

Jackson County Lake Project Environmental Impact Statement Record of Decision

On July 10, 1997, the Jackson County Water Association (JCWA) and the Jackson County Empowerment Zone Community, Inc. (JCEZ) submitted an application to the U.S. Department of Agriculture, Rural Utilities Service (RUS) requesting financial assistance to co-fund a proposed reservoir whose purpose was two-fold: to provide water supply for the citizens of Jackson County, Kentucky and adjacent areas and for recreation. The proposal was to construct a 115-foot roller-concrete compacted dam on the Laurel Fork of the Rockcastle River creating a 640-acre reservoir and the construction of a raw water transmission main from the proposed reservoir to the JCWA Treatment Plant located at Tyner Lake in eastern Jackson County. In response to the application and in accordance with the National Environmental Policy Act of 1969 (42 USC 4231 *et seq.*) and Agency regulations (7 CFR 1794, Environmental Policies and Procedures), RUS initiated the preparation of an Environmental Impact Statement (EIS). Initial co-funding partners for the proposal were JCEZ; Appalachian Regional Commission; U.S. Department of Commerce, Economic Development Administration; and U.S. Housing and Urban Development, Community Block Grant Program.

After reviewing comments from interested citizens, local businesses, environmental advocacy organizations, and other State and Federal agencies, RUS, with conditions, agrees to participate in the co-funding of its previously identified preferred alternative - the War Fork and Steer Fork (WSF), a 3.5 million gallons per day (MGD) reservoir and the construction of a raw water transmission main from the proposed reservoir to the existing JCWA Treatment Plant. This decision was made after comparing overall estimated project costs, user rate impacts, future growth prospects of Jackson County and adjacent areas, and evaluating other relevant information with regard to the reasonable alternatives considered in the EIS. The dam would be situated on War Fork, 0.75 miles north of the confluence with Steer Fork and located about 0.5 miles southwest of Turkey Foot campground in eastern Jackson County. The roller compacted concrete dam would be about 87 to 107 feet tall, 760 to 790 feet long, and 102 to 122 feet wide, creating a reservoir with an average yield of 3.5 MGD of raw water. At a normal pool elevation of 980 feet above mean sea level (MSL), the surface area of this reservoir would be about 116 acres. At a potential maximum flood elevation of 1,000 feet above MSL, the surface area of the reservoir would be approximately 162 acres. The total acreage for a reservoir at maximum flood level at this site, with a 300-foot buffer extending from normal pool level, would be about 337 acres of land. As much of this land is currently part of the Daniel Boone National Forest, land acquisition at this site would require a land exchange with the U.S. Forest Service. In addition, impounding "waters of the United States" will require a Clean Water Act, Section 404 permit from the U.S. Army Corps of Engineers. Other permits will be required; the applicants will be responsible for obtaining all applicable permits prior to construction.

Lists of the alternatives reviewed prior to this decision are as follows. The first list contains the alternatives evaluated and eliminated from further study, and the rationale for their elimination. These alternatives were determined not to be reasonable for the reasons stated. The second list is a list of alternatives determined to be reasonable; these were evaluated in detail in the EIS. In addition, total estimated project costs are listed for these alternatives.

