



# 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

APR 05 2011

## 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, for an addendum to an Environmental Assessment to authorize land use for gathering pipelines connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase 1B-HWY 22 trunk pipeline by Zenergy on the Fort Berthold Reservation, an Environmental Assessment (EA) has been completed and a Finding of No Significant Impact (FONSI) has been issued.

All the necessary requirements of the National Environmental Policy Act have been completed. Attached for your files is a copy of the EA, FONSI and Notice of Availability. The Council on Environmental Quality (CEQ) regulations require that there be a public notice of availability of the FONSI (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, THPO (with attachment)  
Derek Enderud, BLM, Dickinson, 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

**Environmental Assessment for:  
Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines  
Connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase 1B-HWY 22 Trunk  
Pipeline**

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

The U.S. Bureau of Indian Affairs (BIA) has received an Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase 1B-HWY 22 Trunk Pipeline on the Fort Berthold Indian Reservation to be located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, Township (T) 149 North (N), Range (R) 94 West (W), 5<sup>th</sup> Prime Meridian (P.M.), Dunn County, North Dakota. The proposed pipeline would terminate at the Arrow Phase 1B-Hwy 22 Trunk pipeline in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 27, T149N, R94W, 5<sup>th</sup> P.M., Dunn County, North Dakota. 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.

Acting Regional Director



Date

4-5-2011

**ENVIRONMENTAL ASSESSMENT  
Addendum**

**United States Bureau of Indian Affairs**

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



**Zenergy Operating Company, LLC**

**Addendum to Environmental Assessment to Authorize Land Use for Gathering  
Pipelines Connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase 1B-HWY 22  
Trunk Pipeline**

**Fort Berthold Indian Reservation**

**April 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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**Appendix**

- A. Pipeline Layout and Pipeline Right-of-Way for Dakota-3 Lucy Lone Fight #16-22H Gathering Pipelines

## **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 and installation of three separate collocated pipelines occupying the same ground disturbance to transport oil, natural gas, and produced water. The proposed gathering pipeline system would utilize pipe that would not exceed eight inches in diameter and would transport oil and natural gas from the productive Dakota-3 Lucy Lone Fight #16-22H well to markets via the Arrow Phase 1B-HWY 22 Trunk pipeline. If electrical lines are installed in association with this project or to provide service to this project, they will be installed underground within the approved Right-of-Way (ROW).

## **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 Dakota-3 Lucy Lone Fight #16-22H gathering line would be located on trust land originating from the southeast side of the well pad, in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, Township (T) 149 North (N), Range (R) 94 West (W), 5<sup>th</sup> Prime Meridian (P.M.), Dunn County, North Dakota. The proposed pipeline would terminate at the Arrow Phase 1B-Hwy 22 Trunk pipeline in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 27, T149N, R94W, 5<sup>th</sup> P.M., Dunn County, North Dakota, approximately 3.5 miles northeast of Mandaree, North Dakota. (Figure 1).

## **4. Scope of Work for Proposed Action**

Zenergy proposes to construct and install gathering pipelines on trust land originating from the southeast side of the Dakota-3 Lucy Lone Fight #16-22H well pad and joining the existing Arrow Phase 1B-Hwy 22 Trunk pipeline. The pipelines would consist of three separate collocated pipelines occupying the same ground disturbance to transport oil, natural gas, and produced water. The oil, gas, and water pipelines would be buried in either two 2.5-foot wide trenches, spaced 5 feet apart or one 5-foot wide trench. Oil and gas pipelines would be no larger than eight inches in diameter and constructed of steel. Water pipelines would also be no more than eight inches in diameter and constructed of Fiberspar<sup>®</sup> or similar material. The

approximate length of the proposed pipelines would be 881 feet, as shown in Appendix A. All construction disturbance would occur within a 100-foot temporary construction right-of-way and permanent surface disturbance would occur within a 50-foot wide permanent right-of-way between the Dakota-3 Lucy Lone Fight #16-22H well pad and Arrow Phase 1B-Hwy 22 Trunk pipeline, which has been surveyed for impacts to natural and cultural resources with no significant findings. Approximately 1.01 acres would be disturbed as a result of activities associated with the construction of the proposed gathering pipeline. Pipeline plats can be located in Appendix A.

## 5. Surveys

SWCA Environmental Consultants (SWCA) conducted natural resource surveys for wetlands, threatened and endangered species and associated habitat, as well as raptors and raptor nests including bald and golden eagles, on July 22, 2010. No protected species were observed during the field surveys. BIA Environmental Specialist Darryl Turcotte was present for the surveys and approved the location of the gathering pipeline alignment.

