



COALEX STATE INQUIRY REPORT - 213

May 1992

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TOPIC: LANDS UNSUITABLE; VALID EXISTING RIGHTS; TAKINGS (Includes COALEX Reports 139, 155, 156 and 189)

INQUIRY: Without considering additional briefings or testimony, the Court of Appeals added 830 acres to an area petitioned to be designated unsuitable for mining (the suit requested 15 acres be added). The court remanded the case for a new decision which would take into consideration the "future use" of the aquifer. I am interested in information on the following topics:

1. Update of COALEX Reports 156 (renewable resource and aquifers) and 139 (VER).
2. Petitions to OSM for designating lands unsuitable for mining.
3. Additional material on takings and "continually created VER".

SEARCH RESULTS: The COALEX Library and other materials available in LEXIS were used to update the relevant topics and locate the requested documents. Items retrieved as a result of the research are discussed below. Copies are attached, as indicated.

I. RENEWABLE RESOURCE LANDS/AQUIFERS

A. COALEX STATE INQUIRY REPORT – 156, “Lands unsuitable for mining: definition of ‘renewable resource’ and ‘fragile or historic lands’” (1990).

This Report provides a regulatory history of the terms indicated above; information on water supply and replacement; and sole-source aquifers.

B. VILLAGE OF PLEASANT CITY v DIV.OF RECLAMATION, 1991 Ohio App LEXIS 2198 (Ohio Ct App April 7, 1992).

The court reversed the finding of the Reclamation Board of Review and remanded the matter “to the Chief with instructions to modify his decision so that additional areas would be declared



unsuitable for mining.” The Village allegation that “mining could result in a substantial loss or reduction of long-range productivity of water supply, aquifers and aquifer recharge areas” was upheld.

NOTE: This is an update to a case listed in COALEX REPORT – 156.

C. Also see PENN CENTRAL CORP. v OHIO DEPT. OF NATURAL RESOURCES (DNR), Case No. C-2-90-208, slip op. (SD Ohio December 18, 1990).

Penn Central attempted to obtain compensation for DNR’S and the Village of Pleasant City’s alleged taking of its property by designation of part of the property as unsuitable for mining. The motions were dismissed by the court on the grounds that Penn Central had failed to exhaust administrative remedies.

II. VER; CONTINUALLY CREATED VER

D. See JOURNAL OF MINERAL LAW & POLICY, Vol. 5, No. 3 (1989-90). “Symposium on Valid Existing Rights”.

Compilation of papers presented at DOI symposium April 3-4, 1990. [Journal not attached.]

E. COALEX STATE INQUIRY REPORT – 139, “Valid existing rights” (1990).

This Report provides an overview of the history of the rule defining VER under 30 CFR 761.5 and includes Pennsylvania and Interior administrative decisions and state case law.

COALEX STATE INQUIRY REPORT – 13, “Valid existing rights” (1984) is included as part of Report 139. This Report, included as part of Report 139, provides information on the legislative intent of VER.

F. COALEX STATE INQUIRY REPORT – 155, “Lands unsuitable for mining and valid existing rights in a severed mineral situation” (1990).

This Report provides case law relates VER to the right to mine within 300 feet of an occupied dwelling.

G. OSM TEMPORARY DIRECTIVE, Subject No. 90-03, Transmittal No. 587, “Interim procedures for determination of valid existing rights” (Issued November 30, 1989).[Incorporates Directive No. 91-2 (December 11, 1990)]

1. Definitions. “b. VER Standard. The basis on which a determination of VER will be made. Standards are described as they are set forth in OSM’s regulations. When a State’s VER standard is applicable, the language of the approved State regulatory program VER standard will govern. Depending on the circumstances, one of the following VER standards will be applied:”



- “(1) ‘Continually Created’ VER
- (2) ‘Good Faith/All Permits’ VER
- (3) Haul Road VER
- (4) ‘Needed for and Adjacent to’ VER
- (5) ‘Takings’ VER”

H. Also see OSM TEMPORARY DIRECTIVE, Subject No. 88-1, Transmittal No. 419, “Interim procedures for determination of valid existing rights” (Issued January 25, 1988).

I. BELVILLE MINING CO. v UNITED STATES, 763 F Supp 1411 (S.D. Ohio 1991).

The court found that under various deeds of severance, Belville Mining had the right to surface mine three of four tracts of land in the Wayne National Forest in Ohio.

J. Also see BELVILLE MINING CO. v LUJAN, 1991 U.S. Dist. LEXIS 12821 (S.D. Ohio 1991).

The court ordered OSM to begin proceedings to promulgate a final rule defining VER; enjoined OSM from applying a November, 1986 Federal Register notice that announced OSM’s intention to use state program definitions of VER pending further rulemaking; and directed OSM to begin proceedings to disapprove state program definitions of VER that adopted the “all permits” test.

K. THE STEARNS CO., 110 IBLA 345, IBLA 87-262 (1989).

The Board found “that appellant had not shown valid existing rights to engage in surface coal mining operations on land within the Daniel Boone National Forest”. Stearns acknowledged not having applied for all necessary permits to mine as of August 3, 1977, the enactment of SMCRA.

III. REGULATORY HISTORY: STATE AND FEDERAL PROCESSES FOR DESIGNATING LANDS UNSUITABLE FOR MINING (30 CFR Parts 764 and 769)

This is the list of Federal Register preambles and federal cases in which the processes for designating lands unsuitable for surface coal mining are discussed. Some of these notices overlap the VER notices listed in REPORT No. 139. Copies of the notices are attached, as indicated.

L. 44 FR 14902 (MARCH 13, 1979). Permanent program preamble – final rule.

1. Part 764 State processes for designating areas unsuitable.
2. Part 769 Petition process for designation of federal lands as unsuitable.
3. Part 761 Areas designated by Act of Congress. 761.5 Definitions. [Excerpts of this part of the preamble are in REPORT No. 139.]

M. 44 FR 77440 (DECEMBER 31, 1979). Final rule. Reclamation operations.



N. 47 FR 25278 (JUNE 10, 1982). Proposed rule. Areas unsuitable for surface coal mining: Areas designated by Act of Congress; Criteria for designating areas; State processes for designating areas; Designating lands as unsuitable. [Excerpts in REPORT No. 139]

O. 48 FR 41312 (SEPTEMBER 14, 1983). Final rule. Areas unsuitable for surface coal mining: Areas designated by Act of Congress; Criteria for designating areas; State processes for designating areas ; Designating lands as unsuitable. [Excerpts included in REPORT No. 139.]

P. IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION, (D.C. D.C. July 15, 1985).

The court upheld the Secretary's petition process, however, certain portions of the rule were remanded. [Included in REPORT – 156]

Q. 51 FR 41952 (NOVEMBER 20, 1986) Compliance with court order. Suspension of processing unsuitability petitions. [Entire notice included in REPORT No. 139.]

R. 52 FR 21904 (JUNE 9, 1987). Proposed rule. Designating lands unsuitable.

S. 52 FR 49322 (DECEMBER 30, 1987). Final rule. Designating lands unsuitable.

T. 52 FR 30557 (JULY 21, 1989). Withdrawal of proposed rule. Areas unsuitable for mining; Areas designated by Act of Congress. [Included in REPORT 139]

U. 56 FR 33152 (JULY 18, 1991). Proposed rule. Areas unsuitable for mining; Areas designated by Act of Congress.

V. 56 FR 65612 (DECEMBER 17, 1991). Final rule. Areas unsuitable for mining. [Excerpt]

Listed here are the Federal Register notices regarding petitions for designation of lands as unsuitable for surface coal mining operations. The materials are organized by petition area; relevant case law has also been included. Copies of these notices and decisions are attached, unless noted otherwise.

W. COLORADO: Adams County.

The Secretary for Lands and Minerals Management decided to designate certain lands adjacent to the Front Range Airport unsuitable for mining. The petition area is part of the safety zone for the Front Range Airport.

1. 49 FR 5699 (FEBRUARY 14, 1984).
2. 48 FR 7820 (FEBRUARY 24, 1983).
3. 48 FR 51551 (NOVEMBER 9, 1983).

X. MONTANA: Southeastern area near the Tongue River.



The petitions alleged that surface coal mining on lands near the Tongue River would harm the water quality of the River and the ground water, and that soil conditions would make reclamation technically and economically infeasible.

1. 46 FR 61929 (DECEMBER 21, 1981).
2. 46 FR 46008 (SEPTEMBER 16, 1981).
3. 46 FR 30202 (JUNE 5, 1981).

Y. NORTH CAROLINA: Deep River Basin

The petition was returned because the allegations lacked serious merit. One of the allegations stated that mining could result in substantial pollution of the water supply.

1. 54 FR 8605 (MARCH 1, 1989).
2. 52 FR 44499 (NOVEMBER 19, 1987).

Z. TENNESSEE: Flat Fork Creek watershed.

The IBLA ruled that “final unsuitability designations made under the Tennessee State program shall remain valid unless and until terminated.” The Tennessee Department of Health and Environment had designated Flat Fork as unsuitable for mining at about the time the federal program for Tennessee became effective. The petition alleged, among other things, that mining could result in substantial loss or reduction of the water supply and that mining would be incompatible with land-use plans. All parts of the petition area were designated unsuitable; however, continued use of the existing haulage road through the petition areas was allowed.

1. 55 FR 18189 (MAY 1, 1990).
2. 55 FR 10848 (MARCH 23, 1990).
3. 54 FR 42999 (OCTOBER 19, 1989).
4. 53 FR 32115 (AUGUST 23, 1988).
5. FROZEN HEAD STATE PARK ASSOCIATION et al., 102 IBLA 32, IBLA 86-246 (1988).

AA. TENNESSEE: North Chichamauga Creek watershed.

The petition alleged that the area was incompatible with land-use plans, would affect fragile and historic lands, could result in substantial loss or reduction of long-range productivity of water supply, etc. OSM decided not to designate any part of the petition area unsuitable for surface coal mining.

1. 53 FR 12196 (APRIL 13, 1988).
2. 52 FR 33659 (SEPTEMBER 4, 1987).
3. 52 FR 9960 (MARCH 27, 1987).
4. 51 FR 31177 (SEPTEMBER 2, 1986).



BB. TENNESSEE: Rock Creek watershed.

The petition area was designated as “unsuitable for surface coal mining and surface disturbance incident to underground mining.” The petition alleged that lands within the area were fragile lands, operations would adversely affect renewable resource lands, etc.

1. 52 FR 10174 (MARCH 30, 1987).
2. 51 FR 35570 (OCTOBER 6, 1986).
3. 51 FR 10119 (MARCH 24, 1986).
4. 50 FR 50357 (DECEMBER 10, 1985).

CC. TEXAS: Camp Swift Military Reservation, Bastrop County.

The Court of Appeals upheld the district court’s decision and OSM’s determination that the area not be designated as unsuitable for surface coal mining. The court rejected the petitioner’s challenge “that the Secretary acted arbitrarily and capriciously in his decision by failing to adequately consider the ‘economic feasibility’ of reclamation of the Camp Swift area.”

1. PRAGER v HODEL, 793 F 2d 730 (5th Cir 1986).*
2. 47 FR 35042 (AUGUST 12, 1982).
3. 47 FR 20040 (MAY 10, 1982).
4. 46 FR 60279 (DECEMBER 9, 1981).
5. 46 FR 49963 (OCTOBER 8, 1981).

*NOTE: Case sites several law journal and review articles which may be of interest. These are not included here.

DD. UTAH: Southern Utah near Bryce Canyon National Park.

Petitioners raised these issues: air quality, visibility, noise, deep ground water, reclamability, blasting effects and impacts on the local economy.

1. 45 FR 78816 (NOVEMBER 26, 1980).
2. 45 FR 68762 (OCTOBER 16, 1980).
3. 45 FR 60495 (SEPTEMBER 12, 1980).
4. 45 FR 33738 (MAY 20, 1980).
5. 45 FR 27836 (APRIL 24, 1980).

EE. UTAH: Kane County.

“The Director made a decision not to grant the determination of substantial legal and financial commitments.”

1. 54 FR 11576 (MARCH 21, 1989).



FF. WASHINGTON: Black Diamond and John Henry Mine No. 1.

Part of the “curtailed petition area” was designated as unsuitable for mining, other portions were not so designated. The John Henry Mine area was part of the petition was not processes because mine No. 1 that area was permitted prior to receipt of the petition. The petitioners alleged mining in the area would be unsuitable on natural-hazard lands, on fragile lands and in close proximity to population.

1. 53 FR 35565 (SEPTEMBER 14, 1988).
2. 52 FR 44643 (NOVEMBER 20, 1987).
3. 51 FR 10679 (MARCH 28, 1986).
4. 50 FR 19495 (MAY 8, 1985).
5. 49 FR 32686 (AUGUST 15, 1984).
6. 49 FR 25052 (JUNE 19, 1984).
7. DONALD B. PETERSON, 97 IBLA 314, IBLA 85-76 (1987).
8. PETERSON v OSM; STEBLY v OSM, Docket Nos. DV 6-2-PR, DV 6-3-PR (1986).

GG. WEST VIRGINIA: Monongahela National Forest.

The Director’s preliminary findings indicated that the Mower Lumber Company had VER to conduct underground mining operations on federal land in the Forest.

1. 45 FR 69567 (OCTOBER 21, 1980).
2. 45 FR 52467 (AUGUST 7, 1980).

HH. WYOMING: Medicine Bow.

OSM rejected a petition for designation of lands as unsuitable for surface mining, finding that “no new evidence was presented in the petition that was not considered by BLM in their...unsuitability review”.

1. 48 FR 11780 (MARCH 21, 1983).
2. 48 FR 2452 (JANUARY 19, 1983).
3. 48 FR 6201 (FEBRUARY 10, 1983).

II. WYOMING: Red Rim coal lease tract.

OSM and the Wyoming Department of Environmental Quality jointly prepared an Evaluation Document/EIS on the suitability of surface coal mining in the Red Rim area. OSM determined that lands within the petition area were fragile lands which surface mining would affect, but OSM declined to designate the area as unsuitable for mining, opting to set permit conditions for mining instead.

1. 51 FR 18966 (MAY 23, 1986).
2. 50 FR 48844 (November 27, 1985).



3. 49 FR 49388 (DECEMBER 19, 1984).
4. 49 FR 13440 (APRIL 4, 1984).
5. 49 FR 8092 (MARCH 5, 1984).
6. 49 FR 521 (JANUARY 4, 1984).
7. 48 FR 48724 (OCTOBER 20, 1983).
8. 48 FR 28861 (JUNE 29, 1983).
9. 48 FR 523 (JANUARY 5, 1983).

IV. TAKINGS

JJ. COALEX STATE INQUIRY REPORT – 189, “Subsidence and public land use; takings” (1991).

This REPORT provides information on general “takings” law and SMCRA-related law from Annotations and case law.

KK. BOARD OF SUPERVISORS OF SHENANGO TWP. V MCCLIMANS, 597 A2d 738 (Pa Commw Ct 1991).

The court affirmed prior rulings which found that the Shenango Township zoning ordinance prevented Amerikohl Land Company (landowner and lessee) from gaining access to their coal effecting a taking of the property without just compensation.

LL. GARDNER, et al. v COMMONWEALTH OF PENN., DEPT. OF ENVIRONMENTAL RESOURCES, 603 A 2d 279 (Pa Commw Ct January 31, 1992).

The Commonwealth Court affirmed the trial court’s findings that the “landowners’ de facto taking claim was not ripe because an administrative remedy was ‘arguably’ available.”

Attached for the record is this decision sent by Robert Karl:

MM. EAST OHIO GAS CO. (EOG) v DIV. OF RECLAMATION AND OHIO VALLEY COAL CO., Reclamation Board of Review Case No. RBR-5-91-072 (March 19, 1992).

The Board concluded that EOG’s pipelines which crossed an area permitted for longwall mining were “privately owned structures, which [were] privately used to transport gas for sale.... [T]hey are simply not of a public character.” The Board also found that the Subsidence Control Plan provided for “planned, predictable and controlled” subsidence above the “development area” and adequate protection against imminent harm to the public.

ATTACHMENTS

NOTE: Gaps in the lettering scheme indicate that a particular document, according to the indication above, is either not attached or is part of one of the enclosed Reports.



- A. **COALEX STATE INQUIRY REPORT – 156**, “Lands unsuitable for mining: definition of ‘renewable resource’ and ‘fragile or historic lands’” (1990).
- A. CFR sections
 - 1. 30 CFR 762.5 Definitions.
 - 2. 30 CFR 762.11 Criteria for designating lands as unsuitable.
 - B. COALEX STATE INQUIRY REPORT – 85, “Legislative History of SMCRA sec. 522(a)(3)(A) and (B)” (1987).
 - C. IN RE PERMANENT SURFACE MINING REGULATION LITIGATION, 620 F Supp 1519 (DC DC July 15, 1985).
 - D. 44 FR 14902 (MARCH 13, 1979). Subchapter F – Areas Unsuitable for Mining. [Excerpts.]
 - E. 44 FR 14902 (MARCH 13, 1979). Subchapter F – Areas Unsuitable for Mining. 30 CFR Part 762 – Criteria for Designating Areas as Unsuitable for Surface Coal Mining. Section 762.5 Definitions. [Excerpts.]
 - F. 44 FR 14902 (MARCH 13, 1979). Subchapter A – General. 30 CFR Part 701 – Permanent Regulatory Program. Section 701.5 Definitions. [Excerpts.]
 - G. 47 FR 25278 (JUNE 10, 1982). Proposed rules. Areas Unsuitable for Surface Mining. [Excerpts.]
 - H. 48 FR 41312 (SEPTEMBER 14, 1983). Final rules. Areas Unsuitable for Surface Coal Mining. [Excerpts.]
 - I. 50 FR 257 (JANUARY 3, 1985). Notice of suspension.
 - J. 50 FR 30408 (JULY 25, 1985). Proposed rule. Definitions of Fragile Lands and Historic Lands.
 - K. 51 FR 44484 (DECEMBER 10, 1986). Proposed rule. Reopening of comment period. Definitions of Fragile Lands and Historic Lands.
 - L. 52 FR 18792 (MAY 19, 1987). Final rule. Definitions of Fragile Lands and Historic Lands.
 - M. COALEX STATE INQUIRY REPORT – 35, “Water Rights and Replacement” (1985).
 - N. COALEX STATE INQUIRY REPORT – 39, “Water Replacement, Bond Release” (1985).
 - O. COALEX STATE INQUIRY REPORT – 93, “Water Rights and Replacement” (1988).
 - P. VILLAGE OF PLEASANT CITY v DIV. OF RECLAMATION, No. CA-835, slip op (Ohio Ct App 1987).
 - Q. 52 FR 6836 (FEBRUARY 14, 1989). Criteria for Identifying Critical Aquifer Protection Areas.
 - R. 52 FR 32342 (AUGUST 27, 1987). EPA designation of a sole-source aquifer.
 - S. US v MATTIACE INDUSTRIES, INC., CARGO TRUCKING, INC., AND INTERSTATE CIGAR CO., INC., 73 Bankr. 816; 17 ELR 21004 (ED NY 1987).
 - T. NATURAL RESOURCES DEFENSE COUNCIL, INC. (NRDC) et al. v US EPA, 824 F 2d 1258 (1st Cir 1987).
 - U. FLORIDA WILDLIFE FEDERATION et al. v GOLDSCHMIDT, 506 F Supp 350 (SD Fla 1981).



- B. **VILLAGE OF PLEASANT CITY v DIV.OF RECLAMATION**, 1991 Ohio App LEXIS 2198 (Ohio Ct App April 7, 1992).
- C. Also see **PENN CENTRAL CORP. v OHIO DEPT. OF NATURAL RESOURCES (DNR)**, Case No. C-2-90-208, slip op. (SD Ohio December 18, 1990).
- D.
- E. **COALEX STATE INQUIRY REPORT – 139**, “Valid existing rights” (1990).
[Enclosed without attachments.]
 - A. COALEX STATE INQUIRY REPORT – 13.
 - B. US V POLINO, 131 F Supp 772 (ND W Va 1955).
 - C. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Rule. [Excerpts only attached.]
 - D. 44 FR 67942 (NOVEMBER 27, 1979). Notice of suspension of certain rules in 30 CFR Chapter VII. [Excerpts only attached.]
 - E. 45 FR 8241 (FEBRUARY 6, 1980). Proposed rulemaking. [Excerpts only attached.]
 - F. 45 FR 51547 (AUGUST 4, 1980). Notice of suspension and statement of policy regarding effect on State programs. [Excerpts only attached.]
 - G. 47 FR 25278 (JUNE 10, 1982). Proposed rules. [Excerpts only attached.]
 - H. 48 FR 41312 (SEPTEMBER 14, 1983). Final rules. [Excerpts only attached.]
 - I. IN RE PERMANENT SURFACE MINING REGULATION LITIGATION, 22 ERC 1557, Mem op (D DC March 22, 1985).
 - J. 51 FR 41952 (NOVEMBER 20, 1986). Final rule; suspension.
 - K. 52 FR 2421 (JANUARY 22, 1987). Notice of intent to prepare an environmental impact statement (EIS) and a preliminary regulatory impact analysis (RIA).
 - L. 53 FR 52374 (DECEMBER 27, 1988). Proposed rules.
 - M. 54 FR 989 (JANUARY 11, 1989). Notice.
 - N. 54 FR 4837 (JANUARY 31, 1989). Notice of public hearings.
 - O. 54 FR 9847 (MARCH 8, 1989). Notice of reopening of public comment period.
 - P. 54 FR 30557 (JULY 21, 1989). Withdrawal of proposed rule.
 - Q. **DASET MINING CORP. v COMMONWEALTH OF PENN., DEPT OF ENVIRONMENTAL RESOURCES (DER)**, 1981 EHB 109 (1981).
 - R. **WILLOWBROOK MINING CO. v COMMONWEALTH OF PENN., DEPT OF ENVIRONMENTAL RESOURCES**, 92 Pa Commw 163, 499 A 2d 2 (Pa Commw Ct 1985).
 - S. **COGAR et al. v FAERBER AND SPRING RIDGE COAL CO.**, 371 SE 2d 321 (W Va 1988).
 - T. **COGAR et al. v SOMMERVILLE; SPRING RIDGE COAL CO., INC; AND PARDEE & CURTIN LUMBER CO.**, 379 SE 2d 764 (W Va March, 1989).
 - U. **EVANGELINOS v DIV. OF RECLAMATION**, Case No. 88-B-12, 1989 Ohio App LEXIS 3618 (Ohio Ct App September, 1989).
 - V. **RUSSELL v ISLAND CREEK COAL CO. AND FAERBER**, No. 19104, 1989 W Va LEXIS 986 (W Va December, 1989); rehearing refused February, 1990.
 - W. **ILLINOIS**: 54 FR 118 (JANUARY 4, 1989).



- X. KANSAS: 53 FR 39467 (OCTOBER 7, 1988).
 - Y. OHIO: 53 FR 51543 (DECEMBER 22, 1988).
 - Z. OKLAHOMA: 54 FR 37454 (SEPTEMBER 11, 1989).
 - AA. PENNSYLVANIA: 54 FR 29704 (JULY 14, 1989).
 - BB. TENNESSEE: 49 FR 38874 (OCTOBER 1, 1984).
 - CC. TEXAS: 45 FR 78635 (NOVEMBER 26, 1980).
 - DD. TABLE OF REGULATIONS
- F. **COALEX STATE INQUIRY REPORT – 155**, “Lands unsuitable for mining and valid existing rights in a severed mineral situation” (1990).
- A. RONALD JOHNSON, 5 IBSMA 19, IBSMA 80-86-1 (1983).
 - B. GATEWAY COAL CO. v OSM, Stout, Intervenor, Docket No. CH 2-50-R (1988 [Amends 1984 and 1986 Orders]).
 - C. WILLOWBROOK MINING CO. v COMMONWEALTH OF PENN., DEPT OF ENVIRONMENTAL RESOURCES, 92 Pa Commw 163, 499 A 2d 2 (Pa Commw Ct 1985)
 - D. COGAR et al. v FAERBER AND SPRING RIDGE COAL CO., 371 SE 2d 321 (W Va 1988).
 - E. COGAR et al. v SOMMERVILLE; SPRING RIDGE COAL CO., INC; AND PARDEE & CURTIN LUMBER CO., 379 SE 2d 764 (W Va March, 1989).
 - F. EVANGELINOS v DIV. OF RECLAMATION, Case No. 88-B-12, 1989 Ohio App LEXIS 3618 (Ohio Ct App September, 1989).
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- G. **OSM TEMPORARY DIRECTIVE**, Subject No. 90-03, Transmittal No. 587, “Interim procedures for determination of valid existing rights” (Issued November 30, 1989). [Incorporates Directive No. 91-2 (December 11, 1990)]
- H. **OSM TEMPORARY DIRECTIVE**, Subject No. 88-1, Transmittal No. 419, “Interim procedures for determination of valid existing rights” (Issued January 25, 1988).
- I. **BELVILLE MINING CO. v UNITED STATES**, 763 F Supp 1411 (S.D. Ohio 1991).
- J. **BELVILLE MINING CO. v LUJAN**, 1991 U.S. Dist. LEXIS 12821 (S.D. Ohio 1991).
- K. **THE STEARNS CO.**, 110 IBLA 345, IBLA 87-262 (1989).
- L. **44 FR 14902 (MARCH 13, 1979)**. Permanent program preamble – final rule.
- a. Part 764 State processes for designating areas unsuitable.
 - b. Part 769 Petition process for designation of federal lands as unsuitable.
- M. **44 FR 77440 (DECEMBER 31, 1979)**. Final rule. Reclamation operations.
- N.
- O.
- P.
- Q.



- R. **52 FR 21904 (JUNE 9, 1987)**. Proposed rule. Designating lands unsuitable.
- S. **52 FR 49322 (DECEMBER 30, 1987)**. Final rule. Designating lands unsuitable.
- T.
- U. **56 FR 33152 (JULY 18, 1991)**. Proposed rule. Areas unsuitable for mining; Areas designated by Act of Congress.
- V. **56 FR 65612 (DECEMBER 17, 1991)**. Final rule. Areas unsuitable for mining. [Excerpt]
- W. **COLORADO**: Adams County.
 - a. 49 FR 5699 (FEBRUARY 14, 1984).
 - b. 48 FR 7820 (FEBRUARY 24, 1983).
 - c. 48 FR 51551 (NOVEMBER 9, 1983).

- X. **MONTANA**: Southeastern area near the Tongue River.
 - a. 46 FR 61929 (DECEMBER 21, 1981).
 - b. 46 FR 46008 (SEPTEMBER 16, 1981).
 - c. 46 FR 30202 (JUNE 5, 1981).

- Y. **NORTH CAROLINA**: Deep River Basin.
 - a. 54 FR 8605 (MARCH 1, 1989).
 - b. 52 FR 44499 (NOVEMBER 19, 1987).

- Z. **TENNESSEE**: Flat Fork Creek watershed.
 - a. 55 FR 18189 (MAY 1, 1990).
 - b. 55 FR 10848 (MARCH 23, 1990).
 - c. 54 FR 42999 (OCTOBER 19, 1989).
 - d. 53 FR 32115 (AUGUST 23, 1988).
 - e. FROZEN HEAD STATE PARK ASSOCIATION et al., 102 IBLA 32, IBLA 86-246 (1988).

- AA. **TENNESSEE**: North Chichamauga Creek watershed.
 - a. 53 FR 12196 (APRIL 13, 1988).
 - b. 52 FR 33659 (SEPTEMBER 4, 1987).
 - c. 52 FR 9960 (MARCH 27, 1987).
 - d. 51 FR 31177 (SEPTEMBER 2, 1986).

- BB. **TENNESSEE**: Rock Creek watershed.



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
U.S. Department of the Interior

- a. 52 FR 10174 (MARCH 30, 1987).
- b. 51 FR 35570 (OCTOBER 6, 1986).
- c. 51 FR 10119 (MARCH 24, 1986).
- d. 50 FR 50357 (DECEMBER 10, 1985).

CC. TEXAS: Camp Swift Military Reservation, Bastrop County.

- a. PRAGER v HODEL, 793 F 2d 730 (5th Cir 1986).*
 - b. 47 FR 35042 (AUGUST 12, 1982).
 - c. 47 FR 20040 (MAY 10, 1982).
 - d. 46 FR 60279 (DECEMBER 9, 1981).
 - e. 46 FR 49963 (OCTOBER 8, 1981).
- *NOTE: Case sites several law journal and review articles which may be of interest. These are not included here.

DD. UTAH: Southern Utah near Bryce Canyon National Park.

- a. 45 FR 78816 (NOVEMBER 26, 1980).
- b. 45 FR 68762 (OCTOBER 16, 1980).
- c. 45 FR 60495 (SEPTEMBER 12, 1980).
- d. 45 FR 33738 (MAY 20, 1980).
- e. 45 FR 27836 (APRIL 24, 1980).

EE. UTAH: Kane County.

- a. 54 FR 11576 (MARCH 21, 1989).

FF. WASHINGTON: Black Diamond and John Henry Mine No. 1.

- a. 53 FR 35565 (SEPTEMBER 14, 1988).
- b. 52 FR 44643 (NOVEMBER 20, 1987).
- c. 51 FR 10679 (MARCH 28, 1986).
- d. 50 FR 19495 (MAY 8, 1985).
- e. 49 FR 32686 (AUGUST 15, 1984).
- f. 49 FR 25052 (JUNE 19, 1984).
- g. DONALD B. PETERSON, 97 IBLA 314, IBLA 85-76 (1987).
- h. PETERSON v OSM; STEBLY v OSM, Docket Nos. DV 6-2-PR, DV 6-3-PR (1986).



GG. WEST VIRGINIA: Monongahela National Forest.

- a. 45 FR 69567 (OCTOBER 21, 1980).
- b. 45 FR 52467 (AUGUST 7, 1980).

HH. WYOMING: Medicine Bow.

- a. 48 FR 11780 (MARCH 21, 1983).
- b. 48 FR 2452 (JANUARY 19, 1983).
- c. 48 FR 6201 (FEBRUARY 10, 1983).

II. WYOMING: Red Rim coal lease tract.

- a. 51 FR 18966 (MAY 23, 1986).
- b. 50 FR 48844 (NOVEMBER 27, 1985).
- c. 49 FR 49388 (DECEMBER 19, 1984).
- d. 49 FR 13440 (APRIL 4, 1984).
- e. 49 FR 8092 (MARCH 5, 1984).
- f. 49 FR 521 (JANUARY 4, 1984).
- g. 48 FR 48724 (OCTOBER 20, 1983).
- h. 48 FR 28861 (JUNE 29, 1983).
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