

WRITTEN TESTIMONY OF MICHAEL C. CASKEY, EXECUTIVE VICE  
PRESIDENT AND CHIEF OPERATING OFFICER OF FIDELITY EXPLORATION &  
PRODUCTION COMPANY  
SUBMITTED TO THE UNITED STATES SENATE ENVIRONMENT AND PUBLIC  
WORKS COMMITTEE – MARCH 24, 2004

THE HONORABLE JAMES M. INHOFE, CHAIRMAN

Mr. Chairman and members of the Committee, my name is Mike Caskey. I am the Executive Vice President and Chief Operating Officer of Fidelity Exploration & Production Company (Fidelity) headquartered in Denver, Colorado. I would like to thank the Senate Environment and Public Works Committee for the opportunity to testify at this hearing.

Fidelity is a wholly owned indirect subsidiary of MDU Resources Group, Inc. We are an independent oil and natural gas producer engaged in acquisition, exploration and production activities. Our efforts are primarily focused in the Rocky Mountain region of the United States and in the Gulf of Mexico. Fidelity produces coalbed natural gas (CBNG) in Wyoming and Montana. We are currently the only producer of CBNG in Montana. I am here today to discuss the prospects for finding and producing clean natural gas in North America and the obstacles federal, state and local governments and producing companies face.

You are well aware of our nation's growing demand for clean-burning natural gas to meet current and future residential, commercial, industrial and electrical generation needs. Energy Information Agency (EIA) projections show that natural gas will play an increasingly important role in meeting our nation's energy needs. The EIA in its "*Annual*

*Energy Outlook 2004 with Projections to 2025*” forecasts that natural gas used in the industrial sector alone will increase by 41% from 2002 to 2025 (Chart 1). The Department of Energy (DOE) has made similar projections. Current consumption levels of just under 23 trillion cubic feet (tcf) of natural gas per year are expected to grow to approximately 32 tcf/year by 2025. Presently 98% of our domestic consumption is supplied by North American production. Traditional natural gas basins located in Texas and Oklahoma, and in the Gulf of Mexico are showing dramatic declines in production and reserves. The only major gas province with increased reserves is the Rocky Mountain Region (Map 1). Therefore, in order to meet increasing supply needs, natural gas development in the Rocky Mountain region must be allowed to progress in an effective, timely manner.

**Our Stakeholders:**

As an exploration and production company we are committed to do our part to discover, develop and produce this valuable, clean-burning resource. While doing so, Fidelity conducts its operations dedicated to sound environmental stewardship so as to ensure that our development protects the environment and ongoing sustainable agricultural operations. That is the core of our corporate business model. Our business process includes three principal stakeholders - landowners, governments (local, state and federal) and shareholders. In order for Fidelity to operate in a balanced, stable and functional manner, we must meet the needs of all three groups. Today, special interest activism, obstructionism and litigation are threatening the stability of these three stakeholder groups and the natural gas industry’s ability to provide reliable, affordable supplies of

natural gas for our country's needs. I will relate some examples of our experience in the Powder River Basin of Montana and Wyoming as I discuss our concerns.

Perhaps the most important stakeholder in our business is the landowner, the person who owns the surface of the land on which we operate. That person may or may not own the mineral rights. Because natural gas production requires a long-term commitment to be on the land, it is imperative that we develop a "good neighbor relationship" with each landowner. We work with these landowners to ensure that our development activities minimize disruption of the use and enjoyment of the landowners' property, thereby protecting their ability to maintain and enhance the profitability of their agricultural operations. It is important to understand that the time of maximum disturbance occurs during the initial drilling and construction phase of operations. Because of that, most landowners we deal with prefer a "get in - get out - get back to normal" approach to development. Special interest litigation and obstruction, which delay or stop timely development, especially during the initial development phase, have a detrimental effect on landowners who have agreed to allow development of the federal resources beneath their land.

Governments (local, state and federal) are the second stakeholder in our operations. In addition to meeting the needs of our landowners, we must also comply with the laws and regulations in place at the local, state and federal levels. Exploration and development of federal lands is subject to many laws; however, the key laws that impact exploration and

development are the National Environmental Policy Act (NEPA) for which you are the authorizing committee, and the Federal Land Policy and Management Act (FLPMA).

FLPMA is the law which federal land managers use to balance the diverse interests of the multiple uses of federal lands. NEPA is the tool by which the managers analyze the effects of their decisions. NEPA documents --Environmental Impact Statements (EISs) and Environmental Assessments (EAs) -- are the foundation of all decisions involving the use of federal lands. It is this NEPA process of evaluating land use and development plans, not the law itself, which has become the principal tool used by obstructionists to delay or halt natural gas development.

Unfortunately, the plethora of litigation and the likelihood of additional litigation surrounding natural gas development have forced governmental agencies to make choices on the use of limited budgets. Like producers, regulatory agencies' resources are being consumed by defending frivolous, wasteful lawsuits. These lawsuits impact government at all levels. Typically, the lawsuits are against the Bureau of Land Management (BLM) or other land use agencies that manage the use of federal land for multiple activities. The government must divert resources, which are forever lost, from important environmental programs such as noxious weed control, habitat rehabilitation and fire prevention to defend frivolous lawsuits.

In addition to affecting allocation of limited resources, delays or restriction of production from federal leases impacts the revenue received by the government. Royalties from

federal minerals fall behind only personal and corporate income taxes as a source of federal revenue. The states also have a stake in the revenue generated from federal minerals, receiving 50% of federal bonuses, rents and royalties generated within their boundaries. These states use this much needed source of revenue for school funding, law enforcement, infrastructure improvement and other local uses. From 1998 through the first 5 months of 2003, bonus revenue from leasing in Wyoming was over \$147 million and in Montana for that same period the amount was over \$9 million. These are funds paid by energy companies just for the right to explore for natural gas and oil on federal leases.

