



United States Department of the Interior

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



IN REPLY REFER TO:
DESCRM
MC-208

JAN 07 2011

MEMORANDUM

TO: Superintendent, Fort Berthold Agency

FROM: ^{Acting} Regional Director, Great Plains Region

SUBJECT: Environmental Assessment Addendum and Finding of No Significant Impact

In compliance with the regulations of the National Environmental Policy Act (NEPA) of 1969, as amended, for an Addendum to Environmental Assessment to Authorize Land Use for an Access Road Connecting the Dakota-3 Skunk Creek #1-12H Well Pad to the Dakota-3 Packineau #15-32H Well Pad on the Fort Berthold Reservation, an Environmental Assessment (EA) Addendum has been completed and a Finding of No Significant Impact (FONSI) has been issued.

All the necessary requirements of the National Environmental Policy Act have been completed. Attached for your files is a copy of the EA, FONSI and Notice of Availability. The Council on Environmental Quality (CEQ) regulations require that there be a public notice of availability of the FONSI (1506.6(b)). Please post the attached notice of availability at the agency and tribal buildings for 30 days.

If you have any questions, please call Marilyn Bercier, Regional Environmental Scientist, Division of Environment, Safety and Cultural Resources Management, at (605) 226-7656.

Attachment

cc: Tex Hall, Chairman, Three Affiliated Tribes (with attachment)
Elgin Crows Breast, THPO (with attachment)
Derek Enderud, BLM, Dickenson, ND (with attachment)
John Shelman, US Army Corps of Engineers
Jeffrey Hunt, Virtual One Stop Shop

Finding of No Significant Impact

Zenergy Operating Company, LLC

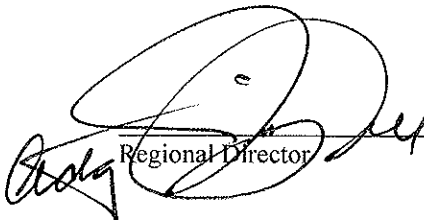
**Addendum to Environmental Assessment to Authorize Land Use for an Access Road
Connecting the Dakota-3 Skunk Creek #1-12H Well Pad to the Dakota-3
Packineau #15-32H Well Pad
Fort Berthold Indian Reservation
Dunn County, North Dakota**

The U.S. Bureau of Indian Affairs (BIA) has received a proposal for an addendum to authorize the land use by Zenergy for the construction of an access road on tribal land originating from the north corner of the Dakota-3 Skunk Creek #1-12H Well Pad, approximately 12 miles southeast of Mandaree, North Dakota and connect to the Dakota-3 Packineau #15-32H access road. Associated federal actions by BIA include determinations of effect regarding cultural resources, approvals of leases, rights-of-way and easements, and a positive recommendation to the Bureau of Land Management regarding the Applications for Permit to Drill.

Potential of the proposed actions to impact the human environment is analyzed in the attached addendum to an existing Environmental Assessment (EA), as required by the National Environmental Policy Act. Based on the recently completed addendum to the EA, I have determined that the proposed project will not significantly affect the quality of the human environment. No Environmental Impact Statement is required for any portion of the proposed activities.

This determination is based on the following factors:

1. Agency and public involvement was solicited and environmental issues related to the proposal were identified.
2. Protective and prudent measures were designed to minimize impacts to air, water, soil, vegetation, wetlands, wildlife, public safety, water resources, and cultural resources. The remaining potential for impacts was disclosed for both the Proposed Action and the No Action Alternative.
3. Guidance from the U.S. Fish and Wildlife Service has been fully considered regarding wildlife impacts, particularly in regard to threatened or endangered species. This guidance includes the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) (MBTA), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) (NEPA), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250) (BGEPA), Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds", and the Endangered Species Act (16 U.S.C. 1531 et seq.) (ESA).
4. The proposed actions are designed to avoid adverse effects to historic, archeological, cultural and traditional properties, sites and practices. The Tribal Historic Preservation Officer has concurred with BIA's determination that no historic properties will be affected.
5. Environmental justice was fully considered.
6. Cumulative effects to the environment are either mitigated or minimal.
7. No regulatory requirements have been waived or require compensatory mitigation measures.
8. The proposed projects will improve the socio-economic condition of the affected Indian community.


