



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

Notice of Determination

Economic/Social Necessity for Degradation of Exceptional Tennessee Waters

Aquatic Resource Alteration Permit application NRS23.158 Modification 1

Tennessee Department of Transportation

I-40 Bridge Replacement over Buffalo River

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 Tennessee Department of Environment and Conservation's (the "Department's") determination that the degradation resulting from the new habitat alteration proposed in the § 401 Water Quality Certification and Aquatic Resource Alteration Permit application NRS23.158 Modification 1 is necessary to accommodate important economic or social development in the area.

Background

The Tennessee Department of Transportation applied to modify the active § 401 Water Quality Certification and Aquatic Resource Alteration Permit to include additional impacts and compensatory mitigation for stream impacts associated with the replacement of a bridge on Interstate 40 crossing the Buffalo River in Waverly, Tennessee. 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. The draft permit and accompanying rationale were placed on Public Notice on June 30, 2026.

One stream located within the project boundary was determined to be an Exceptional Tennessee Water (ETW). This stream is Buffalo River (Waterbody ID TN06040004001_1000) which is an Exceptional Tennessee Water due to designation by the U.S. Fish and Wildlife Service as Critical Habitat for federal and state threatened Slackwater Darter (*Etheostoma boschungii*) and Slabside Pearlymussel (*Pleuroaia dolabelloides*) and populations of federal and state threatened Spotfin Chub (*Erimonax monachus*), state threatened Coppercheek Darter (*Nothonotus aquali*), Saddled Madtom (*Noturus fasciatus*), Ashy Darter (*Allohistium cinereum*), and Longhead Darter (*Percina macrocephala*). Additionally, a portion of the river is designated as a State Scenic River, and portions of the river flow through Natchez Trace Parkway National Park and Hugh Link Farm State Archaeological Area.

Aquatic resource alterations permitted by ARAP NRS23.153 Modification 1 includes permanent impacts to 224.25 feet of stream for bridge replacement and riprap and temporary impacts to 1,059 feet of stream for work pads and haul roads to make improvements to Interstate 40. The proposed alterations are located within Buffalo River HUC 8 watershed (06040004). Resource loss associated with the activities will be compensated through purchase of 85.1 functional foot credits from Center Point Mitigation Bank located within Lower Tennessee-Beech HUC 8 watershed (06040001).

The stated goal and purpose of the authorized activity is “to address insufficient structural elements due to the deterioration of the bridges’ deck, superstructure, and substructure as indicated by the condition ratings, appraisal ratings and overall sufficiency ratings.”

The applicant has provided the following information regarding social or economic necessity for the proposed alteration and need to purchase mitigation credits out of system:

“There are no mitigation banks in the Buffalo River watershed. There are also almost no impacts requiring mitigation in that watershed, so the likelihood of a mitigation bank being located within the Buffalo River watershed is low and likely not economically feasible. The service area for Center Point covers the project impacts. The bank is in the Lower Tennessee HUC8 watershed, and the impacts are in the adjoining Buffalo River watershed (See Attachment #6 Watershed Service Area).

Developing a permittee responsible mitigation (PRM) site to cover the small amount of mitigation credits required is going to be much more costly than purchasing mitigation credits from an already established mitigation bank. It’s estimated that development of a PRM site for these impacts would exceed a credit purchase by over 100%. Additionally, development of a PRM site would have a long delay in project implementation over purchasing credits. It would likely take over 2 years for development of a PRM site for these impacts, whereas this mitigation bank is already established and constructed. Therefore, purchasing mitigation credits is the most socially and economically feasible approach in this instance.”

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. The proposed alterations will result in greater than *de minimis* degradation to a stream designated as Exceptional Tennessee Waters.
2. The degradation 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 ETWs 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 filed timely, 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, Nashville, TN 37243.