



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Great Plains Regional Office  
115 Fourth Avenue S.E., Suite 400  
Aberdeen, South Dakota 57401



IN REPLY REFER TO:  
DESCRM  
MC-208

FEB 13 2012

## MEMORANDUM

TO: Superintendent, Fort Berthold Agency

FROM: <sup>ACTING</sup> 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, an Environmental Assessment (EA) has been completed and a Finding of No Significant Impact (FONSI) has been issued. The EA authorizes land use for the proposed Corn Stalk #20H pad (two potential wells), Edward Goodbird #9-9H (three potential wells) and Independence #2-35H (four potential wells) on the Fort Berthold Indian Reservation.

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 (40 C.F.R. Section 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: Tex Hall, Chairman, Three Affiliated Tribes (with attachment)  
Elgin Crows Breast, Tribal Historic Preservation Officer (with attachment)  
Derek Enderud, BLM, Bureau of Land Management (with attachment)  
Eric Wortman, EPA (with attachment)  
Damien Reinhart, SWCA (with attachment)  
Jonathon Shelman, Corps of Engineers  
Jeff Hunt, Fort Berthold Agency

*Finding of No Significant Impact*

*Dakota-3 E&P Company, LLC*

*Three Bakken/Three Forks Exploratory Oil and Gas Well Pads:*

*Corn Stalk #20H Pad (Two Potential Wells)*

*Edward Goodbird #9-9H (Three Potential Wells)*

*Independence #2-35H (Four Potential Wells)*

*Fort Berthold Indian Reservation*

*Dunn and McKenzie Counties, North Dakota*

The U.S. Bureau of Indian Affairs (BIA) has received a proposal to drill a potential of nine oil wells on three well pads to evaluate, and possibly develop, the commercial potential of natural resources. Developments have been proposed on lands held in trust by the United States in Dunn and McKenzie counties, on the Fort Berthold Reservation. The following three proposed well pads would be located within the Reservation:

- **Corn Stalk #20HC, HD:** NW¼ SW¼ Section 20, Township (T) 149 North (N), Range (R) 94 West (W), McKenzie County, North Dakota
- **Edward Goodbird #9-9HA, HC, HD:** NW¼ NW¼ Section 9, T149N, R91W, Dunn County, North Dakota
- **Independence #2-35HC, HD, HY, HZ:** NW¼ NE¼ Section 11, T149N, R93W, Dunn County, North Dakota

Associated federal actions by BIA include determinations of impacts and effects regarding environmental resources for developments on tribal lands.

The potential of the proposed actions to impact the human environment is analyzed in the attached addendum to an existing 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 solicited for the preceding NEPA document was sufficient to ascertain potential environmental concerns associated with the currently proposed project.
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.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250), Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds", and the Endangered Species Act (16 U.S.C. 1531 et seq.).
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

ACTING

2/13/12  
Date

# **ENVIRONMENTAL ASSESSMENT**

**United States Department of the Interior  
Bureau of Indian Affairs**

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

**Cooperating Agency:**

**Bureau of Land Management**

**North Dakota State Office  
Dickinson, North Dakota**



**Dakota-3 E&P Company, LLC**

**Three Bakken/Three Forks Exploratory Oil and Gas Well Pads:**

**Corn Stalk #20H Pad (Two Potential Wells)  
Edward Goodbird #9-9H (Three Potential Wells)  
Independence #2-35H (Four Potential Wells)**

**Fort Berthold Indian Reservation**

**February 2012**

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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## **1.0 PURPOSE AND NEED FOR THE PROPOSED ACTION**

### **1.1 INTRODUCTION**

Dakota-3 E&P Company, LLC (Dakota-3), a subsidiary of Williams, has acquired the leases and is proposing to drill a potential of nine oil wells on three well pads on the Fort Berthold Indian Reservation (the Reservation), to evaluate, and possibly develop, the commercial potential of natural resources. Developments have been proposed on lands held in trust by the United States in Dunn and McKenzie counties, North Dakota. The Bureau of Indian Affairs (BIA) is the surface management agency for potentially affected tribal lands and individual allotments. The BIA manages lands held in title by the tribe and tribal members to subsurface mineral rights. Development has been proposed in a location that targets specific areas in the Bakken/Three Forks Formation, a known oil reserve. The following three proposed well pads, illustrated in Figures 1-1 through 1-4, would be located within the Reservation:

- **Corn Stalk #20HC, HD:** NW¼ SW¼ Section 20, Township (T) 149 North (N), Range (R) 94 West (W), McKenzie County, North Dakota
- **Edward Goodbird #9-9HA, HC, HD:** NW¼ NW¼ Section 9, T149N, R91W, Dunn County, North Dakota
- **Independence #2-35HC, HD, HY, HZ:** NW¼ NE¼ Section 11, T149N, R93W, Dunn County, North Dakota

Utility corridors will be installed in which access roads would be constructed to facilitate the construction and operation of the proposed wells with the exception of a small section of the Corn Stalk #20H gathering line. The well pads would be constructed to accommodate drilling activities and well operations. It is expected that underground electric lines and other pipelines would be constructed within the existing right-of-way (ROW); however, certain circumstances may require additional National Environmental Policy Act of 1969 (NEPA) analysis and BIA approval prior to construction of these utilities.

All components (e.g., roads, well pads, gathering lines, and supporting facilities) would be reclaimed upon final abandonment unless formally transferred, with federal approval, to either the BIA or the landowner. The proposed wells are exploratory; should they prove productive, further exploration of surrounding areas is possible.

This environmental assessment (EA) addresses the potential impacts associated with the construction, and possible long-term operation, of the above-listed well pads and directly related infrastructure and facilities. Further oil and gas exploration and development would require additional NEPA analysis and federal actions.

For these proposed well pads, Dakota-3 is considered the operator. Dakota-3 agrees to follow and abide by all commitments and agreements discussed in this document and the associated Applications for Permit to Drill (APDs) for these well pads.

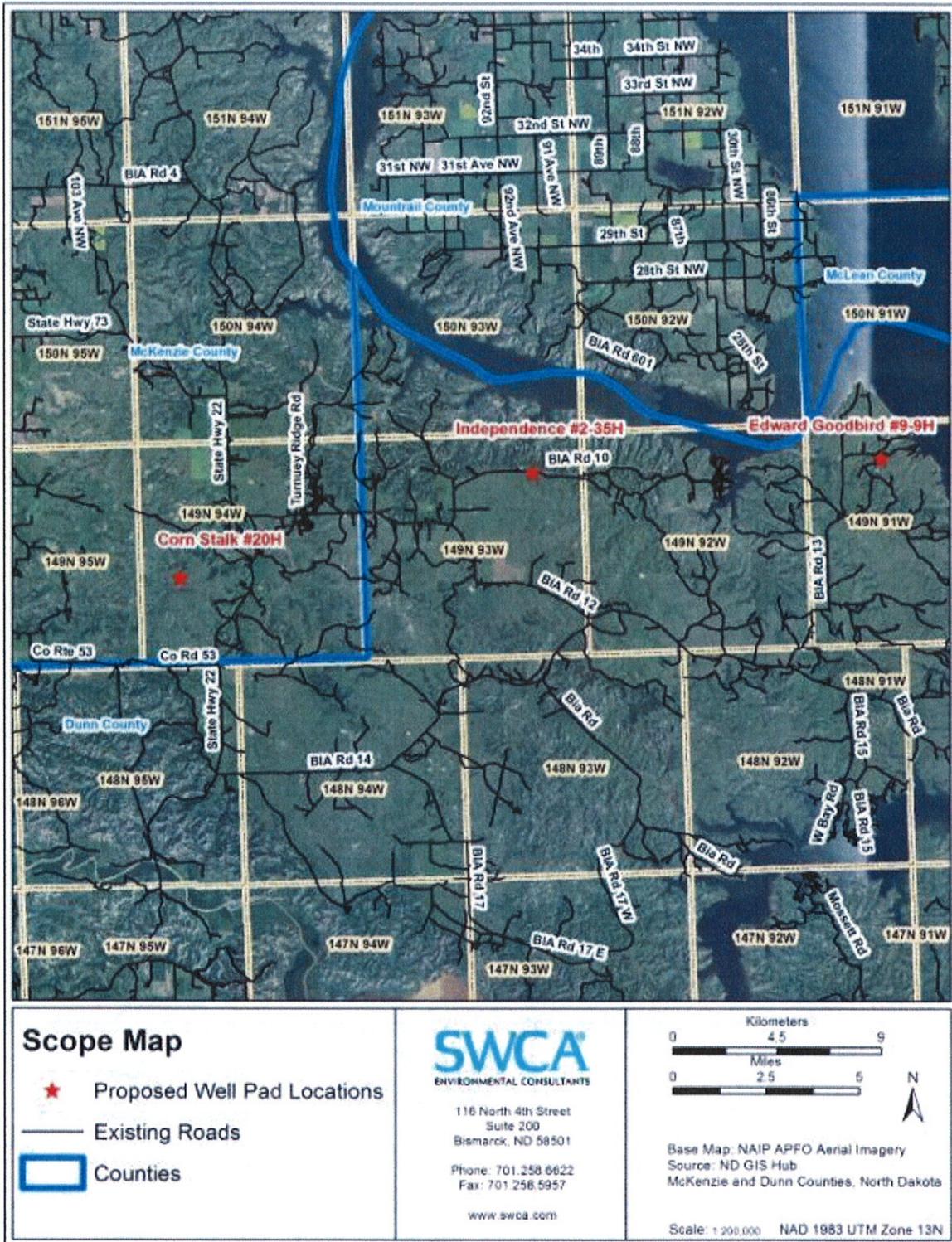


Figure 1-1. Proposed project overview map.

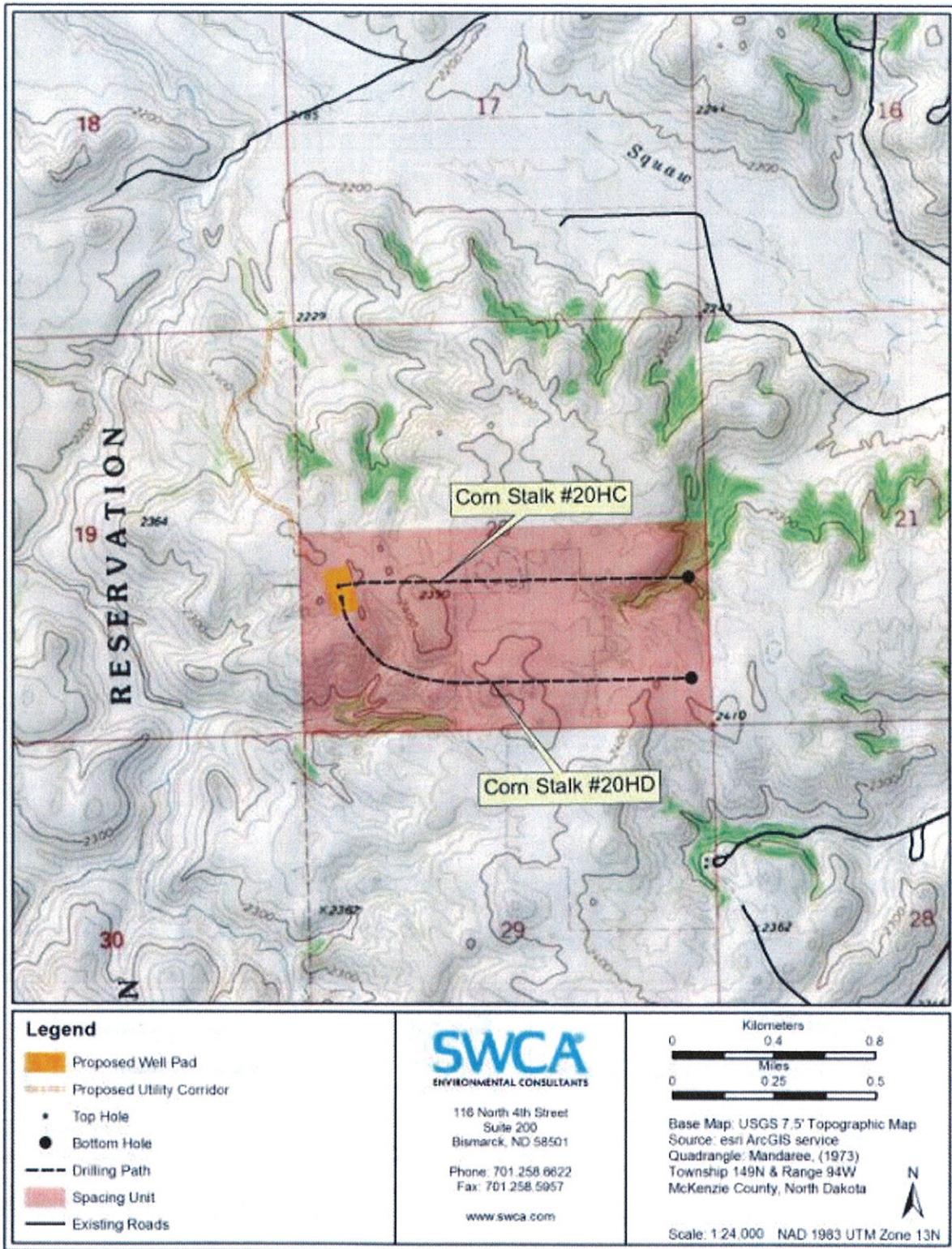


Figure 1-2. Proposed Corn Stalk #20HC and #20HD infrastructure location and spacing unit boundary.

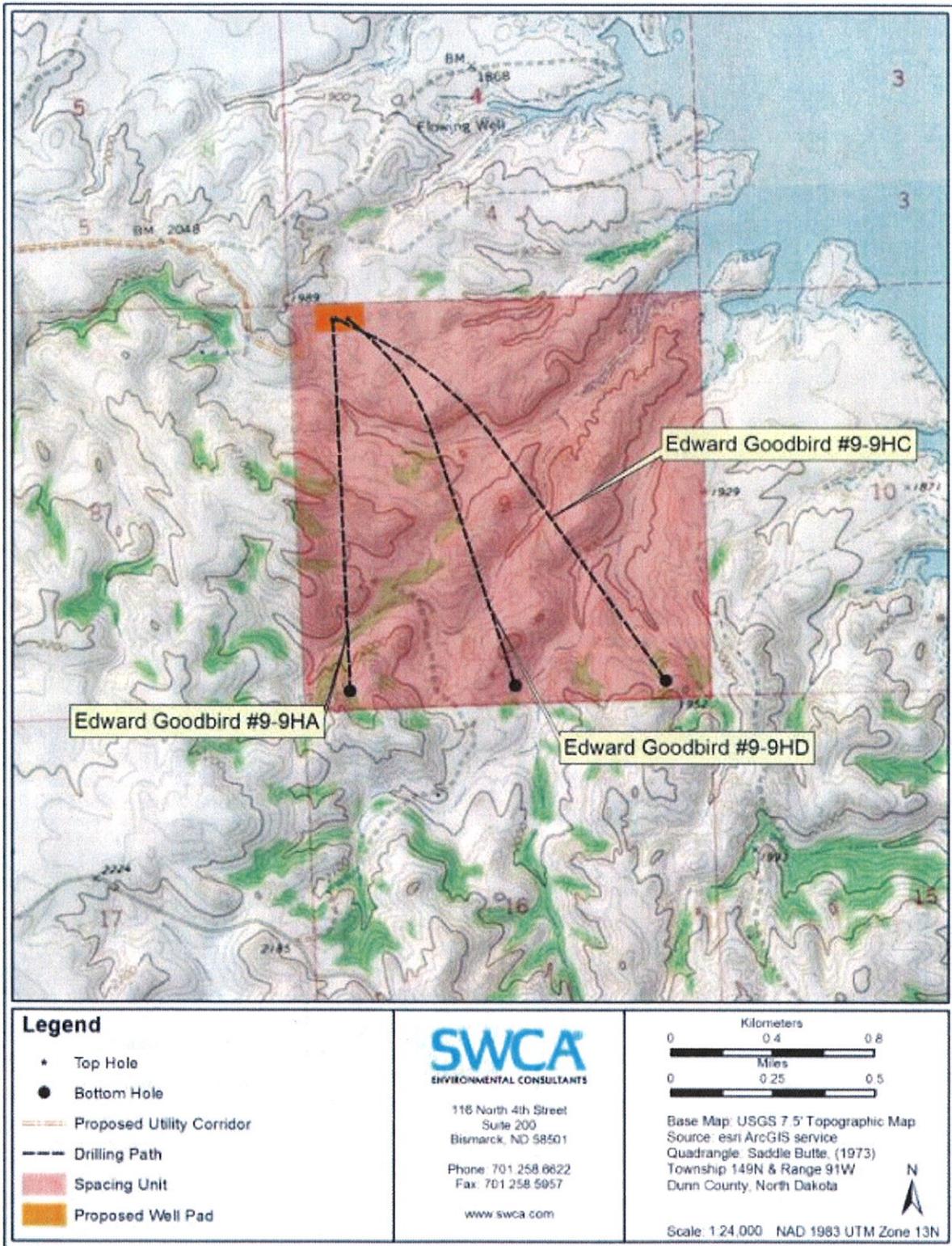


Figure 1-3. Proposed Edward Goodbird #9-9HA, #9-9HC, and #9-9HD infrastructure location and spacing unit boundary.

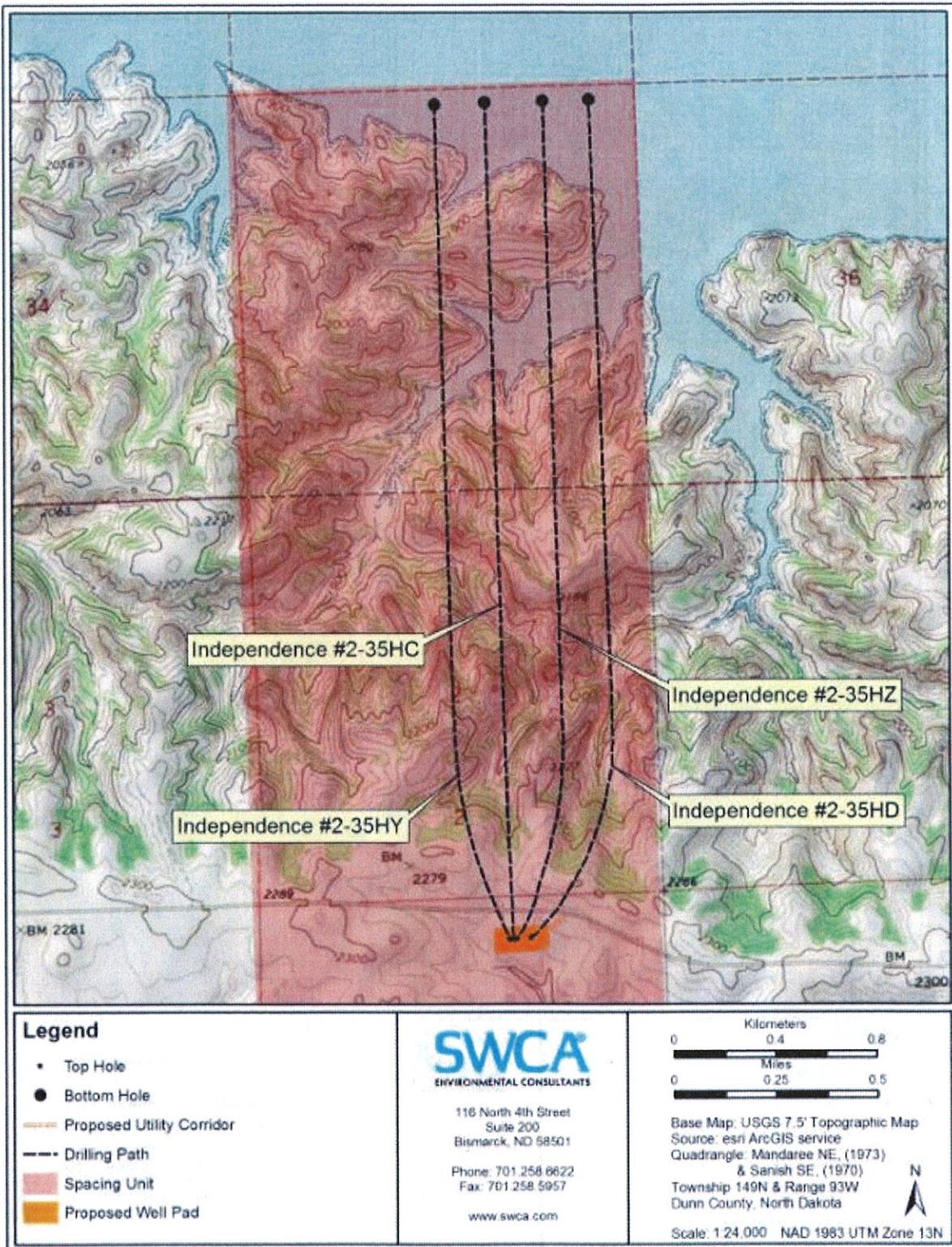


Figure 1-4. Proposed Independence #2-35HC, #2-35HD, #2-35HY, and #2-35HZ infrastructure location and spacing unit boundary.

## **1.2 FEDERAL AND OTHER RELEVANT REGULATIONS AND AUTHORITIES**

The BIA's general mission is to represent the interests, including the trust resources, of members of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara (MHA) Nation, as well as those of individual tribal members. All members of the MHA Nation, including individual allotment owners, could benefit substantially from the development of oil and gas exploration on the Reservation. Oil and gas exploration and subsequent development are under the authority of the Energy Policy Act of 2005 (42 United States Code [USC] 15801, et seq.), the Federal Onshore Oil and Gas Royalty Management Act of 1982 (30 USC 1701, et seq.), the Indian Mineral Development Act of 1982 (25 USC 2101, et seq.), and the Indian Mineral Leasing Act of 1938 (25 USC 396a, et seq.). The BIA's role in the proposed project includes approving easements, leases, and ROWs; determining effects on cultural resources; and making recommendations to the Bureau of Land Management (BLM).

Compliance with NEPA, the Council on Environmental Quality (CEQ) regulations (Title 40 Code of Federal Regulations [CFR] 1500–1508), 43 CFR 3100, and Onshore Oil and Gas Order Nos. 1, 2, 6, and 7 is required due to the project's location on federal lands. The BLM is responsible for the final approval of all APDs after receiving recommendations for approval from the BIA. The BLM is also tasked with on-site monitoring of construction and production activities as well as resolution of any dispute that may arise as a result of any of the aforementioned actions.

Compliance with Section 10 of the Rivers and Harbors Act (33 USC 403) is required when impacting navigable waters of the United States (which includes work over, under, or in such waters). The proposed Independence #2-35H well pad would pull minerals from under Lake Sakakawea, which is considered a navigable waterway. The U.S. Army Corps of Engineers requires that an Application for Department of the Army Permit (33 CFR 325) be submitted for all wells going under the lake. The Department of the Army will then determine if a permit is required.

The procedures and technical practices described in the APD supporting documents and in the EA describe potential impacts to the project area. This EA analyzes potential impacts to elements in the natural and human environment for both the No Action Alternative (described in Section 2.1) and the Proposed Action. Impacts may be beneficial or detrimental, direct or indirect, and short-term or long-term. The EA also analyzes the potential for cumulative impacts and ultimately makes a determination as to the significance of any impacts.

In the absence of significant negative consequences, this EA would result in a Finding of No Significant Impact. Should significant adverse impacts be identified as a result of the direct, indirect, or cumulative effects of the Proposed Action, then NEPA requires the preparation of an environmental impact statement (EIS). It should be noted that a significant benefit from the project does not necessarily require preparation of an EIS. Commercial viability of the proposed wells could result in additional exploration in the area, and any future oil/gas exploration activities and associated federal actions that are proposed wholly or partly on trust land would require additional NEPA analysis and BIA consideration prior to implementation and/or production activities.

Dakota-3 will comply with all applicable federal, state, and tribal laws, rules, policies, regulations, and agreements. Dakota-3 also agrees to follow all best management practices (BMPs) and monitoring mitigations listed in this document. No disturbance of any kind would begin until all required clearances, consultations, determinations, easements, leases, permits, and surveys are in place.

## **2.0 PROPOSED ACTION AND THE NO ACTION ALTERNATIVE**

The BIA, as required by NEPA, must “study, develop, and describe appropriate alternatives to the recommended course of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources...” (NEPA Sec 102[2] [e]). Developing a range of alternatives allows for exploration of options designed to meet the purpose and need for the action. Along with the No Action Alternative, the BIA is considering the Proposed Action.

### **2.1 THE NO ACTION ALTERNATIVE**

Under the No Action Alternative, the proposed project (including the well pad, wells, gathering lines, and access roads) would not be constructed, drilled, installed, or operated. The BIA would not approve easements, leases, or ROWs for the proposed locations and the BLM would not approve the APDs. No impacts would occur as a result of this project to the following critical elements: air quality, public health and safety, water resources, wetland/riparian habitat, threatened and endangered species, soils, vegetation and invasive species, cultural resources, socioeconomic conditions, and environmental justice. There would be no project-related ground disturbance, use of hazardous materials, or trucking of product to collection areas. Surface disturbance, deposition of potentially harmful biological material, and traffic levels would not change from present levels. Under the No Action Alternative, the MHA Nation, tribal members, and allottees would not have the opportunity to realize potential financial gains from the discovery and resulting development of resources at this well location.

### **2.2 THE PROPOSED ACTION**

In addition to the No Action Alternative, this document analyzes the potential impacts of three new exploratory oil and gas well pads and their associated infrastructure, including a potential of nine wells, located in the west-central portion of the Reservation in Dunn and McKenzie counties, North Dakota. The proposed wells would test the commercial potential of the Bakken/Three Forks Formation in this vicinity. Well bottom hole locations, shown in Figures 1-2 through 1-4, were chosen by Dakota-3 in consultation with tribal and BIA resource managers to provide information for potential future development.

#### **2.2.1 Well Pad and Infrastructure Locations and Disturbance**

Well pad and infrastructure locations, shown in Figures 1-1 through 1-4, were developed in consultation with tribal and BIA resource managers during a pre-clearance process that included surveys for cultural, archaeological, and natural (i.e., biological and physical) resources.

Interdisciplinary on-site meetings were conducted on August 10, September 13, and September 19, 2011, to review the well pad locations, proposed access roads, and gathering pipelines. The on-site meetings were attended by the surveyor, natural and cultural resource specialists, a Dakota-3 representative, a BIA representative, and a Tribal Historic Preservation Office (THPO) monitor. Surveys were conducted before that time to determine potential impacts to resources; topography, potential drainage issues, and erosion control measures also

were reviewed. Pad and related facility locations (access roads, gathering pipelines, topsoil/subsoil stockpiles, cuttings pits, tanks, etc.) were also discussed at the on-site meetings in order to minimize effects to natural and cultural resources. The combined disturbance of the project is estimated to be approximately 75.67 acres, as shown in Table 2-1.

**Table 2-1. Proposed Well Pad and Infrastructure Disturbance.**

| <b>Proposed Well Pad Name</b> | <b>Detailed Disturbance</b>  | <b>Approximate Total Disturbance (Acres)</b> |
|-------------------------------|--|--|
| Corn Stalk #20H               | Well Pad: 9.12 acres<br>Access Road and Utility Corridor:<br>28.61 acres | 37.73 acres                                  |
| Edward Goodbird #9-9H         | Well Pad: 7.83 acres<br>Access Road and Utility Corridor:<br>19.88 acres | 27.71 acres                                  |
| Independence #2-35H           | Well Pad: 8.17 acres<br>Access Road and Utility Corridor:<br>2.06 acres  | 10.23 acres                                  |

### **2.2.2 Well Pads**

The proposed well pads would include a leveled area (pad) that would be used for the drilling rig and equipment. The well pads would use a closed-loop system that is part of a modified two-phase system. Cuttings and fluid would be hauled off site and disposed of at an approved facility during phase one, in which a single well would be drilled and allowed to start producing, while a dry cuttings pit would be installed for the second phase, in which the pad would be expanded and the remaining wells would be added. The pad would be stripped of topsoil and vegetation and then graded. The topsoil would be stockpiled and stabilized with native grasses until it could be used to reclaim and revegetate the disturbed area. The subsoils would be used in the construction of the pad and the finished pad would be graded to ensure that water drains away from the pad. Erosion control BMPs (refer to Section 3.12.1) would be implemented and could include surface drainage controls, soil surface protection methodologies, and sediment capture features. Each well pad would be surrounded by a fence. At the point where the access road and fence meet, a cattle guard would be installed. The fenced area would measure the approximate size of each well pad disturbance area.

### **2.2.3 Access Road and Utility Corridor**

Approximately 2.16 miles of new and improved access roads would be constructed in addition to 1.01 miles of gathering pipelines outside of the Corn Stalk #20H utility corridor. Using a purchased ROW width of 130 feet, the result would be up to 50.55 total acres of new surface disturbance for the access roads and utility corridors that would be lowered to 25.66 acres when the access roads are complete and put into use. Signed agreements would be in place allowing road construction across affected private and allotted land surfaces, and any applicable approach permits and/or easements would be obtained prior to any construction activity. It is expected that underground electric lines and other pipelines would be constructed within the existing purchased ROW.

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 no greater than 8 inches in diameter and constructed of steel. The water pipeline would also be no greater than 8 inches in diameter and constructed of Fiberspar® or similar material. Technical descriptions for the materials, corrosion rates, spill response plans, pipeline marking procedures, quality assurance/control, valve locations, boring locations, and reclamation plans are Arrows' specific procedures for pipeline construction.

Dakota-3 adheres to the requirements of 49 CFR 192.707 with regard to the marking of buried pipelines. Specifically, Dakota-3 would place pipeline markers within 1,000 feet of one another, at all public road crossings, railroad crossings, creek crossings, fence crossings, and at all points of major direction change.

Dakota-3 purchases steel pipe that is rated as API 5L X52 and inspects all pipe while at the mill to ensure quality. Dakota-3 is also present to ensure that external epoxy coating is applied to a minimum thickness of 14 millimeters. During construction, all welds are visually inspected for quality and completeness by qualified professionals. Once welds have passed visual inspection, they are subjected to 100 percent Non Destructive Testing. After passing these tests, the weld areas are covered for corrosion protection. After the weld areas have been covered, the external coating of the pipe is inspected using a jeepmeter to detect holes and cracks. The pipe is lowered into the trench and buried. Prior to being put into service, the steel pipe is hydrotested to approximately 1.5 times the minimum design pressure of 1,180 pounds per square inch gauge (psig).

The produced water pipe is designed to sustain a minimum pressure of 750 psig and is hydrotested to approximately 900 psig prior to being approved for service. Two valves would be installed at each end of the proposed pipelines. One valve would be installed at the well location while the second valve would be installed at the proposed tie-in. The installation of two valves would allow Dakota-3 to isolate the proposed gathering pipelines if required.

Arrow has developed a Spill Response Plan (Plan) (Middick 2011<sup>1</sup>) for the Phase 3 southwest pipeline. The spill preventative measures and monitoring protocols, notification procedures, spill detection and on-scene spill mitigation procedures, response activities, contacts, training and drill procedures, and response plan review and update procedures, as referenced in the plan, apply to the proposed pipelines, so long as Arrow remains the operator. A copy of the plan has been filed with the BIA and Arrow has legally committed to adhering to the procedures and requirements as defined by federal law (Title 49 Code of Federal Regulations [CFR] 194). Arrow, on behalf of Dakota-3, has committed to developing a project specific spill response plan that will be submitted to the BIA prior to the commencement of construction activities.

Construction would follow road design standards outlined in the BLM Gold Book (BLM and U.S. Forest Service [USFS] 2007). At a minimum, 8 inches of topsoil would be removed from the access road corridors. This stockpiled topsoil would then be placed on the outside slopes

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<sup>1</sup> Middick, Andy. 2011. *Operations Monitoring and Spill Response Plan*. Blackshare Environmental Solutions. Oklahoma City, Oklahoma.

of the ditches following road construction. The ditches would be reseeded as quickly as possible using a seed mixture determined by the BIA. Care would be taken during road construction to avoid disturbing or disrupting any buried utilities that exist along existing major roads. The access roads would be surfaced with a minimum of 4 inches of aggregate if the site were to be established as a commercial production site. Also, the roadway would remain in use for the life of the wells. Details of road construction are addressed in the APD. A diagram of typical road cross sections is provided in Figure 2-1.

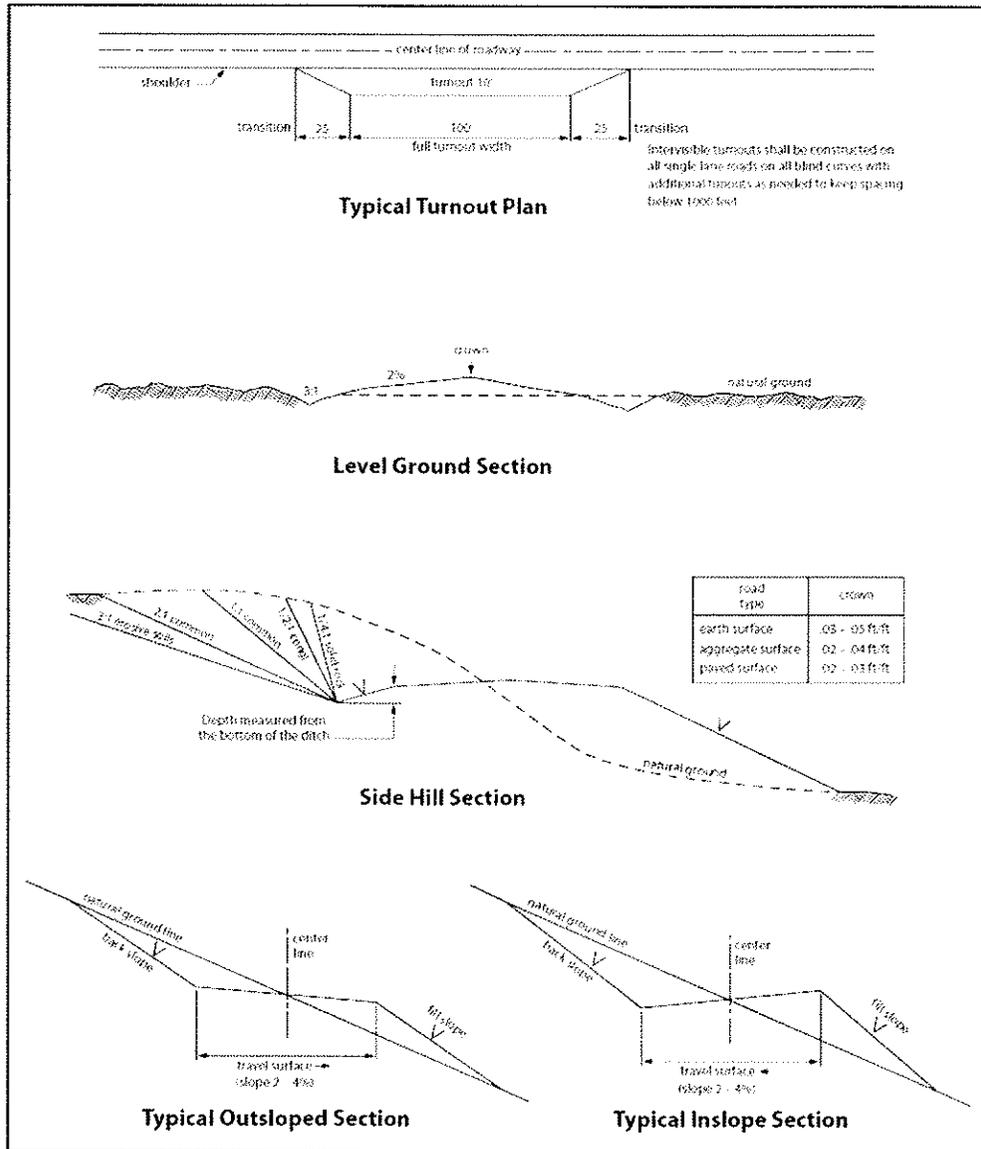


Figure 2-1. Typical road cross sections (BLM and USFS 2007).

## 2.2.4 Drilling

After securing mineral leases, Dakota-3 submitted the APDs to the BLM under separate cover. The BIA's office in New Town, North Dakota, will receive a copy of the APDs from

the BLM North Dakota Field Office. Construction would begin when the BIA completes the NEPA process and the APDs are then approved by the BLM.

Rig transport and on-site assembly would take roughly seven days; a typical drill rig is shown in Figure 2-2. Drilling would require approximately 35 days per well to reach the target depth, using a rotary drilling rig rated for drilling to approximately 15,000 feet. For the first 2,500 feet drilled, a freshwater-based mud system with non-hazardous additives would be used to minimize contaminant concerns. Water would be obtained from a commercial source for this drilling stage, using approximately 8.4 gallons of water per foot of hole drilled (approximately 21,000 gallons total for this portion).

After setting and cementing the near-surface casing, an oil-based mud system (80% to 85% diesel fuel and 15% to 20% water) would be used to drill to a 7-inch casing point. Oil-based drilling fluids reduce the potential for hole sloughing while drilling through water-sensitive formations (shales). Approximately 4,720 additional gallons of water and 18,900 gallons of diesel fuel per well would be used to complete vertical drilling. The lateral reach of the borehole would be drilled using 33,600 gallons of fresh water as mud and adding polymer sweeps as necessary to clean the hole.



**Figure 2-2. Typical drilling rig (Ruffo 2009).**

### **2.2.5 Casing and Cementing**

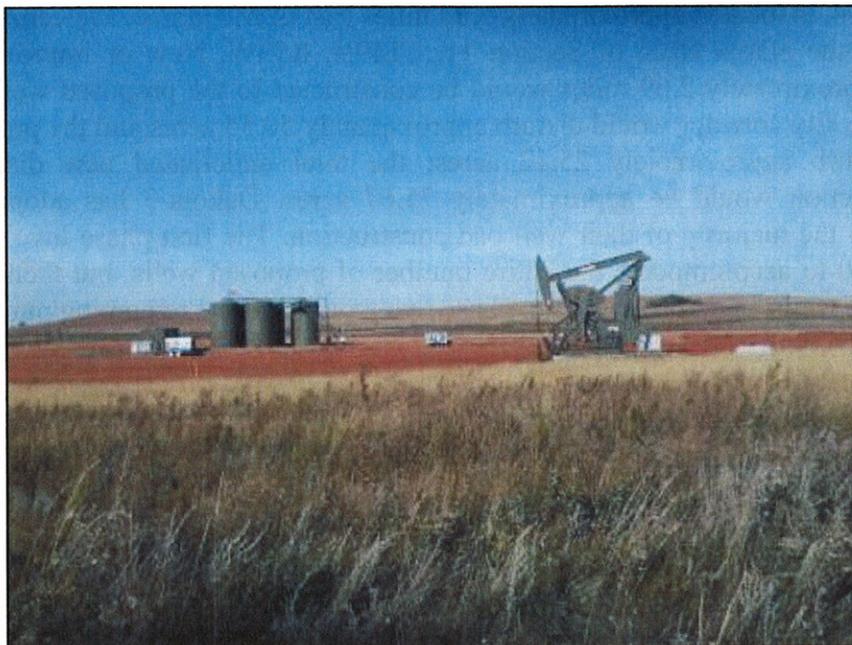
Surface casing would be set at an approximate depth of 2,500 feet and cemented back to the surface during drilling, isolating all near-surface freshwater aquifers in the project area. The Fox Hills Formation and Pierre Formation would be encountered at depths of approximately 1,700 and 1,800 feet, respectively. Production casing would be cemented from a depth approximately 11,256 feet up to about 4,000 feet in order to isolate the hydrocarbon zone present in the Dakota Formation below a depth of 4,500 feet. Casing and cementing operations would be conducted in full compliance with Onshore Oil and Gas Order No. 2 (43 CFR 3160).

