

From: [Sarah Stokes](#)
To: [Hamilton, Elizabeth A CIV USARMY CESAM \(USA\)](#)
Cc: [Litteken, Craig J CIV USARMY CESAM \(USA\)](#); "[LeeAnne.Wofford@ahc.alabama.gov](#)"; "[Eric.Sipes@ahc.alabama.gov](#)"; "[Greg.Lein@dcnr.alabama.gov](#)"
Subject: [Non-DoD Source] SELC extension request and request for public hearing for Public Notice SAM-2020-00353-ES.
Date: Friday, August 21, 2020 5:49:47 PM
Attachments: [2020.8.21 SELC extension and public hearing request.PDF](#)

Ms. Hamilton,

Attached please find the Southern Environmental Law Center's request for a public hearing as well as an extension for the public comment deadline for Public Notice SAM-2020-00353-ES, a proposed 53-mile natural gas pipeline. Without a map showing the water impacts, the public cannot meaningfully comment.

Regards,

Sarah Stokes

Senior Attorney

Southern Environmental Law Center

2829 2nd Ave South, Suite 282

Birmingham, AL 35233

205-745-3060

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 205-745-3060

2829 2ND AVENUE SOUTH, SUITE 282
BIRMINGHAM, AL 35233-2838

Facsimile 205-745-3064

August 21, 2020

Via Electronic Mail

United States Army Corps of Engineers, Mobile District
Attn: Ms. Elizabeth Hamilton, Project Manager
elizabeth.a.seavoy@usace.army.mil

Re: Public Notice SAM-2020-00353-ES, Proposed 53-mile pipeline, request for an extension and public hearing

Dear Ms. Hamilton:

The Southern Environmental Law Center respectfully requests an extension on the public comment deadline as well as a public hearing for **Public Notice SAM-2020-00353-ES**. This is a 53-mile proposed pipeline in Choctaw and Washington counties that will impact over four miles of waterways and will run close if not through a wildlife refuge and two public parks. An extension is necessary so that the public can ascertain the location of the pipeline. The public notice is currently legally insufficient and does not describe this location. Extending the public comment deadline until the public notice is fixed and the location shared will not only benefit the public, but the Corps will learn more information from the public and the specific landowners this pipeline will affect.

The public notice is inadequate. Per the Corps' own regulations, the public notice must describe the "location of the proposed project." 3 C.F.R. § 325.3(a)(4). It must also "include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment." 33 C.F.R. § 325.3(a). Under this regulation, the Corps must "present for public scrutiny the rationale and pivotal data underlying its proposed action before the close of the comment and hearing." *National Wildlife Federation v. Marsh*, 568 F. Supp. 985, 994–96 (D.D.C. 1983). While the map in the public notice names the county the pipeline will cross, the map does not show which wetlands and waterways this 53-mile pipeline will affect – the very resource that the Corps is supposed to be regulating under the Clean Water Act. In fact, "the overall purpose of the § 404 permit evaluation process **and the attendant public notice** is to determine whether a proposed project will result in significant, unacceptable adverse effects to the waters of the United States. *See* 40 C.F.R. §§ 230.1, 230.10, 230.12; 33 C.F.R §§ 320.2(f), 320.4." *Ohio Valley Envtl. Coal. v. U.S. Army Corps of Engineers*, 674 F. Supp. 2d 783, 789 (S.D.W. Va. 2009) (emphasis added). The Corps must disclose the map it is using to determine whether the impacts to waters will be significant.

Importantly, Corps' regulations stipulate that the public notice contain "[a] plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area." 33 C.F.R. § 325.3. This public notice does not have a plan showing the "specific site location" of the proposed activity, nor does it have a plan

Elizabeth Hamilton

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showing “the size relationship of the proposed structure to the size of the impacted waterway and depth of water in the area.” The impacted waterways are unknown, including their size and depth. In fact, no waterways are indicated or marked on the entire map.

