

Meeting Notes Summary: February 19, 2003

Coosa River Projects

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Meeting Attendees

IAG Members

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Dan Catchings	ADCNR	dancatch@hiwaay.net
Bruce DiGennaro	Kleinschmidt	Bruce.DiGennaro@Kleinschmidtusa.com
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Bob Huffaker	Alabama Marine Police	bhuffaker@dcnr.state.al.us
George Jackins	Lake Mitchell Home Owners and Boat Owners	gjackins@aol.com
Barry Lovett	APC	BKLOVETT@southernco.com
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Adam Snyder	Alabama Rivers Alliance	asnyder@alabamarivers.org
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Dan Thompson	ADCNR	dthompson@dcnr.al.us
Joe Young	Lake Jordan Home Owners and Boat Owners	pegyoung@earthlink.net

Other Meeting Attendees

Mike Akridge	APC	RMAKRIDG@southernco.com
Jim Bain	Lake Martin Resource Assoc./Russell Lands	
Amy Bennett	Kleinschmidt	Amy.Bennett@KleinschmidtUSA.com
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Jim Hancock	Balch & Bingham	JHANCOCK@balch.com
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Randy Yates	FERC	
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Action Items

The following action items were agreed upon by the Coosa River meeting attendees:

- Barry Lovett: Compile stakeholder comments to further discuss at the next public safety meeting.
- All stakeholders: Provide additional public safety comments to Barry Lovett by February 26th.
- APC & Marine Police: Meet to discuss their proposed public safety agreement.
- APC: Identify and summarize what other states are doing regarding public safety.

Meeting Notes

These notes summarize the major discussion items and are not intended to be a transcript or analysis of the meeting.

Introductions and Background

The meeting began with participant introductions and review of the agenda. The following agenda was agreed upon for this Coosa Public Safety meeting:

- Introduction and Background
- Review of APC's Public Safety Responsibilities
- FERC to present - A FERC Licensee's Public Safety Responsibilities
- Marine Police Division to discuss
 - public safety responsibilities
 - hazard permitting process
 - budget and expenditure process
- APC and Alabama Marine Police to present and discuss the Draft Public Safety Agreement
- Dan Murchison to present the Coalition's alternate proposal
- Open Discussion Forum
- Review and discuss user's responsibilities
- Review of the February 7th APC and Homeowner conference call
- Identify areas for dialog
- Next steps

APC reminded the meeting attendees that the agenda was aggressive and all participants should be cognizant of the time allocation per subject.

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After review of the agenda, APC discussed the format of the meeting and reviewed the formal IAG procedures (as outlined in the Operating Procedures). APC stated that, particularly during larger meetings, formal meeting procedures will be followed. Several procedures were outlined as follows: IAG members will be situated around the table; tent cards will be placed on the table for each IAG member; non-IAG members will be asked to sit in designated seating; and non-IAG members will be provided with time to speak at the end of each discussion/meeting. In order to better facilitate these procedures in future meetings, APC distributed an IAG member list and asked all meeting participants to review this list and provide corrections to their information. In response to a stakeholder's question, APC indicated that individuals should meet with APC after the meeting if they would like to be added to specific IAGs. APC also encouraged all meeting attendees to contact Viki Jenkins (APC) regarding their planned attendance at the meetings. This will allow APC to better plan lunches and meeting rooms.

Review of APC's Public Safety Responsibilities

To begin this discussion, Jim Hancock distributed a summary of five regulations that influence public safety. Jim discussed the Federal Power Act, Code of Federal Regulations, Alabama Power's Licenses, State Statute and Regulation, and Case Law, as they pertain to public safety. The discussion included:

- **Federal Power Act** – This act is very general in regards to public safety. APC must comply with the Federal Power Act, FERC's regulations and requirements, and the terms and conditions of its various licenses.
- **Code of Federal Regulations (18 CFR)** – The CFR includes two public safety requirements. The first requires the licensee to report to FERC all accidents that occur at the project. The second requires APC to install, operate and maintain appropriate public warning/protection measures at the direction of FERC's Regional Engineer.
- **Alabama Power's Licenses**
 - Standard Land Use Article – Under this article, APC can permit certain uses of land without FERC authorization, so long as the proposed use is not incompatible with the project's recreational values.
 - Free Access to Project Lands – This article requires APC to allow reasonable public access to project lands for recreational and navigation purposes.
- **State Statute and Regulation**
 - APC does not have a regulatory or statutory duty to provide a safe recreational environment, or to inspect the reservoirs and warn the public of unsafe conditions.
 - Alabama's Recreational Use Statute encourages large land owners to provide public recreation by limiting legal liability.
 - Alabama's Administrative Code states that the Marine Police is the only organization that has authority to grant permission for installation and maintenance of regulatory markers.
- **Case Law** – No court in Alabama has held that APC has a general duty to ensure public safety on its reservoirs.
- **Questions/Comments**

