



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:

Issuance Date:

Public Notice No. 200400083

September 17, 2004

Stream:

Expiration Date:

Horse Creek

October 17, 2004

Address comments to:

US Army Corps of Engineers, Huntington District

502 Eighth Street

ATTN: CELRHE

Huntington, West Virginia 25701-2070

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 U.S. Army Corps of Engineers (Corps) 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 Corps Regulatory Program.

SECTION 10: The Corps 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 (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps 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 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: Marfork Coal Company
P.O. Box 457
Whitesville, West Virginia 25209

LOCATION: The proposed project is in Horse Creek, near Naoma, in Raleigh County, West Virginia (latitude 37° 54' 23"N, longitude 81° 25' 45"W) as depicted in the attached Proposal Map (Drawing 1).

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to temporarily enclose 445 linear feet of stream in 4' corrugated metal pipe (CMP) to allow the storage of overburden excavated from a face-up deep-mine portal in a valley fill. An associated sediment control structure would temporarily impact an additional 285 linear feet of stream. Total impacts to Horse Creek, an intermittent stream, are 730 linear feet. There are no permanent impacts associated with the proposed project. The duration of the proposed activity is approximately 10 years and the combined watershed of the proposed fill and watershed upstream of the proposed fill is 105.12 acres.

The basic purpose of the project is to mine coal. The overall purpose of the proposal is to isolate the stream from the impacts of temporary overburden storage from a deep mine face-up, and to provide the required sediment control, associated with access to the Cedar Grove coal seam. A Site Map of the proposed project is attached to this notice (Drawing 2). Profile and section views of the proposed valley fill and stream enclosure are provided in Drawings 3-5 (attached).

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. The applicant submitted an alternative analysis currently under review.

MITIGATION PLAN: To compensate for impacts, the applicant proposes on-site mitigation through in-kind stream restoration and enhancement. The applicant proposes to restore the impacted stream channel as near as practical to original channel profile, with aquatic habitat equal to or better than pre-mining conditions, using natural stream design techniques. Enhancement would consist of bank protection, enhanced vegetation, a minimum 50-foot buffer zone, measures to insure channel flow during low flow months, and the use of log/pole and boulder placement to establish riffles and pools.

After stream restoration and enhancement is complete, a habitat assessment will be performed to determine if morphological characteristics have met or exceeded the original habitat scoring. If characteristics have not been met, the applicant will take corrective measures to meet or exceed original morphological characteristics.

The restored and enhanced stream segment will be monitored for five years following completion of construction with annual monitoring reports submitted to the USACE, Huntington District. The reports will include performance parameters and photographs with locations or stations noted. Corrective measures will be taken in the event of any noted deficiencies. The restored/enhanced stream segments would be protected as such in perpetuity.

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).

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 contact Mr. Richard Hemann of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(W)

