

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Deane Area Phase I Amendment Abandoned Mine Lands (AML) Water Supply Project Letcher County, Kentucky

The Commonwealth of Kentucky has submitted an Authorization to Proceed (ATP) with construction activity for the Deane Area Phase I Amendment 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 Jenkins West, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map(s) at 37° 14' 30" North Latitude and 82° 44' 34" West Longitude near the community of Deane, 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# KY-004201-SGA. The project involves reclamation of AML conditions consisting of coal mine impacted water (polluted water for human consumption, PWHC) at several sites within the watershed.

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 species, the Blackside Dace, 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 eight items for the protection of the streams and trees in the area; they are:

- Avoidance of impacts to intermittent and perennial streams if it is feasible.
- Channel changes located within the project area should incorporate natural stream channel design.
- Development/excavation during low flow period to minimize disturbances.
- Proper placement of erosion control structures below highly disturbed areas to minimize entry of silt to the stream.
- Replanting of disturbed areas after construction, including reforestation of stream banks, with native vegetation for soil stabilization and enhancement of fish and wildlife populations.
- Avoid impacts to forested areas if possible. If impacts cannot be avoided we recommend reforestation of common areas with native trees to promote use by various species of wildlife.
- Return all disturbed in-stream habitat to stable condition upon completion of construction in the area.
- Preservation of any tree canopy overhanging the stream.

They also recommended that the erosion control measures, as mentioned in the proposal, should be implemented and maintained periodically throughout the life of the project.

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 one species of State concern, but within a 1-mile radius of the project.

DAML listed and discussed the 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.

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 cliffines will be disturbed;
- The project proposes to reclaim no 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.

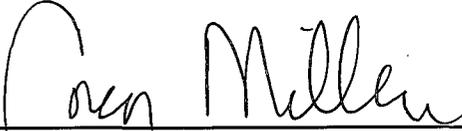
With the specifics of the proposal meeting the criteria set out in the MOA, OSM agrees with DAML's determination that the proposed project would not adversely impact the species if these conditions are present. With this information, they found the requirements of Section 7 of the Endangered Species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

The Office of State Archaeology 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 (KHC) and State Historic Preservation Officer (SHPO) were not consulted further for the current construction activity, since this project activity falls under the "exempt projects" provisions in the Programmatic Agreement that DAML signed on January 3, 2011, with the KHC. Exempt projects are "Routine and recurring projects whose impacts [under Section 106 of the National Historic Preservation Act] are "foreseeable and cause little or no ground disturbance or that have a low probability of affecting known or unknown historic properties ... " Under the agreement KHC requires no consultation beyond DAML's determination that the project is an exempt project.

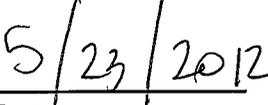
Environmental and Public Protection Cabinet (EPPC) (changed to the Environment and Energy Cabinet (EEC) in July 2008) Secretary order dated December 12, 2006, transferred authority for issuance of Clean Water Act (CWA) Section 401 Water Quality Certifications (WQC) associated with surface coal mine operations, to include any reclamation projects proposed by the DAML, to the Kentucky Department of Natural Resources (DNR). DNR assigned this responsibility to their Division of Mine Permits (DMP). The DMP determined from the written description that the project does not impact a stream or wetland that requires a specific 401 Water Quality Certification.

DMP also noted that the project information indicates that there will be no stream impact resulting from the placement of dredged or fill material within the waters of the Commonwealth. Therefore, a specific 404 Clean Water Act (CWA) permit is not needed based upon DMP and DAML application of criteria provided by the U.S. Army Corps of Engineers (COE).

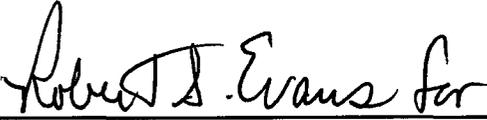
The DOW Floodplain Management Section (FMS) of the Water Resources Branch determined that a stream construction permit will not be required. This is due to the requirement in the proposal that all waterline stream crossings will be completed by subsurface methods. In DAML's ATP request letter and EA, DAML further notes that they will request a copy of all necessary permits prior to expending AML funds.



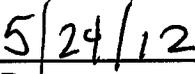
OSM Environmental Reviewer
AML Program Specialist



Date



Joseph L. Blackburn
Field Office Director



Date