



January 15, 2009

Chuck Sumner  
Environment and Resources Branch, Planning and Environmental Division  
U.S. Army Corps of Engineers, Mobile District  
P.O. Box 2288  
Mobile, Alabama 36628-0001

**RE: Environmental Impact Statement Scoping  
Proposed Reservoir on Murder Creek, Conecuh County, Alabama  
Permit Application Number SAM-2007-0289-MNS**

Dear Mr. Sumner:

The Alabama Rivers Alliance (Alliance) and the Southern Environmental Law Center (SELC) submit these comments as part of the National Environmental Policy Act (NEPA) scoping process associated with Conecuh County Commission's application to construct a dam on Murder Creek in Evergreen, Alabama.

The Alliance is a 501(c)3 organization dedicated to the protection and restoration of the rivers of Alabama. It represents more than 750 individuals and 70 grassroots groups from across the state. The Alliance is located at 2027 Second Avenue North, Suite A, Birmingham, Alabama 35210. The Alliance can be reached at (205) 322-6395.

SELC is a nonprofit legal organization whose mission is to protect the natural resource and special places in the Southeastern United States. SELC is located at 127 Peachtree Street, Suite 605, Atlanta, Georgia 30303. SELC can be reached at (404) 521-9900.

If permitted, this project will destroy 1,453 acres of wetlands and 19 miles (100,755 feet) of streams. The reservoir is proposed as a source of irrigation water for crops to support the bio-fuel industry and secondarily as recreation. The applicant is proposing non-specific mitigation projects "within the local area" to offset the impacts of this project.

We agree with the U.S. Army Corps of Engineers (Corps) that the magnitude of this project necessitates the preparation of a thorough EIS. These comments are submitted to assist the Corps as it prepares the necessary studies and gather sufficient data to thoroughly analyze the impacts the proposed project would have on the environment. The list of impacts for study included herein is not intended to be comprehensive.

In addition to the general components of an EIS required under 40 CFR 1502, which include a detailed statement of the project impacts, a discussion of available alternatives, and

documentation of the need of the proposed project, we request that the Corps provide the following information and studies.

### **Project Need**

A clear public need for this project must be determined before the Corps can issue a valid Clean Water Act Section 404 permit. This reservoir was originally discussed as an economic development driver, intended as a recreational destination and as attractive shoreline real estate for private developers and land owners. It is our understanding that the applicant was informed that significant environmental impacts could not be justified for such a purpose. Moreover, it is clear that a reservoir is not needed for water supply, as the area's population and water demand is not estimated to grow beyond current water supply capacity.

The proposed reservoir is also unnecessary for flood control; studies performed by the applicant in 2005 indicate that the project could not provide significant flood control benefits to downstream Brewton. The project purpose has publicly changed several times (as ascertained in newspaper articles and statements from officials representing the applicant), and we therefore have significant questions about the need for this project. The current purposes of irrigation water supply and recreation do not appear to answer a clear public need. Without a clear demonstration of need, the proposed project seemingly benefits only a few landowners whose property values would be enhanced with the addition of a reservoir.

As the proposed reservoir is intended for irrigation to support the biofuel industry, we request a land-use study identifying current and historical land-use trends which would substantiate the need for such a large reservoir. Currently, forestry is one of the major land uses in the area, currently. The land-use study should illustrate any trends towards irrigation-based crops, availability of land for crops, and the need for land owners to irrigate current and future crops. We also request a survey of landowners to determine future plans and demand for crop-based agriculture.

Corn is one of the major crops used in the production of biofuels. The application did not specify which crop was intended for irrigation in the project area. We request an assessment of potential alternative crops that would use the naturally abundant rainfall in the area and would not require extensive irrigation. This should be fully documented in the EIS's alternatives analysis.

As recreation is listed as a secondary project purpose, we request a separate needs assessment for this aspect of the project, which should evaluate current and potential future watercraft ownership rates; likelihood of sportfishing activities; availability of recreational support businesses (outfitters, suppliers, etc) specializing in outdoor recreation in the service area of the reservoir; and intention of the applicant or other local government to provide public parks, campgrounds, picnic areas, fishing piers, and boat launches to accommodate the public's recreational needs. The alternatives analysis should also examine other existing or potential recreational opportunities in the area that might reduce or eliminate the need for this new impoundment.

### **Public Benefit**

Many citizens are concerned about how this project will benefit the public in general rather than landowners and other private interests. More information is needed about how the land around the reservoir will be used, if there will be sufficient public access, the width of any protected

buffer zone (if one is even proposed), and the public's and landowners' rights, if any, to withdraw water from the reservoir. In order to obtain a valid Section 404 permit, the applicant will need to demonstrate that the environmental impacts caused by this project are offset by a legitimate public need and benefit.

### **Analysis of Direct, Indirect, and Cumulative Project Impacts**

Water quality, water quantity, and biological studies must be conducted to establish baseline conditions in the Murder Creek and Conecuh River watersheds. These studies must include more than one season or one year of sampling. Data should be collected during a variety of years to assess low, normal, and high water conditions.

The application information does not indicate whether shoreline areas will be protected after the construction of the reservoir. Nonpoint source pollution can cause numerous problems in a reservoir, including nuisance algal blooms and low levels of dissolved oxygen. We request a study that models the projected changes in land use and the proposed shoreline buffer areas to determine how nonpoint source pollution, especially nutrients and agricultural runoff, could impair the water quality in the reservoir, and how these impacts will be reduced or avoided.

The EIS should analyze the project's effects on soil erosion with any change in land use from forestry to cultivation. Anticipated sediment loads should be analyzed for both current and potential future land use changes. These loads should also be compared with the maximum carrying capacity of the proposed reservoir, as well as the watershed.

As biofuels have grown in popularity, research indicates that growing food crops for fuel can have far-reaching impacts on food supplies, food prices, and regional and global economies. The EIS should study both the environmental and the economic impacts of using food as a fuel source. As previously mentioned, altering existing land uses to accommodate fuel crops can have negative impacts on the environment, including increased erosion, water loss, and polluted runoff from fertilizer and pesticide application.

The Alabama pearlshell mussel (*margaritifera marrinea*) is a candidate species on the U.S. Fish and Wildlife's list of threatened and endangered species. This rare species is known to inhabit the Conecuh River basin. We request thorough biological studies to determine the presence of the pearlshell mussel in the project area and downstream of the project area. Studies must also be conducted on the host fish species to determine range and potential habitat fragmentation problems. The cumulative impacts of other projects in the Conecuh Basin on aquatic species, water quality, streamflow, wetland function, and estuary health must all be thoroughly evaluated in the EIS.

More than 1,400 acres of wetlands will be destroyed if this project is constructed. The Alliance requests studies that will assess the impacts of such a large loss on the floodplain storage, water quality functions, and ecosystem support that is provided by these wetlands. If the Corps ultimately decides to issue a permit, studies must also be conducted to determine where and how mitigation will provide the most benefit. Piecemeal mitigation projects will not replace the loss of such a large and contiguous wetland system.

**Alternatives**

The EIS must examine the potential use of groundwater as a source of irrigation as an alternative to this project. Other alternatives to be studied include instream withdrawals from Murder Creek and smaller off-line storage projects. Since the stream and wetland impacts are significant in this proposal, reasonable alternatives must be thoroughly assessed to avoid or minimize impacts to the environment.

As stated above, the EIS must also assess the feasibility and profitability of alternative biofuel crops that would require less water or no irrigation.

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**Conclusion**

We continue to have serious concerns about the proposed reservoir's environmental impacts, which will be substantial, and the fact that the need for this project has not been well-demonstrated. We appreciate the opportunity to submit comments on the proposed project. We request a response to these comments and notification of future project developments. If you have any questions regarding this submittal, please do not hesitate to contact us. Thank you for your consideration of these comments.

Sincerely,



April Hall, P.E.  
Contract Engineer  
Alabama Rivers Alliance



Cindy Lowry  
Executive Director  
Alabama Rivers Alliance

(Signature on file)

Gilbert B. Rogers  
Staff Attorney  
Southern Environmental Law Center