



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

OCT 28 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 Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Beaks #36-35H to Arrow Phase 1B – Prime Gathering Pipeline by Zenergy Operating Company, LLC 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, Tribal Historic Preservation Officer (with attachment)
Derek Enderud, Bureau of Land Management (with attachment)
Jonathon Shelman, Corps of Engineers (with attachment)
Jeff Hunt, One Stop Shop, Fort Berthold Agency

Finding of No Significant Impact

Zenergy Operating Company, LLC

Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Beaks #36-35H Well Pad to the Arrow Phase 1B Prime 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 to construct and install oil, gas, and water gathering pipelines on tribal land originating from the west corner of the Dakota-3 Beaks #36-35H well pad and joining the existing Arrow Phase 1B Prime Pipeline. 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. This guidance includes the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) (MBTA), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) (NEPA), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250) (BGEPA), Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds", and the Endangered Species Act (16 U.S.C. 1531 et seq.) (ESA).
4. The proposed actions are designed to avoid adverse effects to historic, archeological, cultural and traditional properties, sites and practices. The Tribal Historic Preservation Officer has concurred with BIA's determination that no historic properties will be affected.
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

10-28-10
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 Beaks #36-35H Well Pad to the Arrow Phase 1B Prime
Pipeline**

Fort Berthold Indian Reservation

October 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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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 4-inch-diameter oil line, one 4-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

The Dakota-3 Beaks #36-35H gathering lines would be located on tribal land originating from the west corner of the well pad, approximately 8.11 miles southeast of Mandaree, North Dakota, in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township (T) 149 North (N), Range (R) 93 West (W), 5th Prime Meridian (P.M.), Dunn County, North Dakota, and terminating in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T148N, R93W, 5th P.M., Dunn County, North Dakota.

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 corner of the Dakota-3 Beaks #36-35H well pad and joining the existing Arrow Phase 1B Prime 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 4 inches in diameter and constructed of steel. The water pipeline would be 4 inches in diameter and constructed of Fiberspar[®] or similar material. Approximately 3,721 feet of oil, gas, and water line would be needed to connect the Dakota-3 Beaks #36-35H well pad to the Arrow Phase 1B Prime 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 Beaks #36-35H well pad and the Arrow Phase 1B Prime Pipeline, which has been surveyed for impacts to natural and cultural resources with no significant findings. In total,

approximately 4.27 acres will be disturbed as a result of activities associated with the construction of the proposed gathering pipeline. 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 28, 2010. BIA Environmental Specialist, Darryl Turcotte, approved the location of the gathering lines. These protected species were not observed 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 20.15 acres were inventoried on May 27 and 28, 2010 (Lechert 2010). Two archaeological sites were 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 two archaeological sites will be avoided. This determination was communicated to the THPO on October 18, 2010 and the THPO concurred on October 21, 2010.

6. Potential Effects

Potential impacts to cultural resource sites would occur as a result of direct disturbance and/or the loss of sites eligible for the National Register of Historic Places. Further, potential impacts to natural resources may include the 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 were mitigated via field survey and subsequent avoidance of 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 through 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 finding of no significant impact (FONSI) (March 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 National Environmental Policy Act (NEPA) Document(s)

Environmental Assessment: 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).

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 a 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.

