



BEAR DEN PHASE 2 PROJECT

Plan of Development

APPENDIX M

Environmental Inspection and Compliance Monitoring Plan



BEAR DEN PHASE 2 PROJECT

Plan of Development

Environmental Inspection and Compliance Monitoring Plan

Prepared for:
BUREAU OF LAND MANAGEMENT

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1.0 INTRODUCTION

Enable Bakken Crude Services, LLC (EBCS) will employ at least one full-time Environmental Inspector/Compliance Monitor (EI) per construction spread during construction of the proposed Bear Den Phase 2 Project (Project) to ensure compliance with the mitigation measures contained in the Project-specific documents including the Environmental Assessment (EA) and U.S. Bureau of Land Management's (BLM) Plan of Development (POD), and the conditions and requirements included in other authorizing actions (see below). The environmental inspection and compliance monitoring program will be implemented under the direction of EBCS, with oversight by the BLM. This document presents the objectives of the program, describes the responsibilities of the environmental inspection team, outlines the level of effort anticipated, and defines the decision-making authority of the EI. In addition, this document discusses the compliance reporting and documentation requirements, stop work authority, and the variance process.

2.0 PROGRAM OBJECTIVES

The overall objective of the environmental inspection and compliance monitoring programs is to ensure the implementation of the project's environmental requirements during construction and to document EBCS' compliance and/or noncompliance with these requirements. EBCS will provide at least one full-time EI per construction spread to meet this objective. The project environmental requirements include:

- the environmental mitigation measures that were proposed by EBCS throughout the permitting phase of the project;
- the BLM POD, which will be appended to the BLM Right-of-Way Grant; and
- additional stipulations included in permits from other authorizing federal, state, and local agencies (see Table 2-1).

EBCS will provide the EI with the documentation that is necessary for them to understand the project mitigation measures and environmental requirements. During construction, the EI will conduct daily ongoing inspections of construction activities and mitigation measures. The EI will provide regular feedback on compliance issues to EBCS in the form of daily reports. The EI will also provide direction to the contractor regarding the implementation of the project's environmental requirements on a daily basis. Construction progress and environmental compliance will be tracked and documented by the preparation and submittal of daily and weekly reports (see Section 4.0). The EI will report to EBCS as well as coordinate with the BLM Project Manager.

TABLE 2-1

**Bear Den Project Phase 2
 Environmental Permits, Approvals, and Consultations**

Agency	Permit/Approval/Consultation/ Concurrence	Need
Federal		
Bureau of Land Management	Permit	Right-of-Way Grant
	Consultation and Concurrence	National Environmental Policy Act analysis, Project consistency with NDFO Resource Management Plan
	Approval	Decision Document for National Environmental Policy Act analysis
U.S. Forest Service	Consultation and Concurrence	National Environmental Policy Act analysis, Project consistency with USFS 2001 revised Land and Resource Management Plan for the Dakota Prairie Grasslands Northern Region
U.S. Army Corps of Engineers – Omaha District	Permit	Permit for the discharge of dredge or fill material into waters of the U.S. under Section 404 of the Clean Water Act, and for activities affecting navigable waters under Section 10 of the Rivers and Harbors Act
U.S. Fish and Wildlife Service – Region 6 – North Dakota Field Office	Consultation and Concurrence	Consultations for impacts on federally listed threatened and endangered species and critical habitat under Section 7 of the Endangered Species Act (ESA), the Migratory Bird Treaty Act, the Bald and Gold Eagle Protection Act, and the Fish and Wildlife Coordination Act
U.S. Department of Agriculture, Natural Resources Conservation Service – North Dakota	Consultation	Recommendations for revegetation/seed mixes on private and state lands
Advisory Council on Historic Preservation	Consultation and Concurrence	Consultation under Section 106 of the National Historic Preservation Act if the project would affect historic properties
North Dakota		
North Dakota Department of Health, Division of Air Quality	Permit	Minor source operating permit
North Dakota Department of Health, Division of Water Quality	Permit	General Permit for Construction Stormwater Discharge under the National Pollution Discharge Elimination System
	Permit	General Permit for Construction Dewatering and Discharge of Hydrostatic Test Water under the National Pollution Discharge Elimination System
	Permit	Water Quality Certificate under Section 401 of the Clean Water Act
North Dakota State Water Commission	Permit	Navigable Water Crossing Permit under North Dakota Century Code Chapter 61-33 (Sovereign Lands)
	Permit	Water appropriation permit for any project-related surface water withdrawals
North Dakota Department of Game and Fish	Consultation	Consultation for impacts on fisheries and wildlife
State Historical Society of North Dakota	Consultation and Concurrence	Consultation for impacts on historic properties under Section 106 of the National Historic Preservation Act
North Dakota Department of Transportation	Permit	Right-of-Way Occupancy permit for State roadway crossings
North Dakota Department of Trust Lands, Board of University and School Lands	Permit	Right-of-Way Grant to cross state lands
Local		
McKenzie County	Permit	Right-of-way permit to cross roads

