

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

Badger Creek Addition  
J.M. Huber Corp.  
Bureau of Land Management  
Buffalo Field Office

CX Number	Well Name	Well #	TWP	RNG	Sec	QTR	Lease
08-3-066	BADGER CREEK ADD DOW TRUST	1MK-33	58N	82W	33	NENE	WYW164346
08-3-061	BADGER CREEK ADD DOW TRUST	7MK-33	58N	82W	33	SWNE	WYW164346
08-3-065	BADGER CREEK ADD UNHOCH	1MK-29	58N	82W	29	NENE	WYW141586
08-3-064	BADGER CREEK ADD VISBORG	8MK-21	58N	82W	21	NENE	WYW164345
08-3-063	BADGER CREEK ADD VISBORG	3MK-21	58N	82W	21	NENW	WYW164345

**Description of the Proposed Action**

J.M. Huber Corporation proposes to drill and complete five infill CBNG wells within the previously approved Badger Creek POD. The five wells are located in T58N R82W sections 21, 29 & 33. The locations are located on federal leases WYW164345, WYW164346, & WYW141586. The wells are targeting the Smith, Anderson, Dietz 2, Dietz 3, Monarch and Carney formations to an average depth of 1133 feet.

The water management strategy for these five wells is to discharge produced water into infrastructure which has been constructed for use with the Little Badger POD, EA number WY-070-07-051, approved on 4/3/2007, and facilities related to fee development. Produced water will be sent to one injection well, seven existing off-channel impoundments, and surface irrigation. All impoundments have reclamation bonds posted with the appropriate agency.

The total surface disturbance for this action consists of the following. For more site specific information refer to the CBNG Project Surface Use Data Summary Form located in the Badger Creek Addition Federal POD book:

Facility	Number or Miles	Factor	Acreage of Disturbance	Duration of Disturbance
Nonconstructed Pad	1	150'L X 100'W	0.3	Long Term
Constructed Well Pads	3	Site Specific	1.6	Long Term
Slot Well Pad	1	30'L X 120'W	0.4	Long Term
Proposed Improved Roads				
No Corridor	0.5	Site Specific	2.7	Long Term
With Corridor	1.67	Site Specific	12.4	Long Term
Pipelines				
In Corridor w/o road	0.53	40' Width	2.6	Short Term
Stock Tanks	1	20'L X 20'W	0.1	Long Term
Staging Areas	3	400'L X 100'W	2.8	Short Term

Facility	Number or Miles	Factor	Acreage of Disturbance	Duration of Disturbance
<b>Total Disturbance</b>			<b>22.9</b>	

### Changes Agreed to at the Onsite

1. The 1-21 location was moved as it was situated in a tight spot next to a hill side in which significant amount surface disturbance would be required for the road and well pad. The location was moved to the South onto BLM administered surface and the well number was changed to the 8-21.
2. The access road to the 1-33 and 7-33 location was rerouted to come in from the North per landowner request as to avoid driving thru the surface owners horse pasture. There are fee wells to the north and the majority of the road that will be utilized will be existing improved road. The pipeline will follow the original proposed route and then will hook into an existing pipeline network at an existing well.
3. The 7-33 location, the constructed pad was shrunk to 150'L X 90'W from the original 150'L X 100'W because with the original design, the NW corner of the pad would not provide a 20ft undisturbed vegetative buffer between the edge of disturbance and a drainage on the West side.
4. The 1-29 location, the constructed pad was changed to a slot design of 30'L X 120'W from the original 150'L X 100'W to minimize surface disturbance. Additionally the surface owner requested that a stock tank be placed at this location.

### 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, 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.*

The Badger Creek Federal POD document has been reviewed and has been determined to consider potential environmental effects associated with the proposed activity at a site specific level.

The environmental assessment for Badger Creek Federal POD (WY-070-07-051) was approved on April 3, 2007 and identifies the drilling of CBNG wells as reasonably foreseeable.

#### **Persons and Agencies Consulted**

Wendy Sutton, Archeologist  
 Ben Adams, Hydrologist  
 Don Brewer, Wildlife Biologist  
 Ted Hamersma, Civil Engineering Technician

Class III cultural resource inventory was conducted for the project prior to on-the-ground work (BFO # 070080039). ACR Consultants conducted a Class III cultural resource inventory following the Archeology and Historic Preservation, Secretary of the Interior's Standards and Guidelines (48CFR190) for the project. Wendy Sutton, BLM Archaeologist, reviewed the report for technical adequacy and compliance with Bureau of Land Management (BLM) standards, and determined it to be adequate. One additional Class III inventory covers portions of the project (BLM # 070070001). The following cultural resources are located in or near the area of potential effect.

