

APPENDIX C

Public Notice Responses

4/11/11



United States Department of the Interior

FISH AND WILDLIFE SERVICE
1208-B Main Street
Daphne, Alabama 36526

MAR 28 2008

IN REPLY REFER TO:
2008-I-0007

Paul G. Roebuck, Vice President
Krebs Engineering
2100 River Haven Drive, Suite 100
Birmingham, Alabama 35244

Dear Mr. Roebuck:

This is in response to your letter of March 6, 2008, requesting a Biological Opinion for impacts to listed species in relation to the Athens Utilities proposal to install water and sewer pipelines via open-trench crossings through sections of the Piney and Mill Creek watersheds (Krebs Project No. 07034). In your letter you included construction specifications, cross sections of each proposed creek crossing, and an aquatic species survey conducted by AST Environmental Group that revealed the presence of the armored snail (*Maristonia pachyta*) and the slender campeloma snail (*Campeloma decampi*) within the project area. Our office concurred with the survey protocol and findings by written correspondence on October 29, 2007, and requested to be kept informed of the progress of this project.

Biological opinions are normally prepared by the U.S. Fish and Wildlife Service (Service) in the concluding phase of the formal consultation procedure under section 7 of Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). Formal consultation may only be initiated and conducted by a Federal action agency. This initiation occurs when a Federal agency determines its actions may affect and is likely to adversely affect listed species/critical habitat. Non-Federal representatives may request species lists, prepare biological assessments, and provide other information but must be designated in writing by the Federal agency.

Prior to issuing a Biological Opinion, the Service must review a Biological Assessment prepared by the Federal action agency supporting its determination of effect on listed species. By regulation, a Biological Assessment is prepared for "major construction activities" considered to be Federal actions significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act of 1969 [(42 U.S.C 4332(2)(C))]. A Biological Assessment is required if listed species or critical habitat may be present in the action area. A Biological Assessment may also be recommended for other activities to ensure the agency's early involvement and increase the chances for resolution during informal consultation.

PHONE: 251-441-5181



FAX: 251-441-6222

31 MAR 2008

It is our opinion that this project could be evaluated through informal consultation procedures if less intrusive construction methods are implemented (i.e. directional drilling or spanning the streams entirely). We would be very interested in further discussions with the action agency involving methods to minimize impacts to listed species. However, if the Federal agency wishes to proceed with the project as currently proposed, we would recommend requesting the initiation of formal consultation.

Federal action agencies initiate formal consultation through a written request to the Service. To comply with the section 7 regulations (50 CFR 402.14(c)), the initiation package is submitted with the request for formal consultation and must include all of the following:

- a description of the action being considered;
- a description of the specific area that may be affected by the action;
- a description of any listed species or critical habitat that may be affected by the action;
- a description of the manner in which the action may affect any listed species or critical habitat, and an analysis of any cumulative effect;
- relevant reports, including any environmental impact statements, environmental assessments, biological assessment or other analyses prepared on the proposal; and
- any other relevant studies or other information available on the action, the affected listed species, or critical habitat.

While your submittal contained some of this information, additional information will be necessary in order for us to provide a sufficient review. If the Federal action agency would like to initiate formal consultation, we recommend submitting a complete Biological Assessment for the action area of this project. For your convenience, we have enclosed an example outline for a Biological Assessment. Also, refer to the following website for helpful information on preparing a Biological Assessment:

<http://www.fws.gov/daphne/section7/section7.html>

Please follow the *Outline*, *Contents*, and *Common Flaws* links for more specific information.

We appreciate the opportunity to review the construction specifications of this proposal and look forward to continuing our evaluation of the effects of the proposed action on the armored snail and slender campeloma snail. If you have any questions or would like to discuss options for precluding formal consultation, please contact Mr. Josh Rowell of my staff at (251) 441-5836.

Mr. Paul G. Roebuck

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Please refer to the reference number located at the top of this letter in future phone calls or written correspondence.

