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II. APPROACH TO THE ENVIRONMENTAL IMPACT STATEMENT

A. THE PROCESS

As an outcome of the settlement agreement (Section I.A.1), representatives of the COE, EPA, OSM, FWS, and WVDEP formed an interagency steering committee for preparation of the EIS. Representatives of the Kentucky Department for Surface Mining Reclamation and Enforcement (KYDSMRE) and Virginia Division of Mined Land Reclamation (VADMLR) have provided data, as available, to the steering committee.

The context of this document makes it a programmatic EIS. According to federal regulations (40 CFR 1502.4(b)), EISs may be prepared, and are sometimes required, for broad federal actions such as the adoption of new agency programs or regulations. When preparing statements on broad federal actions, agencies may evaluate the proposal(s) based on the following: geographic location, including actions occurring in the same region; relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, and subject matter; or stage of technological development (40 CFR 1502.4(c)). Preparation of a programmatic EIS serves as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographic area (46 FR 18026, 51 FR 15618). In addition, a programmatic EIS facilitates tiering to an impact assessment of narrower scope to eliminate repetitive discussions of the same issues (30 CFR 1500.4(I)).

Major elements in a standard format for an EIS include:

- Purpose and Need.
- Affected Environment.
- Alternatives, including the Proposed Action or Preferred Alternative.
- Environmental Consequences.

The alternatives evaluated in this EIS include the following.

Alternative A is the baseline alternative, which reflects agency policies, guidance, and decision making processes in effect prior to the December 1998 settlement agreement between the plaintiffs and the COE, USEPA, USOSM, USFWS, and WVDEP. Pre-settlement

conditions are how agencies may have continued to operate if there were no lawsuit. This alternative also reflects the environmental consequences that would be expected to occur if the agencies were to revert back to presettlement programs should the current Federal Court ruling in *Bragg v. Robertson* (*Bragg*, Civ. No. 2:98-0636 S.D. WV) be overturned.

Alternative B would restrict fills to the uppermost reaches of the watershed and recommend improvements to other baseline regulatory programs governing mountaintop mining operations. For study purposes, the watershed size being evaluated ranges from 0-75 acres. Under this alternative, specific action items have been proposed primarily in response to terrestrial and community impact concerns raised during the scoping process. Several aquatic related action items have also been proposed under this alternative, as effluent discharges from sediment ponds may still be anticipated to occur downstream of the fills.

Alternative C would authorize the placement of fill further downstream, possibly under the Corps of Engineers' CWA Section 404 Nationwide Permit Program, provided certain fill minimization requirements are met (such as AOC Plus Fill Optimization and/or Section 404(b)(1) avoidance tests). The current federal court ruling in *Bragg v. Robertson* (*Bragg*, Civ. No. 2:98-0636 S.D. WV) would require one or more rule changes to allow fills within the intermittent stream zone. For study purposes, the watershed size being evaluated ranges from 75 - 250 acres. This alternative differs from alternative B in that additional aquatic related action items have been proposed.

Alternative D is similar to alternative A in that fills would not be restricted to any particular stream segment, but it differs substantially from alternative A in that many new programmatic actions would be implemented to reduce the aquatic, terrestrial, and community impact concerns raised during the scoping process. The current federal court ruling in *Bragg v. Robertson* (*Bragg*, Civ. No. 2:98-0636 S.D. WV) would also require one or more rule changes to allow fills within the intermittent and/or perennial stream zone.

There are actions common to both alternatives C and D and there are actions common to alternatives B, C, and D. The actions comprising the alternatives are explained in chapter IV and summarized in Table IV.-1.

It should be noted that no alternative has been identified as a preferred alternative at this time. The preferred alternative and

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final set of recommended action items will not be determined until the final EIS is circulated for public review and comment. The EIS could lead to changes in, or development of: regulatory procedures, guidelines, or policy; rule making; or even recommendations for law revisions.

The Program Review Group—chartered by and including the steering committee—developed the actions representing improvements to baseline regulatory programs. Ideas for government action to address the potential environmental impacts of mountaintop mining and valley fills in the study area were developed in a series of meetings that centered around three domains—aquatic, terrestrial, and community/human. Each domain covered all relevant values; for example, the terrestrial domain meetings covered values relating to forests, and terrestrial biota. Pursuant to NEPA, values are defined as aesthetic, historical, cultural, economic, social, and health considerations relevant to the proposed action and the alternatives. The Program Review Group went through a three step process where they: 1) summarized existing state and federal policies and regulations related to mountaintop mining/valley filling; 2) brainstormed potential changes to existing policies, regulations, and program coordination to improve environmental protection; and 3) consolidated/summarized alternatives.

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B. ALTERNATIVES ANALYSIS APPROACH

Environmental consequences of the alternatives consider direct, indirect, and cumulative effects on the natural and human influenced environment, as well as the mining industry. The economic significance of surface coal mining in the region is detailed in the EIS by past and current mining, labor productivity and employment, coal distribution and markets, and predictions for future coal mining trends. The evaluation of potential impacts will include qualitative and quantitative assessment depending on the impact factors and the nature of the value or resource. Alternatives include actions that have a common focus in addressing a specific issue that the public identified during the scoping process; therefore, the alternative analysis approach is focused on the issues.

To enhance the EIS, the steering committee identified a number of subjects that require in-depth study and appointed technical teams to prepare work plans for these subjects and oversee their implementation. Technical study subjects include:

- Fill Inventory
- Flooding
- Stability of Valley Fills
- Mining and Reclamation Technology
- Future Mining
- Fill Hydrology
- Landscape Ecology
- Terrestrial Habitats
- Post Mining Land Use
- Fisheries
- Streams
- Wetlands
- Soil Quality and Forest Productivity
- Aquatic Ecosystem
- Economics
- Mine Dust and Blasting

The study area is located within the Appalachian Coalfield Region of the Appalachian Plateau physiographic province and Bituminous Coal Basin and extends over portions of West Virginia, Kentucky, Virginia, and Tennessee. However, it has been necessary to focus most of the technical studies on West Virginia case examples. There are several reasons for this, principally the tight timetable for producing an EIS under the settlement agreement, the opportunity to build upon insights and recommendations in the West Virginia Governor's Task Force Report and to fund studies in cooperation with the West Virginia Legislature.

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C. THE EIS DOCUMENT

The purpose of the EIS and the need for the alternatives evaluated in this EIS were summarized in Chapter I. The approach to the EIS is summarized in Chapter II. Chapter III describes the environment of the study area to be affected by the alternatives under consideration. The alternatives are presented in Chapter IV. The environmental consequences sections form the scientific and analytic basis for the comparisons of the alternatives. The environmental consequences are organized by issue and are presented in Chapter V.