



Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No. 200500495

Issuance Date:

September 20, 2006

Stream: Pretty Branch

Closing Date:
October 19, 2006

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

APPLICANT: Argus Energy WV, LLC
PO Box 200
Dunlow, West Virginia 25511

LOCATION: The proposed project area is located on the Ranger USGS quadrangle at latitude 38° 00'39" and longitude 82° 11'54" in the Harts Creek District of Lincoln County, West Virginia. The proposed project would result in disturbances to Pretty Branch and 13 unnamed tributaries of Pretty Branch. The 13 unnamed tributaries of Pretty Branch are listed as follows: UNT1, UNT2, UNT2.1, UNT3, UNT3.1, UNT3.2, UNT3.2.1, UNT3.3, UNT3.4, UNT4, UNT5, UNT6, and UNT7. These are tributaries of Pretty Branch. Pretty Branch is a tributary of Frances Creek of Kiah Creek of the East Fork of Twelvepole Creek of Twelvepole Creek of the Ohio River, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and fill material into 3,616 linear feet (0.537 acre) of waters of the U.S in conjunction with the construction of one hollow fill and two drainage control ponds (No. 1 and 2) associated with the Pretty Branch Surface Mine (Surface Mining Control and Reclamation Act Permit S-5007-06). For details regarding the proposed stream impacts please reference the below table .

Stream Description/Location	Stream Name	Type of Impact, Type of Channel	Impact	
			Feet	Acres
Stream Section in Hollow Fill No. 1	Pretty Branch	Permanent, Intermittent	1752	.363
Stream Section in Sediment Pond 1	Pretty Branch	Temporary, Intermittent	644	0.222
Stream Section between Pond 1 and Pond 2	Pretty Branch	Temporary, Intermittent	85	.022
Stream Section in Sediment Pond 2	Pretty Branch	Temporary, Intermittent	482	.181
Stream Section Above Fill 1 in the Area Mined	Pretty Branch	Temporary, Intermittent	135	.013
Stream Section in Valley Fill No. 1	Unnamed Tributary 1 of Pretty Branch	Permanent, Intermittent	337	.043
Stream Section Above Fill 1 in the Area Mined	Unnamed Tributary 1 of Pretty Branch	Temporary, Ephemeral	163	.013
Stream Section in Valley Fill No. 1	Unnamed Tributary 2 of Pretty Branch	Permanent, Intermittent	479	.110
Stream Section Above Fill 1 in the Area Mined	Unnamed Tributary 2 of Pretty Branch	Temporary, Intermittent Temporary, Ephemeral	139 82	0.026 .008
Stream Section in Valley Fill No. 1	Unnamed Tributary 2.1 of Pretty Branch	Permanent, Intermittent	146	.002
Stream Section Above Fill 1 in the Area Mined	Unnamed Tributary 2.1 of Pretty Branch	Temporary, Intermittent	233	.001
Stream Section in Sediment Pond 2	Unnamed Tributary 3 of Pretty Branch	Temporary, Intermittent	47	.010
Stream Section Above Pond 2 in the Area Mined	Unnamed Tributary 3 of Pretty Branch	Temporary, Intermittent Temporary, Ephemeral	123 280	.011 .040
Stream Section Above Pond 2 in the Area Mined	Unnamed Tributary 3.1 of Pretty Branch	Temporary, Ephemeral	30	0
Stream Section Above Pond 2 in the Area Mined	Unnamed Tributary 3.2 of Pretty Branch	Temporary, Ephemeral	142	.003

