

## APPENDICES

Energy Policy Act of 2005 – Section 1835  
Split Estate Federal Oil and Gas Leasing and  
Development Practices  
A Report to Congress

December 2006

## Appendix A Comparison of Rights and Responsibilities

The following comparison identifies rights and responsibilities under existing mineral and land laws for the:

- Bureau of Land Management (BLM)
- Lessee/Operator
- Private Surface Owner

A similar comparison can be found in the *Split Estate – Rights, Responsibilities, and Opportunities* brochure available from the BLM and at [www.blm.gov/bmp](http://www.blm.gov/bmp).

### *The Bureau of Land Management*

#### **Planning and Lease Sales**

- **Must notify** the public when preparing land use plans and amendments, and when lease sales are pending.
- **Must notify** the public through a competitive sale notice at least 45 days prior to offering lands for oil and gas leasing. Posts sale notices at the BLM offices, provides notice to surface managing agency offices for posting, posts notices on the BLM websites, and mails lists to parties upon request.

#### **Permitting and Development**

- **Encourages** the operator to contact the private surface owner as early as possible in the process.
- **Requires** the operator to make a good faith effort to negotiate a surface use agreement with the surface owner.
- **Does not participate** in negotiations between the operator and the private surface owner on the terms of damage compensation.
- **Will** invite the surface owner to participate in the pre-drilling onsite inspection and seeks the surface owner's input on development issues.
- **Offers** the private surface owner the same level of protection provided on Federally owned surface.
- **Carefully considers** the private surface owner's views and the effects on the private surface owner's uses before determining mitigation measures to include in the Conditions of Approval to the Application for Permit to Drill.

- **Must** fulfill the requirements of the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, the Clean Water Act, and other applicable laws that protect surface and subsurface resources.
- **Requires** an adequate **performance bond** from the operator for operations and reclamation in accordance with 43 CFR 3104 (3104 Bond).
- **Surface Owner Protection Bond** (also known as a Damages Bond or 3814 Bond – Stock-Raising Homestead Act of 1916):
- **Requires a bond, separate from the 3104 performance bond,** to protect the surface owner against loss and damage if a good faith effort does not produce an agreement with the surface owner. The amount and type of compensation depends on the statute under which the land was patented. The minimum bond amount is \$1,000.
- **Advises** the private surface owner of the right to object to the sufficiency of the Surface Owner Protection Bond and appeal the BLM’s decision.
- **Reviews** the sufficiency of the bond if the private surface owner files a written objection to the bond amount.
- **Receives** and forwards any appeals from the surface owner or lessee/operator to the Interior Board of Land Appeals.

### **Operations and Production**

- **Takes** enforcement action to address operations not complying with lease and permit terms.

### **Plugging and Surface Reclamation**

- **Must** seek the private surface owner’s written concurrence that reclamation is satisfactory.

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## *The Lessee/Operator*

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### **Planning and Lease Sales**

- **May** participate in and comment on preparation of land use plans and amendments.
- **May** nominate parcels for leasing.

### **Permitting and Development**

- **Has** the right to enter and occupy as much of the surface as is reasonably necessary to explore, drill, and remove the oil and natural gas resource on the leasehold, subject to obtaining BLM approval of drilling and surface use plans.

- **Should** coordinate and consult with the BLM and the private surface owner as early as possible.
- **Is responsible** for making access arrangements with the private surface owner prior to entry upon the lands for the purpose of surveying, staking, or to conduct cultural or biological surveys.
- **Must** participate in the onsite inspection that the BLM schedules for Notice of Staking or the Application for Permit to Drill.
- **Must** identify the private surface owner and include the owner's name, address, and telephone number in the Notice of Staking, Application for Permit to Drill, and Sundry Notices.
- **Must** certify to the BLM that he or she made a good faith effort to notify the surface owner before entry, and an agreement with the surface owner has been reached or that a good faith effort to reach an agreement failed.
- **Must** submit an adequate 3104 performance bond for operations and reclamation.
- **Surface Owner Protection Bond** (also known as a Damages Bond or 3814 Bond – Stock-Raising Homestead Act of 1916)
- **Must** submit a separate Surface Owner Protection Bond to the BLM for the benefit of the surface owner if good faith efforts to obtain a surface use agreement fail.

### **Operations and Production**

- **Must** comply with the appropriate regulations, terms of the lease, Application for Permit to Drill, and Conditions of Approval.

### **Plugging and Surface Reclamation**

- **Must** include a surface reclamation plan in the Surface Use Plan of Operations.
- **Must** complete reclamation to the satisfaction of the BLM.

<i><b>The Private Surface Owner</b></i>
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### **Planning and Lease Sales**

- **Is strongly encouraged** to participate in and comment on the preparation of land use plans and amendments.
- **Has the right**, as a member of the public, to comment on pending lease sales and proposed lease stipulations.

### **Permitting and Development**

- **Can** expect to be contacted by the lessee/operator prior to entry and staking to discuss access arrangements and begin discussions on the terms of a surface use agreement.
- **Will** be invited by the BLM to participate in the onsite inspection during the Notice of Staking and/or Application for Permit to Drill process to discuss the operator's development proposal and the BLM's and surface owner's preferences.
- **Is entitled** to the same level of surface protection that is provided on Federal surface.
- **Can** respond to the BLM's oral or written request for recommendations on addressing surface construction and reclamation issues.
- **Will** have his or her views on protection standards and limits carefully considered as the BLM determines the surface use conditions of approval.
- **Will** be asked by the operator to sign a statement certifying that efforts to conclude a surface use agreement were either successful or not successful.
- **Surface Owner Protection Bond** (also known as a Damages Bond or 3814 Bond – Stock-Raising Homestead Act of 1916)
- **Has the right** to object in writing to the sufficiency of the Surface Owner Protection Bond and will be advised of this right by the BLM if a Surface Owner Protection Bond is necessary. **Has the right** to appeal BLM's decision.
- **Will** have bond-sufficiency objections reviewed by the BLM in a timely manner.
- **Is entitled** to seek compensation from the lessee/operator for loss or damage under the authority of the law under which the land was patented. For example, for lands patented under the Stock-Raising Homestead Act, the surface owner is entitled to seek compensation from the lessee/operator for loss or damages to *crops or tangible improvements, including grazing lands*. If a Surface Owner Protection Bond has been filed with the BLM and the surface owner is not satisfied with payments made to the surface owner by the operator, the surface owner may file a claim in court for payments to be made from the Surface Owner Protection Bond.

### **Operations and Production**

- **Is encouraged** to report noncompliance incidents to the BLM.
- **Can** expect to have appropriate inspection and enforcement action taken.

### **Plugging and Surface Reclamation**

- **May** concur that final reclamation is satisfactory or recommend additional actions.

