



**U S Army USACE
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No. 200401585 Issuance Date: March 7, 2005

Stream: Town Creek

Closing Date: April 6, 2005

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 U.S. 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 (U.S.). 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 to act on Section 401 Water Quality Certification for the following application.

APPLICANT: New Land Leasing Company, Inc.
P.O. Box 2243
Beckley, West Virginia 25802

LOCATION: The proposed project is located in the Plateau District of Fayette and Raleigh Counties, West Virginia at Latitude 38°56'45" and Longitude 81°17'10" on the United States Geological Survey 7.5-minute Pax Quadrangle. The proposed project area would be located in the headwaters of Town Creek and unnamed tributaries to Austin Hollow and Town Creek approximately 1.1 miles northwest of Pax, West Virginia. Austin Hollow and Town Creek are tributaries of Paint Creek, which ultimately flows into the Kanawha River, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into approximately 17,823 linear feet (2.89 acres) waters of the U.S. in conjunction with the construction, operation and reclamation of the Pax No. 2 Surface Mine [Surface Mining Control and Reclamation Act (SMCRA) Permit S-3039-91] and Pax Surface Mine No. 3 (SMCRA Permit S-3002-95). SMCRA Permits S-3039-91 and S-3002-95 were approved by the West Virginia Department of Environmental Protection (WVDEP) on October 2, 1992 and February 9, 1996 respectively. SMCRA permit S-3039-91 has been partially surface mined and Valley Fills 1, 5, 6, 7, 8, 14 and 16 have been constructed and are in the process of being reclaimed. Likewise, SMCRA Permit S-3002-95 has been partially surfaced mined and Valley Fills 10 and 11 have been constructed and would be reclaimed in accordance with the approved reclamation plan. The proposal would involve the construction of nine valley fills and nine in-stream sediment ponds. The construction of the proposed valley fills would result in the discharge of fill material into approximately 8,674 linear feet (1.52 acres) of intermittent streams and 3,931 linear feet (0.54 acre) of ephemeral streams for a total impact of approximately 12,605 linear feet (2.06 acres) of waters of the United States. Further, approximately 2,393 linear feet (0.31 acre) of intermittent streams and 2,825 linear feet (0.52 acre) would be temporarily impacted by the construction of the proposed sediment ponds. Adverse impacts associated with the proposed sediment pond construction would be temporary in nature. Lastly, approximately 1,461 linear feet (0.22 acre) of ephemeral streams and 176 linear feet (0.02 acre) of intermittent streams would be temporarily disconnected during mining operations and an additional 825 linear feet of intermittent streams could be indirectly impacted by sediment transportation between the proposed valley fills and sediment ponds.

Table A of this public notice details the proposed mining activities and corresponding information with respect to the proposed impact locations and adverse impacts to waters of the U.S. (linear feet / acreage). The proposed valley fills would drain contributing watersheds ranging from 16.1 acres to 345.1 acres as detailed on **Table B** of this public notice. Approximately 2,672 cubic yards of unspecified, non-toxic, durable material would be permanently discharged within the USACE regulatory jurisdiction as a result of the proposed project. Details regarding the proposed mining plans can be found in Section N of the applicant's Surface Mining Applications on file at the WVDEP.

According to the applicant, the purpose of the project is to recover the remaining bituminous coal reserves from the Alma, Peerless, No. 2 Gas, Lower Campbells Creek, Powellton, Eagle, Glen Alum and Douglas coal seams. To accomplish this, the applicant proposes to continue the construction, operation and reclamation of the Pax No. 2 Surface Mine and Pax Surface Mine No. 3. Reserves from the project site would be sold on the market to satisfy a currently high demand for coal. Plans for the proposed Pax No. 2 Surface Mine and Pax Surface Mine No. 3 are attached to this public notice.

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 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.

