



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

Public Notice

In reply refer to Public Notice No.

200600089

Issuance Date:

~~October 13, 2006~~

Stream: Hoods Fork and

~~Left Fork of Hoods Fork~~

Closing Date:

November 13, 2006

Please address all comments and inquiries to:

U.S. Army Corps 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 (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 Commonwealth of Kentucky, Kentucky Division of Water to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Motts Branch Coal, Incorporated
Post Office Box 2765
Pikeville, KY 41502

LOCATION: The proposed project is located on the McDowell USGS quadrangle at latitude 37° 25'02" and longitude 82° 42'47" within Hoods Fork and Left Fork of Hoods Fork approximately 2.8 miles east of McDowell, in Floyd County, Kentucky. The location of the proposed is depicted on **Drawing 1** titled "Project Location Map." Left Fork of Hoods Fork flows into Hoods Fork, which flows into Frasure Creek. Frasure Creek flows into Left Fork of Beaver Creek. Beaver Creek flows into the

Levisa Fork of the Big Sandy River, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into Hoods Fork, two unnamed tributaries of Hoods Fork and Left Fork of Hoods Fork in conjunction with its surface and deep mining and reclamation operation associated with Surface Mining Control and Reclamation Act (SMCRA) permit 836-5482. The applicant is proposing to contour mine the Elkhorn No.1, No.2, and No.3 coal seams with highwall/auger mining and a face-up area in each seam for underground mining. The proposed project would create 96.2 acres of surface disturbance. The applicant proposes to place dredged or fill material into approximately 7,112 linear feet (1.49 acres) of waters of the U.S. in conjunction with the construction of three mine face up areas, five permanent hollow fills, a permanent refuse fill, and one temporary sediment pond. For details regarding the proposed jurisdictional stream impacts please refer to **Table A**.

The Commonwealth of Kentucky Department of Surface Mining Reclamation and Enforcement (DSMRE) is currently reviewing the applicant's Surface Mining Permit application #836-5482 pursuant to the Surface Mining Control and Reclamation Act of 1977.

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 applicant's goal. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the applicant's goal.

MITIGATION PLAN: The applicant has submitted a compensatory mitigation plan (CMP) to compensate for proposed permanent and temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. The applicant utilized the Eastern Kentucky Stream Assessment Protocol (EKSAP) to assess the proposed stream impacts and compensatory mitigation. The EKSAP computes proposed aquatic resource impact and mitigation activities in the form of Ecological Integrity Units (EIU). The construction of five hollow fills and one refuse fill would involve the permanent placement of dredged or fill material into 6,738 linear feet (or 1.39 acres / 2,077 EIUs) of jurisdictional waters of the United States. The placement of dredged or fill material associated with construction of the sediment pond embankment (including sediment transport area) would impact 449 linear feet (or 0.12 acre / 58 EIUs) of jurisdictional waters of the United States. The total impacts resulting from the proposed project equate to 7,187 linear feet (or 1.49 acres / 2,136 EIUs).

To compensate for permanent impacts to waters of the U.S., the applicant proposes to mitigate on-site through in-kind establishment of aquatic resources utilizing natural stream design techniques. In addition, a minimum 100 foot riparian buffer zone would be established along the created channels. The proposed mitigation would result in the creation of 5,229 linear feet (2341 EIUs) of intermittent stream channel and 2,314 linear feet (1,083.92 EIUs) of ephemeral stream channel.

To compensate for temporary impacts to waters of the U.S., the 449 linear feet (103.27 EIUs) of intermittent stream segment temporarily impacted by sediment pond construction and associated sediment transport area would be restored to their pre-mining conditions. Rosgen-type and other natural stream techniques would be used in the design of the restoration site. In addition, a minimum 100 foot riparian buffer zone would be established along the restored channel segment.

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 Commonwealth of Kentucky, Kentucky Division of Water.

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. This public notice serves as coordination with the Kentucky Heritage Council's State Historic Preservation Office for their review regarding historic properties. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: This public notice also serves as coordination with the U. S. Fish and Wildlife Service (USFWS) regarding threatened or endangered species. The proposed project lies within the distribution range of the endangered Indiana bat (*Myotis sodalis*). 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).

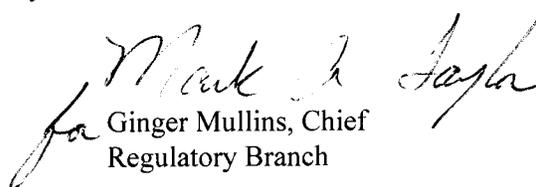
The Huntington District has consulted the most recently available information and has determined that the project is not likely to affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species which has been determined to be critical.

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 U. S. Army Corps of Engineers (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 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. 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 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.

