



COALEX STATE INQUIRY REPORT - 250

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TOPIC: VER: RIGHTS-OF-WAY OR EASEMENTS FOR RAILROADS (Updates COALEX Report No. 149)

INQUIRY: An operator claims VER for an existing right-of-way, which, on August 3, 1977, was for a railroad. After 1977, the tracks were removed and power poles erected on the raised bed. An access road, used to maintain the poles, was built on the raised bed. Does the access road qualify for VER? Please locate any materials that address this issue.

SEARCH RESULTS: Research was conducted using the COALEX Library, other materials in LEXIS and prior COALEX State Inquiry Reports. No materials were identified that address the specific issue of this Report. Only one case with some relevance was retrieved; this West Virginia decision is attached. An existing COALEX Report on haul roads and VER which includes preambles to Federal Register notices is attached along with some updating material. The Report and the updating material are enclosed to provide general information on the issue of VER.

CHURNETTE v CALLAGHAN, 425 SE 2d 170 (W Va 1992).

The issue of this case was whether a private road in existence prior to August 3, 1977 qualified for the VER exception under West Virginia statutes and regulations. After analyzing what constitutes VER for haul roads, the court held that the road in question did qualify for the VER exception.

COALEX STATE INQUIRY REPORT - 149, "Haul Roads and Valid Existing Rights" (1990).

This inquiry requested materials on the hauling of coal on roads in existence prior to August 3, 1977. The only relevant material identified was regulatory-related: preambles to federal regulations, an OSM Directive and a district court case that ruled on the federal regulations.



This Report is updated by a more current OSM Directive on VER and a 1991 preamble to the federal proposed rule published in the Federal Register. See the ATTACHMENTS list below.

ATTACHMENTS

1. CHURNETTE V CALLAGHAN, 425 SE 2d 170 (W Va 1992).
2. COALEX STATE INQUIRY REPORT - 149, "Haul Roads and Valid Existing Rights" (1990).
 - A. TEMPORARY DIRECTIVE: Subject No. 88-1, Transmittal No. 419, "Interim Procedures for Determination of Valid Existing Rights" (January 1, 1988).
 - B. 54 FR 30557 (JULY 21, 1989). Withdrawal of proposed rule.
 - C. Excerpts from 53 FR 52374 (DECEMBER 27, 1988). Proposed rules.
 - D. Excerpts from 48 FR 41312 (SEPTEMBER 14, 1983). Final rules.
 - E. Excerpts from 47 FR 25278 (JUNE 10, 1982). Proposed rules.
 - F. Excerpts from 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble.
 - G. 55 FR 22961 (JUNE 5, 1990). Request for Determination of Valid Existing Rights Within the Daniel Boone National Forest, Ky.
 - H. 46 FR 36758 (JULY 15, 1981). Determination of Valid Existing Rights; Daniel Boone National Forest.
 - I. 45 FR 61798 (SEPTEMBER 17, 1980). Determination of Valid Existing Rights Within Monongahela National Forest.
 - J. Excerpts from NATIONAL WILDLIFE FEDERATION v LUJAN, 1990 U.S. Dist. LEXIS 11541 (D D C August 30, 1990).
3. OSM TEMPORARY DIRECTIVE, Subject No. 90-03, Transmittal No. 587, "Interim Procedures for Determination of Valid Existing Rights" (Issued 11/30/89).
4. 56 FR 33152 (JULY 18, 1991). Proposed rule. Areas designated by Act of Congress.