



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, 2013

North Branch
Regulatory Division

**SUBJECT: Nationwide Permit Authorization with Waiver- Permit Number SAM-2013-00374-
CHE, Cane Creek Mine Revision R-3, Cane Creek, LLC**

Cane Creek, LLC
c/o PERC Engineering
Attention: Mr. Stephen Miles
Post Office Box 1712
Jasper, Alabama 35502

Dear Mr. Miles:

This letter is in response to your July 9, 2013 application and waiver request, submitted on behalf of Cane Creek, LLC, for a Department of the Army (DA) permit to impact 440 linear feet of jurisdictional streams in association with the Cane Creek Mine Revision R-3 Project. The project is located in Section 33, Township 14 South, Range 7 West, in Walker County, Alabama (N 33.788805, W 87.270239).

DA authorization is necessary because the project will involve the placement of fill material into jurisdictional waters of the United States, regulated under Section 404 of the Clean Water Act. The project involves the placement of fill material into 220 linear feet of intermittent stream and 220 linear feet of ephemeral stream.

Based upon the Pre-Construction Notification and waiver request dated July 9, 2013, your proposal is authorized by Nationwide Permit (NWP) 21 with a waiver (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 <http://www.sam.usace.army.mil/Missions/Regulatory.aspx>, and the following special condition:

- a. To mitigate for the stream impacts, the permittee shall purchase 1,299.9 stream credits (866.6 base credits * 1.5 Proximity factor) from Big Sandy Mitigation Bank. A copy of the proof of credit purchase shall be submitted to this office prior to conducting work authorized by this letter.

This verification 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 30 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.

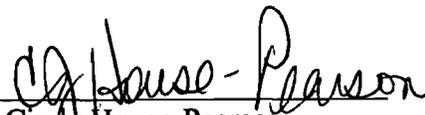
Attached to this letter is a copy of the Preliminary Jurisdictional Determination (PJD) form for the tributary identified on the project site. This PJD treats all waters of the U.S. on the site as jurisdictional for the purposes of determining impacts and mitigation requirements. The PJD is a non-binding action and shall remain in effect unless new information or a request for an approved jurisdictional determination supporting a revision is provided to this office.

Please note that since this jurisdictional determination is a preliminary, it is subject to change and therefore is not an appealable action under the Corps of Engineers administrative appeal procedures defined at 33 CFR 331.

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 or at Courtney.m.shea@usace.army.mil and refer to File Number SAM-2013-00374-CHE if you have any questions. For additional information about our Regulatory Program, visit our web site at <http://www.sam.usace.army.mil/Missions/Regulatory.aspx>, 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.

Craig Litteken
Chief, Regulatory Division

BY: 
Cindy House-Pearson
Chief, North Branch
Regulatory Division

Enclosures

SAM-2013-00374-CHE, Cane Creek Mine Revision R-3

In accordance with General Condition 29 of the Nationwide Permits, if the permittee sells the property or a permit transfer is necessary, the permittee may transfer the permit verification to the new owner by submitting a letter to our office, along with a copy of the verification letter, and the following:

When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEEE)

(DATE)