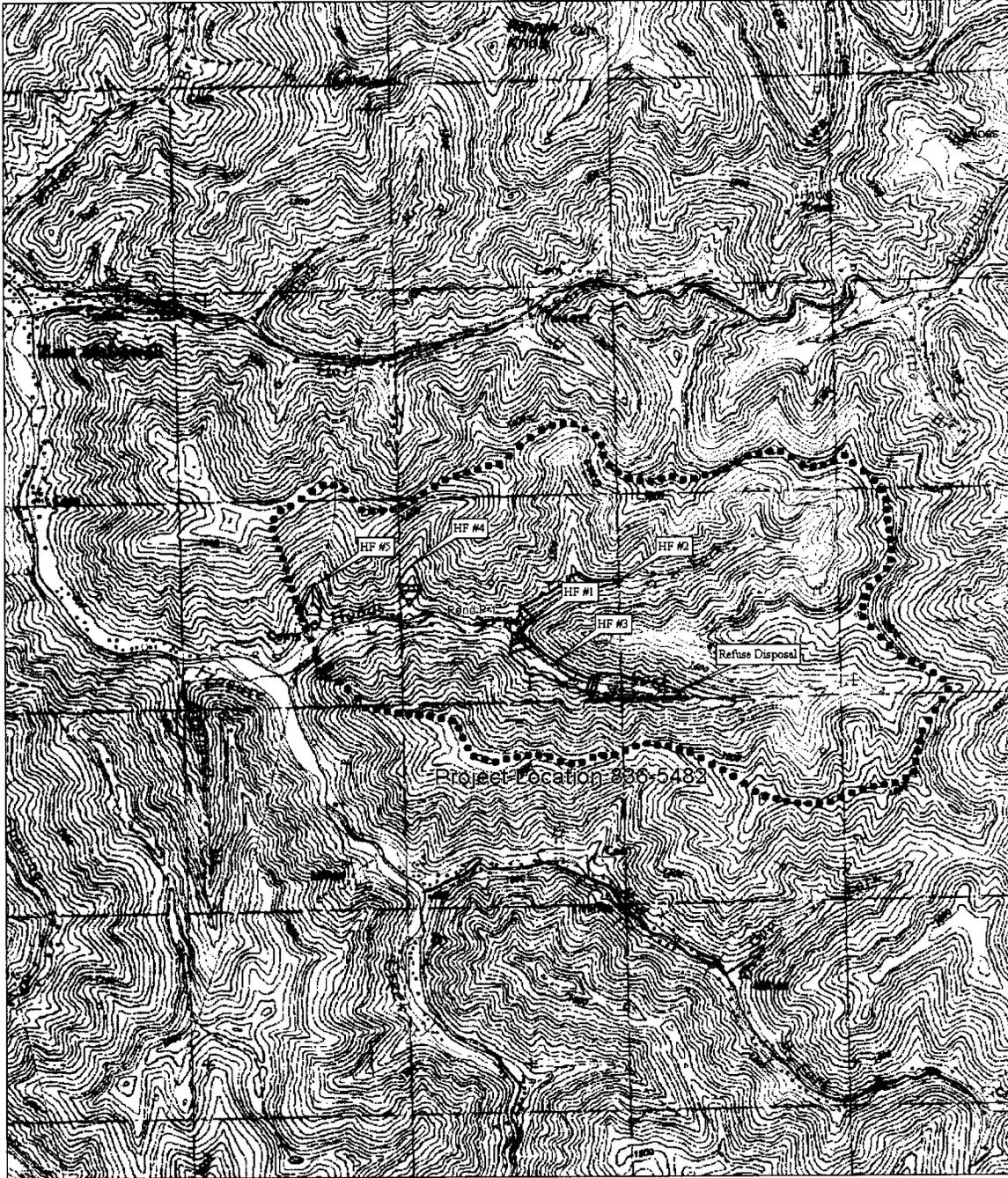
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Ms. LuAnne Conley, Environmental Engineer, South Regulatory Section, CELRH-OR-FS, U. S. Army Corps of Engineers 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. If you have any questions concerning this public notice, please call Ms. LuAnne Conley, South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(K)

