



U S Army USACE
of Engineers
Huntington District

Public Notice

In reply refer to Public Notice No. 200400867 Issuance Date: March 15, 2005

Stream: Thacker Creek

Closing Date: April 14, 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: Central Appalachia Mining, LLC
P. O. Box 1169
116 Main Street
Pikeville, Kentucky 41553

LOCATION: The proposed project would be located near Edgerton in Magnolia District of Mingo County of West Virginia approximately 2.5 miles northwest of the Edgerton as depicted upon the attached Figure 1 entitled "General Location Map." The proposed project would result in disturbances to Mauchlinville Branch, Webb Fork, Prater Creek and Thacker Creek and several other unnamed tributaries to these streams. Mauchlinville Branch, Webb Fork and Prater Creek flow into Thacker Creek, which ultimately flows into Tug Fork, a navigable (Section 10) water of the U.S. The attached Figure 2, entitled "Permit Area" depicts the proposed project area.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into approximately 41,617 linear feet (3.61 acres) of waters of the U.S. in conjunction with the construction, operation and reclamation of the Remining No. 3 Mine [Surface Mining Control and Reclamation Act (SMCRA) Permit S-5014-04]. The applicant's Surface Mine Application (SMA) S-5014-04 was submitted to the West Virginia Department of Environmental Protection (WVDEP) November 2004 and is pending final approval. The proposal would involve the construction of nine valley fills, nine in-stream sediment ponds and one haulroad crossing and the removal of bituminous coal underlying stream beds. The construction of the proposed valley fills and removal of bituminous coal underlying stream beds would result in the permanent discharge of dredged and/or fill material into approximately 4,877 linear feet of perennial streams, 12,031 linear feet of intermittent streams and approximately 20,583 linear feet of ephemeral streams. Further, approximately 1,050 linear feet of perennial streams, approximately 2,380 linear feet of intermittent streams and approximately 650 linear feet of ephemeral streams would be temporarily impacted by the construction of the proposed sediment ponds. Additionally, the proposed haulroad crossing would impact approximately 100 linear of an intermittent stream (Mauchlinville Branch). Adverse impacts associated with the proposed sediment pond and haulroad crossing construction would be temporary in nature. **Tables A and B** of this public notice detail the lengths and acreage of jurisdictional waters of the U.S. proposed to be impacted, volume of material proposed to be placed below the ordinary high water elevation and jurisdictional waters proposed to be replaced or enhanced by the applicant's proposed Compensatory Mitigation Plan. The proposed valley fills would drain contributing watersheds ranging from 58.70 acres to 475.96 acres as detailed on **Table C** of this public notice. Nearly 1,650 cubic yards of fill and/or dredged material would be discharged within the USACE regulatory jurisdiction as a result of the proposed project.

The proposed project would affect 1,175.28 acres of surface area, including 1,093.08 acres of mineral removal to facilitate the recovery of approximately 11.4 million tons of bituminous coal available in the Williamson, Upper Cedar Grove, Lower Cedar Grove and Alma seams. Mineral extraction would be accomplished using the surface contour mining technique supplemented with auger/highwall mining. The proposed project would generate approximately 129,833,003 cubic yards of overburden after bulking (25% swell factor) of which 93,949,631 cubic yards would be placed back upon the highwalls created by the mining process. The remainder of the overburden material would be placed in the proposed valley fills. This project is considered a "Remining" project where improvements to in-stream water qualities would be expected to occur as a result of the construction, operation and reclamation of the Remining No. 3 Mine. For this

