

US EPA ARCHIVE DOCUMENT



Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No. 2008-000370

Issuance Date: June 24, 2009

Closing Date: July 24, 2009

Stream: Old House Branch, Workman Branch, all of Pond Fork and Ducky Ferrell Hollow of West Fork of Pond Fork

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 United States 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: Horizon Resources, LLC
Post Office Box 15220, 11950 MacCorkle Avenue
Marmet, West Virginia 25365

LOCATION: The proposed project would be located approximately 2.79 miles southeast of Wharton, in the Crook District of Boone County, West Virginia. The project area can be found at latitude 37°53'46" and longitude 81°37'30" on the Wharton, Whitesville, Lorado, and Pilot Knob USGS 7.5-minute quadrangles. The proposed project would be constructed in the watersheds of Old House Branch and Workman Branch and Ducky Ferrell Hollow. Old House Branch and Workman Branch are tributaries of Pond Fork. Ducky Ferrell Hollow is a tributary of the West Fork of Pond Fork. Pond Fork exhibits a surface water connection to Little Coal River, a traditional navigable water.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge dredged and/or fill material into approximately 7,140 linear feet or 0.366 acres of waters of the U.S. in conjunction with the construction, operation and reclamation of the Synergy Surface Mine No. 2 [Pending approval under Surface Mining Control and Reclamation Act (SMCRA) Permit S-5017-07 and National Pollutant Discharge Elimination System (NPDES) Permit WV1023209]. Project components would include the construction of four permanent valley fills (Nos. 3, 4, 5, and 6), two in-stream drainage ponds and two access road crossings in waters of the United States. Construction of the drainage ponds with bonded area would result in temporary, direct discharges of dredged or fill material into 2,555 linear feet (0.147 acre) of intermittent stream channels. Construction of the access roads would result in temporary, direct discharges of dredged or fill material into 73 linear feet (0.001 acre) of intermittent stream channels. Construction of the proposed overburden and underdrain systems associated with Fills No. 3, 4, 5, and 6 would result in the permanent, direct discharges of dredged material into 2,458 linear feet (0.097 acre) of intermittent stream channels and 2,054 linear feet (0.121 acre) of ephemeral stream channels. Details regarding these proposed activities are listed in Table 1 attached to this public notice. The purpose of the proposed project is to discharge dredged/fill material to construct attendant and associated features (i.e. overburden disposal, coal recovery, sediment control etc.) and to facilitate efficient extraction of approximately 4.82 million tons of coal reserves in the SMRCA permitted area (883.60 acres of which 220.00 acres would encompass the proposed valley fills and sediment ponds) for a period of 3.5 years. Coal removed from the project area would be processed and moved offsite for delivery to customers. Plans for the proposed facility 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. The applicant considered two practicable mining alternatives: Alternative No. 3 using multiple seam contour and highwall/auger mining and Alternative No. 4 using mountaintop/area mining. While Alternative No. 3 would be practicable, it would sterilize coal reserves that would otherwise be recovered under Alternative No. 4. Alternative No. 3 would reduce the total impacts to waters of the U.S. (7,140 linear feet) by approximately 1,700 linear feet. The applicant evaluated 15 hollows adjacent to the project area as potential locations for overburden storage. Alternative Valley Fill Sites 1, 5, 9, and 10 (contain a total of ~ 4,536 linear feet of waters of the U.S.) provide adequate capacity for excess overburden storage, but are not operationally feasible due to current WVDEP permits located in each site. Alternative Valley Fill Sites 11, 12, and 13 (contains a total of ~ 5,026 linear feet of waters of the U.S.) would provide adequate capacity for excess overburden storage, but the excess overburden material would have to be hauled via public

roads. Alternative Valley Fill Site 2 (contains a total of ~ 500 linear feet of waters of the U.S.) does not provide adequate capacity for excess overburden storage. These 8 sites were determined not to be practicable locations for excess overburden storage. Proposed Fill Sites 3, 4, 6, 7, 8, 14 and 15 would provide adequate capacity for excess overburden storage, are located within a one-mile distance to the mine sites, have the required slope to provide sufficient valley fill stability and would not impact existing homes or utility lines.

MITIGATION PLAN: The project area has been previously timbered and gas reserves have been developed. Mining has occurred using deep and surface mining techniques within and adjacent to the project area. In evaluating a project area containing waters of the U.S., consideration must be given to avoiding impacts on these sites. The USACE has determined that approximately 26,182 linear feet of intermittent streams and 19,413 linear feet of ephemeral stream (unnamed tributaries of/and Jarrell Branch, unnamed tributaries of/and Pond Fork, unnamed tributaries of/and Old House Branch, unnamed tributaries of/and Workman Branch, unnamed tributaries of/and James Branch, unnamed tributaries of West Fork of Pond Fork, and unnamed tributaries of/and Spruce Lick Fork,) are located within the area delineated for the proposed project. As a result of avoidance measures, the applicant proposes to impact 5,086 linear feet of intermittent stream and 2,054 linear feet of ephemeral stream. Therefore, the applicant has avoided impacts to approximately 21,096 linear feet of intermittent stream and 17,359 linear feet of ephemeral stream within the delineated area.

