



ENVIRONMENTAL JUSTICE ANALYSIS

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Prepared For

ICG Tygart Valley, LLC– Leer Mine Complex

Rocky Branch Refuse Impoundment

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Rocky Branch Refuse Impoundment
Rocky Branch of Three Fork Creek**

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Introduction

ICG Tygart Valley, LLC – Leer Mine Complex (ICG Tygart Valley) has submitted a Department of the Army Permit Application for its proposed Rocky Branch Refuse Impoundment (Project). In an effort to assess potential impacts regarding low-income and minority populations in the county where the project is located (Taylor County, West Virginia), an Environmental Justice Analysis (EJA) was prepared utilizing information derived from the U.S. Environmental Protection Agency's (EPA) EJSCREEN as well as other reliable public sources. EJSCREEN (formerly known as the EJView) was selected as the primary assessment tool for the environmental justice geographic assessments, as it is a publicly accessible and reliable mapping program which gives a geographic view of environmental, health, and facility relevant information along with demographics for any given community in the United States. In May 2012, the 2010 U.S. Census Bureau data was added to EJScreen, supplementing the geographic analyses made available by the EPA.

Additional information for the surrounding counties in the northern coalfields was derived from Workforce West Virginia (Workforce WV), formerly the West Virginia Bureau of Employment Programs, the U.S. Census Bureau (CENSUS), and StatsAmerica, a compendium database of publicly available demographic data to further clarify the status of the project area. Summaries of the analyses are provided below with actual data sheets and mapping provided as attachments.

The existing socioeconomic and demographic conditions were analyzed -- from the smallest geographic units in the immediate vicinity of the project area; to the larger county level analysis; to the increasingly larger regional area; to the largest level of analysis at the state level.

Assessment units for this analysis included:

- Project Area Level (defined as a 2-mile radius around the project location);
- County Level (defined as Taylor County);
- Regional Level (defined as the counties immediately surrounding the project counties including Barbour, Harrison, Marion, Monongalia, and Preston Counties); and
- State Level (defined as the State of West Virginia)

This type of comparative approach presents trends between the smaller, immediate project area and larger geographic regions, and highlights whether the proposed action is likely to have disproportionately high and adverse human health or environmental effects to populations with

environmental justice concerns. Additional information for the regional area (defined as the surrounding counties) and the State of West Virginia were derived from Workforce WV and/or the CENSUS to further clarify the existing socioeconomic and demographic conditions and are also summarized below with actual data sheets also provided as an attachment.

Information for the project area (a 2-mile radius around the proposed action) was obtained from EJScreen.

Employment and Economy

As can be seen in the following table (Table 1), unemployment rates provided from Workforce WV for Calendar Year 2020 indicate that the unemployment rate for West Virginia was approximately 8.3 percent. Unemployment rates within the region range from 6.3 percent in Monongalia County to 8.7 percent in Marion County. The average regional rate is 7.7 percent.

Unemployment rates for the State, and Taylor County, as well as the surrounding northern coalfield region, indicates that Taylor County's unemployment rate was lower to that of the State (8.3 percent) and similar to the other northern coalfield counties, with the exception of Monongalia County whose unemployment rate was reported at a significantly lower 6.3 percent. The unemployment rate for Taylor County is also consistent with the regional unemployment rates (7.7 percent average).

Unemployment rates within West Virginia were as high as 15.6 percent in April of 2020, due to the COVID-19 pandemic. A similar spike in unemployment rates occurred in Taylor County during 2020, with the highest unemployment rate being 13.6 percent in April. The previous year (2019), the unemployment rate was 4.9 percent for West Virginia and 4.1 for Taylor County by comparison. Elevated rates of unemployment occurred throughout the state for 2020 and have continued into 2021.

Table 1
2020 UNEMPLOYMENT RATES FOR CIVILIAN LABOR FORCE

AREA	AVERAGE UNEMPLOYMENT RATE (%)	DIFFERENCE FROM STATE AVG. +/- (%)
West Virginia	8.3	--
Barbour County	8.3	0.0
Harrison County	7.9	4.8
Marion County	8.7	4.8
Monongalia County	6.3	24.1
Preston County	7.3	12.0
Taylor County	7.4	10.8

Workforce WV, 2021

Table 2 provides the average annual wage for the State, and Taylor County, as well as the surrounding northern coalfield counties, for 2019¹. The average annual wage for West Virginia was approximately \$46,439 for 2019. On a regional level, annual wages fluctuated from \$40,684 in Preston County to \$53,015 in Monongalia County.

