

APPENDIX E

SURFACE OWNER CONSULTATION

The 1977 Surface Mining Control and Reclamation Act (SMCRA) and implementing regulations (43 CFR 3420.1-4) require that all comprehensive land use plans involving potential coal leasing shall include consultation with qualified surface owners over federal coal. During the week of December 2, 1986, letters were sent to 1844 surface owners requesting the surface owner to state his/her preference for or against the surface mining of federal coal under his/her land. Surface owners were requested to respond before January 21, 1986. A news release announcing the consultation process and deadlines was provided news media located throughout western North Dakota. Three open houses were held in Dickinson, Williston and Hazen, North Dakota, to answer questions of surface owners. A follow-up letter was sent during the week of January 20, 1986, asking that all responses be returned to BLM by February 14, 1986. Another news release announcing the extended deadline was issued to media located throughout western North Dakota.

Surface owners were not recontacted in portions of the nine CSAs that were considered in the McKenzie-Williams and Southwest North Dakota MFPs (USDI 1984c, d) because the views expressed during the preparation of these plans were considered up-to-date. All surface owners located over federal coal in the remaining 15 CSAs were contacted.

In the letter, owners were asked to show themselves as: (1) in favor of, (2) against, or (3) unsure about leasing of federal

coal underneath their surface. They were also asked to state if their surface was already under lease by a coal company and whether they met the requirements as a qualified surface owner under SMCRA. A sample of the consultation letter and response form are included at the end of this appendix.

Areas with significant surface owner opposition were dropped from further consideration for leasing. Eight decision factors were used in combination to delineate areas of significant opposition:

1. Number of landowners over federal coal within the CSA opposed to leasing;
2. Acreage included under "opposed";
3. Percent of federal coal in the CSA;
4. Distribution of federal coal;
5. Distribution of "opposed" comments;
6. Location, size, and number of existing federal leases;
7. Location, size, and number of private and state coal leases;
8. Location, size, and number of surface lease agreements on lands over federal coal.

Results of surface owner consultation are shown in Tables E-1 and E-2.

TABLE E-1
SUMMARY OF SURFACE OWNER CONSULTATION¹

Coal Study Area	Letters Sent	Responses Received	Percent Response	Surface Owners Qualified or Assumed Qualified	Qualified Owners Under Previous Consent Agreements	Qualified Owners Under Previous Consent Agreements Responding "Opposed"	Qualified Owners Without Previous Consent Responding "In Favor"	Qualified Owners Without Previous Consents Responding "Unsure" ²	Qualified Owners Without Previous Consents Responding "Opposed"
Antelope	147	57	39	141	26	9	15	14	21
Arnegard ³	93	57	61	90	2	0	5	8	38
Beulah-Zap	167	70	42	154	23	3	19	20	18
Bowman-Gascoyne ⁴	99	50	51	99	30	10	19	—	11
Center-Stanton	107	44	41	96	25	3	15	7	11
Dickinson ³	417	216	52	400	37	21	17	22	137
Divide	24	14	58	22	0	0	1	1	10
Dunn Center	285	149	52	272	53	34	30	14	92
Elgin-New Leipzig, Mott, and New England ⁵	529	290	55	529	78	44	26	0	162
Elkhorn	72	33	46	68	0	0	5	6	18
Fortuna	99	62	63	93	1	1	16	18	22
Garrison	72	39	54	67	4	2	7	7	20
Golden Valley	94	55	59	86	18	2	8	15	24
Hanks ⁴	175	115	66	175	28	13	10	—	61
Keene	191	89	47	179	1	1	11	23	46
Niobe	2	1	50	2	0	0	0	0	1
Sand Creek ⁴	263	140	53	263	42	18	18	—	71
Tobacco Garden ³	162	77	48	158	2	0	6	12	41
Underwood	6	4	67	6	1	0	2	1	1
Velva	83	39	47	80	4	0	7	8	20
Washburn	13	8	62	10	4	0	2	1	2
Williston ⁴	303	141	47	303	49	23	30	—	61
Total	3403	1750	51	3293	428	184	269	177	888

¹Numerical summary only; identification of significant opposition was based on maps and overlays located in the Dickinson District Office.

²Tabulations of "unsure" responses are not available for CSAs or portions of CSAs included in the McKenzie-Williams and Southwest North Dakota MFPs.

