



Memorandum from the Office of the Inspector General

April 7, 2006

Kathryn J. Jackson, WT 11A-K

FINAL REPORT – INSPECTION 2005-525I – REVIEW OF TVA LAND DISPOSALS

Attached is the subject final report for your review and action. Your informal comments to the draft report have been incorporated, and the subject final report will be issued in presentation format. Please advise us of your planned actions in response to our findings within 60 days of the date of this report.

If you have any questions or wish to discuss our findings, please contact Gregory C. Jaynes, Deputy Assistant Inspector General, Inspections, at (423) 751-7821 or me at (865) 632-6309. We appreciate the courtesy and cooperation received from your staff during the inspection.

Ben R. Wagner
Assistant Inspector General
(Audits and Inspections)
ET 3C-K

JAP:GCJ:BKA

Attachment

cc (Attachment):

Maureen H. Dunn, ET 11A-K
Bridgette K. Ellis, WT 11A-K
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OIG File No. 2005-525I



Land Disposals

2005-525I

April 7, 2006



Agenda

- ◆ Objective and Scope
- ◆ Background
- ◆ Methodology
- ◆ Observations
- ◆ Recommendations



Objective and Scope

Objective: To assess TVA's compliance with applicable policies, procedures, and laws/regulations when conducting land disposal transactions.

Scope: The scope of our review included:

- Policies, procedures, and laws/regulations applicable to TVA land disposals.
- The 236 land disposal transactions for the period of January 2000 – July 2005 conducted by River Systems Operations and Environment (RSO&E), Customer Service & Marketing (CS&M) and Facilities Management (FM).



Background

- ◆ The TVA Act grants TVA authority to transfer land to government agencies, corporations, partnerships, or individuals.
 - TVA’s Board of Directors approves all actions involving land disposals and/or disposal of land rights.
 - RSO&E, CS&M, and FM are responsible for processing the disposal of TVA land or land rights depending on the location and use.
 - ◆ RSO&E processes requests for disposal actions on reservoir lands and land rights.
 - ◆ CS&M processes requests for the disposal of some transmission assets to distributors, i.e., distributor contracts.
 - ◆ FM processes requests for the disposal of facilities (buildings) and associated land assets.
- ◆ TVA maintains 293,000 acres of reservoir property.
 - RSO&E manages reservoir property and maintains Board-approved Land Management Plans for the major reservoir properties.
 - ◆ According to RSO&E, Board-approved Land Management Plans have been developed for approximately 94 percent of reservoir properties.
 - RSO&E develops Land Management Plans that, according to RS Guidelines 6.1, “seek to integrate land and water program goals, provide for the optimum public benefit, and balance competing and sometimes conflicting resource goals.”
 - TVA maintains 35,000 acres of power and commercial (non-reservoir). These properties are managed by FM, Power Systems Operations, TVA Nuclear, Hydro and Fossil Power Group.



Background (cont'd)

- ◆ TVA's overall policy on the use, acquisition, and disposal of land is contained in TVA Code V, which was last updated in 1982. TVA Code V, Disposal of Interests in Real Property, states that TVA:
 - Determines when and to what degree interests in real property are no longer needed.
 - Sells, conveys, or transfers interests in real property in accordance with the TVA Act or under the provisions of other applicable Federal laws.
 - Applies controls and procedures that protect its financial interests, contribute to the achievement of TVA program objectives, and which safeguard public benefits and obligations.
 - Considers program aims and marketability when selling surplus TVA lands.
 - Does not allow employees to buy real property from TVA by direct negotiation.
- ◆ RSO&E follows a land disposal process to review and comply with laws and regulations and to ensure there are no adverse impacts to TVA operations. The process:
 - Identifies specific action steps to be performed during the disposal transaction.
- ◆ TVA's land disposal actions include easements, sales, abandonments, deed modifications, transfers, and leases.
 - Easements were the most common type of land action during the time period covered by the inspection.



Background (cont'd)

- ◆ According to RSO&E, the following definitions reflect use of the words within the RSO&E process (not necessarily the legal definition of the words).

