



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS - MOBILE DISTRICT  
BIRMINGHAM FIELD OFFICE  
218 SUMMIT PARKWAY, SUITE 222  
HOMEWOOD, ALABAMA 35209

July 31, 2012

Inland Section North  
Regulatory Division

SUBJECT: Nationwide Permit Authorization - Permit Number SAM-2012-00143-CMS, Best Coal, Inc.,  
Narley Mine Revision R-8

Best Coal, Inc.  
c/o McGehee Engineering  
Attention: Mr. Stephen Blankenship  
Post Office Box 3431  
Jasper, Alabama 35502-3431

Dear Mr. Blankenship:

This letter is in response to your submittal dated July 20, 2012 requesting a re-verification pursuant to Nationwide Permit (NWP) 21(a), including a mitigation modification request, associated with the Narley Mine Revision R-8. The project is located in Section 24, Township 15 South, Range 4 West in Jefferson County, Alabama (N 33.706778, W 86.905490).

Department of the Army authorization is necessary because your project will involve the placement of fill material into jurisdictional waters of the United States, regulated under Section 404 of the Clean Water Act. Project impacts include 2,995 linear feet of intermittent streams (0.165 acre) and 1,570 linear feet of ephemeral streams (0.046 acre), for a total impact of 4,565 linear feet of stream (0.21 acre).

Your submittal requests a re-verification pursuant to 2012 NWP 21(a). The work was previously authorized under the 2007 NWP 21 (Federal Register, March 12, 2007 Vol. 72, No. 47). As such, we hereby verify that the work associated with Narley Mine Revision R-8, which would be performed in accordance with the received drawings, is authorized by NWP 21(a) (Federal Register, February 21, 2012, Vol. 77, No. 34). In order for this NWP authorization to be valid, you must ensure that the work is performed in accordance with the General Conditions of Nationwide Permit 21, which can be viewed at our website at [www.sam.usace.army.mil/RD/reg](http://www.sam.usace.army.mil/RD/reg), and the special conditions listed below.

a. The permittee shall purchase 0.086 wetland credits (0.058 credits required x 1.49 proximity factor) from Big Sandy Mitigation Bank for the ephemeral stream impacts. Proof of credit purchase must be received by this office prior to commencing work in waters of the United States.

b. The permittee shall implement the Mitigation Plan dated July 20, 2012. The mitigation will consist of constructing at least 1,995 lf of intermittent stream on-site, including planting of 50-foot buffers, as compensatory mitigation for the impacts to intermittent streams. This construction shall generate no less than 11,508 stream SOP credits. Notice shall be made to the Corps when mitigation activities begin and when final construction of restored streams and buffers is complete (initial mitigation report). As-built drawings should be included in the initial mitigation report. Mitigation monitoring reports will be due annually for 5 years from the date of the initial mitigation report. All reports must be submitted to the

U.S. Army Corps of Engineers, Mobile District, Regulatory Division and must prominently display the reference number SAM-2012-00143-CMS.

c. The on-site mitigation areas shall be preserved using the Mobile District's restrictive covenant. A copy of the filed restrictive covenant shall be provided with the initial mitigation report.

d. You shall comply with all the terms and conditions of the Alabama Department of Environmental Management Section 401 Water Quality Certifications for the Nationwide Permits. This document can be viewed at our website: [www.sam.usace.army.mil/rd/reg/nwp/htm](http://www.sam.usace.army.mil/rd/reg/nwp/htm) for you review and compliance, or at your request a paper copy will be provided to you.

e. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition "b", will not be considered fulfilled until you have demonstrated compensatory mitigation project success for 5 consecutive years and have received written verification of that success from the U.S. Army Corps of Engineers.

f. The permittee shall prepare a performance bond before commencing mining activities. The bond shall be submitted to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division for approval prior to being executed. The bond shall be posted before construction authorized by this permit begins. The bonding will be based on the financial assurance table in your July 20, 2012 submittal.

Our verification of this NWP authorization is valid until March 18, 2017 unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date, please contact us to discuss the status of your authorization. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act.