A cultural resource inventory of this pipeline route was conducted by personnel of SWCA Environmental Consultants, using an intensive pedestrian methodology. Approximately 4.77 acres were inventoried on July 22, 2010 (Lechert 2011). 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 March 3, 2011; however, the THPO did not respond within the allotted 30 day comment period.

Lechert, Stephanie

(2011) A Class I and Class III Cultural Resource Inventory of a Gathering Pipeline Connecting the Zenergy Dakota-3 Lucy Lone Flight #16-22H Well Pad to the Arrow Phase 1B – Highway Pipeline, McKenzie County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

## 6. Potential Effects

Potential impacts to cultural resource sites would be the result of direct disturbance, and/or the loss of sites eligible for the National Register of Historic Places; disturbance and loss of native vegetation and wildlife habitats; soil removal and mixing; and erosion during construction. However, potential impacts as a result of the proposed action would be mitigated by surveying for and avoiding any eligible cultural resource sites within the proposed ROW, implementing a stormwater pollution prevention plan and best management practices, completing reclamation of the pipeline corridors with native grasses and other appropriate native vegetation, and stockpiling and re-using topsoil for reclamation. To reduce the potential for the loss of wildlife habitats, the ROW should be reclaimed as soon as practicable, after construction is completed.

Potential indirect impacts include noise and other disturbances to wildlife during construction and the introduction of noxious weeds. Impacts would be mitigated by avoidance of any federally listed threatened or endangered species or wetlands, avoidance of nesting migratory birds, implementing best management practices to control the introduction of noxious weeds, and minimizing the length of time between trenching, pipeline burial, and reclamation. These mitigation measures are consistent with the approved National Environmental Policy Act (NEPA) document, which received a FONSI (January 2010).

SWCA has reviewed the location of the proposed gathering pipeline system relative to sensitive environmental factors in the vicinity, finding that no sensitive wildlife habitats or wetlands of the proposed gathering pipeline system will be impacted. The nearest home to the proposed undertaking is situated approximately 1.02 miles west, while the nearest national wetland inventory wetland is situated approximately 963 feet to the north. Based on those surveys and evaluation 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 and Finding of No Significant Impact: Zenergy Operating Company, LLC, Five Bakken Exploratory Oil Wells: Dakota-3 Benson #3-9H, Dakota-3 High Hawk #4-9H, Dakota-3 Joseph Eagle #16-19H, Dakota-3 Fettig (860 A-B) #16-22H, Dakota-3 Morsette #35-26H (January 2010).*

*Environmental Assessment and Finding of No Significant Impact: Arrow Midstream Holdings Oil, Gas, and Water Gathering System Phase 1B-Highway 22 (December 2009).*

## **8. NEPA Adequacy Criteria**

The two previously prepared NEPA documents adequately describe the environmental consequences of the newly proposed action described herein. Based on a review of these documents, the proposed Project meets the following NEPA Adequacy Criteria:

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

Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines  
Connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase 1B-HWY 22 Trunk Pipeline  
(April 2011)

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6. The cumulative impacts that would result from implementation of the proposed action are unchanged from those analyzed in the existing NEPA documents.
7. A 30-day comment period involving public input and interagency review was used in the development of the existing NEPA documents.



Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines  
 Connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase 1B-HWY 22 Trunk Pipeline  
 (April 2011)

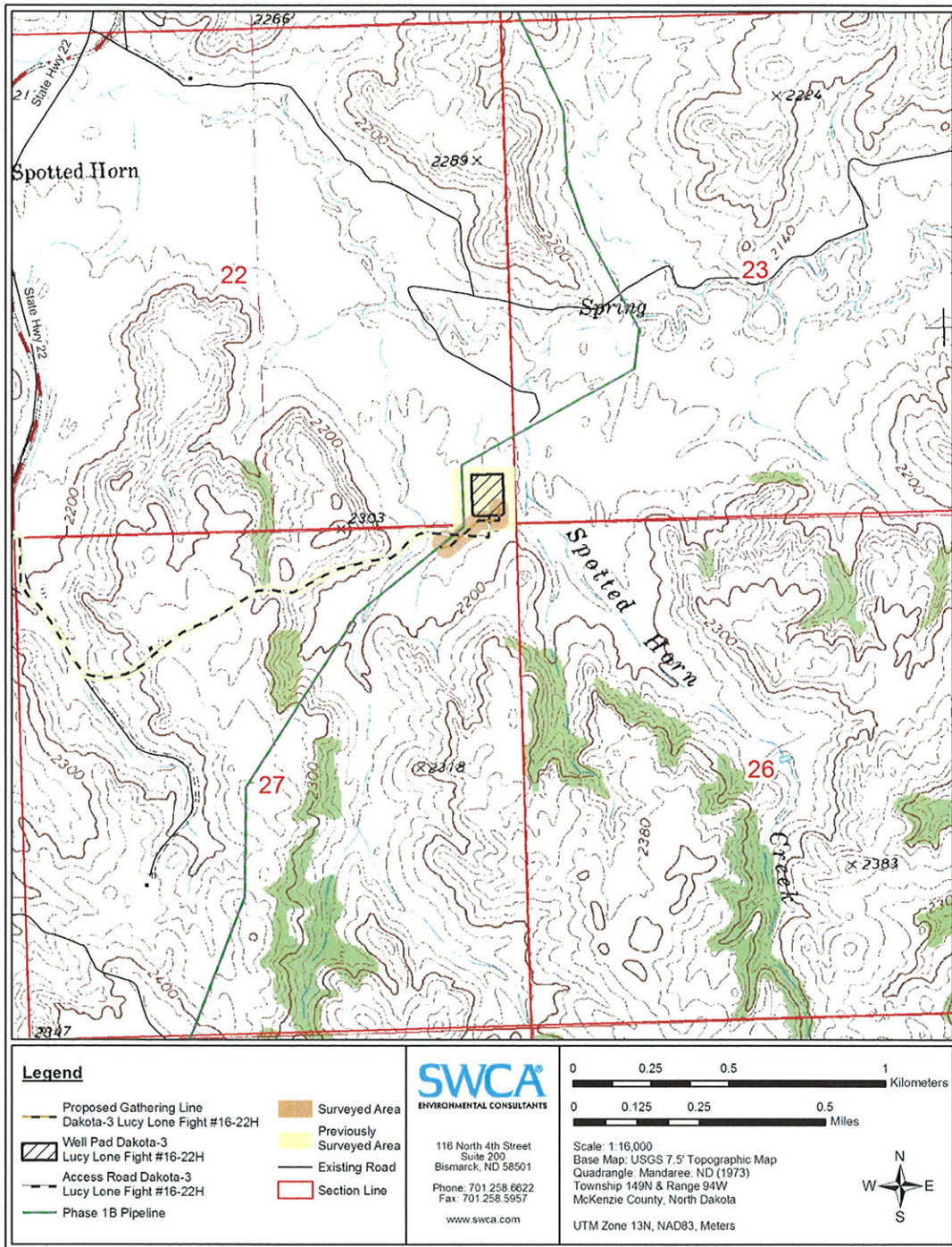


Figure 1. Proposed Dakota-3 Lucy Lone Fight #16-22H gathering pipeline system and associated well pad.

Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines  
Connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase 1B-HWY 22 Trunk Pipeline  
(April 2011)



United States Department of the Interior

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



MAR 03 2011

IN REPLY REFER TO:  
DESCRM  
MC-208

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, access road and two gathering lines in Dunn and McKenzie Counties, North Dakota. Approximately 36.2 acres were intensively inventoried using a pedestrian methodology. Potential surface disturbances are not expected to exceed the areas depicted in the enclosed reports. No historic properties were located that appear to possess the quality of integrity and meet at least one of the criteria (36 CFR 60.4) for inclusion on the National Register of Historic Places. No properties were located that appear to qualify for protection under the American Indian Religious Freedom Act (42 USC 1996).

As the surface management Agency, and as provided for in 36 CFR 800.5, we have therefore reached a determination of **no historic properties affected** for these undertakings. The proposed undertakings, locations, and project dimensions are described in the following reports:

Lechert, Stephanie

(2011) A Class I and Class III Cultural Resource Inventory of a Gathering Pipeline Connecting the Zenergy Dakota-3 Lucy Lone Fight #16-22H Well Pad to the Arrow Phase 1B - Highway 22 Pipeline, McKenzie County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK. Ms. on file (AAO-1887/FB/11)

Lechert, Stephanie, Nelson Klitzka, Todd Kohler and Nicholas Smith

(2011) Addendum to the Class III Cultural Resource Inventory of the Zenergy Dakota-3 John Elk #28-27H Well Pad and Access Road on the Fort Berthold Indian Reservation, Dunn County, North Dakota, to Authorize Land Use for the Revised Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline Location. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK. Ms. on file (AAO-1823/FB/10)

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,

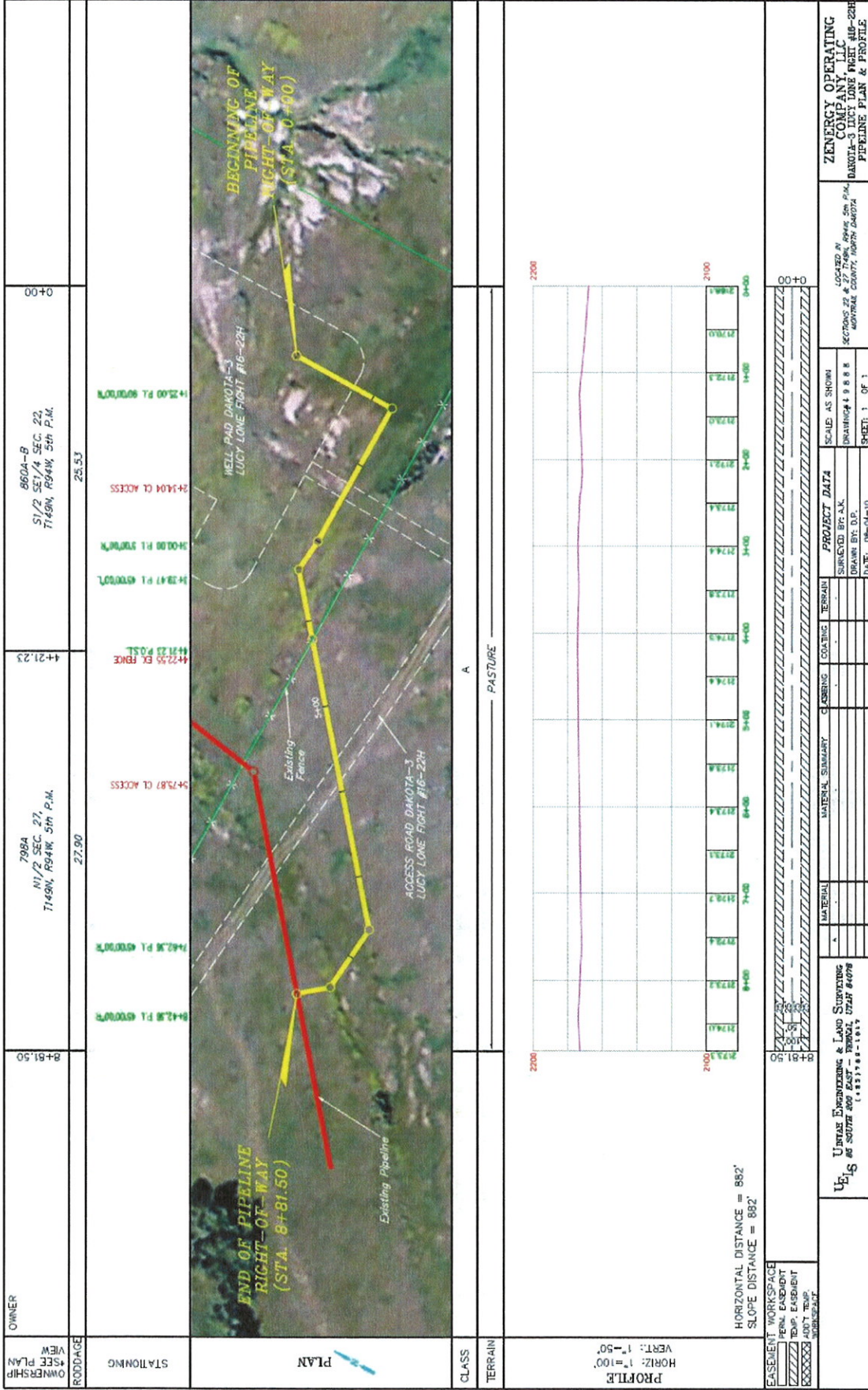
Regional Director

Enclosures

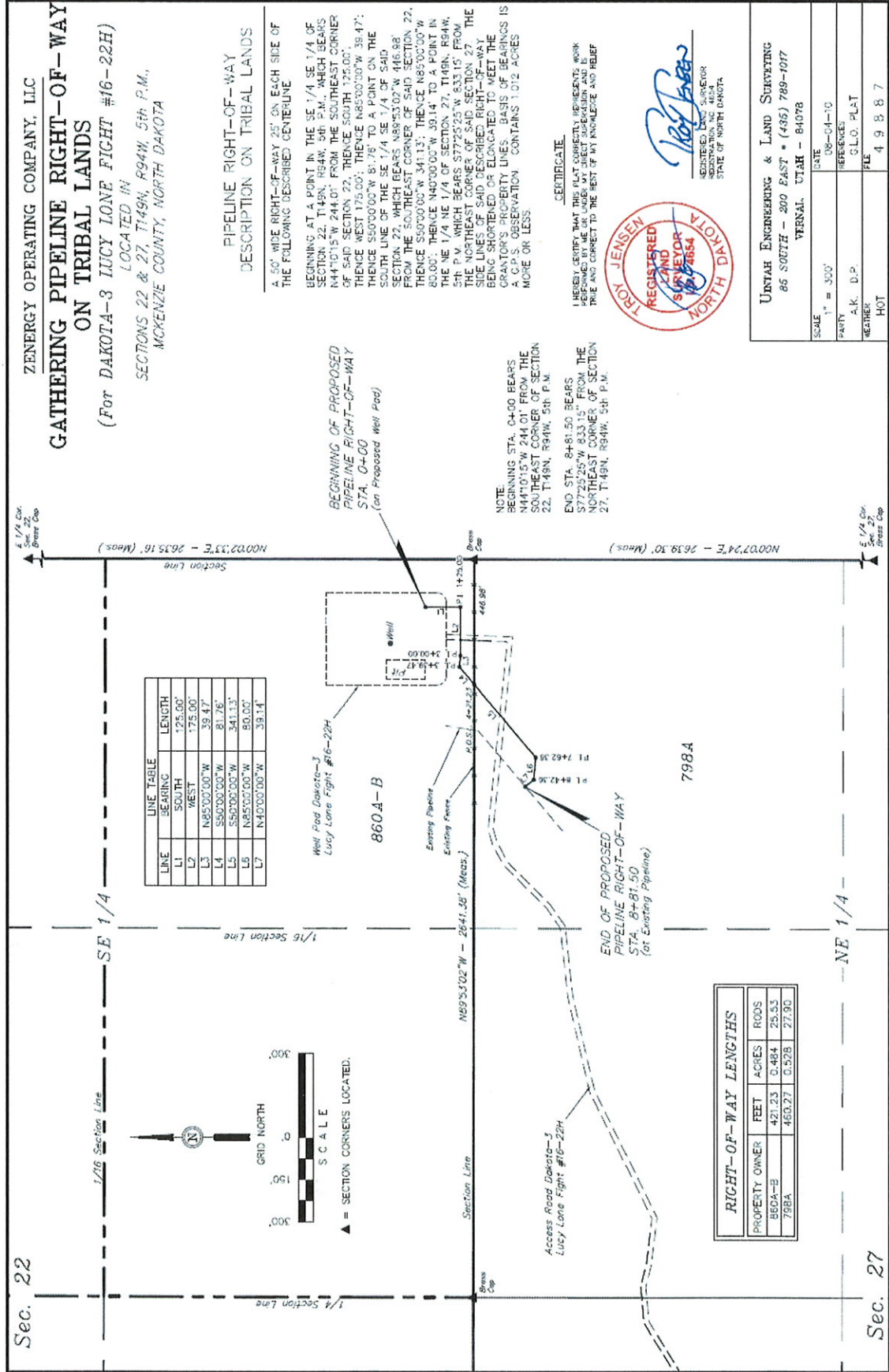
**APPENDIX A**

**Pipeline Layout and Pipeline Right-of-Way  
for the Dakota-3 Lucy Lone Fight #16-22H Gathering Pipelines**

**Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase 1B-HWY 22 Trunk Pipeline (April 2011)**



Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase 1B-HWY 22 Trunk Pipeline (April 2011)



# **Notice of Availability and Appeal Rights**

**Zenergy: Addendum to Environmental Assessment to Authorize Land Use for  
Gathering Pipelines Connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase  
1B-HWY 22 Trunk Pipeline**

**The Bureau of Indian Affairs (BIA) is planning to issue administrative approvals related to Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Lucy Lone Fight #16-22H to Arrow Phase 1B-HWY 22 Trunk Pipeline as shown on the attached map. Construction by Zenergy is expected to begin in 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 May 5, 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.**

Project locations.