<b>Site Number</b>	<b>Site Type</b>	<b>Eligibility</b>
48SH1589	Prehistoric	Eligible

Site 48SH1589 is not located within the APE for the project; there are no eligible sites within the APE of the proposed project. Following the Wyoming State Protocol Section VI (A)(1) the Bureau of Land Management electronically notified the Wyoming State Historic Preservation Officer (SHPO) on 7/29/2008 that no historic properties exist within the APE and that the proposed project would result in *no historic properties affected/no effect* (DBU\_WY\_2008\_1698).

If any cultural values [sites, artifacts, human remains (Appendix L PRB FEIS)] are observed during operation of this lease/permit/right-of-way, they will be left intact and the Buffalo Field Manager notified. Further discovery procedures are explained in the *Standard COA* (General)(A)(1).

The wildlife biologist has reviewed the proposal and determined that the project is consistent with the Final Environmental Impact Statement (WY-070-02-065) and programmatic biological opinion (ES-6-WY-07-F012) from the Powder River Basin Oil and Gas Project.

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

I have decided to implement Badger Creek Addition Federal POD with the following Conditions of Approval (COAs):

#### **General**

1. All changes made at the onsite will be followed. They have been incorporated into the operator's POD.
2. Please contact Mary Maddux, Natural Resource Specialist, @ (307) 684-1164, Bureau of Land Management, Buffalo, if there are any questions concerning these COAs.

### Site Specific Conditions of Approval

#### Surface Use

1. The operator is committed to terms and conditions of approval as outlined in the Badger Creek Federal POD approved 4/3/2007.
2. All permanent above-ground structures (e.g., production equipment, tanks, etc.) not subject to safety requirements will be painted to blend with the natural color of the landscape. The paint used will be a color which simulates "Standard Environmental Colors." The color selected for the Badger Creek Addition Federal POD is Covert Green.
3. The operator will drill seed on the contour to a depth of 0.5 inch, followed by cultipaction to compact the seedbed, preventing soil and seed losses. To maintain quality and purity, the current years tested, certified seed with a minimum germination rate of 80% and a minimum purity of 90% will be used. On BLM surface or in lieu of a different specific mix desired by the surface owner, use the Loamy Ecological Site Seed Mix as outlined in the Badger Creek Federal POD.
4. The following well locations in the project area have been identified to have limited reclamation potential that will require disturbed areas to be stabilized (stabilization efforts may include mulching, matting, soil amendments, etc.) in a manner which eliminates accelerated erosion until a self-perpetuating native plant community has stabilized the site in accordance with the Wyoming Reclamation Policy. Stabilization efforts shall be finished within 30 days of the initiation of construction activities.

Lease	Well #	Aliquot	Sec	T	R
WYW164345	3-21	NENW	21	58N	82W

5. The operator will follow the guidance provided in the Wyoming Policy on Reclamation (IM WY-90-231) specifically the following:

#### Reclamation Standards:

- C. 3 The reclaimed area shall be stable and exhibit none of the following characteristics:
  - a. Large rills or gullies.
  - b. Perceptible soil movement or head cutting in drainages.
  - c. Slope instability on, or adjacent to, the reclaimed area in question.
- C.4. The soil surface must be stable and have adequate surface roughness to reduce runoff and capture rainfall and snow melt. Additional short-term measures, such as the application of mulch, shall be used to reduce surface soil movement.
- C.5. Vegetation canopy cover (on unforested sites), production and species diversity (including shrubs) shall approximate the surrounding undisturbed area. The vegetation shall stabilize the site and support the planned post disturbance land use, provide for natural plant community succession and development, and be capable of renewing itself. This shall be demonstrated by:

- a. Successful onsite establishment of species included in the planting mixture or other desirable species.
  - b. Evidence of vegetation reproduction, either spreading by rhizomatous species or seed production.
  - C.6. The reclaimed landscape shall have characteristics that approximate the visual quality of the adjacent area with regard to location, scale, shape, color and orientation of major landscape features and meet the needs of the planned post disturbance land use.
6. At the 3-21 location no material will be pushed against or piled against any live trees.
  7. At the 3-21 location, the topsoil pile can go past the catchpoint.
  8. The access roads to the following locations will be fully built prior to drilling of the wells.
    - 3-21 location
    - 8-21 location

