



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 06 2010

MEMORANDUM

TO: Superintendent, Fort Berthold Agency

FROM: Acting Regional Director, Great Plains Region

SUBJECT: Environmental Assessment Addendum 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 a Gathering Pipelines Connecting one exploratory oil/gas well (Dakota-3 Black Hawk #15-34H) and related infrastructure to Arrow Phase 2E 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 requires 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
Jeffrey Hunt, Virtual One Stop Shop
Jeffrey Towner, U.S. Fish and Wildlife Service

Finding of No Significant Impact

Zenergy Operating Company, LLC (Zenergy)

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 Land Use for a Gathering Pipelines Connecting one exploratory oil/gas well (Dakota-3 Black Hawk #15-34H) and related infrastructure to Arrow Phase 2E Pipeline on the Fort Berthold Reservation.

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. 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, 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.


Regional Director

10/6/10
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 Black Hawk #15-34H to Arrow Phase 2E 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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A	Pipeline Layout and Pipeline Right-of-Way for Dakota-3 Black Hawk #15-34H
B	BIA and MHA THPO Cultural Resource Concurrence Letters

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 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 Black Hawk #15-34H gathering lines would be located on tribal land off of the east side of the well pad, approximately 11.95 miles southeast of Mandaree, North Dakota, in the SE¼ SE¼ of Section 34, Township (T) 149 North (N), Range (R) 92 West (W), 5th Prime Meridian (P.M.), Dunn County, North Dakota, and terminating in the NE¼ NW¼ of Section 5, T148N, R92W, 5th 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 east side of the Dakota-3 Black Hawk #15-34H well pad and joining the existing Arrow Phase 2E 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 795 feet of oil, gas, and water line would be needed to connect the Dakota-3 Black Hawk #15-34H well pad to the Arrow Phase 2E Pipeline (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 Black Hawk #15-34H well pad and the Arrow Phase 2E Pipeline. In total,

approximately 0.93 acre 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. Surveys

SWCA Environmental Consultants (SWCA) conducted natural resource surveys for threatened and endangered species, migratory birds, bald and golden eagles, and wetlands on April 26 and May 28, 2010. BIA Environmental Specialist Jeff Dejarlais approved the location of the gathering lines. These protected species and ecosystems were not found during the survey.

The ROW and disturbance areas were surveyed for cultural resources by SWCA on April 26 and May 27, 2010. SWCA personnel conducted the cultural resource inventory using an intensive pedestrian methodology. Approximately 9.94 acres were inventoried on April 26 and May 27, 2010 (Eisenhauer and Cooper 2010¹). 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 September 15, 2010 and the THPO concurred on September 17, 2010.

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

¹ Eisenhauer, Nancy F. and Judith R. Cooper

2010 Addendum to the Class I and Class III Cultural Resource Inventory of the Black Hawk 15-34H Well Pad and Access Road on the Fort Berthold Indian Reservation, Dunn County, North Dakota, to Authorize Land Use for a Gathering Pipeline Connecting the Black Hawk 15-34H Well Pad to the Phase 2E Pipeline. SWCA Environmental Consultants for Zenergy Operating company, LLC, Tulsa, OK.

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 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.