As indicated, Taylor County's average annual wage of \$45,743 was slightly lower when compared to that of the State (1.5 percent difference), but was comparable to the surrounding northern coalfield counties, which averages \$46,016 regionally.

Monongalia County, with an annual average wage of \$53,015, had the highest wage rate for the region.

Table 2
2019 AVERAGE ANNUAL WAGE

AREA	AVERAGE ANNUAL WAGE (\$)	DIFFERENCE FROM STATE AVG. +/- (%)
West Virginia	46,439	--
Barbour County	41,513	10.6
Harrison County	51,270	10.4
Marion County	43,870	5.5
Monongalia County	53,015	14.2
Preston County	40,684	12.4
Taylor County	45,743	1.5

Workforce WV, 2021

Demographics

In addition to the data derived from Workforce WV and/or CENSUS, the EPA's EJScreen was utilized to assess the demographic composition of the State of West Virginia, the region as a whole, and Taylor County (in which the proposed project would be located). Additional information was obtained from StatsAmerica, an online demographic database from publicly available statistics. The immediate vicinity of the project (within approximately two [2] miles of project location) was also assessed using EJScreen and CENSUS data.

Table 3 provides a summary of the main demographics of concern provided from all sources. In West Virginia, the percent of the population that is minority is 6.5 percent (from StatsAmerica and CENSUS 2019). Within the region, minority rates vary according to source, but range from 3.0 percent in Taylor County to 12.0 percent in Monongalia County.

The average percentages of the population that are minority in the regional area were around 4.5-6.5 percent. As shown, minorities represent slightly greater percentages in Preston and Monongalia Counties than the other regional counties. In Taylor County, the percent of the

¹ Average annual wages for 2020 cannot be calculated, as 4th quarter data has not been released.

population that are minority ranged from 3.0 percent (from StatsAmerica) to 4.2 percent (from EJScreen2), when comparing the various sources. An assessment of the area within a 2-mile buffer of the project location using EJScreen indicates the population that is minority was approximately 5.0 percent, which is within the range of minority rates for the region and county.

**Table 3
DEMOGRAPHICS**

AREA	Percent Minority (StatsAmerica ²)	Percent Minority (CENSUS 2019 ³)	Percent Minority (EJScreen1 ⁴)	Percent Minority (EJScreen2 ⁵)	Percent Below Poverty (StatsAmerica)	Percent Below Poverty (CENSUS 2019)	Percent Below Poverty (EJScreen2)
West Virginia	6.5	6.5	--	--	16.2	16.0	--
Barbour County	3.9	3.4	4.0	4.4	18.4	18.4	35.3
Harrison County	4.4	4.4	6.0	5.7	11.1	11.1	25.2
Marion County	5.8	6.0	7.0	7.4	14.6	14.6	26.3
Monongalia County	9.9	9.9	12.0	12.0	19.1	19.1	26.8
Preston County	7.3	4.1	9.0	9.1	14.3	14.3	24.9
Taylor County	3.0	3.1	4.0	4.2	16.7	16.7	27.4
Project Area Vicinity (2 miles)	--	--	5.0	5.1	--	--	28.9

As shown in Table 3, and with reference to the attached statistical mapping derived using the EJScreen tool, overall the State was fairly uniform in its distribution of minority populations (approximately 0-10 percent throughout, when compared at the CENSUS Tract level), with only a few concentrated clusters distributed throughout the State (Figure 1).

Within the vicinity of the project area, like the majority of the region and the State, minority populations comprised 10 percent or less of the entire population. Based on statistics derived

² StatsAmerica = data derived from statsamerica.org. based on data from the U.S. Census Bureau.

³ CENSUS 2019 = data derived from 2019 was provided by the U.S. Census Bureau State and County QuickFacts

⁴ EJScreen1 = data derived from EPA's EJSCREEN Standard Report (Version 2020) for each area, using blockgroup information from the 2010 U.S. U.S. Census of Population. This data is the information compiled from the questions asked of all people and about every housing unit.

⁵ EJScreen2 = data derived from EPA's EJSCREEN for each area, using U.S. Census Bureau's 2014-2018 American Community Survey 5-year Summary (ACS). The American Community Survey (ACS) is an ongoing statistical survey that samples a small percentage of the population every year. Unlike the every-10-year U.S. Census, the ACS survey continues all year, every year. Percent Below Poverty is estimated from Household Income.

from EJScreen for the project area (within a 2-mile radius), only 5.0-5.1 percent of the population was composed of minorities. The minority population located within the Project Area is not an environmental justice population, is not comprised of at least half minority status, and does not represent a greater concentration of minority populations than the general population of West Virginia, Taylor County, or the northern coalfield region.

