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## Public Notice

U S Army Corps  
of Engineers  
Huntington District

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In reply refer to Public Notice No. 200500217 Issuance Date: April 13, 2005

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Stream: White Oak Branch

Closing Date: May 14, 2005

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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

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**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 (WVDEP) to act on Section 401 Water Quality Certification for the following application.

**APPLICANT:** Bluestone Coal Corporation  
Post Office Box 1085  
Beckley, West Virginia 25801

**LOCATION:** The proposed project would be located in the Barkers Ridge District of Wyoming County at Latitude 37°28'31" and Longitude 81°25'31" on the United States Geological Survey 7.5-minute Keystone Quadrangle. The proposed project area would result in disturbances to White Oak Branch. White Oak Branch flows into Pinnacle Creek, which ultimately flows into the Guyandot River, a navigable (Section 10) water of the United States.

**DESCRIPTION OF THE PROPOSED WORK:** The applicant proposes to place dredged and/or fill material into approximately 17,300 linear feet (1.25 acres) of waters of the U.S. in conjunction with the construction, operation and reclamation of the Contour and Auger No. 1 Surface Mine [Surface Mining Control and Reclamation Act (SMCRA) Permit S-4014-01]. 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 dredged and/or fill material into approximately 5,550 linear feet (0.48 acre) of intermittent streams and 10,350 linear feet (0.62 acre) of ephemeral streams. Further, approximately 550 linear feet (0.07 acre) of intermittent streams and 850 linear feet (0.07 acre) of ephemeral streams 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. **Table VI-B-1** attached to 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 25.28 acres to 202.69 acres as detailed on **Table B** of this public notice.

The proposed surface mining operation would be affected 512.76 acres of surface area, including 369.10 acres of coal removal. Mining and reclamation activities would take place over the course of six phases during a six-year life of the mine. Excavated overburden material generated during mining in excess of that material that would be placed on the benches would be used to progressively construct the regraded backfill in the proposed project area in accordance with the designated post-mining configuration of forestland. Backfilling and regrading activities would be performed in accordance with contemporaneous reclamation requirements established by the WVDEP. Highwalls would be eliminated. Revegetation would be kept current by establishing a temporary or permanent cover on these areas by the end of the first growing season and a permanent cover on these areas by the end of the second growing season. 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 bituminous coal reserves from the Poca 11 coal seam. Through the construction, operation and reclamation of the Contour and Auger No. 1 Surface Mine, the applicant proposes to recover approximately 5.4 million tons of coal reserves from the Poca 11 coal seam. Reserves from the project site would be sold on the market to satisfy a currently high demand for coal. Plans for the proposed Contour and Auger No. 1 Surface 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 a compensatory mitigation plan to this office.

**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.

in the area affected by the project. In a letter dated November 26, 2001, the West Virginia Division of Culture and History (SHPO) under FR# 99-421-WM-1 stated no known archaeological sites listed on or eligible for inclusion in the NRHP would be affected by the proposed 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. 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 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

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**Table B**  
**Contour and Auger No. 1 Surface Mine**  
**Affected Drainage Areas**

Valley Fill 1	65.14
Valley Fill 2	31.95
Valley Fill 3	55.89
Valley Fill 4	124.89
Valley Fill 5	25.28
Valley Fill 6	153.08
Valley Fill 7	42.69
Valley Fill 8	202.29
Valley Fill 9	51.72

**PROJECT INFORMATION  
TABLE VI-B-1**

**Name of Applicant:** Bluestone Coal Corporation

**Project or Facility Name:** Contour & Auger No. 1

**County(ies):**  
Wyoming

**Description of Location:** 3.5 miles NE of Northfork

**Nearest Township:**  
Northfork

Left Fork of White Oak Branch - Valley Fill No. 1			950	0.0435			200	0.0132
Left Fork of White Oak Branch - Valley Fill No. 2			600	0.0384			150	0.0112
Left Fork of White Oak Branch - Valley Fill No. 3	150	0.0060	350	0.0097	150	0.0077		
Rt. Fork of Lt. Fk. of White Oak Branch - Valley Fill No. 4	1600	0.3133	900	0.0925	200	0.0373		
Unnamed Tributary of Rt. Fk. of Left Fork of White Oak Branch - Valley Fill No. 4			650	0.0459				
Rt. Fk. of Lt. Fk. of White Oak Branch - Valley Fill No. 5			350	0.0092			100	0.0052
Rt. Fk. of Lt. Fk. of White Oak Branch - Valley Fill No. 6			2850	0.1916			200	0.0354
Rt Split of Rt. Fk. of Lt. Fk. of White Oak Branch - Valley Fill No. 6			2300	0.1351				
Rt. Fk. of Lt. Fk. of White Oak Branch - Valley Fill No. 7			300	0.0115			200	0.0120
White Oak Branch - Valley Fill No. 8	3500	0.1368	400	0.0173	200	0.0292		
Unnamed Tributary of White Oak Branch - Valley Fill No.8	300	0.0213	700	0.0294				
Unnamed Tributary of White Oak Branch - Valley Fill No.9	0	0	0	0	0	0	0	0
Cumulative Total Stream Impact	5550	0.4774	10350	0.6241	550	0.0742	850	0.0770