The third stakeholder in this development is our shareholder. As a subsidiary of a Fortune 1000 corporation we are looking for investment opportunities that will stimulate corporate growth and provide an attractive and acceptable return to our shareholders. We constantly pursue new technologies that can accomplish our mission and improve the environment where we operate and live. The litigation from heavily funded, special interest groups that has been so prevalent in the Powder River Basin's CBNG development, impairs our return to shareholders in several ways. First, there is the significant direct legal cost of participating in and defending against the litigation. In addition, there is an indirect cost associated with dedication of corporate resources to litigation that could otherwise be invested in productive, value-building activities. And finally, there is the cost of delay – not being able to fully employ our significant investments in a timely manner. Imagine the owner of any other business, who obtains all the permits necessary to conduct business, sets up an office, invests in hiring workers

and makes a commitment to buy equipment, supplies and start-up needs and isn't allowed to conduct business because of frivolous litigation that targets the well-established licensing process. As our corporation, or any other, is impacted by these impediments to shareholder return, we must begin to look for more attractive, more predictable opportunities with less capital risk. The net result is a chilling effect on energy production in the United States.

I will describe for you some examples of the litigation that has impacted our operations in Montana and Wyoming thereby impairing our ability to produce energy from our lease positions. While these examples are specific to Fidelity's operations, other energy companies could relate similar examples from their experience.

**NEPA Litigation:**

Prior to any surface disturbing activity, oil and gas leasing must take place. Most of the current federal leasehold within Montana and Wyoming was leased during the period from 1997 through 2001. In mid-2000, the BLM commenced the preparation of the Wyoming "*Powder River Basin Oil and Gas Environmental Impact Statement*" and the "*Montana Statewide Oil and Gas Environmental Impact Statement.*"

When Fidelity acquired its oil and gas leases and began planning development of CBNG in the CX Field area of Big Horn County, Montana in 1997, we approached the Bureau of Land Management (BLM) to request that it prepare an environmental assessment of a 325-well pilot project. As the agency began that analysis, Fidelity drilled wells on

private lands and initiated limited production testing of those wells in late 1998. Commercial production from 125 initial wells began in October of 1999. Five months later, in March of 2000, the Northern Plains Resource Council (NPRC) filed its first CBNG lawsuit, suing the Montana Board of Oil & Gas Conservation (MBOGC), claiming it failed to conduct adequate environmental analysis before approving Fidelity's drilling applications. Montana has a state law – the Montana Environmental Policy Act (MEPA) – a law that is essentially identical to NEPA that requires an environmental evaluation of the effects of decisions made by state regulatory agencies. MBOGC settled the case by agreeing to either prepare a supplement to its 1989 Oil & Gas Environmental Impact Statement (EIS) or to cooperate with other agencies in preparation of a programmatic EIS for CBNG development in the Montana portion of the Powder River Basin. The agreement allowed Fidelity to continue with its CX Field pilot project, including the development of up to 250 producing wells, but placed a statewide moratorium on all other CBNG development.

In December of 2000, the BLM, the MBOGC and the Montana Department of Environmental Quality (MDEQ) initiated a programmatic EIS (the Montana Statewide Oil and Gas EIS) to amend the Billings and Powder River Resource Management Plans for CBNG development in the Montana portion of the Powder River Basin. This combined document was prepared to address both MEPA and NEPA issues associated with CBNG development. Prior to that time, in June of 2000, the Wyoming BLM decided to amend the Buffalo and Platte River Resource Management plans for CBNG development in the Wyoming portion of the Powder River Basin by preparing the

Powder River Basin Oil and Gas EIS. The NEPA process for these EISs, originally estimated to take 18 - 24 months to complete, was finally completed on April 30, 2003 (29 months for the Montana Statewide Oil and Gas EIS, 35 months for the Powder River Basin Oil and Gas EIS) with the signing of the Records of Decision (RODs). Within one day of the issuance of the RODs, lawsuits were filed in Montana challenging the validity of both Montana's and Wyoming's EISs. In total, four different lawsuits were filed against the RODs.

In June of 2001, NPRC filed another lawsuit against the BLM and federal oil and gas lease owners in the Powder River Basin of Montana, claiming the BLM should not have issued leases that had the potential to be developed for CBNG. NPRC claimed that the 1994 Miles City District Oil and Gas EIS/Plan Amendment to the Billings, Powder River and South Dakota Resource Management Plans had not analyzed the effects of full scale CBNG development. The 1994 Plan Amendment did allow for the drilling of CBNG test wells and initial small-scale development. It also stated that for full-field development to occur on federal oil and gas leases, an additional environmental document would be required. This lawsuit was filed despite the fact that the Montana Statewide Oil and Gas EIS was underway and the BLM had allowed no production to occur from federal exploratory wells that had been drilled for CBNG. NPRC lost this case on summary judgment but has appealed the case to the Ninth Circuit Court of Appeals.