### **2.2.6 Completion and Evaluation**

A completion rig unit would be moved on site following the conclusion of drilling and casing activities. Approximately 30 days are usually required, at the proposed well depths, to clean out the well bore, pressure test the casing, perforate and fracture the horizontal portion of the hole, and run production tubing for commercial production. The typical procedure for fracturing a target formation to increase production includes pumping a mixture of sand and a carrier (e.g., water and/or nitrogen) downhole under extreme pressure. The resulting fractures are propped open by the sand, increasing the capture zone of the well and subsequently maximizing the efficient drainage of the field. After fracturing, the well is “flowed back” to the surface where fracture fluids are recovered and disposed of in accordance with North Dakota Industrial Commission rules and regulations and in compliance with applicable U.S. Environmental Protection Agency (EPA) guidelines.

### **2.2.7 Commercial Production**

If drilling, testing, and production support commercial production from any of the proposed well pads, additional equipment would be installed, including a pumping unit at the well head, a vertical heater/treater, tanks (usually 400-barrel steel tanks), and a flare pit (Figure 2-3). An impervious dike sized to hold 110% of the capacity of the largest tank plus one full day’s production would surround the tanks and the heater/treater. Load out lines would be located inside the diked area and a heavy screen-covered drip barrel would be installed under the outlet. A metal access staircase would protect the dike and support flexible hoses used by tanker trucks. For all above-ground facilities not subject to safety requirements, the BIA would choose a paint color, recommended by the BLM or the Rocky Mountain Five-State Interagency Committee, which would blend with the natural color of the landscape.



**Figure 2-3. Typical producing oil well pad.**

The duration of production operations cannot be reliably predicted, but some oil wells have been pumping for more than 100 years. The operator estimates that each of the wells would yield approximately 450 barrels of oil per day and 100 barrels per day of water during the first year of production. After the first year, the operator estimates production would decrease to approximately 250 barrels of oil per day and 50 barrels per day of water. Produced water is mostly recovered frac fluids and is expected to become minimal after two years.

Large volumes of gas are not expected from these locations. Small volumes would be flared in accordance with Notice to Lessees 4A and adopted North Dakota Industrial Commission regulations, which prohibit unrestricted flaring for more than the initial year of operation (North Dakota Century Code 38-08-06.4).

### **2.2.8 Field Camp**

A few personnel would be housed in self-contained trailers for a very short period of time; long-term housing is not proposed. Most personnel, both construction and drilling, would commute to the site. Human waste would be collected on site in portable toilets and trailers and it would be transported off site to a state-approved wastewater treatment facility. All other solid waste would be contained in enclosed containers and transported to, and disposed of at, state-approved facilities.

### **2.2.9 Construction Details**

The proposed Corn Stalk #20H well pad, shown in Figure 1-2, is located approximately 4.34 miles southwest of Mandaree, McKenzie County, North Dakota, in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 20, T149N, R94W. The proposed Edward Goodbird #9-9H well pad, shown in Figure 1-3, is located approximately 15.32 miles east of Mandaree, McKenzie County, North Dakota, in the NWE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 9, T149N, R91W. The Independence #2-35H well pad, shown

in Figure 1-4, is located approximately 5.80 miles east of Mandaree, McKenzie County, North Dakota, in the NW¼ NE¼ of Section 11, T149N, R93W. New or improved access roads totaling approximately 2.09 miles would be constructed to the proposed well pads. The new roads and utility corridor would disturb approximately 50.55 acres and the proposed well pads would disturb approximately 25.12 acres; the total anticipated new disturbance of the proposed action would be approximately 75.67 acres. Dakota-3 has adopted a two-phase approach to the majority of their well pad construction. The first phase involves constructing the well pad to accommodate the entire number of proposed wells, but then only drilling an initial set of wells, and at a later date, phase two would add the remaining number of proposed well heads.

#### 2.2.9.1 Corn Stalk #20H

The spacing unit consists of 320 acres (+/-) with the following bottom hole and drilling target locations.

- **#20HC:** Bottom hole located in the NE¼ SE¼ Section 20, T149N, R94W (Figure 1-2). The drilling target is located approximately 2,035 feet from the south line and 250 feet from the east line, approximately 121 feet north and 4,524 feet east of the surface hole location.
- **#20HD:** Bottom hole located in the NW¼ SW¼ Section 20, T149N, R94W (Figure 1-2). The drilling target is located approximately 600 feet from the south line and 250 feet from the east line, approximately 1,167 feet south and 4,493 feet east of the surface hole location.

#### 2.2.9.2 Edward Goodbird #9-9H

The spacing unit consists of 640 acres (+/-) with the following bottom hole and drilling target locations.

- **#9-9HA:** Bottom hole located in the SW¼ SW¼ Section 9, T149N, R91W (Figure 1-3). The drilling target is located approximately 250 feet from the south line and 600 feet from the west line, approximately 4,792 feet south and 75 feet east of the surface hole location.
- **#9-9HC:** Bottom hole located in the SW¼ SE¼ Section 9, T149N, R91W (Figure 1-3). The drilling target is located approximately 250 feet from the south line and 2,550 feet from the east line, approximately 4,783 feet south and 2,002 feet east of the surface hole location.
- **#9-9HD:** Bottom hole located in the SE¼ SE¼ Section 9, T149N, R91W (Figure 1-3). The drilling target is located approximately 250 feet from the south line and 600 feet from the east line, approximately 4,772 feet south and 4,102 feet east of the surface hole location.

### 2.2.9.3 Independence #2-35H

The spacing unit consists of 1,280 acres (+/-) with the following bottom hole and drilling target locations.

- **#2-35HC:** Bottom hole located in the NW¼ NE¼ Section 35, T150N, R93W (Figure 1-4). The drilling target is located approximately 1,950 feet from the east line and 250 feet from the north line, approximately 10,841 feet north and 40 feet west of the surface hole location.
- **#2-35HD:** Bottom hole located in the NE¼ NE¼ Section 35, T150N, R93W (Figure 1-4). The drilling target is located approximately 600 feet from the east line and 250 feet from the north line, approximately 10,834 feet north and 1,085 feet east of the surface hole location.
- **#2-35HY:** Bottom hole located in the NW¼ NE¼ Section 35, T150N, R93W (Figure 1-4). The drilling target is located approximately 2,600 feet from the east line and 250 feet from the north line, approximately 10,842 feet north and 640 feet west of the surface hole location.
- **#2-35HZ:** Bottom hole located in the NE¼ NE¼ Section 35, T150N, R93W (Figure 1-4). The drilling target is located approximately 1,200 feet from the east line and 250 feet from the north line, approximately 10,839 feet north and 660 feet east of the surface hole location.

Dakota-3 has committed to implementing specific mitigation measures and BMPs in an effort to minimize disturbance to natural and cultural resources. Please see Section 3.12, Mitigation and Monitoring, for more information.

## **2.2.10 Reclamation**

### 2.2.10.1 Interim Reclamation

Reclamation would continue over the life of the well pads and would include the return of topsoil, and contouring and seeding of native vegetation. Initial reclamation would be required six months after construction, if environmentally feasible, and then following any maintenance work or additions of infrastructure. Reclamation would be required before final abandonment of the decommissioned well pads. A successful reclamation would at all times be the responsibility of the operator.

The portions of the access roads and well pad areas not used for functionality would be back-filled, assuming frozen or saturated soils are not present. Topsoil piles would be stored on site during construction. If construction is to occur during winter, Dakota-3 would partially use non-frozen back-fill soil to the extent possible and cover the entire ROW with straw. Topsoil would be distributed as soon as practicable after the soil has defrosted. Topsoil piles would be covered to eliminate the potential for rill erosion and subsequent loss of soil during spring snow melt and precipitation events.

Applicable short- and long-term BMPs would be used to minimize and control erosion in disturbed areas. To reduce compaction, the access road ROWs and well pad areas would be plowed before the stockpiled topsoil is distributed.

The disturbed areas would be reclaimed and contoured as soon as possible after construction is complete (fall/spring). The access road ROW and disturbed area outside of the working well pad area would be covered with stockpiled topsoil and seeded with a seed mixture determined by the BIA. Dakota-3 would control noxious weeds within the ROW and other applicable facilities by approved chemical or mechanical methods. If seeding of the ROW does not occur due to growing season constraints, Dakota-3 would deploy approved weed-free hay across the entire ROW. The presence of hay across the ROW would reduce the potential for excessive erosion as a result of spring snow melt and precipitation.

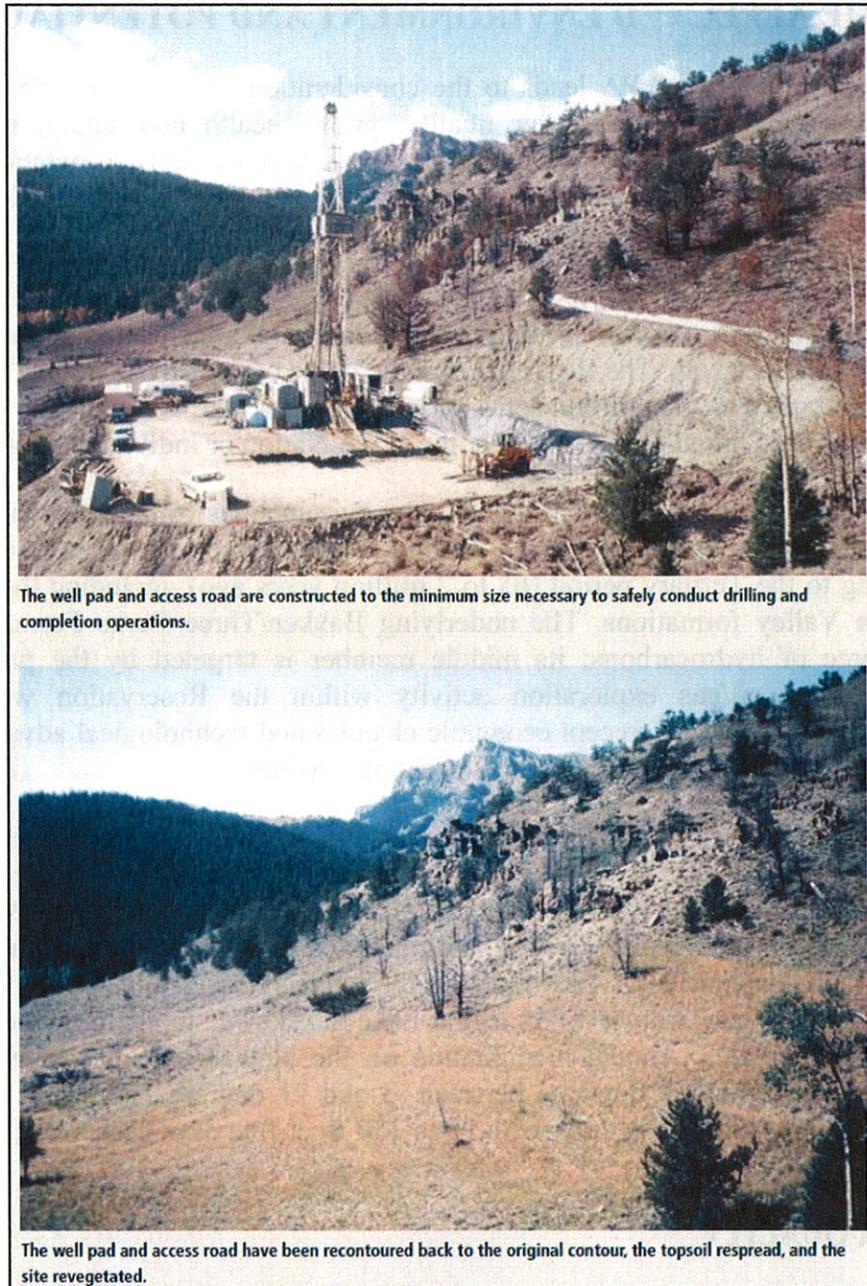
The entire ROW would be monitored for erosion, subsidence, or noxious weeds. In areas where problems are found to occur, reclamation efforts would continue until the BIA feels the ROW is successfully reclaimed. Reclamation is considered successful when:

- seeded areas are established;
- adjacent vegetative communities spread back into the disturbed areas; and
- noxious weeds are under control.

If after two growing seasons the new seeding is not successful, the BIA may require additional efforts to establish vegetation. For noxious weeds, a survey was conducted on the access road ROWs and well pad areas, prior to the construction commencing. The BIA has developed a weed management plan to treat known or likely to occur noxious weed species.

#### 2.2.10.2 Final Reclamation

Final reclamation would occur when the well pad is decommissioned. All disturbed areas would be reclaimed, reflecting the BIA's view of oil and gas exploration and production as temporary intrusions on the landscape. All facilities would be removed. Access roads and work areas would be leveled or backfilled as necessary, scarified, recontoured, and seeded. Exceptions to these reclamation measures might occur if the BIA approves assignment of an access road either to the BIA roads inventory or to concurring surface allottees. Figure 2-4 provides an example of reclamation (BLM and USFS 2007).



**Figure 2-4. Example of reclamation from the BLM Gold Book (BLM and USFS 2007).**

### **2.3 BIA-PREFERRED ALTERNATIVE**

The preferred alternative is to complete all administrative actions and approvals necessary to authorize or facilitate oil and gas developments at the proposed well pad locations.

### **3.0 THE AFFECTED ENVIRONMENT AND POTENTIAL IMPACTS**

The broad definition of NEPA leads to the consideration of the following elements of the human and natural environment: air quality, public health and safety, water resources, wetland/riparian habitat, threatened and endangered species, soils, vegetation and invasive species, cultural resources, socioeconomic conditions, and environmental justice.

#### **3.1 PHYSICAL SETTING**

The proposed well pad sites and spacing units are in a rural area located on the Reservation in west-central North Dakota. The Reservation is the home of the MHA Nation. The Reservation encompasses more than one million acres, of which almost half, including the project area, are held in trust by the United States for either the MHA Nation or individual allottees.

The proposed well pads, access roads, and gathering pipelines would be situated geologically within the Williston Basin, where the shallow structure consists of sandstones, silts, and shales dating to the Tertiary period (65 to 2 million years ago), including the Sentinel Butte and Golden Valley formations. The underlying Bakken/Three Forks Formation is a well-known source of hydrocarbons; its middle member is targeted by the proposed project. Although earlier oil/gas exploration activity within the Reservation was limited and commercially unproductive, recent economic changes and technological advances now make accessing oil in the Bakken/Three Forks Formation feasible.

The Reservation is within the northern Great Plains ecoregion, which consists of four physiographic units: 1) the Missouri Coteau Slope north of Lake Sakakawea; 2) the Missouri River trench (not flooded); 3) the Little Missouri River badlands; and 4) the Missouri Plateau south and west of Lake Sakakawea (Williams and Bluemle 1978). Much of the Reservation is on the Missouri Plateau Slope. Elevations of the unglaciated, gently rolling landscape range from a normal pool elevation of 1,838 feet at Lake Sakakawea to approximately 3,300 feet in the Killdeer Mountains. Annual precipitation on the plateau averages between 15 and 17 inches. Mean temperatures fluctuate between -3 and 21 degrees Fahrenheit (°F) in January and between 55°F and 83°F in July, with 95 to 130 frost-free days each year (U.S. Geological Survey 2010).

#### **3.2 AIR QUALITY**

##### **3.2.1 Air Quality Standards for Criteria Pollutants**

The federal Clean Air Act (CAA) (USC § 7401–7671, as amended in 1990) established national ambient air quality standards (NAAQS) for criteria pollutants to protect public health and welfare. It also set standards for other compounds that can cause cancer, regulated emissions that cause acid rain, and required federal permits for large sources. NAAQS have been established for ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead (EPA 2010a). The primary NAAQS have been set for pervasive compounds that are generally emitted by industry or motor vehicles. Standards for each pollutant meet specific public health and welfare criteria; thus, they are called the ‘criteria pollutants.’

The CAA mandates prevention of significant air quality deterioration in certain designated attainment areas and has designated more stringent air quality standards, known as Secondary Standards, for these areas. Class I attainment areas have national significance and include national parks greater than 6,000 acres, national monuments, national seashores, and federal wilderness areas larger than 5,000 acres that were designated prior to 1977 (Ross 1990). The Class I regulations (40 CFR 51.307) attempt to protect visibility through a review of major new and modified sources of pollutants, and requiring strict air quality emission standards if they will have an adverse impact on visibility within the Class I area (National Park Service 2010).

The nearest designated attainment area to the project area is the Theodore Roosevelt National Park (TRNP), a Class I area that covers about 110 square miles in three units within the Little Missouri National Grassland. The north unit of TRNP is approximately 16 miles south of Watford City, North Dakota, and approximately 40 miles west of the proposed well sites. Two air quality monitoring stations are located there, with the North Unit monitoring most criteria pollutants (National Park Service 2010; North Dakota Department of Health [NDDH] 2010). All other parts of the state, including the Reservation, are classified as Class II attainment areas, affording them protections through the Primary NAAQS (NDDH 2010).

Some states have adopted more stringent standards for criteria pollutants, or have chosen to adopt new standards for other pollutants. For instance, the NDDH has established a standard for hydrogen sulfide (H<sub>2</sub>S) (NDDH 2010).

Criteria pollutants and their health effects include the following.

- **Sulfur dioxide (SO<sub>2</sub>):** SO<sub>2</sub> is a colorless gas with a strong, suffocating odor. SO<sub>2</sub> is produced by burning coal, fuel oil, and diesel fuel, and can trigger constriction of the airways, causing particular difficulties for asthmatics. Long-term exposure is associated with increased risk of mortality from respiratory or cardiovascular disease. SO<sub>2</sub> emissions are also a primary cause of acid rain and plant damage (EPA 2010a).
- **Inhalable Particulate Matter (PM<sub>10</sub> and PM<sub>2.5</sub>):** PM<sub>10</sub> and PM<sub>2.5</sub> are classes of compounds that can lodge deep in the lungs, causing adverse health problems, depending on their size, concentration, and content. Based on extensive health studies, particulate matter is regulated under two classes: PM<sub>10</sub> is the fraction of total particulate matter 10 microns or smaller, and PM<sub>2.5</sub> is two and one-half microns or smaller. Inhalable particulate matter can range from inorganic wind-blown soil to organic and toxic compounds found in diesel exhaust. Toxic compounds such as benzene often find a route into the body via inhalation of fine particulate matter (EPA 2010a).
- **Nitrogen dioxide (NO<sub>2</sub>):** NO<sub>2</sub> is a reddish-brown gas with an irritating odor. Primary sources include motor vehicles, industrial facilities, and power plants. In the summer months, NO<sub>2</sub> is a major component of photochemical smog. NO<sub>2</sub> is an irritating gas that may constrict airways, especially of asthmatics, and increase the susceptibility to infection in the general population. NO<sub>2</sub> is also involved in ozone smog production (EPA 2010a).

- **Ozone (O<sub>3</sub>):** O<sub>3</sub> is a colorless gas with a pungent, irritating odor and creates a widespread air quality problem in most of the world's industrialized areas. Ozone smog is not emitted directly into the atmosphere but is primarily formed through the reaction of hydrocarbons and nitrogen oxides (NO<sub>x</sub>) in the presence of sunlight. Health effects associated with O<sub>3</sub> can include reduced lung function, aggravated respiratory illness, and irritated eyes, nose, and throat. Chronic exposure can cause permanent damage to the alveoli of the lungs. O<sub>3</sub> can persist for many days after formation and travel several hundred miles (EPA 2010a).
- **Carbon monoxide (CO):** CO is a colorless, odorless gas that is a byproduct of incomplete combustion. CO concentrations typically peak nearest a source, such as roadways or areas with high fireplace use, and decrease rapidly as distance from the source increases. Ambient levels are typically found during periods of stagnant weather, such as on still winter evenings with a strong temperature inversion. CO is readily absorbed into the body from the air. It decreases the capacity of the blood to transport oxygen, leading to health risks for unborn children and people suffering from heart and lung disease. The symptoms of excessive exposure are headaches, fatigue, slow reflexes, and dizziness (EPA 2010a).

The Primary and Secondary NAAQS for criteria pollutants are summarized in Table 3-1. NEPA assessments require analysis of both near-field and far-field as part of the cumulative effects of proposals on air quality. Therefore, the North Dakota Ambient Air Quality Standards (AAQS) are shown as well as federal standards.

**Table 3-1. NAAQS and Other Air Quality Standards.**

| <b>Pollutant</b>   | <b>Averaging Period</b> | <b>Primary Standard (NAAQS)</b> | <b>Secondary Standard (National Parks)</b> | <b>North Dakota AAQS</b> |
|--|-------------------------|---------------------------------|--|--------------------------|
| SO <sub>2</sub> in parts per million of air (ppm)                          | 3-hour                  | -                               | 0.5  | 0.273 (1-hour)           |
|  | 24-hour                 | 0.14                            | -  | 0.099                    |
|  | Annual Mean             | 0.03                            | -  | 0.023                    |
| PM <sub>10</sub> in micrograms per cubic meter of air (µg/m <sup>3</sup> ) | 24-hour                 | 150                             | -  | 150                      |
|  | Expected Annual Mean    | 50                              |  | 50                       |
| PM <sub>2.5</sub> (µg/m <sup>3</sup> )                                     | 24-hour                 | 35                              | 35   | -                        |
|  | Weighted Annual Mean    | 15                              | 15   | -                        |
| NO <sub>2</sub> (ppm)  | Annual Mean             | 0.053                           | 0.053                                      | 0.053                    |
| CO (ppm)   | 8-hour                  | 9                               | -  | 9                        |
|  | 1-hour                  | 35                              | -  | 35                       |
| O <sub>3</sub> (ppm)   | 8-hour                  | 0.075                           | 0.075                                      | -                        |
|  | 1-hour                  | -                               | -  | 0.12                     |
| Lead (µg/m <sup>3</sup> )  | Quarterly Mean          | 1.5                             | 1.5  | 1.5                      |

| <b>Pollutant</b>                             | <b>Averaging Period</b> | <b>Primary Standard (NAAQS)</b> | <b>Secondary Standard (National Parks)</b> | <b>North Dakota AAQS</b> |
|--|-------------------------|---------------------------------|--|--------------------------|
| Hydrogen Sulfide (H <sub>2</sub> S)<br>(ppm) | Instantaneous           | -                               | -  | 10                       |
|  | 1-hour                  | -                               | -  | 0.20                     |
|  | 24-hour                 | -                               | -  | 0.10                     |
|  | 3-month                 | -                               | -  | 0.02                     |

Sources: EPA 2010a; NDDH 2010.

North Dakota has separate state standards for several pollutants that are different from the federal criteria standards. These are the standards for SO<sub>2</sub> and H<sub>2</sub>S. All other state criteria pollutant standards are the same as federal. North Dakota was one of 13 states that met standards for all federal criteria pollutants in 2008.

In addition, the EPA averages data from monitoring stations within each county to determine the Air Quality Index (AQI), a general measure of air quality for residents of the county. An AQI greater than 100 is indicative of unhealthy air quality conditions for the county residents, although residents may experience greater or lesser risks depending on their proximity to the sources of pollutants (EPA 2010b).

### **3.2.2 Greenhouse Gas Emissions and Responses to the Threat of Climate Change**

Gases that trap heat in the atmosphere are often called greenhouse gases (GHGs). Some GHGs such as carbon dioxide occur naturally and are emitted to the atmosphere through natural processes and human activities. Other GHGs (e.g., fluorinated gases) are created and emitted solely through human activities. The EPA (2010c) identifies the principal GHGs that enter the atmosphere because of human activities as the following.

- **Carbon Dioxide (CO<sub>2</sub>):** CO<sub>2</sub> enters the atmosphere through the burning of fossil fuels (oil, natural gas, and coal), solid waste, trees and wood products, and also as a result of other chemical reactions (e.g., manufacture of cement). CO<sub>2</sub> is also removed from the atmosphere (or “sequestered”) when it is absorbed by plants as part of the biological carbon cycle.
- **Methane (CH<sub>4</sub>):** CH<sub>4</sub> is emitted during the production and transport of coal, natural gas, and oil. CH<sub>4</sub> emissions also result from livestock and other agricultural practices and by the decay of organic waste in municipal solid waste landfills.
- **Nitrous Oxide (N<sub>2</sub>O):** N<sub>2</sub>O is emitted during agricultural and industrial activities, as well as during combustion of fossil fuels and solid waste.
- **Fluorinated Gases:** Hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are synthetic, powerful GHGs that are emitted from a variety of industrial processes. Fluorinated gases are typically emitted in small quantities, but are potent GHGs thought to contribute significantly to global warming processes (EPA 2010c).

CO<sub>2</sub> is the primary GHG, responsible for approximately 90 percent of radiative forcing, which is the rate of energy change as measured at the top of the atmosphere. Radiative forcing can be positive (warmer) or negative (cooler) (EPA 2010c). To simplify discussion of the various GHGs, the term 'Equivalent CO<sub>2</sub> or CO<sub>2</sub>e' has been developed. CO<sub>2</sub>e is the amount of CO<sub>2</sub> that would cause the same level of radiative forcing as a unit of one of the other GHGs. For example, one ton of CH<sub>4</sub> has a CO<sub>2</sub>e of 22 tons; therefore, 22 tons of CO<sub>2</sub> would cause the same level of radiative forcing as one ton of CH<sub>4</sub>. N<sub>2</sub>O has a CO<sub>2</sub>e value of 310 (EPA 2010c). These GHGs are all positive radiative forcing GHGs. Thus, control strategies often focus on the gases with the highest positive CO<sub>2</sub>e values (EPA 2010c). This document incorporates by reference cited studies and reports from the Pew Center (2009) and the Intergovernmental Panel on Climate Change (2007) concerning GHGs and their impacts.

On May 13, 2010, EPA issued a final rule that establishes thresholds for GHG emissions that define when permits under the New Source Review Prevention of Significant Deterioration and title V Operating Permit programs are required for new and existing industrial facilities (EPA 2010d). This final rule "tailors" the requirements of these CAA permitting programs to limit which facilities will be required to obtain New Source Review Prevention of Significant Deterioration and title V permits. Facilities responsible for nearly 70 percent of the national GHG emissions from stationary sources will be subject to permitting requirements under this rule. This includes the nation's largest GHG emitters—power plants, refineries, and cement production facilities. Emissions from small farms, restaurants, and all but the very largest commercial facilities will not be covered by these programs at this time; however, the EPA recently initiated additional hearings to help determine the types of industries to be held to new standards under these federal permits (EPA 2010d).

Energy production and supply was estimated to emit up to 25.9% of GHGs world-wide in 2004 (Pew Center 2009). Methane gas (CH<sub>4</sub>), with a high radiative forcing CO<sub>2</sub>e ratio, is a common fugitive gas emission in oil and gas fields (EPA 2010d). Oil and gas production, however, is highly variable in potential GHG emissions. Oil and gas producers in the United States are not considered large GHG emitters by the EPA, and are not the subject of any current federal proposals that would regulate GHG emissions.

### **3.2.3 Hazardous Air Pollutants**

Hazardous air pollutants (HAPs) are a class of compounds known to cause cancer, mutation, or other serious health problems. HAPs are usually a localized problem near the emission source. HAPs are regulated separately from criteria air pollutants. Several hundred HAPs are recognized by the EPA and State of North Dakota. Health effects of HAPs may occur at exceptionally low levels; for many HAPs it is not possible to identify exposure levels that do not produce adverse health effects. Major sources of toxic air contaminants include industrial processes, commercial operations (e.g., gasoline stations and dry cleaners), wood smoke, and motor vehicle exhaust. Unlike regulations for criteria pollutants, there are no ambient air quality standards for HAPs. Examples of HAPs found in gases released by oil field development and operation include benzene, toluene, xylene, and formaldehyde (BLM 2009). HAP emissions receive evaluation based on the degree of exposure that can cause risk of premature mortality, usually from cancer.

Risk assessments express premature mortality in terms of the number of deaths expected per one million persons. The NDDH typically reviews projects and either requires an applicant to prepare a risk assessment or assign the state engineers to do the work. For new sources emitting HAPs with known negative health effects, an applicant must demonstrate that the combined impact of new HAP emission does not result in a maximum individual cancer risk greater than one in one hundred thousand.

### **3.2.4 Existing Air Quality in the Project Area**

Federal air quality standards apply in the project area, which is designated as a Class II attainment area. Although the State of North Dakota does not have jurisdiction over air quality matters on the Reservation and no air quality monitoring stations occur within the boundaries of the Reservation, monitoring efforts are being made by the state and industry in the area. The NDDH operates a network of monitoring stations around the state that continuously measure pollution levels. Industry also operates monitoring stations as required by the state. The data from all these stations are subject to quality assurance, and when approved, it is published on the World Wide Web and available from EPA and NDDH (NDDH 2010).

Monitoring stations providing complete data near the project area include Theodore Roosevelt National Park North Unit (TRNP-NU) (Air Quality Station #380530002) in McKenzie County, and Dunn Center (Air Quality Station #38025003) in Dunn County (NDDH 2010). These stations are located west and southeast of the proposed well sites, respectively. Bear Paw Energy and Amerada Hess operate site-specific monitoring stations in the region. However, these stations do not provide coverage that is applicable to this analysis (NDDH 2010).

Criteria pollutants measured at the two monitoring stations include SO<sub>2</sub>, PM<sub>10</sub>, NO<sub>2</sub>, and O<sub>3</sub>. Lead and CO are not monitored by either of the stations. Table 3-2 summarizes the NAAQS and the maximum levels of criteria pollutants. The highest value at either of the two monitoring locations is shown for each year from 2007 through 2009.

All monitored criteria pollutants are well below federal and state standards in the project area for all years in the study period from 2007 through 2009. In addition to the low levels of monitored criteria pollutants, the EPA reports that Dunn County and McKenzie County had zero days in which the AQI exceeded 100 in 2007 and 2008, indicating that general air quality does not pose an unhealthy condition for residents of these counties (EPA 2010b). The AQI was not available for 2009, but is also likely to be zero for these counties.

**Table 3-2. Maximum Levels of Monitored Pollutants, 2007–2009, as Measured at Dunn Center and Theodore Roosevelt National Park North Unit Monitoring Stations.**

| Criteria Pollutant                                     | Averaging Period     | Primary Standard (NAAQS) | Maximum Reported Level from Dunn Center and TRNP-NU Monitoring Stations |        |        |
|--|----------------------|--------------------------|---|--------|--------|
|  |                      |                          | 2009  | 2008   | 2007   |
| SO <sub>2</sub> (parts per million [ppm])              | 24-hour              | 0.14                     | 0.006   | 0.004  | 0.004  |
|  | Annual Mean          | 0.03                     | 0.0005  | 0.0004 | 0.0011 |
| PM10 (micrograms per cubic meter [µg/m <sup>3</sup> ]) | 24-hour              | 150                      | 54  | 108    | 57.4   |
|  | Expected Annual Mean | 50                       | 11.3  | 14.2   | 13.2   |
| PM2.5 (µg/m <sup>3</sup> )                             | 24-hour              | 35                       | 15  | 35.7   | 22.2   |
|  | Weighted Annual Mean | 15                       | 3.4   | 3.7    | 3.6    |
| NO <sub>2</sub> (ppm)                                  | Annual Mean          | 0.053                    | 0.0015  | 0.0018 | 0.0015 |
| O <sub>3</sub> (ppm)                                   | 8-hour               | 0.08                     | 0.057   | 0.0063 | 0.0071 |

Source: NDDH 2010.

### 3.2.5 Typical Air Emissions from Oil Field Development

According to EPA Emission Inventory Improvement documents (EPA 1999), oil field emissions encompass three primary areas: combustion, fugitive, and vented. Typical processes that occur during exploration and production include the following.

- Combustion emissions include SO<sub>2</sub>, ozone precursors called volatile organic compounds (VOCs), GHGs, and HAPs. Sources include engine exhaust, dehydrators, and flaring (EPA 1999).
- Fugitive emissions include criteria pollutants, H<sub>2</sub>S, VOCs, HAPs, and GHGs. Sources of fugitive emissions include mechanical leaks from well field equipment such as valves, flanges, and connectors that may occur in heater/treaters, separators, pipelines, wellheads, and pump stations. Pneumatic devices such as gas actuated pumps and pressure/level controllers also result in fugitive emissions. Other sources of fugitive emissions include evaporation ponds and pits, condensate tanks, storage tanks, and wind-blown dust (from truck and construction activity) (EPA 1999).
- Vented emissions include GHGs, VOCs, and HAPs. Primary sources are emergency pressure relief valves and dehydrator vents (EPA 1999).

Pad and road construction, drilling activities, and tanker traffic would generate emissions of criteria pollutants and HAPs. Primary emissions sources during drilling are diesel exhaust, wind-blown dust from disturbed areas and travel on dirt roads, evaporation from pits and sumps, and gas venting. Diesel emissions are being progressively controlled by the EPA in a nationwide program (EPA 2010d). This program takes a two-pronged approach. First, fuels are improving to the ultra-low sulfur standard, and secondly manufacturers must produce progressively lower engine emissions.

### **3.2.6 Air Quality Best Management Practices**

Under the CAA, federal land management agencies have an affirmative responsibility to protect air quality. Tribes, federal land managers, and private entities can make emission controls part of a lease agreement. BMPs can be adopted for various portions of an oil/gas well's lifecycle. BMPs fall into the following six general categories.

- Transportation BMPs to reduce the amount of fugitive dust and vehicle emissions
  - use directional drilling to drill multiple wells from a single well pad;
  - use centralized water storage and delivery, well fracturing, gathering systems;
  - use telemetry to remotely monitor and control production;
  - use water or dust suppressants to control fugitive dust on roads;
  - control road speeds; and
  - use van or carpooling.
- Drilling BMPs to reduce rig emissions
  - use cleaner diesel (Tier 2, 3, and 4) engines;
  - use natural gas-powered engines; and
  - use “green” completions to recapture product that otherwise would have been vented or flared.
- Unplanned or emergency releases
  - use high-temperature flaring if gas is not recoverable.
- Vapor recovery
  - use enclosed tanks instead of open pits to reduce fugitive VOC emissions; and
  - use vapor recovery units on storage tanks.
- Inspection and maintenance
  - use and maintain proper hatches, seals, and valves;
  - optimize glycol circulation and install a flash tank separator;
  - use selective catalytic reduction; and
  - replace high-bleed with low-bleed devices on pneumatic pumps.
- Monitoring and repair
  - use directed inspection and maintenance methods to identify and cost-effectively fix fugitive gas leaks; and
  - install an air quality monitoring station.

### **3.2.7 Potential Air Quality Impacts**

Based on the existing air quality of the region, typical air levels and types of emissions from similar oil field projects, and Dakota-3's commitment to implementation of BMPs identified in Section 3.2.6, the Proposed Action would not produce significant increases in criteria pollutants, GHGs, or HAPs. The Proposed Action would incrementally contribute to emissions occurring within the region. In general, however, the increase in emissions associated with the Proposed Action would occur predominantly during construction and

drilling operations and therefore would be localized, largely temporary, and limited in comparison with regional emissions. Since the AQI is exceptionally low in the cumulative impact analysis area (CIAA) (see Section 3.2), and the expected future development would be widely dispersed in time and space, the proposed project is not expected to impact attainment status based on any of the Primary and Secondary NAAQS for criteria pollutants or other regulated air emissions. Contribution of the proposal to incremental increases of unregulated GHG emissions is expected to be minor.

### **3.3 WATER RESOURCES**

This section identifies the existing water resources within the project area and potential effects of the project. Specific subjects discussed in this section include surface water and surface water quality, groundwater resources, and the potential short-term and long-term impacts of the proposed project on these water resources.

#### **3.3.1 Surface Water**

The surface water resources in the project area would be managed and protected according to existing federal laws and policies regarding the use, storage, and disposal of the resource during the construction and operation of the project. Surface water resource use and protection is administered under the following federal laws:

- Clean Water Act of 1972, as amended (33 USC 1251 et seq.)
- Federal Land Policy and Management Act of 1976 (43 USC 1711–1712)
- National Environmental Policy Act of 1972 (42 USC 4321)
- Safe Drinking Water Act of 1974, as amended (42 USC 300 et seq.)

Water quality is protected under the Federal Water Pollution Control Act (as amended), otherwise known as the Clean Water Act (CWA). The CWA has developed rules for regulating discharges of pollutants into waters of the U.S. and also regulates water quality standards for surface waters. The CWA has also made it unlawful to discharge any pollutant from a point source into any navigable waters of the U.S., unless a permit has been obtained from the National Pollution Discharge Elimination System (NPDES) program.

The Environmental Division of the MHA Nation has had an application pending with the EPA since 1996 for delegation of authority to set federally approved water quality standards on the Reservation. In the absence of tribal surface water quality authorities, enforcement of federal environmental laws regarding surface water on the Reservation is accomplished through permitting, inspection, and monitoring activities of the NPDES, as administered by the EPA.

Surface water is abundant in the project area, as shown in Figure 3-1. The proposed Dakota-3 well pads, access roads, and gathering pipelines would occur within the Lucky Mound Creek Bay (Hydrologic Unit Code [HUC] 101101012901), Skunk Creek (HUC 101101012102), and Upper Bear Den Creek (HUC 101101012003) sub-watersheds; the Bear Den Creek (HUC 1011010120), Independence Point (HUC 1011010121), and Saddle Butte (HUC 1011010129) watersheds; and Lake Sakakawea (HUC 10110101) drainage basin.

