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ORIGINAL

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FILED
 OFFICE OF THE SECRETARY
 MAY 24 1988
 Alabama Power
 FEDERAL ENERGY REGULATORY COMMISSION
 electric system

May 23, 1988

OHL
 Project No. 2628 - Alabama
 R. L. Harris Dam

Ms. Lois D. Cashell
 Acting Secretary
 Federal Energy Regulatory Commission
 825 North Capitol Street, N.E.
 Washington, D.C. 20426

Dear Ms. Cashell:

On September 21, 1984, the Federal Energy Regulatory Commission (Commission) issued an order conditionally approving, inter alia, the revised Exhibit S for the R. L. Harris Project, FERC Project No. 2628, and amended the license by adding Article 63. This article, as subsequently amended, required Alabama Power Company (Licensee), after consultation with the U. S. Fish and Wildlife Service (USFWS) and the Alabama Department of Conservation and Natural Resources (ADCNR), to develop and file with the Commission a wildlife mitigative plan for the Harris Project. The filing date specified by Article No. 63 was subsequently amended by Commission letter dated October 3, 1985 and Commission orders issued July 29, 1986 and December 17, 1986. On February 4, 1987, Licensee filed with the Commission its plan entitled "Wildlife Mitigation Plan for the R. L. Harris Reservoir", dated October 31, 1986, and included comments on the plan from the USFWS and ADCNR dated January 8, 1987 and January 15, 1987, respectively. 028

The USFWS subsequently filed a report with the Commission on December 22, 1987 entitled "U. S. Fish and Wildlife Service Mitigation Report for the R. L. Harris Project, Tallapoosa River, Alabama" dated December 15, 1987, which was developed jointly by the USFWS and ADCNR. On January 6, 1988, the ADCNR filed a letter dated December 18, 1987 concurring with the provisions set forth within the USFWS mitigation plan.

Subsequent to the filing of the USFWS proposed wildlife mitigation plan and ADCNR's letter, Licensee, USFWS, and ADCNR personnel met in an effort to discuss the differences in the proposed plans and resolve the issues of concern to all parties. As a result of these meetings, Licensee, USFWS, and ADCNR reached an agreement on a wildlife mitigation plan that fully mitigates for the loss of wildlife habitat attributed to the project's development, and a plan which fulfills all requirements of Article 63 of the R. L. Harris license.

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Ms. Lois D. Cashell
May 23, 1988
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Accordingly, Licensee hereby withdraws its proposed plan entitled "Wildlife Mitigation Plan for the R. L. Harris Reservoir", filed with the Commission on February 4, 1987, as well as all related concerns and recommendations. It is Licensee's understanding that the USFWS, with the full concurrence of ADCNR, is also withdrawing its proposed mitigation plan and associated concerns and recommendations filed with the Commission on December 22, 1987. Furthermore, in accordance with the provisions of Article 63 of the R. L. Harris license and subsequent amendments, enclosed herewith for filing with the Commission are the original and fourteen (14) copies of the revised plan entitled "Wildlife Mitigation Plan For R. L. Harris Project, FERC Project No. 2628", dated April 15, 1988 (Attachment I), which has been developed in consultation with the USFWS and the ADCNR. Also enclosed as Attachments II and III are the original and fourteen (14) copies of the USFWS and ADCNR letters dated May 18, 1988 and May 5, 1988, respectively, providing the agencies' total concurrence on the revised mitigation plan.

The enclosed wildlife mitigation plan for the Harris Reservoir provides for management of the existing 5900 acres of project lands for wildlife enhancement; the designation and management of an additional 15,300 acres of land for wildlife enhancement through continued utilization of the ADCNR's Skyline Wildlife Management Area (which is under contract to Licensee for purchase upon approval by the FERC); the designation and management of an additional 779.5 acres of land in the vicinity of the Harris Project for wildlife enhancement; and, an implementation schedule and cost estimate for these actions. In addition, enclosed as Attachment IV are the original and fourteen (14) copies of the proposed lease agreement between the Licensee and ADCNR for the management of the 15,300 acres in the Skyline Wildlife Management Area, to be executed upon Commission approval of the revised plan. Licensee proposes to add the 779.5 acres and the 15,300 acres to the R. L. Harris licensed project since these lands are necessary for project purposes, specifically, for the protection of environmental resources. The enclosed plan provides for the development, enhancement and improvement of wildlife resources and provides specific measures to fully mitigate for loss of wildlife habitat attributed to the project's development.

We respectfully request approval of the enclosed plan entitled "Wildlife Mitigation Plan for R. L. Harris Project, FERC Project No. 2628" by the Director, Office of Hydropower Licensing, under the delegated authority provisions of Section 375.314 of the Commission's Revised General Rules. Upon FERC approval of the plan, Licensee will file with the

Ms. Lois D. Cashell
May 23, 1988
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Commission an executed copy of the lease agreement and a revised Exhibit G and Land Use Plan to incorporate placement of the 779.5 acres and the 15,300 acres within the R. L. Harris FERC project boundary.

Yours very truly,

John E. Donnett

JFC:ejc

Attachment I : Wildlife Mitigation Plan For R. L. Harris Project, FERC
Project No. 2628, dated April 15, 1988
Attachment II : USFWS letter of concurrence, dated May 18, 1988
Attachment III: ADCNR letter of concurrence, dated May 5, 1988
Attachment IV : Proposed lease agreement with ADCNR

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the enclosed service list in accordance with the procedures outlined in the Commission's Order On Complaint and Appeals for PERC Project Nos. 233-008, -013 and -014 issued July 17, 1987.

Dated at Birmingham, Alabama this 23rd day of May, 1988.

John E. Dorsett

John E. Dorsett

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Alabama Power Company)
)
)

Project No. 2628
R. L. Harris Dam

SERVICE LIST

Mr. James D. Martin
Commissioner
Alabama Department of Conservation
and Natural Resources
64 North Union Street
Montgomery, Alabama 36130

Mr. James W. Pulliam, Jr.
U. S. Fish and Wildlife Service
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Wildlife Mitigation Plan
For R. L. Harris Project,
FERC Project No. 2628

April 15, 1988

This wildlife mitigation plan was developed by Licensee in compliance with the requirements of Article No. 63 of the R. L. Harris Project License, Federal Energy Regulatory Commission (FERC) No. 2628. Licensee developed this wildlife mitigation plan in consultation with the U. S. Fish and Wildlife Service (USFWS) and the Alabama Department of Conservation and Natural Resources (ADCNR). The mitigation plan includes the management of R. L. Harris Project land for wildlife enhancement, the acquisition and management of 779.5 acres of land in the vicinity of the R. L. Harris Project for wildlife enhancement and the acquisition by Licensee and management by ADCNR of approximately 15,300 acres of lands in the Skyline Wildlife Management Area located in Jackson County, Alabama which is approximately 110 miles north of the project. Licensee, USFWS and ADCNR are in concurrence on the adequacy of this plan to mitigate the impact of the R. L. Harris development upon wildlife.

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WILDLIFE MITIGATION PLAN FOR SKYLINE WILDLIFE MANAGEMENT AREA LANDS

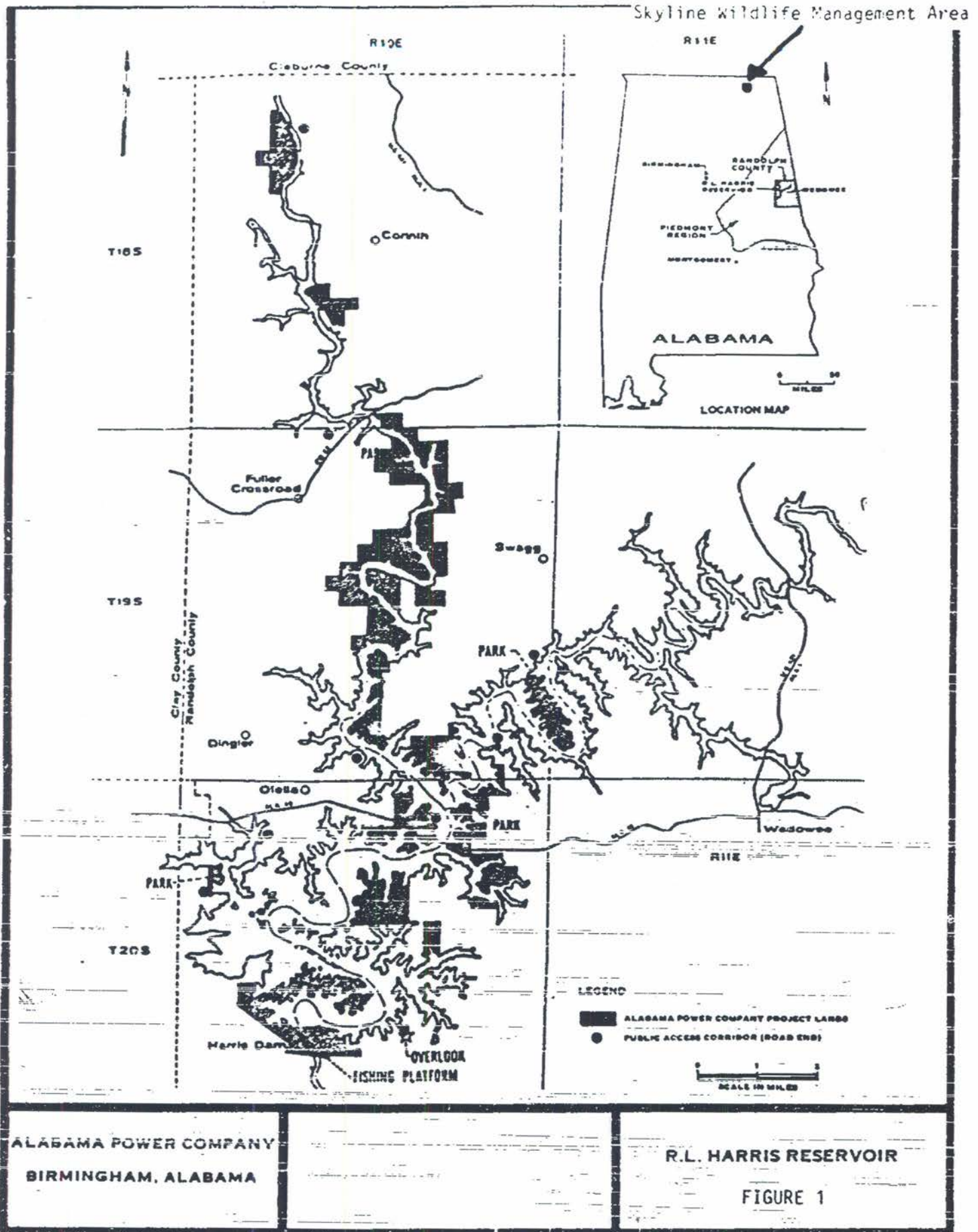
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Introduction

Licensee's R. L. Harris Project involved impounding the Tallapoosa River, a navigable waterway of the United States, at river mile 138, approximately 12 miles below the confluence of the Tallapoosa and Little Tallapoosa Rivers. The development of the R. L. Harris Reservoir resulted in the loss of approximately 9,720 acres of reservoir lands and 940 acres of free flowing river. These lands provided habitat for numerous wildlife species including whitetail deer, eastern wild turkey, eastern gray squirrel, eastern cottontail rabbit, mink, raccoon, beaver, downy woodpecker, wood duck, etc. The reservoir has 272 miles of shoreline and is operated by Licensee as a hydroelectric project and flood control basin. There are approximately 5,925 acres of project lands adjacent to the reservoir which are comprised of parks, overlook areas, recreational areas, residential areas, public areas and natural undeveloped areas (see Figure 1).

