



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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

FILE COPY

MAR 20 2000

Ms. Teresa Hughes
U.S. Army Corps of Engineers, Huntington District
Attn: Regulatory Branch-OR-FS
502 8th Street
Huntington, West Virginia 25701

Dear Ms. Hughes:

This responds to the February 4, 2000 Federal Register Notice of the Intent To Prepare a Draft Environmental Impact Statement (EIS) for the proposed mining activities associated with Hobet Mining, Inc.'s Spruce No. 1 Surface Mine located near Blair, in Logan County, West Virginia. The following technical assistance comments are provided pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661-667-3) and the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). The Service believes that the following areas should be addressed in the EIS under the affected environment and the environmental consequences section.

Evaluation of the quality of the aquatic habitats in the proposed project area and the effects from the proposed project on the aquatic habitat.

Dr. Ben M. Stout in Structure and function of streams in the Pigeonroost Branch watershed, and the influence of mountain top removal and valley fill on southern West Virginia watershed-ecosystems, (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. Invertebrates collected at three sites in the stream that are proposed for filling indicates flowing water occurs in this stream for most of the year. The benthic invertebrate and fish communities indicate that the stream flow is of sufficient volume and duration to maintain reproducing populations of aquatic life. The benthic community in Oldhouse Branch was similar to that of Pigeonroost Branch. Based on stream surveys in White Oak Branch, it was also determined to be a perennial stream for much of its length. The variety of benthic invertebrates collected indicated good water quality and a healthy aquatic ecosystem. Dr. Stout's study should be included in an evaluation of impacts of the project on the aquatic resources.

Fish and Wildlife Service biologists from the Pennsylvania Field Office conducted an aquatic life survey on three of the four valley streams proposed for filling on July 27 and 28, 1998. The final report from this field investigation is enclosed and should be used in evaluation of the aquatic habitats that would be affected by the proposed project.

Evaluation of the downstream impacts to the aquatic environment from the proposed project.

The value of a stream cannot be solely ascertained from measuring biological production in a particular stream segment. Other factors such as transported organic matter processed in upstream areas and its value in downstream energy supplies must be considered. The Service recommends an evaluation of the importance of these headwater streams to the aquatic ecosystem downstream of the project. Perry and Golden in The Importance of Headwater Streams to Downstream Areas and a Comparison of stream and Pond Productivity (1997) reviewed literature to evaluate the importance of headwater streams to downstream areas and this report should be used in evaluating downstream impacts to the aquatic environment. Doppelt et al. in Entering the watershed: A new approach to save America's river ecosystems (1993) also assessed the value of headwater areas to the downstream ecosystem and should be referred to in development of this assessment.

Evaluation of the quality of the terrestrial environment that would be directly affected by the proposed project.

In a field review of the project area, the Service noted that Oldhouse Branch and White Oak Branch stream valleys are remote

and heavily forested. Pigeonroost Branch is occupied by a few homes, but the majority of the valley is uninhabited and forested. These stream valleys along with the Right Fork of Seng Camp Creek valley are proposed to be filled with excavated overburden from the mining operation and will result in permanent loss of hardwood forest upslope of these streams. West Virginia has one of the largest areas of contiguous forest in the Northeast and is considered a primary component of a major geographic area of importance to neotropical migrant birds in the Northeast Region. This project is in the Ohio Hills province which encompasses a portion of the western Appalachian foothills and river valleys, primarily in West Virginia, Ohio, and southwestern Pennsylvania. This province supports more than half of all cerulean warblers in the Northeast. The cerulean warbler, a neotropical migrant bird that is experiencing one of the steepest population declines, has been designated by the Service as a species of concern in the U.S. Much of the importance of this area for neotropical migrant birds is based also on the relatively high concentrations of high-priority bird species occurring in this area. For example, some of the highest concentrations of Northeast forest species such as cerulean warbler, Acadian flycatcher, worm-eating warbler, Louisiana waterthrush, scarlet tanager, and wood thrush occur in West Virginia. Unfortunately, the worm-eating warbler, the Louisiana waterthrush, and the cerulean warbler are showing significant declining trends in the state.

The proposed mine will disturb approximately 3,196 acres. In typical mining operations of this kind, the existing forested habitat will be replaced by a grassland-type or other created habitats that will remain for an unknown time. During that time the site will lose its ability to support species that rely on large unbroken tracts of forest, particularly forest interior migratory birds. The Service recommends an evaluation of the size, type, and quality of habitats that will be disturbed from this project, both temporarily and permanently, and an evaluation of the impacts of loss that this habitat will have on fish and wildlife species.

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 this field investigation is enclosed and should be included in a more comprehensive evaluation of the terrestrial habitats that would be affected by the proposed project. The evaluation of existing habitat should be based on the U.S. Fish and Wildlife Services's Habitat Evaluation Procedures (HEP) for forest interior and riparian wildlife species, ie Louisiana waterthrush, and should be conducted during a time of the year when herbaceous vegetation can be assessed. Species selected as evaluation species should be those known to occur in mid-elevation forests and riparian habitat in West Virginia and should reflect a variety of species guilds, ie ground nesters, canopy nesters, and cavity nesters.

