



1904 1st Avenue North
Suite 300
Birmingham, Alabama 35203
Telephone: (205) 322-7341
Fax (205) 326-4411
www.corporaterealty1.com

April 10, 2014

Huntsville Utilities
P.O. Box 2048
Huntsville, AL 35804

RE: Water Main Installation by Open Cut- Cadence Bank

To Whom It May Concern,

We are in receipt of the Water Main Installation by Open Cut notice for residents along U.S. Highway 431. Corporate Realty Management is the Facilities Manager for all of Cadence Bank.

We understand that there are three entrances to the branch located at 10175 Highway 431 South, which may be effected by the work mentioned in the notice. We want to express our concerns with open cutting the drive ways to the branch as we must keep at least one entrance to the branch accessible at all times. Also, we must be made aware of the scheduled work in advance to notify employees and customers of the obstacles the work may create.

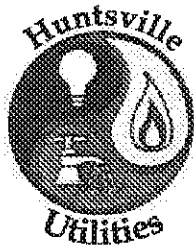
Please keep our concerns in mind if the work is carried out.

Please let us know in advance of any further action with the water main installation process.

Thank You,
Corporate Realty Management Inc., as Agent
For: Cadence Bank, N.A.

A handwritten signature in black ink, appearing to read "A. Overton", is written over the typed name.

Austin Overton
Operations Manager



HUNTSVILLE UTILITIES

Electricity – Natural Gas – Water
(256) 535-1315
www.hsvutil.org

P.O. Box 2048
Huntsville, AL 35804

May 12, 2014

Residents along US Highway 431

RE: Water Main Installation by Open Cut

Huntsville Utilities Water Department is in the process of having the installation of a 48-inch water main designed along the right-of-way of US Highway 431. As part of the design process, we are asking each owner with driveways along the planned route to sign that notification has been given from our office with permissions to open-cut driveways for the installation of said water line. All repairs, including landscaping and repair of driveways, will be at Huntsville Utilities expense. It is the intent of Huntsville Utilities to have the said main installed without causing delays to residents or traffic along US Highway 431.

Please sign the form below and return in the stamped envelope provided with this letter.

Thank you in advance for helping to make this project a success. If you have any questions or concerns, please call our office at 256-535-1400.

Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Ralph Knight

Address: 32022 US Highway 431 South
Grant, AL 35747

Signed by: _____



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Joyce H. & Kenneth Randles

**Address: 10551 US Highway 431 South
New Hope, AL 35760**

Signed by: _____



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Vertice Snow

Address: 10081 US Highway 431 South
New Hope, AL 35760

Signed by:

706 578 9154 phone
580 of Vertice
am co. The kad for snow Thanks

Vertice Snow has passed



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Thomas H. Siniard

Address: 10051 Hwy 431, New Hope, AL

Phone: 256-536-0770

Signed by: Thomas H. Siniard



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Danny Hubbard

Address: 10579 Hwy 431 S.

Phone: 256 723-8690

Signed by: Danny Hubbard



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: James W. Martin (owner)

Address: 1056 US 431 S New Hope

Phone: (256) 655-7644

Signed by: James Wade Martin



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Wilma D. Vaughn

Address: 10493 Highway 431, S, New Hope, AL 35760-9393

Phone: (256) 723-4830

Signed by: Wilma D. Vaughn



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Esperanza Burnes (BBQ)

Address: 100 Peter Lane New Hope, AL 35763

Phone: (256) 723-3600

Signed by:



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name:

Merritt M. Rebin - Merritt M. Rebin

Address:

10201 US 4315 Piggy Wiggy

Phone:

256-723-2664

Signed by:

Merritt M. Rebin



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Hardees (New Hope)

Address: 10139 U.S. Hwy 431 New Hope, AL 35876

Phone: 256-723-5988

Signed by: Branden Kuyb



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Deew Furlough (Furlough Properties)

Address: 9859, 9877, 9899, 9907 US HWY 431S

Phone: 256-723-4050

Signed by:



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Tiffany Lee

Address: 10695 Hwy 431 S New Hope, AL 35760

Phone: 256-505-2069

Signed by: Tiffany Lee



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Eddie Jones (renter) Billy Knott (owner)

Address: 10851 US 431 S New Hope, AL.

Phone: (256) 776-3006 Billy Knott's ##

Signed by: Billy Knott



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Kenneth Bearden

Address: 3309 New Hope Hwy

Phone: 256-723-4888

Signed by: Kenneth Bearden



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Huntsville, AL 35804

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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Curtis Bridges

Address: 32766 US Hwy 431 New Hope AL 35760

Phone: (256) 652-4195

Signed by: Curt Bridges



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: J.Y. Pugh

Address: 580 METTELL

Phone: 256 427 457

Signed by: [Signature]

Concerning 3220 US 431 S Marshall county



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Terry Patterson

Address: 32090 US 431 S Marshall County

Phone: (256) 723-3486

Signed by: Terry Patterson



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(256) 535-1200

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*Helen Wright
256-479-0892*

*Carson Smith
535-1472*

P.O. Box 2048
Huntsville, AL 35804

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Huntsville Utilities Engineering Services

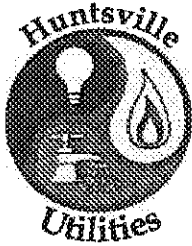
RESIDENT INFORMATION:

Name: *Ernest T. Selzer*

Address: *32040 US Hwy 431, Grant, AL 35747*

Phone: *256-723-8933*

Signed by: *Ernest T. Selzer*



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Sam Grooms Jr.

Address: 9979 US Highway 431 South
New Hope, AL 35760

Signed by:

- estate of Sam Grooms



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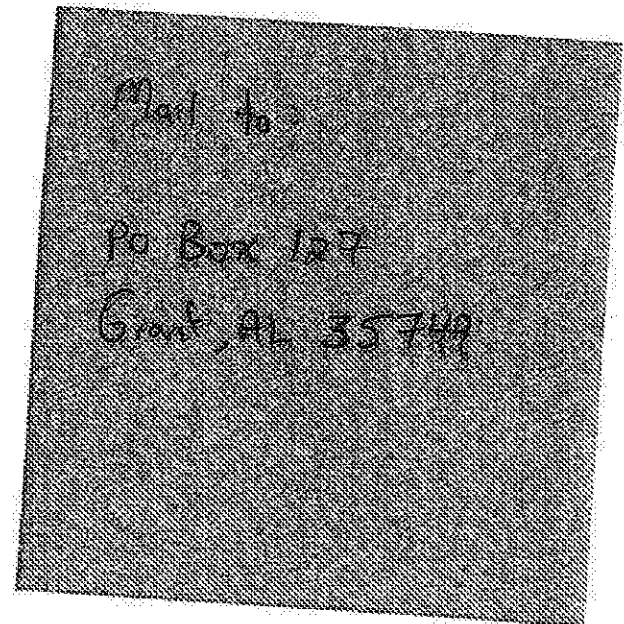
Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Howard H. & Selma L. Lemley

Address: 10511 and 10521 US Highway 431 South
New Hope, AL 35760

Signed by: _____





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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Otis U. Branon

Address: 10813 US Highway 431 South
New Hope, AL 35760

Signed by: _____



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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: Alice M. Medley

Address: 10541 US Highway 431 South
New Hope, AL 35760

Signed by: _____



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Thank you in advance for helping to make this project a success. If you have any questions or concerns, please call our office at 256-535-1400.

Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: _____

Address: 32744 US Highway 431 South
Grant, AL 35747

Signed by: _____



HUNTSVILLE UTILITIES

Electricity – Natural Gas – Water
(256) 535-1315
www.hsvutil.org

P.O. Box 2048
Huntsville, AL 35804

May 12, 2014

Residents along US Highway 431

RE: Water Main Installation by Open Cut

Huntsville Utilities Water Department is in the process of having the installation of a 48-inch water main designed along the right-of-way of US Highway 431. As part of the design process, we are asking each owner with driveways along the planned route to sign that notification has been given from our office with permissions to open-cut driveways for the installation of said water line. All repairs, including landscaping and repair of driveways, will be at Huntsville Utilities expense. It is the intent of Huntsville Utilities to have the said main installed without causing delays to residents or traffic along US Highway 431.

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Sincerely,

Carson Smith, P.E.
Huntsville Utilities Engineering Services

RESIDENT INFORMATION:

Name: John D. & Janice M. Caudle

Address: 9957 US Highway 431 South
New Hope, AL 35760

Signed by: _____

TVA

**26A: Water Withdrawal Permit of
24 MGD and Channel Excavation**

Permit No. 227698



Tennessee Valley Authority

Section 26a Approval

Permit # 227698	Reservoir Guntersville	Category 3
DOT Project #		

Name	Company	Address	Phone/Email
	Huntsville Utilities	Post Office Box 2048 Huntsville AL 35801	256-535-1200

Tract(s) XTGR-184E

Subdivision/Lot(s)	Stream	Mile	Bank	Map Sheet(s)
Subdivision: N/A	Tennessee R	349.5	R	5 C/D Stage 83 Quad Sheet NW

The facilities and/ or activities listed below are APPROVED subject to the plans and general and special conditions attached.

- | | |
|--------------------------------|--|
| 1. Water Intake - Municipality | Volume (GPD): 24 |
| 2. Channel Excavation | Length (ft., in.): 200'; Volume (cu yd): 3150; Width (ft., in.): 50' |

This permit SUPERSEDES all previous TVA approvals at this location including permits approved under land record numbers:

TVA Representative: Samantha J Strickland **Date:** 11-08-2012

May require review by U.S. Army Corps of Engineers (USACE). Plans have been forwarded to the USACE.
No construction shall commence until you have written approval or verification that no permit is required.
 Applicant is also responsible for all local and state approvals that may be required relating to water quality.
No construction shall commence until you have written approval or verification that no permit is required.

THIS PERMIT EXPIRES 15 YEARS FROM THE DATE ABOVE. SEE THE ATTACHED CONDITIONS

GENERAL AND STANDARD CONDITIONS

Section 26a and Land Use

General Conditions

- 1) You agree to make every reasonable effort to construct and operate the facility authorized herein in a manner so as to minimize any adverse impact on water quality, aquatic life, wildlife, vegetation, and natural environmental values.
- 2) This permit may be revoked by TVA by written notice if:
 - a) the structure is not completed in accordance with approved plans;
 - b) if in TVA's judgement the structure is not maintained in a good state of repair and in good, safe, and substantial condition;
 - c) the structure is abandoned;
 - d) the structure or work must be altered to meet the requirements of future reservoir management operations of the United States or TVA, or;
 - e) TVA finds that the structure has an adverse effect upon navigation, flood control, or public lands or reservations.
 - f) all invoices related to this permit are not timely paid.
- 3) If this permit for this structure is revoked, you agree to remove the structure, at your expense, upon written notice from TVA. In the event you do not remove the structure within 30 days of written notice to do so, TVA shall have the right to remove or cause to have removed, the structure or any part thereof. You agree to reimburse TVA for all costs incurred in connection with removal.
- 4) In issuing this Approval of Plans, TVA makes no representations that the structures or work authorized or property used temporarily or permanently in connection therewith will not be subject to damage due to future operations undertaken by the United States and/or TVA for the conservation or improvement of navigation, for the control of floods, or for other purposes, or due to fluctuations in elevations of the water surface of the river or reservoir, and no claim or right to compensation shall accrue from any such damage. By the acceptance of this approval, applicant covenants and agrees to make no claim against TVA or the United States by reason of any such damage, and to indemnify and save harmless TVA and the United States from any and all claims by other persons arising out of any such damage.
- 5) In issuing this Approval of Plans, TVA assumes no liability and undertakes no obligation or duty (in tort, contract, strict liability or otherwise) to the applicant or to any third party for any damages to property (real or personal) or personal injuries (including death) arising out of or in any way connected with applicant's construction, operation, or maintenance of the facility which is the subject of this Approval of Plans.
- 6) This approval shall not be construed to be a substitute for the requirements of any federal, state, or local statute, regulation, ordinance, or code, including, but not limited to, applicable building codes, now in effect or hereafter enacted. State 401 water quality certification may apply.
- 7) The facility will not be altered, or modified, unless TVA's written approval has been obtained prior to commencing work.
- 8) You understand that covered second stories are prohibited by Section 1304.204 of the Section 26a Regulations.
- 9) You agree to notify TVA of any transfer of ownership of the approved structure to a third party. Third party is required to make application to TVA for permitting of the structure in their name (1304.10). Any permit which is not transferred within 60 days is subject to revocation.
- 10) You agree to stabilize all disturbed areas within 30 days of completion of the work authorized. All land-disturbing activities shall be conducted in accordance with Best Management Practices as defined by Section 208 of the Clean Water Act to control erosion and sedimentation to prevent adverse water quality and related aquatic impacts. Such practices shall be consistent with sound engineering and construction principles; applicable federal, state, and local statutes, regulations, or ordinances; and proven techniques for controlling erosion and sedimentation, including any required conditions under Section 6 of the Standard Conditions.
- 11) You agree not to use or permit the use of the premises, facilities, or structures for any purposes that will result in draining or dumping into the reservoir of any refuse, sewage, or other material in violation of applicable standards or requirements relating to pollution control of any kind now in effect or hereinafter established.

- 12) The Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act apply to archaeological resources located on the premises of land connected to any application made unto TVA. If LESSEE {or licensee or grantee (for easement) or applicant (for 26a permit)} discovers human remains, funerary objects, sacred objects, objects of cultural patrimony, or any other archaeological resources on or under the premises, LESSEE {or licensee, grantee, or applicant} shall immediately stop activity in the area of the discovery, make a reasonable effort to protect the items, and notify TVA by telephone (865-228-1374). Work may not be resumed in the area of the discovery until approved by TVA.
- 13) You should contact your local government official(s) to ensure that this facility complies with all applicable local floodplain regulations.
- 14) You agree to abide by the conditions of the vegetation management plan. Unless otherwise stated on this permit, vegetation removal is prohibited on TVA land.
- 15) You agree to securely anchor all floating facilities to prevent them from floating free during major floods.
- 16) You are responsible for accurately locating your facility, and this authorization is valid and effective only if your facility is located as shown on your application or as otherwise approved by TVA in this permit. The facility must be located on land owned or leased by you, or on TVA land at a location approved by TVA.
- 17) You agree to allow TVA employees access to your water use facilities to ensure compliance with any TVA issued approvals.
- 18) It is understood that you own adequate property rights at this location. If at any time it is determined that you do not own sufficient property rights, or that you have only partial ownership rights in the land at this location, this permit may be revoked. TVA may require the applicant to provide appropriate verification of ownership.
- 19) In accordance with 18 CFR Part 1304.9, Approval for construction covered by this permit expires 18 months after the date of issuance unless construction has been initiated.

Standard Conditions (Only items that pertain to this request have been listed.)

1) Structures and Facilities

- g) For all electrical services permitted, a disconnect must be located at or above the 599.0-foot contour that is accessible during flooding.
- j) You agree that all storage, piping, and dispensing of liquid fuel shall comply with applicable requirements of the "Flammable and Combustible Liquids" section of the National Fire Codes and any additional requirements of federal, state, and local laws and regulations.
- r) You are hereby advised that the subject facilities will be on a recreational navigation channel and may be vulnerable to wave wash and possible collision damage from passing vessels.

2) Ownership Rights

- b) You are advised that TVA retains the right to flood this area and that TVA will not be liable for damages resulting from flooding.
- e) You recognize and understand that this authorization conveys no property rights, grants no exclusive license, and in no way restricts the general public's privilege of using shoreland owned by or subject to public access rights owned by TVA. It is also subject to any existing rights of third parties. Nothing contained in this approval shall be construed to detract or deviate from the rights of the United States and TVA held over this land under the Grant of Flowage Easement. This Approval of Plans does not give any property rights in real estate or material and does not authorize any injury to private property or invasion of private or public rights. It merely constitutes a finding that the facility, if constructed at the location specified in the plans submitted and in accordance with said plans, would not at this time constitute an obstruction unduly affecting navigation, flood control, or public lands or reservations.

3) Shoreline Modification and Stabilization

- a) For purposes of shoreline bank stabilization, all portions will be constructed or placed, on average, no more than two feet from the existing shoreline at normal summer pool elevation.
- c) Bank, shoreline, and floodplain stabilization will be permanently maintained in order to prevent erosion, protect water quality, and preserve aquatic habitat.

4) Water Intake

- a) If the reservoir falls below the elevation of the intake, the applicant will be responsible for finding another source of raw water.
- d) This approval does not constitute approval of the adequacy or safety of applicant's water system. TVA does not warrant that the water withdrawn and used by applicant is safe for drinking or any other purpose, and applicant is solely responsible for ensuring that all water is properly treated before using.

6) Best Management Practices

- a) You agree that removal of vegetation will be minimized, particularly any woody vegetation providing shoreline/streambank stabilization.
- c) A floating silt screen extending from the surface to the bottom is to be in place during excavation or dredging to prevent sedimentation in surrounding areas. It is to be left in place until disturbed sediments are visibly settled.
- e) You agree to avoid contact of wet concrete with the stream or reservoir, and avoid disposing of concrete washings, or other substances or materials, in those waters.
- f) You agree to use erosion control structures around any material stockpile areas.
- g) You agree to apply clean/shaken riprap or shot rock (where needed at water/bank interface) over a water permeable/soil impermeable fabric or geotextile and in such a manner as to avoid stream sedimentation or disturbance, or that any rock used for cover and stabilization shall be large enough to prevent washout and provide good aquatic habitat.

Additional Conditions

See the attached Additional Conditions.

ADDITIONAL CONDITIONS

1. At least two weeks prior to the initiation of construction, Huntsville Utilities must notify TVA's Reservoir Land Use and Permitting and submit the contractor's construction plan for review by relevant TVA staff to ensure no conflicts with TVA's programs at the Dam Reservation.
2. Huntsville Utilities is required to comply with the attached Huntsville Utilities Water Intake and Pipeline TVA/USACE Requirements for Blasting as well as the City of Huntsville's Blasting ordinance.
3. Blasting must be conducted during the months of October and November.
4. All blasting will be performed during daylight hours and there would be no onsite overnight storage of explosives. The blasting zone and blasting signal signs will be placed in visible locations and blast signal horns would sound prior to the blast and after to signal the all-clear.
5. You are required to abide by the attached Special Conditions/Requirements for Water Withdrawals.
6. The pumps, all electrical equipment, the carbon feed system and any future facilities or equipment subject to flood damage would be located above or floodproofed to elevation 599.0. The pipeline area would be returned to pre-construction conditions after completion of the project.
7. You are required to comply with State permit requirements for wastewater treatment, outfall location, and effluent treatment (NPDES and stormwater permits) to minimize impacts to surface water.
8. Best Management Practices will be implemented throughout the construction phases to avoid any site runoff, discharge, or impacts to Guntersville Reservoir. All excess excavated fill material associated with the construction in or near the waters of the US shall be moved away from the waterway and placed and stabilized above the 100-year floodplain.
9. All site lighting should be fully shielded and equipped with cutoff features which limit the amount of waste light produced at a vertical angle.
10. Huntsville Utilities will ensure that all construction areas are appropriately marked and access to construction areas is controlled.
11. Special navigation conditions:
 - a. The intake channel contractor will drill and shoot dynamite charges from a barge in Guntersville Reservoir. The barge will also be used to remove the rock debris from the channel and ferry the debris to the shore where dump trucks will be located to haul the debris off-site for disposal at pre-approved disposal site.
 - b. All in-water work activities and schedules should be coordinated with the U. S. Army Corps of Engineers Nashville District for inclusion in a Notice to Navigation Interests as soon as the information is available.
 - c. The intake should be marked by appropriate onshore warning signs
 - d. The intake channel blasting area and surrounding area should be cleared of all boats before blasting occurs.

RLR 222349
Huntsville Utilities Water Intake and Pipeline
Guntersville Reservoir
TVA/USACE Requirements for Blasting

General

TVA requires that blasting associated with the Huntsville Utilities proposed water intake and pipeline construction at Guntersville Dam be in accordance with CFR Title 30: Mineral Resources, section 715.19 - Use of Explosives, and the technical requirements of the City of Huntsville Alabama's blasting ordinance. The transportation, storage, and handling of explosives and blasting agents on TVA property and right-of-ways shall be in compliance with O.S.H.A. Standard 1910.109. Should blasting operations result in any damage to TVA property, TVA will expect reimbursement.

