TENNESSEE VALLEY AUTHORITY BILLING CODE: 8120-08-P

18 CFR Part 1304

When Obstructions on Certain Tributaries of the Tennessee River Do Not Require a Section 26a Permit from the Tennessee Valley Authority

AGENCY: Tennessee Valley Authority.

ACTION: Interpretive Rule.

SUMMARY: The Tennessee Valley Authority (TVA) is issuing guidance stating that certain structures, while obstructions across, along, or in certain tributaries of the Tennessee River, do not need a Section 26a permit from TVA, because they have an indiscernible effect on navigation, flood control or public lands or reservations.

DATES: Effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Rebecca C. Tolene, Vice President, Natural Resources, Tennessee Valley Authority, Knoxville, Tennessee (865-632-4433).

SUPPLEMENTARY INFORMATION:

I. Legal Authority

This interpretive rule is promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831-831ee.

II. Background

Section 26a of the TVA Act requires that TVA's approval be obtained prior to the construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. 16 U.S.C. 831y-1 (2012). TVA's rules governing such approval are codified at 18 CFR Part 1304. The rules include a permitting process whereby applicants may request from TVA a permit for various structures such as boat docks, piers, shoreline stabilization projects, dams, and bridges, all of which

qualify as "obstructions" under TVA's regulations. An obstruction is generally any man-made physical condition that during its continuance after completion impounds, checks, hinders, restricts, retards, diverts, or otherwise interferes with the movement of water or of objects on or in the water.
Over the years, TVA has found that certain obstructions because of their location, the nature of their construction, or both have not discernibly interfered with the operation or management of the TVA reservoir system. In particular, this has occurred at locations across, along, or in certain tributary reaches that are upstream of the control or influence of TVA's reservoir system operations. For the purpose of this rule, these are called upstream tributary reaches. At these locations, certain obstructions have an indiscernible impact on water surface elevations in the reservoir system or the flow or volume of water entering the reservoir system and thereby do not materially interfere with TVA's flood control or navigation responsibilities. Furthermore, at these locations, TVA does not typically own property and therefore construction does not affect or interfere with the management of TVA's property. These obstructions include, but are not limited to, stream bank stabilization, bridges and culverts, stream crossings, fences, launching ramps, boat docks, piers, and certain fills and intakes. For these reasons, TVA has determined that certain obstructions do not require approval pursuant to Section 26a of the TVA Act when located across, along, or in an upstream tributary reach of the Tennessee River.

Conversely, based on years of permitting experience, TVA has found that other obstructions across, along, or in upstream tributary reaches do potentially interfere with the management of TVA's reservoir system. These include, but are not limited to, structures such as dams, impoundments, interbasin transfers and certain water intakes. TVA will continue to require approval of these and other obstructions not set forth in Section III of this Interpretive Rule, when located across, along, or in an upstream tributary reach.

The Tennessee River has a 41,000-square-mile drainage basin. Thousands of miles of upstream tributary reaches ultimately flow into the Tennessee River, making it impractical to identify each upstream tributary reach in this rule. For the purpose of this rule, upstream tributary reaches do ***not*** include the following:

1) the Tennessee River;

2) TVA reservoirs, (TVA reservoirs are listed in Table 1);

3) stream reaches within a TVA reservoir, the 500-year floodplain of the Tennessee River, or both;

4) stream reaches downstream of a TVA dam (these reaches are listed in Table 2); and

5) stream reaches where TVA owns property (whether fee-owned property or other property right, such as a right to flood) in or adjacent to the reach (including property adjacent to a TVA reservoir or downstream of a TVA dam).

TVA will continue to review the proposed construction of obstructions located across, along, or in the above-listed five categories of reservoirs and reaches. These reservoirs and stream reaches are controlled or influenced by the operation of TVA's reservoir system. As discussed in more detail below, individual members of the public are encouraged to contact a TVA representative for help in determining whether their location is across, along, or in a reservoir or stream reach in the above-listed five categories or across, along, or in an upstream tributary reach.

