



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

West Virginia Field Office  
694 Beverly Pike  
Elkins, West Virginia 26241

December 22, 2006



FILE COPY

Ms. Ginger Mullins  
U.S. Army Corps of Engineers  
Operation and Readiness Division  
Regulatory Branch  
502 Eighth Street  
Huntington, West Virginia 25701-2070

Re: Mingo Logan Coal Company, Spruce No. 1 Mine PN 199800436-3, Logan County, WV

Dear Ms. Mullins:

The U.S. Fish and Wildlife Service (Service) has reviewed the revised Compensatory Mitigation Plan (CMP) dated November 2006 for the proposal by Mingo Logan Coal Company to conduct mining activities in waters of the United States in conjunction with the Spruce No. 1 Mine in Logan County, West Virginia. The applicant seeks authorization to construct, operate and reclaim the Spruce No. 1 Mine, a surface bituminous coal mine. The proposed project would include construction of six valley fills, six drainage control ponds, one erosion protection zone, an office and warehouse area, mine through areas in streams, and eliminate one palustrine emergent wetland. The project would involve placement of dredged and fill material into approximately 8.95 acres of waters of the U.S., including 0.12 acre of emergent wetland, 10,630 linear feet (1.83 acres) of ephemeral streams, 32,491 linear feet (6.81 acres) of intermittent streams, and 825 linear feet (0.019 acre) of perennial streams. These comments are provided pursuant to the Fish and Wildlife Coordination Act of 1956 (16 U.S.C. 742a *et seq.*) and to be used in your determination of compliance with the Clean Water Act 404(b)(1) Guidelines (40 CFR 23), and in your public interest review (33 CFR 320.4) as they relate to protection of fish and wildlife resources.

The Service has received electronic mail correspondence from the U.S. Army Corps of Engineers, Huntington District (Corps), dated December 8, 2006, indicating that a cumulative impact assessment and restoration plan for the Little Coal River watershed is being discussed between the Environmental Protection Agency (EPA) and Arch Coal, Inc., the parent company of Mingo Logan Coal Company. The assessment and plan are being discussed through EPA's Conflict Prevention and Resolution Center. The Service promotes such efforts to develop natural resource assessments and mitigation plans at the landscape level. We are very interested in the results of the discussions and would like to offer our natural resource expertise to assist with the discussions.

Until the watershed impact assessment and restoration package is prepared, the applicant has proposed to increase the amount of mitigation by developing more defined channels in 26,625 linear feet of existing non-jurisdictional drainage ways. The drainage ways will be constructed utilizing natural stream design techniques. As the Service has stated in previous letters, streams are complex systems whose hydrogeomorphic behavior and biotic recovery are not easily predicted. On-site erosion control structures and drainage ways are designed strictly with a physical component and lack a replacement of stream

function. Such structures are designed to convey water and, thus, cannot replace the streams' lost ecological services. The resources that are being lost are healthy, biologically functional streams. Erosion control structures and drainage ways lack the groundwater-derived and nutrient-rich base flow; temperature regimes; habitat diversity; gradient; floodplains; connectivity to downstream ecosystems; and other features of natural streams. In addition, the Service is unaware of any research that has determined that creating streams from drainage control structures was successful at replacing the functional aspects of metabolism of biota, particularly the primary producers, within the running waters as well as the dynamics of biogeochemical cycling. A project of the magnitude of Spruce No. 1 should incorporate ecologically meaningful, and successful, mitigation.

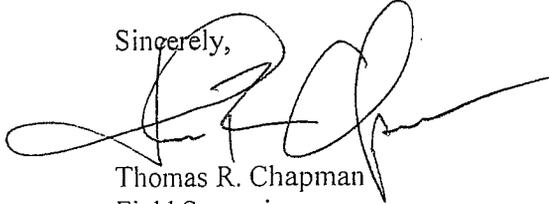
Based on the proposed CMP, and discussions with the applicant, the Corps has drafted Special Conditions to be included in the permit. Special Condition No. 21 mentions that the applicant will use the stream function assessment protocol that is currently under development by the agencies. The applicant will use the protocol to determine success of the proposed compensatory mitigation. The biological, chemical and physical data required for the protocol will be collected, as described in Special Conditions Nos. 12 and 13, and applied once the protocol is finalized.

The Service has determined that although the applicant has made an attempt at increasing the amount of mitigation, the mitigation described in the CMP alone will not compensate for the loss of headwater streams. The Service recommends that the Corps withhold issuance of a permit until the details of the cumulative impact assessment and restoration plan have been released and the federal agencies have had the opportunity to review the CMP, cumulative impact assessment and restoration plan as an entire package.

The Service appreciates the Corps responsiveness in addressing our natural resource concerns. We also appreciate the effort by the Corps to develop and implement a stream assessment protocol that measures stream function, not just physical parameters. The Service will continue to be available to assist the Corps and EPA in the development of the stream assessment protocol and any compensatory mitigation protocol.

The Service requests a copy of your final decision regarding this permit application. If you have any questions regarding these comments, please contact Christy Johnson-Hughes at (304)636-6586 or at the letterhead address.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Chapman', with a long horizontal flourish extending to the right.

Thomas R. Chapman  
Field Supervisor

Ms. Ginger Mullins  
December 22, 2006

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cc:

OSM – Calhoun

EPA - Ryder

WVDEP – Quick

WVDNR – Anderson

Project File

Reader File

ES:WVFO:CJohnson-Hughes:skd:12/22/2006

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