**Appendix B**  
**Current and Proposed Statutes, Regulations, and Policies**

<b>Split Estate Federal Oil and Gas Lease and Development Practices</b>		
<b>Topic</b>	<b>Description of Practice(s)</b>	<b>Statute, Regulation, or Policy</b>
Definition of Split Estate	<p>Where the surface is owned by an entity or person other than the owner of the subsurface minerals.</p> <p><b>*NOTE:</b> Proposed Onshore Oil and Gas Order No. 1 was published in the Federal Register on July 27, 2005 (70 FR 43349). The public review of the proposed Onshore Oil and Gas Order No. 1 has been completed and a final rule is currently being prepared. Some of the split estate-related text of the final rule is expected to change from the proposed rule text shown below.</p>	Proposed Onshore Oil and Gas Order No. 1*
<i>LAND USE PLANNING</i>		
Leasing Decisions & Development of Protective Leasing Stipulations	<p>The BLM notifies the public of opportunities to participate and comment on the preparation of land use plans and amendments. The BLM does not specifically notify individual surface owners that land use planning decisions are being made that could affect the oil and gas development actions on their surface.</p> <p>Planning decisions determine the following land use allocations: No Lease; Lease with Standard Terms and Conditions; Lease with Major Constraints; Lease with Moderate Constraints.</p> <p>Appropriate stipulations to be applied to lands available for lease are developed during the land use planning process, and typically address resources or issues such as wildlife, steep slopes, wetlands, etc.</p>	Standard Land use Planning Practice  Also refer to: 43CFR1610.2
<i>LEASING</i>		
Pre-Lease Surface Owner Notification	<p>The BLM offers for lease parcels that have been nominated by the public and that are in conformance with the BLM or U.S. Forest Service (FS) land use plan.</p> <p>The BLM notifies the public of pending lease sales and provides a 45-day or greater review period. BLM posts the Competitive Sale List and stipulations on the BLM State Office website; mails paper copies to those parties who have requested copies, including other surface managing agencies; and posts the List and stipulations in the affected BLM Field Offices.</p> <p>BLM does not typically notify the surface owner prior to offering for lease subsurface minerals under the surface estate.</p> <p>The Montana Competitive Sale Notice, beginning with the January 2006 Notice, contains a link to a State of Montana website. The public can determine from this State website the surface owner for parcels located in Montana. The Montana Sale Notice also includes a link to a site that has real estate records for the majority of North Dakota Counties, which is accessible to registered users paying the required fee.</p>	Standard Oil and Gas Leasing Practice  Also refer to: 43CFR3120.4-2

Post-Lease Sale Notification	Results of competitive lease sales and day-after-the-sale filings are posted on the respective BLM State Office website. Paper copies are also available upon request. The BLM does not typically notify the affected surface owner that a lease sale of the mineral interests under their surface has occurred.	Standard Lease Notification Practice
<i>DEVELOPMENT AND PRODUCTION</i>		
Development within Forest Service Boundaries	For split estate lands within FS administrative boundaries, the BLM has the lead responsibility, unless there is a local BLM/FS agreement that gives the FS this responsibility.	Proposed Onshore Oil and Gas Order No. 1
Notification & Pre-Planning Field Development	Initial Planning Conference:  The operator should request an initial planning conference with BLM, the applicable surface management entity, including private surface owners, as soon as the operator has identified a potential area of development.	Proposed Onshore Oil and Gas Order No. 1
	Pre-Onsite Coordination:  Early coordination with the BLM and the appropriate surface management agency or Bureau of Indian Affairs (BIA) office is encouraged as procedures and requirements vary by agency or reservation.  Operators are strongly encouraged to consult with the appropriate surface management agency as early as possible before filing an APD to identify local requirements and potential concerns.  Operators are advised to notify the surface management agency or surface owner prior to entry to allow the surface management agency or owner to inform them of sensitive resources that need to be avoided or any difficult, problem conditions. (p. 8)	Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development  Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development 2006 (Gold Book)
Notice of Staking (NOS)	If the surface is privately owned, the operator must furnish the name, address and telephone number of the surface owner, if known.	Proposed Onshore Oil and Gas Order No. 1
	Scheduling Onsite Inspection:  Within 10 days of receiving the Application for Permit to Drill (APD) package, BLM, in coordination with the operator and surface managing entity (including, in the case of split estate, the private surface owners), if appropriate, will schedule a future date for the onsite inspection unless the onsite inspection was held as part of the Notice of Staking (see Section III.F. of Onshore Oil and Gas Order No. 1). The onsite inspection will be held as soon as practicable based on schedules and weather conditions.	Proposed Onshore Oil and Gas Order No. 1
	Surface Owner Notification:  BLM will invite the surface owner to participate in the onsite inspection to assure that its concerns are considered. Surface owner concerns will be considered to the extent consistent with Federal land management policy.	Proposed Onshore Oil and Gas Order No. 1
	Onsite Inspection:  Within 10 days of receiving the NOS or APD package, the BLM, in consultation with the operator and surface management agency or private surface owner, will schedule a date for the onsite inspection. (p. 9)	Gold Book

	<p>When the onsite inspection is on private surface, the surface owner will be invited by the BLM. (p. 9)</p> <p>The BLM will invite the surface owner to participate in the onsite and final reclamation inspections... (p. 11)</p>	
Application for Permit to Drill (APD)	<p>Scheduling Onsite Inspection: Same as Notice of Staking Provisions</p> <p>Surface Owner Notification: Same as Notice of Staking Provisions</p> <p>Onsite Inspection: Same as Notice of Staking Provisions</p>	Proposed Onshore Oil and Gas Order No. 1
	<p>Protection Standards, Limits: The BLM will make the final determination of appropriate surface use requirements. In doing so, the BLM will carefully consider the views of the surface owner and the effect on the surface owner's use of the surface before implementing mitigation measures.</p> <p>The BLM will offer the surface owner the same level of surface protection that the BLM provides on Federal surface. The BLM will not apply standards or conditions that exceed those that would normally be applied to Federal surface, even when requested by the surface owner. (p. 11)</p>	Proposed Onshore Oil and Gas Order No. 1  Gold Book
	<p>Surface Owner Agreement:  The operator must make a good faith effort to notify the private surface owner before entry and obtain an access agreement from the surface owner. The access agreement may include terms or conditions of use, or be in the form of a waiver, or an agreement for compensation. The operator must describe the terms of the Surface Owner Agreement, if one was obtained, in sufficient detail in the Surface Use Plan of Operations to enable the BLM to evaluate impacts to adjacent offsite Federal and Indian lands and resources and prepare the necessary National Environmental Policy Act documentation.</p>	Proposed Onshore Oil and Gas Order No. 1
	<p>Prior to approval of the APD (or Sundry Notice to conduct new surface disturbing activities), the operator must certify as part of the complete application that a good faith effort has been made to reach an agreement with the private surface owner. If the surface owner and operator fail to reach an agreement, the operator must file a bond with the BLM (\$1,000 minimum) for the benefit of the surface owner to cover compensation, such as for reasonable and foreseeable loss of crops and damages to tangible improvements. The BLM will advise the surface owner of the right to object to the sufficiency of the bond and will review the value of the bond if the surface owner objects. (p. 11)</p> <p>The operator is strongly encouraged to negotiate an agreement with the surface owner. Negotiating an agreement in good faith provides a forum through which the operator and surface owner can discuss the preferences and needs of the surface owner. In addressing those needs, the operator may be able to modify the development proposal to minimize reclamation and surface damage costs. These costs can be minimized by placing roads and facilities in locations that the surface owner can use, thereby lessening the reclamation obligations of the operator.</p> <p>The agreement between the surface owner and the operator is confidential, and neither the surface owner nor the operator is required to provide the details of the agreement to the BLM or other agencies. However, the APD</p>	Gold Book