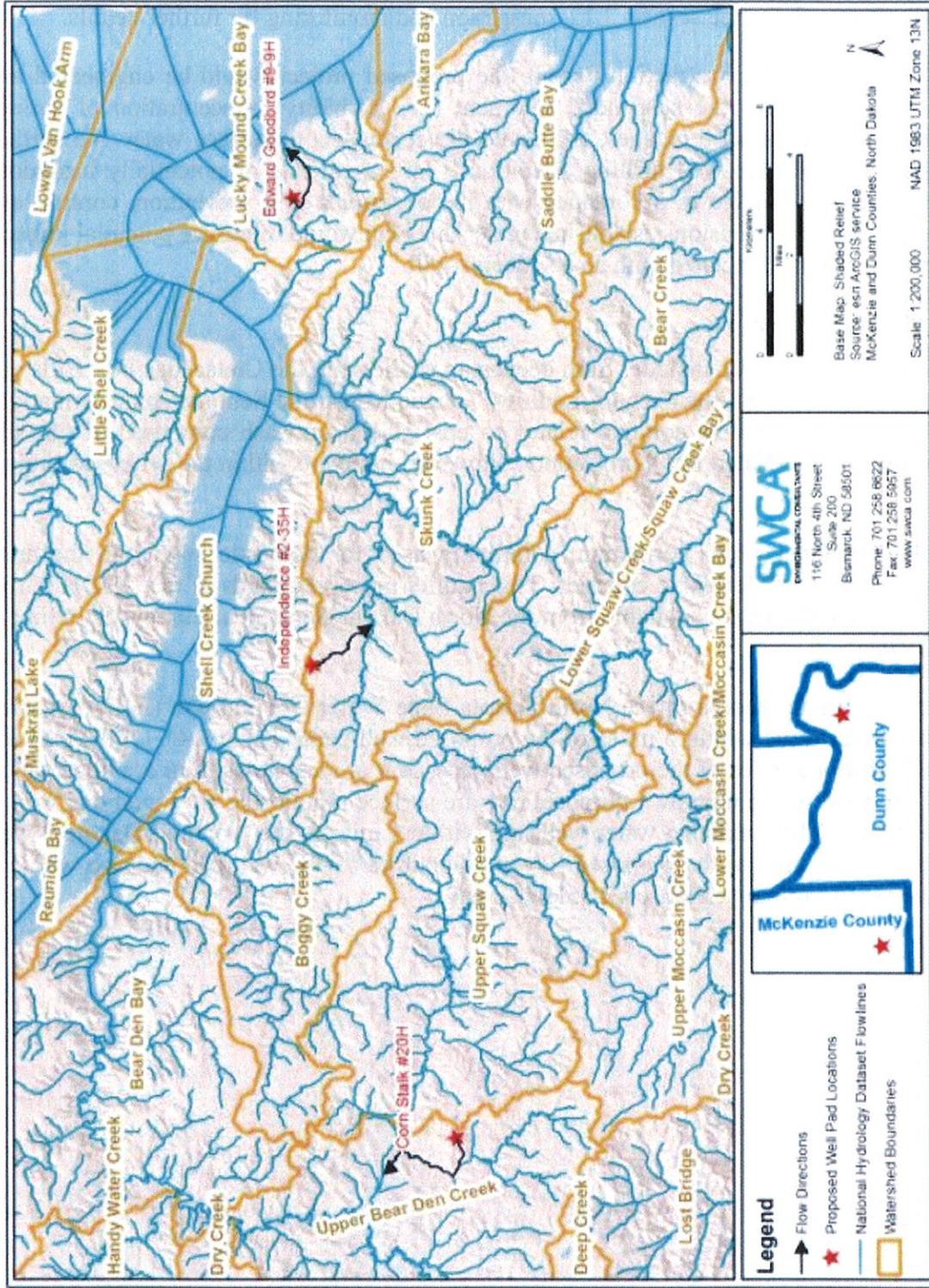


Figure 3-1. Watersheds and surface runoff directions near the proposed Corn Stalk #20H, Edward Goodbird #9-9H, and Independence #2-35H well pads.

Runoff from the proposed Corn Stalk #20H, Edward Goodbird #9-9H, and Independence #2-35H well pads would flow, at its closest, from the proposed Edward Goodbird #9-9H well pad, approximately 0.54 river mile until reaching perennial waters in Lake Sakakawea (HUC 10110101) (Figure 3-1). See section 3.12, mitigation and monitoring for further details.

As part of the NPDES Construction Permit, the proposed project would be engineered and constructed to minimize the suspended sediment (i.e., turbidity) concentration of surface runoff, avoid disruption of drainages, and avoid direct impacts to surface water. No surface water would be used for well drilling operations. Any chemicals or potentially hazardous materials would be handled in accordance with the operator's spill prevention, control, and countermeasure plan. Provisions established under this plan would minimize potential impacts to any surface waters associated with an accidental spill.

### **3.3.2 Groundwater**

Aquifers in the project area include, from deepest to shallowest, the Cretaceous Fox Hills and Hell Creek formations and the Tertiary Ludlow, Tongue River, and Sentinel Butte formations (Table 3-3). Several shallow aquifers related to post-glacial outwash composed of till, silt, sand, and gravel are located in Dunn County. However, none are within the proposed project areas.

The shallow Sentinel Butte Formation, commonly used for domestic supply in the area, outcrops in Dunn and McKenzie counties. This aquifer meets standards of the NDDH (Croft 1985). Detailed analyses are available from the North Dakota Geological Survey, Bulletin 68, Part III, 1976.

Review of electronic records of the North Dakota State Water Commission (2011) revealed 25 existing water wells within 5 miles of the proposed well pads (Table 3-4). Of the existing water wells within 5 miles of the proposed well pads, four are test holes, four are observation wells, 11 are used for an unknown purpose, five are surface monitoring sites, and one well is for domestic use. Three existing water wells are within 1 mile of the proposed Dakota-3 well pads: one within 1 mile of the proposed Edward Goodbird #9-9H well pad and two within 1 mile of the proposed Independence #2-35H well pad.

**Table 3-3. Common Aquifers in the Proposed Project Area and Surrounding Region.**

| Period     | Formation        |                   | Depth Range (feet) | Thickness (feet) | Lithology   | Water-Yielding Characteristics   |
|------------|------------------|-------------------|--------------------|------------------|---|--|
| Quaternary | Alluvium         |                   | 0-40               | 40               | Silt, sand, and gravel                                    | Maximum yield of 50 gal/min to individual wells from sand and gravel deposits. |
| Tertiary   | Fort Union Group | Sentinel Butte    | 0-670              | 0-670            | Silt, clay, sand, and lignite                             | 5 to 100 gal/min in sandstone.<br>1 to 200 gal/min in lignite.                 |
|            |                  | Tongue River      | 140-750            | 350-490          | Silt, clay, sand and lignite                              | Generally less than 100 gal/min in sandstone.                                  |
|            |                  | Cannonball/Ludlow | 500-1,150          | 550-660          | Fine- to medium-grained sandstone, siltstone, and lignite | Generally less than 50 gal/min in sandstone.                                   |
| Cretaceous | Hell Creek       |                   | 1,000-1,750        | 200-300          | Claystone, sandstone, and mudstone                        | 5 to 100 gal/min in sandstone.   |
|            | Fox Hills        |                   | 1,100-2,000        | 200-300          | Fine- to medium-grained sandstone and some shale          | Generally less than 200 gal/min in sandstone. Some up to 400 gal/min.          |

Sources: Croft 1985; Klausning 1979.  
gal/min = gallons per minute

**Table 3-4. Existing Water Wells within 5 Miles of the Proposed Well Pads.**

| Water Well Number      | Section | Township/Range | Type                         | Depth (feet) | Aquifer                     | Miles to Proposed Well Pad |
|------------------------|---------|----------------|------------------------------|--------------|-----------------------------|----------------------------|
| <b>Corn Stalk #20H</b> |         |                |                              |              |                             |                            |
| Undefined              | 27      | 149N/94W       | Domestic Well                | 0            | Undefined                   | 2.27                       |
| Undefined              | 12      | 148N/95W       | Observation Well             | 0            | Sentinel Butte-Tongue River | 4.26                       |
| Undefined              | 28      | 149N/94W       | Observation Well             | 0            | Sentinel Butte-Tongue River | 1.82                       |
| 6275                   | 09      | 149N/95W       | Observation Well             | 2            | Fox Hills                   | 4.96                       |
| 11352                  | 21      | 149N/94W       | Observation Well - Destroyed | 216          | Undefined                   | 1.90                       |

*Environmental Assessment: Dakota-3 E&P Company, LLC, Corn Stalk #20H, Edward Goodbird #9-9H, and Independence #2-35H Well Pads (February 2012)*

| <b>Water Well Number</b>     | <b>Section</b> | <b>Township/Range</b> | <b>Type</b>                   | <b>Depth (feet)</b> | <b>Aquifer</b>              | <b>Miles to Proposed Well Pad</b> |
|------------------------------|----------------|-----------------------|-------------------------------|---------------------|-----------------------------|-----------------------------------|
| 11353                        | 22             | 149N/94W              | Test Hole                     | 42                  | No Obs Well Installed       | 2.02                              |
| 11351                        | 22             | 149N/94W              | Test Hole                     | 111                 | No Obs Well Installed       | 2.07                              |
| 11355                        | 16             | 149N/95W              | Test Hole                     | 108                 | No Obs Well Installed       | 4.26                              |
| 11354                        | 15             | 149N/95W              | Test Hole                     | 109                 | No Obs Well Installed       | 4.17                              |
| Undefined                    | 06             | 148N/94W              | Unknown                       | 0                   | Sentinel Butte-Tongue River | 3.62                              |
| Undefined                    | 30             | 149N/94W              | Unknown                       | 0                   | Fort Union                  | 1.21                              |
| Undefined                    | 14             | 149N/94W              | Unknown                       | 0                   | Sentinel Butte-Tongue River | 3.48                              |
| Undefined                    | 14             | 149N/94W              | Unknown                       | 0                   | Fox Hills                   | 3.64                              |
| <b>Edward Goodbird #9-9H</b> |                |                       |                               |                     |                             |                                   |
| Undefined                    | 08             | 149N/91W              | Surface Water Monitoring Site | 0                   | Surface Water               | 0.26                              |
| <b>Independence #2-35H</b>   |                |                       |                               |                     |                             |                                   |
| Undefined                    | 30             | 149N/92W              | Surface Water Monitoring Site | 0                   | Surface Water               | 3.93                              |
| Undefined                    | 27             | 149N/93W              | Surface Water Monitoring Site | 0                   | Surface Water               | 3.11                              |
| Undefined                    | 21             | 149N/93W              | Surface Water Monitoring Site | 0                   | Surface Water               | 3.51                              |
| Undefined                    | 12             | 149N/93W              | Surface Water Monitoring Site | 0                   | Surface Water               | 0.97                              |
| Undefined                    | 21             | 149N/93W              | Unknown                       | 0                   | Sentinel Butte-Tongue River | 3.34                              |
| Undefined                    | 08             | 149N/93W              | Unknown                       | 0                   | Sentinel Butte-Tongue River | 3.21                              |
| Undefined                    | 09             | 149N/93W              | Unknown                       | 0                   | Sentinel Butte-Tongue River | 2.61                              |
| Undefined                    | 05             | 149N/93W              | Unknown                       | 0                   | Sentinel Butte-Tongue River | 3.32                              |
| Undefined                    | 02             | 149N/93W              | Unknown                       | 0                   | Sentinel Butte-Tongue River | 0.80                              |
| Undefined                    | 33             | 150N/93W              | Unknown                       | 0                   | Sentinel Butte-Tongue River | 2.71                              |
| Undefined                    | 31             | 150N/93W              | Unknown                       | 0                   | Sentinel Butte-Tongue River | 4.07                              |

The identified groundwater wells may have minimal hydrologic connections due to the depths at which these wells are being drilled. Water quality would be protected by drilling with freshwater to a point below the base of the Fox Hills Formation, implementing proper

hazardous materials management, and using appropriate casing and cementing to permanently seal the well shaft from any surrounding aquifers. Drilling would proceed in compliance with Onshore Oil and Gas Order No. 2, Drilling Operations (43 CFR 3160).

Since none of the proposed project area lies within the boundaries of the post-glacial outwash aquifers, low-porosity bedrock near the project wells would act as confining layers to prevent impacts to groundwater resources. Additionally, well completion methods would prevent cross contamination between aquifers or the introduction of hazardous materials into aquifers.

### **3.3.3 Potential Impacts to Surface Water and Groundwater Resources**

Three water wells are within 1 mile of the project area, with the nearest water well located 0.26 mile from the Edward Goodbird #9-9H well pad. Several groundwater protective measures have been included in the drilling and production phases, such as drilling with freshwater to a point below the base of the Fox Hills Formation, implementing proper hazardous materials management, and using appropriate casing and cementing. Based on the location, design, and drilling methods, no significant adverse impacts to surface water or groundwater resources are anticipated from the Proposed Action.

## **3.4 SOILS**

The project area is located toward the center of the Williston Basin. The Greenhorn Formation, which consists of thin limestone and dark gray to black organic-rich shale, is found from the surface to a depth of approximately 4,000 feet. The Greenhorn is subdivided into lower and upper intervals of limestone and calcareous shale with a middle interval of shale. Near-surface sediment is of Recent, Pleistocene, or Tertiary age, and includes Sauk, Tippecanoe, Kaskaskia, Absaroka, Zuni, and Tejas Sequences.

### **3.4.1 Natural Resources Conservation Service Soil Data**

The Natural Resources Conservation Service (NRCS 2011) soil series present on the well pad and access road areas, and their respective acreages, are illustrated in Figures 3-2 through 3-4 and listed in Table 3-5. The acreage shown in Table 3-5 is based on the spatial extent of soil series combinations derived from NRCS data; therefore, the acreage is approximate and used as a best estimate of soil series distribution at each of the proposed project areas.



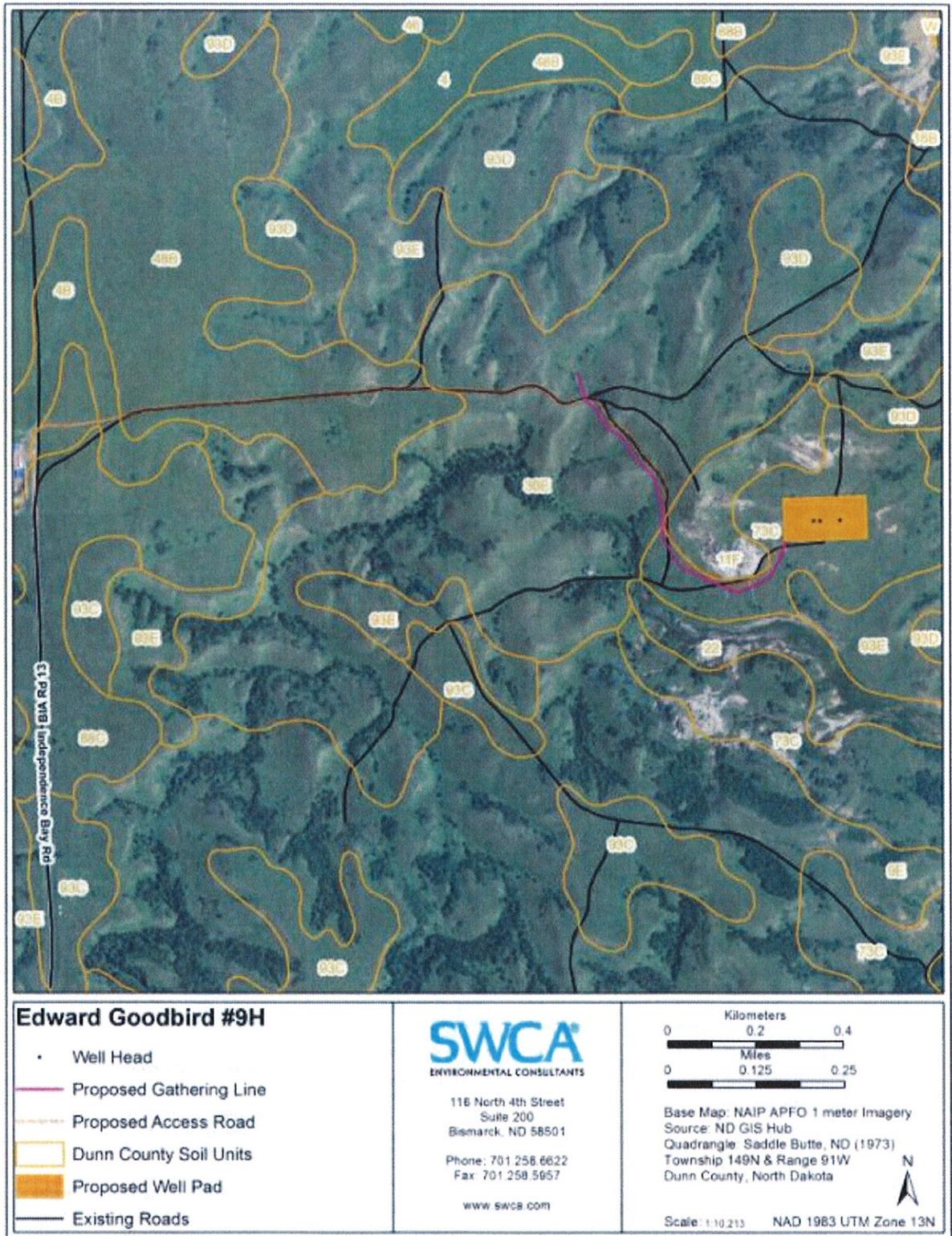


Figure 3-3. Approximate spatial extent of soil types within and around the proposed Edward Goodbird #9-9H well pad.

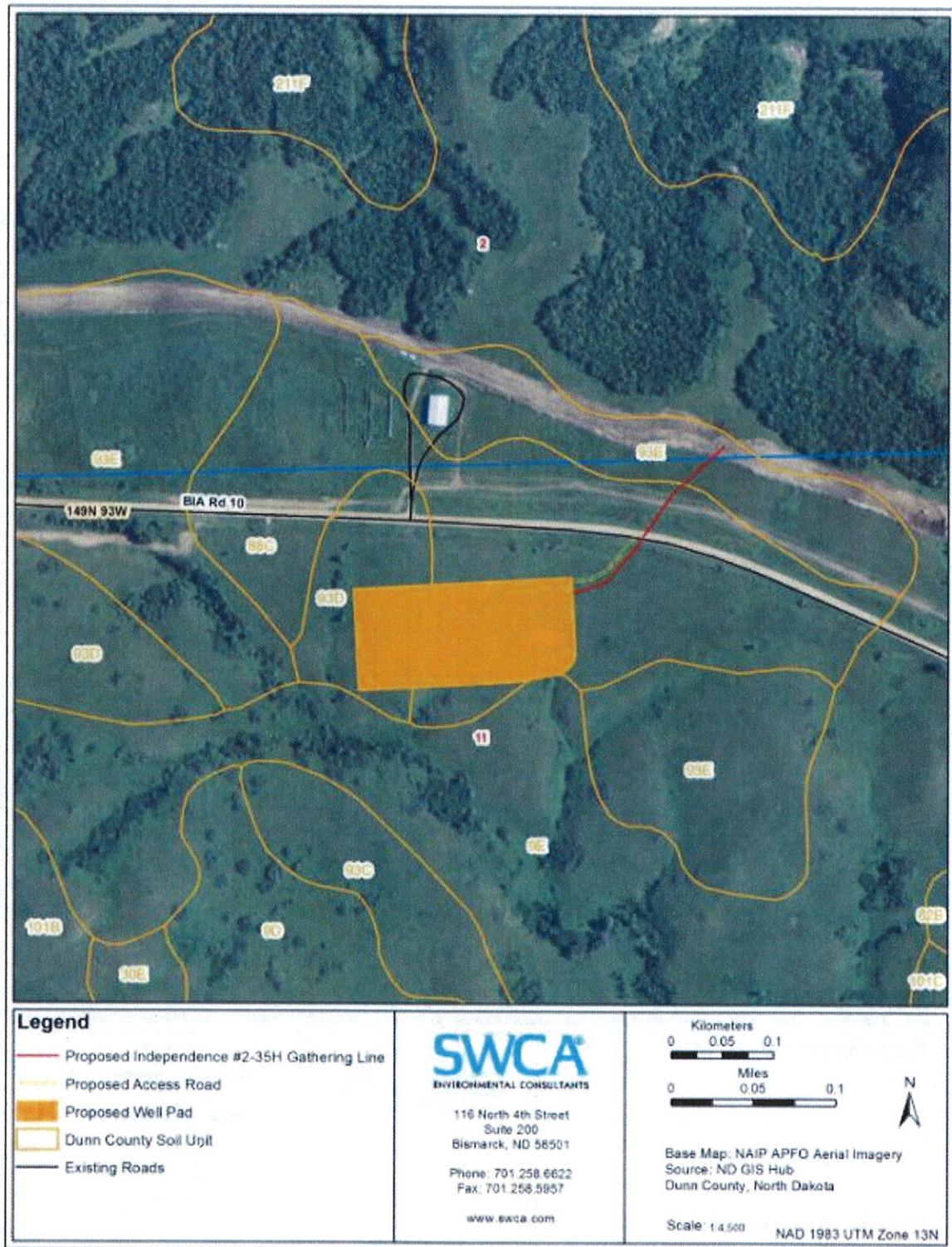


Figure 3-4. Approximate spatial extent of soil types within and around the proposed Independence #2-35H well pad.

**Table 3-5. Percentage of the Project Area Comprised of Specific Soil Types.**

| Feature  | Soil Series   | Acres | % of Location |
|--|---|-------|---------------|
| <b>Corn Stalk #20H</b>                         |   |       |               |
| Well Pad and Access Road                       | Arikara-Shambo-Cabba loams, 9 to 70 percent slopes        | 3.18  | 8.16          |
|  | Beisigl-Flasher-Arikara complex, 15 to 70 percent slopes  | 0.002 | 0.00          |
|  | Cabba-Chama-Havrelon silt loams, 3 to 70 percent slopes   | 9.60  | 24.64         |
|  | Daglum-Belfield complex, 0 to 6 percent slopes            | 5.30  | 13.61         |
|  | Dogtooth-Janesburg silt loams, 0 to 6 percent slopes      | 0.48  | 1.23          |
|  | Dogtooth-Janesburg-Cabba complex, 6 to 30 percent slopes  | 3.38  | 8.67          |
|  | Lambert-Slickspots-Rhoades complex, 0 to 9 percent slopes | 0.84  | 2.15          |
|  | Rhoades-Daglum complex, 0 to 6 percent slopes             | 5.99  | 15.37         |
|  | Vebar-Flasher complex, 3 to 6 percent slopes              | 4.28  | 10.98         |
|  | Vebar-Flasher complex, 6 to 9 percent slopes              | 0.42  | 1.07          |
| Williams-Bowbells loams, 3 to 6 percent slopes | 5.50  | 14.11 |               |
| <b>Edward Goodbird #9-9H</b>                   |   |       |               |
| Well Pad and Access Road                       | Arnegard loam, 2 to 6 percent slopes                      | 0.83  | 3.24          |
|  | Cabba-Badland complex, 15 to 70 percent slopes            | 1.61  | 6.28          |
|  | Cohagen-Vebar fine sandy loams, 9 to 25 percent slopes    | 7.38  | 28.87         |
|  | Cherry-Vanda complex, 2 to 9 percent slopes, gullied      | 7.16  | 28.00         |
|  | Temvik silt loam, 3 to 6 percent slopes                   | 8.55  | 33.45         |
|  | Williams loam, 6 to 9 percent slopes                      | 0.04  | 0.17          |
| <b>Independence #2-35H</b>                     |   |       |               |
| Well Pad and Access Road                       | Cabba loam, 15 to 45 percent slopes                       | 0.03  | 0.40          |
|  | Williams loam, 6 to 9 percent slopes                      | 4.76  | 68.64         |
|  | Zahl-Williams loams, 9 to 15 percent slopes               | 1.66  | 23.93         |
|  | Zahl-Williams loams, 15 to 25 percent slopes              | 0.49  | 7.03          |

The following soil series descriptions represent individual soil series reported to exist within the proposed project area (NRCS 2011). Each individual soil series does not exist individually within the project area, but rather in combination with other soil types (Table 3-5).

#### 3.4.1.1 Arikara

The Arikara series consists of very deep, well-drained soils found on wooded slopes. Permeability is moderate with slopes ranging from approximately 9 to 70 percent. Mean annual air temperature is 40°F, and mean annual precipitation is 15 inches. These soils are commonly used for woodland grazing. Native vegetation species common to this soil type include bur oak (*Quercus macrocarpa*), green ash (*Fraxinus pennsylvanica*), quaking aspen

(*Populus tremuloides*), paper birch (*Betula papyrifera*), and Rocky Mountain juniper (*Juniperus scopulorum*) (NRCS 2011).

#### 3.4.1.2 Arnegard

The Arnegard series consists of very deep, well or moderately well drained soils that formed in calcareous loamy alluvium on upland swales, terraces, fans and foot slopes. Permeability is moderate. Slopes range from 0 to 25 percent. Mean annual air temperature is 42 degrees F, and mean annual precipitation is 14 inches. Most areas are cropped to spring wheat, oats, barley, and hay. Native vegetation is mid, tall, and short grasses such as *Pascopyrum smithii* (western wheatgrass), *Nasella viridula* (green needlegrass), *Andropogon gerardii* (big bluestem), and *Bouteloua gracilis* (blue grama) (NRCS 2011).

#### 3.4.1.3 Badland

Miscellaneous areas have essentially no soil and support little or no vegetation. This can be a result of active erosion, washing by water, unfavorable soil conditions, or human activities. Some miscellaneous areas can be made productive but only after major reclamation efforts. Badland is moderately steep to very steep barren land dissected by many intermittent drainage channels. Ordinarily, the areas are not stony. Badland is most common in semiarid and arid regions where streams cut into soft geologic material. Local relief generally ranges between 10 and 200 meters. Potential runoff is very high, and erosion is active. The Badland type is made of an outcrop-Patent complex with 6 to 25 percent slopes. Badland occurs on the barren shoulders and backslopes of ridges. Patent soils occur on alluvial fans. This map unit occurs in badlands (NRCS 2011).

#### 3.4.1.4 Beisigle

The Beisigle series consists of moderately deep, somewhat excessively drained, rapidly permeable soils on uplands. They formed in sandy materials weathered from soft sandstone. Slope ranges from 0 to 50 percent. Mean annual air temperature is 43°F, and mean annual precipitation is 15 inches. Most areas of Beisigl soils are used for native range; some are used for hay, pasture, and cultivated crops. Native vegetation includes needle and thread (*Hesperostipa comata*), prairie sandreed (*Calamovilfa longifolia*), little bluestem (*Schizachyrium scoparium*), and blue grama (*Bouteloua gracilis*).

#### 3.4.1.5 Bowbells

The Bowbells series consists of very deep, well- and moderately well-drained soils found on glacial till plains and moraines. Permeability is moderate in the upper portions and moderately slow to slow in the substratum. Slopes range from approximately 0 to 9 percent. The mean annual precipitation found throughout the spatial extent of this soil type is approximately 14 inches and mean annual air temperature is approximately 42°F. This soil type is used for cultivation of small grains. Native vegetation species historically common to this soil type include western wheatgrass (*Pascopyrum smithii*), green needlegrass (*Nasella viridula*), and big bluestem (*Andropogon gerardii*) (NRCS 2011).

#### 3.4.1.6 Cabba

The Cabba series consists of shallow, well-drained, moderately permeable soils found on hills, escarpments, and sedimentary plains. The soil slopes broadly range between 2 and 70

percent. The mean annual precipitation found throughout the spatial extent of this soil type is approximately 16 inches and mean annual air temperature is approximately 43°F. The most common vegetation species found on this soil type are little bluestem, green needlegrass, and other various herbs, forbs, and shrub species (NRCS 2011).

#### 3.4.1.7 Chama

The Chama soil series consists of well-drained soils found in materials weathered from soft siltstone, mudstone, and shale on uplands. These soils are reasonably deep to soft siltstone, mudstone, or shale, and are moderately or moderately slowly permeable. The slope ranges from 0 to 45 percent. Mean annual air temperature is 42°F, and mean annual precipitation is 15 inches. Soils are cropped to small grains, which are mostly wheat, where a significant acreage is in rangeland. The native vegetation is principally western wheatgrass, needle and thread, and blue grama (NRCS 2009).

#### 3.4.1.8 Cherry

The Cherry series consists of very deep, well-drained, moderately slowly or slowly permeable soils that formed in alluvium on fans, foot slopes, dissected uplands, and terraces. Slopes range from 0 to 25 percent. Mean annual air temperature is 42°F, and mean annual precipitation is 14 inches. Soils are cropped to small grains, hay, and pasture and are used for grazing. Native vegetation is western wheatgrass, blue grama, green needlegrass, needle and thread, and a variety of forbs and shrubs (NRCS 2009).

#### 3.4.1.9 Cohagen

The Cohagen series consists of shallow, well- to excessively well-drained soils found on sandstone bedrock uplands with slopes ranging from approximately 3 to 70 percent. The mean annual precipitation found throughout the spatial extent of this soil type is approximately 16 inches and mean annual air temperature is approximately 42°F. This soil type is largely used for rangeland foraging with occasional cultivation. Native vegetation species common to this soil type include little bluestem, needle and thread, and prairie sandreed (NRCS 2009).

#### 3.4.1.10 Daglun

The Daglun series consists of deep and very deep, moderately well- and well-drained, slow to very slowly permeable soils found on swales on upland terraces and foot slopes. Slopes range from approximately 0 to 9 percent. The mean annual precipitation found throughout the spatial extent of this soil type is approximately 16 inches and mean annual air temperature is approximately 42°F. This soil type is used for rangeland foraging and cultivation of small grains. Native vegetation species common to this soil type include western wheatgrass, blue grama, and green needlegrass (NRCS 2009).

#### 3.4.1.11 Dogtooth

The Dogtooth series consists of moderately deep, well-drained, very slowly permeable soils found in uplands where the predominant slope is between 0 and 25 percent. The mean annual precipitation found throughout the spatial extent of this soil type is approximately 15 inches and mean annual air temperature is approximately 42°F. The most common vegetation species found on this soil type are range and pasture grasses including western wheatgrass and blue grama (NRCS 2011).

#### 3.4.1.12 Flasher

The Flasher series consists of shallow, somewhat excessively drained soils formed in soft sandstone on side slopes, shoulder slopes and summits of hills, and ridges on uplands and side slopes of valleys. Permeability is moderately rapid or rapid. Slopes range from 3 to 70 percent. Mean annual precipitation is about 14 inches and mean annual temperature is about 42°F. These soils are used mainly for range and pasture. Native vegetation is prairie sandreed, blue grama, little bluestem, upland sedges, some creeping juniper (*Juniperus horizontalis*), and other shrubs (NRCS 2009).

#### 3.4.1.13 Janesburg

The Janesburg series consists of moderately deep, well-drained soils formed in residuum weathered from alkaline, soft shale, siltstone, and mudstone. These soils have slow or very slow permeability. They are on upland plains and have slopes of 0 to 25 percent. Mean annual air temperature is about 42°F, and mean annual precipitation is about 15 inches. This soil type is used for range, pasture, and small grains. Native vegetation is western wheatgrass, blue grama, green needlegrass, sedges, and forbs (NRCS 2011).

#### 3.4.1.14 Havrelon

The Havrelon series consists of very deep, well- and moderately well-drained, moderately permeable soils that formed in loamy alluvium. These soils are on floodplains of major streams and tributaries and have slopes of 0 to 6 percent. Mean annual air temperature is 42°F, and mean annual precipitation is 16 inches. Cultivated areas are used for growing small grains, hay, and corn, and for pasture. Some areas are irrigated and cropped to sugar beets, potatoes, corn, and alfalfa. Native grasses include big bluestem, green needlegrass, and western wheatgrass. Trees, including green ash, cottonwood (*Populus deltoides*), boxelder (*Acer negundo*) and chokecherry (*Prunus virginiana*), are along the stream channels (NRCS 2009).

#### 3.4.1.15 Lambert

The Lambert soils consist of very deep, well drained soils formed recent alluvium on uplands, fans and terraces. These soils are moderately slowly permeable. They are on 0 to 65 percent slopes. Mean annual precipitation is about 14 inches and mean annual air temperature is about 42°F. The moderately sloping areas are about equally divided between cropland and native pasture. The steep areas are all range. Uncultivated areas are chiefly in *Pascopyrum smithii* (western wheatgrass), *Bouteloua gracilis* (blue grama), *Carex filifolia* (threadleaf sedge) and *Hesperostipa comata* (needle and thread) grass (NRCS 2011).

#### 3.4.1.16 Rhoades

The Rhoades series consists of deep and very deep, well- to moderately well-drained, very slowly permeable soils found on swales and uplands with slopes ranging from approximately 0 to 25 percent. The mean annual precipitation found throughout the spatial extent of this soil type is approximately 16 inches and mean annual air temperature is approximately 42°F. This soil type is largely used for rangeland foraging. Native vegetation species common to this soil type include western wheatgrass and blue grama (NRCS 2009).

#### 3.4.1.17 Shambo

The Shambo series consists of deep and very deep, well-drained, moderately permeable soils that formed in calcareous alluvium mainly from soft sandstone, mudstone, and shale. These soils are on terraces and fans along stream valleys and are on fans on uplands. Slope ranges from 0 to 35 percent. Mean annual air temperature is 42°F, and mean annual precipitation is 15 inches. Soils are cropped to small grains, hay, and pasture. Some areas with this soil type are irrigated and some are in native rangeland. Native vegetation is green needlegrass, needle and thread, western wheatgrass, prairie junegrass (*Koeleria macrantha*), blue grama, and a variety of forbs (NRCS 2011).

#### 3.4.1.18 Slickspots

Slickspots are areas having a puddled or crusted, very smooth, nearly impervious surface. The underlying material is dense and massive. The material ranges from extremely acid to very strongly alkaline and from sand to clay (NRCS 2011).

#### 3.4.1.19 Temvik

The Temvik series consists of very deep, moderately permeable, well-drained soils that formed in a silty loess mantle overlying glacial till. These soils are on upland plains with slopes that range from 0 to 15 percent. Mean annual air temperature is 42°F, and mean annual precipitation is 16 inches. Soils are commonly cropped to flax, small grains, and corn. Some areas are used for hay and pasture. Native vegetation is green needlegrass, needle and thread, western wheatgrass, blue grama, upland sedges, and forbs (NRCS 2011).

#### 3.4.1.20 Vanda

The Vanda series consists of very deep, well-drained soils that formed in alluvium derived mainly from semi-consolidated sedimentary bedrock or from glaciolacustrine or glaciofluvial deposits. These soils are on alluvial fans, lake plains, sedimentary plains, drainage ways, and stream terraces. Slopes are 0 to 15 percent. Mean annual precipitation is about 12 inches, and mean annual air temperature is about 43°F. Vanda soils are used mainly for range. The potential native vegetation is mainly western wheatgrass, Nuttall alkaligrass (*Puccinellia nuttalliana*), big sagebrush (*Artemisia tridentata*), blue grama, alkali sacaton (*Sporobolus airoides*), forbs, and shrubs (NRCS 2009).

#### 3.4.1.21 Vebar

The Vebar series consists of moderately deep, moderately rapidly permeable, well-drained soils found on uplands with slopes ranging from approximately 0 to 65 percent. Mean annual air temperature is 42°F, and mean annual precipitation is 16 inches. These soils are typically used for the cultivation of corn and small grains. Native vegetation species common to this soil type are needle and thread and prairie sandreed (NRCS 2011).

#### 3.4.1.22 Williams

The Williams series consists of very deep, well-drained, slowly permeable soils found on glacial till plains and moraines with slopes at approximately 0 to 35 percent. Mean annual air temperature is 42°F, and mean annual precipitation is 14 inches. This soil type is largely used for cultivation. Native vegetation species common to this soil type include green needlegrass, needle and thread, western wheatgrass, and blue grama (NRCS 2011).

3.4.1.23 Zahl

The Zahl series consists of very deep, well-drained, slowly permeable soils found on glacial till plains, moraines, and valley side slopes at approximately 1 to 60 percent. The mean annual air temperature found throughout the spatial extent of this soil type is 40°F, and the mean annual precipitation is 14 inches. This soil type is largely used for rangeland foraging. Native vegetation includes little bluestem, needle-and-thread, and western wheatgrass (NRCS 2011).

**3.4.2 Field-Derived Soil Data**

Soil data derived from on-site excavated soil pits, including the matrix value, hue, chroma, and color name, are summarized in Table 3-6. Additionally, redoximorphic features (i.e., reduced/oxidized iron or manganese deposits), and soil texture were noted. A Munsell Soil Color Chart was used to determine the color of moist soil samples.

**Table 3-6. Soil Data Obtained through the Excavation of Soil Pits within the Proposed Project Area.**

| <b>Proposed Well Pad</b> | <b>Pit Depth (inches)</b> | <b>Soil Matrix Color (color name)</b> | <b>Redoximorphic Feature Color</b> | <b>Texture</b>  |
|--------------------------|---------------------------|---------------------------------------|------------------------------------|-----------------|
| Corn Stalk #20H          | 0-20                      | 10YR 3/2 (very dark grayish-brown)    | None observed                      | Clay loam       |
| Edward Goodbird #9-9H    | 0-20                      | 2.5YR 4/2 (weak red)                  | None observed                      | Clay loam       |
| Independence #2-35H      | 0-20                      | 10YR 4/3 (brown)                      | None observed                      | Silty clay loam |
|                          | 0-20                      | 10YR 3/1 (very dark gray)             | None observed                      | Silty clay loam |

**3.4.3 Potential Impacts from Soil Erosion**

3.4.3.1 Corn Stalk #20H, Edward Goodbird #9-9H, and Independence #2-35H

The proposed well pads are dominated by soils found within 3 to 25 percent slopes. Care would be taken during construction to minimize soil erosion impacts.

1. The soil types found at the well pad locations have variable run-off depending on the slope, which ranges between 3 and 70 percent (NRCS 2011).
2. Reclamation of vegetative communities should be obtainable due to the affinity of native grassland species to the soil types present (NRCS 2011).
3. The sites would be monitored during and after construction and BMPs would be used to prevent erosion, minimize runoff and loss of sediment, and ensure soil stabilization.

3.4.3.2 General

Precautions should be taken during construction activities to prevent erosion. Proven BMPs are known to significantly reduce erosion of various types of soil, including those in the

project area (BLM Instruction Memorandum 2004-124, [www.blm.gov/bmp](http://www.blm.gov/bmp); BLM and USFS 2007; Grah 1997).

The soil types are not expected to create unmanageable erosion issues or interfere with reclamation of the area. Topsoil stripped from areas of new construction would be retained for use during reclamation. Any areas stripped of vegetation during construction would be seeded once construction activities have ceased. The implementation of BMPs by the operator would reduce project effects and maintain negligible levels of erosion; therefore, no significant adverse impacts to soil resources are anticipated.

#### 3.4.3.3 BMPs Designed to Reduce Impacts

Unlike well pads, active roadways are not typically reclaimed, thus sediment yield from roads can continue indefinitely at rates two to three times the background rate. The Proposed Action would create approximately 2.16 miles of new and improved roads in the CIAA, adding incrementally to existing and future impacts to soil resources, dust deposition, and erosion processes. New well field developments would be speculative until APDs are submitted to the BLM and BIA for approval. Additional wells are likely to be drilled in the same general area as the proposed project, using many of the same main access roads and minimizing the disturbance as much as possible.

Dakota-3 is committed to using BMPs to mitigate the potential effects of erosion. BMPs would include implementing erosion and sedimentation control measures, such as installing culverts with energy dissipating devices at culvert outlets to avoid sedimentation in ditches, constructing water bars alongside slopes, and planting cover crops to stabilize soil following construction and before permanent seeding takes place. Additional information regarding BMPs is provided in Section 3.12, Mitigation and Monitoring.