In accordance with the Montana Statewide Oil and Gas EIS, Fidelity submitted its Badger Hills Plan of Development (POD) covering 178 wells. This POD contains a Surface Use

Plan, a Noxious Weed Plan, a Water Management Plan, and a Wildlife Monitoring and Protection Plan as required by the EIS. The BLM spent about 90 days conducting the site-specific environmental review to complete the EA. However, the NPRC, the Northern Cheyenne Tribe, Native Action, the American Lands Alliance, George Wuerthner and the Biodiversity Conservation Alliance protested the EA of the Badger Hills POD to the Montana BLM State Director. NPRC went so far as to file a lawsuit against the BLM before the State Director could even make a decision as to the adequacy of the first EA. The State Director remanded the EA back to the Miles City Field Office for further analysis. When the revised EA was issued and Fidelity was allowed to resume its operations, the NPRC lawsuit was amended to include a laundry list of NEPA objections. Additionally, the Northern Cheyenne Tribe filed suit against the BLM alleging non-compliance with the National Historical Preservation Act. This was done despite the cultural resource inventory that Fidelity submitted with its Badger Hills POD application.

Fidelity is not the only operator being affected by these appeals and lawsuits. Similar lawsuits and endless appeals and protests (Exhibit 1) are delaying production throughout the Rocky Mountain Region. Unfortunately, these lawsuits are also straining the BLM's human resources. Fidelity has been advised that the resource specialists essential to reviewing and processing Plans of Development are now working on litigation, preventing the BLM from committing to a timeline for completing environmental reviews and issuing permits. You can be assured that oil and gas permitting is not the only resource management activity that will suffer from allocation of resources to

litigation. Programs ranging from fire management to habitat enhancement will be impacted. This needless special interest litigation deviates from the honorable goal of protecting the environment to obstructing responsible resource management by challenging the completeness of a well-established and time-tested process.

**Other Lawsuits:**

Montana law allows discharge of unaltered groundwater without a permit if the discharge does not result in a violation of water quality standards or cause degradation of water quality. Nevertheless, Fidelity applied to the MDEQ for a Montana Pollution Discharge Elimination System (MPDES) permit to allow discharge of water produced in conjunction with CBNG in January 1999. The permit was issued on June 16, 2000. On June 23, 2000 Fidelity initiated outreach to the NPRC by hosting NPRC representatives on a field trip of our CX Field. Fidelity granted NPRC the right to tour every aspect of our operations. At the same time this field tour was in progress, NPRC's attorneys were filing a lawsuit in Montana Federal District Court against Fidelity for violating the Clean Water Act by allegedly discharging without a permit. And ten months later, in April of 2001, NPRC and the Tongue River Water Users Association sued the MDEQ in state court for issuing the permit in June of 2000. You can see the complexity of the problem here - We were sued for not having a permit even though state law did not require one, and the agency that issued the permit was also sued. It is important to note that the water quality data shows that Fidelity's discharge has not degraded the receiving water quality.

NPRC next sued Fidelity in August of 2001 in federal court under Section 404 of the Clean Water Act, alleging that Fidelity failed to obtain 404 permits for discharge of fill material and for construction of pipelines and roads in waters of the United States. The lawsuit was filed despite the fact that the U.S. Army Corps of Engineers had advised the NPRC that the work they had reviewed in the field was either covered by nationwide permits or was not located in jurisdictional waters of the U.S. That case was settled in December 2003.

The attached newspaper articles (Exhibits 2 and 3) describe a pipeline proposal in June 2003 to ship natural gas from Wyoming to Chicago and the subsequent decision by the pipeline company to delay the project due to the unwillingness of producers to commit to the project. The producers' reluctance is due to "uncertainty on when they're going to receive permits, how rapidly they are going to receive them, and where they can go once they receive them." The BLM reportedly said that the slow permitting was the result of the numerous still-unsettled lawsuits filed against the Wyoming BLM over the Environmental Impact Statement.

The attached Exhibit 4 shows all of the active lawsuits and their current status related to Fidelity's CBNG development program in Wyoming and Montana. In total, we have been involved in 13 separate lawsuits brought by environmental obstructionists in connection with CBNG development in the Powder River Basin. Twelve of these lawsuits are still active. These lawsuits cover every aspect of resource development, from lawsuits on Resource Management Plan Amendments, lawsuits on individual

CBNG projects and lawsuits on water discharge permits. These numerous lawsuits are limiting the ability of natural gas producers to effectively and efficiently produce energy for the nation, and one can only conclude that there is an agenda by these obstructionists to stop natural gas development in the U.S.

### **Action**

As we look to the future of energy development in the United States, trends indicate that demand has and will continue to outstrip supply. To resolve this imbalance, we need to ensure accountability of all parties. The energy industry is held accountable by federal and state regulation. Those special interest litigants are not being held to the same standard of accountability.

Take NEPA back to its original roots. Special interest groups are misusing the NEPA process to obstruct development. The scales of Justice have to be balanced and not tip to the benefit of one.

Yes, this is America and the obstructionists have every right to due process – but they need to be accountable to the American people for their actions just like my company is held accountable. There is no substitute for honesty and action based upon verifiable science. Without a greater level of accountability being applied to the obstructionist community, the United States' ability to be less dependent upon other energy producing

countries and to keep many of the jobs that are currently going overseas in our homeland will be impossible.

I wish to again thank the committee for this opportunity and if there are any questions I will be happy to share any answers I may have.

**MICHAEL C. CASKEY**  
**PERSONAL BIO**

Michael (Mike) C. Caskey, Executive Vice President and Chief Operating Officer.

Mr. Caskey is the Executive Vice President and Chief Operating Officer for Fidelity Exploration & Production Company which is one of the MDU Resources Group companies. Mr. Caskey has held the position since July 2001.

