

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* States with approved coal reclamation plans.

*Total Annual Responses:* 0.

*Total Annual Burden Hours:* 1.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

**ADDRESSES:** John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 120—SIB, Washington, DC 20240.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Dated: September 17, 1996.

Arthur W. Abbs,

Chief, Division of Regulatory Support.

[FR Doc. 96-24293 Filed 9-20-96; 8:45 am]

BILLING CODE 4310-05-M

### **Fern Lake Watershed, Tennessee, Lands Unsuitable for Surface Coal Mining And Reclamation Operations; Availability of Record of Decision and Statement of Reasons**

**AGENCY:** Office of Surface Mining Reclamation and enforcement, Interior.

**ACTION:** Notice of availability of record of decision and the statement of reasons on the petition to declare certain lands in the Fern Lake Watershed, Tennessee, unsuitable for surface coal mining.

**SUMMARY:** The Director of the Office of Surface Mining Reclamation and Enforcement (OSM) has reached a decision on a petition to designate an area as unsuitable for surface coal mining operations in the Fern Lake watershed, Claiborne County, Tennessee.

**ADDRESSES:** Copies of the decision and the statement of reasons for the decision may be obtained from the Assistant Director, Program Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, HDQ01, Washington, D.C. 20240, or Willis L. Gainer, Supervisor, Technical Group, Knoxville Field Office, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902.

#### **FOR FURTHER INFORMATION CONTACT:**

Willis L. Gainer, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902; telephone: 423/545-4074.

**SUPPLEMENTARY INFORMATION:** The petition was submitted to OSM on February 14, 1994, by the City of Middlesborough, Kentucky, and the National Parks and Conservation Association to designate 3780 acres of land lying in the Fern Lake watershed, Claiborne County, Tennessee, as unsuitable for all types of surface coal mining operations. OSM determined the petition to be complete on March 15, 1994, and initiated evaluation of the petition allegations.

The petition was filed in accordance with Section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing regulations at 30 CFR 942.764. The petitioners alleged that: (1) Surface coal mining operations would affect fragile lands and could result in significant damage to important scientific or esthetic values or natural systems; (2) surface coal mining operations would affect land in which the surface coal mining operations could result in a substantial loss or reduction in the long-range availability of water supplies; (3) surface coal mining operations would be incompatible with the local land use plans of the Cumberland Gap National Historic Park; and (4) surface coal mining operations should not be allowed because the area constitutes a natural hazard land. Pursuant to 30 CFR 942.764, OSM analyzed the allegations of the petition and on March 12, 1996, held a public hearing. OSM filed the final petition evaluation document/environmental impact statement (PED/EIS) for the Fern Lake petition with the Environmental Protection Agency (EPA) on August 2, 1996. The EPA subsequently published the notice of availability on August 9, 1996 (61 FR 41607).

A copy of the decision signed by the Director appears as an appendix to this notice. Additional copies of the decision and copies of the statement of reasons (not attached to this notice) are available at no cost from the offices listed above under **ADDRESSES** OSM has sent copies of these documents to all interested parties of record.

Prior Federal Register notices on the Fern Lake unsuitability petition were the notice of intent to prepare an EIS published in the Federal Register dated April 6, 1994 (50 FR 31177), and the notice of availability of the draft

combined PED/EIS dated January 26, 1996 (61 FR 2531).

Dated: September 13, 1996.

Mary Josie Blanchard,

Assistant Director, Program Support

Appendix: Copy of Decision

#### *Petition To Designate Certain Lands in the Fern Lake Watershed, Tennessee, as Unsuitable for Surface Coal Mining Operations*

Under Section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1272, the Office of Surface Mining Reclamation and Enforcement (OSM) was petitioned by the City of Middlesborough and the National Parks and Conservation Association to designate certain private lands in the Little Yellow Creek (Fern Lake) watershed, Claiborne County, Tennessee, as unsuitable for all surface coal mining operations.

