

Authorization to Proceed (ATP)

Kimberly Helton Group
Abandoned Mine Land Reclamation Project (AMLRP)
based on Environmental Assessment (EA) & Categorical Exclusion (CX)
Morgan County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the August 1, 2011, request for ATP with construction activity on the Kimberly Helton Group AMLRP prepared by the Kentucky Department for Natural Resources (DNR), Division of Abandoned Mine Lands (DAML).

OSM found that the appropriate request documents were submitted and appear to support the need for the proposed construction activity. OSM confirmed that the required information for this project has been included in the AML Inventory System (AMLIS) for Problem Areas (PA) #s KY-003755-SGA and KY-003980-SGA. OSM has approved these PAs in the e-AMLIS for the new KY-003755-SGA and KY-003980-SGA on August 1, 2011.

OSM reviewed the Environmental Assessment (EA) prepared by DAML documenting the National Environmental Policy Act (NEPA) environmental review of this project at the Lexie Adams site. OSM determined that the EA adequately discusses the environmental issues and impacts associated with the construction of the project. Based on the analysis in the EA, I have determined that reclamation of this abandoned mine site would not have significant effects on the quality of the human environment. Therefore, I conclude that no environmental impact statement is necessary. As a result, I have signed the Finding of No Significant Impact (FONSI) for the Kimberly Helton Group AMLRP.

OSM reviewed the Categorical Exclusion Determination (CX) NEPA environmental review document prepared by the Division of Abandoned Mine Lands for the AMLRP project at the Kimberly Helton site. We have determined that the currently proposed activity requested is adequately considered in the approved CX NEPA environmental review document. In addition, the proposed activity conforms with exclusion criteria in 516 DM 2 and 13, does not involve any of the general exceptions in 516 DM 13.5(A)(33) or extraordinary circumstances listed in 516 DM 2, Appendix 2, and is excluded from further NEPA compliance. We have prepared and I have signed a CX for this project. We recommend that appropriate consideration be given to the recommendations and comments provided in the response letters from the consultation agencies. Please give special attention to the following recommendation (s).

- With the exception of trees directly impacted by the AML problem, there is no purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inch or greater diameter at breast height and at least 10 feet in height, during the period of April 1 to

breast height and at least 10 feet in height, during the period of April 1 to November 15, and provided the activity does not occur in "Known Indiana Bat Habitat".

- If tree cutting is required outside of the non-AML features, a habitat assessment or presence /absence survey will be required, and must be performed by a certified biologist.
- The Lexie Adams site requires a Water Quality Certification corresponding with the ACOE 404 Nationwide #13 permit.

Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual and my signature on this notification document, DAML is authorized to proceed with the construction activity for this project as described in the ATP request documents submitted by DAML for this project and further conditioned in this notification, and expend Federal funds in accordance with AML grant terms and conditions.



Joseph L. Blackburn, Field Office Director
OSM Lexington Field Office



Date

Memorandum

Date: August 16, 2011

To: Kimberly Helton Group Abandoned Mine Land (AML) Reclamation Project
File SubAccount# 99.119030000

From: Corey Miller, Program Specialist
Lexington Field Office (LFO), Program Support Branch (PSB)

Subject: Review of "Authorization to Proceed" (ATP) Request

The Branch recommends that the Field Office Director (FOD) authorize the State of Kentucky to proceed with the construction activity proposed on the Kimberly Helton Group Reclamation Project. The Branch prepared an ATP letter, and Finding of No Significant Impact (FONSI) and Categorical Exclusion (CX), for the FOD review. The Branch recommends that the FOD sign the both the CX, the FONSI, and the ATP in the space provided on each document. The original signed ATP letter will be sent to the Division of Abandoned Mine Lands (DAML) Director, along with associated approval documents consisting of a copy of the LFO review memorandum, CX and FONSI. A scanned copy of these authorization documents will be attached to an email to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request dated August 1, 2011, was received at LFO attached to an email on August 1, 2011. The ATP was processed within 11 working days; therefore, the customer service target of 14 working days to process an ATP was met. The ATP was processed in 15 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP was met.

The project area may be centrally located on the White Oak, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map(s) at 37° 52' 18.5" North Latitude and 83° 12' 59.2" West Longitude near the community of , Kentucky. The project location, AML problems to be addressed and proposed reclamation activity/cost are also available at <http://www.osmre.gov> in the AMLIS under PA#s KY-003755-SGA and KY-003980-SGA. The project involves reclamation of AML conditions consisting of Hazardous Water Bodies at two sites.

DAML did not designate a funding source under the budget category entitled Project Costs (Non-Water Supply) of any of Kentucky's AML Annual Construction Grants (ACG). In previous discussions, DNR indicated they would assign projects to a grant before they go to construction. Until a final AG and Location Code are assigned the LFO Project/Site ID # 99.119030000 was assigned to the project file for LFO tracking purposes until actual AG and Location Code numbers are assigned by DAML and can be inserted in the appropriate positions at the beginning and end of the LFO Project #. No bid advertisement, bid opening, or construction completion dates were provided by

DAML in the ATP request letter, therefore I inserted dates in the database based on the ATP request letter stating that these activities will occur as soon as possible. The following proposed dates were assigned and entered by LFO for database tracking purposes: Bid Advertisement Date was entered as September 01, 2011, Contract Award was entered as October 01, 2011, and Contract/Construction Completion was entered as May 01, 2012.

An office review of the request documents was conducted. The documents consisted of; a project description, a location map, a National Environmental Policy Act (NEPA) review documented in a CX and an EA with agency consultation response letters attached; and an Abandoned Mine Land Inventory System (AMLIS) Problem Area Description (PAD) summary and appropriate Priority Documentation Forms, with engineer cost estimates for PA# KY-003755-SGA and KY-003980-SGA.

A pre-approval field inspection of the proposed project was deemed unnecessary, since no unique characteristics warranting special field verification were noted and it wasn't selected for field verification under the EY 2012 Oversight Agreement.

The CX submitted for the construction activity at the Kimberly Helton site was reviewed and found to adequately document the environmental review of the construction activity within the current NEPA review guidance. The use of a CX is acceptable for the construction activity proposed in this project because all items on the CX have a response of "No." The project type does not meet any of the ten general exceptions, in 516 DM 13.5(B) (33) that would require preparation of an Environmental Assessment.

The project involves: no more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, noncommercial borrow or disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes to address more than one structure; and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation.

In addition, none of the twelve extraordinary circumstances listed in 516 DM 2, Appendix 2, exist on the project. Access to the pond embankments and the three collapsed portals will be by newly constructed temporary access roads. Much of the area near the ponds, the portals and remaining project area was previously disturbed by mining. Other areas have been impacted by residential/business development, and road construction. The temporary access roads will be constructed in the vicinity of the three portals to be reclaimed for drainage concerns, and the two ponds to be excavated. There are no unresolved issues or adverse effects requiring specialized mitigation.

The EA for the Lexie Adams site prepared by the State and the State's ATP request letter summarized the responses from agencies consulted for the NEPA review and discussed appropriate resolution of all their concerns and recommendations. The responses from agencies consulted for the NEPA review are summarized here for the Kimberly Helton site and in the FONSI for the Lexie Adams site prepared by OSM for the EA.