The following well pad-specific measures would be used to control erosion.

**Corn Stalk #20H, #20HD:** 18-inch berm along western edge of the well pad; secondary containment (fill from cut and topsoil and spoils stockpiles) along eastern and northeastern edges of the well pad, along with straw waddles (as needed) and matting or hydroseeding on all fill slopes to prevent erosion; rounded corners as needed.

**Edward Goodbird #9-9HA, #9-9HC, and #9-9HD:** 18-inch berm along northern edge of the well pad; secondary containment (fill from cut and topsoil stockpiles) along nearly all edges of the well pad along with straw waddles (as needed) and matting or hydroseeding on all fill slopes to prevent erosion; rounded corners as needed.

**Independence #2-35HC, #2-35HD, #2-35HY, and #2-35HZ:** 18-inch berm along southern edge and portions of the southwestern and southeastern edges of the well pad; secondary containment (topsoil stockpile) along the southern edge of the well pad along with straw waddles (as needed) and matting or hydroseeding on all fill slopes to prevent erosion; rounded corners as needed.

### 3.5 WETLANDS

National Wetland Inventory maps maintained by the U.S. Fish and Wildlife Service (USFWS) identify one freshwater emergent wetland approximately 158 feet south of the proposed Independence #2-35H well pad (USFWS 2009). Any wetlands observed along the proposed access roads or near the proposed well pads were avoided during the on-site meetings with the BIA.

Table 3-7 provides the nearest perennial stream and the surface water runoff distance to Lake Sakakawea for each well pad. Figure 3-1 illustrates the surface water runoff direction for each well pad. The distance from Lake Sakakawea to the project area ranges from 0.54 to 19.48 river miles. No wetlands or other special aquatic sites would be impacted by the proposed project. The nearest wetland identified on the National Wetlands Inventory map of the project area is approximately 0.03 mile south of the proposed Independence #2-35H well pad.

Dakota-3 has committed to using a closed-loop drilling fluid system due to the proximity of the well pads to Lake Sakakawea. Dakota-3 would also take precautions to maintain influential runoff by constructing and maintaining a 2-foot-high berm surrounding the perimeter of the well pads.

**Table 3-7. Well Pad Distances to Wetlands, Perennial Streams, and River Miles to Lake Sakakawea.**

| Proposed Well Pad Name | Nearest Wetland (miles) | Nearest Perennial Water-Body (river miles)                                 | River Miles to Lake Sakakawea |
|------------------------|-------------------------|--|-------------------------------|
| Corn Stalk #20H        | 0.15                    | Bear Den Bay, approximately 19.48 river miles from the proposed well pad   | 19.48                         |
| Edward Goodbird #9H    | 0.24                    | Lake Sakakawea, approximately 0.54 river mile from the proposed well pad   | 0.54                          |
| Independence #2-35H    | 0.03                    | Skunk Creek Bay, approximately 9.31 river miles from the proposed well pad | 9.31                          |

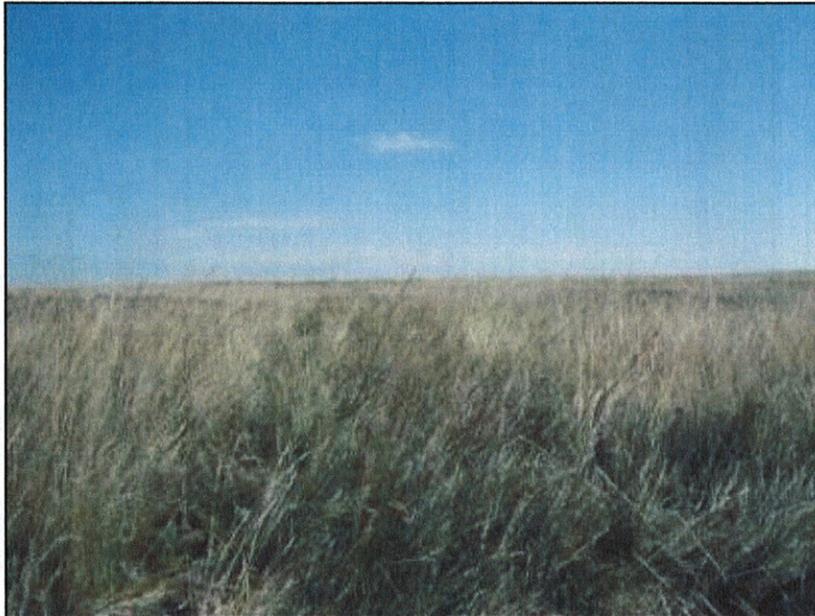
### 3.6 VEGETATION AND NOXIOUS WEEDS

#### 3.6.1 Vegetation Data

The proposed project area occurs in the northwestern Great Plains ecoregion (River Breaks) (U.S. Geological Survey 2010), which is a western mixed-grass and short-grass prairie ecosystem (Bryce et al. 1998). Native grasses include big bluestem, little bluestem, blue grama, and western wheatgrass. Common wetland vegetation includes various sedge species (*Carex* spp.), bulrush (*Scirpus* spp.), and cattails (*Typha* spp.). Common plant species found in woody draws, coulees, and drainages include Juniper (*Juniperus* spp.), silver buffaloberry (*Shepherdia argentea*), and western snowberry (*Symphoricarpos occidentalis*).

3.6.1.1 Corn Stalk #20H

Herbaceous vegetation noted at the project area includes big bluestem and little bluestem. Shrubby vegetation noted at the project area includes silver sage (*Artemisia cana*) and western snowberry. Woody draws noted at the project area include green ash and silver buffaloberry (Figures 3-5 and 3-6).



**Figure 3-5. Vegetation at the Corn Stalk #20H project area, facing north. Photo taken August 11, 2011.**



**Figure 3-6. Vegetation at the Corn Stalk #20H access road, facing east. Photo taken August 11, 2011.**

3.6.1.2 Edward Goodbird #9-9H

Herbaceous vegetation noted at the project area includes big bluestem and little bluestem. Shrubby vegetation noted at the project area includes silver sage and western snowberry. Woody draws noted at the project area include green ash and silver buffaloberry (Figures 3-7 and 3-8).



**Figure 3-7. Vegetation at the Edward Goodbird #9-9H project area, facing east. Photo taken September 19, 2011.**



**Figure 3-8. Vegetation at the Edward Goodbird #9-9H access road, facing southeast. Photo taken September 19, 2011.**

3.6.1.3 Independence #2-35H

Herbaceous vegetation noted at the project area includes prairie junegrass and little bluestem. Shrubby vegetation noted at the project area includes silver sage and western snowberry. Woody draws noted at the project area include green ash and silver buffaloberry (Figures 3-9 and 3-10).



**Figure 3-9. Vegetation at the Independence #2-35H project area, facing east. Photo taken September 12, 2011.**



**Figure 3-10. Vegetation at the Independence #2-35H access road, facing north. Photo taken September 12, 2011.**

### 3.6.2 Noxious Weeds

“Noxious weeds” is a general term used to describe plant species that are not native to a given area, spread rapidly, and have adverse ecological and economic impacts. These species may have high reproduction rates and are usually adapted to occupy a diverse range of habitats otherwise occupied by native species. These species may subsequently out-compete native plant species for resources, causing a reduction in native plant populations.

Noxious weeds have the potential to detrimentally affect public health, ecological stability, and agricultural practices. North Dakota Century Code Chapter 63-01.1 and the North Dakota Department of Agriculture (NDDA) recognize 16 species as noxious, as shown in Table 3-8 (NDDA 2009). Each county has the authority to add additional species to their list of noxious weeds. In 2009, three state noxious weed species were found on 86,100 acres in Dunn and McKenzie Counties. Dunn and McKenzie Counties do not maintain a list of other noxious species. However, 3,000 acres of black henbane (*Hyoscyamus niger*) were shown to occur in Dunn County in 2009 (NDDA 2009).

**Table 3-8. Recognized Noxious Weed Occupied Area in Dunn and McKenzie Counties, North Dakota.**

| Common Name        | Scientific Name               | Dunn County (acres) | McKenzie County (acres) |
|--------------------|-------------------------------|---------------------|-------------------------|
| absinth wormwood   | <i>Artemisia absinthium</i>   | 39,300              | 15                      |
| Canada thistle     | <i>Cirsium arvense</i>        | 28,500              | 33,600                  |
| diffuse knapweed   | <i>Centaurea diffusa</i>      | 0                   | 1                       |
| leafy spurge       | <i>Euphorbia esula</i>        | 18,300              | 26,200                  |
| musk thistle       | <i>Carduus nutans</i>         | 0                   | 0                       |
| purple loosestrife | <i>Lythrum salicaria</i>      | 0                   | 0                       |
| Russian knapweed   | <i>Acroptilon repens</i>      | 0                   | 0                       |
| spotted knapweed   | <i>Centaurea stoebe</i>       | 0                   | 5                       |
| yellow toadflax    | <i>Linaria vulgaris</i>       | 0                   | 0                       |
| dalmatian toadflax | <i>Linaria dalmatica</i>      | 0                   | 1                       |
| salt cedar         | <i>Tamarix ramosissima</i>    | 0                   | 2,400                   |
| black henbane      | <i>Hyoscyamus niger</i>       | 3,000               | 0                       |
| common burdock     | <i>Arctium minus</i>          | 0                   | 0                       |
| houndstongue       | <i>Cynoglossum officinale</i> | 0                   | 0                       |
| halogeton          | <i>Halogeton glomeratus</i>   | 0                   | 0                       |
| baby's breath      | <i>Gypsophila muralis</i>     | 0                   | 0                       |

Efforts to reduce the spread of noxious weeds would be made during the project construction and maintenance processes. The following guidelines would be followed during construction, reclamation, and maintenance stages of the project to control the spread of noxious weeds.

- Construction equipment, materials, and vehicles would be stored at construction sites or at specified construction yards.
- All personal vehicles, sanitary facilities, and staging areas would be confined to a limited number of specified locations to decrease chances of incidental disturbance and spread of weeds.
- In areas with existing noxious weed infestations, vegetation, soils, and trench spoil material would be stockpiled adjacent to the removal point and, following construction, would be returned to its original locations to prevent spreading.
- Prompt re-establishment of the desired vegetation in disturbed areas is required. Seeding would occur during the frost-free periods after construction. Certified “noxious weed-free” seed would be used on all areas to be seeded.

### **3.6.3 Potential Impacts on Vegetation and Noxious Weeds**

The Proposed Action would result in some loss of native grassland vegetation and some improved livestock pasture vegetation. The total new disturbance associated with this project component would be approximately 75.67 acres overall.

In addition to the removal of typical native grasslands, removal of existing vegetation may facilitate the spread of noxious weeds. The APD and this EA require the operator to control noxious weeds throughout project areas. If a noxious weed community is found, it would be eradicated unless the community is too large, in which case it would be controlled or contained to prevent further growth. The services of a qualified weed control contractor would be utilized.

Surface disturbance and vehicular traffic must not take place outside approved ROWs for the well pads, access roads, and gathering pipelines. Areas that are stripped of topsoil must be reseeded and reclaimed at the earliest opportunity. Additionally, certified weed-free straw and seed must be used for all construction, seeding, and reclamation efforts. Prompt and appropriate construction, operation, and reclamation are expected to maintain minimal levels of adverse impacts to vegetation and would reduce the potential establishment of invasive vegetation species.

Construction of the proposed well pad and their associated utility corridors would result in long-term disturbance of approximately 75.67 acres of vegetation, since these facilities would only be partially reclaimed, and would be in continuous use for the life of the project. The loss of acres, with implementation of BMPs and noxious weed management guidelines, would result in negligible levels of vegetation disturbance and would not result in significant adverse impacts to vegetation resources.

The Proposed Action would result in some loss of vegetation and ecological diversity of native mixed-grass prairie habitat. In addition, vegetation resources across the project area could be affected by foreseeable future energy development and surface disturbance in the CIAA. Continued oil and gas development within the CIAA could result in the loss, and further fragmentation, of native mixed-grass prairie habitat. Incremental impacts to quality native prairie may occur in the future from vegetation clearing and soil disturbance, soil loss,

compaction, and increased encroachment of unmanaged invasive weed species. Past, present, and reasonably foreseeable future activities within the general area have reduced, and would likely continue to reduce, the amount of available habitat for certain listed species known to use native mixed-grass prairie habitats. Such impacts could be partially offset by avoidance of previously undisturbed prairie habitats, as well as implementation of soil and vegetation mitigation measures and BMPs. Cumulative impacts to vegetation and other biological resources are therefore expected to be minor.

### 3.7 WILDLIFE

#### 3.7.1 Threatened and Endangered Species Occurrence and Habitat

Several wildlife species that may exist in Dunn and McKenzie counties (USFWS 2010) are listed as threatened or endangered under the Endangered Species Act (ESA) (16 USC 1531 et seq.). According to the USFWS, listed species in Dunn and McKenzie counties, North Dakota, include the gray wolf, black-footed ferret, whooping crane, piping plover and its Designated Critical Habitat, interior least tern, and pallid sturgeon, as well as two federal candidate species, the Dakota skipper and the Sprague’s pipit. In addition to the ESA, the Bald and Golden Eagle Protection Act (BGEPA) (16 USC 668–668d, 54 Sta. 250) and the Migratory Bird Treaty Act of 1918 (MBTA) (916 USC 703–711) protect nesting migratory bird species. The listed species and their federal status are provided in Table 3-9 and discussed in detail in Appendix A. SWCA Environmental Consultants (SWCA) biologists did not observe any of these species or their habitats within the project area during surveys.

**Table 3-9. Summary of Potential Effects to Threatened and Endangered Species.**

| Species   | ESA Status | Habitat Suitability or Known Occurrence   | Operator-Committed Measures | Effects Determination |
|---|------------|---|-----------------------------|-----------------------|
| Black-footed Ferret ( <i>Mustela nigripes</i> ) | Endangered | Species is presumed extirpated from North Dakota; local populations are introduced. | None                        | No Effect             |

| Species  | ESA Status | Habitat Suitability or Known Occurrence   | Operator-Committed Measures  | Effects Determination                         |
|--|------------|---|--|---|
| Gray Wolf<br>( <i>Canis lupus</i> )            | Endangered | Nearest known gray wolf populations exist in Minnesota, Canada, Montana, and Wyoming. Western North Dakota sightings in the late twentieth century are speculated to be solitary, transient, young adult males seeking to establish territory.  | None   | May Affect, Is Not Likely to Adversely Affect |
| Whooping Crane<br>( <i>Grus americana</i> )    | Endangered | Suitable habitat is present. However, no adverse impact is anticipated as a result of construction activities.  | Drilling or construction activity would cease and the Bureau of Indian Affairs (BIA) and U.S. Fish and Wildlife Service would be notified if whooping cranes are sighted within 1 mile of the project area. Activities may commence when the birds have left the 1-mile buffer area. | May Affect, Is Not Likely to Adversely Affect |
| Piping Plover<br>( <i>Charadrius melodus</i> ) | Threatened | Birds are unlikely to be present due to lack of suitable foraging or nesting habitat. The nearest suitable nesting and foraging habitat occurs on the shoreline and islands of Lake Sakakawea, approximately 0.50 to 7.95 straight line miles from proposed well pads and access roads. | See migratory bird protective measures. Dakota-3 would use a closed-loop drilling system for each proposed well pad. Dakota-3 would surround each proposed well pad with a containment berm to prevent hazardous runoff or spills.   | May Affect, Is Not Likely to Adversely Affect |

| Species  | ESA Status                  | Habitat Suitability or Known Occurrence  | Operator-Committed Measures  | Effects Determination                         |
|--|-----------------------------|--|--|---|
| Designated Critical Habitat for Piping Plover    | Designated Critical Habitat | Critical Habitat occurs within the watershed of the project area, on the shoreline and islands of Lake Sakakawea, between approximately 0.54 to 19.48 river miles from proposed well pads and access roads.  | Dakota-3 would implement all best management practices (BMPs), erosion control measures, and spill prevention practices required by the Clean Water Act.<br><br>Dakota-3 would use a closed-loop drilling system for each proposed well pad and would surround each proposed well pad with a containment berm to prevent hazardous runoff or spills. | May Affect, Is Not Likely to Adversely Affect |
| Interior Least Tern ( <i>Sterna antillarum</i> ) | Endangered                  | The nearest suitable nesting and foraging habitat occurs on the shoreline and islands of Lake Sakakawea, approximately 0.54 to 19.48 river miles, and 0.50 to 7.95 straight line miles from proposed well pads and access roads. Migrating or foraging interior least terns may transition through the project area. | See migratory bird protective measures.<br><br>See Designated Critical Habitat protective measures for piping plover.  | May Affect, Is Not Likely to Adversely Affect |

| Species   | ESA Status  | Habitat Suitability or Known Occurrence   | Operator-Committed Measures   | Effects Determination                         |
|---|---|---|---|---|
| Pallid Sturgeon ( <i>Scaphirhynchus albus</i> ) | Threatened  | Lake Sakakawea is between 0.54 and 19.48 river miles from proposed well pads and access roads.  | Dakota-3 would implement all BMPs, erosion control measures, and spill prevention practices required by the BIA and the Clean Water Act. Dakota-3 would use a closed-loop drilling system for each proposed well pad and would surround each proposed well pad with a containment berm to prevent hazardous runoff or spills. | May Affect, Is Not Likely to Adversely Affect |
| Dakota Skipper ( <i>Hesperia dacotae</i> )      | Candidate   | Suitable habitat was noted within the project area. However, no adverse impact is anticipated as a result of construction activities.   | The proposed well pads would be reclaimed as soon as possible after their lifespan is complete. Impacted areas would be returned to pre-construction contours.  | May Affect, Is Not Likely to Adversely Affect |
| Sprague's pipit ( <i>Anthus spragueii</i> )     | Candidate   | Suitable habitat was noted within the project area. However, no adverse impact is anticipated as a result of construction activities.   | The proposed well pads would be reclaimed as soon as possible after their lifespan is complete. Impacted areas would be returned to pre-construction contours.  | May Affect, Is Not Likely to Adversely Affect |
| <b>Other Federally Protected Species</b>        |   |   |   |   |
| Bald Eagle ( <i>Haliaeetus leucocephalus</i> )  | Bald and Golden Eagle Protection Act (BGEPA) and Migratory Bird Treaty Act (MBTA) | Raptor habitat survey was conducted. SWCA observed no suitable nesting or foraging habitat within the project area. Transient individuals may enter the project area on occasion. | A 0.5-mile line of sight survey was conducted during the initial field survey and no suitable nesting habitat was observed within the project area.   | No Adverse Effects Anticipated                |

| Species                                   | ESA Status     | Habitat Suitability or Known Occurrence   | Operator-Committed Measures  | Effects Determination          |
|---|----------------|---|--|--------------------------------|
| Golden Eagle ( <i>Aquila chrysaetos</i> ) | BGEPA and MBTA | No eagle nests were observed in the project area. Golden eagles may occasionally visit or forage within or around the project area. | A 0.5-mile line of sight survey was conducted during the initial field survey.<br><br>The closest known golden eagle nest occurrence is approximately 3.19 miles southeast of the proposed Corn Stalk #20H well pad. | No Adverse Effects Anticipated |
| Migratory Birds                           | MBTA           | Suitable habitat for nesting migratory grassland birds occurs in the project area.  | See migratory bird protective measures.  | No Adverse Effects Anticipated |

### 3.7.2 General Wildlife Species Occurrence and Habitat

Small migratory birds were the only wildlife observed during the field visits. Lake Sakakawea is within view of the proposed Edward Goodbird #9-9H well pad location and some suitable eagle habitat does occur; however, no eagles or nests were observed. Cumulatively, the potential impacts on various species and their habitats are minimal. Currently, no adverse impacts have been identified for either the Reservation or the adjacent areas.

### 3.7.3 Potential Impacts to Wildlife

No impacts to listed species are anticipated because of the low likelihood of their occurrence within the proposed project areas, confirmed by on-site assessments conducted by SWCA biologists. Dakota-3 has committed to using a closed-loop drilling system. For additional information on general BMPs and other operator-committed measures, please see Sections 2.2.9, Construction Details, and 3.12, Mitigation and Monitoring.

Minor impacts to unlisted wildlife species and their habitats could result from the construction of the well pads and new access roads; increased vehicular traffic density; drilling activities; and long-term disturbances during commercial production. Ground clearing may impact habitat for small birds, small mammals, and other wildlife species. The proposed project may affect raptor and migratory bird species through direct mortality, habitat degradation, and/or displacement of individual birds. These impacts are regulated in part through the MBTA. Fragmentation of native prairie habitat can detrimentally affect grouse species; however, due to the ratio of each project area to the total landscape area, the overall disturbance would be negligible.

Several precautions that may limit or reduce the possible impact to all wildlife species include:

- locating well pads over areas with existing disturbances;
- netting the cuttings pit between drilling and reclamation;
- removing any oil found in pits and ponds;
- installing covers under drip buckets and spigots; and
- conducting interim reclamation of at least half the disturbed area.

Reclamation would begin without delay if a well is determined to be unproductive, or upon completion of commercial production.

### **3.8 CULTURAL RESOURCES**

Historic properties, or cultural resources, on federal or tribal lands are protected by many laws, regulations, and agreements. Section 106 of the National Historic Preservation Act of 1966 (16 USC 470 et seq.) requires, for any federal, federally assisted, or federally licensed undertaking, that the federal agency take into account the affect of that undertaking on any district, site, building, structure, or object that is included in the National Register of Historic Places (National Register) before the expenditure of any federal funds or the issuance of any federal license. Cultural resources is a broad term encompassing sites, objects, or practices of archaeological, historical, cultural, and religious significance. Eligibility criteria (36 CFR 60.4) include association with important events or people in our history, distinctive construction or artistic characteristics, and either a record of yielding or a potential to yield information important in prehistory or history. In practice, properties are generally not eligible for listing on the National Register if they lack diagnostic artifacts, subsurface remains, or structural features, but those considered eligible are treated as though they were listed on the National Register, even when no formal nomination has been filed. This process of taking into account an undertaking's effect on historic properties is known as "Section 106 review," or more commonly as a cultural resource inventory.

The area of potential effect of any federal undertaking must also be evaluated for significance to Native Americans from a cultural and religious standpoint. Sites and practices may be eligible for protection under the American Indian Religious Freedom Act of 1978 (42 USC 1996). Sacred sites may be identified by a tribe or an authoritative individual (Executive Order 13007). Special protections are afforded to human remains, funerary objects, and objects of cultural patrimony under the Native American Graves Protection and Repatriation Act (25 USC 3001 et seq.).

Whatever the nature of the cultural resource addressed by a particular statute or tradition, implementing procedures invariably include consultation requirements at various stages of a federal undertaking. The MHA Nation has designated a THPO by Tribal Council resolution, whose office and functions are certified by the National Park Service. The THPO operates with the same authority exercised in most of the rest of North Dakota by the State Historic Preservation Officer. Thus, BIA consults and corresponds with the THPO regarding cultural resources on all projects proposed within the exterior boundaries of the Reservation.

Cultural resource inventories were conducted for the proposed Corn Stalk #20H, Edward Goodbird #9-9H, and Independence #2-35H well pads and access roads by SWCA personnel using an intensive pedestrian methodology.

The well pads and access roads were originally surveyed on the dates listed below with their associated acreages surveyed:

- **Corn Stalk #20H:** August 10, 2011, 110.05 acres
- **Edward Goodbird #9-9H:** September 16, 2011, 110.77 acres
- **Independence #2-35H:** September 12, 2011, 22.41 acres

No significant cultural resources were identified that would be considered eligible for listing on the National Register during these surveys.

Cultural resource inventories of these well pads and access roads were conducted by personnel of SWCA Environmental Consultants, using an intensive pedestrian methodology. For the Edward Goodbird 9-9H project approximately 110.78 acres were inventoried on August 12, 2011 (Sherman and Reinhart 2011). 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. For the Corn Stalk 20H project approximately 141.83 acres were inventoried between August 9 and 11, 2011 (Herson and Reinhart 2011). One archaeological site was revisited and another 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 these undertakings, as the archaeological sites will be fenced out and avoided. This determination was communicated to the THPO on January 9, 2012; however, the THPO did not respond within the allotted 30 day comment period. For the Independence 2-35H project approximately 43.11 acres were inventoried between September 12 and 27, 2011 (Leroy and Reinhart 2011). One archaeological site was revisited and two 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 archaeological sites will be fenced out and avoided. This determination was communicated to the THPO on January 10, 2012; however, the THPO did not respond within the allotted 30 day comment period.

If cultural resources are discovered during construction or operation, the operator shall immediately stop work, secure the affected site, and notify the BIA and THPO. Unexpected or inadvertent discoveries of cultural resources or human remains trigger mandatory federal procedures that include work stoppage and BIA consultation with all appropriate parties. Following any such discovery, operations would not resume without written authorization from the BIA. Project personnel are prohibited from collecting any artifacts or disturbing cultural resources in the area under any circumstance. Individuals outside the ROW are trespassing. No laws, regulations, or other requirements have been waived; no compensatory mitigation measures are required.

### **3.9 PUBLIC HEALTH AND SAFETY**

Health and safety concerns include H<sub>2</sub>S gas that could be released as a result of drilling activities, hazards introduced by heavy truck traffic, and hazardous materials used or generated during construction, drilling, and/or production activities.

H<sub>2</sub>S is extremely toxic in concentrations above 500 parts per million, but it has not been found in measurable quantities in the Bakken/Three Forks Formation. Before reaching the Bakken/Three Forks, however, drilling would penetrate the Mission Canyon Formation, which is known to contain varying concentrations of H<sub>2</sub>S. Contingency plans submitted to the BLM comply fully with relevant portions of Onshore Oil and Gas Order No. 6 to minimize potential for gas leaks during drilling. Emergency response plans protect both the drilling crew and the general public within 1 mile of a well; precautions include automated sampling and monitoring by drilling personnel stationed at each well site.

Standard mitigation measures would be applied, and because release of H<sub>2</sub>S at dangerous concentration levels is very unlikely, no direct impacts from H<sub>2</sub>S are anticipated with implementation of the proposed project.

The number of tanker trips would depend on production, but Dakota-3 estimates approximately two trucks per day during the initial production period. Trucks for normal production operations would use the existing and proposed access roads. Produced water would be transported to an approved disposal site. All traffic would be confined to approved routes and conform to established load restrictions and speed limits for state and BIA roadways and haul permits would be acquired as appropriate.

The EPA specifies chemical reporting requirements under Title III of the Superfund Amendments and Reauthorization Act (SARA), as amended. No chemicals subject to reporting under SARA Title III (hazardous materials) in an amount greater than 10,000 pounds would be used, produced, stored, transported, or disposed of annually in association with the Proposed Action. Furthermore, no extremely hazardous substances, as defined in 40 CFR 355, in threshold planning quantities would be used, produced, stored, transported, or disposed of in association with the Proposed Action. All operations, including flaring, would conform to instructions from BIA fire management staff.

Spills of oil, produced water, or other produced fluids would be cleaned up and disposed of in accordance with appropriate regulations. Sewage would be contained in a portable chemical toilet during drilling. All trash would be stored in a trash cage and hauled to an appropriate landfill during and after drilling and completion operations.

#### **3.9.1 Potential Impacts to Public Health and Safety**

With the implementation of the described reporting and management of hazardous materials, no adverse impacts to public health and safety are anticipated as a result of the proposed well pads. Other potential adverse impacts to any nearby residents from construction would be largely temporary. Noise, fugitive dust, and traffic hazards would be present for about 60 days during construction, drilling, and well completion as equipment and vehicles move on and off the site, and then diminish sharply during production operations. If a well proved productive,

one small pumper truck would visit the well once a day to check the pump. Bakken/Three Forks wells typically produce both oil and water at a high rate initially. Gas would be flared initially and intermittently, while oil and produced water would be stored on the well pad in tanks and then hauled out by tankers until the well could be connected to gathering pipelines. Up to four 400-barrel oil tanks and one 400-barrel water tank would be located on the pad inside a berm of impervious compacted subsoil. The berm would be designed to hold 110% of the capacity of the largest tank plus one full day's production.

### **3.10 SOCIOECONOMICS**

This section discusses community characteristics such as population, housing, demographics, employment, and economic trends within the CIAA. Also included are data relating to the State of North Dakota and the United States, which provide a comparative discussion when compared to the CIAA. Information in this section was obtained from various sources including, but not limited to, the U.S. Census Bureau, the U.S. Bureau of Economics, and the North Dakota State Government.

#### **3.10.1 Socioeconomic Analysis Area**

The scope of analysis for social and economic resources includes a discussion of current social and economic data relevant to the CIAA and surrounding communities of the Reservation and McKenzie, Dunn, McLean, and Mountrail counties, North Dakota. These counties were chosen for analysis because their proximity to the proposed well pad locations and overlap with the Reservation could result in socioeconomic impacts. These communities are collectively referred to as the CIAA for socioeconomic resources.

#### **3.10.2 Population and Demographic Trends**

Historic and current population counts for the CIAA, compared to the state, are provided below in Table 3-10. The state population showed little change between the last two census counts (1990–2000 and 2000–2008), but there were notable changes at the local level. Populations in all four counties have steadily declined in the past. Between 2000 and 2008, McLean and Dunn counties had a higher rate of population decline among the four counties at -10.5% and -7.8%, respectively. These declines can be attributed to more people moving to metropolitan areas, which are perceived as offering more opportunities for growth. However, population on or near the Reservation has increased approximately 13.3% since 2000. While Native Americans are the predominant group on the Reservation, they are considered the minority in all other areas of North Dakota.

As presented in Table 3-10, population growth on the Reservation (13.3%) exceeds the overall growth in the state of North Dakota (-0.1%) and four counties in the Analysis Area. This trend in population growth for the Reservation is expected to continue in the next few years (Fort Berthold Housing Authority 2008).

**Table 3-10. Population and Demographics.**

| County or Reservation                                    | Population in 2008 | % of State Population | % Change Between 1990–2000 | % Change Between 2000–2008 | Predominant Group in 2008 (%) | Predominant Minority in 2008 (Percent of Total Minority Population) |
|--|--------------------|-----------------------|----------------------------|----------------------------|-------------------------------|---|
| Dunn   | 3,318              | 0.5                   | -10.1                      | -7.8                       | Caucasian (84.9%)             | American Indian (15.1%)   |
| McKenzie   | 5,674              | 0.8                   | -10.1                      | -1.1                       | Caucasian (76.3%)             | American Indian (23.7%)   |
| McLean   | 8,337              | 1.3                   | -11.0                      | -10.5                      | Caucasian (91.3%)             | American Indian (8.7%)  |
| Mountrail  | 6,511              | 1.0                   | -5.6                       | -1.8                       | Caucasian (62.8%)             | American Indian (37.2%)   |
| On or Near Fort Berthold Indian Reservation <sup>1</sup> | 11,897             | 1.8                   | 178.02                     | +13.33                     | American Indian               | Caucasian (~27%)  |
| Statewide  | 641,481            | 100                   | 0.005                      | -0.1                       | Caucasian                     | American Indian (8.6%)  |

Source: U.S. Census Bureau 2010a.

<sup>1</sup> Bureau of Indian Affairs 2005. Population shown reflects the total enrollment in the tribe in 2005. 2008 data unavailable. All information related to the Fort Berthold Indian Reservation reflects 2005 data, including state population. 11,897 reflects tribal enrollment on or near the Reservation. According to the BIA, near the Reservation includes those areas or communities adjacent or contiguous to the Reservation.

### 3.10.3 Employment

The economy in the state of North Dakota, including the Reservation and four counties in the CIAA, has historically depended on agriculture, including grazing and farming. However, 2007 economic data indicate that the major employers in North Dakota include government and government enterprises, which employed 16.6%; health care and social assistance, which employed 11.7%; and retail trade, which employed at 11.3% of the state's labor force (U.S. Bureau of Economic Analysis 2009a). Energy development and extraction, power generation, and services related to these activities have become increasingly important over the last several years and many service sector jobs are directly and indirectly associated with oil and gas development.

Table 3-11 provides data on 2009 employment opportunities for the CIAA and changes in unemployment for the period between 2005 and 2009. All counties in the CIAA, and the entire state of North Dakota, showed average weekly wages that were lower than the national average in 2009. In 2009, total employment in the state of North Dakota was approximately 354,916, with a statewide unemployment rate of 4.3% of the workforce, one of the lowest in the nation (Bureau of Labor Statistics 2009). While some counties in the CIAA experienced a slight increase in unemployment, others were unchanged or experienced a decreased unemployment rate.

**Table 3-11. 2009 Total Employment, Average Weekly Wages, and Unemployment Rates.**

| <b>Location</b>                              | <b>Total Employment (September 2009)</b> | <b>Average Weekly Wage (September 2009)</b> | <b>Unemployment Rate (2009)</b> | <b>Change in Unemployment Rate (2005–2009)</b> |
|--|--|---|---------------------------------|--|
| United States                                | 128,088,742                              | \$840                                       | 9.8%                            |  |
| North Dakota                                 | 354,916                                  | \$680                                       | 4.3%                            | +0.9%  |
| Dunn County                                  | 929                                      | \$647                                       | 4.5%                            | +1.1%  |
| McKenzie County                              | 2,899                                    | \$839                                       | 3.5%                            | -0.2%  |
| McLean County                                | 3,594                                    | \$755                                       | 5.0%                            | No change                                      |
| Mountrail County                             | 3,126                                    | \$681                                       | 4.2%                            | -1.8%  |
| On or Near Fort Berthold Indian Reservation* | 1,287                                    | N/A   | 71%                             | N/A  |

Sources: Bureau of Labor Statistics 2009; U.S. Department of Agriculture 2010; Bureau of Indian Affairs 2005.

\* Represents 2005 data only.

The BIA publishes biannual reports documenting the Indian service and labor market for the nation. According to the 2005 American Indian Population and Labor Force Report, of the 8,773 tribal members that were eligible for BIA-funded services, 4,381 constituted the total available workforce. Approximately 29%, or 1,287 members, were employed in 2005, indicating a 71% unemployment rate (as a percent of the labor force) for members living on or near the Reservation; 55% of the employed members were living below poverty guidelines. Compared to the 2001 report, 2005 statistics reflect a 6.2% increase in the number of tribal members employed living on or near the Reservation, but unemployment (as a percent of the labor force) has stayed steady at 71% and the percentage of employed people living below the poverty guidelines has increased to 55% (BIA 2005).

Although detailed employment information for the Reservation is not provided by the U.S. Bureau of Economics or the State of North Dakota, residents of the Reservation are employed in similar ventures as those outside the Reservation. Typical employment includes ranching, farming, tribal government, tribal enterprises, schools, federal agencies, and recently, employment related to conventional energy development. The MHA Nation's Four Bears Casino and Lodge, located 4 miles west of New Town, employs approximately 320 people, of which 90% are tribal members (Fort Berthold Housing Authority 2008).

The Fort Berthold Community College, which is tribally chartered to meet the higher education needs of the people of the MHA Nation, had 11 full-time members and 25 adjunct members in academic year 2006–2007. Approximately 73% of the full-time faculty members are of American Indian/Alaska Native descent, approximately 88% of which are enrolled members of the MHA Nation. Additionally, 65% of the part-time faculty members are of American Indian/Alaska Native descent and all (100%) are tribal members.

### **3.10.4 Income**

Per capita income is often used as a measure of economic performance, but it should be used with changes in earnings for a realistic picture of economic health. Since total personal income includes income from 401(k) plans as well as other non-labor income sources like transfer payments, dividends, and rent, it is possible for per capita income to rise even if the average wage per job declines over time.

The North American Industry Classification System is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. According to North American Industry Classification System standards, per capita personal income for Dunn County was \$20,634 in 2000 and \$26,440 in 2007, an increase of approximately 28.1%; per capita personal income for McKenzie County was \$21,637 in 2000 and \$32,927 in 2007, an increase of approximately 52.1%; per capita personal income for McLean County was \$23,001 in 2000 and \$38,108 in 2007, an increase of approximately 65.6%; per capita personal income for Mountrail County was \$23,363 in 2000 and \$32,324 in 2007, an increase of approximately 38.3%. These figures compare with a State of North Dakota per capital personal income of \$25,105 in 2000 and \$36,082 in 2007, an increase of approximately 43.7% from 2000 (U.S. Bureau of Economic Analysis 2009b).

According to a 2008 report published by the Fort Berthold Housing Authority, the average per capita income for the Reservation was \$8,855 in 1999, compared to \$17,769 for the state and the U.S. average of \$21,587 at that time (Fort Berthold Housing Authority 2008).

With the exception of McLean County, counties that overlap the Reservation tend to have per capita incomes and median household incomes below North Dakota statewide averages. As presented in Table 3-11, unemployment rates in all counties, including the Reservation, were equal to or above the state average of 4.3% with the exception of McKenzie and Mountrail counties. Subsequently, Reservation residents and MHA Nation members tend to have per capita incomes and median household incomes below the averages of the encompassing counties, as well as statewide, and higher unemployment. Per capita income for residents on or near the Reservation is approximately 28% lower than the statewide average (Table 3-12). The median household income reported for the Reservation (i.e., \$26,274) is approximately 60% lower than the state median of \$43,936. According to the BIA, approximately 55% of tribal members living on or near the Reservation were employed, but living below federal poverty levels (BIA 2005).

**Table 3-12. Income and Poverty in Analysis Area, 2007.**

| <b>Unit of Analysis</b> | <b>Per Capita Income<sup>1</sup></b> | <b>Median Household Income</b> | <b>Percent of all People in Poverty<sup>2</sup></b> |
|-------------------------|--------------------------------------|--------------------------------|---|
| Dunn County             | 26,440                               | \$37,632                       | 13.5%   |
| McKenzie County         | 32,927                               | \$41,333                       | 13.8%   |
| McLean County           | 38,108                               | \$44,421                       | 10.4%   |
| Mountrail County        | 32,324                               | \$35,981                       | 15.9%   |

| Unit of Analysis                              | Per Capita Income <sup>1</sup> | Median Household Income | Percent of all People in Poverty <sup>2</sup> |
|---|--------------------------------|-------------------------|---|
| Fort Berthold Indian Reservation <sup>3</sup> | 10,291                         | \$26,274                | N/A   |
| North Dakota                                  | 36,082                         | \$43,936                | 11.8%   |

<sup>1</sup> U.S. Bureau of Economic Analysis 2009b

<sup>2</sup> U.S. Department of Agriculture 2009

<sup>3</sup> North Dakota State Data Center 2009

### 3.10.5 Housing

Workforce-related housing can be a key issue associated with development. Historical information on housing in the four counties in the CIAA was obtained from the U.S. Census Bureau, 2000 Census, with 2008 updates (U.S. Census Bureau 2010a). Because the status of the housing market and housing availability changes often, current housing situations can be difficult to characterize quantitatively. Therefore, this section discusses the historical housing market. Table 3-13 provides housing unit supply estimates in the CIAA, including the Reservation and four overlapping counties.