Blast Vibration and Air Overpressure Limits

The vibration and air overpressure limits for TVA and USACE structures, equipment and historic and wildlife resources shall be in agreement with (1) CFR Title 30: Mineral Resources, section 715.19 - Use of explosives, (2) the City of Huntsville Code of Ordinances, Chapter 12, Article III, Sections 12.70 through 12.73, and the limits in the following table, whichever is more stringent:

Table 1 - Blasting Vibration Limits ¹

Feature	Maximum Velocity (inches per second)	Maximum Spectral Acceleration (g = acceleration of gravity)	Maximum Spectral Displacement (inches)
Historic Stone Walls and flumes (AASHTO)	0.1	NA	NA
Sensitive Wildlife Habitat (USACE)	0.1	NA	NA
Lock Wall	4	NA	NA
Lock Control Building	2	NA	NA
Concrete Walls, Foundations, Roads and Sidewalks	2	NA	NA
Concrete Picnic Tables	1.0	NA	NA
Dam Embankment	2	NA	NA
Powerhouse Relays	NA	0.5	0.0014
Powerhouse Guide Bearing	NA	0.5	0.004
Nearest Transmission Tower	4	NA	NA
Powerhouse Foundation and Spillway	2	NA	NA
Switchyards	2	NA	NA

1: Documents (1) and (2) listed above include frequency dependent vibration limits which may be more restrictive than those in Table 1

TVA also understands and expects that Huntsville Utilities will not perform any explosive blasting during pipeline construction from station 288+50 to 301+00. Excavation methods which produce very minor or no vibration will be used in these areas.

Rather than firing a number of charges simultaneously, it is recommended that short delay firing methods be used. This will reduce the ground vibrations for the same total weight of charge in the blast.

Blast Vibration Monitoring Locations

At a minimum, the following locations will be monitored with ground vibration and air overpressure sensors and recorders:

1. Nearest TVA transmission tower (could change as blasting location changes)
2. Hand placed stone structure nearest to blasting
3. Closest section of flood control wall or north embankment to blasting
4. Bat cave approximately one mile upstream of proposed intake location
5. Powerhouse control room near critical relays
6. Nearest picnic table to blasting
7. Powerhouse turbine floor near unit 4
8. Lock upstream approach wall nearest to blasting

TVA requests that approximately a week's worth of baseline data (seismograph and audio) be collected at the bat cave prior to any blasting in this area to document what the typical ground vibration and noise levels are at this site.

Monitoring data should be retrieved manually. Data retrieval via phone line will not be available. All blast and ground vibration records shall be made available to TVA prior to the next blast unless otherwise stated by TVA.

Blast Ramp-up Plan

The amount of explosives shall be initially restricted to prevent operational problems from blast vibrations. The amount of explosives used per delay should be set initially to no more than 1/4 the amount that site vibration attenuation curve (scaled distance relation) would predict as allowable for production blasting. The ramp-up test blasts will be timed to occur at periods of low power usage to reduce the impact to the public if a relay should trip. These ramp-up blasts will be coordinated with TVA and USACE.

Once the contractor has demonstrated that they can keep vibrations within acceptable levels using the test phase amounts of explosives, the contractor will be allowed to increase the amount of explosives, and use site specific blast monitoring data to determine the amount of explosives that is acceptable for production blasting. Each stage of the ramp-up is subject to approval by TVA.

Blast Plan

The blast plan should include, but not be limited to, the following:

- Specify (confirm) the vibration and air blast limit criteria
- Specify the location, type and number of ground motion and air overpressure monitoring instruments.
- Specify the locations of blasting, type of explosives to be used, the maximum charge size, blast delays, spatial pattern, stemming, and other aspects of the blast design

TVA requests the opportunity to review and comment on the contractor's blasting plan at least 60 days prior to start of blasting operations.

Other Requirements

A pre-blast survey of TVA facilities must be performed to include pictures and written accounts of condition assessments. This should be provided to TVA at least 30 days prior to start of blasting. Relevant facilities will be determined by the expected size of blast charges and their proximity to TVA structures.

All blasting operations are subject to onsite inspection by TVA engineers.

Blasting operations shall be controlled such that no flyrock or debris cast from the blasting site shall impact transmission lines, structures, or foundations. No blasting is permitted within 500' of a concrete foundation which has not cured for at least 7 days.

The blast schedule must be coordinated with TVA (manager of the Guntersville Hydro Plant, Power System Operations, Facilities Management and TVA Police) and the USACE Navigation Branch. The USACE Navigation Branch requires a copy of the blasting schedule a minimum of two weeks prior to the first shot so the schedule can be published for marine traffic via a "Notice to Navigation Interests". If a blasting job involves more than 5 cubic yards of rock breakage or involves blasting within 150 feet of a transmission line structure, then the blast operator shall notify TVA Power Systems Operations in writing at least three working days prior to blasting.

Previously identified depressions on the north abutment and embankment shall be inspected by the blaster following each blast that occurs from the area of the Pavilion to the transmission line crossing north of the Pavilion area (specific locations correspond to those of notes 1,2,4,6,7,8 in Attachment).

Special Conditions/Requirements for Water Withdrawals

Conditions and Requirements

1. Maximum peak day water withdrawal from the permitted intake site is restricted to 24.0 mgd.
2. This § 26a approval expires on November 8, 2027. In order to renew this approval, a Permittee must submit a renewal request to TVA no earlier than eighteen months and no later than 12 months PRIOR to this date. In the event that the approval expires without renewal, all permitted structures shall be removed at no cost to TVA absent TVA's written approval to leave structures in place.
3. Because this is an inter-basin transfer, Permittee is obligated to reimburse TVA for the loss in power benefits resulting from this water withdrawal in the amount of \$_____ per mgd for a total of \$_____ per year subject to such periodic adjustment by TVA to reflect changes in the estimate of power benefits. The first payment shall be due within 30 days of issuance of this approval as prorated for the remainder of the year, and thereafter shall be due by no later than January 15 of each subsequent year without request by TVA. Any adjustment to the estimate of lost power benefits shall first be discussed with Permittee and shall apply to the next year's payment upon written notice from TVA.
4. Because Permittee is located within TVA's Power Service Area and uses power generated by TVA, _____ percent of the assessed lost power benefit shall be waived from year to year until Permittee is otherwise notified in writing that this waiver has been terminated by TVA.
5. NO LATER THAN MARCH 1 of every year following issuance of this approval, Permittee shall report to TVA on the attached form the amount of water withdrawn and used by Permittee.
6. WITHOUT WRITTEN CONCURRENCE FROM TVA, water withdrawn from the Tennessee River System as a result of this § 26a approval SHALL NOT BE SOLD, DISTRIBUTED, OR OTHERWISE TRANSFERRED beyond the utility service territory existing on the date of this approval if the Permittee is a utility, or for other than the use(s) designated in the application by a non-utility Permittee.
7. Water withdrawn from the Tennessee River System as a result of this § 26a approval SHALL NOT BE USED to REPLACE other water supply sources that are sold, distributed or otherwise transferred beyond the utility service territory existing on the date of permit issuance WITHOUT WRITTEN CONCURRENCE FROM TVA.
8. TVA makes no warranty or representation to Permittee or any other entity that the LEVEL of any reservoir or stream will be maintained at or above any elevation. If the water level drops for any reason to a level where Permittee's intake operations or approved structure(s) are impacted, it is the responsibility of the Permittee to have sufficient emergency or contingency plans for alternate sources of water supply. PERMITTEE AGREES THAT IT SHALL MAKE NO CLAIMS AGAINST TVA RELATED TO ANY LOSS OF WATER SUPPLY FOR ANY POSSIBLE REASON, AND SHALL INDEMNIFY AND HOLD TVA HARMLESS FOR CLAIMS MADE BY OTHERS FOR ANY LOSS OF WATER SUPPLY THAT ARISES OUT OF THE ACTIVITIES AUTHORIZED BY THIS APPROVAL.
9. TVA makes no warranty or representation that the FLOW from or WATER QUALITY in any reservoir or stream will be maintained at or above any minimum flow or quality level. If the flow drops or water quality changes for any reason to a level where Permittee's intake operations or other approved activities are impacted, it is the responsibility of the Permittee to detect such changes and have sufficient emergency or contingency plans for alternate sources or treatment of water supply. PERMITTEE AGREES THAT IT SHALL MAKE NO CLAIMS AGAINST TVA FOR ANY LOSS OF INSTREAM FLOW OR DEGRADATION OF RAW WATER QUALITY FOR ANY POSSIBLE REASON, AND SHALL INDEMNIFY AND HOLD TVA HARMLESS FOR CLAIMS MADE BY OTHERS FOR ANY INJURIES OR DAMAGES RELATED TO WATER QUALITY OR LOSS OF WATER SUPPLY THAT ARISES OUT OF THE ACTIVITIES AUTHORIZED BY THE PERMIT.

If any condition of this approval is contested and the condition is removed or voided, this approval is revoked unless TVA, in its sole discretion, agrees in writing to continue it.

WATER WITHDRAWAL ANNUAL REPORTING FORM

(This report is due annually to TVA by MARCH 1)

Complete form and submit to:

Tennessee Valley Authority
River Operations (WT10-K)
Att: Manager, Water Supply
400 W. Summit Hill Dr.
Knoxville, TN 37902-1499

(Check One)
 Utility District / Water Supplier: Industry Irrigation

Name:

Address:

City:

State:

ZIP:

Phone: () -

Water Treatment Plant:

Address:

City:

State:

ZIP:

Phone: () -

Emergency Contact:

Name:

Position:

Address:

City:

State:

ZIP:

Phone: () - Cell: () -

E-Mail:

TVA 26a Permit:

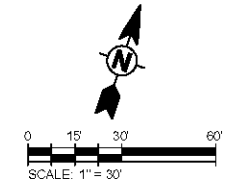
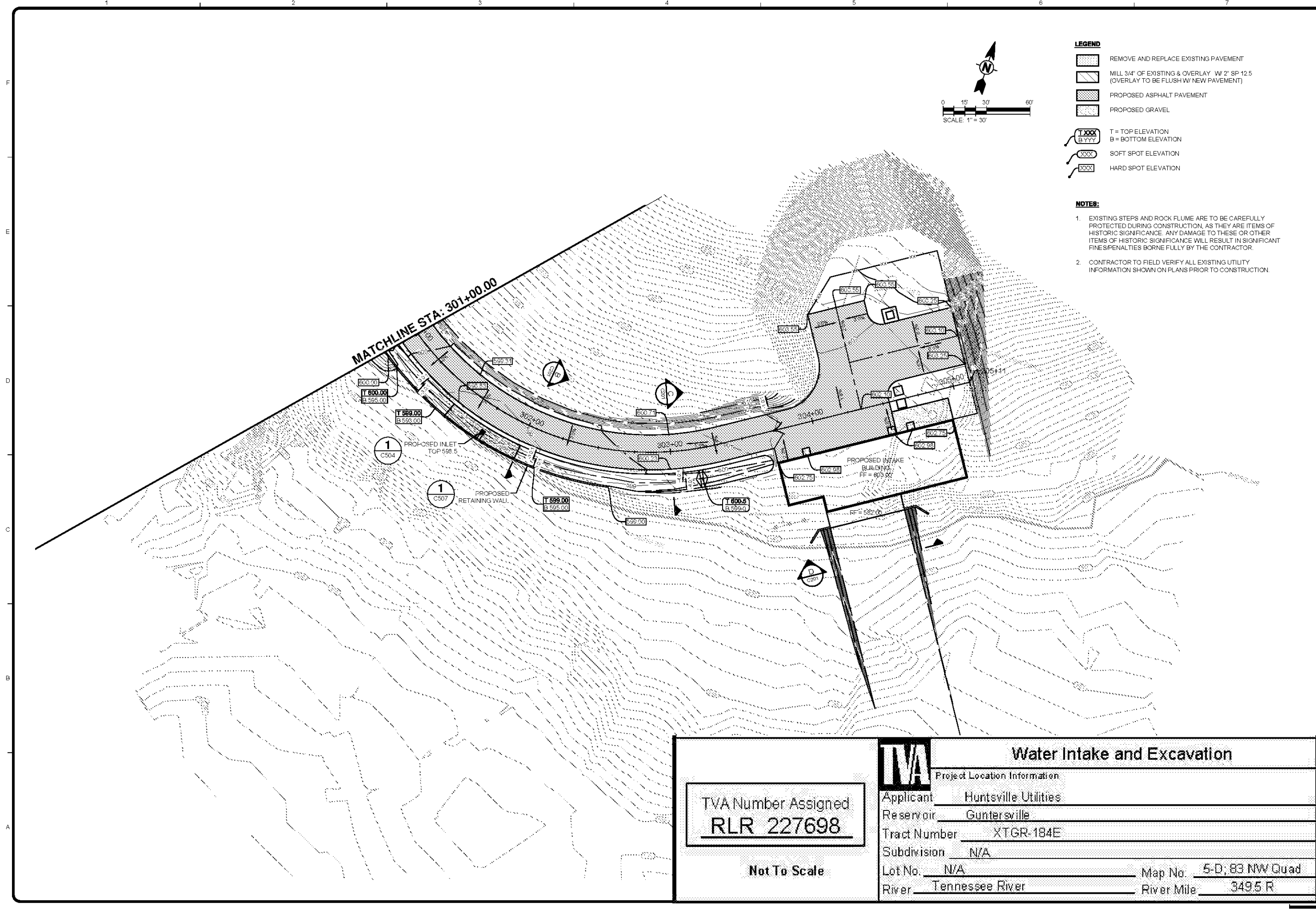
Issue Date:

Expiration Date:

Calendar Reporting Year:

Number of operational intakes:		
Location of intakes (waterbody and stream/river mile)		
Location 1 - Waterbody:	Stream/River Mile:	
Location 2 - Waterbody:	Stream/River Mile:	
Location 3 - Waterbody:	Stream/River Mile:	
Pump capacity at each intake (mgd)		
Intake 1:	mgd	
Intake 2:	mgd	
Intake 3:	mgd	
Approximate number of customers		
Residential:	Commercial:	
Approximate number of customers outside the Tennessee Valley watershed		
Residential:	Commercial:	
Annual average withdrawal (mgd):		
Peak day withdrawal (mgd):		
5 Year projected annual average and peak day withdrawal (mgd):		and
Average monthly volume of backwash water discharged (gal):		
Backwash water discharge location		
sewer	waterbody (list):	
Annual average daily volume sold to other water suppliers (name and volume)		
Water Supplier:	Volume:	
Water Supplier:	Volume:	
Water Supplier:	Volume:	
Percent unaccounted for water:		
Source water quality problems:		
Problems with meeting drinking water standards:		
Prepared By		
Name:		
Position:		
Address:		
City:	State:	ZIP:
Phone: () - Cell: () -		
Date:		

12/2/2011 4:23:43 PM - P:\200-11740-10003-HU GUNTERSVILLE CPMACAD\SSHEETS\PIPERLINE AND INTAKE\C134 GRADING.DWG - DAVALOS, PALLA



- LEGEND**
- REMOVE AND REPLACE EXISTING PAVEMENT
 - MILL 3/4" OF EXISTING & OVERLAY W/ 2" SP 12.5 (OVERLAY TO BE FLUSH W/ NEW PAVEMENT)
 - PROPOSED ASPHALT PAVEMENT
 - PROPOSED GRAVEL
 - T = TOP ELEVATION
B = BOTTOM ELEVATION
 - SOFT SPOT ELEVATION
 - HARD SPOT ELEVATION

- NOTES:**
1. EXISTING STEPS AND ROCK FLUME ARE TO BE CAREFULLY PROTECTED DURING CONSTRUCTION, AS THEY ARE ITEMS OF HISTORIC SIGNIFICANCE. ANY DAMAGE TO THESE OR OTHER ITEMS OF HISTORIC SIGNIFICANCE WILL RESULT IN SIGNIFICANT FINES/PENALTIES BORNE FULLY BY THE CONTRACTOR.
 2. CONTRACTOR TO FIELD VERIFY ALL EXISTING UTILITY INFORMATION SHOWN ON PLANS PRIOR TO CONSTRUCTION.

TETRA TECH
www.tetratech.com
101 CHURCH STREET, SUITE 201
HUNTSVILLE, AL 35801
PHONE: (256) 551-0222

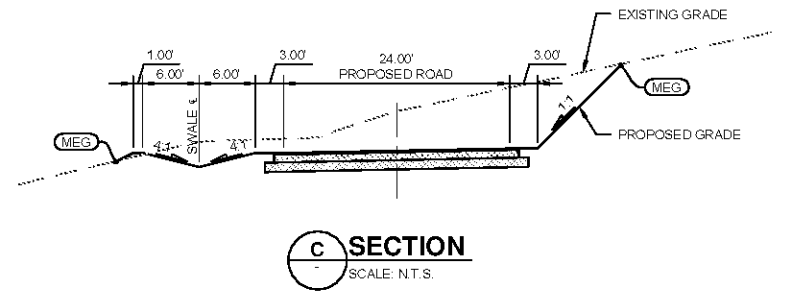
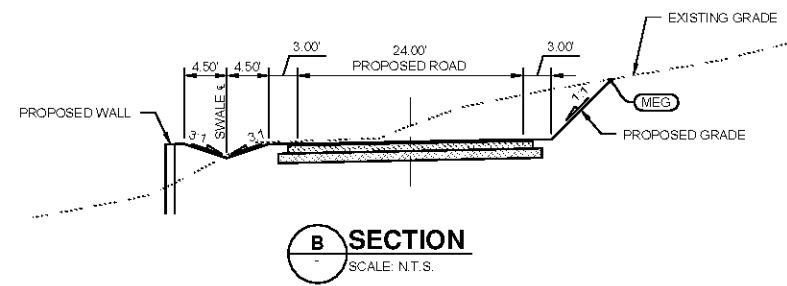
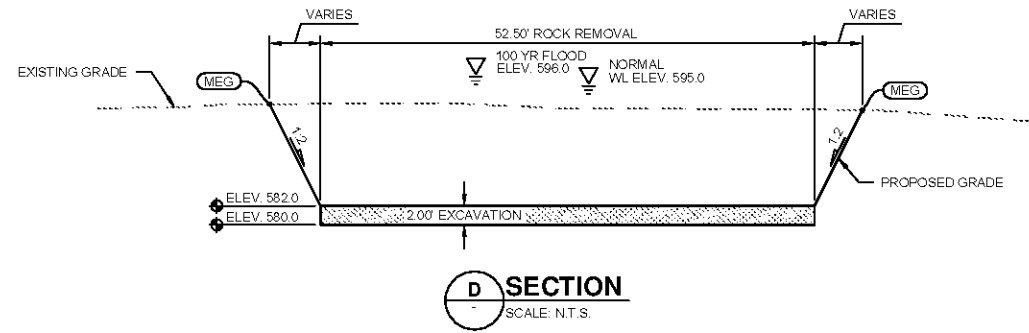
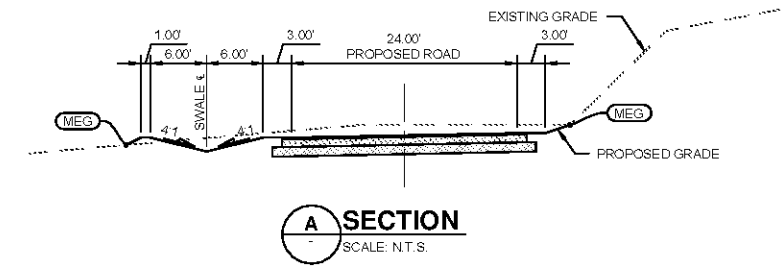
PRELIMINARY
NOT APPROVED FOR
CONSTRUCTION

MARK	DATE	DESCRIPTION

<p>TVA Number Assigned RLR 227698</p> <p style="text-align: center;">Not To Scale</p>	<table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">TVA</td> <td style="text-align: center;">Water Intake and Excavation</td> </tr> <tr> <td colspan="2">Project Location Information:</td> </tr> <tr> <td>Applicant</td> <td>Huntsville Utilities</td> </tr> <tr> <td>Reservoir</td> <td>Guntersville</td> </tr> <tr> <td>Tract Number</td> <td>XTGR-184E</td> </tr> <tr> <td>Subdivision</td> <td>N/A</td> </tr> <tr> <td>Lot No.</td> <td>N/A</td> </tr> <tr> <td>River</td> <td>Tennessee River</td> </tr> <tr> <td>Map No.</td> <td>5-D, 83 NW Quad</td> </tr> <tr> <td>River Mile</td> <td>349.5 R</td> </tr> </table>	TVA	Water Intake and Excavation	Project Location Information:		Applicant	Huntsville Utilities	Reservoir	Guntersville	Tract Number	XTGR-184E	Subdivision	N/A	Lot No.	N/A	River	Tennessee River	Map No.	5-D, 83 NW Quad	River Mile	349.5 R
TVA	Water Intake and Excavation																				
Project Location Information:																					
Applicant	Huntsville Utilities																				
Reservoir	Guntersville																				
Tract Number	XTGR-184E																				
Subdivision	N/A																				
Lot No.	N/A																				
River	Tennessee River																				
Map No.	5-D, 83 NW Quad																				
River Mile	349.5 R																				

HUNTSVILLE UTILITIES
RAW WATER INTAKE STRUCTURE AND RAW WATER MAIN INTAKE ROAD & STRUCTURE GRADING PLAN
Project No.: 200-11740-10003
Designed By:
Drawn By: PD
Checked By:
C134

Bar Measures 1 inch



TVA Number Assigned
RLR 227698

Not To Scale

TVA **Water Intake and Excavation**

Project Location Information:

Applicant: Huntsville Utilities

Reservoir: Guntersville

Tract Number: XTGR-184E

Subdivision: N/A

Lot No. N/A Map No. 5-D, 83 NW Quad

River: Tennessee River River Mile 349.5 R

TETRA TECH
www.tetratech.com
101 CHURCH STREET, SUITE 201
HUNTSVILLE, AL 35801
PHONE: (256) 551-0222

PRELIMINARY
NOT APPROVED FOR
CONSTRUCTION

MARK	DATE	DESCRIPTION

HUNTSVILLE UTILITIES
RAW WATER INTAKE STRUCTURE
AND RAW WATER MAIN
SECTIONS

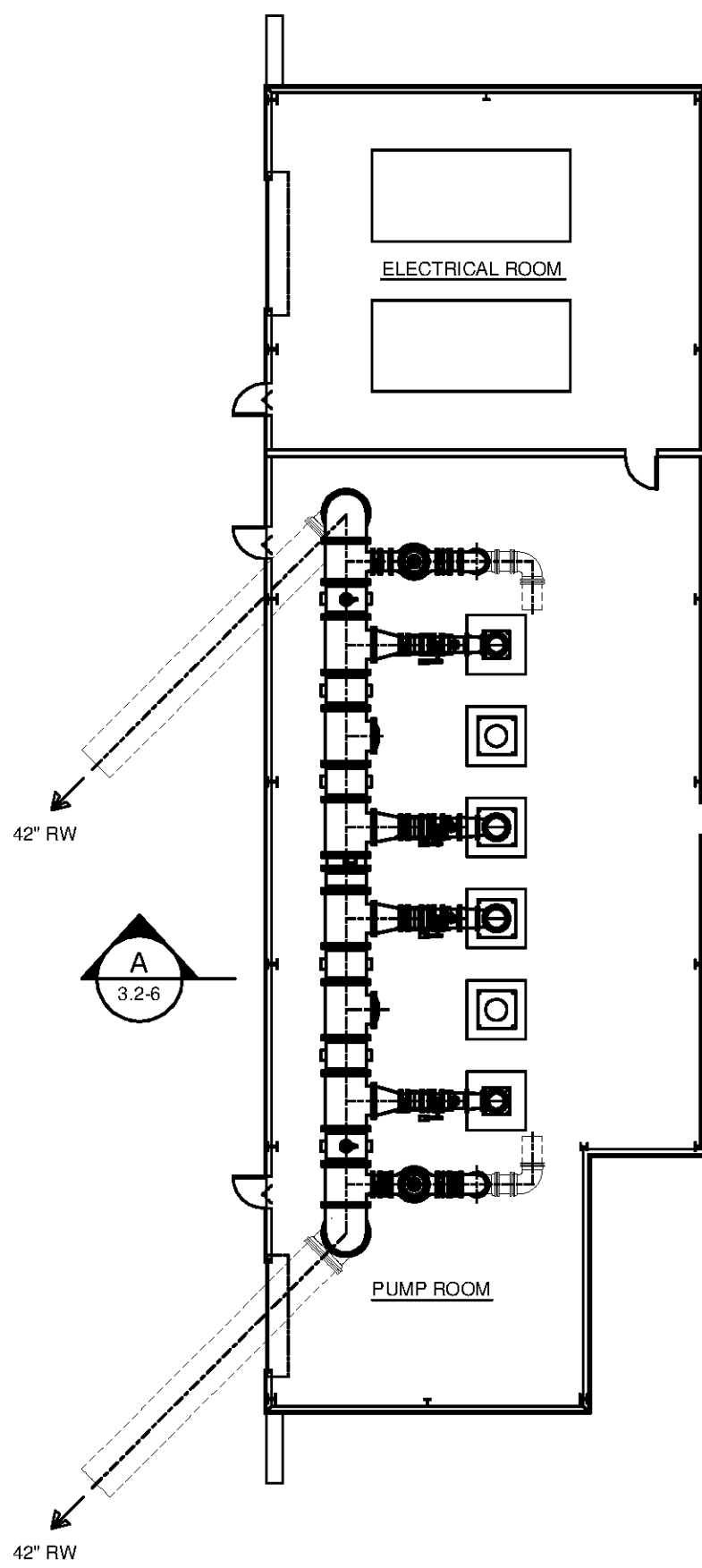
Project No.: 200-11740-10003
Designed By: _____
Drawn By: **PD**
Checked By: _____

C201
Sheet

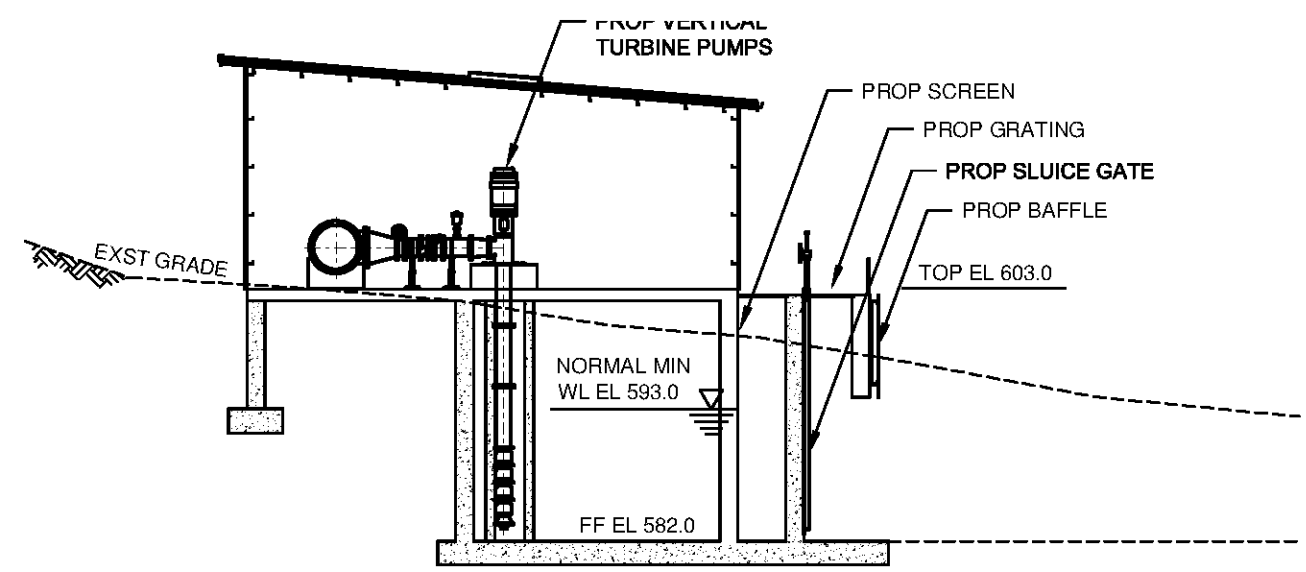
Bar Measures 1 inch

Copyright: Tetra Tech

3/13/2012 5:53:00 PM - C:\USERS\SCOTT.NEUMEYER\DOCUMENTS\FIG 3.2.5.DWG - NEUMEYER, SCOTT



PLAN
SCALE: 1/16"=1'-0"



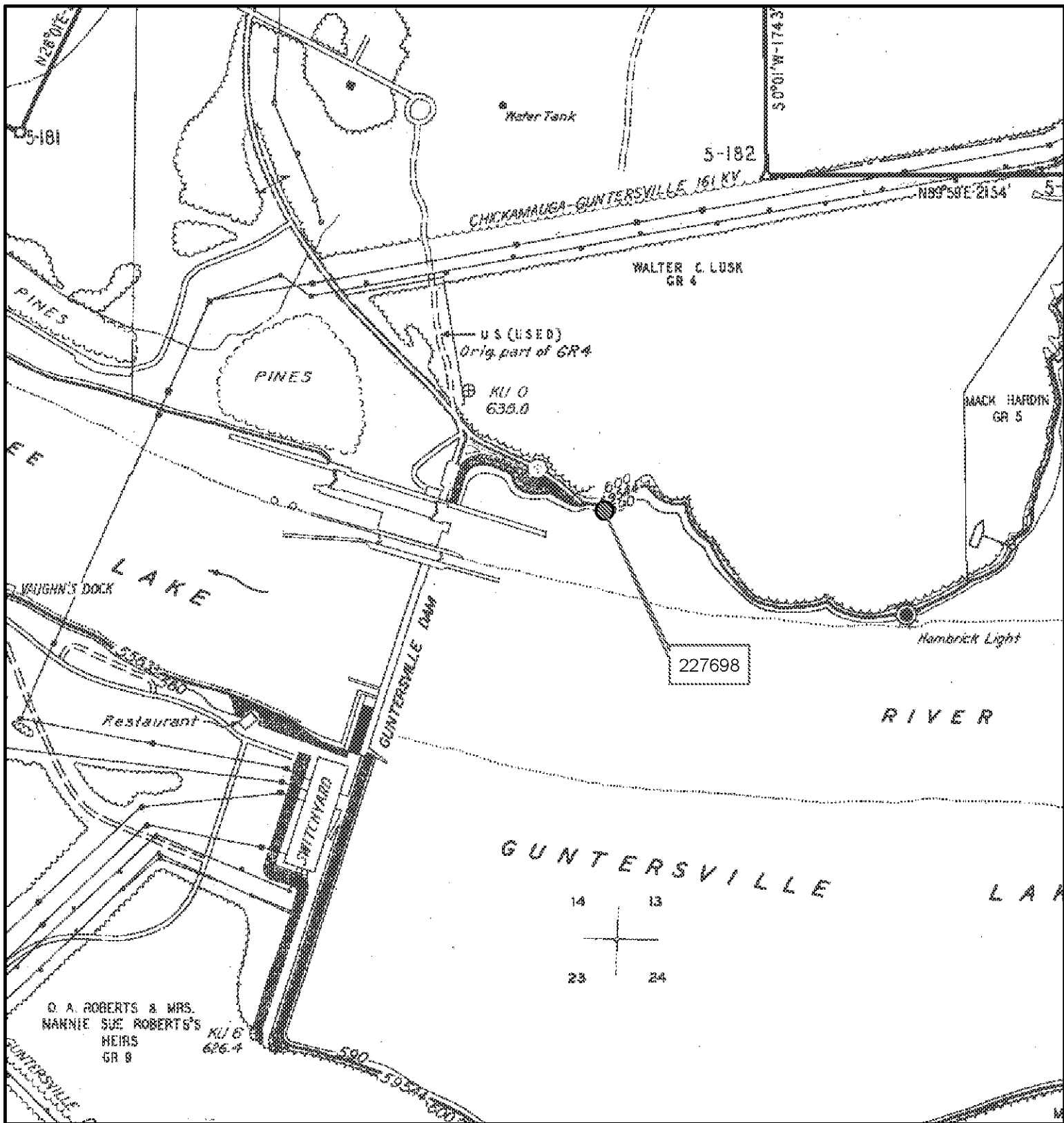
A SECTION
3.2-6 SCALE: 1/16"=1'-0"

APPROXIMATE
LIMITS OF ROCK
EXCAVATION

<p>TVA Number Assigned RLR 227698</p> <p>Not To Scale</p>	<p>TVA Water Intake and Excavation</p>	
	<p>Project Location Information:</p>	
<p>Applicant <u>Huntsville Utilities</u></p>		
<p>Reservoir <u>Guntersville</u></p>		
<p>Tract Number <u>XTGR-184E</u></p>		
<p>Subdivision <u>N/A</u></p>		
<p>Lot No. <u>N/A</u></p>		<p>Map No. <u>5-D, 83 NW Quad</u></p>
<p>River <u>Tennessee River</u></p>		<p>River Mile <u>349.5 R</u></p>

Bar Measures 1 inch

Copyright: Tetra Tech



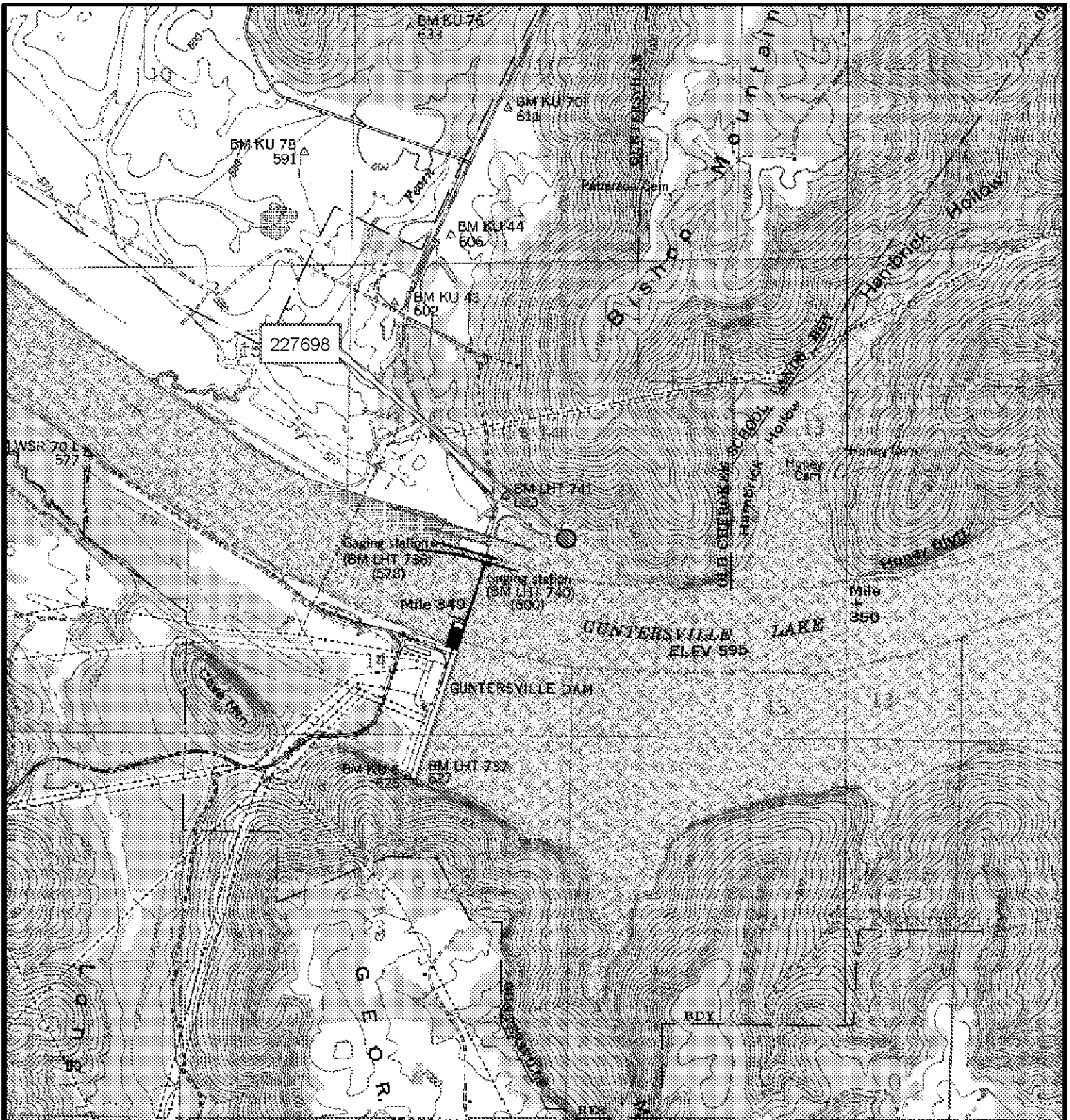
TVA Number Assigned
RLR 227698



Location Map

Project Location Information

Applicant Huntsville Utilities
 Reservoir Guntersville
 Tract Number XTGR-184E
 Subdivision N/A
 Lot No. N/A Map No. 5-D: 83 NW
 River Tennessee River River Mile 349.5 R



TVA Number Assigned
RLR 227698



Location Map

Project Location Information

Applicant Huntsville Utilities
 Reservoir Guntersville
 Tract Number XTGR-184E
 Subdivision N/A
 Lot No. N/A Map No. 5-D: 83 NW
 River Tennessee River River Mile 349.5 R

PK 227698

OMB No. 3215-0069
Exp. Date 09/30/2007

JOINT APPLICATION FORM

Department of the Army/TVA

The Department of the Army (DA) permit program is authorized by Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (P.L. 86-217). These laws require permits authorizing structures and work in or affecting navigable waters of the United States and the discharge of dredged or fill material into waters of the United States. Section 306 of the Tennessee Valley Authority Act, as amended, prohibits the construction, operation, or maintenance of any structure affecting navigation, flood control, or public lands or reservations, except, along, or in the Tennessee River or any of its tributaries until plans for such construction, operation, and maintenance have been submitted to and approved by the Tennessee Valley Authority (TVA).

Name and Address of Applicant: Huntsville Utilities P.O. Box 2048 Huntsville, AL 35801		Name, Address, and Title of Authorized Agent: Tetra Tech 101 Quality Circle Suite 140 Huntsville, AL 35806	
Telephone Number:	Home _____ Office <u>256-335-1200</u>	Telephone Number:	Home _____ Office <u>256-428-8077</u>

Location where activity exists or will occur (include Stream Name and Mile, if known):

Application submitted to DA TVA

Date activity is proposed to commence: 09/2013 Date activity is proposed to be completed: 12/2014

Describe in detail the proposed activity, its purpose and intended use (private, public, commercial, or other). Describe structures to be erected including those placed on fills, piles, or floating platforms. Also describe the type, composition, and quantity of materials to be discharged or placed in the water; the means of conveyance; and the source of discharge or fill material. Please attach additional sheets if needed.

The proposed project includes permitting for a raw water intake, construction of the intake, raw water mains, and water treatment plant on or near TVA property. See attached request from Huntsville Utilities dated 12/05/2011 and the TVA response dated 04/13/2012.

Application is hereby made for approval of the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I agree that, if this application is approved by TVA, I will comply with the attached terms and conditions and any special conditions that may be imposed by TVA at the time of approval. Please note the U.S. Army Corps of Engineers may impose additional conditions or restrictions.

10/19/2012
Date

[Signature]
Signature of Applicant

18 U.S.C. Section 1061 provides that: Whoever, in any manner within the jurisdiction of any department or agency of The United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both. The appropriate DA fee will be assessed when a permit is issued.

Names, addresses, and telephone numbers of adjoining property owners, lessees, etc., whose properties also join the waterway:

NA

Cat 3 Gundersville

TVA, Muscle Shoals, Alabama

Received 10-23-2012

Date Paid _____

Amount _____

Check Number _____

List of previous DA/TVA permits/approvals DA 2007-01655 TVA 10/17/08
Permit Number Date

Is any portion of the activity for which authorization is sought now complete? Yes No (If "Yes" attach explanation)
 Month and year the activity was completed: _____ Indicate the existing work on the drawings.

List all approvals or certifications required by other federal, interstate, state, or local agencies for any structures, construction, discharges, deposits, or other activities described in this application.

Issuing Agency	Type Approval	Identification No.	Date of Application	Date of Approval
ANEM				
USFWS				
AL Hist. Comm.				