No significant impacts have been reported to this office or identified by the Branch. The Branch recommends that the Office of Surface Mining Reclamation and Enforcement (OSM) accept the CX and EA submitted by the Kentucky DAML.

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified no known federally threatened/endangered fish and wildlife within a 10 mile radius of the project area. They also identified no records of state listed species of concern within 1 mile radius of the project area. They recommended coordination with the U.S. Fish and Wildlife Service's Kentucky Field Office concerning their additional concerns for the Indiana bat within Kentucky.

The DAML staff biologist reviewed the Kentucky State Nature Preserves Commission's (KSNPC) BIOTICS database in lieu of further consultation. The findings are noted in the ATP request letter and an attached memorandum. DAML found that KSNPC data indicated no federally listed threatened or endangered species within a 10-mile radius and two species of State concern a 1-mile radius of the project. DAML listed and discussed these species in the biologist's memorandum, the EA, and their ATP request letter, finding that the noted species will not be impacted, since the project will not result in a significant negative impact to their critical habitat and/or suitable habitat does not exist within the project area to support the species. No reason was identified to dispute their determination.

The DAML Biologist also noted that the federally listed endangered Indiana bat, although not indicated to exist in the project vicinity; by his and the KDFWR reviews, would not be disturbed by the project. This is based on the fact that the project proposes to reclaim three portals that are collapsed precluding the use as bat habitat and proposes no disturbance of forested areas that could be utilized as roosting sites other than that area impacted by the AML problem that is creating a threat to the public; and in the event that any trees that represent potential Indiana bat habitat need to be removed, removal will only occur between October 15 and March 31 to avoid potential impacts to the Indiana bat.

In a meeting held in February 2010 between LFO, USFWS Kentucky Field Office (KFO) and DAML; Steve Hohmann, Director of DAML, offered to coordinate NEPA

consultation with the KFO of the USFWS in Frankfort, Kentucky, utilizing the agreements in the September 18, 2009, Memorandum of Agreement (MOA) signed by the OSM, LFO and USFWS, KFO. This document outlined the acceptable conditions that the projects potential impacts can have where the KFO will not need to be further consulted for comment. When the conditions within the agreement are present, processing of the ATP may proceed with the confidence that the biological environment is being protected. It was agreed to by all parties, acknowledging that LFO would retain the final review to determine if the NEPA documentation is complete.

After review of the ATP documents for this project, which included consultation with the KSNPC and the KDFWR, DAML determined that additional consultation with the USFWS is not required because the proposed project will not adversely affect a federally listed species (Federal Assistance Manual (FAM) Chapter 5-11-15, A. 3.)

The conditions in the MOA are met because:

- There will be no purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inch or greater diameter at breast height and at least 10 feet in height, during the period of April 1 to October 14, and the proposed activity does not occur in "Known Indiana Bat Habitat". If tree clearing is needed at the Lexie Adams site, a biological survey or a mist net survey will be required for work during the above time period.
- No caves or clifflines will be disturbed;
- The project proposes to reclaim no open mine portals, but three collapsed portals will be improved to allow for adequate drainage and remain closed.
- No purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within the Tradewater, lower Ohio, Upper Cumberland, Green, and Licking River basins.
- In order to avoid/reduce indirect impacts, erosion and sediment control plans will be implemented and monitored until permanent vegetation has become established in the above listed watersheds and all other watersheds as may be appropriate.

With the specifics of the proposal meeting the criteria set out in the MOA, OSM agrees with DAML's determination that the proposed project would not adversely impact the

species if these conditions are present. With this information, they found the requirements of Section 7 of the Endangered Species Act have been fulfilled.

The Office of State Archaeology found that their records did not indicate any known archaeological sites directly in the project area, no systematic archaeological survey has been conducted in the immediate project area, and past disturbance to the project area make it unlikely that archaeological sites will be preserved. The Kentucky Heritage Council and State Historic Preservation Officer (SHPO) was not contacted for this project, based upon the MOA signed on January 3, 2011. The Kentucky Heritage Council (KHC)/State Historic Preservation Officer (SHPO) and the DAML signed an agreement which identified the criteria to be used to determine which projects are exempt from review by the. The agreement defines exempt projects as: *“Routine and recurring projects whose impacts are foreseeable and cause little or no ground disturbance or that have a low probability of affecting known or unknown historic properties...”*

The agreement also includes a list of previous site activities that would substantially diminish the likelihood of affecting known or unknown historic sites or properties. They are listed below. They are listed below.

1. Activities that occur on previously disturbed land, including highwalls, refuse piles, slurry cells, subsidence areas, mine benches, mine portals with no constructed entry support, and any coal mining remains less than 50 years of age, including tipples, other structures, intact rail tracks, and mining equipment.
2. Roads and roadside ditches.
3. Areas disturbed by timber operations.
4. Areas disturbed by gas and oil well development.
5. Areas disturbed by residential and commercial development.
6. Areas with water flows from mine discharges.
7. Trenches excavated for waterline installation in previously disturbed soils.

According to the project description, all of the project area has been impacted by items 1, 2, and 5 in the above list; therefore, the project is exempt from further consultation with the KHC. This fulfills the responsibility to consult with the SHPO under the Section 106 review process. Neither agency recommended conducting archeological surveys/investigations or mitigation measures.

Environmental and Public Protection Cabinet (EPPC) (changed to the Environment and Energy Cabinet (EEC) in July 2008) Secretary order dated December 12, 2006, transferred authority for issuance of Clean Water Act (CWA) Section 401 Water Quality Certifications (WQC) associated with surface coal mine operations, to include any reclamation projects proposed by the DAML, to the Kentucky Department for Natural Resources (DNR) DNR. DNR assigned this responsibility to their Division of Mine Permits (DMP). The DMP further delegated this responsibility to DAML, with consultation as needed on a case by case basis. In addition, the DAML Director in a meeting held in February 2010, offered and agreed to coordinate consultation with the U.S. Army Corps of Engineers (COE) concerning CWA 404 (CWA) permits, as DAML had been doing without an agreement in the past. OSM LFO accepted DAML's offer to conduct this consultation.

Under a 2005 agreement with the DOW Floodplain Management Section (FMS) of the Water Resources Branch, DOW authorized DAML to apply DOW floodplain standards in lieu of a DOW review. In this agreement, DAML will directly consult with DOW if it appears a permit may be required. DAML has acquired a set of Federal Emergency Management Agency (FEMA) floodplain maps that include the project area.

As a result, DAML applies each responsible agency's criteria by agreement or physically consults with the DMP and DOW concerning CWA 401 WQC and floodplain permits to "Construct Across or Along a Stream", and with the COE concerning CWA 404 permits. This review has been centralized with DAML's Design Branch, whose staff has previous experience in this area and with the Kentucky DOW. DAML determined from the written description that the Kimberly Helton site does not impact a stream, wetland, or floodplain that requires a 401 WQC, a 404 CWA permit, or a DOW floodplain permit. DAML determined from the written description that the Lexie Adams site does impact a stream, wetland, or floodplain that requires a 401 WQC, a 404 CWA permit, or a DOW floodplain permit. The work at this site will be covered under an ACOE Nationwide #13 permit. And the WQC corresponding with the ACOE Nationwide #13 has also been issued for the Lexie Adams site. DAML further notes in their ATP letter that they will request a copy of all necessary permits prior to expending AML funds.

