

**Decision on Action and Application for Categorical Exclusion  
For Activities Associated with Oil and Gas Development  
Section 390, Energy Policy Act of 2005**

Willow Creek  
Additions III POD  
Encore Energy Partners Operating, LLC  
WY-070-390CX3-15-43-52  
Bureau of Land Management  
Buffalo Field Office

**Description of the Proposed Action**

Encore Energy proposes to develop ten (10) CBNG wells from the Willow Creek Plan of Development (POD). The Willow Creek POD EA (WY-070-EA06-211) was approved 9/13/2006 and involved the development of 88 CBNG wells and associated infrastructure. The 88 wells were previously approved within the Willow Creek POD but never drilled, and the Applications for Permit to Drill (APDs) expired. Bill Barrett resubmitted 36 of the 88 APDs as the Willow Creek NC POD and they were approved 7/14/2010. The wells listed below (part of the 36) were not drilled and their APDs expired once again. Encore Energy took over as the operator of the associated leases and submitted NOSs 8/14/2014, onsites were held 9/25/14, and APDs were received 12/23/2014. The wells are located as follows:

<b>CX#</b>	<b>Well Name</b>	<b>Well #</b>	<b>Qtr</b>	<b>Sec</b>	<b>TWP</b>	<b>RNG</b>	<b>Lease #</b>
WY070-CX15-43	FEDERAL	34-2	SWSE	2	45N	77W	WYW128454
WY070-CX15-44	FEDERAL	12-11	SWNW	11	45N	77W	WYW128464
WY070-CX15-45	FEDERAL	21-11	NENW	11	45N	77W	WYW128464
WY070-CX15-46	FEDERAL	32-11	SWNE	11	45N	77W	WYW128464
WY070-CX15-47	FEDERAL	34-11	SWSE	11	45N	77W	WYW128455
WY070-CX15-48	FEDERAL	41-11	NENE	11	45N	77W	WYW128464
WY070-CX15-49	FEDERAL	43-11	NESE	11	45N	77W	WYW128455
WY070-CX15-50	FEDERAL	12-13	SWNW	13	45N	77W	WYW89851
WY070-CX15-51	FEDERAL	14-13	SWSW	13	45N	77W	WYW146849
WY070-CX15-52	FEDERAL	41-14	NENE	14	45N	77W	WYW128455

The following permitted impoundments and discharge point locations, previously approved for use in association with the water management plan for the Willow Creek POD, are approved for use in association with the water management strategy for the 10 Willow Creek Additions III POD wells:

<b>Impoundment/ Discharge Point Name / Number</b>	<b>Existing/New</b>	<b>BLM Identifier</b>	<b>Legal Description</b>	<b>Surface Owner / Mineral Lease #</b>
P24-1	Existing	24-45-77-NENW	45N77W Sec 3 NENW	Fee/WYW128455
Drake Pit	Existing	Drake Pit	45N76W Sec 6 SWSW	Fee/WYW0266651
WY0094625-002	Existing	WY0094625-002	45N77W Sec 14 NWSW	Fee/WYW072460
WY0094625-005	Existing	WY0094625-005	45N77W Sec 24 SWNE	Fee/WYW146849
WY0094625-006	Existing	WY0094625-006	45N77W Sec 13 SENW	Fed/WYW089851

### **Plan Conformance**

The proposed action is in conformance with the terms and the conditions of the Approved Resource Management Plan for the Public Lands Administered by the Bureau of Land Management, Buffalo Field Office (BFO), April 2001 and the PRB FEIS (2003), as required by 43 CFR 1610.5.

### **Plan of Operations**

The proposal is designed in conformance with all Bureau standards and incorporates appropriate best management practices, required and designed mitigation measures determined to reduce the effects on the environment.

A surface use plan of operations describing all proposed surface-disturbing activities has been reviewed and is approved pursuant to Section 17 of the Mineral Leasing Act, as amended.

### **Compliance with the Energy Policy Act of 2005**

The proposed activity has been determined to be statutorily categorically excluded from NEPA documentation in accordance with Section 390 of the National Energy Policy Act of 2005.

The applicable Categorical Exclusion reference in Section 390 of the Energy Policy Act of 2005 is exclusion number (b) (3) which is *drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.*

This document Willow Creek POD EA WY-070-EA06-211 has been reviewed and has been determined to adequately consider potential environmental effects associated with the proposed activity at a site specific level. The Willow Creek POD EA was approved on 9/13/2006 and identifies the Willow Creek Additions III APDs as reasonably foreseeable. There have been no changes in project design or resource conditions since completion of the Willow Creek EA. The ten Willow Creek Additions III POD APDs were approved with the 7/14/2010 Willow Creek NC POD decision. The Willow Creek Additions III POD satisfies the conditions of a Section 390 Categorical Exclusion #3 as these APDs are within a developed field (Willow Creek), for which drilling of these APDs was identified and analyzed within a NEPA document (WY-070-EA06-211), which was refreshed with a decision (Willow Creek NC POD Decision, WY070-CS10-206 through WY070-CS10-231, 7/14/2010) approving these APDs within five years prior to spudding the wells.