In order to adequately compensate for the loss of wildlife, wildlife habitat, and hunting opportunities that resulted from the development of the project, a mitigation plan has been developed in consultation with the USFWS and ADCNR that includes the management of R. L. Harris Project lands, acquisition and management of 779.5 acres of land in the vicinity of the R. L. Harris Project, and acquisition and management of approximately 15,300 acres of land in the Skyline Wildlife Management Area.

The wildlife mitigation plan outlined in this report provides specific measures to mitigate for the loss of wildlife and wildlife habitat attributed to the development of the R. L. Harris project. When approved, this plan will meet the mitigation requirements as set forth by the FERC.



Wildlife Mitigation Plan for R. L. Harris Project Lands
and Those Lands Acquired in the Vicinity of the R. L. Harris Project

1.0 WATERFOWL

1.1 Wood Duck

The wood duck (Aix sponsa) is Alabama's only species of waterfowl that breeds throughout the state in significant numbers. Summer brood surveys indicated about 50,000 wood ducks are produced annually in Alabama; flights of migrant birds increase the population to 75,000 or more (Beshears 1974).

The wood duck in Alabama is an important recreational species and is the second most hunted waterfowl species in the state. Most wood ducks are taken on beaver ponds and from wooded areas in central Alabama. They comprise 20 to 25 percent of the total duck bag, with the annual harvest between 20,000 and 25,000 birds (Beshears 1974).

Wood ducks are commonly found in wooded deciduous hardwood forest swamps with trees of mast-and cavity-producing maturity. Fresh-water ponds, streams, coves and other wetland areas provide food and cover. In Alabama, beaver ponds provide excellent nesting and brood-rearing habitats for wood ducks. Other habitat types used by the species include natural lakes, rivers and streams, seasonal ponds, farm ponds, watering holes and large impoundments such as R. L. Harris Reservoir.

The wood duck is more dependent on forests than any other waterfowl species. McGilvrey (1968) stated that suitable cover for wood ducks may be provided by trees or shrubs overhanging water, flooded vegetation or a combination of these. The best cover consists of an interspersed of shrubs, emergent aquatic plants, trees tolerant to water, and small open water areas (Beshears 1974).

Wood ducks' diet consists of mast, fruits, aquatic plants, seeds, insects, and aquatic invertebrates (Landers et al. 1977). McGilvrey (1966) found that 98 percent of the stomach contents of wood ducks shot contained fruits and seeds of water oak, pin oak, sweetgum, water hickory, and corn. Beshears (1974) found that beechnuts, smartweeds, corn and other grains, pondweeds, blackgum, duckweed, green shoots, and rootstocks are important food items.

Wood duck daily foraging radius in the southeastern United States may be as much as 25 to 30 miles (U.S. Forest Service, 1971). Wood ducks forage on the ground or in water to a depth of 18 inches (McGilvrey 1968). Foraging occurs primarily in flooded timber during spring and fall (Drobney 1980). Bellrose (1976) found that wood ducks prefer to forage for mast in areas of shallow water, but they will forage on the forest floor. Seasonal variations occur in the diet of wood ducks. Landers et al. (1977) found that acorns and other mast are important fall and winter foods.

During the breeding season important components of the diet include persistent overwintering fruits, corn and other grains, seeds and fruits from bottomland hardwoods, shrubs, aquatic herbaceous plants, early spring plants, and invertebrates (McGilvrey 1968). Fredrickson (1980) found that invertebrates make up about one third of the fall diet of drakes and hens, and one third of the spring diet of drakes.

A plant survey was conducted on the Harris Reservoir in June and July of 1986. Each wood duck site (cove, shoreline, slough, embayment) was surveyed from the water and land. Food plants present were recorded and rated according to availability for wood ducks as: abundant, common or scarce. Table 1.1, lists plant species found in reservoir areas.

TABLE 1.1 Cover and food species for wood duck on R. L. Harris Reservoir, Randolph County, Alabama 1986.

Trees and Woody Species

American Beech

Water Oak

White Oak

Pin Oak

Other Oaks

Mulberries

Wild Grape

Blackgum

Buttonbush

Fagus grandifolia

Quercus nigra

Quercus alba

Quercus palustris

Quercus spp.

Morus spp.

Vitis spp.

Nyssa sylvatica

Cephalanthus occidentalis

Aquatic Herbaceous

Arrowhead (Duck Potato)

Smartweed

Cattail

Spikerush

Sedges

Bur reed

Arrow arum

Bulrush

Sagittaria spp.

Polygonum spp.

Typha spp.

Eleocharis spp.

Cyperus spp.

Sparganium spp.

Peltandra virginica

Scirpus spp.

Management Prescription

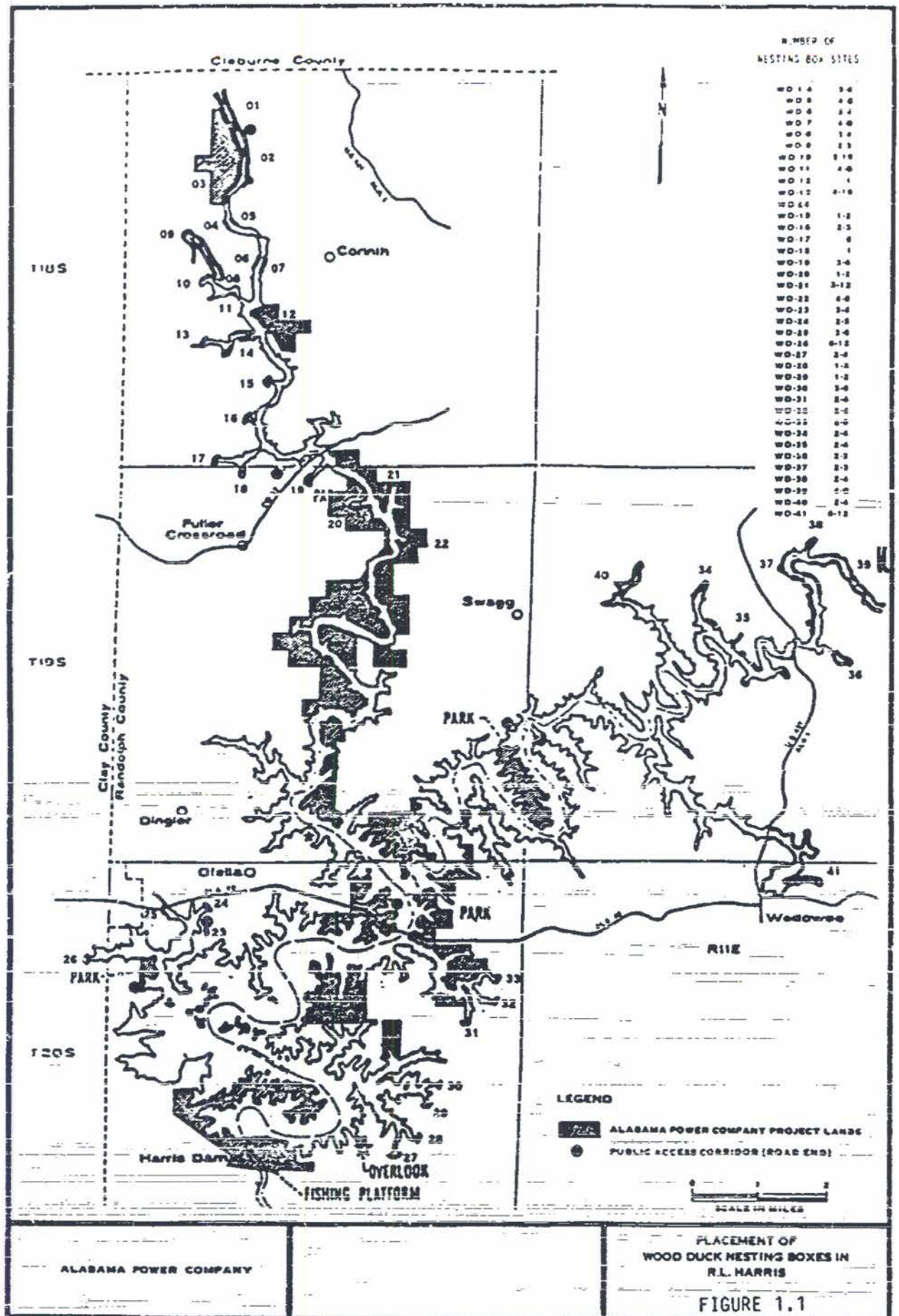
At present there are 263 acres of suitable wood duck habitat in the reservoir project area. It is proposed to initially place 50 wood or equivalent wood duck boxes around the lake in the best available habitat (Figure 1-1). Fifty additional boxes will be installed when 35% of the boxes are being used by wood ducks or when 50% of the boxes are being used by wood ducks and other cavity nesters. The wood duck boxes will be inspected annually and necessary maintenance will be performed prior to the nesting season. Wood duck boxes are used by a number of species, including screech owl, bluebird, starling, and woodpeckers.

The use of nesting boxes will substantially increase the number of wood ducks reared in suitable areas. The nesting boxes will be numbered and installed on selected sites around the reservoir. Extensive use of wood duck boxes will not be expected for the first two years after the boxes are erected. Female wood ducks exhibit a tendency to return to the vicinity where they were hatched.

Two beaver pond sites totaling an estimated 46.5 acres adjacent to the reservoir are being acquired by Licensee. The inclusion of these valuable wildlife areas to the mitigation plan will substantially increase the availability and quality of waterfowl habitats on project lands.

1.2 Canada Goose

The Canada Goose (Branta canadensis) is one of the most familiar species of waterfowl. It is hunted over a wider range and for a longer period than any other American game bird. In face of the general decline of waterfowl numbers, the Canada Goose is present in greater numbers in some areas of the country than it was during historic times (Linduska 1964).



In an effort to increase southern populations, Canada geese are being managed on many southeastern reservoirs. In some states, a cooperative arrangement between reservoir managers and game officials has produced a successful program of goose management for wildlife enthusiasts as well as hunters (Hine 1968). The net annual benefits of management programs in certain areas of the country have been estimated to be in the millions of dollars. Geese are the 'big game' of wildfowl, and biologists throughout North America seek to conserve, maintain and develop this valuable resource (Hine 1968).

Winter surveys between 1955 and 1974 showed that the number of Canadas doubled in the United States. During the 20-year period (1955-1974) the populations of the Atlantic and Mississippi Flyways increased 138.6 percent and 169.5 percent, respectively.

In 1953, a major transplant program was undertaken in the Southeast which resulted in the largest controlled movement of migratory waterfowl. From 1953 to 1965, about 20,734 Canada geese were transplanted to nine national wildlife refuges in four southeastern states (Hankla 1968).

Eight national wildlife refuges in the Southeast have now established resident flocks of Canada geese. Successful programs have been established on the following wildlife refuges: Cross Creek near Dover, Tennessee, Eufaula National Wildlife Refuge on the Walter F. George Reservoir near Eufaula, Alabama; St. Marks Wildlife Refuge on the Gulf Coast of Florida; Harris Neck National Wildlife Refuge near Townsend, Georgia; Holla Bend National Wildlife Refuge near Russellville, Arkansas; Wapanocca National Wildlife Refuge near West Memphis, Arkansas; Noxubee National Wildlife Refuge near Starkville, Mississippi; and Yazoo National Wildlife Refuge near Hollandale, Mississippi (Oberheu 1973). The ADCNR operates the Jackson County Waterfowl Management Area in northeastern Alabama which

supports a resident flock of geese. Near the R. L. Harris project, a resident flock is established on the West Point Reservoir near West Point, Georgia.

