



# 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 additional land use for the Dakota-3 North John Elk #28-27H well pad, access road, and gathering pipeline system 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 Assessments to Authorize Additional Land Use for the Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline System**

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

The U.S. Bureau of Indian Affairs (BIA) has received a proposal for an Addendum to Environmental Assessment to Authorize Additional Land Use for the Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline System. 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

Acting

4-5-2011

Date

**ENVIRONMENTAL ASSESSMENT  
Addendum**

**United States Bureau of Indian Affairs**

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



**Zenergy Operating Company, LLC**

**Addendum to Environmental Assessments to Authorize Additional Land Use for the  
Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline  
System**

**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

## **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 the potentially affected tribal lands and individual allotments. 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 a well pad, access road, and gathering pipeline system. The gathering pipeline system will consist of three buried pipelines, each no greater than eight inches in diameter, designed to transport oil, gas, and produced water, respectively. The gathering pipeline system will connect productive wells to markets and disposal facilities. Electrical lines, if deemed necessary in the future, 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 North John Elk #28-27H well pad, would be located approximately 4.5 miles northeast of Mandaree, North Dakota, in the NW¼ SW¼ of Section 28, Township (T) 150 North (N), Range (R) 93 West (W), 5<sup>th</sup> Prime Meridian (P.M.), Dunn County, North Dakota. The access road and gathering lines would originate from the southeast corner of the well pad and connect to the Dakota-3 Helena Ruth Grant #33-34H access road and gathering line system in the SW¼ NW¼ of Section 33, T150N, R93W, 5<sup>th</sup> P.M., Dunn County, North Dakota (

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
1. Purpose and Need for the Proposed Action .....	3
2. Authorities .....	3
3. Legal Land Description for Proposed Action.....	3
4. Scope of Work for Proposed Action.....	3
5. Surveys.....	4
6. Potential Effects.....	5
7. Applicable NEPA Document(s).....	5
8. Other Relevant Documentation .....	5
9. NEPA Adequacy Criteria.....	6

<b><u>Figure</u></b>	<b><u>Page</u></b>
Figure 1. Proposed Dakota-3 North John Elk #28-27H revised well pad, access road, and gathering pipeline system.....	7

**Appendix**

A Dakota-3 North John Elk #28-27H Well Pad Layout and Access Road
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*Addendum to Environmental Assessments to Authorize Additional Land Use for the Revised Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline System*

