



# 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 Well #32-29H to the Phase 1B BIA 10 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 Wells #32-29H to the Phase 1B – BIA 10 Pipeline

### Fort Berthold Indian Reservation Dunn 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 Wells #32-29H to the Phase 1B-BIA10 Pipeline located on tribal land off of the south corner of the well pad, approximately 3.94 miles northeast of Mandaree, North Dakota, in the SW¼ SE¼ of Section 32, Township (T) 150 North (N), Range (R) 93 West (W), 5<sup>th</sup> Prime Meridian (P.M.), Dunn County, North Dakota. The lines would terminate in the NW¼ SE¼ of Section 9, T149N, R93W, 5<sup>th</sup> P.M., Dunn 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 Wells #32-29H to the Phase 1B – BIA 10 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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**Appendix**

A Pipeline Layout and Pipeline Right-of-Way for Dakota-3 Wells #32-29H
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## **1. Purpose and Need for the Proposed Action**

Zenergy Operating Company, LLC (Zenergy) is drilling an exploratory oil and gas well 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 Dunn 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 oil line, one 6-inch-diameter gas line, and one 4-inch-diameter 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 Wells #32-29H gathering lines would be located on tribal land off of the south corner of the well pad, approximately 3.94 miles northeast of Mandaree, North Dakota, in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 32, Township (T) 150 North (N), Range (R) 93 West (W), 5<sup>th</sup> Prime Meridian (P.M.), Dunn County, North Dakota. The lines would terminate in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 9, T149N, R93W, 5<sup>th</sup> P.M., Dunn 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 south corner of the Dakota-3 Wells #32-29H well pad and joining the existing the Phase 1B – BIA 10 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 be 6 inches in diameter and constructed of steel. The water pipeline would be 4 inches in diameter and constructed of Fiberspar<sup>®</sup> or similar material. Approximately 6,675.76 feet of oil, gas, and water line would be needed to connect the Dakota-3 Wells #32-29H well pad to the Phase 1B – BIA 10 Pipeline (Appendix A). All construction disturbance would occur within a 100-foot temporary right-of-way (ROW) and permanent surface disturbance would occur within a 50-foot ROW between the Dakota-3 Wells #32-29H well pad and the Phase 1B – BIA 10 Pipeline. In total, approximately 9.66

acres will be disturbed as a result of activities associated with the construction of the proposed gathering pipelines. Pipeline plats are provided in Appendix A.

## **5. Surveys**

SWCA Environmental Consultants (SWCA) conducted natural resource surveys for threatened and endangered species, migratory birds, bald and golden eagles, and wetlands on May 27, 2010. On June 11, 2010, SWCA conducted another on-site survey with BIA Environmental Specialist, Darryl Turcotte. These protected species and ecosystems were not found during the survey.

A cultural resource inventory of this pipeline route was conducted by personnel of SWCA Environmental Consultants, using an intensive pedestrian methodology. Approximately 60.6 acres were inventoried between May 13 and July 22, 2010 (Klitzka 2010). One previously recorded 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 27, 2010 and the THPO concurred on September 3, 2010.

Klitzka, Nelson

(2010) Addendum to the Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Wells #32-29H Well Pad and Access Road, Fort Berthold Indian Reservation, Dunn County, North Dakota, to Authorize Land Use for the Dakota-3 Wells #32-29H Gathering Pipeline. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

*Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines  
Connecting Dakota-3 Wells #32-29H to the Phase 1B – BIA 10 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 27 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:

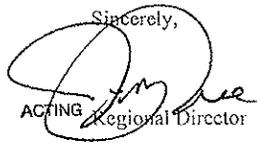
We have considered the potential effects on cultural resources of an oil well gathering line in Dunn County, North Dakota. Approximately 60.6 acres were intensively inventoried using a pedestrian methodology. Potential surface disturbances are not expected to exceed the area depicted in the enclosed report. One previously known archaeological site (32DU901) is located adjacent to the project corridor, which 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 fenced off and avoided. Catalogued as **BIA Case Number AAO-1750/FB/10**, the proposed undertaking, location, and project dimensions are described in the following report:

Klitzka, Nelson  
(2010) Addendum to the Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Wells #32-29H Well Pad and Access Road, Fort Berthold Indian Reservation, Dunn County, North Dakota, to Authorize Land Use for the Dakota-3 Wells #32-29H Gathering Pipeline. 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

Enclosures

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

*Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines  
Connecting Dakota-3 Wells #32-29H to the Phase 1B – BIA 10 Pipeline (September 2010)*



**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@mhnaia.com



Carson Murdy  
Great Plains Regional Office Bureau of Indian  
Affairs 115 Fourth Ave. S. E.  
Aberdeen, South Dakota

RE: Recommendation and Concurrence

As Director of the Tribal Historic Preservation Office and Tribal Historical Preservation Officer, representing the Mandan Hidatsa Arikara Nation I Concur with **BIA Case Number AAO-1750/FB/10** determination of **no historic Properties affected.**

*Klitzka, Nelson*  
*(2010) Addendum to the Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Wells #32-29H Well Pad and Access Road, Fort Berthold Indian Reservation, Dunn County, North Dakota, to Authorize Land Use for the Dakota-3 Wells #32-29H Gathering Pipeline SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK*

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

Sincerely:

Perry "No Tears" Brady  
Director of THPO  
Mandan, Hidatsa, & Arikara Nation

Cc. file

## **6. Potential Effects**

Potential impacts to cultural resource sites are the result of direct disturbance, and/or the loss, of sites eligible for the National Register of Historic Places; disturbance and loss of native vegetation and wildlife habitats; soil removal and mixing; and erosion during construction. However, potential impacts as a result of the proposed action would be mitigated by surveying for and avoiding any eligible cultural resource sites within the proposed ROW, implementing a stormwater pollution prevention plan and best management practices, completing reclamation of the pipeline corridors with native grasses and other appropriate native vegetation, and stockpiling and re-using topsoil for reclamation.

Potential indirect impacts include noise and other disturbances to wildlife during construction and the introduction of noxious weeds. Impacts would be mitigated by avoidance of any federally listed threatened or endangered species or wetlands, avoidance of nesting migratory birds, implementing best management practices to control the introduction of noxious weeds, and minimizing the length of time between trenching, pipeline burial, and reclamation. These mitigation measures are consistent with the approved National Environmental Policy Act (NEPA) document, which received a FONSI (July 2010).

Resource surveys and the supplementary assessment of the potential impacts of the proposed action were completed (May 2010); based on those surveys and the mitigation measures committed to by Zenergy, no significant impacts to natural and cultural resources are anticipated.

## **7. Applicable NEPA Document(s)**

*Environmental Assessment: Zenergy Operating Company, LLC, One Bakken Exploratory Oil Well: Dakota-3 Wells #32-29H (July 2010).*

