

**Modified DECISION RECORD  
For Yates Petroleum Corporation  
Gauge POD  
ENVIRONMENTAL ASSESSMENT WY-070-EA09-075**

This is a modified Decision Record. It is not a new Decision Record. This modified Decision Record augments the Decision Record in the 3 issues addressed in State Director Review (SDR) WY-2011-001. Those issues included deferral of 13 Applications for Permit to Drill (APDs), deferral of 9 impoundments, and some conditions of approval (COAs). New information augments the analysis and rationale, and thus completes the environmental record of review. New COAs replace the earlier COAs.

**Compliance.** This decision complies with:

- Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC 1701).
- Mineral Leasing Act of 1920 (30 U.S.C. 181) and as prescribed in 43 CFR Part 3160 to include On Shore Order No. 1.
- National Environmental Policy Act of 1969 (NEPA) (42 USC 4321).
- Endangered Species Act of 1973 (ESA) (16 USC 1531).
- Bald and Golden Eagle Protection Act (16 USC 668).
- Migratory Bird Treaty Act (16 USC 703).
- DOI Order 3310, Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management, Dec 2010; BLM Manuals 6300-1 and 6300-2 (drafts).
- Powder River Basin Final Environmental Impact Statement (FEIS), 2003.
- Buffalo Resource Management Plan, 1985, Amendments 2001, 2003.
- Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands including the Federal Mineral Estate, (WY-IM-2010-012), Jan 2010.
- Biological Opinion for the Wyoming Bureau of Land Management Resource Management Plans and their Effects to the Bald Eagle, (ES-6-WY-04-F002), Jun 2004.
- Resource Management Plan (RMP) Maintenance Action: Incorporation of Bureau of Land Management (BLM) Programmatic Biological Assessment (BA) for Bald Eagle and the United States Fish and Wildlife Service (FWS) Biological Opinion (BO) into Field Office RMPs, (WY-IM-2004-051), Jun 2004.
- Bald Eagle Delisting Guidance, (WY-IM-2007-037), Sep 2007.
- Wyoming State Director Review No. WY-2011-001, Nov 2010.

**The Selected Alternative.**

**Features.** BLM's decision approved a combination of Alternatives C and D as summarized in the earlier Decision Record and as described in the EA<sup>1</sup>. The proposed Gauge POD received 9 onsite inspections in 2008 and 2009. The new information and analysis allow the BFO to approve 13 APDs and 9 impoundments in this modified decision. The completion of the environmental record of review led to the following decisions.

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<sup>1</sup> Environmental Assessment, WY-070-EA09-075 occurred during a period of shifting policy for sage-grouse conservation at federal, department, bureau, and state levels. Subsequent decisions and refined policy provided clarification and decision space for updated analysis, findings, and approvals. The BFO considered, approved, and issued the vast bulk of over 1,000 APDs received during that time period. About 90 APDs were denied (two-thirds of which were in two proposed developments).

BFO approves these 13 APDs based on Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands including the Federal Mineral Estate, (WY-IM-2010-012), Jan 2010, and the totality of the analysis documented in the EA.

	WELL NAME	WELL #	QTR/QTR	SECTION	TWP	RNG	LEASE #
1	GAUGE PYTHAGOREAN CS	1	NENW	19	46N	75W	WYW144524
2	GAUGE ISOSCELES CS	28	SWSE	18	46N	75W	WYW130609
3	GAUGE ISOSCELES CS	30	SWNE	19	46N	75W	WYW130609
4	GAUGE ISOSCELES CS	29	NENE	19	46N	75W	WYW130609
5	GAUGE ZUCINNI CS COM	1	SWNE	20	46N	75W	WYW134909
6	GAUGE ISOSCELES CS	23	NENE	18	46N	75W	WYW130609
7	GAUGE LINE CAMP CS	9	SWSE	6	46N	75W	WYW133611
8	GAUGE CONIC CS COM	1	NESE	6	46N	75W	WYW129030
9	GAUGE ISOSCELES CS	6	SWNW	8	46N	75W	WYW130609
10	GAUGE MEDICINE CS	12	NWNW	31	46N	75W	WYW138440
11	GAUGE ISOSCELES CS COM	2	NENE	7	46N	75W	WYW130609
12	GAUGE ISOSCELES CS COM	3	NENW	7	46N	75W	WYW130609
13	GAUGE ISOSCELES CS	5	NENW	8	46N	75W	WYW130609

The BFO approves the use of 9 impoundments for disposal of federally produced water. This is based on the Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands including the Federal Mineral Estate, (WY-IM-2010-012), Jan 2010, and the totality of the analysis documented in the EA.