In summary, the population composition in the vicinity (or within a 2-mile radius) of the project area was reported to be predominantly white or Caucasian. The minority composition of the project area was found to be within a similar range than the minority population percentage at the county level, and regional level, and that of the State.

In regard to poverty levels, the population of the State of West Virginia ranges from approximately 16.0 percent below poverty (from CENSUS 2019) to 16.2 percent below poverty (from StatsAmerica). The regional poverty rates fluctuated from 11.1 percent in Harrison County, to over 35.3 percent in Barbour County (from EJScreen2). Taylor County had a reported poverty rate of 16.7 percent from CENSUS 2019 and 27.4 percent from EJScreen2. According to EJScreen data, the poverty rate within a two (2) mile radius of the project area was approximately 28.9 percent of the population.

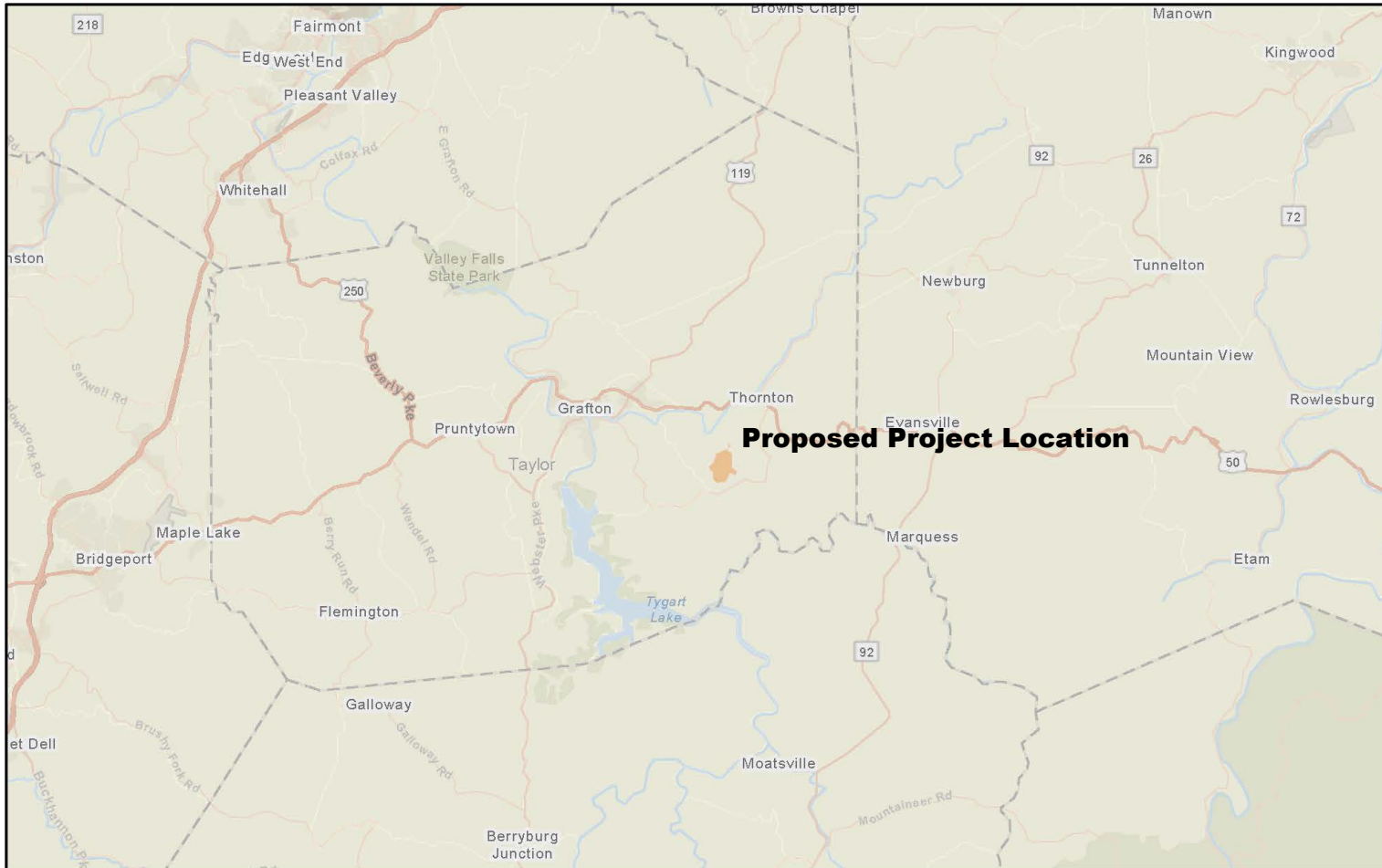
As depicted in the percentage of the population below the poverty level, the State has a similar poverty rate than the study region (Table 3). Figure 2 below illustrates the poverty rates within the region based on Blockgroup data from the 2010 Census. With a slightly greater population below the poverty level than the State, low-income populations are distributed throughout Taylor County, with the areas around Grafton having higher percentages of the population below poverty. Information provided by the National Center for Education revealed that over half of the students in all Taylor County schools were eligible for free or reduced cost lunch and that over one-quarter (24.6 percent) of student families live below the poverty level. There are three elementary schools in Taylor County and two of the three are Title 1 schools, meaning more than half of the students are from low-income families.