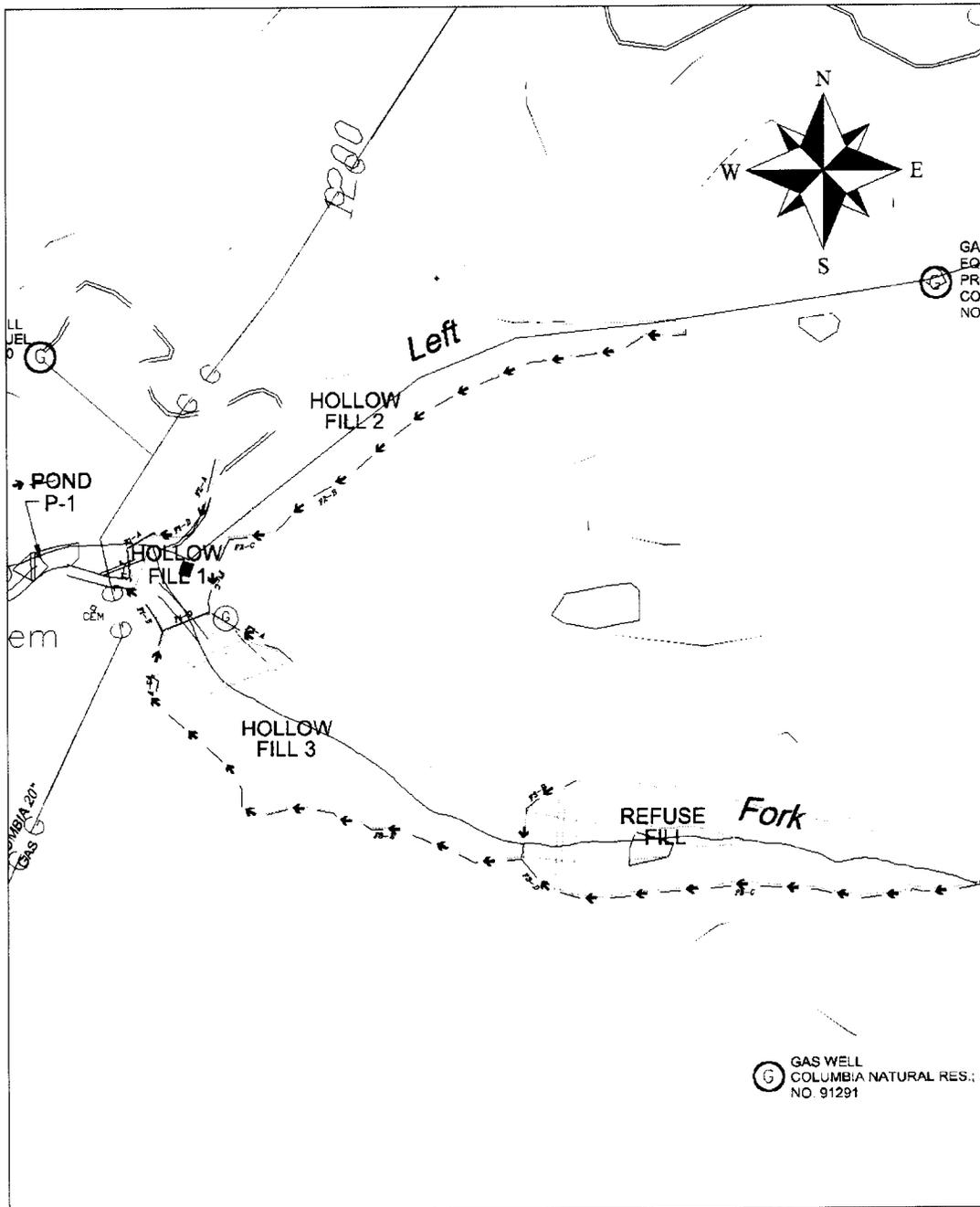
Table A
Motts Branch Coal, Inc
SMCRA Permit 836-5482
Jurisdictional Waters Impact Summary

Structure	Permanent		Permanent Ephemeral		Total Permanent Impact		Temporary Intermittent		Temporary Ephemeral		Total Temporary Impact	
	feet	acres	feet	acres	feet	acres	feet	acres	feet	acres	feet	acres
Hollow Fill No. 1	974	0.21			974	0.21					974	0.21
Hollow Fill No. 2	1425	0.27	480	0.09	1905	0.36						
Hollow Fill No.3	1700	0.44			1700	0.44						
Hollow Fill No.4			548	0.08	548	0.08						
Hollow Fill No. 5			714	0.07	714	0.07						
Refuse Fill	897	0.23			897	0.23						
Sediment Pond P-1							374	0.10			374	0.10
Total					6,738	1.39					374	0.10



