Atlanta







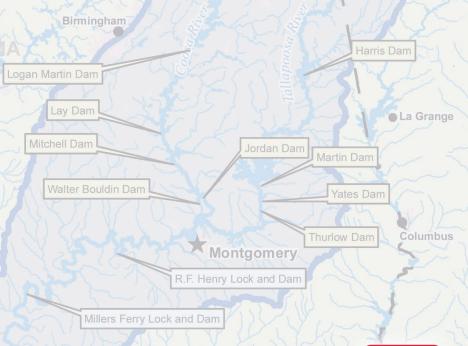


Allatoona Lake Water Supply Storage Reallocation Study and Updates to Weiss and Logan Martin Reservoirs Project Water Control Manuals

Final Feasibility Report and
Integrated Supplemental Environmental Impact Statement

H. Neely Henry Dam

Appendix G. Real Estate



Dothan

Claiborne Lock and Dam



Albany

US Army Corps of Engineers®

Mobile District

Prepared for: U.S. Army Corps of Engineers Mobile District P.O. Box 2288 Mobile, AL 36628

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Tallahas

Final ACR FR/SEIS Appendix G

APPENDIX G REAL ESTATE



ALLATOONA LAKE WATER SUPPLY STORAGE REALLOCATION STUDY AND UPDATES TO WEISS AND LOGAN MARTIN RESERVOIRS PROJECT WATER CONTROL MANUALS

GEORGIA & ALABAMA

APPENDIX G

REAL ESTATE PLAN

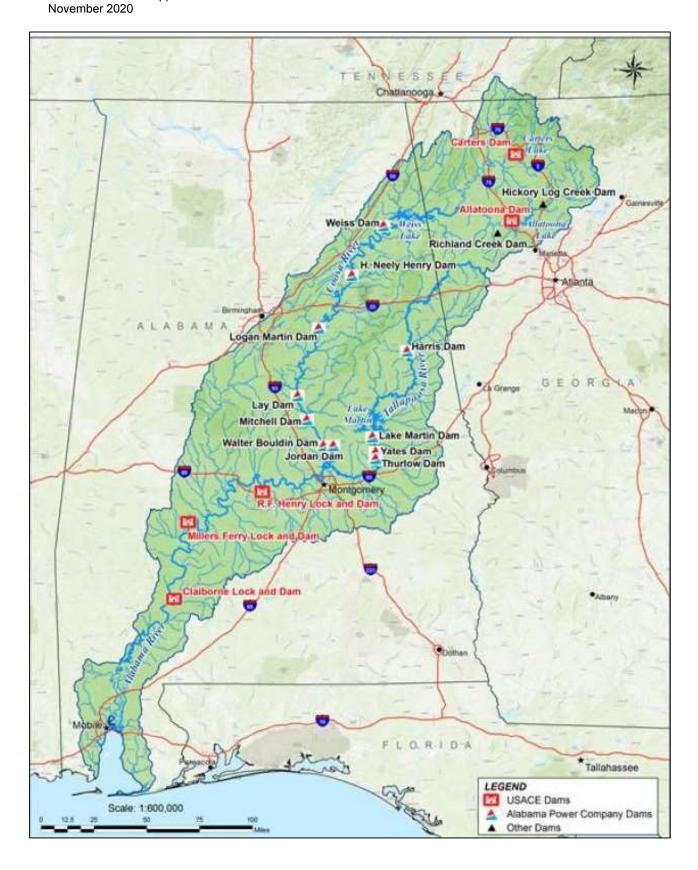
November 2020

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1.0 Preamble

- 1.1 Allatoona Lake Project Authorization: Allatoona Reservoir was authorized by the Flood Control Acts of 18 August 1941 and 22 December 1944, Public Law 228, 77th Congress, 1st Session, as outlined in House Document No. 674, 76th Congress, 3rd Session. Recreation facilities were authorized by Section 4 of the Flood Control Act of 22 December 1944.
- 1.2 Alabama Power Company (APC) Weiss and Logan Martin Reservoirs Project Authorization: Pursuant to Public Law 83-436, approved June 28, 1954, USACE has oversight of four APC projects in the ACT Basin for the authorized purposes of Navigation and Flood Risk Management. These projects are: H. Neely Henry Dam and Lake, R.L. Harris Dam and Lake, Logan Martin Dam and Lake and Weiss Dam and Lake.
 - 1.3 Study Area: Please reference Figure 1 on the following page:



- 1.3 Non-Federal Sponsor: Not applicable as the proposed actions for the water reallocation are not tied to a cost shared project. There are two separable elements of the project. The Allatoona Lake water supply reallocation, and the Weiss and Logan Martin Reservoirs update to water control manual. Allatoona Lake is a full Federal reservoir, owned and operated by the United States of America/Corps of Engineers.
 - 1.3.1 Proponent of Weiss and Logan Martin Reservoirs element: As owner and operator of the Weiss and Logan Martin Reservoirs, Alabama Power Company is responsible for requisite land acquisitions within the project area for the APC Reservoirs in accordance with Public Law 83-436. There is no cost sharing to be provided for accomplishment of APC's LERRD responsibilities.

2.0 Statement of Purpose

The purpose of the Allatoona-Coosa Reallocation Feasibility Study and Integrated Supplemental Environmental Impact Statement (SEIS) is to evaluate the 2018 water supply request from the state of Georgia seeking to reallocate water out of Allatoona Lake, evaluate the proposed flood operations at two Alabama Power Company projects: Weiss and Logan Martin, and to update any water control manuals, as necessary, as a result of changes in operations.

- 2.1 Background of Allatoona Lake Project. In January 2018, the U.S. District Court for the Northern District of Georgia issued a judgment in Georgia et al. v. U.S. Army Corps of Engineers, No. 14-cv-03593 (January 9, 2018), holding that the USACE had unreasonably delayed action on Georgia's water supply request, and directing the USACE to take final action responding to that request by March 1, 2021. Following that court decision, the State of Georgia submitted an updated request to the USACE on March 31, 2018, and the USACE intends to evaluate actions necessary to implement Georgia's request, as well as one or more reasonable alternatives, in the proposed SEIS.
- 2.2 Background of Alabama Power Company (APC) Weiss and Logan Martin Reservoirs Project. The USACE did not include updates to the WCMs for the Weiss and Logan Martin projects in the 2015 ACT Basin WCM Update because further study of flood risk management issues at both projects was required. The APC proposes raising the winter level and also lowering the upper limit of the induced surcharge operation at the Weiss Reservoir and the Logan Martin Reservoir. Current Water Control Plans for the Weiss and Logan Martin reservoirs, originally issued in the 1960s, purportedly contain surcharge curves with elevations higher than the respective flood easements acquired by APC. Furthermore, analysis of instruments provided by APC indicate that the methodologies employed in APC's prior land acquisition standards are unclear.

Pursuant to Public Law 83-436, approved June 28, 1954, FERC issued a permit to APC September 4, 1957, and Article 38 stated "The Licensee shall acquire by flowage easements, or by fee title the right to flood the lands above and below each dam deemed necessary to permit realization of the prescribed flood control regulation plans and shall hold the Government free and clear against any damage claims due to the operation by the Licensee, during the term of the license or of any extension or renewal thereof, of the project for flood control under regulations to be prescribed by the Secretary of the Army."

2.3 **Issue statement**: Despite repeated inquiries from USACE Mobile District, APC has not provided sufficient ownership documentation or land acquisition methodology to validate operations pursuant to Public Law 83-436. If, in the process of legal review, H&H and economic modelling efforts for the proposed change in operations, significant induced flooding is identified, Alabama Power Company shall complete a detailed assessment of requisite real estate acquisition prior to the final approval of the Water Control Manual. The analysis should incorporate the facts relating to the depth, frequency, duration, and extent of the expected induced flooding; discuss such facts in relationship to relevant case law regarding physical invasion takings and just compensation payment requirements; and present a reasoned conclusion on whether the expected induced flooding would rise to the level of a taking for which just compensation would be owed.