project, the definition of “Remining” is to mine again an area where the in-stream water qualities do not meet applicable water quality standards due to mining that was conducted before the implementation of the SMCRA. Thacker Creek and its tributaries do not meet West Virginia water quality standards as approved by the United States Environmental Protection Agency (USEPA). The majority of the area of the project was mined before the implementation of SMCRA in 1977. The proposed project would eliminate approximately 68,300 linear feet of pre-law highwall on the horizon of the Upper and Lower Cedar Grove coal seams. An application for variance from applicable water quality standards for the project has been submitted to the West Virginia Environmental Quality Board (WVEQB) and is pending a final decision. The expected improvements to in-stream water quality would be expected to assist the State of West Virginia in implementation of the Total Maximum Daily Loads program mandated by the USEPA. The WVEQB can only grant a variance from applicable water quality standards under the Remining program for operations that exhibit the potential for water quality improvements due to the mining again of areas that were previously mined before the implementation of SMCRA of 1977. This proposed project, including mitigation, would be accomplished in four general phases over approximately 12 years as depicted on Figures 4 through 7 of this public notice. According to the applicant, the purpose of the project is to recover the bituminous coal reserves from all Williamson, Upper Cedar Grove, Lower Cedar Grove and Alma seams. To accomplish this, the applicant proposes to construct, operate and reclaim the Remining No. 3 Mine. Through construction and operation of the proposed project, the applicant seeks to recover approximately 11.4 million tons of coal from the above mentioned coal seams over the 12-year life of mine (LOM). Reserves from the project site would be sold on the market to satisfy a currently high demand for coal. Plans for the proposed Remining No. 3 Mine 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: To date, the applicant has not submitted their proposed compensatory mitigation plan. However, the submitted application indicates the applicant proposes to reconstruct, restore and enhance intermittent and perennial streams within the Thacker Creek watershed.

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. 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. The applicant retained the services of Apogee Environmental Consultants to conduct a bat mist net survey to determine presence or probable absence of the Indiana bat. The survey followed protocol outlines in the Draft Indiana Bat Recovery Plan and was conducted at 12 net sites from June 20 to 28, 2004. No federally-listed bats were captured. Additionally, on June 3, 2004, no old, open abandoned mine portals were observed within the proposed project area that could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. Based on the fact no Indiana bats were captured during the mist net survey and no old, abandoned mine portals are located within proposed project area, the USACE has determined the proposed project would have no effect on endangered or threatened species or their critical habitat. Therefore, neither a biological assessment nor further consultation under Section 7 of the Endangered Species Act is warranted. Further, the USFWS, in a letter dated October 14, 2004, concurred with the conclusions made in the bat mist net survey report. 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. 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 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.


Ginger Mullins, Chief
Regulatory Branch

(W)

Table C
Remining No. 3 Mine
Affected Drainage Areas

Disposal Site	Affected Drainage Area Measured Above the Toe of the Proposed Valley Fill (Acres)
Valley Fill 1	58.70
Valley Fill 2	56.41
Valley Fill 3	222.57
Valley Fill 4	336.46
Valley Fill 5	174.71
Valley Fill 6	239.21
Valley Fill 7	174.30
Valley Fill 8	194.89
Valley Fill 9	475.96

**Table A. Disturbance - Length of Jurisdictional Waters and
Volumes Below the Ordinary Highwater Mark**

PHASE	IMPACTED												RESTORED		
	EPHEMERAL				INTERMITTENT				PERENNIAL				EPH	INT	PER
	TEMPORARY		PERMANENT		TEMPORARY		PERMANENT		TEMPORARY		PERMANENT				
LF	CY	LF	CY	LF	CY	LF	CY	LF	CY	LF	CY	LF	LF	LF	
I	110	4.00	5810	140.02	600	38.47	3145	186.58	520	36.57	2840	295.57	0	0	4008
II	460	8.17	11528	267.92	1470	29.10	7836	296.17	530	73.87	2037	142.57	0	3289	10647
III	80	1.59	3245	80.94	410	20.17	1050	46.98	0	0	0	0	0	792	0
IV	0	0.00	0	0.00	0	0.00	0	0.00	0	0	0	0	0	2626	1285
Total	650	13.76	20,583	488.88	2480	87.74	12031	529.71	1050	110.44	4877	438.14	0	6707	15940