As required by Section 522(c) of SMCRA, public comments were solicited on the Fern Lake unsuitability petition; a public hearing was held near the petition area in Middlesborough, Kentucky; and a detailed petition evaluation document/environmental impact statement (PED/EIS) was prepared by OSM. The PED/EIS evaluated the petition allegations, the potential coal resources of the petition area, the demand for coal resources, and the impacts of alternative petition decisions available to the decision maker on the entire range of resource elements in the social and physical environment.

I have considered the following information in the course of making this decision on the petition: The draft and final PED/EIS documents; the allegations of the petitioners; comments in the form of oral testimony at the public hearing; and written submissions received during the comment period (which ended March 26, 1996) by Federal agencies, State agencies, local agencies, and members of the public and industry. Other information considered in my decision included meetings with the petitioners, landowners, leaseholders, and officials of the Cumberland Gap National Historical Park. On the basis of all information that is in the record of this proceeding, I have reached the following decision: Designate the entire petition area as unsuitable for all surface coal mining operations but allow underground mining from outside the petition area.

OSM has previously approved permits to extract approximately 3.4 of the estimated 4.3 million tons of the petition area's underground minable

reserves from entries located outside the petition area. Permits for these operations were in effect prior to the receipt and processing of the Fern Lake petition. As a result, these and similar operations which propose to mine coal by underground methods from entries located outside the petition area will not be affected by this decision.

Copies of this decision will be sent to all parties in this proceeding. The decision will become effective on the date of the signing of the "Statement of Reasons." Any appeal from this decision must be filed within 60 days from the date in the United States District Court for the Eastern District of Tennessee, as required by Section 526(a)(1) of SMCRA, 30 U.S.C. 1276(a)(1).

Dated: September 13, 1996.

Robert J. Uram,

*Director, Office of Surface Mining  
Reclamation and Enforcement.*

*Petition To Designate Certain Lands in  
the Fern Lake Watershed, Tennessee as  
Unsuitable for Surface Coal Mining  
Operations; Statement of Reasons*

### I. Introduction

In response to a petition filed by the City of Middlesborough, Kentucky, and the National Parks and Conservation Association, I have decided to designate the entire petition area as unsuitable for all surface coal mining operations while allowing underground mining from entries located outside the Fern Lake petition area in Claiborne County, Tennessee. This decision takes into account all of the information contained in the petition; the draft and final petition evaluation document/environmental impact statement (PED/EIS); information provided by the petitioners; comments in the form of oral testimony at the public hearing; and written submissions received during the comment period (which ended March 26, 1996) by Federal, State and local agencies, and members of the public and industry. Other information considered in my decision included meetings with the petitioners, landowners, leaseholders, and officials of the Cumberland Gap National Historical Park. The following is a discussion of the reasons supporting my decision.

### II. Legal Background

Section 522(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) allows any person having an interest that is or may be adversely affected to petition to have an area designated unsuitable for surface coal mining operations. The Secretary of the

Interior is responsible, under Section 504 of SMCRA, for designating lands in Tennessee as unsuitable. Specific procedures for processing a petition to designate private lands in Tennessee appear in 30 CFR 942, Subchapter F. The Office of Surface Mining Reclamation and Enforcement (OSM) has followed those procedures in reaching its decision on the Fern Lake petition. The Secretary of the Interior has delegated to the Director of OSM the authority to make a final decision on lands unsuitable petitions except for noncoal mining [216 DM.1.1].

The regulatory authority shall designate an area unsuitable if it determines that reclamation pursuant to the requirements of SMCRA is not technologically and economical feasible [Section 522(a)(2)]. The regulatory authority may designate any area unsuitable if such operations would: (1) Be incompatible with existing State or local land use plans or programs [Section 522(a)(3)(A)]; (2) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems [Section 522(a)(3)(B)]; (3) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products [522(a)(3)(C)]; or (4) affect natural hazard lands in which such operations could substantially endanger life or property [Section 522(a)(3)(D)].

The petition in this case requests that the designation of the Fern Lake watershed be made on the basis of criteria cited under 522(a)(3) (A), (B), (C) and (D). The petition contained numerous suballegations and documentation to support its claim that the area should be designated under these discretionary criteria.