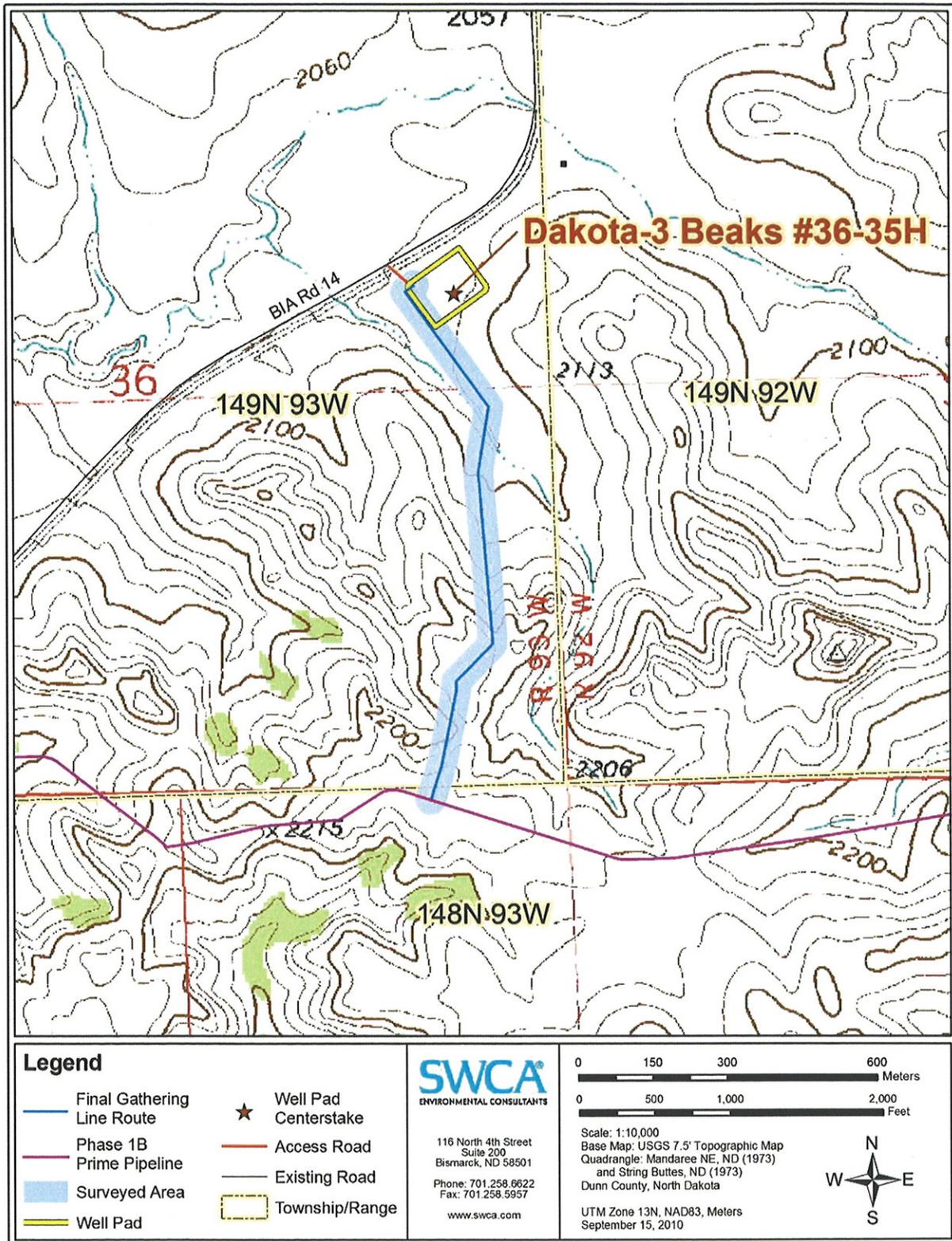


Figure 1. Proposed Dakota-3 Beaks #36-35H gathering line and associated well pad.

