

**Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978)**

**Facts.** In 1967 the Tennessee Valley Authority (TVA) began construction of the Tellico Dam and Reservoir Project on the Little Tennessee River. In 1973 Congress passed the Endangered Species Act (ESA). Many controversies delayed completion of the Tellico Dam. In 1975, when the project was nearly complete, the snail darter was listed as endangered. The snail darter's only known, existing habitat lay in the portion of the Little Tennessee River that would be completely inundated by the reservoir created by the dam. Congress continued to appropriate large sums of public money to complete Tellico Dam even after the dam's threat to the survival of the snail darter became known.

**Issue 1.** Given the presence of an endangered species that would be destroyed by completion of a hydropower project, would completion of the project violate the ESA?

**Holding.** *The ESA prohibits all government actions that eradicate a species or destroy its critical habitat.*

Section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), requires each federal agency,

“ in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary ... to be critical ... ”

The Court found that Congress' plain intent in passing the ESA was to halt and reverse the trend of species extinction and to give endangered species priority over the primary missions of federal agencies. According to the Court, “one would be hard pressed to find a statutory provision whose terms were any plainer than those in § 7 of the ESA.”

In tracing the evolution of what became § 7 of the ESA, the Court emphasized the deliberate drop of language that would have made species conservation secondary to an agency's other purposes. The Court concluded that Congress' intention to “halt and reverse the trend of species extinction, whatever the cost” permeated every section of the statute and manifested an explicit congressional decision to require agencies to afford first priority to species protection.

According to the Court, Congress understood the ESA would occasionally require agencies to substantially change ongoing projects. The Court stated it was not the role of the judiciary to balance financial losses against the Congressionally declared “incalculable” value of species. The Court also noted that Congress created exceptions to the broad sweep of the ESA, and that Tellico Dam did not fall into any of them.

**Issue 2.** Did the appropriations committee's continued funding of the project constitute a repeal by implication of the ESA as applied to the Tellico Dam?

**Holding.** *Expressions of committees dealing with requests for appropriations cannot be equated with statutes enacted by Congress and cannot repeal an act of Congress by implication.*

The intention of the legislature to repeal a law must be clear and manifest. Posadas v. Nat'l City Bank, 296 U.S. 497, 503 (1936).

The court cited the opinions of congressional committees that the implications of a general appropriations measure are not sufficient to amend or repeal legislation. The Court's holding was bolstered by three additional arguments. First, the Court found that the Appropriations Committee had no jurisdiction over the subject of endangered species. Second, Congress as a whole was not aware of the Committee's position, and therefore could not have endorsed it. Third, the Court held that an implied repeal or amendment requires that the bills conflict, whereas here the ESA could be read in harmony with the appropriations bill. TVA had been informing the Appropriations Committee that the transplant of the snail to a different location appeared successful. Accordingly, the committee likely believed that dam construction did not conflict with snail darter's survival.

**Issue 3.** If a project's construction is likely to result in extinction of a species, is an injunction the only appropriate remedy?

**Holding.** *Completion and operation of the dam was irreconcilable with the ESA and the clear Congressional mandate was an injunction.*

Noting that almost all equitable remedies are discretionary, and thus allow for a balancing of equities, Congress made it "abundantly clear" that the balance here had been struck in favor of giving endangered species the highest priority.

Notably, after this case was decided, Congress amended the ESA to provide for "scientific take permits" and "incidental take permits" that allow take under statutorily defined circumstances. However the case is still the preeminent case cited for the proposition that the ESA prohibits actions that eradicate a species or destroy its critical habitat. *See e.g., Babbitt v. Sweethome Chapter of Communities for A Great Oregon*, 515 U.S. 687 (1995), Hamilton v. City of Austin, 8 F.Supp. 2d. 886 (W.D. Tex. 1996).