### III. Events

The petition area encompasses a portion of the Little Yellow Creek watershed, an area of approximately 5.9 square miles, located in north-central Claiborne County, Tennessee. Little Yellow Creek drains into Fern Lake, a 110-acre public water supply lake for Middlesborough, Kentucky. Approximately 45 acres of this lake is in the petition area while the remainder of the lake is in Kentucky. Because the lake constitutes the most significant feature of the watershed, the petition is herein identified as the Fern Lake petition.

The Fern Lake unsuitability petition was submitted to OSM on February 14, 1994, by the City of Middlesborough,

Kentucky, and the National Parks and Conservation Association. OSM determined the petition to be complete on March 15, 1994, and initiated evaluation of the petition allegations.

Because the decision on this petition may have a major effect on the quality of the human environment, OSM decided to prepare a combined petition evaluation document and environmental impact statement. A notice of intent to prepare a draft PED/EIS, including a request for public participation in determining the scope of the issues to be addressed, was published in the April 6, 1994, Federal Register (50 FR 31177) and in the local newspaper. It was also mailed to all persons with an identifiable ownership interest in the petition area and interested State and Federal agencies. A scoping meeting was held on April 18, 1994, in Middlesborough, Kentucky. Approximately 140 persons attended the scoping meeting, 40 of whom presented oral comments.

By the close of the comment period on May 18, 1994, OSM had received 31 scoping comment letters. All comments contained in the public record for the petition and the proposed PED/EIS were used in determining the scope of the PED/EIS.

OSM announced the availability of the draft PED/EIS and requested public comments in the January 26, 1996 (61 FR 2531), Federal Register, in the February 1996, Tennessee Administrative Register; and in local newspapers. Notice of the March 12, 1996 public hearing also was made in these notices and newspaper advertisements. The public comment period on the draft officially closed on March 26, 1996; however, OSM did consider comments received until July 1, 1996.

Approximately 30 persons attended the March 12, 1996 hearing with 7 persons presenting oral comments. During the comment period, 111 letters (with more than 300 signatures) provided written comments on the draft PED/EIS. All comments were considered by OSM in the final PED/EIS.

The notice of availability of the final PED/EIS was published in the Federal Register on August 9, 1996 (61 FR 41607); in the Middlesboro Daily News on August 9, 1996; and in the Claiborne Progress on August 14, 1996.

### IV. The Petition

The Fern Lake petition contained four primary allegations, with a number of suballegations. The petition is printed in appendix C of the final PED/EIS. The petitioners allege that: (1) The petition

area is a fragile area, and mining could result in significant damage to important historical, cultural, scientific, and esthetic values and natural systems; (2) surface mining would result in a substantial loss or reduction in the long-range availability of water supplies; (3) surface mining would be incompatible with local land use plans and programs, including the Cumberland Gap National Historical Park; and (4) surface coal mining operations would affect natural hazard lands which are subject to frequent flooding.

#### V. Decision Alternatives

OSM evaluated several decision alternatives ranging from designating all lands in the petition area unsuitable for all or certain types of surface coal mining operations to not designating any of the lands in the area as unsuitable. The alternatives include the option of designating only parts of the area as unsuitable for all or certain types of surface coal mining operations. However, underground mining from entries located outside the petition area would not be precluded regardless of a decision by the Director. This was based on the fact that 3.4 million of the petition area's estimated 4.3 million tons of underground recoverable reserves are already under permits which allow extraction by this method. The full text discussion of the decision alternatives and their environmental impacts are found in Chapter V of the final PED/EIS.

#### VI. Preferred Alternative

The Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act require an agency preparing an environmental impact statement to identify its preferred alternative [40 CFR 1502.14(e)]. OSM's preferred alternative for the Fern Lake unsuitability petition is alternative 1 in the final PED/EIS. This alternative includes the designation of all parts of the petition area as unsuitable for surface coal mining operations while allowing the continuation of underground mining from entries located outside the petition area. A detailed discussion of the existing environmental resources and the impacts of the preferred alternative can be found in the final PED/EIS in chapter II and chapter V, section A, respectively.