Regional Director

1/7/11
Date

**ENVIRONMENTAL ASSESSMENT
Addendum**

United States Bureau of Indian Affairs

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



Zenergy Operating Company, LLC

**Addendum to Environmental Assessment to Authorize Land Use for an Access Road
Connecting the Dakota-3 Skunk Creek #1-12H Well Pad to the Dakota-3
Packineau #15-32H Well Pad**

Fort Berthold Indian Reservation

January 2011

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

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A Right-of-Way for the Access Road Connecting the Dakota-3 Skunk Creek #1-12H Well Pad and the Dakota-3 Packineau #15-32H Well Pad	

1. Purpose and Need for the Proposed Action

Zenergy Operating Company, LLC (Zenergy) is drilling an exploratory oil and gas well on the Fort Berthold Indian Reservation to evaluate and possibly develop the commercial potential of natural resources. Developments have been proposed on land held in trust by the United States in Dunn County, North Dakota. The Bureau of Indian Affairs (BIA) is the surface management agency for potentially affected tribal lands and individual allotments. The BIA also holds title to subsurface mineral rights. The economic development of available resources and associated BIA actions are consistent with BIA's general mission. Leasing and development of mineral resources offers substantial economic benefits to the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nations and to individual tribal members.

The purpose of the proposed action is to authorize the land use by Zenergy for the construction of an access road connecting the Dakota-3 Skunk Creek #1-12H well pad to the Dakota-3 Packineau #15-32H well pad. This access road will have a temporary right-of-way (ROW) of 100 feet and a construction ROW of 66 feet.

2. Authorities

Oil and gas exploration and development activities are conducted under authority of the Indian Mineral Leasing Act of 1938 (25 United States Code [USC] 396a, et seq.), the Indian Mineral Development Act of 1982 (25 USC 2101, et seq.), and the Energy Policy Act of 2005 (42 USC 15801, et seq.).

3. Legal Land Description for Proposed Action

The proposed access road connecting the Dakota-3 Skunk Creek #1-12H well pad to the Dakota-3 Packineau #15-32H well pad would be located on tribal land originating from the north corner of the well pad, approximately 12 miles southeast of Mandaree, North Dakota. More specifically, the proposed access road would be located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, Township (T) 148 North (N), Range (R) 93 West (W), 5th Prime Meridian (P.M.), Dunn County, North Dakota, and intersect with the Dakota-3 Packineau #15-32H access road on the section line in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T148N, R93W, 5th P.M., Dunn County, North Dakota.

4. Scope of Work for Proposed Action

Zenergy proposes to construct an access road connecting the Dakota-3 Skunk Creek #1-12H well pad to the Dakota-3 Packineau #15-32H well pad. Approximately 982 feet of new access road would be constructed. A maximum disturbed ROW width of 66 feet for the access road would result in approximately 1.5 acres of new surface disturbance. 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.

Construction would follow road design standards outlined in the Bureau of Land Management (BLM) Gold Book (BLM and U.S. Forest Service 2007¹). At a minimum, 6 inches of topsoil would be removed from the access road corridors. This stockpiled topsoil would then be placed on the outside slopes of the ditches following road construction. The ditches would be reseeded as quickly as possible using a seed mixture determined by the BIA. The access road 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 well. The access road plat is provided in Appendix A.

5. Surveys

SWCA Environmental Consultants (SWCA) conducted natural resource surveys for threatened and endangered species, migratory birds, bald and golden eagles, and wetlands on April 13, 2010. BIA Environmental Specialist, Darryl Turcotte, approved the location of the access road on July 22, 2010. No protected species were observed during the survey.

A cultural resource inventory of this access road was conducted by personnel of SWCA Environmental Consultants, using an intensive pedestrian methodology. Approximately 3.82 acres were inventoried on April 13, 2010 (Lechert and Cooper 2010; Klitzka 2010). No historic properties were located that appear to possess the quality of integrity and meet at least one of the criteria (36 CFR 60.6) for inclusion on the National Register. As the lead federal agency, and as provided for in 36 CFR 800.5, on the basis of the information provided, BIA reached a determination of **no historic properties affected** for this undertaking. This determination was communicated to the THPO on November 30, 2010; however, the THPO did not respond within the allotted 30 day comment period.

Klitzka, Nelson

(2010) Addendum to the Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Packineau #15-32H Well Pad and Access Road, Fort Berthold Indian Reservation, Dunn County, North Dakota, Due to Well Pad Revisions. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

Lechert, Stephanie, and Judith Cooper

(2010) A Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Packineau #15- 32H Well Pad and Access Road, Fort Berthold Indian Reservation, Dunn County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

6. Potential Effects

Potential impacts to cultural resource sites would occur as a result of direct disturbance and/or the loss of sites eligible for the National Register of Historic Places. Further, potential impacts to natural resources may include the loss of native vegetation and wildlife habitats; soil removal and mixing; and erosion during construction. However, potential impacts as a result

¹ Bureau of Land Management and U.S. Forest Service

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.

of the proposed action were mitigated via field survey and subsequent avoidance of any eligible cultural resource sites within the proposed ROW, implementing erosion control features, completing reclamation of the pipeline corridors with native grasses and other appropriate native vegetation, and stockpiling and re-using topsoil for reclamation.

