

**MODIFIED DECISION RECORD (DR) FOR
Yates Petroleum Company, Neo Plan of Development (POD)
ENVIRONMENTAL ASSESSMENT (EA) – WY-070-EA10-331
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 3 applications for permit to drill (APDs), 2 impoundments, and an access road that BLM deferred in its decision record of 30 September 2010 supported by EA WY-070-EA10-331. BLM’s Buffalo Field Office (BFO) received new information warranting completing the environmental record of review, including: 1) the Interior Department and its subordinate bureaus and services, along with the State of Wyoming, settled on and finalized an interim sage-grouse policy; 2) the WY BLM State Office (WYSO) changed the no surface use (NSO) to controlled surface use (CSU) for Greater sage-grouse conservation on lease WYW130087; and 3) SDR No. WY-2011-022.

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).
- 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-2011-022, Jul 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 CBNG APDs, 4 water injection APDs (1 new, 3 existing), and authorized the use of federal water in 8 impoundments contingent upon receipt of a sundry notice attesting to reclamation bonding. BLM deferred 3 APDs, the use of federal water in 2 impoundments, and an access road. YPC drilled 1 well, Neo Dozer CS Federal 1 on November 30 and shut it in on December 13 of 2010.

BLM approves the following 3 APDs and their appurtenant infrastructure:

Well Name	Well #	QTR	Sec	TWP	RNG	Lease #
NEO CYPHER CS FEDERAL	13	NESW	26	53N	75W	WYW130087
NEO CYPHER CS FEDERAL	14	SWSW	26	53N	75W	WYW130087
NEO CYPHER CS FEDERAL	15	SWSE	26	53N	75W	WYW130087

BLM approves the following 2 impoundments for using federal water conditioned upon receipt of sundry notice attesting to reclamation bonding.

Impoundment Name	QTR	Sec	TWP	RNG	Lease #
MORTON RESERVOIR	SESE	26	53N	75W	WYW130087
BAZOOKA JOE RESERVOIR	SESW	26	53N	75W	WYW130087

¹ EA WY-070-EA10-331 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).

BLM approves that access road that traverses the portion of lease WYW130087 that formerly would have crossed the NSO portion of this lease.

This approval is subject to adherence with all of the operating plans and mitigation measures 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 all mitigation and monitoring requirements in the ROD and RMP Amendments for the Powder River Oil and Gas Project, (PRB ROD), 2003, and the modified COAs.

Limitations. There are no deferrals and no denials of APDs or impoundments.

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-EA10-331, 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, the WY BLM State Office changed the NSO to CSU for Greater sage-grouse conservation on lease WYW130087, Interior Department Order 3310, and SDR WY-2011-022.

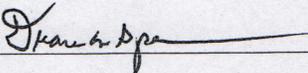
DECISION RATIONALE.

The new information includes the maintenance of the RMP incorporating the new WY sage-grouse policy; the WY BLM State Office changed the NSO to CSU for Greater sage-grouse conservation on lease WYW130087; the SDR No. WY-2011-022; and USDI Order 3310. The decision approving alternative C, augmented with authorizing 3 APDs, the use of federal water in 2 impoundments contingent upon BFO's receipt of sundry notice attesting to reclamation bonding, and the access road on the formerly NSO portion of lease WYW130087, as further described in Appendix 1 and EA WY-070-EA10-331 – which are both incorporated here by reference, is based on the following:

1. The WYSO changed the no surface use (NSO) to controlled surface use (CSU) for Greater sage-grouse conservation on lease WYW130087.
2. The Interior Department and 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 (WYEO 2011-5). As such, the proposal does not occur in sage-grouse key habitats (Wyoming core, BFO focus, and connectivity), and 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). The proposed infrastructure will not affect the current WGFD development thresholds for leks in key habitats.
3. The additional infrastructure will not result in any undue or unnecessary environmental degradation.
4. This federal action is clearly lacking wilderness characteristics because it has surface areas with infrastructure from extensive coal bed natural gas development.

5. The selected alternative will help meet the nation's energy needs, and help stimulate local economies by maintaining workforce stability.
6. The Operator, in their POD, committed to:
 - Have full knowledge of all applicable federal and state laws applicable to this operation.
 - Obtain the necessary permits from other agencies for the drilling, completion and production of these wells including water rights appropriations, the installation of water management facilities, water discharge permits, and relevant air quality permits.
 - Offer water well agreements to the owners of record for permitted water wells within 0.5 mile of a federal CBNG producing well in the POD.
 - Provide water analysis from a designated reference well in each coal zone.
7. The Operator certified that it has a surface use agreement with the landowners or posted bond.
8. These APDs are valid for 2 years from the date of approval (until 2-years and 1-day after the date of the signature below for APDs Neo Cypher CS Federal 13, 14, and 15, and until 1 October 2012 for the other 28 CBNG APDs) or until the oil and gas lease expires/terminates, whichever occurs first.
9. The BFO's spring seeding pilot policy noted in pp. 3-4 of Letter to Operators, January 28, 2009 was not re-initiated in 2010. (See also, BFO Letter to Operators, February 3, 2010.) In December, 2010, WY BLM Instruction Memorandum, IM-WY-2010-12 instructed the Wyoming Field Offices to "... consider and evaluate the following sage-grouse habitat conservation measures related to timing, distance . . . for all proposed projects both within and outside of Core Areas." These conservation measures include seasonal restrictions on surface disturbing and/or disruptive activities. The BFO now processes spring seeding exceptions in sage-grouse habitats on a case-by-case basis in order to adequately consider and evaluate the statewide conservation measures in IM-WY-2010-12.
10. Yates' requested that spring seeding be allowed during sage-grouse, raptor, and mountain plover nesting and breeding seasons in the Neo POD Surface Use Plan. However, BLM will only evaluate exception requests on a case by case basis. Timing limitations developed to protect nesting mountain plovers, nesting raptors, and breeding sage-grouse are important to maintain habitat function, and to ensure compliance with the Migratory Bird Treaty Act. Consequently, timing limitations will apply to the Neo POD to protect nesting mountain plovers, nesting raptors, and breeding sage-grouse.
11. Nothing in this rationale precludes Yates from applying for an exception request for spring seeding.

ADMINISTRATIVE REVIEW AND APPEAL: Under BLM regulations, this decision is subject to administrative review in accordance with 43 CFR 3165. Request for administrative review of this decision 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 decision may appeal that decision to the Interior Board of Land Appeals, as provided in 43 CFR 3165.4.

Field Office Manager: 

Date: 8/30/11

Appendix 1, Details of the New Information and Analysis

The new information includes an 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 BFO's maintenance action to the Buffalo RMP (2010), the WY BLM State Office changed the NSO to CSU for Greater sage-grouse conservation on lease WYW130087; the SDR No. WY-2011-022; and USDI Order 3310. The 14 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. COAs on the life of an APD/POD (General COA #2, Standard COA #3) (pp. 2-3)

1A. WYSO (Wyoming BLM State Office) remanded: COA removed.

1B. WYSO affirmed.

2. COA limiting use off federal lease (Surface Use Site Specific COA #3, p. 3) (p. 3)

WYSO reversed and remanded: "BLM . . . addressed this COA in . . . SDR[‘s] . . . WY-2011-001 and WY-2011-008 [which all crossed paths in processing] . . . BFO is instructed to remove the subject COA."

BFO reply: COA removed.

3. COAs on improved or primitive road widths (Site Specific COAs #s 6 & 7) (pp. 4-6)

WYSO remanded: ". . . to analyze, justify, and clarify road width COAs."

BFO reply and rationale: COA removed. Removal of the COAs clarifies the ambiguity between the EA's analysis and recommended COAs and COAs that appeared on the COA document for the project. Justification for road width restrictions eluded support through biological or soil conditions.