The location of the pipeline in relationship to the proximate waterways is “pivotal data.” Courts across the country have held that the Corps’ public notice is inadequate if it does not include “pivotal data.” *See, Ohio Valley Envtl. Coal. v. U.S. Army Corps of Eng'rs*, 674 F.Supp.2d 783, 804 (S.D.W. Va. 2009); *Friends of the Earth v. Hall*, 693 F. Supp. 904, 948 (W.D. Wash.1988); *Nat'l Wildlife Fed'n v. Marsh*, 568 F. Supp. 985, 991, 994–95 (D.D.C.1983). A map showing the pipeline’s location over the impacted waterways is pivotal data. It goes to the very heart of determining the pipeline’s impacts under the National Environmental Policy Act as well as determining whether the location of this pipeline sufficiently avoided and minimized impacts to waterways.

Additionally, in order to determine whether this pipeline is in the public interest, the location of the proposed project must be shown. The map provided does not show whether the pipeline will run through or border significant public resources in the area, such as Bladon Springs State Park, Choctaw National Wildlife Refuge, and St. Stephens Historical Park. The Corps’ map does not even name the towns on the map that the pipeline may pass or intersect, such as Needham, St. Stephens, and Leroy. Corps regulations mandate that “[a]ny other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest” must be included. 33 C.F.R. § 325.3 (a)(13). The people of these towns cannot meaningfully comment about the pipeline and its effect on the public interest without knowing whether and where the pipeline will pass through their towns and other special places.

When SELC asked for a plan showing the “specific site location,” and how it affected waterways and wetlands, the Corps responded that the map “contains sensitive information that cannot be released to the public. However, in order to obtain the maps, you may submit a FOIA request.” (Exhibit A). It is capricious to force the public to submit a FOIA request to receive a map, instead of providing it in the public notice as required per the Corps’ regulations. SELC has submitted a FOIA request and asked for the map to be expedited (Exhibit B), yet this information will not be provided in time to meaningfully comment before the expiration of the public comment period, August 26, 2020. Additionally, SELC has asked the Corps to at least provide a map which shows the pipeline’s location in relationship to public resources; however, to date that request has been unanswered. (Exhibit C). An extension of the public comment period is requested so that the public notice can be rectified and the location of the pipeline in relationship to waterways and other public resources can be disclosed.

Additionally, a public hearing is requested in order to allow the hundreds of citizens and communities affected by this pipeline an opportunity to ask questions and receive explanations on the location and impacts of this pipeline.

Elizabeth Hamilton

August 21, 2020

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Please feel free to contact me with any questions or concerns at 205-745-3060.

Respectfully,



Sarah Stokes

Senior Attorney

cc: Craig Litteken, U.S. Army Corps of Engineers, Mobile District, Regulatory Division Chief, (craig.j.litteken@usace.army.mil)

Lee Anne Wofford, AL Historical Commission, Deputy SHPO, Historic Preservation Division Director, (LeeAnne.Wofford@ahc.alabama.gov)

Eric Sipes, AL Historical Commission, Assistant State Archaeologist and Section 106 Program Head, (Eric.Sipes@ahc.alabama.gov)

Greg Lein, Alabama Department of Conservation and Natural Resources, Director of AL State Parks Division, (Greg.Lein@dcnr.alabama.gov)

Exhibit A

From: [Sarah Stokes](#)
To: [Molly Golski](#)
Subject: FW: PUBLIC NOTICE NO. SAM-2019-00914-ES
Date: Friday, August 14, 2020 2:26:04 PM

-----Original Message-----

From: Hamilton, Elizabeth A CIV USARMY CESAM (USA) [<mailto:Elizabeth.A.Seavoy@usace.army.mil>]
Sent: Wednesday, August 05, 2020 7:19 AM
To: Sarah Stokes
Subject: RE: PUBLIC NOTICE NO. SAM-2019-00914-ES

Ms. Stokes,

Thank you for providing a response for the below referenced project. Unfortunately the map submitted for our review contains sensitive information that cannot be released to the public. In order to obtain the maps, you may submit a FOIA request as outlined below:

To obtain copies of our records, you'll need to submit a Freedom of Information Act (FOIA) request. For instructions on how to do that, and where to send your request, please see our online FOIA resources at: <http://www.sam.usace.army.mil/BusinessWithUs/FOIA.aspx>

Your request will be added to the comment record.

