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Exceptions to Pretrial Order on Behalf of Plaintiffs, *TVA v. Hill et al*, Civil Action No. 3-76-48

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

HIRAM G. HILL, JR.,)
ZYGMUNT J. B. PLATER and)
DONALD S. COHEN,)

Plaintiffs,)

VS.)

CIVIL ACTION

NO. 3-76-48

TENNESSEE VALLEY AUTHORITY,)

Defendant.)

EXCEPTIONS TO PRETRIAL ORDER ON
BEHALF OF PLAINTIFFS

The plaintiffs present the following exceptions to the Pretrial Order filed in this cause on April 12, 1976:

1. Under the section styled NATURE OF ACTION, the plaintiffs contend that same should be modified and altered to read as follows:

This is an action for injunctive relief pursuant to the Endangered Species Act (16 U.S.C. §§ 1531-1543) (1973), whereby the plaintiffs are seeking to enjoin further construction and implementation of the Tellico Dam and Tellico reservoir by the defendant, Tennessee Valley Authority, and, more immediately, the current extensive bull-dozing and clear-cutting of trees, logs and foliage along the banks of the Little Tennessee River by the defendant, Tennessee Valley Authority, so that the Snail Darter, scientifically known as Percina (Imostoma) tanasi, a designated endangered species pursuant to said Act, will not be jeopardized and the critical habitat of the Snail Darter in the Little Tennessee River will not be destroyed or modified. Jurisdiction of this action is predicated upon 16 U.S.C. §§ 1540 (c), 1540 (g)(1), (2) and (3).

2. The section styled THEORIES UPON WHICH PLAINTIFFS EXPECT TO RECOVER should be modified and altered so that same will read as follows:

On August 12, 1973, Dr. David A. Etnier, Assistant Professor, Department of Zoology, University of Tennessee, and an ichthyologist, discovered a new and distinct species of fish designated and known as the Snail Darter in the Little Tennessee River. On November 10, 1975, the Secretary of Interior, pursuant to the Endangered Species Act, designated the Snail Darter as an endangered species and determined that: "The proposed impoundment of water behind the proposed Tellico Dam would result in total destruction of the Snail Darter's habitat." Further, on April 1, 1976, the Department of Interior further determined that the Little Tennessee River between river mile .5 and river mile 17 was critical habitat for the Snail Darter. The further construction and implementation of the Tellico Dam and Tellico reservoir by the defendant, Tennessee Valley Authority, will jeopardize the existence of the Snail Darter and will destroy and modify the critical habitat of the Snail Darter in the Little Tennessee River. Further, the further construction and implementation of the Tellico Dam and Tellico reservoir by the defendant, Tennessee Valley Authority, is illegal and constitutes violation of the Endangered Species Act. Such violations by the defendant clearly justifies this Court in the issuance of an injunction enjoining further construction and implementation of the Tellico Dam and Tellico reservoir and the bull-dozing and clear-cutting above referred to. Irreparable injury and damage will result unless the Court issues the requested injunctive relief. The plaintiffs contend that it is not appropriate for the Court to consider in this cause any evidence by the defendant, TVA, concerning the costs and expenditures involved in the Tellico Project nor the percentage of completion of same and submit that, if such is in any way considered by the Court, it will open completely those issues relative to the benefits, values, costs and detriments of the Tellico Project and would entitle the plaintiffs to introduce evidence concerning the costs, benefits, values, and detriments concerning said Tellico Project.

3. Under the section styled THEORIES UPON WHICH DEFENDANT EXPECTS TO DEFEAT RECOVERY, the court reporter has listed as the first eleven paragraphs under same those matters which the defendant was willing to stipulate in this cause. The parties are conferring concerning stipulations and will prepare and present to the Court certain stipulations to assist the Court in the trial of this cause. However, it is clearly inappropriate for such proposed stipulations to be a part of the Pretrial Order and, accordingly, the first eleven (11) paragraphs of the theories of the defendant should be deleted from the Pretrial Order.

Following paragraph 11 in the Theories of the Defendant, the court reporter has correctly listed the six proposed Theories of the Defendant. It is appropriate that such remain in the Pretrial Order.

4. Under the section styled ISSUES, the plaintiffs contend that the first two issues under said section should be modified so that same read as follows:

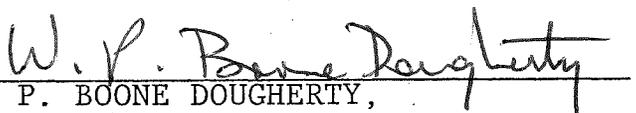
1. Whether the closure of the Tellico Dam and the consequent creation of the Tellico reservoir will jeopardize the existence of an endangered species, the Snail Darter, or destroy or modify the critical habitat of such endangered species?

2. If so, will such violation of the Endangered Species Act require the Court to issue an injunction to enforce the Endangered Species Act?

The plaintiffs submit that it is appropriate for the Court to consider the existing numbered Issues 3, 4, 5, and 6 under the present section ISSUES.

The plaintiffs respectfully request that the Court and the court reporter modify the Pretrial Order filed in this cause on April 12, 1976, as above presented.

Respectfully submitted,


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