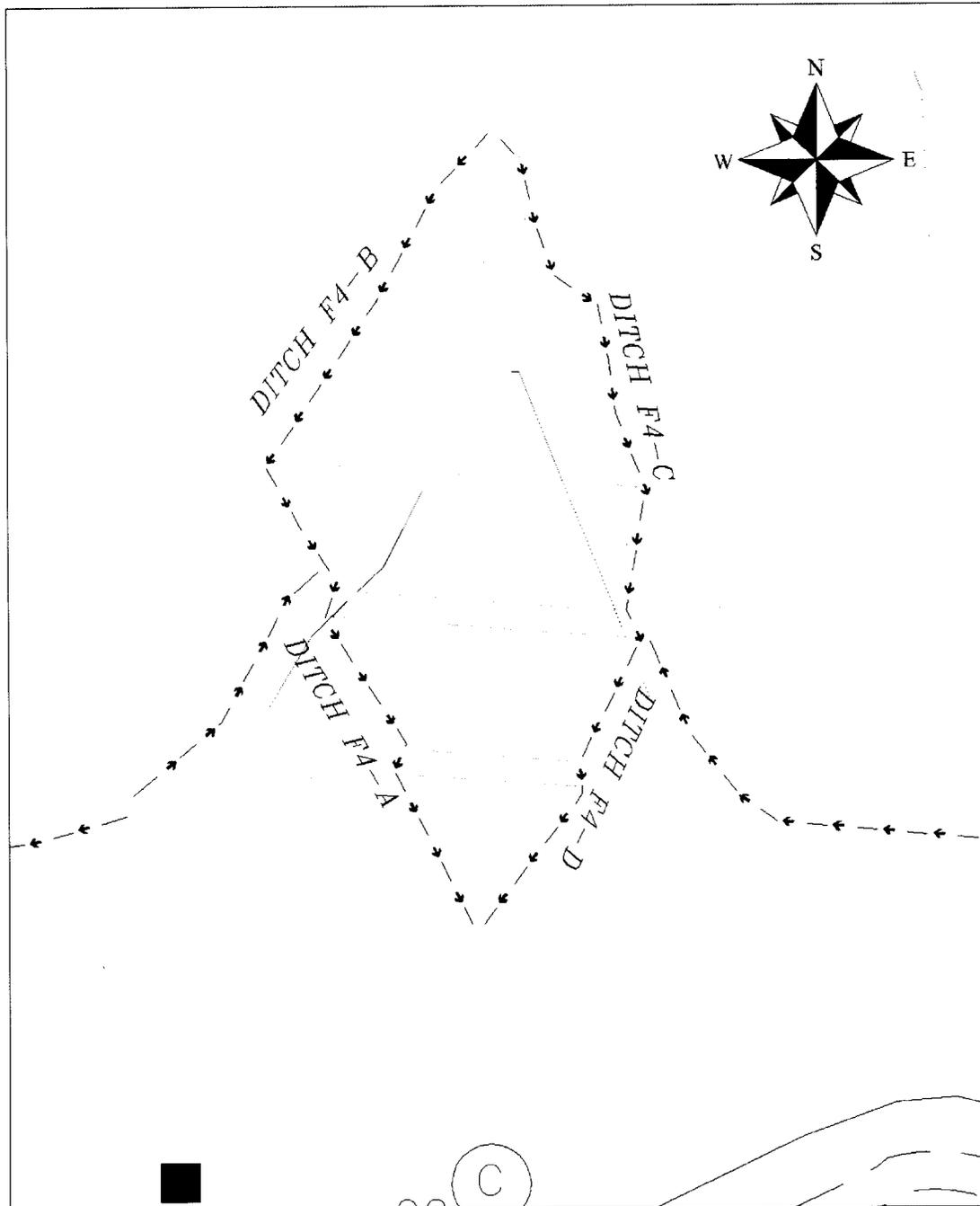
3-D TopoQuads Copyright © 1999 DeLorme Yarmouth, ME 04096 Source Data: USGS 700 ft Scale: 1:12,300 Detail: 14-0 Datum: WGS84

Project Location Map
Hoods Fork Surface Mine
USACE No. 200600089
KDNR No. 836-5482



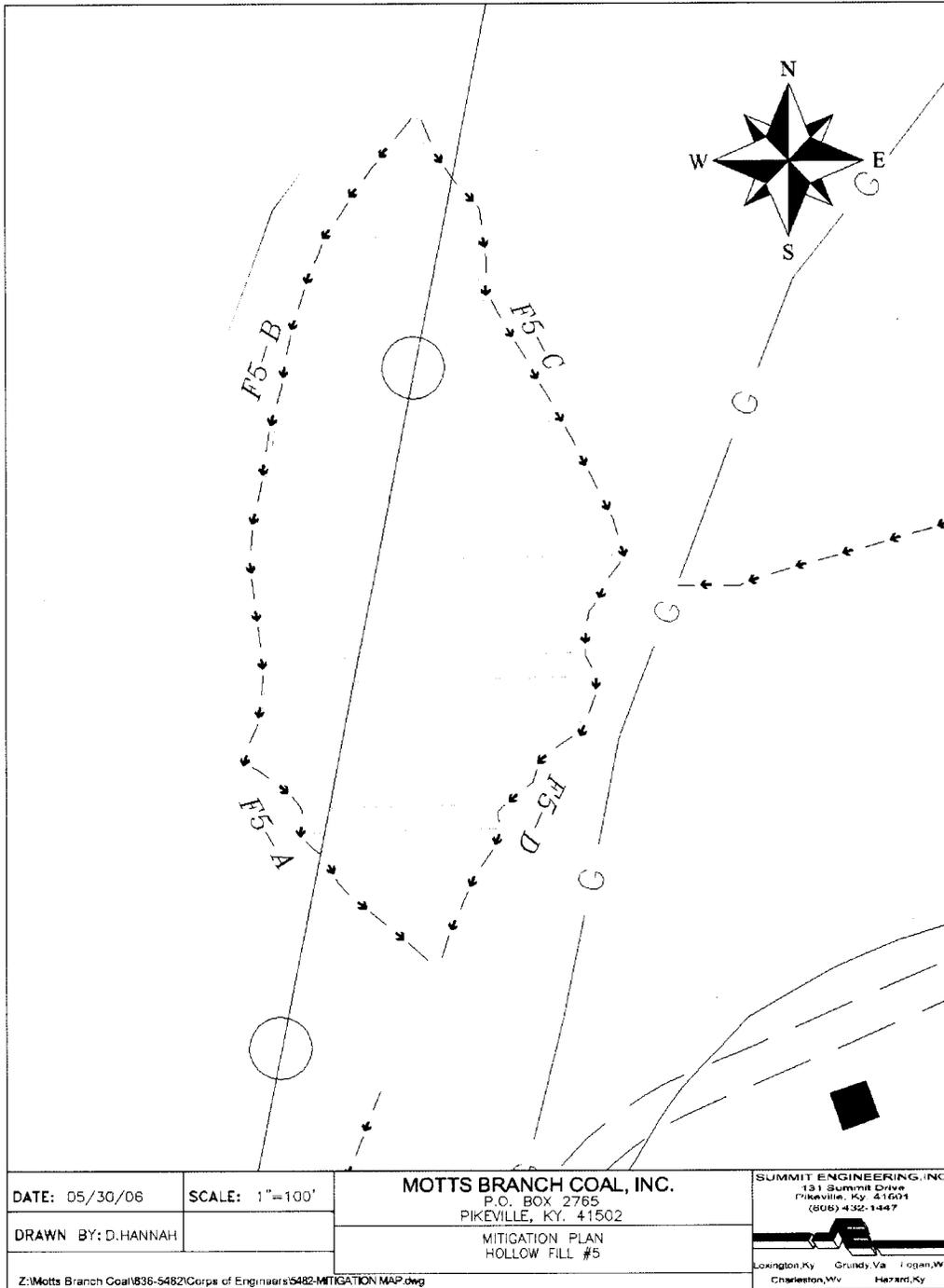
DATE: 05/30/06	SCALE: 1"=400'	MOTTS BRANCH COAL, INC. P.O. BOX 2765 PIKEVILLE, KY. 41502	SUMMIT ENGINEERING, INC. 131 Summit Drive Pikeville, Ky. 41601 (606) 432-1447
DRAWN BY: D.HANNAH			
Z:\Motts Branch Coal\836-5482\Corps of Engineers\5482-MITIGATION MAP.dwg		Lexington, Ky Grundy, Va Logan, Wv Charleston, Wv Hazard, Ky	

