



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

EXCEPTION CHECKLIST FOR BIA CATEGORICAL EXCLUSIONS

Date: 11/16/2009

Project: Supplemental to Environmental Assessment to Authorize New Bottom Hole Location and 1,280-acre Spacing Unit for Dakota-3 Bearstail #32-29H

Nature of Proposed Action: The purpose of the proposed action is to authorize Zenergy to drill a new bottom hole location which will increase the well spacing from 640 to 1,280 acres for the Bearstail #32-29H well. No new surface disturbances will be associated with the spacing change.

Exclusion category and number: 516 DM 10.5G(3)

Evaluation of Exceptions to use of Categorical Exclusion:

1. This action would have significant adverse effects on public health or safety. No X Yes _____
2. This action would have an adverse effect on unique geographical features, such as wetlands, wild or scenic rivers, refuges, floodplains, rivers placed on nationwide river inventory, or prime or unique farmlands. No X Yes _____
3. The action will have highly controversial environmental effects. No X Yes _____
4. The action will have highly uncertain environmental effects or involve unique or unknown environmental risks. No X Yes _____
5. This action will establish a precedent for future actions. No X Yes _____
6. This action is related to other actions with individually insignificant, but cumulatively significant environmental effects. No X Yes _____
7. This action will affect properties listed or eligible for listing in the National Register of Historic Places. No X Yes _____

- 8. This action will affect a species listed, or proposed to be listed as endangered or threatened. No X Yes _____
- 9. This action threatens to violate federal, state, local or tribal law or requirements imposed for protection of the environment. No X Yes _____
- 10. This action will have a disproportionately high and adverse effect on low income or minority populations. No X Yes _____
- 11. This action will limit access to, and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners, or significantly adversely affect the physical integrity of such sacred sites. No X Yes _____
- 12. This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction, growth, or expansion of the range of such species. No X Yes _____

A "yes" to any of the above exceptions will require that an EA be prepared.

NEPA Action - - - CE X EA _____

Preparer's Name and Title: Marilyn Bercier, Regional Environmental Scientist

Regional Archeologist Concurrence with Item _____

Concur: Marilyn Bercier Date: 11/14/09
Regional Office/Agency Environmental Coordinator

Concur: [Signature] Date: 11/18/09
Regional Director/Superintendent

**ENVIRONMENTAL ASSESSMENT
Supplemental**

United States Bureau of Indian Affairs

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



Zenergy Operating Company, LLC

**Supplemental
to**

**Environmental Assessment to Authorize New Bottom Hole Location
and 1,280-acre Spacing Unit for Dakota-3 Bearstail #32-29H**

Fort Berthold Indian Reservation

November 2009

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

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1. Purpose and Need for the Proposed Action

Zenergy is proposing to drill 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 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 Nation and to individual tribal members.

The purpose of the proposed action is to authorize Zenergy to drill a new bottom hole location which will increase the well spacing from 640 to 1,280 acres for the Bearstail #32-29H well.

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 Descriptions of Proposed Action

The Dakota-3 Bearstail #32-29H, formerly Brugh #15-32H, well pad is located approximately 4.70 miles north of the Mandaree Indian community and 24.15 miles northeast of New Town, in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, Township 149 North, Range 94 West, McKenzie County (Figure 1). The bottom hole will be located 9,605 feet north of the well in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, Township 149 North, Range 94 West, McKenzie County (Figure 1).

4. Scope of Work for Proposed Action

Zenergy proposes to change the well pad spacing from 640 to 1,280 acres for the existing Bearstail #32-29H, formerly Brugh #15-32H, well pad. The new bottom hole location will be approximately 9,605 feet north of the well pad. **No new surface disturbances will be associated with the spacing change.**

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

Environmental Assessment: Zenergy Operating Company, LLC, Dakota-3 Mandan #3-13H, Dakota-3 Brugh #15-32H, Dakota 3 TAT (694A) #3-11H, and Dakota-3 Clara #14-17H, July 22, 2009.