Other objectives of the environmental inspection and compliance monitoring programs are to:

- facilitate the timely resolution of compliance-related issues in the field;
- provide timely information to the BLM regarding potential noncompliance issues and their resolution; and
- provide a system for storing the information collected during the environmental inspection and compliance monitoring program.

3.0 ENVIRONMENTAL INSPECTION AND COMPLIANCE MONITORING

3.1 Level of Effort

EBCS is planning to utilize two construction spreads, each divided into various separate crews, to build the Project. Construction activities are expected to begin in June 2014 and be substantively completed by October 2014.

The construction contractor is anticipated to typically work six 10-hour days per week and the full-time EI will typically work a minimum of 60 hours per week as needed, which should provide sufficient coverage to inspect construction activities and document the implementation of the environmental mitigation measures and permit conditions during construction. The EI will be outfitted with a vehicle and other equipment necessary to properly fulfill their duties (see Section 8.0).

The EI will be responsible for all facets of environmental inspection and documenting compliance with the environmental requirements discussed above. The EI's duties will also include coordinating environmental compliance and resolution of issues, identifying construction activities or changes that require higher levels of management, and coordinating communications with the project's contractors. The EI, in conjunction with EBCS' project Environmental Coordinator, will act as the principal liaison when agency personnel visit the construction site. The EI will directly represent EBCS and will have the authority to enforce the environmental requirements of the project, including halting specific noncompliance activities that may cause a significant negative impact on the environment. Other EI responsibilities will include the following:

- informing craft inspectors and contractor management personnel of the status and priority of environmental issues in their respective areas;
- providing guidance for the proper implementation of environmental measures, and particularly, verifying that both temporary and permanent soil erosion and sediment control devices are properly installed where required;
- identifying the need for prompt corrective actions, setting completion priorities, and documenting completion of corrective actions;
- conducting a final walkover of the restored construction spread and developing a list of areas requiring additional restoration work for submittal to EBCS upon project completion;

- completing daily inspection reports (see Section 4.0); and
- conducting new arrival and tailgate environmental training.

Construction activities will be inspected on a daily basis by the EI and environmentally sensitive areas will be regularly inspected to ensure protection of the resource. The level of coverage of specific portions of the construction spread will be determined based on the construction activity occurring at the time of inspection, any noncompliance or problem areas documented during previous inspections, the sensitivity of resources in the vicinity, and landowner complaints received. The EI will record daily observations including digital photo documentation as necessary. This process will ensure consistent and accurate reporting of site conditions at the time of inspection. Each activity inspected will be assigned a compliance level and documented in a daily report (see Section 4.1).

3.2 Environmental Inspection

The EI will oversee management of the environmental inspection and compliance monitoring program supported, as necessary, by EBCS representatives. The EI will be responsible for the following:

- verifying EBCS' compliance with the project environmental requirements;
- ensuring that all reported noncompliances are tracked for resolution by EBCS;
- reviewing and distributing monitoring reports, permit approvals, and approved variance requests;
- coordinating with EBCS and the BLM and on a regular basis;
- facilitating agreements in the field, as appropriate, with the contractors;
- assisting in the development and presentation of the environmental training program;
- preparation of variance request forms;
- implementation of orders received from the BLM Authorized Officer or Project Manager to halt specific non-complying activities on federal land including immediate temporary suspension orders; and
- ensuring the contractor complies with the following:
 - only the approved work areas are used, including the construction right-of-way, extra workspaces, access roads, and contractor yards;
 - exclusion zones and environmental buffers for sensitive resources are observed and maintained;
 - adequate topsoil salvage is conducted where required using the appropriate method;

- appropriate waterbody crossing procedures are implemented in accordance with project documents;
- dewatering activities and the installation of erosion controls are conducted in accordance with the project documents;
- spills of toxic substances or industrial wastes are treated according to EBCS' *Spill Prevention, Control, and Countermeasure Plan* (SPCC Plan); and
- adequate signs and flagging are installed to identify approved and non-approved access roads, wetland and waterbody buffers, and exclusion areas for cultural resources and other sensitive resources.