The Fort Berthold Housing Authority manages a majority of the housing units within the Reservation. Housing typically consists of mutual-help homes built through various government programs, low-rent housing units, and scattered-site homes. Housing for government employees is limited, with a few quarters in Mandaree and White Shield available to Indian Health Service employees in the Four Bears Community and to BIA employees. Private purchase and rental housing are available in New Town. New housing construction has recently increased within much of the CIAA, but availability remains low.

**Table 3-13. Housing Development Data for the Reservation and Encompassing Counties.**

| Region       | Total Housing Units |                |                 |        |         |         | % Change 2000–2008 |
|--------------|---------------------|----------------|-----------------|--------|---------|---------|--------------------|
|              | Occupied            | Owner Occupied | Renter Occupied | Vacant | Total   | Total   |                    |
|              | 2000                | 2000           | 2000            | 2000   | 2000    | 2008    |                    |
| Dunn         | 1,378               | 1,102          | 276             | 587    | 1,965   | 1,968   | +0.1               |
| McKenzie     | 2,151               | 1,589          | 562             | 568    | 2,719   | 2,781   | +2.2               |
| McLean       | 3,815               | 3,135          | 680             | 1,449  | 5,264   | 5,420   | +2.9               |
| Mountrail    | 2,560               | 1,859          | 701             | 878    | 3,438   | 3,528   | +2.6               |
| Reservation  | 1,908               | 1,122          | 786             | 973    | 2,881   | N/A     | N/A                |
| North Dakota | 257,152             | 171,299        | 85,853          | 32,525 | 289,677 | 313,332 | +8.2               |

Source: U.S. Census Bureau 2010a.

Availability and affordability of housing could impact oil and gas development and operations. The number of owner-occupied housing units (1,122) within the Reservation is approximately 58% lower than the average number of owner-occupied housing units found in the four overlapping counties (1,921).

In addition to the relatively low percent change of the total housing units compared to the state average, these four counties are ranked extremely low for both the state and national housing starts and have minimal new housing building permits, as presented in Table 3-14.

**Table 3-14. Housing Development Data for the Encompassing Counties 2000–2008.**

| Housing Development                            | North Dakota County |               |               |               |
|--|---------------------|---------------|---------------|---------------|
|  | Dunn                | McKenzie      | McLean        | Mountrail     |
| New Private Housing Building Permits 2003–2008 | 14                  | 14            | 182           | 110           |
| Housing Starts-State Rank                      | 51 / 53             | 15 / 53       | 21 / 53       | 17 / 53       |
| Housing Starts-National Rank                   | 3,112 / 3,141       | 2,498 / 3,141 | 2,691 / 3,141 | 2,559 / 3,141 |

Source: U.S. Census Bureau 2009a, 2009b.

### 3.10.6 Potential Impacts to Area Socioeconomics

Negative impacts to socioeconomic resources of the CIAA would be minimal and therefore would not adversely impact the local area. Short-term impacts to socioeconomic resources would generally occur during the construction/drilling and completion phase of the proposed wells. Long-term effects would occur during the production phase, should the wells prove successful.

As presented in Table 3-15, implementation of the proposed well pads project is anticipated to require between 14 and 28 workers per well in the short term. If the wells prove successful, Dakota-3 would install production facilities and begin long-term production. To ensure successful operations, production activities require between one and four full-time employees to staff operations. It is anticipated that a mixture of local and Dakota-3 employees would work in the project area. Therefore, any increase in workers would constitute a minor increase in population in the project area required for short-term operations and would not create a noticeable increase in demand for services or infrastructure on the Reservation or the communities near the project area.

**Table 3-15. Duration of Employment during Proposed Project Implementation.**

| Activity                                | Duration of Activity (Average Days per Well) | Daily Personnel (Average Number per Well) |
|---|--|---|
| Construction (access road and well pad) | 5–8 days                                     | 3–5                                       |
| Drilling                                | 30–35 days                                   | 8–15                                      |
| Completion/Installation of Facilities   | Approx. 10 days                              | 3–8                                       |
| Production                              | Ongoing – life of well                       | 1–4                                       |

Although the CIAA has experienced a recent decline in population between 2000 and 2008 (as shown in Table 3-10), the population on the Reservation itself has increased. This has not led to significant housing shortages. The historic housing vacancy rate (Table 3-13) indicates that housing has remained available despite the growth of the population on the Reservation. The levels of available housing are therefore anticipated to be able to absorb the projected

slight increase in population related to this proposed project. As such, the proposed project would not have measurable impacts on housing availability or community infrastructure in the area. The proposed project also would not result in any identifiable impacts to social conditions and structures within the communities in the project area.

Implementation of the proposed project would likely result in direct and indirect economic benefits associated with industrial and commercial activities in the area, including the Reservation, the state of North Dakota, and potentially local communities near the Reservation. Direct impacts would include increased spending by contractors and workers for materials, supplies, food, and lodging in Dunn County and the surrounding areas, which would be subject to sales and lodging taxes. Other state, local, and Reservation tax payments and fees would be incurred as a result of the implementation of the proposed project, with a small percentage of these revenues distributed back to the local economies. Wages due to employment would also impact per capita income for those that were previously unemployed or underemployed. Indirect benefits would include increased spending from increased oil and gas production, as well as a slight increase in generated taxes from the short-term operations. Mineral severance and royalty taxes, as well as other relevant county and Reservation taxes on production would also grow directly and indirectly as a result of increased industrial activity in the oil and gas industry.

### **3.11 ENVIRONMENTAL JUSTICE**

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, signed in 1994 by President Clinton, requires agencies advance environmental justice (EJ) by pursuing fair treatment and meaningful involvement of minority and low-income populations. Fair treatment means such groups should not bear a disproportionately high share of negative environmental consequences from federal programs, policies, decisions, or operations. Meaningful involvement means federal officials actively promote opportunities for public participation and federal decisions can be materially affected by participating groups and individuals.

The EPA headed the interagency workgroup established by the 1994 Order and is responsible for related legal action. Working criteria for designation of targeted populations are provided in Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses (EPA 1998). This guidance uses a statistical approach to consider various geographic areas and scales of analysis to define a particular population's status under the Order.

EJ is an evolving concept with potential for disagreement over the scope of analysis and the implications for federal responsiveness. Nevertheless, due to the population numbers, tribal members on the Great Plains qualify for EJ consideration as both a minority and low-income population. Table 3-16 summarizes relevant data regarding minority populations for the CIAA.

**Table 3-16. Minority Population Breakdown by North Dakota County and Race, 2000–2008<sup>1</sup>.**

| Race                                      | Dunn  |       | McKenzie |       | McLean |       | Mountrail |       | North Dakota |         |
|---|-------|-------|----------|-------|--------|-------|-----------|-------|--------------|---------|
|   | 2000  | 2008  | 2000     | 2008  | 2000   | 2008  | 2000      | 2008  | 2000         | 2008    |
| Total Population                          | 3,600 | 3,318 | 5,737    | 5,674 | 9,311  | 8,337 | 6,629     | 6,511 | 642,204      | 641,481 |
| Non-Hispanic                              | 3,573 | 3,275 | 5,679    | 5,581 | 9,230  | 8,191 | 6,542     | 6,327 | 634,418      | 628,254 |
| Hispanic or Latino <sup>2</sup>           | 27    | 43    | 58       | 93    | 81     | 146   | 87        | 184   | 7,786        | 13,227  |
| <b>Races</b>                              |       |       |          |       |        |       |           |       |              |         |
| Caucasian                                 | 3,123 | 2,818 | 4,457    | 4,329 | 8,632  | 7,610 | 4,546     | 4,086 | 596,722      | 586,272 |
| African American                          | 1     | 2     | 4        | 30    | 2      | 9     | 7         | 27    | 4,157        | 6,956   |
| American Indians and Alaska Natives       | 448   | 467   | 1,216    | 1,230 | 568    | 587   | 1,988     | 2,277 | 31,440       | 35,666  |
| Asian / Pacific Islanders                 | 8     | 3     | 4        | 10    | 12     | 19    | 17        | 20    | 3,912        | 5,095   |
| Two or More Races                         | 25    | 28    | 39       | 75    | 97     | 112   | 71        | 101   | 5,973        | 7,492   |
| All Minorities                            | 509   | 543   | 1,321    | 1,438 | 760    | 808   | 2,170     | 2,609 | 53,268       | 55,209  |
| % Minority Population                     | 14.1  | 16.4  | 23.0     | 25.3  | 8.2    | 9.7   | 32.7      | 40.1  | 8.3          | 8.6     |
| Change in Minority Population (2000-2008) | +6.7% |       | +8.9%    |       | +6.3%  |       | +20.2%    |       | +3.6%        |         |

<sup>1</sup> U.S. Census Bureau estimates of population demographics were made in July 2008.

<sup>2</sup> Hispanic or Latino may be of any race.

Source: U.S. Census Bureau 2010a.

In July 2008, the U.S. Census estimated that North Dakota's total minority population comprised approximately 55,209 persons, or 8.6% of the state's total population (i.e., 641,481 residents). This represents an increase of 3.63% over the 2000 minority population of the state, even though the state's total population decreased during the same time. An even stronger trend of increased minority population, and decrease in overall population occurred in the CIAA during the same time period. As presented in Table 3-16, the number of Caucasian residents decreased, while minorities in nearly all categories increased, producing a strong increase in the percentage of minority population in each of the counties in the CIAA during the period from 2000 until 2008 (U.S. Census Bureau 2010a). The four counties of the CIAA showed an increase of 6.3% to 20.2% in minority population, compared with the statewide increase of 3.6%.

The American Indian and Alaska Native population is the largest minority in each of the counties, as well as for the state as a whole (North Dakota Indian Affairs Commission [NDIAC] 2010). The NDIAC reports that the American Indian population (race alone or in combination) in North Dakota has increased 12% from 31,440 in 2000 to 35,666 in 2008 (U.S. Census Bureau 2010a), with estimates for the future American Indian population (one race only) at 47,000 in 2015 and 59,000 in 2025 in North Dakota (NDIAC 2010). The Reservation had a total population of 5,915 in the 2000 census, with 67.4% American Indian, mostly with tribal affiliations with MHA Nation (NDIAC 2010).

Poverty rate data for the counties in the CIAA are summarized in Table 3-17. The data show that poverty rates have decreased in the CIAA during the period from 2000 to 2008 (U.S. Census Bureau 2010b). However, except for McLean County, the poverty rates are higher and the median household incomes are lower for area residents in 2008, compared with the statewide poverty rate of 11.5% and median household income of \$45,996.

**Table 3-17. Poverty Rates and Median Household Income for the Analysis Area.**

| <b>Location</b>  | <b>2000</b> | <b>2008</b> | <b>2008 Median Household Income</b> |
|------------------|-------------|-------------|-------------------------------------|
| Dunn County      | 13.3%       | 12.2%       | \$40,801                            |
| McKenzie County  | 15.7%       | 14.4%       | \$44,704                            |
| McLean County    | 12.3%       | 11.1%       | \$46,131                            |
| Mountrail County | 15.7%       | 14.0%       | \$41,551                            |
| North Dakota     | 10.4%       | 11.5%       | \$45,996                            |

Source: U.S. Census Bureau 2010b.

### **3.11.1 Potential Impacts to Environmental Justice**

The CIAA, having larger and increasing minority populations, compared with statewide numbers, could result in disproportionately beneficial impacts from the proposed oil field development. These would derive from direct and indirect economic opportunities for tribal members. Generally, existing oil and gas leasing has already benefited the MHA Nation government and infrastructure from tribal leasing, fees, and taxes. Current oil and gas leasing on the Reservation has also already generated revenue to MHA Nation members who hold surface and/or mineral interests. However, owners of allotted surface within the Analysis Area may not necessarily hold mineral rights. In such cases, surface owners do not receive oil and gas lease or royalty income, and their only related income would be compensation for productive acreage lost to road and well pad construction. Those with mineral interests also may benefit from royalties on commercial production if the wells prove successful. Profitable production rates at proposed locations might lead to exploration and development of additional tracts owned by currently non-benefitting allottees. In addition to increased revenue for land and mineral holders, exploration and development would increase employment on the Reservation with oversight from the Tribal Employment Rights Office, which would help alleviate some of the poverty prevalent on or near the Reservation. Tribal members without either surface or mineral rights would not receive any direct benefits, except through potential employment, should they be hired. Indirect benefits of employment and general tribal gains

would be the only potential offsets to negative impacts. Poverty rates in the CIAA have already begun to decrease since oil and gas development began after 2000, as shown in Table 3-17. There is potential for adverse economic impacts to tribal members who do not reside within the Reservation and therefore do not share in direct or indirect benefits.

Potential adverse impacts could occur to tribes and tribal members, as well, such as the potential disturbance of any Traditional Cultural Properties and cultural resources. These potential impacts are reduced through surveys of proposed well locations and access road routes and thorough reviews and determinations by the BIA that there would be no effect to historic properties. Furthermore, nothing is known to be present that qualifies as a Traditional Cultural Property or for protection under the American Indian Religious Freedom Act. The possibility of disproportionate impacts to tribes or tribal members is further reduced by the requirement for immediate work stoppage following an unexpected discovery of cultural resources of any type. Mandatory consultation would take place during any such work stoppage, affording an opportunity for all affected parties to assert their interests and contribute to an appropriate resolution, regardless of their home location or tribal affiliation.

The proposed project has not been found to pose a threat for significant impact to any other critical element, including air quality, public health and safety, water quality, wetlands, wildlife, soils, or vegetation within the human environment. Through the avoidance of such impacts, no disproportionate impact is expected to low-income or minority populations. The Proposed Action offers many positive consequences for tribal members, while recognizing EJ concerns. Procedures summarized in this document and in the APD are binding and sufficient. No laws, regulations, or other requirements have been waived; no compensatory mitigation measures are required.

### **3.12 MITIGATION AND MONITORING**

Many protective measures and procedures are described in this document and in the APD. No laws, regulations, or other requirements have been waived; no compensatory mitigation measures are required. Monitoring of cultural resource impacts by qualified personnel is recommended on a case by case basis for all ground-disturbing activities. Each phase of construction and development through production would be monitored by the BLM, BIA, and representatives of the MHA Nation to ensure the protection of cultural, archaeological, and natural resources. In conjunction with 43 CFR 46.30, 46.145, 46.310, and 46.415, a report would be developed by the BLM and BIA that documents the results of monitoring in order to adapt the projects to eliminate any adverse impact on the environment.

Mitigation opportunities can be found in general and operator-committed BMPs and mitigation measures. BMPs are loosely defined as techniques used to lessen the visual and physical impacts of development. The BLM has created a catalog of BMPs that, when properly implemented, can assist industry in a project's design, scheduling, and construction techniques. Dakota-3 would implement, to the extent possible, BMPs in an effort to mitigate environmental concerns in the planning phase, thereby allowing for smoother analysis, and possibly faster project approval. Many of these are required by the BLM when drilling federal or tribal leaseholds and can be found in the surface use plan in the APD. The regulatory

agencies provide Conditions of Approval and enforcement would occur as a result of non-compliance which adds incentives for strict adherence to the BMPs.

### **3.12.1 General BMPs**

Although largely project-specific, there are a number of BMPs that can, and should, be considered on development projects in general. The following are examples of general BMPs.

- Planning roads and facility sites to minimize visual impacts.
- Using existing roads to the extent possible, upgrading as needed.
- Reducing the size of facility sites and types of roads to minimize surface disturbance.
- Minimizing topsoil removal.
- Stockpiling stripped topsoil and protecting it from erosion, by seeding with native grasses, until reclamation activities commence. At that time, the soil would be redistributed and seeded on the disturbed areas. The reclaimed areas would be protected and maintained until the sites are fully stabilized.
- Avoiding removal of, and damage to, trees, shrubs, and groundcover where possible.
- Clearing a facility or well site to accommodate vehicles or equipment.
- Maintaining buffer strips or using other sediment control measures to avoid sediment migration to stream channels as a result of construction activities.
- Planning for erosion control.
- Storing chemicals properly (including secondary containment).
- Keeping sites clean, including containing trash in a portable trash cage. The trash cage would be emptied at a state-approved sanitary landfill.
- Conducting snow removal activities in a manner that does not adversely impact reclaimed areas and areas adjacent to reclaimed areas.
- Avoiding or minimizing topographic alterations, activities on steep slopes, and disturbances within stream channels and floodplains to the extent possible.
- Maintaining buffers around work areas where there is a risk of fire as a result of construction activities.
- Keeping fire extinguishers in all vehicles.
- Planning transportation to reduce vehicle density.
- Posting speed limits on roads.
- Avoiding traveling during wet conditions that could result in excessive rutting.
- Painting facilities a color that would blend with the environment.
- Practicing dust abatement on roads.
- Recontouring disturbed areas to approximate the original contours of the landscape.
- Developing a final reclamation plan that allows disturbed areas to be quickly absorbed into the natural landscape.

Dakota-3 commits to implementing all BMPs identified during the on-site inspection that can be used to mitigate environmental concerns specific to projects associated with below-ground

linear alignments, such as those included in the proposed utility corridor. BMPs identified during the on-site inspection include the following.

- Locate proposed well pads and access roads in areas with existing disturbances to the extent possible.
- Install covers under drip buckets and spigots.
- Use a closed-loop drilling system where there will be no cuttings pit in the first phase and a dry cuttings pit only in the second phase.
- Construct berms and install waddle on the downslope sides of the proposed well pad.
- Follow the contour (form and line) of the landscape.
- Co-locate multiple utility lines in the same trench.
- Use natural (topography, vegetation) or artificial (berms) features to help screen facilities such as valves and metering stations.
- Paint facilities a color that would blend with the environment.
- Contour disturbed areas to approximate the original contours of the landscape.
- Implement proper storage of chemicals (including secondary containment).
- Keep sites clean, including containing trash in a portable trash cage. The trash cage would be emptied at a state-approved sanitary landfill.
- Avoid or minimize topographic alterations, activities on steep slopes, and disturbances within stream channels and floodplains to the extent possible.
- Keep a watering truck on site and water the access roads as necessary, especially during periods of high winds and/or low precipitation.
- Avoid construction and vehicle use during wet conditions that could result in excessive rutting.
- Avoid removal of, or damage to, trees and woody shrubs where possible.
- Mow the facility or well site instead of clearing vegetation to accommodate vehicles or equipment.
- Conduct interim reclamation of at least half the disturbed area.
- Conduct reclamation without delay if a well is determined to be unproductive, or upon completion of commercial production.
- Lay matting and/or conduct hydro seeding on the fill side of the pad.
- Grind trees and other woody material removed from the pad and add to the topsoil.
- Minimize topsoil removal and stockpile stripped topsoil and protect it from erosion until reclamation activities commence.
- During reclamation, redistribute and seed the topsoil on the disturbed areas, and protect and maintain reclaimed areas until the sites are fully stabilized.
- Develop a final reclamation plan that allows disturbed areas to be quickly absorbed into the natural landscape.

- Maintain buffer strips or use other sediment control measures to avoid sediment migration to stream channels as a result of construction activities.
- Implement an erosion control plan.
- Implement approved Stormwater Pollution Prevention Plan and BMPs for the construction of each roadway and proposed well pad to prevent erosion and sedimentation.
- Install appropriately sized culverts or other stable stream crossings for any intermittent stream crossings.
- Design roads and facility sites to minimize visual impacts.
- Use existing roads to the extent possible, upgrading as needed.
- Minimize the size of facility sites and types of roads to reduce surface disturbance.
- Avoid locating ROWs on steep slopes.
- Share any common ROWs whenever possible.
- Plan transportation to reduce vehicle density.
- Post speed limits on roads.
- Conduct snow removal activities in a manner that does not adversely impact reclaimed areas and areas adjacent to reclaimed areas.
- Require construction crews to carry fire extinguishers in their vehicles and/or equipment.
- Require construction crews be trained in the proper use of fire extinguishers.
- Contract with the local fire district to provide fire protection.

Dakota-3 is committed to implementing these and/or other BMPs to the extent that they are technically feasible and would add strategic and measurable protection to the project area, as well as all specific items identified at the on-site inspections for the proposed well pads and access roads.

### **3.12.2 Mitigation and Safety Measures Committed to by Dakota-3**

#### **3.12.2.1 Dust Control**

During construction, a watering truck may be kept on site and the access roads would be watered as necessary, especially during periods of high winds and/or low precipitation.

#### **3.12.2.2 Utility Lines**

All utility lines, including electric lines and other lines essential to oil well operations, would be installed underground.

#### **3.12.2.3 Fire Control**

Dakota-3 would implement fire prevention and control measures including, but not limited to:

- requiring construction crews to carry fire extinguishers in their vehicles and/or equipment;

- training construction crews in the proper use of fire extinguishers; and
- contracting with the local fire district to provide fire protection.

#### 3.12.2.4 Traffic

Construction personnel would stay within the approved ROW or would follow designated access roads.

#### 3.12.2.5 Closed-Loop System

Dakota-3 commits to using a closed-loop system for the well pad locations with a dry cuttings pit only in the second phase when additional wells are added.

#### 3.12.2.6 Wildlife

During an informal Section 7 consultation with the USFWS, the following mitigation measures were agreed upon to reduce the potential impact to protected species.

##### 3.12.2.6.1 *Bald and Golden Eagle and Migratory Bird Protective Measures*

- SWCA biologists conducted a 0.5-mile line-of-sight survey for eagle individuals and nests during their on-site environmental survey. No eagles or nests were observed within 0.5 mile of the proposed project area.
- Dakota-3 would conduct all construction outside of the migratory bird breeding season (between February 1 and July 15); or, if construction occurs during bird breeding season, Dakota-3 would either:
  - mow and maintain vegetation within the project construction area (access roads and well pads), weather permitting, prior to and during the breeding season to deter migratory birds from nesting in the project area until construction is underway; or
  - conduct an avian survey of the project area five days before construction begins, and if nests are discovered, notify BIA and USFWS.

##### 3.12.2.6.2 *ESA Protective Measures*

- Piping Plover and its Designated Critical Habitat, Interior Least Tern, and Pallid Sturgeon: Dakota-3 commits to constructing a 4-foot berm for controlling influential runoff, and additional berms, as needed and agreed to during the on-site inspection, which would hold a minimum 110% of the capacity of the largest tank plus one full day's production, placed around the location to prevent any accidental release of drilling fluids or hazardous materials into the watersheds of Lake Sakakawea. Migratory bird protective measures would be enforced.
- Whooping Crane: If a whooping crane is sighted within 1 mile of the proposed project area, work would be stopped and the BIA and USFWS would be notified. In coordination with the USFWS, work may resume after the bird(s) leaves the area.

It is the opinion of the USFWS that Dakota-3's commitment to implement the avoidance measures described above demonstrates compliance with the ESA, MBTA, and BGEPA.

Copies of the USFWS letters resulting from the informal Section 7 consultation are provided in Appendix C.

#### 3.12.2.7 Cultural Resources

Dakota-3 recognizes the need to protect cultural resources on the project locations and has committed to the following.

- Prohibiting all project workers from collecting artifacts or disturbing cultural resources in any area under any circumstances.
- Avoiding impacts to National Register-eligible or unevaluated cultural resources on well sites and access roads. If cultural resources are discovered during construction or operation, work shall immediately be stopped, the affected site be secured, and BIA and THPO notified. In the event of a discovery, work shall not resume until written authorization to proceed has been received from the BIA.

### **3.13 IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES**

Removal and consumption of oil and/or gas from the Bakken/Three Forks Formation would be an irreversible and irretrievable commitment of resources. Other potential resource commitments include land area devoted to the disposal of cutting, soil lost to erosion (i.e., wind and water), unintentionally destroyed or damaged cultural resources, wildlife mortality as a result of collision with vehicles (i.e., construction machinery and work trucks), and energy expended during construction and operation.

### **3.14 SHORT-TERM USE VERSUS LONG-TERM PRODUCTIVITY**

Short-term development activities would not detract significantly from long-term productivity, and use, of the project areas. The construction of the access roads and well pads would eliminate any forage or habitat use by wildlife and/or livestock. Any allottees to which compensation for land disturbance is owed would be properly compensated for the loss of land use. The initial disturbance area would decrease considerably once the wells are drilled and non-necessary areas have been reclaimed. Rapid reclamation of the project area would facilitate revived wildlife and livestock usage, stabilize the soil, and reduce the potential for erosion and sedimentation.

### **3.15 CUMULATIVE IMPACTS**

Environmental impacts may accumulate either over time or in combination with similar events in the area. Unrelated and dissimilar activities may also have negative impacts on critical elements, thereby contributing to the cumulative degradation of the environment. For purposes of this analysis, the CIAA is considered to be all lands within a 20-mile radius of the project area.

Past and current disturbances in the CIAA include farming, grazing, roads, and other oil and gas wells, both on the Reservation and off. Although the project area is surrounded on all sides by Reservation lands, land ownership is not relevant to the assessment of cumulative impacts except as it is predictive of future impacts. Farming and grazing activities occur on

the Reservation regardless of the density of oil and gas development, since undivided interests in the land surface, range permits, and agricultural leases are often held by different tribal members than those holding mineral rights, such that economic benefits of both agricultural and oil and gas activities currently co-exist.

Over the past several years, exploration has accelerated over the Bakken/Three Forks Formation. Existing oil and gas wells within 1 mile, 5 miles, 10 miles, and 20 miles of the project area are listed in Table 3-18. Existing oil and gas development has been occurring for several years on private fee land surrounding the Reservation, such that many more wells currently exist off the Reservation, as shown in Table 3-18 and Figures 3-11 through 3-13.

**Table 3-18. Number of Confidential, Active, and Permitted Wells Surrounding the Project Area.**

| Well Type                                  | Corn Stalk #20H Well Pad |     | Edward Goodbird #9-9H Well Pad |     | Independence #2-35H Well Pad |     |
|--|--------------------------|-----|--------------------------------|-----|------------------------------|-----|
|  | on                       | off | on                             | off | on                           | off |
| <b>1-mile CIAA</b>                         |                          |     |                                |     |                              |     |
| Reservation (on/off)                       | on                       | off | on                             | off | on                           | off |
| Active Wells                               | 1                        | 0   | 0                              | 0   | 2                            | 0   |
| Confidential Wells                         | 1                        | 0   | 0                              | 0   | 2                            | 0   |
| Permitted Wells                            | 0                        | 0   | 0                              | 0   | 0                            | 0   |
| Cumulative total wells within 1-mile CIAA  | 6                        |     |                                |     |                              |     |
| <b>5-mile CIAA</b>                         |                          |     |                                |     |                              |     |
| Reservation (on/off)                       | on                       | off | on                             | off | on                           | off |
| Active Wells                               | 22                       | 0   | 9                              | 0   | 27                           | 0   |
| Confidential Wells                         | 30                       | 0   | 22                             | 0   | 32                           | 0   |
| Permitted Wells                            | 0                        | 0   | 0                              | 0   | 0                            | 0   |
| Cumulative total wells within 5-mile CIAA  | 142                      |     |                                |     |                              |     |
| <b>10-mile CIAA</b>                        |                          |     |                                |     |                              |     |
| Reservation (on/off)                       | on                       | off | on                             | off | on                           | off |
| Active Wells                               | 112                      | 0   | 67                             | 0   | 125                          | 0   |
| Confidential Wells                         | 146                      | 0   | 71                             | 0   | 154                          | 0   |
| Permitted Wells                            | 7                        | 0   | 3                              | 0   | 4                            | 0   |
| Cumulative total wells within 10-mile CIAA | 689                      |     |                                |     |                              |     |
| <b>20-mile CIAA</b>                        |                          |     |                                |     |                              |     |
| Reservation (on/off)                       | on                       | off | on                             | off | on                           | off |
| Active Wells                               | 637                      | 0   | 377                            | 0   | 510                          | 0   |
| Confidential Wells                         | 347                      | 0   | 268                            | 0   | 350                          | 0   |
| Permitted Wells                            | 17                       | 0   | 27                             | 0   | 24                           | 0   |
| Cumulative total wells within 20-mile CIAA | 2,557                    |     |                                |     |                              |     |

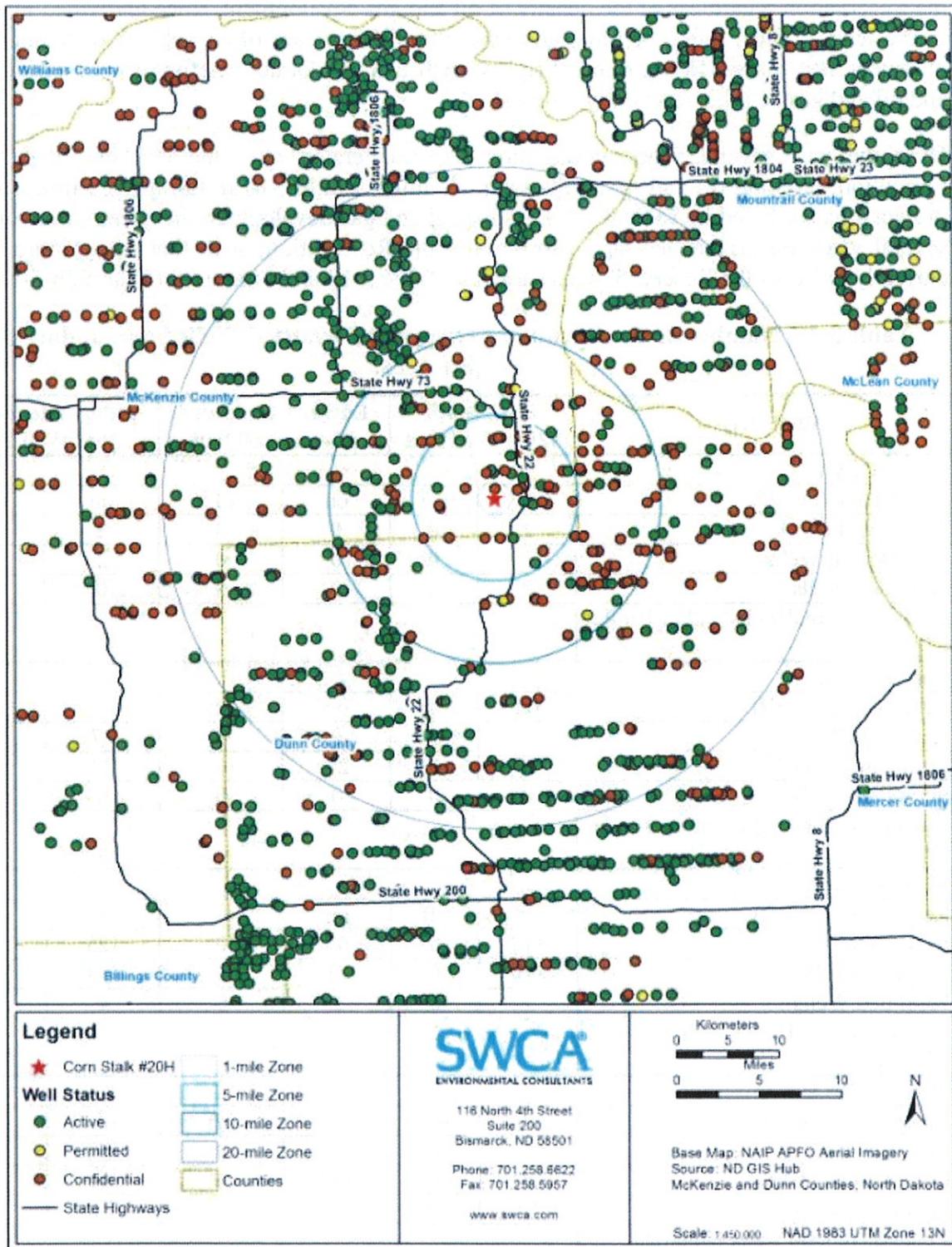


Figure 3-11. Existing and projected future oil and gas development within a 1-, 5-, 10-, and 20-mile radius of the proposed Corn Stalk #20H well pad location.

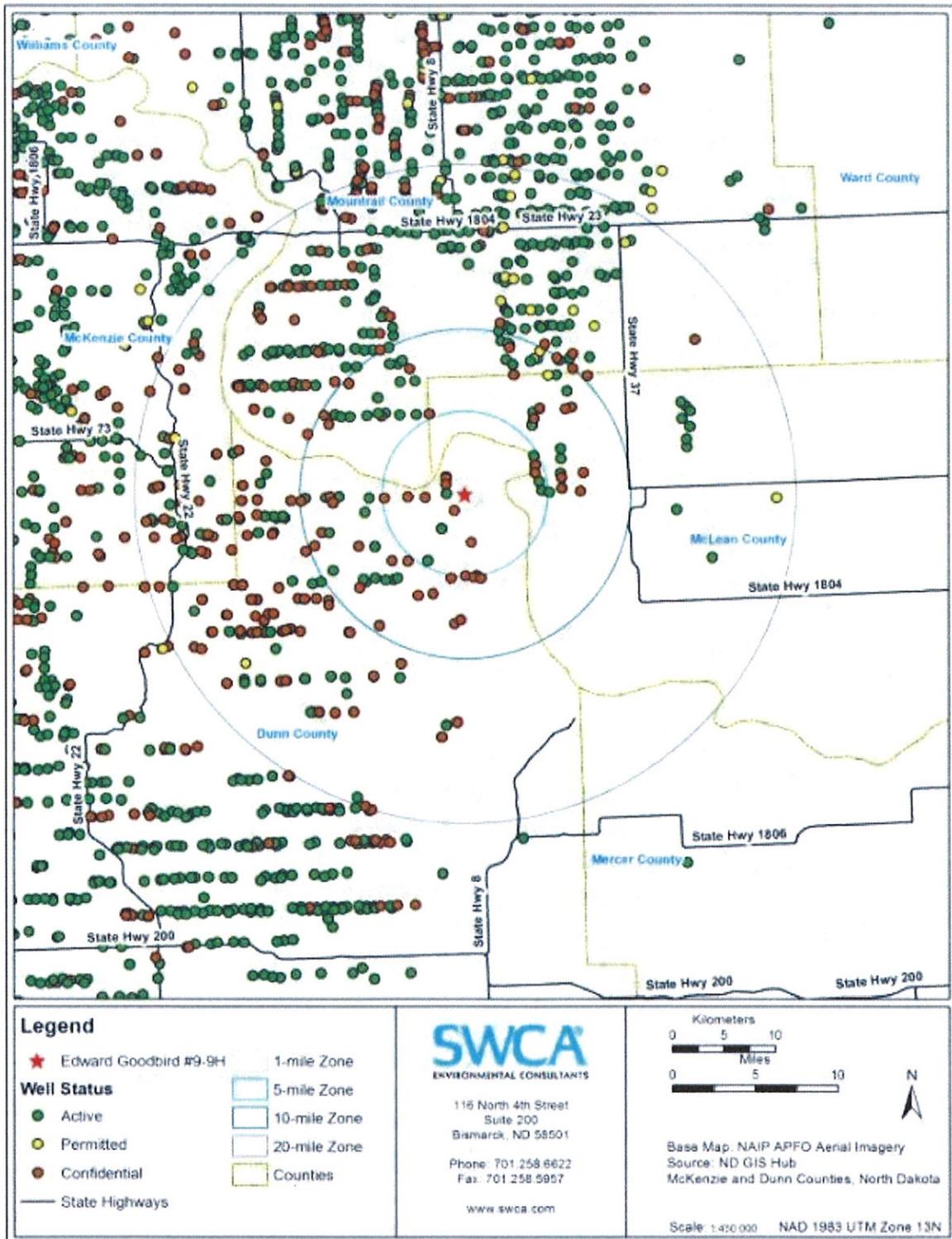


Figure 3-12. Existing and projected future oil and gas development within a 1-, 5-, 10-, and 20-mile radius of the proposed Edward Goodbird #9-9H well pad location.

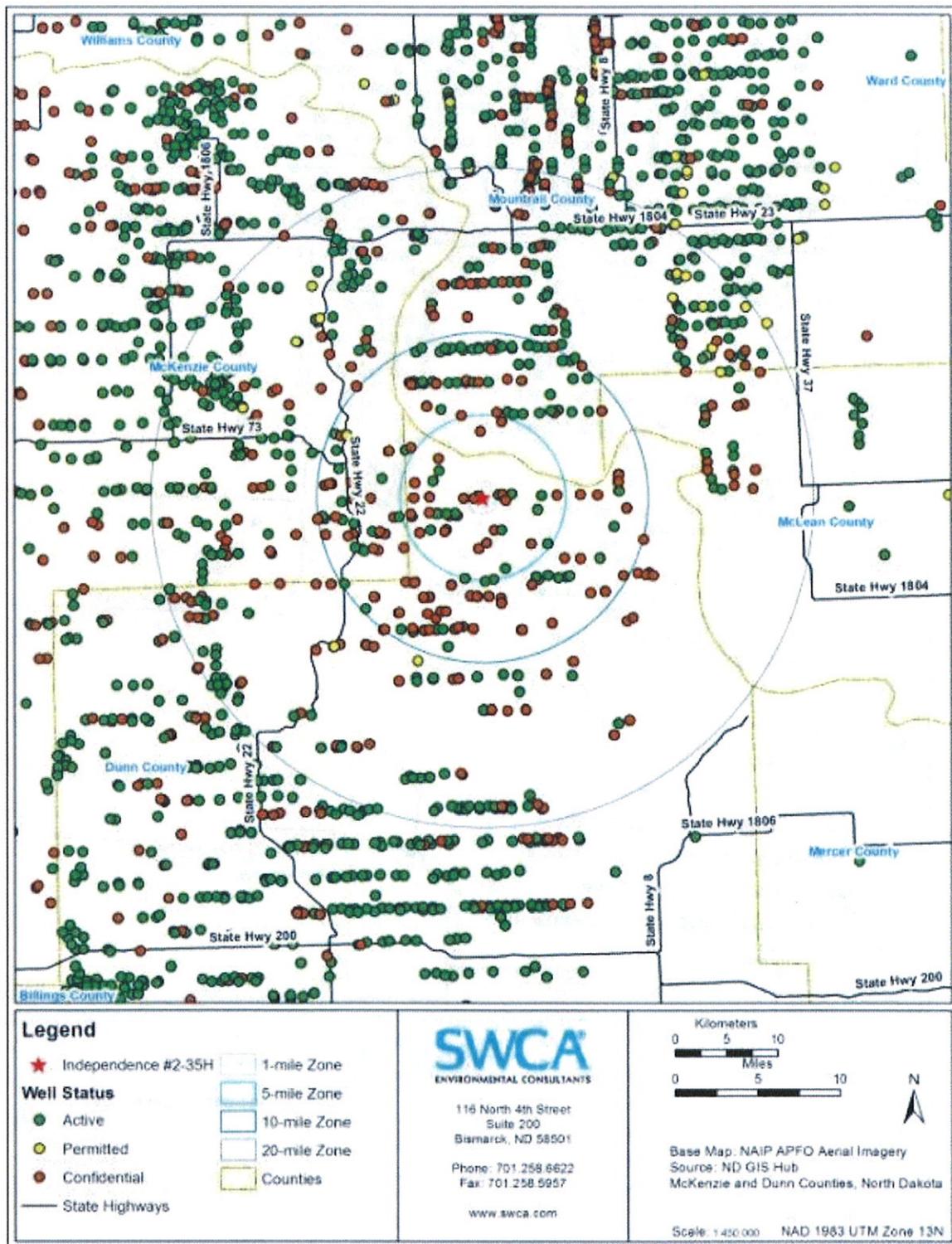


Figure 3-13. Existing and projected future oil and gas development within a 1-, 5-, 10-, and 20-mile radius of the proposed Independence #2-35H well pad location.