6. Other Relevant Documentation:

1) Environmental Assessment: Arrow Midstream Holdings Pipelines and Utilities, March 2009.

7. NEPA Adequacy Criteria

This document has identified a previously prepared NEPA document, *Environmental Assessment: Zenergy Operating Company, LLC, Dakota-3 Mandan #3-13H, Dakota-3 Brugh #15-32H, Dakota 3 TAT (694A) #3-11H, and Dakota-3 Clara #14-17H (July 22, 2009)*, 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 sites specifically analyzed in the existing NEPA documents.
2. The range of alternatives is reasonable with respect to the current proposed action in the existing NEPA documents, which appropriately consider and analyze current environmental concerns, interests, and resource values.

3. The existing analyses and conclusions are adequate in the existing NEPA documents. The analyses are still valid in light of new studies or resource assessment information.
4. The methodology and analytical approach used in the existing NEPA documents continue 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 documents.
6. The cumulative impacts that would result from implementation of the proposed action are unchanged from those analyzed in the existing NEPA documents.
7. A 30-day comment period involving public input and interagency review was used in the development of the existing NEPA documents.

8. Cultural Resources

A cultural resource inventory of the Dakota-3 Brugh #15-32 [now Dakota-3 Bearstail #32-29H] well pad was conducted by personnel of SWCA Environmental Consultants, using a pedestrian methodology. Approximately 10 acres were intensively inventoried on April 17, 2009 (Retter and Reed 2009a). No historic properties were located that appear to 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 (16 USC 1996). 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. This determination was communicated to the THPO on August 25, 2009 and the THPO concurred on September 10, 2009.

Retter, Michael J., and Karen Reed

(2009) A Cultural Resources Inventory of the Dakota-3 Brugh #15-32H Well Pad on the Fort Berthold Indian Reservation, McKenzie County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.



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Great Plains Regional Office
115 Fourth Avenue S.E.
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IN REPLY REFER TO:
DESCRM
MC-208

AUG 25 2009

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 three oil well pads and access roads in McKenzie and Mountrail Counties, North Dakota. Approximately 44.08 acres were intensively inventoried using a pedestrian methodology. Potential surface disturbances are not expected to exceed the areas depicted in the enclosed reports. One historic farmstead (32MN800) and three isolated finds were recorded in the inventories, however, no historic properties were located that appear to 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 (16 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 these undertakings. Catalogued as **BIA Case Number AAO-1649/FB/09**, the proposed undertakings, locations, and project dimensions are described in the following reports:

Retter, Michael J., and Karen Reed

(2009) A Cultural Resources Inventory of the Dakota-3 TAT #3-11H Well Pad and Access Road on the Fort Berthold Indian Reservation, McKenzie County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

(2009) A Cultural Resources Inventory of the Dakota-3 Brugh #15-32H Well Pad on the Fort Berthold Indian Reservation, McKenzie County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

Retter, Michael J., Karen Reed and Thomas Witt

(2009) A Cultural Resources Inventory of the Dakota-3 Mandan #3-13H Well Pad on the Fort Berthold Indian Reservation, Mountrail County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

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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
Chief, Division of Energy and Environment



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

September 10, 2009

Carson Murdy
Regional Archeologist
Bureau of Indian Affairs
Great Plains Regional Office
115 Fourth Avenue SE
Aberdeen, SD, 57401

RE: Project # AAO-1649/FB/09
Dakota 3 TAT 03-11H
Dakota 3 Brugh 15-32H
Dakota 3 Mandan 03-13H

Dr. Murdy:

After review of the documentation provided, the Mandan Hidatsa Arikara Nations Tribal Historic Preservation Office concurs with the determination of 'No Adverse Affect'/No Historic Properties Affected' to any pre and post-historic relics, artifacts or sacred and cultural resources in the proposed Project area.

We respectfully request to be notified should any NAGPRA issue or others arise as the Project progresses.

Sincerely,

Perry 'No Tears' Brady,
Tribal Historic Preservation Officer,
Mandan Hidatsa Arikara Nations.

