

**MODIFIED DECISION RECORD (DR) FOR
Yates Petroleum Company, Congaree Plan of Development (POD)
ENVIRONMENTAL ASSESSMENT (EA) – WY-070-EA10-195
Bureau of Land Management, Buffalo Field Office**

This is a modified decision record; it is not a new decision record. This modified decision record augments the decision record for the specific 8 issues appealed by Yates Petroleum Corporation (YPC) in state director review (SDR) No. WY-2011-029. BLM's Buffalo Field Office (BFO) received new information warranting augmenting the environmental record of review: 1) the Interior Department and its subordinate bureaus and services, and the State of Wyoming, settled on and finalized an interim sage-grouse policy; 2) the Interior Department issued a wilderness policy; and 3) the above SDR.

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 43 CFR Part 3160 to include On Shore Order No. 1.
- National Environmental Policy Act of 1969 (NEPA) (42 USC 4321).
- National Historic Preservation Act of 1966 (NHPA) (16 USC 470).
- Buffalo Final Environmental Impact Statement (FEIS) (1985), and FEIS for the Powder River Basin (PRB) Oil and Gas Project, 2003.
- Buffalo Resource Management Plan (RMP), 1985, Amendments 2001, 2003, 2011.
- Wyoming State Director Review No. WY-2011-029, 2011.
- U.S. Department of Interior Order (USDI) 3310, 2010.

The Selected Alternative.

Features. BLM's decision approved alternative C as summarized in the earlier decision record, as augmented below in this modified decision record, and as described in the EA¹ and Appendix 1, below. The BLM approved 28 coalbed natural gas (CBNG) applications for permit to drill (APDs), 2 water injection APDs and authorized the use of federal water in 2 impoundments. BLM denied 2 APDs and their appurtenant infrastructure. YPC drilled the POD's first well, Congaree Fleetwing CS 25, on September 15, 2010 and it showed production in May and June of 2011.

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-EA10-195, considered the new information, analysis, and rationale and found no significant impact on the human environment aside from those disclosed in the PRB FEIS (2003) so there is no requirement for an EIS.

COMMENT OR NEW INFORMATION SUMMARY.

Critical items of new information became available requiring augmenting the environmental record of review through this modified decision record, in accordance with BLM NEPA Handbook, 8.5.1, Documenting the Decision, and web guide examples (last updated July 29, 2010). This modified decision record is not impermissible supplementation of an EA (Id. 5.3). The most important new information was the receipt of WY BLM sage-grouse policy, the policy's maintenance into the RMP, Interior Department Order 3310, and SDR WY-2011-029.

¹ EA WY-070-EA10-195 occurred during a period of shifting policy for sage-grouse conservation at federal, department, bureau, and state levels. Subsequent refined policy provided clarification and decision space for updated analysis, findings, and final decisions (BFO Letter to Operators, May 10, 2010). The BFO considered and approved the vast bulk of over 1,000 APDs received during that time period. BFO denied about 90 APDs (two-thirds of which were in 2 proposed developments).

Appendix 1, Details of the New Information and Analysis

The new information includes a Buffalo Resource Management Plan (RMP) maintenance action incorporating the WY sage-grouse policy in Information Memorandum No. WY-2010-012 (and the WY Governor's Executive Order, 2011-005); the Buffalo Field Office's (BFO's) maintenance action to the Buffalo RMP (2010), the SDR No. WY-2011-029; and USDI Order 3310. The 8 numbered issues correspond to those in the SDR decision and frame this SDR reply with the new information and its analysis. The trailing bold page numbers refer to where the issue appears in the SDR decision.

1. Denial of Fleetwing #5 and #9 APDs (pp. 2-6)

1A. WYSO (Wyoming BLM State Office) affirmed.

2. Raptor survey requirements (I. Site Specific COAs, Wildlife-Raptors #2) (pp. 6-7)

WYSO remanded: “. . . survey requirement . . . should be based upon where the surface disturbance may occur, not an arbitrary boundary drawn around lease development wells or facilities for administrative purposes.” BFO will modify this COA requiring the conduct of annual surveys for new raptor nests within 1/2-mile of the outer limits of planned surface disturbance for construction or maintenance of federal oil and gas lease wells and facilities.

