

**Finding Of No Significant Impact**  
**License Agreement for Access Road and Pipeline Corridor**  
**Berry Petroleum; Well 13-9D-37 (S16T3SR7W)**

**DECISION**

Upon review of the analysis presented in the Environmental Assessment I have decided to issue a License to Berry Petroleum to allow access across United States property under the administration of the Utah Reclamation Mitigation and Conservation Commission. Access is required by Berry to develop a mineral lease they own on the adjacent private property. Additionally, the License would allow Berry Petroleum to widen and improve the access road and to construct a 4" pipeline within the roadway corridor.

**BACKGROUND**

Berry Petroleum proposes to construct and operate an oil and gas well on private property located in Section 9 Township 3 South (T3S) Range 7 West (R7W), Uintah Base Line and Meridian (UBM). The private parcel is surrounded on three sides by Mitigation Commission administered lands and Berry Petroleum has requested a right-of-way across the Mitigation Commission administered lands to access and develop the well site on the adjacent private parcel. The requested right-of-way would utilize an existing access road located in the N ½ Section 16 Township 3 South (T3S) Range 7 West (R7W), Uintah Base Line and Meridian (UBM). The existing access road is inadequate to support the level of use and type of vehicles anticipated by Berry Petroleum for construction and subsequent operation and maintenance of an oil and gas well site development. Consequently, Berry Petroleum has also requested to widen and improve the road to accommodate the

anticipated level of use and to construction a 4" pipeline within the roadway corridor to transport extracted gas to a gas transmission pipeline.

**PROPOSED ACTION**

Under the selected Alternative, the Mitigation Commission would issue a License to Berry Petroleum to access approximately 4,200 feet of roadway on Mitigation Commission administered lands. The License would allow the roadway to be widened and improved up to 10 feet on either side. The road would be designed to minimize disturbance and maximize transportation efficiency and would be built and maintained by Berry Petroleum to provide year-round access. The road would be built of 4-inches of sub-base and 2-inches of road-base material and crowned and ditched to control surface runoff and to provide a stable travel surface. A buried, 4-inch, polypropylene pipeline would be constructed within the expanded access road.

The pipeline would carry gas from the well site to an existing El Paso gas transmission line south of the pad and road. The pipeline would be constructed with minimal vegetation disturbance. The pipeline would be owned and maintained by Berry Petroleum. Following access road and pipeline construction, equipment, supplies, and trash would be removed from the construction ROW. Additional best management practices are described starting on Page 2.

## **REASON FOR THE DECISION**

The Mitigation Commission and the Utah Division of Wildlife Resources reviewed a number of potential access routes to the well site, including a northerly route initially proposed by Berry Petroleum. The Mitigation Commission and UDWR determined that the right-of-way described as the Proposed Action in the EA would minimize the impacts on wildlife resulting from well pad construction and operation. This route utilizes an existing roadway and is further removed from more valuable wildlife habitat. In addition, the right-of-way will potentially be shared in part by Bill Barrett Corporation thereby consolidating the impacts of truck traffic associated with well construction and development. BBC owns the miners rights on the United States property and they have requested reasonable access from the Mitigation Commission to develop their mineral estate. Should access be provided, it would be provided partially on this same right-of-way.<sup>1</sup>

## **PUBLIC INVOLVEMENT**

Copies of the Draft Environmental Assessment were sent to approximately 42 adjacent landowners, interested parties, County and local agencies. In addition, a Public Notice was issued in two consecutive weekly publications of the Uinta Basin Standard Examiner. The Draft EA was also made available on the Mitigation Commission's website for public review and comment. These public outreach efforts resulted in the receipt of one comment letter from the Duchesne County Commissioners who were in support of the Proposed Action.

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<sup>1</sup> The request by BBC is being considered in a separate NEPA analysis.

## **Summary Of Best Management Practices**

Adherence to standard and project-specific best management practices (BMPs) for the following activities would reduce short-term impacts during the construction of the access road and pipeline and other related construction activities:

- Landscape preservation and impact avoidance
- Erosion and sediment control
- Cultural and paleontological resource site clearances
- Site restoration and revegetation
- Air quality protection
- Prevention of water pollution
- Hazardous material storage, handling, and disposal
- Cultural clearance
- Traffic control
- Public notice and involvement

Each of these procedures would be incorporated into all construction specifications and contract documents, as appropriate, and all contractors would be required to follow them.

