

Coosa / Warrior Relicensing Term Sheet

July 11, 2005

07-11-05

This "Term Sheet" is provided to assist APC and the USFWS and ADCNR (Agencies) in resolution of the final ecological issues identified in the February 9, 2005 letter from APC, and discussed at the May 11, 2005 and June 15, 2005 meetings between APC, USFWS, and ADCNR. Resolution of these issues is crucial for their inclusion in the Environmental Assessment as part of the "APC Enhancement Proposal".

1. Weiss Bypass Adaptive Management Plan (AMP)

APC will submit the consensus-based 9-21-04 version (as amended by Technical Team meeting on 2-28-05 and 3-15-05) of the Weiss Bypass AMP as part of the "APC Enhancement Proposal". The AMP has been revised to add wording that the Weiss Bypass Technical Team will continue their work on the development of goals and criteria and file these goals and criteria with FERC by December 31, 2005. If consensus on goals and criteria cannot be reached, ADCNR and USFWS will provide their goals and criteria to FERC as will APC for FERC's evaluation and decision as part of the dispute resolution process outlined in the AMP.

2. Smith Tailrace Agreement

APC proposes to include the final version of the consensus-based Smith Tailrace Enhancement Proposal (distributed by e-mail on May 18, 2005 to the Smith Tailrace Working Group) as part of the "APC Enhancement Proposal".

3. Erosion Repair and Monitoring Plan

APC proposes to include the Erosion Repair and Monitoring Plan (distributed to the E2 IAG on May 24, 2005 as part of the "APC Enhancement Proposal". The ADCNR and USFWS are generally supportive of this Plan, but reserve the right to comment on specific aspects of the Plan. Any additional details on the Plan will be resolved prior to December 31, 2005 and if necessary, a revised plan will be filed with FERC.

4. Aquatic Research and Culture Center for Aquatic Species of Concern

APC proposes to provide funding to the proposed ADCNR Aquatic Research and Culture Center as part of the "APC Enhancement Proposal". This funding will assist the ADCNR with the creation and operation of an aquatic research and culture center. APC and the Agencies view this proposal as a positive enhancement measure associated with project-related species of concern (including T&E species) and habitat fragmentation type issues in the Coosa and Warrior Basins, as well as in other areas of the state. APC proposes to provide a total of \$ 2,800,000 (2007 dollars) in funding over a 16 year period, beginning with the issuance of a new license. A proposed draft agreement (including funding schedule) is attached, the details of which will be resolved prior to December 31, 2005 and filed with FERC.

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5. Section 7 ESA Consultation

APC proposes to include the Biological Assessment (BA) prepared by APC in the Coosa and Warrior Environmental Assessments. A copy of the BA will be sent to the USFWS by the end of July 2005. The BA contains the latest agreements (up through our May 2005 discussions) on the red-cockaded woodpecker and various USFWS recommendations from Jeff Powell and Patric Harper on aquatic species analysis. USFWS proposes to keep APC involved in the Section 7 process even after the Biological Opinion has been filed with FERC. APC has agreed to continue their cooperation with the USFWS on Section 7 ESA issues during the new license. Each of these agreements and proposals will be included in the “APC Enhancement Proposal”.

6. Minimum Flow Review

APC proposes to continue the E10 IAG work plan as part of the “APC Enhancement Proposal”. A specific timeline has been developed for continued discussions of minimum flows at each of the Coosa developments identified in the February 9, 2005 letter – Neely Henry, Logan Martin, Lay, and Mitchell, as follows;

- Lay and Mitchell - A limited collection of aquatic fauna data (focusing on riverine species, including T&E species) in the tailwater areas will be conducted and the subsequent flow feasibility evaluation will be completed by July 31, 2006.
- Henry and Logan Martin - Collection of aquatic fauna data (focusing on riverine species, including T & E species) in the tailwater areas will be conducted in 2006 and 2007. Also, at the conclusion of the monitoring period specified in Section 401 Water Quality Certificate, additional aquatic fauna data will be collected and the subsequent flow feasibility evaluation will be completed within one year.
- APC and the Agencies are currently discussing the details and the level of sampling for each of these efforts and will resolve these issues prior to December 31, 2005 and file the details with FERC.

7. Habitat Enhancement Program

APC proposes to provide funding to the proposed ADCNR Habitat Enhancement Program as part of the “APC Enhancement Proposal”. The funding will assist the ADCNR with the creation and operation of a Habitat Enhancement Program which will provide for reservoir and tributary habitat enhancements in the Coosa and Warrior Project developments. APC proposes to provide a total of \$ 4,700,000 (2007 dollars) in funding beginning with the issuance of a new license. A proposed draft agreement (including funding schedule) is attached, the details of which will be resolved prior to December 31, 2005 and filed with FERC.

