



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:	Issuance Date:
Public Notice No. 200300886	June 27, 2004
Stream:	Expiration Date:
Orchard Branch	July 27, 2004

Address comments to: US Army Corps of Engineers, Huntington District
602 Eighth Street
ATTN: CELRHF
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: Independence Coal Company
HC 78 Box 1800
Madison, West Virginia 25130

LOCATION: The proposed project is located in Orchard Branch, Long Branch and unnamed tributaries of Sandlick Creek and Morgan Branch just north of Sandlick Creek and just east of the headwaters of Left Fork Rock Creek, near Peytona, in Boone County, West Virginia as depicted on the attached **Drawing 1** titled "Laxare East Surface Mine USGS Location Map." **Drawings 2 and 3** depict the locations of the proposed valley fills and associated sediment ponds.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into waters of the U.S. in conjunction with the construction of eight valley fills and twelve associated sediment ponds associated with the Laxare East Surface Mine. Two of the valley fills (No. C and D) would be situated in watersheds with existing valley fills. The construction of the proposed valley fills would result in the discharge of fill material into approximately 28,690 linear feet or 2.828 acres of waters of the U.S. Further, approximately 8,180 linear feet or 0.828 acre of waters of the U.S. would be temporarily impacted by the construction of the proposed sediment ponds and associated drainage corridors. In total, approximately 36,870 linear feet or 3.656 acres of waters of the U.S. would be impacted by the proposed project. **Table A** of this public notice details the proposed mining activities and corresponding information with respect to the proposed impact locations, stream loss (linear feet and acres), and affected drainage areas. Each of the proposed valley fills would drain watersheds of less than 250 acres, ranging from 117 acres to 227 acres as detailed on **Table A** of this public notice.

The West Virginia Department of Environmental Protection (WVDEP) approved the applicant's Surface Mining Permit application (S-5012-00) on June 30, 2003 pursuant to the Surface Mining Control and Reclamation Act of 1977 and issued a National Pollutant Discharge Elimination System Water Pollution Control permit on March 2, 2004.

The applicant's proposed operation would affect 1,534 acres of surface area, including 1,126 acres of mineral removal to facilitate the recovery of approximately 23.5 million tons of coal reserves. This operation would generate approximately 266 million cubic yards of overburden, of which roughly 188 million cubic yards would be placed on the mined areas as backfill and the remaining 78.5 million cubic yards of excess overburden would be placed in the proposed valley fills. **Table A** of this public notice details the individual volumes of spoil material to be placed in each proposed valley fill as well as within the Corps' regulatory jurisdiction.

The proposed surface mine would be developed using a combination of contour, area, and mountaintop mining. The Buffalo Creek seam throughout the proposed permitted area would be contoured and highwall mined where reserves are present. The Coalburg seam would be mined using a combination of contour, highwall mining, and mountaintop mining practices throughout the permitted area. To the west, the Coalburg seam would be mountaintop mined. As the operation continues to the east, a transition to area mining and contour / highwall mining takes place. A 16-inch high-pressure gas transmission line, which is situated along the ridge top in the eastern region of the proposed surface mine, would be relocated by Columbia Gas.

A primitive "public road" (no state ownership or maintenance) identified as Route 79A on pre-1995 Boone County Highway Maps starts at the end of State Route 119/19 on Indian Creek and generally runs with the gas pipeline across the permit area. The permittee would relocate this road to the anticipated route. The permittee would not restrict access to this road throughout the life of the mining operation except when blasting or conducting other activities that may pose a hazard to users of the road.

Drainage control would be provided in each active phase by sediment structures installed and maintained. In order to provide full sediment control without utilizing extensive on-bench temporary structures, the sediment ponds are designed to provide adequate volume for the entire disturbed area within the particular watersheds. Where mining is outside the coverage of sediment ponds, temporary drainage control that includes on-bench sediment cells would be installed in conjunction with initial mining. Subsequently, the permanent drainage structures would be established and certified.

Note that specific sediment control structures would be installed as needed prior to disturbance in each watershed during each mining phase but those particular structures may not be in place at the very beginning of that phase. However, full-factor sediment storage volume for the current disturbed area would be provided by certified permanent sediment control or temporary sediment control at any time. Additional storage volume would be added prior to the disturbance of acreage in excess of that covered by existing structures. At no time shall the disturbed area exceed the area defined by the installed and certified sediment volume divided by 0.125 acre-feet per acre.

The applicant intends to utilize shovels (either hydraulic, electric, or a combination of each) as the prime earthmover in the overburden zone above the Coalburg horizon. A 300-ton overburden haulage trucks would support the shovels. Contour mining would employ a variety of equipment including front endloaders (Cat 992 or equivalent) with 85-ton trucks and hydraulic shovel / excavators (18 to 30 CY) with 150 to 200 ton overburden trucks.

“Pre-stripping” using the smaller equipment would stay in front of the shovel throughout the mine project. Whenever possible, overburden would be transported from the upper seams mining zone to backfill areas either on the lower seam levels or as backfill on the upper seams elevation. Overburden from the lower seams (Coalburg and Buffalo Creek) would be placed in valley fills. Adequate volume on the solid bench at the lowermost seam to be mined would be maintained through each stage for disposal of the potentially acidic or toxic overburden material.

The applicant would utilize the Burnside Branch haul road, which is bonded by Elk Run Coal Company permit S-5057-92 (West of Stollings), and the existing roads on Laurel Creek permitted by Elk Run and other affiliated companies for coal haulage. Mining would comply with current contemporaneous reclamation standards, including limits regarding disturbed but unreclaimed acreage, time limits for backfilling pits following final coal removal, and distance limits regarding incidental contour mining associated with mountaintop mining.

Mining and reclamation activities would take place over the course of ten phases as discussed below.

Phase 1: The applicant would utilize Elk Run’s East of Stollings surface mine haul road that begins at the end of WV County Route 12 and extends to mineable reserves. This road provides the required connection to a public highway.

Mining would begin at the head of Mudlick Fork and spread easterly and westerly simultaneously. This would activate Valley Fills A and B. Prior to construction of Valley Fills A and B, Ponds A and B would be constructed to ensure appropriate sediment capacity for the mining disturbance. Access would be provided to these ponds by an existing infrequently used access road, which begins at State Route 3 near the mouth of Morgan Branch and proceeds in a southern direction to the proposed pond locations.

Initial mining would begin as a box-cut from the head of Mudlick Fork and progress in a northerly direction to activate Valley Fills A and B. At the Buffalo Creek seam in both Valley Fills A and B, a contour cut would be utilized to recover otherwise unminable Buffalo Creek reserves. Once this contour cut is established, Valley Fills A and B can begin receiving excess spoil from the pre-stripping areas and the box-cut area. The 5-Block overburden as well as the shale unit above the Stockton Rider seam and the fireclay unit directly below the Stockton seam are to be special handled and not placed within a valley fill. Only the overburden material from the Clarion, Coalburg and Buffalo Creek contour cuts would be placed in the valley fills. Sediment Channels 1, 2, 3, 4, 5, 6A, 6B, and 7 would be developed prior as mining progresses in this stage.

Phase 2: Phase 2 would involve reclaiming the western portion of the mined area and the first five (5) lifts of both Valley Fills A and B while mining continues to move to the east. All overburden generated above the 5-Block seam, the shale unit above the Stockton Rider, and fireclay unit below the Stockton seam shall be disposed of on the Coalburg pavement. Conveyance Channel 4 would be constructed at this time to direct any excess runoff to Sediment Channel 7, which would also be constructed early in Phase 2.

Sediment Channels 8, 9 and 10 would be constructed as mining advances along the point between Burnside Branch and Morgan Branch.

Phase 3: In Phase 3, Valley Fill B is still actively receiving excess overburden from the Clarion, Coalburg and other material (above the Stockton Rider Seam) that has been deemed non-acidic and non-toxic. Prior to the disturbance in the southeastern portion of the project's watershed, Ponds C1, C2 and Pond D would be constructed to handle sediment control. While the new pond construction is underway, existing Pond 1 (from Cannelton Industries permit S-79-84) would be used temporarily provide sediment control capacity.

Access to Ponds C1, C2 and D1 as well as the existing Pond 1 on S-79-84 would be provided by Infrequently Used Access Road 2, which is an existing road created by past mining and other activities within the Sandlick Creek area. This road is only being permitted from the mouth of Long Branch to its upstream end at Pond C2. It would be upgraded, if necessary, to satisfy current state and federal requirements.

Once the construction of Ponds C1 and C2 has been completed, Valley Fill C would be activated. Mining would continue to the southeast while a box cut from Elk Run Coal Company's S-5006-96 permitted area (on the Coalburg seam) would be made to gain and provide access the remaining coal reserves within the area. As mining progresses to the east, DRF A and all initial access to the mineable reserve area would be reclaimed. Conveyance channels 1, 2 and 3 would be in place after Valley Fill A has been reclaimed.

Prior to spoil placement above the Coalburg horizon in Valley Fill C, a contour cut in the Coalburg seam would be made in the southern portion. In this area, the Coalburg seam would be highwall mined in this area. This mining would continue into Phase 4 before it has completed. The Buffalo Creek seam has been extensively room and pillar mined in this area. No mining is proposed in the Buffalo Creek seam in this area.

Phase 4: As mining progresses toward the eastern portion of the permit, Sediment Channels 11, 12, 13A and 13B would be installed to provide sediment control for the proposed mining area between Morgan Branch and Burnside Branch as well as the southern ridge between Valley Fills C and D. Valley Fill D would be activated during this stage. While Valley Fill C is still being utilized as an excess spoil disposal structure, the first four lifts (200 feet in elevation) would be reclaimed and Valley Fill D would be utilized to handle the excess spoil from the mining area. Conveyance Channels 7, 8 and 9 would be constructed as part of the final drainage system of Valley Fill B.

Phase 5: Sediment Channels 14 and 15 would be constructed as well as Channels 16 and 17. These channels would provide the sediment control capabilities needed for the advancing mining. During Phase 5, Valley Fill C would be reclaimed and Conveyance Channels 8A, 8B and 9 would be installed. Valley Fill D would be active.

Phase 6: Mining reaches the approximate center of the permit area in this stage and Valley Fill E begins handling the excess spoil. Pond E series would be constructed to provide sediment control. Infrequently used access road 2 would provide access to these ponds. A transition from mountaintop mining employed west of Valley Fill E to a combination of area mining, contour and highwall mining would occur as mining passes Valley Fill E. Valley Fill D would be reclaimed in this phase and conveyance channels 10A, 10B and 10C would be completed.

Phase 7: Ponds F1 and F2 would be constructed during this phase as mining progresses toward Orchard Branch. Valley Fill F would be activated during this phase. A box-cut from Orchard Branch to Long Branch would be made to allow the use of both Valley Fills F and H. Access provided by this box-cut would ensure appropriate excess spoil storage for Phase 9. As mining continues, contouring, highwall and area mining would continue to the east and along Orchard Branch. Sediment Channels 21, 22, 23 and 24 would be installed as mining progresses during this phase of the mine sequencing.

Phase 8: Highwall mining would continue within Orchard Branch and would move along the Buffalo Creek Horizon Bench. Valley Fill G would actively receive excess spoil from the mining disturbance to the east of Orchard Branch. Prior to use of Valley Fill G, Ponds G1 and G2 would be constructed. Valley Fill E would be reclaimed and additional drainage and sediment structures would be constructed. Sediment Channels 25, 26 and part of 27 would be constructed during this stage.

Phase 9: At the beginning of phase 9, Pond H would be installed to provide sediment control in the Long Branch watershed area. Valley Fills F, G and H would be receiving spoil from the contour mined and area mined areas. Sediment Channel 27 and 28 would be constructed during this phase.

Phase 10: The remaining mined areas would be reclaimed in this stage along with the still-active valley fills. Valley Fills F, G and H would be fully reclaimed with the appropriate drainage structures in place. Conveyance channels 14A, 14B, 15A, 15B, 15C and 16 would be completed.

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 valley fills and associated sediment ponds can be found on **Drawings 4 through 10** attached to this public 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 11** of this public notice depicts the geographic relationship between the proposed impact site(s) and the proposed mitigation site(s).

To compensate for permanent impacts to waters of the U.S., the applicant proposes to mitigate on- and off-site through in-kind establishment and enhancement respectively of aquatic resources. The applicant proposes to mitigate impacts to waters on a ratio of 1.5:1 for every linear foot of stream affected or lost as a result of the proposed project. To compensate for permanent intermittent stream impacts, the applicant proposes to enhance approximately 17,425 linear feet of Sandlick Creek and Laurel Creek from the furthest upstream residence, upstream to a headwater fork. An additional 19,175 linear feet of stream located on Laurel Creek would also be utilized as a mitigation site. This stream reach is located from the furthest upstream residence, upstream near a headwater tributary that is located near a mine entrance. These combined enhancement efforts equate to a total of 36,600 linear feet of intermittent and perennial stream mitigation credit. Additionally, the applicant proposes to offset permanent ephemeral stream impacts by converting the on-bench sediment channels located above the proposed valley fills into approximately 28,485 linear feet of natural streams with secondary and primary channels. Natural stream techniques would be used in the design of the mitigation sites. A 50-foot vegetated riparian zone would be established along the mitigation sites. This proposed mitigation would result in the establishment of 28,485 linear feet of ephemeral stream channels and enhancement of 36,600 linear feet of intermittent and perennial

stream channels. Of this total, approximately 18,626 linear feet of intermittent and perennial stream mitigation and 24,414 linear feet of ephemeral stream mitigation would be used to offset the permanent impacts as a result of the applicant's proposed project. The applicant has requested the excess mitigation credits in the amount of 15,179 linear feet of intermittent/perennial stream mitigation and 2,780 linear feet of ephemeral stream mitigation be used for future compensatory mitigation projects.

To compensate for temporary impacts, the applicant proposes to perform stream channel restoration in the temporarily disturbed segments of the sediment pond areas and associated drainage corridors and road crossings upon reclamation of the site. Rosgen natural stream techniques would be used in the design of the restoration sites. A minimum of a 100-foot vegetated riparian zone would be established along the restoration sites. This proposed restoration would result in the restoration of 8,180 linear feet of intermittent stream channels. The applicant also proposes enhance approximately 2,795 linear feet of intermittent/perennial stream channels and 1,295 linear feet ephemeral stream channels within Sandlick Creek and Laurel Creek to offset the temporal losses associated with sediment pond construction as well as the risk of success since the restored stream channels would not be permanently protected via a real estate instrument.

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 would 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: Mist net surveys were conducted July 23 – August 4, 2003. A total of 12 sites were surveyed. An Indiana bat was captured on the Laxare permit during survey efforts. The Indiana bat captured was a post-lactating female captured at MS-17 (Net B) on 29 July 2003. The capture site was located in the Sandlick Creek drainage.

Subsequent radio tracking of the Indiana bat revealed a roost tree in the proposed project area. The loss of this habitat in the "Action Area" will result in the elimination of maternity habitat. The Huntington District has consulted the most recently available information and has determined the project is likely to adversely affect the Indiana bat.

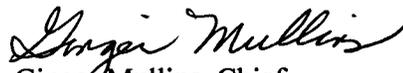
This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

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 would be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision would 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 would 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 would 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 would become a part of the record and would be considered in the final determination. A permit would 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 would 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, Chief
Regulatory Branch

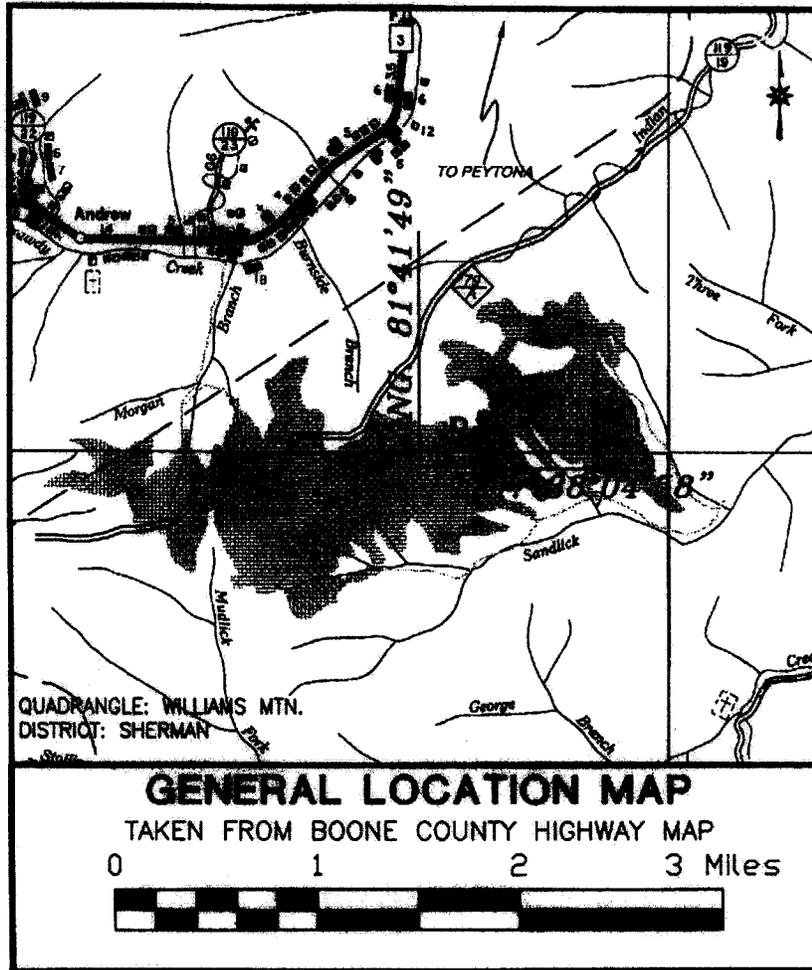
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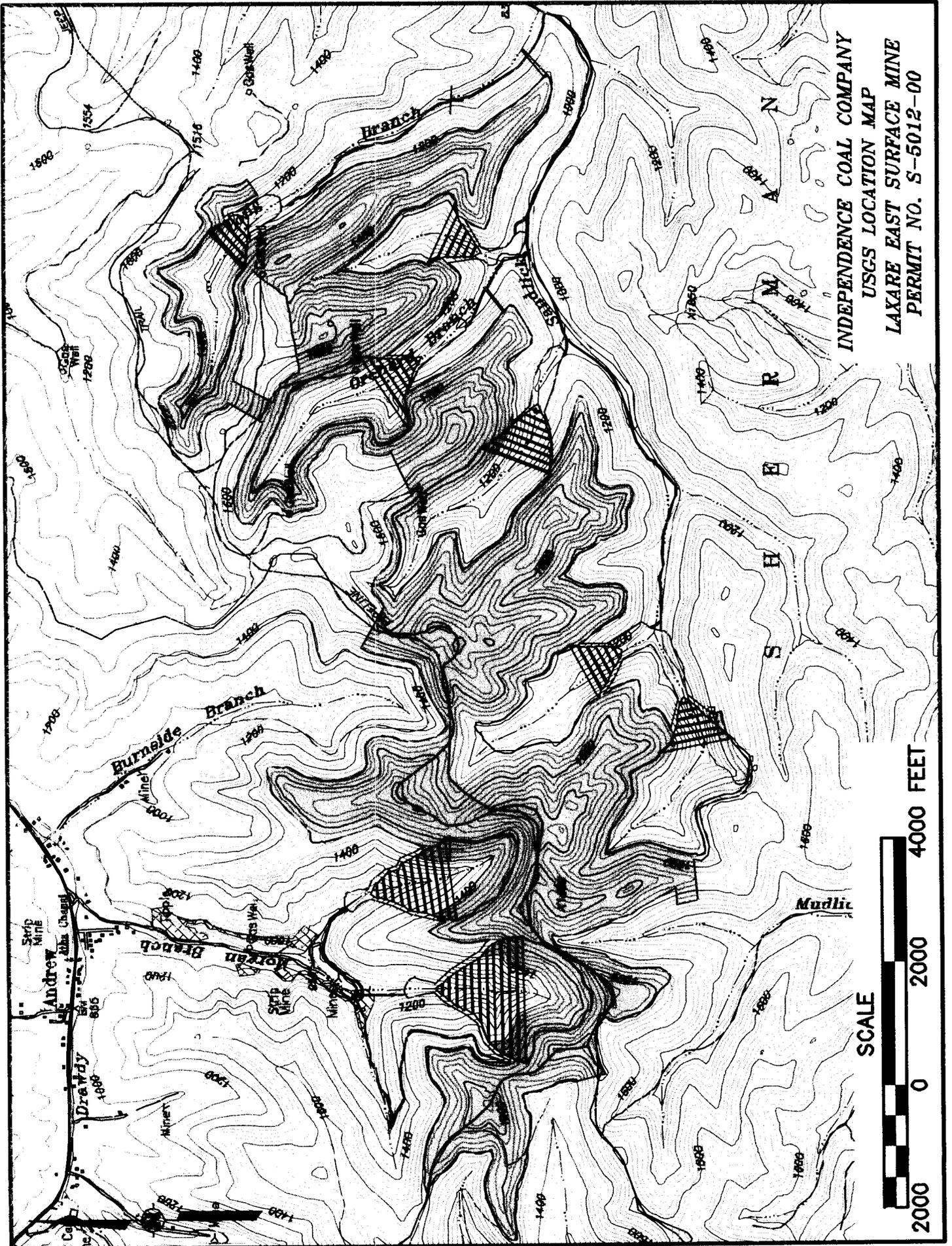
Table A
Independence Coal Company, Inc.

Laxare East Surface Mine

Stream Impact Summary

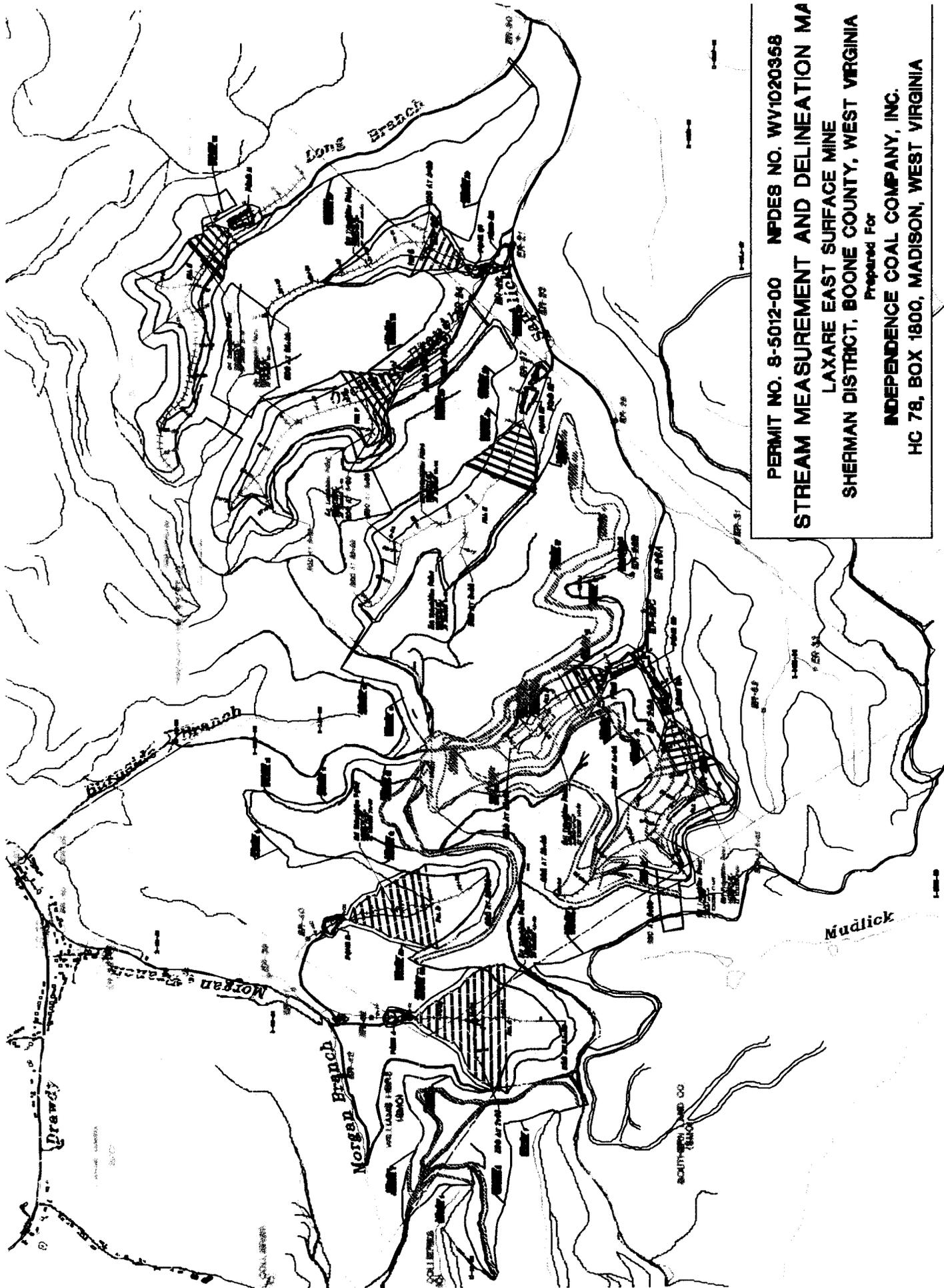
Fill A	132			2,520	0.232	500	0.076	16,231,159	63.39
Pond A			149						
Fill B	117			2,000	0.177	480	0.038	10,064,279	35.98
Pond B			133						
Fill C	177			5,200	0.496	1,700	0.204	11,037,096	217.21
Ponds C1, C2			223						
Fill D	188			2,020	0.289	580	0.072	6,067,566	99.5
Pond D			198						
Fill E	227			4,970	0.547	1,070	0.143	15,102,059	127.43
Ponds E1, E2			262						
Fill F	213			4,780	0.397	1,130	0.102	9,308,940	33.52
Ponds F1, F2			249						
Fill G	137			2,700	0.290	1,400	0.108	4,773,039	87.64
Ponds G1, G2			139						
Fill H	186			4,500	0.400	1,320	0.085	5,828,829	52.82
Pond H			200						
				28,690	2.828	8,180	0.828	78,412,967	717.49





INDEPENDENCE COAL COMPANY
USGS LOCATION MAP
LAXARE EAST SURFACE MINE
PERMIT NO. S-5012-00





PERMIT NO. 8-5012-00 NPDES NO. WV1020358
STREAM MEASUREMENT AND DELINEATION MAP
 LAXARE EAST SURFACE MINE
 SHERMAN DISTRICT, BOONE COUNTY, WEST VIRGINIA
 Prepared For
INDEPENDENCE COAL COMPANY, INC.
 HC 78, BOX 1800, MADISON, WEST VIRGINIA

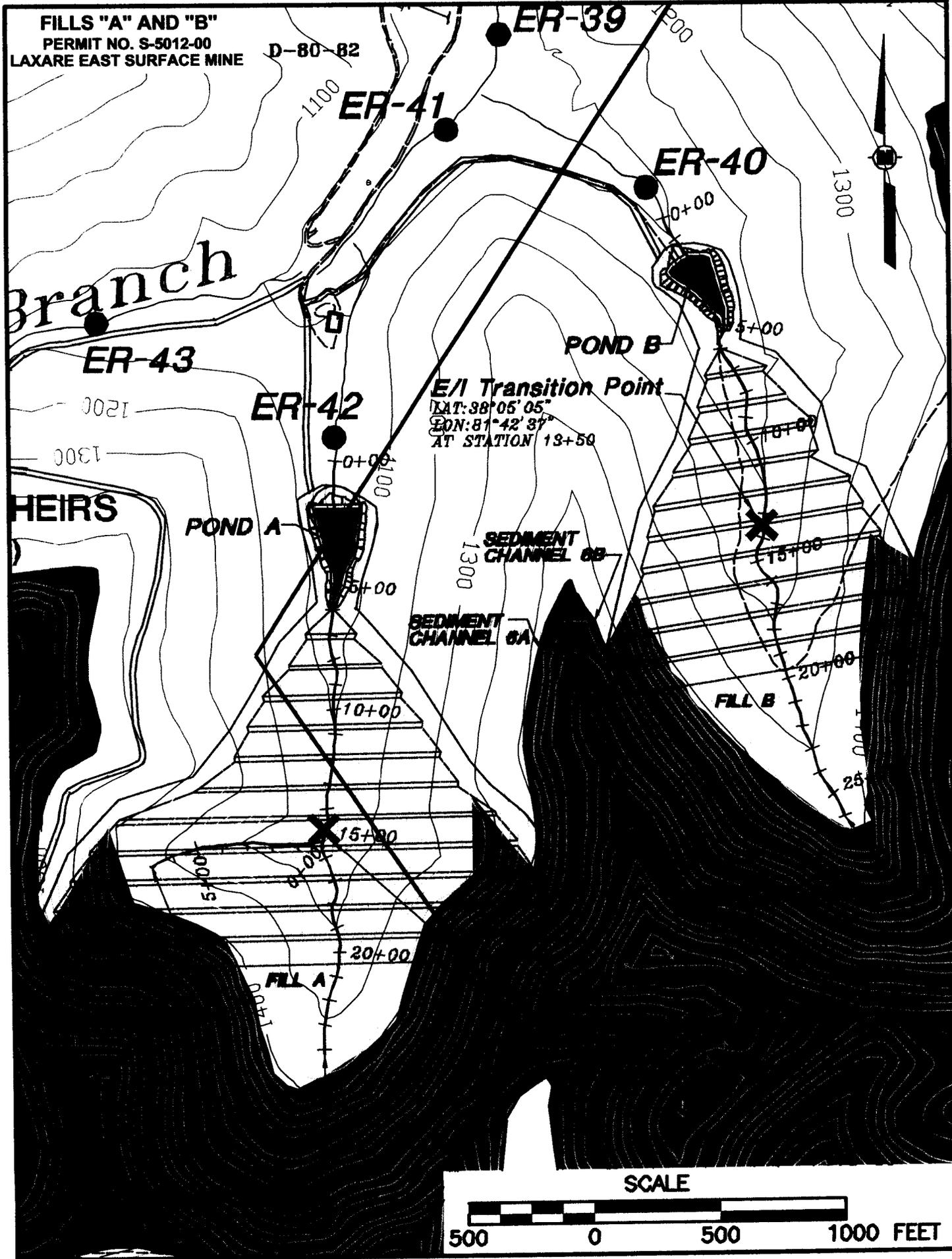
3 of 11

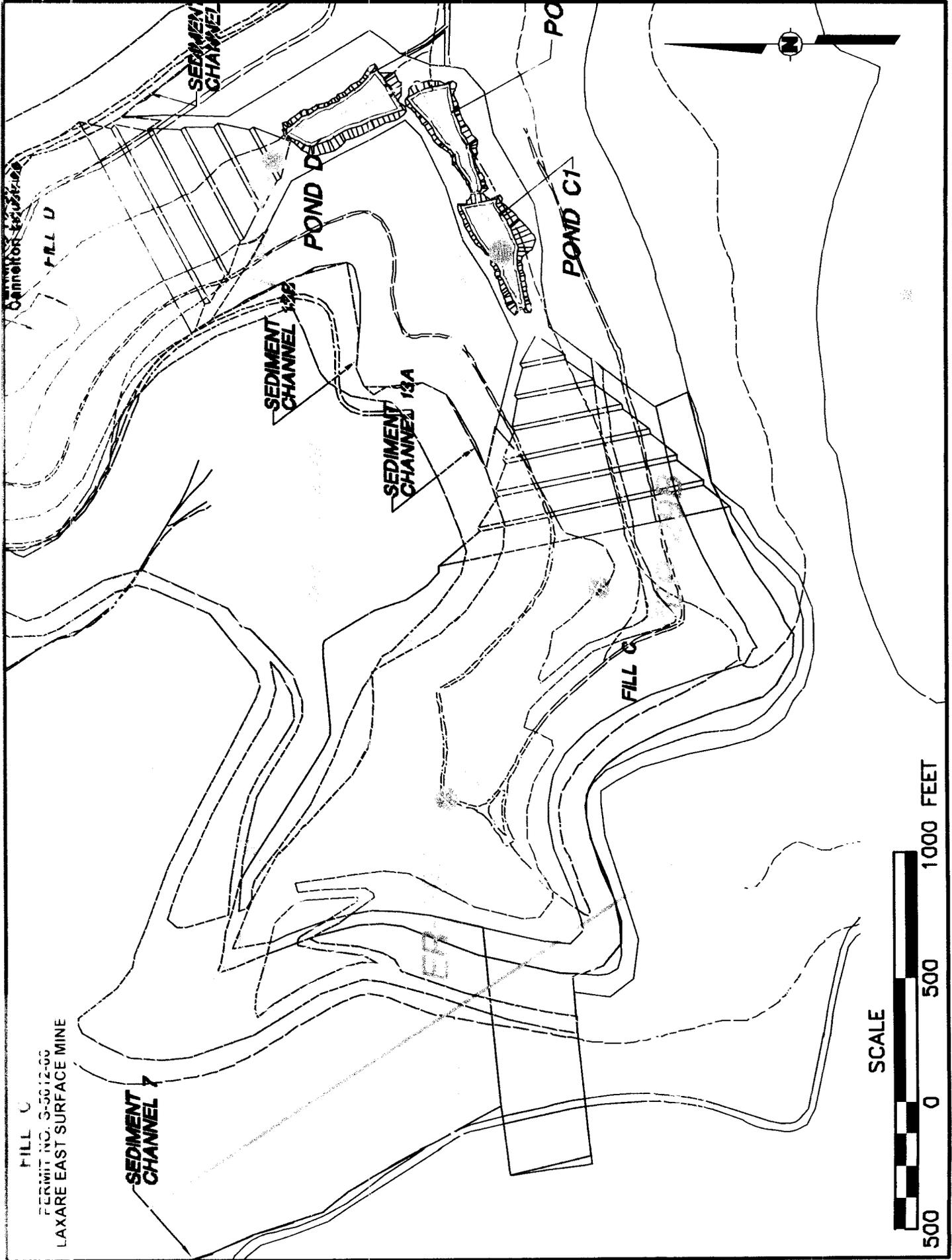
FILLS "A" AND "B"
PERMIT NO. S-5012-00
LAXARE EAST SURFACE MINE

D-80-82

Branch

HEIRS





FILL C
PERMIT NO. S-5012-00
LAXARE EAST SURFACE MINE

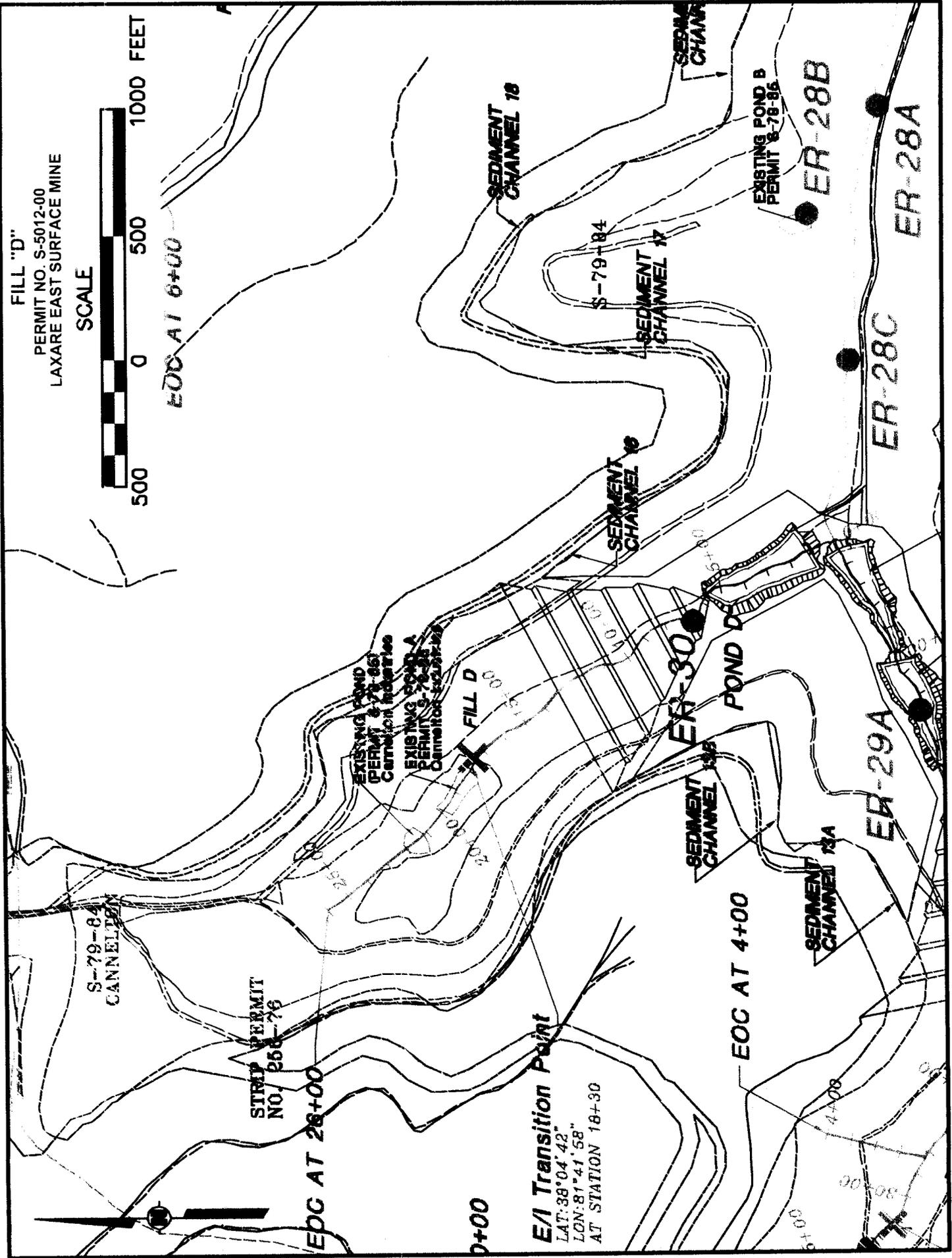
SCALE



FILL "D"

PERMIT NO. S-5012-00
LAXARE EAST SURFACE MINE

SCALE



EOC AT 6+00

S-79-84
CANNELTON

STRIP PERMIT
NO. 258-76

EOC AT 26+00

0+00

E/I Transition Point

LAT: 38°04'42"
LON: 81°41'58"
AT STATION 18+30

FILL D

SEDIMENT
CHANNEL 18

SEDIMENT
CHANNEL 17

SEDIMENT
CHANNEL 16

ER-30

SEDIMENT
CHANNEL 19B

EOC AT 4+00

SEDIMENT
CHANNEL 19A

ER-29A

ER-28C

ER-28B

ER-28A

EXISTING POND B
PERMIT 8-78-86

EXISTING POND
PERMIT 8-78-86
Cannelton Industries

EXISTING POND A
PERMIT S-78-88
Cannelton Industries

POND D

4+00

0+00

80+00

FILL "E"

PERMIT NO. D-5612-00
LAXARE EAST SURFACE MINE

SEDIMENT CHANNEL 25

POND F1

POND F2

SEDIMENT CHANNEL 24

SEDIMENT CHANNEL 22

SEDIMENT CHANNEL 21

POND E1

POND E2

SEDIMENT CHANNEL 20B

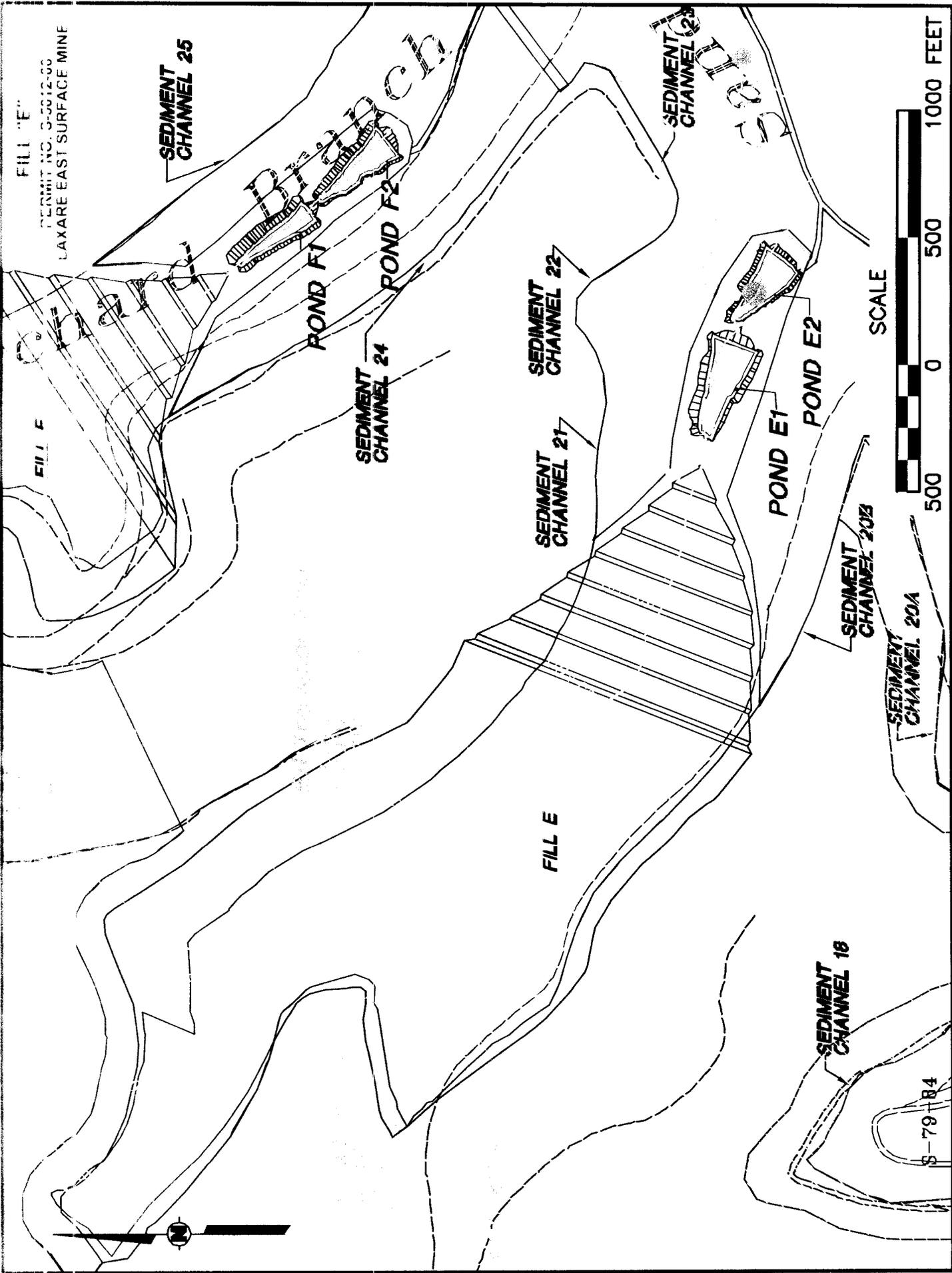
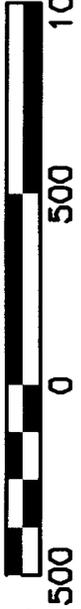
SEDIMENT CHANNEL 20A

SEDIMENT CHANNEL 23

FILL E

SEDIMENT CHANNEL 18

S-79-R4



FILL "F"
PERMIT NO. S-5012-00
LAXARE EAST SURFACE MINE

E/I Transition Point

LAT 38°05'35"
LON 81°40'31"
AT STATION 31+00

E/I Transition Point

LAT 38°05'21"
LON 81°41'02"
AT STATION 28+00

EOC AT 39+00

FILL F

SEDIMENT CHANNEL 25

E/I Transition Point

LAT 38°04'59"
LON 81°41'21"
AT STATION 36+80

POND F1

SEDIMENT CHANNEL 24

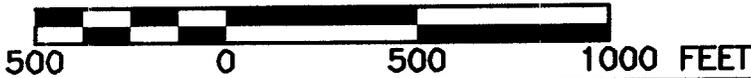
POND F2

FILL E

SEDIMENT CHANNEL 21

SEDIMENT CHANNEL 22

SCALE



SEDIMENT CHANNEL 23

5.11

FILL "G"
PERMIT NO. S-5012-00
LAXARE EAST SURFACE MINE

POND H



EOC AT 39+00

35+00

30+00

SEDIMENT CHANNEL 27

25+00

E/I Transition Point

LAT: 38°05'10"
LON: 81°40'31"
AT STATION 20+60



SEDIMENT CHANNEL 26

FILL G

POND F1

POND F2

EOC AT 2+00

ER-25

ER-24

SEDIMENT CHANNEL 26

SEDIMENT CHANNEL 22

POND G1

POND G2

ER-22

ER-21

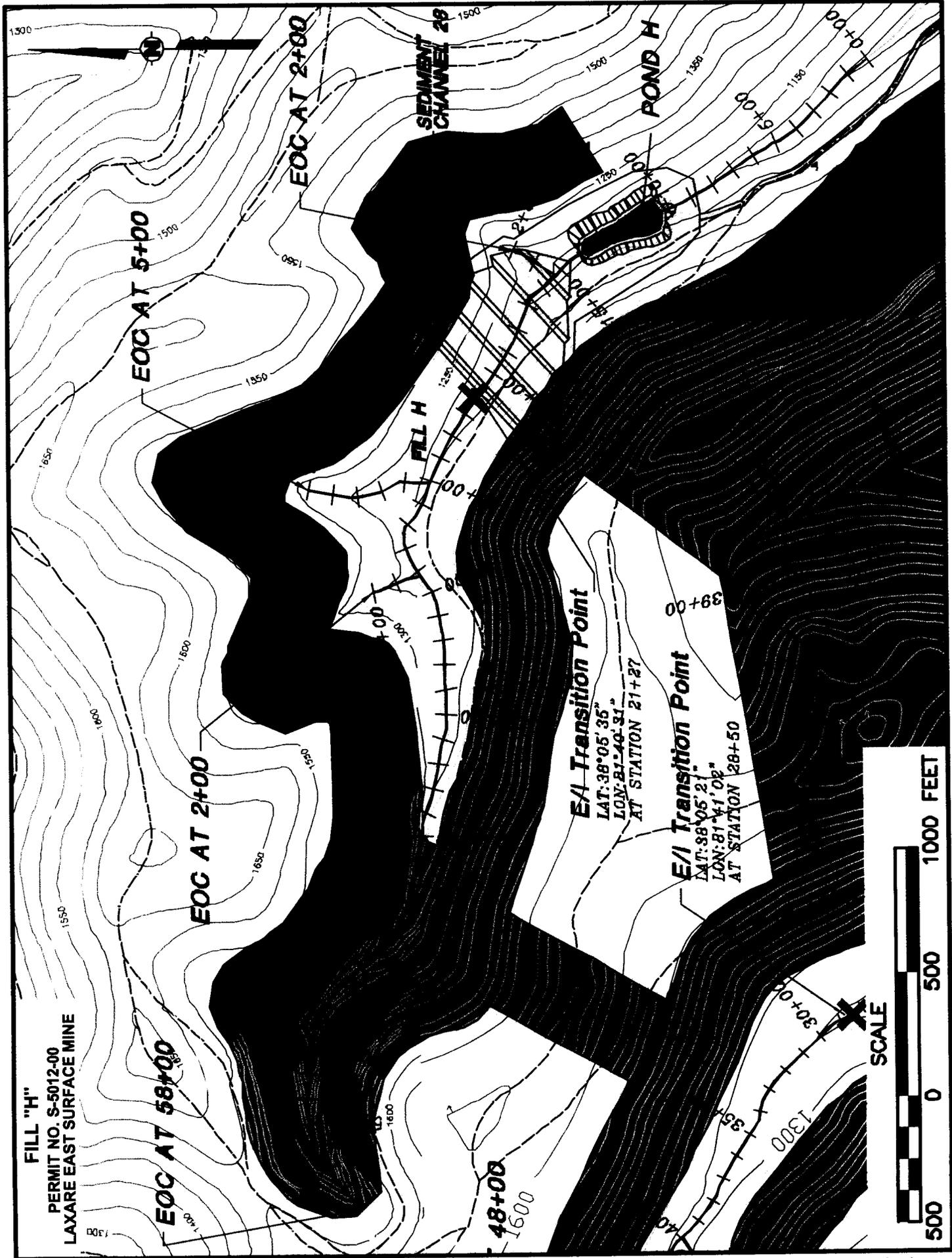
SEDIMENT CHANNEL 23

ER-20

SCALE



9011

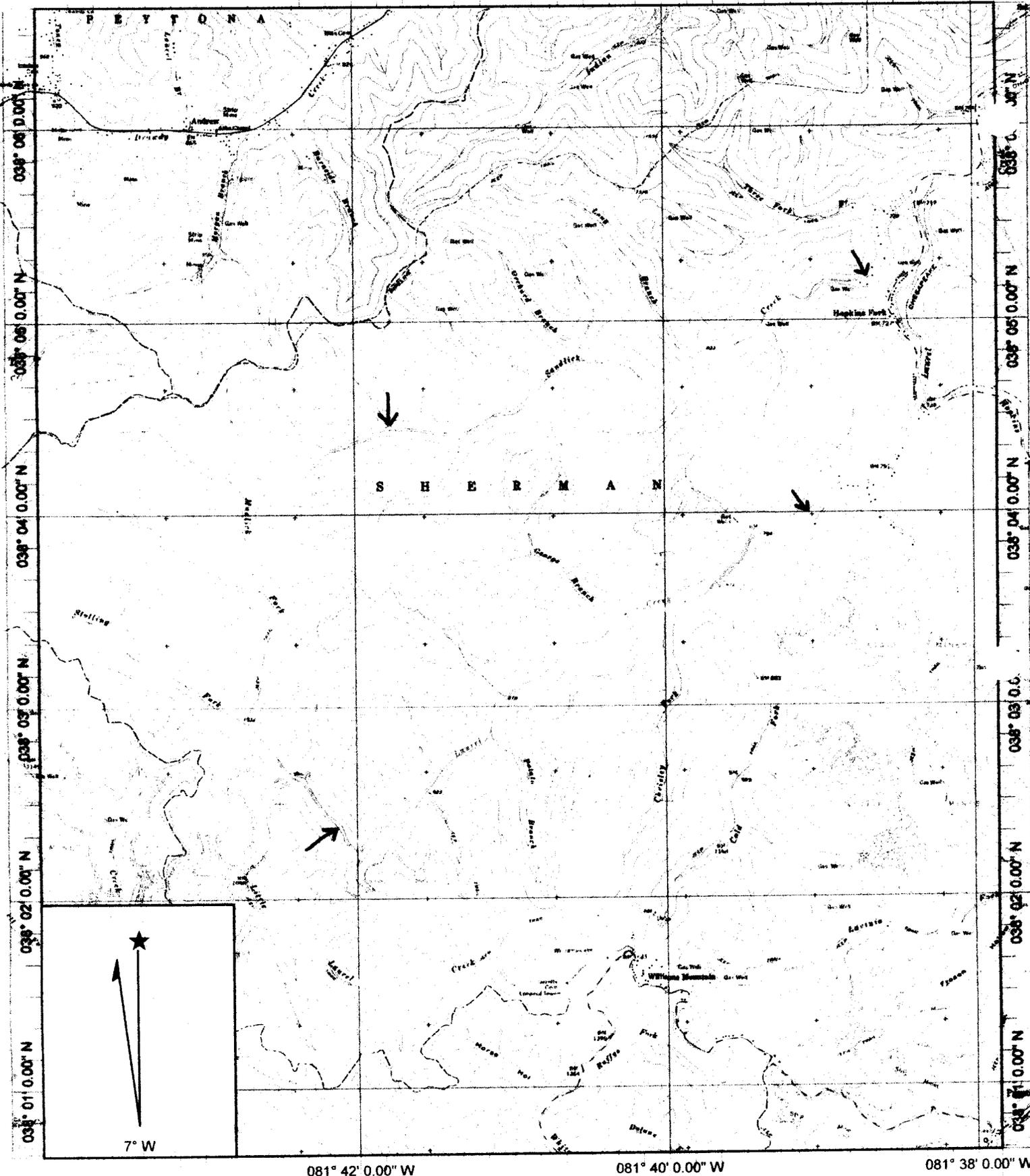


10 OF 11

081° 42' 0.00" W

081° 40' 0.00" W

081° 38' 0.00" W



Name: WILLIAMS MT
 Date: 6/18/2004
 Scale: 1 inch equals 4000 feet

Location: 038° 03' 38.6" N 081° 40' 57.2" W
 Caption: Mitigation Site Areas
 Independence Coal Company, June 2003.