

160 FERC ¶ 62,219UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Alabama Power Company

Project No. 349-193

ORDER APPROVING SHORELINE MANAGEMENT PLAN

(Issued September 12, 2017)

1. On December 19, 2016, Alabama Power Company, licensee for the Martin Dam Hydroelectric Project No. 349, filed a Shoreline Management Plan (SMP), pursuant to Article 412 of the project's license.¹ The project is located on the Tallapoosa River in Tallapoosa, Elmore, and Coosa counties, Alabama, and occupies federal land administered by the U.S. Bureau of Land Management.

I. Project Description

2. The Martin Dam Hydroelectric Project is located in the Tallapoosa River Basin which is approximately 4,675 square miles in east-central Alabama and western Georgia. The project boundary encloses approximately 49,750 acres of land. Of this, approximately 41,150 acres are inundated by the reservoir, roughly 8,600 acres are Lake Martin project land above the reservoir's high water mark (491-foot elevation contour), and approximately 880 miles are project shoreline. The project boundary generally follows the 491-foot elevation contour line around the reservoir, except where it encloses additional lands that serve project purposes (e.g., land occupied by project facilities and recreation areas, and land needed for the management and protection of wildlife and natural resources).

II. Background

3. Article 412 of the project's license requires Alabama Power to file a revised SMP for Commission approval. The plan must include, at a minimum: (1) a description, including acreage and a map or maps of the following seven land use classifications listed in the proposed Shoreline Management Plan filed on June 8, 2011: (i) project operations; (ii) recreation; (iii) quasi-public; (iv) commercial recreation; (v) natural/undeveloped;

¹ Order Issuing New License (153 FERC ¶ 61,298), issued December 17, 2015.

(vi) Martin Small Game Hunting Area; and (vii) 30-foot control strip; (2) a provision for using Geographic Information System (GIS) data to record areas designated as sensitive resources; (3) a description of allowable and prohibited uses for each of the above land use classifications; (4) a description of best management practices, including bio-engineering techniques such as willow and wetland plantings to control erosion; (5) a description of the licensee's Dredge Permit Program, as approved by the Commission on July 6, 2011; (6) a description of the licensee's existing Lake Shore Use Permitting Program and Shoreline Compliance Program, specific to the Martin Dam Project; (7) a provision to limit construction of new seawalls to instances where riprap and vegetation are not sufficient to protect shoreline habitat from erosion, and to include criteria that must be applied in approving the installation of any new seawall; (8) a description of the encroachments at the Martin Dam Project, including the number of encroachments that have been addressed, the method of resolution, and the number and location of encroachments that remain unresolved; and (9) a provision to review and update the Shoreline Management Plan over the term of the license.

4. The proposed SMP must incorporate the project boundary modifications and the reclassification of project lands from the natural/undeveloped classification to the recreation classification for the following project recreation sites as described in Section 4.1.1 of the proposed Recreation Plan filed December 9, 2011: (1) Madwind Creek Ramp (5.8 acres); (2) Smith Landing (4.2 acres); (3) Union Ramp (7.0 acres); (4) Bakers Bottom Landing (1.9 acres); (5) Jaybird Landing (19.9 acres); (6) Pace Point Ramp (8.7 acres); (7) Paces Trail (24.1 acres); and (8) Ponder Camp (Stillwaters Area Boat Ramp) (36.4 acres).²

5. Article 412 also requires Alabama Power to file GIS data showing the project reservoir, tailrace, and SMP classifications.