APC acknowledges that aquatic habitat improvements in the developments is a positive enhancement effort that will provide benefits to riverine species, T&E species, species of concern, game and non-game species, habitat fragmentation, and potentially water quality. Many of the

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other APC proposed measures have focused on this enhancement (DO improvements, Shoreline Management Plan, minimum flows, erosion and siltation plans, etc.) The additional implementation of a minimum flow requirement below Neely Henry, Logan Martin, Lay and Mitchell developments would also provide additional habitat enhancements above APC's current proposed action. Therefore, should minimum flows be required at any of these four developments, APC proposes to reduce the base amount of habitat funding shown in Table 1 of the draft agreement in proportion to the economic value of the additional minimum flows, up to a maximum reduction of 40 % of the yearly funding amount. Any reduction in funding, however, would not be implemented until three years after this percentage is determined.

The economic value of an additional minimum flow would be determined once the flow quantity and schedule is established. This value would be based upon the FERC approved methodology for joint uses of project waters and include the calculated replacement cost of lost generation and capacity associated with the release. The basis and results from that calculation will be provided to the Agencies for comment prior to submittal to the FERC.

8. Fish Passage on the Alabama River

As part of the "APC Enhancement Proposal", APC proposes to cooperate with the USFWS in continued discussions of fish passage on the Alabama River with the USACE and other interested parties. APC has agreed to jointly participate with the USFWS and the Corps in the evaluation of passage-related options on the Alabama River in lieu of the USFWS pursuing those options on the Coosa River.

Attachments: 1) Draft Enhancement and Restoration Program for Aquatic Threatened and Endangered Species and Species of Concern within the State of Alabama
2) Draft Fisheries Habitat Enhancement and Restoration Program

Enhancement and Restoration Program for Aquatic Threatened and Endangered Species and Species of Concern within the State Of Alabama

Introduction

As part of the Fishery Enhancement Plan(s) for the Coosa River Project and the Warrior River Project, Alabama Power Company (APC) proposes to establish a Culture Facility Fund (Fund) to partially fund the establishment and operation of a culture facility to be owned and operated by Alabama Department of Conservation and Natural Resources (ADCNR) for the propagation of threatened and endangered fish, mussels and shellfish and other aquatic species of concern within the State of Alabama. The purpose of the Fund is to provide funding to enable the ADCNR to enhance and restore threatened and endangered species and species of concern within the State of Alabama.

Organizational Structure

A work group will be formed by representatives from APC and ADCNR to review on an annual basis the projects on which to work during the coming year. These projects shall be designed to enhance and/or restore aquatic threatened and endangered species and aquatic species of concern within the State of Alabama.

Funding

APC will establish a Culture Facility Fund (Fund). The Fund shall be maintained by APC and money will accrue annually into the Fund in accordance with the FINANCIAL SUPPORT SCHEDULE contained herein. ADCNR and APC will be able to draw on this Fund for reimbursement of material, labor, equipment, office supplies, matching funds for grants, and subcontract services required to plan, construct, manage, operate and maintain the culture facility. However, the decision as to the allocation of the funding for projects shall reside with the ADCNR.

FINANCIAL SUPPORT SCHEDULE:

a. Upon execution hereof, APC agrees to establish a Fund. APC agrees to make payments into the Fund in accordance with the Base Amount funding schedule in Table 1 (but subject to adjustments in accordance with sub paragraph b of this Section) for the use of APC and ADCNR in enhancing and restoring wildlife over the life the Coosa and Warrior River Project Licenses. Actual payment of such contributions shall be on the following schedule.

Annually in arrears, each payment being the annualized amount as adjusted in accordance with sub paragraph b. The first payment shall be due on the last day of February, in the year following issuance of the new licenses for the Coosa and Warrior Projects by the Federal Energy Regulatory Commission (FERC) and acceptance of the licenses by APC, which is expected to occur in 2007. The first payment shall be for the full Base Amount of the first funding year. All subsequent payments will be made on the last day of the month February.

b. The annualized contributions outlined above in sub paragraph a. shall be adjusted as follows:

The calendar year 2007 shall be deemed the Base Year as used in this provision. It is the intent of this agreement that APC shall make an annual payment into the Fund each year after the licenses for the Coosa and Warrior Projects are issued by FERC and approved by APC, as scheduled in sub paragraph a. The annual payment shall be for an adjusted annual amount which reflects any change in the average annual Consumer Price Index series defined as follows:

Title: Consumer Price Index – All Urban Consumers (Current Series), U.S. City Average, All Items

Series ID: CUUR0000SA0, CUUS0000SA0

Seasonal Adjustment: Not Seasonally Adjusted

Index Base Period: 1982-84 = 100

Frequency: Monthly

Source: Bureau of Labor Statistics of the U. S. Department of Labor (herein the “Consumer Price Index – All Urban Consumers (Current Series), Not Seasonally Adjusted or “CPI”).

