirs with Corps easements on or near private developments). Privatization within the flood pool may lead to conflicts with pool manipulation (e.g., flood control and environmental manipulations) and influence modification of the shoreline vegetation.

Flood easements serve as a buffer from development (and flood damage to development) and provide fish and wildlife benefits. Seasonally inundated terrestrial vegetation provides essential spawning and nursery habitat for fish and cover and foraging habitat for migratory birds. This is recognized in the seasonal pool management plan currently in place and recommended by the Lake Texoma Advisory Committee. This buffer also contributes to shoreline stability, reducing localized erosion and sedimentation. With these important environmental roles, shoreline within the flood pool should remain in a natural condition and unavailable for private purchase.

## SUMMARY

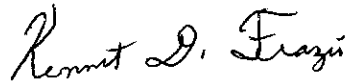
The Service understands that the Corps has been directed by Section 3182 of the Water Resources Development Act (WRDA) of 2007 to sell approximately 900 acres of Federal land to the City of Denison. However, in implementing the WRDA legislation, the Corps is obligated to comply with other Federal legislation such as the NEPA, the FWCA, and the ESA. The Service believes that implementation of the proposed project may lead to substantial mitigation for project related impacts as the Corps strives to comply with these Federal Laws. We also understand that the Corps does not derive any revenue from the proposed sales and that funding from appropriate mitigation may be a problem. Impacts to public access, recreation, and wildlife habitat could be minimized if the City of Denison and the developer were required to fund appropriate mitigation as a condition of the sale. Otherwise, new or revised legislation would be required to include provisions for the revenue going to the Corps (or appropriate state agencies) in order to provide adequate mitigation (such as acquisition and management of new land to replace the public lands sold) for project related impacts.

The Service also is concerned about the cumulative effects of large land sales and leases at the Lake Texoma Project and similar proposals at other Corps projects. The Denison land conveyance would result in private development and use of 900 acres of formerly public land

which would negatively impact public access and recreational use in and near the affected area. The 900 acres would be a part of 2,480 acres at Lake Texoma that are authorized for sale and appear to be planned for private development. In addition to the 2,480 acres to be sold, 3,106 additional acres are currently leased to nonprofit and private organizations for recreational use by the lessee. These leases typically exclude public access and allow the lessee exclusive use. The cumulative effect of these sales and leases (5,586 acres) significantly impacts the public's access and recreational use of Texoma Project lands that were originally purchased and proposed for public use and protection of fish and wildlife habitat values. We suggest the Corps assess these cumulative effects and work with the resource agencies to provide appropriate mitigation for the environmental impacts of these sales and leases.

We appreciate the opportunity to provide comments. If you have any questions or need further assistance with this project, please contact Kevin Stubbs at 918-581-7458, extension 236.

Sincerely,



Kenneth D. Frazier  
Assistant Field Supervisor

cc: Director, ODWC (Attn: Fisheries and Wildlife Divisions), Oklahoma City, OK  
Director, Texas Parks and Wildlife Department  
U.S. Fish and Wildlife Service, Arlington, TX Field Office