**INFREQ. USED
ACCESS HC1**

STREAM ENCLOSURE - 48' CMP

**2-24' CMP'S
32+25**

UHG-2

PERIMETER NO. 1

48' CMP

ACCESS/HAULROAD 3

PERIMETER NO. 2

**INTERSECTION ACCESS NO. 3 AND
INFREQ. USED ACCESS NO. 1**

**NO. 2 GAS
PENDING SMA
U-3002-04**

INFREQ. USED ACCESS NO. 1

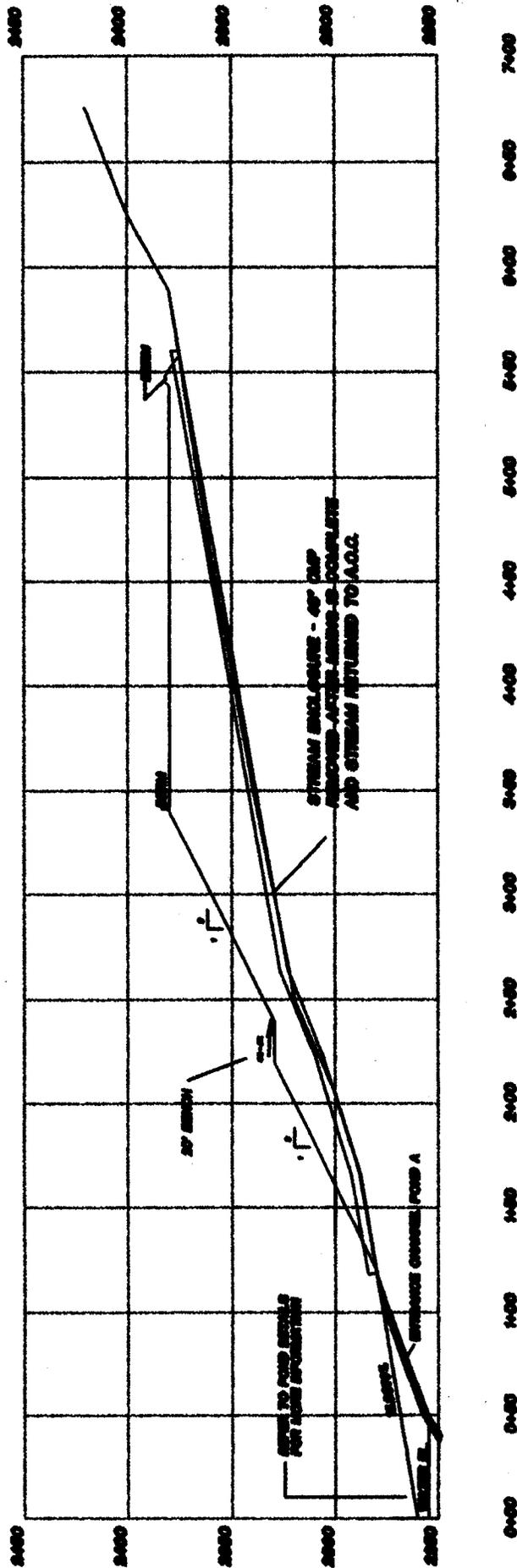
Drawing 2 of 5
Marfork Coal Company
Horse Creek Cedar Grove Portal
SMCRA #S-3021-00 (200400083)
Site Map-Plan View

**SITE PLAN - MARFORK COAL COMPANY, INC.
SLIP RIDGE CEDAR GROVE - HORSE CREEK PORTAL
SCALE: " = 200'**

**PROFILE VIEW
MARFORK COAL COMPANY, INC.
SLIP RIDGE CEDAR GROVE
HORSE CREEK PORTAL FILL**

SCALE: 1" = 100'