*Contains Privileged Information -- Do Not Release*

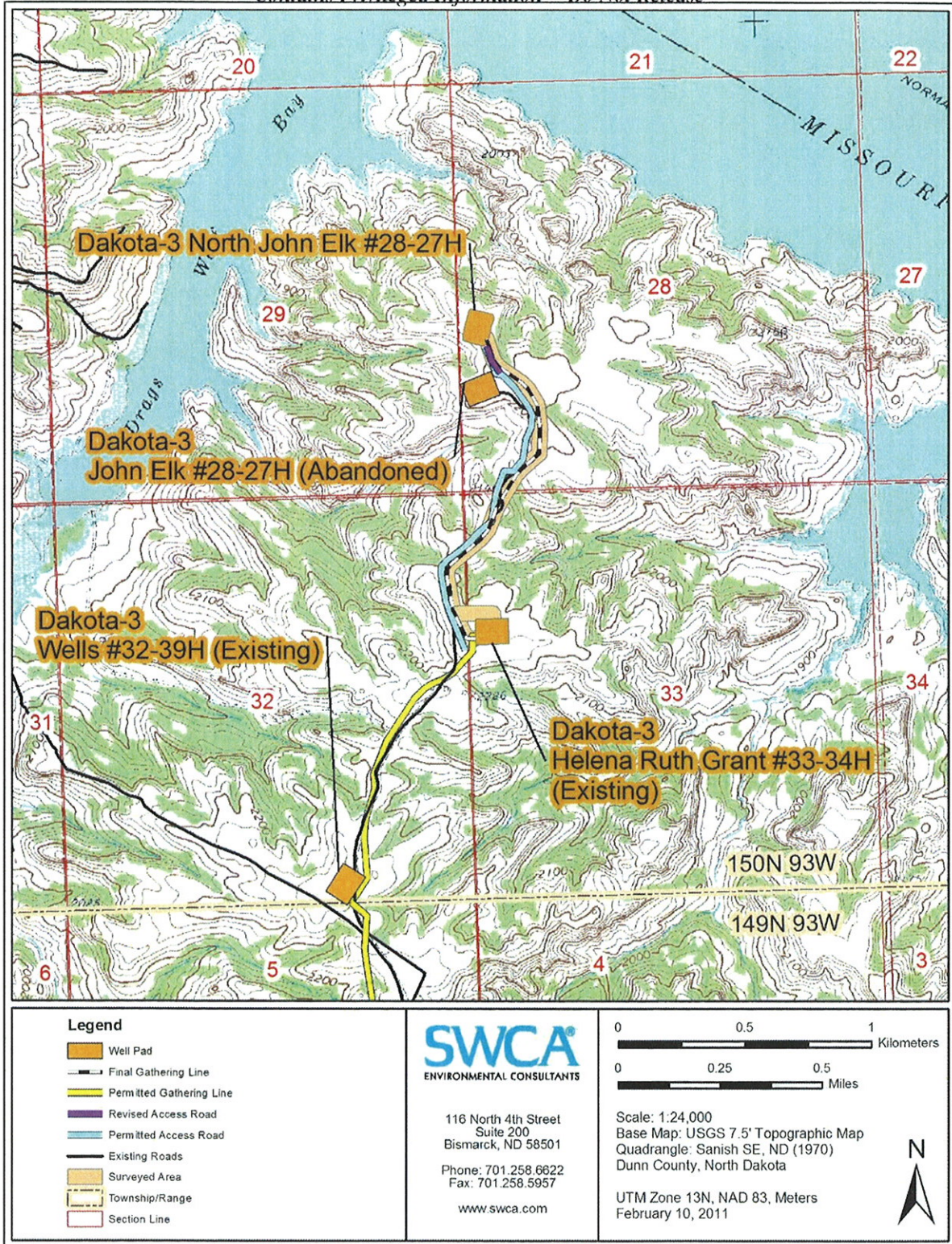


Figure 1).

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

##### **A. Proposed Well Pad and Access Road Location**

Zenergy has proposed the Dakota-3 North John Elk #28-27H location (proposed location) as an alternative to the previously approved Dakota-3 John Elk #28-27H location (original location), which received a Finding of No Significant Impact (FONSI) from the BIA Great Plains Regional Office on August 30, 2010. Due to engineering constraints, the well location has been shifted approximately 672 feet to the northeast of the original location; This alternate location was selected to allow for future production wells to be placed within the drilling unit. The original location did not allow proposed future horizontal drilling to maximize the extraction of the minerals in the drilling unit. The well pad footprint of the proposed location will measure approximately 430 feet by 330 feet, and will occupy approximately 7.25 acres. The proposed location will utilize a 1,280-acre spacing unit where the bottom hole would be located in the NE¼ SE¼ of Section 27, T150N, R93W, 5<sup>th</sup> P.M., Dunn County, North Dakota.

##### **B. Proposed Gathering Pipeline System**

Zenergy proposes to construct and install oil, gas, and water gathering pipelines on land originating from the southeast corner of the Dakota-3 North John Elk #28-27H well pad and joining the existing Dakota-3 Helena Ruth Grant #33-34H gathering pipeline system. 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 greater than 8 inches in diameter and constructed of steel. Water pipelines would be no greater than 8 inches in diameter and constructed of Fiberspar<sup>®</sup> or similar material. The proposed gathering pipeline system will be approximately 4,667.22 feet in length (Appendix A). All construction disturbance would occur within a 100-foot-wide construction ROW and a permanent 50-foot-wide ROW would be maintained. In total, approximately 10.7 acres will be disturbed as a result of activities associated with the construction of the proposed gathering pipeline system.

#### **5. Surveys**

##### **A. Proposed Well Pad and Access Road Location**

SWCA Environmental Consultants (SWCA) conducted natural and cultural resource surveys for threatened and endangered species, migratory birds, bald and golden eagles, and wetlands on October 18, 2010. BIA Environmental Specialist, Jeff Desjarlais, approved the revised location of the well pad and access road. No protected species were observed during the survey.

Approximately 24.18 additional acres of ROW and disturbed areas were inventoried for the revised location using an intensive pedestrian methodology by SWCA on October 18, 2010 (Lechert et.al. 2011). No additional 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.

## **B. Proposed Gathering Pipeline System**

SWCA conducted natural and cultural resource surveys for threatened and endangered species, migratory birds, bald and golden eagles, and wetlands on June 4, 2010. BIA Environmental Specialist, Darryl Turcotte, approved proposed ROW for the gathering pipeline system. No protected species were observed during the survey.

A cultural resource inventory of this well pad, access road and pipeline route was conducted by personnel of SWCA Environmental Consultants, using an intensive pedestrian methodology. Approximately 31.43 acres were inventoried between June 4 and October 25, 2010 (Lechert *et al.* 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.

## **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 of the proposed action were mitigated for via field survey and subsequent avoidance of any eligible cultural resource sites within the proposed well pad and ROW, implementing a storm water pollution prevention plan and best management practices, completing reclamation of the pipeline corridor 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 well pad construction and interim reclamation and trenching, pipeline burial, and reclamation. These mitigation measures are consistent with the approved National Environmental Policy Act (NEPA) document, which received a FONSI (August 2010).

Resource surveys and the supplementary assessment of the potential impacts of the proposed actions were completed (June and October 2010); based on those surveys and the mitigation measures committed to by Zenergy, no significant impacts to natural and cultural resources are anticipated.

## **7. Applicable NEPA Document(s)**

*Environmental Assessment: Zenergy Operating Company, LLC, Two Bakken Exploratory Oil Wells: Dakota-3 Helena Ruth Grant #33-34H and Dakota-3 John Elk #28-27H (August 2010).*



*Addendum to Environmental Assessments to Authorize Additional Land Use for the Revised Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline System*

## **8. Other Relevant Documentation**

*Environmental Assessment: Arrow Midstream Holdings East Mandaree Oil, Gas, and Water Gathering System (December 2009).*

*Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Helena Ruth Grant #33-34H to Wells #32-29H Gathering Pipelines (September 2010).*

*Addendum to Environmental Assessment to Authorize Land Use for Gathering Pipelines Connecting Dakota-3 Wells #32-29H to the Phase 1B – BIA 10 Pipeline (September 2010).*

## **9. NEPA Adequacy Criteria**

This document has identified three previously prepared NEPA documents, *Zenergy Operating Company, LLC, Two Bakken Exploratory Oil Wells: Dakota-3 Helena Ruth Grant #33-34H and Dakota-3 John Elk #28-27H (August 2010)*, which adequately describes the environmental consequences of the newly proposed action described herein, and meets the following NEPA Adequacy Criteria.

1. The proposed action is substantially the same action and at the site specifically analyzed in the existing NEPA document.
2. The range of alternatives is reasonable with respect to the current proposed action in the existing NEPA document, which appropriately considers and analyzes current environmental concerns, interests, and resource values.
3. The existing analysis and conclusions are adequate in the existing NEPA document. The analysis is still valid in light of new studies or resource assessment information.
4. The methodology and analytical approach used in the existing NEPA document continues to be appropriate for the proposed action.
5. The direct and indirect impacts of the proposed action are unchanged from those identified in the existing NEPA document.
6. The cumulative impacts that would result from implementation of the proposed action are unchanged from those analyzed in the existing NEPA document.
7. A 30-day comment period involving public input and interagency review was used in the development of the existing NEPA document.

Addendum to Environmental Assessments to Authorize Additional Land Use for the Revised Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline System