Easement: A recordable document that is used to convey an interest on, over, and across a defined area of TVA land.

- Permits occupancy and the use of the area for specific purposes.
- The proposed action requires long-term tenure or an interest in the property.
- Primarily used for:
 - ◆ Right-of-ways.
 - ◆ Commercial and public recreation.
 - ◆ Industrial site development.
 - ◆ Private water-use facilities on Tellico Reservoir.

Sale: Conveyance of fee ownership in TVA land in exchange for monetary or other consideration.

- Primarily used to:
 - ◆ Dispose of surplus TVA land at auction.
 - ◆ Make lands available for commercial recreation or industrial development at auction.
 - ◆ Dispose of land pursuant to Section 4(k)(a) for recreational or residential use.



Background (cont'd)

Abandonment: A recordable document that is used to release certain land rights previously acquired by TVA.

- Primarily used to:
 - ◆ Resolve violations to TVA flowage easement rights that involve unauthorized permanent structures of significant value.
 - ◆ Allow residential development on parcels of private land that are located outside the limits of flood risk profiles but encumbered by TVA flowage easement rights.
 - ◆ Abandon rights in TVA transmission areas (Power Systems Operation) where no longer needed.

Deed Modification: A recordable document used to release or modify rights, covenants, or restrictions contained in the provision of deeds.

- Primarily used for:
 - ◆ Resolving deed violations involving permanent structures of significant value.
 - ◆ Allowing former TVA lands to be developed for purposes that are prohibited by certain restrictions.
 - ◆ Allowing for development on portions of former TVA lands lying above flood risk profiles.



Background (cont'd)

Transfer: Conveyance of fee ownership in TVA land to other federal, state, or local public agencies, departments, or municipalities.

- Allows lands to be used for (1) public recreation and (2) natural resource management, including:
 - ◆ City, county, state and national parks.
 - ◆ National forests.
 - ◆ Public access areas.
 - ◆ State and federal wildlife management areas.

Lease: A contract agreement that is used to transfer possession and authorize the occupancy and use of a defined area of TVA land for specific purposes.

- Requires TVA's advance written approval and guaranteed long-term tenure or an interest in real property.
- General Services Administration must approve leases of 20 years or more.
- Primarily used for commercial marinas, boat docks, and campgrounds.



Background (cont'd)

TRANSACTION TYPE	NO. OF TRANSACTIONS	APPRAISED VALUE	FEE ACRES	LAND RIGHTS
Easements	153	\$28,570,079		27,702.47
Sales	20	\$12,404,911	883.62	
Abandonment	19	\$794,900		135.27
Deed Modification	33	\$1,341,954		604.47
Transfers	6	\$16,131,000	14,821.30	
Leases	5	\$18,580		141.50
TOTALS	236	\$59,261,424	15,704.92	28,583.71



Methodology

- ◆ To accomplish our objective, we:
 - Identified and documented the laws/regulations, policies, and procedures applicable to TVA land disposals by:
 - ◆ Conducting interviews with RSO&E and Office of the General Counsel personnel.
 - ◆ Reviewing the TVA Act [16 U.S.C. §§ 831dd and 831c(k)], 40 USC §1314, Public Law 93-153, TVA Code V, Disposal of Interests in Real Property, RSO&E's Disposal of Land Rights Process, TVA Land Management Plans, and other documentation.
 - Identified the scope of TVA land management by reviewing:
 - ◆ RSO&E's Intranet website.
 - ◆ Documentation provided by RSO&E.
 - Judgmentally selected ten land disposal transactions totaling \$15.3 million dollars to assess compliance with laws/regulations and key TVA policy requirements.
 - ◆ Seven actions processed by RSO&E.
 - ◆ Three actions processed by FM.



