



Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No. 2003-00238-KAN Issuance Date: **JAN 08 2009**

Stream: UN Tributaries of Long Branch and Abbott Creek Closing Date: **MAR 09 2009**

Please address all comments and inquiries to:

U.S. Army USACE of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the US Army Corps of Engineers (USACE) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the USACE Regulatory Program.

SECTION 10: The USACE is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the USACE request to the West Virginia Department of Environmental Protection (WVDEP) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Alex Energy Inc.
Post Office Box 857
Summersville, WV 26651

LOCATION: The proposed project is located approximately 1.5 miles south of Carbon, Kanawha County, West Virginia. The project area can be found at latitude 37°59'06" and longitude 81°24'14" on the Eskdale and Dorothy USGS 7.5-minute quadrangles. The proposed project would result in disturbances to Abbot Creek and its unnamed tributaries and unnamed tributaries of Long Branch. Long Branch and Abbott Creek are tributaries of Fifteenmile Creek, which flow into Cabin Creek, a tributary of the Kanawha River, a navigable Section 10 waterway of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge fill material into waters of the United States in conjunction with construction, operation and reclamation activities at the Republic No. 1 Surface Mine. The required Surface Mining Control and Reclamation Act (SMCRA) Permit S-3025-00, was issued on October 6, 2003.

PROJECT HISTORY: The applicant originally received authorization from this office on August 4, 2006 to discharge fill material into 9,201' of intermittent and 894' of ephemeral stream channel to construct of four valley fill and into 340' of intermittent stream channel in conjunction with the construction the earthen embankments for four temporary sediment ponds. The permanent and temporary fill activities would be conducted in conjunction with overburden disposal activities at the proposed Republic No. 1 Surface Mine. As a result of the U.S. District Court opinion in the *Ohio Valley Environmental Coalition v. United States Army Corps of Engineers et. al* (Civ. No. 3:05-0784 and 3:06-0438), the applicant voluntarily rescinded the permit in order to comply with the Court's ruling. On December 15, 2008, the applicant re-applied for authorization for work within waters of the United States.

PROPOSED WORK: The applicant proposes to place fill material into waters of the United States in conjunction with the construction of three valley fills, three sediment control structures, and one mine through area at the proposed Republic No. 1 Surface Mine. According to the applicant, the purpose of the project is to construct valley fills to dispose of excess overburden spoil generated by surface mining operations into waters of the United States in order to achieve optimal recovery of available coal reserves within the project area and to provide the mandatory sediment control and access. The construction of the proposed valley fills would result in the permanent discharge of fill material into approximately 7,564' of intermittent and 2,352' of ephemeral stream channels, which includes 1200' of mine through activities. The construction of three sediment ponds would result in the temporary discharge of fill material into 1,025' of intermittent stream channel. No fill is proposed to be placed into perennial stream channels. A total of 10,914 (0.81 acre) feet of waters of the United States would be permanently and temporarily impacted by the proposed surface coal mining activities (See Table 1).

According to the applicant, the overall project purpose is to construct attendant and associated features within waters of the United States (i.e. rock underdrain for three valley fills and embankment structures for sediment ponds) to facilitate the disposal of overburden associated with surface coal removal activities at the Republic No. 1 Surface Mine. Disposal of the fill material into waters of the United States to facilitate the construction these features would allow the disposal of approximately 29.3 million cubic yards of overburden into the three valley fills. These mining activities would facilitate efficient and cost-effective extraction of high quality coal reserves from six coal seams within the SMCRA permitted area.

The applicant's proposed operation would affect 990 acres of surface area in order to facilitate removal of approximately 10.3 million tons of low sulfur coal available in 6 coal seams. Coal extraction would be accomplished utilizing area mining techniques. The proposed operation would generate approximately 142.6 million cubic yards of overburden (including the 20% swell factor) of which approximately 108.3 million cubic yards (76%) would be placed into mined areas as re-grade backfill. Approximately 5 million cubic yards (3.5%) would be placed into two upland side hill fills. The remaining approximately 29.3 million cubic yards (21%) of excess overburden would be placed in the three proposed valley fills. Plans for the proposed facility are attached to this public notice.