III. Scope of Interpretive Rule

TVA hereby clarifies that, going forward, the construction of the following obstructions across, along, or in an upstream tributary reach of the Tennessee River, does not require a Section 26a permit from TVA:

a) Stream bank, bed, or channel stabilization structures - Natural or man-made obstructions to stabilize and protect banks, beds, or channels of streams or excavated channels (e.g., vegetation, riprap, gabions, fiber rolls, stacked rock, retaining walls, etc.);

b) Stream restoration, enhancement, relocation, or treatment structures - Natural or man-made obstructions for relocating a stream or for restoring or improving the stream's function (e.g., weirs or sills, boulders, wing deflectors, log, brush, rock, trees, fill, etc.);

c) Bridges and culverts including riprap or other stabilization necessary for their construction;

d) Stream crossings - A stabilized area or a structure (culvert, bridge, or fill) constructed across a stream to provide a travel-way for people, livestock, equipment, or vehicles, including riprap or other stabilization necessary for their construction;

e) Fences, playgrounds, picnic tables, benches, grills, and other recreational structures;

f) Launching ramps and marine railways;

g) Buoys;

h) Docks, piers, and other water-use facilities;

i) Decks, gazebos, patios, and other open structures;

j) Enclosed land-based structures;

k) Water intakes with a combined peak withdrawal of less than 50,000 gallons per day (0.08 cubic feet per second) and having a pipe diameter less than 6 inches;

l) Towers, poles, electrical panels, satellite antennas, service lights, signs, and their anchors and foundations;

m) Outfall structures;

n) Underground, submarine, or aerial utility pipes and lines and their support structures, anchors or foundations;

o) Causeways, roads, driveways, and parking lots;

p) Grading and fill not involving the construction of a dam or impoundment.

Those considering construction of one or more of the above-listed obstructions across, along, or in an upstream tributary reach as defined in this rule are not required to submit an application or design drawings to TVA for approval of a Section 26a permit.

Members of the public are responsible for knowing whether their proposed construction project is located across, along, or in an upstream tributary reach or on TVA property. If your proposed obstruction is located on TVA property, in addition to a Section 26a permit for the obstruction, approval from TVA to use the property may be required. TVA encourages members of the public to seek TVA's help in identifying whether a Section 26a permit or TVA approval to use its property is necessary. For more information or assistance in determining whether your project requires a Section 26a permit, contact TVA at 1-800-882-5263 or visit TVA's website at tva.com.

Except as it applies to TVA's regulations implementing Section 26a, this interpretive rule is not a substitute for the requirements of any federal, state, or local statute, regulation, ordinance, or code, including, but not limited to, applicable building codes, now in effect or hereafter enacted.

This guidance reflects TVA's current judgment on the types of obstructions that either individually or cumulatively do not affect navigation, flood control, or public lands or reservations across, along, or in an upstream tributary reach of the Tennessee River. TVA may refine this guidance, if circumstances warrant, in a future Federal Register notice. This guidance has no effect on whether a permit is required by other federal or state agencies.

IV. Definitions

Fee-owned property - Real property owned in fee by the United States of America in the custody and control of TVA.

Property - Fee-owned property or other property right, such as a right to flood.

Property right - Any legal right acquired or reserved by TVA that concerns property, such as a right to flood private property.

Reach - A segment of stream between two locations.

Tennessee River - The river reach from its mouth at the Ohio River to its beginning at mile 652, at the confluence of the Holston and French Broad Rivers.

Tributary - Any watercourse the contents of which, if not obstructed, diverted or consumed, will ultimately flow into the Tennessee River.

TVA reservoir - The impoundment created by a TVA dam constructed across the Tennessee River or one of its tributaries (including all streams reaches impounded by the dam). One dam may impound reaches of more than one stream. The impounded stream reaches together form the body of water (i.e., the reservoir) created by the construction of the dam. For example, the construction of Douglas Dam impounded a portion of the French Broad River as well as many other stream reaches, including, but not limited to, portions of Pigeon River, Nolichucky River, Flat Creek, Muddy Creek, and Seahorn Creek. All of the stream reaches impounded by Douglas Dam comprise Douglas Reservoir.

