

**DEQ Response to Comments regarding the Public Notice for a Coal Mining Project in the
Panther Creek watershed
In Craig and Nowata Counties.**

There were 10 comments received in response to an April 14, 2014 public notice:

1. Comments from Stephanie Jeffords:

All you have to do is look at the other towns with coal mining to know that coal mining causes untold injury and illness to people to include pregnant mothers. Stop fossil fuel energy and start using sustainable energy such as hydrogen fuel cell technology.

Response: Nationwide Permit 49, Coal Remining Activities, issued by the Tulsa District U.S. Army Corps of Engineers for the abovementioned coal remining project has been certified by DEQ because the project design and mitigation plan comply with the federal requirements of 33 C.F.R. PART 332, existing Oklahoma water quality standards and other applicable requirements of state law. Approval or disapproval of the existence of a coal mine is outside of the scope of water quality certification authority of DEQ. DEQ certification is limited to verifying that a permit application is administratively complete in accordance with Clean Water Act § 401. The applicant's project design and mitigation plan meet these requirements. No change has been made as a result of this comment.

2. Comments from Tulsa Metropolitan Utility Authority:

The summarized comment is as follows:

The Tulsa Metropolitan Utility Authority (TMUA) and the City of Tulsa support ODEQ's conditional Water Quality certification (WQC) letter regarding a proposed coal mining project in the Panther Creek Watershed. The conditions set forth in the WQC letter should ensure protection of Panther Creek, its tributaries and watershed – all critical sources of water to Lake Oologah, a drinking source water lake for the City of Tulsa and northeast Oklahoma residents.

Response: We appreciate the support provided in the letter. No change has been made as a result of this comment.

3. Comments from Joy Avery, Tulsa OK, Blue Thumb Waterkeeper:

Coal has PROVEN over the years to be DANGEROUS TO WATER, AIR AND HUMANS!
PROTECT our water from further damage from undisclosed chemicals and other pollutants used in the process of "cleaning coal".

It is damaging to our environment in EVERY POSSIBLE WAY. DO NOT APPROVE OF ANOTHER COAL MINE!

Response: Please see Response to Comment 1 above.

4. Comments from BG:

A coal mining project (associated with numerous toxic pollutants) should not be located near a source for drinking water for so many Oklahomans.

ODEQ should ensure the protection of our water quality and maintain safe drinking water, and consequently should and act against permitting of this coal mining.

Phoenix Coal Company should not receive Water Quality Certification.

Response: Please see Response to Comment 1 above.

5. Comments from Barbara VanHanken, Chair Oklahoma Chapter Sierra Club:

The summarized comment is as follows:

Do not approve the permit to Phoenix Coal for placing strip mines near Oologah Lake. This is a huge step backward at a time when water is such a precious commodity. Even if we had plenty of potable water, why take any risk in polluting it so it cannot be used. If our water is polluted, the Tulsa taxpayers will be the ones who will pay more in water treatment processes to make it potable again.

I understand there are a series of mines proposed to be dug leaving another visual and environmental blight in our watershed. These strip mines were problematic years ago when I was a child and they are not any better now. By allowing destruction of our local habitat, we will cause harm to native species of plants and animals, thus disrupting our ecosystem.

Response: The coal remining activities at issue are not strip-mining operations and the applicant has submitted a mitigation plan that will restore the disturbed area to its natural contours and vegetation. Additionally, please see Response to Comment 1 above.

6. Comments from Environmental Protection Agency, Region 6:

The summarized comment is as follows:

The EPA has reviewed and concurs with the conditions identified by ODEQ in the Public Notice to further protect quality in the Panther Creek watershed.

Response: We appreciate the support provided in the comment. No change has been made as a result of this comment.

7. Comments from Oklahoma Chapter of the Sierra Club (David Ocamb, Chapter Director):

“On behalf of the Oklahoma Chapter of the Sierra Club I am writing to request that the Oklahoma Department of Environmental Quality (ODEQ) deny water quality certification for the above-mentioned project.

In this case, the proposed mining project requires a permit pursuant to the Clean Water Act, section 404, in order to obtain an mining permit from Oklahoma Department of Mines (herein ODOM). ODOM relies upon your office to certify whether the required 404 permit would degrade the water quality of the waters receiving a discharge of pollutants from the mine. ODOM does not conduct any independent environmental review of the proposed mine.

While the Army Corps of Engineers (ACoE) has permitting authority over the Clean Water Act Section 404 program, it is your office which decides whether such a permit would degrade the water quality of the waters receiving a discharge of pollutants from the mine. It is expected that ACoE will continue its practice of failing to require a specific permit under Section 404, and that it will instead allow the operator to operate under the ACoE's guidelines.

Accordingly, and despite the involvement of two state agencies and one federal agency, the only substantive review that will occur of the impacts of the proposed mining on the water quality of the state, and particularly the water quality of Panther Creek and Oologah Lake is done only by your office.

Therefore, the review that you will complete is exceedingly important from a regulatory perspective. Absent litigation in federal court, there is no other way to compel the mining company to refrain from polluting Panther Creek and Oologah Lake.

Sierra Club and its members have substantial interests in Panther Creek and Oologah Lake. To begin, the lake is a significant locus of recreation. Many of the Club's members, including at least one member of its' Executive Committee, have and plan to continue to use Oologah Lake for recreation. There are literally thousands of Sierra Club members in Northeastern Oklahoma. Many of those members obtain part or all of their drinking water from the Tulsa Metropolitan Utility Authority (TMUA). TMUA obtains the raw water for its drinking water system in part from Oologah Lake. Accordingly, the quality, quantity, reliability and price of the water the members of Sierra Club drink is impacted by your decisions in relation to a Water Quality Certification for the proposed coal mine.