## **Landscape Preservation and Impact Avoidance**

Construction specifications would require contractors to preserve the natural landscape and prevent any unnecessary destruction, scarring, or defacing of the natural surroundings in the work vicinity. Trees, native shrubbery, and other vegetation would be preserved and protected from construction operations and equipment except where clearing operations are required for construction or excavation operations. Clearing operations would be limited to those needed for construction and would be restricted to only a few feet beyond areas required for construction.

The following table provides a summary of the environmental commitments associated with the Proposed Action.

<b>Summary Of Environmental Measures</b>	<b>EA Page Reference</b>
<p>Drivers would be required to drive 20 miles per hour or less to reduce dust generation, increase awareness of livestock on or near the access road, and use headlights to alert livestock. Berry Petroleum’s trucks would be equipped with GPS tracking devices and compliance with speed limits would be monitored by the applicant.</p>	14
<p>Spatial and seasonal buffers and limitations will be necessary during construction depending upon species observations during subsequent site survey within the nesting and breeding season. The spatial and seasonal buffers only apply to occupied raptor nests.</p> <p>Construction would be restricted to April 16 to November 30. The nesting season for migratory birds is April 1 through August 31. If clearing and grubbing must occur during the nesting season, a pre-construction survey of potential migratory bird habitats would be performed by a qualified biologist to verify the absence of nesting birds. If clearing and grubbing begins prior to the nesting season, it would continue without prolonged breaks as a measure to avoid habitation by migratory birds until after the work is completed. Any potential taking of a migratory bird would be coordinated with the USFWS in accordance with the migratory Bird Treaty Act.</p>	18
<p>A \$25,000 payment to United States for compensatory wildlife mitigation as per separate agreement would be required. Early consultation with the state wildlife management agency and land management agencies can greatly assist with the planning of effective habitat work and selection of appropriate treatments. Berry Petroleum will contribute to habitat enhancement project to improve winter range conditions on nearby United States lands or other properties within the Wildlife Management Area to draw animals away from roads and to replace habitats rendered less usable by the increase road usage. This would be accomplished through a separate agreement with the Mitigation Commission. Pipeline corridor and roadway areas would be reseeded with a seed mix approved by the Mitigation Commission.</p>	18
<p>If construction activities reveal unknown historic, cultural, archaeological, or paleontological resources, the contractor would immediately suspend construction operations in the vicinity (approximately 100-foot buffer around the discovery) and would notify the project manager of the nature and exact location of the discovery. The project manager would contact the Mitigation Commission, who would assess the nature of the discovery and determine the necessary course of action. Construction would resume following notification from the Mitigation Commission. Should the alternative selected for implementation result in an adverse effect to historic</p>	19

<p>resources, a memorandum of agreement to resolve the adverse effect would be prepared, agreed upon, and executed by the Mitigation Commission and the SHPO that would require implementation by the Licensee.</p>	
<p>The Utah Division of Environmental Response and Remediation would be contacted immediately upon the discovery of any contaminated soil or hazardous material. If petroleum hydrocarbons or other previously unidentified hazardous materials or contaminated soil are encountered during construction, appropriate characterization and handling of the soil/waste would be conducted in accordance with DERR guidance.</p> <p>Maintenance of construction equipment onsite would be minimized to the fullest extent possible. If onsite maintenance of construction equipment is required, absorbent pads or sheets would be placed under likely leak or spill sources. In addition, absorbent pads or sheets would be readily available during all refueling activities in the event of minor diesel spills. Spills of fuel or hydraulic fluid would be cleaned up immediately, and contaminated soil would be removed from the site and properly disposed of in accordance with state and federal regulations.</p> <p>Berry Petroleum agrees to abide by all applicable Federal, State, and local laws and regulations pertaining to pollution control and environmental protection. No use of United States lands or rights-of-way shall be permitted that involve the storage of hazardous materials.</p> <p>Berry Petroleum may not allow contamination or pollution of Federal lands, waters or facilities and for which they have responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.</p> <p>Upon discovery of any event which may or does result in contamination or pollution of Federal lands, waters or facilities, Berry Petroleum shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to the Contracting Officer. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.</p>	<p>21</p>
<p>The well-pad facilities would be painted a non-reflective color that blends with the natural environment. The color of any surface-occupied facility or</p>	<p>24</p>

feature on United States land would be approved by Mitigation Commission prior to application.	
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Noxious weed control would be required perpetually throughout the project area. A Pesticide Use Proposal would be prepared by Berry Petroleum and approved by the Mitigation Commission prior to application of any pesticides.