Impoundment Name / Number	Qtr/Qtr	Sec	TWP	RNG	Capacity (Acre Feet)	Surface Disturbance (Acres)	Lease #	Disturbance amount (access road)
Touch Down	NWSE	20	46N	75W	26.6	4.9	Private	0.45 mi
Carry	SWNE	18	46N	75W	23.6	3.4	WYW130609	0.2 mi
Halftime	NENW	20	46N	75W	14.5	2.4	WYW144525	0.23 mi
Shatter	SENE	24	46N	76W	13.4	2.1	State	0.37 mi
Shock	NENE	24	46N	76W	15.2	2.4	State	0.7 mi
Kennedy	NENE	18	46N	75W	19.9	3.8	WYW130609	0.18 mi
Kick	NWNW	17	46N	75W	19.4	3.6	WYW130609	0.37 mi
Skunk	NWSE	17	46N	75W	11.2	1.9	WYW144523	0.25 mi
Pass	SENW	17	46N	75W	19.6	3.1	WYW130609	0.9 mi

This approval is subject to adherence with all of the operating plans and mitigation measures contained in the Master Surface Use Plan of Operations, Drilling Plan, Water Management Plan, and information in individual APDs. This approval is also subject to operator compliance with the modified Conditions of Approval.

**THE MODIFIED FINDING OF NO SIGNIFICANT IMPACT.** The FONSI found no significant impacts, thus an EIS was not required. The Modified FONSI for WY-070-EA09-075, considered the new information, analysis, and rationale and found no significant impact on the human environment aside from those revealed in the Powder River Basin FEIS (2003).

**COMMENT OR NEW INFORMATION SUMMARY.**

Critical items of new information became available requiring augmenting the environmental record of review, per the BLM NEPA Handbook, 8.5.1, Documenting the Decision, and web guide examples (last updated July 29, 2010). The most important new information was receipt of WY BLM sage-grouse policy (WY-IM-2010-012), and guidance from the state director review, SDR No. WY-2011-001. We also received a DOI wilderness policy, DOI Order 3310 (and manuals).

The new information, the analysis, and decision rationale follow.

**DECISION RATIONALE.**

The BFO determined, using the new information, that this federal action is clearly lacking wilderness characteristics because it has surface areas with extensive coal bed natural gas development. Furthermore, the 3 issues identified in bold in the SDR provide the format for the remaining decision rationale.

**1. Deferral of 13 APDs and appurtenant infrastructure**

Remanded:

“The BFO is instructed to complete the environmental record of review (43 CFR 3162.5-1(a)) for these APDs and issue a decision . . . . Additionally, the BFO is instructed to follow recent sage-grouse guidance provided by the WSO when issuing their decision on these APDs. . . . supplement the environmental record of review, provide a modified decision on the deferral of the wells . . . and re-issue COAs consistent with this decision no later than January 31, 2011.”

Buffalo Field Office Reply and Rationale:

The BFO approves the 13 APDs. The WY BLM sage-grouse management strategy solidified (BLM Instruction Memorandum WY-2010-012) and aligned with the State of Wyoming’s Greater Sage-grouse Core Area Protection (WY EO 2010-4). As such, the 13 APDs do not occur within sage-grouse Key habitats (Wyoming Core, BFO Focus, and Connectivity), and their construction is in conformance with the Wyoming BLM policy to manage sage-grouse seasonal habitats and maintain habitat connectivity to support population objectives set by the Wyoming Game and Fish (WGFD).