#### VII. Findings

These findings are based upon all the information contained in the public record of the proceedings on the petition. In accordance with 30 CFR

942.764.13(b)(1)(v), OSM assumed that contemporary mining practices under the Federal Program for Tennessee would be followed if the area were to be mined. The petition allegations and my findings with regard to each allegation and suballegations follow.

A. Allegation No. 1 is that surface coal mining operations will affect fragile lands in which such operations would result in significant damage to important scientific or esthetic values or natural systems. The petitioners supported this allegation with five suballegations. However, several of these suballegations were repetitive so the allegations were grouped into four broader suballegations for the purpose of analysis and are described and answered as follows:

1. The petitioners allege that Little Yellow Creek is a water body of high quality in chemical, biological, and ecological terms, both regionally and specifically within the Yellow Creek watershed. The petitioners have specifically identified Little Yellow Creek as having a unique water quality making it a good reference stream for comparison with other heavily mined watersheds in the region. They also state that the water quality has resulted in the preservation of sensitive aquatic species. Data collection showed that the blackside dace species, listed as an endangered fish species in Tennessee and a Federally listed threatened species, exists in the petition area; however, no other sensitive aquatic species were identified. The blackside dace are susceptible to changes in water chemistry and sedimentation associated with surface coal mining. The petitioners further stated that the water quality and aquatic ecosystem act to replenish degraded downstream reaches of Yellow Creek.

Based on the results of the sedimentation investigations conducted during the course of the PED/EIS, it was found that the Fern Lake watershed would be subjected to increased sediment loading as a result of surface coal mining operations. It has also been determined that a large portion of this sediment loading would be from uncontrolled drainage associated with haul roads and would be clay fraction colloidal material which could not easily be retained by standard sediment ponds without additional water treatment techniques. Any additional treatment, such as flocculants to remove the colloidal clay material, could affect water chemistry and affect the blackside dace [PED/EIS:page IV-3]. As a result, I have determined that potential increase in sediment loading, in the absence of extraordinary control measures, would

dramatically impact the thriving population of blackside dace in Little Yellow Creek. [PED/EIS:page V-9].

The PED/EIS determined that the waters in Fern Lake basin are of higher water quality than many adjacent watersheds. The effects of mining on the surface-water quality of Little Yellow Creek can already be seen. Future mining would increase the nutrient levels in the stream and lake. Specific aquatic toxicity from metals and trace elements is not projected from mining the watershed. However, local toxicity in some tributaries is possible. More importantly, the nutrient loading caused by the mining would change the aquatic ecosystem. Large influxes of sulfates and other dissolved solids would be expected to affect the competitiveness of some aquatic species. The lack of toxicity data on the blackside dace makes predictions difficult, but experience in the Little Clear Creek watershed suggests that mining and the blackside dace are not compatible. As a result of the sedimentation and water quality investigations, I have determined that the sedimentation of Little Yellow Creek, more so than the changes in water chemistry, would adversely affect the blackside dace [PED/EIS: page V-9].

The petitioners have also alleged that the high water quality and diverse aquatic biota of the Fern Lake watershed help to restore the downstream reaches of Yellow Creek and the Upper Cumberland River basin which have already had a major impact from surface coal mining operations. The baseline information in chapter II indicates that Little Yellow Creek above Fern Lake provides little flow during the dry months and has been seen to go completely dry in some segments. Furthermore, the lake discharges water only from the emergency spillway. During summer and fall when rains become infrequent, the evaporation and pumpage from the lake exceed the inflows to the lake. This causes lake water levels to drop below the spillway elevation eliminating any surface-water discharge to lower stream segments. As a result, during low flow periods Little Yellow Creek below the Fern Lake dam flows as a result of dam seepage and ground-water recharge. Sampling of water below the dam in the summer of 1994 revealed fair water quality but high total dissolved solids, elevated sulfates, and some iron. Thus, the data does not support the petitioners' allegation that the Fern Lake watershed helps replenish the downstream degraded reaches. While contributions do occur during high flows and spring runoff events, the contribution during chemically critical

low flows does not appear to be major. As a result of these studies, I have determined that the petition area does not significantly contribute to the restoration of downstream reaches of Yellow Creek. [PED/EIS: page IV-9]