	Surface Use Plan of Operations should contain sufficient detail about any aspects of the agreement necessary for NEPA documentation and to determine that the operations will be in compliance with laws, regulations, Onshore Orders, and agency policies. (p. 12)	
	Surface Use/Owner Agreement Certification:  The operator must certify to the BLM that: (1) it made a good faith effort to notify the surface owner before entry; and (2) that an agreement with the surface owner has been reached or that a good faith effort to reach an agreement failed.	Proposed Onshore Oil and Gas Order No. 1
	Prior to approval of the APD (or Sundry Notice to conduct new surface disturbing activities), the operator must certify as part of the complete application that a good faith effort has been made to reach an agreement with the private surface owner. (p. 11)	Gold Book
	Resource Survey Information Needs - General: When authorizing lease operations on split estate lands where the surface is not Federally owned and the oil and gas is Federal or Indian, the BLM must comply with National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and related Federal statutes.	Proposed Onshore Oil and Gas Order No. 1
	The BLM may need additional cultural resources, sensitive or threatened and endangered species, or other resource survey information in order to comply with the NHPA, the ESA, or to complete an environmental analysis under NEPA. For surveys completed by the operator, the operator will be responsible for making access arrangements with the surface owner. (p. 12)	Gold Book
	National Historic Preservation Act: Federal agencies take into account the effects of their undertakings on properties on or eligible for the National Register of Historic Places whether those effects are on Federal lands, private surface, or split estate. The law defines undertakings as projects, activities, or programs, including those requiring a Federal permit, license, or approval. The area of potential effect for an undertaking is defined as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if such properties exist. Adverse effects include physical destruction; introduction of visual, atmospheric or audible elements that diminish integrity; and transfer, lease or sale outside Federal ownership or control. The 106 requirement to consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking applies regardless of the location of the historic property.	Standard Cultural and Historic Resource Practice  Also refer to: National Historic Preservation Act, Sections 106 and 110; 36 CFR Part 800; 8100 Cultural manual and handbook series; BLM/State Historic Preservation Officer protocols.
	Endangered Species Act:  The BLM must comply with provisions of the Endangered Species Act on split estate lands. This may result in required plant or animal surveys and mitigation to reduce impacts to endangered species, and consultation with the U.S. Fish and Wildlife Service.	Endangered Species Act of 1973, Section 7
	Sensitive Species:  The BLM manages sensitive species to preclude the need to list as endangered species under the Endangered Species Act. This may result in required plant or animal surveys and mitigation to reduce impacts to sensitive species.  The BLM and the U.S. Fish and Wildlife Service work together to address sensitive species issues to preclude the need for listing under the Endangered Species Act.	BLM 6840 Manual – Special Status Species

	<p>Surface Use Plan of Operations:</p> <p>The Surface Use Plan of Operations must:</p> <ul style="list-style-type: none"> <li>where the surface is privately owned, include a certification of surface owner agreement or an adequate bond, as described in Section VI of this Order.</li> </ul>	Proposed Onshore Oil and Gas Order No. 1
	<p>Operations and Reclamation Bond – All Operations:</p> <p>The BLM requires a bond for operations conducted on Federal and non-Federal surface “in order to ensure compliance with the Act, including complete and timely plugging of the well(s), reclamation of the lease area(s) and the restoration of any lands or surface waters adversely affected by lease operations after cessation of oil and gas operations on the lease(s)...”</p>	Refer to 43CFR3104
Bonding	<p>Surface Damages Bond - Surface Estate patented under the Stock-Raising Homestead Act:</p> <p>If no agreement was reached, the operator must submit an adequate bond to the BLM for the benefit of the surface owner sufficient to pay for loss or damages, such as loss of or damage to agriculture, other tangible improvements, or structures, as required by the specific statutory authority under which the surface was patented or the terms of the lease. The minimum acceptable bond amount is \$1,000.</p>	Proposed Onshore Oil and Gas Order No. 1
	<p>If the surface owner and operator fail to reach an agreement, the operator must file a bond with the BLM (\$1,000 minimum) for the benefit of the surface owner to cover compensation, such as for reasonable and foreseeable loss of crops and damages to tangible improvements. The BLM will advise the surface owner of the right to object to the sufficiency of the bond and will review the value of the bond if the surface owner objects. (p. 11)</p>	Gold Book
	<p>Service of Proposed Bond on Surface Owner and Right to Object (Protest) to the Sufficiency of the Bond:</p> <p>The operator must file evidence of service by certified mail of a copy of the bond upon the surface owner. If after expiration of 30 days after receipt of the bond no objections are made, the authorized officer may approve the bond, all else being regular. If objections are made, the authorized officer will immediately consider said bond, accompanying papers, and objections filed and determine whether the bond shall be approved. If approved, the BLM will notify in writing the surface owner of appeal rights. If not approved, the BLM will notify in writing the operator of appeal rights.</p>	43 CFR 3814
	<p>Surface Owner’s Right to Appeal to the Sufficiency of the Bond: Surface owners have the right to appeal to the sufficiency of the bond. Before the approval of the APD, the BLM will make a good faith effort to contact surface owners to assure that they understand their rights to appeal.</p>	Proposed Onshore Oil and Gas Order No. 1
	<p>The BLM will advise the surface owner of the right to object to the sufficiency of the bond and will review the value of the bond if the surface owner objects. (p. 11)</p>	Gold Book
	<p>Inspection and Enforcement :</p> <p>Noncompliance with the conditions of the Application for Permit to Drill Surface Use Plan and Conditions of Approval may result in an Incident of Noncompliance and assessments.</p>	Oil and Gas Leasing Reform Act of 1987

*RECLAMATION*

	<p>Pre-Reclamation Review and Approval:</p> <p>Plans for surface reclamation are a part of the Surface Use Plan of Operations</p> <p>For wells not having an approved plan for surface reclamation, operators must submit a proposal describing the procedures to be followed for complete abandonment, including a map showing the disturbed area and roads to be reclaimed. The operator must submit the request to the BLM. BLM will forward the request to the FS or other Surface Managing Entity (Private Surface owner), if appropriate.</p>	<p style="text-align: center;">Proposed Onshore Oil and Gas Order No. 1</p>
	<p>Post-Reclamation Approval:</p> <p>There are no current requirements to obtain the surface owner's approval. In practice, however, offices generally seek the surface owner's written concurrence that the reclamation is satisfactory.</p>	<p style="text-align: center;">Standard Practice No Statutory or Regulatory Requirement</p>
	<p>Upon completion of reclamation operations, the lessee or operator must notify the BLM or the FS using [Sundry Notice] Form 3160-5, Final Abandonment Notice, when the location is ready for inspection. Final abandonment will not be approved until the surface reclamation work required in the Surface Use Plan or Subsequent Report of Plug and Abandon has been completed to the satisfaction of the BLM or FS and surface managing entity (private surface owner), if appropriate.</p>	<p style="text-align: center;">Proposed Onshore Oil and Gas Order No. 1</p>