III. Licensee's Proposal

6. The purpose of the proposed SMP is to provide a comprehensive guide for managing the project's shoreline in a manner consistent with project purposes and license requirements. The proposed SMP's primary purpose is to ensure that shoreline development is consistent with the protection and enhancement of environmental, scenic, cultural, and recreational values, while ensuring continued safe and reliable hydropower production. General goals under the proposed SMP include the following: facilitate compliance with license articles; provide reasonable public access; protect fish and

² Article 410 of the project's license requires Alabama Power to file, for Commission approval, a revised Recreation Plan. Alabama Power filed the revised Recreation Plan on December 12, 2016, the review of the Recreation Plan is being conducted under a separate proceeding, P-349-194.

wildlife habitat and cultural resources; protect operational needs; minimize erosion; minimize adverse impacts to water quality and scenic resources; and guide shoreline development. The proposed SMP describes Alabama Power's shoreline management and conservation policies, shoreline management classifications, Shoreline Compliance Program, best management practices, and erosion and sediment control measures.

7. The proposed SMP incorporates Alabama Power's shoreline conservation and management policies, which include: (1) the conservation and protection of project shore lands and their associated scenic, cultural, recreational, and environmental values, (2) encouraging alternative bank stabilization techniques other than seawalls; (3) allowing dredging on a case by case basis with prior licensee approval and restricting dredging in and around sensitive resource areas,³ (4) prohibiting channelization on Alabama Power reservoirs, and (5) evaluating applications for water withdrawal on a case-by-case basis, seeking Commission approval when necessary, and charging withdrawals accordingly.

8. Alabama Power classified lands based upon its evaluation of existing land uses, land ownership, and knowledge regarding shoreline resource values. The proposed seven shoreline classifications include: (1) project operations; (2) recreation; (3) quasi-public lands; (4) commercial recreation; (5) natural/undeveloped;⁴ (6) 30-foot control strip; and (7) sensitive resources designation. Appendix D of the proposed SMP includes shoreline classification maps. In general, Alabama Power owns in fee the lands within the project operation, recreation, quasi-public lands, commercial recreation, and natural undeveloped classifications, and manages these lands for project purposes, including public recreational uses. Within the 30-foot control slip classification, Alabama Power maintains an easement on the privately-owned lands and prohibits certain activities (i.e., habitable structures). The SMP includes the acreage of project lands and shoreline

³ Appendix C incorporates the previously approved Dredge Permit Program into the proposed SMP. *See* Order Modifying and Approving Dredge Permit Program (136 FERC ¶ 62,012), issued July 6, 2011. As part of the program, Alabama Power will file an annual report with Commission by January 31, listing any activity removing up to 500 cubic yards of material from the project, during the preceding year. Any activity involving the removal of more than 500 cubic yards would not qualify under this program and would require specific Commission approval and U.S. Army Corps of Engineers permitting.

⁴ The Martin Small Game Hinting Area is a sub-classification of the natural/undeveloped lands which is managed according to the Martin Wildlife Management Program, approved by license Article 409.

miles within each classification, and a description of allowable and prohibited uses for each classification.

9. The sensitive resources designation has been identified as one to be used in conjunction with the shoreline classifications listed above. Of the project's approximate 880 miles of shoreline within the project boundary, 82.5 miles are designated as sensitive resources. Lands designated as sensitive resources are managed for the protection and enhancement of resources that may be protected by state and/or federal law, executive order, and other resources considered important to the area or natural environment. Sensitive resources covered under this designation include: archeological sites and structures listed on or eligible for listing on the National Register of Historic Places; wetlands; floodplains; protected habitat for rare, threatened, and endangered species; significant scenic areas; and other sensitive ecological areas. Alabama Power maintains current GIS data on the locations of shoreline classified as sensitive resources, and requires an internal environmental review for any proposed activity in these sensitive areas prior to issuance of any permit.

10. The proposed SMP includes a sensitive resource evaluation matrix to aid in expediting Alabama Power's permitting process for residential shoreline permits in areas with known wetlands and cultural resources. The matrix identifies specific activities that Alabama Power can permit without further agency consultation and specific restrictions on permitting within the sensitive resource designation. Alabama Power states that there are currently no threatened and endangered species located within the project boundary; however, should species be discovered in the future their location and an appropriate buffer zone will be added to the sensitive resources GIS layer.

