

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Hazard Multi-Site Phase I Abandoned Mine Lands (AML) Water Supply Project Perry County, Kentucky

The Commonwealth of Kentucky has submitted an Authorization to Proceed (ATP) with construction activity for the Hazard Multi-Site Phase I Abandoned Mine Lands (AML) Water Supply Project. The proposal requests the Office of Surface Mining Reclamation and Enforcement (OSM) for authorization to utilize Federal AML grant funds to 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 (compiled from the e-AMLIS database), and other supporting enclosures. The project area may be centrally located on the Hazard North & Krypton, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map(s) most centrally located by booster station #2 at 37° 05' 35.86" North Latitude and 83° 03' 44.15" West Longitude near the community of Combs, Kentucky. The project location, AML problems to be addressed and proposed reclamation activity/cost are also available at <http://amlis.osmre.gov/Default.aspx> in the AMLIS under PA# KY-004210-SGA. The project involves reclamation of AML conditions consisting of potable water for human consumption at several 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 or state listed fish and wildlife within a 10 mile radius of the project area. They state in their June 21, 2012 response letter that based on the location and nature of the project, the KDFWR does not anticipate impacts to the listed species or any associated critical habitat. They recommended that eight erosion control measures and stream mitigation measures, as mentioned in the proposal, are to be implemented and maintained periodically. These measures are listed within the June 21, 2012 response letter.

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 three federally listed threatened or endangered species within a 10-mile radius and six species of State concern within a 1-mile radius of the project. DAML discussed each 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 USFWS Kentucky Field Office (KFO) and DAML have entered into an agreement regarding the potential impacts to the Indiana bat from this project. Memorandum of Agreement (MOA) signed by the USFWS, KFO and the City of Hazard addresses the concern that the project would result in the direct loss of .40 acres of forested habitat. This encompasses .30 acres of "Known Swarming Habitat (P1/P2)" habitat and .10 acres of Known Maternity and Swarming (P1/P2) habitat. This document outlined the arrangement for any incidental take of the Indiana bat, which is addressed by a payment being made in the amount of \$3,045.00 to the Indiana Bat Conservation Fund. Both parties agreed to this and the agreement was signed on July 2012. With the specifics of the proposal meeting the criteria set out in the MOA, OSM agrees with

DAML's determination that the proposed project has addressed any adverse impacts to 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.

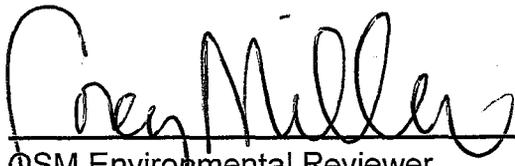
The Office of State Archaeology found that some systematic archaeological surveys have been conducted in the project area and archaeological sites have been identified. The National Register status of these sites has not been determined. However, the proposed lines pass through areas that have high potential for archaeological remains. They recommended coordination with the State Historic Preservation Officer (SHPO) before beginning construction activities.

The Kentucky Heritage Council (KHC) and State Historic Preservation Officer (SHPO) was consulted for the current construction activity, since this project activity falls within areas deemed to have a high potential for archaeological remains. The water line locations were not surveyed as they were determined to fall in areas that have been previously disturbed, and are not likely to have preserved any remains. The three storage tanks and the three booster stations were surveyed. On July 17, 2012 the SHPO responded stating that no new prehistoric archaeological sites were recorded in this investigation. 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.

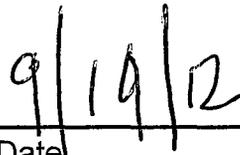
Environmental and Public Protection Cabinet (EPPC) (changed to the Environment and Energy Cabinet (EEC) in July 2008) Secretary order dated December 12, 2006, transferred authority for issuance of Clean Water Act (CWA) Section 401 Water Quality Certifications (WQC) associated with surface coal mine operations, 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.

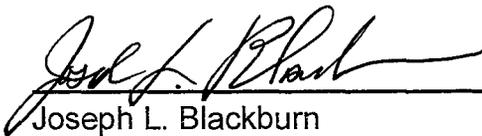
As a result, DAML applies each responsible agency's criteria by agreement or physically consults with the DMP and DOW concerning CWA 401 WQC and floodplain permits to "Construct Across or Along a Stream", and with the COE concerning CWA 404 permits. This review has been centralized with DAML's Design Branch, whose staff has previous experience in this area and with the Kentucky DOW. DAML determined from the written description that the project does not impact a stream or wetland that requires a 401 WQC or a 404 CWA permit. Since the stream crossings may be constructed in or near the floodplain, a floodplain permit is required.



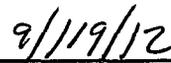
OSM Environmental Reviewer
AML Program Specialist



Date



Joseph L. Blackburn
Field Office Director



Date