



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Montana State Office
5001 Southgate Drive
Billings, Montana 59101-4669
<http://www.blm.gov/mt>

In Reply Refer To:

SDR-922-09-02
MTM-62340; MTM-64473
MTM-83775; MTM-83776
MTM-88909
3165.3 (922.JA)

November 26, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

Mark Fix	(
Chair, Coal Bed Methane Task Force	(
Northern Plains Resource Council	(SDR-922-09-02
220 S. 27 th Street, Suite A	(
Billings, Montana 59101	(

AFFIRMED

The Northern Plains Resource Council (NPRC) requests a State Director Review (SDR) of the September 30, 2008, Decision Records (DR) and Findings of No Significant Impact (FONSI) (Enclosures 1 and 2) approved by the Bureau of Land Management (BLM) Miles City Field Manager. The September 30, 2008, decisions are based on environmental assessments (EA), prepared in response to Plans of Development (POD) filed by Fidelity Exploration and Production Company (Fidelity) to develop existing federal oil and gas leases. A total of 34 Applications for Permit to Drill (APDs) are included with the Tongue River – Deer Creek North Federal Project (Deer Creek North) POD and 14 APDs are included with the Tongue River – Decker Mine East Federal Project (Decker Mine East) POD. Because the Miles City Field Manager’s decision was issued under 43 CFR 3162.3-1, it is subject to SDR according to 43 CFR 3165.3(b).

The SDR request by the NPRC was considered timely filed on October 30, 2008, in accordance with 43 CFR 3165.3(b), and assigned number SDR-922-09-02, (Enclosures 3). The NPRC also requested a stay prohibiting drilling or land disturbing activities until resolution of the items included with their SDR request. The request for a stay of activities is also considered in this review.

BACKGROUND

Fidelity submitted two Coal Bed Natural Gas (CBNG) PODs for its Deer Creek North project area; the Deer Creek North and Deer Creek North Amendment PODs. The project area is located within the CX Field (approved by the Montana Board of Oil and Gas Conservation (MBOGC)), Big Horn County of southeastern Montana, T. 9 S., R. 41 E.

Fidelity filed the Deer Creek North POD and Applications for Permit to Drill (APDs) for 170 wells (71 federal, 99 private) with the BLM on January 31, 2005. Prior to the BLM completing an analysis of the POD, the Federal District Court issued an Order, April 5, 2005, Northern Plains Resource Council v. U.S. Bureau of Land Management, Nos. CV 03-69-BLG-RWA, CV 03-78-BLG-RWA (consolidated), allowing the BLM to approve a limited number of CBNG permits within a defined geographic area under specific conditions. This Order and other matters were subsequently appealed to the United States Court of Appeals for the Ninth Circuit. On May 31, 2005, the Ninth Circuit issued an injunction forbidding the BLM from approving any CBNG production projects in the Powder River Basin of Montana. This injunction was issued pending disposition of the appeal, or until further Order of the Court.

Fidelity then filed the Deer Creek North Amendment POD and APDs for an additional 178 wells (66 federal, 108 private and 4 state) with the BLM on April 4, 2006. This amendment was required as a result Fidelity modifying their well spacing from approximately 160 acres/well to around 80 acres/well.

The MBOGC has sole jurisdiction of private and state wells. When an operator proposes drilling CBNG wells in the State of Montana, they are required to file an application before the MBOGC and present testimony on their application. The application provides required information identified in previous MBOGC Orders and also those identified under the January 2003 Montana Final Statewide Oil and Gas EIS and RMP Amendment of the Powder River and Billings Resource Management Plans (RMPs) (Statewide FEIS) and MBOGC's March 26, 2003, Record of Decision (ROD). The MBOGC then makes a ruling regarding whether the POD is reasonable based on the evidence presented. This type of approval is contingent upon the MBOGC's administrative staff environmental review in accordance with the Montana Environmental Policy Act. The MBOGC Order No. 87-2005 for the Deer Creek North POD, dated March 17, 2005 states, "...approval...is contingent upon completion of an environmental assessment." Order No. 508-2005 for the Deer Creek North Amendment POD, dated December 8, 2005 states, "the application...is granted as applied for subject to completion of an Environmental Assessment..." The MBOGC completed its process with approval of its EA for the Deer Creek North POD on August of 2005 and the Amended POD on January 18, 2006. Development of private and state leases, associated with the Deer Creek North and the Deer Creek North Amendment PODs, has occurred under approvals from the MBOGC while the injunctions were in effect forbidding the BLM from approving any CBNG production projects in the Powder River Basin of Montana.

