



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

MAR 15 2010

MEMORANDUM

TO: Superintendent, Fort Berthold Agency

FROM: **ACTING** 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 TAT (1922) #14-2H to East Mandaree 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, THPO (with attachment)
Roy Swalling, BLM, Dickenson, ND (with attachment)
John Shelman, US Army Corps of Engineers

Finding of No Significant Impact

Zenergy Operating Company, LLC (Zenergy)

Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 TAT (1922) #14-2H to East Mandaree Gathering Pipeline

**Fort Berthold Indian Reservation
Dunn County, North Dakota**

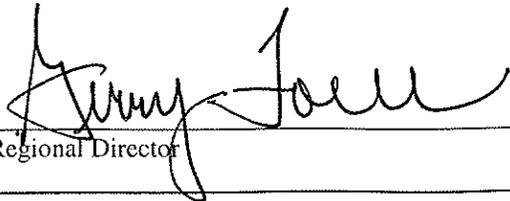
The U.S. Bureau of Indian Affairs (BIA) has received a proposal for an a Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 TAT (1922) #14-2H to East Mandaree Gathering Pipeline on the Fort Berthold Reservation in Dunn County, North Dakota. Associated federal actions by BIA include a determination of effect regarding cultural resources, and approvals of leases, rights-of-way and easements.

The potential of the proposed action 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 activity.

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 actions 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 project will improve the socio-economic condition of the affected Indian community.

ACTING


Regional Director

3/15/10
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 TAT (1922) #14-2H to
East Mandaree Gathering Pipeline**

Fort Berthold Indian Reservation

March 2010

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

Notice of Availability and Appeal Rights

Zenergy: Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 TAT (1922) #14-2H to East Mandaree Gathering 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 TAT (1922) #14-2H to East Mandaree Gathering Pipeline as shown on the attached map. Construction by Zenergy is expected to begin in the Spring 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 April 15, 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:

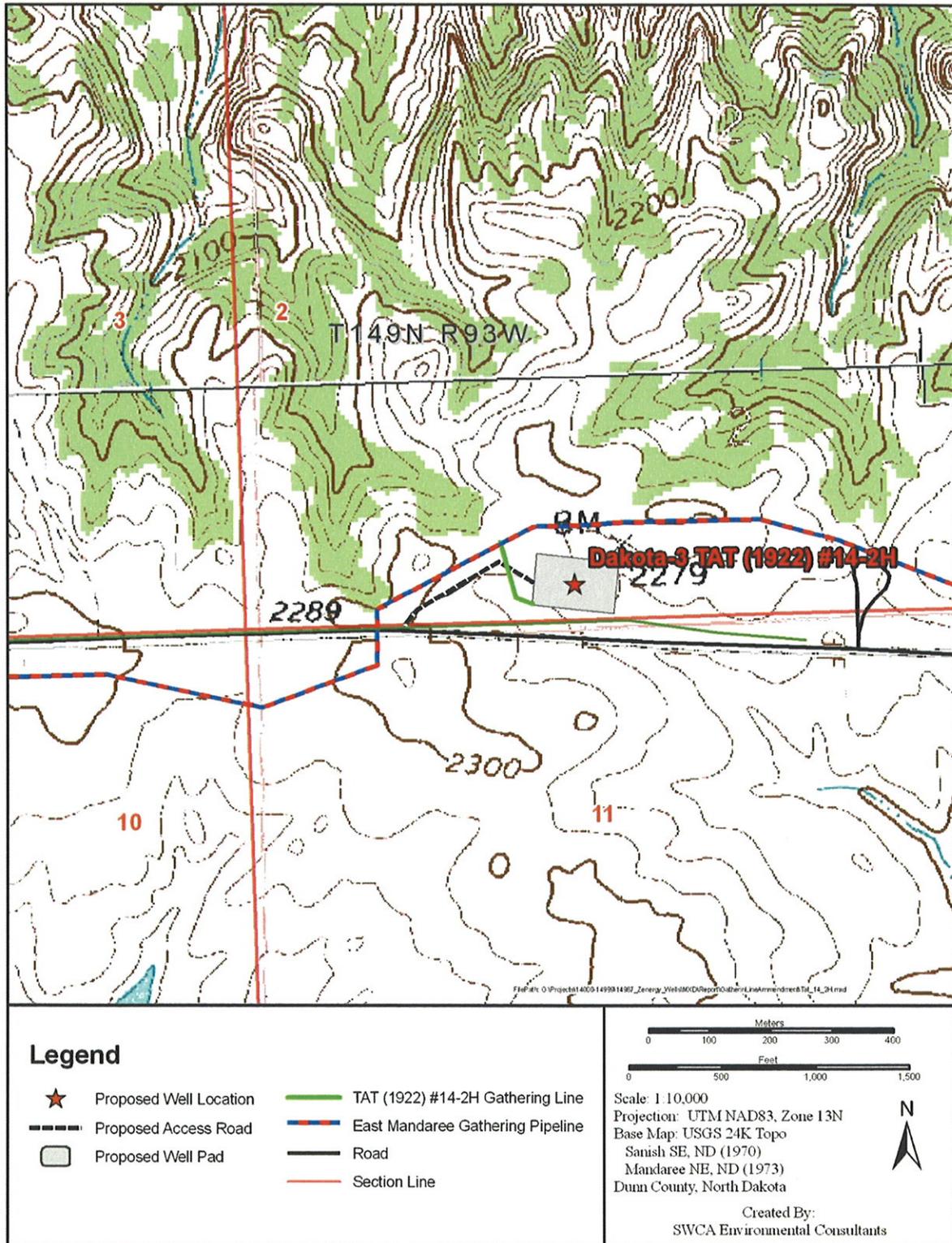


Figure 1. Proposed Dakota-3 TAT (1922) #14-2H gathering line and associated well pad.

**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
Pipelines Connecting Dakota-3 Wolf #27-34H to Arrow Phase 1B -
HWY 22**

Fort Berthold Indian Reservation

March 2010

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

TABLE OF CONTENTS

1.	Purpose and Need for the Proposed Action	1
2.	Authorities	1
3.	Legal Land Description of Proposed Action	1
4.	Scope of Work of Proposed Action	1
5.	Applicable National Environmental Policy Act (NEPA) Document(s)	1
6.	NEPA Adequacy Criteria	1
7.	Other Relevant Documentation	1
8.	Cultural Resources	2-3

Figure

1	Map of Wolf #27-34H gathering line and associated well pad	4
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Appendix

A	Facility Layout and Piping Layout	5-7
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1. Purpose and Need for the Proposed Action

Zenergy is proposing to drill 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 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 a buried gathering pipeline to transport product and waste from productive wells. Installation would include three separate pipelines: one 4-inch-diameter water line, one 6-inch-diameter oil line and one 6-inch-diameter gas line to transport produced water, oil, and gas from wells to markets and disposal facilities.

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 Wolf #27-34H gathering line would be located on federal land off of the southeast corner of the well pad. The well pad is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, Township 149 North, Range 94 West, McKenzie 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 southeast corner of the Wolf #27-34H well pad and joining the existing Arrow Phase 1B Pipeline. Oil, gas, and water pipelines would be buried in either two 2.5-foot wide trenches, spaced 5 feet apart or one 5-foot wide trench. Oil and gas pipelines would be 6 inches in diameter and constructed of steel. Water pipelines would be 4 inches in diameter and constructed of Fiberspar[®] or similar material. Approximately 1,875 feet of oil, gas, and water line would be needed to connect the Wolf #27-34H well pad to the Arrow Phase 1B - HWY 22 (Appendix A). 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 Wolf #27-34H well pad and the Arrow Phase 1B - HWY 22, which has been surveyed for impacts to natural and cultural resources with no significant findings. In total, 4.30 acres will be disturbed as a result of activities associated with the construction of the proposed gathering pipeline. Pipeline plats can be located in Appendix A.

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

Environmental Assessment: Zenergy Operating Company, LLC, Dakota-3 Birdsbill #14-16H, Dakota-3 Clark Fox #16-17H, Dakota-3 Birdsbill (894A) #4-35H, Dakota-3 Wolf #3-27H (September 2009) and Addendum to Environmental Assessment to Authorize New Bottom Hole Location and 1,280-acre Spacing Unit for Dakota-3 Wolf #27-34H.

6. Other Relevant Documentation:

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

7. NEPA Adequacy Criteria

This document has identified a previously prepared NEPA document, *Environmental Assessment: Zenergy Operating Company, LLC, Dakota-3 Birdsbill #14-16H, Dakota-3 Clark Fox #16-17H, Dakota-3 Birdsbill (894A) #4-35H, Dakota-3 Wolf #3-27H (September 2009) and Addendum to Environmental Assessment to Authorize New Bottom Hole Location and 1,280-acre Spacing Unit for Dakota-3 Wolf #27-34H and Environmental Assessment: Arrow Midstream Holdings Oil, Gas, and Water Gathering System. December 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 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 this gathering line route was conducted by personnel of SWCA Environmental Consultants, using a pedestrian methodology. Approximately 3.9 acres were intensively inventoried on November 12, 2009 (Cooper 2010). No historic properties were located that appear to 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. This determination was communicated to the THPO on February 5, 2010; however, no response was received from the THPO within the allotted 30-day comment period.