**Table B. Disturbance - Lengths and Acreage of
Jurisdictional Waters**

PHASE	IMPACTED												RESTORED		
	EPHEMERAL				INTERMITTENT				PERENNIAL				EPH	INT	PER
	TEMPORARY		PERMANENT		TEMPORARY		PERMANENT		TEMPORARY		PERMANENT				
LF	AC	LF	AC	LF	AC	LF	AC	LF	AC	LF	AC	LF	LF	LF	
I	110	0.0085	5810	0.3452	600	0.0585	3145	0.3640	520	0.0788	2840	0.4800	0	0	4008
II	460	0.0198	11528	0.8651	1470	0.1583	7836	0.5898	530	0.0937	2037	0.2155	0	3289	10647
III	80	0.0283	3245	0.1772	410	0.0371	1050	0.0907	0	0	0	0	0	792	0
IV	0	0.0000	0	0.0000	0	0.0000	0	0.0000	0	0	0	0	0	2626	1285
Totals	650	0.0566	20583	1.3875	2480	0.2539	12031	1.0445	1050	0.1725	4877	0.6955	0	6707	15940

Table C
Remining No. 3 Mine
Affected Drainage Areas

Disposal Site	Affected Drainage Area Measured Above the Toe of the Proposed Valley Fill (Acres)
Valley Fill 1	58.70
Valley Fill 2	56.41
Valley Fill 3	222.57
Valley Fill 4	336.46
Valley Fill 5	174.71
Valley Fill 6	239.21
Valley Fill 7	174.30
Valley Fill 8	194.89
Valley Fill 9	475.96

