

Paul M. Seby (Colo. State Bar No. 27487)
Holland & Hart, LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80202-3979
Phone: (303) 295-8430
Fax: (303) 291-9177
pmseby@hollandhart.com

*Attorney for Proposed Intervenor – Defendant
State of North Dakota*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WESTERN ORGANIZATION OF)
RESOURCE COUNCILS and)
FRIENDS OF THE EARTH,)

Plaintiffs,)

v.)

SALLY JEWELL, in her capacity as)
Secretary of the Interior,)
DEPARTMENT OF THE INTERIOR,)
NEIL KORNZE, in his capacity as)
Director, Bureau of Land Management,)
BUREAU OF LAND MANAGEMENT,)

Defendants.)

Case No. 1:14-cv-01993-RBW

DECLARATION OF LINDA LEADBETTER

I, Linda Leadbetter, state and declare as follows:

1. My name is Linda Leadbetter. I am over 21 years of age and am fully competent and duly authorized to make this Affidavit. The facts contained in this Affidavit are based on my personal knowledge and are true and correct.

2. I am employed by the Office of State Tax Commissioner as the State Supervisor of Assessments and Director of the Property Tax Division . I have been employed by the State in this capacity since August 1, 2013, and have continuously served in that position since that date .

3. The Office of State Tax Commissioner (“Office”) is a State agency responsible for collecting the tax revenue required to be paid by law and necessary to fund the operation of state and local government. The Office’s primary goals include obtaining voluntary compliance with the tax laws of North Dakota by issuing rules, regulations, and guidelines, and enforcing compliance by those who refuse to voluntarily submit taxes.

4. In my current position, I am responsible for overseeing all State tax collection efforts and fulfilling State tax responsibilities, including those related to the coal severance tax and coal conversion facilities privilege tax. Those responsibilities, which include the collection of taxes due, and administration of reports required from, coal conversion facilities subject to the privilege taxes, and

coal mine operators or owners in North Dakota, are provided in North Dakota Century Code Chapters 57-60 and 57-61.

5. In my current position, I am familiar with the above-captioned litigation brought by Western Organization of Resource Councils and Friends of the Earth (collectively, "Plaintiffs"), where Plaintiffs seek to require the Department of Interior and Bureau of Land Management to enjoin federal coal leasing actions until they supplement a 1979 programmatic environmental impact statement to assess the effect that greenhouse gas emissions from the federal coal management program have on global climate change.

6. Disposing of the litigation in Plaintiffs' favor would impair or impede North Dakota's ability to protect its financial interests in federal coal.

7. North Dakota generates revenue from both the coal severance tax and coal conversion facilities privilege tax.

8. The State imposes a severance tax on all coal severed for sale or industrial purposes, except coal used for heating buildings in the state, coal used by the state or any political subdivision of the state, and coal used in agricultural processing and sugar beet refining plants in the state or adjacent state. The severance tax applies at a rate of 37.5 cents per ton of coal extracted. N.D. Century Code Chapter 57-61.

9. The State imposes a coal conversion facilities privilege tax on coal conversion facilities, electrical generating plants, coal gasification plants, and coal beneficiation plants.

10. Coal conversion facilities are taxed monthly at a rate of 4.1% of gross receipts derived from coal conversion at the facility. N.D. Cent. Code § 57-60-02(1).

11. Electrical generating plants are taxed at a rate of sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. N.D. Cent. Code § 57-60-02(2). Electrical generating plants are also assessed a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. N.D. Cent. Code § 57-60-02(3).

12. Coal gasification plants are taxed at whichever of the following amounts is greater: 4.1% of gross receipts derived from coal conversion, or 13.5 cents on each 1,000 cubic feet of synthetic natural gas produced for the purpose of sale but not including any amount of synthetic natural gas in excess of one hundred ten million cubic feet per day. N.D. Cent. Code § 57-60-02(4).

13. Coal beneficiation plants are taxed at a rate of 20 cents per each ton of beneficiated coal produced for the purpose of sale, or 1.25% of gross receipts

derived from such facility for the preceding month, whichever amount is greater.


Any amount of beneficiated coal produced in excess of 80% of the design capacity of the coal beneficiation plant is exempt from such tax. N.D. Cent. Code § 57-60-02(6).

14. Over the last ten fiscal years, North Dakota's coal mines have collectively generated the following amounts in State taxes from federally-owned, State-owned, and privately-owned coal tracts:

	<u>Severance Taxes</u>	<u>Conversion Facilities Privilege Taxes</u>
2013:	\$10,986,898	\$24,905,909
2012:	\$11,001,918	\$25,430,529
2011:	\$11,254,271	\$23,118,634
2010:	\$11,506,451	\$26,154,150
2009:	\$12,096,832	\$29,543,292
2008:	\$11,585,819	\$27,461,267
2007:	\$11,969,504	\$28,930,510
2006:	\$12,014,618	\$27,784,633
2005:	\$11,458,156	\$26,264,860
2004:	\$12,450,642	\$28,106,144

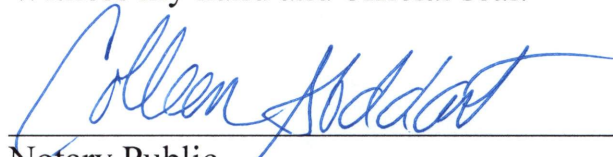
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 13, 2015.


Linda Leadbetter

The foregoing Affidavit of Linda Leadbetter was subscribed and sworn before me by Linda Leadbetter on February 13, 2015.

Witness my hand and official seal.


Notary Public

My commission expires:

