

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 determination 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).