The comments from the Kentucky State Clearinghouse, Kentucky's "Single Point of Contact" (SPOC) pertaining to AML Non-Water Supply projects included no comments that affect this proposal. The information to update PA #'s KY-003755-SGA and KY-003980-SGA was submitted by DAML for OSM review in the e-AMLIS. This information reflects the changes in units and costs based upon the design and classification of the funded category. This was confirmed by LFO's review of the e-AMLIS database.

UNITED STATES DEPARTMENT OF THE INTERIOR
Office Of Surface Mining Reclamation And Enforcement
ABANDONED MINE LANDS
CATEGORICAL EXCLUSION CERTIFICATION AND DETERMINATION

State: Kentucky PA: KY 3755 SGA
Project Name: Kimberly Helton Group AML Reclamation Project
Project Description: Excavation of a sediment structure.

I. GENERAL EXCEPTIONS

Does the project type specifically require an EA in 516 DM 6, Appendix 8, as specified in Item I of the attached instructions? No Yes

II. DEPARTMENT OF INTERIOR EXCEPTIONS

Will the project have any of the following:

A significant adverse effect on public health or safety? No Yes

An adverse effect on any of the following unique geographic characteristics? If 'yes,' check the ones that apply: No Yes

- | | |
|---|--|
| <input type="checkbox"/> Parks (state, local or National) | <input type="checkbox"/> Wild or Scenic Rivers |
| <input type="checkbox"/> Recreation or Refuge Lands | <input type="checkbox"/> Wetlands |
| <input type="checkbox"/> Wilderness Areas | <input type="checkbox"/> Floodplains |
| <input type="checkbox"/> Ecologically Significant or Critical Areas | <input type="checkbox"/> Sole or Principal Drinking Water Aquifers |
| <input type="checkbox"/> Prime Farmlands | |

Highly controversial environmental effects? No Yes

Highly uncertain and potentially significant environmental effects or unique or unknown environmental risks? No Yes

A precedent for future action or a decision in principle about future actions with potentially significant environmental effects? No Yes

Directly related to other actions with individually insignificant but cumulatively significant environmental effects? No Yes

Adverse effects on properties listed or eligible for listing on the National Register of Historic Places? No Yes

Adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species? No Yes

Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Wetlands Protection) or The Fish and Wildlife Coordination Act?	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>
Threaten to violate a Federal, State, Tribal or local law or requirement imposed for the protection of the environment?	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>

III. RESOURCE IMPACT EXCEPTIONS

Are there any unresolved issues or adverse effects requiring specialized mitigation for any of the following resources? If yes, check the ones that apply. No Yes

<input type="checkbox"/> Topography	<input type="checkbox"/> Historic and Cultural
<input type="checkbox"/> Land Use (includes prime farmland)	<input type="checkbox"/> Recreation
<input type="checkbox"/> Soils	<input type="checkbox"/> Air Quality
<input type="checkbox"/> Vegetation (includes wetlands)	<input type="checkbox"/> Noise
<input type="checkbox"/> Hydrology	<input type="checkbox"/> Other (includes socio-economics)
<input type="checkbox"/> Fish and Wildlife	

IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP

V. RESPONSIBLE OFFICIAL CERTIFICATION

Signature: Steve Hohmann Date: 8/1/11

Name and Title: Steve Hohmann, Director
Division of Abandoned Mine Lands

VI. OSM DETERMINATION

This project conforms with the exclusion criteria in 516 Dm 6, Appendix 8, and is excluded from further NEPA compliance.

This project does not conform with the exclusion criteria in 516 DM 6, Appendix 8, and requires an environmental assessment.

Signature: Joseph L. Blackburn Date: 8/19/2011

Name and Title: Joseph L. Blackburn, Field Office Director

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Kimberly Helton Group
Abandoned Mine Lands (AML) Project
Morgan County, Kentucky

The Commonwealth of Kentucky submitted an Authorization to Proceed with Construction Activity (ATP) request for Federal AML grant funds to the Office of Surface Mining Reclamation and Enforcement (OSM) for this project. The ATP request consists of a request letter, Environmental Assessment (EA) with consultation correspondence, project description, location map, AML Inventory System (AMLIS) Problem Area (PA) Description forms, and other supporting enclosures. The project area may be centrally located on the White Oak, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map(s) at 37° 52' 18.5" North Latitude and 83° 12' 59.2" West Longitude near the community of , Kentucky. The project location, AML problems to be addressed and proposed reclamation activity/cost are also available at <http://www.osmre.gov> in the AMLIS under PA#s KY-003755-SGA and KY-003980-SGA. The project involves reclamation of AML conditions consisting of Hazardous Water Bodies at two sites.

OSM has thoroughly reviewed the EA prepared for this project by the Kentucky Division of Abandoned Mine Lands (DAML) and determined that it adequately discusses the environmental issues and impacts as required by the National Environmental Policy Act (NEPA) for OSM abandoned mine lands reclamation grant construction activities for authorization purposes.

Based on the analysis in the EA, I find that the construction activity performed under this project will not have significant impacts on the quality of the human environment. Therefore, I conclude that a detailed Environmental Impact Statement is unnecessary. My specific reasons are as follows:

The alternative to not fund the project would result in no favorable impacts and the adverse impacts would continue unabated. The long-term beneficial impact of the proposed action will result in the protection of the health, safety, general welfare, and property of the local citizens and other persons who may come in contact with these AML conditions. No long-term adverse impacts are anticipated. Short-term environmental impacts are limited to sedimentation, noise, and inconvenience to the local residents while the project is constructed. Sedimentation will be controlled by using silt control and prompt revegetation of the disturbed area. Noise, dust, and other inconveniences to local residents are unavoidable impacts related to construction activities.

All appropriate government agencies were consulted or their review criteria applied by agreement. As a result, it was determined that the project area does not contain or significantly affect threatened or endangered species or their habitat, jurisdictional

wetlands, cultural or historic values, prime and unique farmland values, recreational resources, or Class I air quality regions. To reduce impacts from the project, the recommendations made by the agencies consulted were considered and, as appropriate, incorporated into the EA prepared by DAML and/or as an element of their request for ATP with construction submitted for OSM authorization. The responses from agencies consulted for the National Environmental Policy Act (NEPA) review include the following comments and/or recommendations:

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified no known federally threatened/endangered fish and wildlife within a 10 mile radius of the project area. They also identified no records of state listed species of concern within 1 mile radius of the project area. They recommended coordination with the U.S. Fish and Wildlife Service's Kentucky Field Office concerning their additional concerns for the Indiana bat within Kentucky.

The DAML staff biologist reviewed the Kentucky State Nature Preserves Commission's (KSNPC) BIOTICS database in lieu of further consultation. The findings are noted in the ATP request letter and an attached memorandum. DAML found that KSNPC data indicated no federally listed threatened or endangered species within a 10-mile radius and two species of State concern a 1-mile radius of the project. DAML listed and discussed these species in the biologist's memorandum, the EA, and their ATP request letter, finding that the noted species will not be impacted, since the project will not result in a significant negative impact to their critical habitat and/or suitable habitat does not exist within the project area to support the species. No reason was identified to dispute their determination.

