



US Army Corps  
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# Public Notice

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Public Notice No. 11-48

Date: December 20, 2011

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Nashville District

Application No. LRN 2010-0224 Expires: January 19, 2012

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Please address all comments to: Nashville District Corps of Engineers  
Regulatory Branch, 3701 Bell Road, Nashville, TN 37214 ATTN: Forrest McDaniel

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**SUBJECT:** Proposed Discharge of Dredged and/or Fill Material into Waters of the United States (WOUS) associated with the Proposed Jackson Mountain #3 Surface Coal Mine, KDNR #807-0384

**TO ALL CONCERNED:** The application described below has been submitted for a Department of the Army (DA) Permit pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C 1344). Certification must be provided by the Kentucky Department of Natural Resources (KDNR), pursuant to Section 401(a)(1) of the CWA that applicable water quality standards would not be violated before a valid Section 404 permit can be issued. By copy of this notice, the applicant hereby applies for the required certification.

**APPLICANT:** Nally and Hamilton Enterprises Inc. (Nally and Hamilton)  
P.O. Box 2323  
London, KY 40741

**AGENT:** Biological Systems Consultants, Inc.  
P.O. Box 54954  
Lexington, KY 40555-4954

**LOCATION:** The streams are tributaries to Blacksnake Branch, Mill Creek and Puckett Creek in Bell and Harlan Counties, Kentucky. They are located within Nally and Hamilton's proposed Balkan Surface Mining Area, Puckett Creek watershed (HUC 051301010204). Puckett Creek watershed size is 48.4 square miles. The center coordinates for the mining operation are Latitude 36.74827, Longitude -83.49764. The project site can be found on the Balkan/Wallins Creek/Varilla/Ewing, KY 7 1/2 minute USGS quadrangle maps.

**DESCRIPTION OF THE PROPOSED WORK:** Nally and Hamilton has applied for a DA CWA Section 404 permit to discharge fill material into Right Fork Mill Creek and eight unnamed tributaries to Blacksnake Branch and Puckett Creek. Proposed impacts to waters of the United States (WOUS) would occur due to contour and highwall/auger mining of the Harlan and Kellioka/Darby seams covering a 515.3 acre mining site. The proposed mining plan includes the construction of five Hollow Fills (HFs) impacting 10,138 linear feet of stream channel (sheet 3 of 9). Approximately 2,066' of ephemeral stream, 7,992' of intermittent stream and 80' of perennial would be impacted to facilitate surface coal mining. Temporary impacts would occur as a result of five in stream sediment ponds totaling 1,786 linear feet with sediment corridors totaling 191 linear feet. The proposed mining project would result in permanent

impacts to 1,803' of ephemeral stream and 6,358' of intermittent stream. The permanent impacts to WOUS would occur to construct rock underdrains to facilitate building of five excess spoil material fills (identified as HF#1, HF#2, HF#3, HF#4 and HF#5, sheets 5-9 of 9) and 400' of intermittent stream through mining area #1.

**ALTERNATIVES ANALYSIS:** This project is not water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives, which do not require placing fill into WOUS are not available. No permit will be issued unless the alternatives analysis clearly demonstrates that practicable upland alternatives are not available to achieve this overall project purpose.

**MINIMIZATION OF IMPACTS TO WOUS:** Based on information submitted in the project application, the applicant has proposed to minimize the placement of fill into WOUS by utilizing existing mining benches to place excess spoil material and maximizing backfill configurations in spoil storage areas. The applicant also proposed to construct five HFs.

**COMPENSATORY MITIGATION:** In order to compensate for impacts to jurisdictional waters, the applicant is proposing a combination of onsite stream creation, re-establishment and incremental in-lieu fee payments. The applicant's conceptual mitigation proposal is described as follows:

- a. As part of the site reclamation process, impacts to the affected stream reaches would be compensated by reconstructing 5,640' of streams impacted from the coal mining operation. Approximately 400' of intermittent stream would be re-established in the mine through area above HF #5. In addition 263' of ephemeral stream, 1,634' of intermittent stream, and 80' of perennial stream would be re-established through the ponds and sediment corridor areas. The remainder onsite mitigation would consist of 3,263' of ephemeral stream creation along the side drains of HF #1, #3 and #4. All onsite stream reconstruction efforts would utilize natural stream design techniques, substrate restoration, bank stabilization, and installation of in-stream habitat features. A minimum 60 foot vegetated riparian buffer zone would be established on each side of the restored stream segments. Plantings would consist of native plants, trees, and shrubs, and would be planted in a manner sufficient to ultimately provide adequate shading of the restored stream channel. The applicant would be responsible for monitoring, maintenance, and management of the compensatory mitigation project(s) for a period of five years from completion of each phase of the mitigation work.
- b. Using the Eastern Kentucky Stream Assessment Protocol (EKSAP), stream impacts that would occur from mining activities would result in the loss of 4,662.31 Ecological Integrity Units (EIU) (Sheet 4 of 9). Onsite compensatory mitigation efforts are projected to produce 1,645.74 EIUs immediately after stream reconstruction efforts are completed (five years) and increase 404.43 EIUs at maturity of mitigation (25 years). In addition to the onsite stream reconstruction efforts, four incremental in-lieu fee payments would be made to Kentucky Department of Fish and Wildlife Resources Stream and Wetland Mitigation Program (KDFWMP) for a total of \$1,570,599.64 (2011 EIU price of \$396.00) to compensate for impacts to WOUS that could not be replaced by

onsite compensatory mitigation. Incremental in-lieu fee payments would be made for Watershed 1 (1,462.68 EIUs, 2011 price is \$695,065.54), Watershed 2 (526.15 EIUs, 2011 price is \$250,026.48), Watershed 3 (211.3 EIUs, 2011 price is \$100,459.14), and Watershed 4 (1,104.9 EIUs, 2011 price is \$525,048.48). The KDFWMP uses funds to accomplish stream and wetland restoration and enhancement projects approved by state and federal resource agencies.

Overall, the proposed mitigation efforts are intended to offset and restore functional stream values that would be lost or impacted as a result of project impacts and to compensate for temporal and other unavoidable losses associated with project activity.

Plans of the work are attached. If you wish to view additional information, please contact this office or visit our web site at: <http://www.lrn.usace.army.mil/cof/notices.htm>.

**PUBLIC INTEREST REVIEW/CUMULATIVE EFFECTS:** The DA permit decision will be based on an evaluation of the probable impacts including cumulative impacts of the activity on the public interest. An initial review of the Puckett Creek watershed (HUC 051301010204) indicated that the largest stressors within the watershed result from underground and surface coal mining permits. The DA permit decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the work, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore 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. The evaluation of the impact on the public interest will include application of the guidelines promulgated by the Environmental Protection Agency (EPA), under authority of Section 404(b)(1) of the CWA (40 CFR Part 230). A DA permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

**SOLICITATION OF COMMENTS:** The U.S. Army 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. Any comments received will be considered by the Corps 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 (EA) 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. An EA will be prepared prior to a final decision concerning issuance or denial of the requested DA Permit. Any person may request, in writing, within the comment period specified, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

**ENDANGERED/THREATENED SPECIES REVIEW (Per Section 7 of the Endangered Species Act):** A copy of this notice is being furnished to the USFWS for their review. Per this

notification, we request comments from the USFWS concerning potential impacts to threatened and/or endangered species. Initiation of formal consultation procedures with the USFWS is not planned at this time.

**HISTORIC AND CULTURAL RESOURCES:** A Phase I cultural resource survey was conducted on behalf of the applicant for the proposed mining operation. The report found no evidence of prehistoric or historic sites within the permit area. Based on the review of the permit application, it is the finding of the Corps that no historic properties listed in or eligible for listing in the National Register of Historic Places would be affected by this project. A copy of this notice is being sent to the office of the State Historic Preservation Officer for review.

**ADDITIONAL INFORMATION:** The mining operation is subject to the Surface Mining Control and Reclamation Act (SMCRA) which was enacted by Congress in 1977 to provide a comprehensive program to regulate surface coal mining and reclamation operations. For the purposes of SMCRA, the applicant has described the operation as a 515.3 acres mining site. KDNR is responsible for evaluating applications, including mining and reclamation plans, and issues permits to ensure that all surface coal mining operations in Kentucky meet the performance standards for environmental and public protection and reclamation required under SMCRA. A copy of this notice is being furnished to the KDNR.

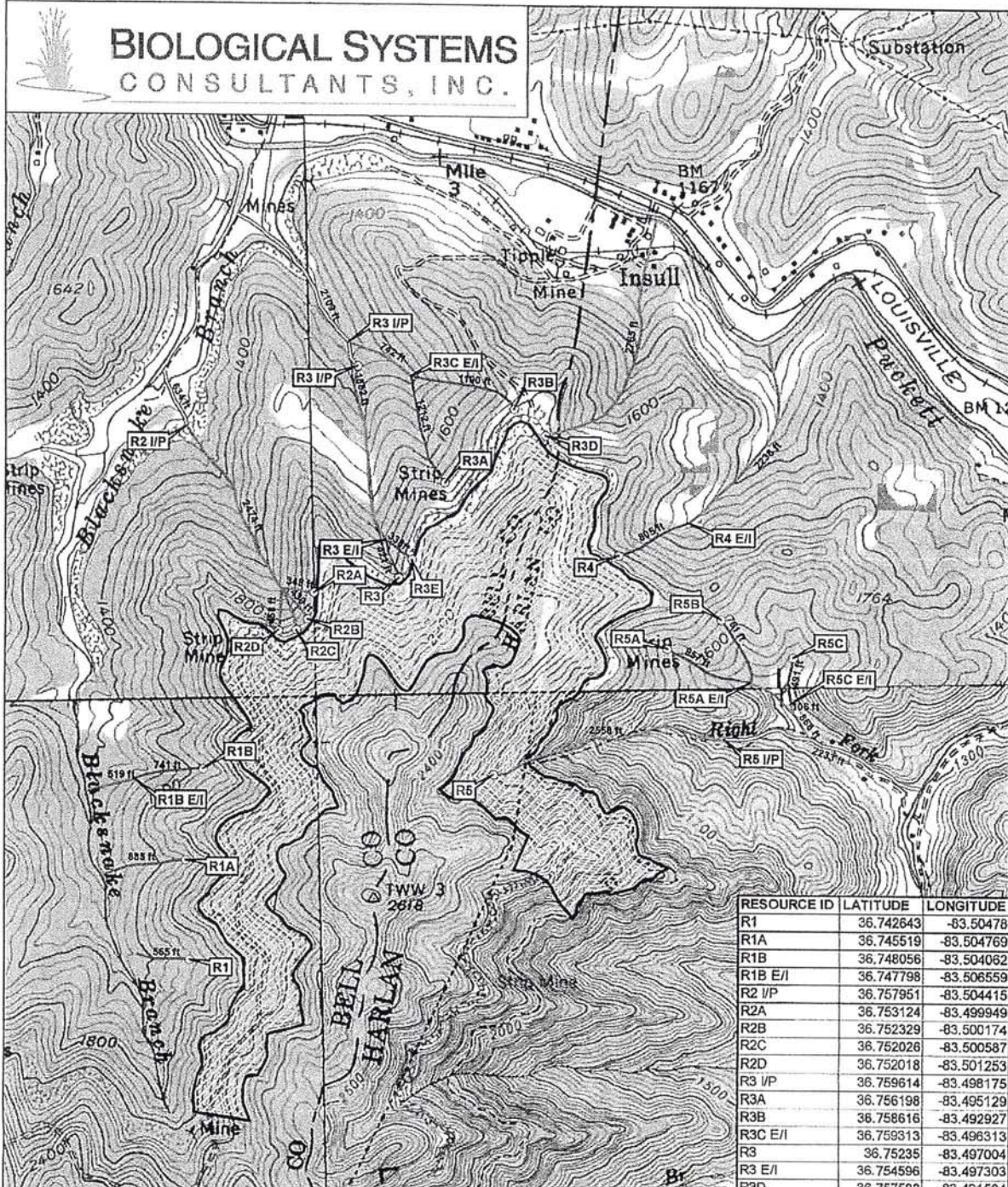
Sections 401 and 402 of CWA programs also apply to surface coal mining activities where these activities may impact the chemical, physical, and biological integrity of the nation's waters. Section 401 provides states with the authority to review and either deny or grant certification for any activities requiring a Federal permit or license, to ensure that they will not violate applicable state water quality standards. The applicant is requesting Section 401 certification for the surface coal mining activities. Section 402 regulates point source discharges of pollutants into WOUS under the Kentucky Pollutant Discharge Elimination System (KPDES) program. The applicant is requesting Section 401 certification the operation.