11. Alabama Power's Shoreline Compliance Program incorporates existing programs and processes to identify and manage both permitted and unpermitted structures around project reservoirs. The program contains various components, including shoreline permitting, structure identification, assessment, and resolution, public education and communication, surveillance, shoreline litigation, and shoreline preservation initiatives.⁵

12. Alabama Power issues permits for development or construction (e.g., land disturbance, dredging, boat docks, piers, shoreline stabilization, and any activity conveying an interest in, on, or across project lands) along the reservoir shoreline and within the project boundary before work begins. Alabama Power refers to its delegated authority under Article 414 (i.e., the standard land use article), and recognizes the need

⁵ A copy of the March 14, 2012 Shoreline Compliance Program letter is included with the Martin Unpermitted Structure Report and is incorporated into the proposed SMP as Appendix F.

for Commission approval of proposals outside the scope of Article 414. The proposed SMP outlines Alabama Powers' step-by-step permitting process, and includes general guidelines (Appendix E to the proposed SMP) for shoreline permitting applicable to development and construction activities within the project boundary as well as legacy structure assessment and resolution processes. The proposed SMP also describes the licensee's efforts in monitoring, enforcing, transferring, and revoking of shoreline permits. Lastly the proposed SMP addresses dilapidated, abandoned, and unpermitted structures.

13. The proposed SMP also includes a description of its current erosion control and best management practices and includes the Shoreline Management Practices brochure available to the public (Appendix H to the proposed SMP). These include vegetative plantings, bioengineering techniques, and a variety of best management practices for various types of proposed shoreline activities. Alabama Power states it is committed to implementing applicable best management practices on Alabama Power fee simple owned lands classified as recreation and natural/undeveloped. Alabama Power recommends that property owners adopt shoreline best management practices to maintain and preserve qualities associated with naturally vegetated shorelines, including water quality protection, shoreline stabilization, aesthetics, and wildlife habitat. Alabama Power provides additional information to the public periodically through its *Shorelines* newsletter, featuring educational information regarding erosion control and best management practices; additional information is also available at: <https://apcshorelines.com/shorelinemanagement/>.

14. Alabama Power proposes to review the SMP and permitting program every six years, beginning with a meeting that includes the consulting agencies by December 31 of the fifth year, and then continuing the review with input from all interested parties. Alabama Power proposes to advertise the upcoming review of the SMP one month prior to beginning through its website and *Shorelines* newsletter, and by contacting various homeowner associations. At the end of each six-year review cycle, Alabama Power proposes to file a report describing the consultation process and any recommended modifications to the SMP, as well as a description of how Alabama Power addressed any proposed modifications to the SMP. As stated above, information regarding sensitive resources (e.g., wetlands, threatened and endangered species, and cultural resources) will be updated as new information becomes available. Additionally, Alabama Power proposes to host public workshops to address SMP questions, especially with regard to permitting.

IV. Agency Consultation and Public Notice

15. Alabama Power provided a draft of the proposed SMP to the U.S. Fish and Wildlife Service, the Alabama Department of Conservation and Natural Resources, and the Alabama Historical Commission on November 1, 2016. The Alabama Department of

Conservation and Natural Resources, and the Alabama Historical Commission responded stating they did not have any comments on the proposed SMP. The U.S. Fish and Wildlife Service did not respond to Alabama Powers request for comments.

16. On March 31, 2017, the Commission issued a public notice of Alabama Power's proposed SMP with a comment filing deadline of May 1, 2017. No comments were received in response to the notice.

V. Discussion and Conclusion

17. As proposed, the SMP incorporates all the requirements outlined in Article 412 and includes as appendixes the Shoreline Compliance Program and the Dredge Permit Program.