CENTRAL APPALACHIA MINING, LLC

P.O. Box 1169
Pikeville, KY 41502

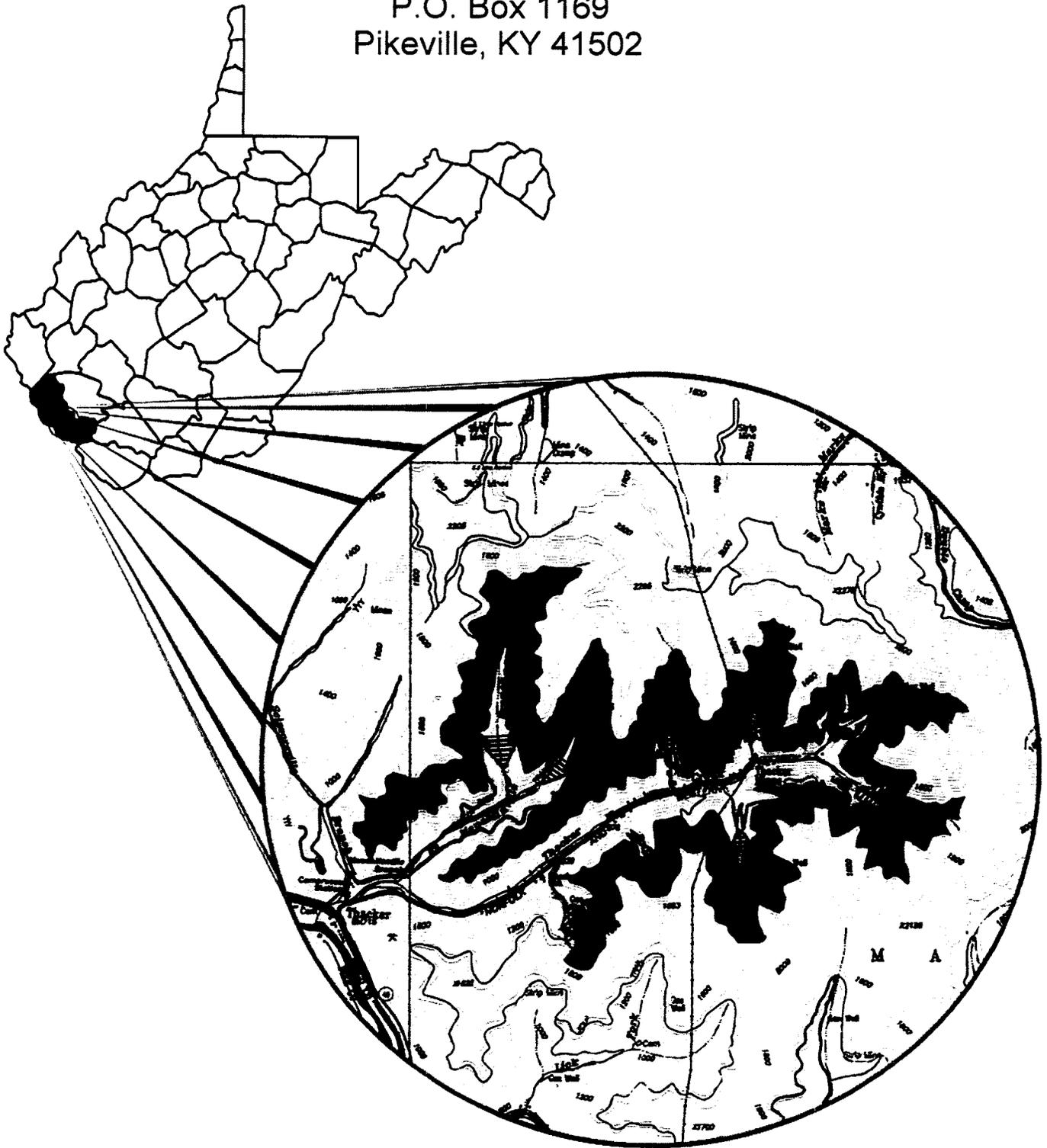


Figure 1 of 7

REMINING NO.3 SURFACE MINE
Location Map



DATE: 12/6/04	CAD BY: <i>B. Miller</i>
FILENAME: delta\CAM\Rem3\USACE	PROJECT: 04195