Hollow Fills No. 1, 2, 3, Refuse
 Fill, and Pond P-1 Site Plan Map
 Hoods Fork Surface Mine
 USACE No. 200600089
 KDNR No. 836-5482

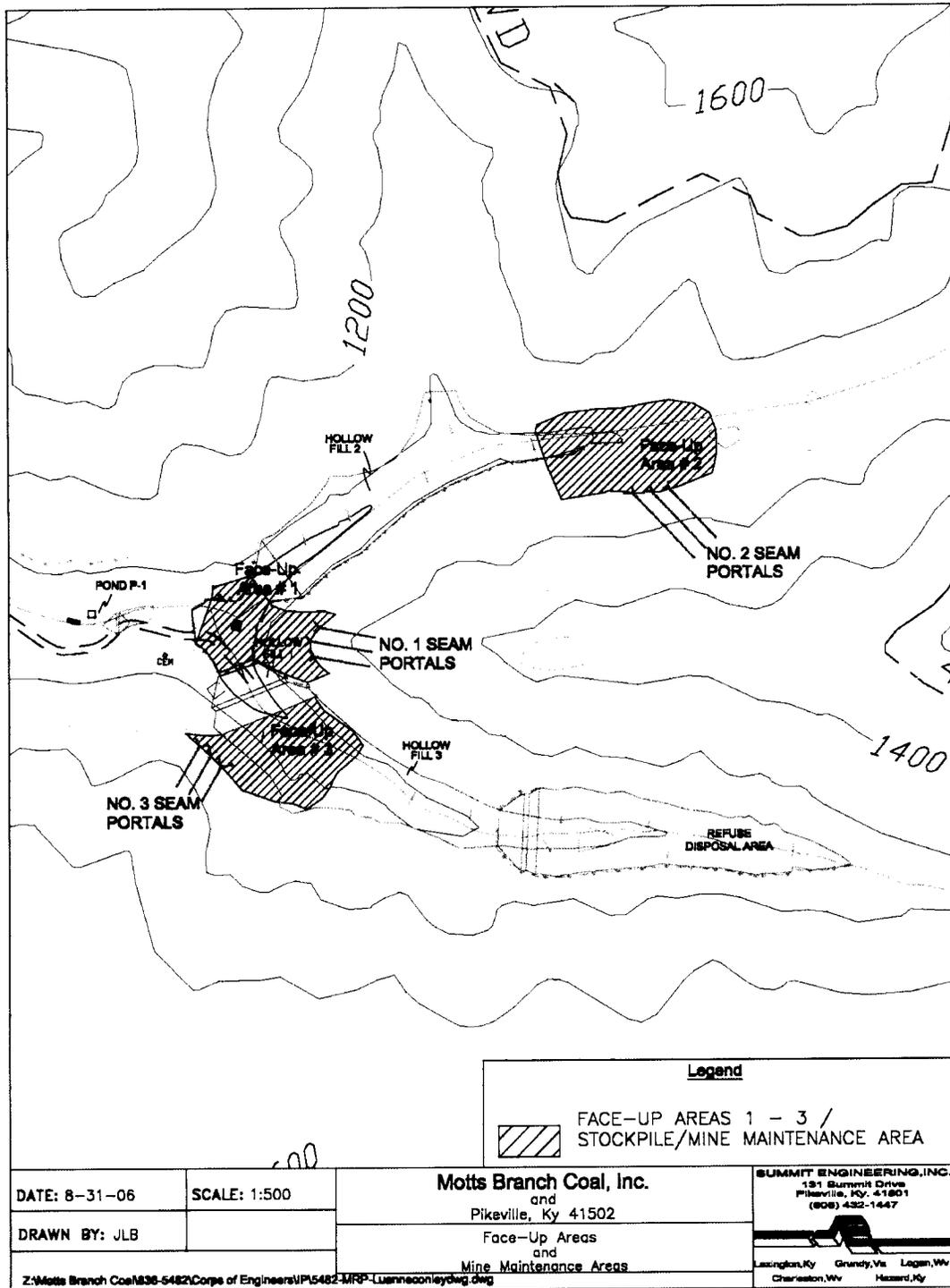


DATE: 05/30/06	SCALE: 1"=100'	MOTTS BRANCH COAL, INC. P.O. BOX 2765 PIKEVILLE, KY, 41502	SUMMIT ENGINEERING, INC. 131 Summit Drive Pikeville, Ky. 41601 (800) 432-1447
DRAWN BY: D.HANNAH			
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Hollow Fill No. 4 Site Plan Map
