



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
300 Westgate Center Drive  
Hadley, MA 01035-9589

In Reply Refer To:  
FWS/Region 5/ES

JUN - 2 2010

EPA-R03-OW-2009-0985, Spruce No. 1 Surface Mine  
U.S. Environmental Protection Agency  
EPA Docket Center Water Docket, Mail Code 28221T  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Dear Mr. Garvin:

The U.S. Fish and Wildlife Service (Service) has reviewed the April 2, 2010, Notice of Public Comment Period regarding the U.S. Environmental Protection Agency (EPA), Region III, proposal to withdraw or restrict use of Seng Camp Creek, Pigeonroost Branch, Oldhouse Branch, and certain unnamed tributaries to those waters in Logan County, West Virginia, to receive dredged and/or fill material in connection with construction of the Spruce No. 1 Surface Mine. The Service offers the following comments, which are provided in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*), the Migratory Bird Treaty Act (40 Stat. 755, as amended; 16 U.S.C. 703 *et seq.*) and the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), and are consistent with the intent of the National Environmental Policy Act of 1969 and the Service's Mitigation Policy.

The Service supports the EPA Region III proposal to prohibit or restrict the discharge of dredged and/or fill material into the waters listed above for the purpose of constructing the Spruce No. 1 Surface Mine as currently authorized by Department of the Army (DA) Permit No. 199800436-3 (Section 10: Coal River). The Service agrees that the preponderance of available scientific information strongly suggests that construction of the project as currently authorized would cause or contribute to significant degradation of waters of the United States, both on-site and in receiving waters downstream of the proposed mine.

Such water quality degradation, combined with the direct, indirect and cumulative effects of the loss of 2,278 acres of mature forest habitat would result in unacceptable adverse impacts to aquatic communities and other wildlife in the affected headwater systems, as well as the Spruce Fork Sub-watershed, Little Coal River Watershed, and the Coal River Sub-basin, each of which is already degraded from past mining activities. The Service also agrees with EPA Region III that impacts to the high-quality headwater streams affected by the proposed mine have not been accurately described or quantified. Therefore, the currently proposed mitigation for these

impacts is very unlikely to adequately compensate for the loss and degradation of these streams, their biological productivity and diversity, or their ecological functions.

The Service previously commented on the proposed project in letters to the U.S. Army Corps of Engineers (Corps), Huntington District, dated January 7, 1999, and July 29, 1999, and to the Department of the Interior, Office of Environmental Policy and Compliance, dated May 10, 2006. In those letters, we articulated our concerns regarding the extent of impacts to headwater streams and valley slopes associated with the valley fills. We also expressed concerns that the Service was not involved in the development of proposed permit conditions and compensatory mitigation and the proposed mitigation lacked sufficient detail to determine whether impacts to aquatic and terrestrial ecosystems would be adequately compensated.

The Service remains concerned about the potential impacts of the project on a number of fish and wildlife resources. We agree with the EPA analysis and conclusion that construction of this project, as proposed, will likely result in impacts similar to those documented at the nearby Dal-Tex site, which was previously mined by the Applicant. We believe the additional and cumulative impacts from this project will cause significant adverse effects on the downstream receiving waters and aquatic and terrestrial wildlife of the Spruce Fork Sub-watershed, Little Coal River Watershed, and the Coal River Sub-basin. Some adverse impacts of the proposed project include:

- the likely loss of macroinvertebrate genera (diversity and abundance) and the cascading biological consequences of that loss on other aquatic and terrestrial wildlife;
- the direct loss of a significant number of salamanders, indirect effects to perhaps many more, and the effects of these losses on other aquatic and terrestrial wildlife;
- degraded fish communities, including reduced diversity and abundance;
- direct loss of habitat, and direct and indirect loss of food resources, for forest interior and riparian-obligate species of migratory birds, including six species the Service considers Birds of Conservation Concern (cerulean, Kentucky, Swainson's, and worm-eating warblers; Louisiana waterthrush; wood thrush); and
- direct loss of habitat, and direct and indirect loss of food resources, for a variety of bat species, many of which are already threatened by the spread of white-nose syndrome in West Virginia and which may require additional protection in the near future.

