



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Plains Regional Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401



IN REPLY REFER TO:
DESCRM
MC-208

SEP 10 2010

MEMORANDUM

TO: Superintendent, Fort Berthold Agency

FROM: Regional Director, Great Plains Region 

SUBJECT: Environmental Assessment and Finding of No Significant Impact

In compliance with the regulations of the National Environmental Policy Act (NEPA) of 1969, as amended, for the proposed Addendum to Authorize Land Use for Gathering Pipelines connecting Dakota-3 KYW #27-34H to the Arrow Phase 1A Northern Extension Pipeline on the Fort Berthold Reservation, an Environmental Assessment (EA) has been completed and a Finding of No Significant Impact (FONSI) has been issued.

All the necessary requirements of the National Environmental Policy Act have been completed. Attached for your files is a copy of the EA, FONSI and Notice of Availability. The Council on Environmental Quality (CEQ) regulations require that there be a public notice of availability of the FONSI (1506.6(b)). Please post the attached notice of availability at the agency and tribal buildings for 30 days.

If you have any questions, please call Marilyn Bercier, Regional Environmental Scientist, Division of Environment, Safety and Cultural Resources Management, at (605) 226-7656.

Attachment

cc: Marcus Levings, Chairman, Three Affiliated Tribes (with attachment)
Perry "No Tears" Brady, THPO (with attachment)
Roy Swalling, BLM, Dickenson, ND (with attachment)
John Shelman, US Army Corps of Engineers
Jeff Hunt, Virtual One Stop Shop
Jeffrey Towner, Field Supervisor, U.S. Fish and Wildlife Service

Finding of No Significant Impact

Zenergy Operating Company, LLC

Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 KYW #27-34H to Arrow Phase 1A Northern Extension Pipeline

Fort Berthold Indian Reservation McKenzie County, North Dakota

The U.S. Bureau of Indian Affairs (BIA) has received a proposal for an addendum to authorize the land use by Zenergy for the construction and installation of three gathering pipelines connecting Dakota-3 KYW #27-34H to Arrow Phase 1A Northern Extension Pipeline located on tribal land off of the west side of the well pad, approximately 4.18 miles north of Mandaree, North Dakota, in the NE¼ NE¼ of Section 33, Township (T) 150 North (N), Range (R) 94 West (W), 5th Prime Meridian (P.M.), McKenzie County, North Dakota, and terminating in the SE¼ NW¼ of Section 28, T150N, R94W, 5th P.M., McKenzie County, North Dakota. The proposed gathering pipelines would transport oil, gas, and produced water from productive wells to markets and disposal facilities on the Fort Berthold Indian Reservation. Associated federal actions by BIA include determinations of effect regarding cultural resources, approvals of leases, rights-of-way and easements, and a positive recommendation to the Bureau of Land Management regarding the Applications for Permit to Drill.

Potential of the proposed actions to impact the human environment is analyzed in the attached addendum to an existing Environmental Assessment (EA), as required by the National Environmental Policy Act. Based on the recently completed addendum to the EA, I have determined that the proposed project will not significantly affect the quality of the human environment. No Environmental Impact Statement is required for any portion of the proposed activities.

This determination is based on the following factors:

1. Agency and public involvement was solicited and environmental issues related to the proposal were identified.
2. Protective and prudent measures were designed to minimize impacts to air, water, soil, vegetation, wetlands, wildlife, public safety, water resources, and cultural resources. The remaining potential for impacts was disclosed for both the proposed action and the No Action alternative.
3. Guidance from the U.S. Fish and Wildlife Service has been fully considered regarding wildlife impacts, particularly in regard to threatened or endangered species.
4. The proposed actions are designed to avoid adverse effects to historic, archaeological, cultural and traditional properties, sites and practices. Compliance with the procedures of the National Historic Preservation Act is complete.
5. Environmental justice was fully considered.
6. Cumulative effects to the environment are either mitigated or minimal.
7. No regulatory requirements have been waived or require compensatory mitigation measures.
8. The proposed projects will improve the socio-economic condition of the affected Indian community.


