

**DECISION RECORD**  
**Categorical Exclusion 3 (CX3), WY-070-390CX3-13-167**  
**Section 390, Energy Policy Act of 2005**  
**Merit Energy Production Company, Federal 22-32**  
**BUREAU OF LAND MANAGEMENT, BUFFALO FIELD OFFICE**

**DECISION:** The BLM approves the application for permit to drill (APD) from Merit Energy to drill 1 oil and gas well and construct their associated infrastructure as described in the CX3 worksheet, WY-070-390CX3-13-167 which BLM incorporates here by reference.

**Compliance.** This decision complies with:

- Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC 1701); Interior Order 3310.
- National Environmental Policy Act of 1969 (NEPA) (42 USC 4321).
- National Historic Preservation Act of 1966 (16 USC 470).
- Buffalo and Powder River Basin (PRB) Final Environmental Impact Statement (FEIS), 1985, 2003.
- Buffalo Resource Management Plan (RMP) 1985, Amendments 2001, 2003, 2011.

**A summary of the details of the approval follows.** The CX worksheet, WY-070-390CX3-13-167 includes the project description, including site-specific mitigation measures which BLM incorporates by reference into that worksheet from earlier analysis. The proposed well is approximately 40 miles North of Gillette, Campbell County, Wyoming. Merit Energies' proposal consist of 1 APD to develop and produce oil from the Butte Draw formation of the PRB.

**Approvals:** BLM approves the following APD and associated infrastructure and uses:

#	Well Name	Well #	QTR	Sec	TWP	RNG	Lease	CX Number
1	Federal	22-32	SWNE	32	56N	72W	WYW-129512	WY-070-390CX3-13-167

**THE FINDING OF NO SIGNIFICANT IMPACT (FONSI).** Congress, the Department of Interior and BLM affirmed there was no significant impact of a like-structured project when they created this CX3 worksheet process and its limiting parameters. The EAs the CX3 worksheet tiers to also had a finding of no significant impact beyond those in the PRB FEIS. Thus a FONSI and an EIS is not required.

**COMMENT OR NEW INFORMATION SUMMARY.** Since implementation of this CX3 proposal BFO received a new a new sage-grouse policy, and maintained that policy into the Buffalo RMP.

**DECISION RATIONALE.** The approval of this project is because:

1. Mitigation measures and conditions of approval (COAs), analyzed in the CX3 worksheet, in EISs or EAs to which the CX3 worksheet tiers or incorporates by reference, will reduce environmental impacts while meeting the project's need.
2. The project conditioned by its design features and COAs, will not result in any undue or unnecessary environmental degradation. The PRB FEIS analyzed and predicted that the PRB oil and gas development would have significant impacts to the region's sage-grouse population. The impact of this development cumulatively contributes to the potential for local extirpation yet its effect is acceptable because it is outside priority habitats and is within the parameters of the PRB FEIS Record of Decision (ROD) and current BLM and Wyoming sage-grouse conservation strategies.

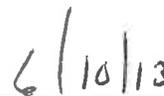
3. There are no conflicts anticipated or demonstrated with current uses in the area. This decision approving the Merit Federal 22-32 complies with the Energy Policy Act of 2005, Section 390, 43 CFR 1610.5, 40 CFR 1508.4, and 43 CFR 46.215.
4. Approval of this project conforms to the terms and the conditions of the 1985 Buffalo RMP (BLM 1985) and subsequent update (BLM 2001) and amendments (BLM 2003, 2011). This project complies with the breadth and constraints of CX3, Energy Policy Act of 2005, and subsequent policy.
5. The selected alternative will help meet the nation's energy need, revenues, and stimulate local economies by maintaining workforces.
6. The project is clearly lacking in wilderness characteristics because it is amidst oil/gas development.
7. This decision does not foreclose the lessee or operator to propose a new or supplementary plan for developing the federal oil and gas lease(s) in this project area, including submission of additional APDs to drain minerals in accord with lease rights and law. This decision does not foreclose the lessee or operator to propose using external pumping units via a sundry application process.
8. This approval is subject to adherence with all of the operating plans, design features, and mitigation measures contained in the Master Surface Use Plan of Operations, Drilling Plan, Water Management Plan, and information in individual APDs.

**ADMINISTRATIVE APPEAL:** This decision is subject to administrative appeal in accord with 43 CFR 3165. Request for administrative appeal 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.