TVA reservoir system - The series of interconnected dams and reservoirs, with associated facilities, on the Tennessee River and its tributaries, that, with the adjacent TVA property, are managed by TVA for purposes of navigation, flood control, and power production; and consistent with those purposes, for a wide range of other public benefits.

Upstream tributary reach - Stream reaches located upstream of the control or influence of the operation of the TVA reservoir system.

Dated: August _17_, 2016

Rebecca C. Tolene
Deputy General Counsel and Vice President, Natural Resources

Table 1. TVA Reservoirs	
Tennessee River Reservoirs	
Kentucky	
Pickwick	
Wilson	
Wheeler	
Guntersville	
Nickajack	
Chickamauga	
Watts Bar	
Fort Loudoun	
Tributary Reservoirs	
Apalachia	**Bear Creek Projects (Alabama)**
Beaver Creek (tributary to South Fork Holston River)	Bear Creek
	Cedar Creek
Blue Ridge	Little Bear Creek
Boone	Upper Bear Creek
Chatuge	**Beech River Projects (West Tennessee)**
Cherokee	Beech
Clear Creek (tributary to Beaver Creek, tributary to South Fork Holston River)	Cedar
	Dogwood
Doakes Creek (Norris Reservoir)	Lost Creek
Douglas	Pine
Fontana	Pin Oak

Fort Patrick Henry Hiwassee John Sevier Detention Dam (just upstream of Cherokee Reservoir) Melton Hill Nolichucky Normandy Norris Nottely Ocoee No. 1 Ocoee No. 2 Ocoee No. 3 South Holston Tellico Tims Ford Watauga Wilbur	Redbud Sycamore

Table 2. Stream Reaches Downstream of TVA dams		
River or Stream	**Reach (mile)**	**Description**
Tennessee River	0 to 652	Mouth to confluence of the Holston and French Broad Rivers
Beaver Creek (tributary to South Fork Holston River)	0 to 22.5	Mouth to Beaver Creek Dam
Clear Creek (tributary to Beaver Creek tributary to South Fork Holston River)	0 to 2.8	Mouth to Clear Creek Dam
Clinch River	0 to 79.8	Mouth to Norris Dam
Duck River	0 to 248.6	Mouth to Normandy Dam
Elk River (tributary to Tennessee River)	0 to 133.3	Mouth to Tims Ford Dam
French Broad River	0 to 32.3	Mouth to Douglas Dam
Hiwassee River	0 to 121.0	Mouth to Chatuge Dam
Holston River	0 to 142.2	Mouth to confluence of the North and South Fork Holston Rivers
Little Tennessee River[1]	0 to 61.0	Mouth to Fontana Dam
Nolichucky River	0 to 45.6	Mouth to Nolichucky Dam
Nottely River	0 to 21.0	Mouth to Nottely Dam
Ocoee River	0 to 37.8	Mouth to the Georgia/Tennessee State Line
South Fork Holston River	0 to 49.8	Mouth to South Holston Dam

Toccoa River	0 to 53.0	The Georgia/Tennessee State Line to Blue Ridge Dam
Watauga River	0 to 36.7	Mouth to Watauga Dam
Bear Creek Projects (Alabama):		
Bear Creek	0 to 114.7	Mouth to Upper Bear Creek Dam
Cedar Creek	0 to 23.1	Mouth to Cedar Creek Dam
Little Bear Creek	0 to 11.6	Mouth to Little Bear Creek Dam
Beech River Projects (West Tennessee):		
Beech River	0 to 35.0	Mouth to Beech Dam
Big Creek	0 to 6.7	Mouth to Dogwood Dam
Browns Creek	0 to 5.1	Mouth to Pin Oak Dam
Dry Branch	0 to 1.1	Mouth to Sycamore Dam
Dry Creek	0 to 1.0	Mouth to Redbud Dam
Haley Creek	0 to 4.0	Mouth to Cedar Dam
Lost Creek	0 to 1.3	Mouth to Lost Creek Dam
Piney Creek	0 to 4.8	Mouth to Pine Dam

[1]Brookfield Smoky Mountain Hydro manages Little Tennessee River Miles 33.6 to 59.1.

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