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- The regulations require APC to acknowledge and protect the public from known safety issues. Why shouldn't all stakeholders provide written comments of what they perceive to be safety hazards to APC in writing? The stakeholder noted that if this was done then APC would be required to address the safety issues. APC responded that it is required to address safety hazards if it creates and is aware of the existence of a hazard existence and the public is not aware. APC explained that it currently forwards any input from stakeholders regarding public safety to the Marine Police and encourages all stakeholders to work with the Marine Police directly on public safety issues. The Marine Police reviews the public safety information and identifies if the perceived problem is a "true" public safety hazard.
- Several stakeholders then suggested that if the Marine Police identifies an area as a public safety issue, then the information should be forwarded to APC to address.
- There are no state regulations that require APC to mark hazards.
- APC stated that the draft public safety agreement is intended to be a good faith effort to address public safety on the lakes.
- APC reiterated that the Marine Police are the safety experts.

FERC to present - A FERC Licensee's Public Safety Responsibilities

FERC began this presentation by introducing themselves and providing a summary of FERC's regulations and responsibilities (including the Director's). FERC noted that the title of the Regional Engineer has been changed to the Regional Director and suggested that all stakeholders should contact the Director if they have public safety issues after the license is issued.

FERC then outlined the licensee's responsibilities, per FERC regulations. The presentation and ensuing discussion yielded the following information:

Background

- All licensees are required to report fatalities or critical injuries that occur on the reservoirs to the Director. These reports need to include specific remedial recommendations if the fatality or injury is directly related to project operations.
- FERC encourages licensees to work with federal, state and local agencies. FERC explained that they have no vested interest in the lakes and stakeholders should attempt to work with each other to resolve this issue. Stakeholders should contact FERC if they are not satisfied with the local authorities and the licensee.
- The Standard License Articles are on FERC's website.
- Three of FERC's divisions address some components of public safety.
- The Public Safety Plan should not be part of the license and typically addresses the project structures and not the impoundments.
- FERC has been active in the Water Safety Congress.
- FERC does not require the Alabama Marine Police to report markings/buoys on the impoundment to FERC.

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Comments/Questions

- Bert Thaxton asked FERC if a plan should be developed between APC and HOBOS so the HOBOS don't have to go to FERC every time they have a public safety issue.
- Jim Howard reminded the meeting attendees that the Lay Lake Safety Committee has representatives from a number of different organizations.
- Dan Murchison reiterated that the Coalition wants to establish public safety water groups.
- Ron McKittrick of FERC was not able to attend today and may not attend in March. Stakeholders can contact Ron to discuss any questions they may have regarding the process.

Marine Police Division Discussion

Bob Huffaker distributed several documents to begin his presentation. Bob began the discussion by stating that all decisions regarding the public safety issue and agreement will be made by the Director of the Marine Police. The remainder of the discussion yielded the following information:

- Bob briefly explained the history and responsibilities of Marine Police. It was created in 1959 and is charged with providing public safety on the waters in Alabama. Primarily enforcing public safety laws on the waters (including DUIs). The Marine Police's Public Safety responsibilities include enforcement and education of public safety on all the waters in Alabama. Specifically the Division is involved in accident investigation; enforcement; education; news releases; and presentation to clubs, schools, and organizations. However, they are not responsible for marking channels.
- The officers also have full police power and can enforce any and all of the state laws.
- The Marine Police are the only ones that can provide enforcement support on the water.
- The Marine Police have a specific permitting process for installation of navigational aids. The Director of the Marine Police is the only individual that can approve applications. Once an application is submitted, the Director, working with the appropriate officer reviews the application and performs a survey before making a recommendation. The Marine Police are doing their best to process these applications however, due to increasing demands on human resources applications may take longer to review (some as long as six-months).
- The Marine Police are the only organization in the State that can process operation restriction on waterways.
- The Marine Police are divided into districts, which cover all reservoirs in the state of Alabama. The Marine Police has 55 sworn officers for the state. Resources are strained because four of the officers are on active military duty.
- There should be one or more officers assigned to each lake depending on the amount of boating activity. The following lists the lakes and the number of officers on each: Weiss Lake (2); Logan Martin (2); Henry (1); Lay (1); Mitchell (0); Smith (3 total – however 2 are currently in training and will not be available until July); and Lake Martin (3 by mid-March).

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- Bob briefly reviewed boating licenses and boating education in the state. All individuals 12 or older are required to be licensed. The Marine Police has licensed over 470,000 people and 265,000 boats.
- Bob reviewed the Marine Police's rules and regulations. At this time he acknowledged that boaters have responsibilities on the water for themselves and must look out for the other people. Boaters also need to be aware of shallow areas, navigable channels and hazards. This awareness can stem from education, reading maps, or experience.
- Bob stated that the marking of channels on Lay is a practical way to address the public safety issue. All perceived hazards should not be marked, instead the marking of channels and restrictive areas should be adequate to address many public safety issues.
- Bob Huffaker stated that no individual has been killed by striking an underwater hazard. Several stakeholders stated that people have been injured or damaged their boat by striking these hazards, however many failed to report these accidents to the Marine Police. Bob stated that all accidents on the waterways must be reported to the Marine Police and failure to do so is a violation of the law.
- The Marine Police is a trust fund organization and is self supported (through the trust fund, federal grants, fines, boater registrations and the Marine fuel tax). The funds it does receive are spent on the public to address safety issues and enforcement on the waters of Alabama.
- In response to a stakeholder inquiry, Bob indicated that funds from the proposed public safety agreement will be spent marking "true" hazard areas on APC lakes and education (as needed).

APC's and Alabama Marine Police's Draft Public Safety Agreement

This portion of the meeting began with a brief overview of the background of public safety as it pertains to the Coosa River and this relicensing process and explained the background of the Coalition. APC explained that the public safety issue has been discussed at many IAG meetings and with HOBOS. The majority of stakeholder input regarding this issue has been provided by the individual HOBOS and the Coalition. APC suggested that other stakeholders should provide input on the proposed agreement and potential alternate solutions.

At this time, APC reiterated that it has been committed to safety in all areas of business and has been very involved in public safety. APC also acknowledged that the Alabama Marine Police and not APC are the experts in public safety. APC entrusts the Marine Police to make fair and consistent public safety decisions on each lake.

In order to address this issue, APC and the Marine Police worked together to develop a draft agreement that would address public safety on all 12 of APC's reservoirs(reservoirs on the Coosa, Tallapoosa and Warrior). The draft agreement included APC contributing monies annually to the Marine Police, which would be utilized to improve boating safety on all 12 of the lakes. Bob Huffaker stated that the funding from APC is "a gift" because the Marine Police do not currently have a budget for marking; therefore APC's funding will allow the Marine Police to enhance current practices in order to better meet the needs of public safety projects on the lakes. Specifically, the Marine Police will utilize the funds to provide boating safety

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programs, install additional signage at ramps and docks, install buoys, and provide additional printing material for the boating public to promote special safety programs.

This agreement could be implemented immediately if there is stakeholders consensus. APC and the Marine Police feel that this agreement provides for a long-term solution public safety issues. In order to track the progress and objectives of the agreement, the Marine Police would provide APC with an annual report that summarizes the annual use of the funds.

The meeting was then open for stakeholder question and comment. This open forum discussion yielded the following information:

- The Marine Police will continue to install regulatory markers. The Police would also ensure that a portion of the funding be utilized to install buoys/markers.
- Several stakeholders noted that they want monies from this fund to only be applied to safety, regulatory and channel markings. They do not want the APC funds to go to education. One stakeholder stated that there are already existing education funds. Stakeholders want input regarding how the funds are spent and also want a more defined plan for the funding. The Marine Police have no problems with stakeholder input.
- Several stakeholders expressed concern regarding their relationship with the Marine Police.
- Bob Huffaker stated that the Marine Police will not provide permits for excessive buoys on the lakes. All applications will be reviewed and the Marine Police will determine if hazards should be marked.
- A few stakeholders noted that the marking of channels is one of their biggest concerns on all the lakes. They noted that the Marine Police has no authority or expertise in channel marking.
- The facilitator requested individuals to continue asking questions and providing input, but to avoid discussion, at this time, on specific public safety issues. This meeting is not intended to solve public safety issues, but to discuss proposed measures.
- APC reiterated that this current proposal is above and beyond what the company has and will be doing to manage public safety. APC is not pushing aside any responsibility. This is a voluntary contribution

The Coalition's Alternate Proposal

Dan Murchison presented the Coalition's alternate public safety proposal to all meeting attendees. He stressed that an assessment of hazards on each reservoir is needed before the public safety issue can be fully addressed. To assess public safety issues, the Coalition proposes that committees be formed on each reservoir (consisting of the HOBOS, APC, Marine Police and other organizations). Once the public safety needs are established than all parties should meet and resolve the public safety issues. Dan noted that he does not believe that public safety needs on the reservoirs will require extensive financial resources. However, the funding for a public safety "budget" should be determined based on a needs study and could be provided by the state or APC. In addition, the funding should be reviewed and adjusted, if necessary, every five years. This review process will include an assessment every five years to determine public safety needs.

