



INDUSTRIAL COMMISSION OF NORTH DAKOTA

Jack Dalrymple
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September 30, 2015

U.S. Department of the Interior, Director (630)
Bureau of Land Management
Mail Stop 2134 LM, 1849 C St., NW
Washington, DC 20240,
Attention: 1004-AE15
Federal eRulemaking Portal: <http://www.regulations.gov>.

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to provide comments on the Bureau of Land Management proposed rule to replace Onshore Oil and Gas Order No. 3, Site Security and amending portions of 43 CFR Part 3160 and adding a new Part 3170.

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces approximately 400 million barrels of oil per year and 465 billion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations found at N.D. Admin. Code Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND UIC Program; and all other operations for the production of oil or gas.

Mineral ownership of North Dakota lands upon which oil and gas development has occurred consists of approximately 85% private lands, 9% federal lands, and 6% state lands. However, many of the private lands in North Dakota upon which oil and gas development has occurred are split estate lands with more than 30% of the potential development drilling on private surface involving federal minerals and therefore subject to the proposed rule.

North Dakota has a unique history of land ownership that has resulted in a significant portion of the state consisting of split estate lands that could be adversely affected by the proposed rule. Unlike many western states that contain large blocks of unified federal surface and federal mineral ownership, the surface and mineral estates in North Dakota were at one time more than 97% private and state owned as a result of the railroad and homestead acts of the late 1800s. However, during the depression and drought years of the 1930s, numerous small tracts in North Dakota went through

foreclosure. The federal government through the Federal Land Bank and the Bankhead Jones Act foreclosed on many farms taking ownership of both the mineral and surface estates. Many of the surface estates were later sold to private parties, but some or all of the mineral estates were retained by the federal government. This resulted in a very large number of small federally-owned mineral estate tracts scattered throughout western North Dakota. Because of this, it is typical for oil and gas spacing units in North Dakota to consist of a combination of federal, state, and private mineral ownership. A diagram of a hypothetical spacing unit with private, state and federal mineral ownership is attached as Exhibit 1.

Federal mineral estates impact more than 30% of the oil and gas spacing units that are typically recognized as a communitized area (CA) by the BLM. In North Dakota, there are a few large blocks of federal mineral ownership or trust responsibility where the federal government also manages the surface estate through the U.S. Forest Service or Bureau of Indian Affairs. These are on the Dakota Prairie Grasslands in southern McKenzie and northern Billings County as well as on the Fort Berthold Indian Reservation. See map, Exhibit 2. However, even within those areas federal mineral ownership is interspersed with a “checkerboard” of private and state mineral or surface ownership. Therefore, virtually all federal management of North Dakota’s oil and gas producing region consists of some form of split estate.

Given North Dakota’s unique land ownership situation, the proposed rule to replace Onshore Oil and Gas Order No. 3 could have far-reaching adverse impacts on North Dakota’s ability to administer its oil and gas regulatory program.

The adverse impacts of the proposed rule on North Dakota’s ability to administer its oil and gas regulatory program are explained below:

Expansion of Federal APDs to Non-Federal Wells in Federal Units and CAs: Current language in 43 CFR 3161.1 clearly states that only a subset of the regulations found in 43 CFR Part 3160 regarding site security, measurement and reporting of production apply to non-federal wells in units and CAs. However, under the proposed rule, *all* of Part 3160 regulations would apply to non-federal wells within units and CAs. Since the rule requiring APDs before drilling is located within Part 3160, operators would have to obtain federal APDs for non-federal wells within a unit or CA. Requiring operators to obtain federal APDs would result in a substantial increase in federal regulation of state and fee oil and natural gas operations, and would also result in a significant increase in the amount of time required to obtain authorization to drill a state or fee well, leading to loss and delay in revenue and payments due to states. Even in circumstances where the federal mineral ownership is small relative to other mineral ownership interests within the spacing unit, all the oil and gas operators within the unit must conduct operations in accordance with the rules and guidelines pertaining to the development of federal minerals under the proposed rule. In order to comply with the additional obligations imposed by the proposed rule, operations on spacing units that contain any federal minerals will be substantially delayed. These delays will substantially frustrate North Dakota’s efforts to produce nonfederal minerals. North Dakota Century Code § 38-08-01 requires the North Dakota Industrial Commission to support the development, production, and utilization of oil and gas while preventing waste of these resources and protecting the correlative rights of all owners. As illustrated by the attached hypothetical spacing unit (Exhibit 1) the proposed rule will impose federal requirements and permitting timelines on all wells drilled into the minerals of all owners in the spacing unit including state and fee minerals.