Contains Privileged Information -- Do Not Release

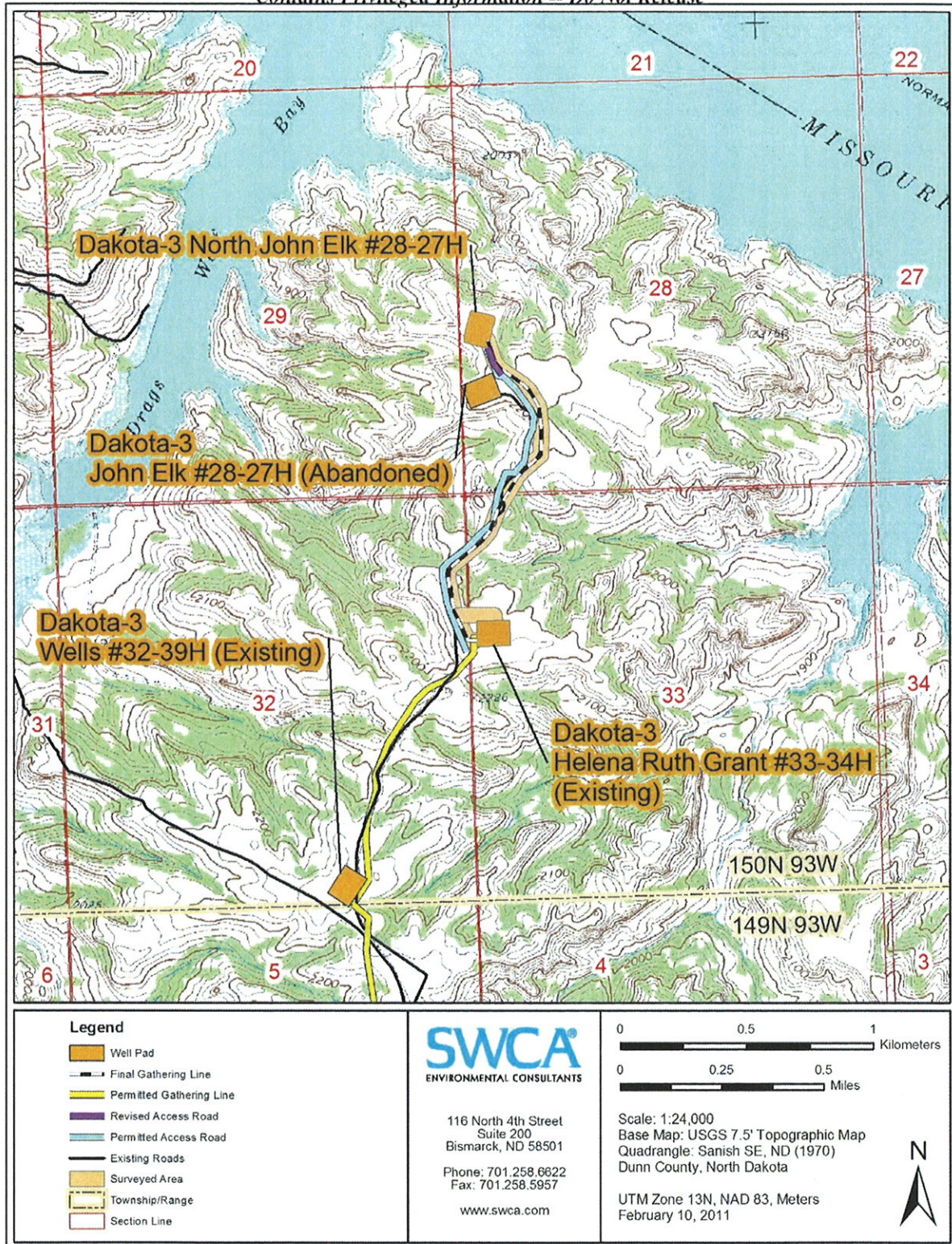


Figure 1. Proposed Dakota-3 North John Elk #28-27H well pad, access road, and gathering pipeline system.

*Addendum to Environmental Assessments to Authorize Additional Land Use for the Revised Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline System*



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Great Plains Regional Office  
115 Fourth Avenue S.E.  
Aberdeen, South Dakota 57461



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 Flight #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 Archacologist, at (605) 226-7656.

Sincerely,

Regional Director

Enclosures

## **References**

Kohler, Todd and Nicholas Smith

2010 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 of the Dakota-3 John Elk #28-27H to Dakota-3 Helena Ruth Grant #33-34H Gathering Pipeline.