It is proposed that a Canada goose restoration project be initiated on the R. L. Harris Reservoir. Objectives for this significant out-of-kind mitigation are:

1. To manage for factors which influence the occurrence, well-being and permanence of a Harris Reservoir resident goose population,
2. To provide the opportunity for wildlife enthusiasts to enjoy this natural resource.

Canada geese require cover for nesting, brood rearing, and resting. This cover may be provided by grasses, shrubs, or broom sedge along shorelines or in coves where nesting takes place. Geese commonly build nests in coves that are secluded and on islands which are relatively safe from predation. Nests are built close to the shoreline in camouflaged areas surrounded by grasses and sedges. The behavior of the female, crouching on the nest, aids in hiding the nest from intruders.

In feeding areas, geese share the food resources between broods and adults. Ganders will defend nests and feeding sites within 50 feet of the goslings. When swimming across large open areas of water, the female will lead, followed by the goslings and gander.

Canada geese are essentially grazing birds and are more land-oriented than ducks. This is particularly true when goslings are growing and feeding on islands and peninsulas with their parents (Linduska 1964). Forage includes roots, stems, leaves and seeds of a variety of water plants and sedges if growing in shallow water areas. Tender shoots of various grasses are favored along with insects, crustaceans, and mollusks (Imhof 1962).

More than any other waterfowl in North America, the Canada goose has benefited from agriculture. Geese are quick to use feed grains and cereal foods on migratory routes and winter management areas. They commonly exploit waste grain and pastures on farms located near reservoirs.

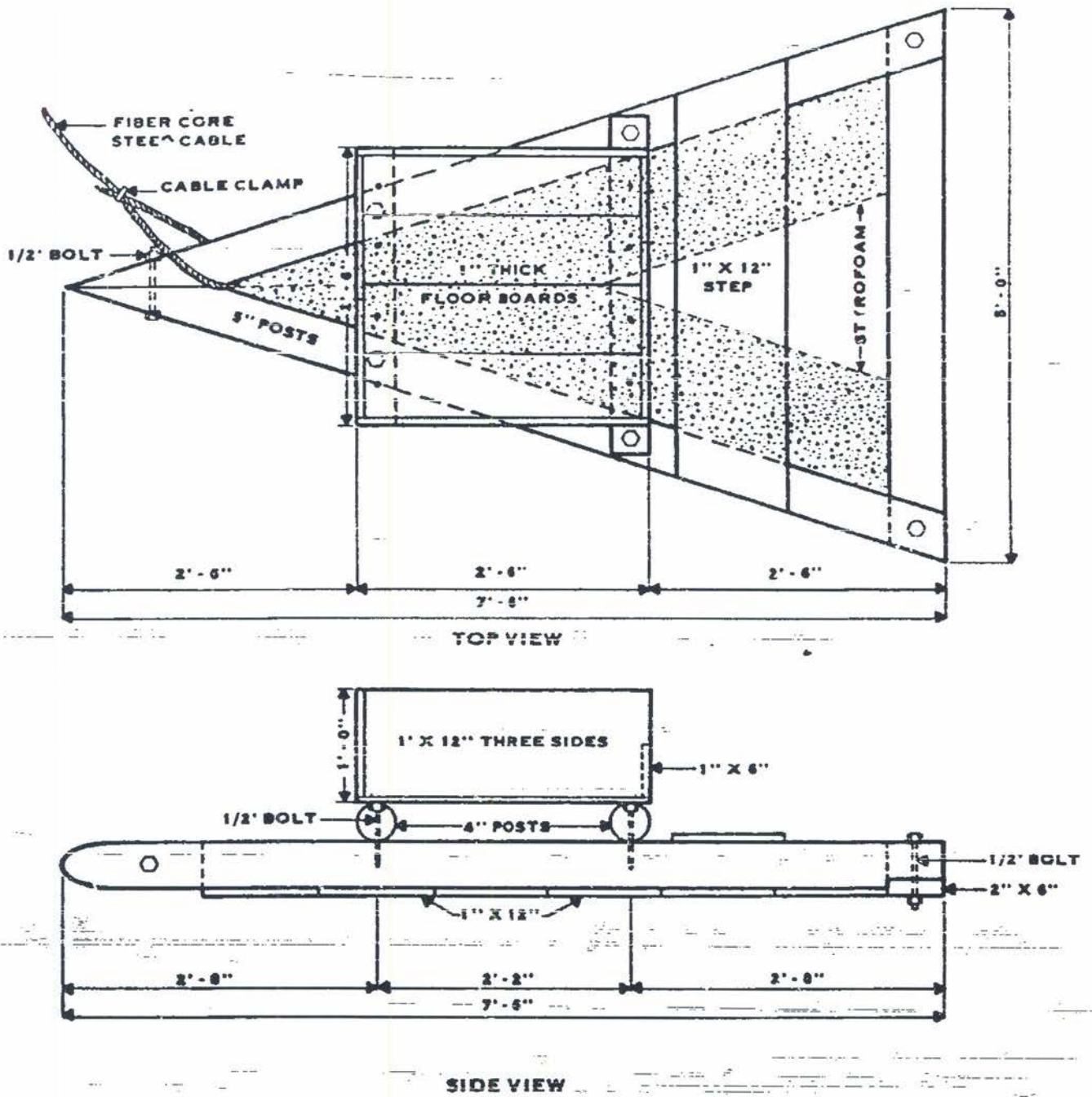
Water areas should be sheltered from wind and wave action. Areas with shallow water that contain food plots along shorelines or in coves provide excellent habitat for geese.

Management Prescription

The initial release will be obtained from a Northern flock and should approximate 50 to 100 birds. Geese will be stocked on the reservoir in late summer. Stocked geese must be wing-clipped at release. This helps to insure that they will remain in the area until the next molt, which occurs in June and July. Goslings will become residents and return to the area when they reach breeding age. With protection, birds raised in this manner will add substantially to the breeding flock (Georgia Department of Natural Resources 1986).

Geese are easily encouraged to nest on artificial structures. These structures will be protected where possible from rising waters and located relatively close to shore and in secluded coves within 10 to 20 yards of an open bank. Floating platform nests (Figures 1.2 and 1.3) will be placed in sheltered coves removed from wind and major wave action. Distance between platforms will be a minimum of 100 yards and "out-of-sight" from other platforms. Ganders vary in their behavior relating to territorial distances and the placement of platforms will vary from area to area.

The R. L. Harris Reservoir has several excellent locations for the placement of twenty-five Canada goose nesting platforms (Figures 1.4 to 1.7). The Morris Bend Peninsula (Figure 1.5) is the suggested area to begin the development of the resident goose program. Eighteen cove sites



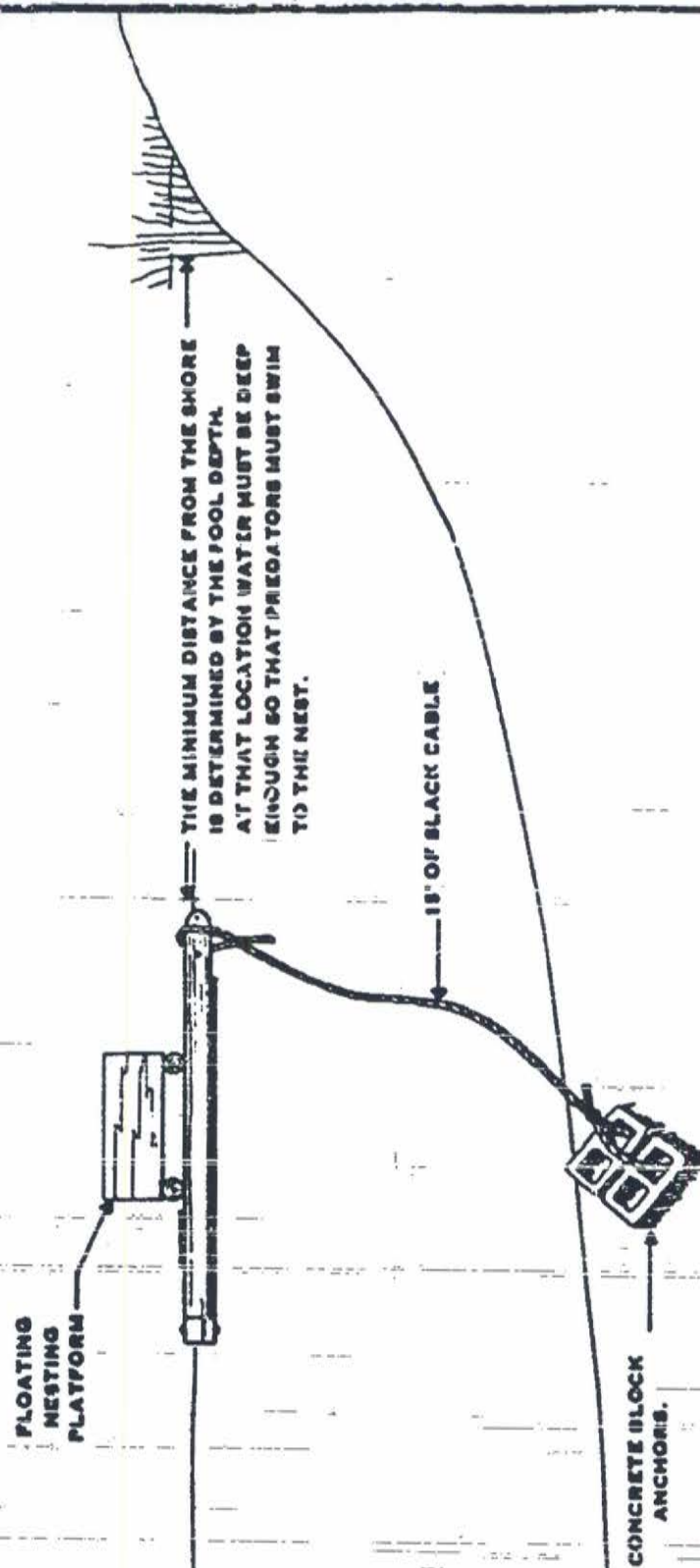
NOTE: TREATED WOOD OPTIONAL

SCALE: 3/4" = 1'-0"

