



United States Department of the Interior

FISH AND WILDLIFE SERVICE



West Virginia Field Office
Post Office Box 1278
Elkins, West Virginia 26241

JUL 29 1999

Colonel Dana Robertson
District Engineer
U.S. Army Corps of Engineers
Attn: Regulatory Branch
502 Eighth Street
Huntington, West Virginia 24701-2070

Re: Public Notice No.199800436-2, Hobet Mining, Inc., Spruce # 1 Mine, Right Fork of Seng Camp Creek, Pigeonroost Branch. Oldhouse Branch, White Oak Branch

Dear Colonel Robertson:

The U.S. Fish and Wildlife Service has reviewed the information provided in the June 29, 1999 Public Notice for the subject mountaintop removal/valley fill coal mine affecting four headwater streams in the Spruce Fork of Little Coal River, near Blair, Logan County, West Virginia. The proposed surface mine will disturb approximately 3,196 acres and will involve discharges of permanent fill materials into five stream valleys. The stream lengths of stream channel that would be eliminated from valley fills and temporarily affected by sediment ponds are unspecified. Of the 3,196 acres that would be disturbed, 2,823 acres are for mineral removal, 364 acres are for fill areas, roads, and other non-mineral removal areas, and 10 acres would be for drainage control structures. Fill #1 would fill 491.2 acres in the Right Fork of Seng Camp Creek watershed, fill #2 would fill 1099.9 acres of Pigeonroost Branch watershed, fill #3 would fill 118 acres of Pigeonroost Branch watershed, fill #4 would fill 529.1 acres of Oldhouse Branch watershed, and fill #5 would fill 665.4 acres of White Oak Branch watershed, totaling 2903.6 acres of fill.

These comments are provided pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661-667-3) and to be used in your determination of compliance with the Clean Water Act 404(b)(1) Guidelines (40 CFR 230), and in your public interest review (33 CFR 320.4) as they relate to the protection of fish and wildlife resources.

Fish and Wildlife Service biologists from the Pennsylvania Field Office conducted an aquatic life survey on three of the valley streams proposed for filling on July 27 and 28, 1998. An interagency team of biologists from the Environmental Protection Agency, Geological

Survey/Biological Resources Division and Fish and Wildlife Service conducted a reconnaissance-level terrestrial habitat survey of the Pigeonroost Branch and Oldhouse Branch valleys on October 27, 1998. The final report from both field investigations is enclosed. These reports represent the Service's evaluation of the quality of terrestrial and aquatic habitats that would be affected by the proposed project.

After a field survey of benthic fauna in the Pigeonroost Branch watershed, Dr. Ben Stout (Stout, 1999) concluded that Pigeonroost Branch appeared to be one of the highest quality streams in the region. He also stated that it is among the best, if not the best, stream in the region based on the fact that it has more diverse macroinvertebrate fauna than EPA's regional reference stream. Regional reference streams represent the "best attainable current conditions" in the ecoregion.

Valley fills have already eliminated 69.5 miles of headwater streams in the Spruce Fork watershed (USFWS, West Virginia Field Office, data on file). The Spruce #1 mine would destroy unspecified stream lengths in five valleys, resulting in additional cumulative impacts. No study has been done on what impacts this level of valley/stream elimination will have on the overall biological productivity of Spruce Fork. Several researchers at the recent "Value of Headwater Streams" workshop held in relation to the mountaintop mining/valley fill Environmental Impact Statement in State College, Pennsylvania, stated that the biological productivity of the small streams, such as those that would be filled under this proposal, are vital to the integrity of larger waterbodies downstream - such as Spruce Fork and Little Coal River.

Valley slopes are an integral part of the forest/stream ecosystem, providing nutrients and energy to headwater streams. Headwater streams provide important habitat to the macroinvertebrate communities which support fish and amphibian which, in turn, provide food for higher level predators. The health and balance of the aquatic system downstream is dependent on headwater streams. Valley coves also provide important habitats for various mammals, amphibians, and reptiles.