Table 1
Stream Impacts Associated with Proposed Republic No. 1 Surface Mine

Structure	Permanent Intermittent Impacts	Permanent Ephemeral Impacts	Temporary Intermittent Impacts	Temporary Ephemeral Impacts
Valley Fill 1 & Pond 32 UN Trib Long Branch	2,303'	0	260'	0
Mine Through Area UN Trib Long Branch	0	1,200'	0	0
Valley Fill 2 & Pond 35 UN Trib Abbott Cr	2,325'	916'	200'	0
Valley Fill 2 1 st Left UN Trib Abbott Cr	660'	0	0	0
Valley Fill 3 & Pond 34 UN Trib Abbott Cr	2,276'	209'	565'	0
SUBTOTAL	7,564'	2,325'	1,025'	0
TOTAL			10,914'	

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives, which do not require the placement of fill material into waters of the U.S., are not available that would achieve the overall project purpose. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose. The applicant has indicated their overall purpose is to construct attendant and associated features in waters of the United States (i.e. sediment control structures, overburden disposal, etc) to facilitate the extraction of coal reserves from 6 coal seams within the SMCRA permitted area. The applicant's alternative analysis included the evaluation of several mining methods including the following: deep mining, contour mining, contour/highwall mining, and area surface mining. They indicated the area surface mining technique would best meet their overall purpose. In order to dispose of the overburden associated with this mining technique, the applicant evaluated several alternatives for the disposal of overburden, including five off-site alternatives and eight on-site alternatives. They indicated two of the five off-site alternatives would be feasible for the storage of excess overburden. The two sites, which are located in upland areas, include use of an old refuse fill and two side-hill fills. However these sites would not have adequate storage potential for the overburden produced by the mining activities therefore the applicant considered on-site

alternatives. The eight on-site alternatives each contain drainage and/or stream channels. The applicant indicated three of the eight on-site alternatives would be practicable for overburden disposal. The three valley fills sites were determined to be the most practicable location for overburden disposal. Based on the information above, the applicant has indicated the preferred alternative, which is described under the proposed work section, is the most practicable alternative while considering cost, existing technology, safety, environmental considerations, and logistics. This alternative analysis is available in the Huntington District's Regulatory Office for review.

MITIGATION PLAN: The applicant has submitted a preliminary Compensatory Mitigation Plan to compensate for temporary and permanent impacts to waters of the United States that are regulated by the USACE. To off-set the permanent loss of 9889' of intermittent and ephemeral stream channel, the application proposes to create approximately 11,100' of jurisdictional channels, develop a mitigation system for acid mine drainage (AMD) seeps using a treatment wetland to enhance water quality for approximately 10,000' of Fifteenmile Fork and Cabin Creek, and restore 1,025' of stream channels temporarily impacted by sediment ponds.

AMD Treatment System: Mitigation would be initiated with the AMD mitigation/treatment system and would occur concurrently with the mining activities, if approved. This proposed mitigation component would utilize a watershed approach to mitigation as indicated by the by the April 2008 Compensatory Mitigation Regulation (SS CFR Parts 325 and 332). An acidic seep flows into Fifteenmile Creek at the mouth of Abbott Creek have resulted in poor water quality within in the creek (i.e. low pH, high conductivity, high acidity, and high amounts of metals). The seep has been identified as the single largest source of water quality impairment to Fifteenmile Fork and Cabin Creek. As a result habitat downstream of the seeps has been severely impaired based on sampling conducted by the applicant. The applicant proposes to offset temporal losses to jurisdictional stream functions by implementing a passive AMD treatment system, which would consist of a constructed wetland that would collect, filter, neutralize the AMD seep water. It is expected the improved water quality would increase periphyton production and provide an energy source for replacing lost nutrients and detrital matter supplied by headwater channels located upstream of the mine site which would provide that energy to downstream perennial reaches. These improvements are expected to extend approximately ten miles downstream of the wetland system. While this component of the mitigation proposal would not replace the loss of headwater streams associated with the fill activities, it would off-set the loss of any productivity associated with the streams proposed for impact by providing a gain of productivity in the perennial stream reaches located downstream of the mine site. Productivity would be demonstrated from periphyton and diurnal dissolved oxygen studies, and estimated organic material from leaf decomposition.

The AMD treatment system would consist of collecting water from the seep and utilizing a buried collection system and hydraulic barrier to channel the water into a collection pipe, which would then be conveyed by gravity to the created wetland. The conveyance system would consist of two trenches which would be lined with No. 3 limestone. The water would then flow through five anaerobic wetland cells connected by limestone lined trenches and finally a limestone lined and polishing pond before being discharged into Fifteenmile Creek. The limestone trenches would contain approximately 8,590 tons of limestone and the wetland cells would encompass an area of approximately 4.81 acres.

Stream Creation: To compensate for the permanent loss of 9889' of intermittent and ephemeral stream channel, the application proposes to create approximately 11,100' of jurisdictional channels on-site. The created and connectivity channels would replace the lost stream functions at the site. The created stream channels would be constructed down-dip within existing on-bench sediment control structures which would extend to the NPDES outlets. Connectivity channels would be direct water flow from the created channels into existing hollows. These channels would connect with jurisdiction channels located lower in the hollow to extend the jurisdiction of those channels higher in the watershed.

Two streams would be created within in two on-bench sediment channels (SD-20A and 21A) after site reclamation activities. The sediment channels would be accomplished by re-shaping to include a two-stage (primary and secondary) channel to mimic their pre-mining morphology. The sediment channels would be constructed using compacted fill therefore it is anticipated there would be no seepage through the streambed substrates. In-stream habitat structures (i.e large woody debris, root wads, boulders, etc.) would be placed either randomly, in clusters, or as step-pools. The bank-full width is estimated to be four feet and the bank-full depth no more than one foot. The created channels would drain 73.0 acres of surface area and would receive extensive groundwater and precipitation input. Riparian buffers, measuring a minimum of 25' from the top of each bank, would be planted and consist of native riparian grasses, forbs, and tree species. A minimum of five herbaceous species, four shrub species, and five tree species would be planted in the riparian zone and would be selected based on their hydrologic and edaphic tolerances. The buffer zone would consist of a minimum of 70% woody tree stems with no more than 25% soft mast producers. The woody stems would be irregularly planted along the corridor and low growing shrubs would be planted between the trees.

Stream Connectivity Channels: The stream connectivity channels would be created from nine converted NPDES outlets which are located at various sites along the on-bench sediment channels. During project operation and reclamation, on-bench sediment channels provide sediment control around the perimeter of the mine site. The NPDES outlets are water quality monitoring locations. After completion of reclamation activities and stream creation activities, the created channels would be connected, via the connectivity channels, through nine converted NPDES outlets which would flow through un-impacted hollow into jurisdictional streams. No construction would be required to create these channels as the stream morphology would form naturally for the force of the flow and gravity, resulting in high gradient streams. The natural substrate located in the hollow would provide the necessary structure for the formation of the stream channel. The connectivity channels would flow through hollows that consist of undisturbed mature forestland therefore organic input would occur immediately upon channel formation. The nine connectivity channels would total a minimum of 7,300 feet and are expected to be fully functional within 3-5 years after construction.

Stream Restoration in Temporarily Impacted Areas: To compensate for the temporary loss of 1,025' of intermittent stream, the applicant would restore each temporarily impacted stream channel their approximate original channel configuration based on pre-impact measurements. Upon completion of mine reclamation and once prescribed water quality standards are met, the ponds would be removed and stream restoration activities would commence. The stream channels would be restored to their pre-impact morphology and would include a primary and secondary channel. Boulders would be added throughout the stream reaches and along the banks for stabilization. In-stream habitat structures would be installed to establish proper pool and riffle areas. A 50-foot riparian buffer consisting of native plants would be

established within the stream channels to provide organic and nutrient input to assist in the reestablishment of ecological function and habitat. A copy of the preliminary Compensatory Mitigation Plan is available for review in the Huntington District Office.

Table 2
Proposed Compensatory Mitigation for the Proposed Republic No. 1 Surface Mine

Proposed Stream Mitigation	Linear Feet of Stream Mitigation
Connectivity Channels	7,300'
Channel Creation	3,800'
Channel Restoration	1,025'
AMD Treatment System	10,000'
TOTAL	22,125'

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the WVDEP.

HISTORIC AND CULTURAL RESOURCES: The proposed mining plans was reviewed by the West Virginia Division of Culture and History (WVDCH) to determine if the proposal would result in impacts to properties listed or eligible for the National Register of Historic Places. WVDCH indicated that based on the topography of the site and the history of activities at the site, no known archeological sites listed on or eligible for the Register would be affected by the proposed undertaking. A copy of this public notice will be sent to the WVDCH for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

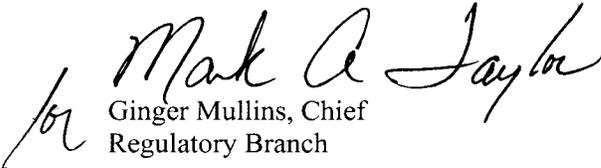
ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. The applicant retained the services of Compliance Monitoring Labs, Inc. to complete a bat-mist net survey to determine presence or probable absence of the Indiana bat within the proposed project area. The required survey was conducted July 5, 2005 to August 10, 2005. No Indiana bats or Virginia big-eared bats were captured during this survey. The bat-mist net survey also indicates the proposed project area was surveyed for abandoned mine portals that could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. As a result, no old, abandoned mine portals were found within the proposed project area. This public notice serves as a request to the USFWS and WVDEP for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the ESA Species Act of 1972 (as amended). The survey expires in May 2010.

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest, which may be adversely affected, and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the United States Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any

objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Kimberly Courts-Brown, Project Manager, South Regulatory Section, CELRH-OR-FS, USACE Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources. If you have any questions concerning the above, please contact Kimberly Courts-Brown of the Energy Resource Section at (304) 399-5610.


for Ginger Mullins, Chief
Regulatory Branch

(WV)

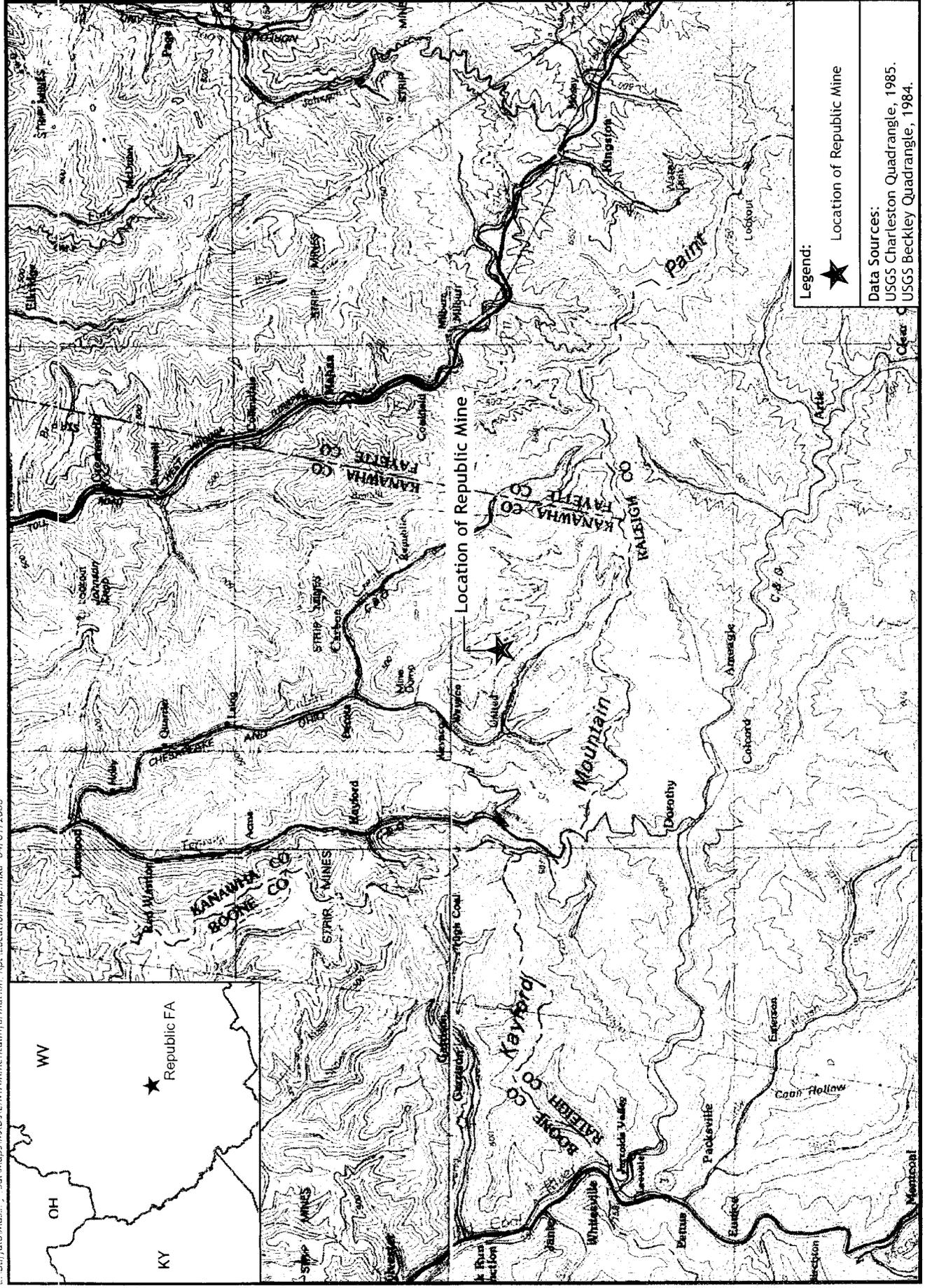


Figure B-1
Topographic map of the Cabin Creek Watershed

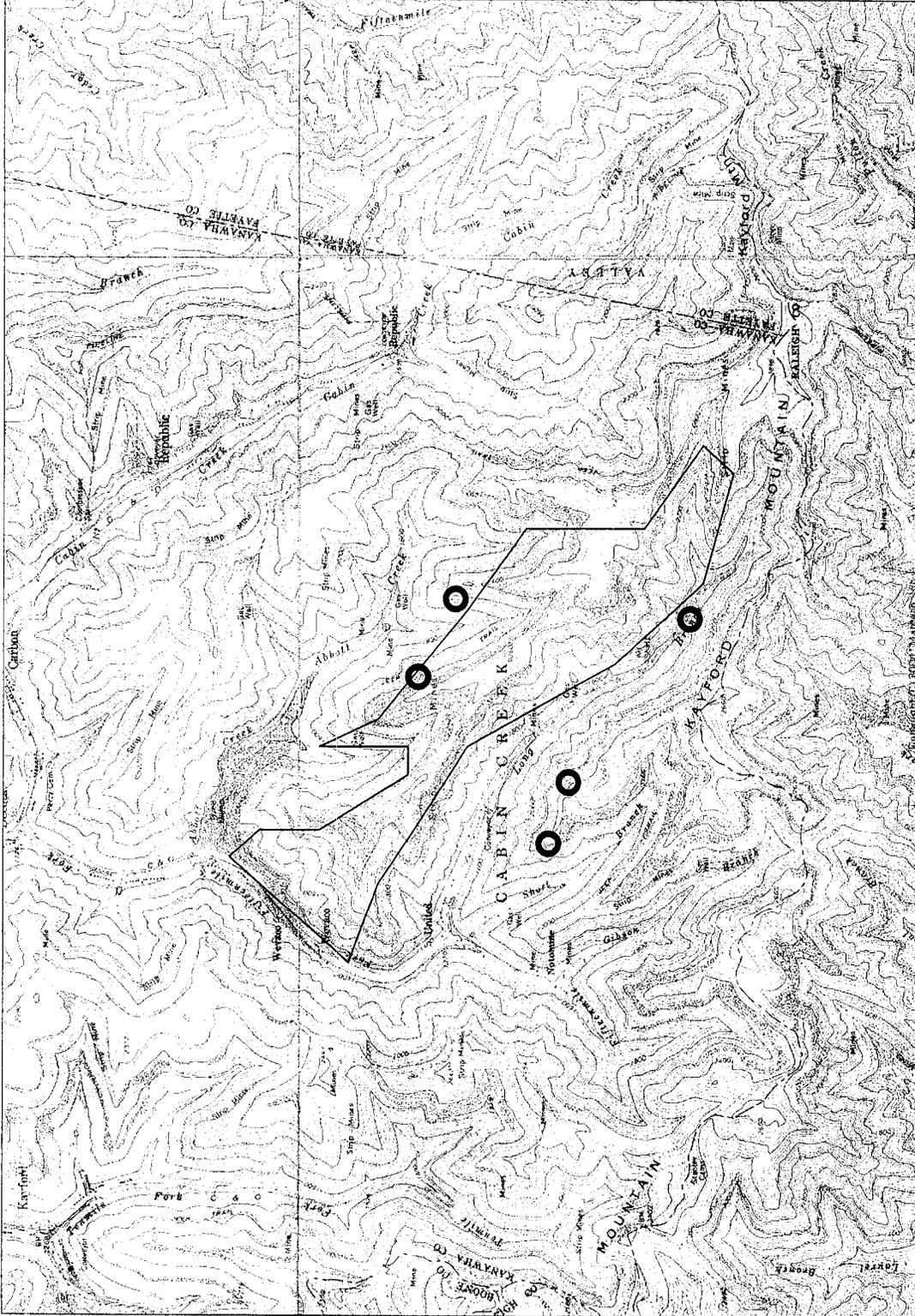


Figure A-2 Approximate locations of the proposed impact site at Republic No. 1 Surface Mine. The approximate area of the surface mine is outlined. The approximate area of the restoration sites is in a circle.

Figure A-6
Locations of
the proposed
impact areas
(yellow) at
Republic No. 1
Surface Mine.