Generally, pursuant to ER 1110-2-1451, as codified in 33 CFR § 222.2, USACE is required to assess hazardous areas downstream from spillways for the purpose of protecting the public from hazards imposed by spillway discharges. This is information which may help guide decision makers in higher headquarters with respect to the most appropriate course of action regarding APC's proposed operational changes. The parcel listing provided in Section 4.0 includes those parcels preliminarily identified in H&H analysis as potentially hazardous under the criteria set forth in ER 1110-2-1451.

3.0 Project Features / Plan of Improvements

See Figure 2 which summarizes the proposed features/components. Reference the Engineering Appendix for more detailed information.

Allatoona Lake Component

- Reallocation of 33,872 ac-ft (11,670 Ac-ft from FP)
- Summer guide curve change 840' 841'
- Winter guide curve change 823' 824.5'
- Meets full 2050 need for CCMWA and Cartersville
- 4% reduction in summer flood storage
- 2.4% reduction in winter flood storage
- Annual cost of storage repayment: \$1M
- · USACE storage accounting

Weiss Lake Component¹

- Raise Winter Level from 558' 561'
- Lower Top of Flood Control from 574' 572'
- 30% reduction in Winter Flood Storage
- 24% reduction in Summer Flood Storage
- Modified Surcharge
 Operation, increase releases at same reservoir elevations

Logan Martin Lake Component¹

- Raise Winter Level from 460' 462'
- Lower Top of Flood Control from 477' 473.5'
- 35% reduction in Winter Flood Control Storage
- 35% reduction in Summer Flood Control Storage
- Modified Surcharge Operation, increase releases at same reservoir elevations

Figure 2

4.0 Required Lands, Easements, and Rights-of Way (LER):

The required LER for the project will be contingent upon the outcome of ongoing litigation and in accordance with the provisions of Public Law 83-436. Pursuant to the requirements of this law, APC is subject to "reasonable rules and regulations of the Secretary of Army in the interest of flood control and navigation" with respect to the operation and maintenance of hydropower dams.

If, in the process of legal review, H&H and economic modelling efforts for the proposed change in operations, significant induced flooding is identified, Alabama Power Company shall complete a detailed assessment of requisite real estate acquisition prior to the final approval of the Water Control Manual. The analysis should incorporate the facts relating to the depth, frequency, duration, and extent of the expected induced flooding; discuss such facts in relationship to relevant case law regarding physical invasion takings and just compensation payment requirements; and present a reasoned conclusion on whether the expected induced flooding would rise to the level of a taking for which just compensation would be owed.

Pursuant to the preliminary analysis of those parcels meeting the criteria of "hazardous" in accordance with ER 1110-2-1451, as codified in 33 CFR § 222.2, a parcel listing is provided below, as a reference of those lands which would be reasonably expected to be acquired by negotiation in the situation of a USACE-owned and operated dam, for the purpose of protecting the public from hazards imposed by

^{*}Pool elevation is feet above MSL

spillway discharges, without regard to those parcels which are in the existing hazardous conditions, as opposed to with project conditions.

4.1 Conclusion: Pursuant to the ongoing USACE interagency coordination with the Federal Energy Regulatory Commission (FERC) at the time of this report, insufficient data is available at the current time to determine the sufficiency of Alabama Power Company's current real estate interests for the proposed operational changes to the Weiss and Logan Martin Dams.

The e-mail correspondence received from FERC on October 22, 2020, implied that APC has acquired all necessary real estate for the proposed operation, but USACE is unable to independently verify FERC's statement, or the methodologies utilized to reach this conclusion, due to our inability to review the historical array of documents associated with APC's operations such as the 1960's Memoranda of Agreement (MOA), land acquisition registers, flowage easement methodology, flood operations variances, and other associated documentation. Furthermore, it is recommended that all necessary real estate interests should be documented prior to the final signing of the new MOA and manuals.