The DAML Biologist also noted that the federally listed endangered Indiana bat, although not indicated to exist in the project vicinity; by his and the KDFWR reviews, would not be disturbed by the project. This is based on the fact that the project proposes to reclaim three portals that are collapsed precluding the use as bat habitat and proposes no disturbance of forested areas that could be utilized as roosting sites other than that area impacted by the AML problem that is creating a threat to the public; and in the event that any trees that represent potential Indiana bat habitat need to be removed, removal will only occur between October 15 and March 31, to avoid potential impacts to the Indiana bat.

In a meeting held in February 2010 between LFO, USFWS Kentucky Field Office (KFO) and DAML; Steve Hohmann, Director of DAML, offered to coordinate NEPA consultation with the KFO of the USFWS in Frankfort, Kentucky, utilizing the agreements in the September 18, 2009, Memorandum of Agreement (MOA) signed by the OSM, LFO and USFWS, KFO. This document outlined the acceptable conditions that the projects potential impacts can have where the KFO will not need to be further consulted for comment. When the conditions within the agreement are present, processing of the ATP may proceed with the confidence that the biological environment is being protected. It was agreed to by all parties, acknowledging that LFO would retain the final review to determine if the NEPA documentation is complete.

After review of the ATP documents for this project, which included consultation with the KSNPC and the KDFWR, DAML determined that additional consultation with the USFWS is not required because the proposed project will not adversely affect a federally listed species (Federal Assistance Manual (FAM) Chapter 5-11-15, A. 3.)

The conditions in the MOA are met because:

- There will be no purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inch or greater diameter at breast height and at least 10 feet in height, during the period of April 1 to October 14, and the proposed activity does not occur in "Known Indiana Bat Habitat". If tree clearing is needed at the Lexie Adams site, a biological survey or a mist net survey will be required for work during the above time period.
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- No purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within the Tradewater, lower Ohio, Upper Cumberland, Green, and Licking River basins.
- In order to avoid/reduce indirect impacts, erosion and sediment control plans will be implemented and monitored until permanent vegetation has become established in the above listed watersheds and all other watersheds as may be appropriate.

With the specifics of the proposal meeting the criteria set out in the MOA, OSM agrees with DAML's determination that the proposed project would not adversely impact the species if these conditions are present. With this information, they found the requirements of Section 7 of the Endangered Species Act have been fulfilled.

The Office of State Archaeology found that their records did not indicate any known archaeological sites directly in the project area, no systematic archaeological survey has been conducted in the immediate project area, and past disturbance to the project area make it unlikely that archaeological sites will be preserved. The Kentucky Heritage Council and State Historic Preservation Officer (SHPO) was not contacted for this project, based upon the MOA signed on January 3, 2011. The Kentucky Heritage Council (KHC)/State Historic Preservation Officer (SHPO) and the DAML signed an agreement which identified the criteria to be used to determine which projects are exempt from review by the. The agreement defines exempt projects as:

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2. Roads and roadside ditches.
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5. Areas disturbed by residential and commercial development.
6. Areas with water flows from mine discharges.
7. Trenches excavated for waterline installation in previously disturbed soils.

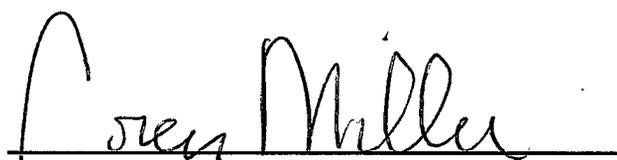
According to the project description, all of the project area has been impacted by items 1, 2, and 5 in the above list; therefore, the project is exempt from further consultation with the KHC. This fulfills the responsibility to consult with the SHPO under the Section 106 review process. Neither agency recommended conducting archeological surveys/investigations or mitigation measures.

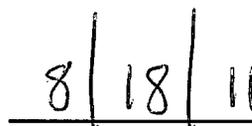
Environmental and Public Protection Cabinet (EPPC) (changed to the Environment and Energy Cabinet (EEC) in July 2008) Secretary order dated December 12, 2006, transferred authority for issuance of Clean Water Act (CWA) Section 401 Water Quality Certifications (WQC) associated with surface coal mine operations, to include any reclamation projects proposed by the DAML, to the Kentucky Department for Natural Resources (DNR) DNR. DNR assigned this responsibility to their Division of Mine Permits (DMP). The DMP further delegated this responsibility to DAML, with consultation as needed on a case by case basis. In addition, the DAML Director in a meeting held in February 2010, offered and agreed to coordinate consultation with the U.S. Army Corps of Engineers (COE) concerning CWA 404 (CWA) permits, as DAML had been doing without an agreement in the past. OSM LFO accepted DAML's offer to conduct this consultation.

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As a result, DAML applies each responsible agency's criteria by agreement or physically consults with the DMP and DOW concerning CWA 401 WQC and floodplain permits to “Construct Across or Along a Stream”, and with the COE concerning CWA

404 permits. This review has been centralized with DAML's Design Branch, whose staff has previous experience in this area and with the Kentucky DOW. DAML determined from the written description that the Kimberly Helton site does not impact a stream, wetland, or floodplain that requires a 401 WQC, a 404 CWA permit, or a DOW floodplain permit. DAML determined from the written description that the Lexie Adams site does impact a stream, wetland, or floodplain that requires a 401 WQC, a 404 CWA permit, or a DOW floodplain permit. The work at this site will be covered under an ACOE Nationwide #13 permit. And the WQC corresponding with the ACOE Nationwide #13 has also been issued for the Lexie Adams site. DAML further notes in their ATP letter that they will request a copy of all necessary permits prior to expending AML funds.


OSM Environmental Reviewer
AML Program Specialist


Date


Joseph L. Blackburn
Field Office Director


Date



Corey Miller <ctmsbc@gmail.com>

ATP Request Package for Kimberly Helton Group AML Reclamation Project (Morgan County)

Bill Overman <kyaml2008@gmail.com>

Mon, Aug 1, 2011 at 3:27 PM

To: scasselsr <scasselsr@gmail.com>, ctmsbc <ctmsbc@gmail.com>, osmlorenestes@gmail.com

Please see attached ATP request package for the Kimberly Helton Group AML Reclamation Project.

Respond accordingly.

If you have any questions or concerns ref. this package, please contact Bill Overman or Ryan Howell.

Thanks,

Vanna Rickwa
AML-Frankfort
[502-564-2141](tel:502-564-2141)



Kimberly Helton Group - ATP request 8.1.11.pdf
18187K



ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR NATURAL RESOURCES

Steven L. Beshear
Governor

Division of Abandoned Mine Lands

2521 Lawrenceburg Road
Frankfort, Kentucky 40601
www.ky.gov

Leonard K. Peters
Secretary

Carl E. Campbell
Commissioner

August 1, 2011

Mr. Joseph L. Blackburn, Director
U. S. Department of the Interior
Office of Surface Mining
Lexington Field Office
2675 Regency Road
Lexington, KY 40503

RE: Kimberly Helton Group AML Reclamation Project (Morgan County)

Dear Mr. Blackburn:

We are requesting "Authorization to Proceed" with site-specific construction activities on the referenced project, as described in the enclosed package. Enclosed are a project description, location map, and problem area description (PAD) supplemental forms, including a problem description and an engineer cost estimate, for the above-referenced project. The PAD's for problem area #'s KY 3755 SGA and KY 3980 SGA have been prepared and entered into the e-AMLIS by the division. An eligibility determination that finds the proposed project eligible for AML funding has been reviewed and signed by the Office of Legal Services. Support documents for the PAD's and the eligibility determination will be made available to you upon request. Also, enclosed are a Categorical Exclusion for the Kimberly Helton site and an Environmental Assessment for the Lexie Adams site, with three agency consultation response documents and two DAML consultation documents attached.

AML Program Development staff conducted a search of the Kentucky State Nature Preserves Commission (KSNPC) BIOTICS database. This search revealed two species of state concern, monitored by the KSNPC, are known to occur within one mile of the project site, and that no species listed as threatened or endangered, under the United States Endangered Species Act (USES), is known to exist within ten miles of the project site. The species noted in the search are the American Brook Lamprey (*Lampetra appendix* – KSNPC threatened) and the Eastern Spotted Skunk (*Spilogale putorius*). As described in the attached memo, dated July 6, 2011, these species should not be negatively impacted.

The entire state of Kentucky has been declared potential Indiana Bat (*Myotis sodalis*, USESA Endangered) habitat by the United States Fish and Wildlife Service (USFWS). Since no tree clearing, or portals with openings > 1 square foot, are associated with project construction at the Kimberly Helton Site, project construction should not negatively impact the Indiana Bat, regardless of the project timing. If trees greater than

Office of Surface Mining
August 1, 2011
Page Two

5" DBH need to be cleared, a biological assessment or a mist survey may be required if the clearing would not occur between October 15 and March 31 at the Lexie Adams Site. The project areas are not within any area held to be the "Known Habitat" of the Indiana bat by the USFWS.

A letter was sent to the DAML floodplain and hydrology staff specialist, soliciting their comments regarding this project. The letter requested comments regarding water quality certification (WQC) and floodplain permit issues. The response stated that no COE or floodplain permits would be required at either site. A WQC will be required at the Lexie Adams site, but not at the Kimberly Helton site. The other consulted agencies had no objections or concerns regarding this project.

Overall, the project is a Priority 1. The project is estimated to cost \$404,122.00, exclusive of "in-house" personnel costs associated with project administration, design, support, surveying, and bid activities. Completion of the project will not require the acquisition of any land and will not significantly affect the potential recovery of residual coal reserves at the sites. The principal benefits to be derived from the successful completion of the project are the elimination of abandoned mine lands problems as described in the attached project description.

Construction contract bidding, awarding, and subsequent construction completion will occur as soon as possible. Should you have any questions regarding this information, please contact us at 502/564-2141.

Sincerely,



Steve Hohmann, Director
Division of Abandoned Mine Lands

SH:BO:RH:vr

Enclosures

**Kimberly Helton Group
AML Reclamation Project
Morgan County**

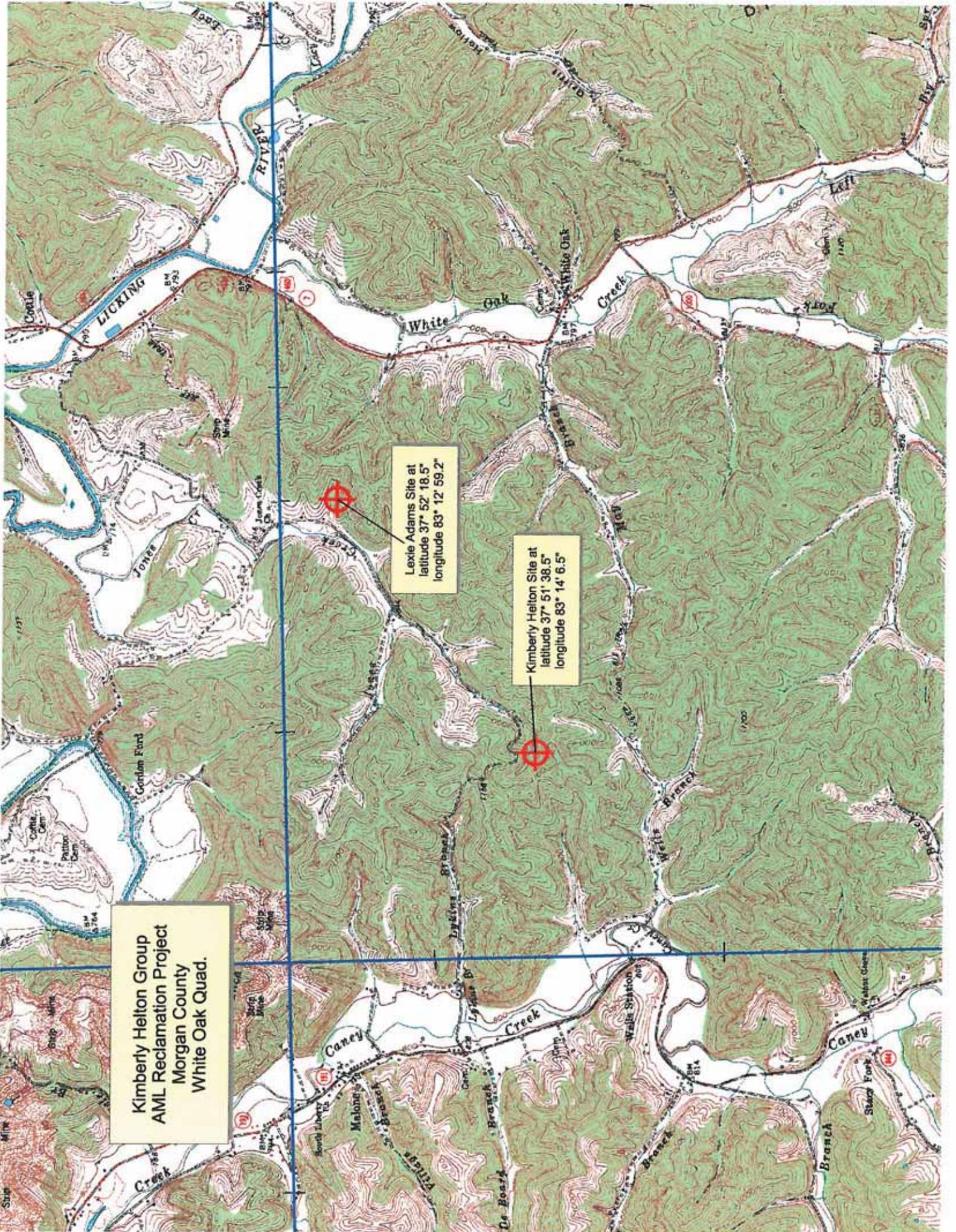
Project Description

The proposed project (7.0 acres total) consists of excavating two sediment pond embankments in Morgan County, and placing the excess soil material onsite. One of two project areas (Kimberly Helton Site) is located in the White Oak Quadrangle at 37° 51' 38.5" latitude and 83° 14' 06.5" longitude; and the second project area (Lexie Adams Site) is located in the White Oak Quadrangle at 37° 52' 18.5" latitude and 83° 12' 59.2" longitude.

