



STATE OF ALABAMA  
**DEPARTMENT OF CONSERVATION AND NATURAL  
RESOURCES**  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130

BOB RILEY  
GOVERNOR

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COMMISSIONER

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ASSISTANT COMMISSIONER

PATRICIA J. POWELL, DIRECTOR  
GREGORY M. LEIN, ASSISTANT DIRECTOR  
STATE LANDS DIVISION

TELEPHONE (334) 242-3484  
FAX NO (334) 242-0999

July 16, 2009

Mr. Rich Weaver  
DSM Design Group, LLC  
P.O Box 690  
Jasper, AL 35502

RE: Sensitive Species Information request  
Birmingham Coal & Coke, Inc. - Old Union #2 Mine

Dear Mr. Weaver:

The Natural Heritage Section office received your e-mail dated June 8, 2009 addressed to Ashley Peters on June 8, 2009 and has since developed the following information pertaining to sensitive species (state protected, and federally listed candidate, threatened, and endangered species). I have enclosed a list of sensitive species which the Natural Heritage Section Database or the U.S. Fish and Wildlife Service have indicated occur or have occurred in Winston and Walker Counties. Additionally, I have listed some potentially helpful and informative web sites at the end of this letter.

The Natural Heritage Section database contains numerous records of sensitive species in Winston and Walker Counties. Our database indicates the area of interest has had no biological survey performed at the delineated location, by our staff or any individuals referenced in our database. Therefore we can make no accurate assessment to the past or current inhabitancy of any federal or state protected species at that location. A biological survey conducted by trained professionals is the most accurate way to ensure that no sensitive species are jeopardized by the development activities. The closest sensitive species is recorded in our database as occurring approximately 0.8 miles from the subject site. This federally listed candidate species (White Fringeless Orchid) is generally found in wet, flat, boggy areas at the head of streams or seepage slopes. It is documented from 53 extant locations within eight states: Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Virginia, and Tennessee; however, it is now considered extirpated or historical in Virginia and North Carolina.\*



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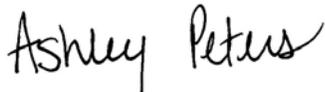
7/16/2009

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I hope this information will be useful to you. The provided information is to help you in fulfilling your necessary legal obligations. This does not constitute any form of Section 7 consultation. We recommend that the U.S. Fish and Wildlife Service Field Office in Daphne be contacted for Section 7 consultations. The information does not suggest that protected species are not at this location. The specific location of a sensitive species is considered confidential information by a State Lands Division Regulation and can be released only to individuals who enter into a confidentiality and indemnity contract with the State Lands Division.

The Natural Heritage Section provides this information as a service to the people of Alabama. The NHS acts as a clearing house for species distribution data. We happily accept any information environmental researchers are willing to donate. Sensitive species exact locations are kept confidential. If you would be willing to donate any information to this database, we will be better able to assist all individuals interested in environmental compliance.

Sincerely,



Ashley Peters  
Database Manager  
Natural Heritage Section

Enclosures

\*Paraphrased Information from NatureServe. 2006. NatureServe Explorer: An online encyclopedia of life [web application]. Version 5.0. NatureServe, Arlington, Virginia. Available <http://www.natureserve.org/explorer>. (Accessed: August 18, 2006).

Potentially helpful web sites

Information about federally listed species  
<http://daphne.fws.gov/es/specieslst.htm>  
<http://www.pfmt.org/wildlife/endangered/>  
<http://www.natureserve.org/explorer/>

State Protected Species Regulations:  
<http://www.outdooralabama.com/hunting/regulations/regs.cfm>

## ALABAMA'S FEDERALLY LISTED AND STATE PROTECTED SPECIES (BY COUNTY)

This is a list of species deemed sensitive by the Alabama State Lands Division's Natural Heritage Section (SLD-NHS) believed to occur in the designated county and the legal protection status of either State protected or federally listed. This list is a combination of the April 2007 U.S.F.W. Service (Daphne field Office) federally listed species by county list and the Alabama State Lands Division's Natural Heritage Section Database of species distributions data. This list is continually being updated, and, therefore, it may be incomplete or inaccurate and is provided strictly for informational purposes. It does not constitute any form of Section 7 consultation. We recommend that the U.S.F.W. Service Field Office in Daphne be contacted for Section 7 consultations. Site specific information can be provided by the Alabama SLD-NHS and/or the U.S.F.W. Service (Daphne field Office) prior to project activities. To be certain of occurrence, surveys should be conducted by qualified biologists to determine if a sensitive species occurs within a project area. Species not listed for a given county does not imply that they do not occur there, only that their occurrence there is as yet unrecorded by these two agencies. This list is currently under review and reflects only our current understanding of species distributions.

### Walker

<b>Protection Status</b>	<b>Common name</b>	<b>Scientific Name</b>	<b>State Regulation Applicable</b>
Candidate	Black Warrior Waterdog	<i>Necturus alabamensis</i>	
Endangered	Ovate Clubshell	<i>Pleurobema perovatum</i>	220-2-.98 (1) (a)
Endangered	Triangular Kidneyshell	<i>Ptychobranchnus greenii</i>	220-2-.98 (1) (a)
State Protected	Alabama Map Turtle	<i>Graptemys pulchra</i>	220-2-.92 (1) (c)
State Protected	Alligator Snapping Turtle	<i>Macrolemys temminckii</i>	220-2-.92 (1) (c)
State Protected	Paddlefish	<i>Polyodon spathula</i>	220-2-.94
Threatened	Finelined Pocketbook	<i>Hamiota altilis</i>	220-2-.98 (1) (a)
Threatened	Flattened Musk Turtle	<i>Sternotherus depressus</i>	
Threatened	Mohr's Barbara Button	<i>Marshallia mohrii</i>	

Key to codes on list:

Endangered - Federally listed as Endangered

Threatened - Federally listed as Threatened

Candidate - Federally listed as Candidate

State Protected - It is unlawful to take, capture, or kill; possess, sell, trade for anything of monetary value, or offer to sell or trade these species. Alabama Regulations relating to game, fish, and furbearing animals. 2005-2006.

Alabama Department of Conservation and Natural Resources.

Experimental - Species is protected throughout its range including Colbert and Lauderdale counties except for the nonessential experimental population. Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status for 16 Freshwater Mussels and 1 Freshwater Snail in the Free-Flowing Reach of the Tennessee River below the Wilson Dam, Colbert and Lauderdale Counties, Alabama. [Federal Register; June 14, 2001 (Volume 66, Number

(P) - Possible Occurrence

(S/A) - Similarity of Appearance to a listed species

(PE) - Proposed for federal listing as Endangered

(PT) - Proposed for federal listing as Threatened

(CH) - Critical Habitat has been designated

(PCH) - Critical Habitat has been proposed

(H) - Historically known to have occurred in the

Notes:

- Bald eagle (*Haliaeetus leucocephalus*), red-cockaded woodpecker (*Picoides borealis*) and the American peregrine falcon (*Falco peregrinus anatum*) may occur in any county, if habitat exists.

- Wood stork: July - October

- Bald eagle (*Haliaeetus leucocephalus*) has been delisted. This species is still protected by the non-game species regulation and the migratory bird act. This species distribution is statewide but it is most likely to be observed near large rivers and reservoirs.

- Sea turtles: Only loggerhead is potential nester, the rest are in coastal waters.

- Black bear (*Ursus americanus* sp.) - known to exist in Mobile County, but not listed.

-Gulf moccasinshell (*Mediondus penicillatus*), oval pigtoe (*Pleurobema pyriforme*), Chipola slabshell (*El liptio chipolaensis*), and purple bankclimber (*Elliptoideus sloatianus*) are freshwater mussels of the family Unionidae found only in eastern Gulf Slope streams draining the Apalachicola Region, defined as streams from the Escambia to the Suwannee river systems, and occurring in southeast Alabama, southwest Georgia, and north Florida. All are listed as "Endangered".

- Fanshell (*Cyprogenia stegaria*), oyster mussel (*Epioblasma capsaeformis*), and Catspaw (purple cat's paw pearlymussel) (*Epioblasma obliquata obliquata*) are historically known to be found in the Tennessee River system and drainage.

-Gentian pinkroot (*Spigelia gentianoides*) has been historically found along the Alabama-Florida border.

-West Indian Manatee (*Trichechus manatus*) has been known to move north along the gulf coast west to Louisiana.

## ALABAMA'S FEDERALLY LISTED AND STATE PROTECTED SPECIES (BY COUNTY)

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### Winston

Protection Status	Common name	Scientific Name	State Regulation Applicable
Candidate	Black Warrior Waterdog	<i>Necturus alabamensis</i>	
Candidate	White Fringeless Orchid	<i>Platanthera integrilabia</i>	
Candidate / State Protected	Rush Darter	<i>Etheostoma phytophilum</i>	220-2-.92 (1) (a)
Endangered	Coosa Moccasinshell	<i>Medionidus parvulus</i>	220-2-.98 (1) (a)
Endangered	Dark Pigtoe	<i>Pleurobema furvum</i>	220-2-.98 (1) (a)
Endangered	Ovate Clubshell	<i>Pleurobema perovatum</i>	220-2-.98 (1) (a)
Endangered	Red-cockaded Woodpecker	<i>Picoides borealis</i>	220-2-.92 (1) (d)
Endangered	Triangular Kidneyshell	<i>Ptychobranthus greenii</i>	220-2-.98 (1) (a)
State Protected	Alabama Map Turtle	<i>Graptemys pulchra</i>	220-2-.92 (1) (c)
State Protected	Bachman's Warbler	<i>Vermivora bachmanii</i>	220-2-.92 (1) (d)
State Protected	Green Salamander	<i>Aneides aeneus</i>	220-2-.92 (1) (b)
Threatened	Alabama Moccasinshell	<i>Medionidus acutissimus</i>	220-2-.98 (1) (a)
Threatened	Alabama Streak-sorus Fern	<i>Thelypteris pilosa</i> var. <i>alabamensis</i>	
Threatened	Finelined Pocketbook	<i>Hamiota altilis</i>	220-2-.98 (1) (a)
Threatened	Flattened Musk Turtle	<i>Sternotherus depressus</i>	
Threatened	Kral's Water-plantain	<i>Sagittaria secundifolia</i>	
Threatened	Orangenacre Mucket	<i>Lampsilis perovalis</i>	220-2-.98 (1) (a)

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Candidate - Federally listed as Candidate

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- Wood stork: July - October
- Bald eagle (*Haliaeetus leucocephalus*) has been delisted. This species is still protected by the non-game species regulation and the migratory bird act. This species distribution is statewide but it is most likely to be observed near large rivers and reservoirs.
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- Black bear (*Ursus americanus* sp.) - known to exist in Mobile County, but not listed.
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- Gentian pinkroot (*Spigelia gentianoides*) has been historically found along the Alabama-Florida border.
- West Indian Manatee (*Trichechus manatus*) has been known to move north along the gulf coast west to Louisiana.



June 8, 2009

**Alabama Department of Conservation and Natural Resources**

Attention: Ms. Ashley Peters  
64 North Union Street  
Montgomery, Alabama 36130

RE: **Birmingham Coal & Coke, Inc.**  
Old Union #2 Mine, P-39--

Dear Ms. Peters:

I would like to request an identification of the Areas of Special Concern located in the boundaries for the proposed 1,505 mining acres located in Section 33, Township 11 South, Range 9 West, in Winston County, Alabama, Section 7, Township 12 South, Range 8 West, in Winston County, Alabama, & Sections 3, 4, 5, 9, 10, 12, 13, 14, 15, 23 & 24, Township 12 South Range 9 West, in Winston and Walker Counties, Alabama. All located on the Nauvoo and Poplar Springs USGS Quadrangles. We are in the process of applying for a surface coal-mining permit through the Alabama Surface Mining Commission for this area and will need the study to meet the requirements of the Law. Therefore, please find the enclosed "Request for Identification of Areas of Special Concern" for the above referenced proposed surface coal mining permit area.

I would like to thank you for your co-operation concerning this matter and would appreciate the assessment at your earliest convenience. If you should have any questions or need additional information, please do not hesitate to contact our office.

Sincerely,

**DSM Design Group, LLC.**

*J. Rich Weaver*

J. Rich Weaver  
E.I.T, CPESC,

Enclosures

**REQUEST FOR IDENTIFICATION OF THE AREAS OF SPECIAL CONCERN  
FOR A SURFACE OR UNDERGROUND MINING OPERATION**

Date: June 5, 2009

Mining Company Name: Birmingham Coal & Coke, Inc.

Return Address: P. O. Box 690, Jasper, Alabama 35502-3431

Contact Person: DSM Design Group, LLC., J. Rich Weaver

Contact email: rich@dsmdg.com

Mine Name: Old Union #2 Mine

Number of Acres: 1505 acres

USGS Quad Sheet(s) on which the Mine occurs: Nauvoo & Poplar Springs U.S.G.S Quad

County: Walker and Winston

See Attached Map

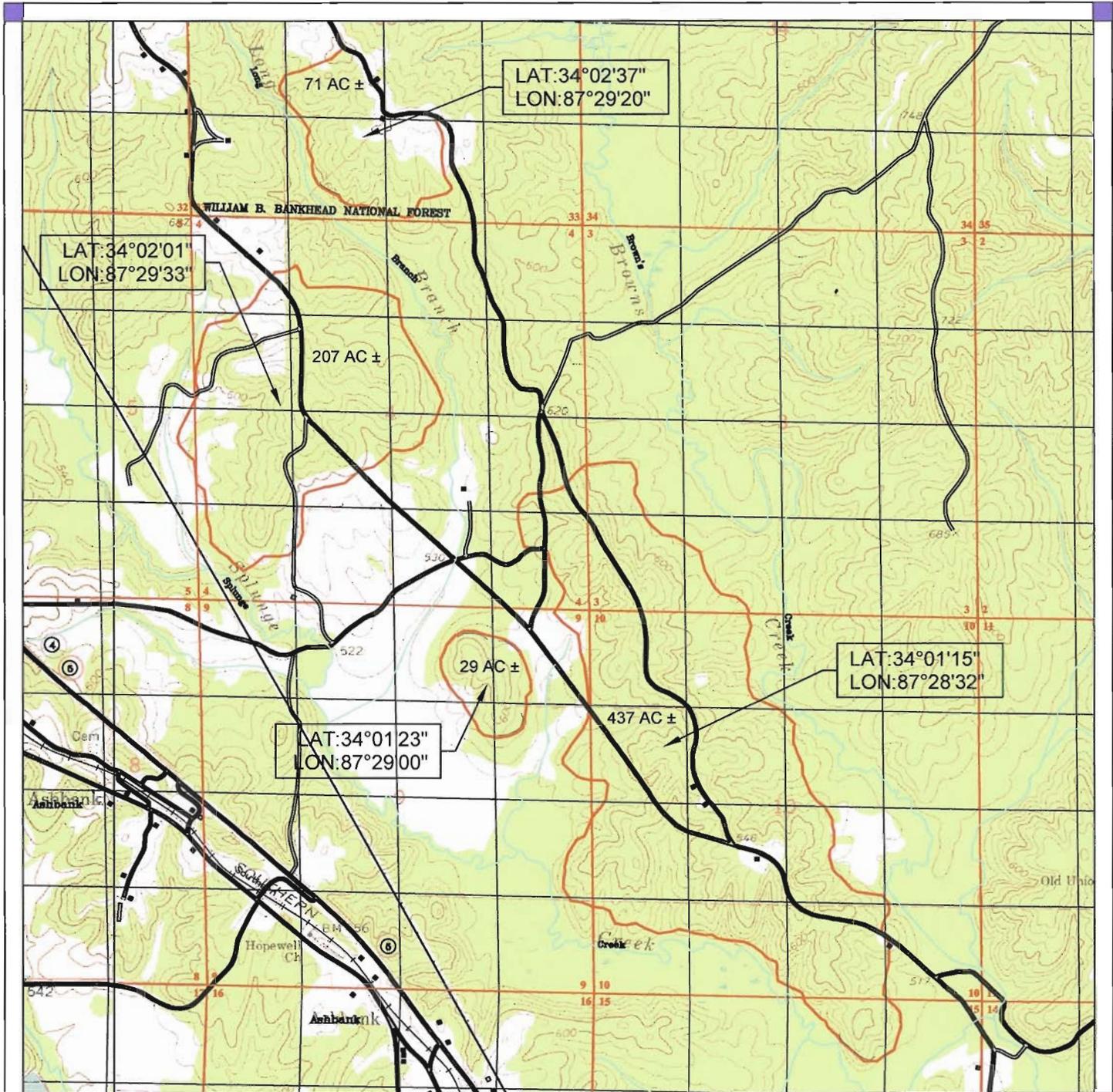
Current Landuse of Permit and Adjacent Areas:

Undeveloped/No current use

Dominate Vegetation Communities of Permit and Adjacent Areas:

Virginia and Loblolly Pine, Sweet gums, Yellow Poplar, American Sycamore, Eastern Cottonwood, Honeysuckle, various grasses, weeds & briars.