**2. Non-approval of [9] nine produced water impoundments**

Remanded:

“The BFO is instructed to complete the environmental record of review and, in another decision, address the fate of these nine impoundments (and in light of more recent BLM guidance for the protection of sage-grouse in non-key/core habitat areas). For the six impoundments located on and receiving produced water from Federal oil and gas leases, the BFO may regulate surface disturbing activities. For the three impoundments located off-lease and on non-Federal surface estate, the BFO will only consider granting or withholding approval for the removal of produced water from Federal leases to the proposed impoundments. . . . supplement the environmental record of review, provide a modified decision on . . . the impoundments, and re-issue COAs consistent with this decision no later than January 31, 2011.”

Buffalo Field Office Reply and Rationale:

The BFO approves the 9 nine water impoundments and / or their use of federal water, as applicable. The WY BLM sage-grouse management strategy solidified (BLM Instruction Memorandum WY-2010-012) and aligned with the State of Wyoming’s Greater Sage-grouse Core Area Protection (WY EO 2010-4). As

such, the 9 impoundments do not occur within sage-grouse Key habitats (Wyoming Core, BFO Focus, and Connectivity), and their construction or use of federal water is in conformance with the Wyoming BLM policy to manage sage-grouse seasonal habitats and maintain habitat connectivity to support population objectives set by the Wyoming Game and Fish (WGFD).

### **3. Application of COAs**

#### **(a) Bald eagle protection measures (II. Site Specific COA – Wildlife, Bald Eagles)**

##### **First Bullet ([No project related actions:] Including Parts (a) [roost] and (b) [nest])**

###### Remanded:

“The BFO is directed to supplement the environmental record of review and issue a revised COA following either (1) the programmatic COA in the 2003 PRB ROD (Pages A-34 to A-35) or (2) protection measures applicable to the site-specific circumstances and with written concurrence by the FWS. . . . Should “project related actions” be restricted or prohibited, the BFO is directed to provide a detailed description of which activities this would include, criteria for consideration of exceptions, and an evaluation of the impacts arising from the limiting of such activities in the environmental record of review.”

###### Buffalo Field Office Reply and Rationale:

The BFO replied to this issue, in part, from the All Day SDR, WY-2010-030, as follows.

“Replaced the first two bullets in bald eagle site specific COAs with the following Programmatic Mitigation Measures from the PRB FEIS ROD, page A-34-35. The inclusion of these programmatic mitigation measures will not alter the environmental analysis.

Surveys for active bald eagle nests and winter roost sites will be conducted within suitable habitat by a [wildlife] biologist. Surface disturbing activities will not be permitted within one mile of suitable habitat prior to survey completion.” This condition of approval will apply to Beaver Creek and North Prong Pumpkin Creek within the Gauge POD boundary. There are no known eagle roosts nor nests within the Gauge POD boundary; yet observations of eagles occurred, thus necessitating the survey.

#### **(b) Biological opinion compliance (III. Standard COAs – A. General, Number 6)**

###### Remanded:

“The BFO is instructed to remove this COA when issuing revised COAs for the Gauge POD. If specific operational constraints are required for the protection of Ute ladies’-tresses orchid, the BFO must provide those in the revised COAs.”

Buffalo Field Office Reply and Rationale: Removed COA.

#### **(c) 30-day site stabilization (II. Site Specific COAs – Surface Use: Numbers 4, 6, 11)**

###### Remanded:

“We remand . . . with instructions to clarify the COA in order to provide reasonable, enforceable, and understandable requirements that provide adequate protection of soil resources. We encourage the BFO to consider the use of a performance-based COA, where appropriate.”

Buffalo Field Office Reply and Rationale: COA clarified with a performance-based COA.

#### **(d) Limitation of wellsite presence (FONSI/DR at page 5, Item C)**

Affirmed, as clarified.

Buffalo Field Office Reply: Affirmed.

**(e) Fall seeding (FONSI DR at Page 5, Item D)**

Remanded:

“We instruct the BFO to re-consider this portion of their decision. Should the BFO wish to select this component of Alternative D, the EA must include an analysis of the potential consequences its implementation would yield (both beneficial and adverse).”

Buffalo Field Office Reply and Rationale: Removed instruction.

**(f) Prohibition of unauthorized activities (II. Site Specific COAs – Surface Use: Number 9)**

Reversed: “. . . the BFO [will] remove [the COA] when issuing the . . . modified COAs.”

Buffalo Field Office Reply and Rationale: deleted from new COAs.