BFO reply: COA (and PRB ROD, A.5.11.1.) modified with guidance from Issue 2, SDR WY-2011-029. Surveys for new raptor nests shall be conducted, annually, within 0.5 miles of the ~~POD boundary~~ *outer limits of the planned surface disturbance for construction or maintenance of federal oil or gas wells or facilities* on or after 15 April, and prior to or during the first nest occupancy check. A seasonal timing restriction (February 1 through July 31) will be added to surface disturbing activities within 0.5 miles of any new nests discovered.

3. Stream crossing design/sizing (II. Programmatic COAs, Surface Water #1) (pp. 7-10)

WYSO affirmed.

4. Sage-grouse lek protection (I. Site Specific COAs, Wildlife-Greater Sage-grouse #3) (pp. 10-12)

WYSO affirmed.

5. Noise limitation (II. Programmatic COAs, Wildlife #3 and Threatened, Endangered or Sensitive Species-Noise #1) (p. 12)

WYSO affirmed.

6. Use of “off lease federal lands” (III. Standard COAs, General #5) (p. 12-13)

WYSO reversed and remand: “We addressed a similar COA in previous SDR decisions [which all crossed in processing along with this POD] . . . remove it”

BFO reply: COA removed.

7. Biological opinion terms and conditions (III. Standard COAs, General #19) (p. 13)

WYSO reversed and remand: “WSO . . . addressed a nearly identical COA in previous SDR decisions [which all crossed in processing along with this POD] . . . remove this COA”

BFO reply: COA removed.

8. Grading W road surfacing aggregate (Surface Use Standard COAs #11) (pp. 13-16)

WYSO reversed and remanded: “We remand the BFO's requirement that, effectively, Grading W aggregate be used within Congaree POD. The BFO did not demonstrate (or evaluate) whether adverse

impacts would occur under the alternative proposed by Yates. We instruct the BFO to verify and carefully consider the views of the surface owner when considering road surfacing material located on private surface. Should the benefits of Grading W be determined to outweigh the potential adverse consequences, and upon consideration of the views of the surface owner, the BFO is not constrained from requiring appropriate, reasonable aggregate specifications on private surface.

BFO reply and rationale: COA modified with guidance from Issue 2, SDR WY-2011-029. Provide a minimum average of 4 inches of gravel aggregate where grades exceed 8%.

The Buffalo Field Office has the authority to require site specific use of gravel aggregate per the BLM Manual Supplement WYSO for 9113 and the BFO Oil and Gas Road Guidelines for APD's.

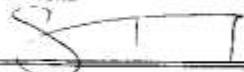
The two main surfacing materials used in the PRB are gravel or clinker rock (sometimes referenced as scoria). Gravel is a hard durable material and by definition it is loose rock that has a particle distribution from 1/12 to 2.5 inch in diameter. One cubic yard of gravel typically weighs around 3000 pounds. Clinker rock is a red-brown shale that has been baked and fused by in situ burning of underlying coal. Clinker rock found in the PRB (called porcelanite) has similar properties to ceramic; it readily breaks down into smaller fragments and has sharp edges when broken. Its weight varies depending upon the parent material but it usually is fairly light and has a specific gravity greater than one.

The benefit of crushed gravel is that it is a hard durable material that can be compacted, has minimal dust and requires minimal maintenance. Whereas clinker rock (scoria) is a soft, non-durable material that lacks a distribution of particle sizes. Vehicles have better traction with a road when the surfacing material is compacted, creating a safer driving surface. Because clinker rock is a soft material, during compaction, it breaks down into dust rather than being compacted whereas crushed gravel has a distribution of particle sizes that are designed to interlock when compacted - creating a solid driving surface. A solid driving surface also promotes sheet flow of surface run-off directing water away from the road; whereas scoria tends to promote infiltration into the road bed due to the porosity of burnt shale. The benefit of keeping water off or away from the road is to lessen maintenance costs. The benefit of scoria is that it is initially more economical – only in the short term.

The sole landowner was contacted by the BLM District Engineer (see attached Conversation Record), who expressed his preference of the use of gravel on his surface within the Congaree POD boundary. Mr. John Christensen stated that he preferred crushed gravel or crushed limestone, discouraged any use of scoria on his surface as it is not native to that area and requires too much maintenance, and that gravel was readily available in the immediate area.

Due to the adverse impacts of clinker rock (scoria), to include but not limited to: its porosity that contributes to increased road erosion; its lack of a distribution of particle size which reduces compaction and thus vehicle traction; its higher maintenance cost as a road surface; its non-availability in the immediate area; the availability of gravel in the immediate area, and the private land owner's preference of crushed gravel, the BLM requires that road surfacing material in the POD be crushed gravel where road grades exceed 8%. Nothing in this analysis or rationale precludes the use of gravel road surfacing other than those meeting Grade W specification, except for clinker (scoria).

