

Authorization to Proceed (ATP)

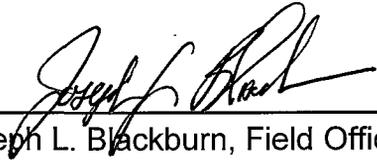
Leslie County Multi Sites Phase I Abandoned Mine Land (AML) Water Supply Project based on Environmental Assessment (EA) Leslie County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the December 3, 2012 request for ATP with construction activity on the Leslie County Multi Sites Phase I AML Water Supply Project prepared by the Kentucky Department for Natural Resources, 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-004226-SGA.

OSM reviewed the EA prepared by DAML documenting the National Environmental Policy Act (NEPA) environmental review of 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. As a result, I have signed the Finding of No Significant Impact (FONSI) for the Leslie County Multi Sites Phase I AML Water Supply Project. Please give special attention to the following recommendation (s).

- The State Historic Preservation Officer states that an archaeological or cultural historic survey for this site is not necessary, however, should the project plans change, or should additional information become available regarding cultural resources or citizens concerns about cultural resources, please submit that information to our office as additional consultation may be warranted.
- According to the review by the DAML staff, no 401 WQC or a 404 CWA permit is required, as long as the stream crossings are constructed using the subsurface installation methods. Should this change, DAML is required to apply for all appropriate permits.
- A floodplain permit is required for this project. Please supply OSM with a copy of this permit for our records.
- Please follow all appropriate provisions included in the DAML Erosion and Sediment Control Best Management Practices (BMP) Plan guidance document throughout the construction activity at this site.

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

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Leslie County Multi Sites Phase I Abandoned Mine Land (AML) Water Supply Project Leslie County, Kentucky

The Commonwealth of Kentucky has submitted an Authorization to Proceed (ATP) with construction activity for the Leslie County Multi Sites Phase I Abandoned Mine Land (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 Hyden East, Leatherwood, and Helton, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map(s) at 36° 56' 36" North Latitude and 83° 23' 27" West Longitude near the community of Mozelle, 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-004226-SGA.. The project involves reclamation of AML conditions consisting of polluted 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) used the Kentucky Fish and Wildlife Information System (KFWIS) to determine the potential to impact protected species. The KFWIS indicated that portions of the project fall within the known overlapping summer maternity and fall swarming habitat for the federally endangered Indiana bat. Trees that are to be cut should only occur during the months of November 15 – March 31 to reduce impacts to the Indiana bat. They recommended that the erosion control measures, as mentioned in the proposal, should be implemented and maintained periodically. They also recommend other measures for portions of the project that cross intermittent or perennial streams. The portions of the project of concern are:

- Development/excavation in streams should be done during low flow periods to minimize disturbances.
- When crossing a stream, the pipe should be laid perpendicular to the stream bank to minimize the direct impact to the streambed.
- Lastly, the KDFWR recommends that all instream disturbances be returned to a stable condition upon completion of the stream pipeline crossing.

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 eight species of State concern within a 1-mile radius of the project. DAML discussed each species in the biologist's memorandum and referenced the document in the 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. In appropriate areas, the techniques used to install the waterline(s) at stream crossings and approach floodplain areas were altered in consideration of the species in the area. No reason was identified to dispute their determination.

Only the Persimmons Fork section of the project falls with the buffer areas for habitat protection for the Indiana bat. This section has no trees to be cleared over 5" dbh or disturbances of portals or any other cave-like structures are planned. The DAML Biologist also noted that the other sections of the water supply are not in the protected habitat area, but the federally listed endangered Indiana bat, 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 November 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 clifflines 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 indicate that no systematic archaeological survey has been conducted in the immediate project area. They also state that one site has not had its eligibility for inclusion on the National Register determined. Although much of the project impacts previously disturbed areas, very little of the project area has been surveyed. Since they have insufficient information to determine the likelihood that archaeological sites may be present or potentially impacted by construction of the water supply, they recommended coordination with the State Historic Preservation Officer (SHPO) before beginning construction activities.

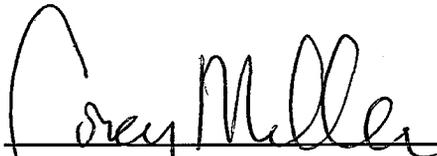
The Kentucky Heritage Council (KHC) and State Historic Preservation Officer (SHPO) was consulted, and they responded on November 13, 2012 for the current construction activity. The SHPO states that based on the information provided that a survey will not be necessary for the proposed permit area. This 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, as long as the stream crossings are constructed using the subsurface installation methods. It has been determined that a floodplain permit will be required for this project. 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

12/17/2012
Date



Joseph L. Blackburn
Field Office Director

12/17/2012
Date

Memorandum

Date: December 17, 2012

To: Leslie County Multi Site Phase 1 Abandoned Mine Land (AML) Water Supply Project File SubAccount# 99.224040000

From: Corey Miller, 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 Leslie County Multi Site Phase 1 Abandoned Mine Land (AML) Water Supply Project with a construction budget of \$ 1,800,000.00. The Branch prepared an ATP letter and Finding of No Significant Impact (FONSI) for the FOD review. The Branch recommends that the FOD sign the FONSI, and 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 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 December 3, 2012, was received at LFO attached to an email on December 3, 2012. The ATP was processed within 10 working days; therefore, the customer service target of 14 working days to process an ATP was met. The ATP was processed in 14 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 Hyden East, Leatherwood, and Helton, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map(s) at 36° 56' 36" North Latitude and 83° 23' 27" West Longitude near the community of Mozelle, 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-004226-SGA.. The project involves reclamation of AML conditions consisting of polluted water for human consumption at several 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 Grant's (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 # 99.224040000 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 January 1, 2013, Contract Award was entered as January 15, 2013, and Contract/Construction Completion was entered as January 1, 2014.

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 Form's, with engineer cost estimates for PA# KY-004226-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 2013 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.

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 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 Water Supply projects included no comments that affect this proposal. The information to update PA # KY-004226-SGA was directly input into the AMLIS by the DAML. The signed form will be kept on file at LFO and a copy will be transmitted to DAML as an enclosure with their copy of the ATP letter.