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TYPICAL
PLANS FOR A
FLOATING GOOSE
NESTING PLATFORM

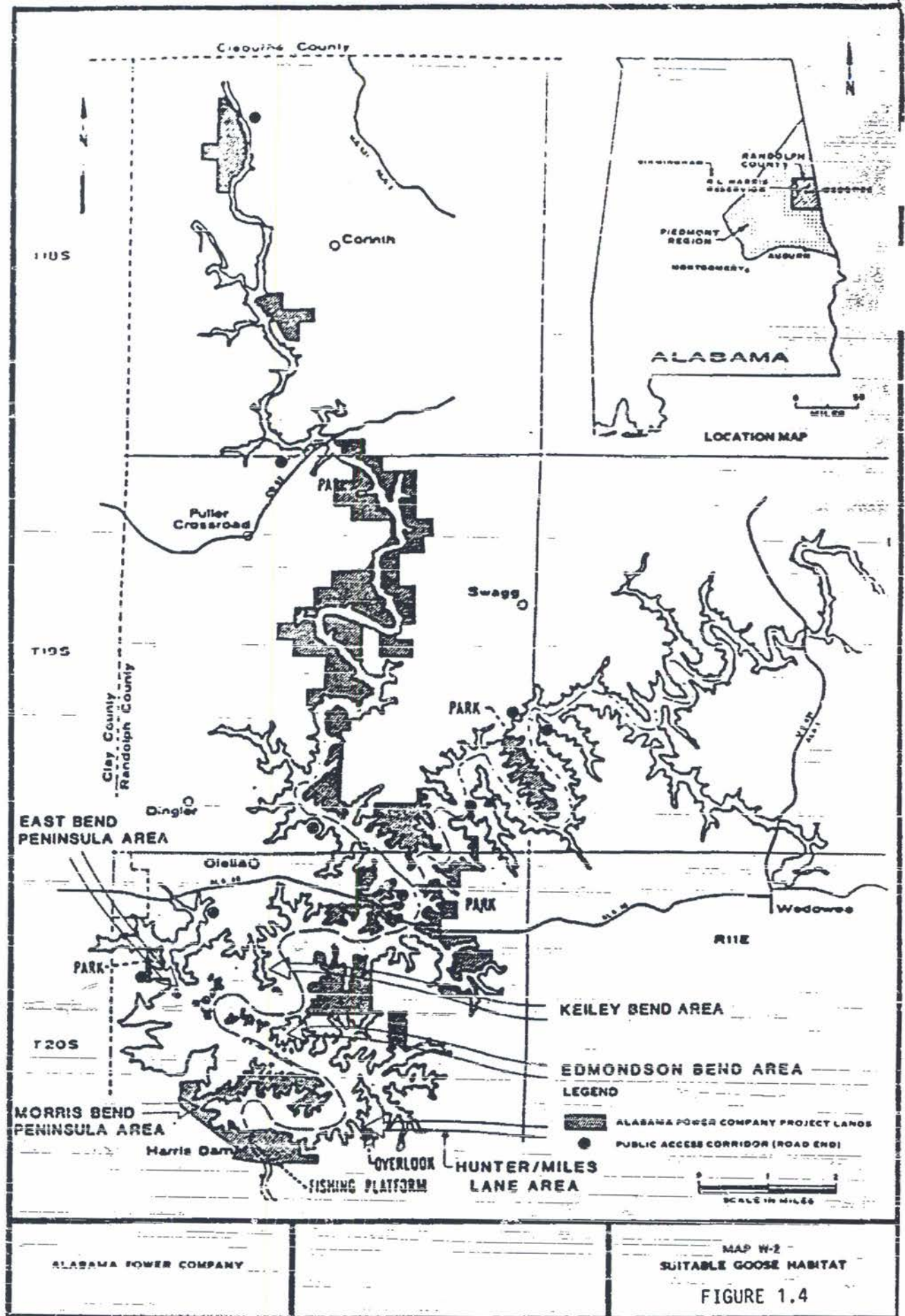
FIGURE 1.2

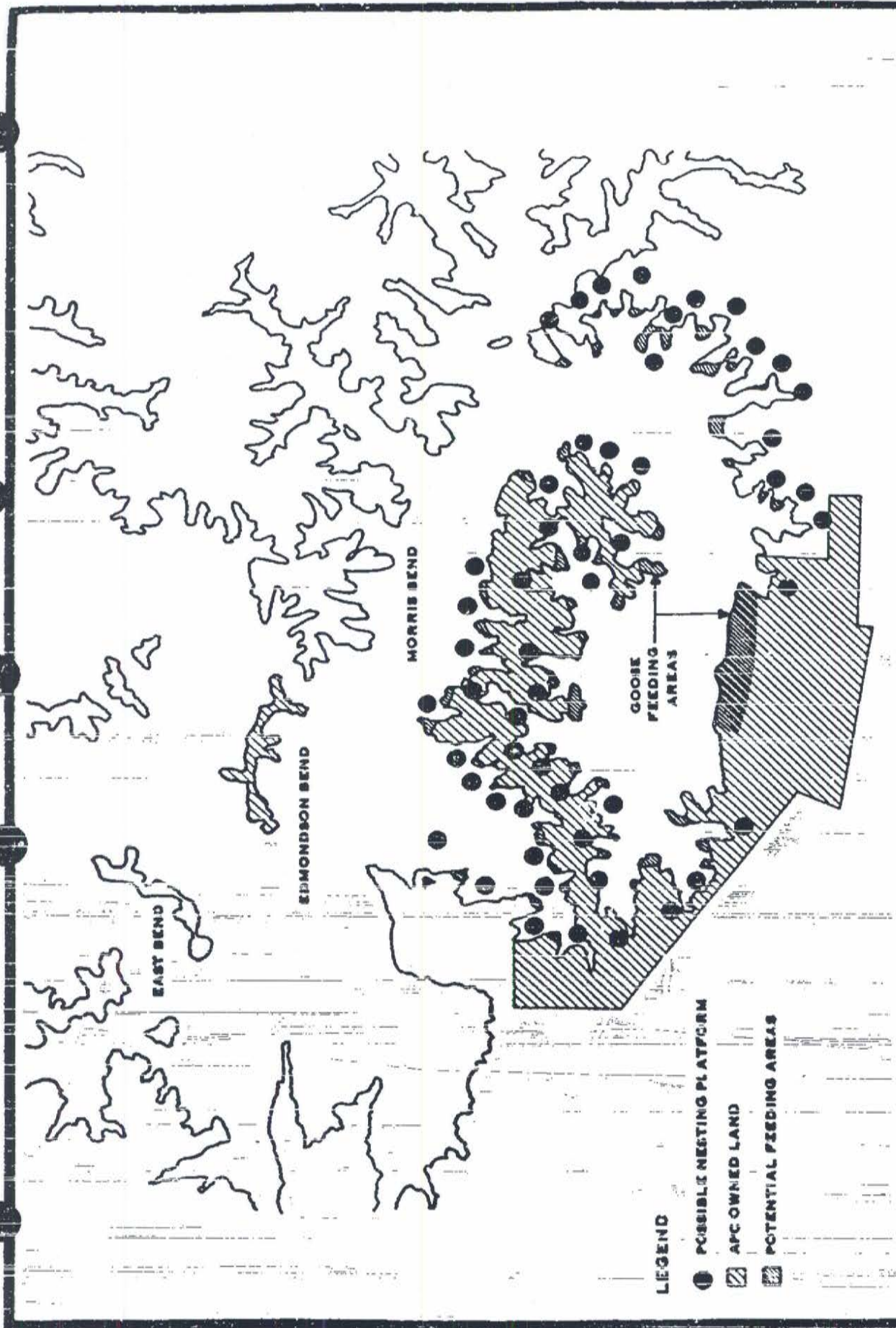


TYPICAL
GOOSE NESTING PLATFORM

FIGURE 1.3

FLABAMA POWER COMPANY





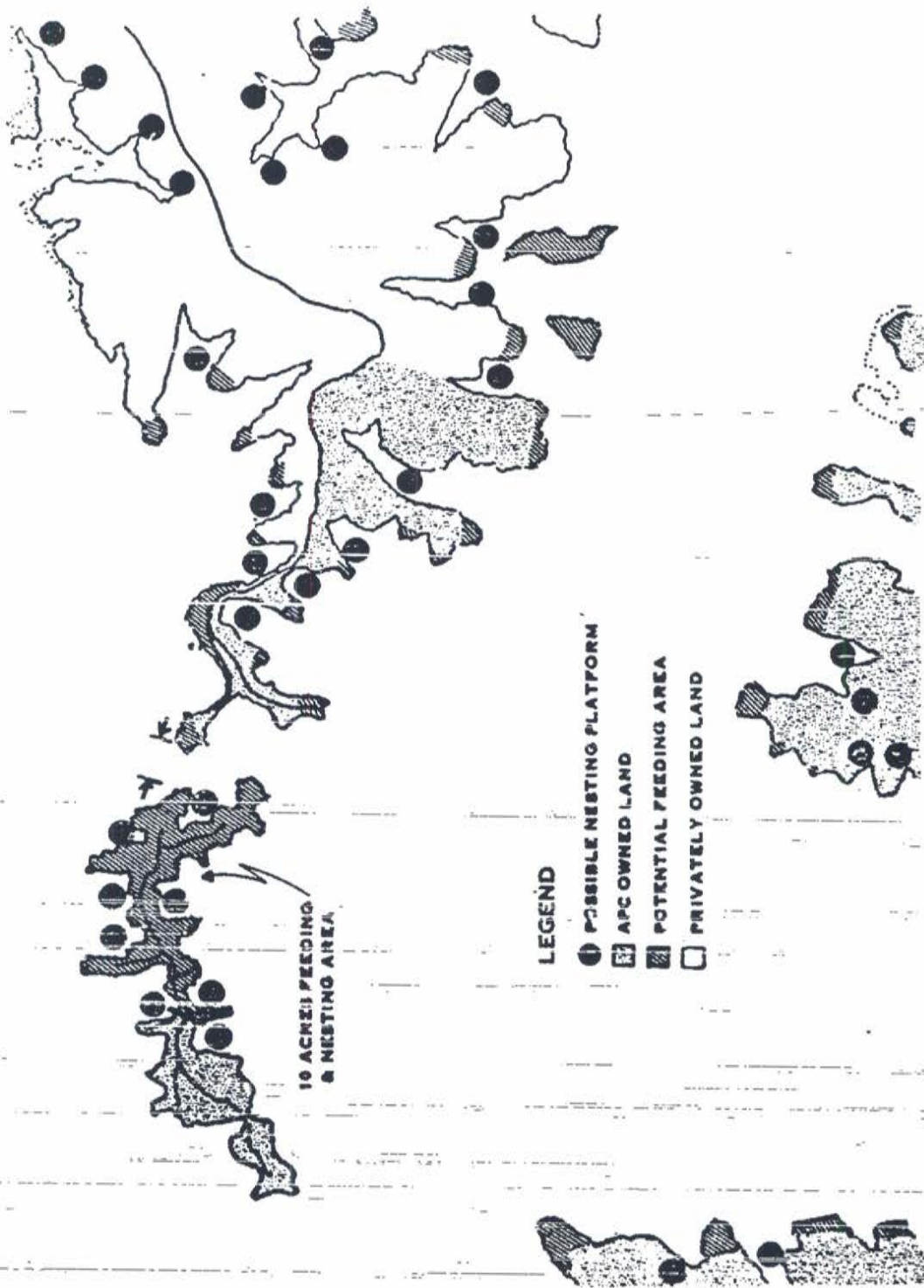
CANADA GOOSE
MANAGEMENT AREA
MORRIS BEND
FIGURE 1.5

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CANADA GOOSE
MANAGEMENT AREA
EAST BEND & KEILEY BEND
FIGURE 1.6

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CANADA GOOSE
MANAGEMENT AREA
EDMONDSON BEND AREA
FIGURE 1.7

ALABAMA POWER COMPANY

have been identified on the south side of this peninsula. These coves are sheltered from the wind and have sufficient cover to provide geese with proper seclusion.