MITIGATION PLAN: The applicant has submitted a compensatory mitigation plan (CMP) to compensate for permanent and temporary impacts to waters of the U.S. regulated by the Department of the Army, USACE. To compensate for impacts to waters of the U.S., the applicant proposes to mitigate on-site through in-kind restoration and creation of aquatic resources. Approximately 11,282 linear feet of intermittent streams and 3,625 linear feet of ephemeral streams would be created along the perimeter of the proposed surface mines and downstream of existing rock fills. To further compensate, the stream segments temporarily impacted by sediment pond construction and associated drainage corridors would be restored to their pre-mining conditions. Natural stream design techniques would be utilized in the design of the mitigation streams and the streams could flow into a surface tributary system of navigable waters. Restoration of the temporarily affected stream channels would include the re-establishment of bankfull and flood prone areas. A 50-foot vegetated riparian zone would also be established along each mitigation channel using native grasses, shrubs and trees. All of the mitigation channels, and their vegetated riparian corridors, would be protected in perpetuity by appropriate real estate instruments. The mitigation would be executed concurrent with the proposed mining activities. A 5-Year monitoring and management plan has been developed by the applicant to provide assurances for mitigation success.

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 (NRHP) 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. As part of the SMCRA permitting process, a Phase I Archaeological Survey was conducted to determine if any architectural and/or archaeological resources existed within the proposed project areas and whether or not those resources were potentially eligible for listing in the NRHP. No historic properties were identified as a result of the survey. The West Virginia Division of Culture and History (SHPO) concurred with this finding in a letter dated June 25, 1991 for Pax No. 2 Surface Mine and September 15, 1995 for Pax Surface Mine No. 3. A copy of this public notice will be sent to the SHPO 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. Two options are available to the applicant in order to address Indiana bat concerns. The applicant may conduct a mist net survey from May 15 to August 15 using the mist net protocol outlined in the draft Indiana bat Recovery Plan. If this option is chosen, the applicant must provide the United States Fish and Wildlife Service (Service) with their survey plan for review and approval prior to conducting the survey. Another option is to presume Indiana bats are present and conduct all timber removal on the project area from November 15 to March 31. If

this option is chosen, an analysis of the post-project Indiana bat summer habitat must be performed within a two-mile radius of the center point of the project area. If the Service determines the extent of disturbance is not significant to affect the Indiana bat, the project may proceed with seasonal restrictions. Conversely, if the Service determines the extent of disturbance is significant and would likely adversely affect the Indiana bat, a mist net survey can be conducted to determine if the Indiana bats are present. Additionally, abandoned mine portals could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. The applicant must survey the project area for old, abandoned mine portals. If portals appear to have suitable bat habitat characteristics, a Phase I Portal Survey must be prepared for each portal by a qualified mammalogist. Based on the above, the USACE cannot make a determination regarding the effect the proposed project could potentially have on the aforementioned endangered species. This public notice serves as a request to the 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. 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 U. S. 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 Mrs. Teresa Spagna, 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 may be made publicly available. Thank you for your interest in our nation's water resources.



for

Ginger Mullins, Chief
Regulatory Branch

(W)