**(g) Burial of power (FONSI/DR at Page 4, Item A)**

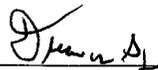
Reversed:

“We reverse the BFO’s apparent decision to not approve the overhead power line segments within the Gauge POD, since the BLM lacks jurisdiction to approve or deny non-lease facilities that are not owned or controlled by the operator and that are located on split-estate fee surface.”

Buffalo Field Office Reply and Rationale:

The BFO removed this condition from POD-modified NEPA documents. The BFO approves the power drops. The environmental analysis in Alternative B of the EA included the analysis of the proposed overhead power and associated drops.

**ADMINISTRATIVE REVIEW AND APPEAL:** Under BLM regulations, 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.

Field Office Manager: 

Date: 11/25/11

**Modified FINDING OF NO SIGNIFICANT IMPACT  
For Yates Petroleum Corporation  
Gauge POD  
ENVIRONMENTAL ASSESSMENT WY-070-EA09-075**

**FINDING OF NO SIGNIFICANT IMPACT:**

On the basis of the information contained in the EA, updated sage-grouse policies received from the BLM Wyoming State Office (WY-IM-2010-012), DOI Order 3310 and BLM Manuals 6300-1 and -2, and all other information available to me, it is my finding that:

- (1) The approval of 13 applications for permission to drill (APDs) and 9 impoundments previously on-sited in the Yates Petroleum Corporation's Gauge Coal Bed Natural Gas (CBNG) POD will not have significant environmental impacts beyond those already addressed in PRB FEIS to which the EA is tiered;
- (2) The decision authorizing the previously on-sited 13 APDs, and 9 impoundments conforms with the BFO Resource Management Plan (1985, 2001, 2003), DOI Order 3310, BLM Manuals 6300-1, -2, and;
- (3) The decision authorizing the 13 APDs and 9 impoundments, by themselves or cumulatively with the earlier approved APDs, reservoirs and infrastructure of the Gauge POD does not constitute a major federal action having a significant effect on the human or natural environment. Therefore, an environmental impact statement is not necessary and will not be prepared.

This finding is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and to the intensity of the impacts described in the EA, WY-070-EA09-095, which is incorporated here by reference.

**CONTEXT:**

Mineral development (coal, oil and gas, bentonite, and uranium) is a long-standing and common land use within the Powder River Basin. More than one fourth of the nation's coal production comes from the Powder River Basin. The PRB FEIS reasonably foreseeable development predicted and analyzed the development of 51,000 CBNG wells and 3,200 oil wells. The additional CBNG development is insignificant within the national, regional, and local context.

**INTENSITY:**

The implementation of a combination of Alternative C and D will result in beneficial effects from energy and revenue production however; there will also be adverse effects to the environment. Design features and mitigation measures were included within Alternative C and D to prevent significant adverse environmental effects.

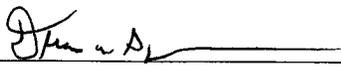
The preferred alternative does not pose a significant risk to public health and safety. The geographic area of the POD does not contain unique characteristics as identified within the 1985 RMP, 2003 PRB FEIS. This federal action includes surface areas with extensive coal bed natural gas development therefore is clearly lacking wilderness characteristics. The geographic area of the POD contains no unique characteristics related to other legislative or regulatory processes, including DOI Order 3310.

Relevant scientific literature and professional expertise were used in preparing the EA. The scientific community is reasonably consistent with their conclusions on environmental effects relative to oil and gas development. Research findings on the nature of the environmental effects are not highly controversial, highly uncertain, or involve unique or unknown risks.

CBNG development of the nature proposed with this POD and similar PODs was predicted and analyzed in the PRB FEIS; the selected alternative does not establish a precedent for future actions with significant effects.

There are no cultural or historical resources present that will be adversely affected by the selected alternative. No species listed under the Endangered Species Act or their designated critical habitat will be adversely affected.

The implementation of the selected alternative best meets the stated purpose and need for the proposed action. With the application of mitigating measures selected from alternatives C and D, Sage-grouse population viability in the Powder River Basin will not be significantly compromised due to the larger scope of planning actions and research initiated by the BLM, Buffalo Field Office.

Field Manager:  Date: 1/25/11