Regional Director

9/10/10
Date

**ENVIRONMENTAL ASSESSMENT
Addendum**

United States Bureau of Indian Affairs

**Great Plains Regional Office
Aberdeen, South Dakota**



Zenergy Operating Company, LLC

**Addendum to Environmental Assessment to Authorize Land Use for Gathering
Pipelines Connecting Dakota-3 KYW #27-34H to Arrow Phase 1A Northern Extension
Pipeline**

Fort Berthold Indian Reservation

September 2010

For information contact:
Bureau of Indian Affairs, Great Plains Regional Office
Division of Environment, Safety and Cultural Resources Management
115 4th Avenue SE, Aberdeen, South Dakota 57401
(605) 226-7656

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A Pipeline Layout and Pipeline Right-of-Way for Dakota-3 KYW #27-34H	
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1. Purpose and Need for the Proposed Action

Zenergy Operating Company, LLC (Zenergy) is drilling exploratory oil and gas wells on the Fort Berthold Indian Reservation to evaluate and possibly develop the commercial potential of natural resources. Developments have been proposed on land held in trust by the United States in McKenzie County, North Dakota. The Bureau of Indian Affairs (BIA) is the surface management agency for potentially affected tribal lands and individual allotments. The BIA also holds title to subsurface mineral rights. The economic development of available resources and associated BIA actions are consistent with BIA's general mission. Leasing and development of mineral resources offers substantial economic benefits to the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nations and to individual tribal members.

The purpose of the proposed action is to authorize the land use by Zenergy for the construction and installation of three gathering pipelines: one 6-inch-diameter (or smaller) oil line, one 6-inch-diameter (or smaller) gas line, and one 4-inch-diameter (or smaller) water line. The proposed gathering pipelines would transport oil, gas, and produced water from productive wells to markets and disposal facilities. A buried electrical line may be installed in the future.

2. Authorities

Oil and gas exploration and development activities are conducted under authority of the Indian Mineral Leasing Act of 1938 (25 United States Code [USC] 396a, et seq.), the Indian Mineral Development Act of 1982 (25 USC 2101, et seq.), and the Energy Policy Act of 2005 (42 USC 15801, et seq.).

3. Legal Land Description for Proposed Action

Dakota-3 KYW #27-34H gathering lines would be located on tribal land off of the west side of the well pad, approximately 4.18 miles north of Mandaree, North Dakota, in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township (T) 150 North (N), Range (R) 94 West (W), 5th Prime Meridian (P.M.), McKenzie County, North Dakota, and terminating in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T150N, R94W, 5th P.M., McKenzie County, North Dakota (Figure 1).

4. Scope of Work for Proposed Action

Zenergy proposes to construct and install oil, gas, and water gathering pipelines on tribal land originating from the west side of the Dakota-3 KYW #27-34H well pad and joining the existing Arrow Phase 1A Northern Extension Pipeline. Oil, gas, and water pipelines would be buried in either two 2.5-foot-wide trenches, spaced 5.0 feet apart, or one 5.0-foot-wide trench. Oil and gas pipelines would not exceed 6 inches in diameter and would be constructed of steel. Water pipelines would not exceed 4 inches in diameter and would be constructed of Fiberspar® or similar material. Approximately 6,008.6 feet of oil, gas, and water line would be needed to connect the Dakota-3 KYW #27-34H well pad to the Arrow Phase 1A Northern Extension Pipeline (Appendix A). During the onsite with BIA Environmental Specialist, Jeff Dejarlais, natural resource surveys for threatened and endangered species, migratory birds, bald and golden eagles, and wetlands were conducted. All construction disturbance would

occur within a 100-foot temporary right-of-way and permanent surface disturbance would occur within a 50-foot right-of-way between the Dakota-3 KYW #27-34H well pad and the Arrow Phase 1A Northern Extension Pipeline, which has been surveyed on May 17, 2010 for impacts to natural and cultural resources with no significant findings. In total, approximately 6.9 acres would be disturbed as a result of activities associated with the construction of the proposed gathering pipelines. Pipeline plats are provided in Appendix A.

5. Applicable National Environmental Policy Act (NEPA) Document(s)

Zenergy Operating Company, LLC, Five Bakken Exploratory Oil Wells: Dakota-3 Black Hawk #15-34H, Dakota-3 Rubia #16-24H, Dakota-3 Beaks #36-35H, Dakota-3 Stevenson #15-8H, Dakota-3 KYW #27-34H (March 2010).

6. Other Relevant Documentation

Environmental Assessment: Arrow Midstream Holdings East Mandaree Oil, Gas, and Water Gathering System (December 2009).

7. NEPA Adequacy Criteria

This document has identified one previously prepared NEPA document, *Zenergy Operating Company, LLC, Five Bakken Exploratory Oil Wells: Dakota-3 Black Hawk #15-34H, Dakota-3 Rubia #16-24H, Dakota-3 Beaks #36-35H, Dakota-3 Stevenson #15-8H, Dakota-3 KYW #27-34H (March 2010)*, which adequately describes the environmental consequences of the newly proposed action described herein, and meets the following NEPA Adequacy Criteria.