Stream Section Above Pond 2 in the Area Mined	Unnamed Tributary 3.2.1 of Pretty Branch	Temporary, Ephemeral	49	0
Stream Section Above Pond 2 in the Area Mined	Unnamed Tributary 3.3 of Pretty Branch	Temporary, Ephemeral	200	.002
Stream Section Above Pond 2 in the Area Mined	Unnamed Tributary 3.4 of Pretty Branch	Temporary, Ephemeral	229	.002
Stream Section Above Pond 2 in the Area Mined	Unnamed Tributary 4 of Pretty Branch	Temporary, Ephemeral	65	.001
Stream Section in Valley Fill No. 1	Unnamed Tributary 5 of Pretty Branch	Permanent, Intermittent	435	.011
Stream Section Above Fill 1 in the Area Mined	Unnamed Tributary 5 of Pretty Branch	Temporary, Intermittent Temporary, Ephemeral	112 197	.001 .003
Stream Section in Valley Fill No. 1	Unnamed Tributary 6 of Pretty Branch	Permanent, Ephemeral	111	.001
Stream Section Above Fill 1 in the Area Mined	Unnamed Tributary 6 of Pretty Branch	Temporary, Ephemeral	189	.001
Stream Section in Valley Fill No. 1	Unnamed Tributary 7 of Pretty Branch	Permanent, Ephemeral	356	.004
	Total Impacts	Permanent, Intermittent	3149	.529
		Permanent, Ephemeral	467	.005
		Temporary, Intermittent	2133	.586
		Temporary, Ephemeral	1626	.391

The Pretty Branch Surface Mine would be a contour with highwall mining operation that would recover identified reserves in the No. 5 Block A Split and the No. 5 Block C&B Split coal seams. Surface disturbance associated with the project area would be approximately 69.70 acres. The proposed mine plan would be implemented in six phases over a period of three years. Details regarding the phases can be found in Section N of the applicant's Surface Mining Application on file at the WVDEP. Plans for the proposed project 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. that are regulated by the USACE. In order to compensate for construction-related impacts to waters of the U.S., the applicant proposes to re-establish and restore 2,133 linear feet of intermittent stream channels and 1,626 linear feet of ephemeral stream channels within the project area and enhance physical in-stream and riparian habitat on 875 linear feet of Spruce Fork and 4,000 linear feet of Laurel Branch.

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 WVDEP.

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. In a letter dated January 18, 2005, the West Virginia Division of Culture and History (SHPO) stated that this project would have no effect on any known historic, architectural or archaeological resources. 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.

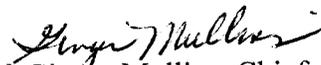
ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. A mist-net survey was completed within the proposed project area on June 22 and July 1, 2005. No Indiana bats or Virginia big-eared bats were captured during the survey efforts. The proposed project area was investigated for the presence of open, abandoned portals or other features that could provide summer and winter habitat for the Virginia big-eared bat or hibernaculum for the Indiana bat. No portals or other features were identified within the proposed project area that provides habitat for these endangered bats. The USACE has determined the proposed project is not likely to adversely affect threatened or endangered species or their critical habitat. The survey will remain valid until May 15, 2008. The USFWS concurred with the survey findings in a letter dated June 21, 2006. Section 7 requirements under the Endangered Species Act (ESA) have been fulfilled. 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 ESA 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,