## **8. Other Relevant Documentation**

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

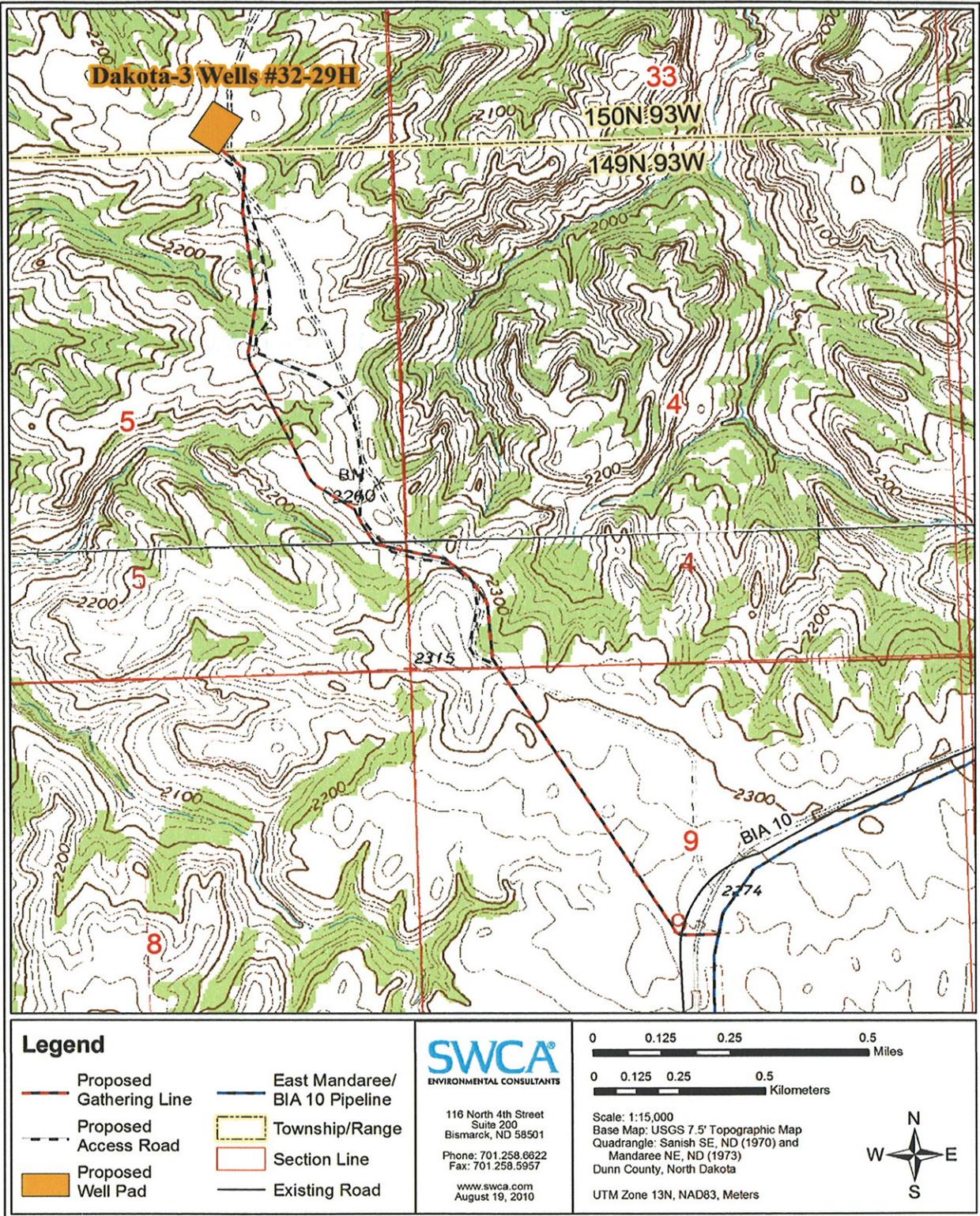
## **9. NEPA Adequacy Criteria**

This document has identified one previously prepared NEPA document, *Zenergy Operating Company, LLC, One Bakken Exploratory Oil Well: Dakota-3 Wells #32-29H (July 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.

*Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines  
Connecting Dakota-3 Wells #32-29H to the Phase 1B – BIA 10 Pipeline (September 2010)*



**Figure 1. Proposed Dakota-3 Wells #32-29H gathering pipelines and associated well pad.**

**APPENDIX A**  
**Pipeline Layout and Pipeline Right-of-Way  
for Dakota-3 Wells #32-29H**





# **Notice of Availability and Appeal Rights**

Zenergy: Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Wells #32-29H to the Phase 1B-BIA 10 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 Wells #32-29H to the Phase 1B BIA 10 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