PRIVATELY-OWNED PARCELS PRELIMINARILY IDENTIFIED AS HAZARDOUS PER ER 1110-2-1451				
Parcel Number (County)	Parcel Number (County)	Parcel Number (County)		
1506130000020002 (Calhoun)	3003060001005000 (St. Clair)	2909304000034003 (St. Clair)		
1506130000020000 (Calhoun)	3003060001004012 (St. Clair)	2807350001002005 (St. Clair)		
1409300000001000 (Calhoun)	1901010001001041 (St. Clair)	3101020003036000 (St. Clair)		
1408342000041000 (Cherokee)	1901010001008000 (St. Clair)	3101020002013000 (St. Clair)		
1408342000038000 (Cherokee)	1807250001014018 (St. Clair)	3102030001024017 (St. Clair)		
1408342000029000 (Cherokee)	1807250001014017 (St. Clair)	3101110002012002 (St. Clair)		
14 19 06 14 0 000 002.000 (Chilton)	1807250001014016 (St. Clair)	3105220001012000 (St. Clair)		
22 06 09 30 0 001 029.000 (Coosa)	1807250001014015 (St. Clair)	3108280004007000 (St. Clair)		
22 06 09 30 0 001 031.000 (Coosa)	1807250001014014 (St. Clair)	06 4 20 0 000 008.004 (Shelby)		
22 06 09 30 0 001 037.000 (Coosa)	1807250001014013 (St. Clair)	06 9 29 0 000 001.012 (Shelby)		
22 06 09 30 0 001 039.000 (Coosa)	1807250001014010 (St. Clair)	06 9 29 0 000 001.008 (Shelby)		
22 06 09 30 0 001 041.000 (Coosa)	1807250001014009 (St. Clair)	06 9 29 0 000 001.009 (Shelby)		
22 06 09 30 0 001 042.000 (Coosa)	1807250001014006 (St. Clair)	06 9 29 0 000 001.017 (Shelby)		
22 06 09 30 0 001 043.000 (Coosa)	1807250001014005 (St. Clair)	06 9 29 0 000 001.006 (Shelby)		
22 06 09 30 0 001 045.000 (Coosa)	2201120000040000 (St. Clair)	06 9 29 0 000 001.007 (Shelby)		
22 06 09 30 0 001 046.000 (Coosa)	2206130001086002 (St. Clair)	07 7 36 0 000 022 000 (Shelby)		
22 06 09 30 0 001 047.000 (Coosa)	2206240001021001 (St. Clair)	07 7 36 0 000 022 000 (Shelby)		
22 16 06 13 0 000 010.000 (Coosa)	2207260001002009 (St. Clair)	17 6 13 0 000 005 026 (Shelby)		
22 16 06 13 0 000 012.000 (Coosa)	2902040002003000 (St. Clair)	17 6 13 0 000 005 025 (Shelby)		
22 16 06 24 0 000 040.000 (Coosa)	2902040003004000 (St. Clair)	20 6 13 0 001 059 002 (Shelby)		
22 16 06 24 0 000 039.000 (Coosa)	2902040003007000 (St. Clair)			
22 16 06 24 0 000 038.000 (Coosa)	2902090001007001 (St. Clair)			
1402090000018000 (Etowah)	3002040001016000 (St. Clair)			
1403050001105017 (Etowah)	3002040001016000 (St. Clair)			
1501121000030000 (Etowah)	3003050001014000 (St. Clair)			
1506232000064000 (Etowah)	3003050001022001 (St. Clair)			
1506232000063000 (Etowah)	3003050001040000 (St. Clair)			
1507250001001000 (Etowah)	2909314001079000 (St. Clair)			
1504170001132001 (Etowah)	2909314001077000 (St. Clair)			

5.0 Non-Federal Sponsor Owned Lands:

Not applicable as this project is not cost shared. None of the lands identified in Section 4.0 have been identified as presently owned in Fee Simple by APC.