Potential indirect impacts include noise and other disturbances to wildlife during construction and the introduction of noxious weeds. Impacts would be mitigated through avoidance of any federally listed threatened or endangered species or wetlands, avoidance of nesting migratory birds, implementing best management practices to control the introduction of noxious weeds, and minimizing the length of time between initial construction and reclamation of the temporary ROW. These mitigation measures are consistent with the approved National Environmental Policy Act (NEPA) document, which received a finding of no significant impact (January 2010).

Based on the completion of resource surveys, the supplementary assessment of the potential impacts of the proposed action, and the mitigation measures committed to by Zenergy, no significant impacts to natural and cultural resources are anticipated.

7. Applicable NEPA Document(s)

Environmental Assessment: Zenergy Operating Company, LLC, Three Bakken Exploratory Oil Wells: D-3 Adam Good Bear #15-22H, D-3 Mandan #13-14H, and D-3 Skunk Creek #1-12H (January 2010).

8. Other Relevant Documentation

A Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Packineau #15-32H Well Pad and Access Road, Fort Berthold Indian Reservation, Dunn County, North Dakota (June 2010) (Submitted to the Bureau of Land Management in Dickinson, North Dakota).

9. NEPA Adequacy Criteria

This document has identified a previously prepared NEPA document, *Environmental Assessment: Zenergy Operating Company, LLC, Three Bakken Exploratory Oil Wells: D-3 Adam Good Bear #15-22H, D-3 Mandan #13-14H, and D-3 Skunk Creek #1-12H (January 2010)*, which adequately describes the environmental consequences of the newly proposed action described herein, and meets the following NEPA Adequacy Criteria.

1. The proposed action is substantially the same action and at the site specifically analyzed in the existing NEPA document.
2. The range of alternatives is reasonable with respect to the current proposed action in the existing NEPA document, which appropriately considers and analyzes current environmental concerns, interests, and resource values.
3. The existing analysis and conclusions are adequate in the existing NEPA document. The analysis is still valid in light of new studies or resource assessment information.

Addendum to Environmental Assessment to Authorize Land Use for an Access Road Connecting the Dakota-3 Skunk Creek #1-12H Well Pad to the Dakota-3 Packineau #15-32H Well Pad (January 2011)

4. The methodology and analytical approach used in the existing NEPA document continues to be appropriate for the proposed action.
5. The direct and indirect impacts of the proposed action are unchanged from those identified in the existing NEPA document.
6. The cumulative impacts that would result from implementation of the proposed action are unchanged from those analyzed in the existing NEPA document.
7. A 30-day comment period involving public input and interagency review was used in the development of the existing NEPA document.

Notice of Availability and Appeal Rights

**Zenergy: Addendum to Environmental Assessment to Authorize Land Use for an Access Road
Connecting the Dakota-3 Skunk Creek #1-12H Well Pad to the Dakota-3
Packineau #15-32H Well Pad**

The Bureau of Indian Affairs (BIA) is planning to issue administrative approvals related to installation of an Addendum to Environmental Assessment to Authorize Land Use for an Access Road Connecting the Dakota-3 Skunk Creek #1-12H Well Pad to the Dakota-3 Packineau #15-32H Well Pad as shown on the attached map. Construction by Zenergy is expected to begin in the Winter/Spring 2011.

An environmental assessment (EA) determined that proposed activities will not cause significant impacts to the human environment. An environmental impact statement is not required. Contact Howard Bemer, Superintendent at 701-627-4707 for more information and/or copies of the EA and the Finding of No Significant Impact (FONSI).

The FONSI is only a finding on environmental impacts – it is not a decision to proceed with an action and *cannot* be appealed. BIA's decision to proceed with administrative actions *can* be appealed until February 7, 2011, by contacting:

**United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Indian Appeals
801 N. Quincy Street, Suite 300, Arlington, Va 22203.**

Procedural details are available from the BIA Fort Berthold Agency at 701-627-4707.

