

## *Gulf Restoration Network and GreenLaw*

December 11, 2015

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Re: Alabama: **SAM-2014-00238** - *Transcontinental Gas Pipe Line Company, LLC*  
**SAM-2014-00655** - *Sabal Trail Transmission, LLC*  
Georgia: **SAS-2013-00942** - *Sabal Trail Transmission, LLC*  
Florida: **SAJ-2013-03030** - *Sabal Trail Transmission, LLC*  
**SAJ-2013-03099** - *Florida Southeast Connection, LLC*

Dear Regulatory Officials,

We submit these comments on behalf of the Gulf Restoration Network (GRN),<sup>1</sup> the Florida Clean Water Network (FCWN),<sup>2</sup> the Kiokee-Flint Group,<sup>3</sup> the Sierra Club,<sup>4</sup> the Flint Riverkeeper,<sup>5</sup> the

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<sup>1</sup> GRN is a network of groups and individuals dedicated to uniting and empowering people to protect and restore the natural resources of the Gulf Region. It has members in Alabama and Florida who will potentially be impacted by the Southeast Market Pipelines Project.

<sup>2</sup> The Florida CWN has been on the front line for the past 18 years in Florida, defending clean water laws on both the state and federal levels; educating the public about the importance of these laws; working with local communities and teaching them to effectively participate in decision-making in their communities; and bringing

Chattahoochee Riverkeeper,<sup>6</sup> Environment Florida,<sup>7</sup> Our Santa Fe River Inc.,<sup>8</sup> Earth Ethics, Inc.<sup>9</sup> (collectively, the “Commenters”). The Commenters have serious concerns about the applications for permits under Section 404 of the Clean Water Act (33 U.S.C. section 1344) and Sections 10 and 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. section 403) submitted to the U.S. Army Corps of Engineers (“Corps”), the Alabama Department of Environmental Management (ADEM), the Georgia Department of Environmental Protection (GaEPD) and the Florida Department of Environmental Protection (FDEP)(the “States”), respectively, by Transcontinental Gas Pipe Line Company LLC (“Transco”), Sabal Trail Transmission LLC (“Sabal Trail”), and Florida Southeast Connection, LLC (“FSC”) (collectively, the “Applicants”) for construction of the Southeast Market Pipelines Project (“Project”).

The Applicants have not demonstrated that their proposal is water-dependent, nor have they adequately assessed practicable alternatives. Arbitrarily narrowing the Project’s purpose while also constraining its limits have allowed the Applicants to conduct less than the bare minimum regarding necessary regulatory requirements. When numerous rivers, associated creeks, and over a thousand wetland acres are at risk of significant impact or destruction, combined with threats of sinkhole creation and aquifer contamination, it is evident that the Applicants have inadequately addressed the requirements of the Clean Water Act and implementing regulations. The Commenters therefore urge the Corps to deny the permit applications in their present form, and should the Applicants reapply, to require a full consideration of water dependency, avoidance, and adequate mitigation for unavoidable impacts; a full lifecycle analysis; adequate consideration of total impacts; and a Supplemental Environmental Impact Statement (SEIS) that

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groups together across the state and in coordination with national groups to win some of the most significant environmental victories in Florida in the past decade or more.

<sup>3</sup> The Kiokee-Flint Group includes southwest Georgia residents and landowners who would be directly impacted by the Project.

<sup>4</sup> The Georgia Chapter of the Sierra Club has over 10,000 members and supporters across the State, supports a sustainable energy future for Georgia, and is strongly opposed to the proposed Project.

<sup>5</sup> The Flint Riverkeeper is a citizens group whose mission to restore and preserve the Flint River’s water quality and integrity would be adversely impacted by the proposed Project.

<sup>6</sup> The Chattahoochee Riverkeeper advocates for the protection and stewardship of the Chattahoochee River and its watershed, both of which are threatened by the Project as proposed.

<sup>7</sup> Environment Florida is a citizen-based environmental advocacy organization and a project of Environment America that believes Florida’s environment is unique and worth protecting for future generations.

<sup>8</sup> Our Santa Fe River, Inc. is a nonprofit composed of concerned citizens working to protect the waters and lands supporting the aquifer, springs, and rivers within the watershed of the Santa Fe River by promoting public awareness pertaining to the ecology, quality, and quantity of the waters and lands immediately adjacent to and supporting the Santa Fe River, including its springs and underlying aquifer.

<sup>9</sup> Earth Ethics is comprised of public and private stakeholders dedicated to addressing issues along the Gulf Coast specific to Northwest Florida, through focuses related to the environment, outreach and education, social issues, and smart growth practices.

includes more robust wetland and waterbody information, to gain fuller insight into the costs of this potential project.

We oppose the Applicants' requests for Section 404 permits and ask that the Corps and the States deny their requests based on the following concerns:

### ***1. THE APPLICANTS HAVE NOT MET CORPS PERMIT REQUIREMENTS***

The intent of Corps regulation is to avoid the unnecessary destruction or alteration of Waters of the United States, including wetlands, and to compensate for the unavoidable loss of such waters. Corps regulations require that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. Based on this provision, an evaluation is required in every case for use of non-aquatic areas and other aquatic sites that would result in less adverse impact to the aquatic ecosystem, irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent. A permit cannot be issued, therefore, in circumstances where an environmentally preferable practicable alternative for the proposed discharge exists.

For proposed discharges into wetlands and other special aquatic sites, the Corps regulation alternatives analysis requires consideration of whether the activity associated with the proposed discharge is "water dependent". Water dependency is defined in terms of an activity requiring access or proximity to or siting within a special aquatic site to fulfill its basic project purpose. Special aquatic sites are: (1) sanctuaries and refuges; (2) wetlands; (3) mud flats; (4) vegetated shallows; (5) coral reefs; and (6) riffle and pool complexes.

If an activity is determined not to be water dependent (i.e. water impacts are avoidable), Corps regulations establish two presumptions that the applicant is required to rebut before satisfying the alternatives analysis requirements: First, that practicable alternatives that do not involve such sites are presumed to be available. And second, that all practicable alternatives to the proposed discharge which do not involve a discharge into such sites are presumed to have less adverse impact on the aquatic ecosystem. It is the responsibility of the applicant to clearly rebut these presumptions in order to demonstrate compliance with the alternatives test, and the Applicants here have failed to satisfy this responsibility.

If an activity is determined to be water dependent, the rebuttable presumptions stated above do not apply. However, the proposed discharge, whether or not it is associated with a water dependent activity, still must represent the least environmentally damaging practicable alternative.

### ***2. THE PROJECT IS NOT WATER DEPENDENT***

The Applicants have not shown that the Project is water dependent, because it is not. Moreover, not only is the proposed pipeline NOT water dependent, but other viable routes have already been identified, and even if some portion of the route were water dependent, the Project does not represent the least environmentally damaging practicable alternative. There is no reason or explanation given by the Applicants concerning why this development must be sited in or near Waters of the US to “fulfill its basic purpose.”

Based on information provided in the relevant public notices, the purpose of the Project is to construct and operate an interstate natural-gas transmission pipeline. Natural-gas pipelines are not inherently water dependent, and the Applicants have not clearly demonstrated that this particular project is an exception. The Applicants’ further detailed in the FERC DEIS:

As stated by the Applicants and as discussed below, the Hillabee Expansion Project, Sabal Trail Project, and FSC Project would *collectively help to meet the growing demand for natural gas by the electric generation, distribution, and end use markets in Florida and the Southeast United States* [emphasis added].<sup>10</sup>

Individually, Sabal Trail reaffirms this purpose too:

Sabal Trail further states that *a new, onshore interstate natural gas transmission system would help to meet the growing demand for electric generation in Florida* because the existing FGT and Gulfstream systems are at or near full subscription and because Florida has no significant natural gas storage or production [emphasis added].<sup>11</sup>

FSC also acknowledges this electricity-generating purpose in the DEIS:

FSC further states that *the FSC Project would help meet the natural gas fuel supply needs of electric generators* and other natural gas users in Florida [emphasis added].<sup>12</sup>

Regarding the Project’s need, electricity generation is again referenced:

As discussed above, the FPSC [Florida Public Service Commission] concluded that *additional natural gas transportation capacity is necessary to help meet FPL’s [Florida Power and Light’s] future electric generation needs, and the Applicants have entered*

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<sup>10</sup> Federal Energy Regulatory Commission, Southeast Market Pipelines Project - Draft Environmental Impact Statement (Volume I), Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000; hereafter, simply referred to as the DEIS, p. 1-2.

<sup>11</sup> DEIS, p. 1-4.

<sup>12</sup> DEIS, p. 1-5.

*into long-term precedent agreements for 93 percent of the project capacity [emphasis added].*<sup>13</sup>

Despite this clear focus on electricity, insights regarding alternative, renewable, carbon-free sources have thus far not been weighed in decision-making processes. Their exclusion appears to be the result of an arbitrary narrowing of the previously-mentioned project purpose:

The Commission also received numerous comments suggesting that electricity generated from solar panels and/or other renewable energy sources could eliminate the need for the SMP Project and that the use of these energy sources as well as gains realized from increased energy efficiency and conservation should be considered as alternatives to the project. *As stated previously, the purpose of the SMP Project is to transport price-competitive natural gas from Alabama to Florida. The generation of electricity from renewable energy sources is a reasonable alternative for a review of power generating facilities.* Authorizations related to how the southeast will meet demands for electricity are not part of the application before the Commission and their consideration is outside the scope of this draft EIS. *Therefore, because the purpose of the SMP Project is to transport natural gas, and the generation of electricity from renewable energy sources or the gains realized from increased energy efficiency and conservation are not transportation alternatives, they are not considered or evaluated further in this analysis [emphasis added].*<sup>14</sup>

On the next page of the DEIS though, the Project reverts back to its focus on electricity:

*The purpose of the SMP Project, which is described in greater detail in section 1.1, is to transport price competitive natural gas from existing transmission facilities in Alabama to customers in Florida.*

Lastly, in the ‘Conclusions and Recommendations’ section of the DEIS, the Project’s purpose is again reformulated:

We also conclude alternative energy sources, energy conservation, and efficiency are not within the scope of this analysis because *the purpose of the SMP Project is to transport natural gas.* The generation of electricity from renewable energy sources, or the gains realized from increased energy efficiency and conservation, *are not transportation alternatives [emphasis added].*<sup>15</sup>

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<sup>13</sup> DEIS, p. 1-5.

<sup>14</sup> DEIS, p. 4-1.

<sup>15</sup> DEIS, p. 5-13.

Regardless of whether the Project's purpose is to meet the growing demand for electric generation or simply to transport natural gas, the Applicants still have not demonstrated that the Project is water dependent. Unlike a project like a marina, port facility or even recreational infrastructure, the Project has not been shown to have an inherent need to be in proximity to or to impact waters of the United States. The Project and its impacts appear to be solely for the convenience and profit of the Applicants, to the detriment of water resources.