Feeding areas will be managed on the peninsula tips. Canada geese require foraging sites within 0.5 mile of nesting sites. These feeding areas will be cleared and strip-cropped with perennial forage. Geese in this area will also have access to the large grassy areas east of the dam site for foraging. As the goose population is established, other sites will be developed east of the dam, north to the Edmondson Bend Island, and north to East Bend and Keiley Bend. Edmondson Bend Island offers a 10 acre feeding and nesting area that will be developed for nesting, foraging, and brood-rearing as the goose population increases. Keiley Bend contains many secluded coves that are ideal for nesting platforms.

The establishment of a resident Canada goose population on the R. L. Harris Reservoir will constitute out-of-kind mitigation. After the establishment of feeding areas, geese will be released on the reservoir.

2.0 PROTECTED SPECIES - OSPREY

The osprey (Pandion haliaetus) is designated as a species of special concern in Alabama. Osprey numbers declined in the mid-1900's and the species disappeared from areas previously occupied in Alabama.

Osprey populations are currently expanding in a number of wetland habitats in North America. Education and enforcement are key issues in the survival of the osprey (Mount 1986). Osprey are presently casual visitors to the R. L. Harris Reservoir.

The expanding fishery of the reservoir and the establishment of nesting platforms should encourage the osprey to use the Harris Reservoir. A restoration project is currently under way in Alabama by the Department of Conservation and Natural Resources (Mount 1986) thus the Harris osprey program will be compatible with these objectives.

Five osprey nesting platforms will be constructed on suitable structures along the reservoir shoreline. Platforms will be located in areas that are subject to minimal human disturbance. Also, osprey will benefit from the maintenance of a buffer strip of undisturbed timber on project lands adjacent to the reservoir.

3.0 MANAGEMENT PRACTICES

There are numerous management techniques available to manipulate habitat to meet the needs of wildlife species. Table 3.1 summarizes the management schedule of each major management practice to be implemented on R. L. Harris project lands. On approval of the mitigation plan these practices will be implemented and continued for the life of the license. A discussion of specific management recommendations follows.

3.1 Timber Management

Licensee will be responsible for all timber management on R. L. Harris project lands and the 779.5 acres of land to be acquired for wildlife management in the vicinity of the R. L. Harris project lands. All forest stands will be managed on a 60 year rotation except upland hardwood stands which will be managed on an 80 year rotation. Licensee will implement a 20 year cutting cycle on all R. L. Harris lands with pulp wood cutting on a 10 year cycle. Pine will be managed for timber production with burning to enhance wildlife habitat where not in conflict with achieving pine regeneration. Natural regeneration in pine cover types will be supplemented with pine plantings.

Regeneration of hardwood and pine hardwood stands will feature a shelterwood system that carries 45 to 55 square feet of basal area (35 to 40 sq. ft. will be in sawtimber) at the end of the cutting cycle. Harvest stands will be marked for improvement cuts of all age classes.

TABLE 3.1
R. L. HARRIS WILDLIFE
MITIGATION PLAN
MANAGEMENT SCHEDULE SUMMARY

1988 1990 1992 1994 1996 1998 2000 2002 2004 2006 2008 2010 2012 2014 2016 2018 2020 2023

| | | |
|---------------------|---|-------------------------------|
| MANAGED OPENINGS | ANNUALS AND PERENNIALS ESTABLISHMENT | 55 AC |
| | ANNUALS AND PERENNIALS MAINTENANCE | ACRES ESTABLISHED 55 AC/YR |
| | OPENINGS ESTABLISHMENT | 50 AC |
| | OPENINGS MAINTENANCE | ACRES ESTABLISHED 50 AC/YR |

| | | | | | | | | |
|---|-----------------------------|-------------------|-------------------------|----|-----------|---|----|---|
| ARTIFICIAL NESTING STRUCTURE CREATION AND ANNUAL MAINTENANCE | WOOD DUCK BOXES | 50 | 50 | ** | 50 | * | 50 | * |
| | WOOD DUCK BOX MAINTENANCE | 50 | 100 BOXES/YEAR ** | | | | | |
| | GOOSE PLATFORMS | 25 | | | | | | |
| | GOOSE PLATFORM MAINTENANCE | 25 PLATFORMS/YEAR | LIFE EXPECTANCY 10 YRS. | | | | | |
| | OSPREY PLATFORMS | 5 | | | | | | |
| | OSPREY PLATFORM MAINTENANCE | 5 PLATFORMS/YEAR | LIFE EXPECTANCY 10 YRS. | | | | | |
| | SMALL ANIMAL BOXES | 100 | 200 | ** | 300 BOXES | | | |
| | LARGE ANIMAL BOXES | 75 | 225 | ** | 300 BOXES | | | |

* INDICATES REPLACEMENT OF WOOD DUCK BOXES, IF NEEDED, AFTER 20 YRS.
** INDICATES ADDITIONAL BOXES PREDICATED ON USE OF INITIAL BOXES.

Herbicides will be used in pine and pine hardwood stands to maintain cover type and to maintain a balance of hard and soft mass producers. It will also be used for the creation of snags in pine, pine hardwood and upland hardwood stands as required to achieve management objectives.

Regeneration cuts will provide excellent nesting and brood habitat for turkey, quail, rufous-sided towhee, eastern bluebird, white-eyed vireo, indigo, bunting, and numerous other song birds. This type of cut will also provide excellent cover and food for deer, rabbit, fox, skunk and numerous other mammals and reptiles.

A contiguous fifty acre tract of upland hardwood on Plunkett Mountain will be designated for no timber harvesting.

3.2 Managed Openings

One of the most effective ways to increase the carrying capacity of the project lands for wildlife is to provide a nutritious food source. Managed correctly, wildlife plantings and forest openings will provide a diverse habitat benefiting both game species and non-game species including deer, turkey, dove, raptors, quail, bluebirds, indigo buntings, vireos, cardinal, raccoon, fox, geese and numerous others. The establishment of additional year-round food supplies will increase the carrying capacity of project land, thus mitigating for these and other species.

One hundred five (105) acres of permanent openings will be created within ten years of the initiation of the mitigation plan. In addition, there are 180 acres of ROW openings on project lands. Of the 105 acres, 55 acres will be managed for annuals or perennials and 50 acres managed as open areas. The 285 acres of openings (including 180 acres of ROW) represent approximately 4.25 percent of the total project land area. See Table 3.1 for the management schedule.

Food plot soils will be tested, then limed and fertilized according to needs of proposed plantings. Openings managed for perennials will be planted in bahia and fescue grasses, clovers, lespedezas, autumn olive, etc. Plantings of annuals will consist of wheat, rye, corn, oats, millet, grain sorghum, etc.

Creation of 105 acres of permanent openings will begin the summer of 1988 with a gradual increase in acreage during the following ten years. All 105 acres will be created by 1998. The gradual addition of food plots will support an increasing wildlife population. The food plots will be distributed throughout the R. L. Harris project lands and the 779.5 acres to be acquired for wildlife management in the vicinity of the R. L. Harris project.

The management of the remaining acres of permanent openings will emphasize upland game species. The openings will be irregular in shape and size to maximize edge effect.

3.3 Artificial Nesting Structures

Artificial nesting structures will be used to enhance wildlife habitat and to increase wildlife populations on project lands. Artificial nesting structures will mitigate for the lack of den trees on project lands. The lack of mature den trees is a limiting factor for many cavity nesting birds and mammals.

Artificial nesting structures will be constructed and installed within the first ten years of the mitigation plan implementation. The plan provides for 100 wood duck boxes, five osprey platforms, 300 large animal (raccoon, etc.) and cavity-nesting bird structures, 300 small animal and cavity-nesting bird structures, and 25 goose nesting platforms. The goose and osprey platforms, 75 of the large animal (raccoon, etc.) den boxes, and

100 of the small animal boxes will be installed by the end of 1989, as will half of the wood duck boxes. The remaining artificial nesting structures will be installed if use of the initial boxes warrants (i.e., 50% of the boxes are being used). A representative sample of the boxes will be checked annually, beginning the second year of the plan, to determine conditions and use of boxes. The management schedule is summarized in Table 3.1.

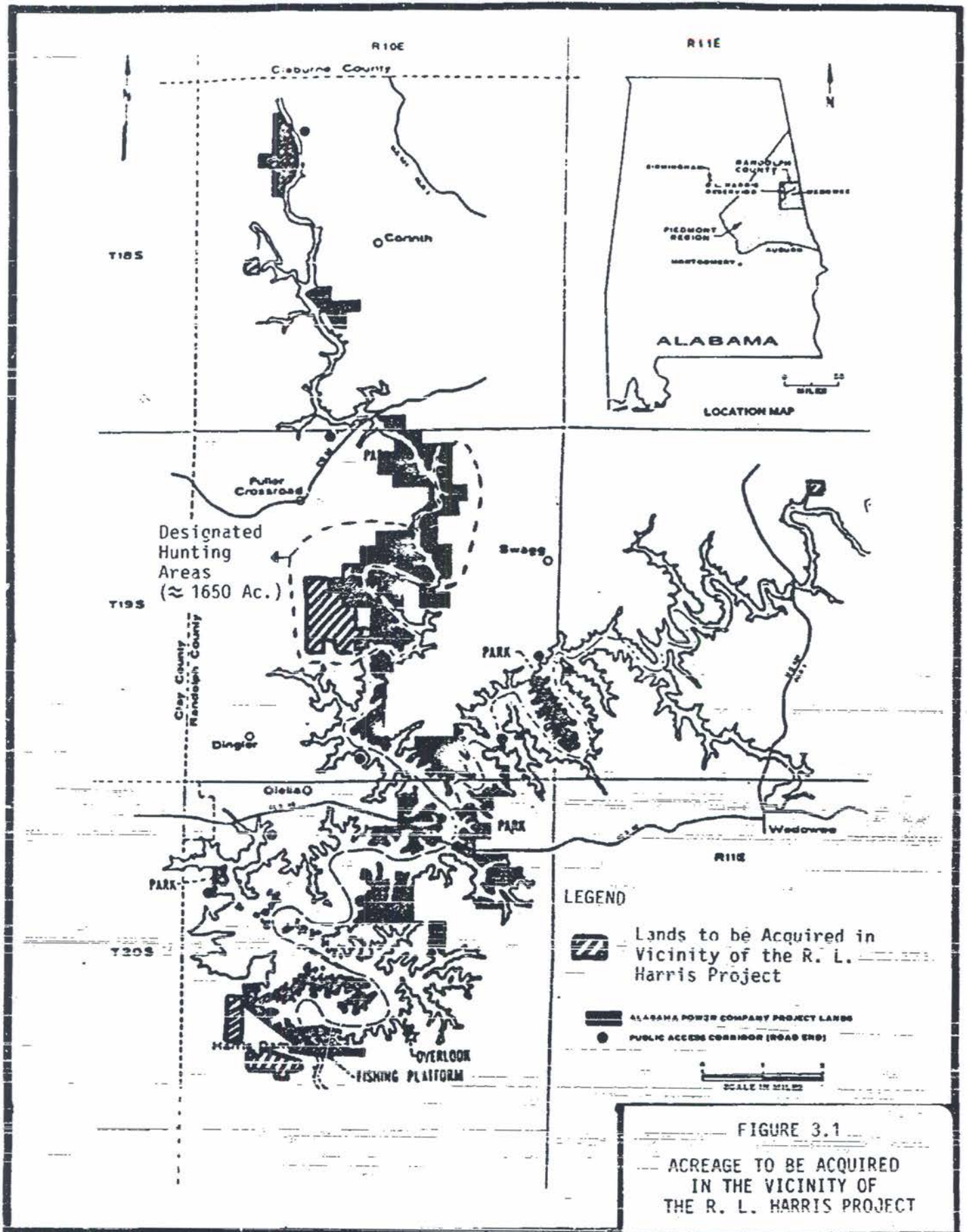
The following is a list of the principal species that may benefit from the installation of artificial nest structures: gray squirrel, raccoon, osprey, wood duck, Canada goose, barn owl, screech owl, and barred owl.