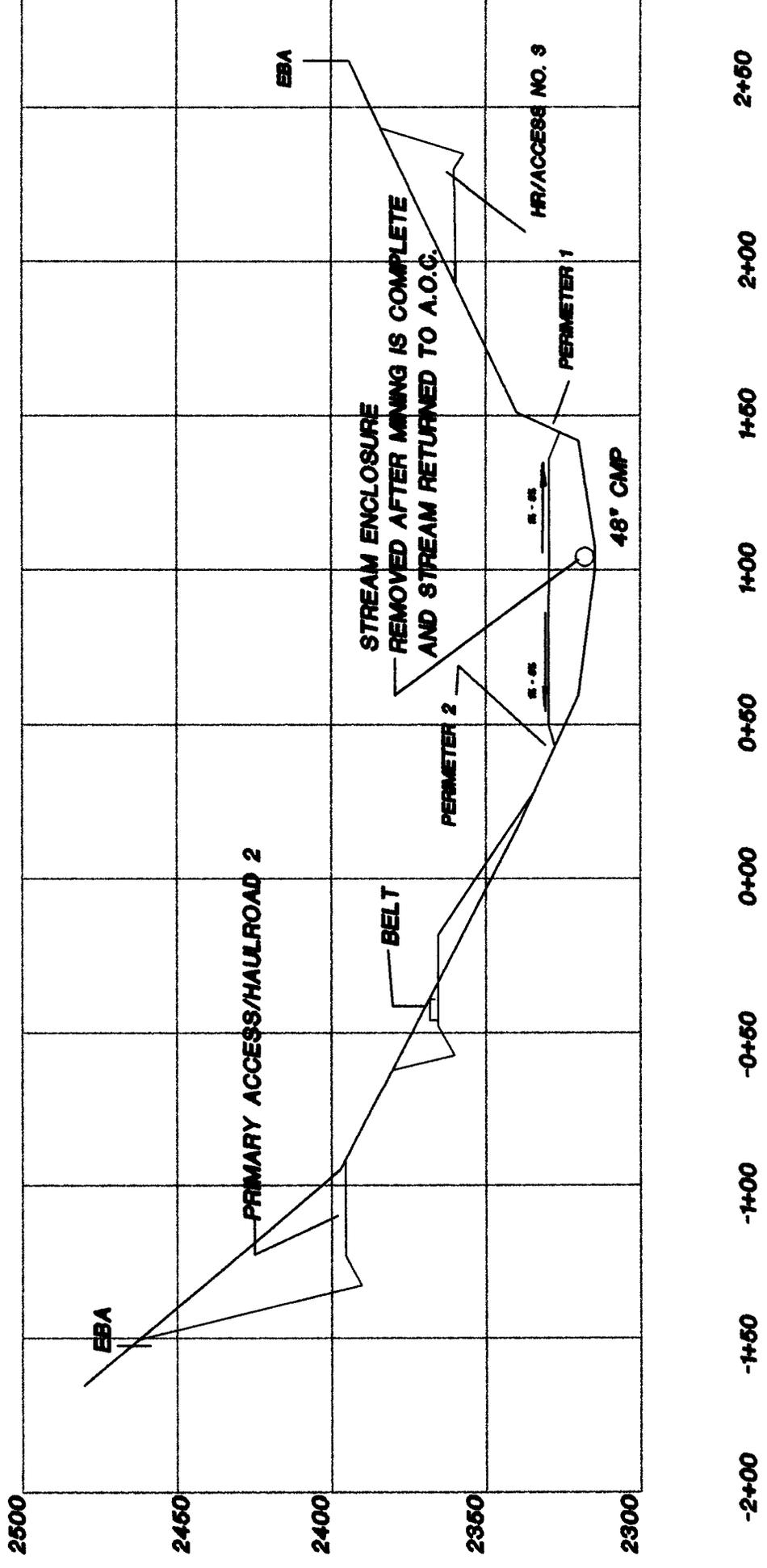
PROFILE A-A - VALLEY FILL



SCALE: 1" = 50'

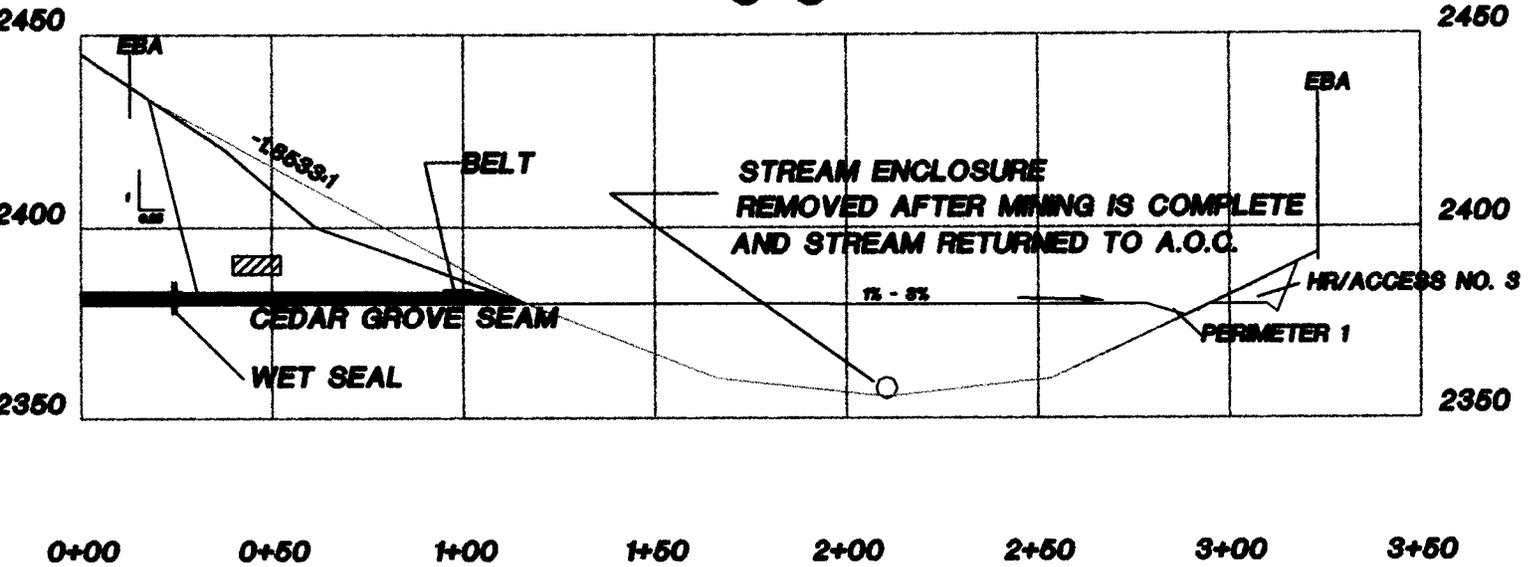
CROSS-SECTIONS
MARFORK COAL COMPANY, INC.
SLIP RIDGE CEDAR GROVE
HORSE CREEK PORTAL

