Mountaintop-Removal Report Avoids Details, Fish and Wildlife Says

By Ken Ward Jr.
Staff Writer

A draft federal study of mountaintop-removal coal mining wrongly avoids a detailed analysis of tougher regulations to limit mining, according to one of the agencies that wrote the government report.

In a previously confidential memo, the U.S. Fish and Wildlife Service said the study’s proposed actions offer “only meager environmental benefits.”

Officials from the service - the federal government’s top biologists - complained that the study did not consider any options that would actually limit the streams buried by valley fills.

Fish and Wildlife officials gave the study a “‘two-star rating,’ as with a budget hotel or a B movie,” according to the memo.

“There is no difference between [the alternatives],” the Fish and Wildlife officials said in a September 2002 memo to other agencies. “The reader is left wondering what genuine actions, if any, the agencies are actually proposing.”

Publication of the draft as written, the service warned, “will further damage the credibility of the agencies involved.”

In mountaintop-removal mining, coal operators use explosives to blast off entire hilltops and uncover coal seams. Leftover rock and dirt, the stuff that used to be the mountains, is dumped into nearby valleys, burying streams.

Nearly five years ago, in December 1998, federal officials agreed to spend two years studying mountaintop removal’s environmental effects. They did so to settle part of a lawsuit that sought to block new mining permits.

The U.S. Army Corps of Engineers and the Fish and Wildlife Service, along with the U.S. Office of Surface Mining and the federal Environmental Protection Agency, released their first formal draft of the study in May. It was 2 1/2 years overdue.

In earlier, unpublished drafts, the agencies examined various potential concrete limits of the size of streams that could be buried by valley fills.

But when they wrote their formal draft, the agencies dropped those proposals. The ideas were not studied in any detail, or released for public comment.

Instead, the draft outlines alternatives for streamlining the process for approving new
mountaintop-removal permits. Currently, coal operators must obtain strip mining permits, water pollution permits and water quality certificates from state environmental regulators. They also must obtain fill authorizations from the corps.

Under one alternative, agencies would maintain their separate authority for different permits required for mining operations. But, the agencies would try to work more closely to achieve “a series of consecutive coordinated reviews and decisions.”

Under a second alternative, preferred by the agencies, companies would submit a “single, joint permit application” to all of the agencies. Each agency would still issue its own permit, but the review process would be greatly streamlined.

Under a third approach, favored by the coal industry, state regulators would take over authority for all mining permits. Most fills would be eligible for streamlined Clean Water Act reviews.

In its memo to other agencies, the Fish and Wildlife Service said it had wanted the study to include “at least one alternative to restrict, or otherwise constrain, most valley fills to ephemeral stream reaches.

“As we have stated repeatedly, it is the service's position that the three ‘action’ alternatives, as currently written, cannot be interpreted as ensuring any improved environmental protection ... let alone protection that can be quantified or even estimated in advance,” the memo said.

Mike Robinson, a spokesman for OSM, said the service’s memo was “just part of the sausage-making process.”

Robinson said the OSM and EPA preferred a case-by-case analysis of valley-fill proposals, rather than a concrete limit to their size.

“We went round and round on the alternatives,” Robinson said. “I do recall a lot of debate as we developed all of the different iterations of the alternatives.”

Lawyers for various environmental groups that oppose mountaintop removal obtained the service’s memo under the Freedom of Information Act.

“The service’s comments are devastating,” said lawyer Jim Hecker of the group Trial Lawyers for Public Justice.

The memo, Hecker said, “admitted that the draft [study] is essentially a sham that merely tinkers with different locations to house the rubber stamp for approving permits, instead of recommending concrete actions to protect the environment.”

Last week, Hecker and Joe Lovett of the Appalachian Center for the Economy and the Environment filed a lawsuit that seeks to curb mountaintop removal.

In this federal lawsuit, Hecker and Lovett argue that the corps has illegally approved the burial of hundreds of miles of Appalachian streams through a streamlined permit process intended only for activities that cause “minimal” environmental damage.

Ginger Mullins, chief of the regulatory branch at the corps’ Huntington District office, conceded that her agency is not really looking at valley-fill permits in a big-picture fashion.

“We’re not branching out,” Mullins said in a telephone interview. “We’re not typing it all in. We’re not looking statewide.

“We do them application by application, and they are not [individually] hundreds of miles,” Mullins said last week. “At this point in time, I believe it’s a reasonable approach. As things accelerate
and there is more and more activity, it may not be.”
In their new court complaint, Hecker and Lovett said the corps continues to authorize valley fills under what is called a nationwide permit.

Under the Clean Water Act, nationwide permits are intended to cover categories of similar activities that have minimal cumulative environmental impact.

With nationwide permits, the corps issues a permit that spells out general conditions that must be met by those performing a particular activity. Then, companies promise to meet those general conditions and are authorized under the nationwide permit.

In their lawsuit, Hecker and Lovett argue that valley fills have greater than minimal environmental impact. Therefore, they say, fills must obtain individual permits.

With individual permits, the corps conducts a detailed review of a specific proposal’s environmental impact before it approves that proposal.

Hecker and Lovett raised this same objection in 1998, when they filed their first major legal attack on mountaintop removal.

The issue was dropped, however, when that part of the lawsuit was settled.

Environmental groups agreed to the settlement because federal agencies promised that their mountaintop-removal study would lead to new regulations that would limit valley fills. But, environmental groups say, the draft federal study contains no such new regulations.

In its memo, the Fish and Wildlife Service said the study ‘documented adverse impacts to aquatic and terrestrial ecosystems, yet the proposed alternatives presented offer no substantive means of addressing these impacts. “The alternatives and actions, as currently written, belie four years of work and the accumulated evidence of environmental harm, and would substitute permit-process tinkering for meaningful and measurable change,” the memo said.

To contact Ken Ward Jr., use e-mail or call 348-1702.