Summary of Observations

In summary, we found:

- TVA’s policy on land disposals does not clearly articulate: (1) criteria for considering which property is subject to disposal, (2) criteria for accepting or rejecting proposals, and (3) provisions for land swaps.*
 - ◆ According to RSO&E, TVA’s policy on land has evolved over time and the last written documentation was in 1982. (i.e., update to TVA Code V)
- RSO&E generally complied with their land disposal processes including: (1) obtaining appropriate reviews and approvals, (2) ensuring independent appraisals of land value, and (3) receipt of payment for appraised values. However, we found documentation could be improved related to the non-requirement of public notice.
- Documentation is not required or being maintained for withdrawn or rejected Land Use Applications.
- RSO&E has scheduled reassessment of TVA’s Land Management Plans beyond their planned ten-year horizon.
- No non-compliance with applicable laws and regulations.

* According to RSO&E, FM uses a Strategic Facilities Plan to guide management decisions regarding commercial properties.



Observation 1 – TVA’s Land Use Policy

TVA Code V, Disposal of Interests in Real Property, is outdated. The policy was last updated in 1982 and does not:

- Include provisions for land swaps.
- Contain decision-making criteria for accepting or rejecting a Land Use Application.
- Accurately reflect TVA’s current organizational responsibilities. Specifically, the policy assigns responsibilities to TVA organizations no longer in existence, including:
 - ◆ Office of Natural Resources.
 - ◆ Division of Property and Services.
 - ◆ Office of Engineering Design and Construction.
- Include criteria for when TVA will identify and dispose of land as surplus.

Note: We found that RSO&E has drafted a revised policy on Land Use and Management. According to RSO&E, the revised statement strengthens TVA’s Land Policy. The statement will be presented to the new Board members after they are confirmed. Plans are being developed to brief them on Land Policy issues.



Observation 2 – Compliance with Disposal of Land/Landrights Process

For the land disposal transactions we reviewed, the disposal transactions generally complied with the uses designated by the Land Management Plans.

- Seven disposals aligned with current reservoir land management plans.
- One disposal action was completed on an unplanned reservoir.
- Two disposal actions were completed on non-reservoir tracts and a reservoir land management plan is not required.

RSO&E generally followed its disposal process which included obtaining the necessary reviews and approvals, obtaining an independent land appraisal, and ensuring the land sale was at market pricing based on the appraisal. However, we noted where documentation could be improved related to non-requirement of public notice.

Ten disposals judgmentally selected for review included:

- Five easements
- One negotiated sale
- Four public auctions
- One deed modification*

*One disposal action included an easement and deed modification. The request was processed as one action.



Observation 2 – Compliance with Disposal of Land/Landrights Process (cont'd)

Of the ten actions reviewed, RSO&E's disposal process includes approximately 50 requirements. We assessed whether RSO&E followed its process and adequately documented ten of the key requirements. FM and CS&M have separate processes for disposal that fall within their areas of responsibility:

	<u>Documentation Maintained</u>	<u>Documentation Not Maintained</u>
Application received	7	3*
Perform Appraisal/CMA	10	0
Public Notice Needed	8	2**
Compile Results of Programmatic & Environmental Review	10	0
Complete Environmental Document	10	0
Board Recommendation & Approval	10	0
Used Correct Transaction Process	10	0
Final Payment Sent (i.e., all eight payments agreed with the appraised value)	8	0***
Final Document Executed	8	0***
Land Sale Record	8	0***

- * For non-reservoir property, other organizations are responsible for compliance with the requirements. Three of the ten disposal transactions we reviewed were the responsibility of FM.
- ** According to RSO&E, public notice was not required for two of the transactions because the transactions involved a continuing use of the land. However, this was not documented in RSO&E records.
- *** For Final Payment Sent, Final Document Executed, and Land Sale Record, we found that two of the disposal actions have not been completed and are still open due to valid business reasons.



Observation 3 – Withdrawn or Rejected Land Use Applications

The Disposal of Land/Landrights Process does not address withdrawn or rejected Land Use Applications.

- Documentation provided by RSO&E showed 20 rejected or withdrawn applications within the scope of the inspection.
- No explanations for the withdrawn or rejected applications were documented. RSO&E stated that some of the general reasons why applications were withdrawn or rejected included:
 - ◆ Negative public comments.
 - ◆ Applicants declined to pay for more data collection.
 - ◆ Identification of natural resources significance. (e.g., land deemed to have cultural or historical significance.)