Filling of the valley streams as proposed would also result in the permanent loss of hardwood forest, upslope of streams. The State of West Virginia and the adjacent highland and valley portions of Maryland constitute one of the most important areas for neotropical migratory birds in the Northeast region of the U.S. This recognition is based on the high concentrations of highly ranked and significantly declining species occurring in this area. For example, some of the highest concentrations of Scarlet Tanager, Worm-eating Warbler, Louisiana Waterthrush, and Wood Thrush occur here. Ten to 20% of the entire population of these species are supported in West Virginia. In addition, West Virginia supports an estimated 27% and 20%, respectively, of the entire populations of Cerulean Warbler and Golden-winged Warbler, both of which are very high priority species for the Northeast Region, based on their relative concentrations throughout their ranges and their rates of decline. The Fish and Wildlife Service has also designated the Cerulean Warbler a Species of Concern in West Virginia. The proposed valley fills would eliminate important habitat for these birds. In the Northeast, cerulean warbler breeding areas are "often in floodplains or other mesic conditions, and are typified by large, mature trees and closed

or semi-open forest canopies" (Hamel, 1992), a description which matches our observations of the project area. This specific habitat requirement is unlikely to be met by the reclaimed surface mine if this project proceeds as proposed.

The Public Notice for the project states the overburden removed during the mining operation necessitates the construction of five valley fill disposal sites and five sediment control structures. The Service does not believe that the applicant has demonstrated avoidance and minimization of fill to the maximum extent practicable, as required by the 404(b)(1) Guidelines. Minimization of impacts could include reduction in project size to the maximum extent feasible, i.e. reduction of extent of, and/or depth of coal seams mined and additional upland disposal of overburden material, either as back-stacking in the mined area or onto previously disturbed mined areas or valley fills. At a minimum, the project should be reconfigured to conform to the Office of Surface Mining's recently developed Approximate Original Contour Model/Excess Spoil Disposal Model process.

The compensatory mitigation plan provided in the Public Notice states "The applicant has agreed to compensate the state at a rate of \$200,000 per acre for permanent impacts to water resources and \$20,000 per acre per five-year term for temporary impacts to water resources due to mining operations. . . . The applicant would define and present to the WVDEP, stream restoration projects, stream enhancement projects or other in-kind aquatic habitat enhancement projects in accordance with the current Mitigation Compensation Guideline ratios. Should the applicant not identify stream enhancement, or stream reconstruction or restoring or aquatic habitat improvements, monetary payment (or) suitable transfer of existing mitigation credits, would be made. . . ". The applicant's proposal does not indicate on-site mitigation that will compensate fully all project impacts. Of particular concern is the proposed option for monetary compensation should enhancement projects not be identified by the applicant. In addition, the mitigation proposal offers compensation only for impacts to the streams that would be destroyed, and does not account for the permanent loss of the hardwood forest upslope of the streams that would be a direct consequence of valley filling. The Service believes that a mitigation plan must address to the maximum extent practicable the permanent loss of the functional values of headwater streams and the terrestrial biological productivity from the valley fills. Compensatory mitigation projects should be conducted within the same watershed (preferably in Spruce Fork or Little Coal River) and serve to measurably improve water quality and macroinvertebrate fauna.

In conclusion, the Service recommends that the application for permit, as presently proposed, not be authorized. Instead, we concur with the applicant's recent request to the Corps that an Environmental Impact Statement (EIS) be prepared. (We will indicate by separate letter whether or not we will be a cooperating agency for this EIS).

We appreciate the opportunity to comment on this proposal. If you have any questions regarding these comments, please have your staff contact Mr. Dan Ramsey of my staff, or contact me directly at 304-636-6586.

Sincerely,

Jeffrey K. Towner

Jeffrey K. Towner
Field Supervisor

Enclosure

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To: Mike Gheem
Of: Huntington District COE
Pages: 5, including this cover sheet.
Date: July 29, 1999

From the desk of...

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