The Ninth Circuit upheld the Federal District Court's April 5, 2005, Order for injunctive relief on September 11, 2007, in Northern Cheyenne v. Norton, 503 F.3d 836 (9th Cir. 2007).

On October 29, 2007, the Ninth Circuit Court of Appeals lifted its May 31, 2005, injunction thus allowing the BLM to process and approve PODs and APDs based on the Federal District Court's April 5, 2005 Order. As a result, Fidelity and the BLM reviewed the two individual PODs, which share the same geographic area, and concurred that they required modification from their "original" proposals. This determination was made due to the several years lapse from their submittal, much of the infrastructure had been constructed in association with the private and state wells and Fidelity changed its well completion to the "monobore" technology.¹ This changed the original applications for a total of 137 individual coal seam wells to 34 monobore wells. Fidelity resubmitted the Deer Creek North and Deer Creek North Amendment PODs into one project; the Deer Creek North POD, on May 7, 2008.

Fidelity's Deer Creek North POD includes the construction, drilling, production, and reclamation of 34 federal CBNG wells, construction of new infrastructure and use of existing infrastructure that is located on private, state and BLM administered surface. The use of existing infrastructure, including compressors, is a result of the private and state portions of the project including wells and associated infrastructure within the project area, already developed and in production. The federal project includes access roads, pipelines for water and gas, overhead and underground power lines, existing compressor facilities, produced water management using existing Montana Pollution Discharge Elimination System (MPDES) permits, and interim/final reclamation. The average production life of the project wells is expected to be 10-20 years with final reclamation to be completed 2 to 3 years after plugging of the wells.

Water produced by the Deer Creek North POD is proposed for disposal by the following water management options: (1) beneficially used for industrial uses (dust suppression) in the Spring Creek and Decker Coal Mines; (2) beneficially used by Fidelity for CBNG drilling, construction and dust suppression; (3) beneficially used by livestock and wildlife; (4) treated via ion exchange and discharged to the Tongue River using Fidelity's existing Montana Department of Environmental Quality (MDEQ) MPDES permit for treated water (MT0030724); and (5) discharged to the Tongue River using Fidelity's existing MDEQ direct MPDES permit (MT0030457).

Fidelity filed the Decker Mine East POD and APDs for 14 federal monobore wells with the BLM on January 3, 2007. The project area is also located within the CX Field (approved by the MBOGC), Big Horn County of southeastern Montana, T. 9 S., R. 40 E. and T. 9 S., R. 41 E.

Fidelity submitted its Decker Mine East POD to the MBOGC on December 13, 2006. The project included plans to drill 56 private wells. The MBOGC Order No. 406-2006, dated December 14, 2006, stated, "...the application...is granted as applied for, contingent upon completion of an environmental assessment." The MBOGC completed its process with approval of its EA for the Decker Mine East POD on February 23, 2007. Development of private and state leases, associated with the Decker Mine East POD, has occurred under approvals from

¹ A commingled well (monobore) is designed and completed to produce gas and water from two or more coal beds from a single well bore.

MBOGC while the injunctions were in effect forbidding the BLM from approving any CBNG production projects in the Powder River Basin of Montana.