 Hoods Fork Surface Mine
 USACE No. 200600089
 KDNR No. 836-5482



Hollow Fill No. 5 Site Plan Map
 Hoods Fork Surface Mine
 USACE No. 200600089
 KDNR No. 836-5482



DATE: 8-31-06

SCALE: 1:500

Motts Branch Coal, Inc.
and
Pikeville, Ky 41502

SUMMIT ENGINEERING, INC.
131 Summit Drive
Pikeville, Ky. 41601
(606) 432-1447

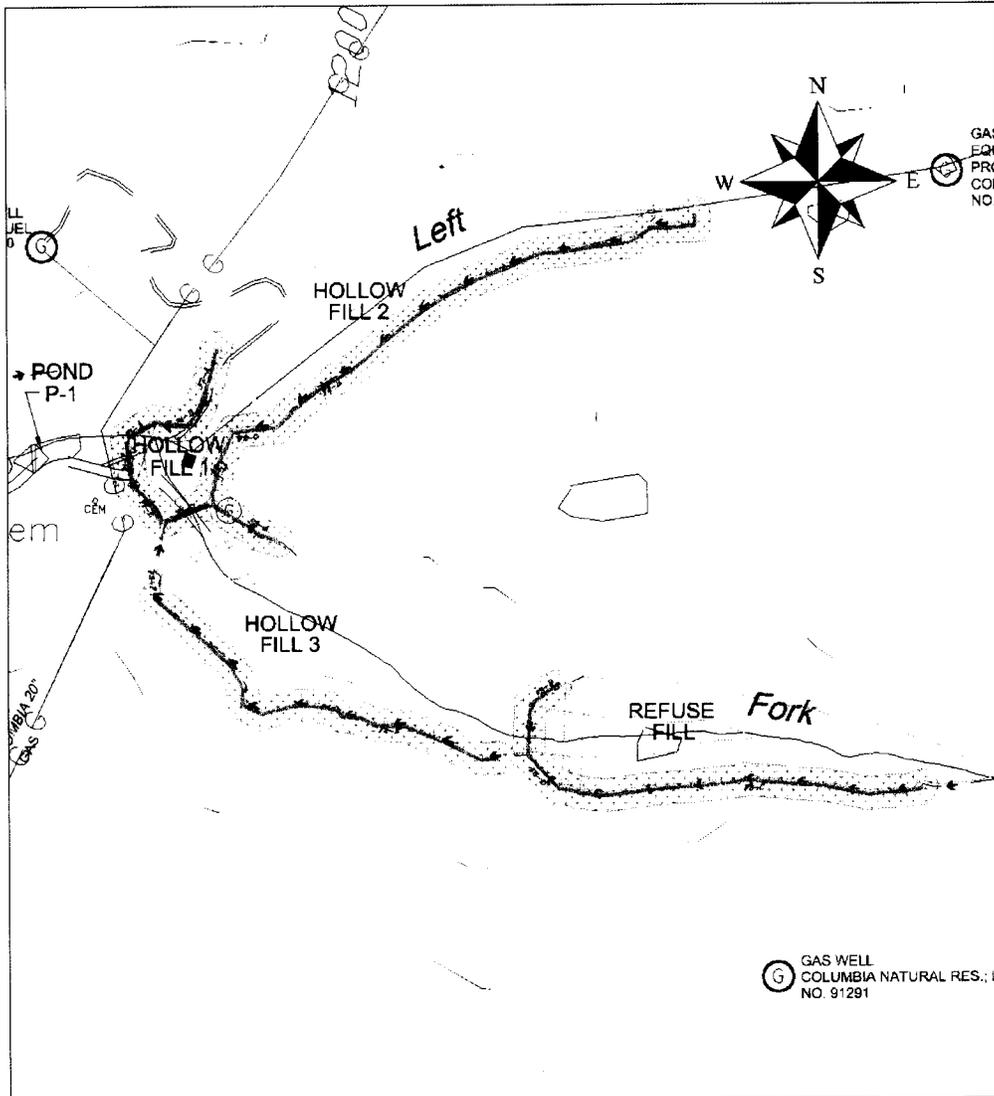
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Face-Up Areas
and
Mine Maintenance Areas

