

United States Department of the Interior Bureau of Land Management

Environmental Assessment MT-020-2008-345

Finding of No Significant Impact and Decision Record

**Fidelity Exploration & Production Company
Coal Bed Natural Gas
Tongue River – Decker Mine East Federal Project
Big Horn County, Montana**

U.S. Department of the Interior
Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

September 30, 2008



Finding of No Significant Impact / Decision Record Miles City Field Office

INTRODUCTION:

The Bureau of Land Management (BLM) completed an Environmental Assessment (EA), No.MT-020-2008-345 of the Fidelity Exploration and Development Decker Mine East POD. The POD include the drilling, completing, and producing 14 federal wells along with the construction and installation of the associated infrastructure, management of produced water, treatment of weeds and reclamation of disturbed areas. These 14 wells would be drilled and completed in the Dietz, Monarch, Carney and Wall coal zones. The average production life of the project wells is expected to be 10 to 20 years with final reclamation to be completed 2 to 3 years after plugging of the wells.

The EA also analyzed the No Action Alternative and the Proposed Action with BLM imposed mitigation measures Alternative. The EA is attached to and incorporated by reference in this Finding of No Significant Impact (FONSI) determination.

PLAN CONFORMANCE AND CONSISTENCY:

The proposed project has been reviewed and found to be in conformance with the following BLM plans and associated Record of Decision(s):

1. Powder River Resource Management Plan and Record of Decision, March 1985
2. Miles City District Oil and Gas FEIS/Amendment, February 1994
3. Montana Statewide Oil and Gas FEIS/Amendment of the Powder River and Billings RMPs, April 2003

FINDING OF NO SIGNIFICANT IMPACT DETERMINATION:

Based upon a review of the EA and the supporting documents, I have determined that the project is not a major federal action significantly affecting the quality of the human environment, individually or cumulatively with other actions in the general area. No environmental effects meet the definition of significance in context or intensity, as defined in 40 CFR 1508.27, and do not exceed those effects described in the Powder River RMP and Montana Statewide Oil and Gas FEIS/Amendment of the Powder River and Billings RMPs. Therefore, an environmental impact statement is not needed. This finding is based on the context and intensity of the project as described below:

Context: The proposed project is in the CX Field that is located in Big Horn County of southeastern Montana. The CX Field is an active gas field that produces coal bed natural gas from federal, state and private wells. The proposed project would add 14 wells and temporarily disturb an additional 26.7 acres within the CX Field. Gas from the CX Field is transported to other states for commercial uses.

The CX Field is located within 2 miles of other producing gas fields and two producing coal mines.

Intensity: The following discussion is organized around the Ten Significance Criteria described in 40 CFR 1508.27.

1. Impacts may be both beneficial and adverse.

The proposed project would impact resources as described in the EA. In addition to mitigation measures included in the project design, BLM developed additional mitigation measures to further minimize or eliminate adverse impacts to other resources and land uses. These additional mitigation measures are included in the Preferred Alternative. The EA also disclosed beneficial impacts from the proposed project to land owners, the local economy and to local, state and federal governments from increased revenues. None of the environmental effects discussed in detail in the EA are considered significant, nor do the effects exceed those described in the Montana Statewide Oil and Gas FEIS.

2. The degree to which the selected alternative will affect public health or safety.

The selected alternative is designed to minimize impacts to other resources as well as to public health and safety. Most of the land in the project area is privately owned. The public generally cannot access the project area because security gates are located on roads leading into the project area. BLM will require Fidelity to have water well mitigation agreements with the owners of domestic water wells and springs that might be adversely affected by the production of coal bed natural gas. The agreements will address potential harm to the groundwater, well or spring and migration of gas into the well or spring, and include monitoring for effects. The mitigation measures in the selected alternative will minimize or eliminate adverse impacts to the public.

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas.

The historic and cultural resources of the area have been reviewed by an archeologist, the State Historic and Preservation Office, and affected Tribes. The potential impacts have been mitigated in the design of the preferred alternative. There are no effects on park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas, because none of these are located within or adjacent to the project area.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

Members of the public expressed concerns regarding potential impacts to groundwater, surface water, existing water rights, wildlife and quality of life in a predominately rural area. The selected alternative includes mitigation measures that are designed to minimize or eliminate adverse impacts to resources and the quality of the human environment. Fidelity is required to have all approved permits required by local, state and federal agencies with jurisdiction over components of the proposed project. Additionally, the project is located within current CBNG development and produced water management options, in the proposed project, are already in existence and permitted.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The proposed project is not unique or unusual. The BLM and the State have approved similar projects, including the mitigation measures found in the selected alternative, in the vicinity of the proposed action. Monitoring inspections and data of these approved projects have shown minimal adverse impacts or even less than predicted in previous environmental analyses. There are no predicted effects on the human environment that are considered to be highly uncertain or involve unique or unknown risks.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The actions considered in the selected alternative were considered by the interdisciplinary team within the context of past, present, and reasonably foreseeable future actions. Approval of the proposed project would not set a precedent because the proposed project would authorize the installation of additional wells and infrastructure in a producing gas field. The environmental analysis did not show significant effects from the proposed project by itself or in addition to past, present and reasonably foreseeable future actions in the general area.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

The interdisciplinary team evaluated the proposed project in context of past, present and reasonably foreseeable actions. The environmental analysis did not show significant effects from the proposed project by itself or in addition to past, present and reasonably foreseeable future actions in the general area.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

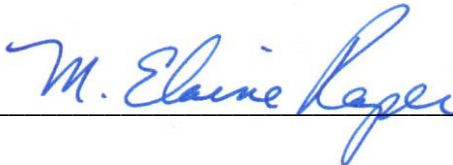
The project will not adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places, nor will it cause loss or destruction of significant scientific, cultural, or historical resources. The historic and cultural resources of the area have been inventoried and analyzed by BLM, the State Historic Preservation Office, and affected Tribes.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

No endangered or threatened species or their habitat are known to exist within or adjacent to the project area.