Has any agency denied approval for the activity described herein or for any activity directly related to the activity described herein?
 Yes No (If "Yes" attach explanation)

Project plans or drawings should accompany the application. These should be on paper suitable for reproduction no larger than 11 x 17 inches or contained on a 3-1/2 inch floppy computer disc in "dxf" format, and should be submitted to the appropriate TVA and U.S. Army Corps of Engineers offices. An application that is not complete will be returned for additional information.

U.S.A.C.E. Offices		TVA Office Location
U.S. Army Corps of Engineers Eastern Regulatory Field Office Spring Cross Business Park 501 Adams Blvd., Suite 250 Lenoir City, Tennessee 37771 (865) 966-7260	U.S. Army Corps of Engineers Savannah District The Plaza, Suite 130 1390 Adamson Parkway Morrow, Georgia 30260-1763 (878) 422-2729	Tennessee Valley Authority
U.S. Army Corps of Engineers Regulatory Branch 3701 Bell Road Nashville, Tennessee 37214 (615) 369-7900	U.S. Army Corps of Engineers Western Regulatory Field Office 2042 Bellline Road, SW, Bldg C, Suite 415 Decatur, Alabama 35602 (256) 350-5620	
U.S. Army Corps of Engineers Norfolk District P.O. Box 338 Abingdon, Virginia 24212 (276) 823-5259	U.S. Army Corps of Engineers Asheville Regulatory Field Office 151 Patton Avenue, Room 208 Asheville, North Carolina 28801-5008 (828) 271-4856	

Privacy Act Statement
 This information is being requested in accordance with Section 26a of the TVA Act as cited on the front page of this form. Disclosure of the information requested is voluntary; however, failure to provide any required information or documents may result in a delay in processing your application or in your being denied a Section 26a permit. An application that is not complete will be returned for additional information. TVA uses this information to assess the impact of the proposed project on TVA programs and the environment and to determine if the project can be approved. Information in the application is made a matter of public record through issuance of a public notice if warranted. Routine uses of this information include providing to federal, state, or local agencies, and to consultants, contractors, etc., for use in program evaluations, studies, or other matters involving support services to the program; to respond to a congressional inquiry concerning the application or Section 26a program; and for oversight or similar purposes, corrective action, litigation or law enforcement.

Burden Estimate Statement
 Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Agency Clearance Officer, Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402; and to the Office of Management and Budget, Paperwork Reduction Project (3318-0080), Washington, D.C. 20503.

TVA

Prior Entry License

Permit No. 222349



Tennessee Valley Authority, 1101 Market Street (PSC 1E), Chattanooga, Tennessee 37402

November 9, 2012

Mr. Jay Stowe
Vice President of Operations
Huntsville Utilities
Post Office Box 2048
Huntsville, Alabama 35801

Dear Mr. Stowe:

GUNTERSVILLE RESERVOIR -- TENNESSEE RIVER MILE 349.5R -- RLR-222349 AND RLR-227898 -- PRIOR ENTRY LETTER -- REQUEST FOR TERM EASEMENT FOR A RAW WATER INTAKE FACILITY, PIPELINES AND ACCESS ROAD -- TVA TRACT XTGR-184E -- HUNTSVILLE UTILITIES -- MARSHALL COUNTY, ALABAMA.

This letter is in response to your request for Tennessee Valley Authority (TVA) approval to allow Huntsville Utilities to begin construction activities on TVA Tract XTGR-184E prior to the execution of the term public utility easement for a raw water intake facility, pipelines and an associated access road.

The TVA Chief Executive Officer (CEO), under authority delegated by the TVA Board of Directors, has determined that the grant of the permanent public utility easement over approximately 18 acres, subject to such conditions, reservations, and restrictions as TVA deems necessary in the interests of its programs and statutory obligations, will not be adverse to the interests of the United States of America (USA) or TVA and has authorized its conveyance pursuant to 40 U.S.C. § 1314.

TVA hereby acknowledges prior receipt of plans (Plans) for construction of the above described improvements.

TVA is willing to allow you to begin this work as set forth under the terms of this letter, and pursuant to the Plans received, conditioned upon payment of the estimated administrative costs to TVA of the remaining balance due for the easement grant, which we estimate to be \$12,056. Since we have not yet finalized the instrument, it should be understood that the balance of \$12,056 represents our best estimate of the total cost and that you will be invoiced for and will be obligated to pay any additional costs exceeding \$12,056 at the time the instrument is provided to you. Likewise, any unused monies will be refunded.

Mr. Jay Stowe
Page 2
November 9, 2012

Pending such conveyance and in keeping with your request, TVA hereby grants Huntsville Utilities, subject to Huntsville Utilities' agreement (evidenced by your signature below) to all of the terms and conditions herein, a nonexclusive License (License) to occupy said proposed easement area as depicted on the attached Exhibit Map and more accurately defined in the plans in the attached 26a permit for the purpose of engaging in construction activities related to the raw water intake, pipeline and access road, with the understanding that such entry is at Huntsville Utilities' sole risk.

This permission is granted solely as an accommodation to Huntsville Utilities. TVA makes no representations as to the safety or suitability of the site for the use proposed. Any activity under this License by Huntsville Utilities or its employees, representatives, agents, contractors, or designees shall be at the sole risk of and the sole responsibility of Huntsville Utilities. To the extent permitted by law, Huntsville Utilities shall indemnify the USA, TVA, and their respective agents and employees and save them harmless from any and all liability for personal injuries, property damage, or loss of life or property resulting from, or in any way connected with, the condition or use of the premises covered by this License, including any means of ingress thereto or egress therefrom, except liability for personal injuries, property damage, or loss of life or property caused by the sole negligence of USA or TVA. Should Huntsville Utilities fail to accept the easement document when tendered, Huntsville Utilities must cease construction activities and use of the proposed easement area and, if requested by TVA, grade, shape, remove debris, and stabilize with grass seed and mulch all exposed soil surfaces to the satisfaction of TVA.

All work must be completed in accordance with the enclosed Section 26a permit RLR 227698. In addition, Huntsville Utilities will follow the requirements as set out below:

1. Huntsville Utilities shall control all emission of pollutants that might be discharged directly or indirectly into the atmosphere into any stream, lake, reservoir, watercourse, or surface or subterranean waters, or into or on the ground on the proposed easement area or on adjoining land, in full compliance with all applicable standards and requirements relating to pollution control of any kind now in effect or hereafter established by or pursuant to federal, state or local statutes, ordinances, codes or regulations. To the extent permitted by law, Huntsville Utilities shall indemnify, defend, and hold harmless USA and TVA from any and all claims, costs, or losses that may arise as a result of the Huntsville Utilities' breach of this provision.

If there is a discharge or release of a hazardous substance, material, or waste, or of any pollutant or other substance, in or from the proposed easement area by any person or entity other than USA or TVA for which a cleanup, remediation, restoration, removal, or other action (hereinafter, individually and collectively, referred to as "Environmental Response") is ordered or required pursuant to any federal, state, or local statute, regulation, code, or ordinance (including, without limitation, discharges or releases which spread or move in whole or in part beyond the proposed easement area to other areas owned by USA), Huntsville Utilities shall bear full responsibility for the cost (including,

without limitation, natural resources damages and costs) of said Environmental Response, and shall not seek any contribution or indemnification from USA or TVA for all or any portion of said costs; provided, however, that nothing in this covenant is intended to or shall preclude Huntsville Utilities from seeking indemnification or contribution from any person or entity other than USA or TVA, and provided further that nothing herein shall create any rights in or be enforceable by any person or entity other than USA, TVA, or their respective successors and assigns.

2. Huntsville Utilities will not permit or suffer any offensive use of the proposed easement area and will keep the proposed easement area and all improvements thereon in a safe condition and in good order and appearance, and it will collect and dispose of all trash, garbage, and other solid wastes accumulated or left on said proposed easement area in accordance with applicable laws and regulations and with sufficient frequency to keep the proposed easement area orderly and sanitary.
3. Huntsville Utilities shall incorporate construction Best Management Practices for soil and erosion control, including practices such as the use of hay bales and silt fencing, to establish a perimeter to protect trees and water from construction activities and erosion damage. Disturbed parking and/or asphalt areas will be returned to pre-construction or better conditions.
4. Huntsville Utilities shall conduct all land-disturbing activities on the proposed easement area in accordance with best management practices to control erosion and sedimentation so as to prevent adverse impacts on water quality and related aquatic interests in order to meet the requirements of Section 208 of the Clean Water Act and implementing regulations.
5. Huntsville Utilities will not disturb or alter in any way the existing state of any archaeological sites, human remains, funerary objects, sacred objects, objects of cultural patrimony, or any other archaeological resources which may be discovered or identified on or under the proposed road easement. Upon the discovery of any such items, Huntsville Utilities shall immediately stop all activity in the area of the discovery, make a reasonable effort to protect such items, and notify TVA's Cultural Compliance Staff by telephone at (865) 632-3660, or the Environmental Information Center (EIC) at (800)882-5263. Huntsville Utilities shall also provide written notification of such discovery to TVA's Cultural Compliance Staff by telephone at (865) 632-3660, or the Environmental Information Center (EIC) at (800)882-5263 and shall also send written notification of such discovery to TVA, Cultural Compliance, 400 W. Summit Hill Ave., WT 11A, Knoxville, TN 37902TVA, 1101 Market Street, PSC-1E, Chattanooga, Tennessee: 37402-2801. Huntsville Utilities will not resume work in the area of the discovery until approved by TVA.
6. Huntsville Utilities will mark and identify all stone landscape features in the field and prevent access by vehicles or equipment using caution tape, barricades, or similar. Huntsville Utilities will not perform any explosive blasting from station 288+50 to 301+00.

Excavation methods which produce very minor or no vibration will be used in these areas. Huntsville Utilities will monitor the stone landscape features during construction for damage or other adverse effects. Upon the discovery of any such impacts, Huntsville Utilities shall immediately stop all activity in the area of the discovery, make a reasonable effort to protect the area(s), and notify TVA's Cultural Compliance Staff by telephone at (865) 532-3600, or the Environmental Information Center (EIC) at (800)882-5263 and shall also send written notification of such discovery to TVA, Cultural Compliance, 400 W. Summit Hill Ave., WT 11A, Knoxville, Tennessee 37902. Work may not be resumed in the area until approved by TVA.

7. Huntsville Utilities shall conduct all activities within the proposed easement area associated with the exercise of rights granted hereunder in such manner: 1) to comply with all applicable local, state, and federal laws and regulations, including wetlands and floodplain regulations; and 2) to protect the environment. Furthermore, Huntsville Utilities shall be responsible for obtaining all necessary licenses, permits, and/or approvals required by local, state, or federal laws and regulations prior to the commencement of any activities on the proposed easement area.
8. Huntsville Utilities shall procure and maintain a policy or policies of commercial general liability insurance in such form as TVA may approve in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage combined single limits, under which USA, TVA, and their respective agents, servants, and employees shall be named as additional insureds, as their interests may appear, and insuring against any and all claims, demands, damages, actions, causes of action, costs, and charges to which they or any of them may be subject resulting from or in any way connected with the condition or use of the easement area. The policy or policies shall be written by insurance company or companies which shall be rated "A" or better by A.M. Best Company and are licensed to do business in Alabama, or are an accepted surplus lines carrier. The insurance carrier or carriers and form of policies shall be subject to TVA's acceptance. A certificate of insurance evidencing such policy or policies shall be delivered to TVA by Huntsville Utilities in advance of the commencement of operations by Huntsville Utilities hereunder. If Huntsville Utilities shall be in default in procuring or maintaining such insurance, TVA may procure such insurance, in which event the premium or premiums therefore shall be paid by Huntsville Utilities within thirty (30) days after receipt of TVA's invoice therefore. TVA accepts Huntsville Utilities as self-insured. However, Huntsville Utilities agrees that nothing diminishes its responsibilities to TVA that would have otherwise been covered by insurance if Huntsville Utilities were not self-insured.
9. Huntsville Utilities shall be responsible for the construction of the new access road at the south end of the existing Guntersville Dam Road to the pump building. Future maintenance of the access road will also be Huntsville Utilities' responsibility.

10. This License is, and the proposed public utility easement will be, subject to existing easements along Guntersville Dam Road for other utility purposes. Huntsville Utilities is solely responsible for locating other utility lines during all construction efforts and for any damage caused to existing utilities as a result of Huntsville Utilities' activities under this License.
11. At least two weeks prior to initiation of construction, Huntsville Utilities must notify TVA's Reservoir Land Use and Permitting and submit the contractor's construction plan for review by relevant TVA staff to ensure no conflicts with TVA's programs at the Dam Reservation.
12. At least four weeks prior to any construction in the vicinity of the recreation areas (pavilion, fishing pier, and associated parking areas), Huntsville Utilities must notify TVA's Reservoir Land Use and Permitting to coordinate with appropriate staff.
13. At least two weeks prior to construction of the Guntersville Dam road crossing, Huntsville Utilities must notify TVA's Reservoir Land Use and Permitting to coordinate with appropriate parties.
14. Huntsville Utilities is required to comply with the attached Huntsville Utilities Water Intake and Pipeline TVA/USACE Requirements for Blasting as well as the City of Huntsville's Blasting ordinance.
15. Blasting must be conducted during the months of October and November.
16. All blasting will be performed during daylight hours and there would be no on-site overnight storage of explosives. The blasting zone and blasting signal signs will be placed in visible locations and blast signal horns would sound prior to the blast and after to signal the all-clear.
17. Construction forces must not operate cranes or other equipment in a manner that would endanger TVA's transmission line or structures. Construction forces must also follow all appropriate State laws and OSHA requirements, including those related to construction activities near energized electric facilities. If blasting is done on the right of way, TVA's lines should be protected against blast damage. TVA should be given at least 48 hours notice before any blasting on or near the right of way. Damage to TVA's facilities must be fully reimbursed. Any underground pipes must be buried deep enough that they will withstand repeated crossing by heavy equipment. TVA will not be responsible for damages from routine maintenance. The integrity of all transmission towers must be maintained and any excavation must not come closer than 25 feet from the nearest tower leg, pole or counterweight. All graded surfaces on the right of way must be left in a condition to prevent future erosion and ground clearances to transmission line conductors must not be reduced.

Mr. Jay Stowe
Page 6
November 9, 2012

18. All site lighting should be fully shielded and equipped with cutoff features which limit the amount of waste light produced at a vertical angle.
19. Huntsville Utilities will ensure that all construction areas are appropriately marked and access to construction areas is controlled.

This License shall terminate automatically upon the execution of the permanent public utility easement. This License also may be revoked on '15 days' notice.

Please indicate your acceptance of the foregoing terms and conditions in the space provided below and return the original of this letter to TVA Reservoir Land Use and Permitting, Attention Samantha Strickland, Post Office Box 1010, MPB-1H-M, Muscle Shoals, Alabama 35662. The extra copy is for your records. Payment in the amount of \$12,058 should be sent to:

TVA Treasurer
Department 868018
Knoxville, TN 37995-8018

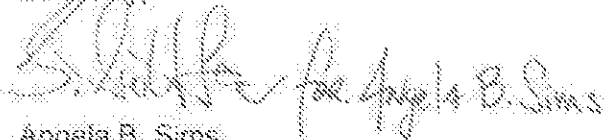
To ensure proper credit, please reference RLR 222349 when making payment.

Alternatively, you may make electronic payments at:

Online via Credit Card or ACH Debit - visit
<https://webp.tva.gov/ecol/Web/servlet/common.ConnectServlet>
ACH Credit - ABA 051038706 - ACCT# 349000
FEDWIRE - ABA 021030004 - ACCT# 4912 Bank Name: TREAS NYC
To ensure proper credit, please reference RLR 222349 when making payment.
Direct electronic payment inquiries to: Hayley Huskey (865) 632-4411

This agreement will not become valid until a signed copy of this agreement and full payment are received by TVA. If you have any questions, please contact Samantha Strickland at 256-386-2643.

Sincerely,



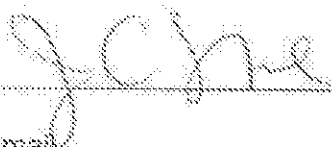
Angela B. Sims
Senior Manager
Reservoir Land Use and Permitting

Mr. Jay Stowe
Page 7
November 9, 2012

Accepted without qualification this

21 day of December 2012

Jay Stowe



By certified mail

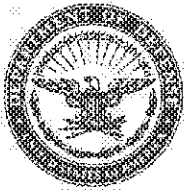
Enclosure

cc: Chelyle Campbell, MPB 1C-M (w/out enclosures)
Andrea Coyne, WT 4B-K
Samantha Strickland, MPB 1H-M
Files, P&NR (Guntersville), 1A-GVA
EDMS, WT 11A-K

USACE

Nationwide Permit (Raw Water Main)

Permit No. 12



DEPARTMENT OF THE ARMY
WESTERN REGULATORY FIELD OFFICE
2042 BELTLINE RD SW
BLDG C SUITE 415
DECATUR AL 35601-9990

July 5, 2013

Regulatory Branch

SUBJECT: File No. LRN 2007-01655; Proposed Deposition of Fill Into an Abutting Wetland and Five Unnamed Tributaries of Tennessee River Mile 349.2, Right Bank, for the Construction of a Raw Water Main Along Guntersville Dam Road, Marshall County, Alabama

Huntsville Utilities
Attn: Mr. Jay Stowe
Post Office Box 2048
Huntsville, Alabama 35801

Dear Mr. Stowe:

This refers to your recent application for a Department of the Army (DA) permit for the proposed construction of a 42" raw water main across five unnamed streams and 0.05 acre of wetland. The water main would be constructed along Guntersville Dam Road from Guntersville Lake to approximately 1/2 mile south of Highway 431. Please refer to the file number LRN 2007-01655 in reference to this letter.

Our agency has regulatory responsibilities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). The Clean Water Act prohibits the discharge of dredged or fill material without a Section 404 permit. The Rivers and Harbors Act requires a Section 10 permit for work in navigable waters of the United States. It appears the project area does not include navigable waters of the U.S. and would not be subject to the provisions of Section 10. Under Section 404, the USACE regulates the discharge of dredged and/or fill material into waters of the U.S., including wetlands.

Eric Sinclair of our Western Regulatory Field Office reviewed the Jurisdictional Determination report submitted to our office on 3 May, 2013, documenting two potential wetlands and five potential streams along Guntersville Dam Road. The review revealed one perennial stream (Little Paint Rock Creek), three intermittent and two ephemeral unnamed tributaries (UT 1 - 5) and two abutting wetlands (WET 3 & WET 4) may exist on the property. This office has determined these waters may be jurisdictional waters of the United States in accordance with the Regulatory Guidance Letter for Jurisdictional Determinations issued by the USACE on June 26, 2008 (RGL No. 08-02). As indicated in the guidance, this preliminary JD (PJD) is non-binding and cannot be appealed (33 C.F.R. 331.2) and only provides a written indication that waters of the U.S. may be present on-site. For purposes of computation of impacts, compensatory mitigation requirements and other resource protection measures, a permit decision made on the basis of a PJD will treat all waters that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S.

Enclosed are a location map indicating the project site and waters, two copies of the Preliminary Jurisdictional Determination Form, and a Notification of Administrative Appeal Options that explains available options regarding this determination. **If you agree with the findings of this PJD and understand your options regarding the same, please sign and date both copies, retain one copy for your records and return one copy to this office within 30 days of receipt of this letter.**

Based upon the information submitted to this office we have determined your proposed deposition of fill into UTs 1-5 and WET 3 meets the criteria of DA Nationwide Permit (NWP) #12, Utility Line Activities, which became effective March 19, 2012 [77 FR 10184]. The proposed work must be constructed in accordance with the enclosed plans and NWP Conditions.

This verification is valid until March 18, 2017, unless the NWP authorization is modified, suspended, or revoked. If the work has not been completed by that time, you should contact this office to obtain another permit determination in accordance with the rules and regulations in effect at that time.

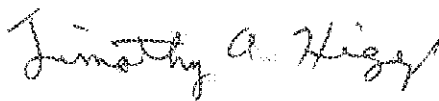
Before you begin construction, you may also need to obtain approval from the Tennessee Valley Authority. In addition, you are also responsible for obtaining any other federal, state, and/or local permits, approvals, or authorizations.

The Alabama Department of Environmental Management issued a conditional 401 certification for the NWPs, copy attached. You must comply with the conditions specified in the certification as special conditions to the NWP.