## Appendix C

### Comparison of the Surface Owner Consent Provisions in Section 714 of the Surface Mining Control and Reclamation Act of 1977 (Coal Operations)

SECTION 714 of PUBLIC LAW 95-87  
Surface Mining Control and Reclamation Act of 1977 (30 U.S.C 1304)

*As taken from an unofficial OSM compilation of P.L. 95-87 and all revisions through December 31, 1993*

#### **SURFACE OWNER PROTECTION**

[30 U.S.C. 1304]

SEC. 714. (a) The provisions of this section shall apply where coal owned by the United States under land the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques.

(b) Any coal deposits subject to this section shall be offered for lease pursuant to section 2(a) of the Mineral Lands Leasing Act of 1920, as amended.

(c) The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent. Valid written consent given by any surface owner prior to the enactment of this Act shall be deemed sufficient for the purposes of complying with this section.

(d) In order to minimize disturbance to surface owners from surface coal mining of Federal coal deposits and to assist in the preparation of comprehensive land-use plans required by section 2(a) of the Mineral Lands Leasing Act of 1920, as amended, the Secretary shall consult with any surface owner whose land is proposed to be included in a leasing tract and shall ask the surface owner to state his preference for or against the offering of the deposit under his land for lease. The Secretary shall, in his discretion but to the maximum extent practicable, refrain from leasing coal deposits for development by methods other than underground mining techniques in those areas where a significant number of surface owners have stated a preference against the offering of the deposits for lease.

(e) For the purpose of this section the term "surface owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) 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 the consent. In computing the three-year period the Secretary may include periods during which title was owned by a relative of such person by blood or marriage during which period such relative would have met the requirements of this subsection.

(f) This section shall not apply to Indian lands.

(g) Nothing in this section shall be construed as increasing or diminishing any property rights by the United States or by any other landowner.

**Comparison of Coal Provisions to Oil and Gas Provisions**

<b>Topic</b>	<b>Coal Provisions</b>	<b>Oil and Gas Provisions</b>
<i>Definitions</i>	<p>43 CFR 3400 Coal Management Regulations</p> <p>§ 3400.0-5 Definitions.                      gg) <i>Qualified surface owner</i>                      “means the natural person or persons (or corporation, the majority stock of which is held by a person or persons otherwise meeting the requirements of this section) who:...”</p>	
<i>Land Use Planning: Protective Leasing Stipulations</i>	<p>43 CFR 3420.1-4 Coal Management Regulations</p> <p>(ii) For the purposes of this paragraph, any surface owner who has previously granted written consent to any party to mine by other than underground mining techniques shall be deemed to have expressed a preference in favor of mining. Where a significant number of surface owners in an area have expressed a preference against mining those deposits by other than underground mining techniques, that area shall be considered acceptable for further consideration only for development by underground mining techniques. In addition, the area may be considered acceptable for further consideration for leasing for development by other than underground techniques if there are no acceptable alternative areas available to meet the regional leasing level.</p> <p>(iii) An area eliminated from further consideration by this subsection may be considered acceptable for further consideration for leasing for mining by other than underground mining techniques if:</p> <p>(A) The number of surface owners who have expressed their</p>	<p>Standard Land Use Planning Practice                      Also refer to: 43 CFR 1610.2</p> <p>The BLM notifies the public of their opportunity to participate and comment on the preparation of land use plans and amendments. The BLM does not specifically notify surface owners that land use planning decisions are being made that could affect the oil and gas development actions on their surface. Planning decisions include: No Lease; Lease with Standard Terms and Conditions; Lease with Major Constraints; Lease with Moderate Constraints; and are typically based on resources such as wildlife, steep slopes, wetlands.</p>

	<p>preference against mining by other than underground techniques is reduced below a significant number because such surface owners have given written consent for such mining or have transferred ownership to unqualified surface owners; ...</p>	
<p><i>Land Use Planning: Surface Owner Consultation</i></p> <p><i>Preference for or against surface occupancy</i></p>	<p>43 CFR 3420.1-4 Coal Management Regulations</p> <p>§ 3420.1-5 <i>Hearing requirements.</i> General requirements for land use planning.</p> <p>(4)(i) While preparing a comprehensive land use plan or land use analysis, the Bureau of Land Management shall consult with all surface owners who meet the criteria in paragraphs (gg) (1) and (2) of §3400.0-5 of this title, and whose lands overlie coal deposits, to determine preference for or against mining by other than underground mining techniques.</p> <p>After public notice, the Bureau of Land Management or other surface management agency shall conduct a public hearing on the proposed comprehensive land use plan or land use analysis if it involves the potential for coal leasing before it is adopted if such a hearing is requested by any person who is or may be adversely affected by the adoption of the plan. A hearing conducted under part 1600 of this title of this chapter shall fulfill this requirement.</p>	<p>There are no surface-owner consent provisions; however, public participation during the land use planning process provides opportunity for surface owners to provide input into potential leasing stipulations.</p>
<p><i>Pre-Lease Surface Owner Notification</i></p>	<p>43 CFR 3422.2 Coal Management Regulations</p> <p>Notice of sale and detailed statement. (a) Prior to the lease sale, the authorized officer shall publish a notice of the proposed sale in the Federal Register and in a newspaper(s) of general circulation in the county or equivalent political subdivision in</p>	<p>Standard Pre-Lease Notification Practice</p> <p>Also refer to: 43 CFR 3120.4-2</p> <p>The BLM notifies the public of pending lease sales and provides a 45-day review period. BLM posts the Competitive Sale List and stipulations on the BLM State Office website; mails paper copies to those parties who have requested copies, including other surface</p>

	<p>which the tracts to be sold are situated. The newspaper notice shall be published not less than once a week for 3 consecutive weeks. BLM will post notice of the sale in BLM State Office where the coal lands are managed. BLM will also mail notice to any surface owner of lands noticed for sale and to any other person who has requested notice of sales in the area. The lease sale shall not be held until at least 30 days after such posting in the State Office</p>	<p>managing agencies; and posts the List and stipulations in the affected BLM Field Offices. BLM does not directly notify the surface owner prior to offering for lease subsurface minerals under the surface estate.</p> <p>Results of competitive lease sales and day-after-the-sale filings are posted on the BLM State Office website. Paper copies are available upon request.</p> <p>The Montana Competitive Sale Notice, beginning with the January 2006 Notice, contains a link to a State of Montana website. The public can determine from this State website the surface owner for parcels located in Montana. The Montana Sale Notice also includes a link to a site that has real estate records for the majority of North Dakota counties which is accessible to registered users paying the required fee.</p>
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**ADDITIONAL SURFACE OWNER CONSENT PROVISIONS  
IN COAL MANAGEMENT REGULATIONS**

***43 CFR 3427 Coal Management Regulations***

***Subpart 3427—Split Estate Leasing***

***§ 3427.0-1 Purpose.***

The purpose of this subpart is to set out the protection that shall be afforded qualified surface owners of split estate lands (43 CFR 3400.0–5) and the requirements for submission of evidence of written surface owner consent from qualified surface owners of split estate lands. 47 FR 33142, July 30, 1982]

***§ 3427.0-3 Authority.***

(a) These regulations are issued under the authority of the statutes cited in §3400.0–3 of this title.