Fidelity's Decker Mine East POD includes the construction, drilling, production, and reclamation of 14 federal CBNG wells, construction of new infrastructure and use of existing infrastructure, including compressors, that is located on private and BLM administered surface. The use of existing infrastructure results from the private wells/infrastructure, within the project area, already developed and in production. The federal project includes access roads, pipelines for water and gas, overhead and underground power lines, existing compressor facilities, produced water management using existing MPDES permits, and interim/final reclamation. The average production life of the project wells is expected to be 10-20 years with final reclamation to be completed 2 to 3 years after plugging of the wells.

Water produced by the Decker Mine East POD is proposed for management using the same suite of water management options as those proposed for the Deer Creek North POD.

The Miles City Field Office (MCFO) completed multiple reviews of the Deer Creek North and Decker Mine East PODs and the final deficiency letters were sent to Fidelity requesting additional information on July 28, 2006 and May 2, 2008. Fidelity completed filing additional information identified in the MCFO deficiency letters on January 26, 2007, and June 17, 2008. Onsite inspections of the drilling proposals and associated development proposals were conducted on February 23, 2005, June 28, 2006, and July 31, 2007. Two EAs were prepared in cooperation with the MDEQ. The Deer Creek North EA and unsigned FONSI were available for public review from August 13, 2008, to August 27, 2008. After consideration of public comments, FONSIs for the Deer Creek North and Decker Mine East PODs were approved on September 30, 2008. A total of 48 federal APDs were also approved on September 30, 2008. At the time of the BLM's approval, approximately 210 private and state wells were in place and producing CBNG within the Deer Creek North and Decker Mine East PODs.

STATE DIRECTOR REVIEW POINTS

The issues raised by the NPRC in their SDR request are categorized and enumerated below, with the supporting arguments in italicized text. The BLM's response to these issues follows each argument in plain text.

In reviewing specific challenges to the EA, our review will rely on precedent governing the Interior Board of Land Appeal's (IBLA) review of EAs (Southern Utah Wilderness Alliance, 159 IBLA 220, 234, 235 (2003)).

“In preparing an EA to assess whether an EIS is required under section 102(2)(C) of NEPA, 42 U.S.C. §4332(2)(C) (2000), an agency must take a “hard look” at the proposal being addressed, identifying relevant areas of environmental concern, so that it can make an informed determination as to whether the environmental impact is insignificant or impacts will be reduced to insignificance by mitigation measures. See Colorado Environmental Commission, 142 IBLA

49, 52 (1997); Utah Wilderness Association, 80 IBLA 64, 78, 91 I.D. 165, 174 (1987). The Board will affirm a FONSI if the record establishes that the BLM has engaged in a careful review of environmental consequences, all relevant environmental concerns have been identified, and the final determination is reasonable. Owen Severance, 118 IBLA 381, 392 (1991); Utah Wilderness Association, 80 IBLA at 78, 91 I.D. at 174.

A party challenging a FONSI must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Southern Utah Wilderness Alliance, 122 IBLA 6, 12 (1991); G. Jon & Katherine M. Roush, 112 IBLA 293, 297 (1990); Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985); Utah Wilderness Association, 80 IBLA at 78, 91 I.D. at 174. “The ultimate burden of proof is on the challenging party and such burden must be satisfied by objective proof. Mere differences of opinion provide no basis for reversal.” Rocky Mountain Trails Association, 156 IBLA 64, 71 (2001), citing Larry Thompson, 151 IBLA 208, 217 (1999).”

1. THE APPROVAL OF FIDELITY’S DECKER MINE EAST AND DEER CREEK NORTH PODS ARE INCONSISTENT WITH U.S. DISTRICT COURT JUDGE ANDERSON’S ORDER DATED, JUNE 6, 2005, AS IT TIERS TO A 2003 STATEWIDE ENVIRONMENTAL IMPACT STATEMENT (FEIS), WHICH WAS FOUND TO BE INADEQUATE

The NPRC Argue:

The comments NPRC submitted on the Deer Creek North. Draft EA and FONSI, reminded the BLM of our letter dated, February 27, 2008, concerning the BLM’s Instruction Memoranda No. MT-2008-027 (IM) dated January 25, 2008. In that letter we stated our concern that, while the interim procedures described were in accordance with the United States District Court for the District of Montana in Billings order dated April 5, 2005, it seemed to us to ignore the more recent Order by US District Judge Anderson dated June 6, 2005 (Anderson’s Order enclosed). This decision explains that the Badger Hills environmental assessment (EA) was overturned because it tiered to an inadequate final environmental impact statement (FEIS) and, therefore, by itself it did not sufficiently address the requirements under the National Environmental Policy Act (NEPA). The June 6th Order states, “In short, the Badger Hills EA tiers to an FEIS that is no longer valid. The EA is not an independent analysis that, absent the FEIS, can withstand scrutiny under NEPA. It must be overturned.”

We believe that Judge Anderson’s decision on the Badger Hills EA applies to any additional POD EAs that the BLM considers in the interim period before the Record of Decision (ROD) on the Final SEIS is issued. It is our opinion that the BLM, by dropping its appeal at the 9th Circuit, acknowledges and confirms Magistrate Anderson’s Order dated June 6, 2005.

Northern Plains believes that while the BLM may proceed with an EA that is adequate as a “stand-alone” document, it has not done so with respect to the Decker Mine East and Deer Creek North Projects, as evidenced by the numerous references to analysis and information in the Statewide FEIS and the stated intention to tier to this document, which the District Court held to be “no longer valid.”

Response:

This issue was included as a comment on the Deer Creek North EA. The EA made available to the public with the FONSI and DR included a response to this comment. See Deer Creek North EA, Appendix I, at pages 26 and 27.

The U.S. District Court never ruled on the adequacy of the Badger Hills EA or any aspect of its consideration of environmental consequences. Instead the court concluded the Badger Hills was insufficient because it tiered to the programmatic EIS, (June 6, 2005 Order at 5). The court reached this finding based in part on the court’s conclusions that “the FEIS has no legal force” and “the entire FEIS is put in question by plaintiffs’ appeal to the Ninth Circuit...” *Id.* at 5 and 6. However, the Court’s interpretation of the utility of the FEIS changed on September 11, 2007, when the Ninth Circuit upheld Judge Anderson’s award of injunctive relief in Northern Cheyenne v. Norton, 503 F.3d 836 (9th Cir. 2007). The Ninth Circuit found:

The partial injunction permits what appellants claim to seek: phased development rather than full-field development. The court found that the environmental impact statement basically complied with NEPA, except for its failure to consider phased development. The partial injunction fully remedies this failure. The District Court concluded that a partial injunction would not cause irreparable harm, because a drilling permit cannot issue without site-specific environmental assessment. And it considered the public interest in clean energy development as well as prevention of environmental harms.

The Ninth Circuit concluded that the partial injunction the BLM proposed “provides an equitable resolution consistent with the purposes of NEPA.” Contrary to arguments from the NPRC, the Ninth Circuit concluded that tiering to the programmatic Statewide FEIS was acceptable. Regardless of any arguments concerning the appropriateness of tiering to the Statewide FEIS, the cumulative impact of the site specific projects (Deer Creek North and Decker Mine East PODs) are fully analyzed in the EAs subject to this SDR request. Therefore, we conclude the documentation completed for the Deer Creek North and Decker Mine East PODs provide adequate site-specific environmental analysis in compliance with NEPA and consistent with the intent of the partial injunction issued by the District Court and affirmed by the Ninth Circuit.

2. BOTH PROJECT EAS AND FONSI INSUFFICIENTLY ANALYZED THE CUMULATIVE IMPACTS OF FUTURE PROJECTS AND WATER QUALITY ISSUES

The NPRC Argue:

The analysis in both the Deer Creek North and Decker Mine East EAs also fails to fully address the cumulative impact of other CBM Projects that are reasonably foreseeable. For example, there are numerous projects not examined or even mentioned in both EA's cumulative analysis, including Pinnacle's Fourmile East and West Projects.