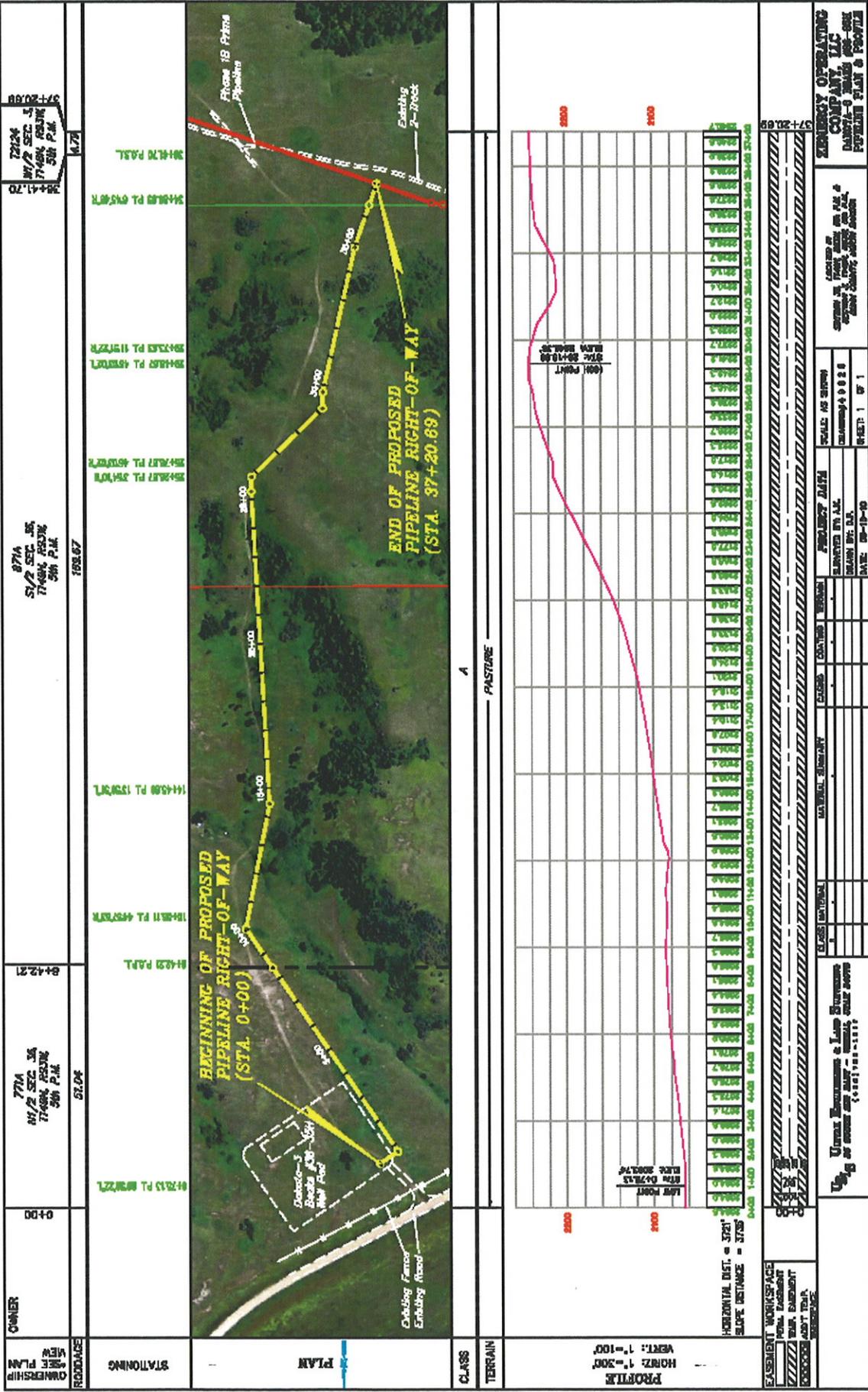
APPENDIX A

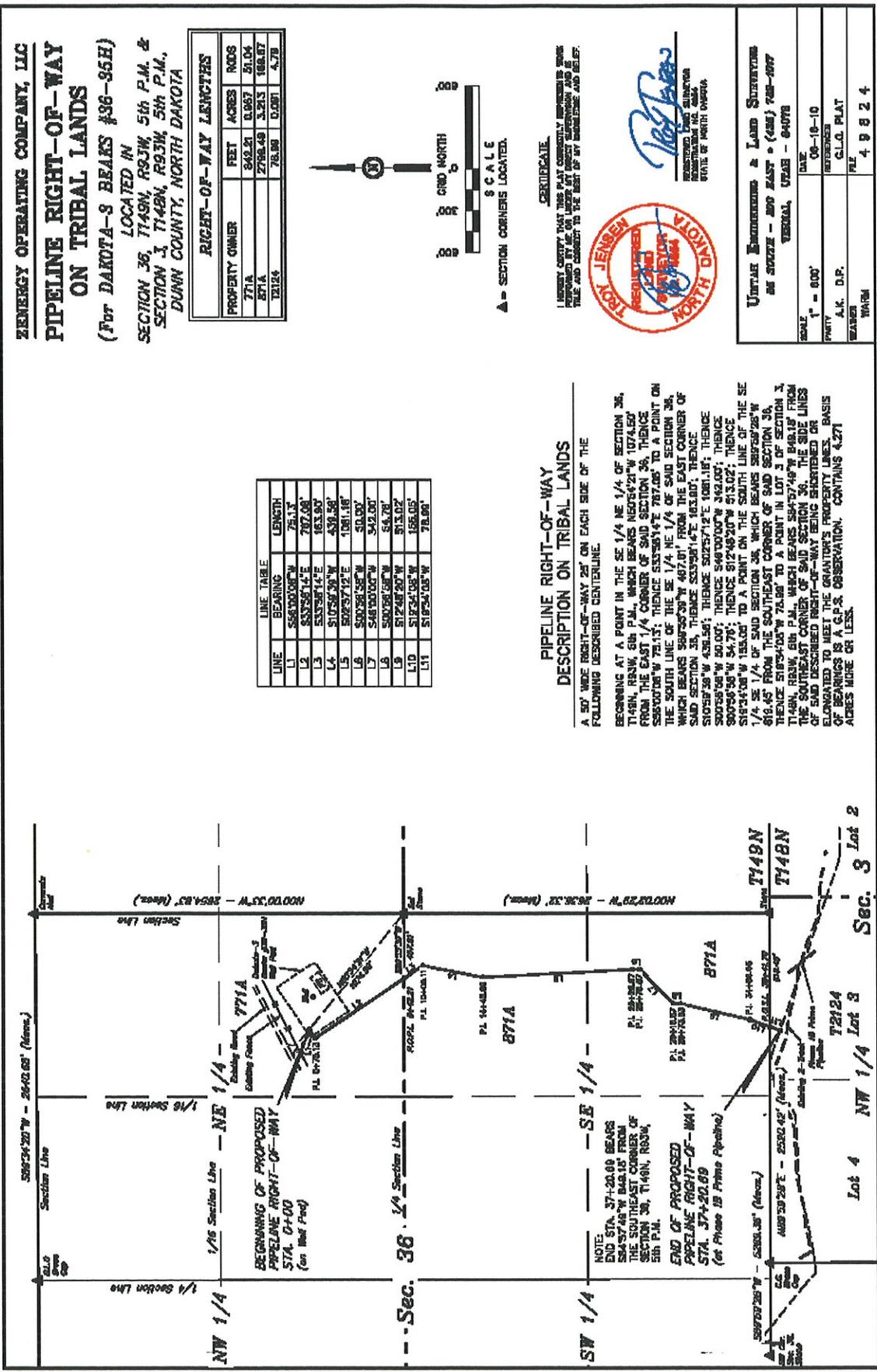
**Pipeline Layout and Pipeline Right-of-Way
for Dakota-3 Beaks #36-35H**

and

Cultural Resources Determination and Concurrence Letters

Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Beaks #36-35H Well Pad to the Arrow Phase 1B Prime Pipeline (October 2010)





ZENERGY OPERATING COMPANY, LLC
PIPELINE RIGHT-OF-WAY
ON TRIBAL LANDS
(FOR DAKOTA-3 BEAKS #36-35H)
 LOCATED IN
 SECTION 36, T149N, R93W 5th P.M. &
 SECTION 35, T148N, R93W 5th P.M.,
 DUNN COUNTY, NORTH DAKOTA

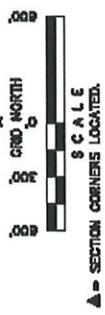
PROPERTY OWNER	FEET	ACRES	RODS
771A	843.21	0.057	51.04
871A	2798.48	3.213	188.87
T2124	76.98	0.001	4.78

LINE	BEARING	LENGTH
L1	S84°00'00"W	76.17
L2	S83°58'14"E	707.08
L3	S83°58'14"E	63.90
L4	S17°58'38"W	438.58
L5	S02°57'12"E	1081.16
L6	S00°58'58"W	50.00
L7	S48°00'00"W	342.00
L8	S00°58'58"W	54.78
L9	S17°48'20"W	513.02
L10	S12°34'08"W	158.05
L11	S12°34'08"W	78.00

PIPELINE RIGHT-OF-WAY
DESCRIPTION ON TRIBAL LANDS

A 50' WIDE RIGHT-OF-WAY 28' ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE.

