

Montana Board of Oil and Gas Conservation

Finding of No Significant Impact and Notice of Decision

Fidelity Exploration & Production Company
Tongue River – Decker Mine East Plan of Development Project
Township 9S, Ranges 40E and 41E
Big Horn County, Montana

Proposed Action

Fidelity Exploration & Production Company (Fidelity) proposes to drill, complete, and produce 110 new wells in the CX Field. Fidelity submitted its Tongue River – Decker Mine East Plan of Development (POD) to the MBOGC on December 13, 2006 as Docket No. 463-2006. The Tongue River – Decker Mine East POD was approved by the MBOGC on December 13, 2006 by Order 406-2006. The MBOGC 2003 Record of Decision (ROD) and MBOGC Order 99-99 apply to this proposed action. The Tongue River – Decker Mine East project totals approximately 1,968.8 acres of surface area. Development will involve the Dietz, Monarch, Carney, and Wall coal seams and the Smith coalbed as well as deeper coals (e.g., Carlson, King, and Roberts) where feasible. For this project, Fidelity will manage produced water by some or all of the following produced water management methods: (1) Transfer to Decker Coal Mine for industrial use within its permit boundary; (2) Provide water to Fidelity personnel and its contractors for industrial use, including drilling, construction, and dust control; (3) Discharge via permitted outfalls to Tongue River; (4) Transfer to stock water reservoirs and tanks for livestock and wildlife; (5) Treat to remove major cations (Na, Ca, and Mg) and anions (HCO₃, CO₃, and Cl) prior to discharge via a permitted outfall to the Tongue River; (6) Construct off-channel containment reservoirs for seasonal storage and irrigation and use by livestock and wildlife. Any well(s) would be plugged and abandoned and surface restored if commercial quantities of gas are not discovered; partial reclamation of unused disturbed areas and utility disturbed areas would be required during the project life. The project area includes both fee and federal surface and minerals.

Decision

The decision to approve the Tongue River – Decker Mine East Project POD includes approval of the drilling, completion, and production of 56 CBNG wells located on fee minerals as well as the installation of roads, pipelines, and other associated infrastructure needed to produce the wells. The decision is effective immediately; drilling permits (Form No. 22) will be approved in the ordinary course of business following this decision.

The Board of Oil and Gas Conservation's General Rules and Regulations, as well as the statutory requirements under which the Rules are adopted generally apply to the proposed action. The operator has agreed to implement other actions to mitigate any significant impacts of its activities. Those mitigating measures include implementation of lease road speed limits to reduce wildlife mortality and dust emissions, monitoring the quantity of produced fluids and monitoring of any domestic wells or springs within the one-mile

statutory radius as needed to determine potential impairment from the project. Monitoring of reclamation and potential noxious weed invasion are also required and agreed to by the operator. Cultural and paleontological resources are the property of the surface owner and MBOGC does not assert any right to determine the disposition of any resources found; the operator however has agreed to notify and consult with the surface owner if any such resources are discovered during construction. Surface owners of record include both fee and federal. The MBOGC cannot require the surface owner to manage property for wildlife mitigation or to require the owner to provide access to those seeking to survey the property for cultural or wildlife resources. MBOGC defers to the surface owner for use of pesticides/herbicides on the property and does not regulate the use or possession of firearms on private property. Private owners retain the right to manage (or prohibit) general public access to the property.

Comments

Comments regarding the Tongue River – Decker Mine East CBNG Project Environmental Assessment (EA) were received from the Northern Cheyenne Tribe on February 5, 2007. Attachment A of this document provides all of the comments made by the Northern Cheyenne Tribe as well as responses.

Finding of No Significant Impact

Based upon this Environmental Assessment prepared for the Tongue River – Decker Mine East project, the mitigation voluntarily proposed by the operator, compliance with the requirements for monitoring and reporting associated with MDEQ’s issuance of a discharge permit, and considering the scope and effect of the MBOGC’s statutory and regulatory requirements, I determine that approval of the proposed action does not constitute a major state action significantly affecting the quality of the human environment, and does not require the preparation of an environmental impact statement.

Original Signed By

February 23, 2007

Thomas P. Richmond
Administrator, Board of Oil and Gas Conservation

Date

Attachment A.

Replies to comments dated February 5, 2007 made by the Northern Cheyenne Tribe to the Fidelity E&P – Tongue River-Decker Mine East CBNG Project Environmental Assessment (EA) as issued by the MBOGC.

Comment	Reply
<p><i>The Northern Cheyenne Reservation is a Class I air-shed and the town of Lame Deer is a PM10 non-attainment area. In addition, the Northern Cheyenne Tribe monitors for SO2, NO2, and visibility. The Northern Cheyenne Tribe is responsible for protecting the health of its residents, wildlife and plants on the reservation. As such, the MBOGC should take into account that the Tribe is affected by surrounding development. Moreover, all sources from all activity surrounding the reservation do have a cumulative effect.</i></p>	<p>Air quality in this portion of Montana is of particular concern for the governmental agencies involved in this issue. The U. S. Bureau of Land Management (BLM) is concerned enough to support a second numerical modeling study of regional air quality as part of their Supplemental Environmental Impact Statement (SEIS), a draft copy of which has recently been made public. This detailed model was performed using reasonably expected cumulative impacts and several CBNG development scenarios. While worst-case models showed some impact to the town of Lame Deer, approximately 20 miles north of the proposed Fidelity project; visibility impacts are only expected to happen up to 92 days per year at the reservation and these impacts are expected to be below state and national ambient standards. Other priority pollutant (SO2 and NO2) levels are not expected to be affected and are expected to remain well below state and national ambient standards.</p> <p>It has not been demonstrated that “all sources” have a cumulative effect on local or regional air quality.</p>
<p>Outfalls – <i>Exceedances of permitted discharges must not occur from treated or untreated produced water at any outfalls, even after modification of the MPDES permit No. MT-0030457.</i></p>	<p>MPDES permits are issued to CBNG operators and those permit conditions are monitored and enforced by the Montana Department of Environmental Quality (MDEQ). This department has sufficient enforcement authority to allow close monitoring of these discharges. Furthermore, they possess a range of penalties sufficient to insure permit compliance by CBNG operators.</p>
<p>Off-channel Reservoirs – <i>The issue of produced water in off-channel reservoirs from CBNG dewatering raises water quality and quantity concerns for the Northern Cheyenne Tribe as a stakeholder in the Tongue River and the TR Reservoir. The long-term effects from combined projects discharging into existing and future reservoirs raises concerns from the Tribe with respect to the storage water owned by the Tribe in the TR Reservoir. The potential for exceeding the permit requirements is an issue often raised by the Tribe and as such, a request to be more informed on the data and</i></p>	<p>Off-channel ponds are constructed in such a manner to safely contain discharged produced water while preventing discharges to the surface due to rain events and other runoff episodes. Off-channel ponds are permitted by the Montana Board of Oil and Gas Conservation (MBOGC) or by the MDEQ which have sufficient authority to monitor and enforce permit compliance for these ponds. Off-channel ponds are permitted to avoid surface discharge to land or water.</p> <p>The Tongue River and TR reservoir are continuously monitored for water quality by the US Geological</p>

analysis from the discharges and reservoir water quality is submitted.

Survey (USGS) in cooperation with the BLM, the MDEQ, the Montana Bureau of Mines and Geology (MBMG), and the Northern Cheyenne Tribe; this data is available in real-time on the project website: (<http://TongueRiverMonitoring.cr.usgs.gov/>). This information is designed to be used as an early warning of any water quality changes in the reservoir. Of course not all changes to the reservoir are due to CBNG development, as a matter of fact, seven years of CBNG production in the Tongue River watershed have not lead to discernable water quality impacts.

The development of the Decker Mine East Plan of Development (POD) mentions that there were six sites and one isolate identified in the inventory area. None were eligible for the National Register of Historic Places (NRHP). Also, according to the executive summary report, there was no cultural landscape that was identified and “no visible evidence exists that any specific area is particularly important to the tribes.”

The Northern Cheyenne Tribe, through the Tribal Historical Preservation Office, is greatly concerned about the Decker Mine East Project. There is no mention of consultation with the Northern Cheyenne Tribe as far as cultural inventories are concerned. The Tribe has a significant historical/spiritual tie to southeastern Montana. Cultural landscapes can only be determined by the Tribe themselves, not from an archeological firm. The Tribe cannot determine the cultural significance of a landscape unless they are allowed to do a tribal cultural survey of the area in question.

The Northern Cheyenne Tribe is adamantly opposed to any further development until a consultation meeting on cultural/tribal resources within the proposed area is addressed. A consultation meeting would serve several purposes. A physical survey of the proposed area by tribal members is one issue. Having a cultural interpretation by the Northern Cheyenne Tribe of the proposed area gives the Tribe an opportunity to become part of the overall process in the POD. A survey would also give the Tribe an idea of the number of different species of plants and animals as seen through the lens of tribal people with a physical and spiritual connection to the area.

The Northern Cheyenne interprets the world around them differently than would an archeologist or others. Not involving tribal experts and the Tribe in cultural resource management does not do justice to the POD process.

A cultural survey was performed specifically for this POD covering federal surface holdings within the POD area. Findings are summarized within the Tribe’s comments. State and BLM regulations do not require the operator of a POD to schedule tribal consultations. Consultations are arranged by the BLM Field Offices who usually request that the operator or their archeological contractor participate in meetings with potentially affected tribes. In this particular case, the Miles City Field Office of the BLM has received the full archeological/cultural survey and expects to schedule consultations with the Crow Tribe and Northern Cheyenne Tribe in the spring of this year. The schedule will allow the tribes to conduct their own onsite surveys on federal and state land and determine the significance of any cultural resources. Until that time, the Plan of Development and drill permit applications will be held up by the BLM, insuring that no cultural resources will be impacted by CBNG development. This is standard practice for those PODs with state or federal surface ownership.

The tribes’ cultural surveys can coincide with biotic surveys for culturally significant plants and animals.

The consultation process, as described in NEPA legislation and guidance, help to make tribal perspectives known to the relevant land managers, oil and gas regulators, and CBNG operators. It is vital that cultural resources on state and federal lands are thoroughly studied from a scientific and tribal viewpoint and preserved in an appropriate manner.