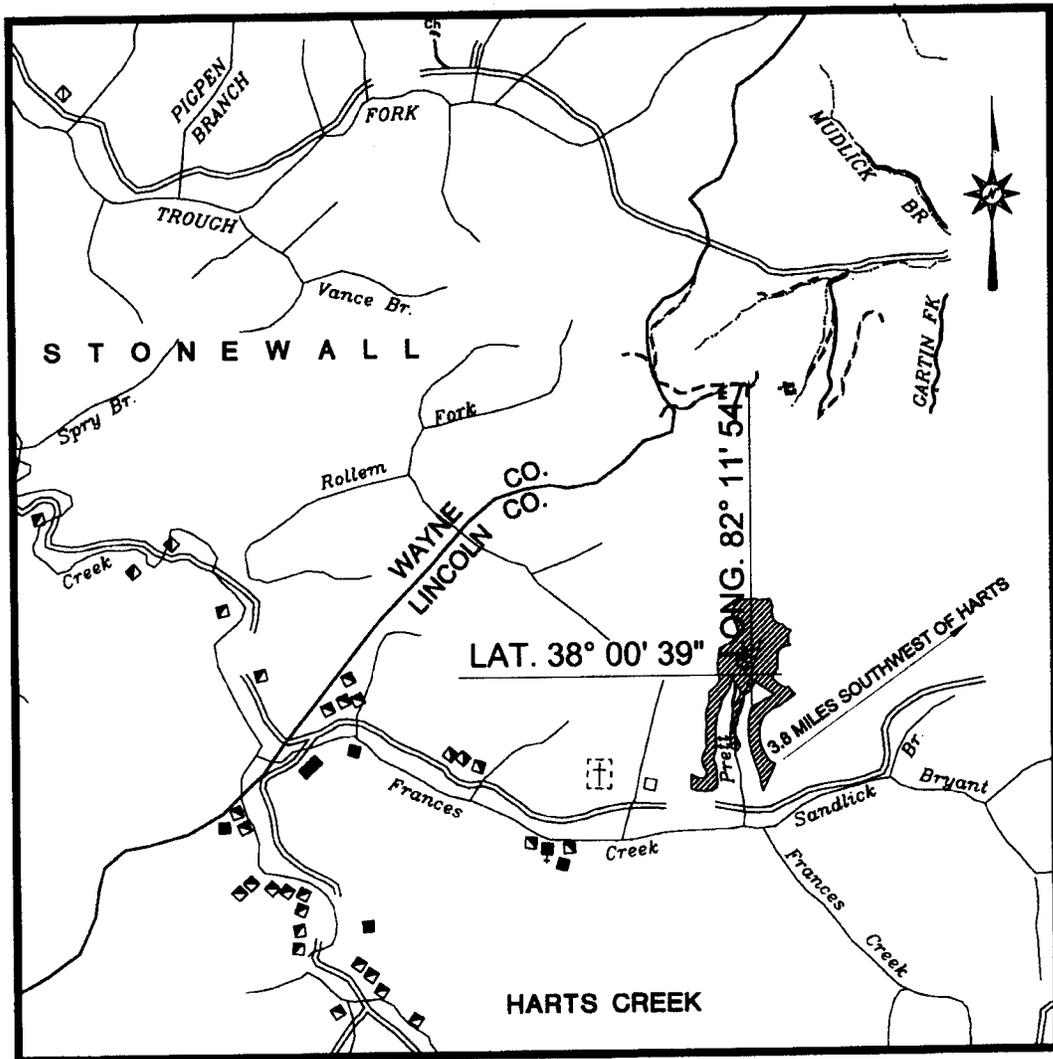
mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. 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

(W)