Threatened and endangered species

The only federally listed species that is likely to occur within the proposed project area is the endangered Indiana bat, Myotis sodalis. There are numerous known hibernacula for the Indiana bat in the limestone region of eastern West Virginia in Preston, Tucker, Randolph, Pendleton, Pocahontas, Greenbrier, Monroe, and Mercer Counties. The population of the hibernacula in West Virginia range in size from one to 9,000 Indiana bats. Recent data indicate that the area within an approximate 5.0 mile radius of a hibernaculum is important foraging and roosting habitat for the Indiana bat in the fall swarming period, August 15 through November 14. The project area is outside a five mile radius of a known hibernaculum. Therefore, fall-swarming behavior is not expected in the proposed project area.

The recent capture of a young male Indiana bat during the maternity period, May 15 to August 15, near Richwood in Nicholas County suggests that female Indiana bats may utilize West Virginia for summer maternity range. Also, an adult male Indiana bat was recently captured in Clay County.

Indiana bat summer foraging habitats are generally defined as riparian, bottomland, or upland forest, and old fields or pastures with scattered trees. Roosting/maternity habitat consists primarily of live or dead hardwood tree species such as shagbark hickory, which have exfoliating bark that provides space for bats to roost between the bark and the bole of the tree. Tree cavities, crevices, splits, or hollow portions of tree boles and limbs also provide roost sites.

Based on the presence of suitable Indiana bat habitat in the

proposed project area, the Service recommends one of two options. Mist net surveys can be conducted to determine if the summer foraging and roosting habitat within the area affected by the proposed project is occupied. A survey plan should be submitted to the Service and the West Virginia Division of Natural Resources for concurrence prior to conducting the work. The survey should follow the standard Indiana bat mist net protocol, and be conducted between May 15 and August 15 by a qualified mammalogist with experience in identifying Indiana bats.

If Indiana bats are collected, the data should be incorporated into a Biological Assessment pursuant to Section 7 of the ESA. Biological Assessments are designed to assist Federal agencies in determining if formal consultation is required. The Service recommends that the following steps be taken in preparation of the BA.

1. Conduct recent interviews of recognized experts on the species at issue, including those within the Service, West Virginia Division of Natural Resources (WVDNR), U.S. Forest Service, universities and others who may have data not yet found in scientific literature.
2. Review up to date literature and other scientific data to determine the species distribution, habitat needs, and other biological requirements.
3. Analyze the effects of the action on individuals and populations of the species and its habitat, including indirect and cumulative effects of the action.
4. Analyze alternative actions that may provide conservation measures.
5. Conduct any studies necessary to fulfill the requirements of (1) through (4) above.
6. Review any other relevant information.

If you determine that the proposed action "may affect" a federally listed species you must request, in writing, formal consultation with this office, pursuant to Section 7(a) of the ESA. If the determination is "no effect", no further consultation is necessary, unless requested by the Service. Regardless of your findings, you should provide this office a

copy of the survey results and any other relevant information that assisted you in reaching your conclusion.

Another option the Federal agency may use to address Indiana bat concerns is to assume Indiana bats are present and schedule timber removal operations during the hibernation period, between November 15 and March 31. If that option is chosen, the Federal agency must then submit a calculation of the percentage of area of suitable habitat that would remain within a two-mile radius after the proposed disturbance. If the Service determines that the extent of disturbance is significant and may affect the Indiana bat, the Federal agency must request formal Section 7 consultation with the Service or conduct mist net surveys to determine if Indiana bats are, in fact, present. If Indiana bats are collected during mist netting, the Federal agency must prepare a Biological Assessment, as described above.

Special Aquatic Sites

Identification and delineation of wetlands and other special aquatic sites, including riffle and pool complexes, should be conducted in the project area. Assessment of impacts to wetlands and other special aquatic sites and identification of practicable measures to minimize harm to these areas should be conducted.

Potential mitigation measures

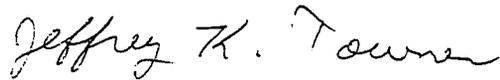
The 404(b)(1) guidelines should be applied, and avoidance and minimization of project impacts should be addressed with reduction of fill to the maximum extent practicable. Minimization of impacts could include reduction in project size to the maximum extent feasible, i.e. reduction of extent of, and/or 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 most recent Approximate Original Contour Model/Excess Spoil Disposal Model process.

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. Mitigation should include on-site or within the watershed mitigation that will compensate fully for all project impacts. Off-site enhancement projects should be identified specifically as to location with preference

given to the Spruce Fork or Little Coal River watersheds. Mitigation should compensate not only for impacts to the streams that would be destroyed, but for impacts to wildlife from the permanent loss of the hardwood forest upslope of the streams that would be a direct consequence of valley filling and the temporary loss of forest habitat due to mountain top removal.

If you have any questions regarding this letter, please contact Ms. Linda Smith of my staff or contact me directly at (304) 636-6586.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey K. Towner".

Jeffrey K. Towner
Field Supervisor

cc:

WVDNR - Dowler

WVDEP - Brannon

WVDEP - Vande Linde

WVDEP - Politan

OSM - Calhoun

USEPA - Ryder

OEPC - Martin

PAFO - Densmore

Readers file

Project file

ES:WVFO:Smith

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