SECTION B-B - VALLEY FILL

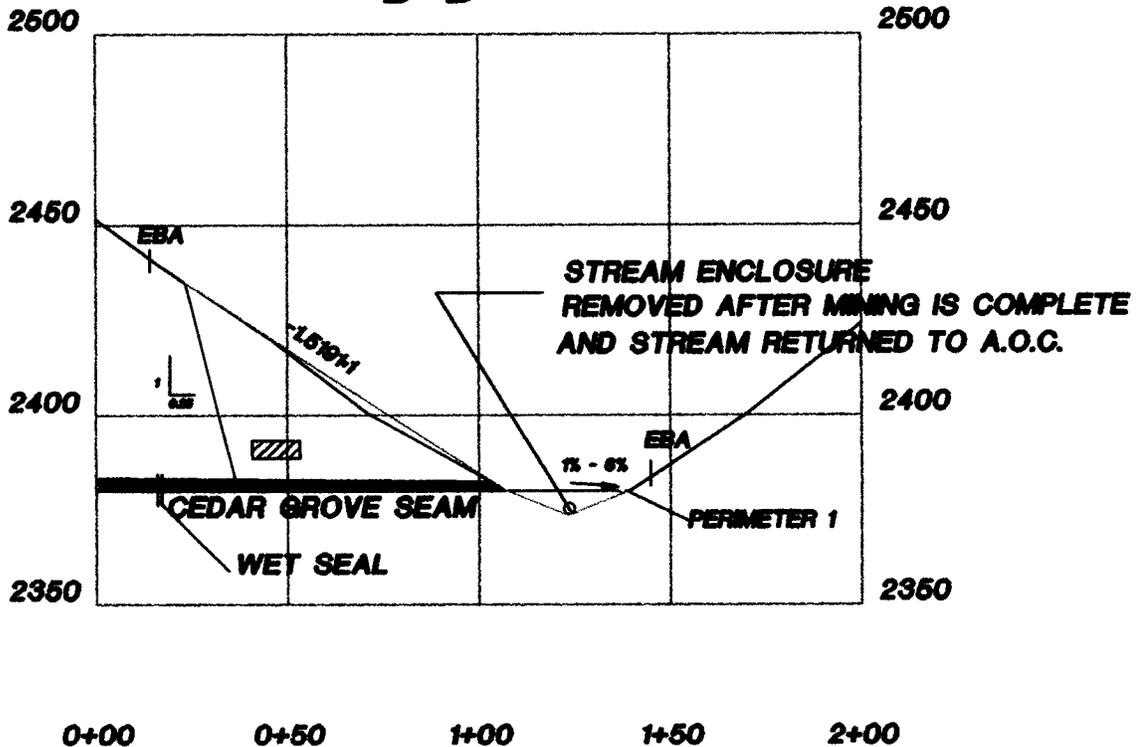


Drawing 4 of 5
Marfork Coal Company
Horse Creek Cedar Grove Portal
SMCRA #S-3021-00 (200400083)
Valley Fill Section B-B

C-C



D-D



**CROSS-SECTIONS
MARFORK COAL COMPANY, INC.
SLIP RIDGE CEDAR GROVE
HORSE CREEK PORTAL**

Drawing 5 of 5
Marfork Coal Company U-3021-00
Horse Creek Cedar Grove Portal
SMCRA #S-3021-00 (200400083)
Valley Fill Sections C-C & D-D

SCALE: 1" = 50'