

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Copeland/Duck Hollow and River Caney
Abandoned Mine Lands (AML) Water Supply Project
Breathitt County, Kentucky

The Kentucky Department for Natural Resources (DNR) Division of Abandoned Mine Land (DAML) 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 Canoe and Haddix, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map(s) at 37° 27' 22" North Latitude and 83° 22' 35" West Longitude near the community of Copeland, Kentucky. The project location, problems to be addressed, and proposed reclamation activity/cost are also available at <http://amlis.osmre.gov/Default.aspx> in the AMLIS under PA#s KY-004198-SGA, KY-004199-SGA and KY-004200-SGA. The project involves reclamation of AML conditions consisting of polluted water for human consumption at two sites.

LFO has thoroughly reviewed the EA prepared for this project by the (DAML) and determined that it adequately discusses the environmental issues and impacts under the National Environmental Policy Act (NEPA).

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, LFO concludes that a detailed Environmental Impact Statement (EIS) is unnecessary. The specific reasons include:

1. The alternative to not fund the project would result in no favorable impacts and the adverse impacts would continue unabated.
2. 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.
3. No long-term adverse impacts are anticipated.

Minor or temporary impacts include 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 located 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 that the erosion control measures, as mentioned in the proposal, should be implemented and maintained periodically. Additionally, the KDFWR recommends eight other measures in their comment letter dated March 6, 2012 that address construction in and along a stream and tree removal.

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 one federally listed threatened or endangered species within a 10-mile radius and two species of State concern within a 1-mile radius of the project. DAML listed and 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 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 disturb no mine portals, cliffs, or caves, 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. DAML also states that, since no tree clearing or activities associated with deep mine portals are associated with the project; construction activities should not be negatively impact the Indiana Bat, regardless of the timing.

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".
- No caves or clifflines will be disturbed;
- The project proposes to reclaim no open mine portals/shafts;
- 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 (OSA) states that their records indicate that no surveys or sites have been recorded in the project areas. However, the proposed lines pass through areas that have potential for archaeological sites. The OSA also states that they do not have sufficient information to determine whether archaeological sites will be impacted by the project. They recommended coordination with the State Historic Preservation Officer (SHPO) before beginning construction activities.

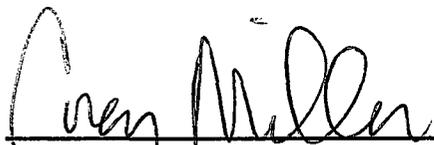
The Kentucky Heritage Council (KHC)/State Historic Preservation Officer (SHPO) was contacted for this project and the SHPO responded on April 24, 2012. Their response is summarized as follows:

The cultural resource survey documents one archaeological site (15Br257) and three historic structures (BR28-Br30). Due to the paucity of artifacts and the lack of subsurface archaeological features the authors recommend that the portion of 15Br257 located within the project area is not eligible for listing on the National Register of Historic Places (NRHP) and no further work is needed. Based on the information provided and our review of the application, additional archaeological or cultural historical surveys should not be necessary for the proposed project area. We concur that the proposed undertaking should have No Effect to archaeological resources. 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.

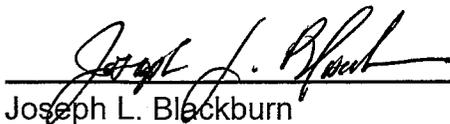
Under a 2005 agreement with the DOW Floodplain Management Section (FMS) of the Water Resources Branch, DOW authorized DAML to apply DOW floodplain standards in lieu of a DOW review. In this agreement, DAML will directly consult with DOW if it appears a permit may be required. DAML has acquired a set 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, wetland, or floodplain that requires a 401 WQC, a 404 CWA permit, or a DOW floodplain permit. This is the case only if the stream crossings for this project are subsurface in nature and do not disturb the stream channel. DAML's ATP request letter and EA note that the engineers or contractors retained for this project are required to obtain all necessary permits. 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

5/4/12
Date



Joseph L. Blackburn
Field Office Director

5/04/2012
Date