(b) These regulations primarily implement Section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304), as construed in Solicitor's Opinion M–36909, 86 I.D. 28 (1979).

***§ 3427.0-7 Scope.***

The surface owner consent provisions of the Surface Mining Control and Reclamation Act do not apply:

(a) To preference right lease applications; and

(b) If the split estate coal is to be mined by underground mining techniques (43 CFR 3500.0–5).

***§ 3427.1 Deposits subject to consent.***

On split estate lands (43 CFR 3400.0–5(kk)) where the surface is owned by a qualified surface owner, coal deposits that will be mined by other than underground mining techniques shall not be included in a lease sale without evidence of written consent from the qualified surface owner (43 CFR 3400.0–5(gg)) allowing entry and commencement of surface mining operations.

[47 FR 33142, July 30, 1982]

***§ 3427.2 Procedures.***

(a)(1) Each written consent or evidence of written consent shall be filed with the appropriate Bureau of Land Management State Office (43 CFR subpart 1821). For lands offered for lease sale pursuant



to subpart 3420 of this title, consents or written evidence thereof shall be filed on or before a date prior to the lease sale specified in a notice published in the Federal Register. For lands offered for lease sale pursuant to subpart 3425 of this title, consents or written evidence thereof shall be filed prior to the posting of the lease sale notice.

(2) Statement of refusal to consent shall be filed with the appropriate Bureau of Land Management State Office, but such statement shall be accepted for filing only during activity planning.

(b) Written consent, evidence of written consent, or statement of refusal to consent may be filed by any private person or persons with a potential interest in the lease sale of split estate lands.

(c) Such filing shall, at a minimum, contain the present legal address of the qualified surface owner, and the name, ownership, interest, if any, and legal address of the party making the filing, and if it is a written consent or evidence thereof, a copy of the written consent or evidence thereof.

(d) The authorized officer shall verify that the written consent or evidence of such consent meets all of the following requirements, and that the statement of refusal to consent meets the requirements of paragraphs (d)(2) and (3) of this section:

(1) The right to enter and commence mining is transferable to whoever makes the successful bid in a lease sale for a tract which includes the lands to which the consent applies. A written consent shall be considered transferable only if it provides that after the lease sale for the tract to which the consent applies:

(i) The successful bidder shall assume all rights and obligations of the holder of the consent, including the obligation to make all payments to the grantor of the consent and to reimburse the holder of the consent for all money previously paid to the grantor under the consent contract; and

(ii) Neither the holder nor the grantor of the consent has any right under the consent contract to prevent the successful bidder from assuming the rights and obligations of the holder of the consent by imposing additional costs or conditions or otherwise;

(2) The named surface owner is a qualified surface owner as defined in §3400.0-5(gg) of this title; and

(3) The title for all split estate lands described in the filing is held by the named qualified surface owners.

(e) Upon receipt of a filing from anyone other than the named qualified surface owner, the authorized officer shall contact the named qualified surface owner and request his confirmation in writing that the filed, written consent or evidence thereof to enter and commence mining has been granted, and that the filing fully discloses all of the terms of the written consent, or that the refusal to consent is accurate.

(f) The applicable conditions of paragraphs (d) and (e) of this section shall be met prior to the lease sale for lands to which the consents apply.

(g) The authorized officer shall in all cases notify the person or persons filing the written consent, evidence of written consent, or statement of refusal to consent of the results of the review of the filing, including any request for additional information needed to satisfy the requirements of this subpart in cases where insufficient information was supplied with the original filing.

(h) The purchase price of any applicable written consent from a qualified surface owner submitted and verified prior to posting of the notice of lease sale shall be included with the description of the tract(s) in the notice of lease sale, and the other terms of the consent shall be included in the detailed statement of the sale for the tract(s). Any consent filed after posting of the notice of lease sale shall be placed in the official file for the lease tract(s) to which the consent applies and shall be available for inspection by the public in the appropriate Bureau of Land Management State office (43 CFR subpart 1821).

(i) Any statement of refusal to consent shall be treated as controlling until the activity planning cycle that includes the area covered by the refusal to consent is repeated or the surface estate is sold. When an activity planning cycle is initiated, the qualified surface owner shall be notified that his/her prior statement of refusal has expired and shall be given the opportunity to submit another statement.

(j) If the surface owner fails to provide evidence of qualifications in response to surface owner consultation or to a written request for such evidence, and if the authorized officer is unable to independently determine whether or not the surface owner is qualified, the authorized officer shall presume that the surface owner is unqualified. The authorized officer shall notify the surface owner in writing of this determination and shall provide the surface owner an opportunity to appeal the determination.

(k) Any surface owner determined to be unqualified by decision of the field official of the surface management agency shall have 30 days from the date of receipt of such decision in which he/she may appeal the decision to the appropriate State Director of the Bureau of Land Management. The surface owner shall have the right to appeal the State Director's decision to the Director, Bureau of Land Management, within 30 days of receipt of that decision. Both appeals under this paragraph shall be in writing. As an exception to the provisions of §3000.4 of this title, the decision of the Director shall be the final administrative action of the Department of the Interior.

[44 FR 42615, July 19, 1979, as amended at 47 FR 33142, July 30, 1982; 48 FR 37656, Aug. 19, 1983]

**§ 3427.3 *Validation of information.***

Any person submitting a written consent shall include with his filing a statement that the evidence submitted, to the best of his knowledge, represents a true, accurate, and complete statement of information regarding the consent for the area described.

**§ 3427.4 *Pre-existing consents.***

An otherwise valid written consent given by a qualified surface owner prior to August 3, 1977, shall

not be required to meet the transferability of §3427.2(d)(1) of this title.

[47 FR 33142, July 30, 1982]

**§ 3427.5 *Unqualified surface owners.***

(a) Lease tracts involving surface owners who are not qualified (see §3400.0–5(gg)) shall be leased subject to the protections afforded the surface owner by the statute(s) under which the surface was patented and the coal reserved to the United States. No consent from an unqualified surface owner is required under this subpart before the authorized officer may issue a lease for such a tract (see Section 9 of the Stock-Raising Homestead Act (43 U.S.C. 249); the Act of March 3, 1909 (30 U.S.C. 81); Section 3 of the Act of June 22, 1910 (30 U.S.C. 85); and Section 5 of the Act of June 21, 1949 (30 U.S.C. 54)).

