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TENNESSEE CLEAN WATER NETWORK

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July 25, 2011

Mr. Brian Canada
Tennessee Department of Environment and Conservation
Division of Water Pollution Control, Natural Resources Section
7th Floor L&C Annex, 401 Church Street
Nashville, TN 37243

Re: Proposed ARAP NRS11.145 (TDOT – S.R. 104, Gibson County)

Dear Mr. Canada,

The Tennessee Clean Water Network (TCWN) submits these comments in response to the Division's proposed Aquatic Resource Alteration Permit for the Tennessee Department of Transportation (TDOT) to conduct work along State Route 104 in Gibson County (NRS11.145).

1. The proposed mitigation does not result in “no overall net loss of resource value.”

Proposed mitigation is outside the watershed in which the impacts would occur. This does not ensure there is no overall net loss of resource value in accordance with Tenn. Comp. R. & Regs. 1200-4-7-.04(7)(b). Debiting a mitigation bank which serves Obion County, located in a different sub-basin, results not only in degradation, but creates a permanent resource loss to the North Fork Forked Deer Watershed and the community.

2. The proposed wetland mitigation does not comply with anti-degradation regulations.

The North Fork of the Forked Deer River is significantly impaired as a result of sedimentation and habitat alterations. Filling these wetlands will only contribute to the existing impairments. In order for the Division to permit degradation in areas impaired by habitat alterations, the applicant must demonstrate avoidance, minimization, or in-system mitigation:

“Where impairment by habitat alteration exists, additional significant loss of habitat within the same area of influence shall not be authorized unless avoidance, minimization, or in-system mitigation can render the impact de minimis.”¹

¹ Tenn. Comp. R. & Regs. 1200-4-3-.06(2)

The proposed mitigation is clearly not in-system. The application submitted by TDOT provides no attempts to minimize the wetland impacts and claims the impacts are unavoidable. These impacts, located in the same area of influence as impaired waters, are not de minimis, and therefore, in accordance with the regulations, can not be authorized.

Wetlands serve vital functions in water quality protection by providing for run-off filtration. Therefore, the applicant should seek to create and/or improve wetlands adjacent to the proposed impacts. Wetlands along the North Fork of the Forked Deer are abundant, affording the applicant ample opportunity to perform in-system mitigation and actually mitigate for the resources lost in this watershed. This would also ensure compliance with the intent of the wetland mitigation regulations.

Please consider the concerns discussed in this letter. We appreciate the opportunity to comment on this proposed permit.

Sincerely,



Dana Wright
Director of Policy and Legislative Affairs

cc: TDOT, Environmental Planning & Permits Division