3.4 Land Acquisition

Licensee will acquire 779.5 acres of land in the vicinity of the R. L. Harris project which will be managed in accordance with the provisions contained herein (See Figure 3.1). Acquisition of these lands for wildlife management will significantly contribute to the mitigation of adverse impacts on wildlife which occurred as a result of the development of the R. L. Harris project.

3.5 Record Keeping, Reporting and Coordination

Licensee will maintain records of management activities and provide a brief report of these activities upon request to the U. S. Fish and Wildlife Service (USFWS) and the Alabama Department of Conservation and Natural Resources (ADCNR). Initial placement of boxes will be coordinated with USFWS and ADCNR.



Wildlife Mitigation Plan
For Skyline Wildlife Management Area Lands

Licensee will acquire approximately 15,300 acres of land as shown in Figure 1 in the Skyline Wildlife Management Area, which is located in Jackson County, Alabama (See Figure 2). Licensee will lease said lands to the ADCNR for the remaining life of the current R. L. Harris license. Further, Licensee will renew said lease agreement with the ADCNR for the term of any subsequent license issued to the Licensee by the Federal Energy Regulatory Commission (FERC) which when coupled with acquisition and management of R. L. Harris project land, serves as fulfillment of Licensee's requirement to mitigate for wildlife impacts associated with the development and continued operation of the R. L. Harris project.

Any request for an easement or change in land use on lands included in the Lease Agreement will, in accordance with standard procedures, be provided for agency consultation prior to submittal to FERC for approval. Such agency consultation will include recommendations for mitigation of the proposed easement or change in land use, which will be included in the proposed grant, to ensure wildlife habitat impairment to the area is regained. Copies of proposed changes in the lease will be submitted to FERC for approval and copied to the U. S. Fish and Wildlife Service.

Should Licensee exercise its mineral rights, it will be responsible for regaining any habitat values lost due to the action.

Should outstanding mineral rights be exercised, Licensee will attempt to obtain fair market value for any such exercise of mineral rights. Licensee agrees to utilize funds received, as necessary, to regain any wildlife habitat impairment occurring as a result of the exercise of any such outstanding mineral rights, up to a maximum of all funds received by Licensee.

Licensee, as part of the lease agreement with the ADCNR, will fund the ADCNR to provide wildlife management on approximately 15,300 acres of land to be acquired within the Skyline Wildlife Management Area. Licensee shall retain the right to review wildlife management plans to be implemented on mitigation lands to assure wildlife mitigation is achieved. Licensee will fund ADCNR at a rate of \$100,000 per year (escalated at the producer price index) to provide wildlife management activities on the lands to be acquired in the Skyline Wildlife Management Area. Licensee will provide ADCNR \$350,000 to fund acquisition of equipment and establish office facilities necessary to manage the lands in the Skyline Wildlife Management Area. Additionally, Licensee will provide funds for capital equipment replacement at a rate of \$34,750 per year (escalated at the producer price index). These funds shall be accrued by Licensee (Lessor) and made available to lessee on October 1 and April 1 of each year. Actual payment of such accumulated contributions shall be on demand up to the accrued amount.

In the event the lease agreement is terminated (for any reason) Licensee will assume the management responsibility entailed in the lease agreement (excluding hunting) for the duration of the license period involved, or until an alternative plan is approved by FERC to accomplish any required mitigation for the R. L. Harris Project. Any hunting permitted on the area will be open to the public.

LANDS TO BE ACQUIRED BY LICENSEE
IN THE SKYLINE WILDLIFE MANAGEMENT AREA

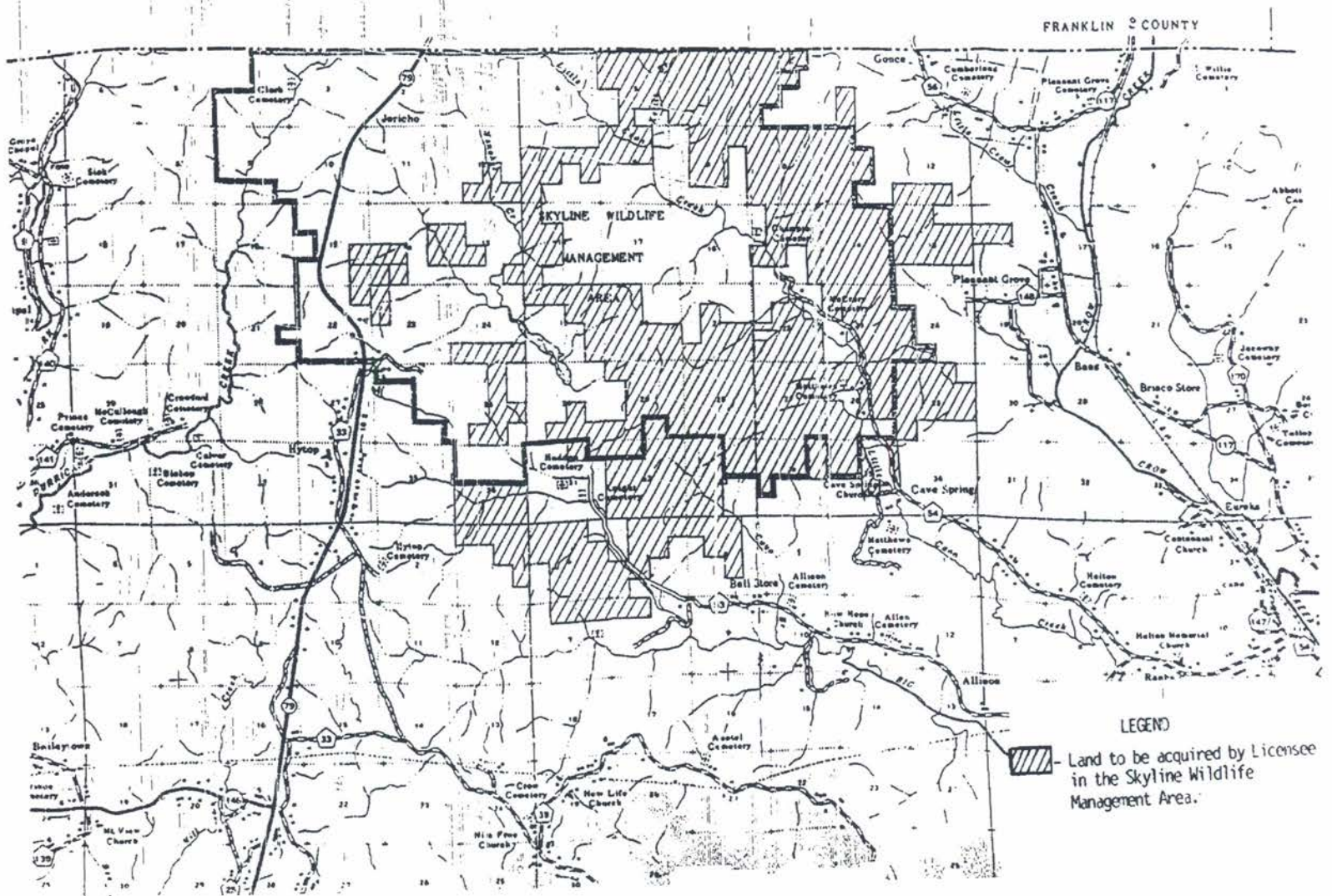
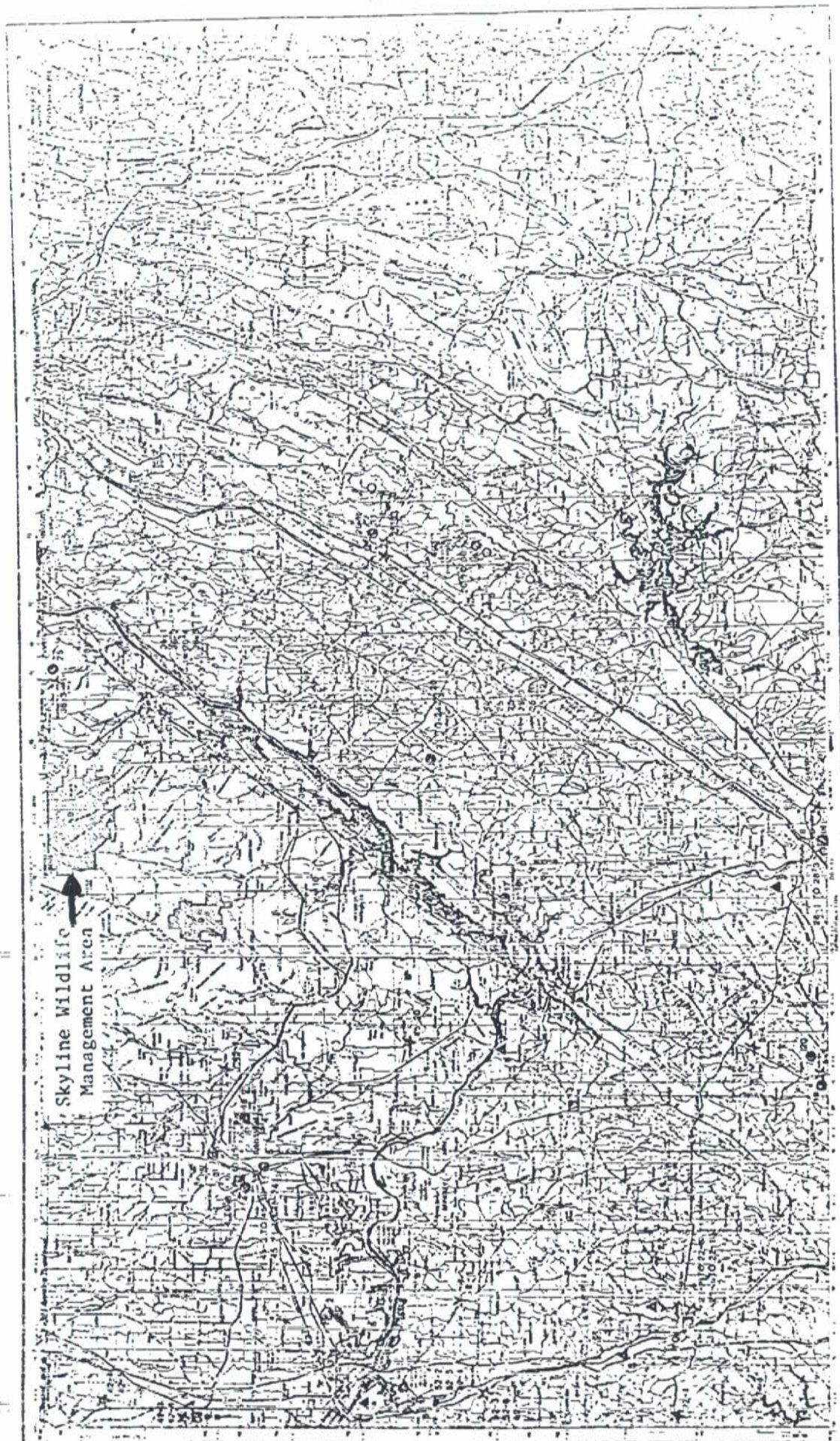


Figure 2

Skyline Wildlife Management Area



REPORT OF BASIC ENVIRONMENTAL DATA

STATE OF ALABAMA

Approved by the U.S. Fish and Wildlife Service, Washington, D.C., on 10/10/70. This report was prepared by the Alabama Department of Conservation and Forestry, Montgomery, Alabama, under the direction of the Chief, Bureau of Wildlife Management.