CENTRAL APPALACHIA MINING, LLC

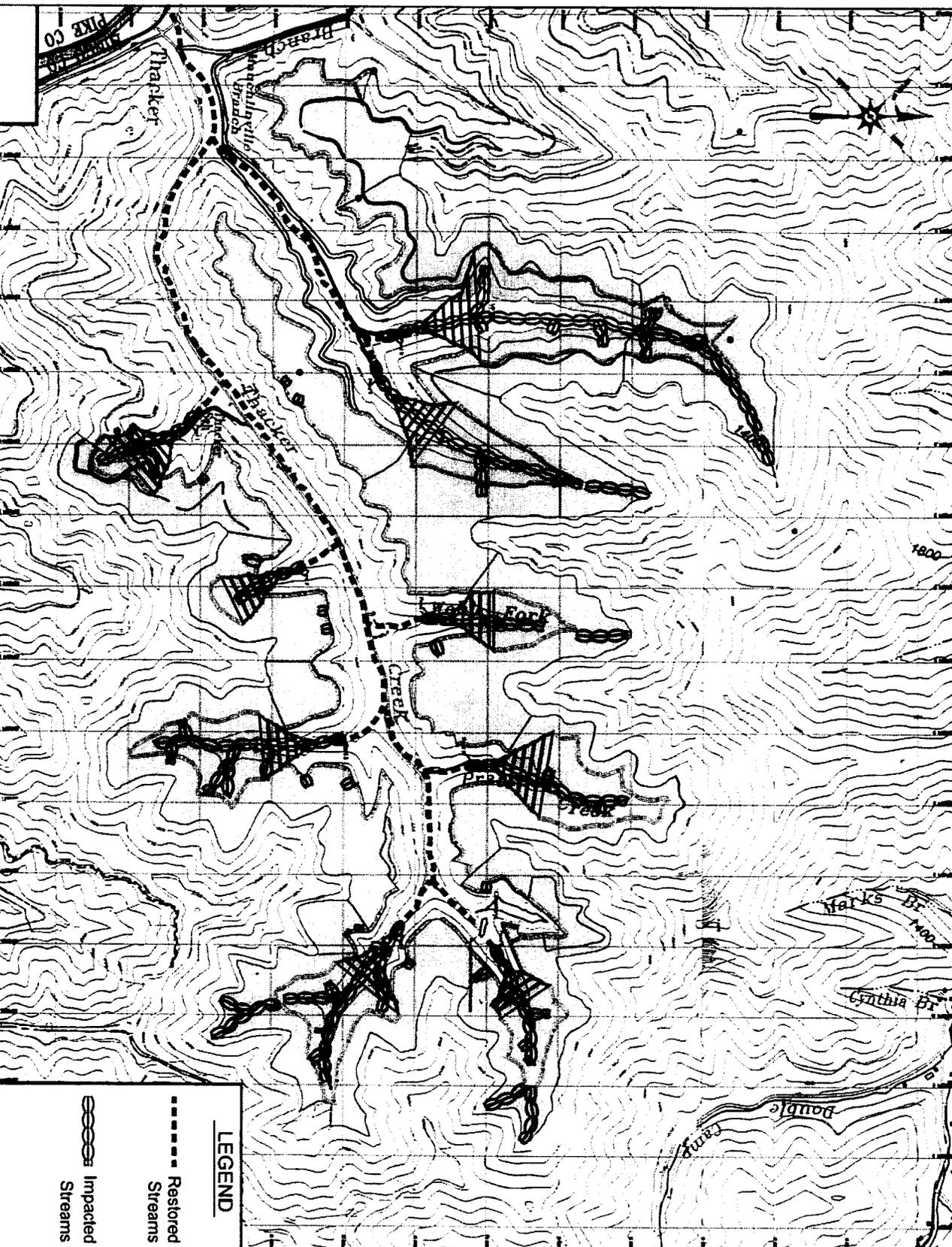
P.O. Box 1889
 Plevna, KY 41802

Figure 2 of 7

DATE: 12/9/04
 CAD BY: *SM*
 PROJECT: 04185

Remining No. 3 Surface Mine
 Permit Area
 USACE Project No. _____





CENTRAL APPALACHIA MINING, LLC

P.O. Box 1669
Pikeville, KY 41502

Figure 3 of 7

DATE:	1/10/05	CAD BY:	JM
FILENAME:	CHM\04195	PROJECT:	05008

Remining No. 3 Surface Mine
Spatial Relation of Jurisdictional Waters to be
Impacted to Restored Stream Channels
USACE Project No. _____