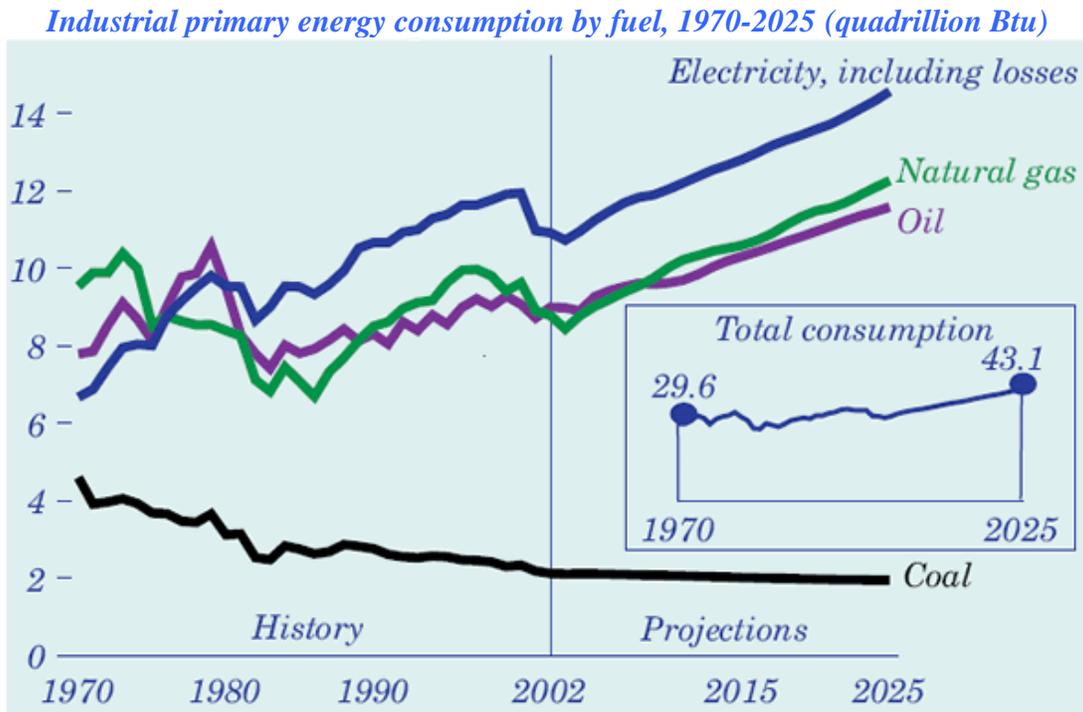
Prior to that, Mr. Caskey was Vice President of Land and held that position since the merger of Redstone Gas Partners, LLC. Prior to that, Mr. Caskey held the position of Vice President of Land for Preston, Reynolds & Co., Inc. from April, 1996 to April 2000. For 9 years, before joining PR&C, Mr. Caskey was Regional Land Manager, Rocky Mountain Region for Cabot Oil and Gas Corporation and Washington Energy Company, which was acquired by Cabot.

Mr. Caskey has over 30 years experience in the oil and gas Land function working for various companies and as an independent consultant. Mr. Caskey is a member of the American Association of Professional Landmen and the Rocky Mountain Mineral Law Foundation. Mr. Caskey received his BA Degree from the University of Wyoming in 1973.

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 CHIEF OPERATING OFFICER OF FIDELITY EXPLORATION & PRODUCTION  
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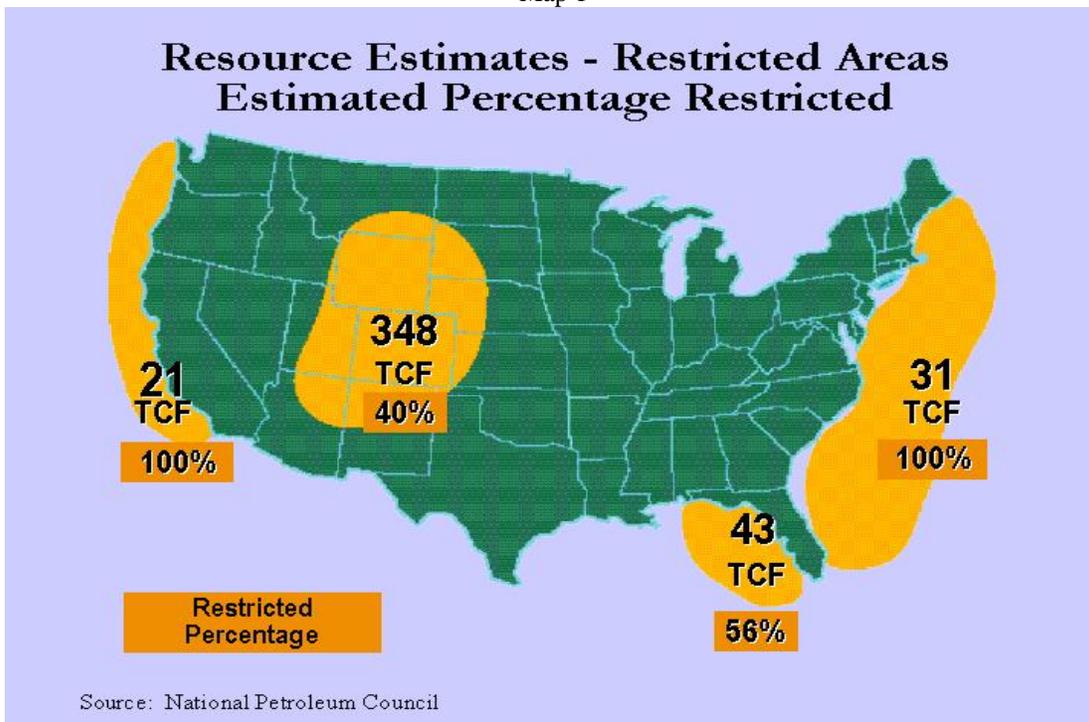
SUBMITTED TO THE UNITED STATES SENATE ENVIRONMENT AND PUBLIC WORKS  
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Chart 1



source: Energy Information Administration

Map 1



WRITTEN TESTIMONY BY MICHAEL C. CASKEY, EXECUTIVE VICE PRESIDENT AND  
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## **FRIVOLOUS ENVIRONMENTAL LITIGATION: AN OBSTACLE TO PRODUCTION OF CLEAN NATURAL GAS**

In the past several years, the nation has seen production of natural gas decline in most of the traditional producing provinces – shallow waters of the central and western Gulf of Mexico; on-shore private lands in Texas, Oklahoma, Kansas and Louisiana. Industry has seen significant restrictions placed on natural gas production in the Eastern Gulf of Mexico, off the California Coast and off the Eastern Coast of the U.S.