There is a moderate distribution of impoverished populations throughout this region of the State (akin to the level of impoverished populations for the State of West Virginia) (Figure 2). The proposed project lies within two (2) miles of three (3) CENSUS blockgroups (Blockgroups 540919646001, 540919649001, and 540919649002). This region was similar low income and impoverished populations to that of the State and region, as can be seen in Figure 2. Within these tracts, the poverty level was reported to range from 17.0 to 29.0 percent. As discussed previously, within a two (2) mile radius of the project area, the percent of persons living below poverty was estimated at 28.9 percent (from EJScreen2).

In this region there are available and high-quality coal reserves; thusly, avoiding impacts adjacent to these communities from all coal mining activities would be difficult, while still maintaining the economic benefits they supply. While some potential for temporary adverse impact to all population segments may exist during the construction phase of this project, a uniquely high concentration of low-income populations does not exist in the immediate site vicinity.

As discussed in the EID, the proposed project is situated on the ridge tops and isolated subwatersheds of Taylor County, and would not directly impact any residence, business, or other structure in the project vicinity. As stated in the EID, precautions are to be taken regarding the protection of the hydrologic balance. With respect to fish and wildlife considerations, proper planning and implementation would protect the general public from potential adverse impacts caused by this project, irrespective of race or economic status. Recreational impacts, such as subsistence fishing and hunting would be minimal, as the property is private land and not accessible by the public.