Prepared by: Alabama Department of Conservation and Forestry, Montgomery, Alabama. Date: 10/10/70.

ENVIRONMENTAL USE

Public Use Areas and Unique Preservation Areas

State Parks and Special Areas

State Parks, National Forests, State Forests

National Natural Landmarks

Natural and Scenic Rivers

Wildlife Management Areas and Refuges

ENVIRONMENTAL USE

Cultural Resources: Monuments, Libraries, Historic Sites

Recreational Centers

Historic Places Listed in National Register and with the Alabama Historical Commission

State Parks and Special Areas

State Parks, National Forests, State Forests

National Natural Landmarks

Natural and Scenic Rivers

Wildlife Management Areas and Refuges

COST ESTIMATE OF WILDLIFE MITIGATION PLAN

The cost estimate for the wildlife mitigation plan to be conducted on the R. L. Harris Project lands and those lands acquired in the vicinity of the R. L. Harris Project is contained in Table 1. The cost estimate for the wildlife management activities to be conducted by ADCNR for Skyline Wildlife Management Area is presented in Table 2.

Table 1. Wildlife Mitigation Plan Costs for R. L. Harris Project Lands and the Acquisition and Management of 779.5 Acres of Land in the Vicinity of the R. L. Harris Project

| <u>Management Practice</u> | <u>Cost Discounted to Present Worth*</u> |
|----------------------------------|--|
| Food Plot Establishment | \$9,808 |
| Food Plot Maintenance | \$52,351 |
| Openings Establishment | \$7,355 |
| Openings Maintenance | \$2,727 |
| Wood Duck Nest Boxes | \$11,464 |
| Wood Duck Boxes Maintenance | \$26,411 |
| Goose Nest Platforms | \$5,000 |
| Goose Nest Platform Maintenance | \$4,156 |
| Osprey Nest Platforms | \$2,500 |
| Osprey Nest Platform Maintenance | \$1,044 |
| Large Animal Boxes Establishment | \$2,641 |
| Small Animal Boxes Establishment | \$804 |
| Land Acquisition of 779.5 Acres | \$313,854 |
| Loss Timber Revenue | \$788,741 |
| Total Management Costs | \$1,228,856 |

Table 2. Wildlife Mitigation Plan Costs for Lands to be Acquired in the Skyline Wildlife Management Area

| | <u>Costs Discounted to Present Worth*</u> |
|--|---|
| Equipment and Facility Cost | \$350,000 |
| Equipment Replacement Cost | \$483,891 |
| Management Cost | \$1,548,191 |
| Land Acquisition of approximately 15,300 Acres | \$3,827,500 |
| Total Management Costs | \$6,209,582 |

*Costs were calculated based on a 4% annual escalation factor for the remaining life of current License and then discounted to present worth at 10.25%. All costs are in 1988 dollars.

Conclusions

The mitigation plan for the R. L. Harris project lands and those lands acquired in the immediate vicinity of the R. L. Harris project describes and identifies wildlife management practices to be implemented to enhance wildlife populations on subject lands. The wildlife management practices to be implemented at the R. L. Harris project, when supplemented with the acquisition and management of approximately 15,300 acres of land at the Skyline Wildlife Management Area, constitute full mitigation for wildlife impacts attributable to the development of the R. L. Harris project.

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

P.O. Drawer 1190
Daphne, AL 36526

May 18, 1988

Mr. Willard L. Bowers
Alabama Power Company
600 North 18th Street
Birmingham, Alabama 35292

Dear Mr. Bowers:

On September 21, 1984, the Federal Energy Regulatory Commission (Commission) issued an order conditionally approving the revised Exhibit S for the R. L. Harris Project, Commission Project No. 2628, and amended the license by adding Article 63. This article as subsequently amended required Alabama Power Company (Licensee), after consultation with the U. S. Fish and Wildlife Service (Service) and the Alabama Department of Conservation and Natural Resources (ADCNR), to develop and file with the Commission a wildlife mitigation plan for the Harris Project.

In accordance with provisions of Article 63 of the R. L. Harris license, representatives of the Service and ADCNR met with the Licensee in an effort to develop an acceptable compromise wildlife mitigation plan. During our March 23, 1988, and March 29, 1988, meetings, we agreed that all discussions and agreements relative to the wildlife mitigation planning would be limited to Article 63 of the project license. We also agreed that both the Licensee's October 31, 1986, "Wildlife Mitigation Plan for the R. L. Harris Reservoir," and the Service's December 15, 1987, "Mitigation Report for the R. L. Harris Project, Tallapoosa River, Alabama," previously filed with the Commission, would be withdrawn from consideration if a wildlife mitigation plan acceptable to the Service, ADCNR, and the Licensee was developed. These earlier reports would need to be withdrawn since each contained different proposed wildlife mitigation plans as developed independently by the respective parties.

The compromise wildlife mitigation plan developed through a series of meetings is addressed in the Licensee's April 15, 1988, "Wildlife Mitigation Plan for the R. L. Harris Project, FERC Project No. 2628," and the supporting draft lease between the Licensee and ADCNR dated May 12, 1988. Basically, that plan consists of:

1. The Licensee will acquire an additional 779.5 acres of land adjacent to existing project lands in Randolph County, Alabama.


2. The Licensee will manage the existing project lands (approximately 5,925 acres) in Randolph County plus the 779.5 acres to increase wildlife productivity. Specific measures are identified in the mitigation plan developed by the Licensee.

3. The Licensee will acquire approximately 15,300 acres in Jackson County adjacent to ADCNR's Skyline Wildlife Management Area. These lands will be leased to ADCNR for wildlife management as long as the Licensee operates the R. L. Harris project.

4. The Licensee will provide \$350,000 to ADCNR for initial capital investment for management equipment. The Licensee will also provide \$134,750 annually (adjusted annually) to the ADCNR for operation and management of the 15,300 acres leased to the State.

We believe that the Licensee's April 15, 1988, wildlife mitigation plan, along with the supporting draft lease, dated May 12, 1988, between the Licensee and ADCNR (to be consummated upon the Commission's approval of the plan), will provide acceptable wildlife mitigation for the project as required by Article 63 of the license. The Service supports approval of this wildlife mitigation plan by the Commission.

Sincerely yours,


Larry E. Goldman
Field Supervisor

cc: ADCNR, Montgomery, AL
(Attn: Gary Moody)
AWB, FWS, Atlanta, GA



STATE OF ALABAMA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

61 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130

GUY HUNT
GOVERNOR

JAMES D. MARTIN
COMMISSIONER

M. N. "CORKY" PUGH
ASSISTANT COMMISSIONER

May 5, 1988

DIVISION OF GAME AND FISH
CHARLES D. KELLEY
DIRECTOR

SAM L. SPENCER
ASSISTANT DIRECTOR

Mr. Willard L. Bowers
Alabama Power Company
600 North 18th Street
Birmingham, AL 35291

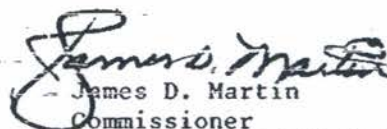
Dear Willard:

On September 21, 1984, the Federal Energy Regulatory Commission (Commission) issued an order conditionally approving, inter alia, the revised Exhibit S for the R. L. Harris Project, FERC Project No. 2628, and amended the license by adding Article 63. This article, as subsequently amended, required Alabama Power Company (Licensee), after consultation with this agency and the U. S. Fish and Wildlife Service (USFWS), to develop and file with the Commission a wildlife mitigation plan for the R. L. Harris Project.

In accordance with the provisions of Article No. 63 of the R. L. Harris license and subsequent amendments, ADCNR and USFWS met with Licensee in an effort to develop a wildlife mitigation plan for the R. L. Harris Project which is responsive to the requirements of Article 63 of the R. L. Harris license. The wildlife mitigation plan entitled "Wildlife Mitigation Plan for R. L. Harris Project, FERC Project No. 2628" which was developed in consultation with our agency and the USFWS provides for the management of project land for wildlife enhancement, the purchase, designation and management of an additional 15,300+ acres of land for dedication to the ADCNR's Skyline Wildlife Management Area (which is under contract to Licensee for purchase upon approval by FERC) for wildlife enhancement, the purchase, designation and management of an additional 779.5 acres of land in the vicinity of the R. L. Harris Project for wildlife enhancement, and an implementation schedule and cost estimate for these actions.

Our review of the wildlife mitigation plan indicates the plan provides for the development, enhancement and improvement of wildlife resources and provides specific measures to mitigate fully for loss of terrestrial wildlife habitat attributed to the R. L. Harris Project development. We concur with the adequacy of this plan and fully support approval of this plan by the Federal Energy Regulatory Commission.

Yours very truly,


James D. Martin
Commissioner

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LEASE

between

STATE OF ALABAMA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

(LESSEE)

and

ALABAMA POWER COMPANY

(LESSOR)

STATEMENT OF PURPOSE

Lessor has constructed the R. L. Harris Dam and Hydroelectric Plant on the Tallapoosa River in Randolph County, Alabama, and owns and operates such plant under Federal Energy Regulatory Commission (FERC) License 2628, Alabama (hereinafter the License), expiring on November 30, 2023.

The License requires, in part, that Lessor, as Licensee, in cooperation with Lessee, mitigate for the loss of wildlife habitat due to the inundation of lands by the pool of water created by Harris Dam and Reservoir.

Lessee specifically agrees that Lessor's acquisition of 779.5 acres in Randolph County and the management of these and all other project lands in Randolph County according to the agreed management plan on such Randolph County acreage and the acquisition and lease of the lands as herein provided and performance of its obligations under this lease shall be sufficient wildlife mitigation for all purposes by Lessor under the License.

WHEREAS, Lessee desires to establish Wildlife Management Areas to include public hunting by leasing from owners of large tracts of land, and
WHEREAS, Lessor is the owner of the lands located in Jackson County, Alabama, as are described on Exhibit "A" hereto (hereinafter referred to as the lands), and

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WHEREAS, Lessee and Lessor desire that the lands be leased for inclusion in Lessee's managed area currently known as the Skyline Wildlife Management Area (WMA), and

WHEREAS, this lease is set forth to define the terms and conditions and agreements of the parties with regard to the leased lands, NOW THEREFORE, For and in consideration of the terms, conditions and covenants hereof, Alabama Power Company, as Lessor, does hereby lease and let unto the State of Alabama Department of Conservation and Natural Resources, as Lessee, the land located in Jackson County, Alabama, and exhibited on Exhibit "A" hereto, such lease being under the following specific terms, conditions and covenants:

I. EXCEPTIONS

This agreement is subject to all outstanding rights, easements, or rights-of-way of others previously granted or now owned including, but not limited to grants for public roads and public utilities. Lessor further reserves the right, subject to approval of Lessee, which approval shall not be unreasonably withheld, to grant, or use itself, as necessary or convenient, rights or rights-of-way for public roads and for public utilities. Impairment of adequate wildlife mitigation because of the proposed rights or rights-of-way shall be grounds for Lessee withholding approval.