18. The Shoreline Compliance Program was initiated by Alabama Power to ensure compliance of activities that occur on Project shorelines. Alabama Power proposes to continue the program to implement the SMP. The proposed SMP identifies Alabama Power's intent to file annual reports on its progress in implementing its Shoreline Compliance Program and encroachment resolution. These annual reports should provide a general overview of the licensee's progress in resolving encroachments rather than providing specific details and descriptions of encroaching structures. Specifically, the annual reports should include a description of the number of encroachments discovered to date, the number of encroachments that have been resolved, the method of such resolution, and any other details that might aid Commission staff in tracking Alabama Power's progress in resolving encroachments at the project. The reports should be filed with the Commission by December 31 each year, beginning on December 31, 2018, until the Commission determines (on its own or at the request of the licensee) that such reports are no longer needed. Ordering paragraph (B) incorporates this filing requirement into the project's license.

19. The Dredge Permit Program, if approved as part of the SMP, would authorize Alabama Power to permit the dredging and removal or relocation of materials up to 500 cubic yards. Alabama Power states it will only issue dredging permits to applications that conform to the U.S. Army Corps of Engineers General Permits, and that the program does not apply to lands designated as 'sensitive' under the SMP nor any removal or filling of special aquatic sites, including wetlands. Activities involving the removal of more than 500 cubic yards would not qualify under this Program and would require specific Commission approval and U.S. Army Corps of Engineers permitting. As stipulated in the Dredge Permit Program, ordering paragraph (C) requires Alabama Power to file an annual report on dredging activities permitted at the project by January 31 annually. The report should include any activities individually removing up to 500 cubic yards of material from the project, during the preceding year, and should include: the location of the dredging, amount of material removed, purpose of the removal

activity, whether material was removed wet or dry, what techniques and equipment were used, location of spoil material placed, and other pertinent information with respect to effects on the environmental resources of the project.

20. The SMP also references general guidelines and shoreline conditions attached as appendices such as the Residential Shoreline Permitting and Permit Terms and Conditions, shoreline classification maps, and the Martin Unpermitted Structure Report. Alabama Power has stated that the most current shoreline permitting and permitting guidelines will be attached to the SMP as a reference as it is updated over the term of the license (i.e., reflect any modifications made to the guidelines over the preceding six-year period). While we concur with Alabama Power's reservation to make necessary modifications to the guidelines and permitting policies, we expect that such changes would not be inconsistent with the overall intent and purposes of the approved SMP and any changes are necessary to allow the licensee to meet its overall obligations and responsibilities under the project's license.

21. In addition to the shoreline classifications, the SMP further designates a substantial portion of its shoreline as containing sensitive resources. This designation includes cultural resources, wetlands, floodplains, habitat protection areas for rare, threatened, and endangered species, significant scenic areas, and other sensitive ecological areas. Specific allowable uses along shorelines designated as sensitive resources depend on the type of resource present, but in general, require an additional level of review by Alabama Power before permitting, as well as resource-specific restrictions for various types of activities. This proposed approach to manage shoreline activities within areas designated as sensitive resources would help to ensure these environmental resources are protected. Because protection of environmental resources is an important project purpose, shoreline activities within areas designated as sensitive resources should be monitored on a comprehensive basis. Thus, ordering paragraph (D) requires Alabama Power to file a report by January 31 of each year, that describes for each permitted activity on shoreline designated as sensitive resources the following: (1) the type of activity permitted; (2) the reason for the sensitive resource designation (e.g., scenic resources, wetlands, etc.); (3) any measures taken to avoid or mitigate adverse effects to a resource; (4) the results of any agency consultation efforts required under the evaluation matrix; and (5) any other information that otherwise justifies granting a permit in sensitive shoreline areas. Alabama Power may file the annual reports under privileged access if doing so would protect the location or other sensitive information regarding any specific environmental resources.

22. As proposed, the SMP would be updated every six years to ensure continued management of changing conditions around the reservoir and shoreline resources. The licensee proposes to file a report by December 31 of each six-year-cycle describing the consultation process and any recommended modifications to the SMP, as well as a description of how it addressed any proposed modifications. We concur with the

proposed SMP update provisions. However, to ensure full consideration of the update filings, ordering paragraph (E) includes more definitive requirements regarding agency consultation and any proposals to modify the approved SMP based on the six-year review.