### **3. PRACTICABLE PROJECT ALTERNATIVES EXIST**

Because the Applicants have not shown the Project to be water dependent, it is then assumed under the regulations that practicable alternatives exist to aspects of the Project that impact waters of the United States. The Applicants have failed to demonstrate adequate consideration of alternatives, or an avoidance of impacts to the maximum extent practicable. Therefore, the Commenters respectfully submit that the Corps cannot issue the requested permits under Clean Water Act Section 404.

According to 40 CFR §230.10(a)(3):

[W]here the activity associated with a discharge which is proposed for a special aquatic site (as defined in subpart E) does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e. not water dependent), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the same aquatic ecosystem, unless clearly demonstrated otherwise.

In general, the regulations provide that no discharge of dredged or fill material shall be permitted: (1) if there is a practicable alternative to the proposed discharge; (2) if the discharge causes or contributes to violations of applicable state water quality standards; (3) if the discharge will cause or contribute to significant degradation of the environment; and (4) unless all appropriate steps have been taken to minimize potential adverse impacts.<sup>16</sup> The Corps' regulations also require that destruction of wetlands is to be avoided to the extent practicable.<sup>17</sup>

The regulations further provide that "practicable alternatives" include "not discharging into the waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences."<sup>18</sup> If a project is not "water dependent," as is the case with natural-gas pipelines,

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<sup>16</sup> 40 C.F.R. § 230.10.

<sup>17</sup> 33 C.F.R. § 320.4(r).

<sup>18</sup> 40 C.F.R. §§ 230.5(c), 230.10(a).

the guidelines contain a presumption that a less environmentally damaging practicable alternative exists and also require that the applicant clearly demonstrates that practicable alternatives which would not involve discharge of fill material into special aquatic sites were not available.<sup>19</sup>

In its DEIS, FERC in cooperation with the Corps identified and evaluated alternatives to specific natural gas transmission facilities (and locations) comprising the Project as proposed by the Applicants in their respective applications and associated supplements. To determine whether a proposed action is favorable, three criteria are weighed: whether an alternative meets the stated purpose of the project; is technically and economically feasible and practical; and offers a significant environmental advantage over a proposed action.

As noted, the Corps must not only consider alternative pipeline routes, it must choose the least-damaging practicable alternative.<sup>20</sup> The least-damaging practicable alternative is the “no action” alternative. This alternative goes to the heart of this entire process – whether there even exists a public need for the Project. Sabal Trail, parroting the contention of FPL, argues that the pipeline is needed to meet the growing demand for natural gas electric generation in Florida.<sup>21</sup> As further discussed below, this contention is belied by a close analysis of FPL’s actual needs, FPL’s contract with Sabal Trail, FPL’s historical reserve margins, past and projected demand in Florida, the availability of low-cost renewable energy sources and energy efficiency measures, and existing capacity on other pipelines serving Florida.

First, FPL, who issued the RFP and who chose Sabal Trail to build the pipeline, has admitted in its filings with FERC and with the Florida Public Service Commission (PSC) that it only needs 400,000 dth/day by 2017 and 600,000 dth/day by 2020, yet it wishes to move forward with the construction of a pipeline that will ship double that amount – 800,000 dth/day by 2017 and 1.1 billion dth/day by 2020. Although Duke Energy has purportedly agreed to purchase some of the natural gas to be shipped within this proposed pipeline, Duke has repeatedly stated that it can also purchase any needed natural gas from the existing Florida Gas Transmission (FGT) or Gulfstream pipelines in Florida.<sup>22</sup> In fact, the Florida PSC has found that “Florida Power & Light

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<sup>19</sup> 40 C.F.R. § 230.10(a)(3).

<sup>20</sup> 40 C.F.R. § 230.10(a).

<sup>21</sup> DEIS at Section 1.1.1, p. 1-2.

<sup>22</sup> Duke spokesperson Heather Danehower has stated that Duke’s new Citrus County gas plant “is not dependent on the proposed Sabal Trail Transmission [pipeline] being approved and constructed. If the Sabal Trail Transmission pipeline is not approved and constructed, we would pursue natural gas transportation from existing providers in Florida.” See “Natural-Gas Plant Not Tied to Pipeline Completion,” Citrus County Chronicle at <http://www.chronicleonline.com/content/natural-gas-plant-no-tied-p...> (May 30, 2014). Duke’s General Manager for Energy Projects has likewise stated that if the Sabal Trail pipeline is not built, Duke could meet its needs from the two other accessible natural gas pipelines in Florida. See “Utility Will Build Plant With Or Without New Pipeline,” Ocala Banner-Herald at <http://www.ocala.com/article/20140714/ARTICLES/140719850?p=...> (July 14, 2014).

Company has demonstrated a need for 400 MMcf/day [400,000 dth/day] of additional firm natural gas transmission capacity by 2017<sup>23</sup> and not the additional 700 MMcf/day (700,000 dth/day) that will be shipped by the proposed pipeline.

Second, the PSC has found that “FPL has signed precedent agreements with these two companies for the initial 400MMcf/day beginning in 2017, *with options* to provide additional increments of 200 MMcf/day in 2020 and beyond.”<sup>24</sup> As a result, the proposed pipeline is presently under-subscribed with no requirement that it will ever be fully subscribed.

Third, FPL consistently has reserve margins that generally exceed a whopping 40%, even during peak months, which is at least double the generally approved standard of 20% in Florida.<sup>25</sup> Moreover, FPL has acknowledged, and current studies confirm, that FPL needs no more than a 15% reserve margin.<sup>26</sup>

Fourth, although Florida has seen increased natural gas demand in recent years, the Florida Reliability Coordinating Council has recently estimated that natural gas demand will remain relatively flat through 2022.<sup>27</sup> And over the past 10 years, demand forecasts in Florida have consistently been over-inflated by as much as 20%.<sup>28</sup> Meanwhile, the U.S. Energy Information Administration (“EIA”) is predicting that any increases in demand in Florida will be met by nuclear power, not natural gas.<sup>29</sup>

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<sup>23</sup> *In re: Petition for Prudence Determination Regarding New Pipeline System by Florida Power & Light*, 2014 Fla. PUC LEXIS 326 at \*9 (2013).

<sup>24</sup> *Id.* at Order paragraph.

<sup>25</sup> For example, FPL’s filing with the Florida PSC at Docket No. 05921 dated October 20, 2014 shows in Schedule A4 that in September 2014, FPL’s net capability was 24,582 MW which is equivalent to 17,699,040 MWH for the entire month (24,582 x 24 hours/day x 30 days per month). That same schedule further shows, however, that FPL only used 9,969,158 MWH for the month or 56% of the available capacity. Thus, FPL had a 44% reserve capacity for that month. See <http://www.psc.state.fl.us/library/FILINGS/14/05921-14/05921-14.pdf>. FPL has consistently had such reserves going back to at least 2009. For example, for the peak month of July, from 2009 to 2014, FPL’s reserve margins were 42%, 45%, 38%, 41%, 43%, and 42%. See <http://www.psc.state.fl.us/library/FILINGS/09/08678-09/08678-09.pdf>; <http://www.psc.state.fl.us/library/FILINGS/10/06922-10/06922-10.pdf>; <http://www.psc.state.fl.us/library/FILINGS/11/05966-11/05966-11.pdf>; <http://www.psc.state.fl.us/library/FILINGS/12/05702-12/05702-12.pdf>; <http://www.psc.state.fl.us/library/FILINGS/13/04872-13/04872-13.pdf>; <http://www.psc.state.fl.us/library/FILINGS/14/04609-14/04609-14.pdf>.

<sup>26</sup> Testimony of John D. Wilson on behalf of the Southern Alliance for Clean Energy, Florida PSC Docket No. 150196, October 14, 2015 at 1-24

<sup>27</sup> See Florida PSC Report (2013) at p. 3, <http://www.psc.state.fl.us/pulications/pdf/electricgas/TYSP2013.pdf>.

<sup>28</sup> *Id.* at pp. 18-19.

<sup>29</sup> See EIA Today (2014) at <http://www.eia.gov/todayinenergy/detail.cfm?id=17571>.

Fifth, despite the huge growth in renewable energy sources, like wind and solar technologies that are now competitive with natural gas according to the U.S. Energy Information Administration,<sup>30</sup> FPL uses no wind power at all (which can be imported through purchase power agreements as Georgia and Alabama have done). FPL also only ranks 18<sup>th</sup> in the country in its use of solar, a special underachievement considering it possesses the best potential for rooftop solar east of Mississippi and third-best potential in the entire country per the Department of Energy.<sup>31</sup>

Sixth, at least one other major natural gas pipeline in Florida, the FGT pipeline, is not at full capacity. The PSC specifically found in its October 28, 2013 Order on FPL's Proposed Sabal Trail and Florida Southeast Connection Pipelines that FGT potentially has additional capacity of 184,000 dth/day or almost half of what FPL claims it needs by 2017.<sup>32</sup> The under-capacity of the FGT line is supported by the Duke Energy official statements noted above, indicating that Duke does not need the Sabal Trail pipeline for a \$1.5 billion power plant Duke is constructing in Citrus County, Florida because it can purchase the necessary natural gas from the existing FGT pipeline.

Seventh, FPL has not utilized energy-efficiency measures that have been proven to substantially reduce the need for additional energy. Even if demand for natural gas electrical generation increases somewhat in Florida, other Florida utilities such as Gulf Power have shown that the projected growth rates can be met almost entirely by just energy-efficiency programs. As recently as 2013, Gulf Power's annual savings were an impressive 0.9%.<sup>33</sup> And outside of Florida, the Bonneville Power Administration has been able to meet 50% of its energy growth over the last three decades through energy-efficiency measures while serving almost 50% more people.<sup>34</sup> There is no reason why FPL cannot do the same.

*In summary, when all of the above points are considered together, the Project is simply not needed to meet the energy demands of FPL's customers. Consequently, the Corps should find that the "no action" alternative applies and deny Sabal Trail's permit applications.*

To the extent that the Corps finds that the "no action" alternative does not apply, the presumption that less environmentally damaging practicable alternatives exist should still be applied in this

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<sup>30</sup> See, e.g., U.S. Energy Information Administration, *Levelized Cost of New Generation Resources in the Annual Energy Outlook 2013*; <http://www.iewa.org/Resources/Content.aspx?ItemNumber=5547>.

<sup>31</sup> See NREL, *U.S. Renewable Energy Technical Potentials: A GIS-Based Analysis* at pp. 10, 12 (July 2012); Solar Energy Industries Association, *Solar Market Insight Report 2013 Year in Review* at p. 7 available at [www.seia.org/research-resources/solar-market-insight-report-2013-year-review](http://www.seia.org/research-resources/solar-market-insight-report-2013-year-review).

<sup>32</sup> See Florida PSC Order No. PSC-13-0505-PAA-E1, Docket No. 130198-E1 (Oct. 28, 2013) at p. 3.