Sincerely,


for William J. Pearson
Field Supervisor
Alabama Ecological Services Field Office

Enclosure

cc: Ms. Amy Robinson, USCOE, Nashville, TN
Ms. Samantha Strickland, TVA, Muscle Shoals, AL
Mr. Jeff Garner, ADCNR, Montgomery, AL
Mr. James Cherry, ADCNR, Montgomery, AL
Ms. Tonya Mayberry, ADEM, Montgomery, AL

**OUTLINE EXAMPLE
FOR A
BIOLOGICAL ASSESSMENT OR BIOLOGICAL EVALUATION**

- A. **Cover letter – VERY IMPORTANT – Include purpose of consultation, project title, and consultation number (if available). A determination needs to be made for each species. You have three options: 1) a "no effect" determination; 2) requesting concurrence with an "is not likely to adversely affect" determination; 3) a "may affect, is likely to adversely affect" determination, and a request for formal consultation. If proposed species or critical habitat is included, state whether the project is likely to result in jeopardy to proposed species, or the destruction or adverse modification of proposed critical habitat.**

- B. **Project description - Describe the proposed action and the action area. Be specific and quantify whenever possible.**

- C. **For Each Species**
 - 1. **Description of affected environment (quantify whenever possible)**
 - 2. **Description of species biology**
 - 3. **Describe current conditions for each species**
 - a. **Rangewide**
 - b. **In action area**
 - c. **Cumulative effects of State and private actions in action area**
 - d. **Other consultations of Federal action agency in area to date**
 - 4. **Describe critical habitat (if applicable)**
 - 5. **Describe effects of proposed action on each species and/or critical habitat.**
 - a. **Direct**
 - b. **Indirect**
 - c. **Interrelated and interdependent actions**
 - d. **Incidental take**

- D. **Conservation measures (protective measures to minimize effects for each species)**

- E. **Conclusions (effects determination for each species)**

- F. **Literature Cited**

- G. **List of Contacts Made/Preparers**

- H. **Maps/ Photographs**

discountable simply because we are not certain they will occur. The probability of occurrence must be extremely small to achieve discountability. Likewise, adverse effects do not meet the definition of insignificant because they are less than major. If the adverse effect can be detected in any way or if it can be meaningfully articulated in a discussion of the results, then it is not insignificant, it is likely to adversely affect. This requires formal consultation with the Service.

A fourth finding is possible for proposed species or proposed critical habitat:

4. "Is likely to jeopardize/adversely modify proposed species/critical habitat" is the appropriate conclusion when the action agency identifies situations in which the proposed action is likely to jeopardize the proposed species, or destroy or adversely modify the proposed critical habitat. If this conclusion is reached, conference is required.

List the species experts you contacted when preparing the BE or BA but avoid statements that place the responsibility for the decision of "may affect" or "no effect" on the shoulders of the species experts. Remember, this decision is made by the Federal action agency.

Provide supporting documentation, especially any agency reports or data that may not be available to the Service. Include a list of literature cited.

Prepared by:
U.S. Fish and Wildlife Service
Arizona Ecological Services Field Office
January 1997

Revised by:
U.S. Fish and Wildlife Service
New Mexico Ecological Services Field Office
April 1997

Edited by:
U.S. Fish and Wildlife Service
National Conservation Training Center
Conservation Science and Policy Branch
June 2006



STATE OF ALABAMA
ALABAMA HISTORICAL COMMISSION
468 SOUTH PERRY STREET
MONTGOMERY, ALABAMA 36130-0900

FRANK W. WHITE
EXECUTIVE DIRECTOR

August 15, 2008

TEL: 334-242-3184
FAX: 334-240-3477

Samantha Strickland
USACE Nashville District
3701 Bell Road
Nashville, Tennessee 37214

21 AUG 2008

Re: AHC 08-1035
COE-T 08-25
Water & Sewer Line Construction
Limestone County, Alabama

Dear Ms. Strickland:

Upon review of the above referenced project, we have determined that we previously concurred with this project. We continue to concur with project activities provided the scope of work remains the same. However, if the scope of work changes, further consultation with our office will be necessary.

Should artifacts or archaeological features be encountered during project activities, work shall cease and our office shall be consulted immediately. Artifacts are objects made, used or modified by humans. These include but are not limited to arrowheads, broken pieces of pottery or glass, stone implements, metal fasteners or tools, etc. Archaeological features are stains in the soil that indicate disturbance by human activity. Some examples are postholes, building foundations, trash pits and even human burials. This stipulation shall be placed on the construction plans to insure contractors are aware of it.

We appreciate your efforts on this project. Should you have any questions, please contact Greg Rhinehart at (334) 230-2662. Please have the AHC tracking number referenced above available and include it with any correspondence.

Truly Yours,

Elizabeth Ann Brown
Deputy State Historic Preservation Officer

EAB/GCR/gcr