### Water

1. The operator will supply a design of the outfalls that have been installed at the off-channel impoundments.

### Wildlife

#### *Raptors*

The following conditions will alleviate impacts to raptors:

1. No surface disturbing activity shall occur within 0.5 mile of all identified raptor nests from February 1 through July 31, annually, prior to a raptor nest occupancy survey for the current breeding season. This timing limitation will affect the following:

Township/Range	Section	Wells and Infrastructure
58N., 82W.	33	1MK-33-58-82 – infrastructure to the southeast
58N., 82W.	33	7MK-33-58-82 - infrastructure to the east

2. Surveys to document nest occupancy shall be conducted by a biologist following BLM protocol, between April 15 and June 30. All survey results shall be submitted in writing to a Buffalo BLM biologist and approved. No surface disturbing activity shall occur within 0.5 mile of all identified raptor nests prior to surface disturbing activities. Surveys outside this window may not depict nesting activity. If a survey identifies active raptor nests, a 0.5 mile timing buffer will be implemented. The timing buffer restricts surface disturbing activities within 0.5 mile of occupied raptor nests from February 1 to July 31.
3. Nest productivity checks shall be completed for the first five years following project completion. The productivity checks shall be conducted no earlier than June 1 or later than June 30 and any evidence of nesting success or production shall be recorded. Survey results will be submitted to a Buffalo BLM biologist in writing no later than July 31 of each survey year. This applies to the following nest listed in Table 4.
4. If an undocumented raptor nest is located during project construction or operation, the Buffalo Field Office (307-684-1100) shall be notified within 24 hours. Well metering, maintenance and other site visits within 0.5 miles of raptor nests should be minimized as much as possible during the breeding season (February 1 – July 31).

#### *Sage Grouse*

The following conditions will minimize the impacts to sage-grouse:

1. No surface disturbing activities are permitted within 2 miles of the PPL sage grouse lek in SE SW Section 30, T58N, R82W between March 1 and June 15, prior to completion of a greater sage grouse lek survey. **This condition will be implemented on an annual basis for the duration of surface disturbing activities.** This timing limitation will affect the following:

Township/Range	Section	Wells and Infrastructure
58N, 82W	29	1MK-29-58-82 well and access corridor

2. A survey is required for sage-grouse between April 1 and May 7, annually, within the project area for the life of the project and results shall be submitted to a BLM biologist. The required sage grouse survey will be conducted by a biologist following the most current WGFD protocol. All survey results shall be submitted in writing to a Buffalo BLM biologist and approved prior to surface disturbing activities.
3. If an active lek is identified during the survey, the 2 mile timing restriction (March 1-June 15) will be applied and surface disturbing activities will not be permitted until after the nesting season. If surveys indicate that the identified lek is inactive during the current breeding season, surface disturbing activities may be permitted within the 2 mile buffer until the following breeding season (March 1).
4. Creation of raptor hunting perches will be avoided within 0.5-mile of documented sage-grouse lek sites. Perch inhibitors will be installed to deter avian predators from preying on sage-grouse.
5. Well metering, maintenance and other site visits within 0.5 miles of documented sage grouse lek sites shall be minimized as much as possible during the breeding season (March 1– June 15).

#### *Sharp-tailed Grouse*

The following conditions will minimize impacts to sharp-tail-grouse:

1. A survey is required for sharp-tailed grouse between April 1 and May 7, annually, within the project area for the life of the project and results shall be submitted to a BLM biologist.
2. If an active lek is identified during the survey, the 0.64 mile timing restriction (March 1-June 15) will be applied and surface disturbing activities will not be permitted until after the nesting season. The required sharp-tailed grouse survey will be conducted by a biologist following WGFD protocol. All survey results shall be submitted in writing to a Buffalo BLM biologist and approved prior to surface disturbing activities.
3. If surveys indicate that the identified lek is inactive during the current breeding season, surface disturbing activities may be permitted within the 0.5 mile buffer until the following breeding season (April 1).
4. Creation of raptor hunting perches will be avoided within 0.64 miles of documented sharp-tailed grouse lek sites. Perch inhibitors will be installed to deter avian predators from preying on grouse.

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. It is my determination that no further environmental analysis is required.

The above described action must be completed by August 18, 2012.

**Implementation Date**

This project will be implemented on or after the below date.

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Chris E. Hanson  
Field Manager

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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  
Mary Maddux  
Natural Resource Specialist,  
BLM-Buffalo Field Office,  
1425 Fort Street, Buffalo, WY 82834  
307-684-1164