If changes in the location or approved plans are necessary, revised plans shall be submitted promptly to this office for review and approval. NWP General Condition #30 requires that you submit a signed certification. **Please sign and return the enclosed "Compliance Certification" form upon completion of the proposed activity and any required mitigation.**

If you have any questions, please contact Mr. Eric Sinclair at the above address or telephone (256) 350-5620.

Sincerely,



Timothy A. Higgs
Acting Chief, Western Regulatory Section
Operations Division

Enclosures

Copy Furnished:

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 5-JUL-2013

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:
Huntsville Utilities, PO Box 2048, Huntsville, Alabama, 35801

C. DISTRICT OFFICE, FILE NAME, AND NUMBER:
Nashville District, LRN 2007-01655, Huntsville Utilities

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: Along Guntersville Dam Road, From Guntersville Lake to Approximately 1/2 Mile South of Highway 431, Multiple waters; Tennessee River 349.2, Right Bank
(SEE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES

State: Alabama County/parish/borough: Marshall City:
Center coordinates of site (lat/long in degree decimal format):
Lat. 34.4493, Long. -86.36487.

Name of nearest waterbody: Tennessee River

Identify (estimate) amount of waters in the review area:

Non-wetland waters: 1200 linear feet: 5 width (ft).
Cowardin Class: Riverine
Stream Flow: Perennial, Intermittent, and Ephemeral
Wetlands: 2.05 Acres
Cowardin Class: Palustrine

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5-JUL-2013
 Field Determinations. Date(s): 29-MAY-2013

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply)

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: Nashville District Public Notice #86-23, dated 8 May 1986.
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000, Guntersville Dam, AL.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Marshall County, Alabama
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Submitted by applicant or Other (Name & Date): 23-APR-2011 & 29-MAY-2013, provided by applicant
- Previous determination(s).
- Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

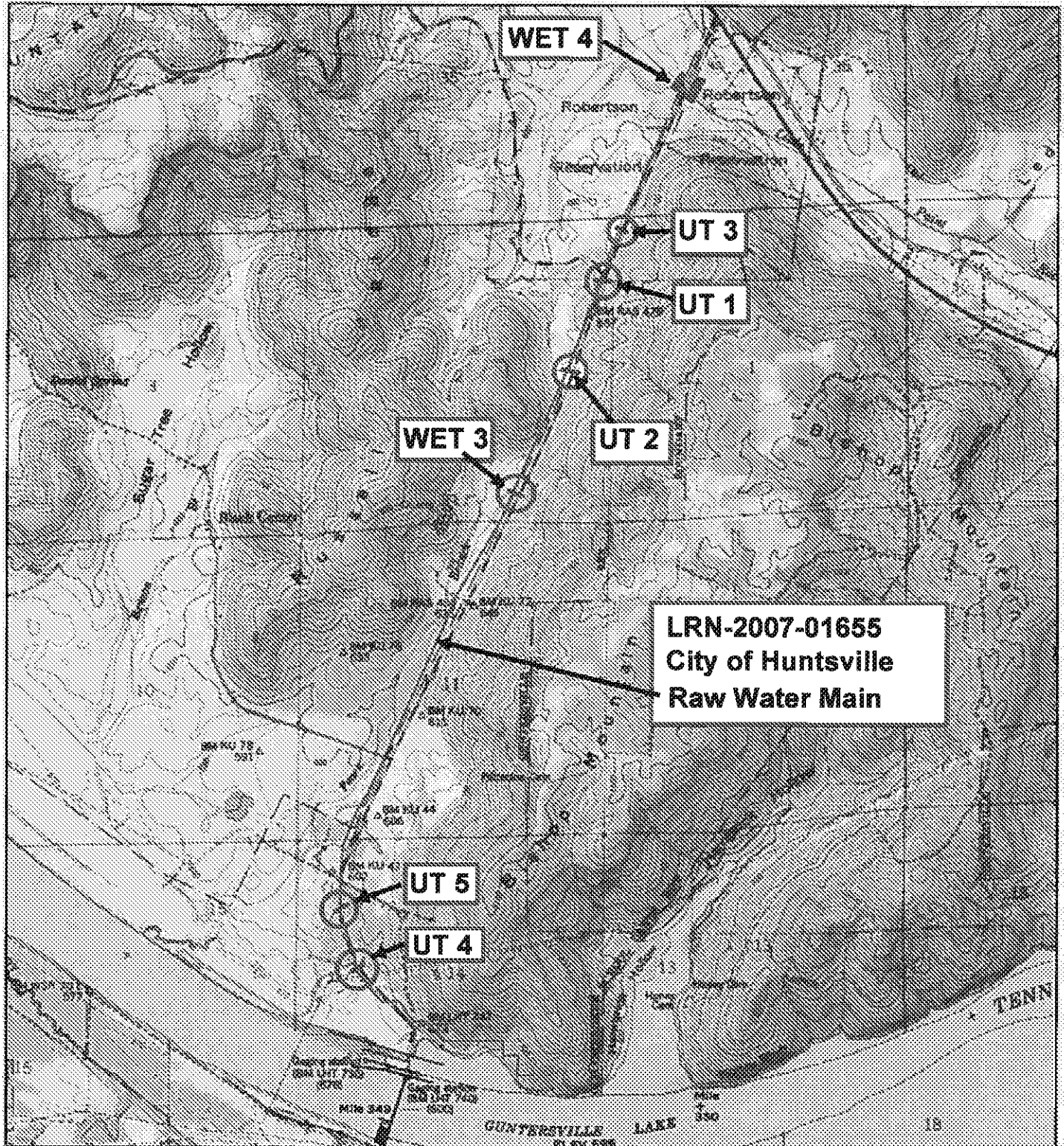
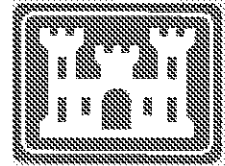
Timothy A. Higgs 7-5-13
Timothy A. Higgs
Chief, Western Regulatory Section
Operations Division

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining
the signature is impracticable)

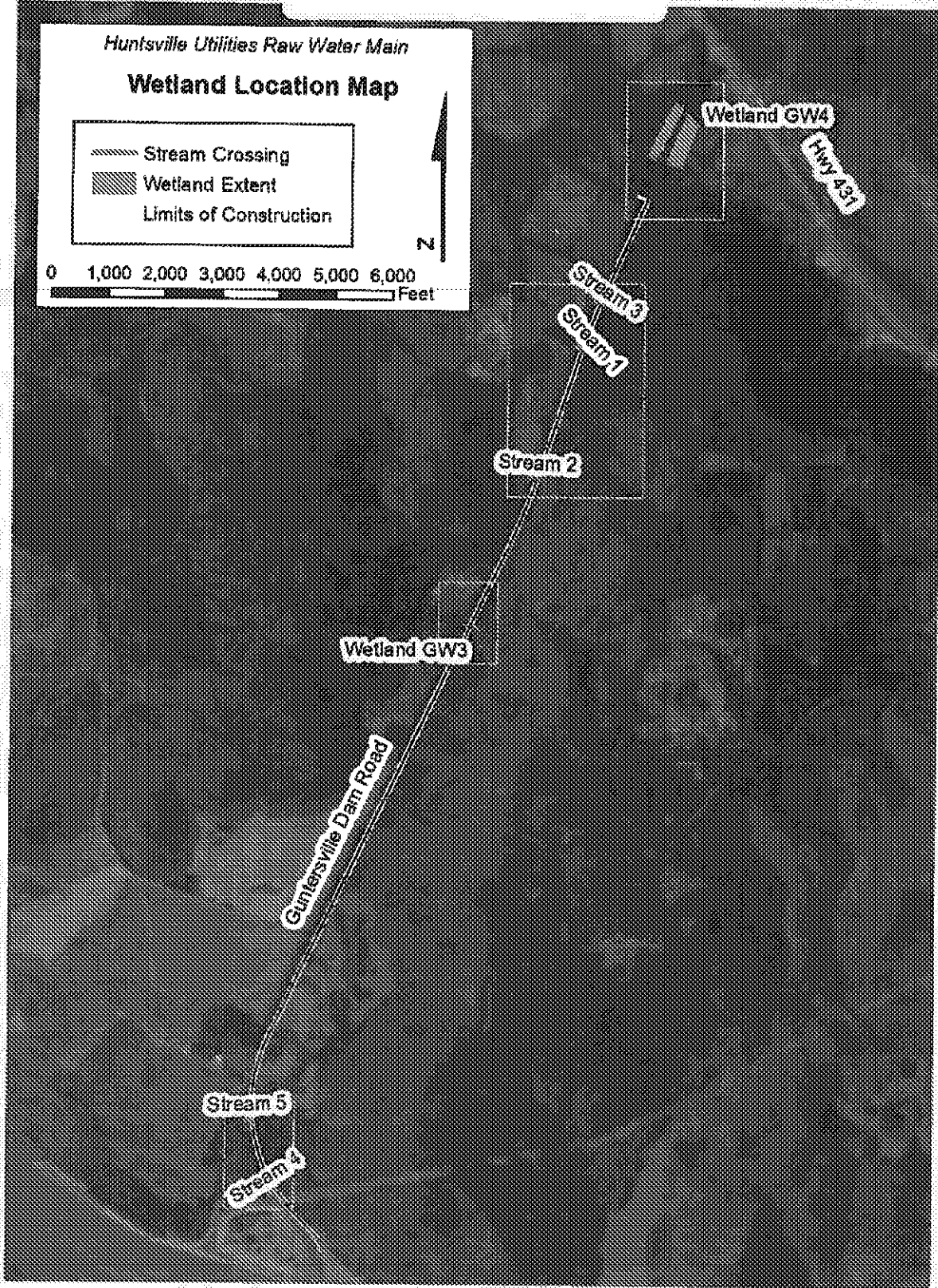
Site number	Latitude	Longitude	Cowardin Class	Estimated amount of aquatic resource in review area	Class of aquatic resource
Little Paint Rock Creek	34.47324	-86.37498	Riverine	200 linear feet	Section 404 RPW Perennial
UT 1	34.46346	-86.38013	Riverine	200 linear feet	Section 404 Non-RPW
UT 2	34.45904	-86.38187	Riverine		Section 404 RPW Intermittent
UT 3	34.46610	-86.37885	Riverine		Section 404 Non-RPW
UT 4	34.43064	-86.39425	Riverine		Section 404 RPW Intermittent
UT 5	34.43381	-86.39537	Riverine		Section 404 RPW Intermittent
WET 3	34.45318	-86.38496	Palustrine/Forested	0.05 acre	Section 404
WET 4	34.47324	-86.37498	Palustrine/Forested	2.0 acres	Section 404

**US Army Corps of Engineers
Western Regulatory Field Office**

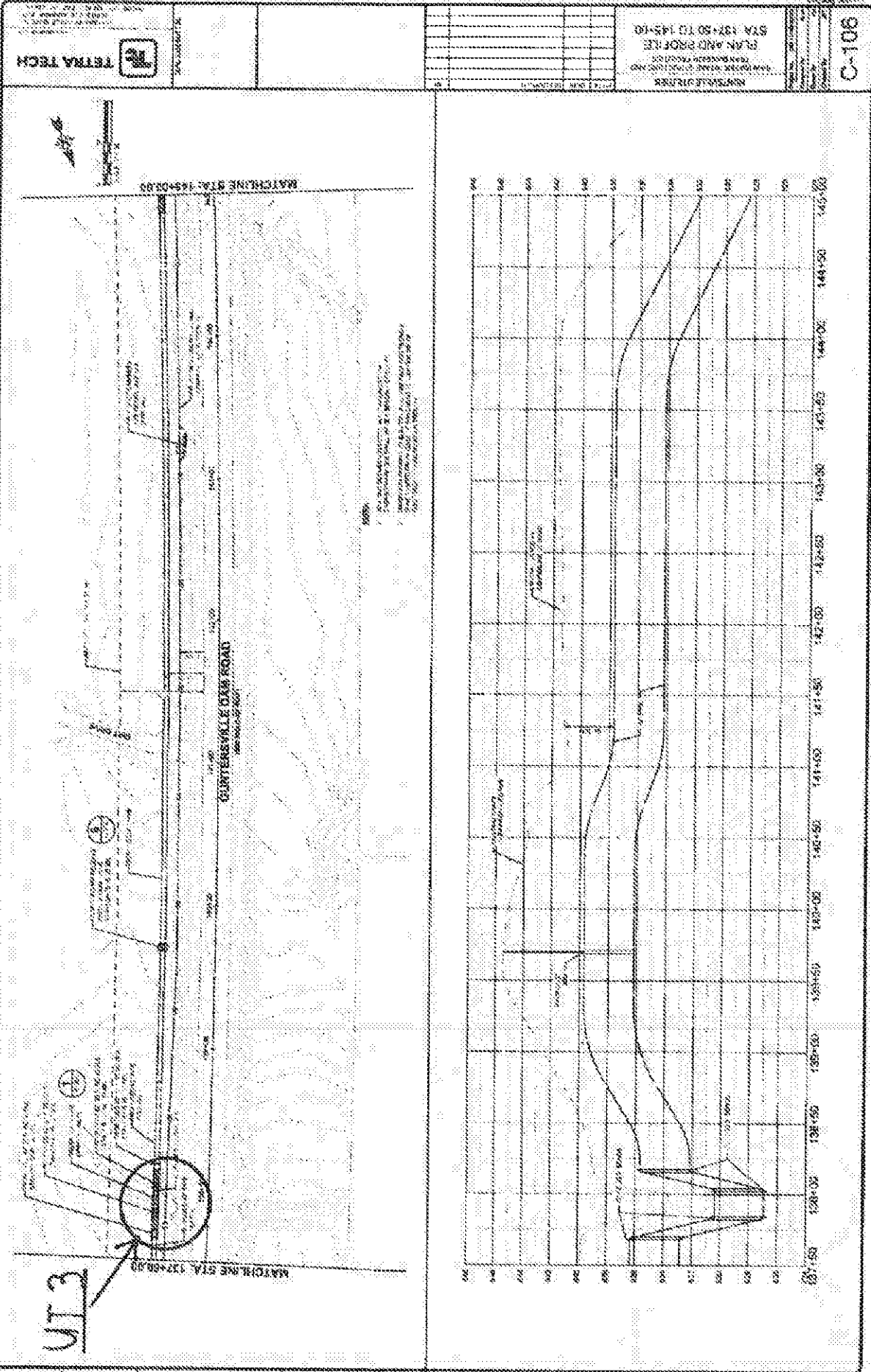
2042 Beltline Road SW
Building C, Suite 415
Decatur, Alabama 35601
(256) 350-5620
(256) 350-5499 fax



LRN-2007-01655
CITY OF HUNTSVILLE
PROPOSED 42" WATER MAIN



LRN-2007-01655
 CITY OF HUNTSVILLE
 PROPOSED 42" WATER MAIN



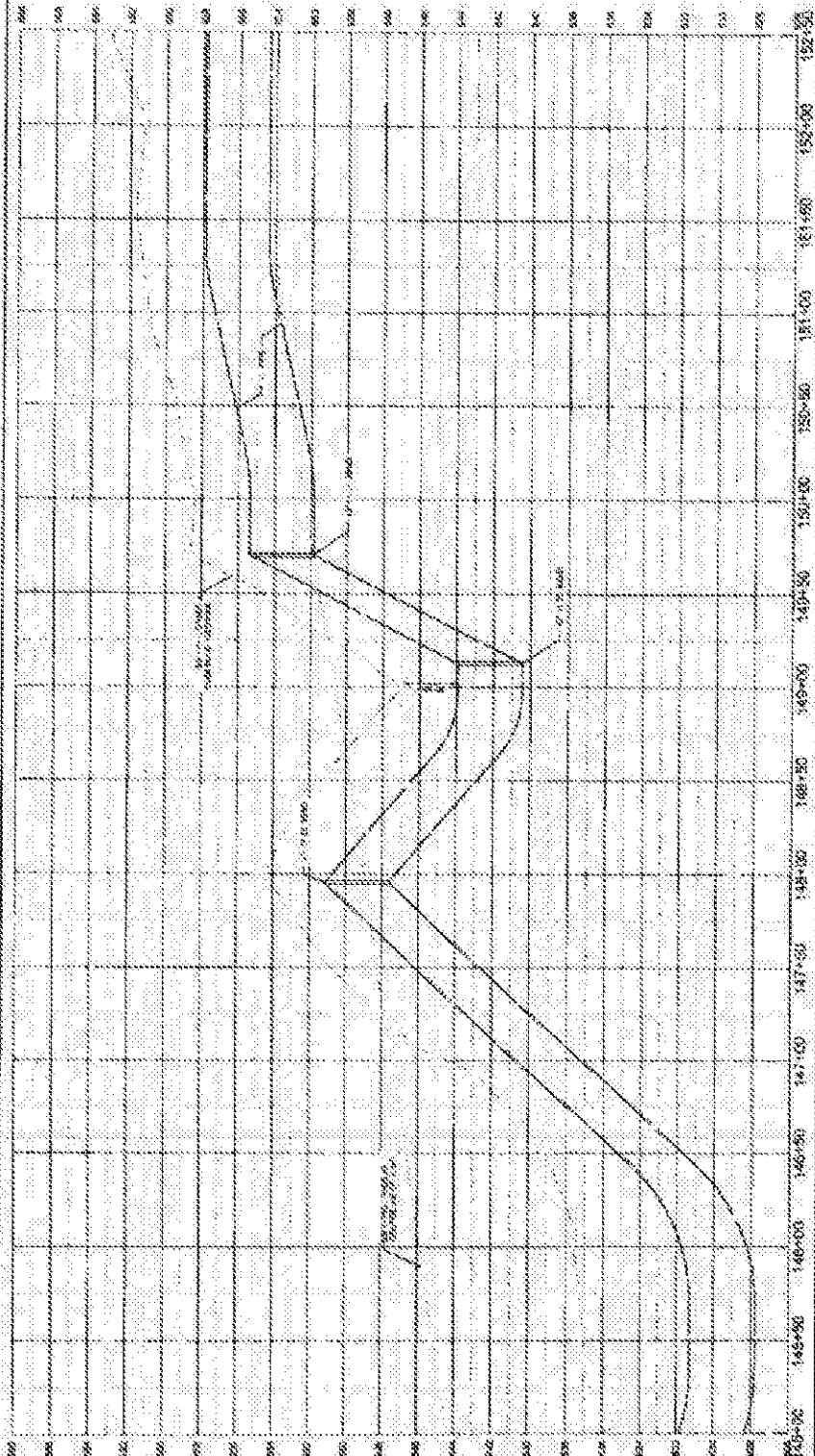
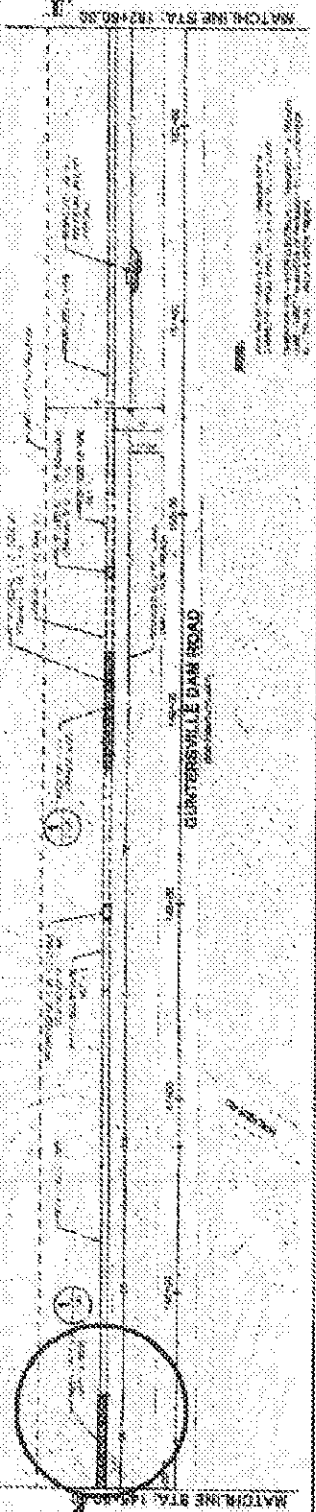
TETRA TECH