Observation 4 – Reassessment of Reservoir Land Management Plans

Reassessment of Land Management Plans are not scheduled in accordance with Resource Stewardship Guideline 6.1.

- RSO&E stated that, as noted in RSO&E Guidelines, Reservoir Land Management Plans have an approximate ten-year planning horizon. Updates to reservoir Land Management Plans are determined by criteria. If conditions have not changed over the ten-year period, an update may not be initiated.
- According to Resource Stewardship Guideline 6.1, Land Management Plans are to be reassessed on a ten-year basis. Reassessment is to be examined on the basis of agency and public needs, environmental conditions, and economic benefits.
 - ◆ Resource Stewardship has implemented a Reservoir Planning Schedule. According to RSO&E, whether a reassessment is necessary is determined by the reservoir uses and pressures, socioeconomic changes in the watershed area, community needs and agency goals.
- Our review of RSO&E’s reassessment schedule for the 31 Land Management Plans noted 11 that extend beyond ten years. For example, the:
 - ◆ Chickamauga Land Management Plan, last reviewed in 1989, is scheduled for reassessment in FY 2008.
 - ◆ Nickajack Land Management Plan, last reviewed in 1990, is scheduled for reassessment in FY 2008.
 - ◆ Kentucky Land Management Plan, last reviewed in 1985, is scheduled for reassessment in FY 2009.
- Interviews conducted with RSO&E staff indicated that ten-year assessments have not performed for a number of reasons, including lack of socioeconomic pressure, changing priorities in dealing with operational issues across the valley, and staff resources.



Observation 5 – Applicable Laws and Regulations

For the transactions we reviewed, we found no indication of non-compliance with applicable laws and regulations.

- Seven provisions are applicable to TVA land disposal transactions.
 - ◆ Five of the laws are contained within the TVA Act.
 - Section 31 is cited by TVA as the authority for selling land for residential and commercial development; this section provides for the disposal of land not necessary to carry out TVA's plans and projects. The property must be sold at public auction.
 - Section 4(k)(a) allows TVA to dispose of land or landrights for recreational uses. The property can be sold through a public sale or a negotiated sale. GSA generally must approve these types of disposals.*
 - Section 4(k)(b) allows TVA to dispose of land or landrights for river transportation terminals and access sites. Congressional approval is required for these transactions.
 - Section 4(k)(c) allows TVA to transfer land to other federal agencies. GSA generally must approve these types of disposals.
 - Section 4(k)(d) allows TVA to dispose of land where facilities were relocated due to the construction of dams and reservoirs.
 - ◆ 40 USC §1314 allows TVA to grant easements for all purposes, except for pipeline right-of-ways.
 - ◆ Public Law 93-153 is to be used by federal agencies for easements for pipelines.
- Three of the seven provisions were applicable to one or more of the ten transactions we reviewed: TVA Act Section 31, Section 4(k)(a), and 40 USC 1314.

* GSA approval is not required for lease terms under 20 years.



Recommendations

The Executive Vice President, RSO&E, should:

- Brief the new TVA Board members on land policy issues.
- Request the TVA Board adopt a land policy statement to strengthen TVA's position for (1) identifying property subject to disposal, (2) accepting or rejecting proposals, and (3) land swaps.
 - ◆ In developing criteria for land swaps, consider (1) ensuring acquired land is necessary for TVA plans and projects, (2) ensuring TVA does not face potential liability due to hazardous waste on the property, and (3) how public interest would best be served.
- Ensure adequate documentation is maintained to show the Disposal of Land/Landrights Process requirements were met.*
- Revise the Disposal of Land/Landrights Process to require documentation and explanations for withdrawn and rejected applications.
- Ensure that Land Management Planning guidance reflects the need for alignment with a ten-year planning horizon or documentation of the justification for deferral.

*RSO&E has implemented a new tracking system for ensuring documentation of the Disposal of Land/Landrights Process.