Reasonably foreseeable impacts of future developments in the CIAA must also be considered. Should development of the three proposed well pads prove productive, it is likely that Dakota-3 and other operators would pursue additional development in the CIAA. For purposes of cumulative impact analyses, the density of active and permitted oil wells and associated facilities (including access and utility corridors) is expected to increase steadily within the CIAA over the next decade. Oil and gas development is expected to have a minor cumulative effect on land use patterns and the human and natural environment, due to the dispersed and passive nature of the development.

Within the Reservation and near the proposed project areas, development projects remain few and widely dispersed. Dispersed location of well pads is achieved through the use of federal planning units, called spacing units, designed to maintain productivity of future wells. The dominant spacing units are 1,280 acres, although 680-acre and 320-acre units also may exist. Given the expected dispersal of future oil and gas well development, the current pattern of farming and ranching activities is expected to continue as the secondary economic activity in the CIAA with little change because virtually all available acreage is already organized into range units to use surface resources for economic benefit. The same economic incentives for co-existing agricultural land uses and oil and gas development may not occur off the Reservation, and agriculture and grazing may be reduced in the future as the economic benefits of oil production increases.

If the pace and level of oil and gas development within this region of the state continues at the current rate over the next few years, it is expected to contribute incrementally to cumulative air quality impacts. The Proposed Action would incrementally contribute to emissions occurring within the region. In general, however, the increase in emissions associated with the Proposed Action would occur predominantly during construction and drilling operations and would therefore be localized, largely temporary, and limited in comparison with regional emissions. Since the AQI is exceptionally low in the CIAA (see Section 3.2), and the expected future development would be widely dispersed in time and space, the proposed project is not expected to impact attainment status based on any of the Primary and Secondary NAAQS for criteria pollutants or other regulated air emissions. Contribution of the proposal to incremental increases of unregulated GHG emissions is expected to be minor.

No surface discharge of water would occur under the Proposed Action, nor would any unpermitted use of surface water or groundwater occur as a result of project development. The Proposed Action, when combined with other future actions, such as cattle grazing, other oil and gas development, and agriculture in the CIAA would tend to increase sedimentation and runoff rates.

Sediment yield from active roadways could occur at higher rates than background rates and continue indefinitely. Thus, the Proposed Action could incrementally add to existing and future sources of water quality degradation in the Lucky Mound Creek Bay, Skunk Creek, and Upper Bear Den Creek sub-watersheds. However, any potential increase in degradation would be reduced by Dakota-3's commitment to minimizing disturbance, using erosion control measures as necessary, and implementing BMPs designed to reduce impacts.

Unlike well pads, active roadways are not typically reclaimed, thus sediment yield from roads can continue indefinitely at rates two to three times the background rate. The Proposed Action would create an additional 2.16 miles of roads in the CIAA, adding incrementally to existing and future impacts to soil resources, dust deposition, and erosion processes. New well field developments would be speculative until APDs are submitted to the BLM and BIA for approval. Additional wells are likely to be drilled in the same general area as the proposed project, using many of the same main access roads and minimizing the disturbance as much as possible.

Dakota-3 is committed to using BMPs to mitigate the potential effects of erosion. BMPs would include implementing erosion and sedimentation control measures, such as installing culverts with energy dissipating devices at culvert outlets to avoid sedimentation in ditches, constructing water bars in conjunction with slopes, and planting cover crops to stabilize soil following construction and before permanent seeding takes place. Additional information regarding BMPs can be found in Section 3.12, Mitigation and Monitoring.

The Proposed Action would result in some loss of vegetation and ecological diversity of native mixed-grass prairie habitat. In addition, vegetation resources across the project area could be affected by foreseeable future energy development and surface disturbance in the CIAA. Continued oil and gas development within the CIAA could result in the loss, and further fragmentation, of native mixed-grass prairie habitat. Incremental impacts to quality native prairie may occur in the future from vegetation clearing and soil disturbance, soil loss, compaction, and increased encroachment of unmanaged invasive weed species. Past, present, and reasonably foreseeable future activities within the general area have reduced, and would likely continue to reduce, the amount of available habitat for certain listed species known to use native mixed-grass prairie habitats. Such impacts could be partially offset by avoidance of previously undisturbed prairie habitats, as well as implementation of soil and vegetation mitigation measures and BMPs. Cumulative impacts to vegetation and other biological resources are therefore expected to be minor.

Cumulatively, the potential impacts on various species and their habitats would be minimal. Currently, no adverse impacts have been identified for either the Reservation, or the adjacent areas. The BMPs designed to protect individual species and classes of species of interest would also protect most of the remaining species both locally and cumulatively.

Significant archaeological resources are irreplaceable and often unique; any destruction or damage of such resources can be expected to diminish the archaeological record as a whole. However, no such damage or destruction of significant archaeological resources is anticipated as a result of the Proposed Action, as these resources would be avoided. Therefore, no cumulative impacts to the archaeological record would occur as a result of implementation of the proposal.

The Proposed Action would incrementally add to existing and future socioeconomic impacts in the general area. The Proposed Action includes development of three new well pads, which would be an additional source of revenue for some residents of the Reservation. Increases in employment would be temporary during the construction, drilling, and completion phases of

the proposed project. Therefore, little change in employment would be expected over the long term.

No significant negative impacts are expected to affect any element of the human and natural environment; impacts would generally be low and mostly temporary from both a context and intensity standpoint. Current impacts from oil and gas-related activities are still fairly dispersed, and the required BMPs would limit potential impacts. The cumulative impacts from activities on the Reservation are still limited enough to not appear to be significant. This is being studied currently by a programmatic EA. Cumulative impacts over the entire field have not been assessed. Information available to the authors of this report from the State of North Dakota indicates all impacts are non-significant also by the standards in 40 CFR 1500.8.28.

Concerns regarding fracturing fluids contamination of aquifers in natural gas formations outside of the Bakken/Three Forks Formation that are commonly used for drinking water, as described in Section 2.2.6 of this document, have been recently investigated by the EPA (EPA 2010e). Aquifers identified in Table 3-3 of this document include the Sentinel Butte Formation which is used for drinking water and occurs at depths of 0 to 670 feet below ground surface, while the deepest aquifer identified in the project area, the Fox Hills Formation, occurs at depths of 1,100 to 2,000 feet below ground surface. By contrast, the oil wells proposed in this undertaking would achieve depths no shallower than 9,200 feet below ground surface, well below any known aquifer in the project area. Additionally, as laid out in Section 2.2.5 of this document, surface casing would be employed to a depth of 2,500 feet below ground surface to isolate all near surface aquifers. Potentially as a result of the disparity in depths of the aquifers and oil wells, no direct or indirect impacts have yet been identified with fracturing in the Bakken/Three Forks Formation.

Dakota-3 has committed to implementing interim reclamation of the access roads, gathering pipelines, and well pads immediately following construction and completion. Implementation of both interim and permanent reclamation measures would decrease the magnitude of cumulative impacts.

#### **4.0 CONSULTATION AND COORDINATION**

The BIA must continue to make efforts to solicit the opinions and concerns of all stakeholders (Table 4-1). For the purpose of this EA, a stakeholder is considered any agency, municipality, or individual person to which the proposed action may affect either directly or indirectly in the form of public health, environmental, or socioeconomic issues. A scoping letter declaring the location of the proposed project areas and explaining the actions proposed at each site was sent in advance of this EA to allow stakeholders ample time to submit comments or requests for additional information. With the exception of the USFWS concurrence letter, no other comments or suggestions were received from stakeholders. Additionally, a copy of this EA would be submitted to all cooperating federal agencies and also to those agencies with interests in or near the proposed actions that could be affected by those actions.

**Table 4-1. Scoping Comments.**

| Name                | Organization                       | Comment  | Response to Comment   |
|---------------------|------------------------------------|--|---|
| Bagley, Lonny       | BLM                                | No Comment   |   |
| Bercier, Marilyn    | BIA                                | No Comment   |   |
| Berg, George        | NoDak Electric Cooperative, Inc.   | No Comment   |   |
| Boyd, Bill          | Midcontinent Cable Company         | No Comment   |   |
| Bryan, Kelley       | Zenergy, Inc.                      | No Comment   |   |
| Brugh, V. Judy      | MHA Nation                         | No Comment   |   |
| Cayko, Richard      | McKenzie County                    | No Comment   |   |
| Chevance, Nick      | National Parks Service             | No Comment   |   |
| Cimarosti, Dan      | USACE                              | Response letter asking for section 10/404 permit if required   | Applications have been sent for section 10 permits  |
| Crows Breast, Elgin | THPO, Three Affiliated Tribes      | No Comment   |   |
| Danks, Marvin       | Fort Berthold Rural Water Director | No Comment   |   |
| Davis, Scott        | Indian Affairs Commission          | No Comment   |   |
| Dhieux, Joyce       | EPA                                | No Comment   |   |
| Dixon, Doug         | Montana Dakota Utilities           | No Comment   |   |
| Dressler, Patricia  | Federal Aviation Administration    | No Objection   |   |
| Erickson, Carroll   | Ward County Board of Commissioners | No Comment   |   |
| Ferris, Cade        | Turtle Mountain Band of Chippewa   | No Comment   |   |
| Fox, Fred           | MHA Nation                         | No Comment   |   |
| Glatt, David        | North Dakota Department of Health  | Impacts will be minor and can be controlled by proper construction methods.  | See Sections 2.2.9, Construction Details, and 3.12, Mitigation and Monitoring, for site-specific details and BMPs.  |
| Hanson, Jesse       | North Dakota Parks and Recreation  | 1) The project as defined does not affect state park lands or Land and Water Conservation Fund recreation projects. 2) Project area approx. 1 -mile to Killdeer Mountain Four Bears Scenic Byways, and should be completed with the least amount of visual impact. | See Sections 2.2.10, Reclamation, 3.5, Wetlands, 3.6, Vegetation and Noxious Weeds, 3.7, Wildlife, and 3.12, Mitigation and Monitoring, for more information. |

| Name                            | Organization                                     | Comment  | Response to Comment   |
|---------------------------------|--|--|---|
| Head, Jennifer                  | Williams Production RMT                          | No Comment   |   |
| Hauck, Reinhard                 | Dunn County                                      | No Comment   |   |
| Hefferman, Dan                  | EPA  | No Comment   |   |
| Hoffman, Warren                 | Killdeer, Weydahl Field                          | No Comment   |   |
| Hudson-Schenfisch, Julie        | McLean County Board of Commissioners             | No Comment   |   |
| Hynek, David                    | Chair, Mountrail Board of County Commissioners   | No Comment   |   |
| Jarski, Tim                     | Reservation Telephone Cooperative                | No Comment   |   |
| Johnson, Harley                 | New Town Municipal Airport                       | No Comment   |   |
| Kadmas, Ray                     | Dunn County                                      | No Comment   |   |
| Kuehn, John                     | Parshall-Hankins Field Airport                   | No Comment   |   |
| Laux, Eric                      | USACE  | The USACE recommends closed loop drilling system   | Dakota-3 uses closed-loop drilling systems as standard for first phase, with a semi-closed-loop for subsequent second phase expansion.                                      |
| Lindemann, Larry                | Airport Manager, Barnes County Municipal Airport | No Comment   |   |
| Link, Greg                      | ND Game and Fish Department                      | Recommends construction be avoided to extent possible in native prairie, wooded draws, riparian corridors, and wetland areas.  | See Affected Environment Sections 3.5, Wetlands, 3.6, Vegetation and Noxious Weeds, and 3.7, Wildlife. BMPs discussed in the APD will be covered in Conditions of Approval. |
| Klitzka, Nelson                 | Williams Production RMT                          | No Comment   |   |
| Kyner, Dave                     | FEMA   | Recommends contacting the local Floodplain Manager for Fort Berthold Reservation to ensure that the proposed project area is not located within a Special Flood Hazard Area. | BIA, Dakota-3, and SWCA held on-site meetings to ensure best well pad and access road placement.  |
| Manager of Engineering Services | McKenzie Electric Cooperative                    | No Comment   |   |

Environmental Assessment: Dakota-3 E&P Company, LLC, Corn Stalk #20H, Edward Goodbird #9-9H, and Independence #2-35H Well Pads  
(February 2012)

| Name              | Organization                                 | Comment   | Response to Comment   |
|-------------------|--|---|---|
| Massad, Mary      | Southwest Water Authority                    | No Comment  |   |
| McKenna, Mike     | North Dakota Game and Fish Department        | Recommend construction be avoided where possible in native prairie, wooded draws, riparian areas, and wetlands. Botanical and raptor surveys suggested. | See Affected Environment Sections 3.5, Wetlands, 3.6, Vegetation and Noxious Weeds, and 3.7, Wildlife. BMPs discussed in the APD will be covered in Conditions of Approval.                             |
| McPhillips, Kelly | Bureau of Reclamation                        | Project components could affect BOR facilities (rural water pipelines). Coordinate with the FBIR Rural Water director.                                  | See Section 2.2.3, Access Roads and Utility Corridor.<br><br>Dakota-3 would consult with the Rural Water Director if the project components should cross or otherwise affect any BOR rural water lines. |
| Murphy, Charles   | Chairman, Standing Rock Sioux Tribe          | No Comment  |   |
| Nash, Mike        | BLM  | No Comment  |   |
| Nelson, Richard   | U.S. Bureau of Reclamation                   | No Comment  |   |
| Herrman, Jeff     | Petro-Hunt, LLC                              | No Comment  |   |
| Obenauer, Steve   | FAA  | No Comment  |   |
| Olson, Frances    | McKenzie County                              | No Comment  |   |
| Overbey, Rachel   | Enerplus Resources Corp.                     | No Comment  |   |
| Paaverud, Merl    | State Historical Society                     | Replied thanking for consideration  | Consultation is with MHA Nation THPO  |
| Packineau, Mervin | MHA Nation                                   | No Comment  |   |
| Paulson, Gerald   | Western Area Power Administration            | No Comment  |   |
| Pearson, Myra     | Spirit Lake Sioux Tribe                      | No Comment  |   |
| Peterson, Walter  | North Dakota Department of Transportation    | No Comment  |   |
| Poitra, Fred      | MHA Nation                                   | No Comment  |   |
| Prchal, Doug      | North Dakota Parks and Recreation Department | No Comment  |   |
| Rudolph, Reginald | McLean Electric Cooperative, Inc.            | No Comment  |   |

*Environmental Assessment: Dakota-3 E&P Company, LLC, Corn Stalk #20H, Edward Goodbird #9-9H, and Independence #2-35H Well Pads (February 2012)*

| <b>Name</b>                  | <b>Organization</b>                     | <b>Comment</b>  | <b>Response to Comment</b>   |
|------------------------------|---|---|--|
| Scheikoph, David             | West Plains Electric Cooperative, Inc.  | No Comment  |  |
| Schaar, Jerome               | NRCS                                    | Avoid impacts to Wetlands, if impact will occur, NRCS can conduct wetland determination   | See Section 3.5, Wetlands  |
| Selvage, Michael             | Chairman, Sisseton-Wahpeton Sioux Tribe | No Comment  |  |
| Smith, Heather               | EOG Resources, Inc.                     | No Comment  |  |
| Sorensen, Charles            | USACE                                   | USACE recommends: The use of a closed loop drilling design and that all construction take place between August 15 <sup>th</sup> and April 1 <sup>st</sup> . | See Section 2.2.9, Construction Details, for information regarding berms. Dakota-3 will construct a berm around the location to contain all hazardous materials. |
| Straus, D. Arnold            | Three Affiliated Tribes                 | No Comment  |  |
| Svoboda, Larry               | EPA                                     | No Comment  |  |
| Sweeney, Paul                | U.S. Department of Agriculture          | No Comment  |  |
| Truskowski, Brent            | EPA                                     | No Comment  |  |
| Turcotte, Daryl              | Fort Berthold Agency                    | No Comment  |  |
| Towner, Jeffrey              | USFWS                                   | See attached letter in Appendix B   | Recommendations in Appendix A  |
| Whitcalf, Frank              | MHA Nation                              | No Comment  |  |
| Williams, Damon              | MHA Nation                              | No Comment  |  |
| County Courthouse            | Mercer County                           | No Comment  |  |
| Chief Missile Engineer       | Minot Air Force Base                    | No Comment  |  |
| Garrison Project Office      | USACE                                   | No Comment  |  |
| Land Department Manager      | Northern Border Pipeline Company        | No Comment  |  |
| NAGRPA Office                | Xcel Energy                             | No Comment  |  |
| Natural Resources Department | Three Affiliated Tribes                 | No Comment  |  |
| Hall, Tex                    | Three Affiliated Tribes                 | No Comment  |  |
| Manager                      | Three Affiliated Tribes                 | No Comment  |  |

## **5.0 LIST OF PREPARERS**

An interdisciplinary team contributed to this document according to guidance provided in Part 1502.6 of CEQ regulations. This document was drafted by SWCA under the direction of the BIA. Information was compiled from various sources within SWCA.

Dakota-3 E&P Company, LLC

- Nelson Klitzka, Regulatory Specialist

SWCA Environmental Consultants

- Courtney Lafferty, Environmental Specialist  
*Prepared the EA.*
- Damien Reinhart, Assistant Project Manager/Archaeologist  
*Prepared cultural resource reports and conducted cultural resource surveys for well pads, and assisted with cultural resource section.*
- Courtney Lafferty, Environmental Specialist  
*Conducted natural resource surveys for well pads and access roads.*
- Kyle McLean, Environmental Specialist  
*Conducted natural resource surveys for well pads and access roads.*
- Chandler Herson, Archaeologist  
*Conducted cultural resource surveys for well pads and prepared cultural resource reports.*
- Adam Leroy, Archaeologist  
*Conducted cultural resource surveys for well pads.*
- Nathan Speidel, GIS Specialist  
*Created maps and spatially derived data.*
- Richard Wadleigh, NEPA Expert  
*Reviewed document for content and adequacy.*

## 6.0 REFERENCES

- Bryce, S., J.M. Omernik, D.E. Pater, M. Ulmer, J. Schaar, J. Freeouf, R. Johnson, P. Kuck, and S.H. Azevedo. 1998. Ecoregions of North Dakota and South Dakota. Jamestown, North Dakota: Northern Prairie Wildlife Research Center Online. Available online at <http://www.npwrc.usgs.gov/resource/habitat/ndsdeco/index.htm>. Accessed April 30, 2010.
- Bureau of Indian Affairs (BIA). 2005. 2005 American Indian Population and Labor Force Report. Available online at <http://www.indianaffairs.gov/WhatWeDo/Knowledge/Reports/index.htm>. Accessed December 2009.
- Bureau of Labor Statistics. 2009. County Wages and Employment in North Dakota, 3rd Quarter 2009. Available online at <http://www.bls.gov/ro5/qcewnd.pdf>. Accessed October 6, 2010.
- Bureau of Land Management (BLM). 2009. Air Resource BMPs – Best Management Practices for Fluid Minerals. Available online at [http://www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/best\\_management\\_practices/technical\\_information.html](http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices/technical_information.html). Accessed August 2009.
- Bureau of Land Management (BLM) and U.S. Forest Service (USFS). 2007. Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development. BLM/WO/ST-06/021+3071/REV 07. Bureau of Land Management. Denver, Colorado. 84 pp.
- Croft, M.G. 1985. Groundwater Resources of McKenzie County, North Dakota. Bulletin 80 – Part III. North Dakota Geological Survey.
- Fort Berthold Housing Authority. 2008. Mandan, Hidatsa, Arikara Website. Available online at [http://www.mhanation.com/main/history\\_economic\\_social.html](http://www.mhanation.com/main/history_economic_social.html). Accessed November 2009.
- Grah, O.J. 1997. Soils, Water, and Vegetation Resources Technical Report. Report prepared for the Cave Gulch-Bullfrog-Waltman Natural Gas Development Project Environmental Impact Statement. Prepared for the Casper District Office, Bureau of Land Management, and Gary Holsan Environmental Planning, Thayne, Wyoming, by ECOTONE Environmental Consulting, Inc. Logan, Utah. 101 pp.
- Intergovernmental Panel on Climate Change. 2007. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. Core Writing Team, R.K. Pachauri and A. Reisinger (Eds.), Geneva, Switzerland. Available online at [http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf). Accessed October 25, 2010.
- Klausing, R.L. 1979. Groundwater Resources of Dunn County, North Dakota. Bulletin 68 – Part III. North Dakota Geological Survey.

- National Park Service. 2010. Visibility Protection. Available online at <http://www.nature.nps.gov/air/regs/visibility.cfm>. Accessed October 4, 2010.
- Natural Resources Conservation Service (NRCS). 2011. Web Soil Survey. Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Available online at <http://websoilsurvey.nrcs.usda.gov> and <http://soildatamart.nrcs.usda.gov>. Accessed January 12, 2011.
- North Dakota Department of Agriculture (NDDA). 2009. Noxious Weed List Survey - Reported Acres. Available online at <http://www.agdepartment.com/weedsurvey/report.asp>. Accessed May 6, 2010.
- North Dakota Department of Health (NDDH) 2010. Air Quality: Ambient Monitoring Annual Reports. Available online at <http://www.ndhealth.gov/AQ/AmbientMonitoring.htm>. Accessed October 1, 2010.
- North Dakota Indian Affairs Commission (NDIAC). 2010. Statewide Data: Tribal population projections. Available online at <http://www.nd.gov/indianaffairs/?id=37>. Accessed October 6, 2010.
- North Dakota State Data Center. 2009. Profile of General Demographic Characteristics: 2000. Fort Berthold Indian Reservation. Available online at <http://www.ndsu.nodak.edu/sdc/data/profiles/profilesDP1to4/reservations/fortberthold.pdf>. Accessed December 15, 2009.
- North Dakota State Water Commission. 2011. North Dakota State Water Commission Mapservice. Available online at <http://mapservice.swc.state.nd.us/>. Accessed November 2, 2010.
- Pew Center. 2009. Climate Change 101: Understanding and Responding to Global Climate Change. Available online at <http://www.pewclimate.org/docUploads/Climate101-Complete-Jan09.pdf>. Accessed October 25, 2010.
- Ross, M. 1990. The Clean Air Act. Chapter 4 in M. A. Mantell, ed. Managing National Park System Resources: A Handbook of Legal Duties, Opportunities, and Tools. The Conservation Foundation, Washington, D.C.
- Ruffo, J. 2009. Photograph of drilling rig in North Dakota. Personal photograph by Joshua Ruffo.
- U.S. Bureau of Economic Analysis. 2009a. Regional Economic Accounts. Local Area Personal Income. Table CA25 – Total Employment by Industry. Available online at <http://www.bea.gov/>. Accessed December 2009.
- . 2009b. Regional Economic Accounts. Local Area Personal Income. Table CA1-3 – Personal Income, Population, Per Capita Personal Income. Available online at <http://www.bea.gov/>. Accessed December 1, 2009.

- U.S. Census Bureau. 2009a. Building Permits (County). Available online at <http://www.census.gov/const/www/permitsindex.html>. Accessed December 1, 2009.
- . 2009b. Profile of General Demographic Characteristics. Available online at [http://factfinder.census.gov/servlet/QTTTable?\\_bm=y&-geo\\_id=25000US1160&-qr\\_name=DEC\\_2000\\_SF1\\_U\\_DP1&-ds\\_name=DEC\\_2000\\_SF1\\_U&-\\_sse=on](http://factfinder.census.gov/servlet/QTTTable?_bm=y&-geo_id=25000US1160&-qr_name=DEC_2000_SF1_U_DP1&-ds_name=DEC_2000_SF1_U&-_sse=on). Accessed December 1, 2009.
- . 2010a. USA Counties. Available online at <http://censtats.census.gov/usa/usa.shtml>. Accessed October 6, 2010.
- . 2010b. Small Area Income and Poverty. Available online at <http://www.census.gov/did/www/saipe/county.html>. Accessed October 15, 2010.
- U.S. Department of Agriculture (USDA). 2009. Economic Research Service. County-Level Unemployment and Median Household Income for North Dakota. Available online at <http://www.ers.usda.gov/Data/Unemployment/RDLList2.asp?ST=ND>. Accessed December 1, 2009.
- . 2010. North Dakota Unemployment Data, by County. Available online at <http://www.ers.usda.gov/data/unemployment/RDLList2.asp?ST=ND>. Accessed October 15, 2009.
- U.S. Environmental Protection Agency (EPA). 1998. Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, U.S. Environmental Protection Agency.
- . 1999. Emission Inventory Improvement, Volume II, Chapter 10. Preferred and Alternative Methods for Estimating Air Emissions from Oil and Gas Field Production and Processing Operations. Available online at <http://www.epa.gov/ttnchie1/eiip/techreport/volume02/ii10.pdf>. Accessed October 25, 2010.
- . 2010a. National Ambient Air Quality Standards (NAAQS). Available online at <http://www.epa.gov/air/criteria.html>. Accessed October 4, 2010.
- . 2010b. Air Quality Indices, by County. Available online at [http://www.epa.gov/cgi-bin/broker?grtype=CGM&dbtype=TSV&rpp=25&reqtype=viewdata&\\_service=airdata&\\_program=progs.webprogs.msummary.scl&\\_debug=2&geotype=st&geocode=ND&geoname=North+Dakota&mpol=aqi\\_days&myear=2008](http://www.epa.gov/cgi-bin/broker?grtype=CGM&dbtype=TSV&rpp=25&reqtype=viewdata&_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=st&geocode=ND&geoname=North+Dakota&mpol=aqi_days&myear=2008). Accessed October 4, 2009.
- . 2010c. Climate Change-Science. Available online at <http://www.epa.gov/climatechange/emissions/>. Accessed October 25, 2010.
- . 2010d. Climate Change-Regulatory Initiatives. Available online at <http://www.epa.gov/climatechange/initiatives/index.html>. Accessed October 25, 2010.

- . 2010e. Hydraulic Fracturing. Available online at <http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/index.cfm>. Accessed December 06, 2010.
- U.S. Fish and Wildlife Service (USFWS). 2009. National Wetlands Inventory: Wetlands Online Mapper. Available online at <http://wetlandsfew.er.usgs.gov/wtlnds/launch.html>. Accessed January 4, 2010.
- . 2010. County Occurrence of Endangered, Threatened, and Candidate Species and Designated Critical Habitat in North Dakota. Available online at [http://www.fws.gov/northdakotafieldoffice/county\\_list.htm](http://www.fws.gov/northdakotafieldoffice/county_list.htm). Accessed October 14, 2010.
- U.S. Geological Survey. 2010. Ecoregions of North and South Dakota. Available online at <http://www.npwrc.usgs.gov/resource/habitat/ndsdeco/nodak.htm>. Accessed April 30, 2010.
- Williams, B.B., and M.E. Bluemle. 1978. Status of Mineral Resource Information for the Fort Berthold Indian Reservation, North Dakota. Administrative Report BIA-40. 35 pp.

## 7.0 ACRONYMS

|                  |  |
|------------------|--|
| °F               | degrees Fahrenheit   |
| APD              | Application for Permit to Drill                                    |
| AQI              | Air Quality Index  |
| BGEPA            | Bald and Golden Eagle Protection Act                               |
| BIA              | Bureau of Indian Affairs   |
| BLM              | Bureau of Land Management  |
| BMP              | Best Management Practice   |
| CAA              | Clean Air Act  |
| CEQ              | Council on Environmental Quality                                   |
| CFR              | Code of Federal Regulations  |
| CH <sub>4</sub>  | methane  |
| CIAA             | cumulative impact analysis area                                    |
| CO               | carbon monoxide  |
| CO <sub>2</sub>  | carbon dioxide   |
| CWA              | Clean Water Act  |
| EA               | environmental assessment   |
| EIS              | environmental impact statement                                     |
| EJ               | Environmental Justice  |
| EPA              | Environmental Protection Agency                                    |
| ESA              | Endangered Species Act   |
| GHG              | greenhouse gas   |
| H <sub>2</sub> S | hydrogen sulfide   |
| HAP              | hazardous air pollutant  |
| HUC              | hydrologic unit code   |
| MBTA             | Migratory Bird Treaty Act  |
| MHA Nation       | Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation |
| NAAQS            | National Ambient Air Quality Standards                             |
| N <sub>2</sub> O | nitrous oxide  |
| NDDA             | North Dakota Department of Agriculture                             |
| NDDH             | North Dakota Department of Health                                  |
| NEPA             | National Environmental Policy Act                                  |
| NO <sub>2</sub>  | nitrogen dioxide   |
| NPDES            | National Pollutant Discharge Elimination System                    |
| NRCS             | Natural Resources Conservation Service                             |
| O <sub>3</sub>   | ozone  |
| PM               | particulate matter   |
| ROW              | right-of-way   |
| SO <sub>2</sub>  | sulfur dioxide   |
| THPO             | Tribal Historic Preservation Officer                               |
| TRNP             | Theodore Roosevelt National Park                                   |
| USC              | United States Code   |
| USFS             | U.S. Forest Service  |
| USFWS            | U.S. Fish and Wildlife Service                                     |
| VOC              | volatile organic compound  |

**APPENDIX A**  
**Species Accounts and Effects Determinations**

## Species Accounts and Affects Determinations

### Endangered Species Act

#### **Black-footed Ferret (*Mustela nigripes*)**

Affects Determination: No Effect

Black-footed ferrets are nocturnal, solitary carnivores of the weasel family that have been largely extirpated from the wild primarily due to range-wide decimation of the prairie dog (*Cynomys* sp.) ecosystem (Kotliar et al. 1999). They have been listed by the U.S. Fish and Wildlife Service (USFWS) as endangered since 1967, and have been the object of extensive re-introduction programs (USFWS 2010a). Ferrets inhabit extensive prairie dog complexes of the Great Plains, typically composed of several smaller colonies in proximity to one another that provide a sustainable prey base. The Black-footed Ferret Survey Guidelines for Compliance with the Endangered Species Act (USFWS 1989) states that ferrets require black-tailed prairie dog (*Cynomys ludovicianus*) towns or complexes greater than 80 acres in size, and towns of this dimension may be important for ferret recovery efforts (USFWS 1988a). Prairie dog towns of this size are not found in the project area. In addition, this species has not been observed in the wild for more than 20 years. The proposed project would have **no effect** on this species.

#### **Gray Wolf (*Canis lupus*)**

Affects Determination: May Affect, Is Not Likely to Adversely Affect

The gray wolf, listed as endangered in the United States in 1978 (USFWS 1978), was believed extirpated from North Dakota in the 1920s and 1930s with only sporadic reports from the 1930s to present (Licht and Huffman 1996). The presence of wolves in most of North Dakota consists of occasional dispersing animals from Minnesota and Manitoba (Licht and Fritts 1994; Licht and Huffman 1996). Most documented gray wolf sightings that have occurred within North Dakota are believed to be young males seeking to establish territory (Hagen et al. 2005). The Turtle Mountains region in north-central North Dakota provides marginal habitat that may be able to support a very small population of wolves. The closest known pack of wolves is the Minnesota population located approximately 28 kilometers (km) from the northeast corner of North Dakota.

The gray wolf uses a variety of habitats that support a large prey base, including montane and low-elevation forests, grasslands, and desert scrub (USFWS 2010b). Due to a lack of forested habitat and distance from Minnesota and Manitoba populations, as well as the troubled relationship between humans and wolves and their vulnerability to being shot in open habitats (Licht and Huffman 1996), the re-establishment of gray wolf populations in North Dakota is unlikely. Additionally, habitat fragmentation, in particular road construction as a result of oil and gas development, may further act as a barrier against wolf recolonization in western North Dakota. Therefore, the proposed project **may affect, but is not likely to adversely affect** the gray wolf.

### **Whooping Crane (*Grus americana*)**

Affect Determination: May Affect, Is Not Likely to Adversely Affect

The whooping crane was listed as endangered in 1970 in the United States by the USFWS, and in 1978 in Canada. Historically, population declines were caused by shooting and destruction of nesting habitat in the prairies from agricultural development. Current threats to the species includes habitat destruction, especially suitable wetland habitats that support breeding and nesting, as well as feeding and roosting during their fall and spring migration (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007).

The July 2010 total wild population was estimated at 383 (USFWS 2010c). There is only one self-sustaining wild population, the Aransas-Wood Buffalo National Park population, which nests in Wood Buffalo National Park and adjacent areas in Canada, where approximately 83% of the wild nesting sites occur (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007; USFWS 2010c). Dunn and McKenzie counties, including the project area, are within the primary migratory flyway of whooping cranes.

Whooping cranes probe the soil subsurface with their bills for foods on the soil or vegetation substrate (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007). Whooping cranes are omnivores and foods typically include agricultural grains, as well as insects, frogs, rodents, small birds, minnows, berries, and plant tubers. The largest amount of time during migration is spent feeding in harvested grain fields (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007). Studies indicate that whooping cranes use a variety of habitats during migration, in addition to cultivated croplands, and generally roost in small palustrine (marshy) wetlands within 1 km of suitable feeding areas (Howe 1987, 1989). Whooping cranes have been recorded in riverine habitats during their migration, with eight sightings along the Missouri River in North Dakota (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007:18). In these cases, they roost on submerged sandbars in wide, unobstructed channels that are isolated from human disturbance (Armbruster 1990).

Suitable whooping crane foraging habitat (i.e., cultivated cropland) was observed near the project area. Project precautionary measures would be implemented if a whooping crane is sighted within 1 mile of the project area. Dakota-3 would cease all construction activities and notify the Bureau of Indian Affairs and USFWS of the sighting, should a whooping crane be spotted within 1 mile of the project area. As a result, the proposed project **may affect, but is not likely to adversely affect** the endangered whooping crane.

### **Piping Plover (*Charadrius melodus*)**

Affect Determination: May Affect, Is Not Likely to Adversely Affect

The piping plover is a small shorebird which breeds only in three geographic regions of North America: the Atlantic Coast, the Northern Great Plains, and the Great Lakes. Piping plover populations were federally listed as threatened and endangered in 1985, with the Northern Great Plains and Atlantic Coast populations listed as threatened, and the Great Lakes population listed as endangered (USFWS 1985a).

Plovers in the Great Plains make their nests on open, sparsely vegetated sand or gravel beaches adjacent to alkali wetlands, and on beaches, sand bars, and dredged material islands of major river systems (USFWS 2002, 2010d). The shorelines of lakes of the Missouri River

constitute significant nesting areas for the bird. Piping plovers nest on the ground, making shallow scrapes in the sand, which they line with small pebbles or rocks (USFWS 1988b). Anthropogenic alterations of the landscape along rivers and lakes where piping plover nest have increased the number and type of predators, subsequently decreasing nest success and chick survival (USFWS 2002, 2010d). The birds fly south by mid to late August to areas along the Texas coast and Mexico (USFWS 2002). The Northern Great Plains population has continued to decline despite federal listing, with population estimates of 1,500 breeding pairs in 1985 reduced to fewer than 1,100 in 1990. Low survival of adult birds has been identified as a factor (Root et al. 1992). Current conservation strategies include identification and preservation of known nesting sites, public education, and limiting or preventing shoreline disturbances near nests and hatched chicks (USFWS 1988b, 2010d).

Suitable shoreline habitat for breeding and nesting plovers does not occur in the project area, and Lake Sakakawea is a minimum of approximately 0.54 river mile and 0.50 straight line mile away from the proposed project. It is unlikely that migrating plovers would visit the project area during their migration. Therefore, the proposed project **may affect, but is not likely to adversely affect** piping plovers.

#### **Designated Critical Habitat of Piping Plover**

Affect Determination: May Affect, Is Not Likely to Adversely Affect

The USFWS has designated critical habitat for the Great Lakes and Northern Great Plains populations of piping plover (USFWS 2002). Designated critical habitat for the piping plover includes 183,422 acres and 1,207.5 river miles of habitat, including areas near the proposed project, along the shoreline of Lake Sakakawea in McKenzie County, North Dakota (USFWS 2002).

It is unlikely that the project would modify, alter, disturb, or affect the shoreline of Lake Sakakawea. Therefore, the proposed project **may affect, but is not likely to adversely affect** designated critical habitat of the piping plover.

#### **Interior Least Tern (*Sterna antillarum*)**

Affect Determination: May Affect, Is Not Likely to Adversely Affect

The population of the interior least tern is listed as endangered by the USFWS (1985b). This bird is the smallest member of the gull and tern family, measuring approximately 9 inches in length. Terns remain near flowing water, where they feed by hovering over and diving into standing or flowing water to catch small fish (USFWS 2010e).

Interior least terns breed in isolated areas along the Missouri, Mississippi, Ohio, Red, and Rio Grande river systems, where they nest in small colonies. From late April to August, terns nest in a shallow hole scraped in an open sandy area, gravel patch, or exposed flat and bare sandbars along rivers, sand and gravel pits, or lake and reservoir shorelines. The adults continue to care for chicks after they hatch. Least terns in North Dakota will often be found sharing sandbars with the piping plover, a threatened species (USFWS 2010e).

Census data indicate over 8,000 interior least terns in the population. In North Dakota, the least tern is found mainly on the Missouri River from Garrison Dam south to Lake Oahe, and on the Missouri and Yellowstone rivers upstream of Lake Sakakawea (USFWS 1990a,

2010e). Approximately 100 pairs breed in North Dakota (USFWS 2010e). Details of their migration are not known, but their winter range is reported to include the Gulf of Mexico and Caribbean Islands (USFWS 1990a, 2010e).

Loss of suitable breeding and nesting habitat for terns has resulted from dam construction and river channelization on major rivers throughout the Mississippi, Missouri, and Rio Grande River systems. River and reservoir changes have led to reduced sandbar formation and other shoreline habitats for breeding, resulting in population declines. In addition, other human shoreline disturbances affect the species (USFWS 1990a). Critical habitat has not been designated for the species (USFWS 2010e).

Current conservation strategies include identification and avoidance of known nesting areas, public education, and limiting or preventing shoreline disturbances near nests and hatched chicks (USFWS 2010e).

It is unlikely that terns would visit the upland habitats present in the project area. Therefore, the proposed project **may affect, but is not likely to adversely affect** endangered least terns.

#### **Pallid Sturgeon (*Scaphirhynchus albus*)**

Affect Determination: May Affect, Is Not Likely to Adversely Affect

The pallid sturgeon was listed as Endangered in 1990 in the United States by the USFWS (1990b). The primary factor leading to the decline of this species is the alteration of habitat through river channelization, creation of impoundments, and alteration of flow regimes (USFWS 1990b). These alterations within the Missouri River have blocked movements to spawning, feeding, and rearing areas; destroyed spawning habitat; altered flow conditions which can delay spawning cues; and reduced food sources by lowering productivity (USFWS 2007a). The fundamental elements of pallid sturgeon habitat are defined as the bottom of swift waters of large, turbid, free-flowing rivers with braided channels, dynamic flow patterns, flooding of terrestrial habitats, and extensive microhabitat diversity (USFWS 1990b).