People of Color Population



6/11/2021

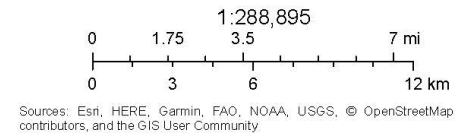
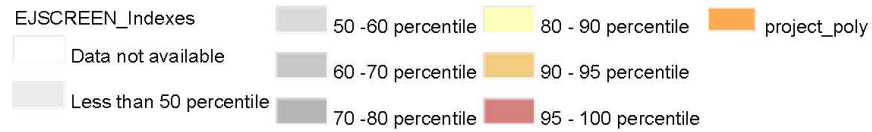
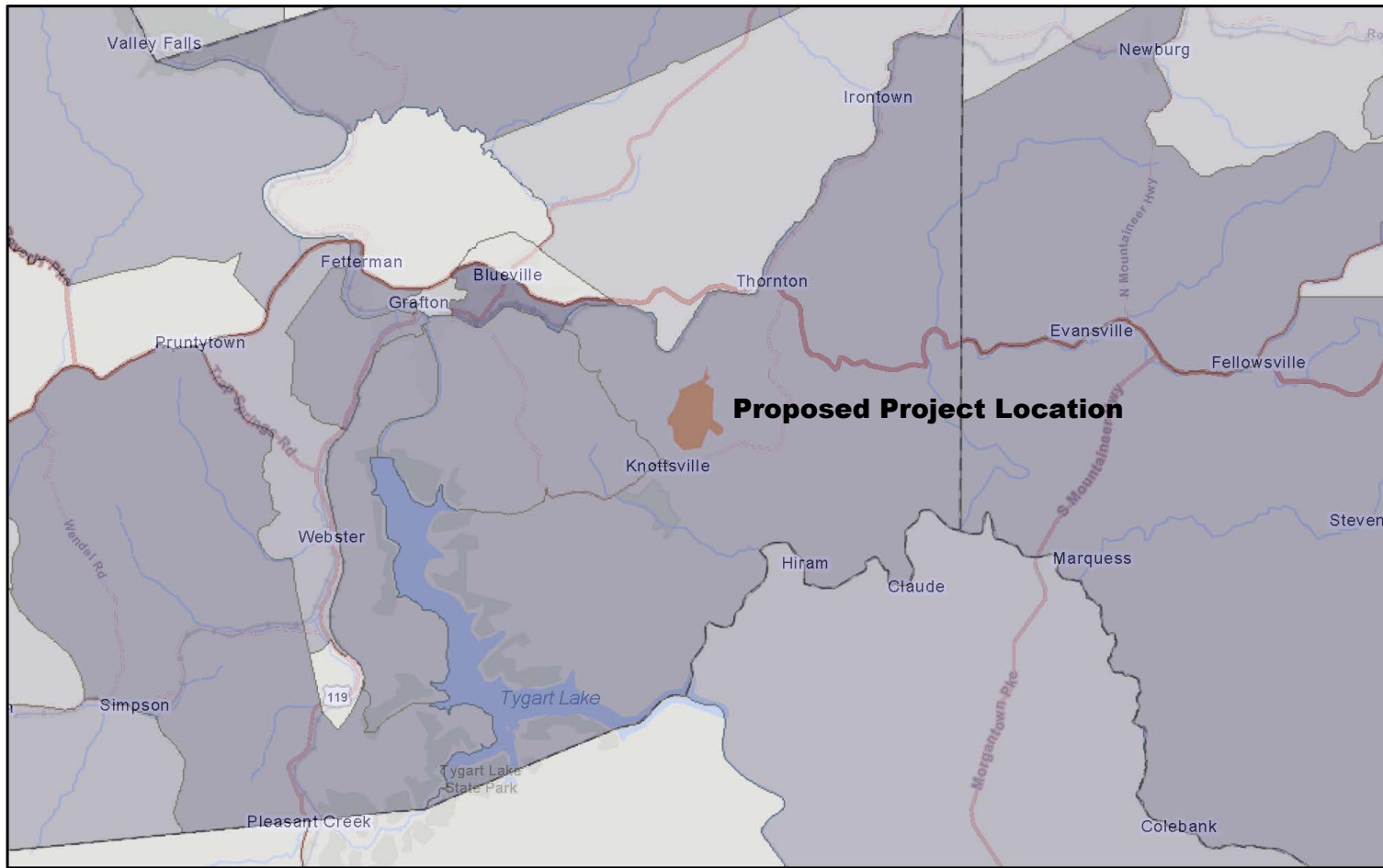


Figure 1 PEOPLE OF COLOR POPULATION

Regional Poverty Conditions



6/11/2021

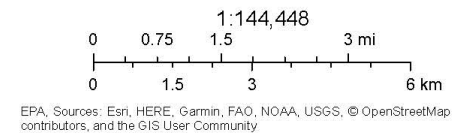
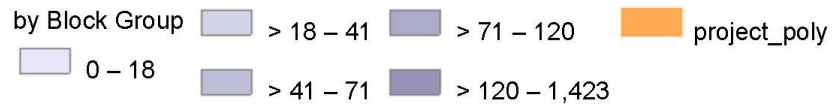


Figure 2 REGIONAL POVERTY CONDITIONS

Implementing Free, Prior and Informed Consent (FPIC)

In 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), recognizing their rights of Free, Prior and Informed Consent (FPIC) as a pre-requisite for any activity that affects their ancestral lands, territories, and natural resources. It allows them to give or withhold consent to a project that may affect them or their territories. Furthermore, FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored, and evaluated. This is also embedded within the universal right to self-determination.

In an effort to identify indigenous or tribal peoples concerned with the Project in the county where the Project is located (Taylor County, West Virginia), and to ensure those peoples have FPIC with regards to the Project, ICG Tygart Valley had a supplemental FPIC analysis prepared for the Leer Mine Complex in February 2021. This analysis was designed to supplement previous and future permitting actions approved by federal and state regulatory agencies with respect to the right to FPIC when developing and permitting projects affecting indigenous peoples.

The supplemental FPIC utilized information derived from the Native Land project (native-lands.ca), a website that has researched and mapped indigenous territories across North America.