6.0 Recommended Estates

Standard Estate No. 6 (Flowage Easement – Occasional Flooding) is the estate which USACE typically utilizes for Federally-owned or cost shared projects, involving increased water surface elevation. In some situations involving physical takings, USACE may recommend Fee Simple, in accordance with the requirements of P.L. 91-646, as amended, the Uniform Relocation Act.

7.0 Existing Federal Projects

¹ See footnote 3.

Where substantial residential structures exist in areas subject to very infrequent flooding, and will not interfere with project operations, the following clause may be substituted, however, leaving these structures in place must be evaluated using the same criteria that would be used to grant permission for a new residential structure to be placed in the easement. See EC 405-1-80: "(and also excepting the structure(s) now existing on the land, described as ______, which may be maintained on the land provided that portion of the structure(s) located below elevation _____ feet, mean sea level, shall be utilized for human habitation to the extent that sleeping accommodations will be maintained therein)". The next clause would then be modified to read "provided that no other structures for "

³ See footnote 4

- 7.1 Allatoona Lake Project. Allatoona Lake Project is a fully-Federally owned and operated reservoir, operated by USACE.
- 7.2 Weiss & Logan Martin Reservoirs Portion of Project. These two reservoir projects are owned and operated by Alabama Power Company in accordance with Public Law 83-436. There have been no Federal projects identified at these locations.

8.0 Federally-owned Lands

- 8.1 Allatoona Lake Project. Allatoona Lake Project is a fully-Federally owned reservoir, operated by USACE. As of the date of this report, the Real Estate Management Information System (REMIS) currently reports a total of 658 active tracts, comprising 931,709 acres, more or less, currently owned in Fee Simple; 503,722 acres, more or less, currently owned in Easement estates; and 30,867 acres, more or less in use through other agreements (i.e., license agreements, permits, leases, etc).
- 8.2 Weiss & Logan Martin Reservoirs Portion of Project. There are no Federally-owned lands identified at APC's Weiss & Logan Martin Dams.

9.0 Navigational Servitude

Not applicable inasmuch as the purpose of the study was to review Alabama Power Company's request to changing flood operations.

The definition of navigation servitude is the dominant right of the Government under the Commerce Clause of the U.S. Constitution (U.S. CONST. Art. I, §8,cl.3) to use, control and regulate the navigable waters of the United States and the submerged lands thereunder for various commerce-related purposes including navigation and flood control. In tidal areas, the servitude extends to all lands below the mean high water mark. In non-tidal areas, the servitude extends to all lands within the bed and banks of a navigable stream that lie below the ordinary high water mark.

Determination of Availability. The determination of the availability of the navigation servitude is a two-step process. First, the Government must determine whether the project feature serves a purpose which is in the aid of commerce. Such purposes recognized by the courts include navigation, flood control and hydro-electric power. If it is so determined, then the second step is to determine whether the land at issue is located below the mean or ordinary high water mark of a navigable watercourse.

Exercise of Navigation Servitude. As a general rule, the Government does not acquire interests in real property that it already possesses or over which its use or control is or can be legally exercised. Therefore, if the navigation servitude is found to be available as a result of application of the process described above, then the Government will generally exercise its rights thereunder and, to the extent of such rights, will not acquire a real property interest in the land to which the navigation servitude applies. Generally,

it is the policy of the U.S. Army Corps of Engineers (USACE) to utilize the navigation servitude in all situations

10.0 **Maps**

Parcel maps showing the location of lands described in Section 4.0 are attached hereto as **Exhibit A.**

11.0 Induced Flooding

If, in the process of legal review, H&H and economic modelling efforts for the proposed change in operations, significant induced flooding is identified, Alabama Power Company shall complete a detailed assessment of requisite real estate acquisition prior to the final approval of the Water Control Manual. The analysis should incorporate the facts relating to the depth, frequency, duration, and extent of the expected induced flooding; discuss such facts in relationship to relevant case law regarding physical invasion takings and just compensation payment requirements; and present a reasoned conclusion on whether the expected induced flooding would rise to the level of a taking for which just compensation would be owed.