Alternatives Eliminated from Further Study	
Alternative	Rationale for Elimination
Non-Reservoir Alternatives	
Groundwater Development	<ul style="list-style-type: none"> • Insufficient yield to meet the projected needs of Jackson County due to the geology of the County • Potential for groundwater contamination
Expansion of Tyner Lake and/or McKee Reservoir	<ul style="list-style-type: none"> • Insufficient yields to meet the projected needs of Jackson County due to the sizes of the watersheds
Importing Water From Surrounding Counties: Buckhorn Lake (Perry and Leslie Counties) and Laurel Lake (Laurel County)	<ul style="list-style-type: none"> • Not cost-effective* • Administrative, legal, and temporal hurdles (for the Buckhorn Lake alternative only)
Water Conservation**	<ul style="list-style-type: none"> • Insufficient quantity of water able to be conserved to meet the projected needs of Jackson County
Pumped Storage From Existing Sources in Jackson County: <ul style="list-style-type: none"> • Laurel Fork and the Middle Fork of the Rockcastle River • Indian Creek Rock Quarry 	<ul style="list-style-type: none"> • Laurel Fork and the Middle Fork of the Rockcastle River: <ul style="list-style-type: none"> ○ Presence of Federally-listed Threatened or Endangered species (Cumberland Bean Pearly Mussel) in tributaries of the Cumberland River ○ No improvement in Jackson County's ability to withstand multi-year droughts (no additional water storage) • Indian Creek Rock Quarry: <ul style="list-style-type: none"> ○ Presence of Federally-listed Threatened or Endangered species (Cumberland Bean Pearly Mussel) downstream of Indian Creek ○ No improvement in Jackson County's ability to withstand multi-year droughts (no additional water storage) ○ Concerns over water quality and adequacy of flows
Reservoir Alternatives	
Laurel Fork and Buzzard Branch	<ul style="list-style-type: none"> • Presence of Federally-listed Threatened or Endangered species (Cumberland Bean Pearly Mussel) • Outstanding Resource Water (ORW) designation
Laurel Fork and McCammon Branch	<ul style="list-style-type: none"> • Presence of Federally-listed Threatened or Endangered species (Cumberland Bean Pearly Mussel) • ORW designation
Horse Lick Creek	<ul style="list-style-type: none"> • Presence of Federally-listed Threatened or Endangered species (Cumberland Bean Pearly Mussel) • ORW designation
South Fork of Station Camp Creek and Rock Lick	<ul style="list-style-type: none"> • Wild and Scenic Study River designation of South Fork
South Fork of Station Camp Creek and Cavanaugh Creek #2	<ul style="list-style-type: none"> • Wild and Scenic Study River designation of South Fork
South Fork of Station Camp Creek	<ul style="list-style-type: none"> • Wild and Scenic Study River designation of South Fork

and Cavanaugh Creek	
McCammon Branch	<ul style="list-style-type: none"> • Presence of Federally-listed Threatened or Endangered species (Cumberland Bean Pearly Mussel) downstream • Downstream feeds into waters with ORW designation
Mill Creek	<ul style="list-style-type: none"> • Presence of Federally-listed Threatened or Endangered species (Cumberland Bean Pearly Mussel) downstream • Stream waters feed into waters with ORW designation • Insufficient yield for Jackson County during worst drought conditions; Insufficient sustainable yield for Jackson County and the region
War Fork and Alcorn Branch	<ul style="list-style-type: none"> • Wild and Scenic Study River designation of included portion of War Fork
South Fork of Station Camp Creek and War Fork	<ul style="list-style-type: none"> • Wild and Scenic Study River designation of South Fork
Travis Creek	<ul style="list-style-type: none"> • Insufficient yield
<p>* Revised cost estimates for pipelines from the Wood Creek Water District water distribution system and from Lock 14 of the Kentucky River were prepared for the FEIS. Based on a simple comparison of the estimated costs of construction and operation of these pipelines, and on the distances over which the Wood Creek Lake and Lock 14 pipelines would travel, rough construction and operation costs were projected for the Buckhorn Lake and Laurel Lake alternatives. Construction and operation of a pipeline from Buckhorn Lake is projected to cost well over \$10 million more than either the Wood Creek Lake or Lock 14 pipelines. Construction and operation of a pipeline from Laurel Lake is project to cost well over \$6 million more than either the Wood Creek Lake or Lock 14 pipelines. These costs suggest that these alternatives would not be a cost-effective.</p> <p>**Water conservation alone has been eliminated as a reasonable alternative to entirely meet the projected water needs for Jackson County and the region. However, in the revised water needs analysis presented in the FEIS, a water conservation factor of 10 percent was determined reasonable for incorporation into the revised water needs projections.</p>	

List of Reasonable Alternatives Considered	
Total Estimated Project Costs*	
Alternative	Total Estimated Project Costs
No Action (existing rates)	N/A
War Fork, 3.5 mgd (preferred alternative)	\$12,224,000
War Fork, 2.2 mgd	\$9,631,000
War Fork, 1.3 mgd	\$7,804,000
Sturgeon Creek, 3.5 mgd	\$13,286,000
Wood Creek Lake Pipeline, 2.2 mgd	\$11,441,000
Purchase of Potable Water	\$20,183,000
Wood Creek Lake Pipeline, 1.3 mgd	\$9,452,000
Purchase of Potable Water	\$16,213,000
Lock 14 Pipeline, 2.2 mgd	\$10,221,000
Lock 14 Pipeline, 1.3 mgd	\$8,964,000

* Includes 50-year operation and maintenance costs of the water transmission facilities.