The NDIC strongly recommends that the proposed language in § 3161.1 Jurisdiction be revised as follows:

§ 3161.1 Jurisdiction.

The regulations in this part apply to:

- (a) All Federal and Indian onshore oil and gas leases (other than those of the Osage Tribe);
- (b) All onshore facility measurement points where Federal or Indian oil or gas is measured;
- (c) Indian Mineral Development Act agreements for oil and gas, unless specifically excluded in the agreement;
- (d) Leases and other business agreements for the development of tribal energy resources under a Tribal Energy Resource Agreement entered into with the Secretary, unless specifically excluded in the lease, other business agreement, or Tribal Energy Resource Agreement; and
- (e) Site security measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements on state or private tracts committed to a federally approved unit or communitization agreement as defined by or established under 43 CFR subpart 3105 or 43 CFR part 3180.

National Standards for Commingling Approvals: The proposed rule would also restrict the instances in which BLM could approve commingling and establish a national, fixed procedure outlining the instances in which commingling would be permitted. With specific and limited exceptions, the rule would generally prohibit the commingling of production from federal or Indian leases, unit participating areas, or CAs, unless all the properties proposed for commingling are 100% federal or leased 100% by the same Indian tribe, and at the same fixed royalty rate. This would require non-federal oil or natural gas to be separated out and measured separately, which would reduce the efficiencies that would otherwise accrue to CAs. The situations in which a well could be drilled on a drilling and spacing unit that encompasses different ownership would be prohibited unless authorized by BLM under specific exceptions.

New Recordkeeping Requirements: The proposed rule mandates a significant increase in recordkeeping, record retention and record submission requirements, and would expand them to transporters and purchasers, in addition to operators. The additional reporting will discourage development on federal lands as well as adjacent state and private lands, further reducing revenue to the state. A number of oil and gas operators in North Dakota will refocus their planned drilling activities to non-federal lands rather than confront the substantial delay and additional costs of complying with the proposed rule. The State of North Dakota could permanently lose billions of dollars in royalties and taxes. The relocation of oil and gas operators due to implementation of the proposed rule would also result in the loss of thousands of jobs.

Ultimately, these proposed rule amendments would prevent the NDIC from regulating the orderly development of the spacing unit for prevention of waste and from pooling to protect the correlative rights of the various owners in the spacing unit. The State of North Dakota intends to defend its sovereign jurisdiction over prevention of waste and pooling to protect the correlative rights in any manner necessary.

Sincerely,

North Dakota Industrial Commission



Jack Dalrymple, Chairman
Governor



Wayne Stenehjem
Attorney General

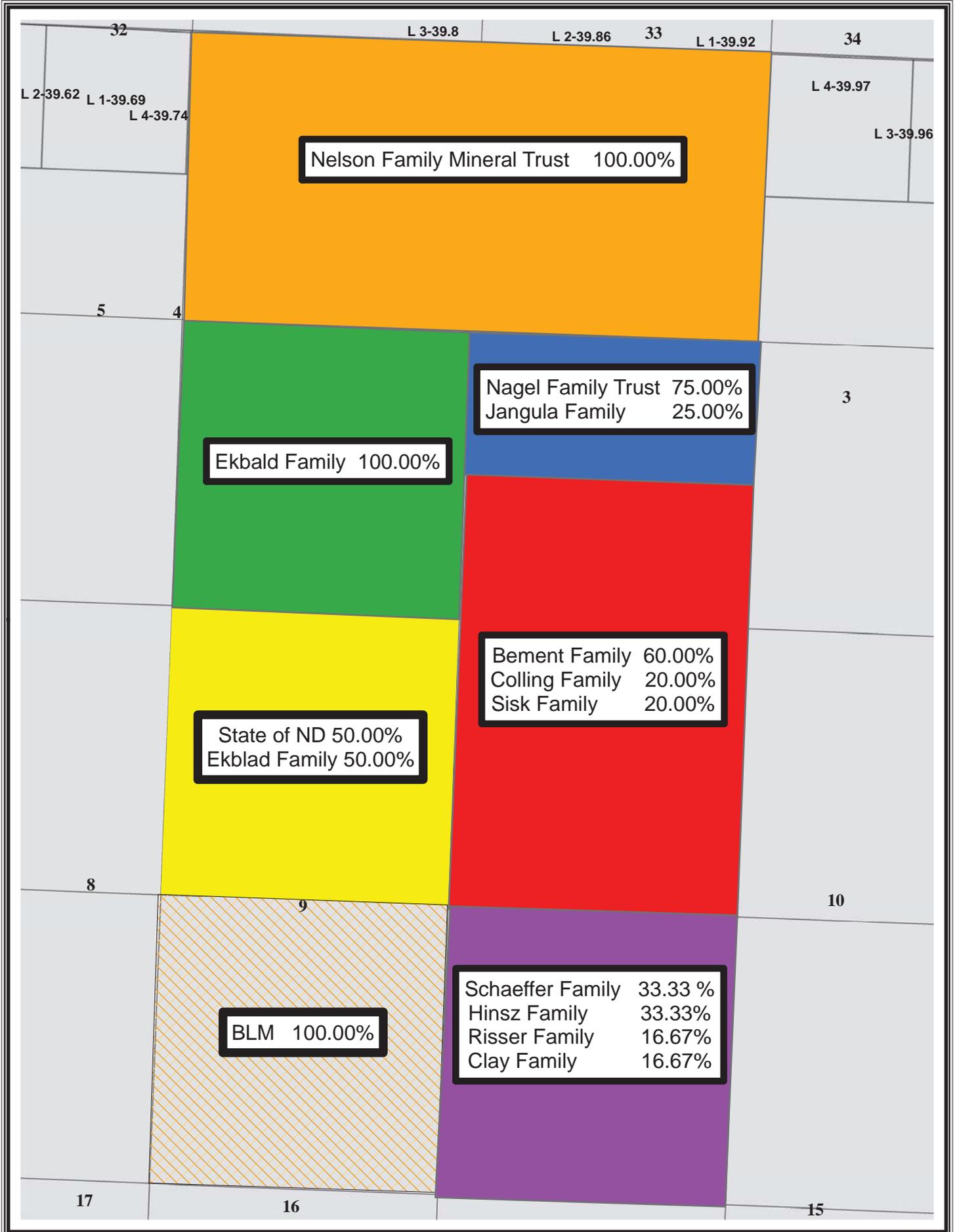


Doug Goehring
Agriculture Commissioner

Cc: *Electronic mail:* oir_a_docket@omb.eop.gov

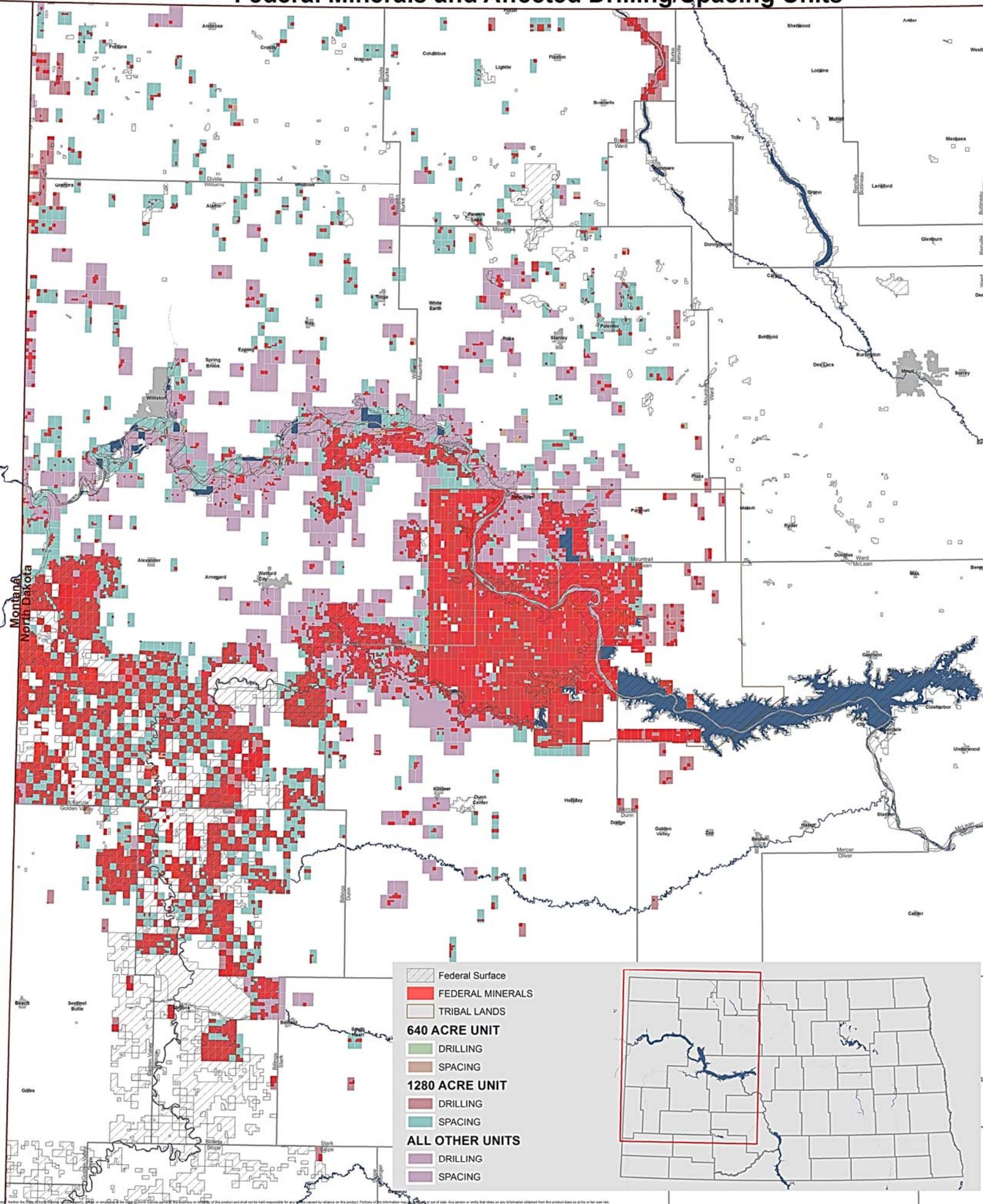
“Attention: OMB Control Number 1004-AE15

T155N, R100W Sections 4 and 9



Northwest North Dakota Federal Minerals and Affected Drilling/Spacing Units

Exhibit 2



Map prepared by the U.S. Geological Survey, 2010. All rights reserved. This map is a product of the U.S. Geological Survey and is not to be used for any other purpose without the express written permission of the U.S. Geological Survey. Any person or entity that relies on any information obtained from this product does so at their own risk.