4.0 REPORTING AND DOCUMENTATION

Reporting and documentation during construction of the project will be provided in the form of daily and weekly reports that will be e-mailed to EBCS' project team.

4.1 Daily Reports

The EI will complete one or more daily report(s) documenting the project-related activities inspected. The EI will document the station number; the presence of threatened or endangered species, waterbodies, wetlands, and cultural or other sensitive resources; and include a brief description of the activities observed. When appropriate, relevant digital photographs will be taken and included in the report. A sample Daily Monitoring Report form is provided in Attachment 1.

Each separate activity monitored and documented in a daily report will be assigned a compliance level. The compliance levels for the Bear Den Project Phase 2 are described below.

Acceptable – An acceptable report will be issued when the activities observed are in compliance with the project environmental requirements.

Incident – An incident report will be issued when an event occurs that would not be considered acceptable but is accidental or unforeseeable and the response to the event is in compliance with the project environmental requirements. An example of an incident is when a fuel leak is observed and the project personnel respond by stopping, containing, and cleaning up the spill in accordance with the project environmental requirements.

Minor Problem – A minor problem report will be issued when there is a minor deviation from the project environmental requirements. An example of a minor problem would be if a small amount of soil or slash is observed off of the right-of-way but has no effect on sensitive resources. If the minor problem is not corrected within an established timeframe or multiple occurrences of a similar nature continue, the situation will be elevated to a noncompliance. The EI will inform the crew foreman about a minor problem before issuing the minor problem report and note in the daily report the name of the foreman who was notified.

Noncompliance – A noncompliance report will be issued when an activity is observed that violates the project environmental requirements and places resources at unnecessary risk.

Examples of noncompliance issues include the failure to install or maintain required erosion control devices and activities conducted outside the approved right-of-way limits or approved temporary use areas and access roads. The EI will inform the crew foreman about a noncompliant activity before issuing the noncompliance report and note in the daily report the name of the foreman who was notified.

Daily reports and relevant photo documentation completed by the EI will be available on the Project's SharePoint site at the end of the next work day.

4.2 Weekly Summary Reports

Weekly reports will be issued that briefly describe construction activities during the reporting period and summarize by compliance level the number of reports completed by the EI during the reporting period and cumulatively. The weekly report will also summarize in a tabular format the noncompliance reports issued by the EI during the reporting period and the variances approved during the reporting period.

The weekly summary report will be emailed to EBCS' Environmental Coordinator early in the week following the reporting period.

5.0 VARIANCES

During construction, unforeseen or unavoidable site conditions can result in the need for changes from approved mitigation measures and construction procedures. Additionally, the need for route realignments, extra workspaces, or access roads outside of the previously approved construction work area may arise. Changes to previously approved mitigation measures, construction procedures, and construction work areas will be handled in the form of variance requests to be submitted by EBCS and reviewed and approved or denied by the BLM and the U.S. Forest Service (USFS; if on National Forest land). The variance process can also be a good mechanism to clarify discrepancies discovered in project materials and/or to distribute information to the entire project team. Variance requests that affect National Forest land will be first submitted to the USFS for review. Once the USFS acts upon a variance request, it will be returned to EBCS with the action decision. If approved, EBCS will forward the request on to the BLM for review. Variance requests that do not affect USFS lands will be submitted directly to the BLM for approval. A system of two variance levels (Levels 1 and 2) will be used to categorize and process variance requests. The variance level determines the type of supporting materials that are needed for review by the BLM to approve the request. A sample variance request form is included in Attachment 1.

5.1 Level 1 Variances

Level 1 variances are site-specific, minor, performance-based changes to project specifications or mitigation measures that provide equal or better protection to environmental resources. These minor variance requests typically require little or no supporting materials besides an accurately completed variance request form. Examples of Level 1 variance requests include:

- allowing rubber-tired vehicles to use additional access roads not identified in the *Transportation Action Plan*, including two-track roads, during dry conditions that would not require any improvement to the road ("like use"). An example would be archaeologists driving pick-up trucks on existing two-track roads to access

and mark archaeological sites prior to construction access along the right-of-way being available;

- waiving the requirement to install a permanent slope breaker at the base of an angled grade leading into a wetland if it is obvious that the angle of the slope drains the water off the right-of-way before entering the wetland;
- minor variations in site-specific stream crossing plans that reflect differences in site conditions from those that were expected when the plan was developed and completed inventories indicate that no cultural, paleontological, or biological resources would be affected (e.g., relocation of a spoil storage area within previously approved work areas);
- shifting extra workspace along the right-of-way a short distance where the overall disturbance remains the same, and completed surveys indicate that no cultural, paleontological, or biological resources would be affected;
- placing a dewatering structure (straw bales and/or filter bags) on federal lands off the construction right-of-way in an area where completed inventories indicate that no cultural, paleo, or biological resources would be affected; and
- limbing or cutting trees adjacent to an approved access road.