### **Previous inventory:**

In accordance with section 106 of the National Historic Preservation Act, BLM must consider impacts to historic properties (sites that are eligible for or listed on the National Register of Historic Places (NRHP)). For an overview of cultural resources that are generally found within BFO the reader is referred to the Draft Cultural Class I Regional Overview, Buffalo Field Office (BLM, 2010). Previously reviewed and accepted Class III cultural resource inventories 70060172 and 70060172A adequately covered the proposed project area. No cultural resources are in the area of potential effect.

BLM policy states that a decision maker's first choice should be avoidance of historic properties (BLM Manual 8140.06(C)). If historic properties cannot be avoided, mitigation measures must be applied to resolve the adverse effect. No historic properties will be impacted by the proposed project. Following the State Protocol Between the Wyoming Bureau of Land Management State Director and The Wyoming State Historic Preservation Officer, Section V(E)(iv), the Bureau of Land Management electronically notified the Wyoming State Historic Preservation Officer (SHPO) on 11/21/14 that no historic properties

exist within the area of potential effect (APE). If any cultural values (sites, features or artifacts) are observed during operation, they will be left intact and the Buffalo Field Manager notified. If human remains are noted, the procedures described in Appendix L of the PRB FEIS must be followed. Further discovery procedures are explained in Standard COA (General)(A)(1) and in Appendix K of the Wyoming Protocol.

The wildlife biologist has reviewed the proposal and determined that the Conditions of Approval from the Willow Creek POD are (1) consistent with the Final Environmental Impact Statement (WY-070-02-065) and programmatic biological opinion (ES-6-WY-07-F012) for the Powder River Basin Oil and Gas Project; and (2) effects to listed species have not changed from those analyzed in the POD consultation. Since the 2010 approval of this project the BFO has developed COAs to ensure that authorization of APDs are in compliance with the Migratory Bird Treaty Act (MBTA), Presidential Executive Order 13186, and the Memorandum of Understanding between the U.S. Fish & Wildlife Service and the Bureau of Land Management (BLM MOU WO-230-2010-04. At the onsite, the BLM biologist identified suitable nesting habitat for several BLM sensitive migratory birds and applies the COAs to the following well locations and their access corridors; 34-2, 41-11, 14-13, 2-11, 21-11, and 32-11.

### **Decision and Rationale on Action**

I have decided to implement the following Conditions of Approval (COAs):

1. The operator will comply with all the COA's identified in the original Willow Creek POD and subsequent sundries for this POD.
2. A preconstruction onsite must be held with a BLM NRS (Eric Holborn (307) 684-1044) prior to any construction or drilling of the approved POD.
3. All infrastructure, including engineering slopes stakes, must be field staked prior the preconstruction meeting and construction of the project
4. In addition to the original POD COAs, the following will provide a measure of protection to nesting migratory birds:
  - A. Migratory birds shall be effectively excluded from all facilities that pose a mortality risk, including, but not limited to, heater treaters, flare stacks, and secondary containment where escape may be difficult or wildlife toxicants are present.
  - B. Habitat removal is prohibited during the migratory bird nesting season (May 1 – Aug 1) unless a nesting survey performed by a biologist confirms an absence of nesting birds in the disturbance area. This measure will apply to the 34-2, 41-11, 14-13, 2-11, 21-11 and 32-11 wells and their access.
    1. Results of the nesting survey must be submitted in writing to a Buffalo BLM biologist prior to commencement of activities.
    2. If the survey shows an absence of nesting birds, then habitat can be removed within 10 days of the survey. After 10 days a new survey is required.
    3. If the survey shows nesting birds are present within the habitat that will be removed, then the activity will be delayed until nestlings have fledged.
    4. Exceptions for alternate timelines or specific activities will be evaluated by a BLM biologist on a case by case basis.

The above COAs and/or terms and conditions provide justification for this decision and may not be segregated from project implementation without further NEPA review. In addition, I have reviewed the plan conformance statement and have determined that the proposed activity is in conformance with the applicable land use plan(s). Further, I have reviewed the proposal to ensure the appropriate exclusion category as described in Section 390 of the Energy Policy Act of 2005 has been correctly applied. The proposed ten APDs that expired were permitted on 7/14/2010 under Decision Record: WY-070-CX3-10-196 through WY-070-CX3-10-231. It is my determination that no further environmental analysis is required.

\_\_\_\_\_/s/ Duane W. Spencer\_\_\_\_\_  
Duane W. Spencer  
Field Manager

\_\_\_\_\_/2/3/15\_\_\_\_\_  
Date

**Administrative Review or Appeal Opportunities**

This decision is subject to administrative review in accordance with 43 CFR 3165. Any request for administrative review of this decision must include information required under 43 CFR 3165.3(b) (State Director Review), including all supporting documentation. Such a request must be filed in writing with the State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003, no later than 20 business days after this Decision Record is received or considered to have been received.

Any party who is adversely affected by the State Director’s decision may appeal that decision to the Interior Board of Land Appeals, as provided in 43 CFR 3165.4.

**Contact Person**

For additional information concerning this decision, contact  
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