Any newly disturbed soil would be treated for knapweed for at least three growing seasons.

All construction vehicles and equipment entering and leaving the project area would be decontaminated per Mitigation Commission procedures to prevent the introduction of noxious weeds to the project area.

### **Erosion and Sediment Control**

Final erosion control and site restoration measures would be initiated as soon as an area is no longer needed for construction, stockpiling, or access.

Berry Petroleum would prepare a Storm Water Management Plan (SWMP) to be approved by the Mitigation Commission. This plan would include sufficient information and narrative descriptions regarding construction activities along existing waterways, locations of all proposed potential discharges, identification of potential pollutant sources, maps detailing all ground disturbing activities, and details and figures for proposed BMPs for construction activities.

BMPs would be implemented and maintained to control stormwater runoff in a manner that minimizes erosion, transport of sediment offsite, and site degradation. BMPs would be maintained until the project area is abandoned and final reclamation is achieved.

### **Site Restoration and Revegetation**

Erosion control measures would be initiated as soon as an area is no longer needed for construction or stockpiling. Upon completion of construction, any land disturbed, but not permanently occupied by the expanded access road, would be graded to provide proper drainage and blend with the natural land contours and restored to its preconstruction condition. Where such lands were vegetated, they would be covered with topsoil stripped from construction areas and revegetated, as appropriate, with plants native to the area and beneficial to wildlife. Post construction monitoring would allow spot-treatment for noxious/invasive weeds to ensure successful revegetation.

Upon construction completion, all staging areas, construction materials, and debris would be removed from the site. Road surfaces would be scarified, as needed, to establish conditions suitable for proper drainage and erosion prevention.

At all times, construction areas, including storage yards, would be kept free from accumulations of waste materials and trash. During the final phase of work, contractors would be required to remove all unused materials and trash, dump it in an approved sanitary landfill, and leave work areas similar to the natural landscape.

Any areas of soil disturbance would be reseeded with a Mitigation Commission-approved seed mix and protected until vegetation is established. This includes required interim reclamation of the site by reclaiming areas during construction of the site but not necessary for operations.

## **Air Quality Protection**

Contractors would be required to establish measures to protect air quality during construction. Proper controls will be implemented to minimize air quality impairments during construction. Dust would be suppressed using appropriate technology during construction activities. Dirt-surfaced roads would be regularly watered during dry periods of active construction to prevent fugitive dust emissions. All loads leaving the site would be covered.

## **Hazardous Material Storage, Handling, and Disposal**

Contractors would be required to comply with Utah Hazardous Waste Management Regulations established under the authority of the federal Resources Conservation and Recovery Act of 1976 (RCRA) and the Utah Hazardous Waste Act of 1979.

The potential for adverse impacts from oil and fuel spills would be reduced through careful handling and designation of specific equipment repair and fuel storage areas. Oil, petroleum waste products, chemicals, and hazardous or potentially hazardous wastes would not be drained onto the soil but confined in sealed containers or sealed sumps for removal to approved disposal sites. They would be transported in accordance with all applicable state and federal safety standards.

The contractor would be required to prepare a Spill Prevention, Control, and Countermeasure Plan if the project is storing, transferring, using, or consuming oil and oil products and has an aggregate aboveground storage capacity of greater than 1,320 gallons. Only aboveground containers with a capacity of 55 gallons or greater are counted in determining if the aggregate storage quantity of 1,320 gallons is exceeded. The proposed project does not

involve the use of any underground storage tanks.

Waste materials known or found to be hazardous would be disposed of in approved treatment or disposal facilities in accordance with federal, state, and local regulations, standards, codes, and laws.

All hazardous materials used would be required to have a material safety data sheet filed onsite. A hazardous material safety and communication plan would be required from each contractor with special emphasis on preventing hazardous materials from entering wetlands and watercourses or contaminating the soil or groundwater.

## **Compliance with NHPA Section 106**

In accordance with 36 CFR 800.13(a) and (b)(1), Berry Petroleum would provide for the protection, evaluation, and treatment of any historic property discovered prior to or during construction. Should any archaeological or historic site or object be discovered within the access road area, construction would be suspended and the Mitigation Commission would immediately be verbally notified of the nature and exact locations of the findings. The contractor, engineer, or other person responsible for the discovery would not damage the discovered objects. If the discovery resulted from construction or other ground-disturbing activities, these activities would immediately cease until the Mitigation Commission, in consultation with the SHPO in accordance with 36 CFR 800.14(b)(3), develops and implements an appropriate treatment plan.

Berry Petroleum would provide on-site cultural resource monitoring by a qualified, Utah SHPO permitted, independent archeologist during all ground clearing activities.

## **Public Involvement and Public Notice**

The Mitigation Commission would comply with all public notice requirements to ensure that the public has an opportunity to participate in the NEPA process. Public notice requirements for this project consist of publishing notices with the local media other interested parties.

## **FINDING OF NO SIGNIFICANT IMPACT**

After considering the environmental effects described in the Environmental Assessment and in consideration of the required Mitigation Measures and Best Management Practices, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. The decision is based on the following:

1. The impacts of this project are not considered to be significant upon the human environment, either to society as a whole or to the affected region, interests and locality.
2. There will be no significant effects on public health and safety.
3. There will be no significant effects on the unique characteristics of the area. This action will have no detrimental effects on prime farmland, rangeland, floodplains or wetlands.
4. The effects on the quality of the human environment are not likely to be highly controversial. There is no known scientific controversy over the impacts of the project.
5. Based on the effects analysis, there are

no effects which may be highly uncertain or involve unique or unknown risks.

6. The action would not set a precedent for future actions other than those described and analyzed in the Environmental Assessment. The decision to grant a License to Berry Petroleum will likely result in the development of a well on the adjacent private parcel. However, if access were not granted, access and development could still be achieved although with a potentially greater impact on wildlife.

7. The cumulative impacts of the project are not significant. An existing road already exists and well development could occur with or without the requested access.

8. The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places.

9. The action will not adversely affect any endangered or threatened species or habitat that have been determined to be critical under the Endangered Species act of 1973 (see EA starting on page 9). No Federally listed Endangered Species occur in the project area.

10. The action will not violate Federal, State, and local laws or requirements for the protection of the environment. Applicable laws and regulations were considered. The action is consistent with Mitigation Commission's Mitigation and Conservation Plan.

## **Findings Required by Other Laws and Regulations**

This decision complies with Executive

Order 13112 on Invasive Species which directs that federal agencies not authorize activities which would increase the spread of invasive species. Disturbed surfaces would be replanted with a native/wildlife seed mix to control the spread of noxious weeds.

This decision complies with Executive Order 13186 - Responsibilities Of Federal Agencies To Protect Migratory Birds. This Executive Order requires Federal Agencies to describe the effects of their actions on migratory birds, with an emphasis on species of concern, in the environmental analyses required by NEPA. Proposed, Threatened and Endangered Species and State of Utah Sensitive Species are described starting on page 9 of the Environmental Assessment. There will be no affects to these species.

This decision complies with Executive Order 12898-Environmental Justice. There

would be no disproportional environmental effects on minority and low income populations as a result of this project.

This decision complies with Executive Order 3215- Indian Trust Assets. There are no Indian trust assets associated with the project and therefore none affected by the Proposed Action.

#### **IMPLEMENTATION DATE**

Issuance of a License for the proposed right-of-way may occur upon the date of signature of this document.

#### **FURTHER INFORMATION**

For further information please contact Richard Mingo, Natural Resource Specialist; Utah Reclamation Mitigation and Conservation Commission; 230 South 500 East #230; Salt Lake City, Utah 84102 (Phone 524-3146).

  
Michael C. Weland, Executive Director

  
Date