Three collapsed mine entrances (portals) will be reopened for drainage improvements, then closed with rocks and soil from onsite near the Lexie Adams residence. In addition, new subdrains and culverts will carry drainage water to the drainage ditch below the three collapsed mine entrances. Ditches will be lined with rock, gabion baskets or erosion control blankets at both sites. Temporary access roads will be constructed at both sites to access the pond embankments and the three portals. Access to all other areas is preexisting or through residentially maintained yards. Trees over 5" DBH may need to be removed from the Lexie Adams site. No trees over 5" DBH are proposed to be removed at the Kimberly Helton site.

Construction disturbances will be kept to a minimum through the use of a stringently formulated sediment and erosion control program, consisting of hay-bale silt checks maintained throughout the life of the project, and prompt re-vegetation using agricultural limestone, fertilizer, seed, netting and mulch for the areas disturbed by the project.

The majority of the project sites have been previously disturbed by coal mining, residential construction, or road construction. No construction is proposed within a regulated floodplain. All necessary permits and/or variances will be procured prior to construction.



Kimberly Helton Group
AML Reclamation Project
Morgan County
White Oak Quad.

Lexie Adams Site at
latitude 37° 52' 18.5"
longitude 83° 12' 59.2"

Kimberly Helton Site at
latitude 37° 51' 38.5"
longitude 83° 14' 6.5"

UNITED STATES DEPARTMENT OF THE INTERIOR
Office Of Surface Mining Reclamation And Enforcement
ABANDONED MINE LANDS
CATEGORICAL EXCLUSION CERTIFICATION AND DETERMINATION

State: Kentucky PA: KY 3755 SGA
Project Name: Kimberly Helton Group AML Reclamation Project
Project Description: Excavation of a sediment structure.

I. GENERAL EXCEPTIONS

Does the project type specifically require an EA in 516 DM 6, Appendix 8, as specified in Item I of the attached instructions? No Yes

II. DEPARTMENT OF INTERIOR EXCEPTIONS

Will the project have any of the following:

A significant adverse effect on public health or safety? No Yes

An adverse effect on any of the following unique geographic characteristics? If 'yes,' check the ones that apply: No Yes

- | | |
|---|--|
| <input type="checkbox"/> Parks (state, local or National) | <input type="checkbox"/> Wild or Scenic Rivers |
| <input type="checkbox"/> Recreation or Refuge Lands | <input type="checkbox"/> Wetlands |
| <input type="checkbox"/> Wilderness Areas | <input type="checkbox"/> Floodplains |
| <input type="checkbox"/> Ecologically Significant or Critical Areas | <input type="checkbox"/> Sole or Principal Drinking Water Aquifers |
| <input type="checkbox"/> Prime Farmlands | |

Highly controversial environmental effects? No Yes

Highly uncertain and potentially significant environmental effects or unique or unknown environmental risks? No Yes

A precedent for future action or a decision in principle about future actions with potentially significant environmental effects? No Yes

Directly related to other actions with individually insignificant but cumulatively significant environmental effects? No Yes

Adverse effects on properties listed or eligible for listing on the National Register of Historic Places? No Yes

Adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species? No Yes

Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Wetlands Protection) or The Fish and Wildlife Coordination Act?

No Yes

Threaten to violate a Federal, State, Tribal or local law or requirement imposed for the protection of the environment?

No Yes

III. RESOURCE IMPACT EXCEPTIONS

Are there any unresolved issues or adverse effects requiring specialized mitigation for any of the following resources? If yes, check the ones that apply.

No Yes

- | | |
|---|---|
| <input type="checkbox"/> Topography | <input type="checkbox"/> Historic and Cultural |
| <input type="checkbox"/> Land Use (includes prime farmland) | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Soils | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Vegetation (includes wetlands) | <input type="checkbox"/> Noise |
| <input type="checkbox"/> Hydrology | <input type="checkbox"/> Other (includes socio-economics) |
| <input type="checkbox"/> Fish and Wildlife | |

IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP

V. RESPONSIBLE OFFICIAL CERTIFICATION

Signature: Steve Hohmann Date: 8/1/11

Name and Title: Steve Hohmann, Director
Division of Abandoned Mine Lands

VI. OSM DETERMINATION

This project conforms with the exclusion criteria in 516 Dm 6, Appendix 8, and is excluded from further NEPA compliance.

This project does not conform with the exclusion criteria in 516 DM 6, Appendix 8, and requires an environmental assessment.

Signature: _____ Date: _____

Name and Title: Joseph L. Blackburn, Field Office Director

ENVIRONMENTAL ASSESSMENT

Lexie Adams site (AMLIS – KY3980 E)

KIMBERLY HELTON GROUP AML RECLAMATION PROJECT

A. Description of the Proposed Action:

The project area is located in Morgan County, within the area shown on the White Oak, KY 7.5' USGS quadrangle map. The proposed project (7.0 acres total) consists of excavating two sediment pond embankments at two locations in Morgan County, and placing the excess soil material onsite at each location. Three collapsed mine entrances (portals) will be reopened for drainage improvements, and then closed with rocks and soil from onsite near the Lexie Adams residence. In addition, new subdrains and culverts will carry drainage water to the drainage ditch below the three collapsed mine entrances. The Kimberly Helton site is eligible for a Categorical Exclusion. This environmental assessment is required because a WQC is required for the Lexie Adams site.

B. Need for the Proposed Action:

Deep and surface mine operations have been conducted near the reported problem area during the 1970's. These operations have left three mine openings and one sediment structure with an unstable dam that is a threat to the Lexie Adams resident and anyone in the near vicinity.

C. Alternatives Considered:

C.1. Preferred Alternative:

The Kentucky Division of Abandoned Mine Lands proposes to excavate the sediment pond embankment and place excess soil material on site, properly close three mine openings, and install proper drainage controls.

C.2. No Action:

Should the Commonwealth take no action, the present threats to health and general safety from the unstable dam on the sediment pond will remain unchanged.

D. Affected Environment

D.1. General setting:

This project is located in Morgan County, in the White Oak Quadrangle. Primary land uses in the area include residential development, agricultural pasture and crop fields, coal mining and natural gas extraction, forested areas, and/or logging. Residential development is most often within the valley floors, and frequently within the 100 year floodplain boundaries. Coal has been mined throughout the watershed, in various seams, by underground, surface and auger methods. Additional information regarding the mining history for this project is contained in the eligibility determination.

D.2. Affected Resources:

The following agencies were consulted to identify resources that may occur in the project vicinity: Office of State Archaeology (OSA), Kentucky Heritage Council (KHC) and Kentucky Department of Fish and Wildlife Resources (KDFWR). Kentucky Division of Abandoned Mine Lands staff, who specialize in water quality issues, were consulted regarding the need for Water Quality Certifications and/or COE and floodplain permits. Replies from these agencies are attached. In addition, a database of occurrences of species which are monitored by the Kentucky State Nature Preserves Commission, and species listed as “threatened” or “endangered” under the Endangered Species Act, was consulted. A summary memorandum regarding the results of the database search is also attached. The actual data that resulted from that search is the confidential property of KSNPC, and may not be distributed.

