

THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

OHIO VALLEY ENVIRONMENTAL )  
COALITION, COAL RIVER MOUNTAIN )  
WATCH, and WEST VIRGINIA )  
HIGHLANDS CONSERVANCY, )  
 )  
Plaintiffs, )  
v. ) Civil Action No. 3:05-0784  
 )  
UNITED STATES ARMY CORPS OF ENGINEERS; )  
LIEUTENANT GENERAL CARL A. STROCK, )  
Commander and Chief of Engineers, )  
U.S. Army Corps of Engineers; )  
COLONEL WILLIAM E. BULEN, District Engineer, )  
U.S. Army Corps of Engineers, Huntington District; )  
 )  
Defendants. )  
\_\_\_\_\_ )

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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Dated: February 1, 2006

Pursuant to Fed. R. Civ. P. 65, Plaintiffs respectfully move the Court for a preliminary injunction ordering the Defendant U.S. Army Corps of Engineers (“Corps”) to rescind its approval for future fill activities at three large surface mines located in Kanawha, Logan and Boone counties in southern West Virginia.

Specifically, Plaintiffs respectfully request the Court to: (1) issue a declaratory judgment that the Camp Branch Mine, Black Castle Mine, and Republic No. 2 Mine permits violate the Clean Water Act (“CWA”) and the National Environmental Policy Act (“NEPA”); (2) issue an injunction requiring the Corps to rescind its authorization of any future discharges of fill material at the Camp Branch, Black Castle, and Republic No. 2 mine sites or at other locations in connection with the mining operations or reclamation activities there, until the Corps demonstrates that such discharges comply with § 404 of the CWA; (3) issue an injunction requiring the Corps to rescind its authorization of any future discharges of fill material at the Camp Branch, Black Castle, and Republic No. 2 mines until it prepares an Environmental Impact Statement (“EIS”) for each mine in compliance with NEPA; (4) declare that the Corps lacks jurisdiction to permit discharges of water and pollutants into streams from the toes of surface mine-related valley fills to the outfalls of sediment control ponds; and (5) enjoin the Corps from authorizing future discharges of sediment-laden water into the portions of waters between the toes of valley fills and outfalls of sediment control ponds at the Camp Branch, Black Castle, and Republic No. 2 mines.

This motion is based on the accompanying memorandum of law, the declarations and exhibits submitted therewith, the Plaintiffs’ First Amended and Supplemental Complaint, the

Plaintiffs' Second Supplemental Complaint<sup>1</sup>, and such other evidence as may be submitted to the Court by Plaintiffs during the hearing on this motion.

Plaintiffs respectfully request a hearing on this motion at the earliest date that comports with the Court's docket.

Submitted this 1st day of February, 2006.

/s/ Joseph M. Lovett  
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<sup>1</sup> Plaintiffs have filed a Motion requesting leave to file a Second Supplemental Complaint. Plaintiffs respectfully request that the Court grant such leave, and allow the Second Supplemental Complaint to serve as part of the basis for the Court's review of this Motion for Preliminary Injunction.