



United States Department of the Interior



FISH AND WILDLIFE SERVICE
1875 Century Boulevard
Atlanta, Georgia 30345

In Reply Refer To:
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December 21, 2021

Brigadier General Jason E. Kelly
Commander, South Atlantic Division
U.S. Army Corps of Engineers
60 Forsyth Street SW
Atlanta, Georgia 30303-8801

Dear General Kelly:

Pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e; FWCA) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1544; ESA), the U.S. Fish and Wildlife Service (Service) is submitting the following comments and requested actions in reference to the Twin Pines demonstration mining project (Joint Public Notice SAS-2018-00554; hereafter, Twin Pines project) in Charlton County, Georgia.

On August 30, 2021, the U.S. District Court for the District of Arizona issued an order to vacate and remand the Navigable Waters Protection Rule. In response, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) halted implementation of the Navigable Waters Protection Rule nationwide and are interpreting “waters of the United States” (WOTUS) consistent with the pre-2015 regulatory regime.

On November 18, 2021, both agencies jointly announced the signing of a proposed rule to restore and reapply the pre-2015 definition of WOTUS.

In light of the Corps and EPA decision to reapply and implement the pre-2015 regulatory definitions, the Service is requesting the Corps reconsider their previous jurisdictional wetland determination for the proposed Twin Pines project in Charlton County, Georgia. The Service has also requested EPA provide to your office its interpretation and review on the Corps jurisdictional wetland determination (see Enclosure).

The Service requests this because the Corps originally evaluated the Twin Pines project under the pre-2015 jurisdictional regulatory definitions and determined it would impact 587 acres (approximately 46% of the area to be mined). However, implementation of the 2020 Navigable Waters Protection Rule definition would substantially reduce the potential amount of jurisdictional wetlands subject to jurisdiction under Section 404 of the Clean Water Act (CWA). Therefore, the applicants (Twin Pines Minerals) requested and received a new jurisdictional determination under the now-obsolete 2020 rule.

After the jurisdictional determination was made under the now-obsolete 2020 rule, Twin Pines Minerals modified their project footprint to avoid the remaining jurisdictional wetlands and in turn, withdrew their permit application to the Corps.

Although impacts under the pre-2015 regulatory framework may differ from their original 404 permit application, based on the most recent changes to the project area footprint and pre-2015 wetland definitions, the Service is concerned that jurisdictional wetlands will now be impacted and subject to the CWA 404 regulations.

In accordance with the FWCA and ESA, and consistent with our review of the previous Twin Pines mining application, the Service is concerned that the proposed project may pose risks to the Okefenokee National Wildlife Refuge (Okefenokee NWR) due to alterations in soil profiles along Trail Ridge and subsequent changes to the hydrology of the area. These changes in hydrology may in turn increase wildfire occurrence in the area by drying vegetation of the Okefenokee NWR and the Okefenokee swamp, thereby threatening and/or decreasing habitat quality for federally listed and at-risk species found in the Okefenokee NWR, such as the endangered red-cockaded woodpecker and the proposed Suwannee alligator snapping turtle.

The Service appreciates our continuing partnership with the Corps and we welcome the opportunity to work with you and your staff to thoroughly and diligently evaluate the proposed activities to ensure the avoidance and minimization of any potential adverse impacts to one of our nation's most treasured natural areas.

If you have any questions, please contact me or Dr. Catherine Phillips, Assistant Regional Director-Ecological Services, at 404-679-7085 or catherine_phillips@fws.gov.

Sincerely,



Leopoldo Miranda-Castro
Regional Director

Enclosure

cc: The Honorable Radhika Fox, Assistant Administrator for the Office of Water, EPA
Jeaneanne M. Gettle, Director, Water Division, Region 4, EPA