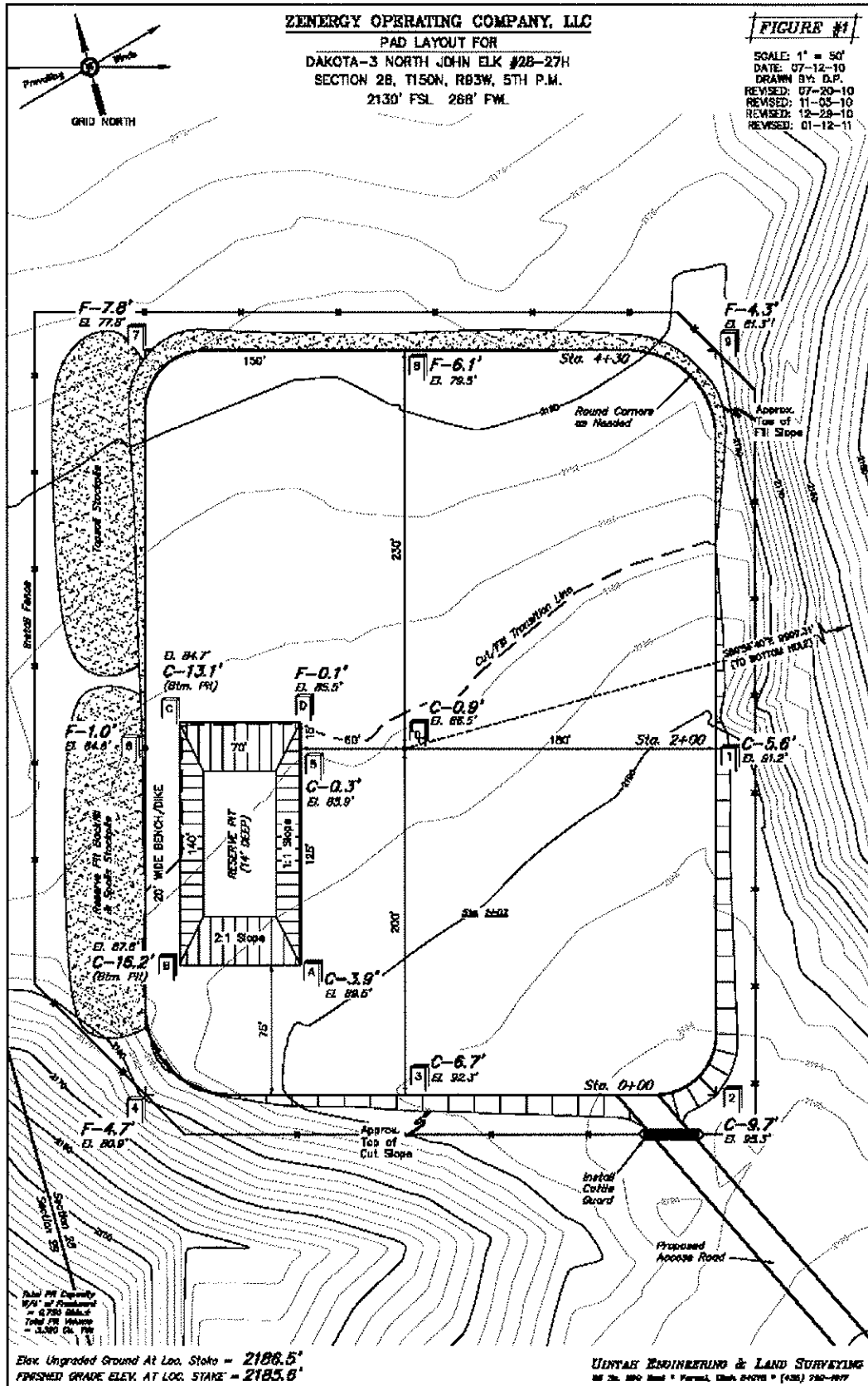
Lechert, Stephanie, Nelson Klitzka, Todd Kohler, and Nicholas Smith

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.