Associated with the other suballegations, the petitioners contend that the high water quality in the petition area makes it a biological refuge for fish and aquatic species. This refuge acts to replenish degraded downstream reaches. OSM findings show that Little Yellow Creek, including Davis Branch, supports aquatic resources that are more diverse than most of the Yellow Creek watershed. Of principle significance is the diverse fishery which supports a population of the blackside dace in Davis Branch which is a tributary to lower Little Yellow Creek. Additionally, the presence of blackside dace in Little Yellow Creek upstream of Fern Lake also represents an aquatic refuge for that species. Although Fern Lake is a high quality aquatic resource, the lake itself is less important as an aquatic refuge in that it serves as a barrier to downstream translocation of native species and promotes potentially nuisance aquatic species. As a result of these findings, I have determined that Fern Lake itself acts as a barrier to the successful translocation of upstream species in the petition area to the degraded downstream reaches. However, the high water quality in the Little Yellow Creek watershed upstream of the Lake does act as a biological refuge for various species which are intolerant of water chemistry alterations associated with mining. [PED/EIS: page IV-11-12]

The petitioners allege that the high water quality and aquatic systems of the petition area make it a reference stream for comparing to other impacted watersheds in the area. The PED/EIS determined that, based on the evidence provided by the petitioners, there is insufficient rationale to consider Little Yellow Creek suitable as a reference stream. The findings do verify that Fern Lake and the Little Yellow Creek tailwaters immediately below Fern Lake are high quality water bodies. They also find that water chemistry and physical habitat characterization of Little Yellow Creek upstream of Fern Lake are indicative of a relatively higher quality than most of Yellow Creek proper and its major tributaries. However, OSM's analyses of biological communities in upper Little Yellow Creek indicate moderate reduction in biological diversity when compared with that in Davis Branch, which is a protected tributary within the boundaries of the national park. Additionally, habitat alteration and associated shift in the

biological community as a result of impoundment of Little Yellow Creek limit the importance of Fern Lake as a reference water body in the Yellow Creek drainage. The fact that mining has already occurred and is having some impact on the water quality and aquatic ecosystem further reduces the viability of the area as a reference stream. Based on these findings, I have determined that Little Yellow Creek in the petition area would not meet the criteria needed to be a reference stream and that there are better streams available in the general area which are less affected by previous mining and afford higher biological diversity. [PED/EIS: page IV-12-14]

2. The petition states that surface coal mining operations would result in visual impacts resulting from the alteration of the land surfaces associated with mining and reclamation activities. They state that these visual impacts would be incompatible with the goals of the Cumberland Gap National Historical Park, which depend on the natural unspoiled, scenic splendor of the vistas from the Pinnacle and other overlooks to help convey a sense of the historic and cultural importance of the Cumberland Gap in American history. They also state that the deforestation and mining-related activities will alter the landscape as seen from overlooks, adversely affecting the primitive experience of park visitors. Because of the regrouping of allegations, the alleged incompatibility of surface coal mining with the goals of the Cumberland Gap National Historical Park's Master Plan is addressed in this document under Allegation No. 3 which concerns local land use plans.

In response to this allegation, OSM determined that surface coal mining within the petition area would adversely affect the area as a landscape resource. Surface mining would affect both the visual quality and value of the Pinnacle Overlook, and the subjective response of the visitor. OSM determined that the Fern Lake petition area is not a pristine viewshed, based on the number of past mining activities both within and adjacent to the petition area. However, OSM also determined that much of this older mining is now reclaimed and not readily visible, giving the current undisturbed appeal. Should surface mining activity occur in the petition area, the current wooded appearance of Fern Lake watershed would change following mining, particularly in the short to medium time frame, decreasing the scenic quality of the view. However, reclamation to approximate original contour and postmining revegetation would

minimize most of the long-term impacts as it has with the previous mining in the petition area. Based on this information, I have determined that there would be an adverse impact on visual quality associated with the park. However, these types of impacts, which have been historically occurring within the petition area, are generally of a short to medium duration and should not cause any permanent impact to the visual quality of the area. [PED/EIS: page IV-14-16]