Field Manager: \_\_\_\_\_



Date: \_\_\_\_\_



**Categorical Exclusion 3 (CX3), WY-070-390CX3-13-167**  
**Section 390, Energy Policy Act of 2005**  
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**Description of the Proposed Action**

The proposed action is to explore for and possibly develop oil reserves in geologic formations currently leased by Merit Energy Company in Wyoming. The leased parcel for exploration is WYW-129512. The project area is in T56N R72W Sec. 32. The proposed project consists of drilling 1 directional oil well to the Butte Draw formation. Merit proposes to drill, complete, produce, and eventually reclaim the location. Associated infrastructure will include a short section of access road, a flow line and a temporary water tank location for completion purposes. There is no proposed tank battery, the flowline will connect to an existing centralized tank battery built for federal and fee mineral production.

The BLM requested that a notice of staking (NOS) not be submitted. The location of the well and surrounding area had been looked at with the previous operator of the lease. Onsites were held January 8, 2013 to evaluate the proposal and modified it as necessary to meet the requirements of the new operator and to mitigate environmental impacts. Merit submitted the Federal 22-32 as an application for permit to drill (APD) March 22, 2013 to the BFO. The BLM sent a post-onsite deficiency letter to Merit on April 2, 2013.

**Table 1 Proposed Well**

#	Well Name	Well #	QTR	Sec	TWP	RNG	Lease	CX Number
1	Federal	22-32	SWNE	32	56N	72W	WYW-129512	WY-070-390CX3-13-167

**Table 1.2. Summary of Surface Disturbance**

Activity	Length (feet)	Width (feet)	Disturbed	Interim Disturbance
Federal 22-32	varies	varies	1.8 acres	0.76 acres
Access Road	~100	18	0.10 acres	
Flowline	6401		1.1 acres	
Total Disturbance			3.0 acres	

NOTE: The flowline has 3 sections of construction; 1) parallel to a county road (w/in 15 'of center line) 2) in the centerline of an oil well access road 3) in an existing pipeline corridor

The well location is adjacent to Elk Creek County road in Campbell County. An approach already exists that has been in place for public and allotment access. No upgrades to the approach will be required (~ 60 ft.). The access beyond the approach from the county road to the drill pad, ~100', will be surfaced for drilling purposes. Upgrades will be done if the well is a producer. Maintenance will be necessary to prevent soil erosion and accommodate year-round traffic.

Water for drilling/completion processes will be obtained from an existing Merit production water source in the area. Water for cementing purposes will be obtained from the municipal water supply in Gillette, WY. Water storage for completion process will be via 3 frac tanks. Water for drilling and completion purposes will be approximately 7000 bbls and 500 bbls respectively.

For more details on project area access, design features, construction practices of the proposed action and details regarding reclamation refer to the (MSUP pp.3-11) in the APD. The plan was written and reviewed to ensure that environmental impacts to both surface and subsurface resources are minimized. Also see

the individual APD for a map showing the well location, proposed access road, flowline and existing roads.

The estimated time to construct the well pad is 7-14 days, estimated time to drill the well is 10-20 days, and the estimated time for completion activities is 6-16 days.

#### **AFFECTED SURFACE OWNERS: BLM.**

#### **Plan Conformance, Compliance, and Justification with the Energy Policy Act of 2005**

The Energy Policy Act of 2005, Section 390(a) subjects oil or gas exploration or development to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act (NEPA) applies. Thus BLM must use an Energy Policy Act, Section 390(b), CX unless BLM rebuts the presumption. This CX worksheet is NEPA compliance categorically excluded from an EA or EIS or their analysis; it is not an exclusion from all analysis. (40 CFR 1508.4 and BLM H-1790, p. 17.) The proposed action conforms with the terms and conditions of the Approved Resource Management Plan (RMP) for the public lands administered by the BLM, Buffalo Field Office (BFO), 1985, the PRB FEIS, January 2003, and the Record of Decision (ROD) and Resource Management Amendments for the Powder River Oil and Gas Project, Amendments of 2001, 2011 as required by 43 CFR 1610.5, 40 CFR 1508.4, and 43 CFR 46.215. The Spruce 1 APDs and area are clearly lacking in wilderness characteristics as they are amidst extensive natural gas development with miles of mechanically maintained improved roads, (DOI Order 3310). BLM finds that the conditions and environmental effects found in the senior EA and PRB FEIS remain valid.

The applicable categorical exclusion from the Energy Policy Act of 2005, Section 390, 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.*

BLM has 3 requirements to use a Section 390 CX3, (BLM H-1790, Appendix 2, #3, p. 143):

1) Each proposed APD is in a developed oil or gas field (any field with a completed confirmation well).