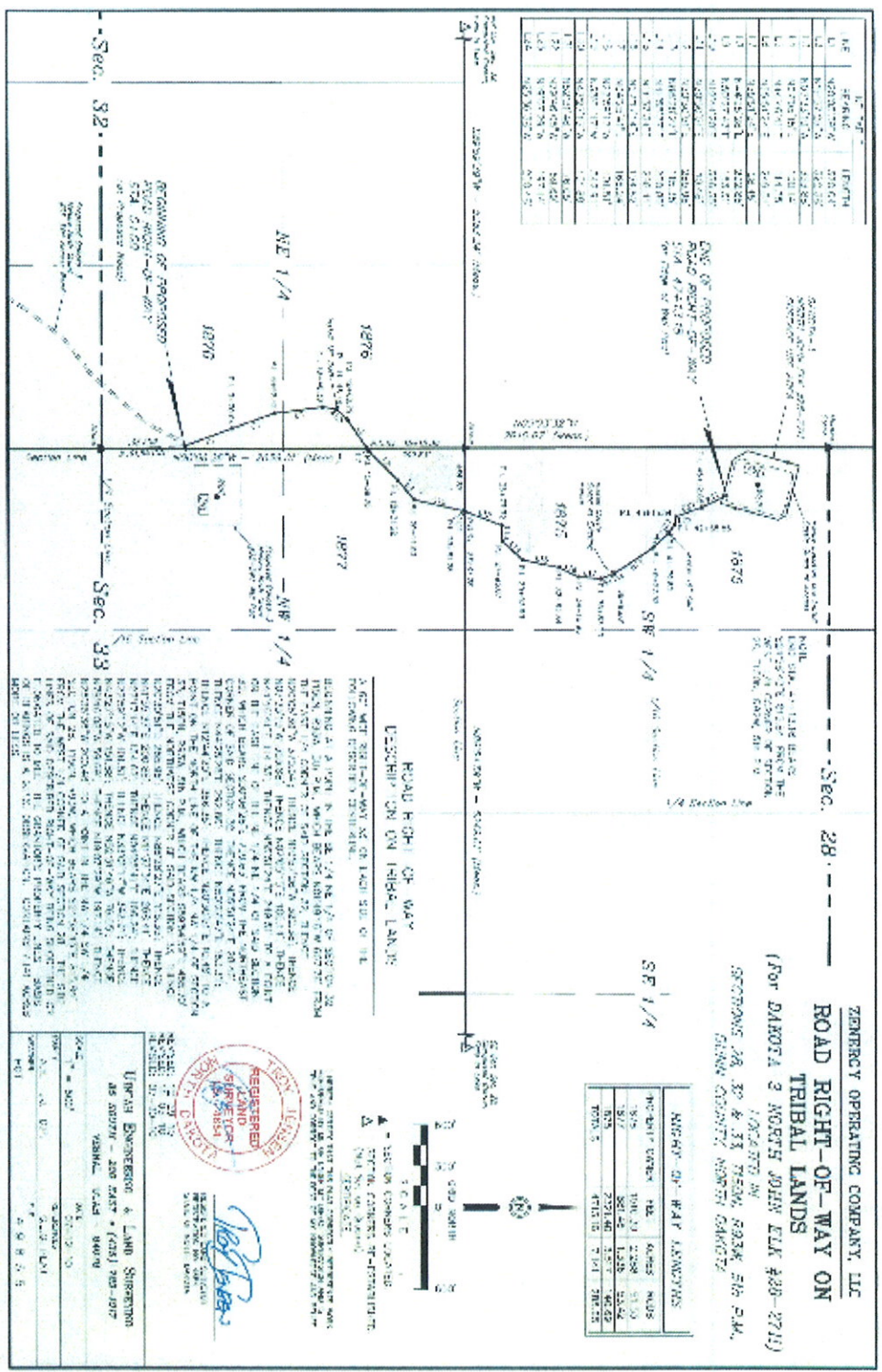
**APPENDIX A**

**Dakota-3 North John Elk #28-27H  
Well Pad, Access Road, and Gathering Pipeline System**

Addendum to Environmental Assessments to Authorize Additional Land Use for the Revised Dakota-3 North John Elk #28-27H Well Pad and Gathering Pipeline System



*Addendum to Environmental Assessments to Authorize Additional Land Use for the Revised Dakota-3 North John Elk #28-27H Well Pad and Gathering Pipeline System*





# **Notice of Availability and Appeal Rights**

**Zenergy: Addendum to Environmental Assessments to Authorize Additional Land Use for the Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline System**

**The Bureau of Indian Affairs (BIA) is planning to issue administrative approvals related to an Addendum to Environmental Assessments to Authorize Additional Land Use for the Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline System 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.**

Addendum to Environmental Assessments to Authorize Additional Land Use for the Revised Dakota-3 North John Elk #28-27H Well Pad, Access Road, and Gathering Pipeline System

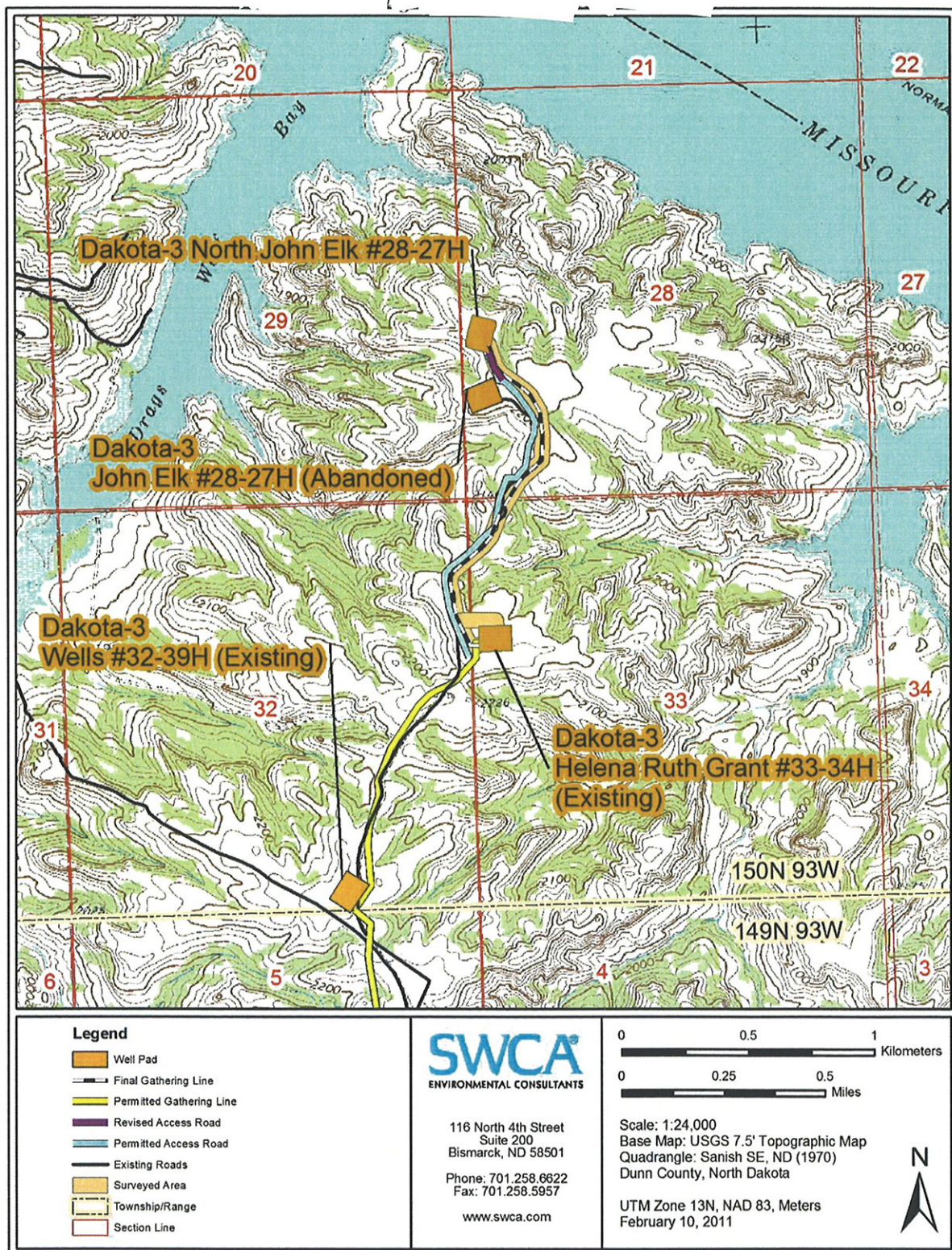


Figure 1).