10. Whether the action threatens a violation of a Federal, State, Local, or Tribal law, regulation or policy imposed for the protection of the environment, where non-Federal requirements are consistent with Federal requirements.

The project does not violate any Federal, State, Local or Tribal law or requirement imposed for the protection of the environment. State, local, and tribal interests were given the opportunity to participate in the environmental analysis process. Furthermore, the project is consistent with applicable land management plans, policies, and programs.

Approved By:  Sept. 30, 2008

SUMMARY OF THE PROPOSAL

Fidelity Exploration & Production Company (Fidelity) proposes to develop coal bed natural gas (CBNG) in its Tongue River-Decker Mine East Federal project area located in Big Horn County of southeastern Montana. The project area is located in T. 9 S., R. 40 E. and T. 9 S., R. 41 E., and is part of the CX Field. Fidelity's Decker Mine East proposed action requiring a decision includes the construction, drilling, and production of 14 Federal CBNG wells and installing the associated infrastructure serving federal leases within the project area; as well as reclaiming disturbed areas and plugging federal wells when they are no longer needed.

DECISION

Based upon the analysis of potential environmental impacts described in the *September 2008, Fidelity Exploration & Production Company, Tongue River – Decker Mine East Federal Project Environmental Assessment* (EA) (Attached), it is my decision to select Alternative C, Preferred Alternative, from the EA and approve the combined Decker Mine East Plan of Development (POD), dated January 3, 2007, submitted by Fidelity and modified by conditions of approval.

Approved project components include:

- Construction, drilling, completion, production, routine operation and reclamation of up to 14 federal coal bed natural gas wells on 14 well sites.
- Approved use, routine operation and reclamation of existing compressor stations (batteries) Holmes 29 Battery and Decker #17 Battery, and the existing sales battery, Symons Central Compressor Station.
- Placement of surface facilities such as well head covers, electric panels, meter houses and other equipment associated with federal wells needed to produce coal bed natural gas for the life of the project.
- Methods of disposal for water produced from federal wells: (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) treated via ion exchange and discharged to the Tongue River using Fidelity's existing MDEQ discharge permit for treated water (MT0030724); and (5) discharged to the Tongue River using Fidelity's existing MDEQ direct discharge permit (MT0030457).

- Access via approximately 2.14 miles of existing two track road, 6.44 miles of proposed two track road, 4.7 miles of existing improved road and 1.74 mile of proposed spot upgrade road. Pipeline corridors will be used as temporary roads for access to well sites. All access is authorized to allow the operator access to its individual leases as described in the Preferred Alternative.
- Approximately 4.22 miles of gas and water pipelines will be installed in common corridors (30 foot wide) from the 14 federal wells to production facilities.
- Electric power supplied from approximately 0.81 miles of proposed (including 6 power drops) and 1.28 miles of existing overhead electrical lines (10 foot wide). Approximately 7.4 miles of underground electrical line will be installed in the common corridor.
- Right-of-way MTM-98478 issued to Fidelity for a 2,205 foot long buried poly gas line and buried poly water line, and a 188 foot long 3-phase .48 kV buried power line. The right-of-way will be a total of approximately 2,205 feet long and 50 feet wide, consisting of approximately 2.53 acres. The right-of-way is subject to cost recovery and rental and will be issued for a term of twenty years and is renewable.
- Surface disturbances will be reclaimed according to the surface use agreements, BLM requirements, and MDEQ storm water construction permits and storm water pollution prevention plans.

Approval of the Decker Mine East POD which includes a Water Management Plan, a Cultural Resources Plan, a Wildlife Monitoring and Protection Plan, a Noxious Weed Prevention Plan and a Reclamation Plan, is subject to the operator implementing and complying with all the attached Conditions of Approval (COA's). These conditions of approval include additional mitigating measures described in Alternative C of the EA and contain all practicable means to avoid or minimize environmental harm. These mitigating measures are either a result of the impact analysis or adopted from the MT FEIS, 2003.

This decision is effective immediately. Actions may begin immediately in accordance with any restrictions or constraints imposed by lease stipulations, permit conditions of approval, or surface owner agreements.

Authorities: The authority for this decision is contained in 43 CFR 3162.3-1.

Compliance and Monitoring: The BLM and Fidelity will provide qualified representatives during and following construction to validate construction, reclamation, and other approved actions commensurate with the provisions of this Decision Record. The MT FEIS (pages MON-7 and MON-8) describes the type of actions that will occur under BLM's inspection and enforcement program to ensure that Fidelity's Deer Creek North Federal Project development and operations are conducted according to the provisions of Alternative C.

Additional monitoring described in the MT FEIS (Monitoring Appendix) concerning

surface water quality, regional groundwater and air quality is tied to established programs operated by the U.S. Geological Survey, Montana Bureau of Mines and Geology, Montana Department of Environmental Quality and BLM.

Fidelity Exploration & Production Company has committed to monitoring activity in their proposal; including:

- All water quality measures identified per the MDEQ MPDES permits
- Domestic water wells and springs included in the cone of influence to determine if impacts are occurring that require mitigation
- Existing and new disturbed areas for invasions of noxious weeds
- Success of reclamation measures
- Cooperation with Montana Fish, Wildlife and Parks and BLM biologists in their monitoring of big game crucial winter ranges
- Sage and sharp-tailed grouse activity within two miles of development
- Raptor nest success and productivity
- Bald eagle winter roost success and productivity
- Air quality permit requirement compliance

Appropriate remedial action will be taken by Fidelity Exploration & Production Company in the event unacceptable impacts are identified during the life of the project.

Terms / Conditions / Stipulations: The following mitigation measures were analyzed in the EA and are included as Conditions of Approval with each approved APD and stipulations for the right-of-way.

CONDITIONS OF APPROVAL

Site Specific

1. The operator is responsible for informing all persons in the area who are associated with this project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. If historic or archaeological materials are uncovered during construction, the operator is to immediately stop work that might further disturb such materials, and contact the authorized officer (AO). Within five working days the AO will inform the operator as to:
 - whether the materials appear eligible for the National Register of Historic Places;
 - the mitigation measures the operator will likely have to undertake before the site can be used (assuming in situ preservation is not necessary);
 - a timeframe for the AO to complete an expedited review under 36 CFR 800.11 to confirm, through the State Historic Preservation Officer, that the findings of the AO are correct and that mitigation is appropriate; and,
 - consult with affected Tribes as appropriate

If the operator wishes, at any time, to relocate activities to avoid the expense of mitigation and/or the delays associated with this process, the AO will assume responsibility for whatever recordation and stabilization of the exposed materials may be required. Otherwise, the operator will be responsible for mitigation costs. The AO will provide technical and procedural guidelines for the conduct of mitigation. Upon verification from the AO that the required mitigation has been completed, the operator will then be allowed to resume construction.

2. Timing restriction for grouse – Surface use is prohibited from March 1 to June 15 in grouse nesting habitat within 2 miles of a lek. This lease stipulation does not apply to the operation and maintenance of production facilities. Those wells that timing would apply, unless BLM grants an exception, modification or waiver (as defined in the FEIS Wildlife Monitoring and Protection Plan), include:
 - Timing restriction would apply for all wells.
3. Timing restriction for raptor nests - Surface use is prohibited from March 1 to August 1 within 1/2 mile of raptor nest sites which have been active within the past 2 years. This lease stipulation does not apply to the operation and maintenance of production facilities. Those wells that timing would apply, unless BLM grants an exception, modification or waiver (as defined in the FEIS Wildlife Monitoring and Protection Plan), include:
 - 33-1791, 24-1791, 13-1791, 44-1891, 22-0791
4. Leafy spurge was identified on locations 44-1891 requiring treatment strategies and management. Treatment prior to construction and undercarriage washing of construction equipment is required.

5. No Surface Occupancy for coal lease – In order to drill wells a modification shall be submitted to the BLM for the No Surface Occupancy stipulation. This lease stipulation does not apply to the operation and maintenance of production facilities. If modification is approved by authorized officer it will be determined that portions of Decker Mine’s existing or planned operations have been completed or not needed. Those wells and infrastructure that modification would be needed for, include:
 - 23-1891, 44-1891, 43-1891, 14-1891, 13-1791, 24-1791, 44-1791, and 33-1791
6. In order to ensure compliance with Onshore Order #7 the following mitigating measures would apply:
 - The operator will comply with the groundwater monitoring plan requirements for lined impoundments established by the MDEQ in the MPDES permits.
 - Water from federal wells will not be discharged to surface waters unless a valid MPDES permit is in place for that discharge.
 - Residual brine which results from the treatment of water from Federal wells will not be discharged into an on-site lined pit for solidification unless the appropriate state permits are in place and a Sundry Notice, including a copy of the applicable MBOGC permit(s), and all applicable informational requirements under Onshore Order #7, are submitted to, and approved by, the BLM

General

1. A pre-construction field meeting must be conducted prior to beginning any construction activities approved under this POD. The operator must contact the BLM Authorized Officer, (406-233-3645) at least 4 days prior to beginning operations so that the meeting can be scheduled. The operator is responsible for having all contractors present (dirt contractors, drilling contractor, pipeline contractor, project oversight personnel, etc.) including the overall field operations superintendent and for providing all contractors copies of the approved POD, project map and BLM Conditions of Approval pertinent to the work that each would be doing.
2. The operator must submit a Sundry Notice (Form 3160-5) to BLM for approval prior to construction of any new surface disturbing activities related to federal leases that are not specifically addressed in the approved APD or POD Surface Use Plan.
3. Prior to the use of pesticides on public land, the applicant must obtain from the BLM authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers and any other information deemed necessary by the authorized officer to such use. Disturbed areas must be monitored annually for the presence of noxious weeds from June through August. Monitoring must begin prior to disturbance.
4. Production facilities shall be painted “Covert Green” 18-0617 TPX, an earthtone color from the Munsell Soil Color Chart, within 6 months after installation.
5. Additional requirements may be imposed if changes in operational and/or environmental conditions dictate.

Drilling

1. The reserve pit must be lined with an impermeable liner. An impermeable liner is any liner having permeability less than 10^{-7} cm/sec. The liner must be installed so that it will not leak and must be chemically compatible with all substances that may be put in the pit. Liners made of any man-made synthetic material must be of sufficient strength and thickness to withstand normal installation and pit use. In gravelly or rocky soils, a suitable bedding material such as sand must be used prior to installing the liner.
2. All wait on cement times must be sufficient for the cement to reach 500 psi compressive strength as required by Onshore Oil & Gas Order No. 2.III.B.
3. A variance is granted to Onshore Order # 2, III, Section 2a, minimum standards for well control equipment. This variance allows the use of a Washington Diverter or similar diverter and blooie line as requested.
4. A minimum of three centralizers must be installed on the production casing and spaced to afford maximum protection of the shallow coals and aquifers.
5. Any evidence of non-exempt wastes being put into the reserve pit may result in the BLM Authorized Officer requiring specific testing and closure requirements.
6. If these wells are drilled during the fire season (June-October), the operator must take all necessary precautions to ensure that fire hazard is minimized, including but not limited to mowing vegetation on the access routes and well sites and keeping firefighting equipment readily available when drilling.
7. The reserve pit must be constructed so that at least half of its total volume is below natural ground level.
8. Any evidence of non-exempt wastes being put into the reserve pit may result in the BLM Authorized Officer requiring specific testing and closure requirements.
9. Any materials classified as nonexempt hazardous wastes must be disposed of in an EPA approved facility.

Access

1. Access roads, including drainage control, must be improved and maintained as necessary or as directed by the BLM Authorized Officer to prevent soil erosion and to provide for safe and environmentally-sound access.
2. Water or other non-saline dust suppressants with at least 50 percent control efficiency must be applied during well site, battery site and road construction. Dust inhibitors (surfacing materials, non-saline dust suppressants and water) must be used as necessary on unpaved roads that present a fugitive dust problem. The use of chemical dust suppressants on public surface will require prior approval from the BLM Authorized Officer.
3. Vehicle travel on unimproved two-track roads is prohibited during periods of inclement weather or spring thaw when the possibility exists for excessive surface resource damage

such as creating ruts in excess of 4 inches or causing vehicles to travel outside two-track roadway.

4. Culverts must be placed on channel bottoms on firm, uniform beds, which have been shaped to accept them and aligned parallel to the channel to minimize erosion. Backfill material must be thoroughly compacted. All culverts must be appropriately sized in accordance with standards in BLM Manual 9113.

Reclamation

1. Reclamation plans must be submitted to BLM for approval via a Notice of Intent (NOI) Sundry Notice before abandoning individual federal POD facilities. Any deviation from the Surface Reclamation Plan included in the Decker Mine East Federal Project must be included at this time. Individual facilities include well locations, pipelines/utility corridors, access roads, and compressor sites.
2. Pit reclamation:
 - a. All pit(s) must be emptied of all fluids within 90 days after completion of drilling operations. The pit must be closed properly to assure protection of soil, water and vegetation.
 - b. The pit may not be cut or trenched.
 - c. Pit mud/sludge material may be buried onsite after the material has dried.
 - d. The plastic pit liner must be cut off below grade and properly disposed of at a state authorized landfill before beginning to recontour the site.
 - e. The pit material must be covered with a minimum of 3' of soil
3. Reclamation of disturbed areas on private surface must be in accordance with agreements between Fidelity and the landowners. The disturbed areas must be disked and seeded with a weed-seed free mix approved by the Natural Resource Conservation Service and the surface owner. At a minimum, 12 pounds per acre of seed would be planted, with the initial reseeding in the fall of 2008 or spring of 2009.
4. Areas of surface disturbance must be ripped or scarified to a depth of at least 12 inches before recontouring and redistributing topsoil. The rippers must not be set more than 24 inches apart.
5. Topsoil must be distributed evenly over the entire recontoured area. Prepare the seedbed by disking to a depth of 4-6 inches following the contour. Seed must be drilled on the contour to a depth of one-half inch, followed by cultipaction to compact the seedbed, preventing soil and seed losses
6. All disturbed areas on BLM surface must be seeded after October 1 (before ground freezes) or prior to May 15 (after ground thaws) at 6" drill row spacing at a depth of ¼" to ½" with the following mixture:

Combination must include at least four of the following species:

<i>Species of Seed</i>	<i>(Variety)</i>	<i>Common Name</i>	<i>Pounds/acre *(PLS)</i>
<u>Pascopyrum smithii</u>	(Rosanna)	Western wheatgrass	3.00
<u>Pseudoroegneria spicata</u>	(Goldar)	Bluebunch wheatgrass	2.00
<u>Stipa viridula</u>	(Lodom)	Green needlegrass	2.00

<u>Elymus trachycaulus</u>	(Pryor)	Slender wheatgrass	2.00
<u>Stipa comata</u>		Needleandthread	1.00
<u>Bouteloua curtipendula</u>		Sideoats Grama	2.00
<u>Schizachyrium scoparium</u>		Little bluestem	2.00

**Pure Live Seed (PLS) formula: % of purity of seed mixture times % germination of seed mixture = portion of seed mixture that is PLS*

Western wheatgrass must be included in the seed mix. Thickspike wheatgrass may be substituted only when Western wheatgrass is unavailable.

7. Slopes too steep for machinery may be seeded by hand broadcast with twice the amount of specified seed and raked.
8. Any mulch used for reclamation must be certified weed seed free and crimped into the soil.
9. Reclamation will be determined successful when the disturbed area and any areas of subsidence are stabilized, potential water erosion is effectively controlled, the area is free of debris and the vegetative stand is established with at least a 70% ground cover and is composed of at least 60% of the required species.
10. Waterbars must be constructed at least one (1) foot deep, on the contour with approximately two (2) feet of drop per 100 feet of waterbar to ensure drainage and extended into established vegetation. All waterbars are to be constructed with the berm on the downhill side to prevent the soft material from silting in the trench. The initial waterbar should be constructed at the top of the backslope. Subsequent waterbars should follow the following general spacing guidelines:

Slope (percent)	Spacing Interval (feet)
< 2	200
2 – 4	100
4 – 5	75
> 5	50

11. BLM will not release the bond until all disturbed areas associated with the APD/POD have been successfully revegetated (evaluation will be made after the second complete growing season) and has met all other reclamation goals of the surface owner and surface management agency.
12. For bond release approval, a Final Abandonment Notice (with a surface owner release letter on split-estate) must be submitted prior to a final abandonment evaluation by BLM.
13. Soil fertility testing and the addition of soil amendments may be required to stabilize some disturbed lands.

Right-Of-Way MTM-98478 Stipulation

The right-of-way grant to be issued to Fidelity Exploration & Production Company for a buried gas line, buried water line and buried power line would be issued under the authority of Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185) and subject to the terms and conditions in 43 CFR 2880, in the application and plan of development, and subject to the stipulations listed below.

1. The holder shall construct, operate, and maintain the facilities, improvements, and structures within this right-of-way in strict conformity with Fidelity's Decker Mine East Plan of Development which was approved and made a part of the grant. Any relocation, additional construction, or use that is not in accord with the approved plan of development, shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant, including all stipulations and approved plan(s) of development, shall be made available to the authorized officer on the right-of-way area during construction, operation, and termination. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
2. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
3. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
4. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
5. Holder shall remove only the minimum amount of vegetation necessary for the construction of structures and facilities. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation.
6. The holder shall seed all disturbed areas with native seed, using an agreed upon method suitable for the location. Seeding shall be repeated if a satisfactory stand is not obtained

as determined by the authorized officer upon evaluation after one growing season. The holder must seed all disturbed areas with the seed mixture(s) listed below. The seed mixture(s) must be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There must be no primary or secondary noxious weed seed in the seed mixture. Seed must be tested and the viability testing of seed must be done in accordance with State law(s) and within six months prior to purchase. Commercial seed must be either certified or registered seed. The seed mixture container must be tagged in accordance with State law(s) and available for inspection by the authorized officer.

Seed must be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture must be evenly and uniformly planted over the disturbed area. Smaller/heavier seeds have a tendency to drop to the bottom of the drill and are planted first. The holder must take appropriate measures to ensure this does not occur. Where drilling is not possible, seed may be broadcast and the area raked or chained to cover the seed. When broadcasting the seed, the pounds per acre noted below are to be doubled. The seeding must be repeated until a satisfactory stand is established as determined by the Authorized Officer. Evaluation of growth will not be made before completion of the second growing season after seeding. The Authorized Officer is to be notified a minimum of seven days prior to seeding of the project.

ROW Seed Mixture (Silty or Clayey Ecological Sites)

The combination must include at least four of the following species. Western wheatgrass must be included in the mix. Thickspike wheatgrass may be substituted for wheatgrass only when western wheatgrass is unavailable.

<i>Species of Seed</i>	<i>(Variety)</i>	<i>Common Name</i>	<i>Pounds/acre *(PLS)</i>
<u>Pascopyrum smithii</u>	(Rosanna)	Western wheatgrass	3.00
<u>Pseudoroegneria spicata</u>	(Goldar)	Bluebunch wheatgrass	2.00
<u>Stipa viridula</u>	(Lodom)	Green needlegrass	2.00
<u>Elymus trachycaulus</u>	(Pryor)	Slender wheatgrass	2.00
<u>Stipa comata</u>		Needleandthread	1.00
<u>Bouteloua curtipendula</u>		Sideoats Grama	2.00
<u>Schizachyrium scoparium</u>		Little bluestem	2.00

*Pure Live Seed (PLS) formula: % of purity of seed mixture times % germination of seed mixture = portion of seed mixture that is PLS

7. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within the limits imposed in the grant stipulations).
8. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of 3-4 inches deep, the soil shall be deemed too wet to adequately support construction equipment.
9. Timing restriction for grouse – Surface use is prohibited from March 1 to June 15 in grouse nesting habitat within 2 miles of a lek. This lease stipulation does not apply to the operation and maintenance of production facilities. This timing stipulation would apply

to the construction of the right-of-way, unless BLM grants an exception, modification or waiver (as defined in the FEIS Wildlife Monitoring and Protection Plan).

10. Timing restriction for raptor nests - Surface use is prohibited from March 1 to August 1 within 1/2 mile of raptor nest sites which have been active within the past 2 years. This lease stipulation does not apply to the operation and maintenance of production facilities. This timing stipulation apply to the construction of the right-of-way, unless BLM grants an exception, modification or waiver (as defined in the FEIS Wildlife Monitoring and Protection Plan).
11. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2880, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.”
12. *The holder shall coordinate with the parties holding authorized rights on the adjacent and affected land [such as the grazing permittee/lessee and right-of-way holders].
13. Sixty days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder’s commencement of any termination activities.

* This non-standard stipulation was approved by the District Manager, which is the next higher level of Bureau line management, for right-of-way MTM-83461, on September 28, 1994.

OTHER APPLICABLE REQUIREMENTS

This is not a complete list of requirements, but is an abstract of some major requirements.

1. General Requirements

- a. The lessee or designated operator shall comply with applicable laws and regulations; with the lease terms, Onshore Oil and Gas Orders; NTL's; and with other orders and instructions of the authorized officer. Any deviation from the terms of the approved APD require prior approval from BLM (43 CFR 3162.1(a)).
- b. If at any time the facilities located on public lands authorized by the terms of the lease are no longer included in the lease due to a lease or unit boundary change, the BLM will process a change in authorization to the appropriate statute. The authorization will be subject to appropriate rental or other financial obligation determined by the authorized officer.

2. Drilling Operations (Onshore Order No. 2)

- a. All applicable safety precautions outlined in Onshore Order No. 2 shall be observed.

3. Well Abandonment (43 CFR 3162.3-4, Onshore Order No. 1 - Sec. V)

Approval for abandonment shall be obtained prior to beginning plugging operations. Initial approval for plugging operations may be verbal, but shall be followed-up in writing within 30 days. Subsequent and final abandonment notifications are required and shall be submitted on Sundry Notice (Form 3160-5), in triplicate.

4. Reports and Notifications (43 CFR 3162.4-1, 3162.4-3)

- a. Within 30 days of completion of the well as a dry hole or producer, a copy of all logs, core descriptions, core analyses, well-test data, geologic summaries, sample descriptions or data obtained and compiled during the drilling, workover, and/or completion operations shall be filed with a Completion Report (Form 3160-4), in duplicate.
- b. In accordance with 43 CFR 3162.4-3, this well shall be reported on the Oil and Gas Operations Report (OGOR, MMS-4054), starting with the month in which drilling operations commence, and continuing each month until the well is physically plugged and abandoned.
- c. Notify this office within 5 business days of production start-up if either of the following two conditions occur:
 - (1) The well is placed on production.
 - (2) The well resumes production after being off of production for more than 90 days."Placed on production" means shipment or sales of hydrocarbons from temporary tanks, production into permanent facilities or measurement through permanent facilities.

Notification may be written or verbal with written follow-up within 15 days, and must include the following information:

1. Operator name, address, and telephone number.

2. Well name and number, county and state.
3. Well location, "¼¼", Section, Township, Range, P.M."
4. Date well begins or resumes production.
5. The nature of the well's production; that is crude oil, or crude oil casing gas, or natural gas and entrained liquid hydrocarbons.
6. The Federal or Indian lease number.
7. As appropriate, the Unit Agreement name, number and Participating Area name.
8. As appropriate, the Communitization Agreement number.

5. Verbal Notifications

Made to the BLM, MCFO 406-233-2800, or after business hours to the appropriate individual's home phone shown on the list attached.

- A. Notify this office verbally at least 48 hours prior to beginning construction.
 - B. Notify this office verbally at least 12 hours prior to spudding the well. (To be followed up in writing within 5 days.)
 - C. Notify this office verbally at least 12 hours prior to running any casing or conducting any BOP tests. (To be followed up in writing within 5 days.)
 - D. Notify this office verbally at least 6 hours prior to commencing any DST test.
 - E. Notify this office verbally at least 24 hours prior to plugging the well to receive verbal plugging orders. (Refer to Informational Notice Item No. 3 for additional abandonment instructions.)
 - F. Notify this office verbally at least 24 hours prior to removal of fluids from the reserve pit.
6. Environmental Obligations and Disposition of Production (43 CFR 3162.5-1, 3162.7-1 and 40 CFR 302-4)
- a. With BLM approval, water produced from newly completed wells may be temporarily stored in reserve pits up to 90 days. During this initial period, application for the permanent disposal method shall be made to this office in accordance with Onshore Order No. 7. If underground injection is proposed, an EPA or State permit shall also be obtained. If surface discharge of produced water is proposed, an MPDES permit shall also be required.
 - b. Spills, accidents, fires, injuries, blowout and other undesirable events shall be reported to this office within the timeframes in NTL-3A.
 - c. You are required to take all necessary steps to prevent any death of a migratory bird in pits or open vessels associated with the drilling, testing, completion, or production of this well. The death of any migratory bird found in such a pit or open vessel is a violation of the Migratory Bird Treaty Act and is considered a criminal act. Any deaths of migratory birds attributable to pits or open vessels associated with drilling, testing, completing or production operations must be

reported to this office and the United States Fish and Wildlife Service within 24 hours.

We may require that the pit be designed or the open vessel be covered to deter the entry of birds in any facility associated with drilling, testing, completion or production of this well. Fencing, screening and netting of pits may be required as a means to deter bird entry. These conditions would most likely be imposed to prevent the entry of migratory birds if oil is left in pits or open vessels after the cessation of drilling or completion of operations, if water disposal pits consistently receive oil, or if pits or open vessels are used repeatedly for emergency situations which result in the accumulation of oil.

Voluntary pit fencing, screening and netting, or sealing vessels, is encouraged to avoid potential instances that may result in the death of a migratory bird.

7. Well Identification (43 CFR 3162.6)

Each drilling, producing or abandoned well shall be identified with the operator's name, the lease serial number, the well number, and the surveyed description of the well (either footages or the quarter-quarter section, the section, township and range). The Indian lessor's name may also be required. All markings shall be legible, and in a conspicuous place.

8. A complete copy of the approved Application for Permit to Drill (APD), including conditions, stipulations, and the H2S contingency plan (if required) shall be available for reference at the well site during the construction and drilling phases. **A copy of the approved Surface Use Plan of Operations and Conditions of Approval (COAs) shall be provided to the surface owner(s) prior to initiating construction.**

9. This drilling permit is valid for either two years from the approval date or until lease expiration, whichever occurs first.

10. Public Availability of Information (43 CFR 3100.4)

All submitted information not marked "CONFIDENTIAL INFORMATION" will be available for public inspection upon request.

If you have any questions, please contact a member of our staff at 406-233-2800.

BUSINESS HOURS: 7:45 A.M. to 4:30 P.M. (Mountain Time) Monday - Friday

Conformity of the April 5, 2005 District Court Order: Approval of the proposed project, and as modified by conditions of approval, is in conformance with the Federal District Court Order dated April 5, 2005. Additionally, all Onshore Oil and Gas Order Number 1 processing times and applicant notification requirements were followed. The specific requirements of the April 5, 2005 Court Order are:

1. While the SEIS is being prepared, BLM is enjoined from approving production-related CBM APDs outside of the following defined geographic area: Townships 7½, 8, 9, and 10 South; Ranges 39, 40 41, 42, 43 and 44 East.
 - The project area is located within the defined geographic area, T. 9 S., R. 41 E.
2. Within the geographic area, BLM shall limit the number of production-related APDs to a number that keeps the total number of federal, state, and private wells to maximum of 500 new wells per year beginning on the date of this order.
 - According to the Montana Board of Oil and Gas Conservation website on September 15, 2008, 103 production related APDs have been approved since April 5, 2008
3. BLM will restrict Water Management Plans for federal wells to prohibit:
 - a. Surface discharge of “untreated” produced water, except for the one existing MPDES permit which allows for untreated discharge (MT-0030457, including any modifications/renewals);
 - b. Discharge of produced water into unlined impoundments (as defined by Onshore Order #7), except where already approved; and
 - c. Discharge of produced water into “on-drainage” impoundments.
 - All methods of disposal for water produced from federal wells is in compliance with the 2005 Order, specifically: (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) treated via ion exchange and discharged to the Tongue River using Fidelity’s existing MDEQ discharge permit for treated water (MT0030724); and (5) discharged to the Tongue River using Fidelity’s existing MDEQ direct discharge permit (MT0030457).
4. BLM shall not approve an APD unless the operator has certified that water mitigation agreements are in place for all wells and springs located within one mile of federal wells. BLM shall require each agreement to include measures to remedy methane-related impacts. BLM shall require operators to conduct baseline and periodic monitoring of all water wells and springs covered by the agreement.

- Fidelity Exploration and Production Company has certified that they have obtained Water Well Mitigation Agreements from all parties directly affected by the Decker Mine East Federal project. This includes owners of all wells or springs within one mile of Fidelity's proposed operations. These agreements also include measure to remedy methane-related impacts and baseline and periodic monitoring.
5. If a water well or spring is adversely affected by a CBM well, BLM shall require the operator to offer a water well mitigation agreement to owners of any water well or spring within one-half mile of the adversely affected well.
 - BLM has required and Fidelity Exploration and Production Company have certified they have obtained Water Well Mitigation Agreements from all owners of wells or springs within one mile of the Decker Mine East Federal project.
 6. BLM shall require operators to retain an archaeologist holding a valid BLM Cultural Resources Permit. The archaeologist must be available to conduct monitoring during construction at BLM specified sites on federal leases. BLM shall require operators to provide an opportunity for a Northern Cheyenne Tribal cultural resources specialist to monitor construction at BLM specified sites on federal leases. Monitoring by a Tribal specialist shall only be conducted with the consent of the surface owner.
 - There are no cultural sites identified that would require an archaeologist or Tribal cultural resource specialist to conduct monitoring during construction.
 7. All exploration-only APDs shall be subject to the management requirements.
 - All APDs included with the Decker Mine East Federal Project are for production

Public Involvement

The Miles City Field Office completed the Montana Statewide Final Oil and Gas EIS and Amendment of the Powder River and Billings RMPs on April 30, 2003 (MT FEIS). One result of this effort is an extensive database of public input on CBNG. Issues, comments and concerns obtained from the public throughout the EIS scoping, comment and protest period were all used to review the Fidelity Decker Mine East Federal Project and prepare the EA.

The public was provided opportunity, through project scoping letters dated June 2, 2008 to assist BLM in identification of relevant issues on the Decker Mine East POD.

An opportunity for public involvement on the Decker Mine East Federal Project proposal was provided via the Applications for Permit to Drill (APDs) posting periods (43CFR 3162.3-1(g)). These 30 day public comment periods started on January 3, 2007. No comments were received from the public during either of the 30-day posting periods.

Decker Mine East Federal Project is adjacent to the Deer Creek North Federal Project, with the two projects located in the same geographic area. BLM modified the Decker Mine East Federal Project Environmental Assessment and Finding of No Significant Impacts to incorporate the public comments received from the Deer Creek North Federal Project. Public comment was solicited by the BLM Miles City Field Office on August 13, 2008 and ended on August 27, 2008 for the Deer Creek North Federal Project Environmental Assessment and Finding of No Significant Impact. Six individual interest groups, citizens and tribe provided comment to the Deer Creek North EA/FONSI. The substantive comments and brief responses can be found in Appendix I of the Deer Creek North Federal Project EA.

Alternatives Considered: The EA analyzed three Alternatives; Alternative A (the No Action), Alternative B (the Proposed Action), and Alternative C (the Proposed Action with Mitigation).

The key element of Alternative A (No Action) is that BLM would not approve any of the proposed federal wells and the associated infrastructure. Selection of this Alternative would not meet the purpose and need of developing the CBNG resources that may be found in coal seams on federal leases within the project area. Selection of this Alternative would result in the drainage of gas from federal leases by adjacent non-federal wells, minimize the potential gas production from federal leases and eliminate revenues from the production of gas from federal leases. Selection of this Alternative would also inhibit the orderly and efficient development of the CX Field.

The key element of Alternative B (Proposed Action) is the development of federal leases by installation of wells and associated infrastructure, as proposed by Fidelity. Selection of the Proposed Action Alternative would not meet the purpose and need of developing the CBNG resources that may be found in coal seams on federal leases within the project area by developing the federal leases in an orderly, efficient and environmentally responsible manner that provides measures to protect the environment and surface owner assets. The proposed action does not include all of the environmentally protective measures necessary to lessen the effects on the natural environment and surface owner assets.

The key element of Alternative C (Proposed Action with Mitigation, BLM's Preferred) is the development of federal leases by the installation of wells and the associated infrastructure, as proposed by Fidelity along with additional environmental protective mitigation measures developed by BLM. Selection of the Preferred Alternative meets the purpose and need of developing the CBNG resources that may be found in coal seams on federal leases within the project area, while developing in an orderly, efficient and environmentally responsible manner that provides measures to protect the environment and surface owner assets.

Rationale for Decision: Alternative C, the BLM's Preferred Alternative, is in conformance with the Powder River RMP, as amended by the 1994 Miles City Oil & Gas Amendment, the 1999 Miles City ACEC Amendment and the 2003 MT FEIS, and the

Federal District Court Order of April 5, 2005. This decision is in conformance with the overall planning direction of BLM for the area, including review to insure that the Preferred Alternative is consistent with the management objectives of the Preferred Alternative being considered in the SEIS. The Powder River RMP, as amended, required that “standard” and “special” protective stipulations and mitigation measures in the form of conditions of approval be applied to prevent undue adverse impacts to other resource values. Standard and special protective measures were identified and incorporated into the BLM Preferred Alternative to reduce or eliminate impacts. The Preferred Alternative provides the opportunity to continue exploring for and developing coal bed natural gas resources that may be found on federal leases while providing for the protection of other resources.

Appeals: You have the right to request a State Director Review of this decision and these Conditions of Approval pursuant to 43 CFR 3165.3(b). An SDR request, including all supporting documentation shall be filed with the Montana State Office, State Director (MT-920) at 5001 Southgate Drive, Billings, Montana 59101-4669 within 20 business days of your receipt of this decision. If adversely affected by the State Director's decision, it can be further appealed to the Interior Board of Land Appeals (IBLA) pursuant to 43 CFR 3165.4, 43 CFR 4.411, and 43 CFR 4.413. If a statement of reasons for the appeal is not included with the notice, it must be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, VA 22203 within 30 days after the notice of appeal is filed with the authorized officer.

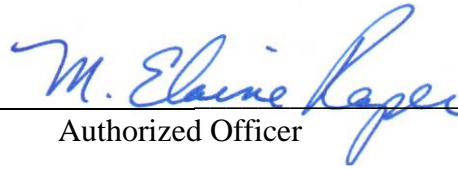
If you wish to file a petition for stay pursuant to 43 CFR Part 4.21(b), the petition for stay should accompany your notice of appeal and shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If a petition for stay is submitted with the notice of appeal, a copy of the notice of appeal and petition for stay must be served on each party named in the decision from which the appeal is taken, and with the IBLA at the same time it is filed with the authorized officer.

A copy of the notice of appeal, any statement of reasons and all pertinent documents must be served on each adverse party named in the decision from which the appeal is taken and on the Office of the Regional Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, Montana 59107-1394, not later than 15 days after filing the document with the authorized officer and/or IBLA.

Should you fail to timely request an SDR, or after receiving the State Director's decision, fail to timely file an appeal with IBLA, no further administrative review of this decision would be possible.



Authorized Officer

Sept. 30, 2008
Date