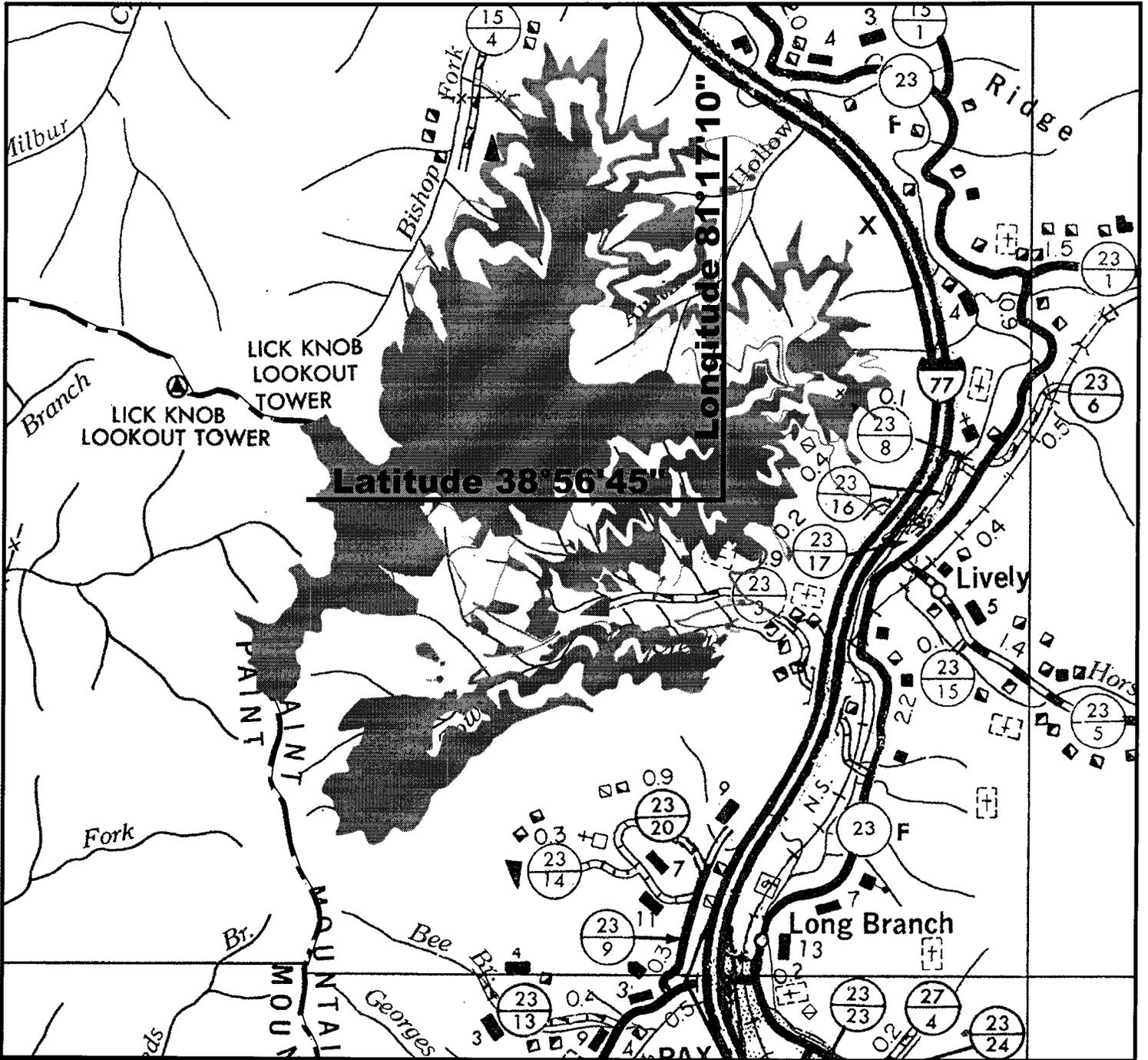
Table A

Name of Stream or Stream Section	Permanent Impact				Temporary Impact				Previously Impacted				Temporary Impact					
	Intermittent/Perennial		Ephemeral		Intermittent/Perennial		Ephemeral		Isolated Waters *		Length & Reclaimed		Sediment *					
	Length	Acreage	Length	Acreage	Length	Acreage	Length	Acreage	Length	Acreage	Length	Acreage	Length	Acreage				
Valley Fill No. 2 (S-3039-91)	719	0.19											35 (E)	0.01	200	0.05	40 (I)	0.01
Valley Fill No. 3 (S-3039-91)			885	0.10			116	0.01					249 (E)	0.03	226	0.03		
Valley Fill No. 4 (S-3039-91)	567	0.12	350	0.06			263	0.06					86 (E)	0.02	201	0.04		
Valley Fill No. 10 (S-3039-91)	795	0.21			64	0.02	196	0.05					564 (E)	0.10	19	0.00		
Valley Fill No. 12 (S-3039-91)	1265	0.17			340	0.00	118	0.01							203	0.02	659 (I)	0.08
Valley Fill No. 15 (S-3039-91)	613	0.12	303	0.04			537	0.07					417 (E)	0.05	700	0.07	38 (I)	0.00
Fill No. 4 (S-3002-95)	4328	0.66	582	0.12	517	0.06	433	0.06					176 (I)	0.02				
Fill No. 6 (S-3002-95)	355	0.05	671	0.11			446	0.06										
Fill No. 7 (S-3002-95)	32	0.00	1140	0.11			648	0.19					110 (E)	0.01			88 (I)	0.00
Pond No. 1 (S-3039-91)					234	0.03												
Pond No. 2 (S-3039-91)					172	0.03	68	0.01										
Pond No. 3 (S-3039-91)					118	0.03												
Pond No. 5 (S-3039-91)					98	0.00												
Pond No. 6 (S-3039-91)					95	0.00												
Pond No. 4 (S-3039-91)					103	0.03												
Pond No. 4 (S-3002-95)					118	0.03												
Pond No. 6 (S-3002-95)					333	0.06												
Pond No. 7 (S-3002-95)					201	0.02												
Cumulative Total Stream Impact	9,574	1.52	2,921	0.54	2,393	0.31	2,825	0.52	1,537	0.24	1,549	0.21	825	0.09				