If waters of the U.S. cannot be avoided, impacts must be minimized. The applicant has proposed efforts to minimize impacts to aquatic resources throughout project implementation. The applicant proposes to incorporate best management practices (BMPs), as required by SMCRA and NPDES, to the maximum extent possible and by using the best technology currently available. To limit the impacts of the proposed operation, the design of the valley fills were optimized by placing excess overburden in drainage areas where no jurisdictional streams are located, thus reducing impacts to jurisdictional waters of the U.S. With regard to sediment control, run-off must pass through the proposed designed sediment control structures before entering the streams to prevent downstream sedimentation in any considerable quantities. These measures would minimize the potential for excessive erosion and deposition of sediment in waters of the U.S. The applicant proposes to manage discharges in accordance with WVDEP-established NPDES threshold limits for suspended solids and settleable solids. Further minimization of impacts would be achieved through timely backfilling, grading and revegetation of operational areas and stabilization of fill material, which would be expected to minimize the amount of earth disturbance at any given time and would reduce the potential for erosion and sedimentation. The applicant examined numerous alternatives to avoid all impacts to waters of the U.S. and determined them to be impracticable based on cost effectiveness, and technical feasibility in light of the overall project purpose. The applicant proposes to contribute a payment to the WV In-Lieu Fee Program to compensate for unavoidable impacts to waters of the U.S. Following avoidance and minimization measures, all potential mitigation options for the proposed impacts were considered. Permittee-responsible or on-site mitigation was determined to be unsuitable for the proposed impacts, primarily because of the nature of the impacts, surrounding environment, and the low likelihood of mitigation success. Contributing factors include historic impacts to hydrologic regime of existing streams on-site, limited opportunities downslope of impervious strata (down-dip) for establishment of viable baseflows, and a relatively small project area surrounded by mitigation-incompatible land-uses. All proposed impacts lie within the Upper Pond Fork watershed. No extant watershed plans for this particular basin were encountered thereby eliminating the watershed approach to mitigation. Finally, no practicable mitigation banking alternatives were available for the proposed impacts.

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: It has been determined there are no properties included in or eligible for listing in the National Register of Historic Places (NRHP) that would be affected by the proposed undertaking. A Phase I report was submitted to the West Virginia Division of Culture and History, State Historical Preservation Office (SHPO) under FR# 08-195-BO-4. SHPO reviewed the report and requested a Phase II National Register Assessment of Prehistoric Site 46BO40 be conducted. SHPO has reviewed the Phase II report and, in a letter dated January 29, 2009, stated no archaeological sites were eligible for or listed in the National Register of Historic Places and no further consultation was necessary. 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. In the summer of 2005, a bat-mist net survey was completed in the project area to determine presence or probable absence of the Indiana bat within the proposed project area. No federally-listed bats were captured during this survey. The proposed project area was also surveyed for abandoned mine portals that could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. No abandoned mine portals were found within the proposed project area. Based on these facts, the USFWS, in a letter dated April 11, 2006, has determined the proposed project is not likely to adversely affect endangered or threatened species or their critical habitat. This public notice serves as a request to the USFWS 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 320-332, 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 Ms. Teresa Spagna, Project Manager, Energy Resource Section, CELRH-OR-FE, 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. If you have any questions concerning the above, please contact Ms. Teresa Spagna of the Energy Resource Section at (304) 399-5610.



Ginger Mullins, Chief
Regulatory Branch

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Table 1

Jurisdictional Waters of the United States to be Impacted	Jurisdictional Waters of the United States Impact Category											
	Permanent Fill Impacts						Drainage Pond Impacts					
	Perennial	Intermittent	Ephemeral	Perennial	Intermittent	Ephemeral	Perennial	Intermittent	Linear Feet	Acres	Linear Feet	Acres
Ducky Ferrell Hollow and unnamed tributary (DF) (Fill No. 3)												
Unnamed Tributary of Old House Branch (OHB-11) (Fill No. 4)												
Unnamed Tributary of Old House Branch (OHB-13) (Fill No. 5)												
Old House Branch (OHB) (Pond No. 5)												
Workman Branch and unnamed tributary (WB and WB-2) (Fill No. 6)												
Unnamed Tributary of Unnamed Tributary of Workman Branch (WB-10A-1a)												
TOTAL	0	0.000	2,458	0.097	2,054	0.121	0	0.000	2,284	0.136	0	0.001
											73	0.001
											271	0.011