3. The petitioners allege that surface coal mining would significantly diminish the recreational experience of visitors to Cumberland Gap National Historical Park. The petitioners support this by stating that surface coal mining activities would alter the visual quality of the park which depends on the natural unspoiled, scenic splendor of the vistas from the Pinnacle and other overlooks to help convey a sense of the historic and cultural importance of the area in American history. They state that deforestation and mining-related disturbances would alter the landscape and adversely affect the primitive experience of the park visitor. They further allege that the area of "recreational value due to high environmental quality" and should be considered as fragile lands.

OSM findings support the petitioners' allegation in that surface coal mining operations would be expected to affect the visual quality of the Cumberland Gap National Historical Park, thus impacting the visitor's recreational experience [PED/EIS: page IV-16-17]. OSM also recognized that Cumberland Gap is a unique feature which provides special recreational opportunities because of its historical and cultural background. The Cumberland Gap is a break in the Appalachian Mountains that allowed westward expansion of the United States to occur in the late 1700's. The route through the gap also played an important role for Colonists to move westward prior to the Revolutionary War. Because of this historical and cultural association with the gap, I have determined that the area is unique and that similar esthetic values and recreational opportunities at other public use lands would not provide an appropriate substitute for those found at the Cumberland Gap National Historical Park. For these historical and cultural values of the park, I conclude that its natural visual character is important. However, for recreationists who are not concerned with historical or cultural aspects, the Cumberland Gap National Historical Park is not considered unique, nor would mining be expected to drastically reduce the recreational

experience of those who are involved with more conventional use of the park such as hiking, camping, picnicking, and fishing.

4. The petitioners refer to analyses performed by the Commonwealth of Kentucky in granting the Lands Unsuitable Petition 87-2 for the Cannon Creek Lake watershed. Petitioners allege these analyses demonstrate that impacts from surface coal mining operations "could result from the surface disturbances associated with coal mining activities and discharges of water which have been demonstrated to be major in terms of both the water supply systems and the natural systems with the lake." Petitioners argue that these impacts would result even if the operations were conducted in full compliance with all the environmental protection performance standards of Sections 515 and 516 of SMCRA and the Secretary's regulations. They go on to provide a summary of the findings made by the Kentucky Division of Surface Mining Reclamation and Enforcement which showed major sediment loading to Cannon Creek Lake, which is the public water supply lake for Pineville, Kentucky.

OSM recognizes the findings and the decision made by the Commonwealth of Kentucky to designate the watershed to the Cannon Creek lake as unsuitable for surface coal mining activities. OSM's findings do acknowledge that there are similarities between the petition areas; however, OSM also recognizes that each watershed has physical and ecological differences that need to be considered distinctly from each other. In conclusion, I have determined that the decision regarding the Cannon Creek Lake petition area is not precedent setting with regards to the Fern Lake petition area.

Based upon: (1) The effects of the increase in sedimentation and water chemistry from mining, including adverse effects on the blackside dace; (2) the value of Little Yellow Creek as important habitat for the blackside dace; and (3) the short to medium term adverse impact on the visual quality of the views from the Cumberland Gap National Historic Park, I have determined that surface coal mining operations in the petition area will affect fragile lands resulting in damage to important esthetic values and natural systems.

B. Allegation No. 2 is that surface coal mining operations would affect land by causing a substantial loss or reduction in the long-range availability of water supplies.

The petitioners have alleged that surface mining could result in an

increased sediment yield of as much as 2000 times that of baseline conditions during mining and 10-100 times that of baseline conditions after reclamation, and that such sedimentation would decrease the storage capacity and useful life of the lake. OSM's analysis determined that although some sediment loading would occur as a result of mining activities, there would not be any major impact to the storage capacity of Fern Lake nor would it dramatically alter the useful life of the lake from a water quantity standpoint.

