Public Notice

US Army Corps of Engineers
Huntington District

In reply refer to:
Public Notice No. 200400604

Issuance Date:
May 14, 2004

Stream:
Cow Creek

Expiration Date:
June 13, 2004

Address comments to: US Army Corps of Engineers, Huntington District
502 Eighth Street
ATTN: CELRH-F
Huntington, West Virginia 25701-2070

PUBLIC NOTICE

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 Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Coal Mac, Inc.
1628 West Third Avenue
Williamson, West Virginia 25661

LOCATION: The proposed project is located in Cow Creek, Middle Fork of Elk Creek, Left Fork of Pine Creek, an unnamed tributary of Cow Creek and two unnamed tributaries of Left Fork of Pine Creek, near Omar, in Logan and Mingo Counties, West Virginia as depicted on the attached **Drawing 1** titled "Exhibit 2-Phoenix No. 4 Study Area."

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged or fill material into 19,572 linear feet of jurisdictional streams in conjunction with the Phoenix No. 4 Surface Mine as depicted on the attached **Drawing 2** titled "Exhibit 10-Phoenix NO. 4 Proposed Permit Valley Fills." The proposal would involve the construction of seven valley fills and six sediment ponds. The construction of the proposed valley fills would result in the permanent discharge of fill material into approximately 16,153 linear feet of jurisdictional streams. Of this total, approximately 6,040 linear feet consists of intermittent stream channels while 9,963 linear feet consists of ephemeral stream channels. Each proposed valley fills would affect watersheds of less than 250 acres, ranging from 56.52 to 155.49 acres and would range from 18.31 to 46.84 acres in size as detailed on the attached **Table A**. The construction of the proposed sediment ponds would result in the temporary placement of dredged or fill material into 2,871 linear feet of intermittent stream channels and 373 linear feet of ephemeral stream channels. **Table B** (attached) details the individual permanent and temporary filling activities and their corresponding locations and stream impacts.

The West Virginia Department of Environmental Protection (WVDEP) approved the applicant's Surface Mining Permit application (S-5013-01) on September 29, 2003 pursuant to the Surface Mining Control and Reclamation Act of 1977. The proposed project would involve mineral extraction from seven coal seams: Upper 5-Block, 5-Block, Lower 5-Block, Upper Stockton, Lower Stockton, Stockton B, and Coalburg. Approximately 8.3 million tons of these coal reserves are expected to be recovered over the life of the mining operation.

As a result of mineral extraction operations, nearly 121 million cubic yards of spoil material would be generated. Nearly 80 million cubic yards of this material would be returned to the mined area to meet the Approximate Original Contour (AOC) plus requirements as specified in the "AOC and Excess Spoil Disposal Optimization Model" in the WVDEP's AOC guidance document. Approximately 36 million cubic yards of excess spoil material would be placed in the proposed valley fills. **Table C** (attached) details the individual volumes of spoil material to be placed in each proposed valley fill.

Approximately 632.54 acres in Logan County and 218.46 acres in Mingo County would be disturbed by the proposed mining operation for a total of 851 surface acres. The mineral removal area on the permit is to be mined via mountaintop removal methods using dozers, hydraulic excavators, drills, backhoes and loaders. Mining and reclamation activities as detailed in the attached **Table 4** would take place over the course of seven phases during a 54-month period. A discussion of each phase is below.

Phase I. Mining operations would begin in the very headwaters of Cow Creek with the construction and certification of Embankment Pond 1 and in the very headwaters of the Left Fork of Pine Creek with the construction of Embankment Pond 6. Haulroad 1 would then be constructed along the Coalburg Bench to the vicinity of Valley Fill 1. Mining would begin with a series of area mining cuts throughout the confines of Valley Fill 1 and advance in a northerly direction into the headwaters of the Left Fork of Pine Creek in the watershed of proposed Valley Fill 7. In addition to Ponds 1 and 6, Sediment Ponds SD 59, SD 60, CD1A, CD1C, CD1D, SD41, SD42, CD7A and CD7B would also be constructed and certified. The excess spoil distribution would occur as follows:

- Spoil generated from the area mining located at the located at the headwaters of Cow Creek would be transported to and utilized to construct Valley Fill 1 to its approved design.
- Spoil generated from the area mining cuts taken in the very headwaters of Left Fork of Pine Creek would be transported to and utilized to partially construct Valley Fill 7.
- Spoil from the mining conducted under this phase would also be utilized to backfill and reclaim the mined area immediately adjacent to Valley Fill 1.