Level 1 variances may also be used to document and disseminate agency-directed changes to mitigation measures (e.g., a change to a mitigation measure or specification in the POD that was made at the request of the BLM).

To initiate a Level 1 variance request, the EI or other designated EBCS representative will fill out a variance request form and obtain at least one authorizing signature (see Attachment 1). The request form shall include copies or maps, drawings, and the page numbers from appropriate cultural resource inventories and biological inventory reports to facilitate timely review and approval of the request. The variance request will then be submitted to the BLM (as described in Section 5.0).

The BLM may approve a Level 1 variance request if the results of implementing the change will provide equal or better protection for the resource than the original mitigation measure, and the original mitigation measure is not applicable to that specific site.

If the Level 1 variance request is approved, the BLM will sign the variance request and e-mail the approved form (scanned copy) to the designated EBCS representatives and the EI, and the USFS (if on National Forest land). The EI will be responsible for the distribution of the approved variance request to the contractor and other field personnel as appropriate. The variance may be implemented in the field as soon as the approved variance is received.

5.2 Level 2 Variances

Level 2 variance requests generally involve project changes that would affect an area outside of the previously approved work area, but within the corridor previously surveyed for cultural resources and sensitive species. Level 2 variance requests typically require the review of supplemental documents, correspondence, and records. Examples of Level 2 variance requests include:

- the use of extra workspace outside of the previously approved work area;
- adding the use of an existing access road to the *Transportation Plan* for general purpose construction access;
- modifying a previously approved access road in ways not previously identified;
- increasing the width of the construction right-of-way at specific locations for truck turn-arounds, additional topsoil storage, side-slope construction, or where unstable soils, landowner requests, or other conditions require slight realignments of the pipeline;
- extra workspaces, access roads, or route realignments for which landowner approval cannot be documented;
- certain project-wide changes to mitigation measures or construction/restoration procedures; and
- extra workspaces, access roads, or route realignments where additional resource surveys are required that result in the need to consult with other federal agencies for threatened or endangered species or for cultural resources and supplemental National Environmental Policy Act documentation is needed to approve the measure.

Level 2 variance requests may also be submitted for changes that would extend beyond the corridor previously surveyed for sensitive resources if additional cultural and biological resources surveys are conducted and documentation of the surveys and any applicable agency correspondence are submitted with the variance request. The procedures outlined in EBCS' *Cultural Resources Unanticipated Discovery Plan* for the project must be followed for additional cultural resources surveys, including appropriate agency approvals, before the BLM can approve the variance request. If sensitive biological species and/or habitat are encountered during the additional surveys, documentation of consultation with applicable agencies must be provided with the variance request.

To initiate a Level 2 variance request, the EI or other designated EBCS representative will fill out a variance request form, prepare the appropriate supporting documentation, and obtain the required signatures (see Attachment 1).

The EI or designated EBCS representative will complete and submit the variance request form and supporting documentation by e-mail (scanned copy) or fax to the to the USFS (if on National Forest Lands) and the BLM (as described in Section 5.0). The request form shall include copies or maps, drawings, and the page numbers from appropriate cultural resource inventories and biological inventory reports to facilitate timely review and approval of the request.

If the Level 2 variance request is approved, the BLM will sign the variance request and email the approved form (scanned copy) to the designated EBCS representatives, the EI, and the USFS (if on National Forest land). The EI will be responsible for the distribution of the approved variance request to the contractor and other field personnel as appropriate. The variance may be implemented in the field as soon as the approved variance is received.

6.0 STOP WORK AUTHORITY

The EI will have the authority to stop construction if an activity is determined to be a deviation from the project environmental requirements.

7.0 TRAINING

The EI will conduct EBCS' ongoing environmental training program. All field personnel will be required to attend environmental training and obtain a hard hat sticker before being allowed on the right-of-way.

8.0 EQUIPMENT

The environmental inspection and compliance monitoring program will utilize field support equipment such as laptop computers and associated software, digital cameras, cellular phones, and vehicles for field personnel. The EI will also be equipped with a 4-wheel drive vehicle throughout construction to maintain access to all areas of the right-of-way.