There remain large supplies of natural gas to meet our nation's needs for clean burning fuels. Much of it can be found in Wyoming, Utah, Colorado, Montana and New Mexico. Future supplies of this vital fuel that heats our homes, operates factories and is the feedstock for many industrial and commercial products are increasingly found on public (BLM and Forest Service), non-park lands in the west.

The ability of energy companies to extract this clean fuel from national, non-park federal lands has become harder because of aggressive, frivolous litigation from so-called "special interest" groups. Legal challenges have caused delays at every step of the permitting process – Resource Management Plan Revisions, oil and gas leasing, Environmental Impact Statements, Environmental Assessments, Records of Decision, Applications for Permit to Drill, regulatory permits (i.e. water discharge permits), and many more. The cost in time to the federal and state bureaucracies to prepare administrative records for protests, appeals, and legal challenges is staggering. Agency budgets are now spent defending these challenges versus performing their regulatory duties such as conducting environmental audits, processing permits, and conducting enforcement responsibilities in Wyoming and Montana. The cost to energy companies is equally debilitating.

The following chart represents examples of current actions taken by special interest groups. Should this trend continue, further delays will continue to reduce supplies of natural gas, increase costs and affect employment in a number of industries.

<b>Request for State Director Reviews or Environmental document challenged</b>	<b>Who challenged</b>	<b>Year</b>	<b>Field Office</b>
Fidelity's Badger Hills POD	Northern Cheyenne Tribe	2004	Montana – Miles City Field Office  United States District Court
Epsilon POD EA	Powder River Basin Resource Council (PRBRC)	2004	Wyoming -- Buffalo Field Office  State Director Review (SDR)
Delta POD EA	PRBRC	2004	Wyoming -- Buffalo Field Office (SDR)
Fogarty Creek Wells #3133 & #3233	Defender of Wildlife and Wyoming Outdoor Council (WOC)	2004	Wyoming -- Pinedale Field Office (SDR)
Lower Prairie Dog POD EA	PRBRC	2004	Wyoming -- Buffalo Field Office (SDR)
Copper Ridge Shallow Gas Unit	Biodiversity Conservation Alliance (BCA)	2004	Wyoming -- Rock Springs Field Office (SDR)
Anadarko's Beta II Plan of Development (POD)	Powder River Basin Resource Council	2004	Wyoming -- Buffalo Field Office (SDR)
Fidelity's Badger Hills POD	Northern Plains Resource Council, Inc. (NPRC)	2003	Montana – Miles City Field Office  United States District Court
Fidelity Tongue River – Badger Hills POD	NPRC, Northern Cheyenne Indian Tribe, Native Action, Western Environmental Law Center	2003	Montana – Montana Miles City Field Office (SDR)

<b>Request for State Director Reviews or Environmental document challenged</b>	<b>Who challenged</b>	<b>Year</b>	<b>Field Office</b>
Brown Cow POD EA	National Wildlife Federation, et al	2003	Wyoming -- Rawlins Field Office (SDR)
Beta II Additions POD EA	PRBRC	2003	Wyoming -- Buffalo Field Office (SDR)
Questar Winter Long Drilling Exception	BCA, Wyoming Outdoor Council (WOC), Greater Yellowstone Coalition (GYC), Jackson Hole Conservation Alliance, Wilderness Society	2003	Wyoming -- Pinedale Field Office (SDR)
N SA Creek POD EA	PRBRC	2003	Wyoming -- Buffalo Field Office (SDR)
LX Bar Creek POD EA	PRBRC	2003	Wyoming -- Buffalo Field Office (SDR)
NP II POD EA	PRBRC, Tom and Helen Jones, Mr. & Mrs. Barlow	2003	Wyoming -- Buffalo Field Office (SDR)
Horse Creek POD EA	PRBRC, Tom and Helen Jones, Mr. & Mrs. Barlow	2003	Wyoming -- Buffalo Field Office (SDR)
Vermillion Basin	Biodiversity Conservation Alliance	2003	Wyoming -- Rock Springs Field Office (SDR)
Lower Bush Creek II	Biodiversity Conservation Alliance	2003	Wyoming -- Rock Springs Field Office (SDR)
Lower Bush Creek	Biodiversity Conservation Alliance	2003	Wyoming -- Rock Springs Field Office (SDR)
Williams' Pleasantville POD EA	PRBRC	2003	Wyoming -- Buffalo Field Office (SDR)