<sup>33</sup> See Gulf 2014 Ten-Year Site Plan (April 2014) at 31 (reporting 2013 sales of 10,620 GWh) and Gulf FEECA Programs Progress Report (Feb. 2014) at 58 (reporting 2013 energy reduction of 95.32 GWh).

<sup>34</sup> Cf. <http://www.bpa.gov/news/pubs/GeneralPublications/gi-BPA-Facts.pdf> with FPL's Ten Year Power Plant Site Plan, p. 32; see also EPA April 21, 2014 scoping comments at pp. 5-6 filed in FERC Docket No. PF14-1-000.

case. At least seven such alternatives have already been presented to FERC. GreenLaw first presented four of these alternatives to FERC in its scoping comments letter of April 21, 2014. These alternatives are specifically described in HydroQuest's report authored by expert hydrologist Paul A. Rubin and attached to GreenLaw's April 21, 2014 letter.<sup>35</sup> All four alternative routes largely follow existing roadways, pipeline routes, and transmission corridors. As such, they significantly reduce risk to public health and safety, avoid devastating environmental consequences, and reduce the need to take private property to less than 10% of the pipeline's length.

As documented further below, the unique regional geography of the proposed pipeline siting is prone to sinkhole formation. In just Citrus County, FL alone, there were over 300 documented sinkholes as of 2008.<sup>36</sup> Obviously, this number has only increased in subsequent years. For the sake of brevity, all known sinkholes will not be discussed, though The University of South Florida possesses a robust, relevant database.<sup>37</sup> However, it worth mentioning that pipeline-related activities, especially the installation of compressor stations, exacerbate these already-significant risks. The Corps must assess the indirect impacts to surface waters and wetlands related to drilling and trenching.

Moreover, the unique regional geography also creates an especially interconnected network of freshwater bodies. Seen in the below map, west-central Florida is home to many major, publically-accessible springs (Figure 1). These springs are directly tied to the Floridan Aquifer, the underground source of potable water for over 60% of Florida's residents whose designation as a sole-source is currently pending.<sup>38</sup> As such, any impacts to a single spring or waterbody would be felt counties away.

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<sup>35</sup> See GreenLaw's April 21, 2014 letters at [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20140421-5238](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140421-5238).

<sup>36</sup> Documented Citrus County Sinkholes, as of 2008: <http://fcit.usf.edu/florida/maps/pages/11100/f11119/f11119table.htm>

<sup>37</sup> Complete Florida Sinkhole Database, as of 2008: <http://fcit.usf.edu/florida/maps/galleries/sinkholes/index.php>

<sup>38</sup> Florida's Springs: <http://www.floridasprings.org/learn/journey/>

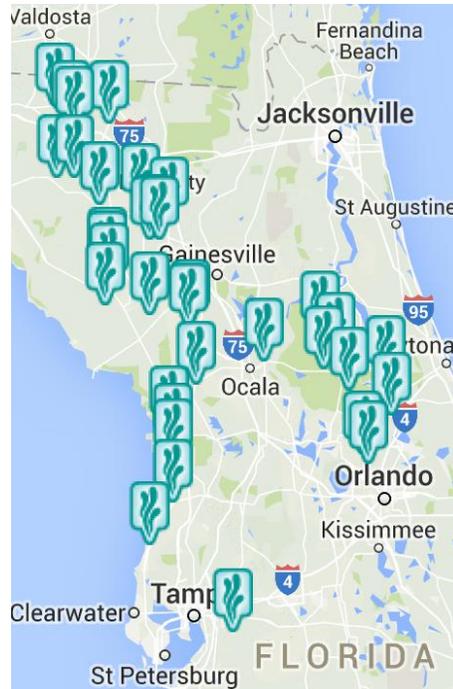


Figure 1: A partial list of significant springs in Florida, which must be avoided.

Some highlights of the four alternative routes are as follows:

Alternate 1:

- Avoids new pipeline construction through two sinkhole-rich areas situated approximately between MP 138 and MP 172 (containing approximately 13 mapped sinkholes) and between MP 227 and MP 460 (containing approximately 204 mapped sinkholes).
- Avoids new disruption of waterways, wetlands, unfragmented forest lands, undisturbed habitats, and private property in favor of pre-existing easements.
- Limits new land disturbance to less than 10 percent.

Alternate 2:

- Nearly or completely avoids disrupting new terrain, results in no taking of private property, avoids hundreds of miles of hazardous karst terrain, and preserves expansive wetlands and unfragmented forest habitat.

Alternate 3:

- Avoids almost 100% of Sabal Trail's proposed disruption of wetlands and unfragmented forest lands, hazardous karst terrain, and taking of private property.

Alternate 4:

- Has the same benefits as Alternate 1 while improving the location of the Flint River crossing.

All of these alternatives avoid significant karst-ridden areas that would be traversed by Sabal Trail's preferred route. The Environmental Protection Agency (EPA) is particularly concerned in its DEIS comments about the dangers of building a flammable natural gas pipeline in such terrain. Karst areas are prone to sinkhole development, which risks collapse of the pipeline. This danger is amplified by the use of HDD under major rivers such as the Flint, Withlacoochee, Suwannee, and other rivers flowing through the Dougherty Plain and the Cody Escarpment.<sup>39</sup> In Florida, the same concerns pertain to the Withlacoochee and Suwannee Rivers, along with the Alapaha, Little, Willacoochee, and Santa Fe Rivers, Green and Mallory Swamps, and Falmouth Cathedral Cave System. These are especially priceless entities, and impacts to their waters and wetlands must be avoided.

Despite almost 126 miles of karst terrain in Georgia and hundreds of known sinkholes, geophysical and geotechnical testing was performed in only two areas in Georgia. And at the time the DEIS was issued, the results of that testing were not complete. With respect to the Sabal Trail portion of the pipeline route in Florida, of the 3,750 karst and potential karst features, including 29 fracture traces, only nine areas were subjected to geophysical and geotechnical testing. Of those nine, two had anomalies, but geotechnical results were not available for the DEIS.<sup>40</sup> Worse, for the FSC portion of the Project, 650 karst and potential karst features that were identified yet not a single one was subjected to any geophysical or geotechnical investigation.<sup>41</sup>

The Environmental Protection Agency (EPA) therefore has recommended that additional investigations of these sorts be performed.<sup>42</sup> Notably, such testing is being performed along the

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<sup>39</sup> See EPA Comments to DEIS at p. 20 attached to EPA's October 26, 2015 letter filed with FERC at [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20151102-0219](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20151102-0219).

<sup>40</sup> *Id.* at p. 17.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at p. 19.

entire length of the Atlantic Sunrise Project in Pennsylvania where karst terrain also is present.<sup>43</sup> EPA has specifically requested that “FERC reconsider the proposed action siting in the vicinity of the SNG and Dixie pipelines and the Albany Municipal well field” that already contains over 40 sinkholes.<sup>44</sup> The Albany well field supplies all the drinking water for 92,000 community members.

EPA is so concerned about building this pipeline through hundreds of miles of dangerous karst that it concluded its comments to FERC as follows:

In summary, EPA **strongly recommends that an alternative route be considered**, fully and objectively analyzed, and selected **to completely avoid the most vulnerable karst areas of the Floridan Aquifer and avoid and minimize jurisdictional wetlands** and other environmentally sensitive areas. EPA requests that the FERC conduct a more thorough investigation and establish meaningful environmental metrics that allow for a full and informed comparison between the full range of reasonable and environmentally-sound alternatives.<sup>45</sup>

Indeed, FERC concedes that GreenLaw’s four proposed alternatives noted above have fewer overall impacts to the physical environment, but rejects them on the basis that they supposedly have greater impacts to the overall human environment. These alternatives, however, impact the human environment in areas where that environment is already heavily impacted by other utilities, roads, and developments. This is particularly true for the alternatives that co-locate with I-75, an especially-developed corridor. Given FERC’s preference for co-location and minimization of greenfield development (which is a significant component of the Project), it appears that FERC’s rejection of these alternatives is merely a capitulation to Sabal Trail’s concern that these alternatives might cost more money to build. Given that no objective analysis has been performed to confirm any such potential increased costs or the amount of those costs, the proposed alternatives have not been adequately investigated to justify their rejection.

In subsequent filings with FERC on November 14, 2014, December 22, 2014, and October 26, 2015, GreenLaw suggested two additional alternative routes that would have far fewer adverse environmental effects, including impacts on wetlands. Those alternatives involve more direct routes from Transco Station 85 in Choctaw County, Alabama to the end point in Osceola County, Florida by way of either (1) co-locating with or upgrading the existing FGT pipeline through the Florida Panhandle or (2) co-locating with or upgrading the Gulfstream pipeline through the Gulf of Mexico. Of note, Spectra Energy is the 67% owner of Sabal Trail

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<sup>43</sup> AECOM, “Transcontinental Gas Pipeline Company, LLC Atlantic Sunrise Project Karst Investigation and Mitigation Plan,” Williams and Wood Group Mustang, July 27, 2015.

<sup>44</sup> See EPA DEIS Comments at p. 25.

<sup>45</sup> *Id.* at p. 26 (emphasis added).

Transmission, LLC and the majority owner of the Gulfstream pipeline. Both of these alternatives would be consistent with FERC's preference for co-location, would be more direct routes, would avoid Georgia altogether where no benefit will be provided, and would have less environmental and wetlands impacts.

In its Draft Environmental Impact Statement ("DEIS"), FERC dismisses the FGT Panhandle route, in part, on the ground that it supposedly affects more acres of wetlands. However, as aptly noted by EPA in its comments on the DEIS, FERC fails to evaluate the relative importance of various wetlands. The Commenters would add that wetland areas interconnected with karst geology should have special consideration, given the potential for indirect and cumulative impact. Perhaps most importantly, FERC relied on inaccurate representations from Sabal Trail regarding the existence of specially protected wetland areas. For example, Sabal Trail misrepresented that the FGT Panhandle alternative would cross both the Robert Brent Wildlife Management Area and the San Pedro Bay WMA. Those WMAs no longer exist.<sup>46</sup> As a result, "[t]he EPA strongly recommends that the FERC require the development of a comparative metric to make this a meaningful metric in its alternatives analysis."<sup>47</sup>

The Corps, in its duties to the public interest, cannot accept the mistakes of FERC. These conflicting impact assessments underline the need for a Supplemental EIS on the basis of the significance of impacts to water sand wetlands alone.