1. The proposed action is substantially the same action and at the site specifically analyzed in the existing NEPA document.
2. The range of alternatives is reasonable with respect to the current proposed action in the existing NEPA document, which appropriately considers and analyzes current environmental concerns, interests, and resource values.
3. The existing analysis and conclusions are adequate in the existing NEPA document. The analysis is still valid in light of new studies or resource assessment information.
4. The methodology and analytical approach used in the existing NEPA document continues to be appropriate for the proposed action.
5. The direct and indirect impacts of the proposed action are unchanged from those identified in the existing NEPA document.
6. The cumulative impacts that would result from implementation of the proposed action are unchanged from those analyzed in the existing NEPA document.
7. A 30-day comment period involving public input and interagency review was used in the development of the existing NEPA document.

8. Cultural Resources

A cultural resource inventory of this pipeline route was conducted by personnel of SWCA Environmental Consultants, using an intensive pedestrian methodology. Approximately 27.42 acres were inventoried on May 17 and 18, 2010 (Lechert *et al.* 2010). One archaeological site was located that may possess the quality of integrity and meet at least one of the criteria (36 CFR 60.6) for inclusion on the National Register. As the lead federal agency, and as provided for in 36 CFR 800.5, on the basis of the information provided, BIA reached a determination of **no historic properties affected** for this undertaking, as the archaeological site will be avoided. This determination was communicated to the THPO on August 23, 2010 and the THPO concurred on August 25, 2010.

Lechert, Stephanie, Jon Markman and Nicholas Smith
(2010) A Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 KYW #27-34H Gathering Line, Fort Berthold Indian Reservation, McKenzie County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

*Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting
Dakota-3 KYW #27-34H to Arrow Phase 1A Northern Extension Pipeline (September 2010)*



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Plains Regional Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401

AUG 23 2010



IN REPLY REFER TO:
DESCRM
MC-208

Perry 'No Tears' Brady, THPO
Mandan, Hidatsa and Arikara Nation
404 Frontage Road
New Town, North Dakota 58763

Dear Mr. Brady:

We have considered the potential effects on cultural resources of a proposed gathering line in McKenzie County, North Dakota. Approximately 27.42 acres were intensively inventoried using a pedestrian methodology. Potential surface disturbances are not expected to exceed the area depicted in the enclosed report. One archaeological site (32MZ2072) was located that may possess the quality of integrity and meet at least one of the criteria (36 CFR 60.4) for inclusion on the National Register of Historic Places. No properties were located that appear to qualify for protection under the American Indian Religious Freedom Act (42 USC 1996).

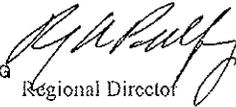
As the surface management agency, and as provided for in 36 CFR 800.5, we have therefore reached a determination of **no historic properties affected** for this undertaking, as the archaeological site will be avoided. Catalogued as **BIA Case Number AAO-1828/FB/10**, the proposed undertaking, location, and project dimensions are described in the following report:

Lechert, Stephanie, Jon Markman and Nicholas Smith
(2010) A Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 KYW #27-34H Gathering Line, Fort Berthold Indian Reservation, McKenzie County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

If your office concurs with this determination, consultation will be completed under the National Historic Preservation Act and its implementing regulations. The Standard Conditions of Compliance will be adhered to.

If you have any questions, please contact Dr. Carson N. Murdy, Regional Archaeologist, at (605) 226-7656.

Sincerely,


ACTING Regional Director

Enclosure

cc: Chairman, Three Affiliated Tribes
Superintendent, Fort Berthold Agency



TRIBAL HISTORIC PRESERVATION

Mandan Hidatsa Arikara
Perry 'No Tears' Brady, Director
404 Frontage Road,
New Town, North Dakota 58763
Ph/701-862-2474 fax/701-862-2490
pbrady@mhanation.com



August 25, 2010

Dr. Carson Murdy
Great Plains Regional Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401

RE: Recommendation and Concurrence

As Director of the Tribal Historic Preservation Office and the Tribal Historical Preservation Officer, representing the Mandan Hidatsa Arikara Nation I Concur with **BIA Case Number AAO-1828/FB/10**

Lechert, Stephanie, Jon Markman and Nicholas Smith
(2010) A Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 KYW #27-34H Gathering Line, Fort Berthold Indian Reservation, McKenzie County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

I you have any questions or need additional information, you can contact me at Office # (701) 862-2474 or Cell # (701) 421-0547

Sincerely:

Perry ("No Tears") Brady
THPO Director

Cc. file

APPENDIX A
**Pipeline Layout and Pipeline Right-of-Way
for Dakota-3 KYW #27-34H**

Notice of Availability and Appeal Rights

Zenergy: Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 KYW #27-34H to Arrow Phase 1A Northern Extension Pipeline

The Bureau of Indian Affairs (BIA) is planning to issue administrative approvals related to an Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 KYW #27-34H to Arrow Phase 1A Northern Extension Pipeline as shown on the attached map. Construction by Zenergy is expected to begin in the Summer/Fall of 2010.

