DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–00–4488; ES–49260, Group 179, Minnesota]

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey and survey of the U.S. Bureau of Mines, Twin Cities Research Center, located within the Fort Snelling Military Reservation in Township 28 North, Range 23 West, Fourth Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on January 20, 1998.

The survey was requested by the U.S. Bureau of Mines.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., January 20, 1998.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: December 5, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–32911 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Monongahela National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has been ordered by the United States District Court for the Northern District of West Virginia to determine whether Walter D. Helmick has valid existing rights (VER) to surface mine coal on 1,045.3 acres of Federal lands within the Monongahela National Forest in Pocahontas County, West Virginia. Mr. Helmick claims to hold certain coal rights in these lands. Ernest J. Van Gilder had previously submitted a VER request in connection with the same property. Prior to the court order, OSM had suspended action on a VER determination request by Mr. Van Gilder for surface mining, on the basis that his request was administratively incomplete due to an unresolved dispute over whether he possessed all of the necessary property rights to mine coal by the intended method. Since there is still an unresolved property rights dispute as to whether the current mineral holder, Mr. Helmick, has the necessary property right to surface mine, OSM hereby determines that Mr. Helmick has not demonstrated VER to surface mine the coal on the 1,045.3 acres of Federal lands within the Monongahela National Forest.

FOR FURTHER INFORMATION CONTACT: Peter R. Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15200, Telephone: (412) 937–2867. E-mail address: pmichael@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. VER Requirements on National Forest Lands

Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)) prohibits surface coal mining operations on certain lands unless a person has VER to conduct such operations or unless the operation was in existence on August 3, 1977. Section 522(e)(2), in relevant part, applies the prohibition to Federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations and the surface operations and impacts are incident to an underground coal mine.

Under section 523 of the Act (''Federal Lands'') and 30 CFR 740.11, the approval State program (including the State definition of VER) applies to all Federal lands within States with regulatory programs approved under section 503 of SMCRA. However, under 30 CFR 745.13, the Secretary has exclusive authority to determine VER for surface coal mining and reclamation operations on Federal lands within the boundaries of the areas specified in paragraphs (e)(1) and (e)(2) of section 522 of the Act. OSM reaffirmed these basic principles in the preamble to the suspension notice concerning VER published on November 20, 1986 (51 FR 41954).

Subsection 2.130 of the West Virginia Surface Mining Reclamation Regulations provides, in relevant part, that VER exists in each case in which a person demonstrates that the limitation provided for in Section 22–3–22(d) of the West Virginia Surface Coal Mining and Reclamation Act (the State counterpart to section 522(e) of SMCRA) would result in the unconstitutional taking of that person's rights. OSM approved this definition as being no less effective than the 1983 version of the Federal definition of VER at 30 CFR 761.5. Paragraphs (a) and (d) of the 1983 Federal definition clarify that the takings standard for VER applies only to those property interests that existed on August 3, 1977 [paragraph (a)], or any subsequent date that the lands come under the protection of section 522(e) of SMCRA (paragraph (d)). *See also* 48 FR 41313, third column (September 14, 1983). The West Virginia program does not specifically address this issue. However, in accordance with OSM's basis for approval of the West Virginia provision, OSM is interpreting the West Virginia definition consistent with the 1983 Federal definition. Because the lands in question came under the protection of section 522(e) on August 3, 1977, OSM will consider only the property interests as they existed on that date.

In this case, the critical property interest is the coal rights beneath certain Federal lands within the Monongahela National Forest in the Little Levels District of Pocahontas County, West Virginia (hereafter, Tract 574). Administrative Record No. 2.1 (hereafter, ''A.R._____''). The threshold determation OSM must make is whether Mr. Helmick has demonstrated the property right to mine the coal. If so, OSM must then determine whether Mr. Helmick has demonstrated, as of 1977, that he or a predecessor in interest had the property right to surface mine the coal.

B. Factual Background

The record before OSM indicates that, in September of 1990, Walter D. Helmick acquired from Cecil Nichols certain mineral rights in Tract 574. This tract contains 1,045.3 acres and is situated seven miles west of Hillsboro, West Virginia, on the waters of Hills Creek and the waters of Robbins Run, a tributary of Spring Creek. The property is located on Briery Knob. It was mined during the 1940's surface mining methods.[1] The surface of this land is

[1] An additional property, Tract 372, was included in previous requests for VER determinations relating to Tract 574. This parcel is adjacent to Tract 574. However, neither the court order (A.R. 2.345) nor the materials submitted by Mr. Helmick (A.R. 2.368–2.510 and 2.516–2.523) mention or assert any interest in Tract 372. Mr. Helmick's counsel has confirmed that this tract is no longer a subject of this request. (A.R. 2.528).

owned by the United States of America and managed by the United States Forest Service. (A.R. 2.352).

One month before Mr. Helmick acquired the mineral rights, the documents submitted by Mr. Helmick indicate he had deeded an undivided one-half interest in those rights to Ernest J. Van Gilder. (A.R. 2.527). Mr. Van Gilder later requested a VER determination from OSM for a surface mining operation on the property in question.[2] (A.R. 2.317).

Five years later, in September of 1995, Mr. Helmick acquired the remaining mineral interests in the property, by partition deed. (A.R. 2.527).

On November 17, 1989, in regard to a then-pending VER request on Tract 574, the U.S. Department of Agriculture (USDA) Forest Service advised OSM of the USDA Office of General Counsel's opinion that ''. . . the owners did not reserve the right to remove the coal by surface mining when these lands were acquired by the United States.'' (A.R. 2.260). This opinion was reaffirmed on February 6, 1991, after Mr. Van Gilder asserted an interest in the coal and requested a VER determination. (A.R. 2.333). On April 23, 1991, OSM informed Mr. Van Gilder that the agency could not consider his request to be administratively complete in light of ''. . . the unresolved difference of opinion concerning the nature of the property rights you possess.'' (A.R. 2.337). In December 1995, Mr. Helmick filed an action in the United States District Court for the Northern District of West Virginia, claiming that his mineral interests had been taken without just compensation when the Forest Service determined that Mr. Van Gilder's interest in the tract did not include the right to conduct surface mining. *Helmick* versus *United States*, No. 95–0115 (N.D. W. Va.) After the Government filed a motion to dismiss for failure to state a claim on February 15, 1996, Mr. Helmick amended his complaint by adding the Department of the Interior as a party, by eliminating his claim of a taking under the Tucker Act, and by substituting three new counts seeking to review ''agency action'' under the Administrative Procedure Act (APA). On October 20, 1997, the court in *Helmick* ordered the Secretary of the Interior to render a final VER determination by December 8, 1997.

In order to comply with the Court's order in the *Helmick* litigation, and because of the time that had passed since OSM's last administrative action in this matter, OSM believed it was appropriate to reopen the administrative record to allow all interested persons to provide any additional factual information as to whether Mr. Helmick has the property right to mine by the proposed method, and as to whether he has VER under the applicable standards. In a notice published in the October 16, 1997, **Federal Register** (62 FR 53798), OSM provided opportunity for public comment on the Helmick request until October 31. In response to the request of Mr. Helmick's attorney, the public comment period was reopened from November 4 to November 12, 1997. (62 FR 59731).

After the close of the reopened comment period and upon reviewing the administrative record, OSM determined that the record contained no legally cognizable documentation of any current interest of Mr. Helmick in Tract 574. OSM therefore contacted Mr. Helmick's counsel and advised him of this lack of title documentation. Mr. Helmick's counsel subsequently provided OSM with relevant documentation. That documentation has been entered in the administrative record, and is reflected in this decision document.[3]

II. VER Determination

In order to establish that Mr. Helmick has VER for surface coal mining on the property in question, OSM must first determine that he has demonstrated all necessary property rights to surface mine the coal .

In a November 11, 1997, letter to OSM, Mr. Helmick provided comments pertaining to the disputed USDA title opinion and to OSM's responsibilities in VER determinations. (A.R. 2.517). Mr. Helmick claims he has the property right to surface mine by virtue of two things: first, the use of the word, ''stripping'' in a December 4, 1939, deed in which a predecessor in title conveyed the surface estate in Tract 574 to the United States of America; and second, evidence that allegedly shows that surface mining was a known and accepted method of mining in the area surrounding the subject property. Mr. Helmick also posits that ''. . . the OSM may not simply defer to an opinion of the Forest Service or the U.S. Department of Agriculture in rendering the property rights determinations which form the underlying basis of a VER determination.'' Further, he stated that, ''The OSM also may not refuse to render the necessary determinations in reliance upon a Memorandum of Understanding (MOU) between the Forest Service and the OSM, which was not adopted as a rule after notice and comment in accordance with the required procedures of the APA.''

OSM did not defer to the opinion of the U.S. Forest Service on Mr. Helmick's property rights; and does not rely on the MOU with the U.S. Forest Service to establish the basis and standards for OSM's actions in this case. Rather, the aforementioned MOU delineates the process by which OSM verifies whether a property rights dispute exists regarding requests for VER determinations on lands where the U.S. Forest Service is the surface owner. Under section 510(b)(6) of the Surface Mining Control and Reclamation Act of 1977, OSM is not authorized to adjudicate a property rights dispute. This section of SMCRA sets out specific requirements to be met prior to approval of a permit or revision application for surface mining and forbids approval in cases where ''. . .the private mineral estate has been severed from the private surface estate, . . .'' unless the applicant has submitted:

> ''(A) the written consent of the surface owner to the extraction coal by surface mining methods; or
>
> (B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
>
> (C) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with State law: *Provided*, That nothing in this act shall be construed to authorize the regulatory authority to adjudicate property rights disputes.''

OSM, which acts as a regulatory authority when it issues VER determinations, does not, and cannot, adjudicate property rights between competing claimants. *See* 30 U.S.C. 1260(b); 54 FR 52469. OSM regulations specifically provide that, when the Secretary acts in an enforcement capacity or other regulatory capacity, he

[2] It is not clear from the record before OSM what, if any, interest Mr. Van Gilder may have had in the property during the pendency request, as the transfer from Mr. Helmick to Mr. Van Gilder apparently occurred when Mr. Helmick had no documented interest in the property. On December 4, 1997, Mr. Van Gilder quitclaimed back to Mr. Helmick any interests ''that may have been acquired'' under the August, 1990 deed (A.R. 2.527).

[3] OSM does not believe that accepting this documentation after the close of the comment period affects the fairness of the proceedings. Because of the court's order in the pending *Helmick* litigation, OSM believes it would have been constrained to issue a VER determination even in the absence of the late documentation. If the record did not demonstrate that Mr. Helmick owned the property, OSM would have made its VER determination with regard to the most recent holder shown in the record before it. If the record established that VER existed in 1977, then VER would have conveyed in any subsequent conveyances. And if VER was not demonstrated as of 1977, then VER could not have been created in any subsequent conveyances.

constitutes the ''regulatory authority.'' 30 CFR 700.5; see also 44 FR 14913 (March 13, 1979). In his role with respect to federal lands programs, the Secretary of the Interior is a regulatory authority subject to SMCRA sections 507(b)(9) and 510(b)(6)(C). Thus, when the Secretary makes VER determinations on federal lands, he is acting as the regulatory authority. See *National Wildlife Federation* v. *Lujan,* 950 F.2d 765, 767 (D.C.Cir. 1991), citing 30 CFR 700.5.

Mr. Helmick argues that he has an express right to strip mine the subject property because a boiler plate regulation incorporated into the deed of severance references ''stripping.'' But that reference explicitly relates to a separate tract of property, Tract 574–I, that is not an issue in this determination. The deed is silent as to ''stripping'' on Tract 574. If any inference can be drawn from the reference to stripping for one tract (574–I) and exclusion of the language for the second tract (574), it is that strip mining was expressly not intended for the second tract (574).

A property rights dispute presently exists between the U.S. Forest Service and Mr. Helmick. Mr. Helmick has alleged in the 1995 lawsuit, that he has the right to surface mine the property in question. The U.S. Forest Service contested that allegation. The trial court has not ruled on the issue of whether the requester has the property right to surface mine. Moreover, the U.S. Forest Service has reiterated its position, in a letter to OSM, that it is of the opinion that Mr. Helmick does not possess the right to surface mine in the Monongahela National Forest. (A.R. 2.352). As a result, the dispute remains unresolved in the record before OSM. And, for the reasons set out above, section 510(b)(6) precludes OSM from adjudicating that property rights dispute. Thus the record before OSM does not demonstrate whether, under applicable State law, Mr. Helmick holds the property right to surface mine tract 574.

Consequently, based on the record before it, OSM has reached the following conclusions in this matter: First, the written consent of the surface owner to surface mine was not provided, and is not in the record. Second, the 1939 deed which severed the coal rights did not expressly reserve the right to extract the coal on Tract 574 by surface mining methods. Finally; in light of the pending unresolved dispute concerning the property right to surface mine this coal, Mr. Helmick has not met his burden of demonstrating the property right to mine by the method intended. Therefore, OSM must also conclude that Mr. Helmick has not demonstrated VER to surface mine the property in question.[4]

III. Summary and Disposition of Comments

OSM received numerous comments opposed to VER requests pertinent to Tract 574, most of which were submitted in January and February 1990, in response to an application by Cecil E. Nichols. (A.R. 2.73). The protests focus on property rights, environmental concerns, and economic issues. In this decision, OSM is not responding to comments as to whether the coal holder has the necessary rights, because, as explained above, OSM cannot adjudicate the property rights dispute between the U.S. Forest Service and the current requester, Mr. Helmick. OSM is not addressing the remaining comments, because this decision cannot reach the takings analysis to which those comments may relate.

IV. Appeals

Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390. Notice of intent to appeal must be filed within 30 days after receipt of the determination by a person who has received a copy by certified mail or overnight delivery service; or within 30 days of the date of publication of this notice of decision in the **Federal Register** by any person who has not received a copy by certified mail or overnight delivery service.

Dated: December 9, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–32850 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–05–M

[4] Because the record does not demonstrate that Mr. Helmick holds the necessary property rights, OSM will not address the second stage of a takings analysis, the analysis of whether, as of 1977, application of the section 522(e) prohibition to Mr. Helmick's property rights would effect a compensable taking. (OSM notes that judicial case law concerning compensable takings would also require a threshold determination as to whether Mr. Helmick has demonstrated the property right to surface mine the coal. *See Lucas* v. *South Carolina Coastal Council,* 505 U.S. 1003, 1027 (1992).)

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–753–756 (Final)]

Certain Carbon Steel Plate From China, Russia, South Africa, and Ukraine

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury [2] by reason of imports from China, Russia, South Africa, and Ukraine of cut-to-length carbon steel plate,[3] provided for in provisions of headings 7208 through 7212 of the Harmonized Tariff Schedule (HTS) of the United States, [4] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[5]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford determines that an industry in the United States is materially injured by reason of the subject imports. Pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673d(b)(4)(A)), Commissioner Crawford makes a negative determination regarding critical circumstances.

[3] For purposes of these investigations, cut-to-length carbon steel plate is hot-rolled iron and nonalloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and nonalloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included in this definition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling''), such as products which have been bevelled or rounded at the edges. Excluded from this definition is grade X–70 plate.

[4] Cut-to-length carbon steel plate is currently covered by the following statistical reporting numbers of the HTS: 7208.40.3030; 7208.40.3060; 7208.51.0030; 7208.51.0045; 7208.51.0060; 7208.52.0000; 7208.53.0000; 7208.90.0000; 7210.70.3000; 7210.90.9000; 7211.13.0000; 7211.14.0030; 7211.14.0045; 7211.90.0000; 7212.40.1000; 7212.40.5000; and 7212.50.0000.

[5] The Commission further determines, pursuant to 19 U.S.C. 1673d(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.