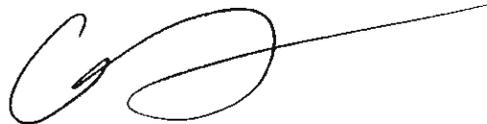
This letter of authorization does not obviate the necessity to obtain any other Federal, State, or local permits, which may be required. Further, please note General Condition 26 requires that you submit a signed certification to us once any work has commenced and when the work and required mitigation are completed. Please complete and submit the attached Notification of Commencement of Work when work has begun and the attached Compliance Certification form to this office within 60 days of completion of the authorized work.

A copy of the preliminary jurisdictional form is enclosed. Please be advised that this jurisdictional determination reflects current policy and is valid for a period of 5 years after the date on the form. If after a 5-year period this jurisdictional determination has not been specifically revalidated by the U.S. Army Corps of Engineers, it shall automatically expire. Should you disagree with certain terms and/or conditions of this determination, the enclosed Appeal Form outlines the steps to take to file your objection.

A copy of this authorization is being provided to the Alabama Department of Environmental Management, Attention: Mr. Richard Hulcher, Field Operations Division, 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

Please contact me at 205-290-9096 and refer to File Number SAM-2012-00143-CMS if you have any questions. For additional information about our Regulatory Program, visit our web site at [www.sam.usace.army.mil/RD/rcg](http://www.sam.usace.army.mil/RD/rcg), and please take a moment to complete our customer satisfaction survey while you are there. Your responses are appreciated and will allow us to improve our services.

Sincerely,

A handwritten signature in black ink, appearing to read 'CS', with a long horizontal line extending to the right.

Courtney Shea  
Project Manager  
Regulatory Division  
Birmingham Field Office

Enclosures



US Army Corps of Engineers  
Mobile District

**NOTIFICATION OF COMMENCEMENT OF WORK**

Permit Number: SAM-2012-00143-CMS

Name of Permittee: Best Coal, Inc.

Date of Permit Issuance: July 31, 2012

Location of the Work: Jefferson County, AL

**Upon commencement of the authorized work and any mitigation required by the permit, you must complete and return this notification to the following address:**

**U.S. Army Corps of Engineers, Mobile District  
Regulatory Division (RD-I-N)  
218 Summit Pkwy, Suite 222  
Homewood, AL 35209**

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with all terms and conditions of this permit the permit is subject to permit suspension, modification, or revocation and you are subject to an enforcement action by this office.

IT SHALL NOT BE LAWFUL TO DEVIATE FROM SUCH PLANS EITHER BEFORE OR AFTER COMPLETION OF THE WORK, unless modification of said plans has previously been submitted to and received the approval of the Department of the Army. If for any reason it becomes necessary to make a material change in location or plans for this work, revised plans should be submitted promptly to the District Engineer in order that the revised plans may receive the approval required by law before work is begun.

**PERMITTEE TO COMPLETE THE FOLLOWING:**

Date Work Commenced: \_\_\_\_\_

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date



US Army Corps of Engineers  
Mobile District

**SELF-CERTIFICATION - STATEMENT OF COMPLIANCE**

Permit Number: SAM-2012-00143-CMS

Name of Permittee: Best Coal, Inc.

Date of Permit Issuance: July 31, 2012

Location of the Work: Jefferson County, AL

**Upon completion of the activity authorized by this permit and any mitigation required by the permit, you must complete and return this certification to the following address:**

**U.S. Army Corps of Engineers, Mobile District  
Regulatory Division (RD-I-N)  
218 Summit Pkwy, Suite 222  
Homewood, AL 35209**

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with all terms and conditions of this permit the permit is subject to permit suspension, modification, or revocation and you are subject to an enforcement action by this office.

**PERMITTEE TO COMPLETE THE FOLLOWING:**

Date Work Completed: \_\_\_\_\_

I hereby certify that the work authorized by the above-referenced permit has been completed in accordance with the permit authorization, including all general and/or special conditions of the said permit, and the required mitigation (if applicable) was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Best Coal, Inc.		File Number: SAM-2012-00143-CMS	Date: 7/31/12
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
	APPROVED JURISDICTIONAL DETERMINATION		D
X	PRELIMINARY JURISDICTIONAL DETERMINATION		E

**SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/CECW/Pages/reg\\_materials.aspx](http://www.usace.army.mil/CECW/Pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.**

**A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.**

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT: You may accept or appeal the permit**

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.**

**D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.**

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.**

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:  
USACE Mobile District – Birmingham Field Office  
218 Summit Parkway, Suite 222  
Homewood, Alabama 35209

If you only have questions regarding the appeal process you may also contact:  
Jason Steele  
Administrative Appeals Review Officer  
60 Forsyth Street, SW (Room 9M10)  
Atlanta, GA 30303-8801  
404-562-5137

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 7/27/12**

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

Best Coal, Inc.  
Attention: Mr. Otis Robison  
2361 Cumberland Lake Drive  
Pinson, AL 35126

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESAM-RD-I-N, Narley Mine Revision R-8, SAM-2012-00143-CMS**

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:** There is an existing JD dated 2/15/12 that includes WFP 1, 2, 3, 4A, 7, and 8. This JD is for WFP 4B only, which was added to the project area.

**(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)**

State:AL County/parish/borough: Jefferson City: Birmingham  
Center coordinates of site (lat/long in degree decimal format): Lat. 33.716778°  
**Pick List**, Long. -86.905490° **Pick List**.

Universal Transverse Mercator:

Name of nearest waterbody: Trouble Creek, a tributary of Locust Fork

Identify (estimate) amount of waters in the review area:

Non-wetland waters: 600 lf linear feet: 1 width (ft) and/or 0.014 acres .

Cowardin Class: riverine

Stream Flow: ephemeral

Wetlands: 0 acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date:

Field Determination. Date(s): 6/14/12 (Corps)

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit

applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply -**

checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant:
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
  - USGS NHD data.

- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Brookside Quad.
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): 2011.  
or  Other (Name & Date): site photos 6/14/12.
- Previous determination(s). File no. and date of response letter:
- Other information (please specify):

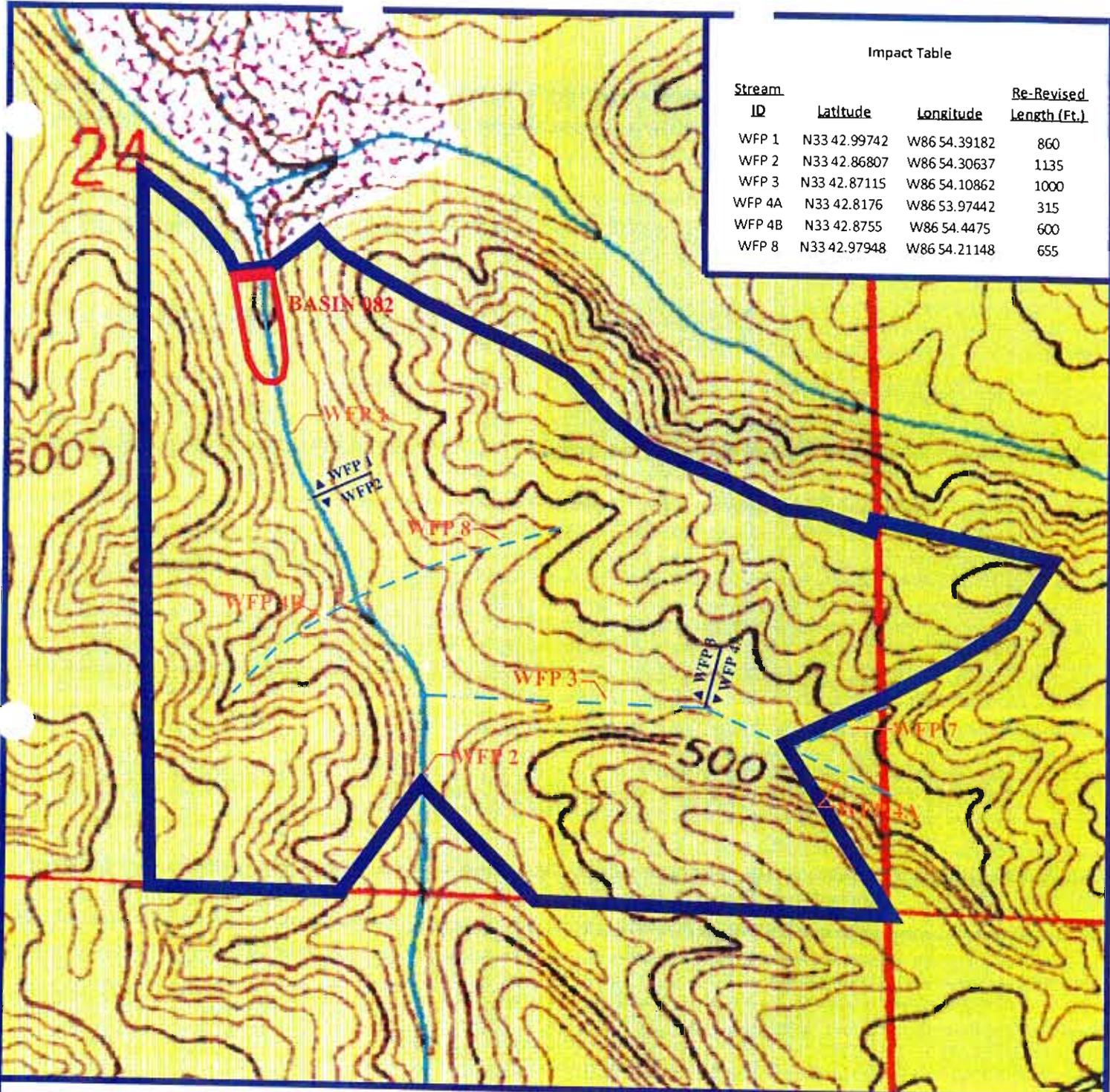
**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