Pursuant to 33 CFR Part 208.11, subparagraphs (d)(1) and (2), During the planning and design phases, the project owner should consult with the Corps of Engineers regarding the quantity and value of space to reserve in the reservoir for flood control and/or navigation purposes, and for utilization of the space, and other requirements of the license, permit or conditions of the law. Relevant matters that bear upon flood control and navigation accomplishment include: Runoff potential, reservoir discharge capability, downstream channel characteristics, hydrometeorological data collection, flood hazard, flood damage characteristics, real estate acquisition for flowage requirements (fee and easement), and resources required to carry out the water control plan. Advice may also be sought on determination of and regulation for the probable maximum or other design flood under consideration by the project owner to establish the quantity of surcharge storage space, and freeboard elevation of top of dam or embankment for safety of the project, Corps of Engineers involvement. If the project owner is responsible for real-time implementation of the water control plan, consultation and assistance will be provided by the Corps of Engineers when appropriate and to the extent possible. During any emergency that affects flood control and/or navigation, the Corps of Engineers may temporarily prescribe regulation of flood control or navigation storage space on a dayto-day (real-time) basis without request of the project owner. Appropriate consideration will be given for other authorized project functions. Upon refusal of the project owner to comply with regulations prescribed by the Corps of Engineers, a letter will be sent to the project owner by the Chief of Engineers or his duly authorized representative describing the reason for the regulations prescribed, events that have transpired, and notification that the project owner is in violation of the Code of Federal Regulations. Should an impasse arise, in that the project owner or the designated operating entity persists in noncompliance with regulations prescribed by the Corps of Engineers, measures may be taken to assure compliance.

- •Generally, pursuant to ER 1110-2-1451, as codified in 33 CFR §222.2, USACE is required to assess hazardous areas downstream from spillways for the purpose of protecting the public from hazards imposed by spillway discharges.
- •FERC License to APC issued 4 September 1957 in Article 38 requires APC to acquire appropriate real estate rights to flood the lands above &below each dam. The requirement is separate and distinct from the requirement under ER1110-2-1451.
- •P.L. 83-436 (Coosa Power Act) of 28 JUN 1954, Sec. 9 states: "The operation and maintenance of the dams shall be subject to reasonable rules and regulations of the Secretary of the Army in the interest of flood control and navigation."

A part of the USACE evaluation of the request for changes to the operational plan is a determination of whether APC has sufficient land rights to support the operational change. CESAM-RE could not make a determination because the real estate records provided by APC did not have legal descriptions that clearly delineated the area over which rights were acquired. Coordination with FERC is required to ascertain whether it has determined or will determine whether APC has sufficient lands rights to support the operational change. Recommend that if FERC does not provide the determination that any approval of the operational change and change to the Operations Use Manual be made conditioned on APC demonstrating that it has sufficient land rights to support the operational change.

12.0 Baseline Cost Estimate for Real Estate

Since subject project is not cost shared, a nominal administrative cost of \$25,000 (Federal) is estimated if further validation of APC land acquisitions is anticipated.

13.0 Compliance with Public Law 91-646

Land acquisitions shall be governed by the provisions of the Uniform Relocations Assistance and Real Property Acquisition Policies Act (P.L. 91-646), as amended, 49 Code of Federal Regulations Part 24, and applicable laws and regulations for owner-occupant, non-residential and tenant-occupant residents. No P.L. 91-646 relocations are anticipated at this time based on current level of Engineering analysis.

14.0 Minerals and Timber Activity

- 14.1 Allatoona Lake Portion of Project. No known impact has arisen to existing flowage easements impacting mineral timber rights downstream of the dam. Therefore, it is not anticipated that acquisition of mineral and timber rights will be necessary.
- 14.2 Weiss & Logan Martin Reservoirs Portion of Project. No known impact has arisen to APC's existing flowage easements impacting mineral timber rights downstream of their dams. Timber and crops could potentially be impacted by flooding durations imposed by induced flooding conditions, which would require further analysis as noted in Section 11.