Based on the analyses and conclusions presented in the Draft and Final EISs, RUS identified the WSF, 3.5 MGD alternative as its preferred alternative. Within the context of the proposed action's purpose and need as submitted to RUS, this alternative is the most environmentally preferable of the reasonable reservoir alternatives considered in the EIS.

Responses to the FEIS's public comments and RUS's analyses supporting its Record of Decision are presented in the following discussion.

As an overview, a public notice announcing a "Notice of Intent to Prepare an Environmental Impact Statement and Notice of Public Meeting" was published in the Federal Register (62 FR 41336 (1997)) and local newspapers on or beginning on August 1, 1997. Subsequent to these notices, a public scoping meeting to solicit public comments regarding the scope of the ensuing environmental impact analysis was held in McKee, Kentucky on August 21, 1997.

Prior to preparing and publishing a Draft EIS (DEIS), RUS undertook a number of investigative and preparatory studies to determine the basic parameters of the follow-on studies. The initial studies included: Water Need Analysis, Recreational Needs Analysis, Alternative Analysis, Endangered Species Screening Study and Field Survey for the Cumberland Bean Pearly Mussel, and Preliminary Survey for the Federally Endangered Indiana Bat and Virginia Big-eared Bat. The results and conclusions of these studies focused the follow-on, more detailed analyses on the alternatives determined to be reasonable.

Public notices announcing the availability of the DEIS and notice of public meetings were published in the Federal Register (65 FR 34142 (2000)) and local newspapers on or beginning on May 26, 2000. Because of the early identification and presence of endangered species at the proposal's site – the 640-acre reservoir at the Laurel Fork of the Rockcastle River – and the availability of other reasonable alternatives, RUS declined to participate in co-funding the proposal at this site. Instead RUS selected a preferred alternative that could meet the purpose and need of the proposal - the 3.5 MGD, 116-acre reservoir at the confluence of the War Fork and Steer Fork Rivers. The applicants agreed to the change in the proposal's location. The public comment period was 45 days. RUS held two public meetings to solicit public comments on the DEIS on June 27, 2000 in McKee, Kentucky.

In response to the public comments received on the DEIS, RUS re-evaluated a number of issues and prepared a Final EIS (FEIS). Public notices announcing the availability of the FEIS were published in the Federal Register (66 FR 29768 (2001)) and local newspapers on or beginning on June 1, 2001. Public comment period was 30 days.

RUS received comments from the following groups in support or opposition to RUS's preferred alternative:

Public Comments on FEIS		
Group	Support (number)	Opposition (Number)
Private Citizens	159	20
Businesses	8	0
Environmental Advocacy Groups	0	5
Local/State/Federal Governmental agencies	2	2

In general, a review of the FEIS's comments indicates commenters were confused as to the proposed action to which RUS is responding. Comments were made criticizing RUS for an overemphasis on or a bias to the proposal's recreational component and requests were made to remove this element from the proposed action. A brief summary of the applicant's proposal or proposed action is as follows.

The proposed action as stated in RUS's "Notice of Intent to Prepare an Environmental Impact Statement" published in the Federal Register and local newspapers stated:

"The primary scope of the EIS is to evaluate the environmental impacts of and alternatives to the Jackson County Water Association's applications for financial assistance to provide water supply for the residents of Jackson and surrounding counties. This project, known as the Jackson County Lake (Project), is one of the initiatives developed for the Kentucky Highlands Empowerment Zone. The project proposes to construct a 115 foot tall dam on the Laurel Fork of the Rockcastle River in Jackson County, Kentucky creating a 640 acre lake, storing approximately 28,440 acre feet of water. Included in the proposal is a raw water intake, pumps, water treatment plant upgrade from 1.0 million gallons per day (MGD) to 2.0 MGD, and pipelines necessary for transporting raw water to the Jackson County Water Association's water treatment plant for treatment and distribution to residents in Jackson County and portions of Lee, Madison, Owsley, and Rockcastle Counties. In addition to improving the water supply of the areas specified above, the Project will serve to meet a stated goal of the Kentucky Highland Empowerment Zone's Strategic Plan for increasing local recreational and tourism opportunities in the Jackson County area."