Four tribal groups of indigenous peoples were identified as potentially being impacted by the Project. Those four groups include: the Calicuas, Massawomeck, Shawnee, and Osage. Of these four native groups, the Shawnee were previously proposed to be recognized as a unique Native American tribe in West Virginia. This bill was however not passed by the bicameral legislative body for the state of West Virginia. Another local nation potentially impacted at the Project and county level is the Massawomeck. This tribal group has been associated with the larger Iroquois or Iroquois-speaking Nation⁶. Along with the Shawnee, the Iroquois were previously proposed to be recognized as a unique Native American tribe in West Virginia.

However, as of June 2021, there are no federal or state tribes/indigenous groups officially recognized in West Virginia. During the 2021 regular legislative session, WV House Bill 2107 (tribal recognition and designation) was reintroduced but did not make it out of committee.

The remaining two groups, the Calicuas and the Osage, have not been proposed to be recognized as unique Native American tribes in West Virginia. The Calicuas entered what is now West Virginia around 1650⁷, were either pushed out of the area or were destroyed and then absorbed by other tribes by around 1750⁸. Although typically associated with the Great Plains, the earliest known

⁶ Pendergast, James F. (1991). The Massawomeck : raiders and traders into the Chesapeake Bay in the seventeenth century. *Transactions of the American Philosophical Society*. 81. Philadelphia: American Philosophical Society. pp.i–101.

⁷ Augustin Herrman map, dated 1670, printed 1673.

⁸ Nicolas de Fer 1715 map

ancestral lands of the Osage Nation include portions of Ohio, West Virginia, Indiana, Kentucky, and Pennsylvania⁹. Historically, the Osage travelled back and forth between the Ohio Valley and western settlements for centuries. Sometime prior to European contact, they crossed permanently, then settled near what would later become St. Louis, giving up the Ohio Valley lands per treaty with the U.S. government.

Historical evidence identifies a more recent group of persons in Taylor County, potentially descended from indigenous people. Chestnut Ridge People, or CRP, identify as multi-racial, Indian-white mixed group, or as Native American, but they are at present not enrolled in any officially recognized tribe in West Virginia, nor is the CRP proposed to be recognized as an official tribe in West Virginia.

Given the cohabitation of indigenous peoples with ethnically heterogeneous communities in West Virginia, along with other factors, such as the continued existence of nomadism or transhumance and the history of involuntary resettlement in the extended United States, the expectation of fixed boundaries of indigenous peoples or native tribes is not always distinct or appropriate. With the lack of official recognition within West Virginia of any specific Native American tribes or designated tribal lands, and the perpetuation of self-identification as “indigenous person” at the individual level, recognition and acknowledgment of native populations is difficult. With this in mind, appropriate dissemination of the proposed permit and its anticipated impacts should be communicated to any recognized indigenous or tribal group.

In consideration of all the data presented, the impacts of the proposed Project are not anticipated to have disproportionately high and adverse impacts to indigenous peoples or native tribes. There are no anticipated adverse impacts on the livelihoods, or cultural, ceremonial, or spiritual uses that define the identity and community of the indigenous peoples.

Summary

The objective of Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” is to identify whether proposed federal actions will have disproportionately high and adverse impacts to minority and low-income populations as well as to determine whether these populations would share equally in the benefits of proposed actions. Additional analyses of the impacts to indigenous peoples and native tribes was undertaken, in accordance with the United Nations General Assembly’s adoption of the Declaration on the Rights of Indigenous Peoples (UNDRIP).

In consideration of all the data presented, the direct and indirect impacts of the proposed project are not anticipated to have disproportionately high and adverse impacts to low income, minority populations, indigenous peoples, or native tribes. The proposed project would generate tax revenues that would be used by government programs aimed at assisting education and providing community services utilized by lower income populations in the region.

⁹ Osage Nation website <https://www.osagenation-nsn.gov/who-we-are/historic-preservation>

As described in the EID, previous mining has had a beneficial impact on the socioeconomic well-being of the region. The proposed project will generate tax revenues (severance, property, income, etc.), as detailed in the EID, which would be utilized by government programs aimed at education and providing community services utilized by lower income populations in the region. The positive impacts of the project to the local tax base may also help improve government services or reduce the tax burden for these low-income populations. There is no reason to expect that these populations would not share equally in the benefits of the project. Consequently, there is no evidence to suggest that low income, minority populations, indigenous peoples, or native tribes would be disproportionately adversely affected by the development of the proposed Rocky Branch Refuse Impoundment Project.

Without this project, these additional revenues would not be generated and, therefore, these funds would not be available to maintain services provided by the local, State and federal government depriving these populations of greater assistance. Therefore, the proposed Rocky Branch Refuse Impoundment Project would indirectly provide benefit to low-income populations through generated revenues.