

Matthew W. Bowden
Vice President
Environmental Affairs

600 North 18th Street
Post Office Box 2641
Birmingham, Alabama 35291

Tel 205.257.4075
Fax 205.257.4349



November 1, 2012

J. Brian Atkins, P.E.
Division Director
Alabama Office of Water Resources, a division of the
Alabama Department of Economic and
Community Affairs
401 Adams Avenue, Suite 434
Montgomery, Alabama 36103-5690

Re: Comments on *Water Management Issues in Alabama*, August 1, 2012

Dear Director Atkins:

Thank you for the opportunity to provide comments on the Alabama Water Agencies Working Group (AWAWG) report titled *Water Management Issues in Alabama*. As the largest water manager in the state, Alabama Power Company is keenly aware of the importance of Alabama's water resources and we are pleased that AWAWG has sought stakeholder input in the process of evaluating our State's water resource programs and policies. Alabama Power appreciates the time and resources the AWAWG members have invested in this report and we look forward to working with AWAWG and other stakeholders as the process moves forward.

The AWAWG report does a good job of outlining many important water issues and various policy options that should be considered by policymakers. The report acknowledges that water resources in Alabama have been available in abundance historically. The report observes, however, that this abundance is threatened by population and industrial growth, development, drought, interstate disputes, and the "vagaries" of the existing riparian rights system. Although these and other factors may ultimately lead us from an environment of water resource abundance to an environment of water resource constraint, it is not clear when, where, or to what extent that may happen.

It is for that reason that many legislators and water resource stakeholders worked for passage of SJR 5 sponsored by Senator Orr in the 2009 Regular Session. SJR 5 outlined a comprehensive program for enhanced data collection and water resource analysis efforts across the state. As called for in this resolution, your office subsequently developed an estimate of funding that would be required to implement a comprehensive data collection program. Unfortunately, that funding has not been made available. Alabama Power believes that a sustained and comprehensive statewide water resource data collection program should be implemented before any major water policy changes are proposed. Without such information, it is impossible for any stakeholder to properly evaluate available policy options outlined in the AWAWG report, to offer any meaningful comment on whether proposed policy changes mitigate or eliminate identified problems, or to consider whether the benefits from any changes would exceed the burdens they might impose.

Mr. J. Brian Atkins, P.E.
November 1, 2012
Page 2

The AWAAG report suggests that there is not sufficient data at this time to make useful assessments or forecasts of the state's water resources. Alabama Power agrees that the state must first collect pertinent statewide data on water use, water availability, rainfall, and instream flows before material changes in the existing water laws are proposed. To this end, Alabama Power would encourage the AWAAG, the administration, the legislature, and stakeholders to work together in finding a way to fund a comprehensive data collection program at the earliest possible opportunity. Alabama Power has worked with state and federal agencies for many years to support data collection efforts and we will continue those efforts.

On the subject of riparian rights, it is fair to say that the AWAAG report is somewhat critical. The existing Alabama Water Resources Act contains provisions that acknowledge riparian rights and riparian law. Although there are certainly some limitations in resolving surface water issues under a traditional riparian rights program, landowners across the state do have vested riparian rights that individuals and business have relied upon since statehood in making economic decisions and investments. Those rights must be taken into account when water policy changes are considered and any future changes must respect those rights.

On a final issue, the AWAAG report contains a statement implying that Alabama's water resources are owned by the State. While there is little debate that the state owns certain submerged lands and that certain water bodies are classified as "public waters" from the standpoint of public access, we are not aware of any legal support for the proposition that the state "owns" surface waters as a general rule. To avoid a lengthy and technical legal discussion in these comments, we would merely suggest that the AWAAG agencies find a future opportunity to explain their views on this question in more detail and to direct stakeholders to appropriate sources of legal support.

Alabama Power understands the AWAAG report is not intended to be comprehensive. Similarly, these comments and observations are general in nature and are not intended to address every potential water resource issue whether discussed in the report or not. As discussed above, given the lack of statewide water availability data, Alabama Power cannot offer comments on particular policy options at this time. Instead, we would reiterate the importance of developing and funding a comprehensive data collection program. After such data is available, state agencies can better consider whether the policy options identified in the AWAAG report would be effective in resolving problems identified by the data and stakeholders would be better able to contribute meaningful comments.

We appreciate the opportunity to work with you and the other members of AWAAG on this important project.

Sincerely,



Matthew W. Bowden
Vice President Environmental Affairs

Mr. J. Brian Atkins, P.E.

November 1, 2012

Page 3

cc: Honorable N. Gunter Guy, Jr., Commissioner, Alabama Department of Conservation and Natural Resources
Honorable John M. McMillan, Jr., Commissioner, Alabama Department of Agriculture and Industries
Lance R. LeFleur, Director, Alabama Department of Environmental Management
Berry H. (Nick) Tew, Jr., State Geologist, Geological Survey of Alabama
Bennett Bearden, Esq., General Counsel, Geological Survey of Alabama