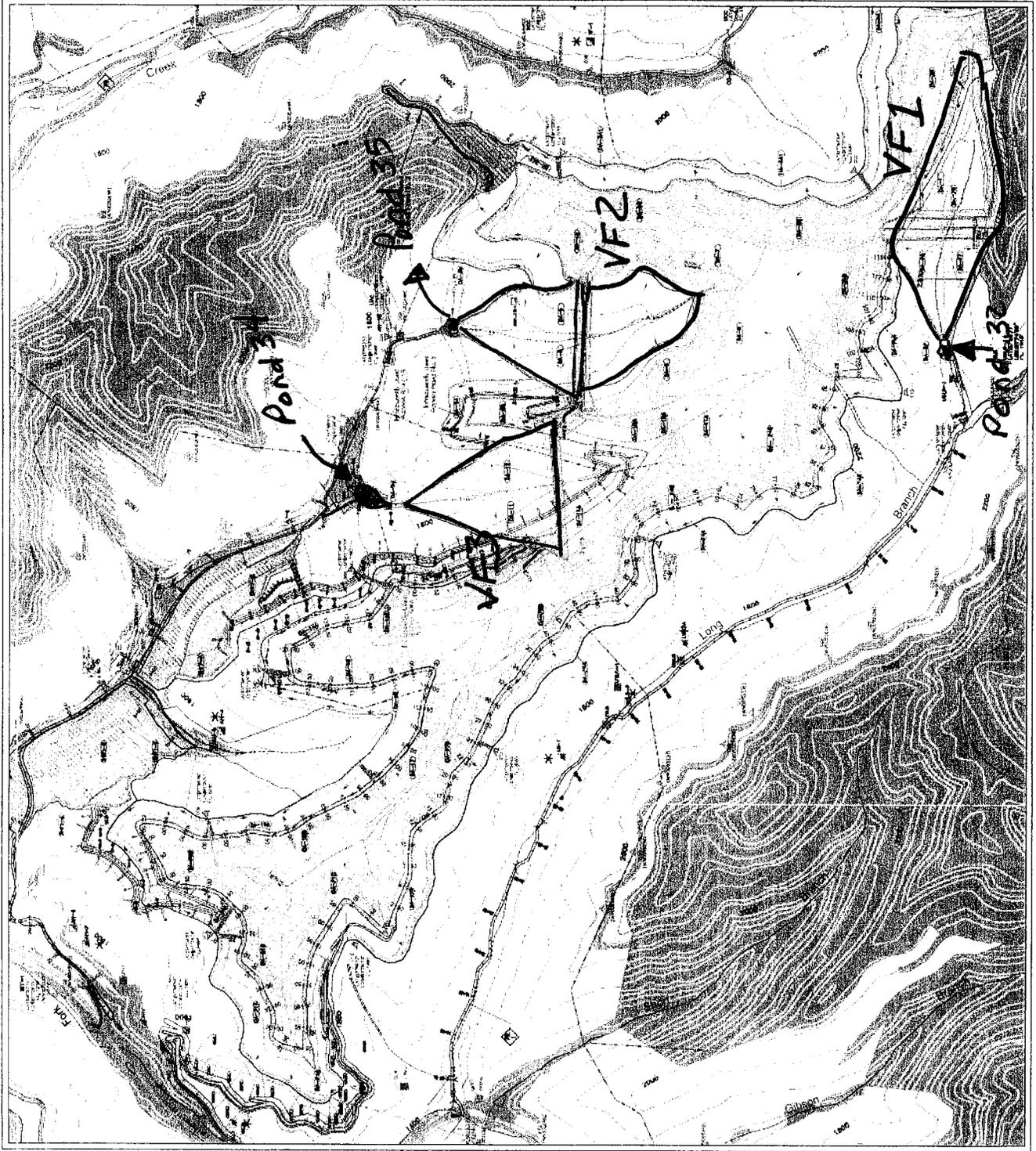
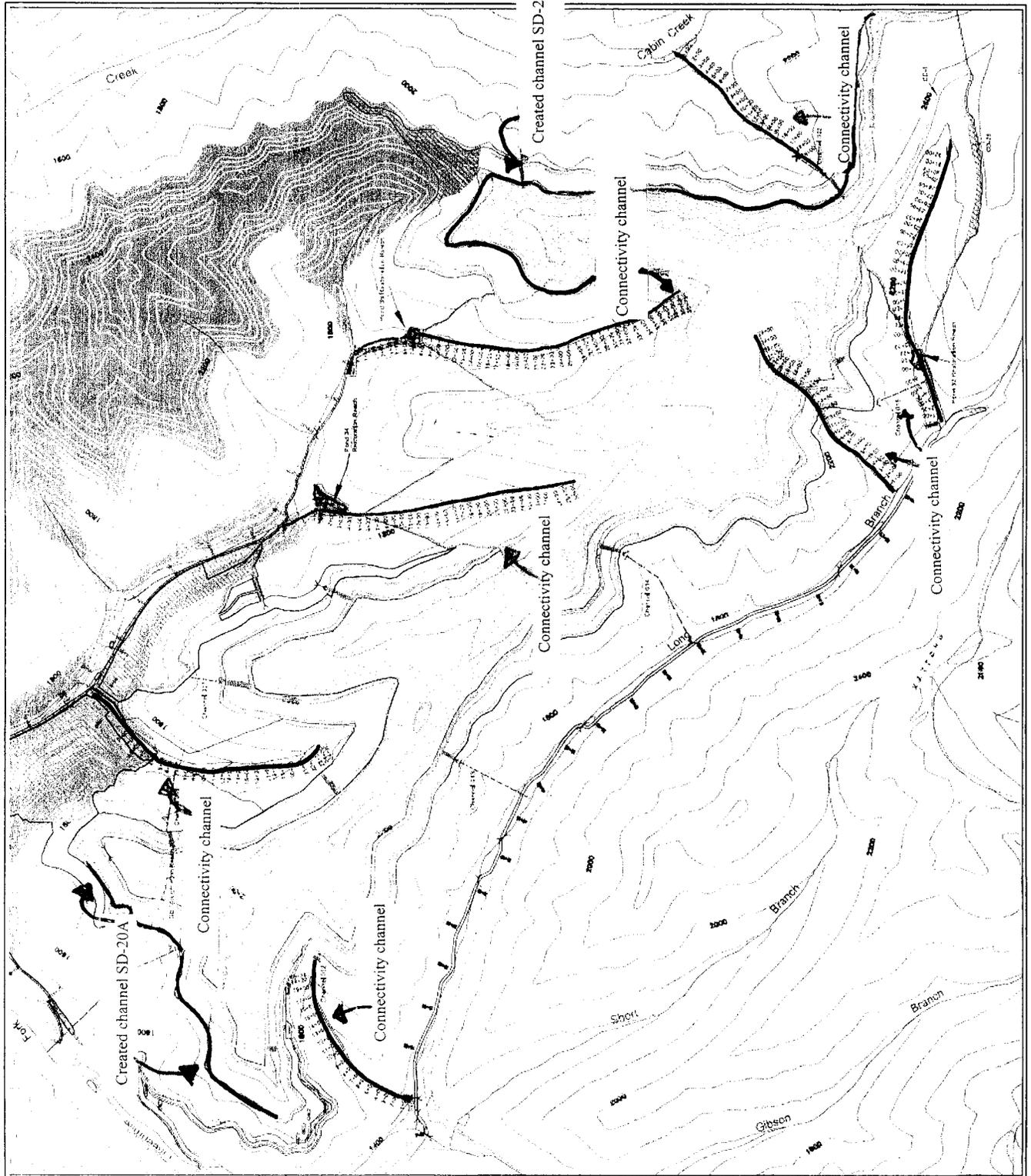


