

number. Until OMB approves a collection of information, you are not obligated to respond.

### III. Request for Comments

*We are soliciting comments as to:*  
(a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

*USGS Information Collection Clearance Officer:* Phadrea Ponds 970-226-9445.

Dated: November 3, 2009.

**John H. DeYoung, Jr.,**  
*Chief Scientist, Minerals Information Team.*  
[FR Doc. E9-26895 Filed 11-6-09; 8:45 am]

**BILLING CODE 4311-AM-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Determination of Valid Existing Rights Within the Daniel Boone National Forest, Kentucky

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Notice of decision.

**SUMMARY:** This notice announces our decision on a request for a determination of valid existing rights (VER) under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We have determined that Jag Energy LLC possesses VER for a coal haul road within the boundaries of the

Daniel Boone National Forest in Leslie County, Kentucky. This decision will allow Jag Energy LLC to obtain a Kentucky surface coal mining and reclamation permit for the road in question and to use the road to access and haul coal from a surface mine located on adjacent private lands.

**DATES:** *Effective Date:* November 9, 2009,

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Blackburn, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260-8402. Fax: (859) 260-8410. E-mail: [jblackburn@osmre.gov](mailto:jblackburn@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. What Is the Nature of the VER Determination Request?
- II. What Legal Requirements Apply to This Request?
- III. What Information is Available Relevant to the Basis for the Request?
- IV. How We Processed the Request.
- V. How We Made Our Decision.
- VI. What Public Comments Were Received?
- VII. How Can I Appeal the Determination?
- VIII. Where Are the Records of This Determination Available?

#### I. What Is the Nature of the VER Determination Request?

On October 21, 2008, Mr. John Begley II submitted a request for a determination of VER on behalf of Mr. William T. Gilbert of Jag Energy LLC. Jag Energy LLC applied for a permit (Application #866-0264) to conduct surface coal mining operations on privately owned land in Bear Branch, Leslie County, Kentucky. The property to be mined is adjacent to the Daniel Boone National Forest.

William T. Gilbert is seeking a determination that Jag Energy LLC has VER under paragraph (c)(1) of the definition of VER in 30 CFR 761.5 to use an existing road across Federal lands within the Daniel Boone National Forest as an access and haul road for the proposed mine. No other surface coal mining operations would be conducted on Federal lands within the Daniel Boone National Forest as part of this mine.

On December 16, 2008, we published a notice in the **Federal Register** (73 FR 76382) in which we provided an opportunity for the public to comment on the request for a determination of VER to use an existing Forest Service road as a coal mine access and haul road across Federal lands within the boundaries of the Daniel Boone National Forest in Leslie County, Kentucky. The comment period closed on January 15, 2009. We received no comments.

#### II. What Legal Requirements Apply to This Request?

Section 522(e)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1272(e)(2), prohibits surface coal mining operations on Federal lands within the boundaries of any national forest, with two exceptions. The first exception pertains to surface operations and impacts incidental to an underground coal mine. The second relates to surface operations on lands within national forests west of the 100th meridian. Neither of those exceptions applies to the request now under consideration.

The introductory paragraph of section 522(e) also provides two general exceptions to the prohibitions on surface coal mining operations in that section. Those exceptions apply to operations in existence on the date of enactment of the Act (August 3, 1977) and to land for which a person has VER. SMCRA does not define VER. We subsequently adopted regulations defining VER and clarifying that, for lands that come under the protection of 30 CFR 761.11 and section 522(e) after the date of enactment of SMCRA, the applicable date is the date that the lands came under protection, not August 3, 1977.

On December 17, 1999 (64 FR 70766-70838), we adopted a revised definition of VER, established a process for submission and review of requests for VER determinations, and otherwise modified the regulations implementing section 522(e). At 30 CFR 761.16(a), we published a table clarifying which agency (OSM or the State regulatory authority) is responsible for making VER determinations and which definition (State or Federal) will apply. That table specifies that OSM is responsible for VER determinations for Federal lands within national forests and that the Federal VER definition in 30 CFR 761.5 applies to those determinations.

Paragraph (c) of the Federal definition of VER contains the standards applicable to VER for roads that lie within the definition of surface coal mining operations. Jag Energy LLC is seeking a VER determination under paragraph (c)(1), which provides that a person who claims VER to use or construct a road across the surface of lands protected by 30 CFR 761.11 or section 522(e) of SMCRA must demonstrate that the "road existed when the land upon which it is located came under the protection of § 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations."

Based on other information available to us, we also considered whether VER might exist under the standard in paragraph (c)(3), which requires a demonstration that a "valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e)."

### III. What Information Is Available Relevant to the Basis for the Request?

The following information has been submitted by Jag Energy LLC or obtained from the United States Forest Service (USFS) or the Kentucky Department for Natural Resources (DNR):

1. A 1.76 mile long x 12 foot wide road designated USFS road FSR 1669 exists on the land to which the VER determination request pertains;

2. The land upon which the road is located was in Federal ownership as part of the Daniel Boone National Forest on August 3, 1977, the date of enactment of SMCRA;

3. A letter from USFS District Ranger, John Kinney, indicates that William Gilbert has applied for a special use permit for the use of Forest Service Road 1669 to access his property in Bear Branch, Ky.;

4. An affidavit from John Hollen, a resident of Bear Branch in Leslie County, Ky indicates that the proposed haul road contained in Jag Energy LLC application #866-0264 crossing the USFS property was used prior to 1977 as a coal haul road;

5. A coal lease between William T. Gilbert *et al.* Lessors, and Kenneth C. Smith, Lessee, for the Number four coal seam on lands described in Deed Book 34, page 464 and an Affidavit of Descent of John and Sally B. Gilbert in the records of the Leslie County, Ky. Court Clerk's office;

6. A copy of the deed and Affidavit of Descent referenced in the coal lease; and,

7. A copy of Special Use Permit RED 5064-01, issued by the USFS to Jag Energy LLC, authorizing the use of Forest Service Road 1669 to access the proposed mine site.

### IV. How We Processed the Request

We received the request on October 21, 2008, and determined that it was administratively complete on October 30, 2008. That review did not include an assessment of the technical or legal adequacy of the materials submitted with the request.

As required by 30 CFR 761.16(d)(1), we published a notice in the **Federal Register** seeking public comment on the

merits of the request on December 16, 2008 (73 FR 76382). We also published notices on December 11, 2008, December 18, 2008, December 25, 2008, and January 1, 2009, in Leslie County News, Hyden, Kentucky, a newspaper of general circulation in Leslie County, Kentucky.

After the close of the comment period on January 15, 2009, we reviewed the materials submitted with the request, and other relevant, reasonably available information and determined that the record was sufficiently complete and adequate to support a decision on the merits of the request upon issuance of the Forest Service Special Use permit for use of the road to which the VER request pertained.

We evaluated the record in accordance with the requirements at 30 CFR 761.16(e) as to whether the requester has demonstrated VER for the proposed access and haul road. For the reasons discussed below, we have determined that the requestor has demonstrated VER.

### V. How We Made Our Decision

As we stated above, Jag Energy LLC sought a VER determination under paragraph (c)(1) of the definition of VER at 30 CFR 761.5, which provides as follows:

(1) The road existed when the land upon which it is located came under the protection of section 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations.

Based upon information contained in the VER request submitted by Jag Energy and information obtained from the USFS and DNR, the following facts were determined about this road:

A 1.76 mile long x 12 foot wide road designated USFS road FSR 1669 exists on the land to which the VER determination request pertains. The land upon which the road is located was in Federal ownership as part of the Daniel Boone National Forest on August 3, 1977, the date of enactment of SMCRA. Thus the road existed when the land upon which it is located came under the protection of section 761.11 or 30 U.S.C. 1272(e).

The VER standard in the definition of VER at 30 CFR 761.5 also requires that the person seeking VER must have "a legal right to use the road for surface coal mining operations." That "legal right" standard was added to the definition of VER on December 17, 1999 (64 FR 70766, 70832). In the preamble to that revision of the definition of VER, OSM stated that a person must demonstrate a legal right to use the road for surface coal mining operations. (See 64 FR 70791) That is, despite the fact that a road existed on August 3, 1977, that fact alone doesn't give the applicant

the right to use the road for surface coal mining operations. To comply with this requirement, Jag Energy applied for and received a Road Use Permit for the road in question from the Forest Service dated June 26, 2009. That permit authorizes Jag Energy LLC to rehabilitate and maintain the road while using it to access the mine site.

Therefore, we conclude that the June 26, 2009, Road Use Permit from the Forest Service is sufficient to prove that Jag Energy LLC has a legal right to use the road for surface coal mining operations.

As stated previously, we also considered whether VER might exist under the standard in paragraph (c)(3), which requires a demonstration that a "valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e)." In our review of the available information we were able to determine that a special use permit had been issued previously by the USFS for the road in question to William T. Gilbert. However we were unable to determine that the special use permit for the road was issued prior to SMCRA, or that the special use permit was for the purpose of conducting surface coal mining operations.

Therefore we cannot conclude that the applicant has demonstrated VER under the standard contained in paragraph (c)(3) of the VER definition.

Based on the information above, it is the decision of OSM that the Jag Energy LLC does have valid existing rights to use this road. This decision is based primarily on the finding that the road was in existence at this location prior to the enactment of SMCRA, and that the applicant does have a legal right to use this road for surface coal mining operations under the special use permit issued by the USFS on June 26, 2009.

This finding is in accordance with the definition of VER pertaining to roads found at 30 CFR 761.5 subdivision (c)(1).

### VI. What Public Comments Were Received?

No public comments were received.

### VII. How Can I Appeal the Determination?

Our determination that VER exists is subject to administrative and judicial review under 30 CFR 775.11 and 775.13 of the Federal regulations.

### VIII. Where Are the Records of this Determination Available?

Our records on this determination are available for your inspection at the

Lexington Field Office at the location listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 24, 2009.

**Thomas D. Shope,**

*Regional Director, Appalachian Region.*

[FR Doc. E9-26954 Filed 11-6-09; 8:45 am]

BILLING CODE 4310-05-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R1-R-2009-N178; 1265-0000-10137-S3]

#### Rose Atoll National Wildlife Refuge, American Samoa

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare a comprehensive conservation plan and environmental assessment; announcement of public open house meetings; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) for the Rose Atoll National Wildlife Refuge (Refuge). We will also prepare an environmental assessment (EA) to evaluate the potential effects of various CCP alternatives. We provide this notice in compliance with our CCP policy to advise the public and other Federal and State agencies and Tribes of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process. We are also announcing public meetings and requesting public comments.

**DATES:** To ensure consideration, please send your written comments by December 9, 2009.

**ADDRESSES:** Send your written comments or requests for more information by any of the following methods.

*E-mail:*

*FW1PlanningComments@fws.gov* (include "Rose Atoll" in the subject line of the message).

*U.S. Mail:* Don Palawski, Project Leader, Pacific Remote Islands National Wildlife Refuge Complex, 300 Ala Moana Blvd., Room 5-231, Honolulu, HI 96850.

**FOR FURTHER INFORMATION CONTACT:** Don Palawski, Project Leader, (808) 792-9560 (phone).

#### SUPPLEMENTARY INFORMATION:

##### Refuge Overview

Rose Atoll Refuge was established in 1973 after a cooperative agreement between the Government of American

Samoa and the Service was signed. The Refuge is part of American Samoa and is located 78 miles east-southeast of Tau Island in the Manua Group at latitude 14°32'52" south and 168°08'34" west. The Refuge includes approximately 20 acres of land and 1,600 acres of lagoon surrounded by a perimeter reef. The lands, submerged lands, waters, and marine environment of the Refuge support a dynamic reef ecosystem that is home to a very diverse assemblage of terrestrial and marine species, some of which are Federally listed as threatened or endangered. One of the Refuge's most striking features is the pink hue of the perimeter reef caused by the dominance of coralline algae.

#### National Monument Establishment and Management Responsibilities

On January 6, 2009, President George W. Bush established the Rose Atoll Marine National Monument (MNM, or Monument) by signing Presidential Proclamation 8337 (Proclamation) under the authority of the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431). The Rose Atoll Refuge is part of the Rose Atoll MNM. Rose Atoll MNM consists of approximately 13,451 square miles of emergent and submerged lands and waters, with an outer boundary that is approximately 50 nautical miles from the mean low water line of Rose Atoll, the Monument's center.

Through the Proclamation, management responsibility for the Monument was assigned to the Secretary of the Interior, in consultation with the Secretary of Commerce. The Secretary of the Interior delegated management responsibility to the Service's Director (Secretary of the Interior Order 3284, January 16, 2009). The Director will continue to manage Rose Atoll Refuge for the conservation and protection of the Refuge's unique and valuable fish and wildlife resources, consistent with protection of the Monument's resources identified in the Proclamation.

Through the Proclamation, the Secretary of Commerce's National Oceanic and Atmospheric Administration (NOAA) was assigned primary management responsibility for fishery-related activities in the Monument's marine areas located seaward of the mean low water line of Rose Atoll, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The Secretary of Commerce was also directed in the Proclamation to initiate the process to add the marine area of Rose Atoll MNM to the Fagatele Bay National Marine Sanctuary in

accordance with the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*)

When completed, the Refuge's CCP and NOAA's Fagatele Bay National Marine Sanctuary management plan and fishery regulations will be referenced in and will form the foundation of the Monument's management plan. Agencies with jurisdiction or special expertise, including the U.S. Department of Defense, U.S. Department of State, and the Government of American Samoa, are to be treated as cooperating agencies during development of any Rose Atoll MNM management plans.

#### The CCP Planning Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction for conserving wildlife and habitats, CCPs identify wildlife-dependent recreational opportunities compatible with each refuge's establishing purposes and the NWRS mission, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS is established for specific purposes. We use a refuge's purposes to develop and prioritize its management goals and objectives within the NWRS mission, and to determine a refuge's compatible public uses. The CCP planning process provides opportunities for the public to participate in evaluating our management goals and objectives for conserving important wildlife habitat, and providing wildlife-dependent recreation opportunities.

Throughout our CCP planning process, we provide participation opportunities for the public and other agencies and organizations, including agencies of the American Samoa government. At this time, we encourage input in the form of issues, concerns,