The BLM dismisses this exclusion by stating in the appendices of the Deer Creek North EA on page 28, "BLM analyzed all reasonably foreseeable CBNG projects that may contribute to the cumulative effects. Other projects, such as the Fourmile East and West PODs, are far too early in the planning process to provide substantive detail to analyze and are considered to be speculative and vague. It is not reasonable to assess impacts of "unknown" future projects because they are not reasonably foreseeable." However, both of Pinnacle's Fourmile East and West PODs have been submitted to the MBOGC and include project descriptions, water management plans, and wildlife assessments, all of which can be used to determine a project's cumulative impact. Further, since the MBOGC is listed as a cooperative agency, the BLM needs to fulfill its obligation to include not only the projects that pertain to federal minerals, but also those that pertain to state and private minerals while conducting a cumulative impact analysis.

The Deer Creek North and Decker Mine East EAs fail to adequately address and disclose impacts to ground and surface waters caused by the cumulative impacts of dewatering coal seam aquifers from this and other projects. Northern Plains believes that the BLM should consider the cumulative effect of the Wyoming Department of Environmental Quality (WDEQ) proposed general discharge permits in addition to the discharge of the proposed 34 federal wells described in the Deer Creek North EA.

Response:

The NPRC do not identify the cumulative impacts issues or specific cumulative actions that need to be considered except for projects that are dismissed within the Deer Creek North and Decker Mine East EAs, impacts to ground and surface waters caused by the cumulative impacts of dewatering coal seam aquifers from CBNG projects, and a recent proposal from the WDEQ to issue general discharge permits for main tributaries of the Tongue River, which include: Hanging Woman Creek, Badger Creek, and Prairie Dog Creek.

The NPRC fail to recognize that the Deer Creek North and Decker Mine East analysis of cumulative ground and surface water impacts includes a comprehensive consideration of past, present and future actions, including all the projects identified in the EAs as those that would be considered in the cumulative impact analysis. The analysis of cumulative impacts completed by the MCFO includes consideration of the state and private portions of projects and is consistent with the projection of increased numbers of producing CBNG wells discussed in the Deer Creek North EA at page 4-23. A substantial part of the analysis completed for surface water and groundwater is found in Chapter 3 of the Deer Creek North and Decker Mine East EAs to accurately describe the existing conditions (past and present actions). All of the CBNG projects that are already in operation in Montana and Wyoming that have the potential to affect the Tongue River and the potential area of groundwater drawdown are included in the analysis of the existing conditions (see Deer Creek North EA, pages 3-15 through 3-23 and pages 12 and 13,

Appendix F Hydrology and Decker Mine East EA, pages 3-11 through 3-19 and pages 13 and 14, Appendix F).

The NPRC argue that the Fourmile East and West PODs should be included in the cumulative impact analysis and only identify surface water and groundwater as the cumulative issues of concern. No attempt is made to provide any reasons why the Fourmile East and West PODs should be considered in the cumulative impact analysis except that these projects have been identified and submitted to the MBOGC. No evidence is provided to demonstrate how the geographic scope of the Fourmile PODs warrant consideration of these projects as cumulative actions, or how the potential impacts of these projects could contribute to impacts that are also potential direct or indirect impacts from the North Deer Creek and Decker Mine East PODs.

We agree the Fourmile East and West PODs were submitted to the MBOGC and orders were granted by the MBOGC. However, no actions have been taken to further the likelihood of these projects moving forward. At this time, the MBOGC orders are still contingent on completion of an environment assessment by the MBOGC staff. The MBOGC orders were granted in September and November 2006 and the NPRC provide no evidence to indicate the Fourmile East and West PODs were reasonable foreseeable at the time the Deer Creek North and Decker Mine East EAs were prepared. No additional action has been taken to initiate the EA process for the Fourmile East or West PODs with the MBOGC.

The WDEQ meeting to discuss finalizing the general discharge permitting process by the end of the year does not change the finding detailed in response to comments on the Deer Creek North EA that a Draft General Discharge Permit process is not ripe for analysis. See Deer Creek North EA, page 30, Appendix I.