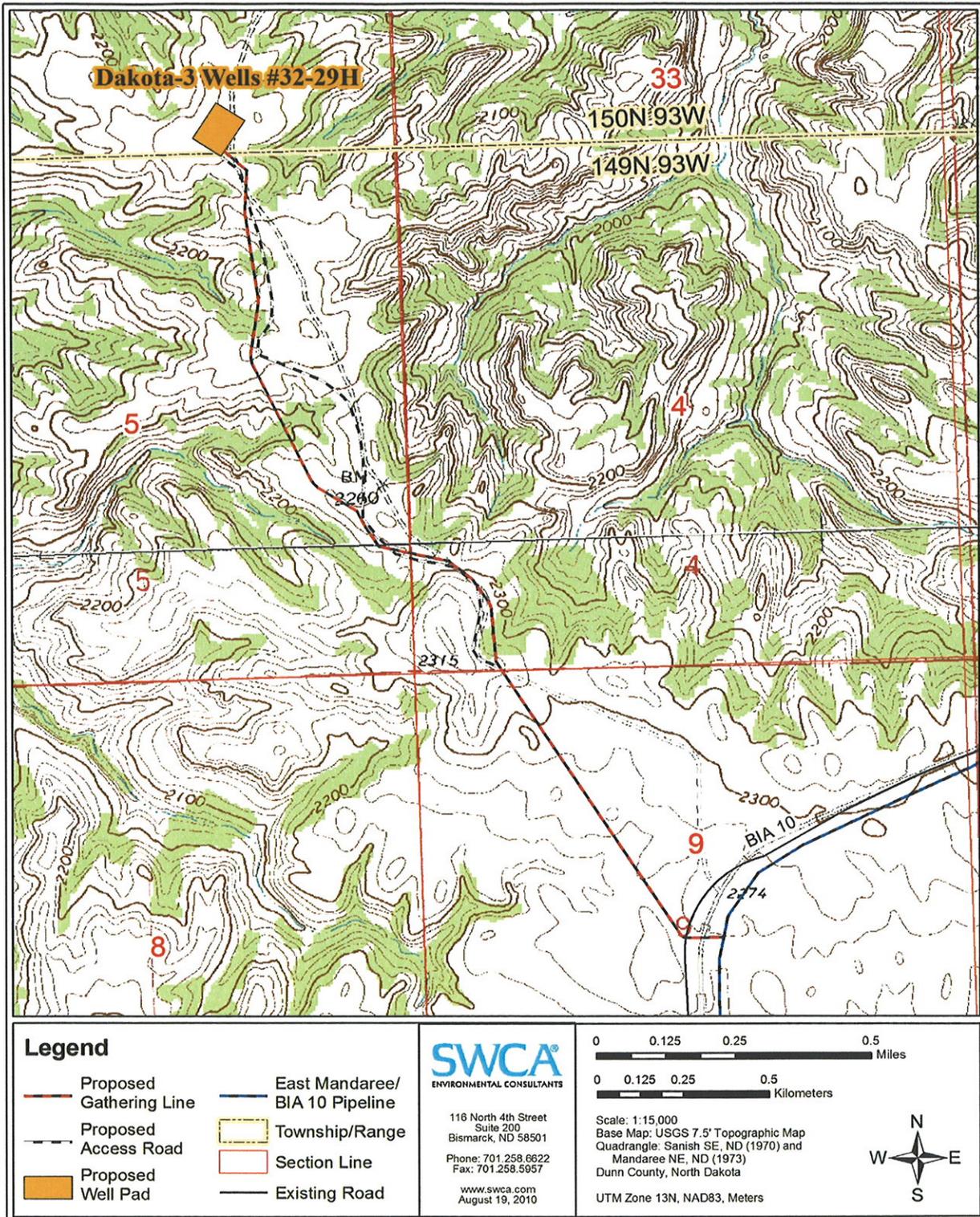


Figure 1. Proposed Dakota-3 Wells #32-29H gathering pipelines and associated well pad.