Attachment 1 to Appendix 1: Conversation Record; September 8, 2011.

CONVERSATION RECORD			TIME 9:48 am	DATE 9.8.2011
TYPE <input type="checkbox"/> VISIT <input type="checkbox"/> CONFERENCE <input checked="" type="checkbox"/> TELEPHONE		<input type="checkbox"/> INCOMING <input checked="" type="checkbox"/> OUTGOING		ROUTING NAME/SYMBOL INT
Location of Visit/Conference:				
NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU		ORGANIZATION (Office, dept., bureau, etc.)		TELEPHONE NO.
John Christensen		Land Owner		307-939-1361
SUBJECT				
Surfacing material for Roads on John's Private Surface for the Yates Congaree POD				
SUMMARY				
Discussed Surfacing material for roads on John's private Surface upon the Congaree POD Boundary John stated that he preferred local gravel, either crushed limestone or crushed gravel. He stated that 'Scoria' was not native to that area + required too much maintenance. Did not have a preference to gradation but preferred to have it crushed. He did not want 'Scoria' or pit run gravel. He stated there was a gravel pit on his surface @ Section 36 Township 45N, Range 77W.				
ACTION REQUIRED				
MAIL A COPY TO JOHN CHRISTENSEN				
NAME OF PERSON DOCUMENTING CONVERSATION		SIGNATURE		DATE
Stacy Glenderson				9.8.2011
ACTION TAKEN				
MAILED 9 9.8.2011				
SIGNATURE		TITLE		DATE
		CIVIL ENGINEER		9.8.2011
50271-101		CONVERSATION RECORD		OPTIONAL FORM 271 (12-76) DEPARTMENT OF DEFENSE

**MODIFIED FINDING OF NO SIGNIFICANT IMPACT (FONSI) FOR
Yates Petroleum Company, Congaree Plan of Development (POD)
ENVIRONMENTAL ASSESSMENT (EA) – WY-070-EA10-195
Bureau of Land Management, Buffalo Field Office**

FINDING OF NO SIGNIFICANT IMPACT:

On the basis of the information in the EA and the Appendix to its modified decision record, both incorporated here by reference, and information available to me, I find that: (1) the decision to approve alternative C for the previously onsited in the Yates Petroleum Company (YPC) Congaree coalbed natural gas (CBNG) POD will not have significant environmental impacts beyond those addressed in the Powder River Basin Final Environmental Impact Statement (PRB FEIS) to which the EA tiers; (2) this finding conforms to the Buffalo Field Office (BFO) Resource Management Plan (RMP) (1985, 2001, 2003, 2011); and (3) this finding does not constitute a major federal action having a significant effect on the human environment. Thus there is no requirement for an environmental impact statement. I base this finding on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27) and Interior Department Order 3310, both with regard to the context and to the intensity of the impacts described in the EA and Appendix of its modified decision record.

CONTEXT:

Mineral development is a long-standing and common land use in the PRB. More than 42% of the nation's coal comes from the PRB. 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 described in Alternative C is insignificant in the national, regional, and local context.

INTENSITY:

The implementation of Alternative C (modified with modified conditions of approval (COAs)) will result in beneficial effects of energy and revenue production however; there will also be adverse effects to the environment. YPC and BLM included design and mitigation measures in Alternative C to minimize adverse environmental effects. Congaree POD clearly lacks wilderness characteristics as it has no federal surface land. The preferred alternative does not pose a significant risk to public health and safety. The POD's geographic area does not contain unique characteristics identified in the 1985 RMP, 2003 PRB FEIS, or other legislative or regulatory processes. YPC and BLM used relevant scientific literature and professional expertise 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. BLM predicted and analyzed CBNG development of the nature proposed with this POD and similar PODs 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 selected alternative will not have any anticipated effects that would threaten a violation of federal, state, or local law or requirements imposed for environmental protection.

ADMINISTRATIVE REVIEW AND APPEAL: This finding is subject to administrative review in accordance with 43 CFR 3165. Request for administrative review of this finding must include information required under 43 CFR 3165.3(b) (State Director Review), including all supporting documentation. 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 finding may appeal that finding to the Interior Board of Land Appeals, as provided in 43 CFR 3165.4.

Field Manager: _____

Date: _____

9/30/11