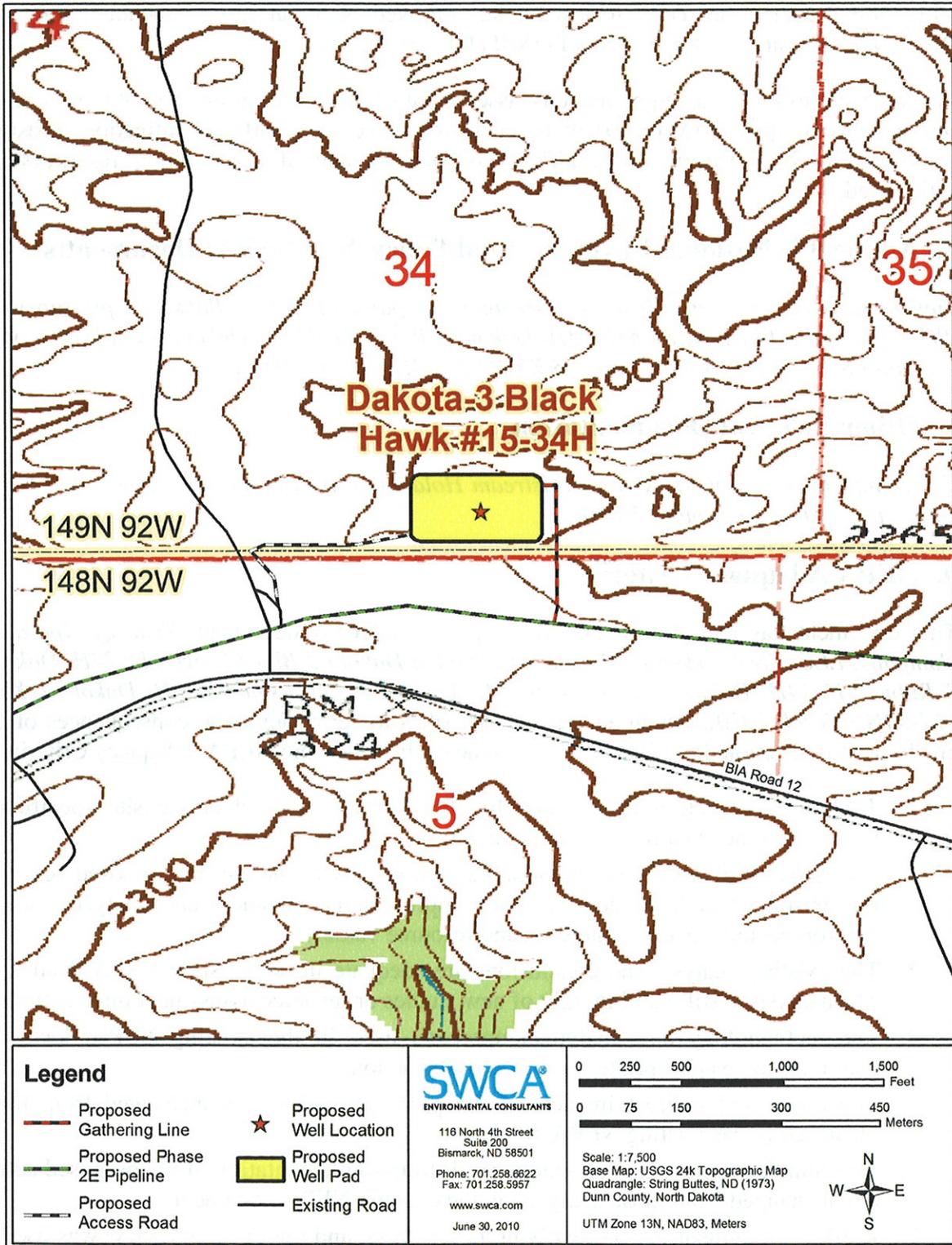
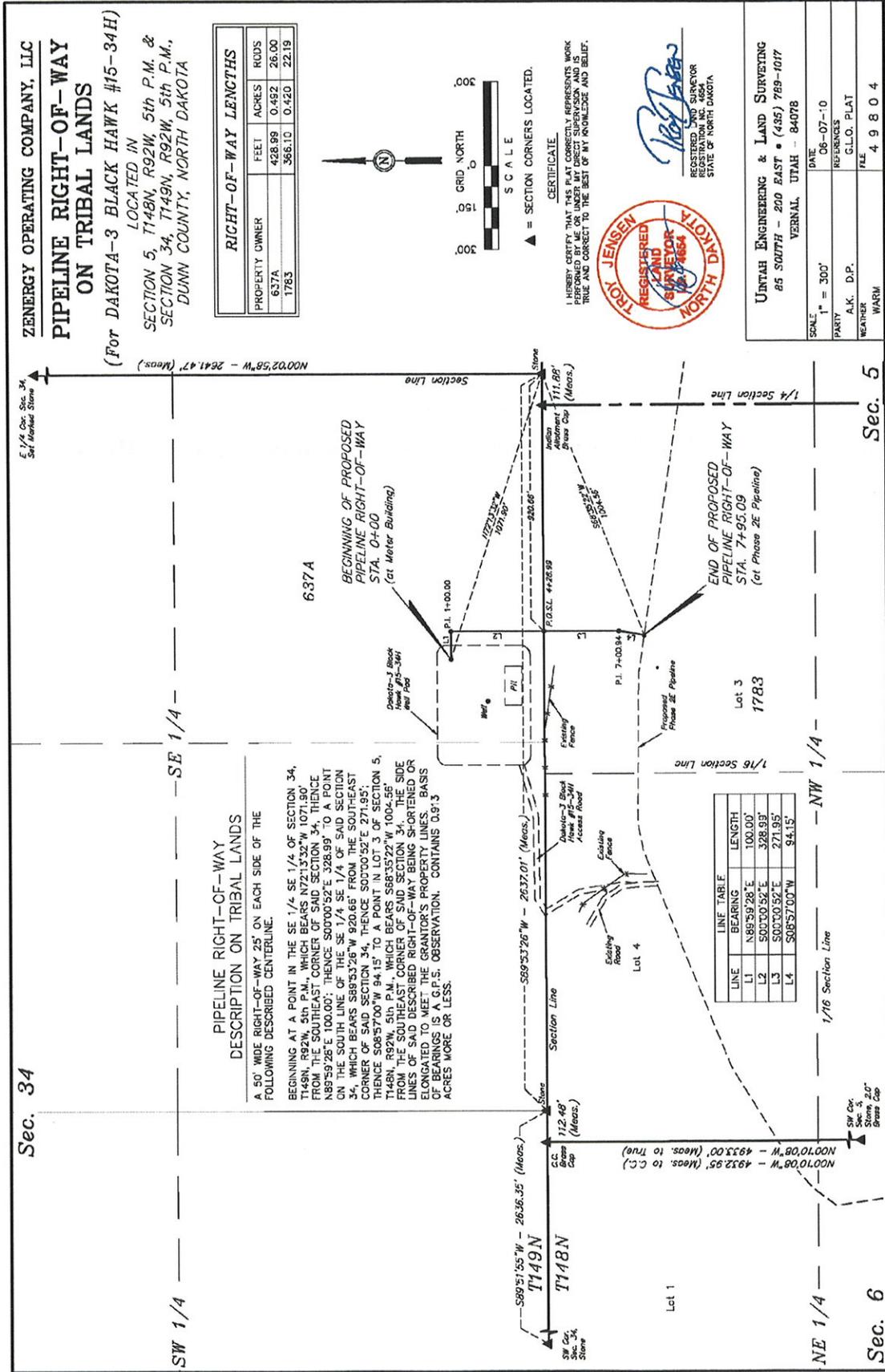