The real reason that the FGT and Gulfstream routes have not been considered is because FPL, who contracted with Sabal Trail to build the proposed pipeline, limited at the very outset through its RFP process the routes that could be considered. The RFP required a proposal for a pipeline "that is geographically diverse from the two major pipelines currently serving the state of Florida."<sup>48</sup> Of course, those two pipelines are the FGT and Gulfstream pipelines. The RFP further stacked the deck by providing that (1) the beginning point for the pipeline had to be in the vicinity of Transco's Station 85 in Choctaw County, Alabama; (2) FP&L had a "strong preference" for an onshore pipeline (thus eliminating any expansion of or co-location with the Gulfstream pipeline); (3) FPL preferred a project that would not rely on any existing pipelines in Florida (thus eliminating any expansion of or co-location with the FGT or Gulfstream pipelines); and (4) FPL preferred a project that would not rely on any existing pipelines currently providing direct delivery to peninsular Florida (thus, again eliminating any expansion of or co-location with the FGT or Gulfstream pipelines). Finally, Sabal Trail's preferred route is required under its June 26, 2013 contract with FPL.

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<sup>46</sup> *Id.* at pp. 13-14.

<sup>47</sup> *Id.* at p. 14. In similar fashion, EPA has taken the position in its comments that the FGT Panhandle alternative's crossing of a few additional miles of karst terrain is meaningless without a proper evaluation of significant versus insignificant karst features. *Id.* at 14-15.

<sup>48</sup> See Florida Power & Light Company's Firm Gas Transportation Request for Proposals dated October 19, 2012 at p. 3.

*As a result of these deliberately limiting requirements, FPL essentially excluded more environmentally friendly routes from consideration so it could have total control over any pipeline that might be built.*

The Corps is not bound by these artificially imposed limits, and the Corps can not be bound by limitations that cripple its ability to follow regulations. Both the Panhandle and Gulf routes are less damaging environmental alternatives which must be accorded the proper presumption for a project, such as this one, that is not water dependent. The same is true for the four alternatives presented by expert hydrologist Paul Rubin described above.

Additionally the Southeast Connector project is an ancillary pipeline for which no alternative routes, construction sites, or access roads have been developed. Because that dependent but separate project is not water dependent, a robust series of alternative routes and construction sites must be developed for this separate but dependent project.

In its comments filed in response to FERC's DEIS, EPA largely agrees with the conclusion that some of the above alternatives, including a "no action" alternative, are preferable to Sabal Trail's proposed route. One of those "no action" alternatives is use of a LNG (liquefied natural gas) import/export mode of natural gas transmission. As correctly noted by EPA, FERC has recently approved five Gulf Coast LNG export terminals, four of which are reportedly under construction.<sup>49</sup> And 16 more are proposed for the Gulf Coast.<sup>50</sup> Additionally, the Port Dolphin LNG import project has now secured approval from all applicable federal agencies, including FERC.

As noted by EPA, the LNG "no action" alternative will likely have less impacts to Clean Water Act-protected waters, wetlands, conservation easements, the Floridan Aquifer (which has a sole source drinking water designation pending), and public source waters.<sup>51</sup> It also has the additional advantage of being consistent with FPL's desire for a gas transmission system that is geographically separate from existing transmission lines.

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<sup>49</sup> FERC Docket Numbers CP11-72 and CP14-12, CP13-25, CP12-509, CP12-507, and CP13-552; *see also* "North American LNG Import/Export Terminals Approved" (as of June 10, 2015) at <http://www.ferc.gov/industries/gas/indus-act/lng/lng-approved.pdf>.

<sup>50</sup> FERC Docket Numbers CP14-120, CP14-71 and 72, CP14-347, PF13-11, CP14-517, PF13-4 Gulf LNG, PF14-17, PF15-2, PF15-13, PF15-14, PF15-15, PF15-18, PF15-20, PF15-25, and PF15-26. The sixteenth facility is under the U.S. MARAD/Coast Guard's jurisdiction, not FERC's. *See also* "North American LNG Import/Export Terminals Approved" (as of June 10, 2015) at <http://www.ferc.gov/industries/gas/indus-act/lng/lng-export-proposed.pdf>.

<sup>51</sup> EPA DEIS Comments at p. 12.

After fully evaluating Sabal’s preferred route, significantly, EPA rated that route as “EO-2,” meaning that EPA has “**environmental objections to a significant portion of the proposed pipeline route due to the magnitude of the impacts to jurisdictional wetlands. . . .**”<sup>52</sup> EPA thus concluded as follows:

As currently proposed in the DEIS, **the preferred alternative has the potential to violate the Section 404 requirements of the Clean Water Act.** Appropriate and required avoidance and minimization measures to jurisdictional resources have not been documented and the plans to provide compensatory mitigation for unavoidable impacts were not disclosed in the DEIS. Furthermore, the proposed action has the potential to effect (sic) the designation of the Floridan Aquifer as a sole source aquifer under the Safe Drinking Water Act. EPA has substantial environmental concerns that local community water supplies could be adversely impacted in the future.

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**EPA recommends that the FERC re-evaluate its environmental alternatives analysis for routes that avoid environmentally sensitive areas including jurisdictional wetlands, conservation areas, EJ communities, and sensitive karst terrain areas prior to proceeding with a final EIS (FEIS).**<sup>53</sup>

The Applicants have failed to properly consider alternatives or to choose the one that avoids and minimizes impacts to waters of the United States. Therefore, the Applicants have not met the requirements to receive a permit under section 404 of the Clean Water Act.

#### ***4. IMPACTS HAVE NOT BEEN PROPERLY AVOIDED OR MINIMIZED***

Even if the Applicants had demonstrated water dependency and a valid consideration of alternatives for the Project, it is apparent that the Applicants have not truly considered avoidance or mitigation of impacts. The variety and complexity of impacts from the Project should entail a similar consideration of ways to limit damages, but that is lacking from the applications.

For example, Horizontal Directional Drilling (“HDD”) methodology for crossing water bodies drills under a waterway and can eliminate the need for direct cut and fill within jurisdictional waters. However, only a total of 6 waterbodies in Georgia and 11 in Florida would be crossed using HDD. Instead, Sabal Trail would cross the majority of the jurisdictional waters through direct impact -- the most environmentally destructive approach. As additional impact avoidance is possible by utilizing HDD for additional crossings, the Applicants have not properly demonstrated that impacts have been avoided to the fullest extent practicable.

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<sup>52</sup> *Id.* at p. 3 of EPA’s letter accompanying the Comments (emphasis added).

<sup>53</sup> *Id.* (emphasis added).

In areas in which HDD would itself have too deleterious impacts, such as in a karst geologic setting, aerial crossings would be a more environmentally sound alternative to consider. Instead, the Applicants' plan is to keep drilling new holes in the same crossings:

"If it is determined necessary to abandon the original HDD location, the proposed alignment may be shifted and retried"<sup>54</sup>.

The absence of these considerations shows that the Applicants have not properly demonstrated that impacts have been avoided.

The Commenters have many concerns about trenching and drilling through karst areas without site-specific karst mitigation plans, particularly for areas near the Albany well field, the crossings at Withlacoochee, Alapaha, Little, Willacoochee, Suwannee, and Santa Fe Rivers, along with the Falmouth Cathedral Cave System. The pipeline passes through areas where karst geology directly connects surface waters to subsurface flow. As much of the pipeline will pass through karst areas in Georgia and Florida, the indirect impacts to surface waters and wetlands must be evaluated on a site-specific basis, including site visits after rains. Without a survey of the karst system, the Corps cannot determine indirect impacts to surface waters and wetlands due to induced subsidence. The absence of these plans shows that the Applicants have not properly demonstrated that impacts have been avoided.

## **5. AS PROPOSED, THE PROJECT WOULD CONTRIBUTE TO DEGRADED WATER QUALITY**

The Corps' guidelines provide that "[n]o discharge of dredged or fill material shall be permitted if it: (1) causes or contributes . . . to violations of any applicable State water quality standard."<sup>55</sup> The incredible scope and breadth of the Project will inevitably cause or contribute to violations of State water quality standards, including but not limited to the standards already failed by streams identified as impaired. The burden of demonstrating a lack of adverse impact on the ability of water bodies to meet state standards falls squarely upon the Applicants, who have not met that burden.

The Project, as proposed, would traverse 22 major watersheds, including 5 watersheds crossed by Transco's segment, 15 by the Sabal Trail portion, and 4 crossed by the Florida Southeast Connection (Figure 2). More specifically, the proposed Project crosses at least 699 waterbodies, 26 of which are classified by state and federal agencies as either (1) sensitive waters (due to exceptional water quality; presence of sensitive fisheries; close proximity to public drinking water supplies; existence of steep, unstable and actively eroding banks; listing on the National Rivers Inventory; or navigability issues subject to Corps permitting), or (2) listed on the

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<sup>54</sup> HDD Contingency Plan, Florida Southeast Connection Project

<sup>55</sup> See 40 C.F.R. § 230.10(b)(1).

Environmental Protection Agency’s list of impaired streams compiled under Section 303(d) of the Clean Water Act due to poor water quality<sup>56</sup>. Furthermore, the Project would potentially impact 1,954 wetland systems that include over a thousand wetland acres.

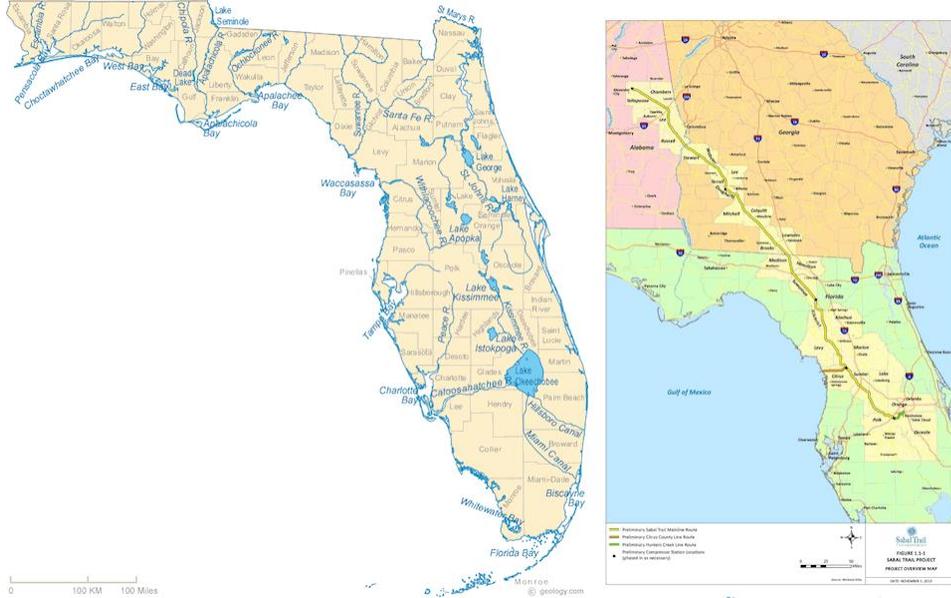


Figure 2: The proposed project would cross countless unique waterbodies

*Of particular concern are the proposed crossings at the Withlacoochee, Alapaha, Little, Willacoochee, Suwannee, and Santa Fe Rivers, along with the Falmouth Cathedral Cave System, Mallory Swamp, and Green Swamp.*

The Sabal Trail portion of the pipeline crosses 16 impaired streams listed on the Section 303(d) list, 8 federally-designated exceptional water bodies, 7 high priority waters, 2 protected river corridors associated with the Chattahoochee and Flint Rivers, and 3 water bodies designated as Outstanding Florida Waters. As proposed, Sabal Trail would also cross 11 navigable waters of the United States that require Section 10 permits for any activities conducted below Ordinary High Water.