³Portions of surface owner consultation conducted during preparation of McKenzie-Williams or Southwest North Dakota MFPs.

⁴Surface owner consultation conducted during preparation of McKenzie-Williams or Southwest North Dakota MFPs.

⁵Consultation results combined in Southwest North Dakota MFP.

**TABLE E-2
ACRES EXCLUDED FROM CONSIDERATION DUE TO SIGNIFICANT SURFACE OWNER OPPOSITION**

CSA	ALTERNATIVES					
	Gross	A Net	B, C, D Gross	B Net	C Net	D Net
Antelope	0	0	0	0	0	0
Arnegard	9,563	9,563	10,900	10,561	10,517	10,082
Beulah-Zap	0	0	1,800	1,779	1,779	55
Bowman-Gascoyne	0	0	0	0	0	0
Center-Stanton	0	0	1,120	1,120	1,120	1,120
Dickinson	0	0	15,040	9,050	8,882	8,009
Divide			480	480	480	480
Dunn Center	0	0	16,440	15,115	15,115	13,385
Elgin-New Leipzig	0	0	240	240	240	240
Elkhorn			4,080	4,070	3,911	3,610
Fortuna			2,760	1,676	1,636	1,517
Garrison	0	0	1,400	627	627	558
Golden Valley	0	0	2,520	2,478	2,478	2,360
Hanks	0	0	3,280	3,084	2,755	1,917
Keene			18,280	16,304	16,085	9,123
Mott	0	0	0	0	0	0
New England	8,600	3,800	12,920	11,889	11,770	11,668
Niobe			0	0	0	0
Sand Creek	5,520	5,280	8,040	7,906	7,298	6,514
Tobacco Garden	4,760	429	22,390	3,884	3,796	3,103
Underwood	0	0	0	0	0	0
Velva			0	0	0	0
Washburn	0	0	0	0	0	0
Williston	13,174	40	10,640	154	154	154
TOTAL	41,617	19,112	132,330	90,417	88,643	73,895



United States Department of the Interior

BUREAU OF LAND MANAGEMENT DICKINSON DISTRICT OFFICE

P.O. Box 1229
Dickinson, ND 58602

Dear Landowner:

The Bureau of Land Management (BLM) is screening federal coal areas to identify which areas should be considered further for possible leasing in accordance with the Department of the Interior's coal management regulations. The screening is part of the process of preparing a resource management plan for public lands and federal minerals managed by BLM in North Dakota.

Our review of federal and county records shows that you own the surface of lands in which the United States has retained ownership of the coal. On the enclosed consultation form you will find the legal description of these lands.

The Surface Mining Control and Reclamation Act of 1977 gives certain types of protection to surface owners who qualify under the law. The law contains both a consent requirement and a consultation requirement. If you qualify, the BLM cannot issue a coal lease and authorize a company to surface mine the coal under your land unless you agree to let that mining take place (the consent requirement). The surface mining law also requires BLM to consult with surface owners as part of the planning process and ask whether they favor or oppose leasing of coal under their land (the consultation requirement).

The purpose of this letter is to consult with you and to give you a chance to tell us whether you favor or oppose leasing the coal under your land. The BLM is not now proposing to lease the coal under you land. Also, we are not asking for your consent to leasing and mining. The resource management plan we are preparing will help us decide which coal lands in North Dakota should and should not be considered further for possible leasing. The decision on which specific coal lands will be leased will be made in a separate process.

The reason for this consultation with you and other surface owners in your area is to give the BLM an opportunity to understand your feelings about surface mining of coal under your land. The coal under your land might be included in a tract which we would offer for federal leasing. However, if a significant number of qualified surface owners in your area are opposed to surface mining of coal under their land, we may decide to refrain from leasing any federal coal in that area for surface mining. If this is the case, receiving your views at this early stage of planning will allow us to avoid making specific plans for coal leasing in your area.

Views Expressed During Consultation Not Binding

The views you express in this consultation are not binding, either on you or on the BLM. Here is what your views will do and what they will not do:

1. If you state at this time that you favor leasing, you may still stop surface mining at any time before a lease is issued by withholding your consent to mining. This will prevent the BLM from leasing the coal. However, if you (or a previous owner) have already given written consent to allow surface coal mining on your land, you may have already given up your right to stop leasing and mining.
2. If you express a preference for leasing, the BLM is under no obligation to offer the coal under your land for lease. Analysis may indicate the coal should not be leased because of environmental problems, that other lands contain better coal and should be leased first, or that there is no need to lease the coal under your land because sufficient coal lands are already available for mining.
3. If you express a preference against surface coal mining under your land and a significant number of other surface owners in your area are opposed to leasing a part of or the whole area may be eliminated from consideration for leasing. However, the BLM will consider other matters, such as the availability of other coal land for leasing, in making the decision whether or not to issue leases in the area.

The Consent Requirement vs. The Consultation Requirement

The two protections of the surface mining law for surface owners are very different.

The consent requirement concerns each surface owner's authority to prevent surface mining of coal under his land. The BLM will not at any time seek consent from you directly. If a coal company wants to surface mine the coal under your land, the company will have to negotiate with you to obtain your consent to mine. If a qualified surface owner refuses to grant consent for surface coal mining, BLM is required to withhold the coal from leasing. Your decision to give consent or refuse consent does not need to be made until a later time when BLM is preparing a specific coal leasing plan that includes your lands.

The consultation requirement of the law concerns the ability of a group of surface owners to influence coal leasing plans in their area. The BLM has to decide during the planning process whether to make lands eligible for coal leasing or to eliminate lands from leasing consideration within the life of the resource management plan. If there are a significant number of surface owners opposed to leasing for surface mining, and if other acceptable areas are available for leasing, the BLM may decide not to lease lands in the area for surface coal mining. Your preferences, along with those of neighboring surface owners, will be taken into consideration now, during planning.

The Effect of Significant Opposition to Leasing

If a significant number of surface owners in your area oppose leasing for surface coal mining, the BLM may issue no leases in the area, even though some surface owners do favor surface coal mining under their land. Just how many surface owners would amount to a "significant number" cannot be answered at this time. This will have to be determined on a case-by-case basis for each coal study area. But, in no case will the coal under your land be leased without your consent if you are a qualified surface owner.

Qualified Surface Owners

The protections of the surface mining law apply only to surface owners as defined by the surface mining law. The law defined surface owners as a person or persons who:

- (1) hold legal or equitable title to the land surface;
- (2) have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations; and,
- (3) have met the conditions of paragraphs (1) and (2) for a period of at least three years prior to the granting of consent.

If you meet the requirements of law listed above, you can help ensure that your preferences are considered in the BLM planning process by letting us know that you meet each of the requirements. If you do not meet the requirements, please let us know this also.

If Consent to Mine has Already Been Given

If you have already given your consent to a coal company or someone else to surface mine the coal under your land, it is important that the BLM know about this in preparing its land use plans. The enclosed consultation form provides an opportunity for you to list any such agreements.

If you have already given your consent to surface coal mining on your land, the BLM must consider you to be in favor of mining those tracts to which the consent agreements apply [according to BLM regulations 43 CFR 3420.1-4 (e)(4)(ii)].

Outside Advice

You may want to seek the advice of someone outside the federal government (for example, neighboring surface owners, a lawyer, or someone familiar with surface coal mining operations) before you answer this letter.

Time for Answering

In order to fully consider your views, we must have your response to this consultation by January 6, 1986. Please express your views on the enclosed form with preprinted name and legal descriptions

The form is designed so that you can respond individually for each separate parcel of land, and you may separate the parcels by legal descriptions as you see fit. If there is an error in the preprinted legal descriptions, please make the necessary correction. The form without preprinted name and legal descriptions is for your records. You may want to fill it out and save it, so you will have a record of your response.

The preprinted descriptions only cover federal coal with an identified potential for development. If you wish to know the boundaries of coal with development potential in your area, you can inspect the coal deposit maps on display at the County Auditor's Office in your county. Those who are unable to visit the courthouse can request deposit maps from this office.

If you have questions concerning consultation or any other aspect of the planning process, please call Mark Stiles or Ken Burke at (701) 225-9148. Or stop in at our office, which is on the second floor of the Gate City Building, 204 Sims Street, Dickinson. Our office hours are from 7:45 a.m. to 4:30 p.m.

To make it easier for surface owners to talk individually with BLM staff about consultation, three question-and-answer sessions will be held. These sessions will be informal, there will be no program presented, and persons can drop by any time during the scheduled hours.

Schedule

We are looking forward to finding out your views.

Sincerely yours,



District Manager