* (E) = Ephemeral Isolated Waters, (I) = Intermittent Isolated Waters

Table B

Proposed Valley Fill	Latitude	Longitude	Contributing Drainage Area to Toe
2 (S-3039-91)	37° 56' 12"	81° 16' 40"	16.29 Acres
3 (S-3039-91)	37° 56' 13"	81° 16' 34"	18.97 Acres
4 (S-3039-91)	37° 56' 13"	81° 16' 25"	16.10 Acres
10 (S-3039-91)	37° 57' 09"	81° 16' 13"	52.29 Acres
12 (S-3039-91)	37° 57' 27"	81° 16' 17"	53.36 Acres
15 (S-3039-91)	37° 56' 17"	81° 16' 18"	54.01 Acres
4 (S-3002-95)	37° 55' 50"	81° 17' 23"	345.10 Acres
6 (S-3002-95)	37° 56' 01"	81° 16' 41"	29.37 Acres
7 (S-3002-95)	37° 56' 01"	81° 16' 14"	21.54 Acres

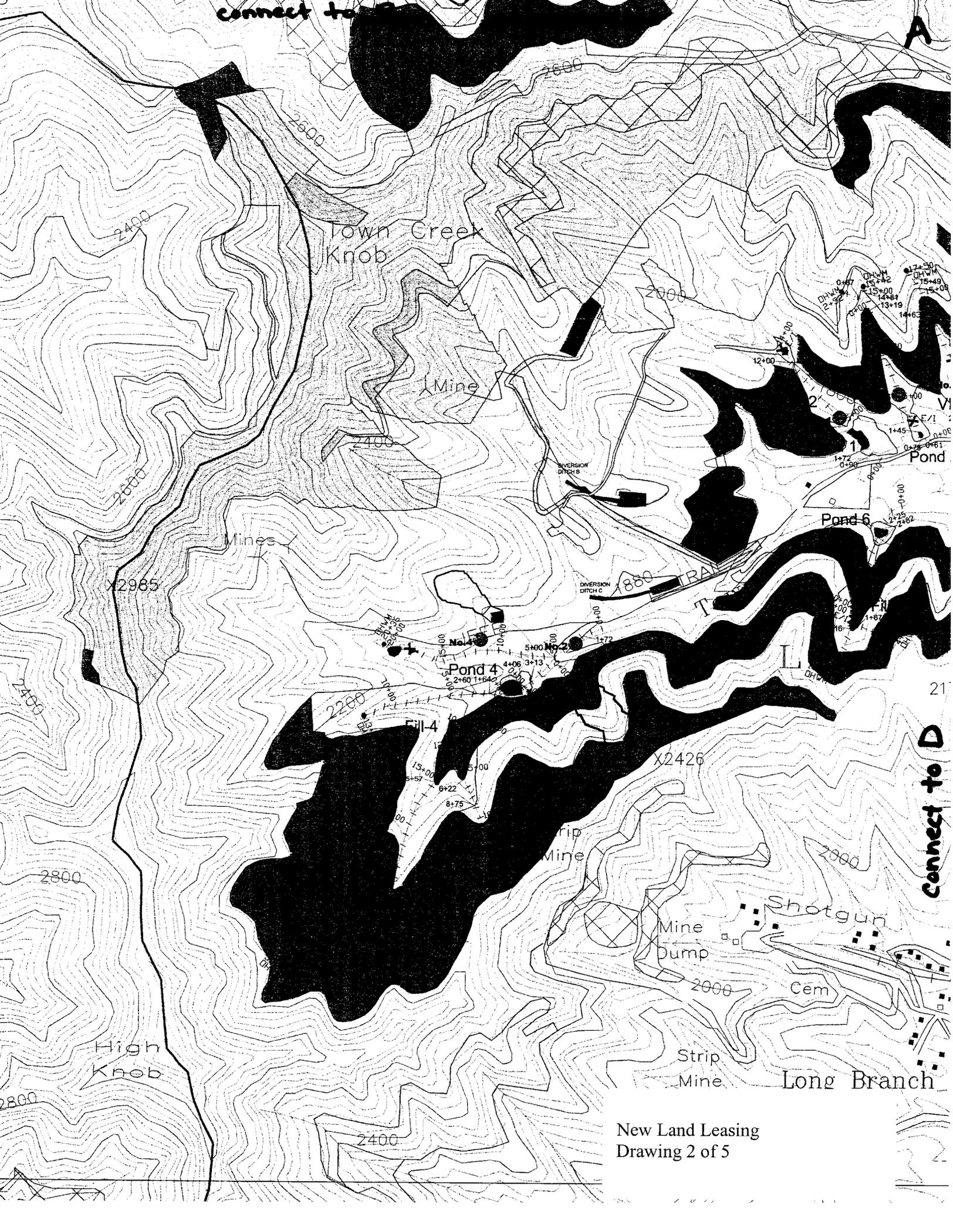


LOCATION MAP — SMA NO. S-3039-91 S-3002-95
 NPDES NO. WV1012487

WV DEPT. OF HIGHWAYS
 PLATEAU DISTRICT OF RALIEGH AND FAYETTE COUNTY, WV
 PAX QUADRANGLES
 SCALE 1" = 1 MILE

connect to A

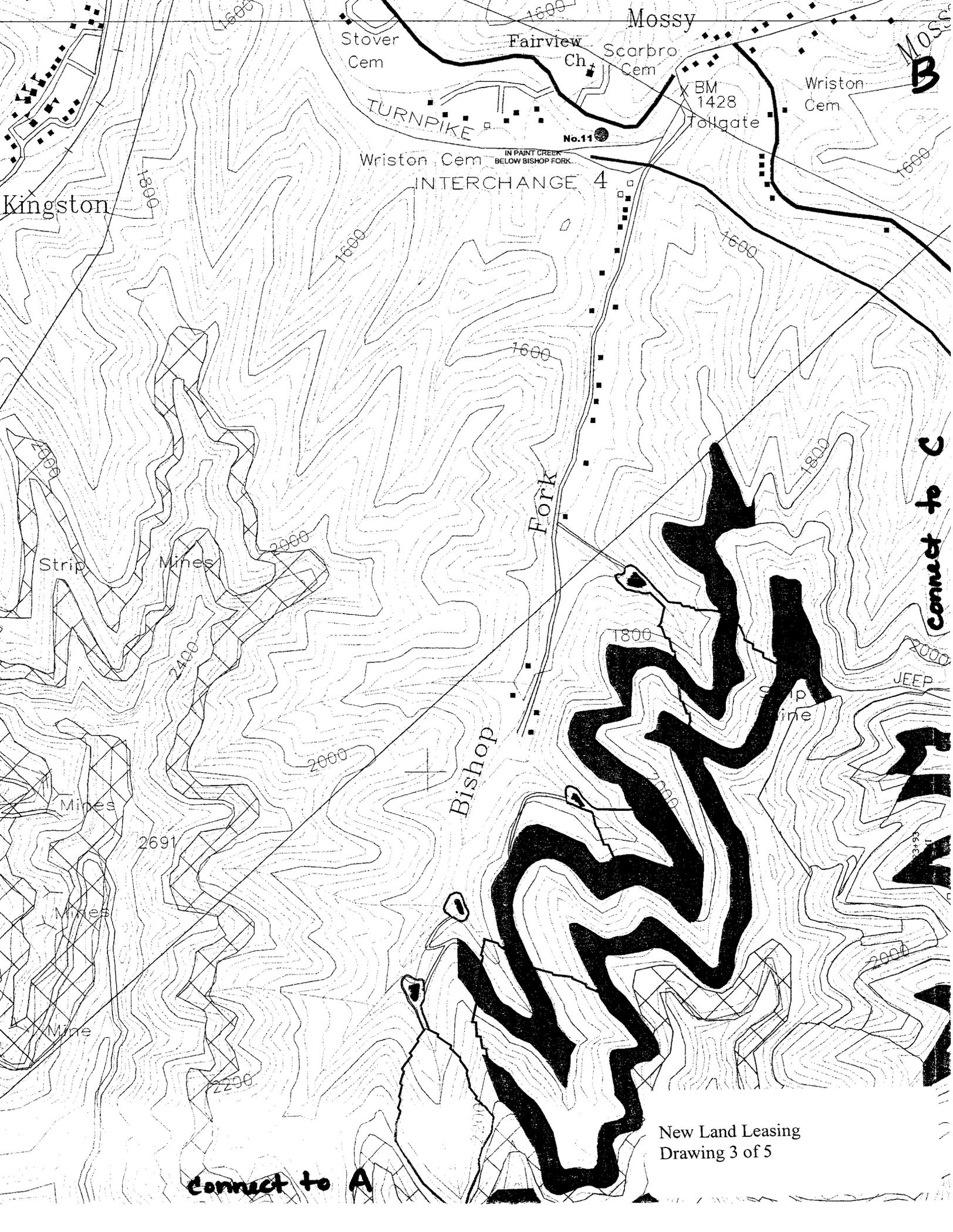
