



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: April 9, 2019  
Comment Deadline: April 23, 2019  
Corps Action ID Number: SAW-2018-02144

The Wilmington District, Corps of Engineers (Corps) received a request from the Town of Beech Mountain seeking Department of the Army authorization to modify a minimum flow release permit condition of a previously issued standard permit which authorized the construction of the Buckeye Reservoir, in Beech Mountain in Watauga County, North Carolina.

Specific plans and location information are described below and shown on the attached plans. This Public Notice and all attached plans are also available on the Wilmington District Web Site at <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

**Applicant:** Town of Beech Mountain  
Mr. Tim Holloman  
503 Beech Mtn. Parkway  
Banner Elk, North Carolina 28604

**AGENT (if applicable):** ClearWater Environmental Consultants, Inc.  
Mr. Clement Riddle  
32 Clayton Street  
Asheville, North Carolina 28801

## Authority

The Corps evaluates this application and decides whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of the following Statutory Authorities:

- Section 404 of the Clean Water Act (33 U.S.C. 1344)
- Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

## Location

Location Description: Buckeye Reservoir, 1400 Pine Ridge Road, Beech Mountain, NC 28604-8012

Project Area (acres): 13.5                      Nearest Town: Beech Mountain  
Nearest Waterway: Buckeye Creek              River Basin: French Broad/Holston  
Latitude and Longitude: 36.218598 N, - 81.906699 W

### **Existing Site Conditions**

The site is comprised of an existing water supply impoundment that was constructed in the late 1980's. The lake serves as the Town of Beech Mountain's main water supply and was originally permitted through the issuance of a Department of the Army permit in 1984. The lake is currently adjacent to the water treatment plant with the remainder of adjacent properties being wooded.

### **Applicant's Stated Purpose**

The purpose of this request is to modify previous permit conditions regarding the maintenance of downstream flows in Buckeye Creek. Throughout the history of the project, the applicant has been unable to release and maintain the flow requirements listed in the permit conditions. The applicant is requesting to modify the previously issued permit to allow for a more practicable and adaptive management release schedule given the Town's current water supply needs and inflows from Buckeye Creek.

### **Project Description**

The applicant has been unable to maintain the previously required downstream flows due to the combination of several factors including the Buckeye Creek inflow, the Town's water supply needs, the Town's water system losses and drought conditions. The revised permit conditions will be based on Low-Flow and High-Flow conditions of Buckeye Creek upstream of the reservoir. Low-Flow conditions of the stream are defined as flow that is less than 1.0 cubic feet per second (cfs). High-Flow conditions are defined as flow that is more than 1.0 cfs. The Low-Flow value of 1.0 cfs represents the estimated 7Q10 discharge entering the lake. 7Q10 is defined as the minimum seven day average flow rate that occurs with an average frequency of once in ten years as published by the United States Geological Survey (USGS) or an estimate extrapolated from published or verified USGS data. The applicant requests that the following conditions be used to replace the previous conditions:

1. Inflow to the reservoir will be continuously measured using a stream flow gauge station upstream of the reservoir.
2. During Low-Flow conditions, stream flow downstream of the reservoir will be maintained to match inflow by adjusting the outflow gate valve.
3. During High-Flow conditions, stream flow downstream of the reservoir will be maintained at 1.0 cfs or higher.

Additional permit conditions will include the requirement that two stream flow gauge stations be installed, maintained and monitored to be able to adjust flows accordingly. Another permit condition will require that the existing dam be retrofitted with a mechanized valve and gate as

well. As noted by the applicant, any flow in excess of the 7Q10 will be stored for drinking water supply in the reservoir. Once the reservoir is at capacity, outflow will match inflow by adjusting the dam gate valve or releasing water over the spillway.

### **Avoidance and Minimization**

The applicant is attempting to avoid and minimize impacts to downstream waters through more deliberate and controlled mechanisms (gauge stations and mechanized valve gates) so that the reservoir can supply the downstream portion of Buckeye Creek with the water necessary to mimic more natural flow conditions despite the operation of a water-supply impoundment on Buckeye Creek.

### **Compensatory Mitigation**

There is no compensatory mitigation required due to the nature of this request (i.e. modification to previously issued permit conditions) and since there are no direct impacts to waters of U.S. associated with this request.

### **Essential Fish Habitat**

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial determination is that the proposed project would not effect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

### **Cultural Resources**

Pursuant to Section 106 of the National Historic Preservation Act of 1966, Appendix C of 33 CFR Part 325, and the 2005 Revised Interim Guidance for Implementing Appendix C, the District Engineer consulted district files and records and the latest published version of the National Register of Historic Places and initially determines that:

- Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties.
- No historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).

- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).
- The proposed work takes place in an area known to have the potential for the presence of prehistoric and historic cultural resources; however, the area has not been formally surveyed for the presence of cultural resources. No sites eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work. Additional work may be necessary to identify and assess any historic or prehistoric resources that may be present.

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area.

### **Endangered Species**

Pursuant to the Endangered Species Act of 1973, the Corps reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information:

- The Corps determines that the proposed project would not affect federally listed endangered or threatened species or their formally designated critical habitat.
- The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat.
  - The Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
  - The Corps will consult under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
  - The Corps has initiated consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
- The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat. Consultation has been completed for this type of activity and the effects of the proposed activity have been

evaluated and/or authorized by the National Marine Fisheries Service (NMFS) in the South Atlantic Regional Biological Opinion or its associated documents, including 7(a)(2) & 7(d) analyses and Critical Habitat assessments. A copy of this public notice will be sent to the NMFS.

- The Corps is not aware of the presence of species listed as threatened or endangered or their critical habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The Corps will make a final determination on the effects of the proposed project upon additional review of the project and completion of any necessary biological assessment and/or consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

### **Other Required Authorizations**

The Corps forwards this notice and all applicable application materials to the appropriate State agencies for review.

**North Carolina Division of Water Resources (NCDWR):** The Corps will generally not make a final permit decision until the NCDWR issues, denies, or waives the state Certification as required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice, combined with the appropriate application fee, at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. Additional information regarding the 401 Certification may be reviewed at the NCDWR Central Office, 401 and Buffer Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for a 401 Certification should do so, in writing, by April 23, 2019 to:

NCDWR Central Office  
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Unit  
(USPS mailing address): 1617 Mail Service Center, Raleigh, NC 27699-1617

Or,

(Physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

### **Evaluation**

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values (in accordance with Executive Order 11988), land use,

navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

### **Commenting Information**

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing will be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, April 23, 2019. Comments should be submitted to Ms. Amanda Jones, Asheville Regulatory Field Office , 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006 , at (828) 271-7980 extension 4225.