Lexington, Ky Grundy, Va Logan, Wv
Charleston, Wv Hazard, Ky

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Hollow Fill No. 6 Mine Face-Up Areas
Hoods Fork Surface Mine
USACE No. 200600089
KDNR No. 836-5482



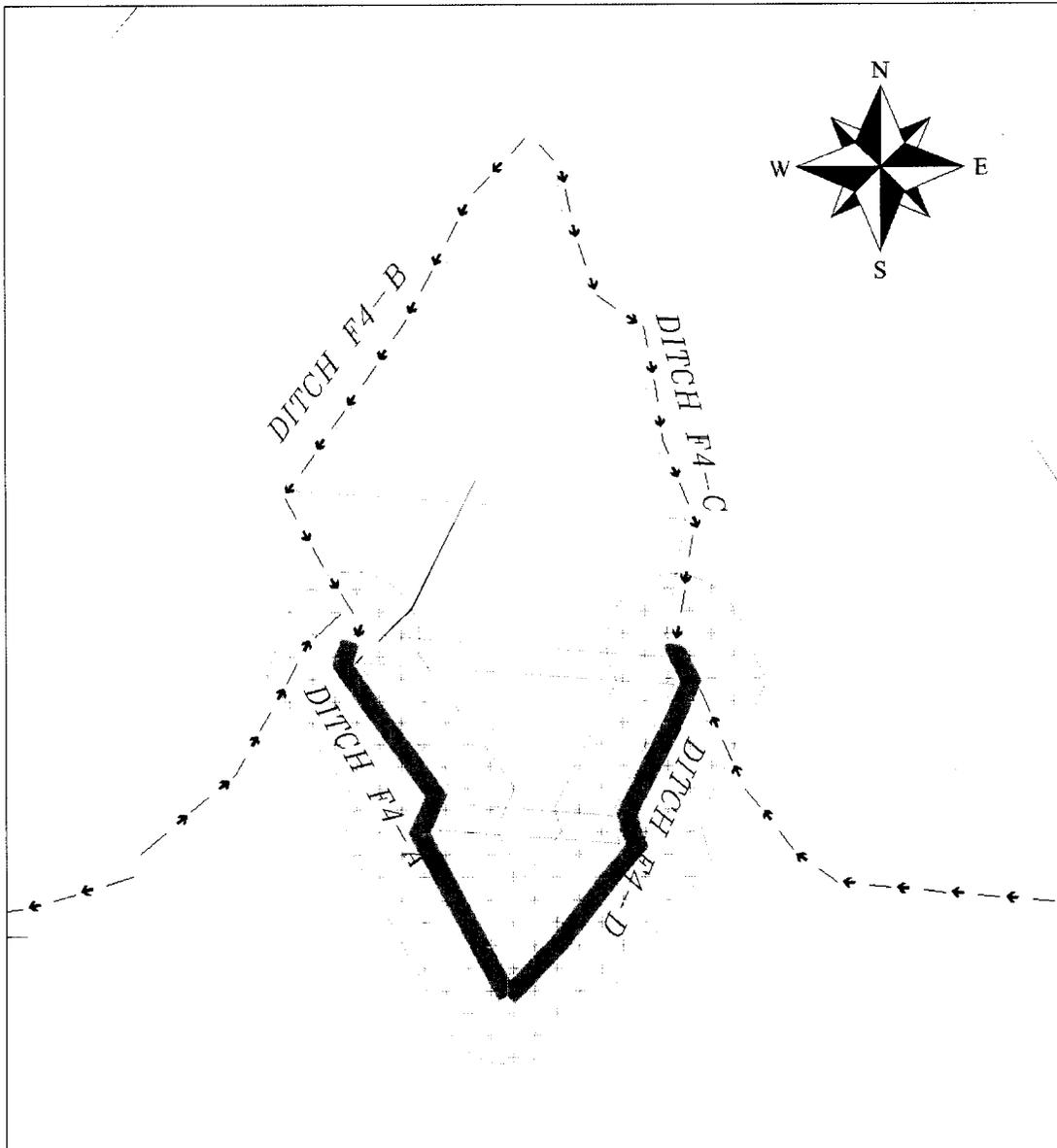
GAS WELL
COLUMBIA NATURAL RES.: L
NO. 91291