4. BLM exception requests for spring seeding (II. Site Specific COA, Wildlife, p. 5) (pp. 6-7)

WYSO remanded: "We remand . . ."

BFO reply and rationale: The BFO's spring seeding pilot policy noted in pp. 3-4 of Letter to Operators, January 28, 2009 was not re-initiated in 2010 (see Appendix 1 to this EA's COAs). (See also BFO Letter to Operators, February 3, 2010.) In December, 2010, WY BLM Instruction Memorandum, IM-WY-2010-12 instructed the Wyoming Field Offices to ". . . consider and evaluate the following sage-grouse habitat conservation measures related to timing, distance . . . for all proposed projects both within and outside of Core Areas." These conservation measures include seasonal restrictions on surface disturbing and/or disruptive activities. The BFO now processes spring seeding exceptions in sage-grouse habitats on a case-by-case basis in order to adequately consider and evaluate the statewide conservation measures contained in IM-WY-2010-12.

5. Noise near lek COA (Site Specific COA #3, p. 5) (p. 7)

WYSO affirmed: "This COA will only apply to Yates' lease infrastructure that was approved by the BFO in the Neo POD. Any additional lease infrastructure proposed by Yates must be applied for by [s]undry [n]otice and reviewed and approved by the BFO, subject to appropriate COAs."

6. Noise from compressors COA (Programmatic COA #1, Wildlife, pp. 8-9) (p. 7)

WYSO reversed and remanded: "Yates did not propose to install compressors when they submitted their Neo POD, therefore we instruct the BFO to remove this COA."

BFO reply: COA removed.

7. Mountain plover disturbance COAs (Programmatic COAs #s 3, 4, & 5) (pp. 8-11)

WYSO affirmed, in part, and reversed and remanded, in part: The Neo POD received approval when the mountain plover was a candidate species for listing as a threatened species under the Endangered Species Act but “in May 2011 USFWS [withdrew] their proposed rule to list the mountain plover. . . . we believe it is appropriate to continue to require appropriate COAs as described in the PRB FEIS/ROD (2003) in order to protect mountain plover.”

WYSO, RE: COA #3: “As a result of the USFWS decision to withdraw the proposed listing of mountain plover, it is not necessary for the BLM to consult with the USFWS, unless the status of the bird changes in the future. Therefore, we remand this issue to the BFO with instructions to remove the subject sentence from the subject COA.”

WYSO, RE: COAs #3 and 4: “The WSO cannot find a BLM definition of “project-related features.” For the purpose of this SDR, we will define project-related features as a lease facility constructed and operated by Yates that was approved by the BFO pursuant to the Neo POD EA/DR. In Onshore Order No. 1, “ancillary facilities” is defined as camps, airstrips, and staging areas. Therefore, we instruct the BFO to use these definitions when applying COA No. 3 and COA No. 4.”

WYSO, RE: COA #5: “. . . we remand this issue to the BFO with instructions to remove the subject COA.”

BFO reply and rationale: BFO will amend the ROD via SDR under the direction of this SDR, pending the processing of a RMP maintenance action.

- COA #3:
 - BFO will strike the appealed sentence in COA #3 and in programmatic COA, A.5.11.8.3.
- COAs # 3 and 4:
 - BFO will provide the WYSO “clarification” to the ROD’s terms “project-related activities” and “ancillary facilities” in COAs #3 and 4, above (programmatic COAs A.5.11.8.3 and A.5.11.8.7) in the future.
- COA #5:
 - BFO will delete the programmatic COA, A.5.11.8.8.

8. Impoundment reclamation (Programmatic COA, Water Management, p. 9 COA #1) (pp. 10-11)

WYSO affirmed.

9. Comply with biological opinion COA (Standard General COA #18, p. 12) (p. 11)

WYSO reversed and remand: “This COA has been challenged in previous COAs [which all crossed in processing along with this POD] . . . remove this COA”

BFO reply: COA removed.

10. COA drilling and production (Well Control Equipment, COA #8, p. 13) (pp. 11-12)

WYSO affirmed.