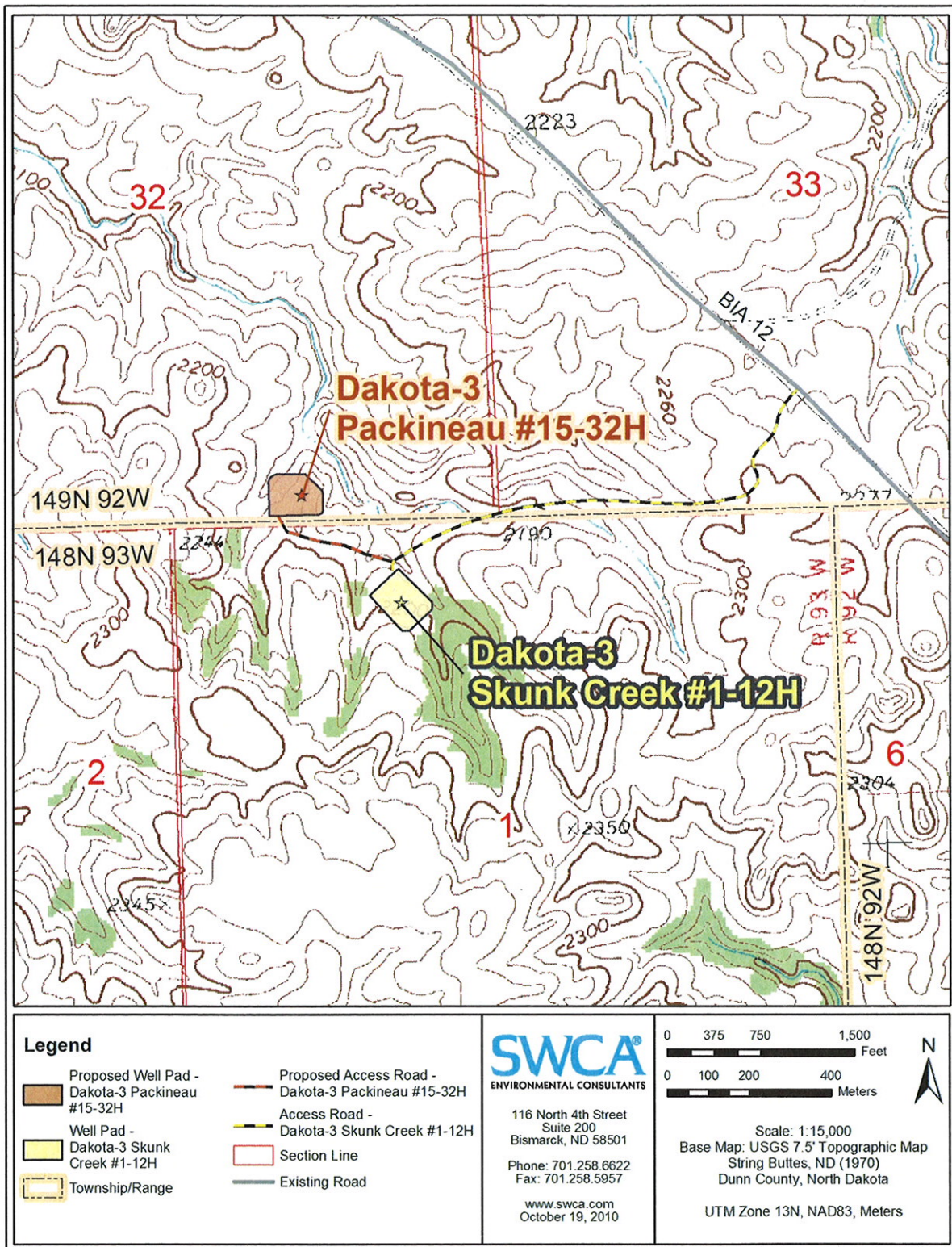


Figure 1. Proposed access road connecting the Dakota-3 Skunk Creek #1-12H well pad to the Dakota-3 Packineau #15-32H well pad.

Addendum to Environmental Assessment to Authorize Land Use for an Access Road Connecting the Dakota-3 Skunk Creek #1-12H Well Pad to the Dakota-3 Packineau #15-32H Well Pad (January 2011)



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Great Plains Regional Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401



IN REPLY REFER TO:
DESCRM
MC-208

NOV 30 2010

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 the access road to an oil well pad in Dunn County, North Dakota. Approximately 3.2 acres were intensively inventoried using a pedestrian methodology. Potential surface disturbances are not expected to exceed the area depicted in the enclosed report. No historic properties were located which appear to possess the quality of integrity and meet at least one of the criteria (36 CFR 60.4) for inclusion on the National Register of Historic Places. No properties were located that appear to qualify for protection under the American Indian Religious Freedom Act (42 USC 1996).

As the surface management agency, and as provided for in 36 CFR 800.5, we have therefore reached a determination of **no historic properties affected** for this undertaking. Catalogued as **BIA Case Number AAO-1823/FB/10**, the proposed undertaking, location, and project dimensions are described in the following report:

Klitzka, Nelson
(2010) Addendum to the Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Packineau #15-32H Well Pad and Access Road, Fort Berthold Indian Reservation, Dunn County, North Dakota, Due to Well Pad Revisions. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

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

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

Sincerely,

Regional Director

Enclosure

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

APPENDIX A

**Right-of-Way for the Access Road Connecting
the Dakota-3 Skunk Creek #1-12H Well Pad
and the Dakota-3 Packineau #15-32H Well Pad**

Addendum to Environmental Assessment to Authorize Land Use for an Access Road Connecting the Dakota-3 Skunk Creek #1-12H Well Pad to the Dakota-3 Packineau #15-32H Well Pad (January 2011)