The petitioners alleged that surface mining could also alter the physical and chemical properties of the water stored in the lake, resulting in diminution of water quality and potentially increasing water treatment costs. Based on available information, OSM's findings support this allegation. Surface coal mining and reclamation operations conducted within the Fern Lake watershed would significantly impair the water quality of Fern Lake by altering both the physical and chemical characteristics of the water. If surface coal mining operations occurred, chemical changes to the water are predicted to last several hundred years. [PED/EIS: page V-5]

The PED/EIS concluded that these effects would result in increased treatment costs to the City of Middlesborough to meet domestic water supply standards for the water supplied to its users. A sustained increase in turbidity of Fern Lake waters would require the city's treatment plant to operate longer hours and/or to modify equipment to process high turbidity water. The increase in water sediments would increase costs because it would require more frequent equipment cleaning and disposal of more sediment. In addition, the plant would have to add chemicals and/or other processing equipment to reduce the increased concentrations of metals and trace elements in the water from Fern Lake such as fluoride, lead, mercury, selenium, and sulfate. The use of additional chemicals and/or installation of processing equipment would be necessary to meet domestic water supply standards. The existing plant was not designed to treat water with elevated levels of sulfates, sediments, and turbidity. [PED/EIS: page V-11-13]

The significant changes to the water quality of Fern Lake would require the city to make appropriate changes to the existing water treatment system to maintain current water quality. These changes are predicted to be costly to Middlesborough, with no guarantee that the existing water quality could be maintained. Furthermore, no other

domestic water supply of the same quality was identified which it would be economically feasible for the city to utilize.

The PED/EIS also concluded that underground mining, from outside the petition area, would cause a major alteration of the water quality or treatment costs of water in Fern Lake.

According to the petitioners, surface coal mining operations could affect aquifers and recharge areas for the watershed, thus affecting the overall hydrology and water availability to the City of Middlesborough. The PED/EIS concluded that the Fern Lake watershed is a renewable resource land and that surface coal mining could result in a substantial loss and reduction in the long-range availability of water supplies for the community of Middlesborough. In evaluating the allegation, I was especially concerned with the predicted impact of mining in the petition area on the water supply for Middlesborough.

Based on OSM's findings, I have determined that changes in sediment loading and water chemistry as a result of surface coal mining operations will affect both aquatic life and drinking water supplies. For the long term, the resource lands subject to the petition would no longer produce a water supply that existing facilities and budget could treat, as discussed above. Therefore, I conclude that surface mining operations on these lands would substantially reduce the long-range productivity of the community's water supply.

C. Allegation No. 3 is that surface coal mining operations would be incompatible with existing local land use plans or programs, specifically those associated with the Cumberland Gap National Historical Park.

The Cumberland Gap National Historical Park Master Plan (National Park Service, 1978) states that "according to law, the purpose of the Cumberland Gap National Historical Park is to preserve \* \* \* natural features for the benefit and inspiration of the people." Based on this objective, the stated goals of the master plan include the securing of a "land base through acquisition or other means that is adequate to preserve the park's natural \* \* \* resources and to provide for visitor use and enjoyment."

The petition area is visible from the Pinnacle Overlook, one of the most popular destinations in the park, and was judged to offer greater esthetic qualities than any of the other viewsheds visible from the Overlook. I have concluded that based on the stated overall objective and purpose of the park, esthetic impacts associated with surface coal mining operations in the

petition area would be short to medium term, but would nevertheless be considered incompatible with the goals of the master plan which are to preserve the park's natural resources and minimize adverse effects on these resources and visitation because of strip mining (see previous discussion on page 7).

D. Allegation No. 4 is that surface coal mining operations should not be allowed because the watershed, due to frequent flooding, constitutes a natural hazard land.

The petitioners have alleged that any additional mining would increase surface water runoff and increase sediment loading and flooding to downstream areas in the Cumberland Gap National Historical Park and the City of Middlesborough. They support this by making a statement that, without any major surface disturbances within the watershed, there is still evidence of current sediment loading from the headwaters (identified as logging roads) which are depositing sediment in the stream channel of Little Yellow Creek.