UNITS: FEET AND INCHES
 PLAN AND PROFILE
 STA 137+00 TO 145+00

C-106

LRN-2007-01655
 CITY OF HUNTSVILLE
 PROPOSED 42" WATER MAIN

UT1



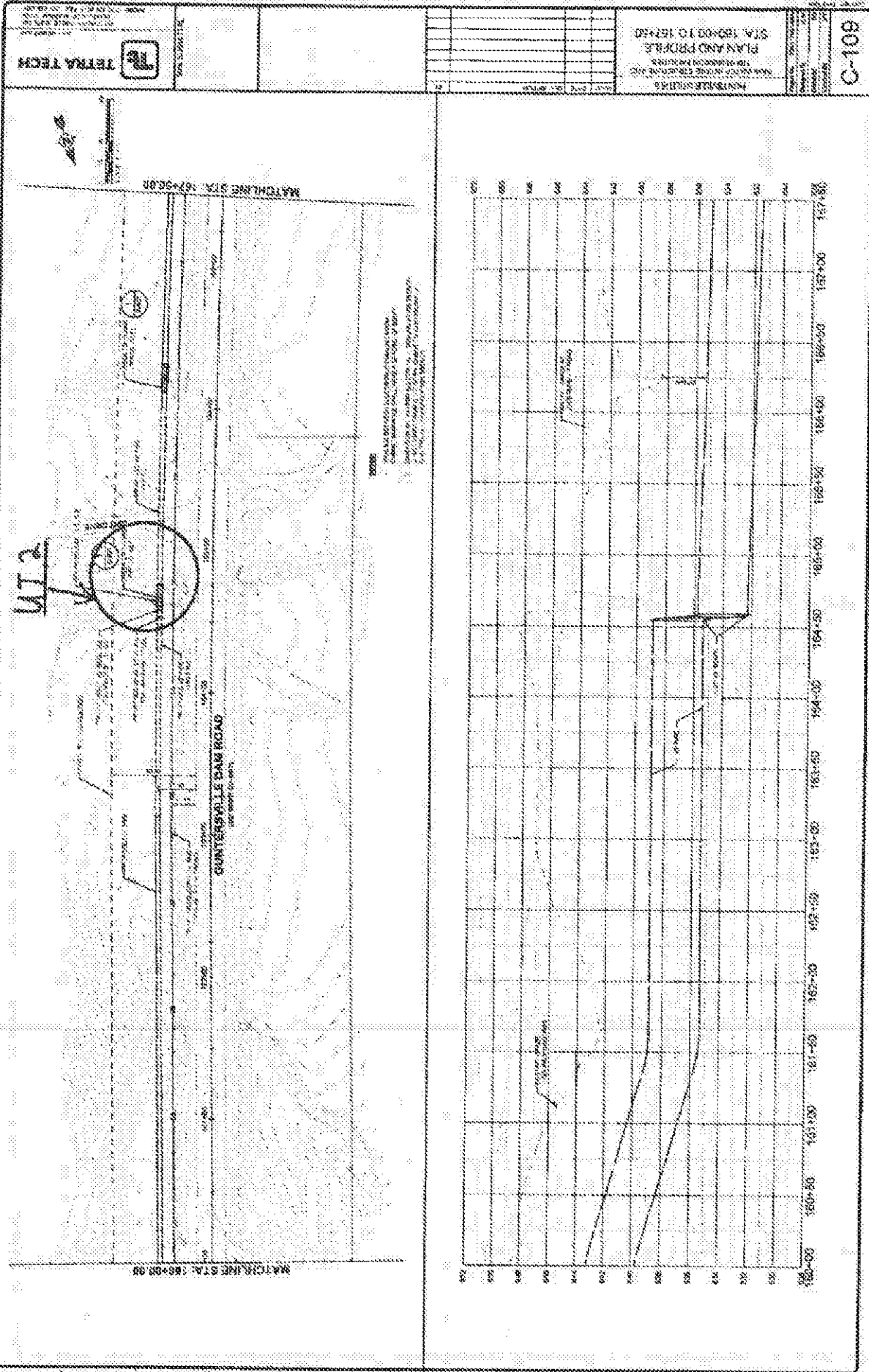
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NO.	DATE	DESCRIPTION

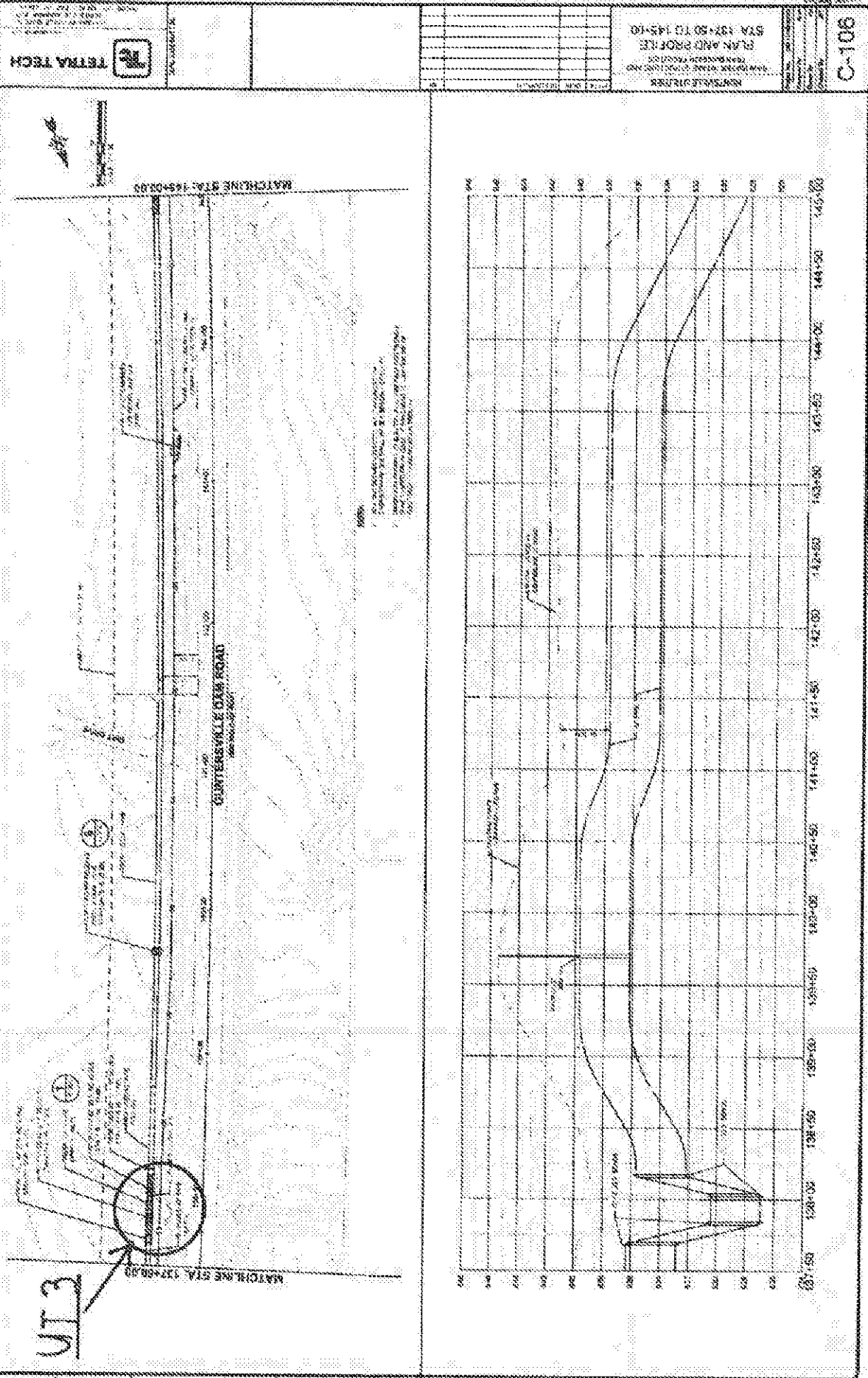
HUNTSVILLE UTILITIES
 PLAN AND PROFILE
 STA. 145+00 TO 152+50
 ...
 ...

C-107
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 ...

LRN-2007-01655
 CITY OF HUNTSVILLE
 PROPOSED 42" WATER MAIN



LRN-2007-01655
 CITY OF HUNTSVILLE
 PROPOSED 42" WATER MAIN

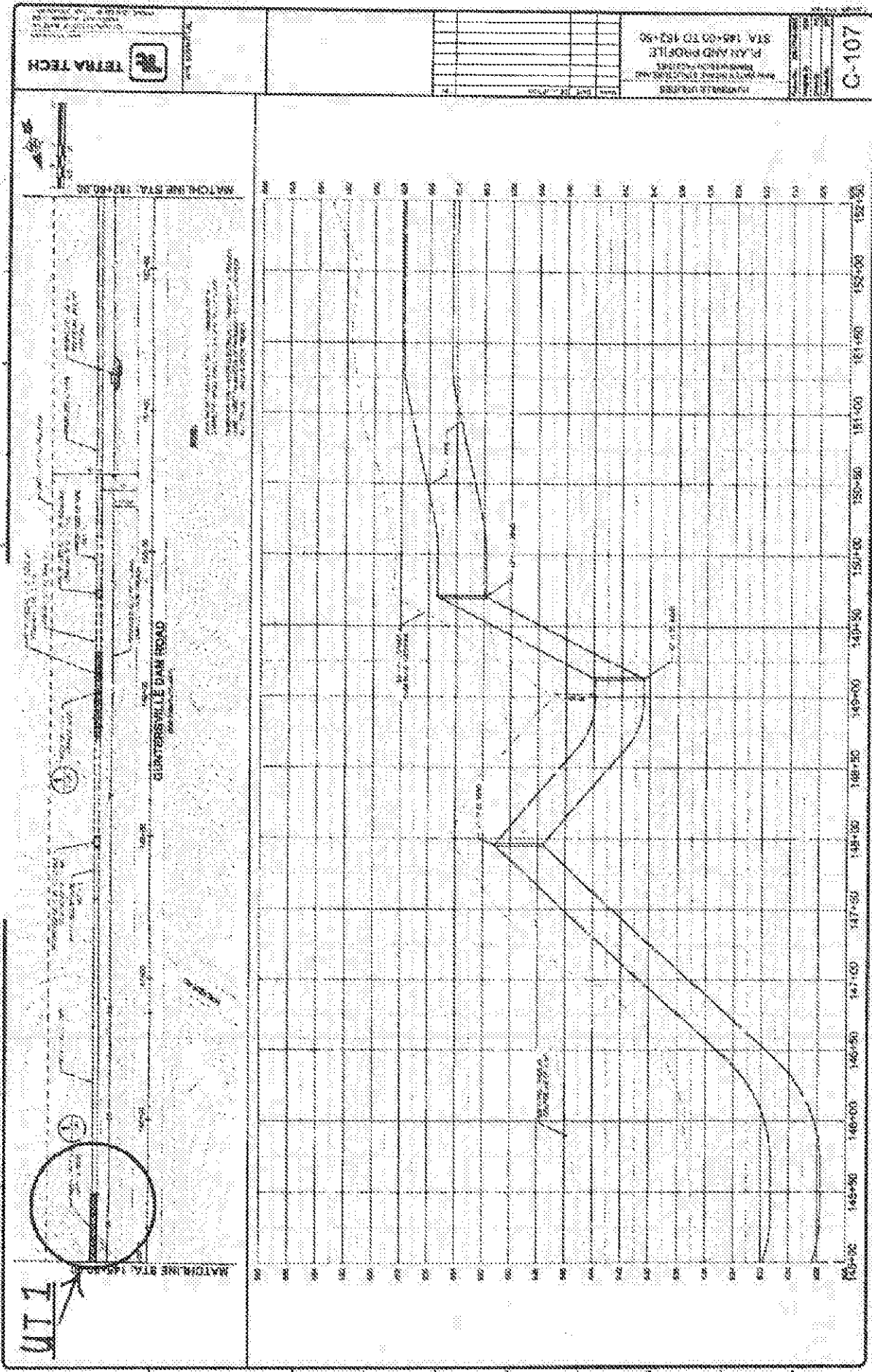


TETRA TECH

HUNTSVILLE DESIGN
 PLAN AND PROFILE
 STA 137+00 TO 145+00

C-106

LRN-2007-01655
 CITY OF HUNTSVILLE
 PROPOSED 42" WATER MAIN



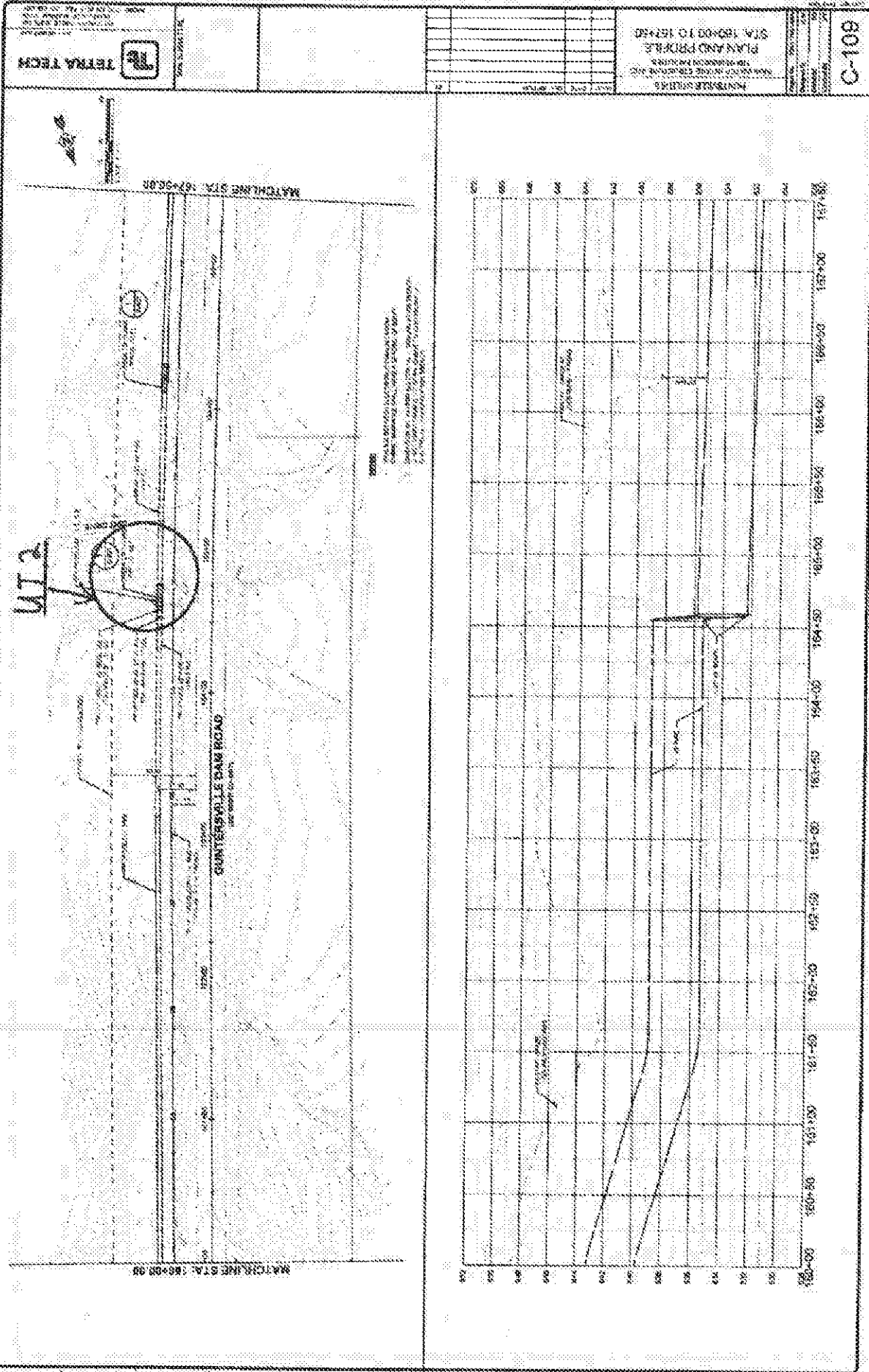
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TETRA TECH

PLAN AND PROFILE
 STA. 140+00 TO 152+50

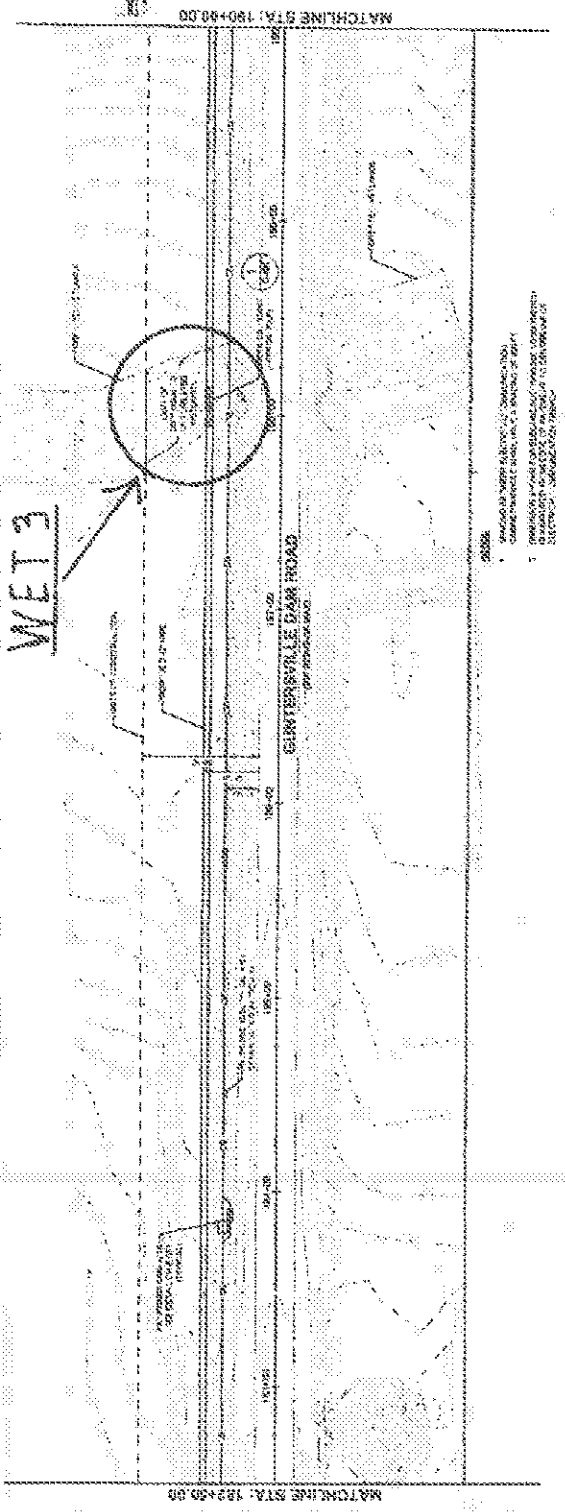
C-107

LRN-2007-01655
 CITY OF HUNTSVILLE
 PROPOSED 42" WATER MAIN

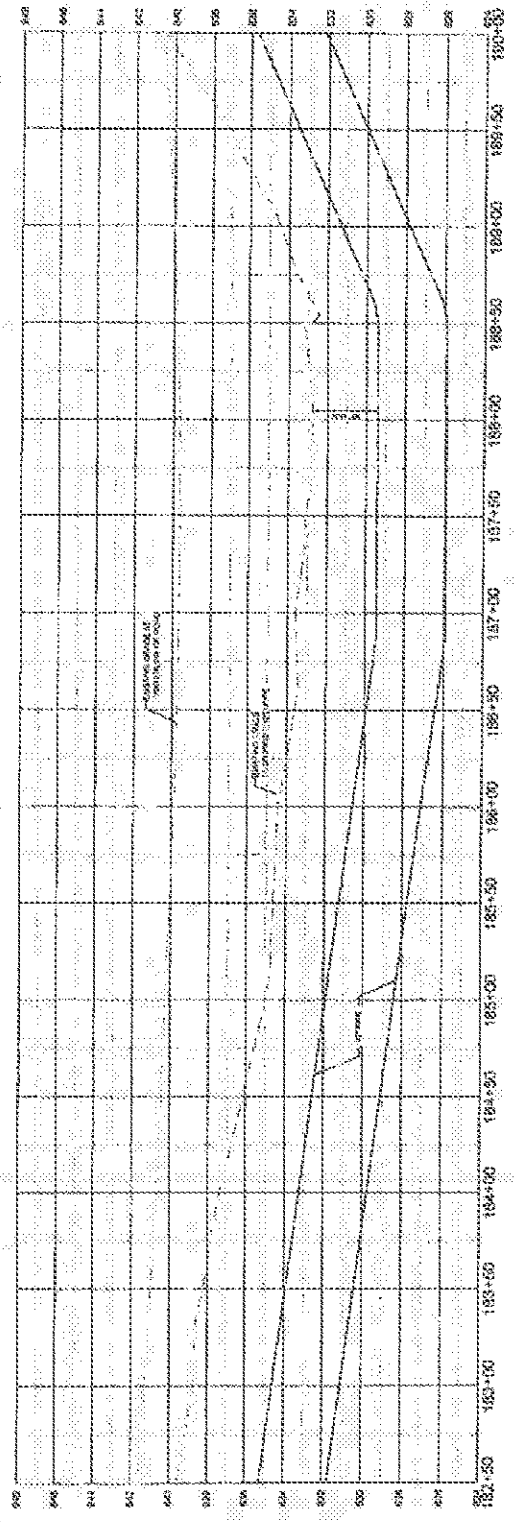


LRN-2007-01655
 CITY OF HUNTSVILLE
 PROPOSED 42" WATER MAIN

WET 3

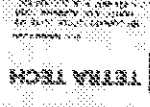


NOTES:
 1. PROPOSED WATER MAIN SHALL BE 42" DIAMETER (750) CLASS PIPE WITH 12.5' COVER. SEE PLAN FOR EXACT LOCATION.
 2. EXISTING WATER MAIN SHALL BE 42" DIAMETER (750) CLASS PIPE WITH 12.5' COVER. SEE PLAN FOR EXACT LOCATION.



HUNTSVILLE UTILITIES
 PLANS AND PROFILE
 STATIONING FROM 182+00 TO 190+00

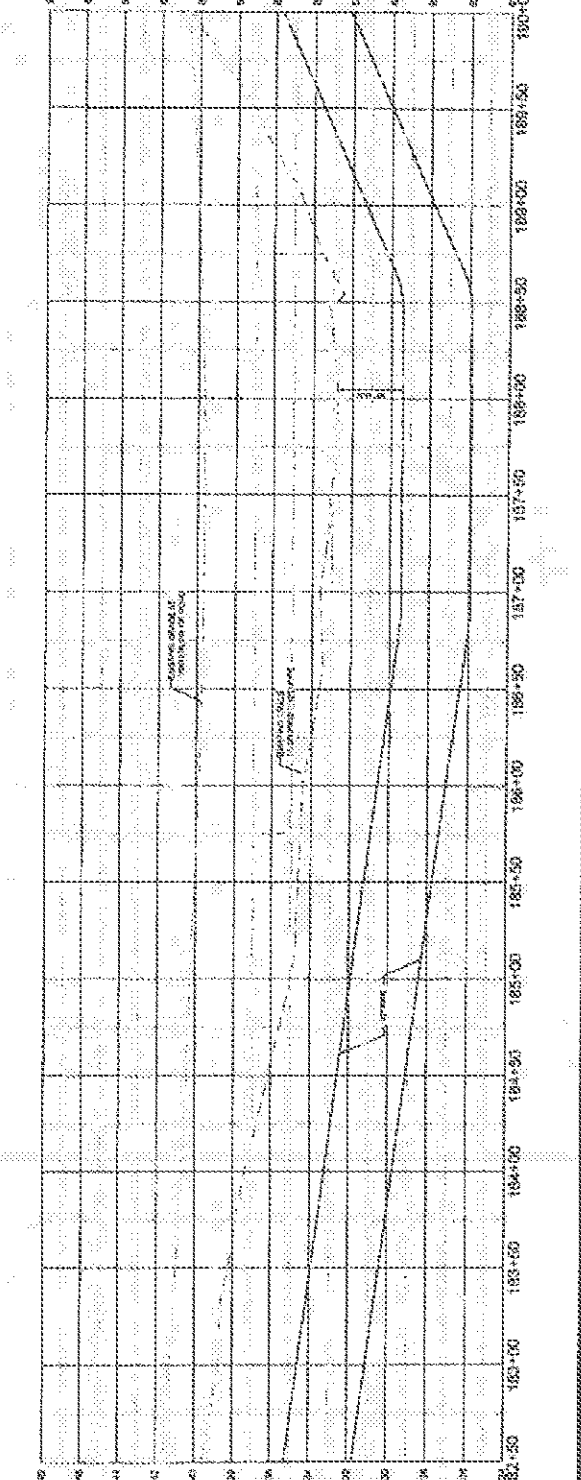
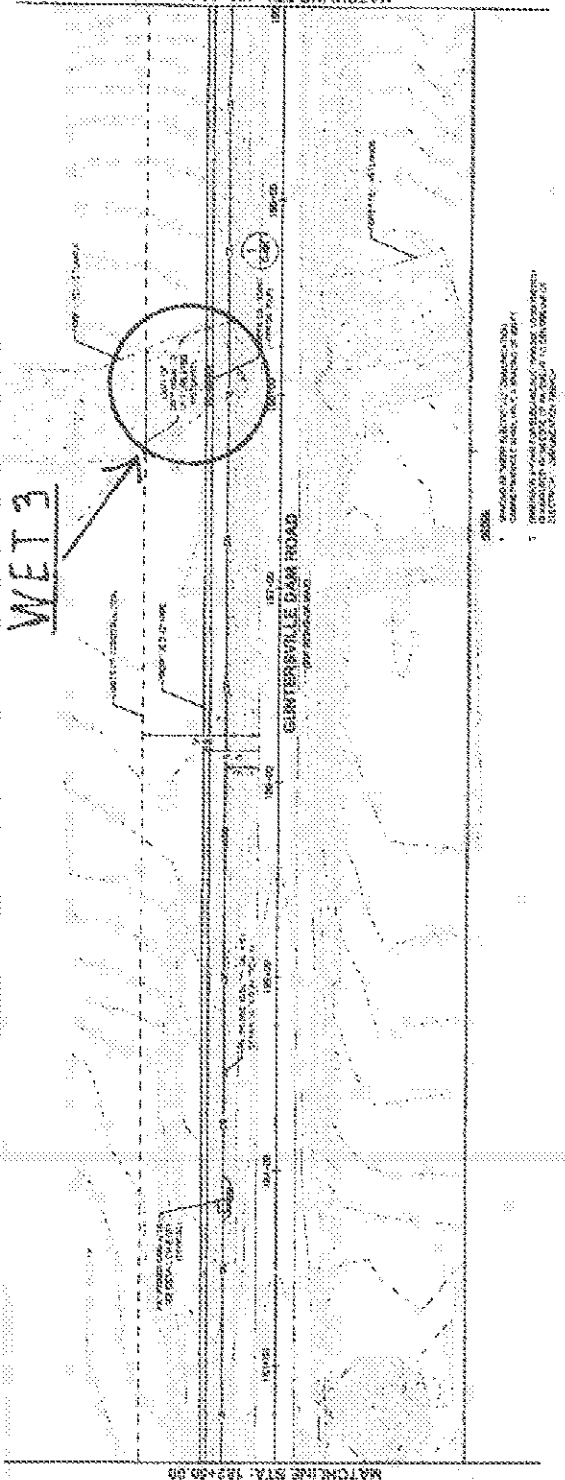
C-112



DATE: 08/14/07
 DRAWN BY: J. W. HARRIS
 CHECKED BY: J. W. HARRIS

LRN-2007-01655
 CITY OF HUNTSVILLE
 PROPOSED 42" WATER MAIN

WET 3

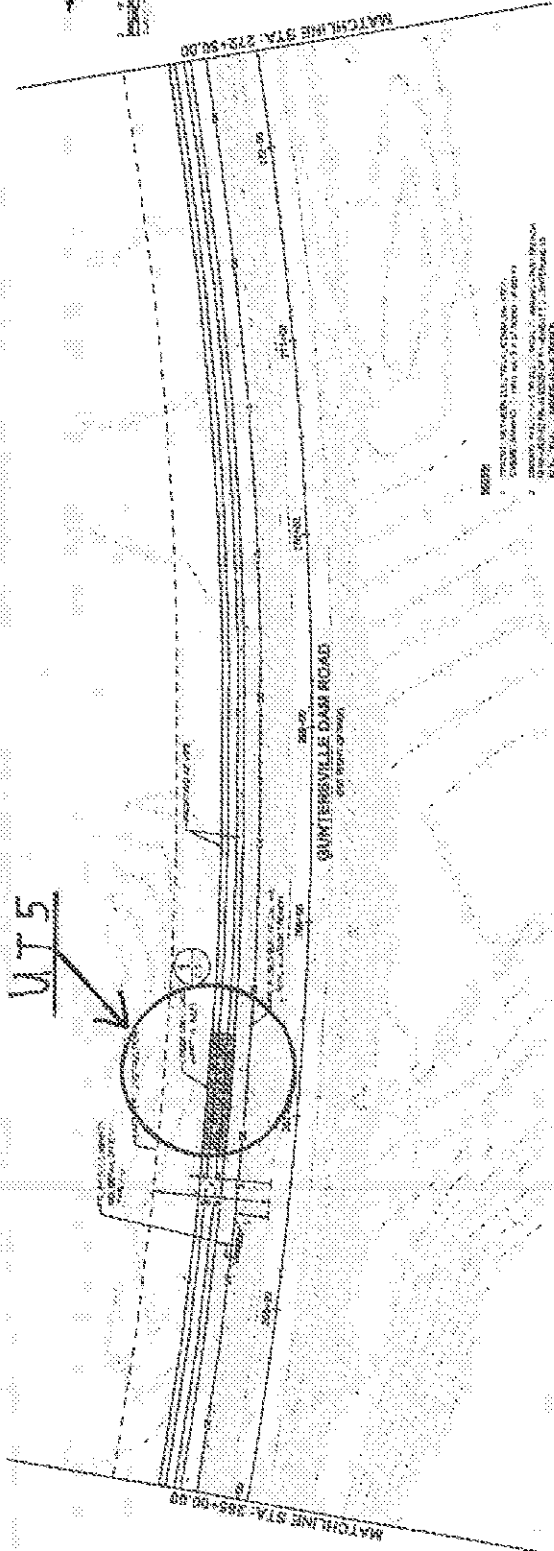


NOTES:
 1. PROPOSED WATER MAIN SHALL BE 42" DIAMETER (30" INSIDE DIAMETER) WITH 15' SPACING OF JOINTS.
 2. MATERIAL SHALL BE 1500 PSI CONCRETE PIPE WITH 3" THICK WALLS.
 3. ALL JOINTS SHALL BE GASKETED.

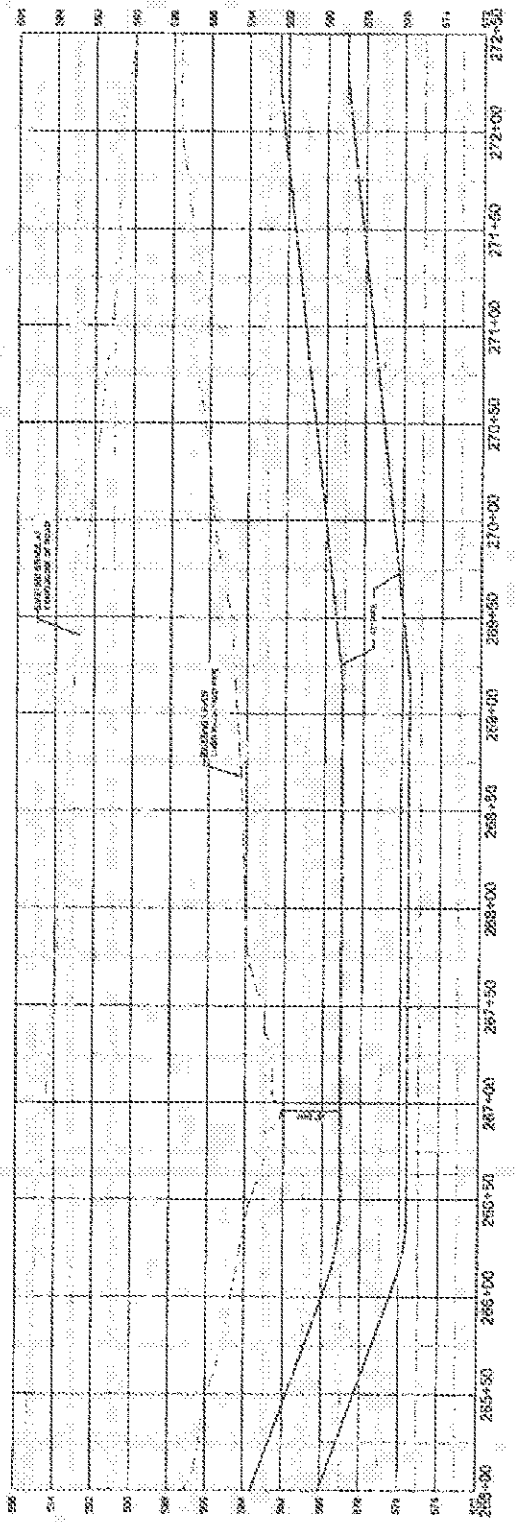
MATCHLINE STA: 182+00.00
 MATCHLINE STA: 189+00.00
 TETRA TECH
 HUNTSVILLE, ALABAMA
 PLAN AND PROFILE
 STA: 182+50 TO 189+00
 PROPOSED 42" WATER MAIN
 TRANSMISSION FACILITY
 PROJECT NO.: 07-001
 SHEET NO.: 1
 DATE: 08/20/07

LRN-2007-01655
 CITY OF HUNTSVILLE
 PROPOSED 42" WATER MAIN

UT5



NOTES:
 1. REFER TO OTHER PLANS FOR UTILITY LOCATIONS.
 2. CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF HUNTSVILLE STANDARD SPECIFICATIONS FOR WATER MAINS.
 3. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF HUNTSVILLE STANDARD SPECIFICATIONS FOR WATER MAINS.



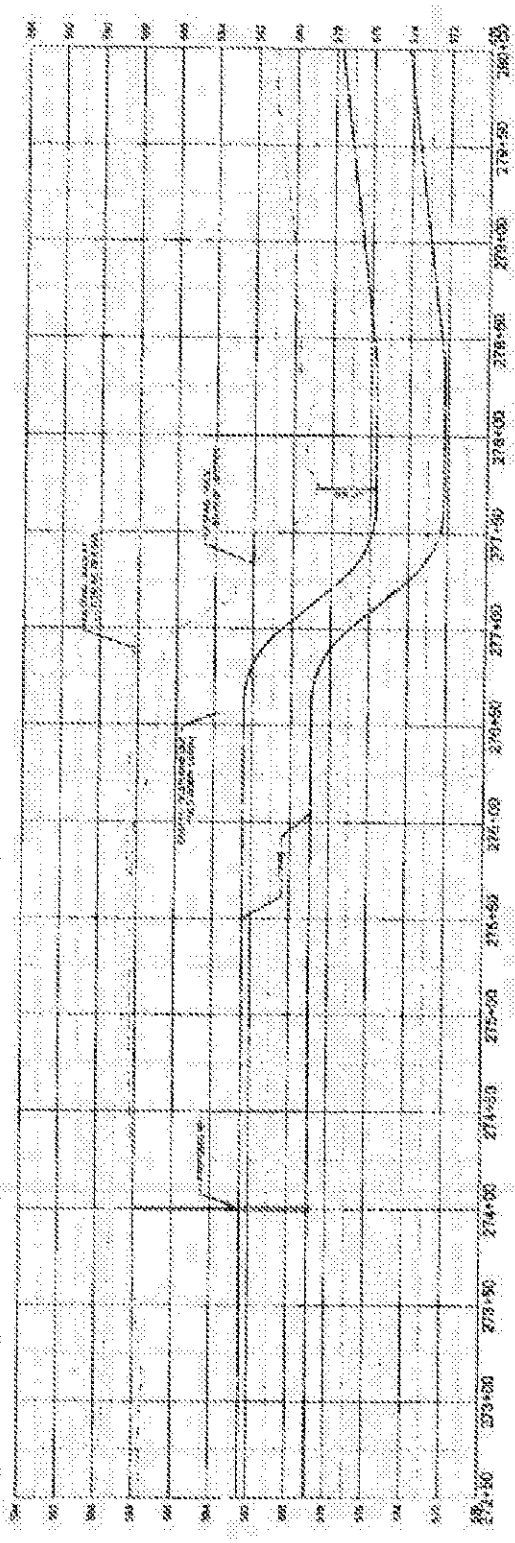
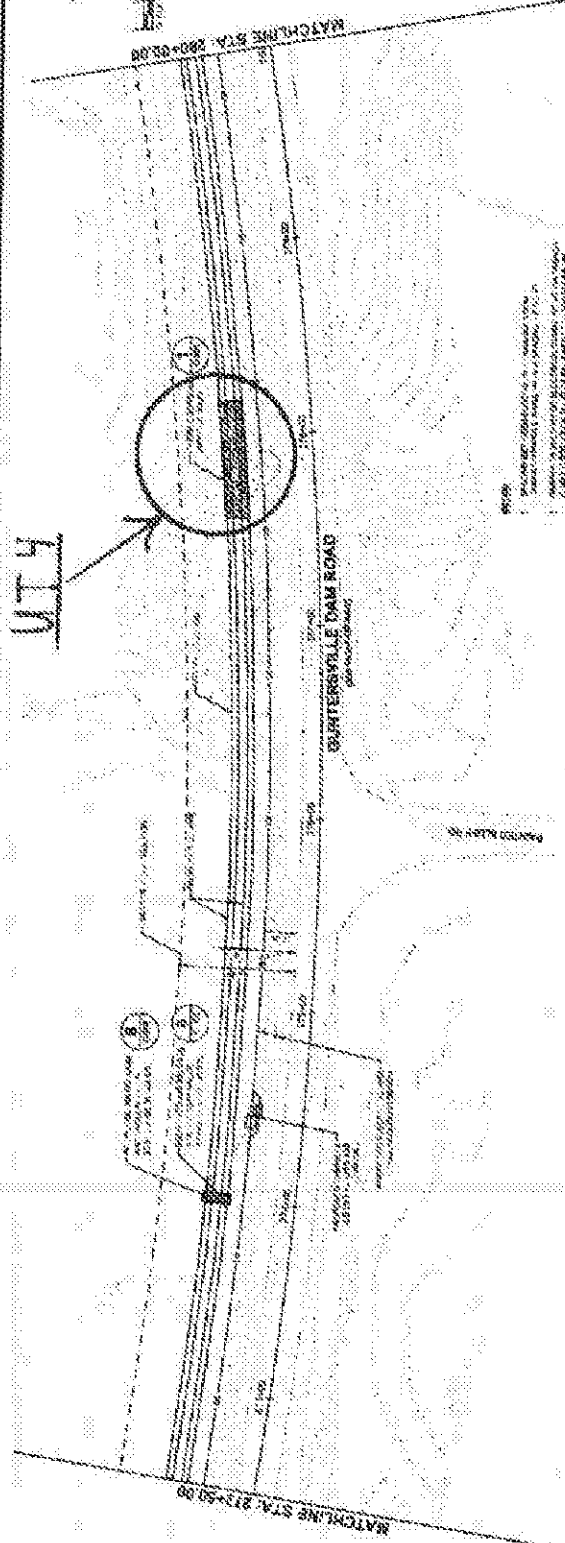
HUNTSVILLE UTILITY
 PLAN AND PROFILE
 STA. 259+00 TO 272+50

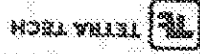
C-123

TETRA TECH

LRN-2007-01655
 CITY OF HUNTSVILLE
 PROPOSED 42" WATER MAIN

UT4




 TETRA TECH
 2000 W. UNIVERSITY BLVD., SUITE 200
 HUNTSVILLE, AL 35894-0001
 TEL: 256-833-8800 FAX: 256-833-8801
 WWW.TETRA-TECH.COM

HUNTSMILLS SURVEYS
 PLAN AND PROFILE
 STA. 273+90 TO 280+00
 42" PROPOSED WATER MAIN
 PROJECT NO. 2007-01655

C-124

ATTENTION

YOU ARE REQUIRED TO SUBMIT THIS SIGNED CERTIFICATION REGARDING THE COMPLETED ACTIVITY AND MITIGATION.

Nationwide Permit General Condition 30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(i)(3) to confirm that the permittee secured the appropriate number and resource type of credits. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately at a compliance inspection.

I hereby certify that the work authorized by Permit No. LRN-2007-01655 (Huntsville Utilities, Unnamed Tributaries of Tennessee River Mile 349.2R, Madison County, AL) and any required mitigation was done in accordance with the Corps authorization, including any general, regional, or special conditions.

Permittee Signature

Date _____

Submit this signed certification to the office checked below:

- U.S. Army Corps of Engineers
Regulatory Branch
3701 Bell Road
Nashville, TN 37214
- Eastern Regulatory Field Office
501 Adessa Blvd., Ste. 250
Lenoir City, TN 37771
- Western Regulatory Field Office
2042 Beltline Road, SW
Building C, Suite 415
Decatur, AL 35601

Sinclair _____

Eric

Project Manager



US Army Corps
of Engineers
Nashville District

Nationwide Permit

No. 12, Utility Line Activities

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than ½-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than ½-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into nontidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and

elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than $\frac{1}{10}$ -acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 31.)

(Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 4: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.



US Army Corps
of Engineers,
Nashville District

Nationwide Permit Conditions

The following General Conditions must be followed in order for any authorization by NWP to be valid

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the US Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US.
- (c) The permittee understands and agrees that, if future operations by the US require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or after the structural work or obstructions caused thereby, without expense to the US. No claim shall be made against the US on account of any such removal or alteration.
2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. Migratory Bird Breeding Areas. Activities in waters of the US that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 4B, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high

- ice line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the US during periods of low-flow or no-flow
13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
 14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
 15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
 16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, US Forest Service, US Fish and Wildlife Service).
 17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
 18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
 - (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.
 - (c) Non-Federal permittees must submit a pre-construction notification (PCN) to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the PCN must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps determination within 45 days of receipt of a complete PCN. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from Corps.
 - (d) As a result of formal or informal consultation with the USFWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the US to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS at <http://www.fws.gov/> or <http://www.fws.gov/igac> and <http://www.nmfs.gov/fisheries.htm>, respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the USFWS's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the USFWS to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA is complete.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110(k) of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who,

with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/HPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the US are not authorized by NWPs 7, 12, 14, 16, 17, 21, 25, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the US to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or USEPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittees the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(f)(3) to confirm that the permittee secured the appropriate number and resource type of credits, and

(c) The signature of the permittee certifying the completion of the work and mitigation.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(f)(2) - (14) must be approved by the district engineer before the permittee begins work in waters of the US, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the US, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the US are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland or a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has

31. Pre-Construction Notification (PCN). (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a PCN as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer, or
 - (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if this permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).
- (b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee.
- (2) Location of the proposed project.
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the US expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans).
- (4) The PCN must include a delineation of wetlands, other special aquatic sites, and waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the US. The 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate.
- (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act, and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of PCN Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require PCN notification and result in the loss of greater than 1/2-acre of waters of the US, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require PCN notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require PCN notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the PCN notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each PCN notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of PCN notifications to expedite agency coordination.

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 • Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 • FAX (334) 271-7950

March 12, 2012

Colonel Steven J. Roemhildt, P.E.
Commander, Mobile District
U.S. Army Corps of Engineers
P.O. Box 2288
Mobile, AL 36628-0001

RE: Clean Water Act (CWA) Section 401 Water Quality Certification (WQC), U.S. Army Corps of Engineers (COE) Proposed Reissuance of Alabama Nationwide Permits (NWP) Activities Within the State of Alabama With Minimal Individual And Cumulative Adverse Impacts On The Aquatic Environment, SAM 2011-00006-JMT

Dear Colonel Roemhildt:

This office has completed a review of the below-referenced joint public notices and all associated materials submitted related to the proposed NWP. Any comments made during the public notice period have also been forwarded to us for review.

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil and Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Existing Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects

Because action pertinent to water quality certification (WQC) is required by Section 401(a)(1) of the Clean Water Act (CWA), 33 U.S.C. Section 1251, et seq., we hereby issue certification until March 18, 2017, that there is reasonable assurance that the discharge resulting from the proposed activities as submitted will not violate applicable water quality standards established under Section 303 of the CWA and Title 22, Section 22-22-9(g), Code of Alabama, 1975, provided the applicant acts in accordance with the following conditions as specified. We further certify that there are no applicable effluent limitations under Section 301 and 302 nor applicable standards under Section 306 and 307 of the CWA in regard to the activities specified.

To minimize adverse impacts to State waters by copy of this letter we are requesting the Mobile District Corps of Engineers to incorporate the following as special conditions appropriate to each activity in Alabama authorized by the COE NWP's:

1. During project implementation, the applicant shall ensure compliance with applicable requirements of ADEM Admin. Code Chapter 335-6-6 (National Pollutant Discharge Elimination System (NPDES)), Chapter 335-6-10 (Water Quality Criteria), and Chapter 335-6-11 (Water Use Classifications for Interstate and Intrastate Waters).

2. ADEM permit coverage may be required prior to commencing and/or continuing certain activities/operations relating to or resulting from the project. If an applicant has any questions regarding ADEM regulated activity or the need for NPDES permit coverage, the applicant can contact ADEM's Water Division at (334) 271-7823. If an applicant has any questions regarding ADEM regulated activity or the need for air permit coverage, the applicant can contact ADEM's Air Division at (334) 271-7869. If the applicant has any questions regarding ADEM regulated activity or the need for hazardous, toxic, and/or solid waste permit coverage, the applicant can contact ADEM's Land Division at (334) 271-7730.
3. Upon the loss or failure of any treatment facility, Best Management Practice (BMP), or other control, the applicant shall, where necessary to maintain compliance with this certification, suspend, cease, reduce or otherwise control work/activity and all discharges until effective treatment is restored. It shall not be a defense for the applicant in a compliance action that it would have been necessary to halt or reduce work or other activities in order to maintain compliance with the conditions of this certification.
4. The applicant shall retain records adequate to document activities authorized by this certification for a period of at least three years after completion of work/activity authorized by the certification. Upon written request, the applicant shall provide ADEM with a copy of any record/information required to be retained by this paragraph.
5. The applicant shall conduct or have conducted, at a minimum, weekly comprehensive site inspections until completion of the proposed activity to ensure that effective BMPs are properly designed, implemented, and regularly maintained (i.e. repair, replace, add to, improve, implement more effective practice, etc.) to prevent/minimize to the maximum extent practicable discharges of pollutants in order to provide for the protection of water quality.
6. The applicant shall prepare a detailed general or project-specific BMP Plan commensurate with activities of the type proposed. Effective BMPs shall be implemented and continually maintained for the prevention and control of sediment and other sources of pollutants, including measures to ensure permanent revegetation or cover of all disturbed areas, during and after project implementation.
7. The applicant shall implement a Spill Prevention Control and Countermeasures (SPCC) Plan for all temporary and permanent onsite fuel or chemical storage tanks or facilities consistent with the requirements of ADEM Admin. Code R. 335-6-6-.12(r), Section 311 of the Federal Water Pollution Control Act, and 40 CFR Part 112. The applicant shall maintain onsite or have readily available sufficient oil & grease absorbing material and flotation booms to contain and clean-up fuel or chemical spills and leaks. The applicant shall immediately notify ADEM after becoming aware of a significant visible oil sheen in the vicinity of the proposed activity. In the event of a spill with the potential to impact groundwater or other waters of the State, the applicant should immediately call the National Response Center at 1-800-424-8802 and the Alabama Emergency Management Agency at 1-800-843-0699. The caller should be prepared to report the name, address and telephone number of person reporting spill, the exact location of the spill, the company name and location, the material spilled, the estimated quantity, the source of spill, the cause of the spill, the nearest downstream water with the potential to receive the spill, and the actions taken for containment and cleanup.

8. Additional, effective BMPs shall be fully implemented and maintained on a daily basis as needed to prevent to the maximum extent possible potential discharges of pollutants from activities authorized by this certification, directly to or to a tributary or other stream segment, that have the potential to impact a State water currently considered impaired [waterbody is identified on the Alabama 303(d) list, a total maximum daily load (TMDL) has been finalized for the waterbody, and/or the waterbody is otherwise considered a Tier 1 water pursuant to ADEM Admin. Code Ch. 335-6-10]. The applicant shall inspect all BMPs as often as is necessary (daily if needed) for effectiveness, need for maintenance, and the need to implement additional, effective BMPs. Additional effective BMPs shall immediately be implemented as needed to ensure full compliance with ADEM requirements and the protection of water quality in the impaired waterbody.
9. All construction and worker debris (e.g. trash, garbage, etc.) must be immediately removed and disposed in an approved manner. If acceptable offsite options are unavailable, effective onsite provisions for collection and control of onsite worker toilet wastes or gray waste waters (i.e. port-o-let, shower washdown, etc.) must be implemented and maintained. Soil contaminated by paint or chemical spills, oil spills, etc. must be immediately cleaned up or be removed and disposed in an approved manner. Also, the applicant shall manage and dispose of any trash, debris, and solid waste according to applicable state and federal requirements.
10. The applicant shall implement appropriate measures to minimize the potential for a decrease of instream dissolved oxygen concentrations as a result of project implementation. In addition, the applicant shall ensure that the activities authorized by this certification do not significantly contribute to or cause a violation of applicable water quality standards for instream dissolved oxygen. The applicant shall implement appropriate, effective BMPs, including installation of floating turbidity screens as necessary, to minimize downstream turbidity to the maximum extent practicable. The applicant shall visually monitor or measure background turbidity. The applicant must suspend operations should turbidity resulting from project implementation exceed background turbidity by more than 50 NTUs. Operations may resume when the turbidity decreases to within acceptable levels.
11. NWP21 (Surface Coal Mining Activities) Special Condition: The applicant shall obtain and maintain valid NPDES permit coverage prior to commencing and/or continuing activities authorized under NWP21. The applicant can contact ADEM's Water Division at (334) 271-7823 or H2o_mail@adem.state.al.us with any questions regarding ADEM NPDES permitting/regulatory requirements for surface and/or underground mining activity.

In recognition that projects are site specific in nature and conditions can change during project implementation, ADEM reserves the right to require the submission of additional information or require additional management measures to be implemented, as necessary on a case by case basis, in order to ensure the protection of water quality. Liability and responsibility for compliance with this certification are not delegable by contract or otherwise. The applicant shall ensure that any agent, contractor, subcontractor, or other person employed by, under contract, or paid a salary by the applicant complies with this certification. Any violations resulting from the actions of such person shall be considered violations of this certification.

Issuance of a certification by ADEM neither precludes nor negates an operator/owner's responsibility or liability to apply for, obtain, or comply with other ADEM, federal, state, or local government permits, certifications, licenses, or other approvals. This certification does not convey any property rights in either

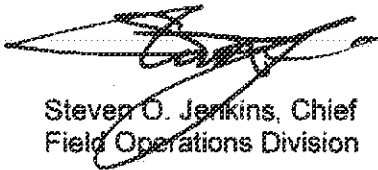
March 12, 2012

Page 5 of 5

real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, trespass, or any infringement of Federal, State, or local laws or regulations, and in no way purports to vest in the applicant title to lands now owned by the State of Alabama nor shall it be construed as acquiescence by the State of Alabama of lands owned by the State of Alabama that may be in the applicant's possession.

Should you have any questions on this or related matters, please do not hesitate to contact Richard Hulcher, Office of Field Services, by email at rfh@adem.state.al.us or by phone at 334-394-4311.

Sincerely,



Steven O. Jenkins, Chief
Field Operations Division

File: WQ401/12545

c: Water Division, ADEM
Nashville District COE
EPA Region IV

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Huntsville Utilities		File Number: LRN 2007-01655	Date: 5-JUL-2013
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
<input checked="" type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/secwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:

U.S. Army Corps of Engineers
Western Regulatory Field Office
2042 Beltline Rd SW
Bldg C Suite 415
Decatur, AL 35601

If you only have questions regarding the appeal process you may also contact:

U.S. Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10032
Cincinnati, OH 45202

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

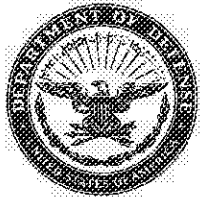
Date:

Telephone number:

USACE

Nationwide Permit (Finished Water Main and Water Treatment Plant)

Permit No. 12



DEPARTMENT OF THE ARMY
WESTERN REGULATORY FIELD OFFICE
2042 BELTLINE RD SW
BLDG C SUITE 415
DECATUR AL 35601-9990

September 30, 2014

SUBJECT: File No. LRN 2007-01655; Proposed Raw and Finished Water Mains Leading to and from the Proposed Southeast Water Treatment Plant, Near and Along Highway 431, Multiple Streams and Wetlands Including Paint Rock River Mile 5.5, Madison and Marshal Counties, Alabama

Huntsville Utilities
Mr. Mr. Tony Owens
Post Office Box 2048
Huntsville, Alabama 35801

Dear Mr. Owens:

This refers to your recent application for a Department of the Army (DA) permit for fill activities into waters of the U.S. associated with the construction of a raw water main from Guntersville Dam Road to the proposed Southeast Water Treatment Plant (WTP) southwest of the Guntersville Dam Road/Highway 431 Intersection, and the proposed finished water main from the WTP to Highway 431 and then along Highway 431 for approximately 6.5 miles to the northwest. The purpose of the proposed work is to provide additional potable water to the City of Huntsville. Previous Department of the Army (DA) permits were issued for the construction of the associated water intake at Guntersville Lake, immediately upstream of Guntersville Dam, and a raw water line from the intake and along Guntersville Dam Road. The currently proposed work includes 3.56 wetland acre impacts (3.47 acres of temporary fill and 0.09 acre of permanent fill). 2.85 acres of the above wetland impacts involve permanent conversion of forested wetland to herbaceous. The water line would cross 7 streams via open trench construction and the Paint Rock River via directional bore (Section 10). A road crossing would be constructed across one intermittent stream to provide access from Walker Road to the WTP and water lines.

Based upon the information submitted to this office, we have determined your proposed project meets the criteria of DA Nationwide Permit (NWP) #12, Utility Line Activities, which became effective March 19, 2012 [77 FR 10184]. The proposed work shall be accomplished in accordance with the enclosed NWP general and specific conditions and must also comply with the special conditions attached to this permit verification letter entitled "SPECIAL CONDITIONS FOR DEPARTMENT OF THE ARMY PERMIT LRN-2007-01655, HUNTSVILLE UTILITIES: SOUTHEAST WATER TREATMENT PLANT".

This verification is valid until March 18, 2017, unless the NWP authorization is modified, suspended, or revoked. If the work has not been completed by that time, you should contact this office to obtain another permit determination in accordance with the rules and regulations in effect at that time.

Before you begin construction, you are responsible for obtaining any other federal, state, and/or local permits, approvals, or authorizations.

The Alabama Department of Environmental Management issued a conditional 401 certification for the NWPs, copy attached. You must comply with the conditions specified in the certification as special conditions to the NWP.

If changes in the location or approved plans are necessary, revised plans shall be submitted promptly to this office for review and approval. NWP General Condition #30 requires that you submit a signed certification. **Please sign and return the enclosed "Compliance Certification" form upon completion of the proposed activity and any required mitigation.**

If you have any questions, please contact Mr. Eric Sinclair at the above address or telephone (256) 350-5620.

Sincerely,



Timothy C. Wilder
Chief, Western Regulatory Section
Operations Division

Enclosures

Copy Furnished:

Alabama Department of
Environmental Management
Field Operations Division
Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 394-4308

Tetra Tech, Ms. Julie Kaplan via Julie.kaplan@tetratech.com

TVA, Ms. Samantha Strickland via sistrickland@tva.gov

USFWS, Ms. Karen Marlowe via Karen_marlow@fws.gov

“SPECIAL CONDITIONS FOR DEPARTMENT OF THE ARMY PERMIT LRN-2007-01655,
HUNTSVILLE UTILITIES: SOUTHEAST WATER TREATMENT PLANT”.

1. The work shall be constructed in accordance with the construction plans submitted with the Department of the Army application by Tetra Tech cover letter dated 26 February 2014, developed by Tetra Tech. The exception would be for the crossing of the Paint Rock River which was changed to a jack and bore construction method. The revised construction plan, Sheet C-2022, for the Paint Rock River crossing is attached. Also attached are construction plans, Sheets C-2008 & C-9515(submitted June 2014), for the Little Paint Rock Creek crossing and outfall for the wash water supernate line. The approved construction plan sheets are labeled SHEET(s) 1-21.
2. In order to protect the Indiana bat (*Myotis sodalis*) tree removal associated with the project is prohibited between the dates of April 1 to October 14 in any year this permit is valid.
3. No fill activities are permitted within the Paint Rock River. Please contact our office as early as possible should the need arise to conduct fill activities within the River. Should the jack and bore method of construction lead to any incidental discharge of fill material (i.e. frack-out) into the River, you shall immediately cease the activity and contact our office for consultation to avoid adverse effects to listed species within the River.
4. To compensate for permanent adverse effects resulting from the conversion of 2.85 acres of forested wetland to herbaceous wetlands within the permanently maintained right-of-way, the permittee shall purchase 1.43 wetland credits from a Corps approved mitigation bank whose service area includes the permitted impact locations. A signed record of the purchase of the wetland credits from the mitigation bank shall be provided to this office prior to work within wetlands.
5. In order to ensure wetlands temporarily impacted from water line construction activities remain functioning wetlands post-construction, they shall be returned to their pre-construction contours with the top 6 to 12 inches of the trench backfilled with topsoil from the trench.
6. Each temporarily impacted wetland shall be monitored during the first spring (March-June) following construction impacts to document whether or not the wetland was properly restored. The wetland monitoring report shall be submitted to the Corps no later than July 31 of the year the monitoring is conducted.
7. The monitoring report shall document each impacted wetland's status by completing one "Wetland Determination Data Form – Eastern Mountain and Piedmont Region." per wetland. Restoration success will be based on meeting wetland hydrology indicators and a predominance of wetland vegetation. A brief narrative summarizing the success or failure to restore wetlands at each of the impact sites shall be included in the report. Should any wetland fail to be properly restored additional mitigation measures may be required including the purchase of additional wetland credits from a Corps approved mitigation bank.
8. The status report shall be submitted to the Nashville District :

Western Regulatory Field Office
2424 Danville Road SW
Suite N
Decatur, AL 35603

ATTENTION

YOU ARE REQUIRED TO SUBMIT THIS SIGNED CERTIFICATION REGARDING THE COMPLETED ACTIVITY AND MITIGATION.

Nationwide Permit General Condition 30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately at a compliance inspection.

I hereby certify that the work authorized by **Permit No. LRN-2007-01655** (Huntsville Utilities, PRRM 5.5, Marshall and Madison Counties, AL) and any required mitigation was done in accordance with the Corps authorization, including any general, regional, or special conditions.

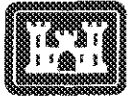
Permittee Signature

Date _____

Submit this signed certification to the office checked below:

- U.S. Army Corps of Engineers
Regulatory Branch
3701 Bell Road
Nashville, TN 37214
- Eastern Regulatory Field Office
501 Adessa Blvd., Ste. 250
Lenoir City, TN 37771
- Western Regulatory Field Office
2424 Danville Road, SW
Suite N
Decatur, AL 35603

Eric Sinclair
Project Manager



US Army Corps
of Engineers
Nashville District

Nationwide Permit

No. 12, Utility Line Activities

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than ½-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than ½-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into nontidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and

elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than $\frac{1}{10}$ -acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 31.)

(Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 4: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.



**US Army Corps
of Engineers**

Nashville District

Nationwide Permit General Conditions

The following General Conditions must be followed in order for any authorization by NWP to be valid:

- 1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the US Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US. (c) The permittee understands and agrees that, if future operations by the US require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the US. No claim shall be made against the US on account of any such removal or alteration.
- 2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
- 3. Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
- 4. Migratory Bird Breeding Areas.** Activities in waters of the US that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
- 5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
- 6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
- 8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
- 9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the US during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, US Forest Service, US Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary. (c) Non-federal permittees must submit a pre-construction notification (PCN) to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the

district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the PCN must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete PCN. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification of the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from Corps. (d) As a result of formal or informal consultation with the USFWS or NMFS, the district engineer may add species-specific regional endangered species conditions to the NWP. (e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the US to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS at <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the USFWS's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the USFWS to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity

may have the potential to cause effects and notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA is complete. (d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110(k) of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment. (a) Discharges of dredged or fill material into waters of the US are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. (b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal: (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the US to the maximum extent practicable at the project site (i.e., on site). (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this