LOCATION MAP

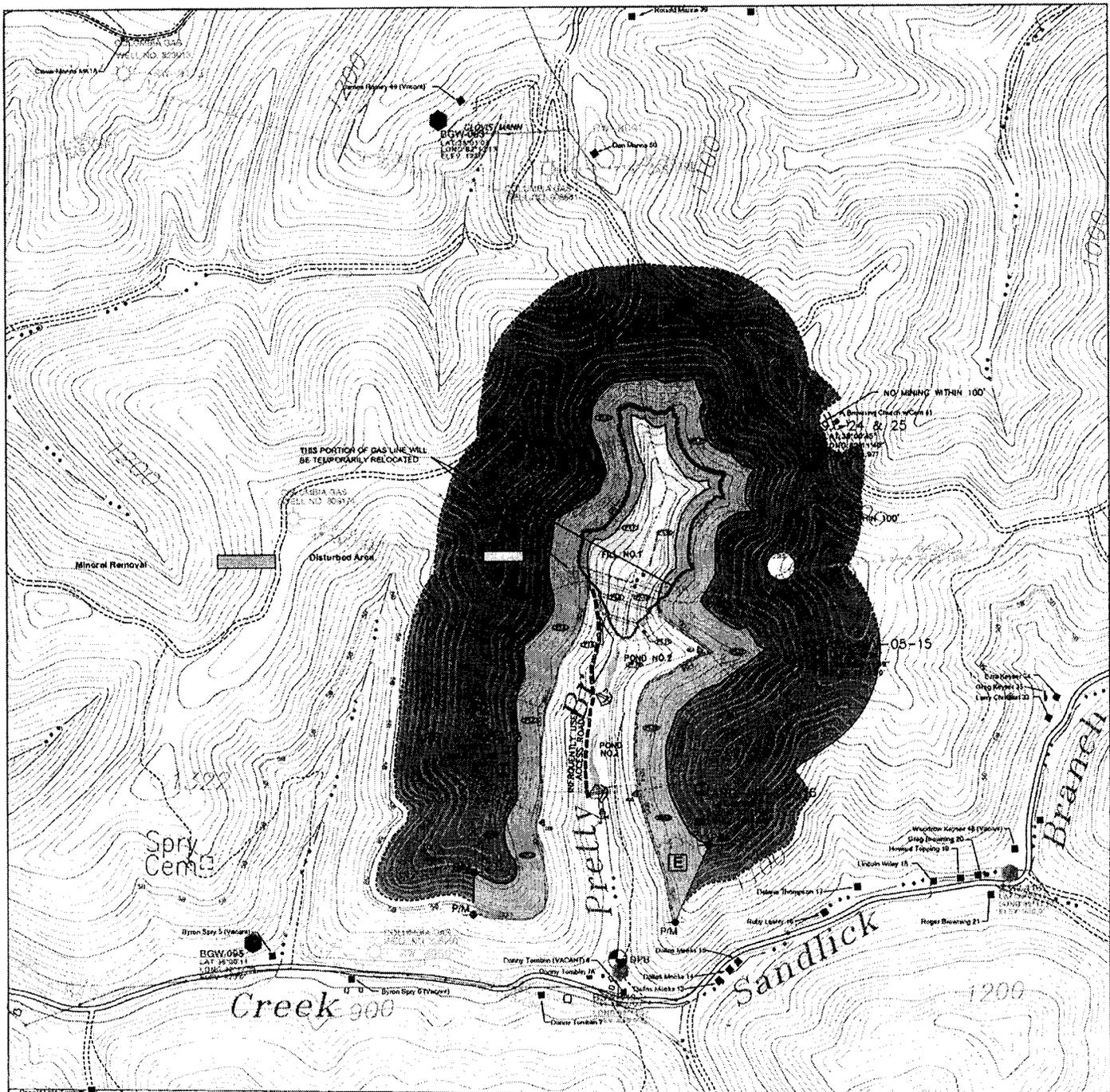
RANGER QUADRANGLE
 HARTS CREEK DISTRICT
 LINCOLN COUNTY

RECEIVING STREAMS: PRETTY BRANCH AND UNNAMED
 TRIBUTARIES OF PRETTY BRANCH OF FRANCES CREEK OF KIAH
 CREEK OF THE EAST FORK OF TWELVEPOLE CREEK OF
 TWELVEPOLE CREEK OF THE OHIO RIVER.

SMA NO. S-5007-06

Scale: 1" = 1 Mile

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Frances Creek Sch

LEGEND			
Mineral Removal		Disturbed Area	
NPDES Outlet		Dwelling	
Perimeter Marker		Outbuildings	
Active Gas Well		Auger/Highwall Miner Area No. 6 Block (BAC Spill)	
Active Oil & Gas Well		Intercom Monitoring Point	
Active Oil Well		Plugged Oil or Gas Well	
Pipe Access Road		Emplacement Pouch	
Power Line		Geologic Boundary Pits	
Utility Line		Surface Water Monitoring Point	

Prepared by:

ENGINEERS & CONSULTANTS
P.O. Box 279 Louisville, KY 41230
(606) 673-4413

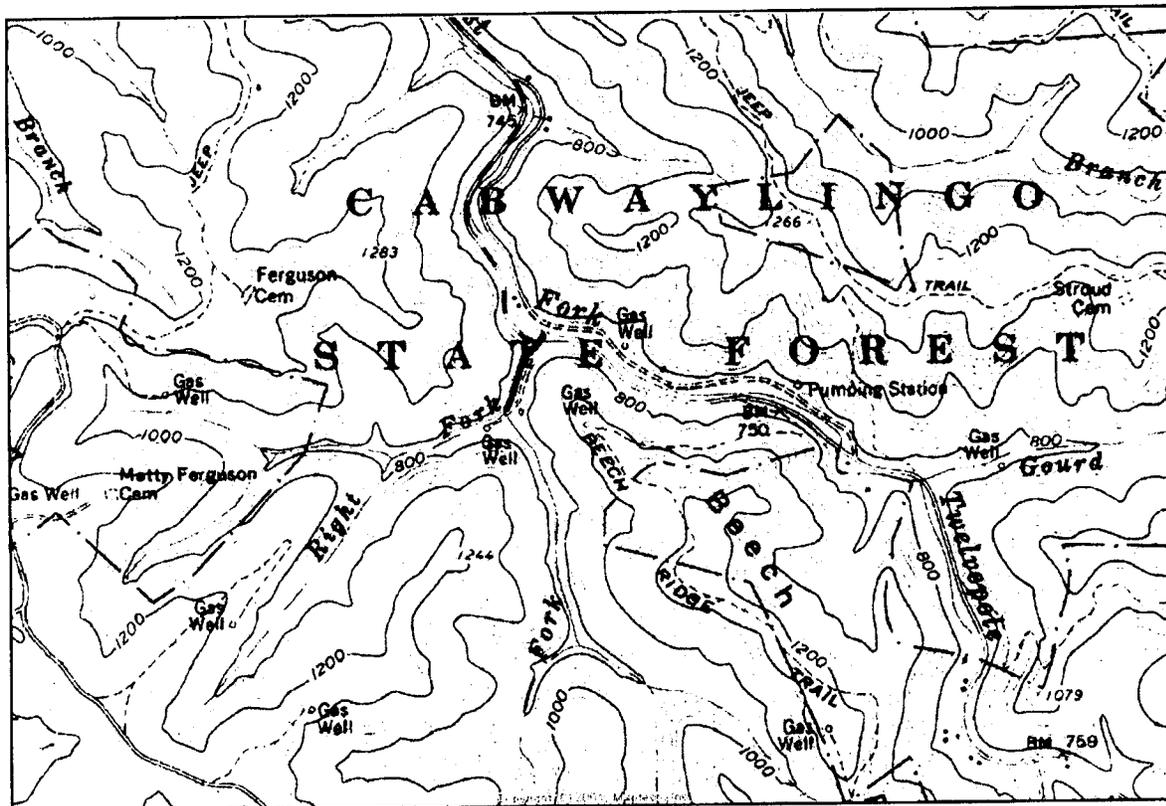
ARGUS ENERGY WV, LLC
P.O. Box 200 Dunlow, Wv. 25511