Phase II. Mining operations would continue in the watershed of Valley Fill 7 and would progess in a northerly direction into an unnamed tributary of Cow Creek into the watershed planned for Valley Fill 2 beginning with the construction and certification of Sediment Pond 2. Area mining cuts would progress throughout the confines of Valley Fill 2 and adjacent point area. In addition to Sediment Pond 2, sediment structures SD43, SD44, SD45, SD46, SD47, CD2 and CD2A would also be constructed and certified. The excess spoil distribution would occur as follows:

- Spoil generated from the area mining located in the unnamed tributary of Cow Creek would be transported to and utilized to partially construct Valley Fill 2.
- Spoil generated from the area mining cuts taken in the very headwaters of Left Fork of Pine Creek would be transported to and utilized to construct Valley Fill 7 to its approved design.
- Spoil from the mining conducted under this phase would also be utilized to backfill and reclaim the mined area immediately adjacent to Valley Fill 7.

- A Complete Certification for Valley Fill 1 would be submitted the regional WVDEP Inspector during this phase.

Phase III. Mining operations would continue in the watershed of Valley Fill 2 and would progress in a westerly direction into an unnamed tributary of Left Fork of Pine Creek into the watershed planned for Valley Fill 6. Area mining cuts would progress in the watershed associatd with Valley Fill 2 until all permitted reserves are depleted in that area. A series of area mining cuts would be taken in the watershed of Valley Fill 6. In addition sediment structures SD40, CD6A and CD6B would be constructed and certified. The excess spoil distribution would occur as follows:

- Spoil generated from the area mining located in the unnamed tributary of Cow Creek would be transported to and utilized to complete Valley Fill 2 to its approved design.
- Spoil generated from the area mining cuts taken in the unnamed tributary of Left Fork of Pine Creek would be transported to and utilized to partially construct Valley Fill 6.
- Spoil from the mining conducted under this phase would also be utilized to backfill and reclaim the mined area immediately adjacent to Valley Fill 2.
- A Complete Certification for Valley Fill 7 would be submitted the regional WVDEP Inspector during this phase.

Phase IV. Mining operations would continue in the watershed of Valley Fill 6 and would progress in a northerly direction on both sides of the ridge that separates Cow Creek and Left Fork of Pine Creek beginning with the construction and certification of Sediment Pond 4. Area mining cuts would progress in the watershed associated with Valley Fill 6 until all permitted reserves are depleted in that area. A series of area mining cuts would be taken in the watershed of Valley Fill 4. Sediment structures SD51, SD52, SD68, SD69, Sd70, CD4 and CD4A would be constructed and certified. The excess spoil distribution would occur as follows:

- Spoil generated from the area mining located in the unnamed tributary of Left Fork of Pine Creek would be transported to and utilized to complete the construction of Valley Fill 6 to its approved design.
- Spoil generated from the area mining cuts taken in the unnamed tributary of Left Fork of Pine Creek would be transported to and utilized to partially construct Valley Fill 4.
- Spoil from the mining conducted under this phase would also be utilized to backfill and reclaim the mined area immediately adjacent to Valley Fill 6.
- A Complete Certification for Valley Fill 2 would be submitted the regional WVDEP Inspector during this phase.

Phase V. Mining operations would continue in the watershed of Valley Fill 4 and would progress in a northerly direction on both sides of the ridge that separates Cow Creek and Left Fork of Pine Creek beginning with the construction and certification of Sediment Pond 3. Mining operations would also continue to progress in a westerly direction into the watershed of an unnamed tributary of Middle Fork of Elk Creek beginning with the construction and certification of Sediment Pond 5. Sediment structures SD28, SD52, SD54, SD55, SD56, SD57, SD58, SD61, SD62, SD63, SD64, SD65, SD66,

CD3, CD3A, CD5 and CD5A would be constructed and certified. The excess spoil distribution would occur as follows:

- Spoil generated from the area mining located in the unnamed tributary of Left Fork of Pine Creek would be transported to and utilized to complete the construction of Valley Fill 4 to its approved design.
- Spoil generated from the area mining cuts would be transported to and utilized to partially construct Valley Fills 3 and 5.
- Spoil from the mining conducted under this phase would also be utilized to backfill and reclaim the mined area immediately adjacent to Valley Fill 4.
- A Complete Certification for Valley Fill 6 would be submitted the regional WVDEP Inspector during this phase.

Phase IV. Mining operations would continue in the watersheds of Valley Fills 3 and 5. Mining operations would also progress in a southwesterly direction into the headwaters of Middle Fork of Elk Creek. Sediment structures SD37, SD33, SD32, SD31, SD30, SD29, SD28, SD27, SD26 and SD26A would be constructed and certified. The excess spoil distribution would occur as follows:

- Spoil generated from the mining in this phase would be transported to and utilized to complete the construction of Valley Fills 3 and 5 to their approved design.
- Spoil from the mining conducted under this phase would also be utilized to backfill and reclaim the mined area between Valley Fills 4 and 3 as well as areas immediately adjacent to Valley Fill 5.
- A Complete Certification for Valley Fill 4 would be submitted the regional WVDEP Inspector during this phase.

Phase VII. This phase would involve reclamation activities on any remaining disturbed areas to comply with Phase I Bond Release criteria. All disturbed areas would be regraded.

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.

Plans of the proposed work are attached to this notice.

MITIGATION PLAN: The applicant has submitted a conceptual mitigation plan to compensate for permanent and temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. **Drawing 3** (attached) depicts the geographic relationship between the proposed impact site(s) and the proposed mitigation site(s).

To compensate for permanent intermittent stream impacts, the applicant proposes to mitigation off-site through in-kind enhancement of approximately 7,180 linear feet of stream channel from the mouth of Left Fork of Cow Creek, upstream to the end of an existing access road as depicted on the attached **Drawing 4**. At this proposed mitigation site, benthic macroinvertebrate, physical and

chemical water chemistry, habitat, riparian and stream morphology parameters were collected at different stations and will serve as data monitoring points for both the pre- and post-mining impacts. A functional assessment was performed to identify deficient stream morphological features for purposes of the proposed stream enhancement work. This proposed mitigation site is located in a forested area with a partly open canopy and provides marginal aquatic habitat. There is an access road that runs directly through the proposed mitigation site and is severely degrading stream banks and impacting surrounding riparian vegetation. This disturbance has resulted in poor in-stream substrates, increased sediment depositions and runoff, reduced riparian vegetation zones and lack of pool habitats. This site also has poor fish habitat and cover.

To compensate for permanent ephemeral stream impacts, the applicant proposes to mitigate on-site through in-kind establishment of approximately 22,320 linear feet of naturally flowing stream channels with primary and secondary channels within the sediment ditches that would run along the sides of Valley Fills 1, 2, 4, 5, 6 and 7 as depicted on the attached **Drawing 5**. In-stream structures (i.e. boulders, rootwads) and a vegetated riparian zone would be installed to provide sinuosity and available nutrients for aquatic organisms.

To compensate for temporary stream impacts, the applicant proposes to perform stream channel restoration in the temporarily disturbed segments of the sediment pond areas and associated drainage corridors upon reclamation of the site. Approximately 3,569 linear feet of affected stream channels would be restored to their pre-mining conditions. Rosgen natural stream techniques would be used in the design of the restoration sites. A 50-foot vegetated riparian zone would be established along the restoration sites.

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 West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A copy of this public notice will be sent to the State Historic Preservation Office for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: The Huntington District has consulted the most recently available information and has determined the project is not likely to affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species, which has been determined to be critical. This public notice serves as a request to the U.S. Fish and Wildlife Service 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 area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended). The applicant submitted with its Department of the Army permit application a mist net survey titled "A Summer Mist Net Survey for a 1,735 Acre Surface Mine Development by Coal Mac, Inc., Logan and Mingo Counties, West Virginia." Fifteen mist net sites were selected and surveyed during August 8 and 12, 2003. As a result of the survey, no endangered or threatened bat species were captured.

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.

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. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. 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.

The Corps of Engineers 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. Any comments received will be considered by the Corps of Engineers 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.

If you have any questions concerning this public notice, please call Mrs. Teresa Spagna of the South Regulatory Section at 304-399-5710.

Ginger Mullins

Ginger Mullins, Chief
Regulatory Branch

(W)

Table A

Fill No.	Size of Fill (Acres)	Volume of Fill (Cubic Yards)	Drainage Area at Fill Toe (Acres)
1	45.29	4,093,099	155.49
2	22.6	3,076,988	62.73
3	25.83	4,069,319	56.52
4	37.62	9,131,880	102.39
5	46.84	9,493,941	141.41
6	18.31	2,773,420	75.81
7	23.29	3,361,466	84.59

Table B

Valley Fill		Permanent Stream Length Impacts (Linear Feet)		Temporary Stream Length Impacts (Linear Feet)		TOTAL (Linear Feet)
		Intermittent	Ephemeral	Intermittent	Ephemeral	
1		3,110 ft.	670 ft.	700 ft.	0 ft.	4,480 ft.
2		0 ft.	1,630 ft.	300 ft.	51 ft.	1,981 ft.
3		0 ft.	1,040 ft.	300 ft.	0 ft.	1,340 ft.
4		0 ft.	2,298 ft.	442 ft.	142 ft.	2,882 ft.
5		2,300 ft.	1,585 ft.	600 ft.	180 ft.	4,665 ft.
6		200 ft.	2,170 ft.	400 ft.	0 ft.	2,770 ft.
7		430 ft.	570 ft.	454 ft.	0 ft.	1,454 ft.
TOTAL	Feet	6,040	9,963	3,196	373	19,572
	(Miles)	(1.14)	(1.89)	(0.61)	(0.07)	(3.71)

Table C

Phase	Mining			Reclamation		
	Start	End	Acres	Start	End	Acres
1	Month 1	Month 12	217.21	Month 1	Month 18	0
2	Month 12	Month 18	80.36	Month 18	Month 24	79.62
3	Month 18	Month 24	74.17	Month 24	Month 30	85.03
4	Month 24	Month 30	139.46	Month 30	Month 36	105.52
5	Month 30	Month 36	186.99	Month 36	Month 42	187.26
6	Month 36	Month 48	152.81	Month 42	Month 48	148.14
7	Month 48	Month 54	0	Month 48	Month 54	245.43
TOTAL			851.00			851.00

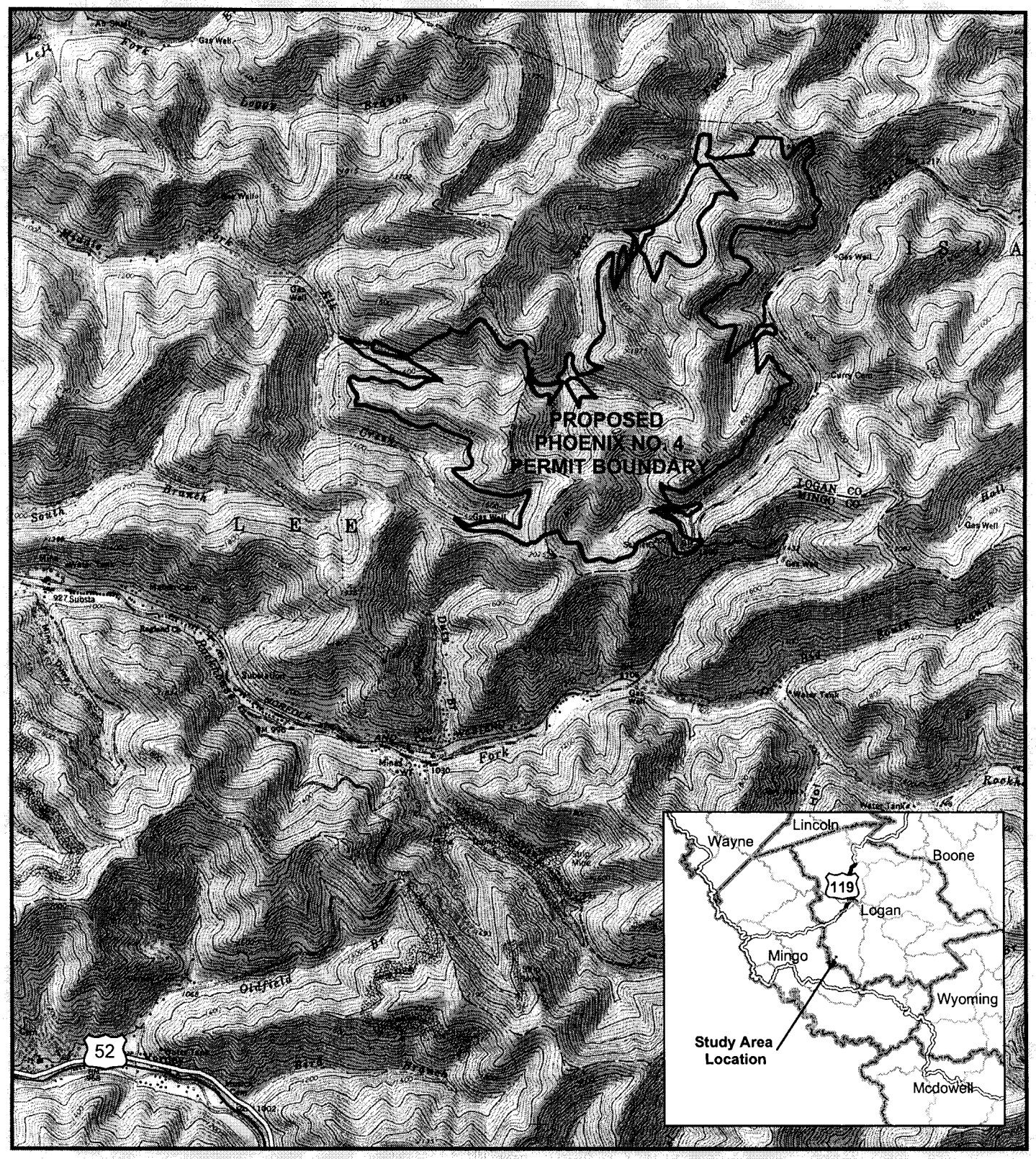


EXHIBIT 2 - Phoenix No. 4 Study Area

Coal-Mac, Inc.
dba Phoenix Coal-Mac Mining, Inc.
PO Box 436
1628 West Third Avenue
Williamson, WV 25637