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BEAR DEN PHASE 2 PROJECT

**ATTACHMENT 1
Sample Reports and Forms**

**Enable Bakken Crude Services, LLC – Bear Den Phase 2 Project
Daily Inspection Report**

Environmental Inspector:

Date:

Compliance Level:

BLM Field Office:

Activities:

Milepost Start:

Milepost End:

Begin Station:

End Station:

Spread #:

State: **North Dakota**

Contact Name:

Weather Conditions:

Contact Title:

Precipitation Amount:

T&E Habitat:

Follow-up Required:

Water Crossing Name or #:

Wash Crossing Name or #:

Cultural Resource #:

Inspection Notes:

Photos Attached?

(If yes, include photo names below)



ENABLE BAKKEN CRUDE SERVICES, LLC
BEAR DEN PHASE 2 PROJECT
ENVIRONMENTAL INSPECTION MONITORING PROGRAM
WEEKLY SUMMARY REPORT
 For the Period:
XXXXX XX, 2014 – XXXXX XX, 2014

SUMMARY OF ACTIVITIES

Weekly Summary Environmental Inspection		
For the Period: XXXXX XX, 2014 through XXXXX XX, 2014		
Compliance Level	Compliance Reports for the Period	Cumulative Compliance Reports for the Project
Acceptable		
Communication		
Incident		
Minor Problem		
Total Compliance Reports		
Compliance Level	Noncompliance Reports for the Period	Cumulative Noncompliance Reports for the Project
Noncompliance		
Total Noncompliance Reports		
Total Reports		

SPREAD 1

[insert weekly summary here]

SPREAD 2

[insert weekly summary here]

PROBLEM AREAS AND NONCOMPLIANCES

VARIANCES

SUMMARY OF APPROVED LEVEL 1 AND 2 VARIANCES					
Variance Number	Date Approval Issued	Location (Station Numbers)	Brief Description	Net Acreage Affected	
				Federal Land	Non-Federal Land
LEVEL 1					
LEVEL 2					

SUMMARY OF ACREAGE AFFECTED BY VARIANCES		
	Additional Acreage Disturbed this Reporting Period	Cumulative Additional Acreage Disturbed
Federal Land		
Non-Federal Land		
Total		

Variance Request Form

CEBCS Bear Den Project

Variance Request No.: _____
 Date Approval Requested: _____
 Date Submitted: _____
 Date Received by BLM: _____

Request prepared by: _____ BLM Approval No.: _____
 Spread/ Location (Milepost): _____ Net acreage affected: _____
 Alignment Sheet/ Station Number: _____ Tract No.: _____
 Landowner: _____

Current Land Use/ Vegetative Cover: _____ In or w/in 50 feet of a wetland: Yes No
 Nearby Features (Wash, Wetland, Noxious Weed Area, Residence (distance), etc.): _____
 Variance Level: Level 1 Level 2 Level 3
 Variance From: Permit Plan of Development Specification Drawing Mitigation Measure Other

Sign Below To Request This Variance

Sign-off (as appropriate)	Name (print)	Approval Signature	Conditions (See Attached)
Lead Environmental Inspector			<input type="checkbox"/> Yes <input type="checkbox"/> No
Contractor Environmental Coordinator			<input type="checkbox"/> Yes <input type="checkbox"/> No
ROW Agent			<input type="checkbox"/> Yes <input type="checkbox"/> No
Overland Pass Construction Management			<input type="checkbox"/> Yes <input type="checkbox"/> No

Detailed Description of Variance: Attachments? Yes No Photos? Yes No

Variance Justification:

For Overland Pass Use Only

Additional Surveys Required	Surveyed Corridor Description	Additional Surveys Completed
Cultural Survey <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No
T & E Survey <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No

Previously Surveyed _____

Sign Below For Approval Of This Variance

Sign-off (as appropriate)	Name (print)	Approval Signature	Conditions (See Attached)
Lead Environmental Inspector			<input type="checkbox"/> Yes <input type="checkbox"/> No
Environmental Inspection Manager			<input type="checkbox"/> Yes <input type="checkbox"/> No
Overland Pass Construction Management			<input type="checkbox"/> Yes <input type="checkbox"/> No
ROW Agent			<input type="checkbox"/> Yes <input type="checkbox"/> No

For BLM Compliance Monitor and Manager Use Only

Variance Approved: _____ Variance Denied: _____ Beyond Authority: _____
 Signature: _____ Date: _____
 Stipulations: _____

Spread No.: _____

Bear Den Variance Request No.: _____

VARIANCE CONDITIONS

Name: _____

Title: _____

Organization: _____

Conditions:

Name: _____

Title: _____

Organization: _____

Conditions:

Name: _____

Title: _____

Organization: _____

Conditions: