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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.

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 for the proposed discharge of fill material into waters of the United States (U.S.). A copy of the application, including all supplemental materials (alternative analysis, compensatory mitigation plan, etc.), is available for review in the Huntington District Office, by appointment. The proposed discharge is in conjunction with the Tommy Creek Highwall Mine No. 1 – Devil’s Fork Surface (Devil’s Fork Surface Amendment) (S-3007-11, Amendment No. 1), which was approved by the West Virginia Department of Environmental Protection (WVDEP) pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) on May 1, 2013.

APPLICANT: Pocahontas Coal Company, LLC
109 Appalachian Drive
Beckley, West Virginia 25801

LOCATION: The proposed project is located approximately 2.9 miles southeast of Rhodell in the Slab Fork District of Raleigh County, West Virginia. Specifically, the proposed project area is situated at latitude 37° 34' 32" and longitude -81° 16' 26" on the Rhodell USGS 7.5 quadrangle. The proposed project would result in the discharge of dredged and/or fill material into unnamed tributaries of Devil’s Fork, a tributary of the Guyandotte River, a traditional navigable water of the U.S. See project Location Map in **Exhibit 1**, Proposal Map in **Exhibit 2**, and the Stream Delineation Map in **Exhibit 3**.

PROJECT HISTORY: On January 13, 2012, the U.S. Army Corps of Engineers (Corps) – Huntington District authorized Pocahontas Coal Company, LLC to discharge dredged and/or fill material into 1,587 linear feet (lf) of stream channel and 0.10 acres of emergent wetland in order to provide linear transportation for the Tommy Creek Highwall Mine No. 1 – Devil’s Fork Surface (238 acres). The project was issued under the Nationwide Permit program described in the March 12, 2007 Federal Register, Final Notice of Issuance of Nationwide Permits (72 FR11092), and completed prior to the expiration date.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge fill material into waters of the U.S. associated with the construction, operation and maintenance of the Devil’s Fork Surface Amendment. The project purpose is to provide for the extraction of bituminous coal within the Beckley and Pocahontas No. 6 coal seams.

The proposed Devil’s Fork Surface Amendment (25.34 acres) would result in the discharge of approximately 232.4 cubic yards of fill material into a total of 2,538 lf of stream channel, 2.016 acres of wetland, and 0.348 acres of open water within unnamed tributaries of Devil’s Fork. As shown in Tables 1 and 2, the Devil’s Fork Surface Amendment would result in the permanent discharge of fill material into 606 lf of intermittent stream channel, 1,932 lf of

ephemeral stream channel, 1.448 acres of emergent wetland, 0.568 acres of scrub/shrub wetland, and 0.348 acres of open water. A preliminary jurisdictional determination was completed by this office for the proposed project area on June 16, 2011 (**Exhibit 3**). A reference cross-section within the proposed project area can be found in **Exhibit 4**.

Table 1
Summary – Proposed Permanent Discharge of Fill Material (Stream)

Project Feature	Stream Reach	Proposed Permanent Discharge of Fill Material			
		Intermittent		Ephemeral	
		Length	Acreage	Length	Acreage
MINE THROUGH ACTIVITIES	Devil's Fork (DF)	—	—	—	—
	1 st Left UT of 3 rd Right UT of 1 st Left UT	—	—	42	0.002
	1 st Left UT of 1 st Left UT of 3 rd Right UT of 1 st Left UT	—	—	34	0.000
	Left UT of 1 st Left UT of Left UT	355	0.026	—	—
	1 st Right UT of Left UT of 1 st Left UT of Left UT	—	—	239	0.022
	1 st Right UT of Left UT of 1 st Left UT of Left UT	—	—	581	0.075
	3 rd Right UT of 1 st Left UT of Left UT	—	—	249	0.010
	1 st Right UT of 1 st Left UT of Left UT	8	0.000	—	—
	REIC 1 st Right UT of 1 st Right UT of Left UT	—	—	264	0.038
	4 th Right UT of 1 st Left UT	206	0.040	—	—
	4 th Right UT of 1 st Left UT	37	0.007	—	—
	2 nd Right UT of Left UT of 1 st Left UT of Left UT	—	—	52	0.003
	2 nd Right UT of Left UT of 1 st Left UT of Left UT	—	—	305	0.026
	1 st Right UT of 2 nd Right UT of Left UT of 1 st Left UT of Left UT	—	—	166	0.009
	Cumulative Total (Stream)	606	0.073	1,932	0.0185

Table 2
Summary – Proposed Permanent Discharge of Fill Material (Wetland/Open Water)

Project Feature	Wetland/Open Water ID	Proposed Permanent Discharge of Fill Material		
		Wetland (Acres)		Open Water (Acres)
		Emergent	Scrub/Shrub	
MINE THROUGH ACTIVITIES	Wetland 10	0.092	—	—
	Wetland 11	0.097	—	—
	Wetland 12	0.088	—	—
	Wetland 17	—	—	—
	Wetland 18	0.292	—	—
	Wetland 20	—	—	—
	Wetland 36	0.090	—	—
	Wetland 37	0.022	—	—
	Wetland 40	0.416	—	—
	Wetland 50	0.109	—	—
	Wetland 53A	0.100	—	—
	Wetland 53B	0.142	—	—
	Wetland REIC WL 1	—	0.200	—
	Wetland REIC WL 3	—	0.107	—
	Open Water 12	—	—	0.007
	Open Water 17	—	—	0.045
	Open Water 18	—	—	0.053
	Open Water 20	—	—	0.176
	Open Water 37	—	—	0.038
	Open Water 53	—	—	0.029
	Cumulative Total (Wetland)	1.448	0.568	—
	Cumulative Total (Open Water)	—	—	0.348

ALTERNATIVE ANALYSIS: As a result of the proposal, fill material would be discharged into 2.016 acres of jurisdictional wetland, 2,538 lf of jurisdictional stream channel, and 0.348 acres of jurisdictional open water. The project does not require access or proximity to or siting within the wetlands to fulfill its basic purpose and is considered a non-water dependent activity. The Section 404(b)(1) Guidelines state that for non-water dependent activities, practicable alternatives that do not involve wetlands are presumed to be available, unless clearly demonstrated otherwise. Therefore, no permit will be issued until we have

determined that the alternative analysis clearly demonstrates that upland alternatives are not available to achieve the overall project purpose. The applicant is required to provide an alternatives analysis that must overcome the presumption prior to receiving authorization for the placement of fill material. The applicant has submitted the required alternatives analysis and it is currently under review. Alternatives evaluated by the applicant include: not mining the project area; relocating the project; underground mining methods (room and pillar); surface mining methods (contour mining, mountaintop mining, area mining, and dragline methods); excess overburden disposal methods (placing all overburden material back on the mining bench, placing excess overburden in various valley fill sites, and hauling all excess overburden material off-site); reduction of project scope; sediment control placement options; as well as construction and other techniques to avoid, reduce and minimize impacts upon the aquatic environment.

AVOIDANCE AND MINIMIZATION: The applicant has indicated that there is no practicable alternative for the proposed project that completely avoids the discharge of fill material into waters of the U.S. However, the applicant’s proposed alternative incorporates the following measures to minimize impacts to aquatic resources: analysis of the mining ratio to reduce quantity of excess overburden material; utilization of the backfill and on-bench storage areas; elimination of valley fills and off-site disposal areas; elimination of instream drainage or sediment control structures; implementation of contour mining methods in order to minimize overburden material; and avoidance of the discharge of fill material into perennial stream channel. As a result of these avoidance and minimization measures, the proposed alternative would result in filling approximately 2,538 lf of stream channel, 2.016 acres of wetland, and 0.348 acres of open water, and would allow for the extraction of approximately 230,000 tons of bituminous coal over a four (4) year period.

COMPENSATORY MITIGATION PLAN: The applicant explored the use of mitigation banks, the West Virginia In-Lieu Fee Program (WV ILF), permittee-responsible on-site and in-kind mitigation, and permittee-responsible off-site and out-of-kind mitigation to compensate for the permanent and temporal loss of jurisdictional stream channels and wetland. Currently, there are no approved mitigation bank credits available within the watershed. Therefore, the applicant has chosen to offer mitigation in the form of permitte-responsible stream, wetland and open water restoration (enhancement) in order to offset the permanent and temporary loss of jurisdictional stream, wetland, and open water.

The applicant has used the West Virginia Stream and Wetland Valuation Metric (WV SWVM) to evaluate whether the proposed mitigation would adequately offset the discharge of fill material into waters of the U.S in conjunction with the Devil’s Fork Surface Amendment. Table 3 summarizes the proposed stream and wetland mitigation, and **Exhibit 5** provides the location of the specific mitigation reaches in relation to the proposed project. A description of each mitigation element is provided below.

Table 3
Summary – Proposed Stream and Wetland Mitigation

Proposed Stream and Wetland Mitigation	Linear Feet	Acres
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<u>Stream Enhancement</u>		
Left unnamed tributary of Devil's Fork (LUT of Devil's Fork)	9,400	—
<u>Wetland Creation</u>		
Tommy Creek watershed	—	2.68
<u>Open Water Creation</u>		
Tommy Creek watershed	—	2.199
TOTAL	9,400	4.879

Stream Restoration (Enhancement) – within the LUT of Devil’s Fork: The applicant proposes to enhance approximately 9,400 lf of perennial and intermittent stream channel within the LUT of Devil’s Fork and provide a 50-foot buffer zone along each stream bank (**Exhibit 6**). Enhancement measures would include elimination of severe erosion and depositional contributions, bank stabilization, and riparian and bank vegetative stability additions. Preservation of these enhancement measures would be through a conservation easement. These enhancement efforts within the LUT of Devil’s Fork would provide an ecological lift within the watershed. The stream restoration efforts are proposed to be initiated prior to, or concurrent with, the proposed Devil’s Fork Surface Amendment.

Wetland and Open Water Establishment (Creation) - within the Tommy Creek Watershed: The applicant also proposes wetland and open water habitat establishment in the adjacent Tommy Creek watershed. Mining and reclamation activities at the adjacent Tommy Creek Highwall Mine No. 1 have left several non-jurisdictional sediment ponds and sediment drainage ditches. By developing and establishing connectivity and jurisdiction to these currently isolated, non-jurisdictional features, converting one pond into a wetland, and extending the wetland boundaries on four (4) additional wetlands, the applicant would provide both appropriate and adequate mitigation. Approximately 2.199 acres of open water habitat would be created along with 2.52 acres of emergent wetland and 0.16 acres of wet meadow wetland (**Exhibit 7**). Each feature would be protected and preserved with 25-foot riparian buffer zones and conservation easements. Establishment efforts within the Tommy Creek would provide an ecological lift within the watershed. The stream restoration efforts are proposed to be initiated prior to, or concurrent with, the proposed Devil’s Fork Surface Amendment.

The proposed CMP is open for comment and is subject to change based on comments received. After review of all submitted information, the Corps will determine appropriate mitigation, in the event a decision is made to issue a permit.

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: The proposed project was reviewed by the West Virginia State Historic Preservation Officer (SHPO) to determine if the project would result in impacts to archeological resources and/or architectural resources (properties) listed on or eligible for inclusion on the National Register of Historic Places (National Register). In a series of letters dated May 2011, September 2011, and November 2011, the SHPO stated

that no archaeological sites or architectural resources within the proposed project that are eligible for or listed in the National Register.

Based on this information, the Corps has determined the proposal would have no effect on properties listed or eligible for listing in the National Register. This public notice serves as coordination with the SHPO, pursuant to Section 106 of the National Historic Preservation Act. If the SHPO has new information and believes that the Corps proposed permitting action may potentially affect properties listed or eligible for listing in the National Register, it is requested the SHPO provide such information.

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. The applicant retained the services of Compliance Monitoring Labs, Inc. to complete a survey to determine the presence or probable absence of the Indiana bat and the Virginia big-eared bat within the proposed project area. Four (4) mist net survey sites were selected and surveyed between July 7, 2010 and July 12, 2010. No Indiana bats or Virginia big-eared bats were captured during either survey.

The WVDEP reviewed the survey results and determined that the proposed surface mine project is not likely to adversely affect endangered or threatened bat species or their critical habitat. The validity of the survey results expired on May 15, 2015. Based on this information, the Corps has determined that the project as proposed may affect but is not likely to affect the Indiana bat, Virginia big-eared bat or its designated critical habitat. This Public Notice serves as coordination with the United States Fish and Wildlife Service for any additional information they may have concerning the project's potential effect on federally listed threatened and endangered species pursuant to Section 7 of the Endangered Species Act of 1972 (as Amended).

PUBLIC INTEREST REVIEW AND CUMMULATIVE EFFECTS: This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the Corps, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the United States Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. 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. The project lies within the Guyandotte River (050701010103) 12-digit hydrologic unit code watershed. The Corps is assessing the potential cumulative effects that the proposed Devil's Fork Surface Amendment may have on public interest factors when considered with other activities in that watershed. The assessment includes use of the Corps analytic

tool, *Cumulative Effects Analysis Prototype for LRD Regulatory Districts*. The tool uses available State and Federal data for each 12-digit hydrologic unit code watershed to analyze past and present activities that may currently be affecting streams.

SOLICITATION OF COMMENTS: The Corps 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 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. 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 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. 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.

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:

U.S. Army Corps of Engineers

ATTN: CELRH-RD-E, Public Notice No. LRH-2010-637-GUY

502 Eight Street

Huntington, West Virginia 25701-2070

Please note that 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 Samantha Dailey of the Energy Resource Branch at (304) 399-5610.