N
W E
S

Permit Boundary

Pond Construction & Maintenance Roads

0.4 0.2 0 0.4 0.8 Miles

780 390 0 780 1,560 Meters

1 of 5

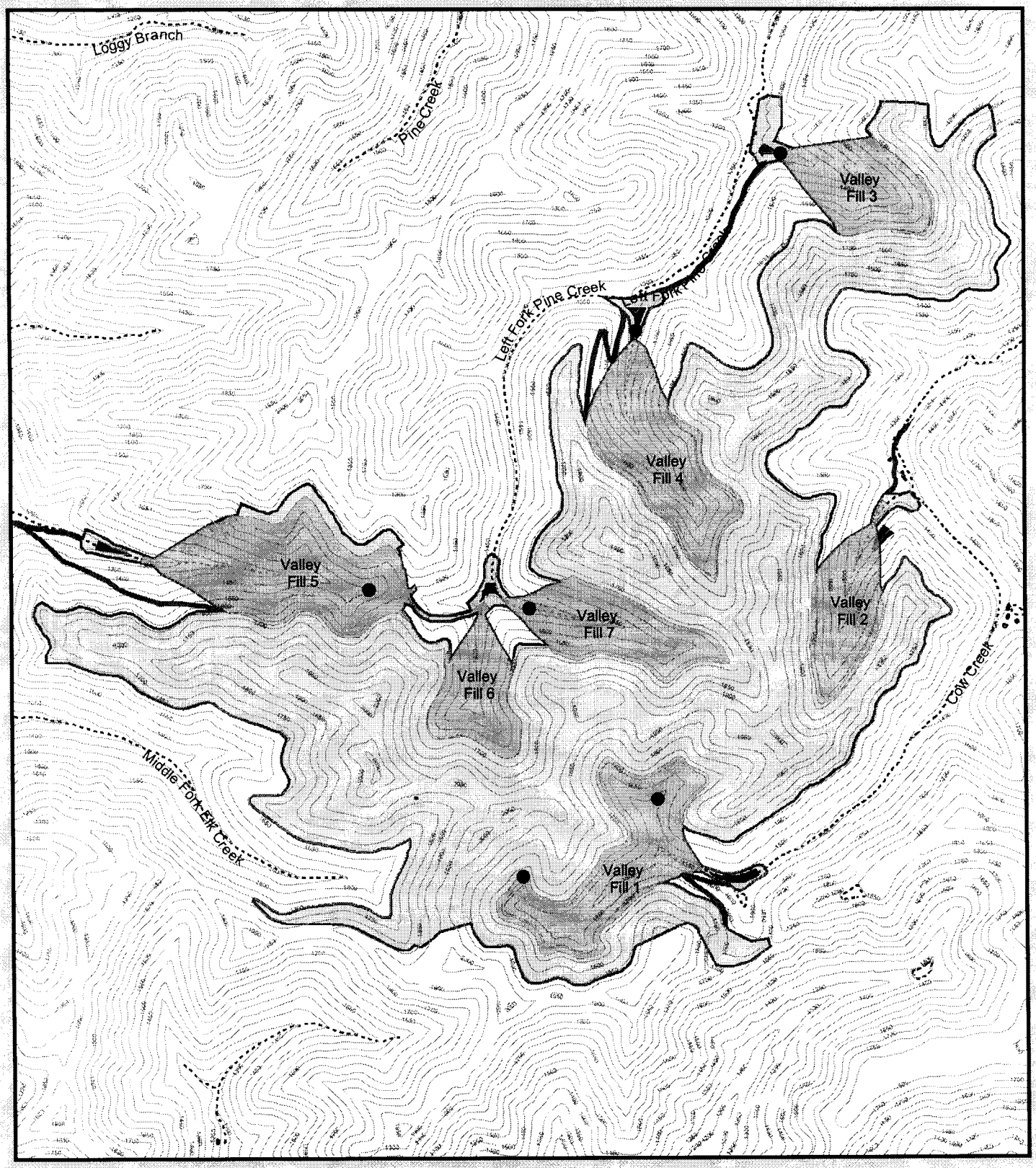


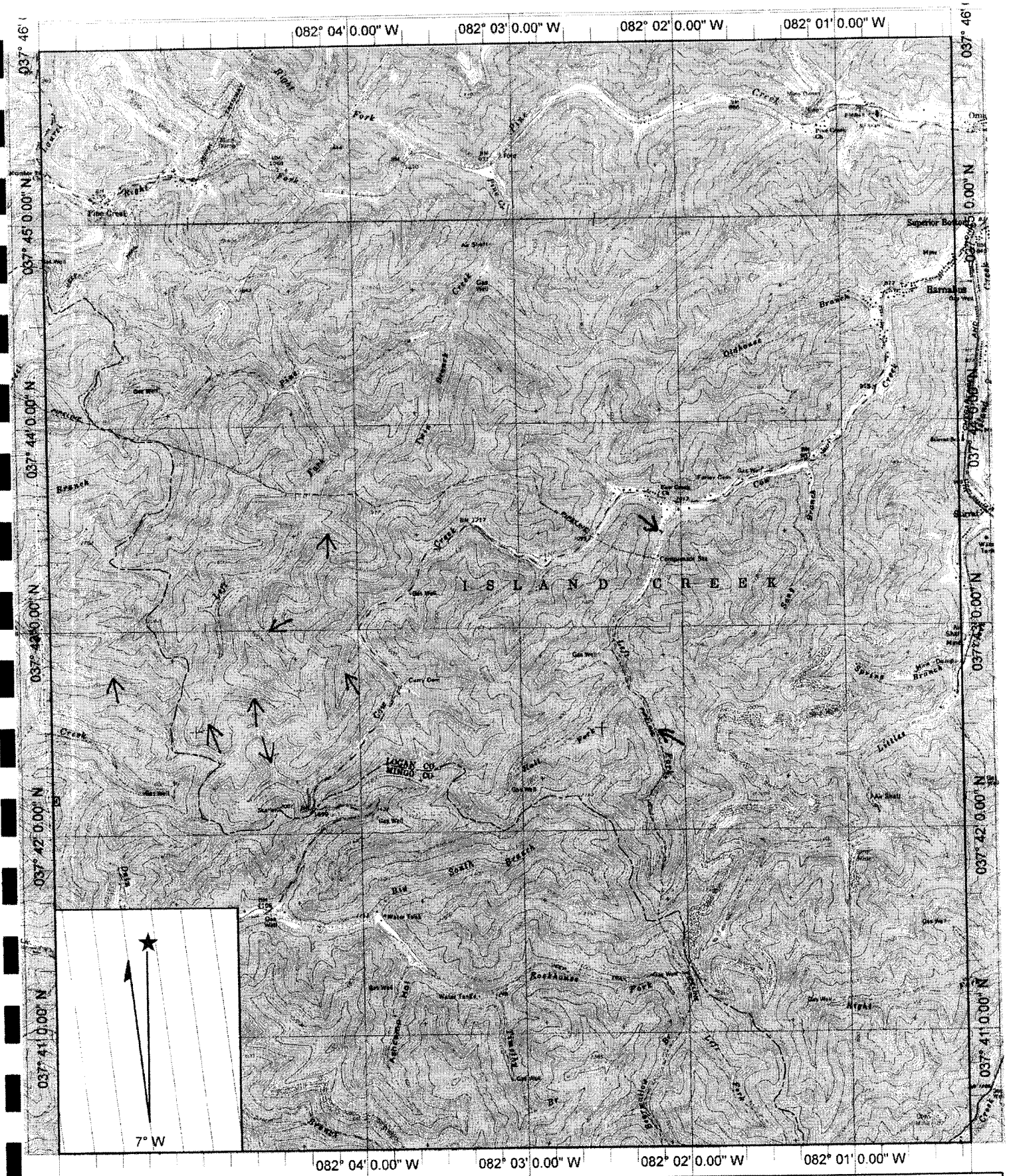
EXHIBIT 10 - Phoenix No. 4 Proposed Permit Valley Fills

Coal-Mac, Inc.
dba Phoenix Coal-Mac Mining, Inc.
PO Box 436
1628 West Third Avenue
Williamson, WV 25637

Valley Fills
Ponds
Ephemeral/Intermittent Stream Delineation

950 475 0 950 1,900 Feet

0.25 0.125 0 0.25 0.5 Km



Name: BARNABUS
Date: 3/25/2004
Scale: 1 inch equals 3636 feet

Location: 037° 43' 08.9" N 082° 03' 05.2" W
Caption: Blue Arrow = Impact Sites →
Red Arrow = Mitigation Sites →

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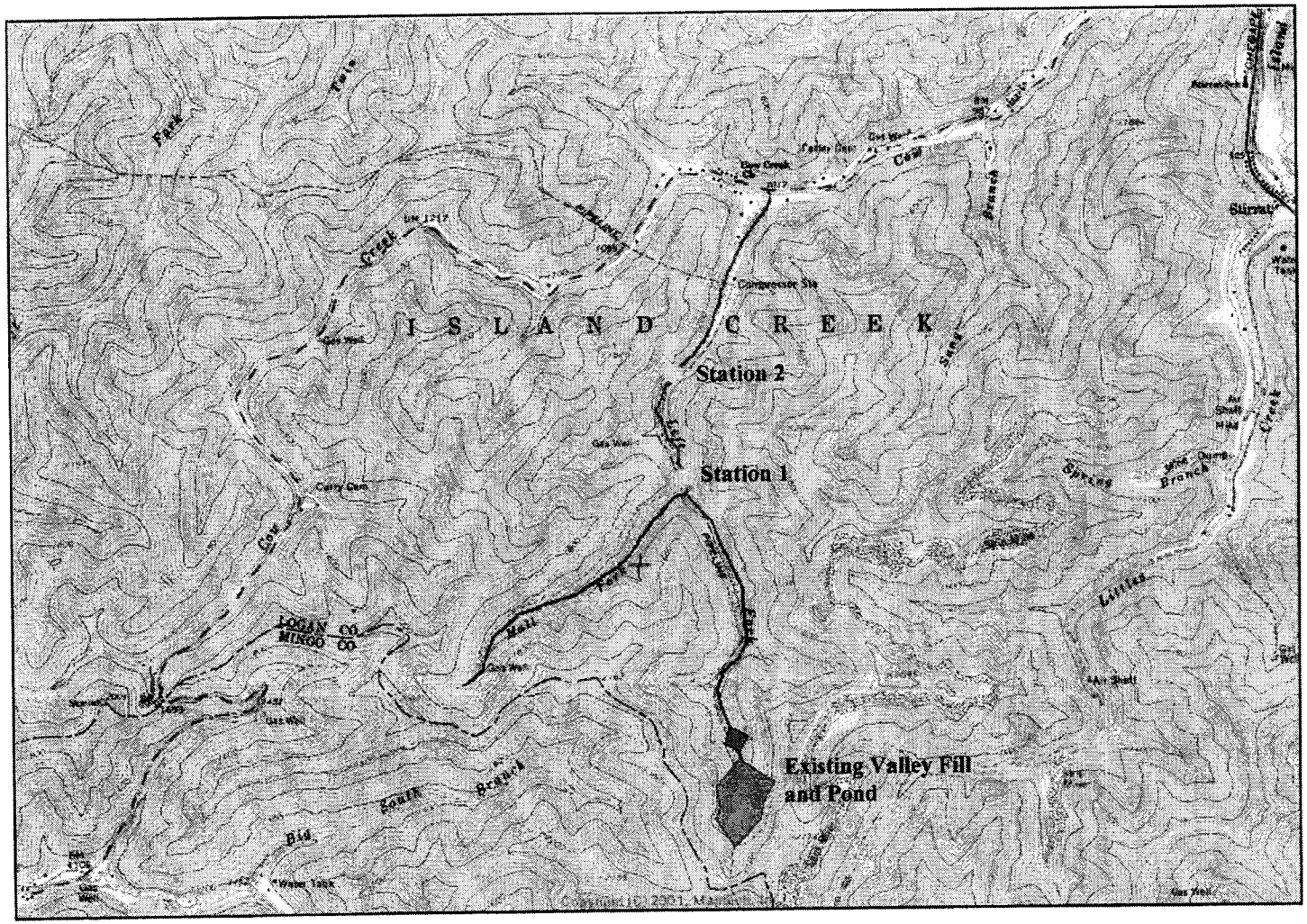

FIGURE 3. Topographical map showing approximate locations of proposed mitigation stream reaches (red) and sampling stations (yellow) located on the Left Fork of Cow Creek. Coal Mac, Inc., January 2004.

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COAL MAC, INC.
PHOENIX No. 4 SURFACE MINE
PENDING PERMIT No. S-5082-01
WVNPDES PENDING PERMIT No. WV1020692

FILL 5
FILL 4
FILL 7
FILL 6
FILL 2
FILL 1
CD 5A
CD 5
CD 4A
CD 4
CD 7B
CD 7A
CD 2A
CD 2
CD 1B
CD 1A
POND NO. 5
POND NO. 6
POND NO. 2
POND NO. 1
Pond Cleanings Area
EXISTING LOW WATER CROSSING
GW 8
GW-1
PX9508
PX9509
PX9525
PX9522
PX9521
PX9524
PX9523
HEARTWOOD FORESTLAND FUND II LP (SMO)
COLE & CRANE R.E.T. (SMO)
CALLA SMITH, et al (SMO)
HARLEY/CURRY HEIRS (SMO)
CROWN INDU (SO) POCAHONTAS LAN (MO)
CROWN INDUSTRIES (SO)
POCAHONTAS LAND CO. (MO)
ARK LAND COMPANY (SMO)

VALLEY FILLS
SEDIMENT DITCHES
MINERAL REMOVAL AREA

COAL-MAC, INC.
1628 West Third Avenue, Williamson, WV 25661

PHOENIX 4 SURFACE MINE
COMPENSATORY MITIGATION PLAN MAP

DRAWN	
DATE	BY
5/04	RDA
REVISED	
DATE	BY
APPROVED	
DATE	BY

COORDINATE SYSTEM: NAD 83 W Va South
SCALE
PATH: ENGINEERING/501301
FILE NO: MITIGATIONMAP

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