We find the determination of the components of past, present and reasonably foreseeable future actions that were included as part of the cumulative impact analysis was fully informed and properly considered.

3. THE BLM FAILED TO ENSURE THAT THE WATER MANAGEMENT PLAN SPECIFIED IN THE PROJECT'S EAS IS IN COMPLIANCE WITH THE CLEAN WATER ACT; THEREBY VIOLATING THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 (FLPMA)

The NPRC Argue:

We are very concerned that untreated wastewater from the 48 CBM wells within the BLM approved Deer Creek North and Decker Mine East PODs will add to the pollution we are already observing. We believe that, with the February 2008 Environmental Protection Agency (EPA) approval of Montana's nondegradation rules, the nondegradation permits issued by the state to Fidelity need to be re-opened, reviewed, and re-permitted to comply with Montana's nondegradation rules for electrical conductivity (EC) and sodium adsorption ration (SAR). And, any environmental compliance document must examine the cumulative effects of Wyoming's coal bed methane development on Montana.

On July 10, 2008, we wrote the MDEQ explaining their obligations under existing statutes to modify Fidelity's discharge permits (MT-0030457 and MT-0030724) based upon EPA's action in February, which approved the nondegradation standards for the Tongue River (copy of letter enclosed). The existing Federal and State regulations to support the modification of Fidelity's discharge permits include: 33 U.S.C. §1342(5)(b)(1)(C)(iii), 40 CFR §122.62(a)(3), MCA §75-5-402, and ARM §17.30.1361(1)(c)(i)(B).

Both the Deer Creek North and Decker Mine East EA and FONSI use the information contained in the existing discharge permits, and do not incorporate non-degradation calculations. The NPRC feels strongly about the protection of the Tongue River, and requests that the BLM include in the Deer Creek North EA an analysis of the water being discharged from the 34 federal CBM wells proposed for the project, and their potential to exceed the nondegradation standards approved by the EPA in February.

Response:

This claim is premised on interpretations of an existing antidegradation (nondegradation) program and rules, and claims that the nondegradation criteria are applicable to the subject cases and are appropriate measures to use as NEPA significance factors, and finally are directly related to FLPMA's mandate to comply with applicable laws.

The language from page 3-21 of the Deer Creek North EA describes the BLM's interpretation of the relevance of State and Tribal nondegradation criteria to the BLM's analysis and how the EA will measure potential surface water quality impacts. In summary, the nondegradation provisions are applied by the National Pollutant Discharge Elimination System (NPDES) (or in this case MPDES since the State of Montana is delegated authority) issuing agency or Tribe, delegated to implement the program, when a permit is requested for a "new or increased source" (ARM § 17.30.705).² The MDEQ's water quality information web site further clarifies that the Department (MDEQ) will ensure compliance with the nondegradation requirements before issuing permits, licenses or authorizations that are regulated by the Department. These criteria serve as a trigger during the permitting process, which may require the permitting agency to look more closely at a proposal, and then take appropriate action (i.e., issuance of a permit to degrade or denial of the proposed permit). These are triggers, and are not intended to be used in stream, and are not intended to be used for evaluation of existing discharges. The in stream standards are specifically developed in order to protect beneficial uses, and as such it is more appropriate to

² The Draft Northern Cheyenne Tribe Standards include a section that describes the scope of the antidegradation policy and review process. Section 1.4.2. states; "The Department will conduct some level of antidegradation review for all "regulated activities" (see definition in Section 3.1.1) that have the potential to affect existing water quality. The specifics of the review will depend upon the waterbody segment that would be affected, the tier of antidegradation applicable to that waterbody segment, and the extent to which existing water quality would be degraded." Definitions are actually found at Section 1.3.3. This section defines regulated activity to mean; "...any activity that requires a permit or a water quality certification pursuant to federal law (e.g. §402 NPDES permits, CWA §404 dredge and fill permits, FERC licenses, any activity requiring an CWA § 401 certification), and any other activities (which may include nonpoint sources of pollution) where tribal regulation specify that an antidegradation review is required."

use them to provide a significance threshold from a NEPA perspective (i.e., are beneficial uses affected) or to determine compliance with FLPMA's mandate to comply with applicable laws.