Environmental Assessment WY-070-11-38 approved 11 APDs on November 9, 2010. Seven of the APDs are within lease WYW-129512 and two are in same section as the proposed well.

2) There is an existing NEPA document (and the RMP) containing reasonably foreseeable development scenario for this action. There are several existing NEPA documents that reasonably foresaw development to spud additional wells to fill in 80 acre well-spacing. BLM reviewed these documents and determined they considered the potential environmental effects associated with the proposed activity at a site specific level. In addition, the approved EA tiered into the PRB FEIS (2003). The PRB EIS analyzed foreseeable development in the PRB. The PRB foreseeable development included 3,200 oil wells and drilling CBNG wells on 80 acre-spacing resulting in about 51,000 CBNG wells.

3) The tiered NEPA document was finalized or supplemented within 5 years of spudding (drilling) the proposed well.

#### **Plan of Operations**

The proposal conforms to all Bureau standards and incorporates appropriate best management practices, required and designed mitigation measures determined to reduce the effects on the environment. BLM reviewed and approved a surface use plan of operations describing all proposed surface-disturbing

activities pursuant to Section 17 of the Mineral Leasing Act, as amended. This CX3 worksheet also incorporates and analyzes the implementation of committed mitigation measures contained in the MSUP, drilling plan, in addition to the Standard COAs found in the PRB FEIS ROD, Appendix A.

This CX3 worksheet also incorporates by reference the oil and gas drilling practices described and analyzed throughout environmental assessment (EA), WY-070-11-38.

### **Soils/Vegetation**

Impacts anticipated to occur and mitigation considered with the implementation of the proposed action will be similar to those analyzed in the following EA which are adjacent or overlapping to the project area and are incorporated here by reference:

1. EA WY-070-11-38, pp.17-18.

### **Wetlands/Riparian**

No wetlands/riparian areas are within the project area.

### **Invasive Species**

Impacts anticipated to occur and mitigation considered with the implementation of the proposed action will be similar to those analyzed in the following EA which are adjacent or overlapping to the project area and are incorporated here by reference:

1. EA WY-070-11-38, pp. 19.

### **Wildlife Resources**

Several resources were consulted to identify wildlife species that may occur in the proposed project area. Resources that were consulted include the wildlife database compiled and managed by the BLM Buffalo Field Office (BFO) wildlife biologists, the PRB FEIS, the Wyoming Game and Fish Department (WGFD) big game and Greater Sage-Grouse (GSG) maps, and the Wyoming Natural Diversity Database (WYNDD). A BLM biologist conducted a field visit on January 8, 2013. During the visit, the biologist evaluated potential impacts to wildlife resources, and provided project modification recommendations. Wildlife species common to the habitat types present are identified in the PRB FEIS, p. 3-114.

Migratory bird habitat within and surrounding the proposed well pads is less than suitable for nesting pairs of several migratory bird species because of fragmentation from current anthropogenic features. An existing county road (Elk Creek County road) is adjacent to the proposed well pad, as well as, three phase overhead power, ranching operations, and a conventional oil well all within 0.25 mile. No raptor nests occur within 0.5 mile of the proposed project. No GSG leks occur within two mile of the proposed project.

The wildlife biologist determined that the proposed APD, combined with the COAs are: (1) consistent with the FEIS (WY-070-02-065) and its supplements, to include biological opinion (ES-6-WY-02-F006), the RMP and its Amendments, and the above tiered EAs; and (2) consistent with the effects analyzed in the site specific Endangered Species Act Section 7 consultation and does not change the determinations in that consultation. Effects to GSG (p. 6) and migratory birds (pp. 6-9) are anticipated to be similar to those discussed in the projects (all approved under one NEPA document) referenced in Table 1.3. In addition, the wildlife biologist has determined that the proposal is in compliance with Instruction Memorandum No. WY-2013-005 (Expires: 9/30/14) Interim Management Guidance for Migratory Bird Conservation Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands Including the Federal Mineral Estate.

**Table 1.3. NEPA Analyses, Incorporated by Reference Here, for Wildlife Analysis**

#	Well Name & #	Qtr	Sec	Twp	Rng	CX Number
1	Bonita Federal Com 11H	NENE	10	43N	73W	WY-070-390CX3-13-41
2	Cousins Federal Com 22H	SWSE	2	43N	74W	WY-070-390CX3-13-74
3	Lone Moose Federal Com 13H	NWNW	26	44N	74W	WY-070-390CX3-13-73
4	Rocky Butte Federal Com 29H	NENW	4	43N	73W	WY-070-390CX3-13-75

The PRB FEIS predicted that the PRB oil and gas development would have significant impacts to the GSG population. The impact from the proposed well and infrastructure may cumulatively contribute to the potential for local extirpation yet its effect is acceptable because it is outside priority habitats and is within the parameters of the PRB FEIS/ROD and current BLM and Wyoming GSG conservation strategies.