This agreement is subject to any and all outstanding minerals and mineral rights not owned by Lessor. There shall be no obligation on Lessor under this agreement to acquire any such outstanding mineral rights, nor to prevent the exercise of such rights even though such exercise may interfere with Lessee's proposed use of the lands. Lessor will attempt to obtain fair market value for any such exercise of mineral rights. Lessor agrees to utilize funds Lessor receives as a result of such mineral recovery as

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necessary to regain any wildlife habitat impairment occurring as a result of the exercise of any such outstanding mineral rights, up to a maximum of all funds received by Lessor.

Also reserved from this agreement are the mineral and mining rights owned by Lessor in the lands, and the right of Lessor to recover such minerals, subject, however, to Lessee's prior approval of the recovery method, which approval shall not be unreasonably withheld. Impairment of adequate wildlife mitigation, because of the proposed recovery, shall be grounds for Lessee withholding approval.

II. LESSEE'S OBLIGATION TO POSSESS, CONTROL AND MANAGE THE LANDS

Lessee shall have full, exclusive, and total possession of the lands and the right and obligation to manage the lands so as to optimize wildlife habitat and production. Lessor shall have no possessory rights, nor right or duty to control access or use of the lands by third parties. Lessee shall develop wildlife and timber management plans and forward copies thereof to Lessor. Lessor shall have the option to cut and sell merchantable timber, and to receive all payments therefor, which is to be cut and harvested as directed by Lessee in conjunction with its clearing of wildlife openings and timber management plans and/or silvicultural practices for the enhancement of wildlife habitat, now and for the duration of this lease and extensions hereof. Herein, time is of the essence; therefore, Lessee shall present its plans for such clearing and timber management plans and/or silvicultural practices to Lessor at least one year in advance of its proposed cutting to afford Lessor the option to dispose of the

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timber. Such timber removal by Lessor shall be in accordance with Lessor's standard bidding and contracting practices. Lessor will notify Lessee of its decision regarding timber removal within three months after receiving notification. Should Lessor not respond within three months, Lessee may remove the timber by any method it chooses and retain any revenues generated.

Lessee alone shall have the right and obligation to fully control and manage the public utilization, including hunting, on the lands; to determine the dates and seasons, bag limits, restrictions, the number of hunters, licenses and permits; all for the optimization of wildlife habitat, production, and harvest. Use of the lands shall, however, be made available to the public without regard to race, gender, creed, color, age, or national origin.

Lessee's activities hereunder shall be the subject of a detailed annual report of (i) use of funds paid by Lessor, (ii) public utilization of the lands and facility, and (iii) major projects undertaken on the lands during the preceding year, a copy of which shall be furnished to Lessor within Ninety (90) days after the close of Lessee's fiscal year.

III. FINANCIAL SUPPORT

a. Upon execution hereof, Lessor has paid to Lessee the sum of Two Hundred Seventy-Five Thousand and No/100 Dollars (\$275,000.00), receipt and sufficiency whereof is hereby acknowledged by Lessee. In addition, Lessor agrees to pay an additional sum of Forty-Five Thousand and No/100 Dollars (\$45,000.00) to Lessee on

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_____, 1991 and Thirty Thousand and No/100 Dollars (\$30,000.00) on _____, 1992. Lessee agrees to utilize such funds for the acquisition of equipment, machinery, or other capital needs to be utilized in its management of the lands.

b. Lessor agrees to make additional payments to Lessee at the rate of Thirty-Four Thousand Seven Hundred and Fifty Dollars (\$34,750.00) per year (but subject to adjustments in accordance with sub paragraph d of this Section III) for each year following the first year (1988) of this lease. Such payments to be used for replacement of equipment, machinery, or for other capital needs on the lands. These funds shall be accrued by Lessor and shall be subject to withdrawal by Lessee, up to the then accrued amount on April 1 and October 1 of each year.

c. Lessor agrees to pay additionally to the Lessee, at the rate of One Hundred Thousand and No/100 Dollars (\$100,000.00) per year (but subject to adjustments in accordance with sub paragraph d of this Section III) for use of Lessee in managing the lands. Actual payment of such contributions shall be on the following schedule.

Quarterly in arrears, each quarterly payment being one-fourth (1/4) of the annualized amount as adjusted in accordance with sub paragraph d of this Section III. The first payment shall be due on September 30, 1988 and shall be for the entire period from the date the lease was signed. All subsequent payments will be made on the last day of the months of December, March, June, and September.

d. The annualized contributions outlined above in sub paragraph b and c shall be adjusted as follows:

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The calendar year 1989 shall be deemed the Base Year as used in this provision. It is the intent of this agreement that Lessor shall pay to the Lessee each year after the first year (1989), as scheduled in sub paragraphs b and c adjusted annual amounts which reflect any change in the average annual Producer Price Index (All Commodities, unadjusted data, 1982 = 100), from the Base Year, as published by the Bureau of Labor Statistics of the U. S. Department of Labor (herein the "Producer Price Index", or "PPI"). Therefore, beginning with the second year (1990) and each year thereafter, Lessor and Lessee agree that the Base Amounts shall be adjusted on January 1, or as soon as possible after the Producer Price Index for all months of the preceeding calendar year have been published, of each year during the remainder of the term of this agreement and any extensions thereof as follows:

The Base Amounts shall be adjusted on January 1, or as soon as possible after the Producer Price Index for all months of the preceeding calendar year have been published, of each year to reflect any change in the Producer Price Index between the Base Year (hereinafter referred to as BPPI) and the average annual Producer Price Index for the calendar year just completed (hereinafter referred to as EPPI).

The change will be computed as follows:

$$\frac{[(EPPI - BPPI) + 1.00]}{BPPI} \times (\text{Base Amount}) = \text{New Adjusted Annual Amount for forthcoming year}$$

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If the said Producer Price Index published by the Bureau of Labor Statistics of the U. S. Department of Labor, as the same is now computed and published, should be discontinued, or enlarged upon, or changed, upward or downward, the payment adjustments will be calculated on the equivalent of the Producer Price Index, and for the purpose of determining and calculating the equivalent of the present Producer Price Index, use shall be made of the successor index or indexes and the formulae announced or published by the Bureau of Labor Statistics of the United States Department of Labor, and its successors, as being proper for conversion of any such successor index to the equivalent of the present Producer Price Index.

IV. TERM, TERMINATION, ASSIGNMENT

This lease is subject to the provisions, terms and conditions, and is for the duration of the License, as modified and amended and as may be further amended for Project 2623 as described in the records of the Federal Energy Regulatory Commission. Such lease shall continue for the duration of any new license as may be issued to Lessor for operation of the R. L. Harris Dam and Hydroelectric Plant upon expiration of its existing license on November 30, 2023.

Lessee shall have the right to terminate this lease only in the event of Lessor's default concerning its duties hereunder. Any such termination by Lessee shall be effective 180 days after Lessee has given Lessor written notice of Lessor's default and Lessor has failed to cure such default within such period.

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Should the Lessee terminate this lease for any other reason, or substantially default in its responsibilities hereunder, so long as Lessor is not in default of its agreement to make monetary contributions as specified in Article III hereof, Lessee shall immediately proceed to sell, as provided for by State law, all equipment, materials, supplies, and capital improvements made on the lands or lands of others (as personal property) acquired or constructed with funds provided by Lessor under this agreement. Lessee, upon receipt of funds from the sale of all equipment, materials, supplies, and such capital improvements, shall remit all proceeds from the sale to Lessor.

Lessor shall have the right to terminate this lease 180 days after written notice to Lessee of Lessor's determination that Lessee is in default under its obligation to manage as set out in Article II, above, in the opinion of both the Lessor and the Federal Energy Regulatory Commission, and Lessee's failure to make satisfactory corrections within such period.

In the event of such termination or default, Lessee shall immediately proceed to sell, as provided for by State law, all equipment, materials, supplies, and capital improvements made on the lands or lands of others (as personal property) acquired or constructed with funds provided by Lessor under this agreement. Lessee, upon receipt of funds from the sale of all equipment, materials, supplies, and such capital improvements, shall remit all proceeds from the sale to Lessor.

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V. EXCULPATORY CLAUSE

Lessor has acquired the lands, but has not inspected the lands in detail, and makes no representation to Lessee, nor to any person whomsoever, that the lands are safe or fit for the purposes for which Lessee has taken possession under this lease agreement.

Lessee acknowledges and agrees that Lessor has purchased the lands solely upon Lessee's recommendation for the purposes stated herein, and that Lessee previously leased a majority of the lands for many years. Lessee acknowledges that it has no knowledge of defects or hidden dangers or hazardous materials in, on or about the lands. Lessee further acknowledges it shall have exclusive possession and control of the lands and agrees that Lessor shall have no responsibility to Lessee and the general public or any third party, and all other persons using the lands, which arises out of or is in any way connected with or attributable to the condition or use of the lands, the structures thereon, if any, and further agrees that Lessor has made no representation regarding the suitability of the lands for any use by Lessee and other persons. Lessee, its successors and assigns, and not Lessor shall be responsible for any valid claims or losses for damages and liability arising out of death or injury to persons, or damage to property, which may in any way be caused or occasioned at any time, directly or indirectly, by the use of the lands by Lessee or any party, including Lessee's, licensees and all other persons allowed by Lessee to use the lands.

Lessor shall have no duty to Lessee and other persons to maintain the lands and any structures

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thereon and shall have no responsibility to give any notice to any person relating to the condition of the lands or structures, these obligations being the sole responsibility of Lessee.

Lessee agrees that it shall be solely and exclusively responsible for maintaining the condition and use of the lands in a suitable and satisfactory condition for its purposes and to prevent nuisances thereon and that Lessor shall have no responsibility to Lessee, and other persons using the lands, for the condition and maintenance of the lands which is the exclusive responsibility of Lessee. Lessee shall have provided for the lands and timber fire and theft protection equal to that the State of Alabama provides for its own lands. Lessee will maintain the corners and painted boundaries of the lands equal to the condition as they currently exist.

VI. SALE OR EXCHANGE

Lessor, with concurrence and agreement of Lessee, FERC and Lessor's Board of Directors, shall have the right to sell or exchange any of the lands, which sale or exchange is consistent with, or results in the enhancement of the WMA, except that in no case shall the mitigation lands resulting be more than shown on Exhibit A, as it currently exists or as it may be revised in the future upon agreement of the above entities. If such transaction is at the request of the Lessee all cost associated with the transaction including attorney's fees and Lessor's administrative cost shall be paid by Lessee either by deduction from the next quarterly payment(s) or payment(s) by Lessee in another manner acceptable to Lessor.

DRAFT

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this the ____ day of _____, 1988.

STATE OF ALABAMA
Department of Conservation and
Natural Resources

RECOMMENDED:

Game and Fish Division Director

By _____
Its Commissioner

ATTEST:

ALABAMA POWER COMPANY,
A Corporation

Secretary

By _____

ATTEST:

GOVERNOR, STATE OF ALABAMA

Secretary of State

DRAFT

STATE OF ALABAMA)
 :
 MONTGOMERY COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the foregoing agreement, he, in his official capacity and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand on this the _____ day of _____, 1988.

 Notary Public

STATE OF ALABAMA)
 :
 JEFFERSON COUNTY)

I, _____, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of Alabama Power Company, a corporation, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand on this the _____ day of _____, 1988.

 Notary Public

STATE OF ALABAMA)
 :
 MONTGOMERY COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the foregoing agreement, he, in his official capacity and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand on this the _____ day of _____, 1988.

 Notary Public