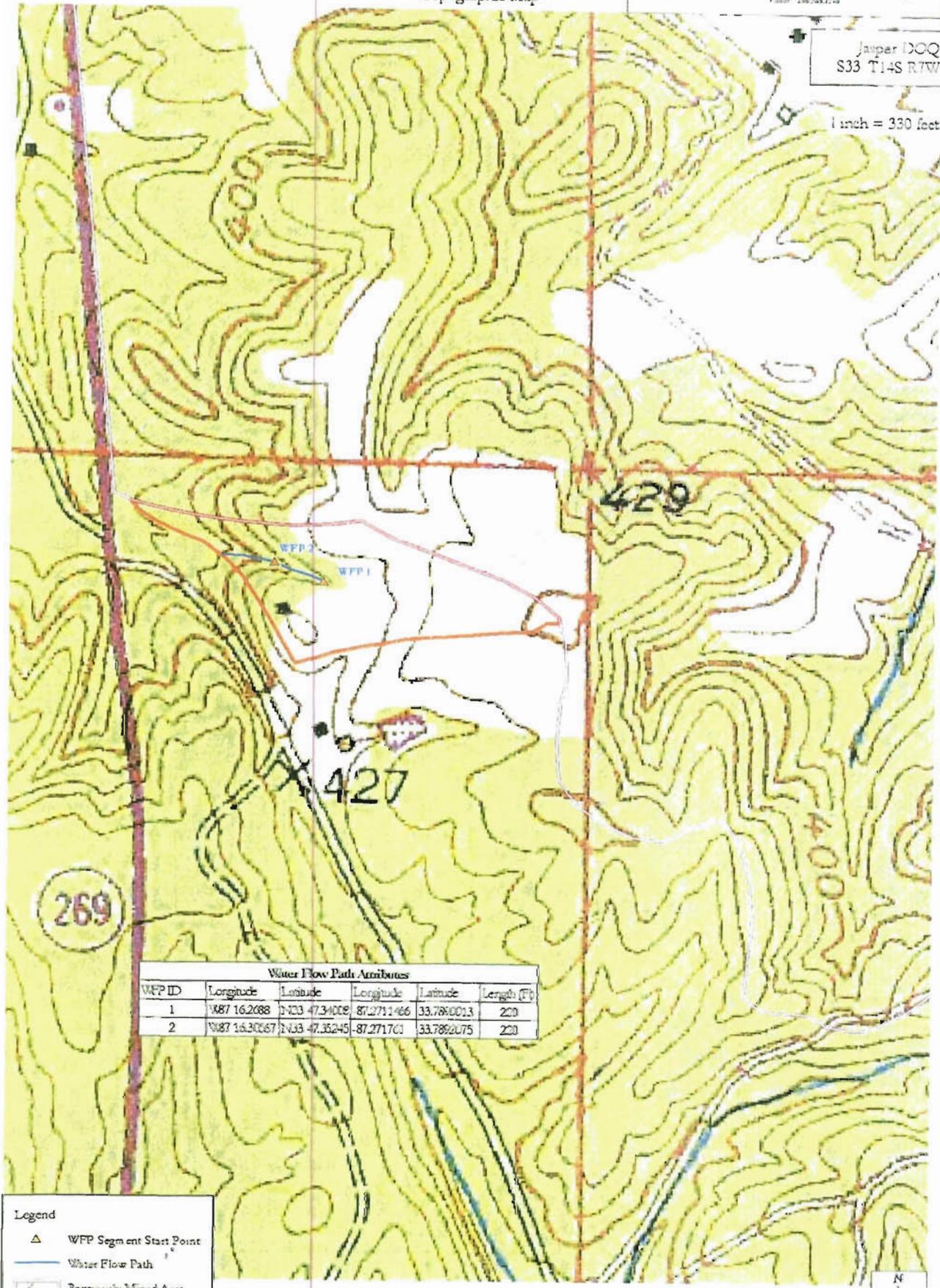
ALABAMA
Walker County
June 2013

Cane Creek, LLC.
Cane Creek Mine
P-3910 / Revision R-3
Topographic Map



Jasper DOQ
S33 T14S R17W

1 inch = 330 feet



Water Flow Path Attributes					
WFP ID	Longitude	Latitude	Longitude	Latitude	Length (ft)
1	1887 16.2088	2423 47.34009	87.2711466	33.7890013	220
2	1887 16.30667	2433 47.35245	87.271701	33.7892075	220

Legend

- WFP Segment Start Point
- Water Flow Path
- Previously Mined Area
- Permit Area



CMS

SAM 2013 00374-CHE



US Army Corps of Engineers
Mobile District

NOTIFICATION OF COMMENCEMENT OF WORK

Permit Number: SAM-2013-00374-CHE

Name of Permittee: Cane Creek, LLC

Date of Permit Issuance: July 31, 2013

Location of the Work: Walker 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-2013-00374-CHE