(b) The provisions of §§3427.1 through 3427.4 of this title are inapplicable to any lease tract on which a consent has been given by an unqualified surface owner. The high bidder at the sale of such a tract is not required to submit any evidence of written consent before the authorized officer may issue the lease unless the statute establishing the relative rights of the United States (and its lessees) and the surface owner so requires.

[47 FR 33142, July 30, 1982]

**Appendix D**  
**Listening Session Attendance**

<b>State/Date</b>	<b>Speakers</b>	<b>Participants</b>
<b>Albuquerque, NM</b> March 20, 2006	1:00 PM <b>25</b> 7:00 PM <b>7</b>	1:00 PM <b>100+</b> 7:00 PM <b>64</b>
<b>Grand Junction, CO</b> March 22, 2006	1:00 PM <b>12</b> 7:00 PM <b>7</b>	1:00 PM <b>43</b> 7:00 PM <b>22</b>
<b>Casper, WYO</b> March 24, 2006	1:00 PM <b>32</b> 7:00 PM <b>7</b>	1:00 PM <b>72</b> 7:00 PM <b>20</b>
<b>Miles City, MT</b> March 27, 2006	1:00 PM <b>6</b> 7:00 PM <b>2</b>	1:00 PM <b>20</b> 7:00PM <b>6</b>
<b>Washington, DC</b> March 31, 2006	1:00 PM <b>4</b>	1:00 PM <b>10</b>
<b>Total</b>	<b>102</b>	<b>360+</b>

**Appendix E**  
**Summary of Issues and Recommendations**  
**Email Comments Sent to [splitestate@blm.gov](mailto:splitestate@blm.gov)**

**Acronyms: SO=Surface Owner, APD=Application for Permit to Drill, BMP=Best Management Practices, COA=Conditions of Approval, POD=Plan of Development**

<b>Planning, Cooperation, &amp; Surface Use Agreements</b>
Recommend mediators and timelines for the Surface Use Agreement process.
Use third party facilitators, BLM should find them for the Surface Use Agreement process.
Binding arbitration is not recommended – it is costly and used as a delay tactic by SO.
If no access agreement can be reached, use mediation and a certification process for access.
More communication between all parties.
Need to get operators and surface owners together to work through problems, take BLM out of the middle of this situation.
Require use of BMPs and Gold Book Make the field managers use the Gold Book too. Implement the Gold Book or the State’s Standards, whichever is more stringent.
BLM should back up owner to enforce BMPs.
BLM’s COAs should not conflict with Surface Owner Agreement.
BLM representatives working with local government is important.
Define “Good Faith” to include guidance of regulations on SUA, damage and bonding.
Fairly balance multiple use interests.
Less voluntary, more mandatory requirements.
Have a BLM National team decide how to implement the EPA Act, but each BLM State have subset policies for own State areas.
Make mineral rights as clear on title as deeds and easements are and file with the county.
Do not change the balance of SO and mineral Lessee – that’s illegal.
Operators should not be able to indemnify from compliance with environmental requirements by agreements with SO for leasing.
Apply the higher procedures to State land too.
Do not separate surface and mineral estates in future land sales and exchanges.
Make the Energy Act 362 budget a priority next year.
Look for next generation energy instead of O&G.
<b>Lease Sales</b>
Require SO to consent to lease prior to leasing.
Inform SO of their rights to appeal at all stages in the process.
BLM should not apply stipulations to Split Estate lands during planning
Establish criteria for leasing based on size of parcel (do not lease ranchettes).
Stock-Raising Homestead Act preempts Wyoming Law and can’t apply to Federal minerals.
Notify NM State Land Dept of any mineral leasing under their own land.
Define the rights of all parties involved.
Provide a copy of the Split Estate policy IM 131-2003 to all SO.
Lessees take the risk of laws changing so it is OK to change the laws regarding compensation.
No leasing on Watersheds.
Leasing on Municipal Watershed should require 1 year waiting period and a Plan of

Development (POD).
Education for the leasing process & NEPA for land owners. Have the realtors, lawyers, and title companies make SO aware they are purchasing split estate.
Do not allow leasing on Federal Deductible Conservation Easements and do a mineral potential feasibility study at the time of donation.
<b>Notification Before Leasing</b>
Notify SO with the name of lease winners upon lease sale (same day). Post-lease winner information at local BLM Office.
Do not require additional notification.
Support the type of processes done in Milwaukee BLM to notify individuals in writing with tract and copy of deeds.
Notify State and local government before staking with timely notices of the Notice of Staking (NOS).
Notify the SO 45 days prior to leasing.
Notify SO 60 days prior to leasing so they can participate in the planning on their land.
Notify not more than 365 or less than 90 days prior to leasing. Notify ahead of time before leasing. Notify adjacent owners before leasing. Send a (certified) letter. Include maps on web announcements. Do not rely on computer notices – send personal notices. Put notices in local newspapers and in county offices. Have a backup to the website in case it goes down.
Notify SOs within 1 mile 45 days in advance of sale. Post on BLM website 45 days in advance of sale. Put a legal notice in local newspaper and do direct mailing.
Notify the SO of who the lease holders are and of any BLM waivers of lease stipulations within 10 days.
<b>APD Process</b>
Timing of APD process does not allow the operator to get in and out as fast as possible.
Speed up processing of APDs While SO appeals, keep moving for authorized operator.
APD practices are expensive for SO and sometimes confusing.
Clarify issues where operator compels access across parcels by drilling on one and not the other.
Notify SO within 5 working days of APD receipt Notify SO within 10 working days of APD receipt.
Notify SO within 10 working days of on-site inspection.
Include COAs or APD in the notification.
Issue notice to SO of APD or NOS with copy to SO at the same time and manner as the lessee.
Notify SO (not just the public) 30 days prior to APD approval. 60 days.
Local government should get a copy of the APD when approved.
NEPA notification should include SO.
Have an exception to notification if SO cannot be found.