BEGINNING AT A POINT IN THE SE 1/4 NE 1/4 OF SECTION 36, T149N, R93W, 5th P.M., WHICH BEARS N60°55'21"W 1074.50' FROM THE EAST 1/4 CORNER OF SAID SECTION 36, THENCE S85°00'00"W 79.13'; THENCE S33°58'14"E 787.08' TO A POINT ON THE SOUTH LINE OF THE SE 1/4 NE 1/4 OF SAID SECTION 36, WHICH BEARS S89°58'38"W 467.81' FROM THE EAST CORNER OF SAID SECTION 36, THENCE S33°58'14"E 163.80'; THENCE S10°58'38"W 438.58'; THENCE S02°57'12"E 1081.16'; THENCE S00°58'58"W 50.00'; THENCE S48°00'00"W 342.00'; THENCE S00°58'58"W 54.78'; THENCE S17°48'20"W 513.02'; THENCE S12°34'08"W 158.05' TO A POINT ON THE SOUTH LINE OF THE SE 1/4 NE 1/4 OF SAID SECTION 36, WHICH BEARS S89°58'38"W 467.81' FROM THE SOUTH-EAST CORNER OF SAID SECTION 36, THENCE S12°34'08"W 78.00' TO A POINT IN LOT 3 OF SECTION 36, T149N, R93W, 5th P.M., WHICH BEARS S84°57'49"W 684.18' FROM THE SOUTH-EAST CORNER OF SAID SECTION 36. THE SIDE LINES OF SAID DESCRIBED RIGHT-OF-WAY ARE TO BE PLACED ON THE BASIS OF BEARINGS AS A C.P.S. OBSERVATION. CONTAINS 4.271 ACRES MORE OR LESS.



CERTIFICATE
 I HEREBY CERTIFY THAT THIS PLAN CORRECTLY REPRESENTS THE WORK DONE AND THE FIELD NOTES AND SURVEY DATA ON WHICH THIS PLAN AND CERTIFICATE IS THE BASIS OF ANY INSTRUMENTS AND DEEDS.

UNITS	DATE
1" = 800'	06-18-10
PREPARED BY	REVISIONS
A.K.A. D.P.	C.L.O. PLAT
WEATHER	FILE
THRM	4 9 8 2 4

Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Beaks #36-35H Well Pad to the Arrow Phase 1B Prime Pipeline (October 2010)



IN REPLY REFER TO
DESCRM
MC-208

United States Department of the Interior

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

OCT 18 2010



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 20.15 acres were intensively inventoried using a pedestrian methodology. Potential surface disturbances are not expected to exceed the area depicted in the enclosed report. Two archaeological sites (32DU1532, 32DU1533) were 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 two archaeological sites will be avoided. Catalogued as BIA Case Number AAO-1740/FB/10, the proposed undertaking, location, and project dimensions are described in the following report:

Leechert, Stephanie
(2010) A Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Beaks #36-35H Gathering Line, Fort Berthold Indian Reservation, Dunn 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,

Regional Director

Enclosure

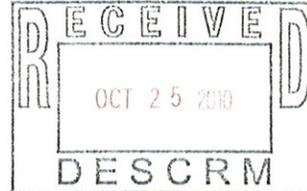
cc: Chairman, Three Affiliated Tribes
Superintendent, Fort Berthold Agency



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

October 21, 2010



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 the BIA Case Number AAO-1740/FB/10

Lechert, Stephanie
(2010) A Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Beaks #36-35H Gathering Line, Fort Berthold Indian Reservation, Dunn County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

If you have any questions or need additional information, you can contact me at the THPO at anytime.