An environmental assessment (EA) determined that proposed activities will not cause significant impacts to the human environment. An environmental impact statement is not required. Contact Howard Bemer, Superintendent at 701-627-4707 for more information and/or copies of the EA and the Finding of No Significant Impact (FONSI).

The FONSI is only a finding on environmental impacts – it is not a decision to proceed with an action and *cannot* be appealed. BIA’s decision to proceed with administrative actions *can* be appealed until October 10, 2010, by contacting:

**United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Indian Appeals
801 N. Quincy Street, Suite 300, Arlington, Va 22203.**

Procedural details are available from the BIA Fort Berthold Agency at 701-627-4707.

Project locations

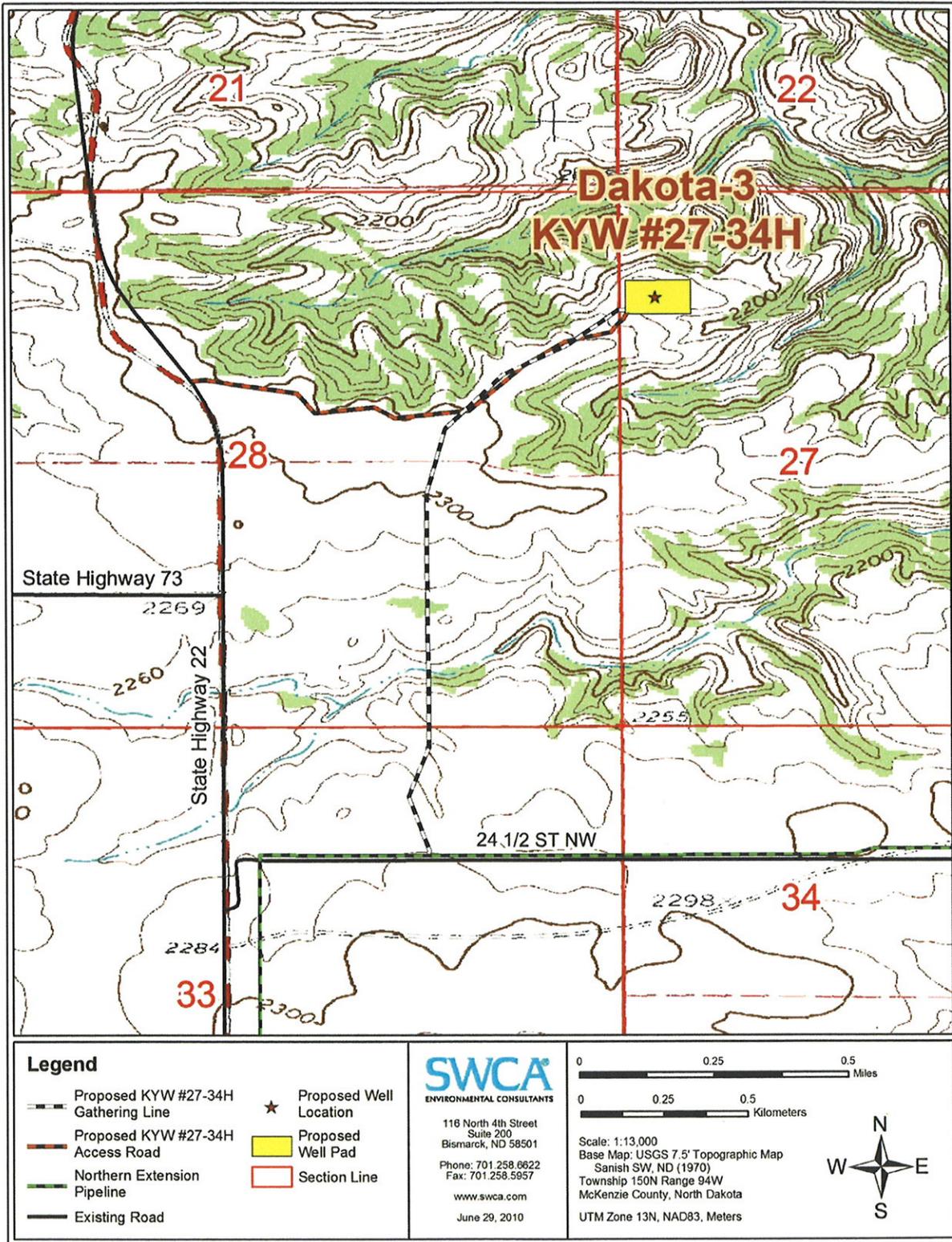


Figure 1. Proposed Dakota-3 KYW #27-34H gathering line and associated well pad.