<b>Request for State Director Reviews or Environmental document challenged</b>	<b>Who challenged</b>	<b>Year</b>	<b>Field Office</b>
Pennaco's (Marathon) Horse Creek 10 POD EA	PRBRC	2003	Wyoming -- Buffalo Field Office (SDR)
Powder River Basin Oil and Gas Project Environmental Impact Statement (EIS), Record of Decision (ROD) and Resource Management Plan (RMP) amendments *  Montana Statewide Oil and Gas EIS, ROD and RMP for the Billings and Powder River Resources Areas	*American Lands Alliance, BCA, George Wuerthner *Western Organization of Resource Councils, Jeanie Alderson, Wally McRae, Wyoming Outdoor Council (WOC), Natural Resources Defense Council (NRDC), PRBRC	2003	Wyoming -- Buffalo; Montana - Billings and Miles City Field Office
Montana Statewide Oil and Gas EIS, ROD and RMP for the Billings and Powder River Resources Areas	NPRC, Northern Cheyenne Tribe and Native Action	2003	Montana – Billings and Miles City Field Office
Montana Statewide Oil & Gas EIS & ROD	NPRC, Montana Environmental Information Center, Inc., Tongue and Yellowstone Irrigation District	2003	Montana Environmental Policy Act & Constitutional Litigation against Montana Board of Oil & Gas Conservation & Montana Department of Environmental Quality

<b>Request for State Director Reviews or Environmental document challenged</b>	<b>Who Challenged</b>	<b>Year</b>	<b>Field Office</b>
Application for Permit to Drill (APD) Environmental Assessment (EA) for the Questar Stewart Point Wells **	WOC, Greater Yellowstone Coalition (GYC), Defenders of Wildlife, Wilderness Society	2003	Wyoming – Pinedale Field Office (SDR)
Hanna Draw Coalbed Methane Exploration Project EA, Decision Record and Finding of No Significant Impact (FONSI)	WOC, BCA, Sierra Club, NRDC, Earthjustice	2003	Wyoming – Rawlins Field Office
Questar Winter Long Drilling Exception	WOC	2002	Wyoming -- Pinedale Field Office  Federal District Court
Haystacks Geophysical EA, Decision Record and FONSI	BCA, GYC, Center for Native Ecosystems, Wildlands Center for Preventing Roads	2002	Wyoming -- Rock Springs Field Office (SDR)
Big Piney 2-D Geophysical Project EA, Decision Record and FONSI	Sierra Club, BCA, GYC, Center for Native Ecosystems, Wildlands, Center for Preventing Roads	2002	Wyoming – Pinedale Field Office (SDR)
West Pinedale 3-D Geophysical Project EA, Decision Record (DR) and FONSI	GYC, Sierra Club, WOC	2002	Wyoming – Pinedale Field Office (SDR)
Merna 3-D Geophysical Project EA, DR, and FONSI	GYC, Sierra Club, WOC, NRDC	2002	Wyoming – Pinedale Field Office (SDR)
Blue Sky POD EA, DR and FONSI	National Wildlife Federation (NWF), BCA, WOC Wyoming Wildlife Federation (WWF)	2002	Wyoming – Rawlins Field Office (SDR)
Cow Creek Pod EA, DR and FONSI	NWF, BCA, WOC, WWF	2002	Wyoming – Rawlins Field Office (SDR)

<b>Request for State Director Reviews or Environmental document challenged</b>	<b>Who Challenged</b>	<b>Year</b>	<b>Field Office</b>
Leasing under 1994 oil and gas leasing EIS, ROD, Resource Management Plan Amendment in Billings and Powder River RMA	NPRC	2001	Montana -- Miles City Field Office
Lower Prairie Dog Creek CBM Project EA, DR and FONSI	WOC, PRBRC, Mike Foate	2000	Wyoming – Buffalo Field Office  IBLA Appeal
Lower Prairie Dog Creek CBM POD EA, DR, and FONSI	WOC, PRBRC, Mike Foate	2000	Wyoming – Buffalo Field Office  IBLA Appeal

\*Powder River Basin Oil and Gas EIS

Pg. S-1 “within the US the largest number of responses were from California, New York, and Florida”  
14,283 comments from member organizations

4/30/03 Record of Decision signed, 5/1/03 three lawsuits filed by Earthjustice in Denver as lead council, Western Environmental Law Center of Boise, and NPRC of Denver. A fourth suit was filed 5/8/03 by the firm of Ziontz, Chestnut, Varnell, Berley & Slonim of Seattle as lead counsel. Suits filed in Montana District Court in Billings, Mt.

### **WATER ISSUES**

<b>Environmental document challenged</b>	<b>Who challenged</b>	<b>Year</b>	<b>Field Office</b>
General Permit for off-channel pit Coal Bed Natural Gas	PRBRC	2002	Wyoming
National Pollution Discharge Elimination System (NPDES) permits	WOC; PRBRC	Continuously	Wyoming
Corps of Engineers (COE) General Permit 98-08.	WOC, PRBRC	2002	Wyoming
MPDES discharge permit issued by Montana DEQ	Tongue River Water Users’ Association, NPRC,	2001	Montana

	Montana Environmental Information Center		
Construction of roads, impoundments, outfall structures and pipelines without Corp of Engineers 404 Permit (COE advised permit not necessary)	NPRC	2001	Montana
Montana Water Quality Act, discharge of unaltered groundwater without permit	NPRC	2000	Montana

### **FEDERAL OIL AND GAS LEASE SALES**

**In Wyoming, 23 of 24 lease sales have been protested and/or appealed by special interest groups since February 2000 to present. The outcomes of those protests present significant delay in industries' ability to produce natural gas and do not necessarily conclude with a better environmental outcome. The following examples are provided:**

#### Wyoming BLM February 2000 Lease Sale

- The February 2000 lease sale was protested to the BLM State Director by special interest groups where 49 lease parcels were offered in the sale that were located within the Buffalo Field Office Management Area.
- The State Director Review dismissed the protest and special interest groups then appealed that decision to the Interior Board of Land Appeals (IBLA).
- IBLA dismissed 46 of the 49 parcels for lack of standing and granted the special interest groups standing on 3 parcels of which a stay was granted.
- IBLA ruled on April 2002 remanding the 3 parcels back to the BLM for further review. IBLA determined that BLM did not take a "hard look" at the unique characteristics of coal bed natural gas development prior to leasing, particularly water and air quality, and therefore the leases were issued illegally.
- BLM then placed a moratorium on further leasing in the Buffalo Field Office Management Area where leases were thought to be utilized for coal bed natural gas development.
- Several parties appealed this decision to Federal District Court in Wyoming and on May 30, 2003 the federal judge overturned IBLA's decision and defended BLM's original State Director Review in that the agency did take a "hard look" at the impacts of coal bed natural gas prior to leasing.