The increases in erosion and sedimentation within the water bodies caused by construction of the proposed pipeline would result in a degradation of water quality through increased turbidity, increased pollutant load and depletion of dissolved oxygen, adversely impacting viability and biodiversity of native flora and fauna (including benthic organisms and larval forms of

<sup>56</sup> Section 303(d)(1)(A) requires that States “identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters,” identifying these as particularly vulnerable waters.

important fishery species) as well as causing increased treatment costs for public water supply systems. There is great potential for the release of gas, oils, and lubricants leaking from construction equipment. Such leaks would result in degradation of water quality. The number of such impacts on such a quantity and wide variety of vulnerable waters by definition must be considered significant.

Secondary impacts to surface waters may also be expected from associated activities such as the approximately 189 million gallons of surface water withdrawals required for mixing bentonite for the HDD method, dust control, and hydrostatic testing. Hydrostatic testing will require a Water Use Permit under Chapter 40B-2, Florida Administrative Code. The Applicants have not characterized the origin and disposal of the water associated with this use or impacts on water quality.

A significant portion of the Project is currently slated to run through karst terrain, underneath which the Floridan Aquifer is highly vulnerable to contamination.<sup>57</sup> The proposed route passes through an area with a high incidence of sinkholes; the extraction of groundwater volumes from near the pipeline could potentially trigger additional sinkhole activity, such as near the Albany municipal well field. Degradation of aquifers in this area can impact surface water quality through the surficial expression of sinking and ephemeral streams.

In the area of the Project within the jurisdiction of the Savannah District, Sabal Trail proposes to cross 47 perennial streams, 47 intermittent streams, 25 ephemeral streams, and 7 Palustrine open water systems. There are additional impacts to limesink wetlands vulnerable to direct and indirect impacts of trench cutting. Open trench cutting to lay a pipeline through these waterways would result in both temporary and permanent loss of aquatic and riparian habitat, as well as sedimentation in stream channels, lakes, and wetlands.

In Georgia, state waters are protected by a 25-foot mandated stream buffer unless an exemption is met or a variance is granted by the director of the Georgia Environmental Protection Division. The Applicants have stated that “Sabal Trail is exempt from obtaining stream buffer variances under Official Code of Georgia Annotated (O.C.G.A.) § 12-7-17 of the Erosion and Sediment Control Act.” The Applicants are not, however, exempt from the National Pollutant Discharge Elimination System Permit for Construction Activity for Infrastructure Construction Project – GAR100002 (NPDES Permit). Part IV(i) of the NPDES Permit provides for a 25-foot protective buffer along the banks of all “State Waters.” Part IV(iii) provides for an exemption to this buffer requirement for utility line crossings, but only if the utility crossing occurs at an angle, as measured from the point of the crossing, within 25 degrees of perpendicular to the stream and

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<sup>57</sup> See, e.g., William H. McLemore, Bobby Jones & David B. Wenner, Department of Natural Resources Environmental Protection Division Georgia Geologic Survey, *Preliminary Wellhead Protection Area Delineation: Recommended Methods for Karst Aquifers in Northwest and Southwest Georgia* (1999), discussing the high susceptibility to pollution of the karst regime in Southwest Georgia.

causes a width of disturbance of not more than 50 feet within the buffer. Therefore, all stream crossings in Georgia that are not within 25 degrees of the perpendicular to the stream and/or have a width of disturbance within the buffer of more than 50 feet will require an EPD approved stream buffer variance.

In sum, even if the Project were water dependent, the Applicants have not met the burden under the (b)(1) guidelines of demonstrating that the proposed Project will not cause or contribute to violations of any State water quality standard. The impacts of the Project would be substantial, varied and extensive, affecting both sensitive water bodies and those for which 303(d) listing has already indicated difficulty meeting water quality requirements. The Applicants have failed to even address many of the risks. The Commenters urge that the Corps cannot issue the permit as presently proposed. The Commenters also request that the Corps require a Supplemental Environmental Impact Statement to address issues not covered at present.

#### ***6. DIRECT, INDIRECT, SECONDARY, AND CUMULATIVE IMPACTS MUST BE EVALUATED***

As highlighted above, the potential impacts of the Project to wetlands and water quality are undoubtedly significant on their own, warranting a Supplemental EIS. To provide context to necessary mitigation measures, we have included multiple tables and graphs that summarize possible disruptions. Values were transcribed from ‘Table 3.4.1-2’ of itemized wetland impacts, provided in the appendix of the FERC DEIS. Also included is information compiled from FOIA responses and ancillary environmental information from RIBITS and FL DEP.

To be clear, the aforementioned DEIS table included repeated entries, omitted here. The regulatory agencies did not recognize this oversight, which allowed inaccuracies to permeate through the entirety of the DEIS.

Upon receiving the FOIA responses on wetland impacts in the USACE applications, it became clear that the wetlands impacts in the USACE application are different than those in the DEIS. We request a supplemental EIS to set the record straight on which assessment is correct.

Table F1: Acres of Wetland Impact, By State and County

State	County	Construction/Temporary	Operation/Permanent	Total
AL	Choctaw	38.90	4.76	43.66
AL	Autauga	25.70	4.50	30.20
AL	Chilton	8.60	1.30	9.90
AL	Coosa	5.60	0.50	6.10
AL	Tallapoosa	10.40	1.50	11.90
AL	Chambers	6.50	1.80	8.30
AL	Lee	2.80	0.80	3.60
AL	Russell	9.40	3.10	12.50
GA	Stewart	7.20	2.20	9.40
GA	Webster	0.60	0.20	0.80
GA	Terrell	13.30	4.40	17.70
GA	Dougherty	35.70	10.70	46.40
GA	Mitchell	3.70	1.10	4.80
GA	Colquitt	33.10	10.50	43.60
GA	Brooks	30.60	9.80	40.40
GA	Lowndes	9.80	3.20	13.00
FL	Hamilton	3.10	1.00	4.10
FL	Suwannee	1.70	0.40	2.10
FL	Gilchrist	27.00	9.00	36.00
FL	Levy	32.80	7.60	40.40
FL	Marion	12.90	1.20	14.10
FL	Sumter	56.50	7.10	63.60
FL	Lake	84.70	21.70	106.40
FL	Polk	138.70	37.50	176.20
FL	Osceola	169.30	42.00	211.30
FL	Orange	6.00	0.50	6.50
FL	Citrus	13.20	0.90	14.10
FL	Okeechobee	37.50	8.00	45.50
FL	St. Lucie	36.20	5.80	42.00
FL	Martin	23.60	2.10	25.70
<b>TOTAL</b>		<b>885.10</b>	<b>205.16</b>	<b>1090.26</b>

Table F2: Acres of Wetland Impact, by Applicant and Project Component

<i>Applicant</i>	<i>Construction/Temporary</i>			<i>Operation/Permanent</i>			<b><i>TOTAL</i></b>
	<i>Pipe</i>	<i>Roads</i>	<i>C. Stations</i>	<i>Pipe</i>	<i>Roads</i>	<i>C. Stations</i>	
<i>Transco</i>	75.90	0.30	6.60	10.20	0.30	0.76	<b><i>94.06</i></b>
<i>Sabal Trail</i>	552.90	9.10	8.20	153.60	0.40	2.70	<b><i>726.90</i></b>
<i>FSC</i>	228.00	4.10	0.00	37.20	0.00	0.00	<b><i>269.30</i></b>
<b><i>TOTAL</i></b>	<b><i>856.80</i></b>	<b><i>13.50</i></b>	<b><i>14.80</i></b>	<b><i>201.00</i></b>	<b><i>0.70</i></b>	<b><i>3.46</i></b>	<b><i>1090.26</i></b>

Table F3: Acres of Wetland Impact, by Type and State

<i>Type</i>	<i>Construction/Temporary</i>			<i>Operation/Permanent</i>			<b><i>TOTAL</i></b>
	<i>AL</i>	<i>GA</i>	<i>FL</i>	<i>AL</i>	<i>GA</i>	<i>FL</i>	
<i>PEM</i>	34.20	15.00	225.60	0.10	0.00	1.10	<b><i>276.00</i></b>
<i>PSS</i>	10.70	6.90	27.70	0.50	0.60	3.70	<b><i>50.10</i></b>
<b><i>PFO</i></b>	<b><i>62.70</i></b>	<b><i>112.40</i></b>	<b><i>389.90</i></b>	<b><i>17.56</i></b>	<b><i>41.60</i></b>	<b><i>140.00</i></b>	<b><i>764.16</i></b>
<b><i>TOTAL</i></b>	<b><i>107.60</i></b>	<b><i>134.30</i></b>	<b><i>643.20</i></b>	<b><i>18.16</i></b>	<b><i>42.20</i></b>	<b><i>144.80</i></b>	<b><i>1090.26</i></b>

The overwhelming impact to forested-wetland habitat bears emphasis here. Specifically, the fact that much of the potential destruction falls under the category of ‘temporary.’ Unlike its peers, forested ecosystems take centuries to grow and develop. These time-scales are in stark contrast to those expected by regulators, so we accordingly question any accompanying mitigation measures as well as the ‘temporary’ classification.

### ***ENDANGERED SPECIES***

Habitat for the endangered Gopher Tortoise, Sand Skink and Blue-Tailed Mole Skink must be considered.

### ***DIRECT ECOLOGICAL IMPACTS TO CANOPY***

Impacts to wetland canopy and wetland canopy in contiguously forested areas warrant special consideration for evaluation and avoidance, especially because many impacts are to interior canopy areas, and the watersheds considered for impact lack appropriate forest mitigation options. These potential impacts to canopy as canopy have not yet been evaluated or avoided.

### ***INDIRECT AND SECONDARY IMPACTS NOT EVALUATED***

As mentioned above, The Commenters have many concerns about trenching and drilling through karst areas without site-specific karst mitigation plans, particularly for areas near the Albany well field, the crossings at Withlacoochee, Alapaha, Little, Willacoochee, Suwannee, and Santa Fe Rivers, along with the Falmouth Cathedral Cave System.

The pipeline passes through areas where karst geology directly connects surface waters to subsurface flow. As much of the pipeline will pass through karst areas in Georgia and Florida, the indirect impacts to surface waters and wetlands must be evaluated on a site-specific basis, including site visits after rains. Without a survey of the karst system, the Corps cannot determine indirect impacts to surface waters and wetlands due to induced subsidence.

### ***CUMULATIVE AND INDUCED IMPACTS***

Across the Gulf Coast, there are an inordinate number of commercial pipelines through the region with the largest concentration of the nation's wetlands. The Commenters have observed that, once right-of-ways are established, impacts in those right-of-ways are never again considered for avoidance, leading to cumulative impacts in watersheds that lack mitigation options, due to their already preserved and protected status.