With regard to Allegation No. 4, OSM's findings in the PED/EIS demonstrated that mining in the petition area would not substantially affect the flooding potential in the Yellow Creek basin and that the Fern Lake watershed does not constitute a natural hazard land. Mining in the watershed would constitute a minor change in the overall land use, which, when coupled with the storage capacity of the required sediment basins, should not significantly alter surface water runoff to the Little Yellow Creek watershed. As a result, I have determined that the area does not constitute a natural hazard land and that mining would not significantly alter the flooding potential of the area.

#### VIII. Conclusion

I find that surface coal mining operations in the petition area would affect the renewable resource lands in that area and result in a substantial loss in long-range productivity of Fern Lake, which serves as the Middlesborough public water supply. Surface mining would alter the physical and chemical properties of the water stored in the lake. Changes in sediment loading and water chemistry could degrade the water quality of the lake so as to be a major burden on the city's water treatment plant. Mining in the petition area would cause this loss in productivity even if conducted in full compliance with the environmental performance standards of SMCRA.

In addition, I find that surface coal mining operations in the petition area

would affect fragile lands resulting in damage to important esthetic values and natural systems and would be incompatible with the goals of the master plan for the Cumberland Gap National Historical Park. I considered these findings in my decision on the petition, but the most important consideration was the impact of surface coal mining operations in the petition area on productivity of the Fern Lake water supply.

I find that alternative No. 1, designating the entire petition area as unsuitable for surface coal mining operations but allowing underground mining from outside the petition area, will best prevent the harms discussed in this decision. The other designation alternatives would not effectively address the adverse effects identified in Section V of the PED/EIS.

#### IX. Future Action

OSM is responsible for approving or denying applications for proposed surface coal mining operations in the Fern Lake petition area. Under this decision, OSM would not receive and process applications for proposed surface coal mining operations on any coal seam within the Fern Lake petition area. However, if a petitioner provides information to terminate this designation, the petition would require new allegations of fact that would support such a termination.

#### X. Notification

Pursuant to 30 CFR 942.764.19, this "Statement of Reasons" is being sent simultaneously by certified mail to the petitioners and by regular mail to every other party to the petition process. My decision becomes final upon the date of signing this statement. Any appeal from this decision must be filed within 60 days from this date in the United States District Court for the Eastern District of Tennessee, as required by Section 526(a)(1) of SMCRA.

Dated: September 13, 1996.  
Robert J. Uram,  
*Director, Office of Surface Mining  
Reclamation and Enforcement.*  
[FR Doc. 96-24262 Filed 9-20-96; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OJP No. 1100]

RIN 1121-ZA49

### Solicitation for Corrections Technical Assistance and Conference Series

**AGENCY:** Office of Justice Programs, Corrections Program Office, Justice.

**ACTION:** Notice of solicitation of applications.

**SUMMARY:** The Corrections Program Office is soliciting proposals to establish a Corrections Technical Assistance and Conference Series. The purpose of the series is to provide training and technical assistance to State and local jurisdictions to support the effective implementation of corrections-related grant programs authorized by the Violent Crime Control and Law Enforcement Act of 1994, as amended.

**DATES:** Applications are due to the Corrections Program Office no later than close of business on October 25, 1996.

**ADDRESSES:** Corrections Program Office, 633 Indiana Avenue, NW, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Patricia Malak, Corrections Program Office, at (800) 848-6325 or (202) 305-4866 if calling from Metropolitan Washington, DC. Applications for this solicitation may be obtained through this number.

#### SUPPLEMENTARY INFORMATION:

##### Authority

This action is authorized under the Violent Crime Control and Law Enforcement Act of 1994, as amended, 42 U.S.C. 13701-9 and 42 U.S.C. 13911, and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3796ff-3796ff-4.

##### Background

The Corrections Program Office is responsible for administration of the following corrections-related grant programs authorized by the Violent Crime Control and Law Enforcement Act of 1994, as amended:

- Violent Offender Incarceration and Truth-in-Sentencing Incentive Formula Grants
- Discretionary Grants to Build Jail Facilities on Tribal Lands
- Residential Substance Abuse Treatment for State Prisoners
- Prevention, Diagnosis, and Treatment of Tuberculosis in Correctional Institutions

The solicitation describes these programs, outlines the scope of work