- The reinstatement of these three leases took place some 3 years after industry invested in developing the federal mineral estate.
- Special interest groups are now appealing the Federal District Court decision to the 10<sup>th</sup> Circuit Court of Appeals. This hearing has yet to be scheduled.

### Wyoming BLM April 2000 Lease Sale

- The April 2000 lease sale was protested to the BLM State Director by special interest groups where 122 lease parcels were offered in the sale that were located within Bighorn, Campbell, Carbon, Converse, Johnson, Natrona, Sheridan, Sweetwater, and Uinta Counties in Wyoming.
- The State Director Review dismissed the protest and special interest groups then appealed that decision to IBLA.
- IBLA initially dismissed 119 parcels for lack of standing and eventually reconsidered 5 of those parcels that were dismissed; therefore granting standing on a total of 8 parcels. A stay was granted on those 8 parcels limited to coal bed natural gas development only.
- The special interest groups charged that the applicable environmental documents of which the State Director relied in its review completely failed to mention coal bed natural gas development or inadequately addressed the unique and significant impacts associated with that development.
- In April of 2003, IBLA affirmed the State Director's Review in part and reversed and remanded the Review in part. That decision was never appealed to Federal District Court.

### Wyoming BLM June 2000 Lease Sale

- The June 2000 lease sale was protested to the BLM State Director by special interest groups where 132 lease parcels were offered in the sale that were located within Bighorn, Campbell, Carbon, Converse, Johnson, Natrona, Sheridan, Sweetwater, and Uinta Counties in Wyoming.
- The State Director Review dismissed the protest and special interest groups then appealed that decision to the IBLA.
- IBLA dismissed 127 parcels for lack of standing and granted the special interest groups standing on 5 parcels but limited the stay to only coal bed natural gas activities.
- IBLA then granted the special interest groups motion for partial voluntary dismissal of the appeal as to 3 of the 5 parcels for which it had established standing leaving only 2 parcels in the appeal.
- The special interest groups charged that the applicable environmental documents of which the State Director relied on his its review completely failed to mention coal bed natural gas development or inadequately addressed the unique and significant impacts associated with that development.
- In February of 2004, IBLA affirmed the State Director's decision on review stating that the BLM supplemented its review with the submission of supporting information and provided the hard look at the environmental consequences of leasing including impacts from coal bed natural gas development.
- It has not been decided if this decision will be appealed to Federal District Court.

## **CONCLUSION**

It has become apparent that through the public process NEPA has become a “tool” that is used as the primary impediment to oil and gas development on federal lands. Industry supports without qualification the Act’s provisions for public comment, identification of alternatives to the proposed action, and consideration of impacts and mitigation measures to be used. However, these same provisions are being used by some groups as opportunities to stop proposed projects without regard for cost and delay of impacts on land management agencies, the US taxpayer, or multiple users of the public lands.

The cost of “NEPA abuse” is high. All of these delays put a tremendous burden on industry’s ability to economically develop the resource for the benefit of the country. It is safe to say that the cumulative impacts, due to frivolous environmental litigation, is strangling industry’s ability to develop energy resources on federal lands and to supply much needed energy to the citizens of this country.

**Exhibit 2**

WRITTEN TESTIMONY BY MICHAEL C. CASKEY, EXECUTIVE VICE PRESIDENT  
AND CHIEF OPERATING OFFICER OF FIDELITY EXPLORATION & PRODUCTION  
COMPANY

SUBMITTED TO THE UNITED STATES SENATE ENVIRONMENT AND PUBLIC WORKS  
COMMITTEE

March 24, 2004

The *NEWS RECORD*  
(Gillette, WY)  
June 25, 2003

## **Canadian firm plans pipeline to Chicago**

### ***From staff and wire reports***

A Canadian firm has announced plans to build a high-volume natural gas pipeline from northeastern Wyoming to Chicago.

Calgary, Alberta-based Enbridge, Inc., said Tuesday the plans include a design that would export up to 1 billion cubic feet of gas per day from the Powder River Basin.

Industry and government officials say a pipeline with that much volume would bolster wholesale prices and bring Wyoming closer to becoming the nation's top natural gas supplier.

"Here we have a time when the whole country is screaming for natural gas and we have the supply. Clearly this huge for the state," said Mark Doelger, chairman of the Wyoming Pipeline Authority.

"We've been talking with Enbridge since February but didn't expect a decision this early," Doelger told The News-Record.

"If ongoing market studies and other reviews are favorable, Enbridge believes this pipeline could be constructed and in service within four years," said Ron Brintnell, director of the company's Gas Pipeline Development Division.

The proposal was announced at a meeting of the Wyoming Natural Gas Pipeline Authority in Casper.

Brintnell said Enbridge has been working with the agency to contact local gas producers and to find out if it can make a deal to ship royalty-in-kind gas, or gas that is given to the

federal government in lieu of conventional royalty payments.

