Authorization to Proceed (ATP)

Jerry Collins Group Abandoned Mine Land (AML) Reclamation Project
based on Finding of No Significant Impact (FONSI)
Floyd County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the December 20, 2010, request for ATP with construction activity on the Jerry Collins Group AML Reclamation project, prepared by the Division of Abandoned Mine Lands (DAML) of the Kentucky Department for Natural Resources. OSM found that the appropriate request documents were submitted and appear to support the need for the proposed construction activity.

The information to enter new AMLIS Problem Area (PA) #(#s) (Jerry Collins Site) KY-004050-SGA; (Bobby Slone Site) KY-004052-SGA; (Georgia Layne Site) KY-004051-SGA was submitted by DAML for OSM review and approval with the ATP request package. The AMLIS system is not operative at this time for input of new data by DAML or the OSM LFO. DAML noted that they will input this new PA data when the AMLIS is once again operative. I have signed an approval form for the PA’s in accordance with OSM Directive AML-1-2 (June 22, 2007).

OSM thoroughly reviewed the environmental assessment (EA) prepared by DAML for this project. 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.

Please ensure compliance with the following provisions in the ATP request documents noted here for emphasis or the authorization of this project is further conditioned as follows:

• The DAML project request notes that no tree removal is proposed outside the AML problem area, but that if tree removal is needed outside the AML problem area that it will only take place between October 15 and March 31, or a habitat assessment or a presence/absence survey will be required. Please note that tree removal restrictions pertain to the 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.

• The DAML project request notes that a Kentucky Division of Water (DOW) 401 Water Quality Certification, a U.S. Army Corps of Engineers (COE) 404 Permit, and a floodplain encroachment permit to “Construct Across or Along a Stream” must be applied for and obtained prior to initiation of construction on the Georgia Layne Site. Construction activity should follow the conditions within these authorizations.
Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual and my signature on this ATP notification document, DAML is authorized to proceed with 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 1/7/11
FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Jerry Collins Group
Abandoned Mine Lands (AML) Project
Floyd 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 Martin, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map at 37° 31' 28" North Latitude and 82° 45' 13" West Longitude in central Floyd County, 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 (Jerry Collins Site) KY-004050-SGA; (Bobby Slone Site) KY-004052-SGA; (Georgia Layne Site) KY-004051-SGA. The project involves reclamation activities at three sites totaling 9.5 acres to address AML conditions consisting of reclaiming clogged stream lands, dangerous slides and the removal of hazardous equipment and facilities.

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 one known federally threatened/endangered fish and wildlife, the Indiana bat, within a 10 mile radius of the project area. They identified no records of state listed species of concern within 1 mile radius of the project area. KDFWR did provide a list of recommendations to reduce potential negative impacts to general aquatic resources that can occur in the project area. DAML considered all of the suggestions and incorporated their suggestions as appropriate.

The designated DAML biological review staff reviewed the Kentucky State Nature Preserves Commission's (KSNPC) endangered, threatened and special concern reference databases in lieu of direct consultation. The findings are noted in the ATP request letter and an attached biological review memorandum. DAML found that KSNPC data indicated one federally listed threatened or endangered species, the Indiana bat, within a 10-mile radius and two species of State concern, Scrub Oak and Scarlet Kingsnake, known to occur within a 1-mile radius of the project.

DAML listed and discussed each species noted above, as they related to each site in the project, in the biological review 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, and the only tree removal is of trees within the AML problem area at the Georgia Layne site. No reason was identified to dispute their determination.

In a meeting held in February 2010 between the OSM Lexington Field Office (LFO), Kentucky Field Office (KFO) in Frankfort, Kentucky, of the U.S. Fish and Wildlife Service (USFWS) and DAML; Steve Hohmann, Director of DAML, offered to coordinate NEPA consultation with the KFO, 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 contacted for comment. When the Jerry
conditions within the agreement are present, processing of the ATP may proceed with the confidence that the biological environment is being protected and provisions of Section 7 of the Endangered Species Act have been fulfilled. 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 project activities meet the following conditions noted in the MOA to ensure protection of federally listed species; specifically the Indiana bat, Gray bat, and freshwater fishes and mussels:

- With the exception of trees directly impacted by the AML problem, the project does not include the 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 15;

- Except for the Bobby Slone Site, which involves no tree removal or portal closures or any activity known to impact Indiana bats, the project activity does not occur in "Known Indiana Bat Habitat" identified on the map attached to the MOA and the GIS files provided by USFWS KFO on November 2, 2009, used to generate the map (a copy of a section of the MOA GIS layer map on which the project coordinates are located is attached to the DAML biological review memorandum as proof of this determination);

- No caves or clifflines will be disturbed;

- No mine portal closures are included in this project except two mine portals/shafts that are collapsed or are too small (less than one foot in diameter) and, thus, preclude their use as bat habitat, project work only involves onsite grading;

- 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.
The DAML ATP request letter and biological review memorandum also note that if any tree removal is later found to be necessary between October 15 and March 31, a habitat assessment or mist-net survey will be required.

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 Jerry Collins or Georgia Layne site areas of the project and no systematic archaeological survey has been conducted in these areas. However, there has been an archaeological site recorded very near the Bobby Slone site and they have insufficient information to determine the likelihood that archaeological sites may be present or potentially impacted by construction at that site. They recommended coordination with the State Historic Preservation Officer (SHPO) on the Bobby Slone site before beginning construction activities. The Kentucky Heritage Council and State Historic Preservation Officer (SHPO) determined that the proposed project will not impact any National Register Properties or sites, no properties currently listed in the National Register of Historic Places are within the project areas, do not need additional documentation of structures to be demolished at the Georgia Layne site and an archaeological survey will not be necessary for any of the sites, which 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 to coordinate consultation with the U.S. Army Corps of Engineers (COE) concerning CWA 404 (CWA) permits. DAML also consults with DMP and the Kentucky Division of Water (DOW) concerning floodplain permits to “Construct Across or Along a Stream”.

DAML determined from the written description that the Jerry Collins and Bobby Slone sites of the project do not impact a stream or wetland that requires a CWA 401 WQC, a COE CWA 404 permit, or a DOW floodplain permit to “Construct Across or Along a
Stream. However, they did determine that all of these authorizations are needed for the Georgia Layne site. DAML's ATP request letter and EA note that construction will not start on this site until these authorizations have been received. This will be made a condition of the OSM ATP for the project.

OSM Environmental Reviewer
AML Program Specialist

Joseph L. Blackburn
Field Office Director

Date
1/7/11

Date
1/7/11
Memorandum

Date: January 7, 2011

To: Jerry Collins Group Abandoned Mine Land (AML) Reclamation Project
File ID# 99.087030000

From: Steve Cassel, Sr., AML 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 Jerry Collins Group AML Reclamation Project. The Branch prepared an ATP notice, Problem Area (PA) approval forms, as required by OSM Directive AML-1-2 (signed June 22, 2007), and Finding of No Significant Impact (FONSI) for the FOD review. The Branch recommends that the FOD sign the FONSI, PA approval forms, and ATP notice in the space provided on each document. The original signed ATP notice will be filed in the LFO AML project construction files and a copy will be sent to the Division of Abandoned Mine Lands (DAML) Director attached to a transmittal email, with an attachment of associated approval documents, consisting of a copy of the LFO review memorandum, FONSI, and PA approval forms. Additionally, the transmittal email will be copied to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request dated December 20, 2010, was received at LFO on December 20, 2010. The ATP was processed within 12 working days; therefore, the customer service target of 14 working days to process an ATP has been met. The ATP was processed in 18 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP has been met.

DAML did not designate a funding source for the construction work under the budget category entitled Project Costs (Non-Water Supply) of any of Kentucky’s AML Annual Construction Grants (AG). In previous discussions, DNR indicated they would assign projects to a grant before they go to construction. The LFO Project/Site ID #99.087030000 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 specific 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 February 1, 2010, Contract Award was entered as March 1, 2011, and Contract/Construction Completion was entered as March 1, 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 an Environmental Assessment (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#s (Jerry Collins Site) KY-004050-SGA; (Bobby Slone Site) KY-004052-SGA; (Georgia Layne Site) KY-004051-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 2011 Oversight Agreement.

The EA submitted for the construction activity at the 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 would have been acceptable for the construction activity proposed on the Jerry Collins and Bobby Slone sites in this project, however DAML determined an EA was necessary for the Georgia Layne site, so an EA was prepared for the entire project. 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 EA submitted by the Kentucky DAML. The EA prepared by the State and the State's ATP request letter and attachments 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 in the FONSI prepared by OSM for the EA.

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 (Jerry Collins Site) KY-004050-SGA; (Bobby Slone Site) KY-004052-SGA; (Georgia Layne Site) KY-004051-SGA, was prepared by DAML for OSM review with the ATP request. Currently the AMLIS is not operational for data input. DAML states in their ATP request letter that they will input this information at a later date in the future when the AMLIS is once again operational. PA #s (Jerry Collins Site) KY-004050-SGA; (Bobby Slone Site) KY-004052-SGA; (Georgia Layne Site) KY-004051-SGA represent a "new Problem Area" requiring FOD approval under OSM Directive AML-1-2 (signed June 22, 2007). A FOD approval form was prepared for each PA and submitted for FOD signature. The signed forms will be kept on file at LFO and a copy of each will be transmitted to DAML as an enclosure with the ATP letter.

The Area Office AML staff will be notified of this project authorization by cc'd copy of the email notifying DAML of this ATP or email of an updated State AML Project List after the authorization of this project and availability of the project documents on the LFO State AML reclamation project tracking database.
Jerry Collins Group  
Abandoned Mine Lands  
Reclamation Project  
ENVIRONMENTAL ASSESSMENT

A. Description of the Proposed Action:

The Kentucky Division of Abandoned Mine Lands (AML) proposes to reclaim 9.5 acres at three different sites in Floyd County. This environmental assessment is required to address the stabilization of eroded stream channel banks at the Georgia Layne site, which will require a WQC, and floodplain and COE permits. If left unabated, this and other abandoned mine problems are threats to human health and safety. Three state agencies and two state agency databases were consulted; the agency response letters, a statement regarding floodplain and water issues and a memorandum regarding the KSNPC database search are enclosed.

B. Need for the Proposed Action:

The clogged stream lands and eroded stream channel banks are environmental threats and sources of stream pollution in the Rough and Tough and Molly Cabin creek watersheds. The proposed project will mitigate problems rated as Priority 1. The problems are further described in the description for national AML inventory problem area #s KY 4050-SGA (Jerry Collins site); # KY 4051-SGA (Georgia Layne site); and KY # 4052-SGA (Bobby Slone site).

C. Alternatives Considered:

- Reclaim the environmental damages and hazards to human safety, caused by pre-law mining features.
- Take no action, allowing the human health hazards to continue.

C.1. Preferred Alternative:

The proposed project (9.5 acres total) consists of reclaiming clogged stream lands, dangerous slides and the removal of hazardous equipment and facilities. The clogged stream lands are adjacent to the Bobby Slone site. After the clogged stream lands are reclaimed a nearly flat open space will be left that will likely be used for additional residential yard.

At the Georgia Layne site, all unconsolidated mine spoil materials excavated from the project area will be placed in the designated waste area. All runoff from the project
area will be controlled by shallow depressions/dugouts, berms, straw bales and silt fences. The coal refuse removal area includes approximately 500 feet of the southwestern banks of the Molly Cabin/Stephens Branches. No equipment will operate in the waters of the Molly Cabin/Stephens Branch, and the Molly Cabin/Stephen Branch stream channels will not be excavated. Hazardous equipment facilities will also be removed.

Reclamation at the Jerry Collins site includes the construction of a reinforced concrete wall, the construction of an approximately 3,400 feet long road that connects to an existing mine road at the ridge above the site, and the installation of drainage controls. The landowner recently had the project area selectively logged. No off-site borrow or waste areas are proposed. Construction disturbances will be kept to a minimum, top soiled (or alternate top soiled), seeded and mulched as soon as practical.

C.2. No Action:

Should the Commonwealth take no action, people could be injured and residences and property could be damaged from abandoned mine land problems.

D. Affected Environment:

D.1. General Setting:

The predominant land uses in the vicinity are residential, commercial (small businesses), agricultural, and forestland. Second growth, unmanaged upland hardwood forest, coal mines and natural gas wells are on the steep slopes.

D.2. Affected Resources:

The following agencies and databases were consulted to identify resources that may occur in the project vicinity:

- Kentucky Department of Fish and Wildlife Resources (KDFWR)
- Kentucky Heritage Council (KHC)
- Kentucky Office of State Archaeology (OSA)
- Kentucky Division of Water (DOW) floodplain database
- Kentucky State Nature Preserves Commission (KSNPC) database

Replies from these agencies and AML staff are attached.

E. Environmental Impacts of the Proposed Alternative:

The following resources will not be significantly impacted by reclamation activities using the preferred alternative:

- Historic/Cultural Resources
The proposed project will not adversely impact low income or minority persons. Due to the Georgia Layne site requiring a WQC, and floodplain and COE permits for reconstructing and improving the stream channel flow, hydrology will be discussed. Due to the possible occurrence of three monitored species within the project area, fish and wildlife/plants will be discussed.

E.1.a. 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, road culverts, surface ditches and prompt re-vegetation 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.

AML staff hydrology specialists provide oversight regarding Water Quality Certifications and floodplain permits associated with projects. A review of the project sites indicate a WQC and floodplain and COE permits will be required at the Georgia Layne site. This division is applying for all necessary permits and construction will not start until they have been received.

E.1.b. Fish and Wildlife/Plants

The KSNPC database researched by AML staff revealed that one federally listed threatened and endangered species is known to exist within ten miles of the project sites, and two species of state concern monitored by the KSNPC occur within a 1-mile radius of the project sites. The species noted in the search are the:

- Indiana Bat *(Myotis sodalis* – federal Endangered)
- Scrub Oak *(Quercus ilicifolia* – KSNPC Historical Record)
- Scarlet Kingsnake *(Lampropeltis triangulum elapsoides* – Historical Record)
None of the proposed construction activities at any of the three sites involves direct disturbance of any perennial or intermittent streams. Stringent erosion and sediment controls implemented throughout the life of the project will prevent significant amounts of sediment from escaping work areas and entering area streams. The Scrub Oak is a scrubby oak which inhabits dry slopes. The defined range is throughout the northeastern United States, extending southwest through the Virginias and North Carolina. The single record of this species, associated with the project sites, is a historical record which has been drawn as the entire Martin quadrangle. The record site has not been located in recent years. Since the only tree removal associated with the project is within unstable, impacted areas, project related construction should not negatively impact the species. The Scarlet Kingsnake is a mild-tempered, non-venomous snake which inhabits soft soils of upland oak and oak-hickory or oak-pine forests. It is also fossorial and generally only seen above ground at night or after heavy rains. Since the reclamation sites associated with this project consist of unstable saturated areas and/or are within lowland areas, this species should not be impacted by this project. The Indiana Bat roosts and establishes maternity colonies in trees with hollowed out cavities, exfoliating bark or splits in their trunks and larger limbs, and hibernates in caves and other similar underground cavities. Since no records of hibernacula are within 10 miles of any project area, no maternity area records are within 5 miles from any project area, and 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). The Bobby Slone site falls within a “known habitat” area which has been buffered by USFWS. No tree removal or portal closures are associated with the Bobby Slone site. Therefore, none of these species will be negatively impacted by these project activities.

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. Hydrology:

Existing hydrologic conditions would remain unchanged with the no-action alternative.

E.2.b. Fish and Wildlife/Plants:
Existing plant and animal species would remain unchanged with the no-action alternative.

F. **Summary:**

The Commonwealth considered two reclamation options:

1. Reclaim health hazards from pre-law mining.
2. Take no action.

The first option was selected due to its overall advantages.

G. **Consultations:**

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

- Kentucky Department of Fish and Wildlife Resources (KDFWR)
- Kentucky Heritage Council (KHC)
- Kentucky Office of State Archaeology (OSA)
- Kentucky Division of Water (DOW) floodplain database
- Kentucky State Nature Preserves Commission (KSNPC) database

H. **Preparers/Reviewers:**

Kentucky Division of Abandoned Mine Lands Personnel:

- Jesse K. Moore, Environmental Technologist III
- Keith Coleman, Staff Biologist
- Ryan Howell, Environmental Control Supervisor
- Bill Overman, Program Development Branch Manager

Steve Hohmann, Director  Date