23. Alabama Power asked for reconsideration of its previous request to remove portions of land within the project boundary and provided additional information supporting its request. This review is being handled under a separate proceeding, docket P-349-195, which will not affect the approval of the proposed SMP. Depending on the final disposition of the land removal request, provisions regarding Article 412 GIS requirements will be addressed in that proceeding.

24. The SMP, as modified above, fulfills the requirements of Article 412 and will serve as a comprehensive guide for managing the project's shoreline in a manner consistent with license requirements and project purposes. The SMP will help ensure that shoreline development is consistent with the protection and enhancement of environmental, scenic, cultural, and recreational values, without impeding the continued safe and reliable production of hydroelectric power at the project. For these reasons, the proposed SMP should be approved.

The Director orders:

(A) Alabama Power Company's Shoreline Management Plan for the Martin Dam Hydroelectric Project No. 349, filed on December 19, 2016, as required by license Article 412, is approved.

(B) By December 31 each year, beginning on December 31, 2018 and until the Commission determines (on its own or at the request of the licensee) that such reports are no longer needed Alabama Power Company must file an annual status report on its activities under the project's Shoreline Compliance Program. The annual report must provide a general overview of the Alabama Power Company's progress in resolving encroachments at each project reservoir and include a description of the number of encroachments discovered to date, number of encroachments that have been resolved, method of such resolution, and any other details that might aid Commission staff in tracking the Alabama Power Company's progress in resolving encroachments at the project. The Commission reserves the right to request additional information or specific details regarding the encroachment summaries.

(C) By January 31 of each year, beginning on January 31, 2018, Alabama Power Company must file a report that describes any activities individually removing up to 500 cubic yards of material from the project during the preceding year, as described in the Dredge Permit Program. The report must include: the location of the dredging, the amount of material removed, purpose of the removal activity, whether material was removed wet or dry, what techniques and equipment were used, location of spoil material

placed, and other pertinent information with respect to effects on the environmental resources of the project.

(D) By January 31 of each year, beginning on January 31, 2018, Alabama Power Company must file a report that describes, for each permitted activity authorized during the prior calendar year on shoreline designated as sensitive resources, the following: (1) the type of activity permitted; (2) the reason for the sensitive resource designation (e.g., scenic resources, wetlands, etc.); (3) any measures taken to avoid or mitigate adverse effects to a resource; (4) the results of any agency consultation efforts required under the evaluation matrix; and (5) any other information that justifies granting a permit in sensitive shoreline areas. Alabama Power Company may file the annual reports for privileged access only if not doing so could potentially hinder efforts to protect environmental resources. The Commission reserves the right to require changes to the shoreline management plan based on the results of the annual reports.

(E) Beginning on December 31, 2023, and every six years thereafter, Alabama Power Company must file, a Shoreline Management Plan update or report describing the consultation process, any recommended modifications to the Shoreline Management Plan, and if applicable a plan and schedule for addressing any proposed modifications. The report must also include the Shoreline Management Plan current permitting guidelines and identify any changes made to the guidelines, as well as any changes made to the sensitive resources designation, permitting process, or matrix; along with supporting justification for such changes. The update/report must be filed for Commission approval and be prepared in consultation with, at a minimum, the U.S. Fish and Wildlife Service, the U.S. Bureau of Land Management, the Alabama State Historic Preservation Office, and the Alabama Department of Conservation and Natural Resources. Alabama Power Company's update/report must include documentation of consultation with the agencies and specific descriptions of how the entities' comments are accommodated in the update/report. Alabama Power Company must allow a minimum of 30 days for the entities to comment and to make recommendations prior to filing the update/report with the Commission. If Alabama Power Company does not adopt a recommendation, the filing must include the reasons based on project-specific information. The Commission reserves the right to require changes to the Shoreline Management Plan based on the filed update reports.

(F) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2012), and section 385.713 of the

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Commission's regulations, 18 C.F.R. § 385.713 (2017). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Robert J. Fletcher
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and Compliance

Document Content(s)

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