 7/27/12  
 \_\_\_\_\_  
 Signature and date of  
 Regulatory Project Manager  
 (REQUIRED)

\_\_\_\_\_  
 Signature and date of  
 person requesting preliminary JD  
 (REQUIRED, unless obtaining the  
 signature is impracticable)

SAM-2012-00143-CMS Narley Mine Revision R-8, Best Coal

<b>Site number</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Cowardin Class</b>	<b>Estimated amount of aquatic resource in review area</b>	<b>Class of aquatic resource</b>
WFP4B	33.714658	-86.907306	Riverine ephemeral	600 linear feet	Non-section 10, non-wetland



Impact Table			
Stream ID	Latitude	Longitude	Re-Revised Length (Ft.)
WFP 1	N33 42.99742	W86 54.39182	860
WFP 2	N33 42.86807	W86 54.30637	1135
WFP 3	N33 42.87115	W86 54.10862	1000
WFP 4A	N33 42.8176	W86 53.97442	315
WFP 4B	N33 42.8755	W86 54.4475	600
WFP 8	N33 42.97948	W86 54.21148	655

SCALE: 1" = 500'

**BEST COAL, INC.**  
**NARLEY MINE**  
 (APPROXIMATELY 121 ACRES TOTAL)  
*SAM-2012-00143-CMS*  
**JURISDICTIONAL IMPACT MAP**  
 SAM-2012-00143-CMS



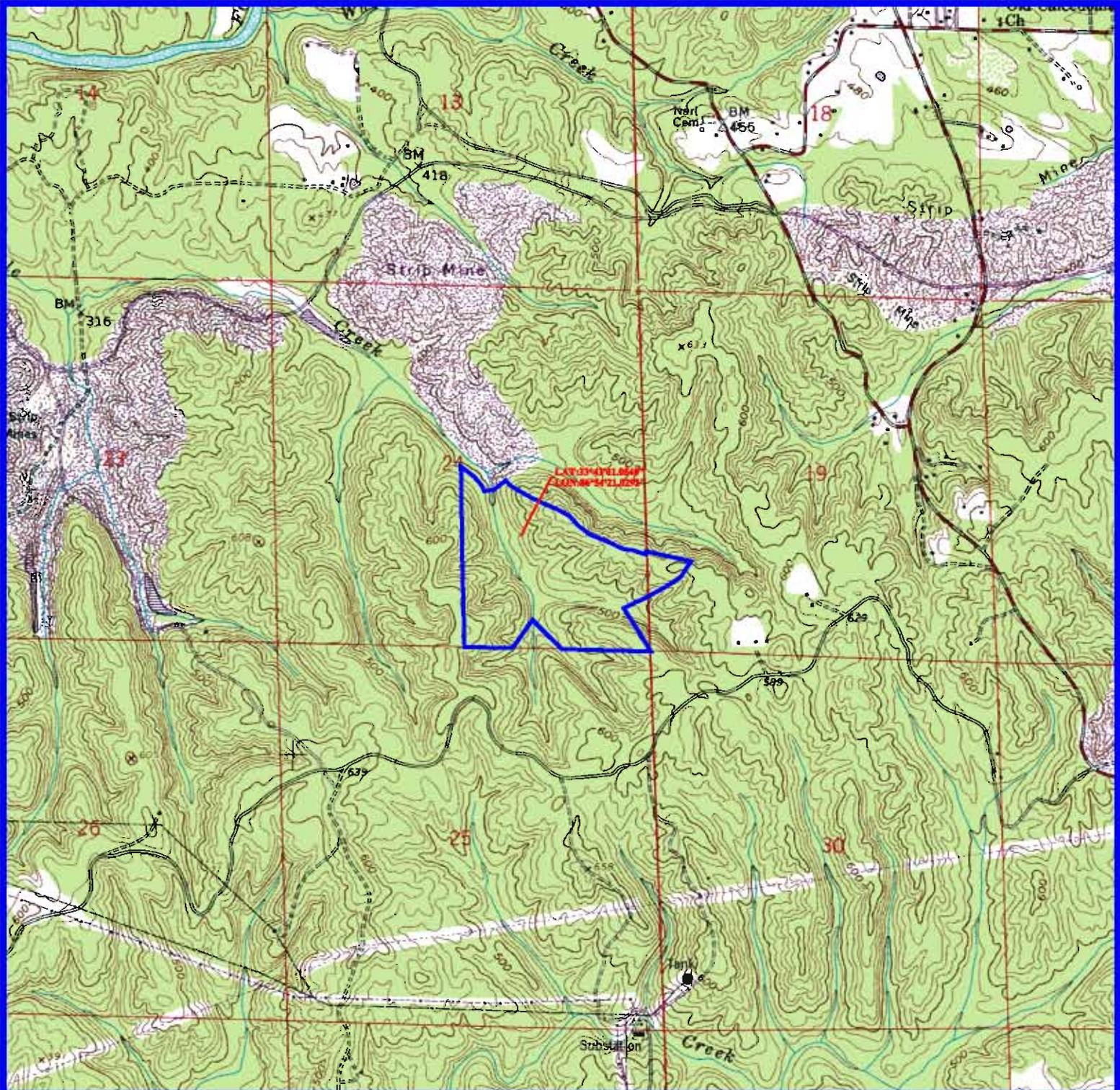
SECTION 24, TOWNSHIP 15 SOUTH, RANGE 4 WEST  
 SECTION 19, TOWNSHIP 15 SOUTH, RANGE 3 WEST  
 ALL IN JEFFERSON COUNTY, ALABAMA  
 AS FOUND ON THE BROOKSIDE, AL. USGS QUAD.

**MEC**  
**mcgehee engineering corp**  
 post office box 3431  
 jasper, alabama 35502-3431  
 telephone: (205) 221-0686 fax: 221-7721  
 email: slatt@mcgehee.org

- REVISION R-8 PROJECT BOUNDARY
- EPHEMERAL DRAIN
- INTERMITTENT DRAIN
- STREAM CHANGE INDICATOR
- STREAM ID
- BASIN LOCATION

*CMS* 7/31/12

Latitude: 33°43'01" N  
 Longitude: 86°54'21" W



SCALE: 1" = 2000'

**BEST COAL, INC.**  
**NARLEY MINE**  
 (APPROXIMATELY 121 ACRES TOTAL)



**PROJECT AREA MAP**

**SECTION 24, TOWNSHIP 15 SOUTH, RANGE 4 WEST**  
**SECTION 19, TOWNSHIP 15 SOUTH, RANGE 3 WEST**  
**ALL IN JEFFERSON COUNTY, ALABAMA**  
**AS FOUND ON THE BROOKSIDE, AL. USGS QUAD.**

 **REVISION R-8 PROJECT BOUNDARY**

**Latitude: 33°43'01" N**  
**Longitude: 86°54'21" W**

**MEC**  
**mcgehee engineering corp**  
 post office box 3431  
 Jasper, Alabama 35502-3431  
 telephone: (205) 221-0888 fax: 221-7721  
 email: staff@mcgehee.org