The proposed coal mine would discharge pollutants into Panther Creek. Panther Creek flows into Lake Oologah. Panther Creek, as you know, is already impaired for sulfides and turbidity. Oologah Lake is impaired for turbidity and dissolved oxygen. Pursuant to state law, a permit should not be issued which would cause a further impairment of a water body.

In this case, the proposed permit would violate Oklahoma law, and therefore the Water Quality Certification should indicate that the coal mining activity should not be permitted by the ACoE to commence. Coal mining, like the coal mining proposed in this case, has discharges which cause an increase in sulfides and turbidity, as well as a reduction of dissolved oxygen. These are the very things for which Panther Creek and Oologah Lake are impaired. Therefore, pursuant to Oklahoma Law you should not provide the ODOM with a Water Quality Certification for the proposed mine.”

Response: Please see Response to Comment 1 above.

8. Comments from Phoenix Coal Sales, Inc, the applicant (Clay Hartley, Vice President):

The summarized comment is as follows:

The applicant objects to the first points of condition # 5 (“Permittee shall increase the mitigation ratio for impacted streams by 20%”) for the following reasons:

“We are reconstructing the disturbed streams to the original length and class. Reconstruction will begin at the pre-mine elevations of the head and will end at the pre-mine elevations of the toe of the disturbed streams within the permit. We will be using Natural Regrade software that will produce reclamation plans for a natural permanent stream in the post mine era of the land. Any additional length added to the stream will not be a natural or stable structure. Adding “sinuosity” to the stream length within the boundaries of the permit is not an option. The stream will cut its own natural channel. Also adding sinuosity to the streams will violate the CFR laws concerning Approximate Original Contour with respect to reclamation.”

The applicant objects to the third point of Condition #5 (“The water bodies that comprise the mitigation project shall be provided long-term protection through real estate instruments or other appropriate mechanisms”) for the following reason:

- A. This demand violates “Reasonable Private Use.” See 33 CFR 320.4 (g) (1-3).
- B. Phoenix Coal Company believes it will comply with the provisions of 33 CFR 332.7 Management (a) Site protection with its use of the Natural Regrade reclamation software program. Using this program during reclamation of streams and drainage structures (ephemerals) will result in natural and stable structures that will not require any additional protection when the land is reclaimed to agricultural use as it is stated in the ODOM Permit 4287. Also, Phoenix Coal Company does not believe that 33 CFR Part 332 applies to Permit 4287, as there is no permanent “loss of aquatic resources.” We will agree, however, to a 1:1 mitigation ratio on disturbed streams to satisfy the requirements of 33 CFR 332.
- C. Reference: *2006 Oklahoma Code – Title 27A. – Environment and Natural Resources.* 27A-1-1-201 Definitions. (8) Point Source. 27A-1-3-101 B. DEQ. (1) (2), D. Oklahoma Department of Agriculture, (1) (a). Under this act all agricultural runoff is classified as “nonpoint source” water and is under the jurisdiction of the Oklahoma Department of Agriculture. Phoenix Coal Company agrees that until the reclamation and mitigation plan for permit 4287 is completed, that the runoff from the permit will be classified as “point source” water. When the mitigation plan is complete the mined land will have been returned to agricultural use and thus the runoff water will be classified as nonpoint source water. DEQ does not have jurisdiction over nonpoint source per 27A-1-3-101 F. Phoenix Coal Company believes that DEQ does not have the authority to require any permanent or perpetual real estate instrument or any or other measure to restrict usage of the agricultural property once said property is reclaimed to agricultural.
- D. Reference: *2006 Oklahoma Code – Title 27A – 1-3-101 G. (1-4) Department of Mines.*

Phoenix Coal Company believes pursuant to this section of the code that the ODOM has supremacy over DEQ for all mining activities including mitigation requirements relating to mining.

Response: The final certification will have these two points removed as requested to be consistent with the Tulsa District Army Corps of Engineers procedures.

9. Comments from Oklahoma Department of Wildlife Conservation (Russ Horton):

The summarized comment is as follows:

“The ODWC supports the applicant’s use of fluvial design within its mitigation strategies. Within ODWC’s Comprehensive Wildlife Conservation Strategy, there are several identified threats to small streams in northeast Oklahoma. One of the major threats is sedimentation due to erosion and stream bank instability. Disturbed and/or removed riparian vegetation in a watershed can increase erosion, and thus increase sediments entering streams. Activities that withdraw or divert water away from streams, especially water regime changes (e.g., patterns of flow, lack of channel maintenance flow, sedimentation and erosion) often have detrimental effects on sensitive stream species. Removal of riparian vegetation also can result in loss of shading which affects stream water temperatures and may harm some species.”

The commenter gives general recommendations on riparian vegetation for stream and habitat restoration and suggests the applicant to contact ODWC personnel who can provide more specific recommendations for implementing a “wildlife habitat” plan designed to lessen impacts and restore altered areas (or enhance mitigated areas) to provide local fish and wildlife species with quality habitat.

Response: A copy of the ODWC comment letter will be send to the applicant.

10. Comments from Oklahoma Archeological Survey (OAS) (Shawn Lambert and Robert L. Brooks):

The summarized comment is as follows:

An archeological field inspection is considered necessary prior to project construction in order to identify significant archeological resources that may exist in the project area.

The OAS also needs additional information regarding the location of where the fill for the tributaries is obtained.

Response: A copy of the OAS comment letter will be send to the applicant.