Figure 1. Proposed Dakota-3 Black Hawk #15-34H Gathering Line and Associated Well Pad.

APPENDIX A
**Pipeline Layout and Pipeline Right-of-Way
for Dakota-3 Black Hawk #15-34H**

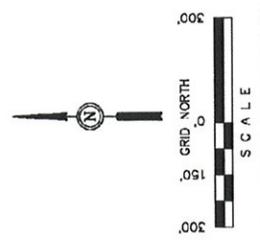
Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Black Hawk #15-34H to Arrow Phase 2E Pipeline (October 2010)



ZENERGY OPERATING COMPANY, LLC
PIPELINE RIGHT-OF-WAY ON TRIBAL LANDS
 (For DAKOTA-3 BLACK HAWK #15-34H)
 LOCATED IN
 SECTION 5, T148N, R92W, 5th P.M. &
 SECTION 34, T149N, R92W, 5th P.M.,
 DUNN COUNTY, NORTH DAKOTA

RIGHT-OF-WAY LENGTHS

PROPERTY OWNER	FEET	ACRES	RODS
637A	428.99	0.452	26.00
1783	366.10	0.420	22.19



CERTIFICATE
 I HEREBY CERTIFY THAT THIS PLAT CORRECTLY REPRESENTS WORK PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

TROY JENSEN
 REGISTERED LAND SURVEYOR
 REGISTRATION NO. 10664
 STATE OF NORTH DAKOTA

UNTAH ENGINEERING & LAND SURVEYING
 85 SOUTH - 200 EAST • (435) 789-1017
 VERNAL, UTAH - 84078

SCALE: 1" = 300'
 DATE: 06-07-10
 PARTY: A.K. D.P.
 WEATHER: WARM
 REFERENCES: G.L.O. PLAT
 FILE: 4 9 8 0 4

APPENDIX B
BIA and MHA THPO Cultural Resource Concurrence Letters

Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Black Hawk #15-34H to Arrow Phase 2E Pipeline (October 2010)



United States Department of the Interior

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



SEP 15 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 reroute in Dunn County, North Dakota. Approximately 9.94 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-1740/FB/10**, the proposed undertaking, location, and project dimensions are described in the following report:

Eisenhauer, Nancy F., and Judith R. Cooper
(2010) Addendum to the Class I and Class III Cultural Resource Inventory of the Dakota-3 Black Hawk #15-34H Well Pad and Access Road on the Fort Berthold Indian Reservation, Dunn County, North Dakota, to Authorize Land Use for a Gathering Pipeline Connecting the Black Hawk 15-34H Well Pad to the Phase 2E 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,

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

September 17, 2010



Dr. Carson Murdy

After review of the documentation provided by your Office, the Mandan Hidatsa Arikara Nations Tribal Historic Preservation Office determines there will be 'No Adverse Affect/No Historic Properties Affected in regard to any pre and post-historic relics, artifacts or sacred In addition, cultural resources in the proposed Project area with that this office **concur**.
BIA Case Number AAO-1740/FB/10

Eisenhower, Nancy F., and Judith R. Cooper
(2010) Addendum to the Class I and Class III Cultural Resource Inventory of the Dakota-3 Black Hawk #15-34H Well Pad and Access Road on the Fort Berthold Indian Reservation, Dunn County, North Dakota, to Authorize Land Use for a Gathering Pipeline Connecting the Black Hawk 15-34H Well Pad to the Phase 2E Pipeline, SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

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

Sincerely,


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

Notice of Availability and Appeal Rights

Addendum to Authorize Land Use for a Gathering Pipelines Connecting one exploratory oil/gas well (Dakota-3 Black Hawk #15-34H) and related infrastructure to Arrow Phase 2E Pipeline on the Fort Berthold Reservation.

The Bureau of Indian Affairs (BIA) is planning to issue administrative approvals related to an Addendum to Authorize Land Use for a Gathering Pipelines Connecting one exploratory oil/gas well (Dakota-3 Black Hawk #15-34H) and related infrastructure to Arrow Phase 2E Pipeline on the Fort Berthold Reservation, 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 6, 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.

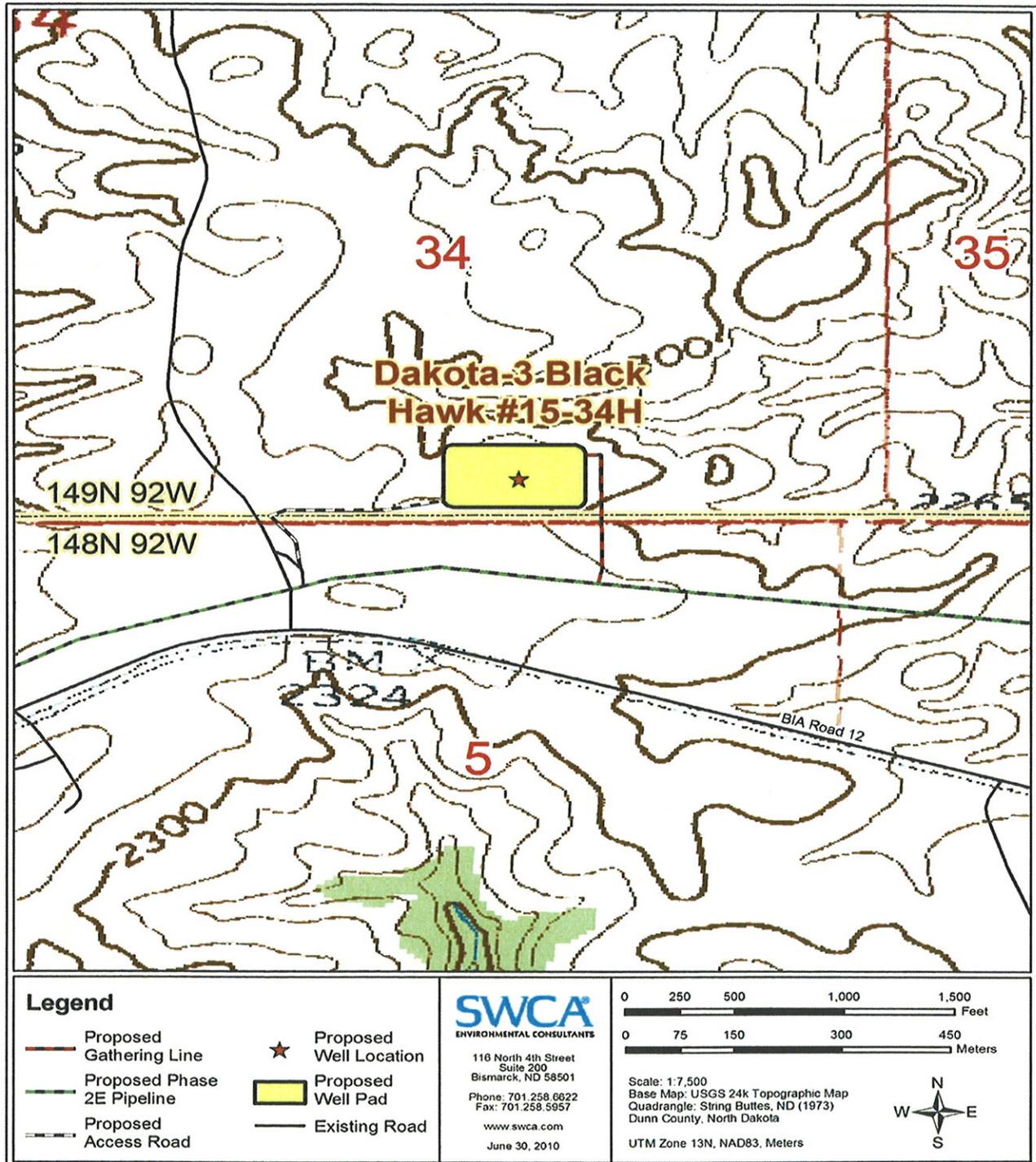


Figure 1. Proposed Dakota-3 Black Hawk #15-34H Gathering Line and Associated Well Pad.