The Deer Creek North and Decker Mine East EAs include a rigorous analysis of surface water quality impacts, including potential impacts from applicable CBNG development in Wyoming. The results of the analyses indicate that the action alternatives would not cumulatively cause the beneficial uses of the Tongue River to become impaired due to comparisons with both Tribal and State SAR and EC standards, or any other standards included in the MDEQ analysis for the existing MPDES permits. See Deer Creek North EA at pages 4-18 through 4-20 and 4-36, and Decker Mine East EA at pages 4-19 through 4-21 and 4-35.

Similar comments were provided during the public comment period provided for the Deer Creek North EA. The BLM properly considered these comments by either making changes to the EA or including responses in the EA made available to the public with the FONSI and DR. The responses address many of the same issues related to concerns about the applicability of nondegradation criteria. See Deer Creek North EA, Appendix I at pages 29 through 32.

The NPRC continue to disagree with the analysis the BLM and MDEQ are using to disclose water quality impacts. The NPRC's opinion about the water quality analysis completed by the BLM and MDEQ is not supported by objective proof that demonstrates a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the actions under consideration by the MCFO.

DECISION

After careful review of the written SDRs, I affirm the September 30, 2008, DRs and FONSI approved by the BLM Miles City Field Manager. The MCFO completed a careful review of environmental problems, all relevant environmental concerns have been identified, the final determination is reasonable and the Miles City Field Manager correctly determined an EIS was not necessary. The scope of the projects is appropriate. The analysis of the environmental impacts from the projects is comprehensive and the conclusion that these impacts, as the projects are designed with additional mitigation measures are not significant is correct.

Although NPRC requested a stay, no justification was submitted to support a petition for a stay except for the arguments deliberated in this SDR. Therefore, consistent with our Decision we deny NPRC's request for a stay. This Decision will be effective during the time in which a party adversely affected may file a notice of appeal with the Interior Board of Land Appeals (43 CFR 3165.4(c)).

This Decision may be appealed to the Board of Land Appeals Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and Form 1842-1 (Enclosure 4). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the

Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed from, is in error.

If you wish to file a Petition for a Stay of this Decision, pursuant to 43 CFR 3165.4(c), the Petition must accompany your Notice of Appeal. A Petition for a Stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and Petition for a Stay must also be submitted to each party named in this Decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

In case of an appeal, the adverse parties to be served are:

Fidelity Exploration & Production Company
Attn: Mike Keller
1700 Lincoln Street Suite 2800
Denver, Colorado 80203

/s/ Theresa M. Hanley

Theresa M. Hanley
Deputy State Director
Division of Resources

4 Enclosures

- 1-Deer Creek North POD FONSI and DR Dated September 30, 2008 (21 pp)
- 2-Decker Mine East POD FONSI and DR Dated September 30, 2008 (23 pp)
- 3-Northern Plains Resource Council SDR Request Dated October 29, 2008 –
SDR-922-09-02 (7 pp)
- 4-Form 1842-1 (2 pp)

cc: (w/encls.)

Miles City Field Office

Fidelity Exploration & Production Company, Attn: Mike Keller, 1700 Lincoln Street Suite 2800,
Denver, Colorado 80203

cc: (w/o encls.)

WO-300, MIB, Rm 3222

WO-310, LS, Rm. 501

WO-200, MIB, Rm. 5650

WO-240, LS, Rm. 204

North Dakota Field Office

Great Falls Field Station

AKSO, AZSO, CASO, COSO, ESO, IDSO, NVSO, NMSO, ORSO, UTSO, WYSO

MT-923

MT-924

922.JA:kr:x5111:11/20/08:NPRC_SDR_1.docx