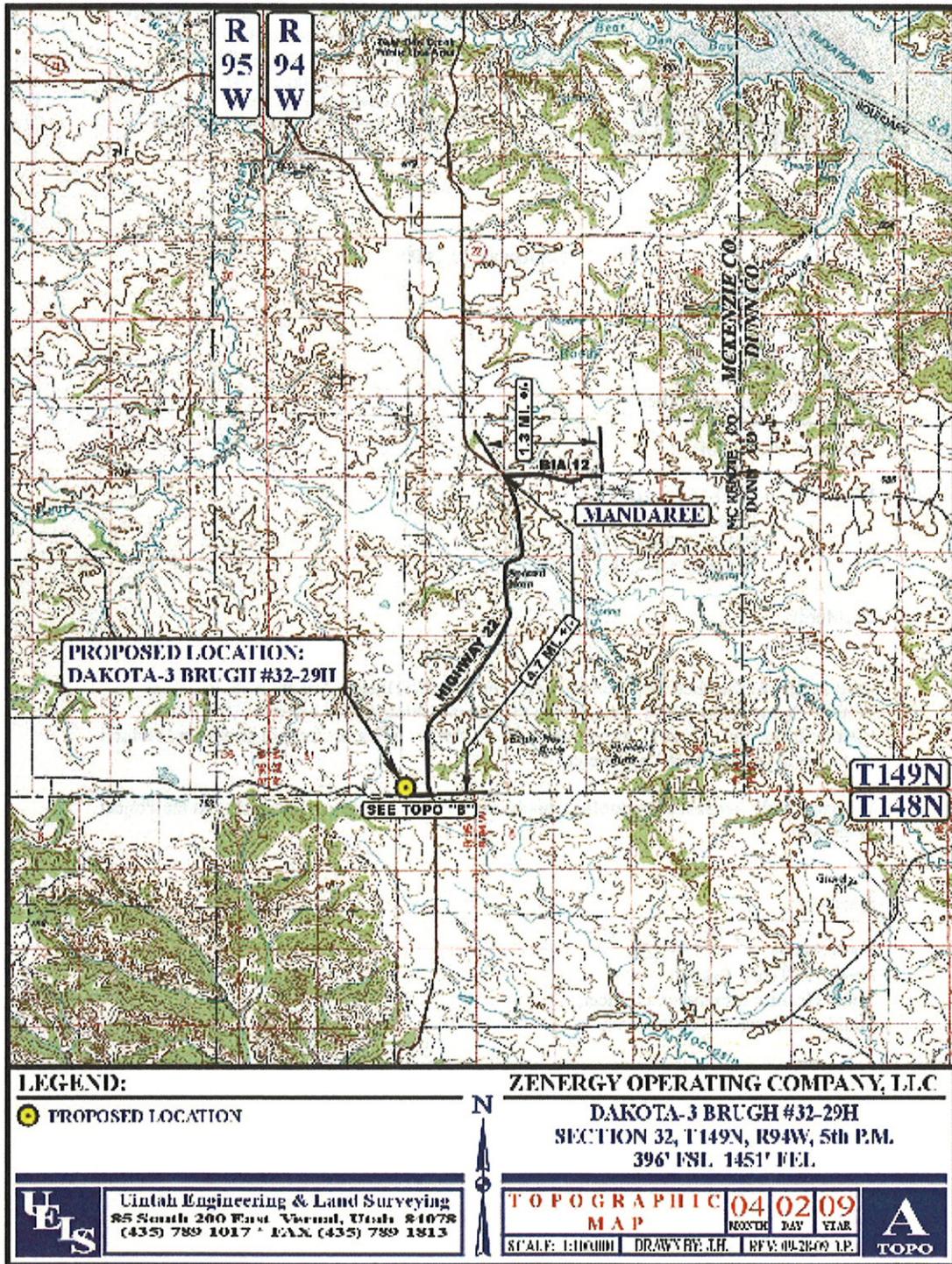


Figure 1. Map of Dakota-3 Bearstail #32-29H.

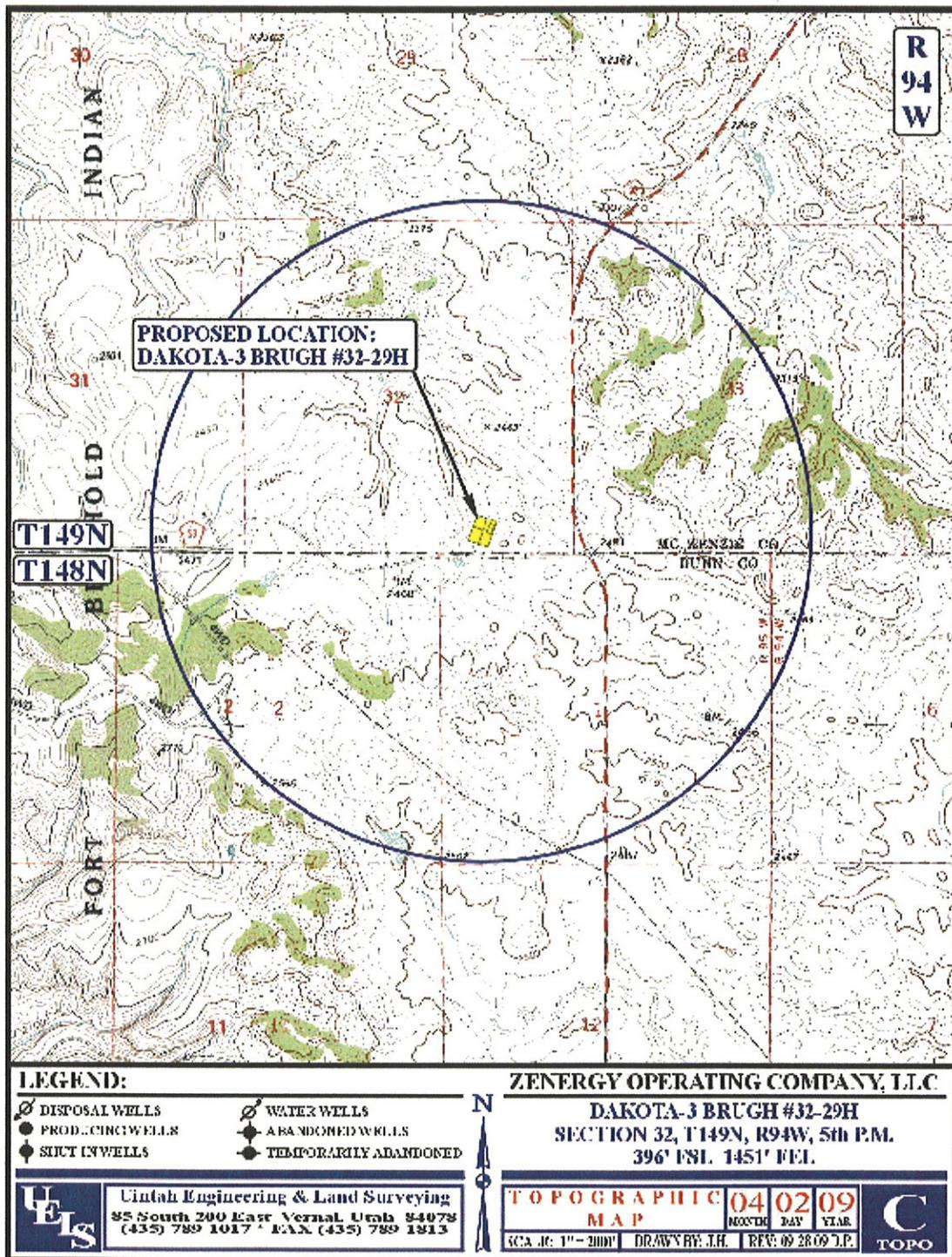


Figure 2. Map of Dakota-3 Bearstail #32-29H.

**APPENDIX A
PAD LAYOUT, CROSS SECTIONS WELL LOCATION
PLAT AND SECTION BREAKDOWN
FOR
DAKOTA-3 BRUGH 32-29H**