E. Environmental Impacts of the Proposed Alternatives:

E.1. Preferred Alternative:

The following resources will not be significantly negatively impacted by the preferred reclamation scheme: historic/cultural, vegetation, fish and wildlife, agriculture, soils, recreation, air quality, noise, topography, and “other” (socioeconomic or political). The proposed project will not adversely impact low income or minority persons. As the federal United States Fish and Wildlife Service (USFWS) has declared the entirety of the Commonwealth of Kentucky to be the potential habitat of the Indiana bat [*Myotis sodalis* – listed as “endangered” under the United States Endangered Species Act (USESA)], fish and wildlife will be addressed. As DAML staff have indicated that a WCQ will be required for the Lexie Adams site, floodplain/hydrology issues will be addressed.

E.1.a. Fish and Wildlife:

AML Program Development staff conducted a search of the Kentucky State Nature Preserves Commission (KSNPC) BIOTICS database. This search revealed two species of state concern, monitored by the KSNPC, are known to occur within one mile of the project site, and that no species listed as threatened or endangered, under the United States Endangered Species Act (USES), is known to exist within ten miles of the project site. The species noted in the search are the American Brook Lamprey (*Lampetra appendix* – KSNPC threatened) and the Eastern Spotted Skunk (*Spilogale putorius*). As described in the attached memo, dated July 6, 2011, these species should not be negatively impacted.

As noted above, the USFWS had declared the entirety of the Commonwealth of Kentucky to be the potential habitat of the Indiana bat (*Myotis sodalis* – USESA Endangered). Indiana Bat habitat includes caves and/or cave-like structures, such as abandoned mines which are free of poisonous gases, which are utilized as winter hibernacula. Additionally trees, which are over 5” diameter at breast height, and display such features as exfoliating bark, split limbs, or hollowed out cavities, are utilized as summer roost and maternity colony sites.

The nearest recorded occurrence of the Indiana bat was approximately 10-20 miles from the Lexie Adams project site. Since no records of hibernacula are within 10 miles of any project area and maternity area records are within 5 miles for any project area, and since no maternity colonies or non-maternity records are within 2.5 miles from any project area, no special conditions would apply to the accepted tree removal period, a time at which bats are secured within their hibernacula (October 15- March 31). If trees greater than 5” DBH need to be cleared, a biological assessment or a mist survey may be required if the clearing would not occur between October 15 and March 31. Lastly, the project does not fall within the buffered, known-habitat area as described by USFWS.

E.1.b. Floodplain/Hydrology:

A formulated erosion, sediment, and drainage control plan will be implemented during construction, to minimize sedimentation of receiving streams. This plan includes hay-bale silt checks, silt fences, surface ditches and prompt revegetation of disturbed areas. The completed project will provide non-eroding drainage controls. The project will also provide a vigorous, complete cover of perennial vegetation, which will result in less stream sedimentation after project construction. All drainage controls will be implemented throughout the life of the project. Therefore, the hydrology of the project areas and downstream areas will suffer no long-term negative impacts due to construction of this project.

The database for water quality certification (WQC) and floodplain review researched by AML staff revealed that the project will require a WQC for the reclamation work at the Lexie Adams site. No COE or floodplain permits will be required. This division is applying for all necessary permits and construction will not start until they have been received.

E.1.c. Cumulative Environmental Impact:

No significant environmental impacts should occur as a result of construction of the preferred alternative in the watersheds where the proposed construction sites are located. While numerous AML reclamation projects have been constructed throughout the state, each has been found through the NEPA process to have no significant impact upon the environment. Therefore, as neither previous projects nor the proposed alternative will have any significant impact upon the environment within the watershed, there will be no cumulative impact as a result of the construction of this proposed AML project.

E.2. No Action Alternative:

E.2.a. Fish and Wildlife:

Taking no action would not cause any adverse impact to the fish and wildlife of the area.

E.2.b. Floodplain/Hydrology:

Taking no action would not cause any adverse impact to the floodplain or hydrology of the project area.

E.2.c. Cumulative:

Taking no action would result in the same conditions as currently exist – three mine openings that aren't properly closed and an unstable sediment structure that is a threat to the Lexie Adams resident and anyone in the vicinity should the dam breach.

F. Summary

The Commonwealth considered two reclamation options. First, properly close three mine openings, excavate the sediment pond embankment and place excess soil material on site, and install proper drainage controls. Second, take no action. The first option was selected, as it is the only option that properly reclaims the problems at the site..

G. Consultations:

The following agencies were consulted prior to preparation of this document:

1. Kentucky Department of Fish and Wildlife Resources.
2. Office of State Archaeology, University of Kentucky.
3. Kentucky Heritage Council.
4. Kentucky Division of Abandoned Mine Lands, Water Quality Specialists
5. Kentucky State Nature Preserves Commission, via its BIOTICS database.



W. S. Webb Museum of Anthropology
Office of State Archaeology
College of Arts and Sciences
211 Lafferty Hall
Lexington, KY 40506-0024
(859) 257-8208
Fax (859) 323-1968
www.uky.edu

June 29, 2011

Mr. Steve Hohmann, Director
Energy and Environment Cabinet
Department for Natural Resources
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, KY 40601

RE: Kimberly Helton Group AML Reclamation Project (Morgan County)

Dear Mr. Hohmann:

Concerning the above referenced project, I have reviewed the Office of State Archaeology files to determine if any prehistoric or historic archaeological sites are located in proximity to the proposed AML project. The following information is provided to assist in your decision to proceed with an Environmental Assessment or a Categorical Exclusion Determination for the project.

Our records indicate that there are no archaeological sites or surveys recorded within the immediate vicinity of the project area. While our records indicate that the project area has not been previously surveyed for archaeological remains, past disturbances to the area make it unlikely that archaeological sites will be preserved.

Sincerely,

A handwritten signature in blue ink that reads 'George M. Crothers'. The signature is written in a cursive style with a large, sweeping 'G' and 'C'.

(Christina A. Pappas for)
George M. Crothers, Ph.D.
Director

Howell, Ryan (EEC)

From: Hall, Samantha (EEC)
Sent: Monday, July 11, 2011 7:50 AM
To: Rickwa, Vanna (EEC)
Cc: Howell, Ryan (EEC); Ruebens, Jeff (EEC); Overman, Bill (EEC)
Subject: RE: Kimberly Helton Group AMLRP

Floodplain/Stream Construction Permit

Kimberly Helton Site: No permit is necessary.

Lexie Adams Site: No permit is necessary.

US Army Corps of Engineers Permit (ACOE)

Kimberly Helton Site: No permit is necessary.

Lexie Adams Site: The work is covered under the ACOE Nationwide 13 permit.

Water Quality Certification

Kimberly Helton Site: No permit is necessary.

Lexie Adams Site: The Division of Mine Permits has issued a WQC corresponding with the ACOE Nationwide 13.

From: Rickwa, Vanna (EEC)
Sent: Monday, June 27, 2011 2:00 PM
To: Hall, Samantha (EEC)
Cc: Howell, Ryan (EEC); Ruebens, Jeff (EEC)
Subject: Kimberly Helton Group AMLRP

Attached please find the project description and maps for the Kimberly Helton Group AML Project.

Please do a floodplain and WQC review to determine if there would be any issues reference this project.

Please notify Bill Overman, Ryan Howell, Jeff Ruebens, and myself of your response.