The pallid sturgeon population which is found near the project area occurs from the Missouri River below Fort Peck Dam to the headwaters of Lake Sakakawea and the lower Yellowstone River up the confluence of the Tongue River, Montana (USFWS 2007a). This population consists of approximately 136 wild adult pallid sturgeon (USFWS 2007a). Hatchery reared sturgeon have also been stocked since 1998. The pallid sturgeon has been found to utilize the 25 km of riverine habitat that would be inundated by Lake Sakakawea at full pool (Bramblett 1996 per USFWS 2007a). Larval pallid sturgeons have also been found to drift into Lake Sakakawea. While the majority of pallid sturgeons are found in the headwaters of Lake Sakakawea, North Dakota Game and Fish have caught and released pallid sturgeon in nets set in 80 to 90 feet of water between the New Town and Van Hook area. Based on this information, pallid sturgeon could be found throughout Lake Sakakawea (personal communication, email from Steve Krentz, Pallid Sturgeon Project Lead, U.S. Fish and Wildlife Service, to Mike Cook, Aquatic Ecologist, SWCA Environmental Consultants, September 3, 2010).

Suitable habitat for pallid sturgeon does not occur in the project area, and Lake Sakakawea is a minimum of 0.54 river mile away from the proposed project. Potential pollution and sedimentation occurring within the project area are concerns for downstream populations of endangered pallid sturgeon. Activities associated with the construction, production, or reclamation of the proposed project area are not anticipated to adversely affect water quality and subsequently the pallid sturgeon. Therefore, the proposed project **may affect, but is not likely to adversely affect** pallid sturgeon.

**Dakota Skipper (*Hesperia dacotae*)**

**Affect Determination:** May Affect, Is Not Likely to Adversely Affect

The Dakota skipper is a small butterfly with a 1-inch wingspan and is found primarily in undisturbed native tall grass and upland dry mixed grass prairie areas with a high diversity of wildflowers and grasses (Committee on the Status of Endangered Wildlife in Canada 2003). The Dakota skipper appears to require a range of precipitation-evaporation ratios between 60 and 105 and a soil pH between 7.2 and 7.9 (McCabe 1981). Larvae feed on grasses, favoring little bluestem. Adults commonly feed on nectar of flowering native forbs such as harebell (*Campanula rotundifolia*), wood lily (*Lilium philadelphicum*), and purple coneflower (*Echinacea angustifolia*). The species is threatened by conversion of native prairie to cultivated agriculture or shrublands, over-grazing, invasive species, gravel mining, and inbreeding (USFWS 2005).

Dakota skippers are not known to occur within the project area; however, suitable habitat does occur. The proposed project **may affect, but is not likely to adversely affect** this species. The use of best management practices and conservation guidelines (USFWS 2007b) during construction and operation and immediate reclamation of short-term disturbance should decrease direct, indirect, and cumulative impacts to this species.

**Sprague's Pipit (*Anthus spragueii*)**

**Affect Determination:** May Affect, Is Not Likely to Adversely Affect

The Sprague's pipit is a small passerine bird that is native to the North American grasslands. It is a ground nester that breeds and winters on open grasslands and feeds mostly on insects and spiders and some seeds. The Sprague's pipit is closely tied with native prairie habitat and breeds in the north-central United States in Minnesota, Montana, North Dakota, and South Dakota as well as south-central Canada (USFWS 2010f). Wintering occurs in the southern states of Arizona, Texas, Oklahoma, Arkansas, Mississippi, Louisiana, and New Mexico.

Sprague's pipits are not known to occur within the project area; however, suitable habitat does occur. The proposed Project **may affect, but is not likely to adversely affect** this species. The use of best management practices and conservation guidelines (USFWS 2007b) during construction and operation and immediate reclamation of short-term disturbance should decrease direct, indirect, and cumulative impacts to this species.

**Migratory Bird Treaty Act / The Bald and Golden Eagle Protection Act**

**Bald Eagle (*Haliaeetus leucocephalus*)**

Status: Delisted in 2007; protected under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA)

Effects of Project: No adverse effects anticipated

Suitable nesting or foraging habitat for bald eagles includes old growth trees relatively close (usually less than 1.24 miles [Hagen et al. 2005]) to perennial water bodies. The project area does not contain old growth trees and is located, at the closest approximately, 1.01 straight line miles from Lake Sakakawea. No nests or eagles were observed within 0.5 mile line-of-sight during the field surveys. Therefore, no adverse effects are anticipated. However, the possibility of transient, flying bald eagle individuals traversing the project area does exist.

**Golden Eagle (*Aquila chrysaetos*)**

Status: Not Listed; protected under the MBTA and the BGEPA

Effects of Project: No adverse effects anticipated

No eagles or nests were observed during the field surveys; however, golden eagles may occur within or near the project area. The closest known golden eagle nest occurs approximately 3.19 miles southeast of the proposed Corn Stalk #20H well pad. The golden eagle prefers habitat characterized by open prairie, plains, and forested areas. Usually, golden eagles can be found in proximity to badland cliffs which provide suitable nesting habitat. However, no primary or secondary indication of golden eagle presence, including nests, was observed within or near the project area during the field survey. Therefore, the project is unlikely to cause any adverse effects to golden eagles.

**References Cited**

- Armbruster, M.J. 1990. Characterization of habitat used by whooping cranes during migration. *Biological Rept.* 90(4):1-16.
- Bramblett, R.G. 1996. Habitats and movements of pallid and shovelnose sturgeon in the Yellowstone and Missouri Rivers, Montana and North Dakota. Doctoral dissertation. Montana State University, Bozeman.
- Canadian Wildlife Service and U.S. Fish and Wildlife Service. 2007. International Recovery Plan for the Whooping Crane. Ottawa: Recovery of Nationally Endangered Wildlife (RENEW), and U.S. Fish and Wildlife Service, Albuquerque, New Mexico.
- Committee on the Status of Endangered Wildlife in Canada. 2003. COSEWIC Assessment and Status Report on the Dakota Skipper *Hesperia dacotae* in Canada. Ottawa: Committee on the Status of Endangered Wildlife in Canada.
- Hagen, S.K., P.T. Isakson, and S.R. Dyke. 2005. North Dakota Comprehensive Wildlife Conservation Strategy. North Dakota Game and Fish Department. Bismarck, ND.

- Howe, M.A. 1987. Habitat use by migrating whooping cranes in the Aransas-Wood Buffalo corridor. Pages 303–311, in J. C. Lewis and J. W. Ziewitz, eds. Proc. 1985 Crane Workshop. Platte River Whooping Crane Habitat Maintenance Trust and USFWS, Grand Island, Nebraska.
- . 1989. Migration of radio-marked whooping cranes from the Aransas-Wood Buffalo population: Patterns of habitat use, behavior, and survival. USFWS Technical Report.
- Kotliar, N.B., B.W. Baker, A.D. Whicker, and G. Plumb. 1999. A critical review of assumptions about the prairie dog as a keystone species. *Environmental Management* 24(2):177–192.
- Licht, D.S., and S.H. Fritts. 1994. Gray wolf (*Canis lupus*) occurrences in the Dakotas. *American Midland Naturalist* 132:74–81.
- Licht, D.S., and L.E. Huffman. 1996. Gray wolf status in North Dakota. *The Prairie Naturalist* 28(4):169–174.
- McCabe, T.L. 1981. The Dakota skipper (*Hesperia dacotae*) (Skinner): Range and biology, with special reference to North Dakota. *Journal of the Lepidopterists' Society* 35(3):179–193.
- Root, B.G., M.R. Ryan, and P.M. Mayer. 1992. Piping plover survival in the Great Plains. *Journal of Field Ornithology*, Vol. 63, No. 1, pp. 10–15.
- U.S. Fish and Wildlife Service (USFWS). 1978. Reclassification of the gray wolf in the United States and Mexico, with determination of critical habitat in Michigan and Minnesota. *Federal Register* 43(47):9607–9615.
- . 1985a. Endangered and Threatened Wildlife and Plants: Determination of Endangered and Threatened Status for the Piping Plover. *Federal Register* 50 (238):50726–50734.
- . 1985b. Interior population of the least tern. *Federal Register* 50 FR 21784–21792. May 28, 1985.
- . 1988a. Black-footed Ferret Recovery Plan. U.S. Fish and Wildlife Service. Denver, Colorado. 154 pp.
- . 1988b. Great Lakes and Northern Great Plains Piping Plover Recovery Plan. U.S. Fish and Wildlife Service, Twin Cities, MN. 160 pp.
- . 1989. Black-footed Ferret Survey Guidelines for Compliance with the Endangered Species Act. Denver and Albuquerque: U.S. Fish and Wildlife Service.
- . 1990a. Interior Population of the Least Tern Recovery Plan. U.S. Fish and Wildlife Service, Twin Cities, MN. 160 pp.

- . 1990b. Endangered and threatened wildlife and plants; Determination of endangered status for the pallid sturgeon. Federal Register 55(173):36641–36647.
- . 2002. Designation of Critical Habitat for the Northern Great Plains Breeding Population of the Piping Plover; Final Rule. Federal Register. September 11, 2002 (Volume 67, Number 176), Rules and Regulations, pp. 57637–57717.
- . 2005. Endangered and Threatened Wildlife and Plants; Review of Native Species that are Candidates or Proposed for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Proposed Rule. Federal Register 70(90):24870–24934.
- . 2007a. Pallid sturgeon (*Scaphirhynchus albus*) 5-year review summary and evaluation. U.S. Fish and Wildlife Service, Pallid Sturgeon Recovery Coordinator. Billings, Montana.
- . 2007b. Dakota skipper conservation guidelines *Hesperia dacotae* (Skinner) (Lepidoptera: Hesperiidae). U.S. Fish and Wildlife Service, Twin Cities Field Office. Available online at <http://www.fws.gov/midwest/endangered/insects/dask-cons-guid2007.pdf>. Accessed September 3, 2010.
- . 2010a. Black-footed ferret. Available online at <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?sPCODE=A004>. Accessed September 7, 2010.
- . 2010b. Gray wolf. Available online at <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?sPCODE=A00D>. Accessed September 7, 2010.
- . 2010c. Whooping crane. Available online at <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?sPCODE=B003>. Accessed September 2, 2010.
- . 2010d. Piping plover. Available online at <http://www.fws.gov/mountain-prairie/species/birds/pipingplover>. Accessed September 7, 2010.
- . 2010e. Least Tern (Interior population). Available online at <http://www.fws.gov/southwest/es/oklahoma/lestern.htm>. Accessed September 7, 2010.

**APPENDIX B**  
**MHA THPO Consultation**



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Great Plains Regional Office  
115 Fourth Avenue S.E., Suite 400  
Aberdeen, South Dakota 57401



IN REPLY REFER TO:  
DESCRM  
MC-208

JAN 09 2012

Elgin Crows Breast, THPO  
Mandan, Hidatsa and Arikara Nation  
404 Frontage Road  
New Town, North Dakota 58763

Dear Mr. Crows Breast:

We have considered the potential effects on cultural resources of four oil well pads and a gathering line reroute in Dunn, McKenzie, McLean and Mountrail Counties, North Dakota. Approximately 326.91 acres were intensively inventoried using a pedestrian methodology. Potential surface disturbances are not expected to exceed the areas depicted in the enclosed reports. One previously recorded archaeological site (32MZ2017) was revisited and three archaeological sites (32MZ2274, 32DU1676, 32DU1677) were located 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 reached a determination of **no historic properties affected** for these undertakings, as the archaeological sites will be fenced out and avoided. Catalogued as **BIA Case Number AAO-2024/FB/12**, the proposed undertakings, locations, and project dimensions are described in the following reports:

Herson, Chandler S., and Damien S. Reinhart

(2011) A Class I and Class III Cultural Resource Inventory of the Corn Stalk #20H Well Pad and Utility Corridor, Fort Berthold Indian Reservation, McKenzie County, North Dakota. SWCA Environmental Consultants for Dakota-3 E & P Company, LLC, Denver.

Herson, Chandler S., Damien Reinhart and Andrew Lantz

(2011) A Class I and Class III Cultural Resource Inventory of the Brunsell #16-9H Well Pad Expansion and Gathering Pipeline, Fort Berthold Indian Reservation, Mountrail County, North Dakota. SWCA Environmental Consultants for Dakota-3 E & P Company, LLC, Denver.

Reinhart, Damien

(2011) A Class I and Class III Cultural Resource Inventory of the Tri-Unit Production Pad, Utility Corridor and Gathering Pipeline, Fort Berthold Indian Reservation, Dunn County, North Dakota. SWCA Environmental Consultants for Dakota-3 E&P Company, LLC, Denver.

Schleicher, Jolene

(2011) An Addendum to the Class I and Class III Cultural Resource Inventory of the North Segment #6-5H Gathering Pipeline, Fort Berthold Indian Reservation, McLean and Mountrail Counties, North Dakota. SWCA Environmental Consultants for Dakota-3 E&P Company, LLC, Denver.

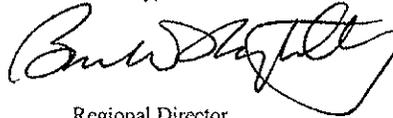
Page 2

Sherman, Martin H., and Damien S. Reinhart  
(2011) A Class I and Class III Cultural Resource Inventory of the Edward Goodbird #9-9H Well Pad and Utility Corridor, Fort Berthold Indian Reservation, Dunn County, North Dakota. SWCA Environmental Consultants for Dakota-3 E & P Company, LLC, Denver.

If your office concurs with this determination, consultation will be completed under the National Historic Preservation Act and its implementing regulations. We will adhere to the Standard Conditions of Compliance.

If you have any questions, please contact Dr. Carson N. Murdy, Regional Archaeologist, at (605) 226-7656.

Sincerely,



Regional Director

Enclosures

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



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Great Plains Regional Office  
115 Fourth Avenue S.E., Suite 400  
Aberdeen, South Dakota 57401



IN REPLY REFER TO:  
DESCRM  
MC-208

JAN 10 2012

Elgin Crows Breast, THPO  
Mandan, Hidatsa and Arikara Nation  
404 Frontage Road  
New Town, North Dakota 58763

Dear Mr. Crows Breast:

We have considered the potential effects on cultural resources of an oil well pad and gathering line in Dunn County, North Dakota. Approximately 43.11 acres were intensively inventoried using a pedestrian methodology. Potential surface disturbances are not expected to exceed the area depicted in the enclosed report. One archaeological site (32DU1471) was revisited and two sites (32DU1679, 32DU1680) 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 reached a determination of **no historic properties affected** for this undertaking, as the archaeological sites will be avoided. Catalogued as **BIA Case Number AAO-2054/FB/12**, the proposed undertaking, location, and project dimensions are described in the following report:

Leroy, Adam, and Damien S. Reinhart  
(2011) A Class I and Class III Cultural Resource Inventory of the Independence #2-35H Well Pad, Utility Corridor and Gathering Line, Dunn County, North Dakota. SWCA Environmental Consultants for Dakota-3 E & P Company, LLC, Denver.

If your office concurs with this determination, consultation will be completed under the National Historic Preservation Act and its implementing regulations. We will adhere to the Standard Conditions of Compliance.

If you have any questions, please contact Dr. Carson N. Murdy, Regional Archaeologist, at (605) 226-7656.

Sincerely,

ACTING Regional Director

Enclosure

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

**APPENDIX C**

**U.S. Fish and Wildlife Service Informal Section 7 Consultation and  
Concurrence Letters**



Sound Science. Creative Solutions.

Bismarck Office  
118 N. 4<sup>th</sup> Street, Suite 210  
Bismarck, ND 58501  
701.258.6622  
www.swca.com

November 4, 2011

Jeffrey K. Towner  
U.S. Fish and Wildlife Service  
3425 Miriam Avenue  
Bismarck, ND 58501

**RE: Request for Concurrence Letter**

Dear Mr. Towner,

The Bureau of Indian Affairs (BIA) is preparing an environmental assessment (EA) under the National Environmental Policy Act (NEPA), in cooperation with the Bureau of Land Management (BLM). The proposed action (Project) includes approval by the BIA and BLM for the construction, drilling, completion, and production of three exploratory oil and gas well pads, and their associated gathering pipelines (Cornstalk #20H, Edward Goodbird #9H, and Independence #2-35H) on the Fort Berthold Indian Reservation (Reservation) by Dakota-3 E&P Company, LLC (Dakota-3).

The proposed surface locations for the three well pads are summarized below, and illustrated in Figures 1 through 4.

- **Cornstalk #20H:** NW¼ SW¼ of Section 20, Township (T) 149 North (N), Range (R) 94 West (W), McKenzie County, North Dakota
- **Edward Goodbird #9-9H:** NW¼ NW¼ of Section 9, T149N, R91W, Dunn County, North Dakota
- **Independence #2-35H:** NW¼ NE¼ Section 11, T149N, R93W, Dunn County, North Dakota

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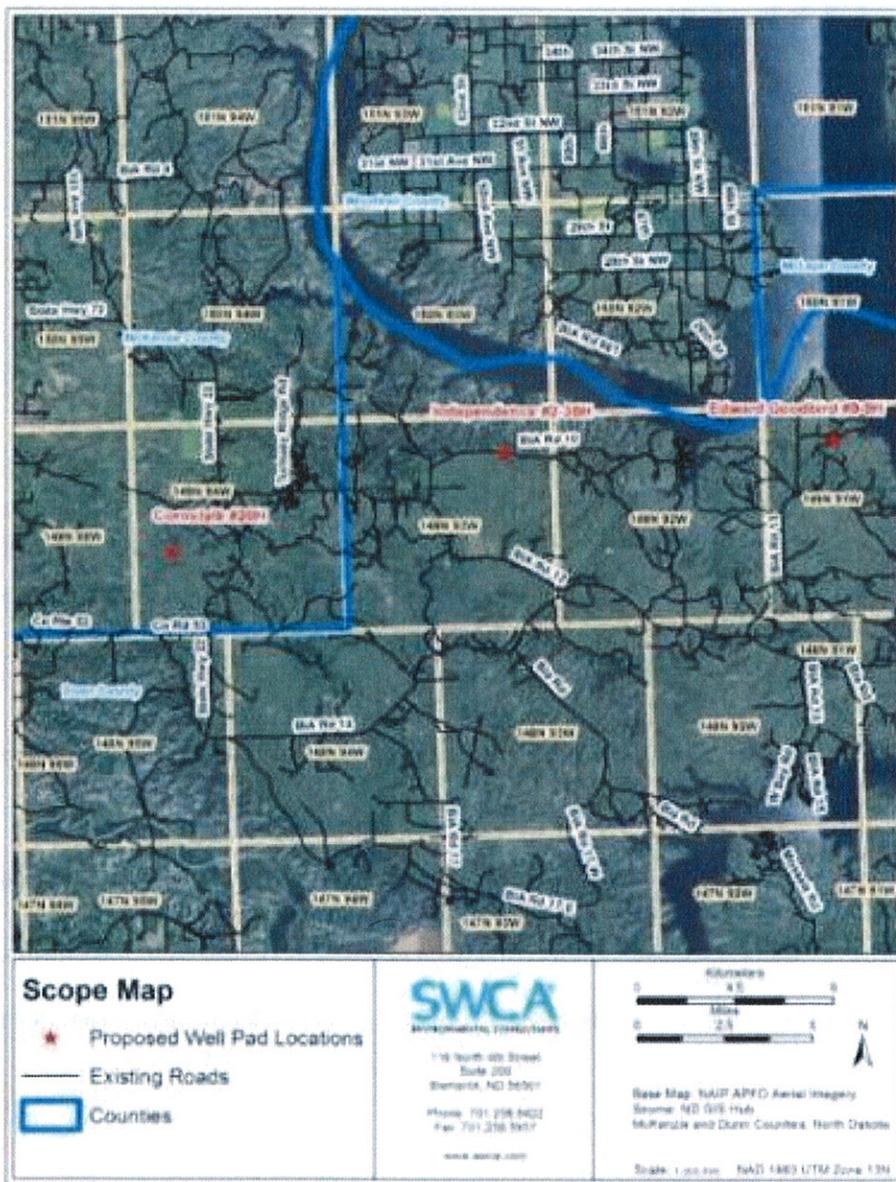


Figure 1. Proposed project overview map.

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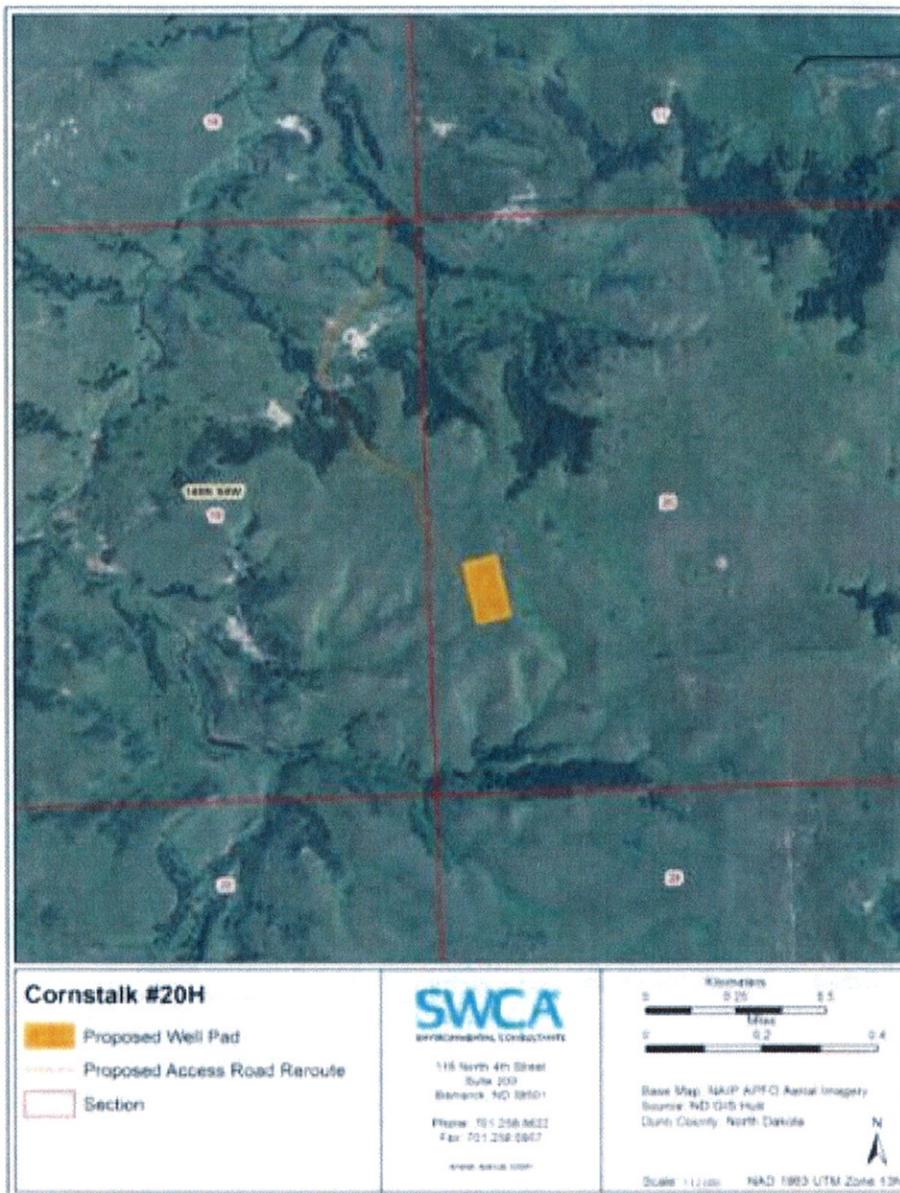


Figure 2. Proposed Cornstalk #20H well pad and access road location.

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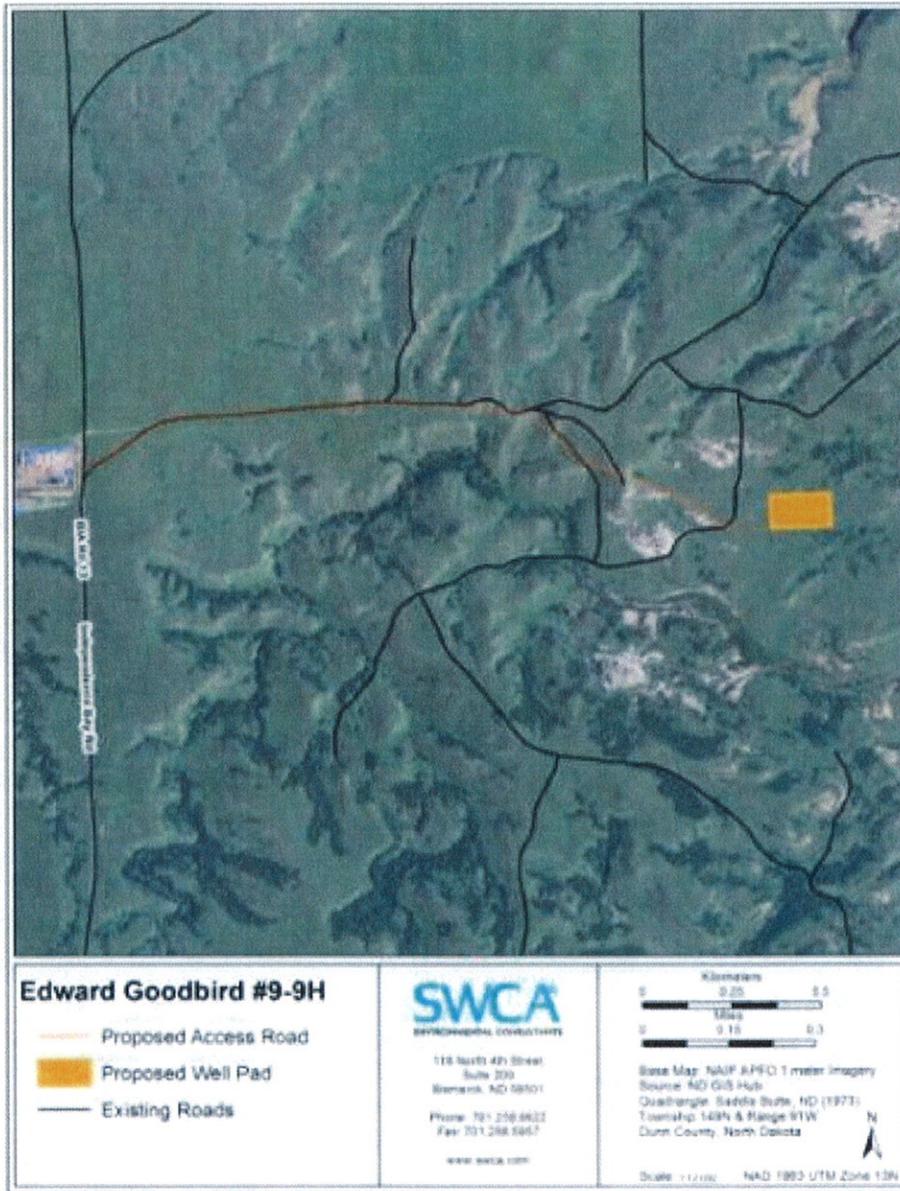


Figure 3. Proposed Edward Goodbird #9H well pad and access road location.

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Figure 4. Proposed Independence #2-35H well pad and access road location.

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The associated facilities required by the Project would include roads, utility lines, production facilities (production tanks), gathering pipelines, and equipment storage facilities. Trucking of oil and water from the Proposed Independence #2-35H well pad will be minimal due to the pipeline being installed at the time of pad construction. Trucking will initially occur for the first couple of months at the proposed Corn Stalk #20H and Edward Goodbird #9-9H well pads. Construction of the proposed access roads would utilize a 130-foot-wide purchased ROW that would contain the access road and gathering lines. Dakota-3 would use existing roads and previous disturbances to the greatest extent practicable. Existing highways and arterial roads would provide the main access to the project area. Surface disturbance from the Project would result from the construction of approximately 1.84 miles of new roads to access the three proposed well pads, plus approximately 14.28 acres of disturbance for the new construction of the proposed well pads, as shown in Table 1.

**Table 1. Proposed Well Locations and Biological Observations for Project Area.**

| Proposed Quad well pad Name | Area of Disturbance and Location  | Biological Observations   |
|-----------------------------|---|---|
| Cornstalk #20H              | 3.2-acre well pad<br>0.57-mile, 8.98-acre access road<br>NW¼ of the SW¼, Section 20, T149N, R94W, McKenzie County, North Dakota | Habitat: Northern mixed grass prairie<br>Vegetation observed: prairie sagewort ( <i>Artemisia tridentata</i> ), western snowberry ( <i>Symphoricarpos occidentalis</i> ), big bluestem ( <i>Andropogon gerardii</i> ), and needle and thread ( <i>Hesperisotropa canadensis</i> ).<br>Wildlife observations: No raptors or nests, or threatened and endangered species observed. However, suitable habitat for Dakota skipper, gray wolf, Sprague's pipit, and whooping crane was observed. The nearest known golden eagle nest is approximately 3.19 miles southeast of the proposed well pad. |
| Edward Goodbird #9H         | 4.8-acre well pad<br>1.27-mile, 20.01-acre access road<br>NW¼ of the NW¼, Section 9, T149N, R94W, Dunn County, North Dakota     | Habitat: Northern mixed grass prairie<br>Vegetation observed: little bluestem ( <i>Setopogon nuttallianus</i> ), blue grama ( <i>Bouteloua gracilis</i> ), wild rose ( <i>Rosa arkansana</i> ), and silver buffaloberry ( <i>Shepherdia argentea</i> ).<br>Wildlife observations: No raptors or nests, or threatened and endangered species observed. However, suitable habitat for Dakota skipper, gray wolf, Sprague's pipit, and whooping crane was observed. The nearest known golden eagle nest is approximately 9.02 miles south of the proposed well pad.                                |

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| Proposed Quad well pad Name | Area of Disturbance and Location   | Biological Observations   |
|-----------------------------|--|---|
| Independence #2-35H         | 6.78-acre well pad<br>55-foot, 0.54-acre access road<br>NW 1/4 of the NE 1/4, Section 11, T149N, R93W, Dunn County, North Dakota | Habitats: Northern mixed grass prairie<br>Vegetation observed: prairie sagewort ( <i>Artemisia tridentata</i> ), western snowberry ( <i>Symphoricarpos occidentalis</i> ), prairie pinegrass ( <i>Koeleria macrantha</i> ), and needle and thread ( <i>Sisyrinchium</i> ).<br>Wildlife observations: No raptors or nests, or threatened and endangered species observed. However, suitable habitat for Dakota skupper, gray wolf, Sprague's pipit, and whooping crane was observed. The nearest known golden eagle nest is approximately 8.07 miles southwest of the proposed well pad. |

#### Wildlife and Habitat Observations

SWCA Environmental Consultants (SWCA) biologists conducted wetland waterbody and wildlife surveys, including threatened and endangered species habitat assessments, on August 10, September 12 and September 16, 2011. The habitat type identified during the field surveys was Northern mixed grass prairie. Northern mixed grass prairie can include wetlands, native grassland, and grass-shrub habitats, with riparian and floodplain forests along major drainages.

Vegetation and wildlife habitats observed in the vicinity of each proposed well pad are summarized in Table 1.

#### Project Area Hydrology

The project area is located within the Lucky Mound Creek Bay (Hydrologic Unit Code (HUC) 10110102901), Skank Creek (HUC 10110102102), and Upper Bear Den Creek (HUC 10110102003) sub-watersheds, the Bear Den Creek (HUC 1011010120), Independence Point (HUC 1011010121), and Saddle Butte (HUC 1011010129) watersheds; and Lake Sakakawea (HUC 10110101) drainage basin. Table 2 provides the nearest perennial stream and the surface water runoff distance to Lake Sakakawea for each proposed well pad. Figure 6 illustrates the surface water runoff direction for each proposed well pad. The distance from Lake Sakakawea to the project area ranges from 0.54 to 19.48 river miles. Wetlands were identified during surveys of the project area, and the proposed well pads and access routes were relocated to prevent disturbance in compliance with the U.S. Army Corps of Engineers Nationwide Permit 14 requirements that require notification if wetlands are disturbed in acreages of 0.10 acres or more. No special aquatic sites will be impacted. A culvert will be placed within the drainage at the start of the Cornstalk #9H access road to avoid disruption of runoff flow. The nearest wetland identified on the National Wetlands Inventory (NWI) map of the project area is approximately 0.03 mile from the nearest proposed well pad or access road, as shown in Table 2.

Best management practices (BMPs) will be implemented for all ground-disturbing activities, as required by the Clean Water Act (CWA). With the implementation of all the provisions of the CWA National Pollutant Discharge Elimination System, including federal requirements for

Mr. Toomer  
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implementation of adequate Spill Prevention, Control and Countermeasures during drilling and construction, no impacts to water resources are anticipated.

**Table 2. Proposed well pad Distances to Wetlands, Perennial Streams, and River Miles to Lake Sakakawea.**

| Proposed Well Pad Name | Nearest Wetland (NW) (Miles) | Nearest Perennial Water-Body (River Miles)                                  | River Miles to Lake Sakakawea |
|------------------------|------------------------------|---|-------------------------------|
| Cornstalk #20H         | 0.15                         | Bea Den Bay, approximately 19.48 river miles from proposed well pad.        | 10.48                         |
| Edward Goodbird #9H    | 0.24                         | Lake Sakakawea, approximately 0.54 river miles from proposed well pad.      | 0.54                          |
| Independence #2-35H    | 0.03                         | Skunk Creek Bay, approximately 9.31 river miles from the proposed well pad. | 9.31                          |

Mr. Turner  
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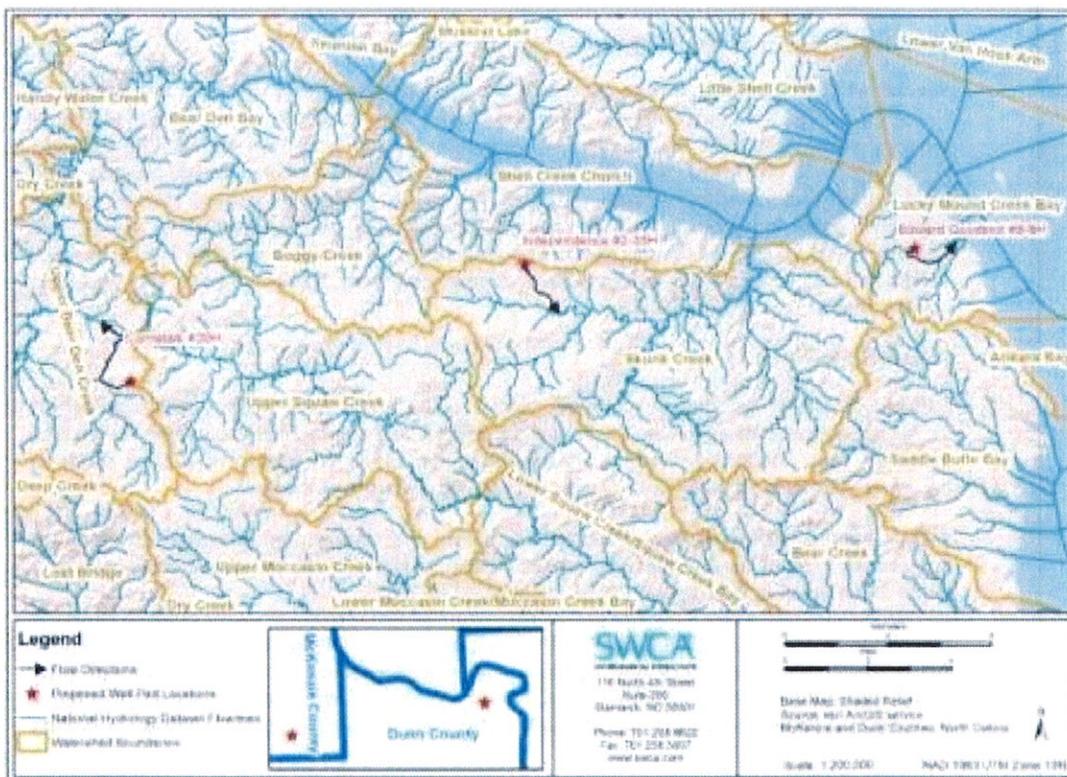


Figure 6. Watersheds and surface runoff.

Mr. Louner  
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**Threatened and Endangered Species Occurrence and Habitat**

Several wildlife species that may exist, or have been known to exist in Dunn and McKenzie Counties, are listed as threatened or endangered under the Endangered Species Act (16 United States Code [USC] 1531 et seq.) (ESA). According to the U.S. Fish and Wildlife Service (USFWS), listed species in Dunn and McKenzie counties, North Dakota, include the gray wolf, black-footed ferret, whooping crane, piping plover and its Designated Critical Habitat, interior least tern, pallid sturgeon, as well as two federal candidate species, the Dakota skipper and Sprague's pipit. The listed species and their federal status are provided in Table 3. SWCA noted habitat suitable of supporting of the Dakota skipper, gray wolf, Sprague's pipit, and whooping crane within or near the project area.

**Potential Effects**

Indirect effects of the Project on listed species could result from anthropogenic influences including increases in vehicular traffic during drilling and commercial production, as well as indirectly from habitat degradation, sedimentation, or accidental release of drilling fluids or hazardous materials from the drilling, construction, or operation of the wells.

SWCA wildlife biologists have evaluated the status, life history, and potential effects of the proposal on each of these listed species. The potential effects of the Project on these species is described in detail in Attachment 1, and summarized in Table 3.

In addition to the ESA, the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act protect nesting migratory bird species. With implementation of the protective and other specific measures identified in Table 3, and Owner-Committed Measures discussed in this letter, the proposed Project is unlikely to adversely affect bald or golden eagles or nesting migratory birds.