11. Grading W use (Surface Use Standard COA #10, p. 17) (pp. 12-15)

WYSO affirm, in part, remand, in part: “Where roads within Neo POD are located on BLM administered surface, we affirm BFO’s requirement for Grading W”. . . . Where roads within Neo POD are proposed on private lands . . . Yates . . . [will provide] information . . . to determine what materials are going to be used.

BFO reply and rationale: The COA will require a minimum average of 4 inches of Grading W on federal surface, as discussed in previous SDRs and analyzed in those SDR replies noted by this SDR decision, that analysis is incorporated here by reference, all of which crossed in processing with this POD. BFO will task Yates to report road surfacing materials used on private surface in their “as built” report.

12. Performance bond release (Surface Use Reclamation/Dry Hole #1, p. 19) (p. 15)

WYSO affirmed.

13. Reclamation within 180 days (Surface Use, Reclamation/Dry Hole #5, p. 19, COA #5) (p. 16)

WYSO affirmed, with comment. “In the future, the BFO is instructed to . . . write this COA consistent with the Gold Book [(2007), the PRB ROD,] and our clarification.”

14. Correcting the environmental record of review. (pp. 16-17)

WYSO affirmed, in part, remanded, in part: “The BFO is instructed to . . . accurately reflect the record.”

BFO reply and rationale: There are 3 sub-issues which BFO discusses in bullets, below. BFO, and the WYSO, recognize that an EA is an analysis document only; and is neither a finding nor a decision. The purpose of an EA includes ensuring the bureau took a “hard look” at the effects on the human environment of the proposed project and its alternatives. Once a finding and / or decision culminate it is impermissible to reopen an EA; rather if substantial new information arises the regulatory procedure is to initiate a new EA or initiate an EIS – according to regulations from the Council of Environmental Quality, Interior Department, and BLM (BLM H-1790-1, p. 29). Such steps would stay project field work since the NEPA analysis on the substantial federal action would be unfinished. Yet NEPA procedures allow for consideration and integration of new information on a project via a decision record for a completed EA (BLM H-1790-1, p. 85). BFO uses this method for this SDR reply.

- First, the BFO corrects the environmental record of review through acknowledging that BFO removed 6 reservoirs and their infrastructure from the original Yates project proposal and that Yates did not remove them from the proposal, as incorrectly reflected in the EA on pp. 2 and 12.
- WYSO affirmed the BFO in the second appealed item.
- Third, the EA discusses overhead power on p. 10. As the WYSO and this SDR decision note this issue received resolution in several SDRs, all of which crossed in processing, along with this SDR. BFO recognizes the issue is resolved and incorporates by reference the rationale the SDRs cited by the WYSO.

**MODIFIED FINDING OF NO SIGNIFICANT IMPACT (FONSI) FOR
Yates Petroleum Company, Neo Plan of Development (POD)
ENVIRONMENTAL ASSESSMENT (EA) – WY-070-EA10-331
Bureau of Land Management, Buffalo Field Office**

FINDING OF NO SIGNIFICANT IMPACT:

On the basis of the information in the EA, incorporated here by reference, and all information available to me, I find that: (1) the decision to change the no surface occupancy to controlled surface use with a stipulation for Greater sage-grouse conservation (a WY BLM state office action) in lease WYW130087, approve 3 coalbed natural gas (CBNG) APDs, the use of federal water in 2 impoundments, and an access road previously onsite in the Yates Petroleum Company (YPC) Neo 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 that 3 previously onsite APDs, 2 reservoirs, and access road 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. Therefore there is no requirement for an environmental impact statement.

This finding is based 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.

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 within the national, regional, and local context.

INTENSITY:

The implementation of Alternative C (modified with approval of the earlier deferrals) 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 features and mitigation measures in Alternative C to minimize adverse environmental effects. The Neo POD clearly lacks wilderness characteristics as it's in the midst of CBNG development.

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: Francis A. [Signature] Date: 8/30/11