

MEMORANDUM OF AGREEMENT
BETWEEN
DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT

AND

DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE
KENTUCKY FIELD OFFICE

SUBJECT:

Reduction of paperwork and unnecessary review of certain Office of Surface Mining (OSM) Abandoned Mine Land Emergency Program projects which typically result in no adverse impacts to fish and wildlife resources.

PURPOSE:

The U.S. Fish and Wildlife (FWS) is charged with protection of fish and wildlife resources, particularly federally listed endangered and threatened species. In this role, the FWS provides comments to the OSM, Federal Reclamation Program regarding the impacts of specific Emergency Program projects. It is recognized that certain categories of Emergency Program activities typically result in no adverse impacts to the natural environment and/or federally listed species and that a detailed project review by the FWS is not warranted for such projects. This Memorandum of Agreement (MOA) is intended to define the categories of Emergency Program projects that do not require coordination with and written comments from the FWS.

SCOPE:

This MOA does not supersede the responsibilities and obligations of the FWS or OSM which are mandated by the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*), Endangered Species Act (87 Stat 884, as amended; 16 U.S.C. 1531 *et seq.*), or related regulations and agency policy. The following categories of projects have been evaluated in accordance with these statutes, regulations, and policies, and a conclusion has been reached by both FWS and OSM that specific Emergency Program projects within these categories will not result in adverse impacts to fish and wildlife resources, including federally listed species. As a result, this MOA constitutes programmatic coordination pursuant to the Fish and Wildlife Coordination Act and a programmatic consultation-pursuant to Section 7 of the Endangered Species Act.

CATEGORIES:

1. Surface Burning—Activities associated with extinguishing grass and forest fires, refuse pile fires, and dwelling fires and activities which involve the containment of poisonous and combustible gases related to such fires, provided that neither of the following is necessary: (a) the purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inches or greater diameter at breast height and at least 10 feet in height during the period of April 1 to November 15 and provided the activity does not occur in "Known Indiana Bat Habitat" identified on the attached map; or (b) the purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within Bayou de Chien and the upper Cumberland, Green, and Licking River basins. These limitations are necessary to ensure protection of federally listed Indiana bats, fishes and freshwater mussels, respectively. Additional consultation is necessary if the tree removal conditions in (a) above cannot be met.

2. Underground Burning—Activities associated with extinguishing fires within abandoned underground mine workings, provided that neither of the following is necessary: (a) the purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inches or greater diameter at breast height and at least 10 feet in height during the period of April 1 to November 15 and provided the activity does not occur in “Known Indiana Bat Habitat” identified on the attached map; (b) the purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within Bayou de Chien and the upper Cumberland, Green, and Licking River basins. These limitations are necessary to ensure protection of federally listed Indiana bats, fishes, and freshwater mussels, respectively. Additional consultation is necessary if the tree removal conditions in (a) above cannot be met.
3. Dangerous Landslides—Activities required to repair and permanently stabilize landslides that involve blockages of streams, blockages of roadways and driveways, or threats to structures and public facilities. These activities generally include removal of excess materials, grading and sloping of steep banks, revegetation, the provision of internal and surface drainage features, and the placement of riprap and gabion retaining walls, provided that neither of the following is necessary: (a) the purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inches or greater diameter at breast height and at least 10 feet in height during the period of April 1 to November 15 and provided the activity does not occur in “Known Indiana Bat Habitat” identified on the attached map; or (b) the purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within Bayou de Chien and the upper Cumberland, Green, and Licking River basins. These limitations are necessary to ensure protection of federally listed Indiana bats, fishes and freshwater mussels, respectively. Additional consultation is necessary if the tree removal conditions in (a) above cannot be met.
4. Portals and Vertical Openings—Activities associated with the permanent closure of abandoned mine portals or vertical shaft openings. This category is limited to those situations where the connected mine shaft is permanently flooded to the ceiling within 100 feet of the surface opening or where the air inside the portal has been shown to have high levels of gases (e.g. methane, carbon dioxide, etc.) that are hazardous to living organisms. Portals and vertical openings that do not meet either of these two criteria may support populations of federally listed bats and must be evaluated on a project-by-project basis through coordination with the FWS and other resource agencies.
5. Subsidence—All activities associated with the filling of subsidence cavities, provided that neither of the following is necessary: (a) the purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inches or greater diameter at breast height and at least 10 feet in height during the period of April 1 to November 15 and provided the activity does not occur in “Known Indiana Bat Habitat” identified on the attached map; or (b) the purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within Bayou de Chien and the upper Cumberland, Green, and Licking River basins. These limitations are necessary to ensure protection of federally listed Indiana bats, fishes and freshwater mussels, respectively. Additional consultation is necessary if the tree removal conditions in (a) above cannot be met.
6. Dangerous Piles and Embankments—Activities required to remove and/or stabilize piles of earth, rock, coal, or mine wastes that are subject to leaching, erosion, and/or sudden slippage, provided that neither of the following is necessary: (a) the purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inches or greater diameter at breast height and at least 10 feet in height during the period of April 1 to November 15 and provided the activity does not occur in “Known Indiana Bat Habitat” identified on the attached map ; or (b) the purposeful filling or crossing of streams using heavy equipment or the

removal of riparian vegetation using heavy equipment within Bayou de Chien and the upper Cumberland, Green, and Licking River basins. These limitations are necessary to ensure protection of federally listed Indiana bats, fishes, and freshwater mussels, respectively. Additional consultation is necessary if the tree removal conditions in (a) above cannot be met.

7. Hazardous Equipment and Facilities—All activities with the removal and disposal of abandoned mining equipment and facilities. Also included are land restoration activities on the sites where abandoned mining equipment and facilities were located including grading, replacement of topsoil, and revegetation.

GENERAL PROVISIONS:

This MOA only applies to AML Emergency Program activities within the Commonwealth of Kentucky.

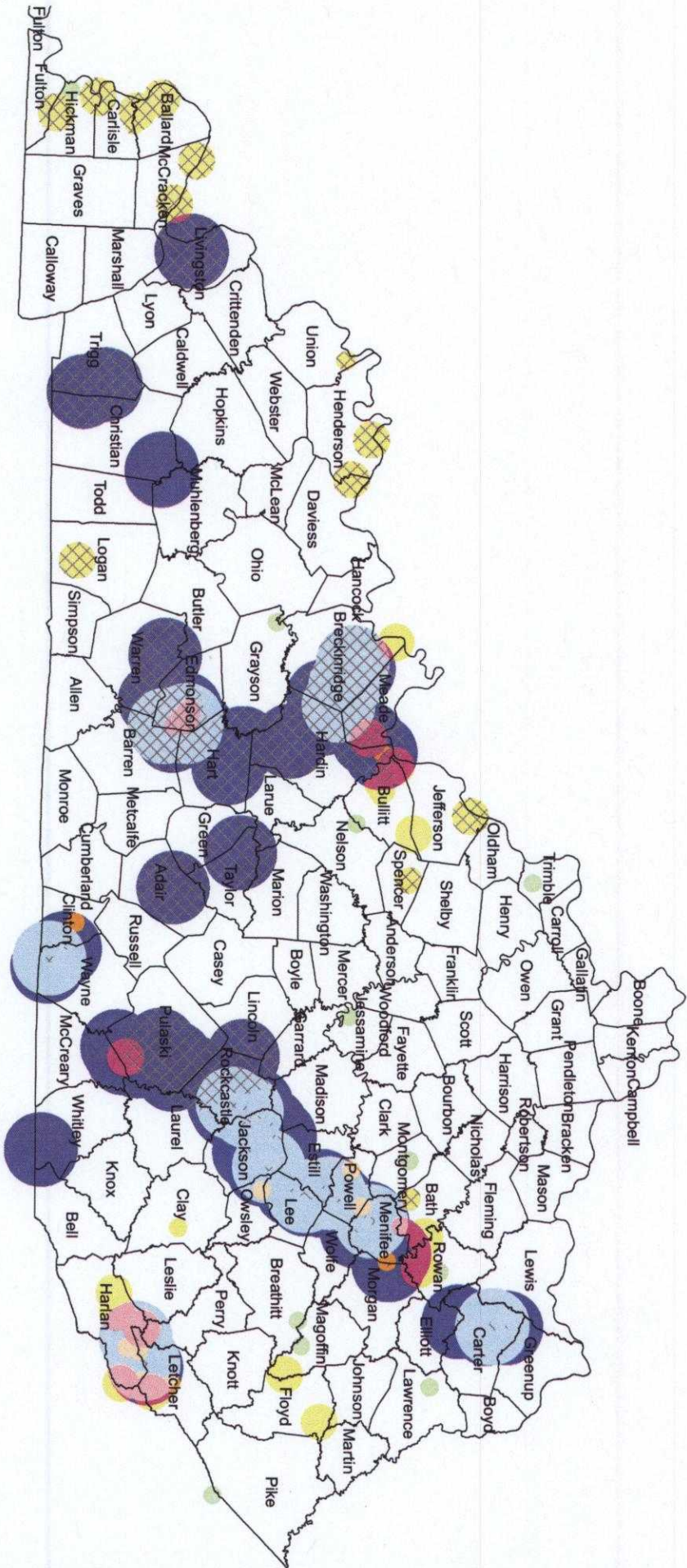
Either agency may unilaterally withdraw from this agreement with 30 days written notice.

This MOA will be in effect for five years. Either agency may request revisions at any time during the term of the MOA. All revisions will be made in writing and require the concurrence of both agencies.











This MOA is hereby authorized as of the last date identified below.

By: Virgil Lee Anderson Date: 4/16/09
Field Supervisor, Kentucky Field Office
U. S. Fish and Wildlife Service

By: Vann Weaver Date: 6/8/09
Division Chief, Federal Reclamation Program
Office of Surface Mining



LEGEND

-  Sensitive Areas – work in these areas requires coordination with USFWS under the Indiana bat Mitigation Guidance
-  Overlapping habitat – areas of known maternity and swarming (P1 and P2) habitat
-  Overlapping habitat – areas of known maternity and swarming (P3 and P4) habitat
-  Overlapping habitat – areas of known non-maternity summer and swarming (P1 and P2) habitat
-  Overlapping habitat – areas of known non-maternity summer and swarming (P3 and P4) habitat
-  Known swarming habitat (P1 and P2)
-  Known swarming habitat (P3 and P4)
-  Known maternity summer habitat
-  Known non-maternity summer habitat
-  Potential habitat