Sincerely:

Perry 'No Tears' Brady
THPO Director

Cc.file
MC

Notice of Availability and Appeal Rights

**Zenergy: Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting
Dakota-3 Beaks #36-35H Well Pad to the Arrow Phase 1B Prime Pipeline**

The Bureau of Indian Affairs (BIA) is planning to issue the administrative approvals to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Beaks #36-35H to Arrow Phase 1B Prime Pipeline as shown on the attached map. Construction by Zenergy is expected to begin in the 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 November 28, 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:

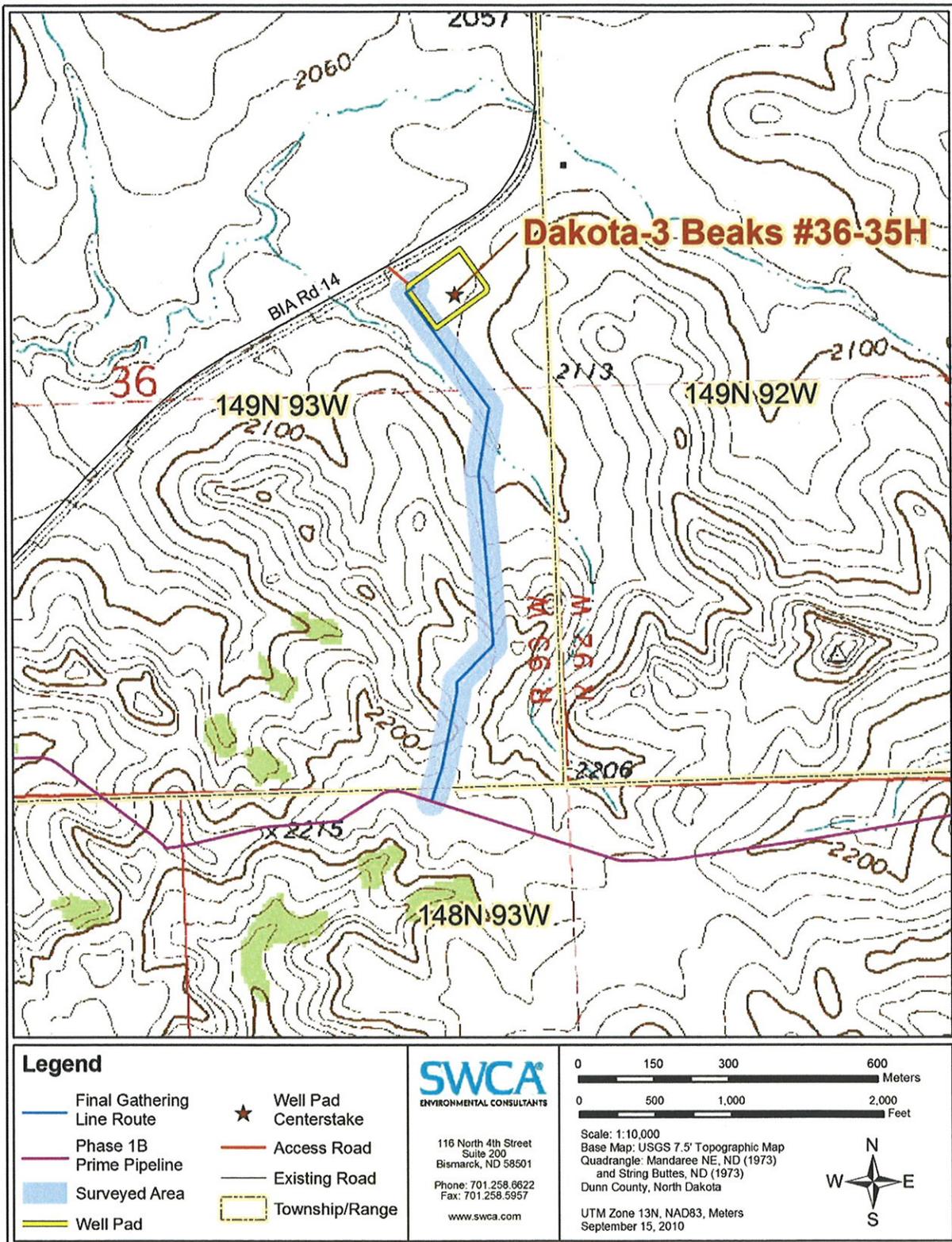


Figure 1. Proposed Dakota-3 Beaks #36-35H gathering line and associated well pad.