



Public Notice

U.S. Army Corps of Engineers, Norfolk District

December 11, 2012

CENAO-WR-R
NAO-2011-00900

FEDERAL PUBLIC NOTICE

The District Commander has received a joint application for Federal and State permits as described below:

APPLICANT

Robert J. Zik, Vice President
Clintwood Elkhorn Mining Company
PO Box 196
Hurley, VA 24620

WATERWAY AND LOCATION OF THE PROPOSED WORK: The project is located in Spring Branch, a tributary to Race Fork, a tributary to Knox Creek of the Tug Fork, approximately 1.8 miles west, southwest of Hurley, in Buchanan county Virginia.

PROPOSED WORK AND PURPOSE: The applicant proposes to conduct bituminous coal extraction on a proposed surface mine of approximately 260 acres to be known as the Laurel Branch Surface Mine – Spring Branch Amendment. The applicant proposes to fill and excavate waters of the U. S. during mining and excess material disposal for the purpose of recovering approximately 2.2 million tons of coal from the Hagy, Glamorgan, Blair, Lower Eagle, Clintwood, and Lower Elkhorn coal seams including all necessary support facilities (sediment control, excess material disposal, access/haul roads, etc.) providing high quality thermal and primarily bituminous coal to meet contractual obligations to the electric and steel industries. Proposed permanent impacts will occur to 900 linear feet of perennial stream channel, 4,200 linear feet of intermittent stream channel, 980 linear feet of ephemeral stream channel and 0.11 acres of emergent wetlands. In addition, 710 linear feet of perennial stream channel will be temporarily impacted at the sediment pond site. Total projected losses of stream Ecological Integrity Units (as determined by the Eastern Kentucky Stream Assessment Protocol) are 2,303.0.

The applicant incorporates onsite avoidance and minimization efforts to avoid and minimize impacts. Those efforts include:

- 1) Placement of the sediment basin as close to the toe of the fill as possible, eliminating indirect impacts, and
- 2) Increase the hauling of spoil to upland “back-stacking areas” thereby reducing the volume of spoil to be placed in the hollow fill.

The applicant proposes to compensate for permanent stream channel impacts with permittee responsible compensation in the form of on-site stream re-establishment and wetland creation and off-site stream rehabilitation. Off-site rehabilitation is proposed to offset temporal loss of aquatic resource function, and will be conducted in advance of or concurrent with proposed impacts. The wetland compensation is proposed to provide compensation at 1:1 ratio for

emergent wetlands. The stream compensation is proposed to provide 2,559.1 total projected gains of stream Ecological Integrity Units (as determined by the Eastern Kentucky Stream Assessment Protocol). This compensation is proposed to include:

- 1) Onsite re-establishment of 710 linear feet of stream channel,
- 2) Onsite creation of 0.11 acres of emergent wetland, and
- 3) Offsite rehabilitation of 5,760 linear feet of stream channel.

In addition to the required Department of the Army permit, the applicant must obtain a Virginia Water Protection Permit from the Virginia Department of Environmental Quality (DEQ) assuring that applicable laws and regulations pertaining to water quality are not violated. Project drawings are attached.

AUTHORITY: Permits are required pursuant to Sections 401 and 404 of the Clean Water Act (Public Law 95-217) and Title 62.1 of the Code of Virginia.

FEDERAL EVALUATION OF APPLICATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected from the proposal must be balanced against its reasonably foreseeable detriments. All of the proposal's relevant factors will be considered, including conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The Environmental Protection Agency's "Guidelines for Specification of Disposal Sites for Dredged or Fill Material" will also be applied (Section 404(b)(1) of the Clean Water Act).

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the direct, indirect, and cumulative impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Anyone may request a public hearing to consider this permit application by writing to the District Commander within 30 days of the date of this notice, stating specific reasons for holding the public hearing. The District Commander will then decide if a hearing should be held.

Preliminary review indicates that: (1) no environmental impact statement will be required; (2) no species of fish, wildlife, or plant (or their critical habitat) listed as endangered or threatened under the Endangered Species Act of 1973 (PL 93-205) will be affected; and (3) no known properties eligible for inclusion or included in the National Register of Historic Places are in or near the permit area, or would likely be affected by the proposal. Additional information might change any of these findings.

COMMENT PERIOD: Comments on this project should be made in writing, addressed to the Norfolk District, Corps of Engineers, Virginia Highlands Field Office (ATTN: Claire Trent), PO

Box 1295, Abingdon, Virginia 24212, and should be received by the close of business on January 11, 2013.

PRIVACY & CONFIDENTIALITY: Comments and information, including the identity of the submitter, submitted in response to this Public Notice may be disclosed, reproduced, and distributed at the discretion of the U.S. Army Corps of Engineers. Information that is submitted in connection with this Public Notice cannot be maintained as confidential by the U.S. Army Corps of Engineers. Submissions should not include any information that the submitter seeks to preserve as confidential.

If you have any questions about this project or the permit process, contact Claire Trent at 276-206-8347 or claire.trent@usace.army.mil.

FOR THE DISTRICT COMMANDER:

A handwritten signature in black ink, appearing to read "Peter Kube", with a large, sweeping flourish at the end.

Peter R. Kube
Chief, Western Virginia
Regulatory Section

Attachment (1.92MB): USGS Topographic Map with Project Location, Impacts Map, Offsite Mitigation Map (Devils Branch), Offsite Mitigation Map (Puncheon Camp Creek), and Conceptual Mitigation Plan