Construction of the project, as proposed, would eliminate several of the few remaining sources of freshwater dilution in the Spruce Fork Sub-watershed. It would effectively convert Oldhouse Branch, Pigeonroost Branch, and Seng Camp Creek from high quality, low conductivity (90-199 microSiemens per centimeter [ $\mu\text{S}/\text{cm}$ ]) headwaters with healthy and diverse populations of aquatic organisms into conduits of high levels of total dissolved solids (TDS) that would be discharged from the proposed mine site. These discharges will likely increase specific conductivity in these streams to levels similar to those in adjacent, previously mined watersheds (971-2,426  $\mu\text{S}/\text{cm}$ ), which are elevated well above levels considered protective of aquatic life, and which would impair downstream aquatic life uses via acute toxicity to native aquatic organisms.

Such discharges of additional TDS and elevated conductivity would further impair the mainstem of Spruce Fork, which already has conductivity levels exceeding 500  $\mu\text{S}/\text{cm}$  (“high probability of impairment to native biota”) downstream of the proposed project. The Service agrees that such increased impairment would contribute to conditions that could support the growth of toxic golden algae, potentially resulting in an aquatic life kill like the one that occurred in Dunkard Creek in September 2009. This aquatic life kill resulted in the deaths of a significant number of fish, freshwater mussels, and other aquatic organisms.

The Service also agrees that available data strongly suggest the project will discharge and export selenium downstream at levels that will exceed West Virginia’s numeric water quality standard. Such elevated levels of selenium will cause significant acute and/or chronic toxicity and bioaccumulation of selenium in fish and birds, resulting in embryonic defects leading to reduced productivity and recruitment.

With regard to currently proposed mitigation, the Service remains concerned that:

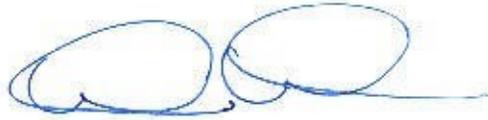
- impacts to the high-quality headwater streams in and downstream of the project area have not been adequately quantified;
- the proposed mitigation is unlikely to sufficiently compensate for the expected loss of, and degradation to, these systems;
- appropriate performance standards have not been developed to determine if and when mitigation has successfully compensated for lost or diminished physical, chemical and biological processes and ecological functions of the impacted streams; and
- other mitigation opportunities have not been identified should the proposed mitigation fail to compensate for the loss and degradation of these headwater systems.

Given the potential for significant loss and degradation of water quality, adverse effects to a number of fish and wildlife species and habitats, the inadequacy of currently proposed mitigation measures, and uncertainty regarding the ability to effectively compensate for the unavoidable losses of the physical, chemical, and biological processes and ecological functions of the headwater systems that would be affected by the proposed project, the Service agrees that the Spruce No. 1 Surface Mine, as currently proposed, is inconsistent with the Clean Water Act Section 404(b)(1) Guidelines. We, therefore, support the EPA Region III Proposed Determination to prohibit or restrict the discharge of dredged and/or fill material into Pigeonroost Branch and Oldhouse Branch and their unnamed tributaries for the purpose of constructing the project.

The Service appreciates this opportunity to provide comments, and we look forward to continuing to work with the EPA, Corps, Office of Surface Mining, West Virginia Department of Environmental Protection, and the Applicant to further minimize and appropriately compensate for unavoidable impacts of the proposed Spruce No. 1 Surface Mine on fish, wildlife, and the habitats that support them.

If you have questions regarding these comments or require additional information, please contact Paul Phifer, Assistant Regional Director – Ecological Services, at 413-253-8304, or Deb Carter, Supervisor, West Virginia Field Office, at 304-636-6586.

Sincerely,



Acting Marvin E. Moriarty  
Regional Director

cc:

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