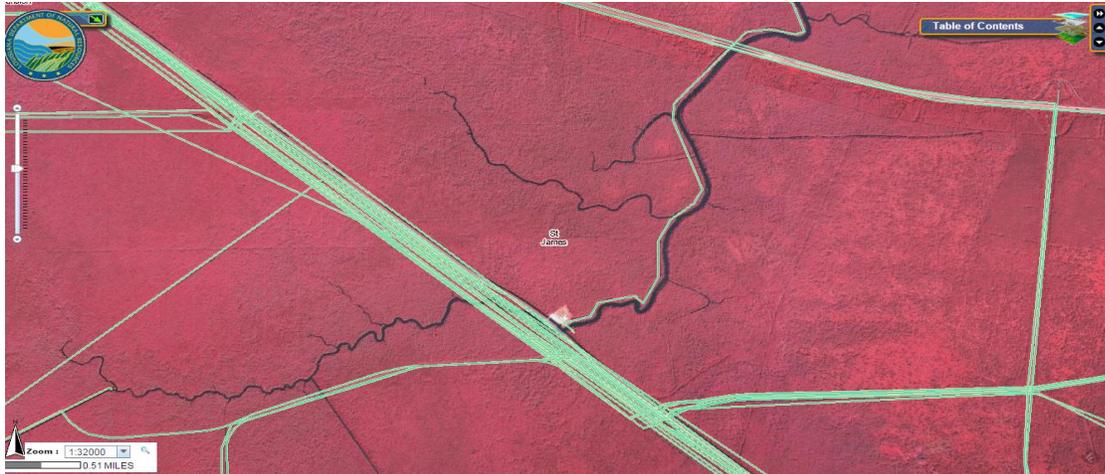


Figure 3. from SONRIS, Louisiana Department of Natural Resources (False Color Aerial Imagery). An Example of 26 pipeline right of ways crossing Blind River.

An example of cumulative impacts to wetland canopy, induced from pipeline and utility right of way exists through the Maurepas Swamp in New Orleans District. Twenty-six right-of-ways have been introduced over years, through some of the nation's last contiguous forest stands in the Mississippi River Valley. Despite the ONRW status of the Blind River, and the preserved status of the Swamp, and its unique flood attenuation values for towns like Convent and cities like Baton Rouge, the continual expansion of this right of way has never been considered for avoidance. It expands indefinitely, hundreds of acres at a time. The Corps must consider the cumulative impacts of placing a right of way in a previously avoided and preserved watershed.

As a whole, the cumulative impacts and effects appear to have been completely ignored. A cumulative impact means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions, taking place over a period of time. A cumulative impact includes the total effect on a natural resource, ecosystem, or human community due to past, present, and future activities or actions. These impacts may also include the effects of natural processes and events, depending on the specific resource in question. Cumulative impacts include the total of all impacts to a particular resource that have occurred, are occurring, and will likely occur as a result of an action or influence, including the direct and reasonably foreseeable indirect impacts of the project being evaluated. Accordingly, there may be different cumulative impacts on different environmental resources. A project's incremental impacts are a necessary component of cumulative impacts. This incremental impact will guide the conclusions to be drawn from the analysis in terms of resource sustainability and potential mitigation strategies.

In summary, three types of effects must be considered when evaluating a project: direct effects that occur as a direct result of an action and at the same time and place as the action; indirect effects that are reasonably foreseeable effects that occur as a result of an action, but later in time or removed from the location of direct effects action location; and cumulative effects that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions.

In other words, an “effect” is the result or outcome from change caused by an action. It is important, especially in cumulative effects analysis, to consider “effect” as change in the trend of a resource as opposed to impact in static terms. Such impacts and effects must be identified and considered and the analysis results made available for public comment.

## **7. THE PUBLIC NOTICES FAIL TO ADEQUATELY DESCRIBE MITIGATION PLANS**

Federal law requires applicants for Section 404 permits to compensate for, or mitigate, the damages resulting from the destruction of our nation’s wetlands, should the permits be issued. Although the FERC DEIS references the Applicants’ intent to develop a mitigation plan as part of the Corps permit process, the public notices issued by the various Corps districts do not reference the development of a mitigation plan by the Applicants.

In fact, the Jacksonville notice under the heading “compensatory mitigation” requests that the public review the narratives in the FERC DEIS.<sup>58</sup> The Joint Public Notices from the Corp’s Mobile District and the State of Alabama Department of Environmental Management state that “[d]iscussion related to the applicant’s proposed compensatory mitigation is found in the FERC DEIS. *The [Corps] has not verified the adequacy of the applicant’s proposed off-site mitigation plan at this time.*”<sup>59,60</sup> While the Savannah notice also references the DEIS as a source of further information, no actual mention of mitigation is included at all.<sup>61</sup>

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<sup>58</sup> Public Notice Nos. SAJ-2013-0303, SAJ-2013-03099 (September 11, 2015), <http://www.saj.usace.army.mil/Missions/Regulatory/PublicNotices/tabid/6072/Article/616792/saj-2013-03030-and-saj-2013-03099.aspx>.

<sup>59</sup> Public Notice No. SAM-2014-00238-JSC (September 11, 2015), [http://www.sam.usace.army.mil/Portals/46/docs/regulatory/public\\_notices/SAM-2014-00238-JSC.pdf](http://www.sam.usace.army.mil/Portals/46/docs/regulatory/public_notices/SAM-2014-00238-JSC.pdf).

<sup>60</sup> Public Notice No. SAM-2014-00655-JSC (September 11, 2015), [http://www.sam.usace.army.mil/Portals/46/docs/regulatory/public\\_notices/SAM-2014-00655-JSC.pdf](http://www.sam.usace.army.mil/Portals/46/docs/regulatory/public_notices/SAM-2014-00655-JSC.pdf).

<sup>61</sup> Public Notice No. SAS-2013-00942 (September 11, 2015), <http://www.sas.usace.army.mil/Portals/61/docs/regulatory/publicnotices/20150911-SAS-2013-00942-Coastal-1012-TCK.pdf>.

Corps/EPA regulations concerning mitigation plans specifically require that the Corps “must ensure that adequate [mitigation plan] information is included in the public notice to enable the public to provide meaningful comment,” providing exception only for data which is “legitimately confidential for business purposes.”<sup>62</sup> According to the joint EPA/USACE ‘Compensatory Mitigation for Losses of Aquatic Resources; Final Rule,’<sup>63</sup> mitigation plans for all wetland compensatory mitigation projects must contain twelve elements, including:

- site selection criteria
- baseline information for impact and compensation sites
- ecological performance standards
- monitoring requirements.

The mere mention of the existence of the “Applicants’ proposed compensatory mitigation” within a DEIS<sup>64</sup> cannot reasonably satisfy this requirement of “adequate information” to allow “meaningful comment.” Considering this project’s impacts include over a thousand acres of wetlands, 699 waterbody crossings, and many populated communities, the nature and location of compensatory mitigation is of vital importance to all those who wish to provide meaningful comment. As just one example, canopy-cover values ought to be publically provided, given the significant impacts to forests that make up the majority of this proposal’s potential wetland destruction.

Further detail on mitigation requirements in 33 C.F.R. § 332 are included below.

To satisfy the Clean Water Act, mitigation plans must provide a level of detail “commensurate with the scale and scope of the impacts”<sup>65</sup> and include the following information:

1. “A description of the resource type(s) and amount(s) that will be provided, the method of ecoregion, physiographic province, or other geographic areas of interest.”<sup>66</sup>

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<sup>62</sup> 40 CFR § 230.94(b).

<sup>63</sup> 33 CFR § 322.4[c].

<sup>64</sup> The Corps’ reference to the FERC DEIS for specific information about compensatory mitigation is confusing at best. The DEIS specifically states that “where secondary and indirect effects cannot be avoided or minimized, they would be mitigated as part of the applicable [Corps] and state wetland mitigation requirements described below” (DEIS, p. 3-70). Thereafter, the DEIS states that the Corps will determine mitigation requirements using WRAP and UMAM scores (DEIS, p. 3-71); that Transco, in consultation with the Corps, proposes to create a project-specific wetland mitigation plan (DEIS, p. 3-71); and that Sabal Trail, in consultation with the Corps and the Florida Department of Environmental Quality proposes to create a project-specific wetland mitigation plan (DEIS, pps. 3-76). In short, the DEIS indicates that the Corps will determine the need for mitigation and will consult with the Applicants as they develop project-specific mitigation plans.

<sup>65</sup> 33 C.F.R. § 332.4(c).

<sup>66</sup> 33 C.F.R. § 332.4(c)(2).

2. “A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation project site.”<sup>67</sup>
3. “A description of the legal arrangements and instrument, including site ownership, that will be used to ensure the long-term protection of the compensatory mitigation project.”<sup>68</sup>
4. “A description of the ecological characteristics of the proposed compensatory mitigation project site.... This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other site characteristics appropriate to the type of resource proposed as compensation. The baseline information should also include a delineation of waters of the United States on the proposed compensatory mitigation project site.”<sup>69</sup>
5. “A description of the number of credits to be provided, including a brief explanation of the rationale for this determination,” including “an explanation of how the compensatory mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity.”<sup>70</sup>
6. “Detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures.”<sup>71</sup>
7. “A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.”<sup>72</sup>
8. “Ecologically-based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives.”<sup>73</sup>

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<sup>67</sup> 33 C.F.R. § 332.4(c)(3).

<sup>68</sup> 33 C.F.R. § 332.4(c)(4).

<sup>69</sup> 33 C.F.R. § 332.4(c)(5).

<sup>70</sup> 33 C.F.R. § 332.4(c)(6).

<sup>71</sup> 33 C.F.R. § 332.4(c)(7).

<sup>72</sup> 33 C.F.R. § 332.4(c)(8).

9. “A description of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results to the district engineer must be included.”<sup>74</sup> The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs).<sup>75</sup>
10. “A description of how the compensatory mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resources, including long-term financing mechanisms and the party responsible for long-term management.”<sup>76</sup>
11. “A management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation project, including the party or parties responsible for implementing adaptive management measures. The adaptive management plan will guide decisions for revising compensatory mitigation plans and implementing measures to address both foreseeable and unforeseen circumstances that adversely affect compensatory mitigation success.”<sup>77</sup>
12. “A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards.”<sup>78</sup>
13. The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs).<sup>79</sup>
14. The compensatory mitigation requirements must be clearly stated and include special conditions that “must be enforceable.” The special conditions must: “(i) Identify the party

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<sup>73</sup> 33 C.F.R. § 332.4(c)(9).

<sup>74</sup> 33 C.F.R. § 332.4(c)(10).

<sup>75</sup> 33 C.F.R. § 332.6.

<sup>76</sup> 33 C.F.R. § 332.4(c)(11).

<sup>77</sup> 33 C.F.R. § 332.4(c)(12).

<sup>78</sup> 33 C.F.R. § 332.4(c)(13).

<sup>79</sup> 33 C.F.R. § 332.6.

responsible for providing the compensatory mitigation; (ii) Incorporate, by reference, the final mitigation plan approved by the district engineer; (iii) State the objectives, performance standards, and monitoring required for the compensatory mitigation project, unless they are provided in the approved final mitigation plan; and (iv) Describe any required financial assurances or long-term management provisions for the compensatory mitigation project, unless they are specified in the approved final mitigation plan....”<sup>80</sup>  
“The special conditions must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project.”<sup>81</sup>

15. “The real estate instrument, management plan, or other mechanism providing long-term protection of the compensatory mitigation site must, to the extent appropriate and practicable, prohibit incompatible uses (e.g., clear cutting or mineral extraction) that might otherwise jeopardize the objectives of the compensatory mitigation project.”<sup>82</sup>

A key element of a legally adequate mitigation plan is the inclusion of ecological performance standards for assessing whether the mitigation is achieving its objectives, and these are described under 33 C.F.R. § 332.5:

“Performance standards should relate to the objectives of the compensatory mitigation project, so that the project can be objectively evaluated to determine if it is developing into the desired resource type, providing the expected functions, and attaining any other applicable metrics (e.g., acres).”<sup>83</sup>

And, further:

“Performance standards must be based on attributes that are objective and verifiable. Ecological performance standards must be based on the best available science that can be measured or assessed in a practicable manner. Performance standards may be based on variables or measures of functional capacity described in functional assessment methodologies, measurements of hydrology or other aquatic resource characteristics, and/or comparisons to reference aquatic resources of similar type and landscape position. The use of reference aquatic resources to establish performance standards will help ensure that those performance standards are reasonably achievable, by reflecting the range of variability exhibited by the regional class of aquatic resources as a result of natural processes and anthropogenic disturbances. Performance standards based on

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<sup>80</sup> 33 C.F.R. § 332.3(k).

<sup>81</sup> 33 C.F.R. § 332.3(l).

<sup>82</sup> 33 C.F.R. § 332.7(a).

<sup>83</sup> 33 C.F.R. § 332.5(a).

measurements of hydrology should take into consideration the hydrologic variability exhibited by reference aquatic resources, especially wetlands. Where practicable, performances standards should take into account the expected stages of the aquatic resource development process, in order to allow early identification of potential problems and appropriate adaptive management.”<sup>84</sup>

The information provided on impacts and mitigation is wildly insufficient to allow for meaningful comments, especially regarding limesink wetlands. However, what is clear is that the federal regulations are not being followed. The failure of the Corps to include even the most minimal information required of the applicant regarding avoidance, minimization, and compensatory mitigation, proves the public notices as legally deficient.

## **8. PRESENTLY, MITIGATION APPEARS IMPOSSIBLE**

Mitigation Options are Constrained, Due to the Development of the Springs Area for its Ecological Values. Not only are the unique ecological natures and values of Flint, Withlacoochee, Suwannee, and other rivers flowing through the Dougherty Plain and the Cody Escarpment considered, nor the Alapaha, Little, Willacoochee, and Santa Fe Rivers, Green and Mallory Swamps, and Falmouth Cathedral Cave System, but their impacts cannot be mitigated, because there is insufficient mitigation available in the watershed. For the Lower Suwannee watershed, there are no mitigation banks. This is an additional reason for avoiding these waters and wetlands.

Mitigation options are available to the east, where development requiring wetland fill has been focused.

Because the area in North Florida and South Georgia has been developed as a natural area, rather than for agricultural or industrial development, the area has been largely avoided to date. Should this right of way clear a new path through the previously avoided springs region, it will induce further impacts from future utility and commercial transmission projects.

These qualities of the unspoiled natural environment mean that mitigation options that restore previously impacted landscapes are unavailable or underdeveloped. The mitigation available to Savannah and Jacksonville districts will inevitably lead to net loss of ecological function in the watersheds where we are most concerned with preserving and enhancing environmental values.

Mitigation options are severely limited in areas heretofore avoided due to ecological function and environmental and esthetic values. These watersheds, in North Florida particularly, have

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<sup>84</sup> 33 C.F.R. § 332.5(b).

been preserved and developed for the natural environment, and thus they are vulnerable to loss of function given the lack of mitigation options.

We did not have the final mitigation plan to determine exactly where mitigation falls short; but this general lack of options underscores that other alternatives (FGL and Gulfstream, among other to be developed) are environmentally preferable.

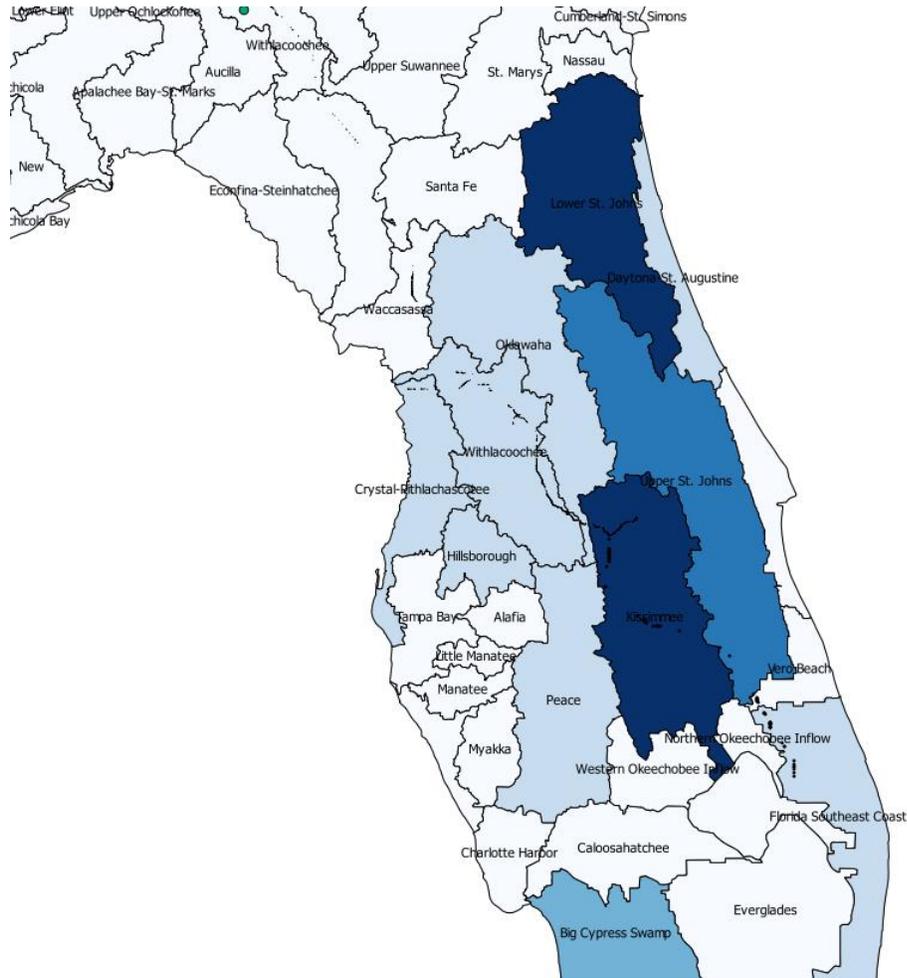


Figure 4. Number of mitigation banks by watershed, Jacksonville District. Mitigation options are severely limited in areas heretofore avoided due to their high ecological function. This fact underscores the need to avoid these areas for projects that are not water-dependent.

There are many wetland values lost in the shuffle of mitigation. The Corps should include its rationale for preserving ecological values in these watersheds as part of a mitigation plan included with an alternatives analysis in a Supplemental EIS.

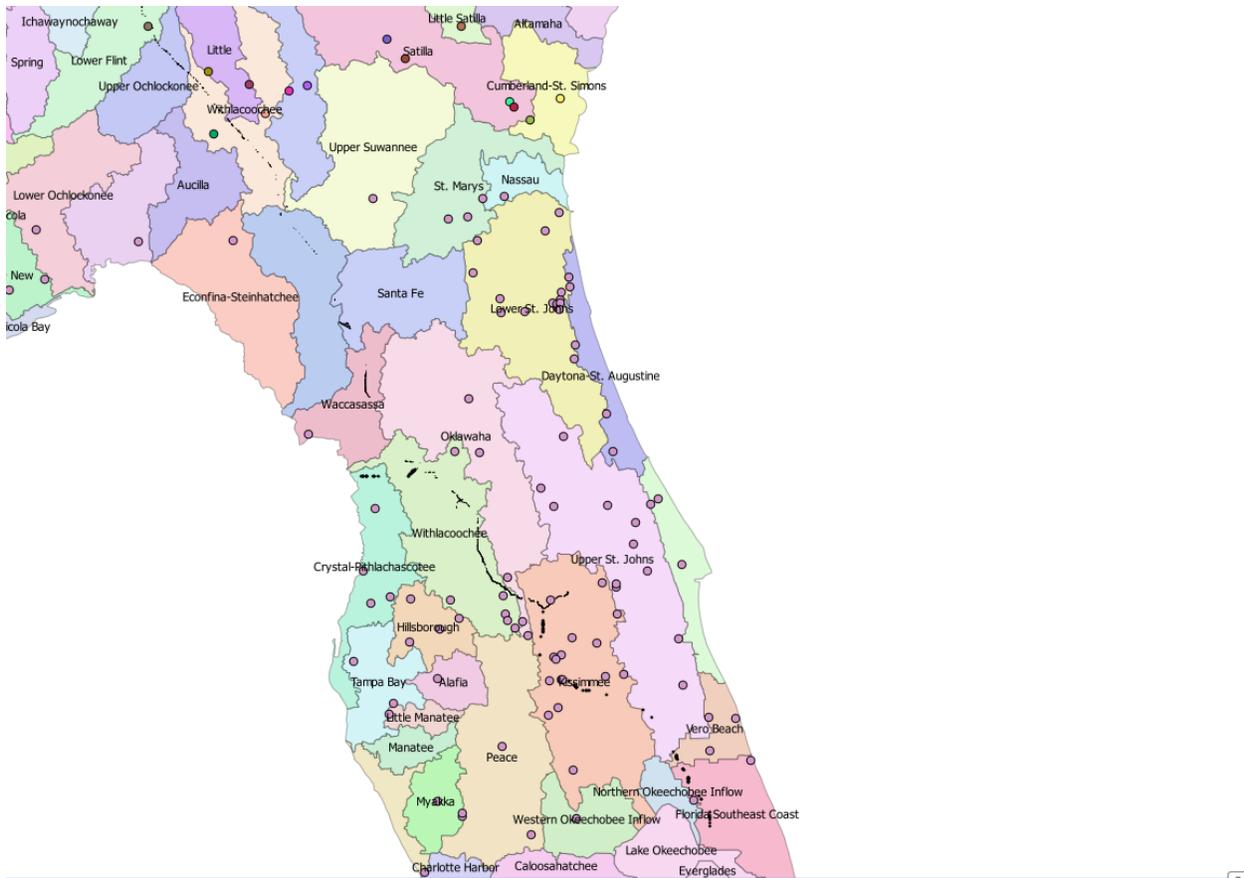


Figure 5: The Project’s Florida Portion crosses numerous watersheds (HUC8s). Mitigation Banks (dots) for in the Upper Ochlocknee, Withlacoochee (GA), Lower Suwannee, Waccasassa, Willacoochee (listed on RIBITS as Withlacoochee, FL) are especially constrained. The Santa Fe and Lower Suwannee, watersheds within karst geology with many springs connecting limestone geology with surface waters, lack mitigation banks completely. The Upper Ochlocknee prevents a similar problem in the Savannah District.

**9. THE FINAL PLAN, INCLUDING MITIGATION PLAN, MUST BE PUBLICLY AVAILABLE BEFORE ANY PERMITS ARE GRANTED**

The only items available to the public in the entire decision-making process are the FERC DEIS and the Corps Public Notices, which were released before the FERC, the Corps, and the Applicants had gone through the ‘avoid, minimize, and mitigate’ procedures. This limited information is not enough to foster full public involvement, especially since individuals are never given opportunities to comment on the final project, including its mitigation plan.

We are often told that many changes happen to permits before they are issued, but the

public never sees them until wetlands have already been filled and water quality altered.

We request a supplemental environmental impact statement (SEIS) with more robust information on wetland impacts, including locations of impact by watershed (HUC8) and stream body, locations of impact to limesink wetlands, total impact (AAHU) by watershed (HUC8), and a list of regional mitigation banks with available credits by type and location (HUC8).

## **10. CLIMATE CHANGE SHOULD BE CONSIDERED IN THE PERMITTING PROCESS**

Today's world is one of a rapidly-changing global climate. This human-induced phenomenon threatens our nation's communities with stronger, more frequent storms, longer heat waves, more regional droughts, increased incidences of wildfires, permafrost thawing, ocean acidification, and sea-level rise from melting glaciers. Without question, the Gulf Coast and Gulf Coast wetlands are especially vulnerable to these impacts. Regional subsidence from continued oil, gas, and freshwater extraction only compounds these threats.

The FERC DEIS did not fully address the December of 2014's *Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts*<sup>85</sup> issued by the President's Council on Environmental Quality (CEQ), nor evidently has the Corps. As described in the guidance, "*Unlike the 2010 draft guidance, the revised draft guidance applies to all proposed Federal agency actions.*" The Corps is strongly encouraged to comply with this executive guidance and to fully address the requirements in either a supplemental or final NEPA document.

When simply looking at higher temperatures, a clear positive association exists between air temperature and quality. As temperatures rise, so do ozone levels. Excess ozone exposure in turn elicits direct negative health outcomes, in individuals both young and old. Like all other repercussions of climate inaction, this harmful example is one felt disproportionately by communities already marginalized by histories of one-sided public policies.

In order to stand a chance at avoiding catastrophic, irreversible climate change, scientists have repeatedly said that the majority of fossil-fuel reserves must remain underground. A lifecycle analysis (LCA) of the The Project should therefore be conducted, with information included about the natural gas flowing through the system as well as an analysis of the *total* greenhouse-gas emissions related to the project, including the end-use combustion of the product. Given the pressing need to leave fossil-fuel reserves untapped, the LCA would act as a tool to gain insight into whether The Project's expected benefits do actually outweigh its obvious costs.

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<sup>85</sup> See [https://www.whitehouse.gov/sites/default/files/docs/nepa\\_revised\\_draft\\_ghg\\_guidance\\_searchable.pdf](https://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance_searchable.pdf)

More specifically, the Corps ought to analyze the climate impacts associated with the extraction, processing, transportation, and end-use combustion of the natural gas that will be transported by The Project. And in a world constrained by climate change, the proper measure of The Project's climate impact should not be based on assumptions inherent in business-as-usual scenarios that guarantee climate disaster.

As an example, Louisiana's Coastal Master Plan outlines coastal wetlands at risk from Sea Level Rise in the Gulf of Mexico. The differential drowning of coastal wetlands in the New Orleans District of the Corps, based on different climate scenarios, is on the order of one thousand square miles by 2061<sup>86</sup>. Given the similar magnitude of the Nation's wetlands in Savannah, Mobile, and Jacksonville Districts, we expect that similar projection for loss of coastal wetlands exist within these jurisdictions. Should the Corps approve this project, some portion of those thousands of square miles of wetlands lost could be attributed to the burning of gas delivered by the Applicants.

The Corps (or any other decision-making agency) could further determine the amount of direct land-loss that would result from this project's implementation. A discrete amount of lifetime greenhouse-gas emissions is directly related to a given temperature increase, which is then responsible for quantities of melting ice and rising seas. After also accounting for rates of regional subsidence, the decision-makers would then be able to explicitly see the climate-related impacts of this particular project. And further, these methods could seemingly be used on a cumulative scale to quantify the impacts of continued permitting of fossil-fuel infrastructure in all its forms.

For full clarification, while these sorts of analyses should be conducted, the mere mention of climate considerations is intended to highlight the fact that they have thus far been absent from all deliberations.

## **11. NEITHER NATIONWIDE PERMIT 12 NOR ANY OTHER NATIONWIDE PERMIT CAN BE USED FOR CONSTRUCTION OF ANY SIGNIFICANT PORTION OF THE PROJECT**

The Nationwide Permit 12 is one of several categories of general permits issued by the Corps for activities that will have minor environmental impacts. Nationwide Permit 12 applies to specific projects required in the construction of utility lines, which include pipelines, located in waters of the United States. Federal regulations mandate that an applicant seeking a Nationwide Permit 12 must comply with general conditions.<sup>87</sup>

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<sup>86</sup> Coastal Protection and Restoration Authority of Louisiana, *2012 Comprehensive Master Plan for a Sustainable Coast* p 105)

<sup>87</sup> 33 CFR § 330.4.

As set forth in the conditions, limitations, and restrictions.<sup>88</sup>

(e) Discretionary authority:

(1) A division engineer may assert discretionary authority by modifying, suspending, or revoking NWP [Nationwide Permit] authorizations for a specific geographic area, class of activity, or class of waters within his division, including on a statewide basis, whenever he determines sufficient concerns for the environment under the section 404(b)(1) Guidelines or any other factor of the public interest so requires, or if he otherwise determines that the NWP would result in more than minimal adverse environmental effects either individually or cumulatively.

(2) A DE may assert discretionary authority by modifying, suspending, or revoking NWP authorization for a specific activity whenever he determines sufficient concerns for the environment or any other factor of the public interest so requires. Whenever the DE determines that a proposed specific activity covered by an NWP would have more than minimal individual or cumulative adverse effects on the environment or otherwise may be contrary to the public interest, he must either modify the NWP authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the proposed activity is not authorized by NWP and provide instructions on how to seek authorization under a regional general or individual permit. . .

(4) NWPs do not authorize any injury to the property or rights of others.

To qualify for NWP authorization, the prospective permittee must comply with the applicable general conditions, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. The general conditions limit the application of Nationwide permits when they would affect:

- Aquatic Life Movements
- Spawning Areas
- Migratory Bird Breeding Areas
- Shellfish Beds
- Water Supply Intakes
- Management of Water Flows
- Fills Within 100-Year Floodplains
- Soil Erosion and Sediment Controls
- Removal of Temporary Fills
- Wild and Scenic Rivers

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<sup>88</sup> §330.4, 2013.

- Endangered Species
- Migratory Bird and Bald and Golden Eagle Permits.

Reviewing the FERC DEIS for the above referenced permits reveals that the Project, as proposed, would have many of the effects listed above.<sup>89</sup> Moreover, the Project would result in more than minimal adverse environmental effects either individually or cumulatively and is otherwise contrary to the public interest. The Corps must accordingly modify the NWP authorization to reduce or eliminate the adverse impacts of pipeline construction (including any segment thereof) for which construction under NWP 12 or any other nationwide permit is sought. Or, the Corps must prohibit the use of NWP 12 or any other nationwide permit.

## 12. INCORPORATION OF COMMENTS BY REFERENCE

The Corps is charged with considering any and all information submitted to the offices identified in the relevant public notices, prior to determining final actions regarding permit applications. However, to this point, the Project offers a unique case given the heavy reliance on the FERC DEIS as the source of pertinent facts and analyses.

To therefore ensure the administrative record on the aforementioned permit applications contains all of the relevant comments from interested groups and individuals, the Commenters ***adopt and incorporate herein by reference*** all comments or information submitted by GRN, GreenLaw, Florida Clean Water Network, Kiokee-Flint Group, Sierra Club, Flint Riverkeeper, Chattahoochee Riverkeeper, WWALS Watershed Coalition, Inc., Environment Florida, Our Santa Fe River, Inc., and Earth Ethics, Inc. during the comment period on the aforementioned permits, during the period between the end of the comment period and the issuance of the Corps decision on the permits, and during the comment period on the FERC DEIS and FERC Final EIS.

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<sup>89</sup> This DEIS is referenced in the public notices. The notices states that the Corps is participating as a cooperating agency in the development of the FERC environmental impact statement. Instead of discussing existing conditions, proposed work, avoidance and minimization, compensatory mitigation, and endangered species, the public notice issued by the Jacksonville District requests that the interested public review the narratives within the FERC DEIS.

To briefly summarize, the Applicants have not demonstrated that their proposal is water-dependent, nor have they adequately assessed practicable alternatives. Arbitrarily narrowing the Project's purpose while also constraining its limits have allowed the Applicants to conduct less than the bare minimum regarding necessary regulatory requirements.

When numerous rivers, associated creeks, and over a thousand wetland acres are at risk of significant impact or destruction, combined with threats of sinkhole creation and aquifer contamination, it is evident that the Applicants have inadequately addressed the requirements of the Clean Water Act and implementing regulations.

The Commenters therefore urge the Corps to deny the permit applications in their present form, and should the Applicants choose to reapply, to require a full consideration of water dependency, avoidance, and adequate mitigation for unavoidable impacts; a full lifecycle analysis; adequate consideration of total impacts; and a Supplemental Environmental Impact Statement (SEIS) that includes more robust wetland and waterbody information, to gain fuller insight into the costs of this potential project.

In order to keep us and the public properly informed, we request notification of approvals/denials/changes to the Project proposal. This includes information related to all of the Applicants: Transco (SAM-2014-00238), Sabal Trail (SAM-2014-00655, SAS-2013-00942, SAJ-2013-03030) and FSC (SAJ-2013-03099).

We look forward to a written response.

For a healthy Gulf,

[sent via email and post]

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