



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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



December 16, 2010

In Reply Refer To:
FWS/R5/ES

Mr. Peter Silva
Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Mr. Silva:

The U.S. Fish and Wildlife Service (Service) has reviewed the September 24, 2010, Recommended Determination of the U.S. Environmental Protection Agency (EPA) Region III Pursuant to Section 404(c) of the Clean Water Act Concerning the Spruce No. 1 Mine, Logan County, West Virginia. The mine, if constructed as currently authorized by Department of the Army Permit No. 119800436-3 (Section 10: Coal River), would bury approximately 7.48 miles of streams and impact 2,278 acres of predominantly-forested habitat. We provide the following response pursuant to the requirements of the Fish and Wildlife Coordination Act of 1956 (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) and the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

The Service has consistently expressed concerns regarding the loss of headwater streams and adjacent riparian and terrestrial habitats associated with the proposed mine, as well as its likely impacts on downstream water quality, aquatic organisms, and the terrestrial and aquatic wildlife that depend on those resources. We remain concerned that impacts to the high-quality headwater streams that would be affected by the mine have not been accurately described or quantified. Therefore, the currently-proposed mitigation for these impacts is unlikely to adequately compensate for the loss and degradation of these streams, their biological productivity and diversity, or their ecological functions. We also believe construction of the mine, as currently authorized, would exacerbate water quality problems in the Spruce Fork Sub-watershed, Little Coal River Watershed, and the Coal River Sub-basin, each of which is already degraded from past mining.

We understand that EPA Headquarters is currently reviewing the EPA Region III recommendation to withdraw the specification of Pigeonroost Branch, Oldhouse Branch, and

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their tributaries (all of which are waters of the United States) as disposal sites for dredged or fill material in connection with construction of the Spruce No. 1 Mine. The EPA Region III recommendation is based on its analysis of the proposed mine's likely degradation of water quality and unacceptable adverse effects on wildlife. The Service believes the available scientific information supports the EPA Region III recommendation, and we concur with the EPA Region III conclusion that construction of the mine, as currently authorized, would result in unacceptable adverse impacts to water quality and wildlife.

In response to EPA's request for section 7 consultation under the ESA dated November 1, 2010, the Service determines that the proposed withdrawal of specification is not likely to adversely affect federally listed threatened or endangered species, and will have no effect on designated or proposed critical habitats. The Spruce No. 1 Mine is within the range of the endangered Indiana bat (*Myotis sodalis*), and it contains potential Indiana bat summer foraging and/or roosting habitat. No Indiana bats were captured during mist net surveys conducted at the site in 2004; however, survey results are valid for only 5 years. Any new or additional clearing or filling of potential Indiana bat habitat would need to be preceded by new mist net surveys. The proposed withdrawal, because it would temporarily or permanently prevent the destruction of potential Indiana bat summer habitat, could have a beneficial effect on the species. We also agree that implementation of the Recommended Determination would not result in any change to the environmental baseline or the current status of any federally listed species. Hence, further consultation under section 7(a)(2) of the ESA is not required.

Please let us know if we can be of further assistance in your Clean Water Act Section 404(c) review of the proposed Spruce No. 1 Mine. If you have any questions regarding these comments, please contact me at 304-636-6586, or at the letterhead address.

Sincerely,



For Deborah Carter
Field Supervisor

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cc:

R. Calhoun, OSM, Charleston, WV
T. Clarke, WVDEP, Charleston, WV
S. Garvin, EPA, Philadelphia, PA
F. Jezioro, WVDNR, Charleston, WV
C. Johnson-Hughes, FWS, Arlington, VA
M. Moriarty, FWS, Hadley, MA
G. Mullins, COE, Huntington, WV

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