The stated purpose and need for the proposal was two-fold – water supply and recreation. In responding to applicants' proposals, RUS normally does not dictate specific project elements. As long as proposed actions or project elements thereof meet RUS's loan and facility eligibility requirements as promulgated in 7 CFR 1780.7, Eligibility, and the project element is not unreasonable or unfeasible from a cost or technical (including environmental) perspective, RUS normally evaluates the proposal as submitted. Even if specific project elements do not meet the agency's eligibility requirements, RUS is not precluded from participating in the

financing of the proposal as long as RUS's financial assistance is used to finance eligible project purposes.

RUS is responsible pursuant to the National Environmental Policy Act (NEPA) to objectively evaluate the potential environmental effects of the proposed action and through an informed decision-making process decide whether or not to fund the proposal. As stated above, the analyses performed during the EIS did determine that the proposal's original site was unreasonable due to the presence of threatened and endangered species and with the availability of other reasonable alternatives, RUS selected with the applicant's concurrence an alternate location. This location was asserted in the EIS as the agency's preferred alternative. Conclusions drawn from the Recreational Needs Analysis determined that the recreational component of the proposal was not unreasonable and met the applicants' stated purpose and need for the proposal. Therefore, RUS finds that the requests to remove the recreational elements from the proposal are not appropriate.

To clarify the genesis of the proposal with regard to the Kentucky Highland Empowerment Zone the following is presented.

On August 10, 1993, President Bill Clinton signed Public Law 103-66, Omnibus Budget Reconciliation Act of 1993. Subchapter XIII of the Act, titled "Empowerment Zones, Enterprise Communities and Rural Development Investment Areas" created the Empowerment Zone initiative for the purpose of empowering local communities and their residents to design and implement their own strategic plan for creating jobs and opportunities to build a better and brighter future.

In support of Public Law 103-66, President Clinton signed a directive on September 9, 1993 establishing the President's Community Enterprise Board to assist in coordinating across Federal agencies the various programs available to distressed communities. The Board was to assist in enabling distressed communities through a "comprehensive, coordinated, and integrated approach that combines bottom-up initiatives and private-sector innovations with responsive Federal-State support." It emphasized a bottom-up community based strategy rather than the traditional top-down bureaucratic approach; in other words, the program provides for local self-determination in setting priorities, and puts the Federal government in the role of assisting communities with the priorities they have chosen and maintaining the integrity of the program's local implementation. It was a strategy to address economic, human, community, and physical development problems and opportunities in a comprehensive fashion. In addition, the program was intended to combine the resources of the Federal Government with those of State and local governments, educational institutions, and the private and non-profit sectors to implement community-developed strategic plans for economic development.

The statute specified certain criteria that must apply in order for an area to be eligible for Empowerment Zone designation, including geographic size, population, poverty rate by census tract (or by block numbering areas when the community is not delineated by census tracts), pervasive poverty, unemployment, and general distress of the area. The statute created urban and rural empowerment zones.

To support the selection and designation of rural empowerment zones, USDA published a notice in the Federal Register on January 18, 1994, "Notice Inviting Applications for Designation of Rural Empowerment Zones and Enterprise Communities" (59 FR 2696 (1994)). This Notice invited applications from State and local governments, regional planning agencies, non-profit organizations, community-based organizations, or other locally based organizations to compete for the Secretarial designations as Empowerment Zones or Enterprise Communities. Application deadlines were set for June 30, 1994.

This notice prompted citizens from Clinton, Jackson, and Wayne Counties, Kentucky to initiate a series of public meetings to identify economic development goals for inclusion into a comprehensive Strategic Plan that was required as part of the Empowerment Zone application process. In conjunction with the Kentucky Highlands Investment Corporation, a private corporation exempt from taxation under the provisions of Section 501 (c) (4) of the Internal Revenue Code, these local citizens and leaders organized a Kentucky Highlands Steering Committee. In order to identify and establish "benchmark" economic development goals for the Strategic Plan, planning committees and subcommittees from each county were organized.