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Dan noted that the Marine Police should provide an itemized report every year and a projected plan of action/timetable based on the combined lake needs.

Dan then took the time to thank the Marine Police for all of their efforts and recognize that the Marine Police's responsibility for the safety on Alabama waters. Dan provided a brief outline of the Marine Police's responsibilities, as understood by the Coalition. He noted that the Marine Police are not necessarily charged with marking hazards (including trees) and do not mark channels. However, he stated that channel markings and hazard buoys need to be dealt with in the public safety issue. He stated that if the Marine Police does not provide these markers, then APC should furnish money to assist or complete these issues.

The Coalition also acknowledged that some hazards may not need to be marked on reservoirs, but an assessment needs to be done and all items need to be looked at before a decision is made. Bob Huffaker reminded the group that the Marine Police still need to approve hazard and channel markers.

Open Discussion Forum

At this time, APC stated that there has been a fair amount of feedback from the HOBOS and request that other stakeholders provide comments and feedback. APC encouraged all stakeholders to either provide feedback during this meeting or provide written comments to Barry Lovett in the next week.

Additional discussion items included:

- The Lake Martin representatives stated that there are state and federal regulations regarding public safety on the reservoirs in the state of Alabama. Maybe the draft public safety agreement should include language that the proposal does not abdicate APC from any federal responsibilities under the law. Jim Hancock explained that the APC proposal is in addition to the federal regulations and would supplement the Marine Police's budget.
- The stakeholders inherently have input into public safety decisions on the lakes. All issues submitted to the Marine Police are thoroughly investigated.
- Several stakeholders noted that APC's proposal is a step in the right direction, but acknowledge the validity of the formation of safety committees for each reservoir.
- One stakeholder did not agree with the Coalition's idea of splitting public safety responsibilities between APC and the Marine Police.
- One stakeholder stated that this issue can be resolved through compromise. APC's proposal is trying to get rid of safety responsibility on the lake, but APC is not necessarily responsible for public safety on the lakes.
- Jim Howard pointed out that "your hazard could be my fishing habitat". Jim noted that everyone has there biases regarding public safety issues and that this group is dealing on the margins. The group needs to set priorities over the entire system and spend the money wisely. This spending may include education because it is an effective means to

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address public safety. Stakeholders need to work together to address this issue and we need to put money on resources that are best spent.

- Installing buoys and channel markings does not necessarily mean that individuals utilize the markers.
- Joe Young stated that his objective on Jordan is to eliminate the hazards by lowering the lake 5 ft every 4 year and eliminate stumps and old piers.
- Some stakeholders want APC to provide, in writing, an overview of what they are currently doing in order to compare current practices with the proposal.
- One stakeholder stated that safety markers benefit all who utilize the lake and the option of sharing the cost for maintaining the markers should be explored.

Review and Discuss User's Responsibilities

User responsibilities were discussed throughout the entire meeting. All stakeholders expressed that individuals boating on the reservoir have some responsibilities, but extent of the responsibilities varied slightly.

Review of the February 7th APC and Homeowner conference call

The February 7th APC and Homeowner conference call was briefly discussed at this time.

Identify areas for dialog

Barry has had several conversations with stakeholders over the past several weeks. He has jotted down notes and will utilize the today's discussion to identify potential areas evaluation and future discussion. The following summarizes the comments and stakeholder input:

- Organization and Process –
 - Provide stakeholders with a mechanism to provide comments to Marine Police on a regular basis.
 - Further discuss lake safety committees.
 - Identify and summarize what other states are doing regarding public safety.
 - Several stakeholders are not comfortable with the Marine Police being the sole authority for public safety.
 - Top-level Marine Police personnel need to be involved in discussions and agreements.
- Needs
 - More Marine Police coverage is needed, particularly on holidays and high-use weekends. Mitchell currently has no officer.
 - Existing markers need to be maintained. Responsible parties for maintenance of the buoys need to be identified.

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Next steps

Today's discussion of the challenging public safety issue was productive and Barry thanked all stakeholders for their positive input. APC will compile a list of issues for a future meeting. APC will inform all stakeholders of the specifics of the next public safety meeting.