

Fish & Wildlife

MEMORANDUM OF AGREEMENT
(MOA)

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between:

**West Virginia Division of Natural Resources (DNR)
Wildlife Resources Section**

and

**West Virginia Department of Environmental Protection (DEP)
Division of Mining and Reclamation**

Regarding:

Surface and Underground Coal Mining Permit Applications

September, 2003

This Memorandum of Agreement (MOA) is entered into by and between the Department of Natural Resources (DNR), Wildlife Resources Section; and the Department of Environmental Protection (DEP), Division of Mining and Reclamation; both of the State of West Virginia and under authority granted to them respectively in Code of State Regulations at Chapters 20 and 22.

WHEREAS, the Wildlife Resources Section has been created under the laws of the State of West Virginia to conserve, protect, propagate, control, manage, and otherwise regulate all resident wildlife in West Virginia, and;

WHEREAS, the Division of Mining and Reclamation has been created under the laws of the State of West Virginia to administer laws of the State subject to surface and underground mining and reclamation, and;

WHEREAS, it is the mutual desire of the Wildlife Resources Section and the Division of Mining and Reclamation, to work in harmony for the common purpose of protecting the environment and promoting an effective wildlife management program on mined lands in West Virginia for the best interest of the people of West Virginia.

The Wildlife Resources Section agrees to:

- (a) Review and respond to individual surface and underground coal mining permits via the applicant's Wildlife Lands Inquiry but not necessarily limited by it, for inclusion as written technical assistance to the Division of Mining and Reclamation within such applications regarding:
1. the proximity of critical fish and wildlife habitat or populations (e.g., rare, threatened and endangered species, sensitive habitats, high quality streams, special management areas, wetlands, etc.) in relation to such applications;
 2. location and/or operation of haul roads in relation to sensitive fish and wildlife and/or their habits;
 3. presence of toxic, or toxic forming materials that may be detrimental to aquatic ecosystems;

4. avoidance of disturbance to high value fish and wildlife habitats;
 5. protection of aquatic habitats; and
 6. recommended plantings that should be used for reclamation when Fish and Wildlife Habitat and Recreation lands are featured as the post-mining land use.
- (b) Assist in review and analysis of areas petitioned as lands unsuitable for mining when requested by the Director, Division of Mining and Reclamation.
- (c) Provide the Division of Mining and Reclamation with a report signed by the Chief of the Wildlife Resources Section, or other notice regarding the matters in (a) above within twenty (20) work days of Wildlife Resources' receipt of preliminary surface and underground mining permit application Wildlife Lands Inquiries.
- (d) Provide technical assistance as available to operators and inspectors regarding fish and wildlife habitat development in conjunction with reclamation efforts and participate in site visits on selected permits as needed.
- (e) Provide Mining and Reclamation with the report signed by the Chief of Wildlife Resources, referenced below in (1), (2), and (3) within 20 work days after receipt of applicable portions Wildlife Planting Plans of selected surface and underground mining permit applications that feature Fish and Wildlife Habitat and Recreation lands as the post-mining land use:
1. fish and wildlife restoration and enhancement measures proposed by the applicant in the permit application;
 2. the applicant's restoration and enhancement explanation regarding non-practicability of fish and wildlife enhancement measures (if such an explanation is present) in the permit application; and
 3. the applicant's reclamation plan where fish and wildlife habitat and recreation lands are the post-mining land use.

- (f) Further consultation between the Division of Mining and Reclamation and the Wildlife Resources Section's Wildlife Diversity or Program Planning and Coordination Units may be developed independently of this Memorandum of Agreement concerning items of mutual interest (i.e., data base, scientific collecting permits/procedures, natural stream channel design, etc.).

The Division of Mining and Reclamation agrees to:

- (a) Supply Wildlife Resources through its applications processes with:
1. a locator map (with coordinates) of designated areas of proposed mining; including;
 2. information on surface and underground mine permit applications specifying fish and wildlife habitat and recreation lands as the post-mining land use.
- (b) Advise the Wildlife Resources Section if recommended measures to eliminate and/or minimize adverse effects to sensitive wildlife habitats (e.g., endangered species, high quality streams, wetlands, etc.) are being conducted during and after mining.
- (c) Make available to the Wildlife Resources Section, within five (5) working days after an application is deemed administratively completed, portions of the surface or underground mining permit application dealing with:
1. applicant's proposed fish and wildlife restoration and enhancement measures;
 2. applicant's explanation regarding non-practicability of fish and wildlife restoration and enhancement measures (if applicable); and

3. applicant's reclamation plan where fish and wildlife habitats and recreation lands are proposed as the post-mining land use.
- (d) Notify Wildlife Resources Section (monthly) of approval or denial of Surface and Underground Mining Permits that Wildlife Resources Section has provided technical assistance or comments.

The Wildlife Resources Section and the Division of Mining and Reclamation mutually agree:

- (a) To cooperate in the restoration, protection, and enhancement of fish and wildlife on mined lands in West Virginia.
- (b) To meet at least once a year on matters pertinent to fish and wildlife as they pertain to mining. Meetings other than the above may be held as needed.
- (c) That this agreement shall become effective as soon as it is signed by the parties hereto and shall continue in force until terminated by either party upon thirty (30) days' notice in writing to the other of his intention.
- (d) That this Memorandum of Agreement is intended to conform and be consistent with the state program as approved by the Office of Surface Mining under Public Law 95-87 (SMCRA).
- (e) This agreement may be amended when changes are mutually agreed upon by both the Wildlife Resources Section and the Division of Mining and Reclamation.

WEST VIRGINIA DIVISION OF NATURAL RESOURCES (DNR)
WILDLIFE RESOURCES SECTION



Chief

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)
DIVISION OF MINING AND RECLAMATION



Director

16 Sept 03

Date