**CLOSE OF COMMENT PERIOD:** Written statements received by January 19, 2012, will become a part of the record and considered in the determination. Any response should be directed to the Regulatory Branch, Attention: Mr. Forrest McDaniel, at the above address or at [forrest.e.mcdaniel@usace.army.mil](mailto:forrest.e.mcdaniel@usace.army.mil). Mr. McDaniel can also be contacted at (615) 369-7511.

*Tammy R. Fudge*

Tammy R. Fudge  
Chief, Eastern Regulatory Section  
Nashville District  
Corps of Engineers

**BIOLOGICAL SYSTEMS  
CONSULTANTS, INC.**



File No. LRN-2010-0224 JD Map  
Nally and Hamilton Enterprises Inc.  
Sheet 1-9, Public Notice # 11-48

RESOURCE ID	LATITUDE	LONGITUDE
R1	36.742643	-83.50478
R1A	36.745519	-83.504769
R1B	36.748056	-83.504062
R1B E/I	36.747798	-83.506559
R2 I/P	36.757951	-83.504415
R2A	36.753124	-83.499949
R2B	36.752329	-83.500174
R2C	36.752026	-83.500587
R2D	36.752018	-83.501253
R3 I/P	36.759614	-83.498175
R3A	36.756198	-83.495129
R3B	36.758616	-83.492927
R3C E/I	36.759313	-83.496313
R3	36.75235	-83.497004
R3 E/I	36.754596	-83.497303
R3D	36.757522	-83.491504
R3E	36.754022	-83.496397
R4	36.754034	-83.488964
R4 E/I	36.754992	-83.486494
R5	36.747736	-83.493622
R5 I/P	36.7486	-83.4785344
R5A	36.751303	-83.487331
R5 E/I	36.750226	-83.484363
R5B	36.752124	-83.485394
R5C	36.750964	-83.482762
R5C E/I	36.749625	-83.482892

**Legend**

- End of Jurisdiction/Reach (R#)
- RPW
- RPW-S
- NRPW
- Uplands
- Permit Boundary

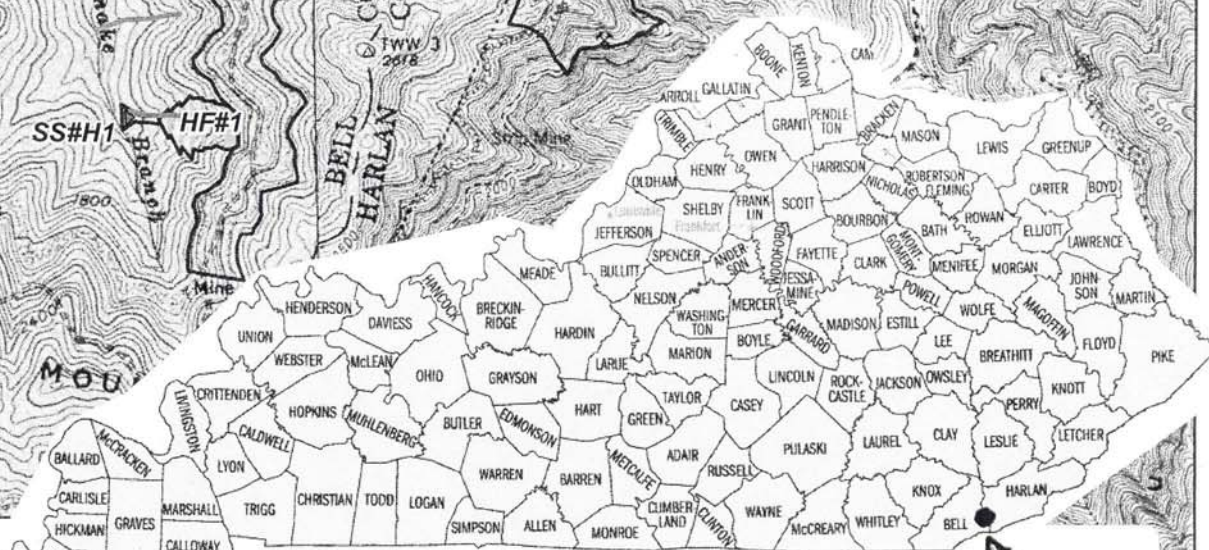
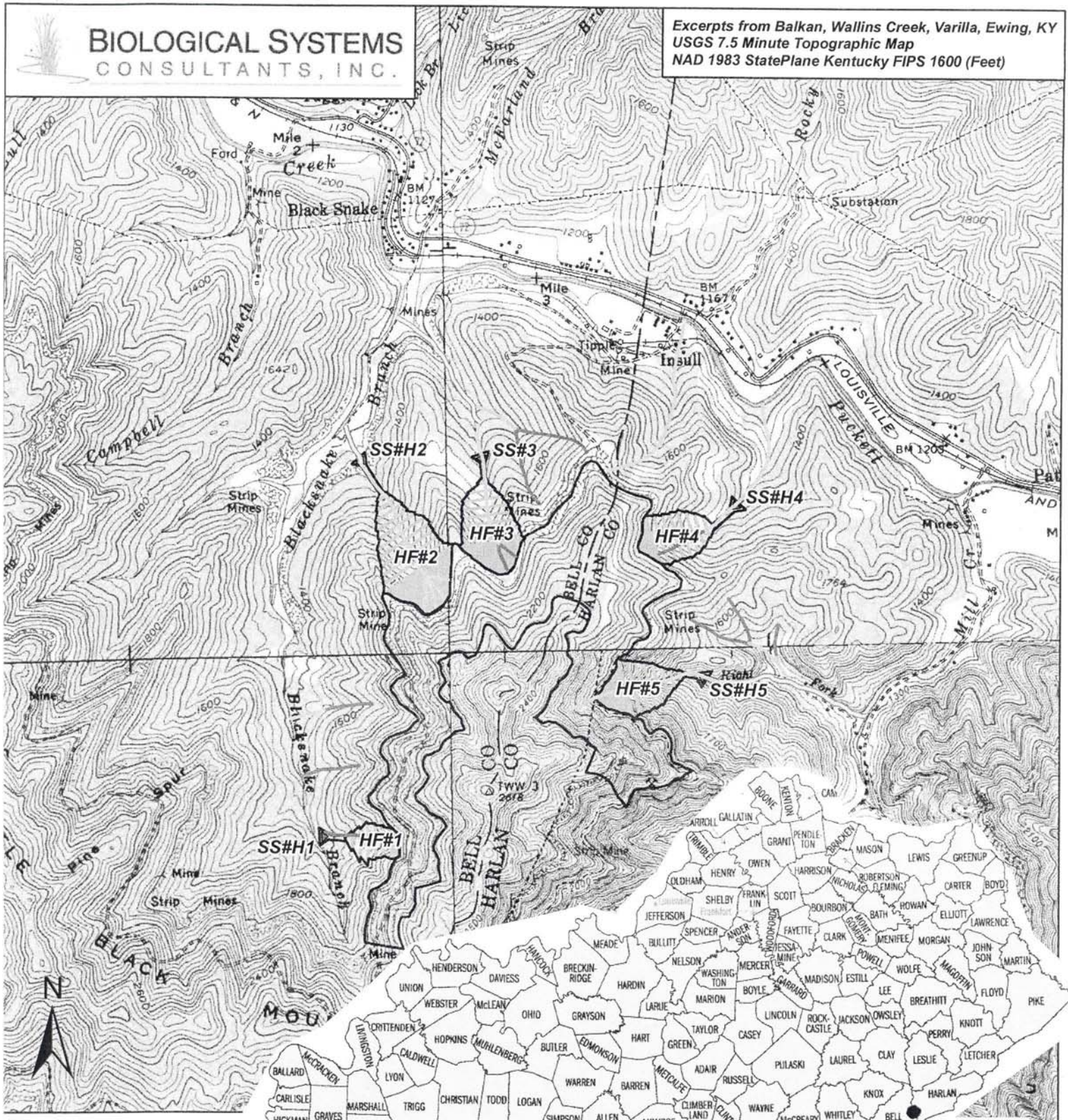
1 inch = 1,000 feet

DISCLAIMER: Findings based on current USACE interpretations.  
Excerpt from Balkan, Wallins Creek, Varilla, Ewing, KY  
USGS 7.5' Topographic Map  
NAD 1983 StatePlane Kentucky FIPS 1600 (Feet)

0 500 1,000 2,000 Feet

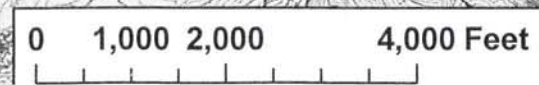
DRAWING NAME: Figure 1 - JD Map  
CLIENT: Nally & Hamilton Enterprises, Inc.  
KDN# 807-0384  
LRN-2010-0224  
PROJECT#: 21053  
DRAWN BY: ARB CHECKED BY: JRR  
DATE: 7/22/10  
SCALE: 1:12,000

A



**Legend**

- RPW (Perennial)
- RPW:S (Intermittent)
- NRPW (Ephemeral)
- Permit Boundary
- Proposed Ponds
- Proposed Hollowfills



File No. LRN-2010-0224 SITE MAP  
Nally and Hamilton Enterprises Inc.  
Sheet 2-9, Public Notice # 11-48



**DRAWING NAME:** Public Notice Map  
**CLIENT:** Nally & Hamilton Enterprises, Inc.  
**KDNR#:** 807-0384  
**PROJECT#:** 21053  
**DRAWN BY:** ARB **CHECKED BY:** JBR  
**DATE:** 12/2/2011

As illustrated on the following table the proposed impacts include 10,138 linear feet of ephemeral, intermittent and perennial stream. Proposed impacts include one (1) mine through area, five (5) spoil storage areas, and five (5) embankment ponds. Temporary impacts to ponds, corridors, and mine areas include: 263 linear feet of ephemeral stream, 2,034 feet of intermittent stream, and 80 linear feet of perennial streams. Permanent impacts include: 1,803 linear feet of ephemeral stream, and 5,958 linear feet of intermittent stream. In total, the impact areas include 80 linear feet of perennial stream, 7,992 linear feet of intermittent, and 2,066 linear feet of ephemeral stream for a total of 10,138 linear feet of impact to "waters of the U.S.". The impacts are proposed to occur shortly after the issuance of the section 404 permit.

**Table 1. Impact Name, Flow Regime, Linear Feet, EIUs, RBP Score, Conductivity, and Flow Regime Totals; Harlan County, KY; Bell County, KY**

Impact Name	Flow Regime	Linear Feet	EIUs	RBP Score	EII Score	Conductivity	Total Ephemeral	Total Intermittent	Total Perennial
HF#1	EPHEMERAL	239	76.48	106	.32	338	239		
SS#H1	EPHEMERAL	263	84.16	106	.32	338	263		
HF#2	INTERMITTENT	3295	1449.8	121	.44	304		3295	
DC#2	INTERMITTENT	191	63.03	84	.33	304		191	
SS#H2	INTERMITTENT	233	76.89	84	.33	304		233	
SS#H2	PERENNIAL	80	26.4	84	.33	304			80
HF#3	EPHEMERAL	759	341.55	122	0.45	300	759		
HF#3	INTERMITTENT	1030	463.5	122	0.45	300		1030	
SS#H3	INTERMITTENT	430	193.5	122	0.45	300		430	
HF#4	EPHEMERAL	805	442.75	94	.55	100	805		
HF#4	INTERMITTENT	137	75.35	94	.55	100		137	
SS#H4	INTERMITTENT	380	209	94	.55	100		380	
Mine Area #1 (Above HF5)	INTERMITTENT	400	240	109	.60	112		400	
HF#5	INTERMITTENT	1496	897.6	109	.60	112		1496	
SS#H5	INTERMITTENT	400	220	94	.55	99		400	
<b>TOTAL</b>		<b>10,138</b>	<b>4,860.01</b>				<b>2,066</b>	<b>7,992</b>	<b>80</b>

Hollow Fills (HF)  
 Sediment System - Pond (SS)  
 Drainage Corridor (DC)

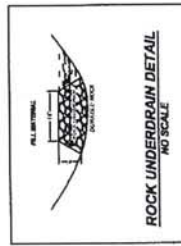
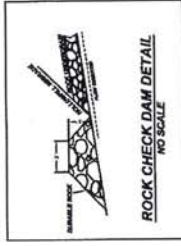
**TAB 9: COMPENSATORY MITIGATION PLAN**  
 LRN-2010-00224

It is projected that ephemeral relocation mine area restoration and enhancements will be performed in 2012, dependent upon the progress of the operation and USACE authorization dates. The pond and corridor restorations will be conducted as soon as the ponds are removed as authorized by KDNR (approximately 7 years).

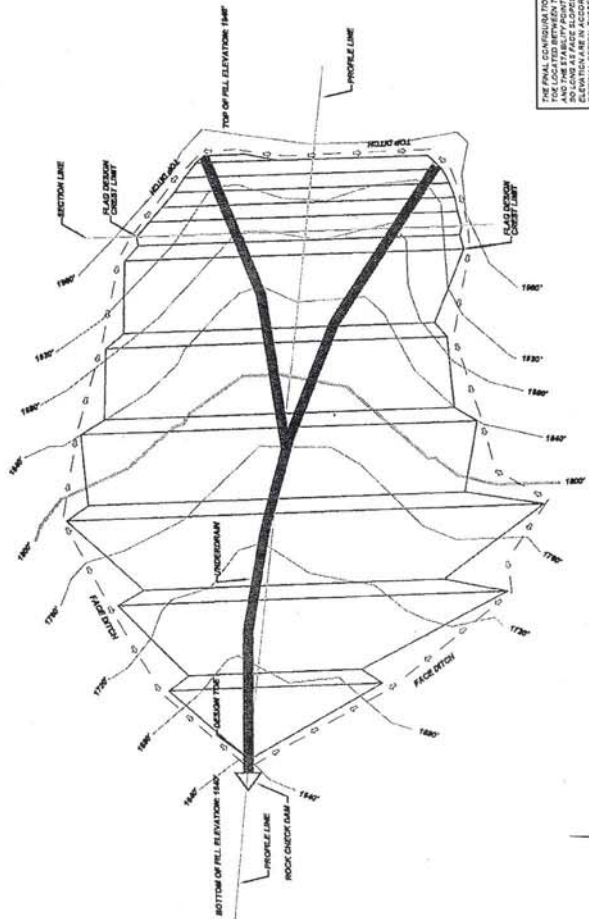
Table 9.2 Length, flow regime, specific conductivity, Ecological Integrity Index (EII), and Ecological Integrity Units (EIUs) for Overall Impacts Compared to On-Site Mitigation										
Impact	Impact Length	Flow-regime	Existing EII	Existing EIU	EIU Lost*	On-site Mitigation Length	EII 5 YRS	EII Mature Mitigation	EIU 5 YRS After	Mature EIU
Pond H1	263	Ephemeral	0.32	84.16	57.86	263	0.16	0.28	42.08	73.64
HF1	239	Ephemeral	0.32	76.48	76.48	1108	0.29	0.30	321.32	332.4
Pond H2	233	Intermittent	0.33	76.89	53.59	233	0.26	0.42	60.58	97.86
Pond H2	80	Perennial	0.33	26.4	18.4	80	0.26	0.42	20.8	33.6
DC#2	191	Intermittent	0.33	63.03	43.93	191	0.26	0.42	49.66	80.22
HF#2	3,295	Intermittent	0.44	1449.8	1449.8	N/A				
Pond H3	430	Intermittent	0.45	193.5	150.5	430	0.26	0.42	111.8	180.6
HF3	759	Ephemeral	0.45	341.55	341.55	992	0.34	0.35	337.28	347.2
HF3	1,030	Intermittent	0.45	463.5	463.5	N/A				
Pond H4	380	Intermittent	0.55	209	171	380	0.26	0.42	98.8	159.6
HF4	805	Ephemeral	0.55	442.75	442.75	1163	0.34	0.35	395.42	407.05
HF4	137	Intermittent	0.55	75.35	75.35	N/A				
Pond H5	400	Intermittent	0.55	220	180	400	0.26	0.42	104	168
HF5	1,496	Intermittent	0.60	897.6	897.6	N/A				
Mine Area 1	400	Intermittent	0.60	240	240	400	0.26	0.42	104	168
<b>TOTAL</b>	<b>10,138</b>			<b>4,860.01</b>	<b>4,662.31</b>	<b>5,640</b>			<b>1,645.74</b>	<b>2,048.17</b>

\*Ponds and Corridors are considered to retain a post-impact score of 0.1

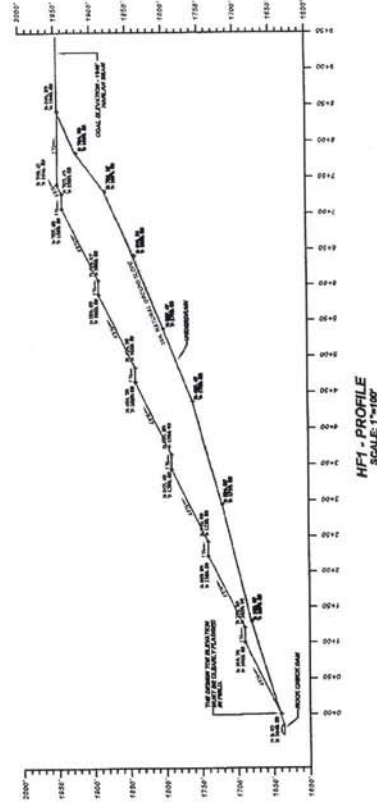
File No. LRN-2010-0224 HF #1  
 Nally and Hamilton Enterprises Inc.  
 Sheet 5-9, Public Notice # 11-48



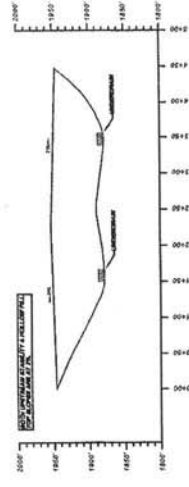
**NALLY & HAMILTON ENTERPRISES**  
 JACKSON MOUNTAIN #3  
 PERMIT# 807-0384  
**HF #1**



HF1 - PLAN VIEW  
 SCALE: 1"=100'



HF1 - PROFILE  
 SCALE: 1"=100'



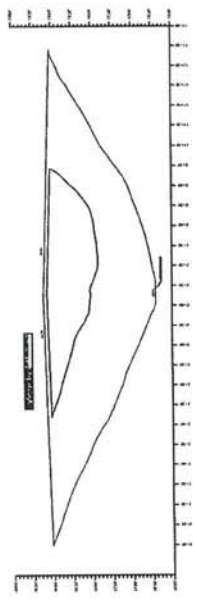
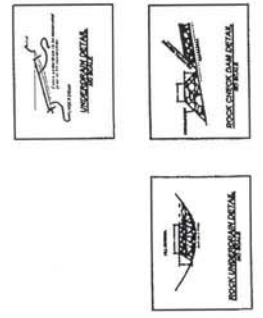
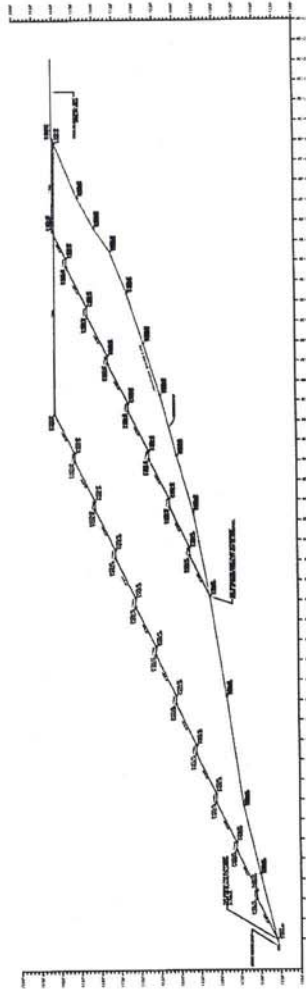
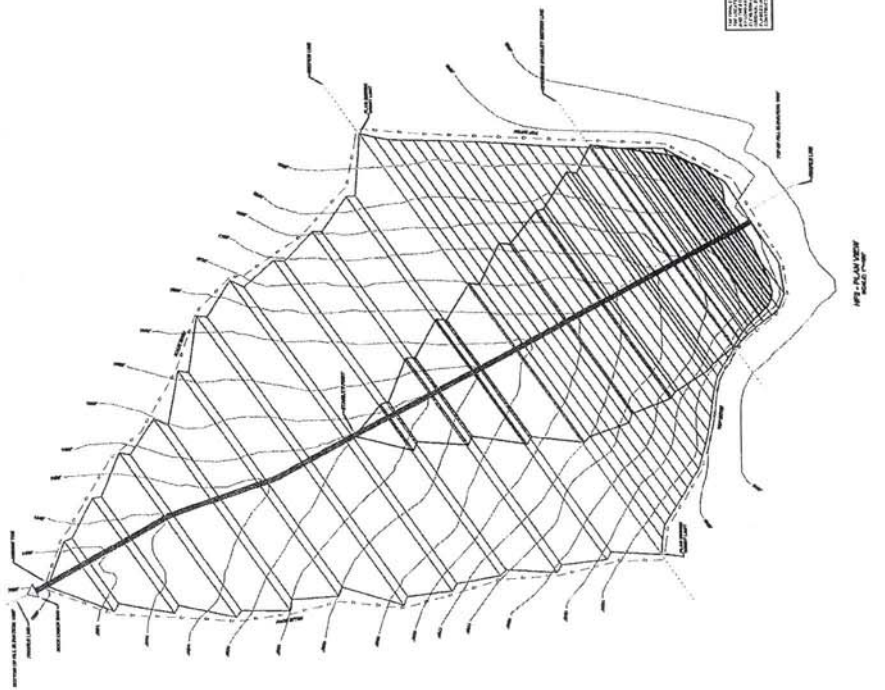
HF1 - CROSS SECTION  
 SCALE: 1"=100'

THE FINAL CONSTRUCTION WITH THE  
 ORIGINAL DESIGN AND ELEVATIONS  
 AND THE STABILITY IS ACCEPTABLE  
 AND THE STABILITY IS ACCEPTABLE  
 ORIGINAL DESIGN AND ELEVATIONS  
 ELEVATIONS ARE IN ACCORDANCE WITH THE  
 ORIGINAL DESIGN AND ELEVATIONS  
 CONSTRUCTION.

File No. LRN-2010-0224 HF #2  
Nally and Hamilton Enterprises Inc.  
Sheet 6-9, Public Notice # 11-48

NALLY & HAMILTON ENTERPRISES  
JACKSON MOUNTAIN #2  
POWER PROJECT

HF #2



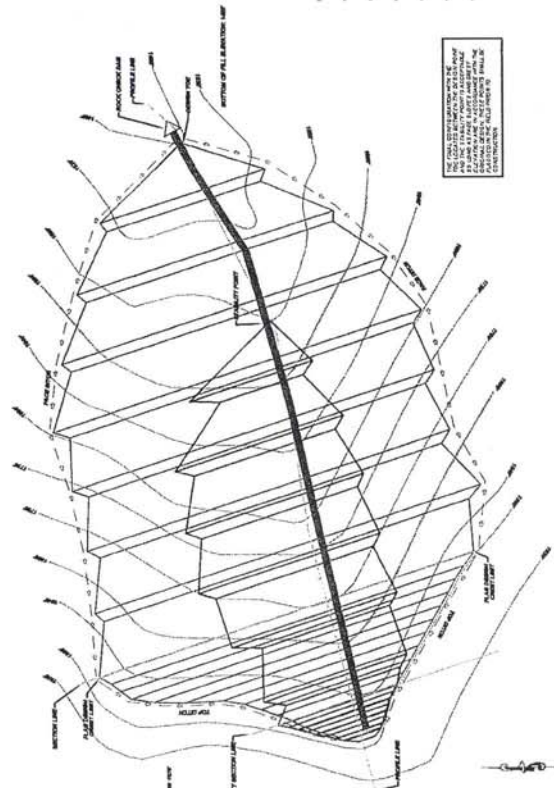
NOTES:  
1. ALL DIMENSIONS ARE IN FEET AND INCHES.  
2. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.



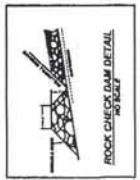
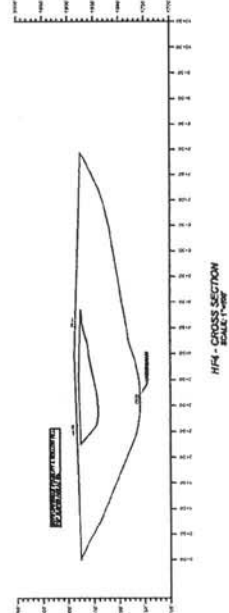
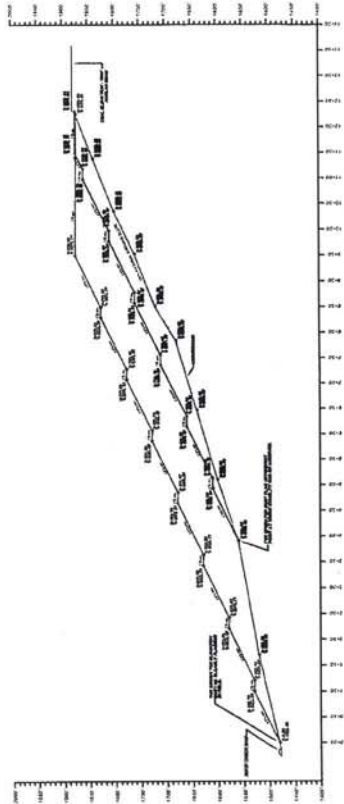
File No. LRN-2010-0224 HF #4  
 Nally and Hamilton Enterprises Inc.  
 Sheet 8-9, Public Notice # 11-48

NALLY & HAMILTON ENTERPRISES  
 JACKSON MOUNTAIN #3  
 PERMITS #07-038

HF #4



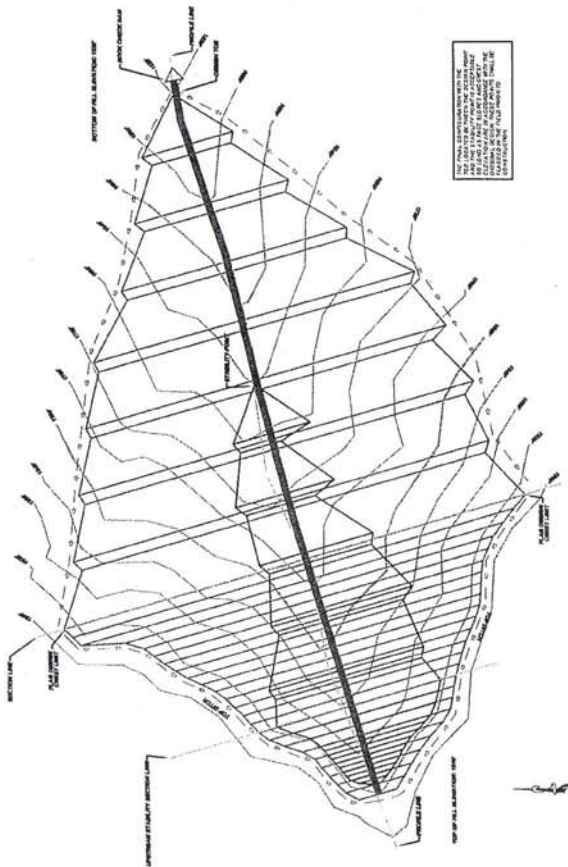
THE LOCATION OF THE DAM IS SHOWN IN THE PLAN VIEW. THE DAM IS A GRAVITY DAM WITH A ROCK CHECK DAM AND A ROCK UNDERDRAIN DAM. THE DAM IS LOCATED IN THE MOUNTAIN AREA. THE DAM IS A GRAVITY DAM WITH A ROCK CHECK DAM AND A ROCK UNDERDRAIN DAM.



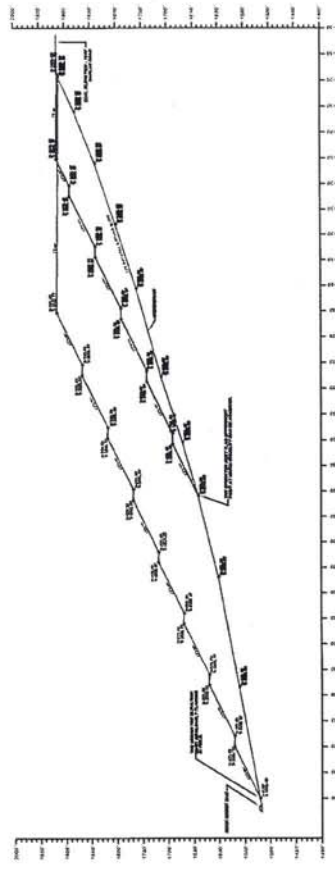
File No. LRN-2010-0224 HF #5  
 Nally and Hamilton Enterprises Inc.  
 Sheet 9-9, Public Notice # 11-48

NALLY & HAMILTON ENTERPRISES  
 JACKSON MOUNTAIN #3  
 PROJECT #07-034

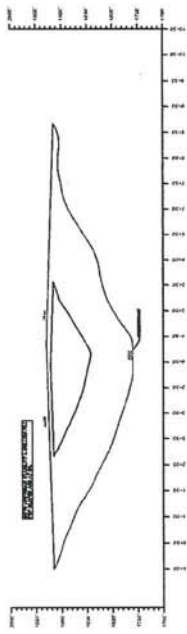
HF # 5



HFS - PLAN VIEW  
 SCALE 1"=100'



HFS - PROFILE  
 SCALE 1"=100'



HFS - CROSS SECTION  
 SCALE 1"=100'