Give a 20-day notice to SO prior to O&G operations resuming – done in writing by certified letter or hand delivery.
<b>Bonding</b>
Surface owner should have input into bond amount.
Require bonds to be on entire field or project area.
Bond should cover all facilities not just wells.
Each well should have a 20K or higher bond.
Make it harder to bond-on.
Bond is too low.
Bond should be adequate.
Higher bonding to protect the watersheds.
BLM issues bonds when all other measures fail.
Oil companies use bonding on as a leverage to force agreements.
Notify surface owner if bond is protested or appealed.
Clarify bonding-on procedures.
Especially where 3 bonds may be needed for 1 site.
After bonding-on move APD faster.
Allow blanket bonds in lieu of APD by APD bonding. Bond at \$2 per foot for inactive wells.
Do not allow blanket bonds. They do not adequately protect each individual site.
Streamline the bonding process.
Incorporate a 30-day limit on bonding.
<b>Payments</b>
Royalty payments should be 1%-3%.
Compensate for other losses like property values at market rate.
Need control over payments for access to land.
Develop Federal and fee minerals concurrently.
Have payments for surface damage based on actual damage.
Have damages determined by an expert.
Show how surface damage is calculated.
Require surface damage agreements.
Show how they are calculated.
Make damage agreements site specific.
Have them calculated by an expert.
Require a zero net impact standard for health of the property before, during and after and compensation for any temporary departure from that.
Compensation for loss should be based on the statute of patent.
Guarantee appropriate water sources if SO water fails or becomes polluted.
Pay royalties to SO to stabilize community tax base in areas predominantly owned by Federal Government.
Make payments for lost agriculture production and resulting loss of income and diminished land values.
<b>Permitting &amp; Development</b>
Operator must be accountable for higher levels of communication with SO like responding to calls, letters, inquiries and providing information on activities.
Keep the process the same.
Simplify the process and add timelines.

Provide indemnification against injury or policy cancellation.
Make the regulations more stringent.
State clearly that compliance with NEPA, environmental impacts, etc., are the responsibility of the BLM and operator not the SO.
Archeological monitors should accompany drilling survey parties to assure extraction will not damage historical resources.
Develop a template surface owner agreement.
Partner with State and local laws to regulate.
Do not allow States to design their own laws, keep it Federal.
Follow the State laws instead.
Change Federal laws due to limitations of State laws.
Streamline permit process by eliminating duplicate agency tasks.
Define timelines on permitting.
BLM should apply the same rules to private surface as BLM would on Federal surface.
Give a list of mitigation requirements required on Federal Land to SO as an example.
Penalize operators for violations.
Operators should know what land use is before drilling.
Surface Use Agreements are private and should remain so, except where they nullify legitimate public concerns.
Once a surface use agreement is in place, BLM should allow project to proceed per Onshore Order #1.
Require soil testing for construction techniques for specific lands.
Include geological surveys in the process.
Mineral Leasing Act already covers requirements adequately.
Regulate oil and gas surface owner consent the same as coal mines.
Modify Onshore Order to include replacement of water, re-injection & treatment of CBM produced water and to require a water management plan.
Require the least intrusive methods be used.
Don't compare Oil and Gas to strip mining.
<b>Notification After Leasing</b>
Invite local government with jurisdiction and SO to pre-onsite/planning meeting – give reasonable notice.
Schedule pre-drill meeting ASAP to allow SO planning.
Notify SO of the lessees name within 10 days of lease agreement.
<b>BMPs/Stipulations</b>
Consult local government on historic preservation in addition to SHPO.
Honor SO wishes with regard to historic preservation.
Consult local government on Threatened/Endangered/Special Status Species or candidates for stipulations to safeguard species with directional drilling or banning if needed.
Honor SO wishes with regard to Threatened, Special Status.
Require BMPs – including air, pest, weed practices.
Locate pipes adjacent to roads.
Require more transportation planning.
Place Meter houses at back of location for rehab.
Shield lighting to lessen light pollution.
Force operators to use existing pipelines instead of making more.



In rugged areas go to 160 acre spacing – do a pilot area to test.
Use pitless drilling.
More prescription of directional and pitless drilling.
Directional drilling should be used in Watersheds and Wildlife areas.
Don't drill in the Palisade area or at least use pitless drilling.
Drillers should cooperate more with ranchers.
Line the ponds with containers to prevent seepage.
Ground water issues need to be addressed.
Inspect wells annually.
Decrease density of drilling sites.
Use multiple well pads.
Require Plans of Development (POD) or Geographic Area Plans to include cluster wells and lower density.
Replace lost water supplies.
Require additional language requiring operating during daylight hours, not weekends or Federal holidays and for operator to not disturb SO.
Mitigate loss of privacy, noise, traffic from O&G, biologists, archeologists.
Don't treat Special Status animals like Endangered Status.
Work with water and electric co-ops to stop the practice of making improvements for operators and charging the SO in higher utility fees.
Limit the SO approval time for reclamation signoff to 30 days.
Solicit local government recommendations on surface impact mitigation.
Use Colorado or State/local storm-water Authority.
No drilling on Watersheds.
For CBM, require water removal plans prior to drilling wells.
BLM's stipulations for the Palisades watershed does not provide protection.
Do not have a 5-mile buffer around the Crow and Cheyenne Indian Reservations.
Put a 1/4 mile NSO stipulation around existing residences at leasing.
<b>Operations and Production</b>
Hire BLM landmen, (paid by fee to the BLM).
Hire more inspectors.
Part of the proceeds from fines should go to the landowner.
Increase funding for I&E
<b>Plugging and Surface Reclamation</b>
Must have immediate and regular enforcement.
Have consistent enforcement for everyone.
Limit SO to 30 days approval time on reclamation approval.
Require hydro-seed on all reclamation.
Have SO sign-off on Reclamation Plan before BLM releases bond.
Clean up idled/abandoned/orphaned wells – High cost to taxpayer.
Make abandoned well cleanup a priority in 2007-10
Local government should be consulted prior to BLM approving final abandonment plugging or reclamation..
Amend Onshore Order to require complete and timely reclamation.
Give mineral rights back to owner if operator does not “prove up” rights or abandons site

instead of selling lease again.
Record title with lessor and operators jointly responsible for reclamation.
<b>Other Requests for BLM Action</b>
Inappropriate to apply SO consent in SMCRA to Oil & Gas leasing.
Onshore Order needs to be withdrawn.
Actively develop a program of exchanges in New Mexico to consolidate mineral and surface of BLM and State Land Office.
Rewrite all the regulations so that there are no negative impacts on the SO's property.
If a new species or historical discovery is made, turn the information over to the proper authorities and restrict the use of the surface. Ensure it remains confidential and indemnify SO against loss caused by discovery.
Director Clarke should officially retract her letter and affirm States rights.
Pull together a blue ribbon panel of independent scientists to work with SO and cutting edge operators to recommend the best technology and processes.
Add Oil and Gas to list of minerals covered under subsection b-o of the Stock-Raising Homestead Act.
By October 1 each year, have the Secretary of the Interior certify to Congress that staff and budgets are adequate to ensure inspection and enforcement.
Allow the SO to recover legal costs of negotiations with operators.