The Jackson County Planning Committee and its various subcommittees held and participated in public meetings on May 4, May 17, June 7 and June 14, 1994 with the goal to identify their local benchmarks. By the May 17 public meeting, the Infrastructure and Tourism Subcommittees both identified the lake proposal as a goal and the Jackson County Planning Committee submitted the goal to the Kentucky Highland Steering Committee for inclusion in the Strategic Plan. The Kentucky Highland Steering Committee agreed to include the goal and submitted the Strategic Plan and application to USDA.

On December 21, 1994, President Clinton announced the jurisdictions that were designated as Rural Empowerment Zones by USDA and the Kentucky Highlands application was one of three jurisdictions in the United States to be designated. This announcement was formalized in a Federal Register notice published by USDA on May 10, 1995 (60 FR 24828 (1995)), "Notice of Designation of Empowerment Zones and Enterprise Communities." In accordance with the authorizing statute, each Empowerment Zone was entitled to receive grants of \$40 million dollars for the economic development activities identified in their Strategic Plan. With the Empowerment Zone designation, the Kentucky Highlands Empowerment Zone was created and the lake proposal identified in the Kentucky

Highlands Strategic Plan was established as Benchmark 19 with a \$5 million budget.

Subsequent to the Empowerment Zone designation and with partial funding from a grant from the U.S. Forest Service and assistance from the Center for Economic Development, Eastern Kentucky University, the JCEZ prepared a May 1995 report titled, "What We Envision: A Strategic Plan for Future Development, Jackson County." This plan developed an action plan that identified as Goal 3, Infrastructure – "Provide safe drinking water and an adequate supply for all residents and businesses of Jackson County." This report also re-examined and included by reference a 1988 study titled "Prospects and Impacts of a Reservoir Location for Jackson County." The 1988 study evaluated eight potential reservoir sites in the county using broad socio-economic and environmental criteria and concluded that a 600-acre reservoir at the Steer/War/Hughes Fork site would reasonably meet the goals of the community and should be considered as the top candidate for such a reservoir proposal. The 1988 and 1995 report recommended evaluating the proposal in greater detail and further recommended that Empowerment Zone funds be utilized to further this stated goal.

All of the above led to the JCWA and JCEZ's July 10, 1997 application to RUS requesting financial assistance to co-fund their lake proposal. In reviewing the past and more recent planning actions of the local community and the JCEZ, RUS determined that the proposal would require an EIS. In addition to comply with the procedural requirements and intent of the National Environmental Policy Act (NEPA), RUS determined that both reservoir and non-reservoir alternatives had to be evaluated as part of the EIS. It was understood, that the non-reservoir alternatives would not meet the overall stated purpose and need of the applicant's proposed action - that is, the recreational component of the proposal. However, the analysis would be necessary in the event the reservoir alternatives would prove unfeasible for economic or environmental reasons.

In the Alternative Analysis and DEIS, RUS evaluated a number of reservoir locations as well as non-reservoir alternatives and the required no-action alternative. These alternatives are listed in the tables presented above. A total of eleven proposed reservoir locations were initially evaluated in the Alternative Analysis. Many of these reservoir alternatives were considered unreasonable, insufficient, or impracticable primarily due to the presence of threatened and endangered species, Outstanding Resource Waters designation, Wild and Scenic River designations, or insufficient yields. From this analysis, three reservoir alternatives were determined to be reasonable and were examined in greater detail in the EIS. Those alternatives and locations were the WSF and two scenarios in the Sturgeon Creek watershed.

Based on the Water Needs Analysis, RUS evaluated a number of water supply options for the pipeline alternatives and the three selected reasonable reservoir alternatives. The reservoir alternatives were 3.5 MGD for the WSF and 3.5 MGD

and 8.5 MGD for the Sturgeon Creek watershed. The latter reservoir size was being evaluated for the potential of pursuing a more regional water supply approach to meeting the needs of Jackson and surrounding counties. This alternative, however, was abandoned because of the estimated project cost and the inability to secure any contractual or financial commitments from surrounding communities to pursue such a proposal. The pipeline alternatives were dismissed as unfeasible due to high project costs.

In response to public comments received on the DEIS and changes in the methodology used by University of Louisville, Kentucky Population Research for projecting future demographic trends, RUS recalculated water needs and re-evaluated costs and project feasibility associated with the non-reservoir alternatives that were earlier dismissed as too expensive. The revised water needs were recalculated for Jackson County residents alone and one that provided for a moderate growth potential and expansion of water service to the areas identified in the “Notice of Intent to Prepare an Environmental Impact Statement.” These areas included areas that are presently served by the JCWA, i.e., Rockcastle and Lee Counties as well as the adjacent, unserved areas in Owsley and Estill County that could be potentially served by the JCWA. While not a true regional approach, this was determined to be feasible and reasonable for contributing to the long-term water needs of central Kentucky.

Cost analyses in the FEIS included two pipeline alternatives (Wood Creek and Kentucky River, Lock/Pool 14) with two water supply scenarios and reservoir alternatives for the WSF with 3 water supply scenarios and one water supply scenario for Sturgeon Creek. The table below summarizes these cost analyses.

Impacts on Typical Residential Water Rates Under Each Alternative*			
Alternative	Average Monthly Bill	Increased Cost for Average Monthly Bill	% Increase over Existing Rates
No Action (existing rates)	\$25.02	Not applicable	Not applicable
War Fork, 3.5 mgd	\$32.05	\$7.03	28.16%
War Fork, 2.2 mgd	\$30.45	\$5.44	21.72%
War Fork, 1.3 mgd	\$29.33	\$4.31	17.29%
Sturgeon Creek, 3.5 mgd	\$32.87	\$7.85	31.38%
Wood Creek Lake Pipeline, 2.2 mgd	\$33.31	\$8.30	33.17%
Wood Creek Lake Pipeline, 1.3 mgd	\$32.23	\$7.21	28.81%
Lock 14 Pipeline, 2.2 mgd	\$30.56	\$5.54	22.19%
Lock 14 Pipeline, 1.3 mgd	\$30.02	\$5.00	20.04%

In addition to the confusion regarding the development of the proposed action, significant public comments were made regarding the following issues: over-inflated water needs analyses; regional demand/supply issue; criticism regarding recreational needs analyses; status of Wild and Scenic River designation for the War Fork; improper consultation with other Federal agencies; consistency with or proper evaluation of the proposal’s effect to waters of the United States relative to

the Clean Water Act, Section 404(b)(1), 40 CFR Part 230 – “Guidelines for Specifications of Disposal Sites for Dredged or Fill Material,” and criticism for not factoring potential Section 404 compensatory mitigation costs into total project costs. Each of these issues will be responded to briefly.

Over-inflated Water Needs – Primary concerns related to use of state-wide water use data for residential purposes versus actual data from the JCWA and use of 15% water loss and 10% water conservation in the overall water needs calculation. RUS continues to maintain that each of the parameters used are reasonable industry-wide standards for rural areas and use of such standards for long-range projections is reasonable and appropriate.

Regional Demand/Supply Issue – Evaluating, promoting and funding regional water systems, through for example consolidations, for financial, managerial and technical capacity development is consistent with RUS, U.S. Environmental Protection Agency and Safe Drinking Water Act policies. The EIS with limitations did attempt to look beyond just the immediate jurisdiction of Jackson County. Because the JCWA currently serves customers outside Jackson County it is logical that they will continue to do so particularly if additional potable water becomes available. It is also logical that they will continue to expand their service area as necessary to serve presently unserved citizens. As stated in the Water Needs Analysis, four jurisdictions – Rockcastle, Owsley, Lee and Clay counties – expressed interest in obtaining water, if available, at some future date.

Comments criticized RUS’s calculation of water needs outside Jackson County (42% of Jackson County needs). Commenters are referred to the Water Needs Analysis, Regional Needs Assessment, page E-16 for clarification as to the methods used to quantify regional needs. RUS maintains that the value developed in the Water Needs Analysis is not unreasonable given the imprecise nature of a 50-year water needs projection and an inability, as earlier stated, of obtaining contractual or financial commitments from surrounding jurisdictions to pursue a more regional water supply perspective. In the DEIS, RUS did evaluate a 8.5 MGD Sturgeon Creek alternative but was dismissed due to reasons cited above. Placing the time and financial burden on the Jackson County community to fully explore a multi-county jurisdictional water system is unreasonable; the approach taken by the community and RUS in exploring expanded peripheral service beyond the JCWA’s present service area is more reasonable and served as the basis for the analysis.

Recreational Needs Analysis – Many comments were received concerning the analyses presented in the EIS regarding recreational needs. The interest shown by the public on this issue demonstrates the subjectivity of determining recreational needs for and interests of a diverse population. The Recreational Needs Analysis (page F-21) indicated that at some level “there will be increasing needs for additional camping, picnicking, hiking, and swimming facilities in the future. Based on the current facility plans, the proposed Jackson County lake

would help meet some of the needs for picnicking facilities, and all of the needs for swimming facilities, which is projected to reach a maximum of only 29 acres for the planning period.

The Level of Lake Use (Section 3.2) in the area cannot be adequately assessed because recreational use data is very limited for the existing lakes in the study area. Based on the limited data, the current use of the lakes can be described as moderate to heavy. Since population is expected to increase in the study area under moderate and high growth scenarios, the proposed lake may help alleviate the potential heavy use of the surrounding lakes in the future.”

If the proposed lake is permitted, the types of recreational activities developed at the proposed lake will be determined in consultation with the U.S. Forest Service and be consistent with the water supply aspects of the reservoir. RUS acknowledges that the State of Kentucky has recommended water uses for water supply reservoirs.

RUS believes the conclusions drawn from the analyses presented in the Recreational Needs Analysis are reasonable and are consistent with the goals of the Kentucky Highlands Empowerment Zone Strategic Plan.

Status of the Wild and Scenic River Designation of War Fork – Many comments were received regarding the status of the War Fork as a candidate for the Wild and Scenic River System. The proposal’s location is upstream from the segment of War Fork that has been recommended by the U.S. Forest Service for inclusion into the Wild and Scenic River System. The recommendation determined that this segment is eligible for a “scenic” classification.

While the candidacy or eligibility of stream segments for inclusion into the Wild and Scenic River System was a major factor in the initial alternative analysis performed prior to the publication of the DEIS, RUS does not believe the proposed action, particularly with flow requirements required by the State of Kentucky, will have a significant effect on the streams’ scenic classification or qualities.

Improper Consultation with Other Federal Agencies – Comments received criticized RUS for not consulting properly with other Federal agencies, primarily the U.S. Fish and Wildlife Service (USFWS). RUS does not agree with this charge. Considerable effort was made to include all of the pertinent agencies throughout the EIS. The USFWS was invited and participated in most of the planning and technical review sessions held throughout the entire analyses. Formal reviews of the EIS were coordinated, as requested, with the Department of Interior, Office of the Secretary, Office of Environmental Policy and Compliance. A comment letter was received from this office on the FEIS concurring on our no effect determination on threatened and endangered species. In addition, the Department of Interior stated that if the proposal is approved and permitted a pre-

construction survey for the Grey Bat must be conducted. RUS will make this requirement a condition of its financial assistance.

In addition, comments were received alleging that RUS did not properly consult with the Kentucky Heritage Council. Based on the preliminary investigation performed prior to publication of the DEIS (see Appendix K), it is unlikely any historic properties will be affected by the proposed WSF reservoir. However, as a condition of financial assistance and upon successful permitting of the WSF reservoir, RUS will require the applicant to execute a Memorandum of Agreement (MOA) with and between the Kentucky Heritage Council (KHC), the Kentucky State Historic Preservation Officer (SHPO) and RUS. The MOA will formalize a phased identification and evaluation process consistent with 36 CFR 800.4(b)(2), Phased Identification and Evaluation.

