



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

In Response Reply to:
FWS/IR02/04/076308

The Honorable Michael L. Connor
Assistant Secretary of the Army (Civil Works)
United States Department of the Army
The Pentagon
Washington, DC 20310

Dear Mr. Connor:

I am writing to you to request that the U.S. Army Corps of Engineers (USACE) reconsider the jurisdictional wetland determination for the Twin Pines demonstration mining project in Charlton County, Georgia, Joint Public Notice SAS-2018-00554 (Twin Pines). Based on the best available science, including an updated hydrological review, the Twin Pines project will likely have major negative impacts to the globally significant Okefenokee wetland ecosystem including the Okefenokee National Wildlife Refuge.

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 USACE 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 memorialize the pre-2015 WOTUS definition.

Under the pre-2015 jurisdictional regulatory definitions, the Twin Pines project as originally submitted, would have impacted 587 acres of jurisdictional wetlands connected to the Okefenokee National Wildlife Refuge (approximately 46% of the area to be mined). Following the implementation of the 2020 Navigable Waters Protection Rule definition, the applicants (Twin Pines Minerals) requested and received a new jurisdictional determination under the now-obsolete 2020 rule. The applicant modified the project footprint to avoid any jurisdictional wetlands and in turn, withdrew their permit application to the USACE. However, the modified project footprint would still impact wetlands that are jurisdictional under the pre-2015 definition now in effect. Reversion to the more reasonable regulatory definition creates a changed circumstance warranting a second look at this determination.

Consistent with our expert review of the previous Twin Pines mining application, the Department of the Interior is concerned that the proposed project poses risks to the Okefenokee swamp ecosystem including the Okefenokee National Wildlife Refuge. For example, changes in hydrology may in turn increase wildfire occurrence by drying vegetation of the Okefenokee Swamp, thereby decreasing habitat quality for federally listed and at-risk species found there,

such as the endangered red-cockaded woodpecker and the proposed Suwannee alligator snapping turtle and other plants and wildlife.

The US Fish and Wildlife Service (Service) Regional Director, Leopoldo Miranda-Castro expressed these concerns on December 21, 2021, in letters to both Brigadier General Kelly of the USACE South Atlantic Division and Radhika Fox, EPA Assistant Administrator for the Office of Water (enclosed). The Department supports the Service's recommendation requesting a re-visitation of the jurisdictional determination considering the current WOTUS interpretation.

I appreciate your partnership in protecting important wetland resources across the country, and I stand ready to offer any assistance you may need in updating agency review of the Twin Pines project and its wetland impacts. Please do not hesitate to contact me with questions.

Sincerely,

Shannon A. Estenoz
Assistant Secretary for Fish and Wildlife and Parks