**Table 3. Summary of Potential Effects to Threatened and Endangered Species.**

| Species   | Federal Status | Habitat Suitability or Known Occurrence          | Operator-Committed Measures | Effects Determination |
|---|----------------|--|-----------------------------|-----------------------|
| Black-footed ferret ( <i>Mustela nigripes</i> ) | Endangered     | Species is presumed extirpated from North Dakota | None                        | No Effect             |

Mr. Fowler  
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| Species   | Federal Status | Habitat Suitability or Known Occurrence   | Operator-Committed Measures  | Effects Determination                         |
|---|----------------|---|--|---|
| Gray Wolf<br>( <i>Canis lupus</i> )                   | Endangered     | Nearest known gray wolf populations exist in Minnesota, Canada, Montana, and Wyoming. Western North Dakota sightings in the late twentieth century are speculated to be solitary, transient, young adult males seeking to establish territory.  | None   | No Effect                                     |
| Whooping Crane<br>( <i>Grus americana</i> )           | Endangered     | Suitable habitat is present. However, no adverse impact is anticipated as a result of construction activities.  | Drilling or construction activity will cease and the Bureau of Indian Affairs (BIA) and U.S. Fish and Wildlife Service will be notified if whooping cranes are sighted within 1 mile of the project area. Activities may commence when the birds have left the 1 mile buffer area. | May Affect, Is Not Likely to Adversely Affect |
| Piping Plover<br>( <i>Charadrius melanocephalus</i> ) | Threatened     | Birds are unlikely to be present due to lack of suitable foraging or nesting habitat. The nearest suitable nesting and foraging habitat occurs on the shoreline and islands of Lake Sakahawea, approximately 0.50 to 7.05 straight line miles from proposed well pads and access roads. | See migratory bird protective measures.<br><br>Dakota-1 will use a closed-loop drilling system for each proposed well pad. Dakota-3 will surround each proposed well pad with a containment berm to prevent hazardous runoff or spills.  | May Affect, Is Not Likely to Adversely Affect |

Environmental Assessment: Dakota-3 E&P Company, LLC, Corn Stalk #20H, Edward Goodbird #9-9H, and Independence #2-35H (February 2012)

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| Species   | Federal Status              | Habitat Suitability or Known Occurrence  | Operator-Committed Measures  | Effects Determination                         |
|---|-----------------------------|--|--|---|
| Designated Critical Habitat for Piping Plover     | Designated Critical Habitat | Critical Habitat occurs within the watershed of the project area, on the shoreline and islands of Lake Sakakawea, between approximately 0.57 to 19.48 river miles from proposed well pads and access roads.  | Dakota-3 will implement all best management practices (BMPs), erosion control measures, and spill prevention practices required by the Clean Water Act. Dakota-3 will use a closed-loop drilling system for each proposed well pad. Dakota-3 will surround each proposed well pad with a containment berm to prevent hazardous runoff or spills. | May Affect, Is Not Likely to Adversely Affect |
| Interior Least Tern<br><i>(Sterna antillarum)</i> | Endangered                  | The nearest suitable nesting and foraging habitat occurs on the shoreline and islands of Lake Sakakawea, approximately 0.57 to 19.48 river miles, and 0.50 to 7.95 straight line miles from proposed well pads and access roads. Migrating or foraging interior least terns may transition through the project area. | See migratory bird protective measures.<br>See Designated Critical Habitat protective measures for piping plovers.   | May Affect, Is Not Likely to Adversely Affect |
| Pallid Sturgeon<br><i>(Scaphirhynchus albus)</i>  | Threatened                  | Lake Sakakawea is between 0.57 and 19.48 river miles from the proposed well pads and access roads.   | Dakota-3 will implement all BMPs, erosion control measures, and spill prevention practices required by the BIA and the Clean Water Act. Dakota-3 will use a closed-loop drilling system for each proposed well pad. Dakota-3 will surround each proposed well pad with a containment berm to prevent hazardous runoff or spills.                 | May Affect, Is Not Likely to Adversely Affect |
| Dakota Skipper<br><i>(Hesperia dacotae)</i>       | Candidate                   | Suitable habitat was rated within the project area. However, no adverse impact is anticipated as a result of construction activities.  | The proposed well pads will be reclaimed as soon as possible after their lifespan is complete.<br>Impacted areas will be returned to pre-construction conditions.  | May Affect, Is Not Likely to Adversely Affect |

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| Species   | Federal Status   | Habitat Suitability or Known Occurrence   | Operator-Committed Measures   | Effects Determination                         |
|---|--|---|---|---|
| Sprague's pipit ( <i>Anthus spragueii</i> )     | Candidate  | Suitable habitat was noted within the project area. However, no adverse impact is anticipated as a result of construction activities.   | The proposed well pads will be reclaimed as soon as possible after their lifespan is complete. Impacted areas will be returned to pre-construction contours.  | May Affect, Is Not Likely to Adversely Affect |
| <b>Other Federally Protected Species</b>        |  |   |   |   |
| Bald Eagle ( <i>Haliaeetus leucocephalus</i> )  | Bald and Golden Eagle Protection Act (BGEPA) and Migratory Bird Treaty Act of 1918 (MBTAA) | Raptor habitat survey was conducted. SWCA observed no suitable nesting or foraging habitat within the project area. Transient individuals may enter the project area on occasion. | A 0.5-mile line of sight survey was conducted during the initial field survey and no suitable nesting habitat was observed within the project area.<br><br><b>An aerial bald eagle survey will be conducted in late autumn after leaf senescence.</b> | No Adverse Effects. Anticipated               |
| Golden Eagle ( <i>Haliaeetus chrysatorius</i> ) | BGEPA and MBTAA  | No eagle nests were observed in the project area. Golden eagles may occasionally visit or forage within or around the project area.   | A 0.5-mile line of sight survey was conducted during the initial field survey.<br><br>The closest known golden eagle nest occurrence is approximately 3.19 miles southeast of the proposed Cornstalk #20H well pad.                                   | No Adverse Effects. Anticipated               |
| Migratory Birds                                 | MBTAA  | Suitable habitat for nesting migratory grassland birds occurs in the project area.  | See migratory bird protective measures.   | No Adverse Effects. Anticipated               |

**Owner-Committed Best Management Practices, Mitigation, and Safety Measures**

Dakota-3 has committed to implementing the following measures for all drilling, construction, and operations on the Reservation, including the proposed Project:

Construction and Design Measures

- Locate proposed well pads and access roads in areas with existing disturbances to the extent possible.
- Implement approved Stormwater Pollution Prevention Plan and BMPs for the construction of each roadway and proposed well pad to prevent erosion and sedimentation.

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- Install covers under drip buckets and spigots.
- Use a closed-loop drilling system where there will be no cuttings pit in the first phase and a dry cuttings pit only in the second phase
- Conduct interim reclamation of at least half the disturbed area
- Conduct reclamation without delay if a well is determined to be unproductive, or upon completion of commercial production
- Lay matting and/or conduct hydro seeding on the fill side of the pad.
- Grind trees and other woody material removed from the pad and add to the topsoil.
- Construct berms and install silt barrier fencing on the downslope sides of the proposed well pad.
- Install appropriately sized culverts or other stable stream crossings for any intermittent stream crossings
- Design roads and facility sites to minimize visual impacts.
- Use existing roads to the extent possible, upgrading as needed.
- Minimize the size of facility sites and types of roads to reduce surface disturbance.
- Minimize topsoil removal and stockpile stripped topsoil and protect it from erosion until reclamation activities commence.
- During reclamation, redistribute and reseed the topsoil on the disturbed areas, and protect and maintain reclaimed areas until the sites are fully stabilized
- Avoid removal of, or damage to, trees and woody stumps where possible.
- Mow the facility or well site instead of clearing vegetation to accommodate vehicles or equipment.
- Follow the contour (form and line) of the landscape
- Avoid locating ROWs on steep slopes.
- Share any common ROWs whenever possible.
- Co-locate multiple lines in the same trench
- Use natural (topography, vegetation) or artificial (berms) features to help screen facilities such as valves and metering stations.
- Paint facilities a color that would blend with the environment
- Contour disturbed areas to approximate the original contours of the landscape
- Develop a final reclamation plan that allows disturbed areas to be quickly absorbed into the natural landscape.
- Maintain buffer strips or use other sediment control measures to avoid sediment migration to stream channels as a result of construction activities

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- Implement an erosion control plan
- Implement proper storage of chemicals (including secondary containment)
- Keep sites clean, including containing trash in a portable trash cage. The trash cage would be emptied at a state-approved sanitary landfill
- Conduct snow removal activities in a manner that does not adversely impact reclaimed areas and areas adjacent to reclaimed areas.
- Avoid or minimize topographic alterations, activities on steep slopes, and disturbances within stream channels and floodplains to the extent possible.
- Keep a watering truck on site and water the access roads as necessary, especially during periods of high winds and/or low precipitation
- Require construction crews to carry fire extinguishers in their vehicles and/or equipment.
- Require construction crews be trained in the proper use of fire extinguishers.
- Contract with the local fire district to provide fire protection
- Plan transportation to reduce vehicle density
- Post speed limits on roads
- Avoid construction and vehicle use during wet conditions that could result in excessive rutting

#### Bald and Golden Eagle Protective Measures

- SWCA biologists conducted a 0.5-mile line of sight survey from the project area for bald and golden eagle nests. No nests were observed. No previously recorded nests are known to be present within 0.5 mile of the project area
- The nearest known golden eagle nest to the project area occurs approximately 3.19 miles southeast of the proposed Cornstalk #20H well pad
- Additional eagle surveys are planned for late autumn after leaf senescence

#### Migratory Bird Protective Measures

- Dakota-3 will conduct all construction outside of the migratory bird breeding season (between February 1 and July 15); or, if construction occurs during the bird breeding season, Dakota-3 will either

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mow, maintain, or completely remove vegetation within the Project construction area (access roads and proposed well pad disturbance) prior to July 16 to January 31 and maintain such conditions during the breeding season to deter migratory birds from nesting in the project area until construction is underway, weather conditions permitting; or

- o if the project areas are not mowed and maintained as indicated above, conduct an avian survey of the project area no greater than five days before construction begins, and if nests are discovered, notify BIA and USFWS.

- Dakota-3 will use a closed-loop drilling system for each of the proposed well pads and surround each proposed well pad with a berm.

#### ESA Protective Measures

- **Piping Plover and its Designated Critical Habitat, Interior Least Tern, and Pallid Sturgeon:** Erosion control mechanisms will be deployed to reduce the potential for sediment transport into drainages and subsequently Lake Sakakawea. The disturbed area will be reclaimed per the BIA's requirements as soon as practicable after construction is complete.
- **Whooping Crane:** If a whooping crane is sighted within 1 mile of the proposed project area, work will be stopped and the BIA and USFWS will be notified. In coordination with the USFWS, work may resume after the bird(s) leaves the area.
- Dakota-3 will use a closed-loop drilling system for each of the proposed well pads and surround each proposed well pad with a berm.
- Dakota-3 will install corrugated metal pipe (CMP) or culverts on the proposed bird access road so that the flow of the intermittent streams is not restricted.

With the implementation of the above standard BMPs, general design measures, and species-specific measures, no riparian areas or wetlands would be directly or indirectly affected by the proposed access roads or proposed well pads.

**No effects** to black-footed ferret or gray wolf are anticipated because of the low likelihood of their occurrence in the proposed project area and other factors discussed in Attachment 1. With implementation of the protective and other specific measures identified in Table 3 and Owner-Committed Measures discussed in this letter, the proposed Project **may affect but is not likely to adversely affect** the whooping crane, piping plover and its Designated Critical Habitat, the interior least tern, and the pallid sturgeon.

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We are requesting a concurrence letter be sent before December 4, 2011, so that it may be addressed in the final EA. Please send the concurrence letter to the addresses below.

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(701) 258-6622  
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Sincerely,



Courtney Lafferty  
Environmental Specialist  
[clafferty@swca.com](mailto:clafferty@swca.com)

Enclosures: Attachment 1

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## ATTACHMENT 1 - SPECIES ACCOUNTS AND EFFECTS DETERMINATIONS

### ENDANGERED SPECIES ACT

#### **Black-footed Ferret (*Mustela nigripes*)**

##### **Affects Determination: No Effect**

Black-footed ferrets are nocturnal, solitary carnivores of the weasel family that have been largely extirpated from the wild primarily due to range-wide decimation of the prairie dog (*Cynomys* sp.) ecosystem (Kothari et al. 1999). They have been listed by the U.S. Fish and Wildlife Service (USFWS) as endangered since 1967, and have been the object of extensive re-introduction programs (USFWS 2010a). Ferrets inhabit extensive prairie dog complexes of the Great Plains, typically composed of several smaller colonies in proximity to one another that provide a sustainable prey base. The *Black-footed Ferret Survey Guidelines for Compliance with the Endangered Species Act* (USFWS 1989) states that ferrets require black-tailed prairie dog (*Cynomys ludovicianus*) towns or complexes greater than 80 acres in size, and towns of this dimension may be important for ferret recovery efforts (USFWS 1988a). Prairie dog towns of this size are not found in the project area. In addition, this species has not been observed in the wild for more than 20 years. The proposed Project will have **no effect** on this species.

#### **Gray Wolf (*Canis lupus*)**

##### **Affects Determination: No Effect**

The gray wolf, listed as endangered in the United States in 1978, was believed extirpated from North Dakota in the 1920s and 1930s with only sporadic reports from the 1930s to present (Licht and Huffman 1996). The presence of wolves in most of North Dakota consists of occasional dispersing animals from Minnesota and Manitoba (Licht and Fritts 1994; Licht and Huffman 1996). Most documented gray wolf sightings that have occurred within North Dakota are believed to be young males seeking to establish territory (Hagen et al. 2005). The Turtle Mountains region in north-central North Dakota provides marginal habitat that may be able to support a very small population of wolves. The closest known pack of wolves is the Minnesota population located approximately 17.4 miles from the northeast corner of North Dakota.

The gray wolf uses a variety of habitats that support a large prey base, including montane and low-elevation forests, grasslands, and desert scrub (USFWS 2010b). Due to a lack of forested habitat and distance from Minnesota and Manitoba populations, as well as the troubled relationship between humans and wolves and their vulnerability to being shot in open habitats (Licht and Huffman 1996), the re-establishment of gray wolf populations in North Dakota is unlikely. Additionally, habitat fragmentation, in particular road construction as a result of oil and gas development, may further act as a barrier against wolf recolonization in western North Dakota. Therefore, the proposed Project will have **no effect** on the gray wolf.

#### **Whooping Crane (*Grus americana*)**

##### **Affect Determination: May Affect, Is Not Likely to Adversely Affect**

The whooping crane was listed as endangered in 1970 in the United States by the USFWS, and in 1978 in Canada. Historically, population declines were caused by shooting and destruction of nesting habitat in the prairies from agricultural development. Current threats to the species

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includes habitat destruction, especially suitable wetland habitats that support breeding and nesting, as well as feeding and roosting during their fall and spring migration (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007).

The July 2010 total wild population was estimated at 383 (USFWS 2010c). There is only one self-sustaining wild population, the Annas-Wood Buffalo National Park population, which nests in Wood Buffalo National Park and adjacent areas in Canada, where approximately 83% of the wild nesting sites occur (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007, USFWS 2010c). Dunn and McKenzie counties, including the project area, are within the primary migratory flyway of whooping cranes.

Whooping cranes probe the soil subsurface with their bills for foods on the soil or vegetation substrate (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007). Whooping cranes are omnivores and foods typically include agricultural grains, as well as insects, frogs, rodents, small birds, minnows, berries, and plant tubers. The largest amount of time during migration is spent feeding in harvested grain fields (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007). Studies indicate that whooping cranes use a variety of habitats during migration, in addition to cultivated croplands, and generally roost in small palustrine (marshy) wetlands within 1 kilometer (km) of suitable feeding areas (Howe 1987, 1989). Whooping cranes have been recorded in riverine habitats during their migration, with eight sightings along the Missouri River in North Dakota (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007:18). In these cases, they roost on submerged sandbars in wide, unobstructed channels that are isolated from human disturbance (Ambruster 1990).

Suitable whooping crane foraging habitat was observed near the project area. Project precautionary measures would be implemented if a whooping crane is sighted within 1 mile of the project area. Dakota-3 would cease all construction activities and notify the BIA and USFWS of the sighting, should a whooping crane be spotted within 1 mile of the project area. As a result, the proposed Project **may affect, but is not likely to adversely affect** the endangered whooping crane.

#### **Piping Plover (*Charadrius melodus*)**

**Affect Determination:** May Affect, Is Not Likely to Adversely Affect

The piping plover is a small shorebird which breeds only in three geographic regions of North America: the Atlantic Coast, the Northern Great Plains, and the Great Lakes. Piping plover populations were federally listed as threatened and endangered in 1985, with the Northern Great Plains and Atlantic Coast populations listed as threatened, and the Great Lakes population listed as endangered (USFWS 1985a).

Plovers in the Great Plains make their nests on open, sparsely vegetated sand or gravel beaches adjacent to alkali wetlands, and on beaches, sand bars, and dredged material islands of major river systems (USFWS 2002, 2010d). The shorelines of lakes of the Missouri River constitute significant nesting areas for the bird. Piping plovers nest on the ground, making shallow scrapes in the sand, which they line with small pebbles or rocks (USFWS 1985b). Anthropogenic alterations of the landscape along rivers and lakes where piping plover nest have increased the number and type of predators, subsequently decreasing nest success and

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chick survival (USFWS 2002, 2010d). The birds fly south by mid to late August to areas along the Texas coast and Mexico (USFWS 2002). The Northern Great Plains population has continued to decline despite federal listing, with population estimates of 1,500 breeding pairs in 1985 reduced to fewer than 1,100 in 1990. Low survival of adult birds has been identified as a factor (Root et al. 1992). Current conservation strategies include identification and preservation of known nesting sites, public education, and limiting or preventing shoreline disturbances near nests and hatched chicks (USFWS 1988b, 2010d).

Suitable shoreline habitat for breeding and nesting plovers does not occur in the project area, and Lake Sakakawea is a minimum of approximately 0.57 river miles and 0.50 straight line miles away from the proposed Project. It is unlikely that migrating plovers would visit the project area during their migration. Therefore, the proposed Project **may affect, but is not likely to adversely affect** piping plovers.

**Designated Critical Habitat of Piping Plover**  
**Affect Determination:** May Affect, Is Not Likely to Adversely Affect

The USFWS has designated critical habitat for the Great Lakes and Northern Great Plains populations of piping plover (USFWS 2002). Designated Critical habitat for the piping plover includes 183,422 acres and 1,207.5 river miles of habitat, including areas near the proposed Project, along the shoreline of Lake Sakakawea in McKenzie County, North Dakota (USFWS 2002).

It is unlikely that the Project will modify, alter, disturb, or affect the shoreline of Lake Sakakawea. Therefore, the proposed Project **may affect, but is not likely to adversely affect** designated critical habitat of the piping plover.

**Interior Least Tern (*Sterna antillarum*)**  
**Affect Determination:** May Affect, Is Not Likely to Adversely Affect

The population of the interior least tern is listed as endangered by the USFWS (1985b). This bird is the smallest member of the gull and tern family, measuring approximately 9 inches in length. Terns remain near flowing water, where they feed by hovering over and diving into standing or flowing water to catch small fish (USFWS 2010e).

The population of interior least terns breeds in isolated areas along the Missouri, Mississippi, Ohio, Red, and Rio Grande river systems, where they nest in small colonies. From late April to August, terns nest in a shallow hole scraped in an open sandy area, gravel patch, or exposed flat and bare sandbars along rivers, sand and gravel pits, or lake and reservoir shorelines. The adults continue to care for chicks after they hatch. Least terns in North Dakota will often be found sharing sandbars with the piping plover, a threatened species (USFWS 2010e).

Census data indicate over 8,000 interior least terns in the population. In North Dakota, the least tern is found mainly on the Missouri River from Garrison Dam south to Lake Oahe, and on the Missouri and Yellowstone rivers upstream of Lake Sakakawea (USFWS 1990a, 2010e). Approximately 100 pairs breed in North Dakota (USFWS 2010e). Details of their migration are not known, but their winter range is reported to include the Gulf of Mexico and Caribbean Islands (USFWS 1990a, 2010e).

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Loss of suitable breeding and nesting habitat for terns has resulted from dam construction and river channelization on major rivers throughout the Mississippi, Missouri, and Rio Grande River systems. River and reservoir changes have led to reduced sandbar formation and other shoreline habitats for breeding, resulting in population declines. In addition, other human shoreline disturbances affect the species (USEWS 1990a). Critical habitat has not been designated for the species (USEWS 2010c).

Current conservation strategies include identification and avoidance of known nesting areas, public education, and limiting or preventing shoreline disturbances near nests and hatched chicks (USEWS 2010c).

It is unlikely that terns would visit the upland habitats present in the project area. Therefore, the proposed Project **may affect, but is not likely to adversely affect** endangered least terns.

#### **Pallid Sturgeon (*Scaphirhynchus albus*)**

##### **Affect Determination: May Affect, Is Not Likely to Adversely Affect**

The pallid sturgeon was listed as Endangered in 1990 in the United States by the USEWS (1990b). The primary factor leading to the decline of this species is the alteration of habitat through river channelization, creation of impoundments, and alteration of flow regimes (USEWS 1990b). These alterations within the Missouri River have blocked movements to spawning, feeding, and rearing areas, destroyed spawning habitat, altered flow conditions which can delay spawning cues, and reduced food sources by lowering productivity (USEWS 2007a). The fundamental elements of pallid sturgeon habitat are defined as the bottom of swift waters of large, turbid, free-flowing rivers with braided channels, dynamic flow patterns, flooding of terrestrial habitats, and extensive microhabitat diversity (USEWS 1990b).

The pallid sturgeon population which is found near the project area occurs from the Missouri River below Fort Peck Dam to the headwaters of Lake Sakakawea and the lower Yellowstone River up the confluence of the Tongue River, Montana (USEWS 2007a). This population consists of approximately 136 wild adult pallid sturgeon (USEWS 2007a). Hatchery reared sturgeon have also been stocked since 1998. The pallid sturgeon has been found to utilize the 25 km of riverine habitat that would be inundated by Lake Sakakawea at full pool (Hramblett 1996 per USEWS 2007a). Larval pallid sturgeons have also been found to drift into Lake Sakakawea. While the majority of pallid sturgeons are found in the headwaters of Lake Sakakawea, North Dakota Game and Fish have caught and released pallid sturgeon in nets set in 80 to 90 feet of water between the New Town and Van Hook area. Based on this information, pallid sturgeon could be found throughout Lake Sakakawea (personal communication, email from Steve Krentz, Pallid Sturgeon Project Lead, U.S. Fish and Wildlife Service, to Mike Cook, Aquatic Ecologist, SWCA Environmental Consultants, September 3, 2010).

Suitable habitat for pallid sturgeon does not occur in the project area, and Lake Sakakawea is a minimum of 0.57 river miles away from the proposed Project. Potential pollution and sedimentation occurring within the project area are concerns for downstream populations of endangered pallid sturgeon. Activities associated with the construction, production, or reclamation of the proposed project area is not anticipated to adversely affect water quality and

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subsequently, the pallid sturgeon. Therefore, the proposed Project **may affect, but is not likely to adversely affect** pallid sturgeon.

**Dakota Skipper (*Hesperia dacotae*)**

**Affect Determination:** May Affect, Is Not Likely to Adversely Affect

The Dakota skipper is a small butterfly with a 1-inch wingspan and is found primarily in undisturbed native tall grass and upland dry Northern mixed grass prairie areas with a high diversity of wildflowers and grasses (Committee on the Status of Endangered Wildlife in Canada 2003). The Dakota skipper appears to require a range of precipitation-evaporation ratios between 60 and 165 and a soil pH between 7.2 and 7.9 (McCabe 1981). Larvae feed on grasses, favoring little bluestem. Adults commonly feed on nectar of flowering native forbs such as harebell (*Campanula rotundifolia*), wood lily (*Lilium philadelphicum*), and purple coneflower (*Echinacea angustifolia*). The species is threatened by conversion of native prairie to cultivated agriculture or shrublands, over-grazing, invasive species, gravel mining, and mudding (USFWS 2005). Suitable habitat does exist within the proposed Project areas, therefore the project **may affect, but is not likely to adversely affect** this species. The use of best management practices and conservation guidelines (USFWS 2007b) during construction and operation and immediate reclamation of short-term disturbance should decrease direct, indirect, and cumulative impacts to this species.

**Sprague's Pipit (*Arreus spragueii*)**

**Affect Determination:** May Affect, Is Not Likely to Adversely Affect

The Sprague's pipit is a small passerine bird that is native to the North American grasslands. It is a ground nester that breeds and winters on open grasslands and feeds mostly on insects and spiders and some seeds. The Sprague's pipit is closely tied with native prairie habitat and breeds in the north-central United States in Minnesota, Montana, North Dakota, and South Dakota as well as south-central Canada (USFWS 2000). Wintering occurs in the southern states of Arizona, Texas, Oklahoma, Arkansas, Mississippi, Louisiana, and New Mexico. Sprague's pipit are not known to occur within the project area; however, suitable habitat does occur. The proposed Project **may affect, but is not likely to adversely affect** this species. The use of best management practices and conservation guidelines (USFWS 2007b) during construction and operation and immediate reclamation of short-term disturbance should decrease direct, indirect, and cumulative impacts to this species.

**MIGRATORY BIRD TREATY ACT / THE BALD AND GOLDEN EAGLE  
PROTECTION ACT**

**Bald Eagle (*Haliaeetus leucocephalus*)**

**Status:** Delisted in 2007, protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act

**Effects of Project:** No adverse effects anticipated

Suitable nesting or foraging habitat for bald eagles includes old growth trees relatively close (usually less than 1.24 miles [Hagen et al. 2005]) to perennial water bodies. The project area does not contain old growth trees and is located at the closest approximately, 0.50 straight line

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miles from Lake Sakakawea. No nests or eagles were observed within 0.5 mile line-of-sight during the field surveys. Therefore, no adverse effects are anticipated. However, the possibility of transient, flying bald eagle individuals traversing the project area does exist.

**Golden Eagle (*Aquila chrysaetos*)**

**Status:** Not Listed; protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act

**Effects of Project:** No adverse effects anticipated

No eagles or nests were observed during the field surveys; however, golden eagles may occur within or near the project area. The closest known golden eagle nest occurs approximately 3.19 miles southeast of the proposed Cornstalk #20H well pad. The golden eagle prefers habitat characterized by open prairie, plains, and forested areas. Usually, golden eagles can be found in proximity to badland cliffs which provide suitable nesting habitat. However, no primary or secondary indication of golden eagle presence, including nests, was observed within or near the project area during the field survey. Therefore, the Project is unlikely to cause any adverse effects to golden eagles.

**References Cited**

Ambrosester, M.J. 1990. Characterization of habitat used by whooping cranes during migration. Biological Rept. 90(41) 1-16

Bramblett, R.G. 1996. Habitats and movements of pallid and shovelnose sturgeon in the Yellowstone and Missouri Rivers, Montana and North Dakota. Doctoral dissertation Montana State University, Bozeman

Canadian Wildlife Service and U.S. Fish and Wildlife Service. 2007. International recovery plan for the whooping crane. Ottawa. Recovery of Nationally Endangered Wildlife (RENEW), and U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Committee on the Status of Endangered Wildlife in Canada. 2003. COSEWIC Assessment and Status Report on the Dakota Skipper *Hesperia dacotae* in Canada. Ottawa. Committee on the Status of Endangered Wildlife in Canada

Hagen, S.K., P.T. Isakson, and S.R. Dyke. 2005. *North Dakota Comprehensive Wildlife Conservation Strategy*. North Dakota Game and Fish Department, Bismarck, ND.

Howe, M.A. 1987. Habitat use by migrating whooping cranes in the Apsaras-Wood Buffalo corridor. Pages 303-311, in J.C. Lewis and J.W. Ziewitz, eds. Proc. 1985 Crane Workshop. Platte River Whooping Crane Habitat Maintenance Trust and USEWS, Grand Island, Nebraska.

1989. Migration of radio-marked whooping cranes from the Apsaras-Wood Buffalo population: Patterns of habitat use, behavior, and survival. USEWS Technical Report.

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- Kothlar, N.B., H.W. Baker, A.D. Wheeler, and G. Plumb. 1999. A critical review of assumptions about the prairie dog as a keystone species. *Environmental Management* 24(2):177-192.
- Licht, D.S., and S.H. Truitt. 1994. Gray wolf (*Canis lupus*) occurrences in the Dakotas. *American Midland Naturalist* 132:74-81.
- Licht, D.S., and L.E. Huffman. 1996. Gray wolf status in North Dakota. *The Prairie Naturalist* 28(4):169-174.
- McCabe, T.L. 1981. The Dakota skipper (*Hesperia dacotae* (Skinner): Range and biology, with special reference to North Dakota. *Journal of the Lepidopterists' Society* 35(3):179-193.
- Rust, B.G., Ryan, M.R., and Mayer, P.M., 1992. Piping plover survival in the Great Plains. *Journal of Field Ornithology*, Vol. 63, No. 1, pp. 10-15.
- U.S. Fish and Wildlife Service (USFWS). 1978. Reclassification of the gray wolf in the United States and Mexico, with determination of critical habitat in Michigan and Minnesota. *Federal Register* 43(47):9607-9615.
- 1985a. Endangered and Threatened Wildlife and Plants: Determination of Endangered and Threatened Status for the Piping Plover. *Federal Register* 50(238):50726-50733.
- 1985b. Interior population of the least tern. *Federal Register* 50 FR 21784-21792, May 28, 1985.
- 1988a. Black-footed Ferret Recovery Plan. U.S. Fish and Wildlife Service, Denver, Colorado. 154 pp.
- 1988b. Great Lakes and Northern Great Plains Piping Plover Recovery Plan. U.S. Fish and Wildlife Service, Twin Cities, MN. 160 pp.
1989. Black-footed Ferret Survey Guidelines for Compliance with the Endangered Species Act. Denver and Albuquerque. U.S. Fish and Wildlife Service.
- 1990a. Interior Population of the Least Tern Recovery Plan. U.S. Fish and Wildlife Service, Twin Cities, MN. 160 pp.
- 1990b. Endangered and threatened wildlife and plants: Determination of endangered status for the pallid sturgeon. *Federal Register* 55(173):36641-36647.
2002. Designation of Critical Habitat for the Northern Great Plains Breeding Population of the Piping Plover: Final Rule. *Federal Register*. September 11, 2002 (Volume 67, Number 176). Rules and Regulations, pp. 57637-57717.

Mr. Towne  
September 17, 2011  
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. 2005. Endangered and Threatened Wildlife and Plants; Review of Native Species that are Candidates or Proposed for Listing as Endangered or Threatened. Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions. Proposed Rule. Federal Register 70(90): 24870-24934.

. 2007a. Pallid sturgeon (*Scaphirhynchus albus*) 5-year review summary and evaluation. U.S. Fish and Wildlife Service, Pallid Sturgeon Recovery Coordinator, Billings, Montana.

. 2007b. Dakota skipper conservation guidelines *Hesperia dacotae* (Skinner) (Lepidoptera: Hesperiidae). U.S. Fish and Wildlife Service, Twin Cities Field Office. Available online at <http://www.fws.gov/midwest/endangered/insects/dask-cons-guid2007.pdf>. Accessed September 7, 2010.

. 2010a. Black-footed ferret. Available online at <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A004>. Accessed September 7, 2010.

. 2010b. Gray wolf. Available online at <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A0010>. Accessed September 7, 2010.

. 2010c. Whooping crane. Available online at <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=B003>. Accessed September 2, 2010.

. 2010d. Piping plover. Available online at <http://www.fws.gov/mountain-prairie/species/birds/pipingplover>. Accessed September 7, 2010.

. 2010e. Least Tern (interior population). Available online at <http://www.fws.gov/southwest-es/oklahoma/ternern.htm>. Accessed September 7, 2010.

. 2010f. Sprague's Pipit. Available online at <http://www.fws.gov/mountain-prairie/species/birds/spraguespipit/index.html>. Accessed December 28, 2010.

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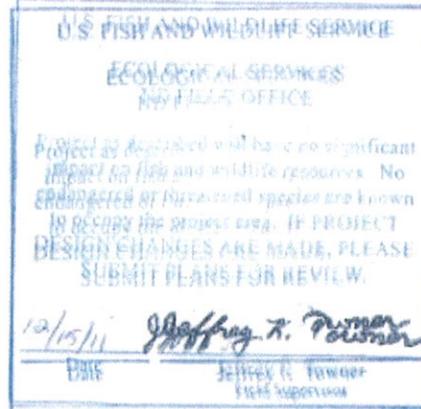
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November 4, 2011

Jeffrey K. Towner  
U.S. Fish and Wildlife Service  
3425 Miriam Avenue  
Bismarck, ND 58501

**RE: Request for Concurrence Letter**



Dear Mr. Towner,

The Bureau of Indian Affairs (BIA) is preparing an environmental assessment (EA) under the National Environmental Policy Act (NEPA), in cooperation with the Bureau of Land Management (BLM). The proposed action (Project) includes approval by the BIA and BLM for the construction, drilling, completion, and production of three exploratory oil and gas well pads, and their associated gathering pipelines (Cornstalk #20H, Edward Goodbird #9H, and Independence #2-35H) on the Fort Berthold Indian Reservation (Reservation) by Dakota-3 E&P Company, LLC (Dakota-3).

The proposed surface locations for the three well pads are summarized below, and illustrated in Figures 1 through 4.

- **Cornstalk #20H:** NW¼ SW¼ of Section 20, Township (T) 149 North (N), Range (R) 94 West (W), McKenzie County, North Dakota
- **Edward Goodbird #9-9H:** NW¼ NW¼ of Section 9, T149N, R91W, Dunn County, North Dakota
- **Independence #2-35H:** NW¼ NE¼ Section 11, T149N, R93W, Dunn County, North Dakota

**APPENDIX D**  
**General Consultation and Scoping Letter**

Environmental Assessment: Dakota-3 E&P Company, LLC, Corn Stalk #20H, Edward Goodbird #9-9H, and Independence #2-35H (February 2012)



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October 07, 2011

Dear Interested Party:

The Bureau of Indian Affairs (BIA) is preparing an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) in cooperation with the Bureau of Land Management (BLM). The proposed action includes approval by the BIA and BLM for the construction, drilling, completion, and production of an exploratory oil and gas well pad to be situated on the Fort Berthold Indian Reservation by Dakota-3 E&P Company, LLC (Dakota-3). This proposed location will be called the Independence #11-35 well pad and located in the NW1/4 NE1/4 of Section 11, Township 149 North, Range 93 West, Dumas County, North Dakota.

The exploratory oil and gas wells will be located within their own 1,280-acre spacing unit and positioned to utilize existing roadways for access to the greatest extent possible. The drilling of this well site is proposed to begin as early as January 05, 2011.

The associated facilities required for the project would include roads, utility lines, production facilities (production tanks), and equipment storage facilities. In general, oil would be stored on location in tank batteries and sent through pipelines to the nearest processing plant or sales point. In the future, trucks may be used to transport oil from the well location to processing plants or sales points. Produced water would be transported by pipeline to approved water disposal wells. Any gas produced from these wells would initially be flared until a gas pipeline could be planned, permitted, and constructed, if necessary. Dakota-3 would utilize existing roads and previous disturbances to the greatest extent practicable. Project development would result in the construction of approximately 55 feet of new or upgraded/improved roads to access the well pad. Existing highways and arterial roads would provide the main access to the project area.

To ensure that any effects on social, economic, and environmental issues are analyzed accurately, we solicit your views and comments on the proposed action, pursuant to Section 102(2)(D)(IV) of NEPA, as amended. We are interested in developments proposed or underway that should be considered in connection with the proposed project. We also ask your assistance in identifying any property or resources that you own, manage, oversee or otherwise value that might be adversely impacted. Please send your replies and requests for additional project information to:

SWCA Environmental Consultants  
Courtney Lafferty, Environmental Specialist  
116 North 4th Street, Suite 200  
Bismarck, North Dakota 58501  
(701) 258-6622  
clafferty@swca.com

Comments should be submitted before November 07, 2011 so that they may be addressed in the final document. Questions for the BIA can be directed to Marilyn Benier, Regional Environmental Scientist, or Mark Herman, Environmental Engineer, at (605) 226-7656.

Sincerely,

A handwritten signature in blue ink that appears to read "Courtney Lafferty".

Courtney Lafferty

*Environmental Assessment: Dakota-3 E&P Company, LLC, Corn Stalk #20H, Edward Goodbird #9-9H, and Independence #2-35H (February 2012)*



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August 18, 2011

Dear Interested Party:

The Bureau of Indian Affairs (BIA) is preparing an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) in cooperation with the Bureau of Land Management (BLM). The proposed action includes approval by the BIA and BLM for the construction, drilling, completion, and production of four exploratory oil and gas wells to be situated on two dual well pads on the Fort Berthold Indian Reservation by Dakota-3 E&P Company, LLC (Dakota-3). These wells will be located on the proposed Cornstalk #29H well pad located in the NW 1/4 SW 1/4 of Section 20, Township (T) 149 North (N), Range (R) 94 West (W), McKenzie County, North Dakota, and on the proposed White Fingernails #9H well pad located in the NW 1/4 NW 1/4 of Section 9, T 149N, R 91W, Dunn County, North Dakota.

The proposed Cornstalk #29H well pad would be located within a 1,200-acre spacing unit, while the proposed White Fingernails #9H well pad would be located within a 640-acre spacing unit. The drilling of these well sites is proposed to begin as early as November 18, 2011.

The associated facilities required by the project would include roads, utility lines, production facilities (production tanks), and equipment storage facilities. In general, oil would be stored on location in tank batteries and sent through pipelines to the nearest processing plant or sales point. In the future, trucks may be used to transport oil from the well location to processing plants or sales points. Produced water would be transported by pipeline to approved water disposal wells. Any gas produced from these wells would initially be flared until a gas pipeline could be planned, permitted, and constructed, if necessary. In addition to using the existing roads for access, project development would result in the construction of approximately one mile of new or upgraded/improved roads to access the well pads. The Cornstalk #29H well pad would encompass approximately 4.01 acres (i.e., 2.00 acres per well), while the White Fingernails #9H well pad would encompass approximately 4.51 acres (i.e., 2.25 acres per well). These well pads will be constructed using a two phase plan. Phase one would be the initial construction and drilling of one well, while phase two would be the expansion and addition of the second well.

To ensure that any effects on social, economic, and environmental issues are analyzed accurately, we solicit your views and comments on the proposed action, pursuant to Section 102(2)(D)(iv) of NEPA, as amended. We are interested in developments proposed or underway that should be considered in connection with the proposed project. We also ask your assistance in identifying any property or resources that you own, manage, oversee or otherwise value that might be adversely impacted. Please send your replies and requests for additional project information to:

SWCA Environmental Consultants  
Courtney Lafferty, Environmental Specialist  
116 North 4th Street, Suite 200  
Bismarck, North Dakota 58501  
(701) 258-6622  
clafferty@swca.com

Comments should be submitted before September 18, 2011 so that they may be addressed in the final document. Questions for the BIA can be directed to Marilyn Bersler, Regional Environmental Scientist, or Mark Herman, Environmental Engineer, at (605) 226-7656.

Sincerely,

Courtney Lafferty

# **Notice of Availability and Appeal Rights**

Dakota-3 E&P: Three Bakken/Three Forks Exploratory Oil and Gas Well Pads -  
Corn Stalk #20H Pad (Two Potential Wells)  
Edward Goodbird #9-9H (Three Potential Wells)  
Independence #2-35H (Four Potential Wells)

**The Bureau of Indian Affairs (BIA) is planning to issue administrative approvals related to an Environmental Assessment to Authorize Land Use for the Installation of Three Bakken/Three Forks oil and gas wells from on the Fort Berthold Reservation as shown on the attached map. Construction by Dakota-3 E&P Resources is expected to begin in 2012.**

**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 Earl Silk, 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 March 13, 2012, 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.