Clean Water Act, Section 404(b)(1), 40 CFR Part 230 - Guidelines for Specifications of Disposal Sites for Dredged or Fill Material - Many comments were received regarding the proposal's consistency with the Clean Water Act, Section 404(b)(1) Guidelines. The guidelines provide policy guidance to the U.S. Corps of Engineers (USACE) in determining consistency with the policies and goals of the Clean Water Act when issuing Section 404 permits. As stated in the U.S. Corps of Engineers Regulatory Guidance Letter 93-02, "The fundamental precept of the Guidelines is that discharges of dredged or fill material into waters of the United States, including wetlands, should not occur unless it can be demonstrated that such discharges, either individually or cumulatively, will not result in unacceptable adverse effects on the aquatic ecosystem."

In general, determining compliance with the 404(b)(1) Guidelines requires avoidance and minimization of adverse impacts and, in addition, compensatory mitigation is required for unavoidable adverse impacts. Determinations of whether the intent of these Guidelines have been met are a determination that USACE will make when acting on the JCEZ and JCWA's Section 404 permit application.

The primary purpose of the alternative analyses performed, as part of the EIS, was to avoid and minimize any unacceptable adverse environmental impacts. The preferred alternative was selected based on a comprehensive analysis of critical environmental and socio-economic factors; such as, the presence of threatened and endangered species; potential residential relocations in the Sturgeon Creek alternative; of numerous alternative locations for a reservoir; an evaluation of other reasonable non-reservoir alternatives; and, as required by NEPA, the no-action alternative. These non-reservoir alternatives ultimately did not meet the proposal's two-fold purpose and need, but were analyzed in the event the reservoir alternatives would prove unfeasible for economic or environmental reasons.

The EIS outlines and compares all of the WSF alternative's potential impacts. Most notably and significant will be the long-term effect of converting a free-flowing

stream to an open water lake environment. This change will have predictable effects, primarily changes to water quality, such as dissolved oxygen, downstream temperatures, and stream flow rates. In addition, the EIS describes the likely biological effects. It is possible to manage most of these concerns and, therefore, minimize these potentially adverse effects through specific dam construction practices, all of which were discussed in the EIS and would be addressed during the Federal and State permitting process and through final design and specifications.

While recognizing that significant biological effects to the aquatic environment will occur, RUS does not believe that these effects are unacceptable in the context of the Section 404(b)(1) Guidelines. Notwithstanding these impacts, the fact that the WSF is located predominantly within National Forest System Lands is desirable for water quality purposes. No development will likely occur in the buffer zone and the JCEZ proposes to purchase and convey the few remaining privately owned parcels surrounding the proposed lake for inclusion into the National Forest System. Therefore, the U.S. Forest Service will manage all developmental proposals surrounding the proposed reservoir.

The EIS clearly demonstrated the need for the Jackson County community to develop additional water supplies, particularly in meeting existing and future needs. Commenters to the EIS argued that the selection of one of the pipelines, particularly the pipeline to the Kentucky River, could logically meet the water needs of the Jackson County community; consultations with the Kentucky River Authority support this position in that the river is capable of supplying these needs. However, RUS's decision weighs heavily in supporting the intent and goals of the Empowerment Zone initiative by showing deference to the local citizens' long-stated desire, as expressed in the Kentucky Highlands Empowerment Zone's Strategic Plan and earlier documents, for a reservoir to provide a long-term, sustainable water supply and for developing recreational opportunities to further the Zone's economic development goals.

In agreeing to co-fund the WSF proposal, RUS will condition its loan approval on the following conditions. The JCEZ and JCWA shall:

- Obtain and comply with all local, State and Federal permits required for the construction and operation of the reservoir.
- Prior to construction consult with the U.S. Fish and Wildlife Service to perform a pre-construction survey for Grey Bats.
- Execute a Memorandum of Agreement (MOA) with the Kentucky Heritage Council (KHC), the Kentucky State Historic Preservation Officer and RUS. This MOA will formalize a phased identification and evaluation consistent with 36 CFR 800.4(b)(2), Phased Identification and Evaluation.

In addition, RUS fully supports the Jackson County community in its goal of obtaining a long-term, sustainable water supply. In the event that the JCEZ and

JCWA are unable to obtain the proper permits, RUS stands ready to fund any other reasonable and feasible alternative identified in this EIS. Any deviation from the alternatives and their areas of potential affect evaluated in the EIS may require supplemental environmental analyses.

Signed

Blaine D. Stockton
Acting Administrator
Rural Utilities Service

September 5, 2001

Date