Cooper, Judith R.

(2010) Addendum to the Class III Cultural Resource Inventory of the Dakota-3 Wolf #27-34H (formerly Wolf #3-27H) Well Pad and Access Road on the Fort Berthold Indian Reservation, McKenzie County, North Dakota, to Authorize Land Use for the Wolf #27-34H Gathering Pipeline. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.



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IN REPLY REFER TO:
DESCRM
MC-208

FEB 05 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 gathering pipeline in McKenzie County, North Dakota. Approximately 3.9 acres were intensively inventoried using a pedestrian methodology. Potential surface disturbances are not expected to exceed the area depicted in the enclosed report. 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 (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. Catalogued as **BIA Case Number AAO-1704/FB/10**, the proposed undertaking, location, and project dimensions are described in the following report:

Cooper, Judith R.
(2010) Addendum to the Class III Cultural Resource Inventory of the Dakota-3 Wolf #27-34H (formerly Wolf #3-27H) Well Pad and Access Road on the Fort Berthold Indian Reservation, McKenzie County, North Dakota, to Authorize Land Use for the Wolf #27-34H 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 Archacologist, at (605) 226-7656.

Sincerely,

ACTING Regional Director

Enclosure

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

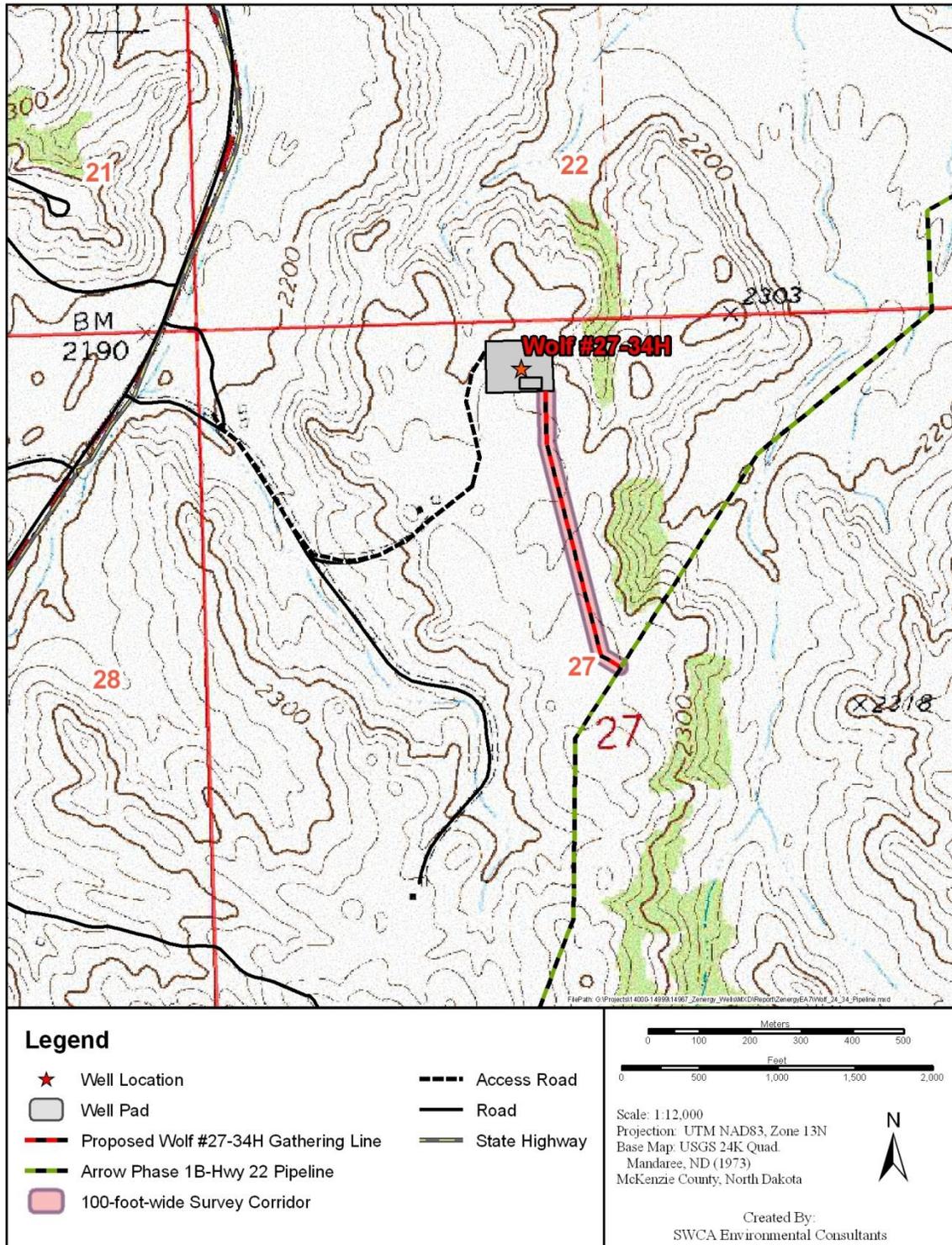
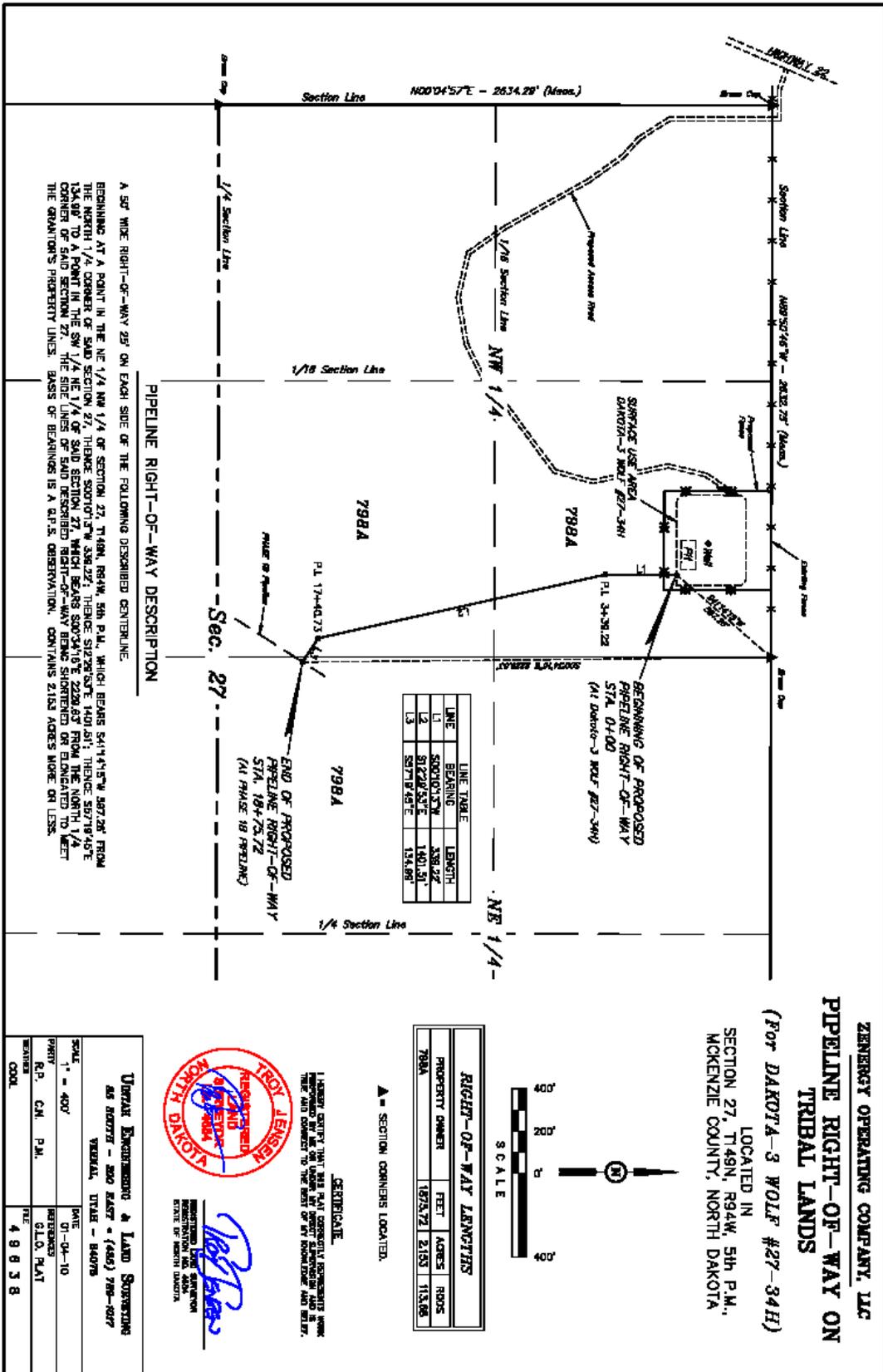


Figure 1. Proposed Wolf #27-34H gathering line and associated well pad.

APPENDIX A

**PIPELINE LAYOUT AND
PIPELINE RIGHT-OF-WAY FOR
DAKOTA-3 Wolf #27-34H**



**ZENERGY OPERATING COMPANY, LLC
DAKOTA-3 WOLF #27-34H
PIPELINE RIGHT-OF-WAY
SECTION 27, T149N, R94W, 5th P.M.**

TOTAL PIPELINE RIGHT-OF-WAY ON TRIBAL LANDS

TOTAL LENGTH OF RIGHT-OF-WAY IS 1875.72' OR 0.355 MILES. WIDTH OF RIGHT-OF-WAY IS 50' (25' PERPENDICULAR ON EACH SIDE OF THE CENTERLINE). CONTAINS 2.153 ACRES MORE OR LESS.

ENGINEER'S AFFIDAVIT

STATE OF MONTANA }
COUNTY OF RICHLAND } SS

TROY JENSEN, BEING FIRST DULY SWORN DEPOSES AND STATES THAT HE IS THE REGISTERED LAND SURVEYOR, FOR ZENERGY OPERATING COMPANY, LLC, THAT THESE SURVEYS WERE MADE BY HIM (OR UNDER HIS SUPERVISION); THAT HE HAS EXAMINED THE FIELD NOTES OF THE SURVEYS OF THE PIPELINE RIGHT-OF-WAY AS DESCRIBED AND SHOWN ON THIS MAP, THAT THIS MAP WAS PREPARED UNDER HIS DIRECTION FROM SAID FIELD NOTES; AND THAT SAID RIGHT-OF-WAY, 0.355 MILES IN LENGTH BEGINNING AND ENDING AS SHOWN ON THIS MAP IS ACCURATELY REPRESENTED.




REGISTERED LAND SURVEYOR
REGISTRATION NO. 4654
STATE OF NORTH DAKOTA

APPLICANT'S CERTIFICATE

I, KELLEY BRYAN, DO HEREBY CERTIFY THAT I AM THE WILLISTON BASIN LAND MANAGER FOR ZENERGY OPERATING COMPANY, LLC, HERINAFTER DESIGNATED THE APPLICANT; THAT TROY JENSEN WHO SUBSCRIBED TO THE FOREGOING AFFIDAVIT, IS EMPLOYED BY THE APPLICANT AS A LAND SURVEYOR AND THAT HE WAS DIRECTED BY THE APPLICANT TO SURVEY THE LOCATION OF THIS PIPELINE RIGHT-OF-WAY, 0.355 MILES IN LENGTH BEGINNING AT STA. 0+00 AND ENDING AT STA. 18+75.72, THAT SAID PIPELINE RIGHT-OF-WAY IS ACCURATELY REPRESENTED ON THIS MAP; THAT SUCH SURVEY AS REPRESENTED ON THIS MAP HAS BEEN ADOPTED BY THE APPLICANT AS THE DEFINITE LOCATION OF THE RIGHT-OF-WAY THEREBY SHOWN; AND THAT THE MAP HAS BEEN PREPARED TO BE FILED WITH THE SECRETARY OF THE INTERIOR OR HIS DULY AUTHORIZED REPRESENTATIVE AS PART OF THE APPLICATION FOR SAID RIGHT-OF-WAY TO BE GRANTED THE APPLICANT, ITS SUCCESSORS AND ASSIGNS, WITH THE RIGHT TO CONSTRUCT, MAINTAIN, AND REPAIR IMPROVEMENTS, THEREON AND THEREOVER, FOR SUCH PURPOSES, AND WITH THE FURTHER RIGHT IN THE APPLICANT, ITS SUCCESSORS AND ASSIGNS TO TRANSFER THIS RIGHT-OF-WAY BY ASSIGNMENT, GRANT, OR OTHERWISE.

APPLICANT

WILLISTON BASIN LAND MANAGER
TITLE