Name of Permittee: Cane Creek, LLC

Date of Permit Issuance: July 31, 2013

Location of the Work: Walker 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: Cane Creek, LLC	File Number: SAM-2013-00374-CHE	Date: 7/31/13
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input type="checkbox"/>	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 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:
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PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 3/26/2013

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:
Cane Creek, LLC c/o PERC Engineering, Inc. P.O. BOX 1712
Jasper, Alabama 35502

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District
Cane Creek Mine

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

State: AL County: Walker City: Jasper, Alabama

Center coordinates of site: Lat. N33° 47' 19.6967" Long. W87° 16 12.9394

Name of nearest water body: Cane Creek

Identify amount of waters in the review area (use the attached table to document multiple waterbodies/locations): See Table Below

Non-Wetland Waters: 440 linear feet / width (ft) and / acres.
Cowardin Class: R1V Stream Flow: Int + Ep

Wetlands: / acres.
Cowardin Class: /

(See sheet below)

Name of any water bodies on the site that have been identified as Section 10 waters: There are no Section 10 waters located within the project boundaries.

Tidal: / Non-Tidal: /

E. REVIEW PERFORMED FOR SITE EVALUATION

Office Determination. Date: _____
Field Determination. Date: 3/26/2013 + 4/19/13 CWR

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 - checked items should be included in the file:

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. *clb*

Data sheets prepared/submitted by or on behalf of the applicant/consultant. *scw*

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). scale 1" = 660 ft. Quad Name: Jasper, DOQ. 067

USDA Natural Resources Conservation Service Soil Survey. Walker County Soil Survey/USDS/NRCS *clb*

___ 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): Jasper 2011
or Other - Onsite photos taken 3/26/2013 *clb*

___ Previous determination(s). File No. and Date: _____

___ 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.

clb
4-22-17

Regulatory Project Manager
Signature and Date
(REQUIRED)

Person Requesting Preliminary JD
Signature and Date
(REQUIRED, unless obtaining
the signature is impracticable)

Site number	Latitude	Longitude	Cowardin Class	Estimated amount of aquatic resource in review area	Class of aquatic resource
WFP 1	N33 47.34008	W87 16.2688	Riverine ephemeral	220	Non-section 10
WFP 2	N33 47.35245	W87 16.30567	Riverine intermittent	220	Non section 10



REPLY TO
ATTENTION OF:

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

February 14, 2013

Inland Section North
Regulatory Division

SUBJECT: Nationwide Permit Authorization - Permit Number SAM-2008-00127-NSB, Cane Creek Mine, Cane Creek, LLC

Cane Creek, LLC
c/o PERC Engineering Company, Inc.
Attention: Mr. Stephen Miles
Post Office Box 1712
Jasper, Alabama 35502

Dear Mr. Miles:

This letter is in response to your September 21, 2012 request for re-verification of this previously authorized project. The project is located near N 33.790199, W 87.261647 in Walker County, Alabama.

The original permit verification authorized impacts to 0.38 acre of waters of the United States, including wetlands, consisting of 2,560 linear feet (lf) of ephemeral stream and 0.0546 acre of wetland. According to your submittal, 2,320 lf of ephemeral stream and 0.0546 acre of wetland have been impacted, leaving 240 lf of ephemeral stream to be impacted.

Based on your submittal, your project is re-verified pursuant to Nationwide Permit (NWP) 21a (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 21a*, which can be viewed at our website at <http://www.sam.usace.army.mil/Missions/Regulatory.aspx>, as well as the conditions of the previous authorization.

Work will be accomplished as described in the original permit application and the associated permit authorization dated November 25, 2008. All other provisions and conditions to which the work is made subject shall remain in full force and effect.

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.

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 if you have any questions. For additional information about our Regulatory Program, visit our web site at <http://www.sam.usace.army.mil/Missions/Regulatory.aspx>, 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 that reads "Lewis Brockette". The signature is written in a cursive style with a long horizontal stroke at the end.

Lewis Brockette
Project Manager
Regulatory Division
Birmingham Field Office