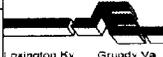
LEGEND

-  RIPARIAN ZONE
-  EPHEMERAL WATERS

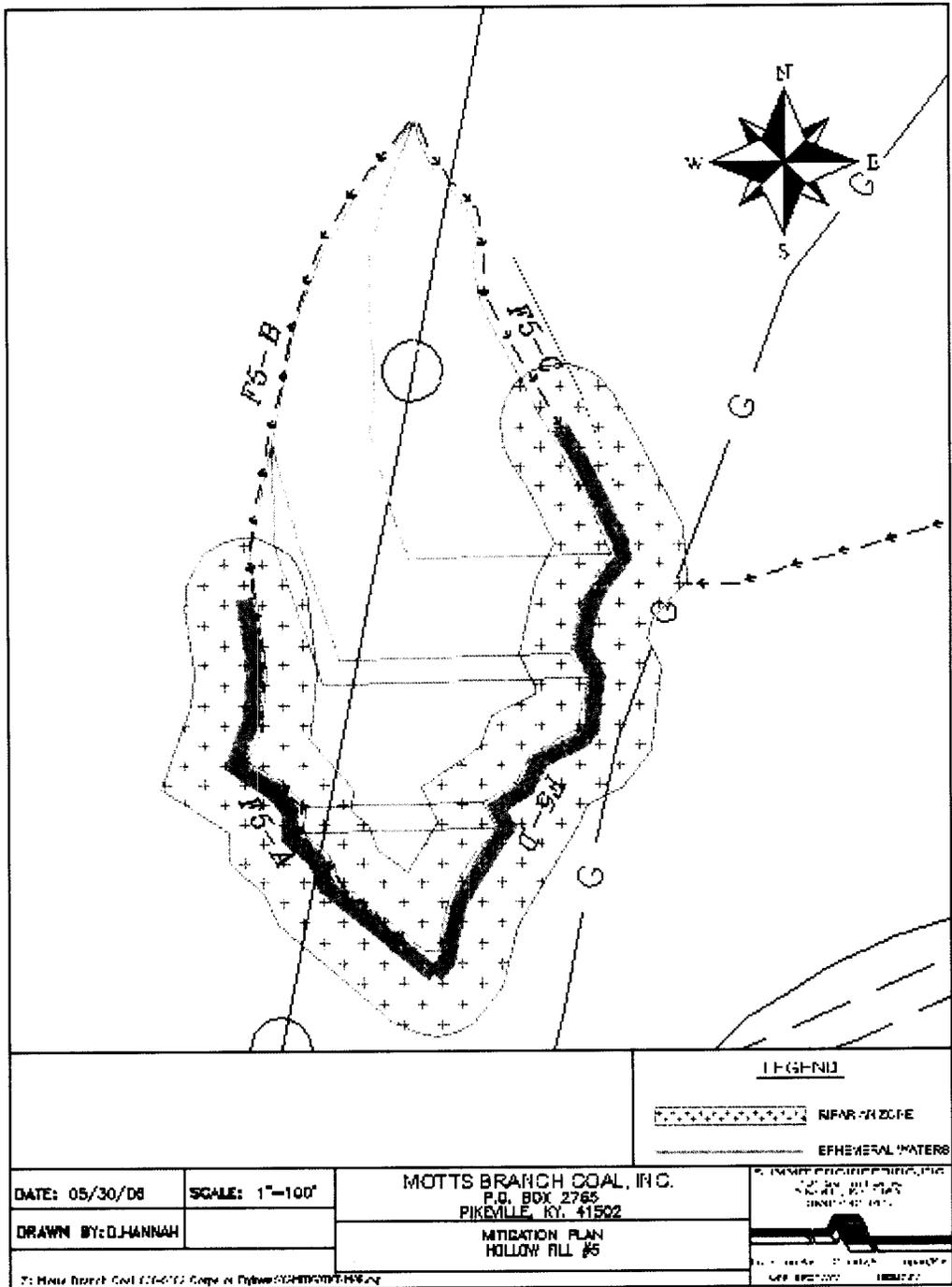
DATE: 05/30/06	SCALE: 1"=400'	MOTTS BRANCH COAL, INC. P.O. BOX 2765 PIKEVILLE, KY. 41502	SUMMIT ENGINEERING, INC. 131 Summit Drive Pikeville, Ky. 41601 (606) 432-1447
DRAWN BY: D.HANNAH			
Z:\Motts Branch Coal\836-5482\Corps of Engineers\6482-MITIGATION MAP.dwg		 Lexington, Ky Grundy, Va Logan, Wv Charleston, Wv Hazard, Ky	

Hollow Fill No. 1, 2, 3, Refuse Fill,
Pond P-1 Mitigation Plan Map
Hoods Fork Surface Mine
USACE No. 200600089
KDNR No. 836-5482



		LEGEND	
		 RIPARIAN ZONE  EPHEMERAL WATERS	
DATE: 05/30/06	SCALE: 1"=100'	MOTTS BRANCH COAL, INC. P.O. BOX 2765 PIKEVILLE, KY. 41502	
DRAWN BY: D.HANNAH		MITIGATION PLAN HOLLOW FILL #4	
Z:\Motts Branch Coal\836-5482\Corps of Engineers\5482-MITIGATION MAP.dwg		SUMMIT ENGINEERING, INC. 131 Summit Drive Pikeville, Ky. 41501 (606) 432-1447  Lexington, Ky Grundy, Va Logan, Wv Charleston, Wv Hazards, Ky	

Hollow Fill No. 4 Mitigation Plan Map
 Hoods Fork Surface Mine
 USACE No. 200600089
 KDNR No. 836-5482



Hollow Fill No. 5 Mitigation Plan Map
 Hoods Fork Surface Mine
 USACE No. 200600089
 KDNR No. 836-5482