**PRETTY BRANCH SURFACE MINE
SMA S-5007-06
NPDES WV1022920
PROJECT LOCATION MAP**

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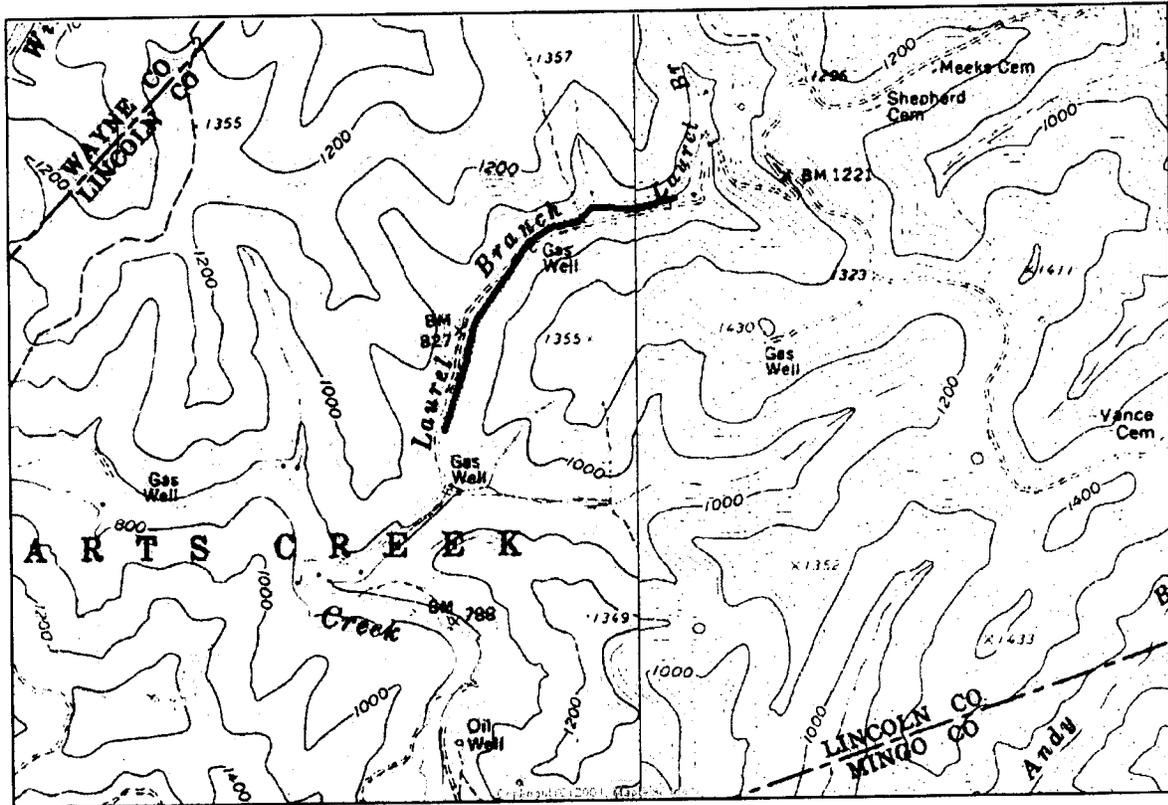
I. MITIGATION BOUNDARIES

A. Spruce Fork



The Spruce Fork enhancement reach (shown in red) is located in the Cabwaylingo State Forest and is northeast of the town of Wilsondale, West Virginia. The approximate GPS location at the bottom of the enhancement reach is 37° 58' 07.9" Latitude and 82° 21' 20.6" Longitude, and continues upstream approximately 875 linear feet to 37° 57' 59.6" Latitude and 82° 21' 25.6" Longitude. A detailed station map, photographs (see PHOTOS), and installation guidelines for the proposed enhancements on the Spruce Fork enhancement reach are located in (TABLE 8A) and on the enclosed "Stream Enhancement Map".

B. Laurel Branch



The Laurel Branch enhancement reach (shown in red) is north of the town of Hart's Creek, West Virginia. The approximate GPS location at the bottom of the enhancement reach is 37° 58' 13.3" Latitude and 82° 15' 24.9" Longitude, and continues upstream approximately 875 linear feet to 37° 58' 35.0" Latitude and 82° 14' 55.8" Longitude. A detailed station map, photographs (see PHOTOS), and installation guidelines for the proposed enhancements on the Laurel Branch enhancement reach are located in (TABLE 8B) and on the enclosed "Stream Enhancement Map".

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