15.0 Land Acquisition Experience and Capability of the Non-Federal Sponsor

- 15.1 Allatoona Lake Portion of Project: Not applicable as subject project is fully-Federal and owned by United States of America / Corps of Engineers.
- 15.2 Weiss & Logan Martin Reservoirs Portion of Project. Not applicable inasmuch as subject project is not Cost Shared. Alabama Power Company is a utility regulated by the Alabama Public Service Commission. Furthermore, Alabama Power is one of the largest Real Estate land holders in the state, has more than 78,000 miles of electrical cable and is the largest taxpayer in the state, per company history.

16.0 **Zoning**:

- 16.1 Allatoona Portion of Project: There is no proposed zoning anticipated in lieu of acquisition.
- 16.2 Weiss & Logan Martin Reservoirs Portion of Project: There is no proposed zoning anticipated in lieu of acquisition.

17.0 Acquisition Schedule

- 17.1 Allatoona Lake Portion of Project. Not applicable inasmuch as no land acquisition is anticipated.
- 17.2 Weiss & Logan Martin Reservoirs Portion of Project. No data concerning a land acquisition schedule is available at this time.

18.0 Facility and/or Utility Relocations

- 18.1 Allatoona Lake Portion of Project. No facility or utility relocations have been identified as of the date of this report.
- 18.2 Weiss & Logan Martin Reservoirs Portion of Project. No facility or utility relocations have been identified as of the date of this report.

19.0 Hazardous, Toxic, and Radioactive Waste (HTRW)

- 19.1 Allatoona Lake Portion of Project. There is currently no identified HTRW impacts in conjunction with the TSP.
- 19.2 Weiss & Logan Martin Reservoirs Portion of Project. There is currently no identified HTRW impacts in conjunction with the TSP. Notwithstanding, Alabama Power Company shall be responsible for compliance with all Federal and State laws pertaining to HTRW, and bear responsibility for remediation of contaminated lands in accordance

with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

20.0 Attitude of Property Owners

- 20.1 Allatoona Lake Portion of Project. There is no known or anticipated support for, or opposition to, the project by landowners in the project area.
- 20.2 Weiss & Logan Martin Reservoirs Portion of Project. Per public coordination with the City of Southside, concerns were raised regarding many citizens of the City who have water front property on the Coosa River with major loss of property values with unreliable lake levels. The City is developing six acres on the river with two boat ramps, boardwalk, 48 boat slips and a possible restaurant, and the proposed changes could have an adverse effect on their development.

21.0 Notifications to Non-Federal Sponsor

- 21.1 Allatoona Lake Portion of Project. Not applicable.
- 21.2 Weiss & Logan Martin Reservoirs Portion of Project. Not applicable. Pursuant to the requirements of Public Law 83-436, APC is subject to "reasonable rules and regulations of the Secretary of Army in the interest of flood control and navigation" with respect to the operation and maintenance of hydropower dams.

22.0 Other Issues

- 22.1 Allatoona Lake Portion of Project. No impacts are anticipated to existing easements and outgrants as a result of enactment of operational changes with the TSP.
- 22.2 Weiss & Logan Martin Reservoirs Portion of Project. As of the date of this report, USACE interagency coordination is underway with FERC regarding the real estate interests possessed by Alabama Power Company.

23.0 Recommendations:

This report has been prepared in accordance with Paragraph 12-16 of Chapter 12 of the Real Estate Handbook, Corps of Engineers Regulation (ER) 405-1-12. The portion of the report concerning the Alabama Power Company reservoirs has been prepared in accordance with 33 CFR Part 208.11. It is recommended that this report be approved.

Approved by:

KAREN M. KENNEDY
District Chief of Real Estate
Real Estate Contracting Officer
U.S. Army Engineer District, Mobile

Drafted by:

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