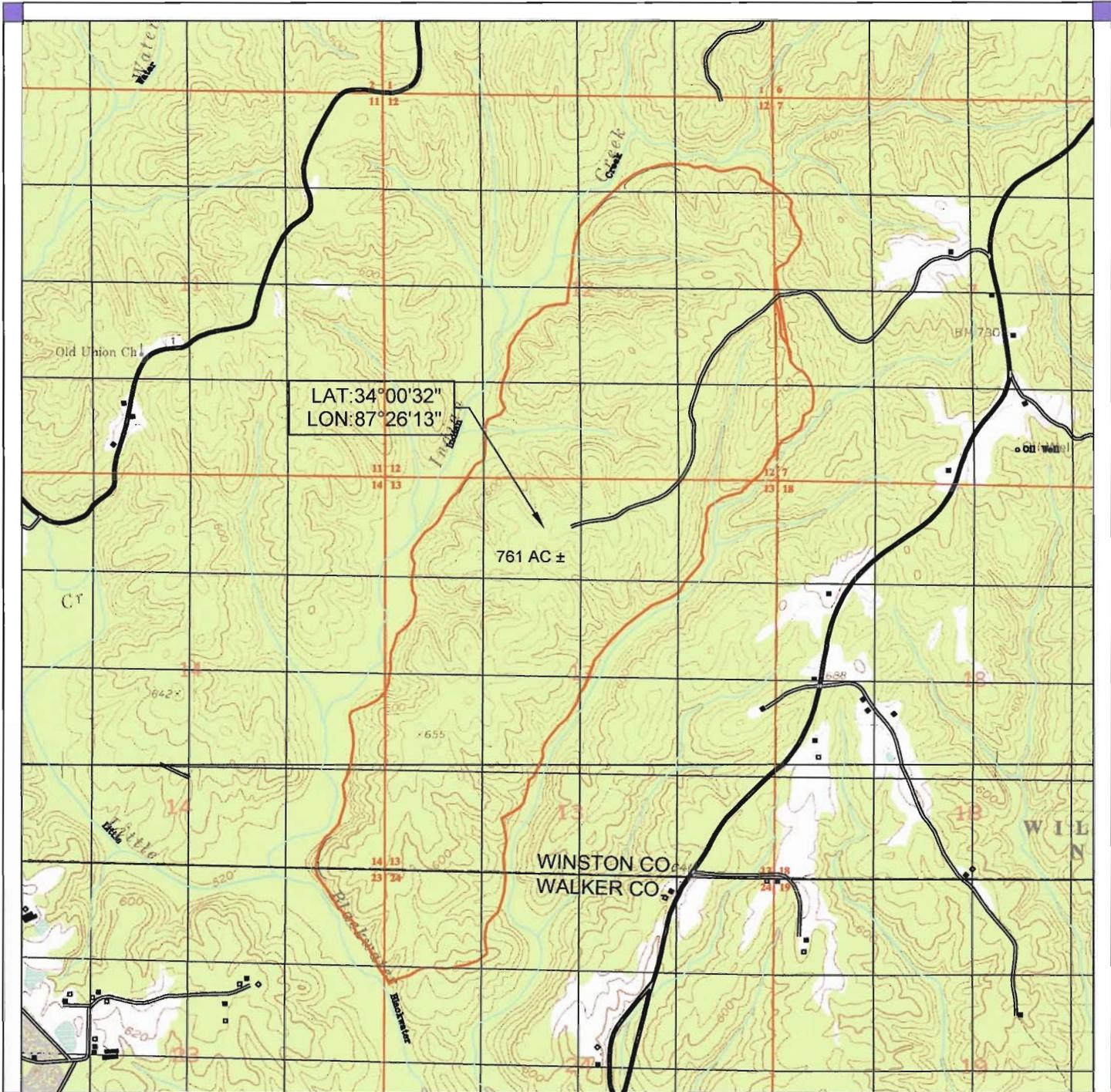




**Birmingham Coal & Coke, Inc  
Old Union #2 Mine, P-39--**

DRAWN BY: Z.B.W.	DATE: 06/04/09	T. 11 S., R. 9 W., SEC. 33 T. 12 S., R. 9 W. SEC. 3, 4, 5, 9, 10, 15 WINSTON CO., AL
APPROVED BY: J.D.M.	DATE: 06/04/09	
SCALE: 1" = 2000'	SHEET: 1 OF 2	LYNN & POPLAR SPRINGS USGS QUADRANGLES

**DSM**  
DESIGN GROUP, LLC  
ENGINEERING / SURVEYING  
1400 VIKING DRIVE  
JASPER, ALABAMA 35501  
TELEPHONE: (205) 221-6262



**Birmingham Coal & Coke, Inc  
Old Union #2 Mine, P-39--**

DRAWN BY: Z.B.W.	DATE: 06/04/09	T. 12 S., R. 8 W., SEC. 7 T. 12 S., R. 9 W. SEC. 12, 13, 14, 23, 24 WALKER & WINSTON CO., AL
APPROVED BY: J.D.M.	DATE: 06/04/09	
SCALE: 1" = 2000'	SHEET: 2 OF 2	NAUVOO & POPLAR SPRINGS USGS QUADRANGLES

**DSM**  
DESIGN GROUP, LLC  
ENGINEERING / SURVEYING  
1400 VIKING DRIVE  
JASPER, ALABAMA 35501  
TELEPHONE: (205) 221-6262