A



connect to D

21

New Land Leasing
Drawing 2 of 5



Stover Cem

Fairview Ch

Scarbro Cem

Wriston Cem

Kingston

Wriston Cem

INTERCHANGE 4

IN PAINT CREEK
BELOW BISHOP FORK

No. 11

BM 1428
Tollgate

Strip

Mines

Fork

Bishop

Mines

2691

Mines

Mine

connect to A

connect to C

JEEP

New Land Leasing
Drawing 3 of 5

Stream Delineation Map

C

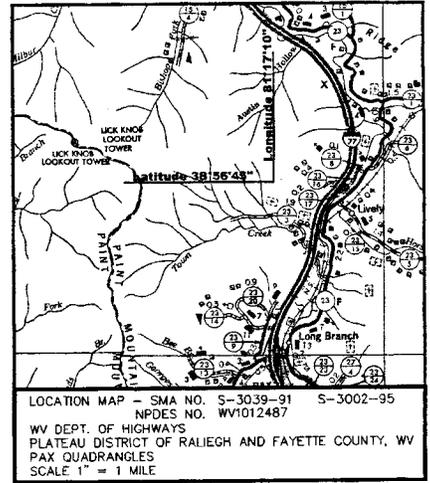
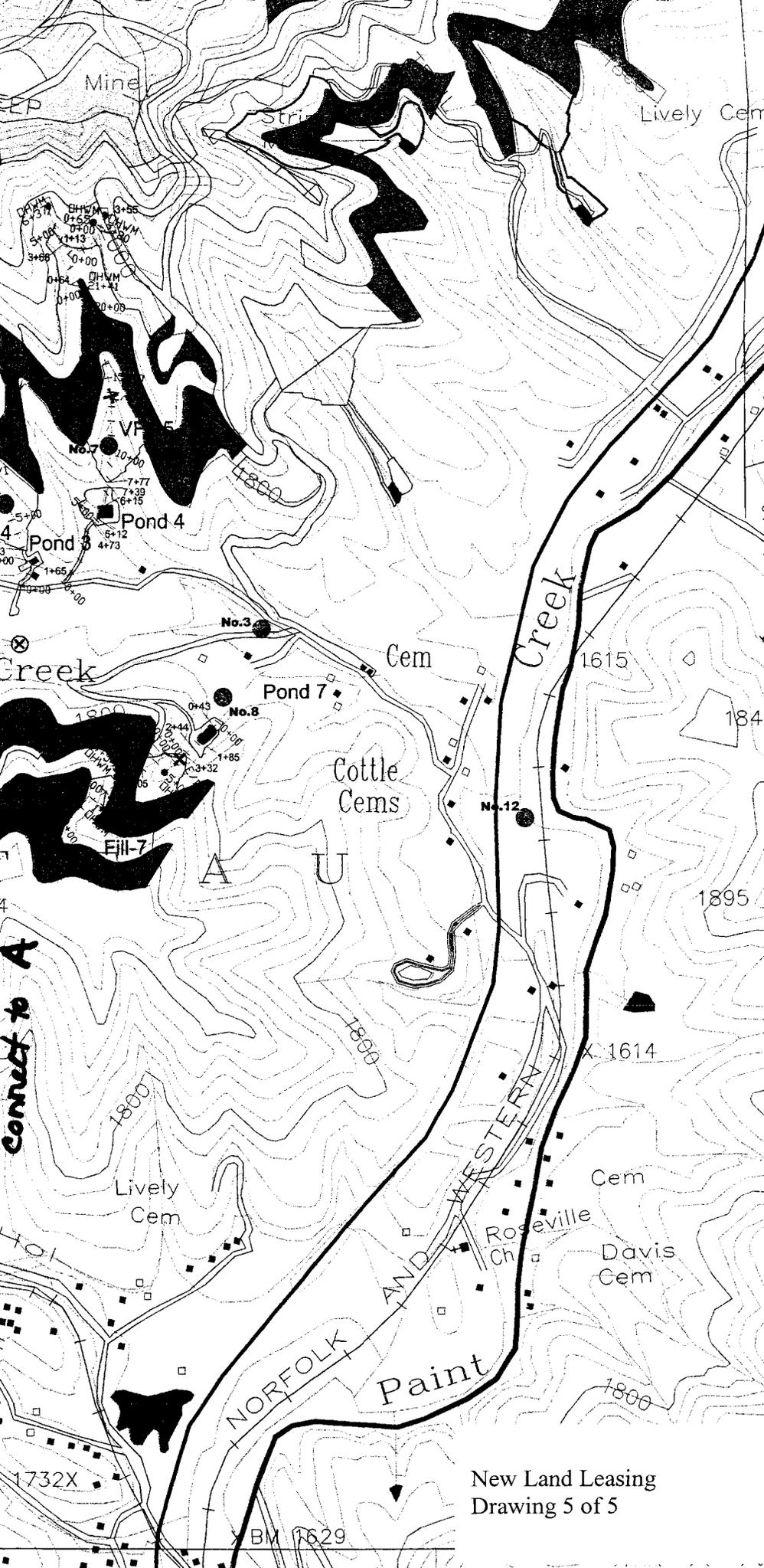


