

Montana Board of Oil and Gas Conservation

Finding of No Significant Impact and Notice of Decision

Fidelity Exploration and Production Company
Tongue River-Deer Creek North and Tongue River - Pond Creek CBM Projects
Township 9 South, Ranges 40 and 41 East

Proposed Action

Fidelity Exploration and Production Company proposes to drill, complete and produce Ninety-nine CBM natural gas wells on 30 well sites located on privately owned minerals (and 71 federal wells on 20 well sites) in the *Deer Creek North Plan of Development* (see Appendix A), with 1 to 4 wells drilled on each well site at 160 acre well spacing (1 well per coal seam per 160 acres). Separate vertical wells would be drilled into the Carney, Monarch and Dietz coal seams. Anticipated depth of the wells would be from approximately 117 to 1,072 feet deep. The drilling and construction period is anticipated to begin in 2005 and last approximately 3 years.

Twenty-three CBM natural gas wells would be drilled on 14 well sites located on privately owned minerals (and 55 CBNG federal wells would be drilled on 30 well sites) in the *Pond Creek Plan of Development* (see Appendix A), with 1 to 2 wells drilled on each well site at 160 acre well spacing. Separate vertical wells would be drilled into the Carney and Monarch coal seams. Three existing wells have been drilled in the Dietz coal seam. Anticipated depth of the wells would be from approximately 297 to 936 feet deep. The drilling and construction period is anticipated to begin in 2005 and last approximately 3 years.

The Deer Creek North and Pond Creek Plans of Development and CX Field re-delineation and expansion were approved by the Board of Oil and Gas Conservation on March 17, 2005 by Orders 86-2005 and 87-2005 respectively. The Board accepted the plans of development and approved them subject to environmental assessment.

Water produced by the Deer Creek North and Pond Creek PODs is proposed to be (1) beneficially used for industrial uses (dust suppression) in the Spring Creek and Decker Coal Mines; (2) beneficially used by Fidelity for CBNG drilling, construction, and dust suppression; (3) beneficially used by livestock and wildlife; (4) discharged to the Tongue River using Fidelity's existing MDEQ direct discharge permit (MT0030457), including modifications; (5) treated via ion exchange and discharged to the Tongue River using Fidelity's proposed MDEQ discharge permit for treated water (MT0030724); (6) stored in the existing off drainage impoundment 23-0299; (7) stored in the lined off drainage impoundment 44-3490 which was authorized in the Badger Hills POD, but has not yet been constructed; (8) stored in proposed lined off drainage impoundments 23-2191, 33-2191 and 31-2991; and (9) during the irrigation season, applied to 114 acres of managed irrigation which was authorized in the Badger Hills POD, but is not in use at this time. The ion exchange water treatment facility is proposed to be located 2.5 miles south-southeast of Decker in T. 9. S., R. 40 E, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 34. The Agency preferred

alternative, Alternative D”, assumes drilling and production of all proposed wells and the associated need to manage water produced from 100% of the proposed wells; at this time federal wells cannot be drilled pending results of current litigation. In the interim, only about 50% of the total build-out can be accomplished; therefore, until such time that federal wells begin to produce, water management is expected to maximize use of existing facilities, including beneficial use, managed irrigation and untreated water discharge. For the purposes of this record of decision, the use of treated water discharge as a management option is assumed to be supplemental to existing management options on an as needed basis.

Any well(s) would be plugged and abandoned and surface restored if commercial quantities of gas is not discovered; partial reclamation of unused disturbed areas and utilities/flow line disturbed areas would be required during the project life. The project area is comprised of private, and federal minerals. Surface is managed by private owners and BLM.

Decision

The decision to approve the project plan of development includes adoption of the Environmental Analysis prepared jointly by the U.S. Bureau of Land Management (BLM), the Montana Department of Environmental Quality (MDEQ), and the Montana Board of Oil and Gas Conservation (MBOGC), (environmental assessment MT 020-2005-0155, August 2005); approval of the drilling, completion, and production of 122 new wells located on private minerals, producing 15 existing exploratory wells, installation of roads, pipelines and associated infrastructure needed to produce the wells; and the location, construction and operation of up to four new impoundments to receive produced water. Two of the impoundments are on federal surface and one of these is proposed in conjunction with a water treatment facility. New and existing field compression and sales compression will be used for both POD areas. The decision is effective immediately; drilling permits (Form No. 22) will be approved in the ordinary course of business following this decision.

The two plans of development being approved are immediately adjacent to the existing CX Field producing area that formed the principle analog analyzed in the 2003 Statewide EIS which addressed CBM development in Montana. The proposed action is the most recent phase of development in the area which began at the pilot project level in 1997 with the MBOGC designation of the CX Field.

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. Additional mitigation is required by BLM for federal actions and the operator has agreed to implement other actions to mitigate any impacts of its activities. Those mitigating measures include implementation of lease road speed limits to reduce wildlife mortality and dust emissions, monitoring of 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. Construction of ancillary facilities, such as the proposed lined impoundments, will be

approved under the MBOGC existing program and authorities. It is assumed that other agencies permitting requirements, mitigation requirements or monitoring are authorized by those agencies jurisdictional authorities; where program elements and associated requirements overlap, the MBOGC relies upon its own authority for this decision. Some mitigation imposed by BLM is beyond the scope of jurisdiction of the MBOGC, however. Cultural and paleontological resources are the property of the private 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. The MBOGC cannot require the surface owner to manage private 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/herbicide 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.

Finding of No Significant Impact

Based upon a review of the Environmental Assessment prepared for the project, the voluntary mitigation proposed, the effects of BLM's lease stipulation/permitting process for approval of the proposed federal actions, the monitoring and reporting associated with the both the existing and the proposed MPDES discharge permits, 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

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

September 12, 2005