Therefore, beginning with the first year and each year thereafter, APC and ADCNR agree that the Base Amounts outlined in paragraph a. shall be adjusted on the last day of February, or as soon as possible after the CPI for all months of the preceding calendar year have been published, of each year during the remainder of the term of this agreement and any extensions thereof as follows:

The Base Amounts shall be adjusted on the last day of February , or as soon as possible after the CPI for all months of the preceding calendar year have been published, of each year to reflect any change in the CPI between the Base Year (hereinafter referred to as BCPI) and the average annual Consumer Price Index for the calendar year just completed (hereinafter referred to as ECPI).

The change will be computed as follows:

$$\left[\frac{(\text{ECPI} - \text{BCPI})}{\text{BCPI}} + 1.00 \right] \times (\text{Base Amount}) = \text{New Adjusted Annual Amount for forthcoming year}$$

If the said CPI published by the Bureau of Labor Statistics of the U. S. Department of Labor, as the same is now computed and published, should be discontinued, or enlarged upon, or changed, upward or downward, the payment adjustments will be calculated on the equivalent of the CPI, and for the purpose of determining and calculating the equivalent of the present Consumer Price Index, use shall be made of the successor index or indexes and the formulae announced or published by the Bureau of Labor Statistics of the United States Department of Labor, and its successors, as being proper for conversion of any such successor index to the equivalent of the present Consumer Price Index.

Table 1. APC Proposed Base Amount Funding
Funding Year Funds Provided (2007 Dollars)

1	\$400,000
2	\$250,000
3	\$200,000
4	\$150,000
5	\$150,000
6	\$150,000
7	\$150,000
8	\$150,000
9	\$150,000
10	\$150,000
11	\$150,000
12	\$150,000
13	\$150,000
14	\$150,000
15	\$150,000
16	\$150,000
17	0
18	0
19	0
20	0
21	0
22	0
23	0
24	0
25	0
26	0
27	0
28	0
29	0
30	0
31	0
32	0
33	0
34	0
35	0
36	0
37	0
38	0
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
Total Base Funding	\$2,800,000

Fisheries Habitat Enhancement and Restoration Program

Introduction

As part of the Fishery Enhancement Plan(s) for the Coosa River Project and the Warrior River Project, Alabama Power Company (APC) proposes to establish a Fisheries Habitat Enhancement and Restoration Program (FHERP) in cooperation with the Alabama Department of Conservation and Natural Resources (ADCNR). The purpose of this FHERP is to develop a framework for working together in a mutually beneficial manner to enhance and restore fisheries and their habitats over the life of the new licenses issued to APC for the Warrior River Project and the Coosa River Project.

Organizational Structure

A work group will be formed by representatives from APC and ADCNR to review on an annual basis the projects on which to work during the coming year. These projects shall be designed to enhance and/or restore fisheries and their habitats on lands within the Warrior River Project Developments and/or the Coosa River Project Developments.

Funding

APC will establish a Fisheries Habitat Enhancement and Restoration Fund (Fund), the purpose of which is to provide a source of financial support for the conduct of the projects selected by the ADCNR. The Fund shall be maintained by APC and money will accrue annually into the Fund in accordance with the FINANCIAL SUPPORT SCHEDULE contained herein. APC and ADCNR will be able to draw on this Fund for reimbursement of material, labor, equipment, office supplies, matching funds for grants, and subcontract services required to plan, construct, manage and maintain all FHERP projects as administered by the ADCNR. However, the decision as to the allocation of the funding for projects shall reside with the ADCNR.

FINANCIAL SUPPORT SCHEDULE:

a. Upon execution hereof, APC agrees to establish a Fund. APC agrees to make payments into the Fund in accordance with the Base Amount funding schedule in Table 1 (but subject to adjustments in accordance with sub paragraph b of this Section) for the use of APC and ADCNR in enhancing and restoring wildlife over the life the Coosa and Warrior River Project Licenses on the Project(s) lands. Actual payment of such contributions shall be on the following schedule.

Annually in arrears, each payment being the annualized amount as adjusted in accordance with sub paragraph b. The first payment shall be due on the last day of February, in the year following issuance of the new licenses for the Coosa and Warrior Projects by the Federal Energy Regulatory Commission (FERC) and acceptance of the licenses by APC, which is expected to occur in 2007. The first payment shall be for the full Base Amount of the first funding year. All subsequent payments will be made on the last day of the month February.

b. The annualized contributions outlined above in sub paragraph a. shall be adjusted as follows:

The calendar year 2007 shall be deemed the Base Year as used in this provision. It is the intent of this agreement that APC shall make an annual payment into the Fund each year after the licenses for the Coosa and Warrior Projects are issued by FERC and approved by APC, as scheduled in sub paragraph a. The annual payment shall be for an adjusted annual amount which reflects any change in the average annual Consumer Price Index series defined as follows:

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The Base Amounts shall be adjusted on the last day of February , or as soon as possible after the CPI for all months of the preceding calendar year have been published, of each year to reflect any change in the CPI between the Base Year (hereinafter referred to as BCPI) and the average annual Consumer Price Index for the calendar year just completed (hereinafter referred to as ECPI).