Respectfully,

Elizabeth A. Hamilton
U.S. Army Corps of Engineers
Project Manager
Mobile District, Regulatory Division
South Alabama Branch

-----Original Message-----

From: Sarah Stokes [<mailto:ssstokes@selcal.org>]
Sent: Friday, July 31, 2020 1:31 PM
To: Hamilton, Elizabeth A CIV USARMY CESAM (USA) <Elizabeth.A.Seavoy@usace.army.mil>
Subject: [Non-DoD Source] PUBLIC NOTICE NO. SAM-2019-00914-ES

Good afternoon Ms. Seavoy,

Could you please send me a map of where the proposed pipeline in Choctaw and Washington County, SAM-2019-00914-ES, will cross wetlands and waterways? The map attached to the public notice does not indicate which wetlands or waterways will be affected.

Thank you,

Sarah Stokes

Sarah Stokes

Senior Attorney

Southern Environmental Law Center

2829 2nd Ave South, Suite 282

Birmingham, AL 35233

205-745-3060

Exhibit B

From: [Sarah Stokes](#)
To: [Molly Golski](#)
Subject: FW: Request for documents regarding proposed pipeline, SAM-2019-00914-ES
Date: Friday, August 14, 2020 2:42:52 PM
Attachments: [2020.08.05 SELC request for documents regarding pipeline.PDF](#)

From: Sarah Stokes
Sent: Wednesday, August 05, 2020 2:44 PM
To: 'FOIA-SAM@usace.army.mil'; 'Keri.Schenter@usace.army.mil'
Subject: Request for documents regarding proposed pipeline, SAM-2019-00914-ES

Good afternoon Keri,
Attached please find a FOIA request for information regarding a proposed pipeline in Washington and Choctaw Counties, SAM-2019-00914-ES. The public comment deadline is August 26th. Is there anyway you could get us the maps by then?

Thank you,
Sarah

Sarah Stokes
Senior Attorney
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2829 2nd Ave South, Suite 282
Birmingham, AL 35233
205-745-3060

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BIRMINGHAM, AL 35233-2838

Facsimile 205-745-3064

August 5, 2020

VIA ELECTRONIC MAIL

USACE Mobile District
Attn: CESAM-OC (FOIA)
PO Box 2288
Mobile, Alabama 36628
FOIA-SAM@usace.army.mil
Keri.Schenter@usace.army.mil

Re: FOIA Request – Proposed Lowman Pipeline, SAM-2019-00914-ES

Dear Ms. Schenter:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 7 C.F.R. §§ 1.1-1.25, the Southern Environmental Law Center (“SELC”) respectfully requests copies of the following documents in the possession or control of the United States Army Corps of Engineers (“USACE”), dated January 1, 2010 to present:

- All documents regarding the proposed Lowman Pipeline Project, **SAM-2019-00914-ES**, which will result in the construction of new natural gas transmission lines in Choctaw County and Washington County (the “Project”).

These documents are to include, but are not limited to:

- 1) Any documents related to the listed species in the vicinity, environmental impact, funding, right-of-way acquisition, site preparation, construction, licensing, traffic counts, or planning of the Project;
- 2) Any environmental, economic, traffic, and all other reports, studies and/or draft studies concerning the Project;
- 3) Any written comments made regarding the Project;
- 4) Any public comments made after or during any public meetings regarding the Project;
- 5) Any statements written, recorded, or in electronic format relating to the Project;
- 6) Any written or electronic minutes from meetings or phone conversations relating to the Project;
- 7) Any emails relating to the Project;
- 8) Any maps of the Project.

Because releasing these records is in the public interest, we request a fee waiver for costs associated with conducting this search.

For the purposes of this request, the term “documents” includes all written, printed, recorded, or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of USACE. Please provide any electronic records in native file format.

In addition, we request access to each and every version of a record or document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc. Please also include all responsive records generated up to the date of the agency’s search for records responsive to this request.