If the government is able to negotiate better pipeline deals for moving gas, it can earn more money than it would from cash payments. Wyoming was the first state to make in-kind payments.

The company is looking for producer support and plans to open an office in Wyoming but “the location and timing has yet to be determined,” Brintnell told The News-Record.

Enbridge and its subsidiaries operate more than 20,000 miles of natural gas and oil pipelines in Canada and the United States, including the Vector natural gas pipeline from the Chicago Hub to Dawn, Ontario.

Enbridge has been working on a \$900 million deal to sell half its interest in the 1,857-mile Alliance Pipeline, which moves natural gas from western Canada to the Chicago hub, and all its interest in a Saskatchewan pipeline system.

According to an Enbridge press release issued Monday, the deal would net the company about \$210 million, which it would use to pay down debt and invest in "strategic growth opportunities."

The deals could close at the end of the month.

Last year the state and several gas producers paid PACE Global Energy Services to study what Wyoming's gas industry needs to become more competitive nationwide. The answer was a high-volume, single-route "bullet" pipeline from northeast Wyoming to the Chicago market.

Enbridge was not among the firms that helped fund the PACE study but state officials involved in the process said it doesn't matter who wants to build it.

Earlier this year, the Legislature followed recommendations from the now-idled Wyoming Energy Commission and from Gov. Dave Freudenthal to revive the Wyoming Natural Gas Pipeline Authority and charge it with bolstering interest in expanding Wyoming's pipeline connections to high-volume markets.

One of the problems noted in the PACE study was how many of the companies which typically build interstate gas pipelines have suffered from credit problems related to the recent problems in the energy trading business.

Brintnell said Enbridge never got into the energy trading business and its credit is strong enough to finance a project like a Wyoming-to-Chicago pipeline.

He said the next step will be for the company to discuss with producers and end-users to see how much interest there is in the project.

**Exhibit 3**

WRITTEN TESTIMONY BY MICHAEL C. CASKEY, EXECUTIVE VICE PRESIDENT  
AND CHIEF OPERATING OFFICER OF FIDELITY EXPLORATION & PRODUCTION  
COMPANY

SUBMITTED TO THE UNITED STATES SENATE ENVIRONMENT AND PUBLIC WORKS  
COMMITTEE

March 24, 2004

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(Gillette, WY)  
January 28, 2003

## **Pipeline project is put on hold**

Line would carry coal-bed gas from Cheyenne to Chicago

By CHARLIE HOMANS  
News-Record Writer  
Gillette, WY

The Canadian pipeline company Enbridge Inc. has put its Beacon Pipeline project on the back burner, an Enbridge official told The News-Record today.

“For the time being, we’ve stopped further development on it,” said Ron Brintnell, Enbridge’s director for gas pipeline development. “We didn’t see the kind of response from the producing community that we hoped for.”

But Brintnell says the company is optimistic about the future of the pipeline, which is slated to eventually carry 2 billion cubic feet per day of coal-bed methane and conventional natural gas from Cheyenne to Chicago.

“Right now we’re waiting to see what transpires with producers over the next year or so,” he said. “If we see the kind of growth that we expect, then we will continue.”

Both Brintnell and Wyoming Natural Gas Pipeline Authority officials pointed to slow coal-bed methane well permitting by the U.S. Bureau of Land Management’s Wyoming field offices as a large part of the problem.

According to BLM Buffalo field office manager Dennis Stenger, the Buffalo office – where most of the criticism has been targeted -- has permitted 525 wells since April, when the landmark Powder River Basin Oil & Gas Project environmental impact statement was issued.

Last week Secretary of the Interior Gale Norton said she wanted to see 3,000 permits issued each year by the BLM in the Powder River Basin.

“Right now there’s just a lack of market support for the project,” Pipeline Authority Executive Director Bryan Hassler said of the Beacon Pipeline. “And most of that’s due to producer uncertainty on when they’re going to receive permits, how rapidly they’re going to receive them, and where they can go once they do receive them.”

BLM Buffalo assistant field manager Richard Zander acknowledged that slowed permitting has been a problem, pointing to the numerous still-unsettled lawsuits filed against the BLM over the environmental impact statement.

But he said that permitting was most likely not the only factor inhibit large projects like Beacon.

“Is there a certainty that (the permitting)’s affecting it? I don’t thinks so,” Zander said.

Brintnell said that while the scale of the Beacon project could offer significant economic payoffs to Wyoming, particularly if natural gas prices in the Midwest remain high, it also made getting the pipeline off the ground a trickier proposition.

“Given that it is a bigger project economics prevail,” Brintnell said. “We need more commitments to make it work, so it’s just a different set of challenges.”

State Oil & Gas Conservation Commission Supervisor Don Likwartz said that the commitment problems Beacon faces are characteristic of the Wyoming pipeline market in general.

“What has happened is that a lot of operators...are having even more difficulty forecasting production for their companies and their boards and Wall Street, and they’re also getting more reluctant to commit to pipelines,” Likwartz said.

**Exhibit 4**  
**WRITTEN TESTIMONY BY MICHAEL C. CASKEY, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER OF**  
**FIDELITY EXPLORATION & PRODUCTION COMPANY**

**SUBMITTED TO THE UNITED STATES SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE**  
**THE HONORABLE JAMES M. INHOFE, CHAIRMAN**

<u>Case</u>	<u>Cause Number</u>	<u>Court</u>	<u>Complaint Allegations</u>
NPRC v. Fidelity	CV-00-105-BLG-SEH No. 02_35836	US District Court for the District of Montana, