

MEMORANDUM OF AGREEMENT

BETWEEN

DEPARTMENT OF THE INTERIOR  
OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
APPALACHIAN REGION  
FEDERAL RECLAMATION PROGRAM

AND

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

SUBJECT:

Reduction of paperwork and unnecessary review of certain Office of Surface Mining (OSM) Abandoned Mine Lands Emergency Program projects which typically result in no adverse effects to federally listed, proposed, or candidate species.

PURPOSE:

The U.S. Fish and Wildlife Service (Service) is charged with protection of fish and wildlife resources, including federally listed and proposed species, migratory birds, and their habitats. In this role, the Service provides comment to the OSM, Federal Reclamation Program, regarding the impacts of specific individual emergency program projects. It is recognized that certain categories of Emergency Program activities typically result in no adverse impacts to the natural environment and that a detailed project review by the Service is not warranted for such projects. This Memorandum of Agreement (MOA) is intended to define the categories of Emergency Projects that, when carried out in the Commonwealth of Pennsylvania, do not require written comments from the Service.

SCOPE:

This MOA does not supersede the responsibilities and obligations of the Service 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 policies. Several categories of projects have been evaluated in accordance with these statutes, regulations, and policies, and a conclusion has been reached by both the Service and OSM that specific projects within these categories will not result in adverse effects to fish and wildlife resources, including endangered species. As a result, this MOA constitutes programmatic coordination pursuant to the Fish and Wildlife Coordination Act and a programmatic informal consultation pursuant to section 7 of the Endangered Species Act for certain categories of projects proposed within the Commonwealth of Pennsylvania.

## SCREENING FOR FEDERALLY LISTED SPECIES:

Prior to undertaking any project pursuant to this MOA, OSM will screen the project area for the potential presence of federally listed species using the Pennsylvania Natural Heritage Program's on-line environmental review website ([www.naturalheritage.state.pa.us](http://www.naturalheritage.state.pa.us)).

If a potential conflict with a federally listed species is identified, the receipt generated by the website will direct the inquirer to 1) contact the Fish and Wildlife Service, or 2) implement an avoidance measure(s) to avoid potential adverse effects on federally listed species. When an avoidance measure is provided, OSM will implement the avoidance measure, thereby fulfilling its consultation responsibilities under the Endangered Species Act. When the receipt directs to the inquirer to contact the Service, OSM will consult with the Fish and Wildlife Service to resolve issues related to federally listed species prior to approving or carrying out the proposed project.

## CATEGORIES:

Provided no conflicts with federally listed species have been identified using the on-line environmental review website (see "Screening for Federally Listed Species"), and provided no aspect of the project falls under the "EXCEPTIONS" (see below), the Service and OSM conclude that specific projects within the following categories will not result in adverse effects on fish and wildlife resources, including federally listed species.

1. Surface Burning – Activities associated with extinguishing grass and forest fires, refuse pile fires, and dwelling fires. Also included are activities that involve the containment of poisonous and combustible gases related to such fires.
2. Underground Burning – Activities associated with extinguishing fires within abandoned underground mine workings.
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.
4. Subsidence – All activities associated with the filling of subsidence cavities.
5. 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.
6. Hazardous Equipment and Facilities – All activities associated with the removal and disposal of abandoned mining equipment and facilities. Also included are land

restoration activities on the sites including grading, replacement of topsoil, and revegetation. Revegetation will use only plant species native to Pennsylvania.

#### EXCEPTIONS:

The following projects have the potential to result in adverse effects on fish and wildlife resources, including federally listed species. Therefore, these projects will undergo further assessment and interagency coordination, as detailed below.

1. Portals and vertical openings – Activities associated with the closure of abandoned mine portals or vertical shaft openings. These mine openings have the potential to support bats; consequently their closure may trap bats inside and kill them, or deprive bats of valuable hibernating habitat.

All mine openings proposed for closure will be evaluated using the attached protocols (Appendices A and B). If a mine opening has one or more characteristics making bat occupation unlikely (as specified in Appendix A), the mine opening may be closed at any time without further consultation. However, all other openings will undergo a survey in accordance with the specifications detailed in Appendix A. Appendix B specifies the course of action that will be taken for mine openings proposed for closure, based on the results of the bat survey.

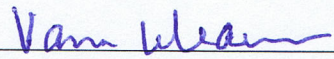
2. Wetland and stream impacts – Projects that will result in loss of 0.25 acre or more of wetlands or open water habitats, or alteration of more than 250 linear feet of stream channel. These projects should be submitted to the Service for review under the Fish and Wildlife Coordination Act.
3. Projects that may affect federally listed or proposed species. If the Service or OSM becomes aware of the presence or potential presence of a federally listed or proposed species in a proposed project area, that project is subject to further review by OSM and the Service. Information about the presence of federally listed species may become available via online project screening (see “Screening for Federally Listed Species”), a site visit, or other sources.

#### GENERAL PROVISIONS:

This MOA only applies to the Abandoned Mine Lands Emergency Program activities within the Commonwealth of Pennsylvania.

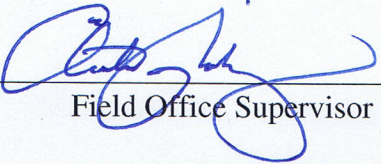
Either agency may unilaterally withdraw from this agreement with 30 days written notice. This MOA will remain in effect for 5 years and is authorized beginning August 17, 2010. Revisions may be requested at any time by either agency. All revisions will be made in writing and require the concurrence of both agencies.

Office of Surface Mining Reclamation and Enforcement

By:   
Division Chief, Federal Reclamation Program  
Office of Surface Mining

Date: 7/14/10

U.S. Fish and Wildlife Service, Pennsylvania Field Office

By:   
Field Office Supervisor

Date: 7/13/10