The change will be computed as follows:

$$\left[\frac{(\text{ECPI} - \text{BCPI})}{\text{BCPI}} + 1.00 \right] \times (\text{Base Amount}) = \text{New Adjusted Annual Amount for forthcoming year}$$

If the said CPI published by the Bureau of Labor Statistics of the U. S. Department of Labor, as the same is now computed and published, should be discontinued, or enlarged upon, or changed, upward or downward, the payment adjustments will be calculated on the equivalent of the CPI, and for the purpose of determining and calculating the equivalent of the present Consumer Price Index, use shall be made of the successor index or indexes and the formulae announced or published by the Bureau of Labor Statistics of the United States Department of Labor, and its successors, as being proper for conversion of any such successor index to the equivalent of the present Consumer Price Index.

APC shall have the right to reduce or eliminate the base amount of funding shown in Table 1 in the future based on the costs of any minimum flow requirements which may be placed on the Neely Henry, Logan Martin, Lay, Mitchell and/or Walter Bouldin developments.

Initial Projects

The following projects, among others, will be considered by the working group following issuance of new 50 year license for the Warrior River Project and Coosa River Project

1. Fishery habitat enhancements, such as placement of additional structure within the Coosa River Project developments reservoirs.
2. Applications for matching grants for fishery restoration and enhancement projects to be conducted on Warrior River and/or Coosa River Project lands.

Table 1. APC Proposed Base Amount Funding

Funding Year	Funds Provided (2007 Dollars)
1	\$300,000
2	\$200,000
3	\$200,000
4	\$200,000
5	\$200,000
6	\$80,000
7	\$80,000
8	\$80,000
9	\$80,000
10	\$80,000
11	\$80,000
12	\$80,000
13	\$80,000
14	\$80,000
15	\$80,000
16	\$80,000
17	\$80,000
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28	\$80,000
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31	\$80,000
32	\$80,000
33	\$80,000
34	\$80,000
35	\$80,000
36	\$80,000
37	\$80,000
38	\$80,000
39	\$80,000
40	\$80,000
41	\$80,000
42	\$80,000
43	\$80,000
44	\$80,000
45	\$80,000
46	\$80,000
47	\$80,000
48	\$80,000
49	\$80,000
50	\$80,000
Total Base Funding	\$4,700,000

From: Cook, Stan [Stan.Cook@dcnr.alabama.gov]
Sent: Tuesday, July 12, 2005 5:08 PM
To: Crew, James F.
Subject: RE: Coosa Warrior Relicensing Term Sheet - Latest Revision

Jim,

I have reviewed the "Term Sheet" and discussed with Commissioner Lawley, Alabama Power Company's approach to resolving the remaining ecological issues identified in the document. Alabama Department of Conservation and Natural Resources supports Alabama Power Company's proposal to address these issues by the end of 2005. The "Term Sheet" provides us an excellent opportunity to reach resolution or at the very least a plan of resolution for every outstanding issue. There is still a great deal to do and many details to work out but resolution is achievable.

Stan Cook
Chief of Fisheries
Alabama Department of Conservation & Natural Resources

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

Stan and Larry,

Well, I think we may have finally made it - attached is the latest and hopefully final version of the Coosa Warrior Relicensing Term Sheet, dated July 11, 2005. This version addresses the concerns of Stan and the Commissioner, and incorporates comments provided by Larry and Jeff. Please review this document and verify that everything is acceptable, and provide us with an email indicating your consensus on this approach. We recognize there is still much to be done to work out all the details on a formal agreement document, as well as the implementation aspect of the Term Sheet. Please keep in mind when preparing your email that in order for FERC to accept (and not alter) this agreement, all parties need to show strong support for the plan. The Term Sheet and your letters on concurrence will be included in the license application. Again, due to our time constraints, an email (rather than a formal letter) is really all we need - and please as soon as possible. Thanks for all your help.

Jim
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From: Larry_Goldman@fws.gov
Sent: Wednesday, July 13, 2005 8:47 AM
To: Crew, James F.
Cc: Jeff_Powell@fws.gov
Subject: Re: Coosa Warrior Relicensing Term Sheet - Latest Revision

Jim--although we recognize that many of the details are still being worked out, the Fish and Wildlife Service concurs with the contents and sense of direction found in the Term Sheet.

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

Stan and Larry,

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Jim
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