FOIA directs a responding agency to make a “determination” on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A); 7 C.F.R. § 1.7(a). Pursuant to 7 C.F.R. § 1.15, in addition to making responsive documents available for request, should you determine that certain documents are responsive to this request and choose not to produce them on the basis of any claimed privilege or exemption from disclosure, we request that you produce a detailed list of those documents, including: the date of the document; the authors and recipients; the subject matter of the document; and the basis for the claimed privilege or exemption for disclosure. Further, where a document contains specific information that you claim is exempt or privileged, we request that you simply redact the information so claimed and produce the document in redacted form. The redacted information should be included in the list of privileged or exempt information just described.

The disclosure of the requested records would be in the public interest because it is likely to contribute significantly to public understanding of the proposed pipeline in Choctaw County and Washington County which might traverse both public and private property and USACE’s review of the Project. This disclosure is not in the commercial interest of SELC. SELC is a 501(c)(3) non-profit organization working to protect the natural resources of the Southeast and, in particular, to gather, analyze, and disseminate public information about matters of conservation and environmental protection. As part of its work, SELC has been actively engaged in protecting the environment of the Southeast for three decades. SELC has been actively engaged in monitoring and participating in projects which may impact water quality and other natural areas, with the goal of preserving the natural places of the Southeast for future generations. The proposed Project may directly impede the ability of future generations to enjoy this natural area. SELC intends to disseminate the information gathered through this request to the general public through press releases, social media, public comment letters, and its website, southernenvironment.org, which is updated regularly.

We request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver is appropriate because SELC does not have a commercial interest that would be furthered by the requested disclosure. SELC is a 501(c)(3) non-profit organization that provides legal representation to other 501(c)(3) non-profits and public advocacy free of charge. Our intended use of the requested materials is to glean a greater understanding of USACE’s plans for the Project for the reasons discussed above and to continue to disseminate information about federal conservation policy to the public through the many channels described above. All of the activities described above have been, and will continue to be, provided to the public by SELC and our clients for no payment. Courts have recognized that Congress intended FOIA’s fee

waiver to be “liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before processing this request to discuss fees. We reserve our right to appeal a denial of our request for a fee waiver or reduction.

Thank you for your prompt attention to this matter. In the event you deny our request, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available.

Please contact me at (205) 745-3060 or sstokes@selcal.org with any questions regarding this request.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Stokes".

Sarah Stokes
Senior Attorney

Exhibit C

From: [Sarah Stokes](#)
To: [Molly Golski](#)
Subject: FW: PUBLIC NOTICE NO. SAM-2019-00914-ES
Date: Friday, August 14, 2020 2:28:16 PM

-----Original Message-----

From: Sarah Stokes
Sent: Tuesday, August 11, 2020 8:52 AM
To: 'Hamilton, Elizabeth A CIV USARMY CESAM (USA)'
Subject: RE: PUBLIC NOTICE NO. SAM-2019-00914-ES

Ms. Hamilton,

I have FOIAed these maps, but am concerned that I will not receive them in time for the public comment deadline. Can you please provide the maps that show where the pipeline crosses or affects Bladon Springs State Park, Choctaw National Wildlife Refuge and St. Stephens Archeological Park? These are all parks of public interest, and the public deserves to understand how the pipeline will affect its resources.

Thank you,
Sarah Stokes

Sarah Stokes
Senior Attorney
Southern Environmental Law Center
2829 2nd Ave South, Suite 282
Birmingham, AL 35233
205-745-3060

-----Original Message-----

From: Hamilton, Elizabeth A CIV USARMY CESAM (USA) [<mailto:Elizabeth.A.Seavoy@usace.army.mil>]
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Respectfully,

Elizabeth A. Hamilton
U.S. Army Corps of Engineers
Project Manager
Mobile District, Regulatory Division

South Alabama Branch

-----Original Message-----

From: Sarah Stokes [<mailto:ssstokes@selcal.org>]

Sent: Friday, July 31, 2020 1:31 PM

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Subject: [Non-DoD Source] PUBLIC NOTICE NO. SAM-2019-00914-ES

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