Thanks,

*Vanna Rickwa
Administrative Specialist III
Energy and Environment Cabinet
Department for Natural Resources
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, Kentucky 40601
502/564-2141, Ext. 130*



Bill D

STEVEN L. BESHEAR
GOVERNOR

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL**

MARCHETA SPARROW
SECRETARY

THE STATE HISTORIC PRESERVATION OFFICE
300 WASHINGTON STREET
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-7005
FAX (502) 564-5820
www.heritage.ky.gov

MARK DENNEN
EXECUTIVE DIRECTOR AND
STATE HISTORIC PRESERVATION OFFICER

July 8, 2011

Mr. Steve Hohmann
Department of Natural Resources
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, Kentucky 40601

RE: Kimberly Helton Group AML Reclamation Project (Morgan County)

Dear Mr. Hohmann,

Thank you for your letter concerning the above referenced project. Our review of this project indicates that an archaeological survey should not be required. In accordance with 36CFR Part 800.4 (d) of the Advisory Council's revised regulations our finding is that there should be No Historic Properties Affected within the undertaking's area of potential impact. Unless the project boundaries change, we have no further comments and the responsibility to consult with the Kentucky State Historic Preservation Officer under the Section 106 review process for archaeology is fulfilled for this project.

Should you have any questions, feel free to contact Wes Stoner of my staff at 502-564-7005 ext 151.

Sincerely,

Mark Dennen, Executive Director
Kentucky Heritage Council and
State Historic Preservation Officer

MD: wds



**KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES
TOURISM, ARTS, AND HERITAGE CABINET**

Steven L. Beshear
Governor

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Marcheta Sparrow
Secretary

Dr. Jonathan W. Gassett
Commissioner

1 July 2011

Steve Hohmann, Director
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, KY 40601

RE: Kimberly Helton Group AML Reclamation Project (Morgan County)

Dear Mr. Hohmann:

The Kentucky Department of Fish and Wildlife Resources (KDFWR) has received your request for information pertaining to the subject project. The Kentucky Fish and Wildlife Information System indicates that no federally or state-listed threatened/endangered species are known to occur within 10 miles and one mile, respectively, of the project sites. Please be aware that our database system is a dynamic one that only represents our current knowledge of various species distributions.

Erosion control measures, as mentioned in the project description, will need to be installed prior to construction and should be inspected and repaired regularly as needed. I hope this information is helpful to you, and if you have questions or require additional information, please call me at (502) 564-7109 extension 4453.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dan Stoelb".

Dan Stoelb
Wildlife Biologist

Cc: Environmental Section File

Memorandum

To: Kimberly Helton Group
AML Reclamation Project

From: *Keith B. Coleman*
Environmental Technician, AML Program Development Branch
Keith Coleman July 6, 2011

Through: *Bill Overman*
Manager, AML Program Development Branch
Bill Overman 7/7/11

RE: Results of Kentucky State Nature Preserves Commission (KSNPC)
BIOTICS Database Search

Date: July 6, 2011

On July 6, 2011, I conducted a search of the KSNPC database in order to determine if any species which are monitored by the KSNPC are known to occur within the near vicinity (1 mile radius) of the sites to be disturbed by this project, and if any federally listed threatened or endangered species are known to occur within the general area (10 mile radius) of the project sites. This search revealed that 2 species of state concern, monitored by the KSNPC, are known to occur within one mile, and that no species listed as threatened or endangered under the United States Endangered Species Act (USES) are known to occur within ten miles of the project sites.

The project plans (7.0 acres total) consist of the removal of two sediment ponds with failing embankment structures, the closure of 3 collapsed portals with onsite materials, and the installation of drainage control structures. Temporary access routes will be constructed to access the pond embankments and/or the collapsed portals. Trees over 5" DBH will likely need to be removed at the Lexie Adams site. No trees over 5" DBH will need to be removed at the Kimberly Helton site. No cave-like structures, which are currently open greater than 1 square foot, will be disturbed. In order to minimize sedimentation, a stringent erosion and sediment control plan including such measures as hay-bale silt checks, silt fences and prompt vegetation of all disturbed areas will be implemented. All permits and/or variances will be procured prior to construction.

The two KSNPC species found within 1 mile from the project site are:

American Brook Lamprey

(*Lampetra appendix* – KSNPC Threatened, 1983 Record, Poor Viability)

Eastern Spotted Skunk

(*Spilogale putorius* – KSNPC Special Concern, Pre-1993 Record, Morgan County)

The **American Brook Lamprey** is a non-parasitic species, considered to be derived from a parasitic ancestor. Juveniles are filter feeders for at least 5 years prior to metamorphosis into sexually mature adults. Larvae prefer pools and backwater areas with sediment in which they can bury themselves. Following larval transformation, adults do not feed and die soon after spawning. Spawning occurs in fast moving riffles of high to medium-gradient streams over rocky substrates. Neither of the two sediment ponds are located within mapped blue-line stream channels. Release of the pond water, prior to the embankment removal, should be conducted so the release is gradual, and the flow may be adequately filtered by AML sediment and erosion control structures. Due to the fact that the current condition of the pond embankments poses the risk of catastrophic failure, the net result, with respect to aquatic life within the immediate area, is that the threat of sudden, drastic increases in turbidity will be removed and that the stable drainage contours will provide better quality water after the graded, vegetated slopes have been established. Provided the above conditions are met, no negative impacts should result upon the American Brook Lamprey as a result of project-related construction.

The **Eastern Spotted Skunk** inhabits wooded areas, especially along cliff-lines. Breeding occurs in late winter, and the den site is usually within a crevice at the base of a cliff, or within areas containing large boulders. The record is a county-wide record which was documented prior to 1993. No areas containing cliff-lines or large boulders will be impacted by project-related construction; therefore, no negative impacts should result upon the Eastern Spotted Skunk due to project-related construction.

The US Fish and Wildlife Service (USFWS) has declared the whole of the state of Kentucky to be the habitat of the **Indiana Bat** (*Myotis sodalis* – USESA Endangered). This species day roosts and establishes maternity colonies in trees with exfoliating bark or splits in their trunks and larger limbs, and hibernates in caves and other similar underground cavities. The above search of the KSNPC BIOTICS database revealed no records of this species within 10 miles of any of the project sites. Six records document

the species within 10-20 miles from the project sites. Of the six records within 10-20 miles from the project sites, one is of a hibernaculum (16.4, 16.9 miles NW), one is a maternity colony (18.6, 18.7 miles NW), two are summer mist-net records, one is a post-summer mist-net record, and one is a transient roost site record. Since *no* records of hibernacula are within 10 miles of any project area and *no* maternity area records are within 5 miles from any project area, and since *no* maternity colonies or non-maternity records are within 2.5 miles from any project area, no special conditions would apply to the accepted tree removal period, a time at which bats are secured within their hibernacula (October 15 – March 31).

Since no tree clearing, or portals with openings > 1square foot, are associated with project construction at the Kimberly Helton Site, project-related construction should not negatively impact the Indiana Bat, regardless of the project timing. If trees greater than 5" DBH need to be cleared, a biological assessment or a mist net survey may be required if the clearing would not occur between October 15 and March 31, (Lexie Adams Site). Lastly, the project does not fall within "*known habitat*" of the Indiana Bat, as described by USFWS. Adherence to these best management practices should prevent any negative impacts upon the Indiana Bat.