### **Water Resources**

Water for drilling and completion purposes will be obtained from existing facilities within the Butte Draw field. The use of produced water from an existing field for the drilling/completion processes is classified as a beneficial use. Water for drilling will be hauled to location by transport truck.

Produced water will be removed from location via a flowline connected to an existing tank battery. Merit will have to produce the well for a time to be able to estimate the volume and quantity of water production. To comply with Onshore Order Oil and Gas Order No. 7 Disposal of Produced Water, Merit will submit a Sundry to the BLM within 90 days of first production which includes a representative water analysis. Any produced hydrocarbon/water during flowback or testing will be placed into frac tanks until such time as construction of pipeline is complete. Frac tank contents will be hauled off to an approved disposal site.

Disposition of produced water is regulated by Department of Environmental Quality (DEQ). Produced water is disposed of in properly permitted lined pits or at permitted injection facilities and authorized by Onshore order No. 7.

BFO RMP, p. 26 contained a reasonable foreseeable development scenario of 800 wells per year and projected water use of 2.8 acre feet (ac-ft) per well for the average oil well. The 2003 PRB ROD projected 3,200 oil wells which would include the use 8,960 ac-ft of water.

The WDEQ and WOGCC regulate waters and chemicals for drilling, “BLM may rely on the actions of state regulators. The IBLA and federal courts recognized it is appropriate for BLM to assume a proposed action complies with state permitting requirements, and rely on state analysis when evaluating the significance of effects. *Wyo. Outdoor Council v. U.S. Army Corps of Eng'rs*, 351 F. Supp. 2d 1232, 1244 (D. Wyo. 2005); PRBRC, 180 IBLA 32, 57 (2010); *Bristlecone Alliance*, 179 IBLA 51, 74-77 (2010).” In *Wyoming Outdoor Council*, the District Court held the Corps may rely on the WDEQ permitting process to “ameliorate any concerns that impacts to water quality will be significant.” *Id.*

Adherence to the drilling COAs, the setting of casing at appropriate depths, following safe remedial procedures in the event of casing failure, and using proper cementing procedures should protect fresh water aquifers (Fox Hills Formation ~3100’) above the drilling target zone (~9500’). Compliance with the drilling and completion plans and Onshore Oil and Gas Orders Nos. 2 and 7 will ensure there is no adverse impact on ground water.

The historical use for groundwater in this area was for stock water or domestic purposes.

A search of the WSEO Ground Water Rights Database showed 3 registered stock water wells within 1 mile of the proposed well(s) in the project area with depths from 90 to 500 feet. Two are located on Fee surface one is located on Federal surface. Refer to the PRB FEIS for additional information on groundwater, pp. 3-1 to 3-36.

Existing conditions and uses were analyzed in the following EA which are adjacent or overlapping to the project area and are incorporated here by reference:

1. EA WY-070-11-38, pp. 5-16.

No impacts to surface water will result from this proposed action.

### **Cultural**

A Class III cultural resource inventory was performed for the Merit 22-32 flowline route prior to on-the-ground project work (BFO project no. 70130057). A class III cultural resource inventory following the Archeology and Historic Preservation, Secretary of the Interior's Standards and Guidelines (48CFR190) and the *Wyoming State Historic Preservation Office Format, Guidelines, and Standards for Class II and III Reports* was provided to BFO by Merit. Seth Lambert, BLM Archaeologist, reviewed the report for technical adequacy and compliance with Bureau of Land Management (BLM) standards, and determined it to be adequate. A previously reviewed and accepted Class III cultural resource inventory (BFO # 70060038) adequately covered the remainder of the proposed project area.

Non-eligible sites 48CA5964 and 48CA77 will be impacted by the proposed 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 05/20/13 that no historic properties exist within the APE.

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

The COAs provide mitigation and further the justification for this decision and may not be segregated from project implementation without further NEPA review. I reviewed the plan conformance statement and determined that the proposed name CX3 APDs and infrastructure conform to the applicable land use plans. I reviewed the proposal to ensure the appropriate exclusion category as described in Section 390 of the Energy Policy Act of 2005 is correct. It is my determination that there is no requirement for further environmental analysis.



Duane Spencer  
Field Manager



Signature Date

For additional information concerning this decision, contact  
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