



State of Tennessee
Department of Environment and Conservation
Division of Water Resources
Davy Crockett Tennessee Tower
500 James Robertson Parkway, 9th Floor
Nashville, Tennessee 37243

Notice of Determination
Necessity to Accommodate Economic or Social Development
Aquatic Resource Alteration Permit NRS25.277
Fayetteville Public Utilities

Pursuant to *The Tennessee Water Quality Control Act of 1977*, and Tenn. Comp. R. & Regs. 0400-40-03-.06(4)(d), this notice sets out the Department of Environment and Conservation's determination that the degradation resulting from an increased withdrawal of drinking water from the Elk River proposed in the Aquatic Resource Alteration Permit application NRS25.277 is necessary to accommodate important economic or social development in the area.

Background

Fayetteville Public Utilities (FPU) has applied for an Aquatic Resource Alteration Permit (ARAP) for an increased withdrawal of 6,500 gallons per minute (GPM) up to five million gallons per day (MGD) from the Elk River in Lincoln County near river mile 94. Additional information on the project proposal and supporting documents are available for review on the internet at the Division's Water Resources Permits Data viewer (<https://www.tn.gov/environment/about-tdec/tdec-dataviewers.html>) by entering the permit file number listed in the title of this Notice of Determination.

Public notice of a draft permit that would authorize the withdrawal of 6,500 GPM up to five MGD was issued on May 14, 2026. The public comment period began on July 1, 2026. The public comment period ended on July 31, 2026.

Pursuant to Tennessee's General Water Quality Criteria, Rule 0400-40-03-.04, a single water withdrawal is considered de minimis if it removes less than five percent of the minimum 7-day average streamflow with a 10-year recurrence interval (7Q10) flow of the stream. The intake is located near Elk River mile 94 in river segment ID TN06030003010_1000. The 7Q10 in this river segment is 191.29 cubic feet per second (CFS) or 85,856.92 GPM. The 7Q10 flow of the Elk River near Fayetteville was calculated utilizing the United States Geological Survey's (USGS) Hydrologic Toolbox v1.1.3 for the period of record from April 1, 1996 to March 31, 2026 at USGS gage 03582000. The proposed withdrawal is 6,500 GPM up to 5 MGD which is 7.57 percent of the 7Q10 flow. As defined in Rule 0400-40-03-.04(4) the withdrawal results in greater than de minimis degradation.

In waters identified as Exceptional Tennessee Waters, new or increased water withdrawals that would cause degradation of any available parameter above the level of de minimis will only be authorized if the applicant has demonstrated to the Department that there are no practicable alternatives to prevent or lessen degradation associated with the proposed activity and the degradation is necessary to accommodate

important economic or social development in the area and will not violate the water quality criteria for uses existing in the receiving waters. If one or more practicable alternatives is identified, the Department shall only find that a lowering is necessary if those alternative(s) are selected for implementation.

Discussion

The proposed activity is the withdrawal is 6,500 GPM up to 5 MGD from the Elk River near river mile 94. The Department's rules exempt water withdrawals that existed on July 25, 2000, from permit requirements to the extent that they do not adversely alter or affect the classified uses of the source stream. FPU's peak withdrawal during the summer of 2000 was 1.25 MGD. Because this river segment fully supports its classified uses, this withdrawal does not interfere with achieving these uses. This amount is therefore exempted from permit requirements. The remaining portion of the withdrawal is considered new or increased. That total (5MGD – 1.25 MGD) is 3.25 MGD.

The FPU water treatment plant has a rated capacity of 4.5 MGD. Raw water for the water treatment plant is supplied by an intake in the Elk River. The raw intake pump house currently has two different pumps that can run at a maximum rate of 3,500 GPM. The proposed work includes installation of a third pump that would increase overall pump capacity to 6,500 GPM. The existing water withdrawal as of July 25, 2000 was 1.25 MGD.

The number of current water customers of FPU is approximately 20,000 requiring a peak withdrawal of 2.72 MGD. The estimated growth rate is of FPU's service area shows the need for a total of 5 MGD by the year 2045.

Determinations

After taking into consideration the information received in support of the permit application and the comments received through public participation, the Department has determined that:

1. As defined in rule 0400-40-03-.04(4) the proposed withdrawal is greater than de minimis degradation of water quality parameters in waters identified as Exceptional Tennessee Waters.
2. The degradation of Exceptional Tennessee Waters is necessary to accommodate important economic or social development in the area.

Petition for Declaratory Order/Permit Issuance

Pursuant to the Antidegradation Statement, Tenn. Comp. R. & Regs. 0400-40-03-.06(4)(d), the Department's determination that degradation above a de minimis level of the Exceptional Tennessee Waters is necessary to accommodate important economic or social development in the area is subject to review by the Board of Water Quality, Oil, and Gas.

Within 30 days after the date of this notification, any affected intergovernmental coordination agency or affected third person may petition the Board for a declaratory order under Tenn. Code Ann. § 4-5-223, and the Board shall convene a contested case. If a petition for declaratory order is timely filed, it will be processed in accordance with Tenn. Comp. R. & Regs. 0400-40-03-.06(4)(d) and rules governing contested case hearings. If no such petition is filed within 30 days after this notification, then the Department will proceed to its final determination of whether to issue the permit. A petition may be filed by electronic mail at TDEC.Appeals@tn.gov or by mail to **Jenny Howard**, TDEC General Counsel, 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243.