**Appendix F**  
**Summary of Issues and Recommendations**  
**Listening Session Comments from CO, NM, WY, MT, and D.C.**

**Acronyms: SO=Surface Owner, APD=Application for Permit to Drill, BMP=Best Management Practices, COA=Conditions of Approval, POD=Plan of Development**

<b>Planning, Cooperation, &amp; Surface Use Agreements</b>
Recommend mediators to help the SO and operator.
Use third party facilitators, BLM finds them.
BLM should not negotiate compensation.
BLM representatives working with local government is important.
Define "Good Faith" to include guidance of regulations on SUA, damage and bonding.
Fairly balance multiple use interests.
Give high priority to surface owners to develop Federal minerals.
Less voluntary, more mandatory mitigation.
Update or revise the management plan.
Don't just go through motions in meetings with mind already made up.
Have energy rules written by energy companies.
BLM's COAs should not conflict with Surface Owner Agreement.
Apply the higher procedures to State land too.
In the future, do not separate surface and mineral estates.
Make the Energy Act 362 a priority next year.
More communication between all parties.
<b>Lease Sales</b>
Need GIS Layers BEFORE leasing to assess impact.
Establish criteria for leasing based on size of parcel (do not lease ranchettes).
Stock-Raising Homestead Act preempts Wyoming Law which can't apply to Federal minerals.
Once a lease is sold, honor that contract.
Define the rights of all parties involved.
Lessees take the risk of laws changing.
No leasing on Watersheds.
Leasing on municipal water requires 1 year waiting and POD.
Education for the leasing process & NEPA for land owners and industry.
Stipulations for Palisades watershed don't provide protection, want a waiver.
<b>Notification Before Leasing</b>
Do not require additional notification.
Notify State and local government before staking with timely notices of NOS.
Notify SO 45 days prior to leasing.
Notify SO 60 days prior to leasing, notify land owner so they can participate
Notify SO not more than 365 or less than 90 days prior to leasing
Notify ahead of time before leasing.
Notify adjacent owners before leasing.
Send a certified letter.
Include maps on web announcements.

Notify SOs within 1 mile 45 days in advance of sale.
Post on BLM site for 45 days in advance of sale.
Put a legal notice in local paper and do direct mailing.
Identify Lease holders within 10 days and SO of waiver of stipulations.
<b>APD Process</b>
Timing of process does not allow the operator to get in and out as fast as possible.
Speed up processing of APDs.
While SO appeals, keep moving for authorized operator.
Notify SO within 5 days of APD receipt.
Notify SO within 10 days of APD receipt.
Notify SO within 10 days of on-site inspection.
<b>Bonding</b>
Surface owner should have input into bond amount.
Require bonds to cover an entire field or project area.
Bond should cover all facilities not just wells.
Each well should have a 20K bond.
Make it harder to bond-on.
Bond is too low.
Bond should be adequate.
Higher bonding to protect the watersheds.
BLM issue bonds when all other measures fail.
Oil companies use bonding on as a leverage to force agreements.
Notify SO if bond is protested or appealed.
Clarify bonding-on procedures.
After bond, move APD faster.
<b>Payments</b>
Royalty payments should be 1%.
Compensate for other losses like property values at market rate.
Need control over payments for access to land.
Develop Federal and fee minerals concurrently.
Have payments for surface damage based on actual damages.
Show how surface damage is calculated.
Need to get operators and SOs together to work through problems and take BLM out of the middle of this situation.
Require surface damage agreements.
Show how they are calculated.
Make damage agreements site specific.
In lieu of surface damage payments, convey a portion of royalty received by Fed or State to new SO and attach forever to the land.
Since the Government is getting royalties the SO imposes excessive surface damages and access to land fees.
<b>Permitting &amp; Development</b>
Keep the process the same.
Simplify the process and add timelines.
Make the regulations more stringent.
<b>Category/Recommendation</b>

Partner with State and local laws to regulate.
Follow the State laws instead.
Change Federal requirements due to limitations of State laws.
Streamline permit process by eliminating duplicate agency tasks.
Define timelines on permitting.
Don't roll lands into Federal Units – it is unfair.
Give a list of requirements required on Federal land to SO.
Number of sites in National Forest should be dependent on market pricing. (Price drops/drilling drops.)
Operators should know what land use is before drilling.
Surface Use Agreements are private and should remain so.
Once a Surface Use Agreement is in place BLM should allow project to proceed per Onshore Order #1.
Require soil testing for construction techniques for specific lands.
Include geological surveys in the process.
Mineral Leasing Act already covers requirements.
Regulate the same as coal mines.
Modify Onshore Order to include replacement of water, re-injection & treatment of CBM produced water and require a water management plan.
Don't compare Oil and Gas to strip mining.
<b>Notification After Leasing</b>
Invite local government with jurisdiction and SO to pre-onsite meeting – give reasonable notice.
Schedule pre-drill meeting ASAP to allow SO planning.
Notify SO 45 days prior to drilling.
Notify SO of the lessees name within 10 days of lease agreement.
60 days prior to permitting notify land owners.
<b>BMPs/Stipulations</b>
BLM should back up owner to enforce BMPs
Consult local government on historic preservation in addition to SHPO.
Require use of BMPs and Gold Book.
Make the field managers use the Gold Book too.
Implement the Gold Book or the State's Standards, whichever is more stringent.
Consult local government on Threatened/Endangered/Special Status Species or candidates for stipulations to safeguard species with directional drilling or banning if needed.
Require BMPs – including air, pest, weed practices.
Location of pipes should be adjacent to roads.
Require more transportation planning.
Place meter houses at back of location for rehab.
Lighting shielding should be used to lessen light pollution.
In rugged areas go to 160 acre spacing – do a pilot area to test.
Use pitless drilling
More prescription of directional and pitless drilling.
Directional drilling should be used in Watersheds and Wildlife areas.
Don't drill in the Palisade area or at least use pitless.
Drillers should cooperate more with ranchers.

Line the ponds with containers to prevent seepage.
Ground water issues need addressed.
Decrease density of drilling sites. Use multiple well pads. Require Plans of Development (POD) or Geographic Area Plans to include cluster wells and decreased drilling density and spacing.
<b>Category/Recommendation</b>
Solicit local government recommendations on surface impacts.
Use Colorado Stormwater Authority.
No drilling on Watersheds.
Require CBM water removal plans prior to drilling wells.
<b>Operations and Production</b>
Hire BLM landmen, (paid by fee to the BLM).
Hire more inspectors.
Part of the proceeds from fines should go to the landowner.
Increase funding for I&E.
<b>Plugging and Surface Reclamation</b>
Must have immediate and intermittent enforcement. Have consistent enforcement for everyone.
Notify surface owner on post-staking.
Surface owners sign off on Reclamation Plan.
Clean up idled/abandoned/orphaned wells –
Local government should be consulted prior to BLM approving final plugging and abandonment.
Amend Onshore Order to require complete and timely reclamation.

<b>Other Requests for BLM Action</b>
Any changes made should be statutory and the report should reflect that.
Put the split estate PowerPoint that was shown at the listening sessions, on the web site. Put listening session comments on web site.
Put Report to Congress on web site.
Distribute brochure handout to all parties.
Need rules to come out of this that cover oil shale.
Have the BIA or other Government Agencies share office space to eliminate duplication and time spent.
Add Oil and Gas to list of minerals covered under subsection b-o of Stock-Raising Homestead Act.
By October 1 each year, have the Secretary of the Interior certify to Congress that staff and budgets are adequate to ensure inspection and enforcement.