- DRAINAGE SYSTEM**
- X EPHEMERAL/INTERMITTENT STREAM POINT
 - ⊗ INTERMITTENT/PERENNIAL STREAM POINT
 - NOTE: INTERMITTENT/PERENNIAL STREAM POINT DERIVED FROM U.S.G.S. BELLE AND SYLVESTER QUADRANGLE 7.5 MINUTE SERIES, PHOTO REVISED 1988.
 - APPROXIMATE WETLAND DELINEATION LOCATION
 - PERENNIAL STREAM
 - INTERMITTENT STREAM
 - EPHEMERAL STREAM
 - No. 2 BENTHIC SAMPLE SITE AND ID
 - OHWM ORDINARY HIGH WATER MARK
 - VALLEY FILLS AND PONDS, NOT TO BE BUILT, NOT PART OF THIS APPLICATION.
 - MINERAL REMOVAL AREA, NOT DISTURBED
 - PROPOSED DISTURBED AREA
 - EXISTING DISTURBED AREA
 - RECLAIMED AREA

New Land Leasing
Drawing 4 of 5

Connect to D

D

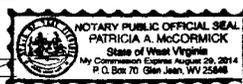


LOCATION MAP - SMA NO. S-3039-91 S-3002-95
 NPDES NO. WV1012487
 WV DEPT. OF HIGHWAYS
 PLATEAU DISTRICT OF RALIEGH AND FAYETTE COUNTY, WV
 PAX QUADRANGLES
 SCALE 1" = 1 MILE

I hereby certify that this document was prepared by me or under my direct personal supervision and is correct to the best of my knowledge and belief and that I am a duly licensed Professional Engineer under the laws of the State of WV
Joseph R. Overbay
 (Signature)
 Date: 1-21-05



Acknowledged before me a Notary Public,
Patricia A. McCormick
 This 21st Day of January, 2005
 my commission expires Aug. 29, 2014



REVISION	DATE	DESCRIPTION	P
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Prepared By: **Marshall Miller and Associates**
 Geology, Environmental Sciences & Engineering, Geophysics

MARSHALL MILLER & ASSOCIATES

Bluefield, VA
 Lexington, KY
 Raleigh, NC
 Richmond, VA
 Charleston, WV
 Harrisburg, PA

J33102 10/04 JADR/2K
 J33102_STREAM-DELIN.dwg

PERMIT No. S-3039-91 NPDES No. WV1012487
S-3002-95

Stream Delineation Map
 PAX No. 2 SURFACE MINE - PAX SURFACE MINE No. 3
 PLATEAU DISTRICT, RALIEGH AND FAYETTE COUNTY, WEST VIRGINIA
 PAX QUADRANGLE
 Prepared For:
 NEW LAND LEASING COMPANY, INC.
 PO BOX 2243, BECKLEY, WV 25802-2243

Scale in Feet

New Land Leasing
 Drawing 5 of 5