

1.0 PURPOSE OF AND NEED FOR ACTION

This EIS analyzes effects anticipated from leasing Federal coal adjacent to the Freedom Mine, Mercer County, North Dakota (see Figure 1.1).

Acquiring Federal coal would be part of Coteau's plan to keep the Freedom Mine operating into the 2030s.

1.1 PURPOSE AND NEED FOR ACTION

On January 16, 2002, Coteau filed an application with BLM to lease Federal coal deposits beneath private surface at the following locations:

T. 144 N., R. 88 W., 5th P.M.
 Sec. 2: Lots 3, 4, S^{1/2}NW^{1/4}
 Sec. 4: Lots 1, 2, S^{1/2}NE^{1/4}, S^{1/2}
 Sec. 6: All
 Sec. 8: N^{1/2}NE^{1/4}, SE^{1/4}NE^{1/4}, NW^{1/4}, N^{1/2}SW^{1/4}

T. 144 N., R. 89 W., 5th P.M.
 Sec. 12: E^{1/2}

T. 145 N., R. 88 W., 5th P.M.
 Sec. 4: Lots 1, 2, 3, 4, S^{1/2}N^{1/2}, SE^{1/4}, S^{1/2}SW^{1/4}
 Sec. 10: N^{1/2}
 Sec. 14: All
 Sec. 22: All
 Sec. 26: N^{1/2}NE^{1/4}, SW^{1/4}NE^{1/4}, NW^{1/4}SE^{1/4}, W^{1/2}
 Sec. 28: E^{1/2}NE^{1/4}, SW^{1/4}NE^{1/4}, SE^{1/4}NW^{1/4}, S^{1/2}
 Sec. 34: N^{1/2}N^{1/2}, SE^{1/4}NE^{1/4}, E^{1/2}SE^{1/4}, SW^{1/4}SE^{1/4}, SW^{1/4}.

5, 571 Acres Federal Coal, Mercer County, North Dakota.

Figure 1.1
West Mine Area, Mercer County, North Dakota



BLM proposes to lease the above-listed tracts as part of a 17,000-acre expansion, the West Mine Area (WMA) of the Freedom Mine (Figure 1.2). The need is to acquire Federal coal reserves to be mined along with adjacent private reserves. Coteau would (1) maintain annual production at the current rate of 15-16 million tons/year, (2) meet existing contracts (3) conserve the coal resource.

1.2 SCOPE OF THE ANALYSIS

Leasing of Federal coal reserves is analyzed at the local (field office) level. Information on anticipated activities and impacts are considered appropriate for the scope of the proposed action and the likely environmental impacts of the operation.

1.2.1 History of Scoping and Public Participation

Scoping was begun on March 6, 2003 when BLM published a Notice of Intent to prepare a NEPA document in the *Federal Register*.

The project leader sent over 190 letters to interested parties on March 11, 2003. The letters explained Coteau's proposal and asked for issues and comments regarding the proposed action.

BLM and OSM held informational and consultation meetings, and field visits with tribes historically present in the area.

1.2.2 Issues Studied in Detail

- What direct, indirect, and cumulative effects on cultural, air quality, and other resources would result from leasing and mining of Federal coal reserves in the West Mine Area?
- If unacceptable adverse impacts are anticipated, how might such impacts be minimized, mitigated or avoided?
- What environmental effects would likely occur if Federal coal tracts were not leased?

1.3 DECISIONS TO BE MADE

BLM must decide whether to grant a lease for Federal coal reserves in the West Mine Area.

BLM must decide whether to (1) hold a competitive, sealed-bid lease sale for the tracts as applied for, (2) hold a com-

petitive sealed-bid lease sale for a modified tract configuration, or (3) reject the lease application and offer no tracts in the WMA at this time.

The Office of Surface Mining Reclamation and Enforcement (OSM), a cooperating agency on this EIS, must recommend (1) approval, (2) approval with conditions, or (3) disapproval of the mining plan (if leased) that a successful bidder would submit.

1.4 REGULATORY AUTHORITY AND RESPONSIBILITY

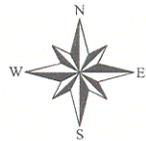
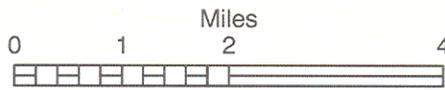
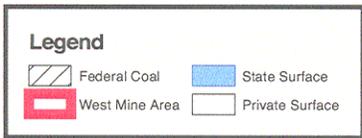
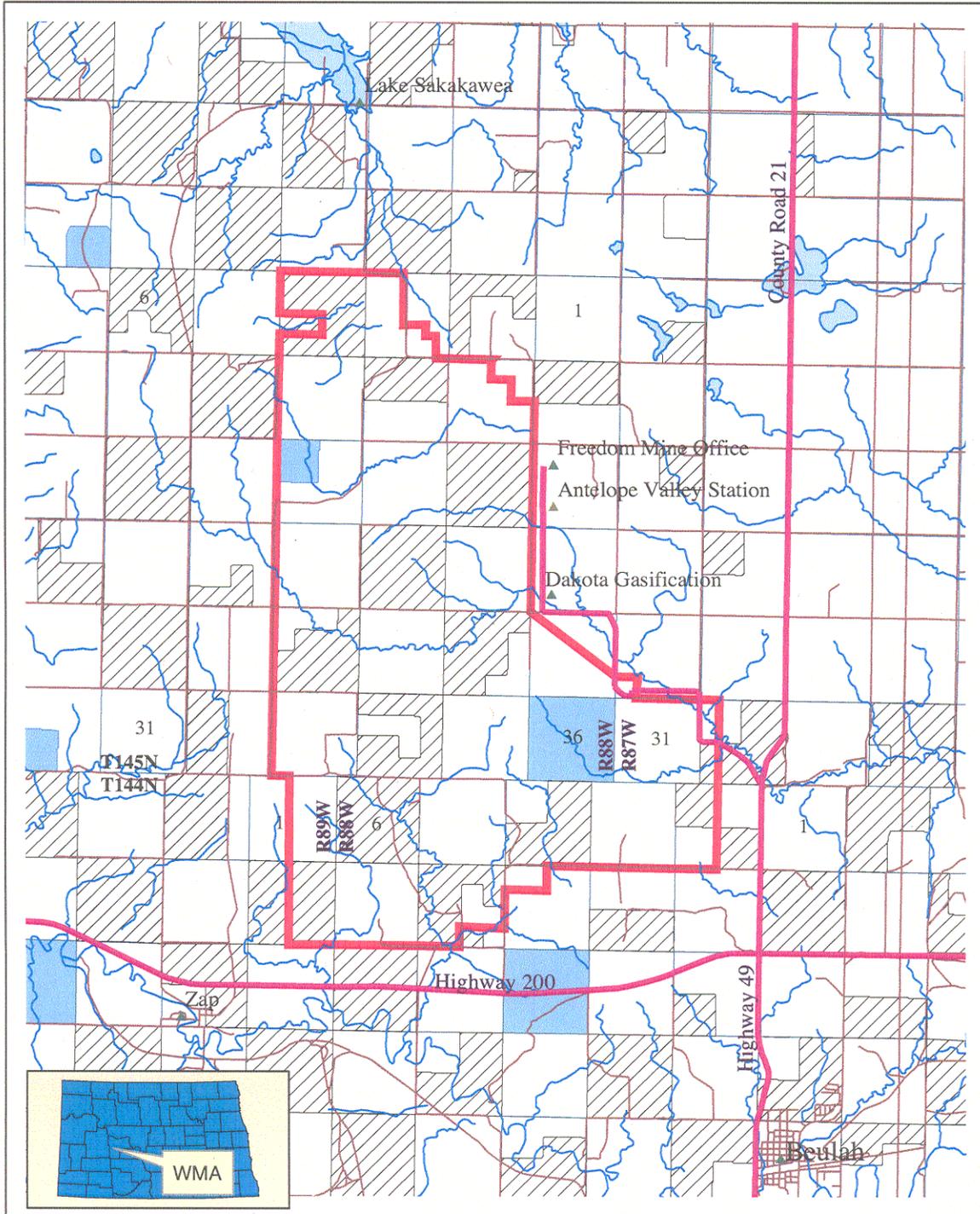
The Surface Mining Control and Reclamation Act of 1977, as amended (SMCRA), gives OSM primary responsibility to administer programs that regulate surface coal mining operations and the surface effects of underground coal mining operations in the United States. Pursuant to Section 503 of SMCRA, the North Dakota Public Service Commission (PSC) developed, and the Secretary of the Interior approved, North Dakota's permanent regulatory program. This authorized the PSC to regulate surface coal mining operations and the surface effects of underground coal mining on private and State lands within the State of North Dakota. In August 1983, pursuant to Section 523(c) of SMCRA, PSC entered into a cooperative agreement with the Secretary of the Interior. The PSC now regulates surface coal mining operations and the surface effects of underground coal mining on Federal lands within the State.

Pursuant to the cooperative agreement, Federal coal lease holders in North Dakota must submit a permit application package (PAP) to OSM and PSC for any proposed mining and reclamation operations on Federal lands in the State. PSC reviews the PAP to ensure it complies with the permitting requirements. PSC also ensures the proposed mining operation meets the performance standards of the approved North Dakota State permanent program and other statutes.

If the PAP does comply, PSC issues the applicant a permit to conduct coal mining operations. OSM, BLM, and other Federal agencies review the PAP to ensure that it contains the necessary information for compliance with the coal lease; the Mineral Leasing Act of 1920, as amended (MLA); the National Environmental Policy Act of 1969, as amended (NEPA); National Historic Preservation Act of 1966, as amended (NHPA); and other applicable Federal laws and their attendant regulations.

OSM recommends to the Assistant Secretary of the Interior, Land and Minerals Management (1) approval of the mining plan, (2) approval of the mining plan with conditions, or (3) disapproval of the mining plan. Before making a recommendation on the mining plan, OSM would obtain input from other Federal agencies, including BLM.

Figure 1.2
Setting of the West Mine Area showing location of Federal Coal Tracts



No warranty is made by the BLM for the use of the data for purposes not intended by BLM

Surface estate of the WMA is entirely non-Federal.

PSC enforces the performance standards and permit requirements during the mine's operation and has primary authority in environmental emergencies. OSM retains oversight responsibility of this enforcement. BLM has authority in emergency situations in which PSC or OSM inspectors cannot act before environmental harm or damage occurs.

1.4.1 Status of Coteau's WMA Application

Coteau applied for a Federal Coal Lease (NDM-91535) in January 2002. Concurrently, Coteau filed an application with the PSC for a permit to conduct coal mining operations in the West Mine Area. At present, that application does not include mining of Federal coal. Coteau would update the application if/when Federal coal becomes available.

Because the surface estate of the WMA is entirely non-Federal (see Appendix B for ownership), Federal approval is not required for PSC to approve Coteau's pending application.

1.5 RELATIONSHIP TO BLM POLICIES, PLANS, AND PROGRAMS

In addition to acts listed above, guidance and regulations for managing and administering public lands are set forth in 40 CFR 1500 (Protection of the Environment), and 43 CFR 3400 (Coal Management).

The BLM's cultural resource management program and consideration of effects to cultural resources are guided primarily by law (NHPA), regulation (36 CFR 800), related guidance, and BLM Cultural Resource Manuals and Handbook (8100 series). North Dakota is not a participant in the National Cultural Programmatic Agreement and therefore must comply with current Section 106 regulations of the National Historic Preservation Act. As the proposed lease is on privately owned lands many of the laws and Executive Orders pertaining to Federal lands, such as the Native American Graves Protection and Repatriation Act and Executive Order 13007 do not apply.

As put forth in Executive Order 13212, dated May 18, 2001, all BLM decisions must take into consideration adverse impacts on the President's National Energy Policy. According to BLM Instruction Memorandum No. 2002-053, dated December 12, 2001, it is BLM policy to prepare a Statement of Adverse Energy Impact whenever a BLM decision or action will have a direct or indirect adverse impact on energy development, production, supply or distribution. If there is no adverse impact, no Statement needs to be prepared. However, the Record of Decision must note this fact.

The No Action Alternative (rejection of Coteau's lease application) could adversely affect energy production when Federal coal tracts are bypassed. However, the action alternatives (to lease Federal coal reserves) would have no adverse energy impact.

1.6 SCOPING AND AMERICAN INDIAN CONSULTATION

The imprint of past peoples is found on the WMA landscape mainly in the form of stone features: rings, cairns, alignments, and a single effigy and petroglyph. These stone features, which dot the landscape, mark locations used by the ancestors of the Mandan, Arikara, Hidatsa, and, later, the Yanktonai Sioux and other nomadic groups who moved into the area in the 1700s.

In June of 2000 Ethnoscience, Inc. was contracted by Coteau to conduct investigations and provide recommendations regarding Traditional Cultural Values for the WMA and adjacent mine extension areas. That report was completed in September of 2001 (Deaver 2001). Tribal representatives had conversations concerning the WMA with Federal Agencies, SHPO, and PSC earlier that year. On April 11, 2000 Standing Rock Sioux Tribe's THPO facilitated a meeting in Bismarck which began a series of meetings/consultation meetings, site visits, individual consultations, conversations, and correspondence concerning the WMA that continue today.

Fort Berthold's Three Affiliated Tribes, Fort Peck's Assiniboine and Sioux, and the Standing Rock Sioux Tribe have participated in consultation, as have the BLM, OSM, PSC, North Dakota State Historic Preservation Officer, Coteau, the Advisory Council On Historic Preservation and the National Trust for Historic Preservation.

American Indian Tribes consulted include Fort Belknap, Oglala Sioux Tribe, Rosebud Sioux Tribe, Santee Sioux Tribe of Nebraska, Yankton Sioux Tribe, Flandreau Santee Sioux Tribe, Turtle Mountain Band of Chippewa Indians, Northern Cheyenne Tribe, Crow Creek Sioux Tribes, and Lower Brule. BLM and OSM have held over six formal group meetings with Tribal representatives and four meetings with individual Tribes. There have been two field tours by BLM/OSM. These consultations are in addition to the information gathered by Ethnoscience, Inc. (Deaver 2001).

1.7 CONFORMANCE WITH EXISTING LAND USE PLANS

Four land-use-planning screens for Federal coal were employed in BLM's North Dakota Resource Management Plan

and Environmental Impact Statement (Record of Decision signed April 1988): (a) coal development potential, (b) unsuitability criteria, (c) multiple-use tradeoffs, and (d) surface-owner consultation. Screening ensures that leasing conforms to the North Dakota Field Office's Resource Management Plan.

The interdisciplinary team revisited the land-use planning screens after receiving Coteau's lease application. One unsuitability criterion and one multiple-use tradeoff were addressed after reviewing Coteau's application.

Alluvial Valley Floors were originally evaluated for Coal Study Areas in the North Dakota Resource Management Plan. Portions of sections 26 and 28, T. 145 N., R. 88 W. in the WMA were identified as preliminary Alluvial Valley Floors in a 1983 study. Based on that study, areas designated as preliminary Alluvial Valley Floors were excluded from further consideration for coal leasing in the 1988 Resource Management Plan.

Current North Dakota surface coal mine regulations require companies to make an Alluvial Valley Floor determination and submit such findings to the North Dakota Public Service Commission. PSC makes a determination on the existence of an Alluvial Valley Floor prior to mine-permit application. Coteau conducted an Alluvial Valley Floor study for the WMA, which included contiguous downstream areas that could be affected by surface mining activities. No Alluvial Valley Floors were found in the West Mine or adjacent areas, which includes all nominated Federal coal tracts. PSC concurred with Coteau's determination. Therefore, a maintenance action was completed for the Resource Management Plan, removing the "unsuitable designation" for sections originally considered to be Alluvial Valley Floors.

Portions of sections 4, 22, 28, T. 145 N., R. 88 W., had Federal coal excluded from consideration for leasing under the "Steep Slope Multiple-Use Tradeoff" in the North Dakota Resource Management Plan. Alternative C, the selected alternative of the Resource Management Plan, stated that concentrations of steep slopes (generally areas of 40 acres or

more with slopes at or greater than 30 percent) would be excluded from further consideration for coal leasing. During the 1988 analysis, technological capability did not allow for a thorough analysis of each parcel under consideration.

These areas should not have been designated as "excluded from further consideration for leasing" because of steep slopes. GIS analysis shows locales with slopes greater than 30 percent in WMA are small and widely scattered with no individual areas of 40 acres in size. Therefore, a Resource Management Plan maintenance action was completed, which removed steep-slope designation for all areas over Federal coal in the WMA.

Based on these two planning screen modifications, BLM has determined the entire WMA is considered suitable for leasing.

Planners with the City of Beulah, Mercer County, Standing Rock Sioux Tribe, and The Three Affiliated Tribes were contacted regarding plans for the WMA:

- John Phillips, City planner for Beulah, ND, reported that they have no conflicts and no plan that extends as far as the WMA.
- Richard Sorenson, Planner for Mercer County, ND, said Coteau brought a proposal before the Planning and Zoning Board in March 2003. The County Commissioners approved Coteau's plan in April 2003.
- Del LeCompte, Land Coordinator for the Standing Rock Sioux Tribe, reported that he is not aware of any plans that cover the WMA. He said that their plans deal largely with land consolidation and management on the reservation.
- Anet Youngbird, Realty Specialist for the Three Affiliated Tribes, reported they have no current land-use plans that cover the WMA.