LEGEND

- Restored Streams
- ===== Impacted Streams





PHASE I

CENTRAL APPALACHIA MINING, LLC

P.O. Box 1769
 Pikeville, KY 41502

Figure 4 of 7

DATE:	1/10/05	CAD BY:	JAM
FILENAME:	data/CMA/04195	PROJECT:	05008

Remining No. 3 Surface Mine
 Phase Map 1 of CMP

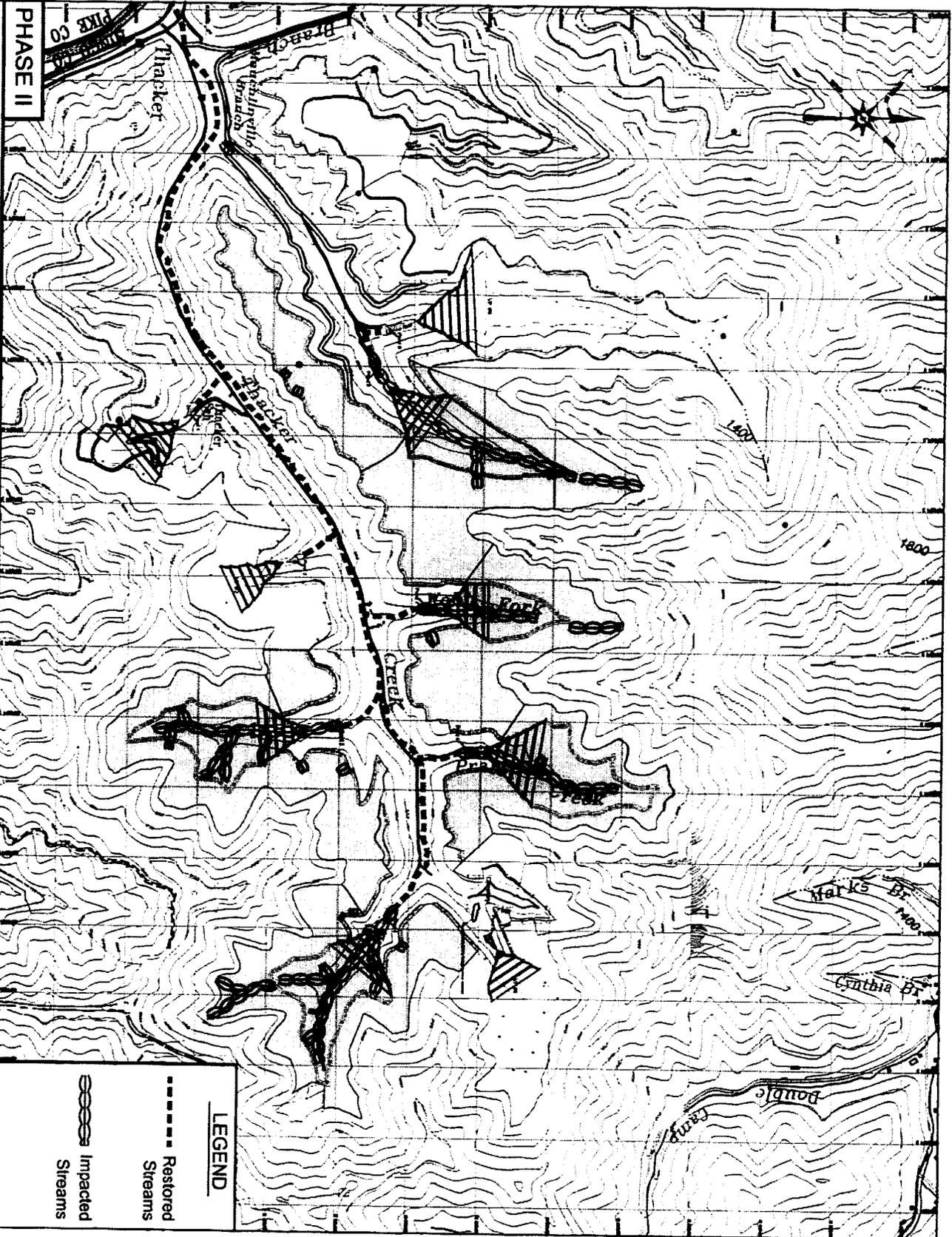
USACE Project No. _____

LEGEND

- Restored Streams
- ~~~~~ Impacted Streams



TECHNICAL ASSOCIATES



CENTRAL APPALACHIA MINING, LLC

P.O. Box 169