Figure A-7
Locations of the
proposed
creation,
connectivity, and
restoration
mitigation sites at
Republic No. 1
Surface Mine



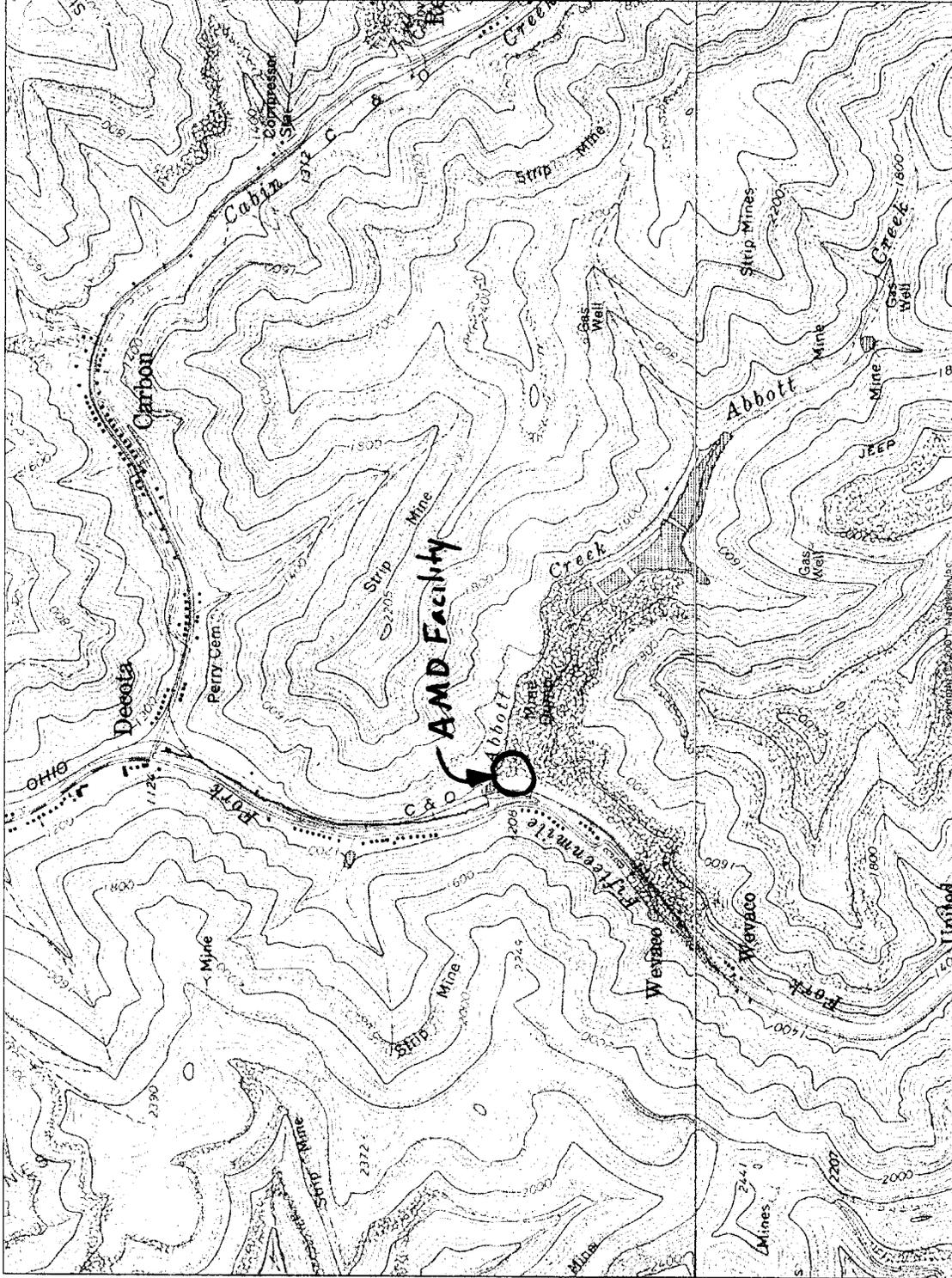


Figure A-3 Approximate location of proposed AMD treatment system at Republic No. 1 Surface Mine.