Pikeville, KY 41602

PHASE II

Figure 5 of 7

DATE:	1/10/05	CAD BY:	JAM
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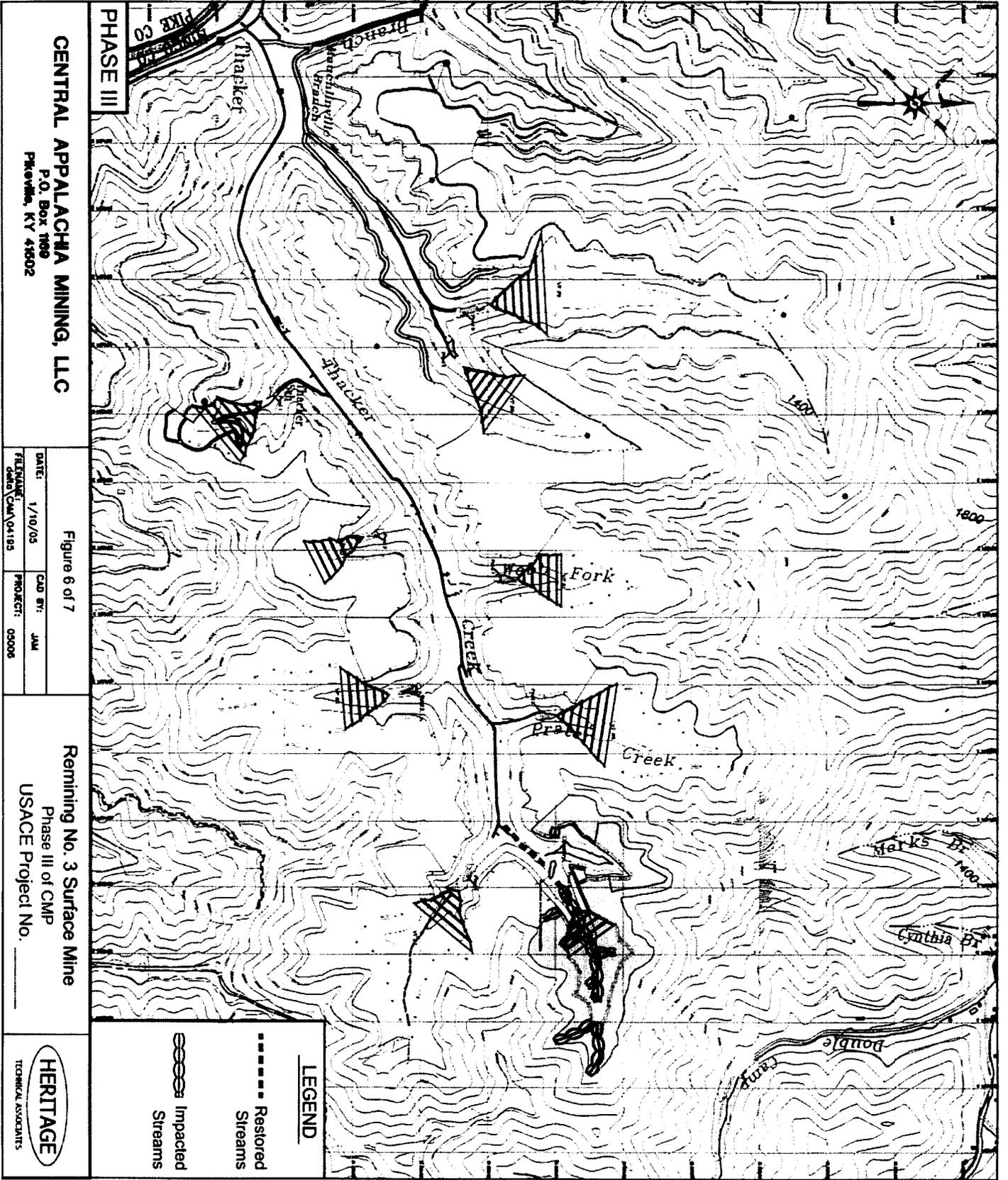
Remining No. 3 Surface Mine
Phase II of CMP
USACE Project No. _____

LEGEND

- Restored Streams
- Impacted Streams



TECHNICAL ASSOCIATES



CENTRAL APPALACHIA MINING, LLC
 P.O. Box 1100
 Pheasant, KY 41502

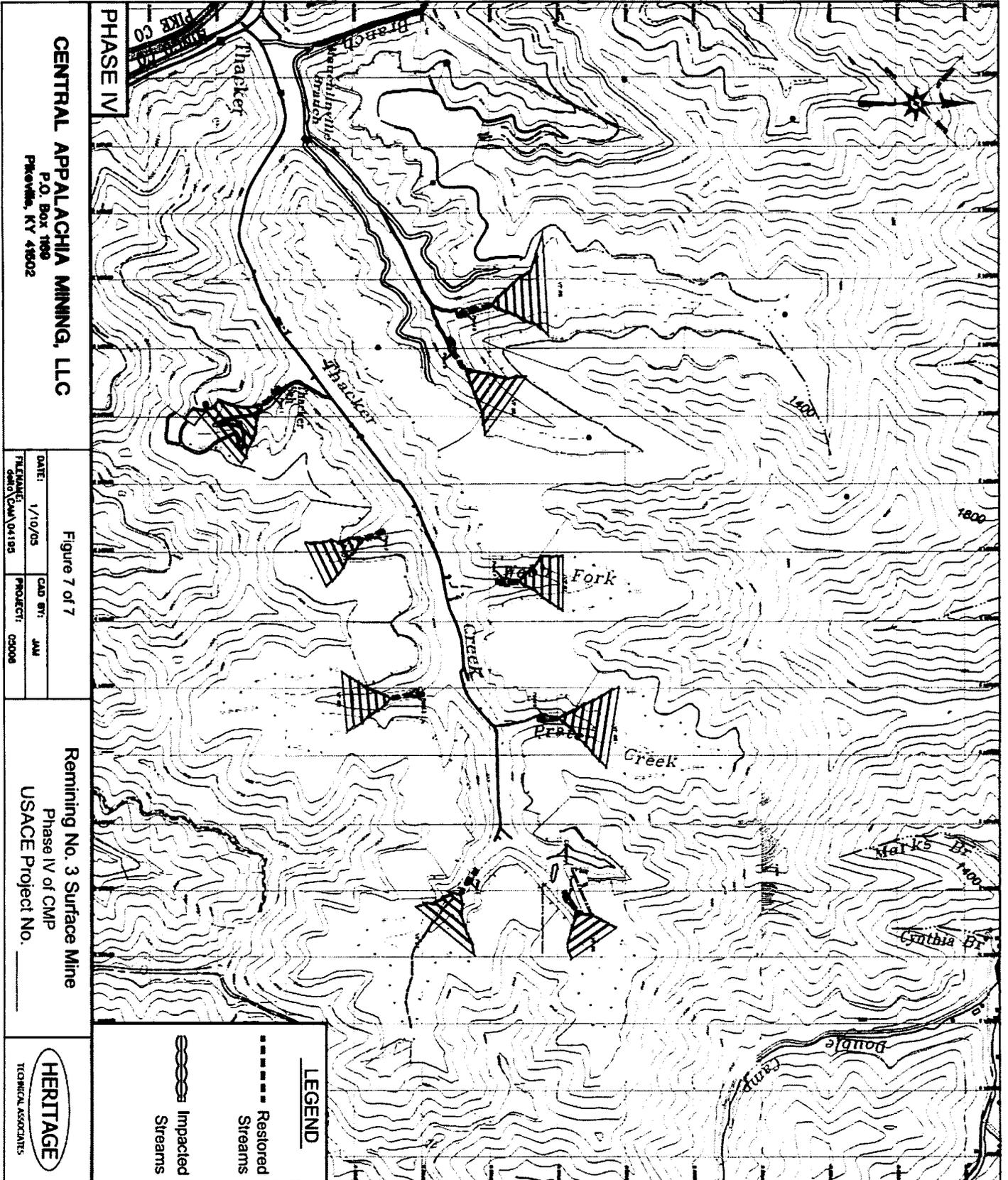
Figure 6 of 7
 DATE: 1/10/05
 CAD BY: JM
 FILENAME: C:\M\041193
 PROJECT: 05006

Remining No. 3 Surface Mine
 Phase III of CMP
 USACE Project No. _____



LEGEND

- Restored Streams
- ===== Impacted Streams



CENTRAL APPALACHIA MINING, LLC

P.O. Box 1850
 Pikeville, KY 41602

Figure 7 of 7

DATE: 1/10/05
 FILENAME: cma001125

CAD ST: JAM
 PROJECT: 02006

Remining No. 3 Surface Mine
 Phase IV of CMP
 USACE Project No. _____



LEGEND

- Restored Streams
- ~~~~~ Impacted Streams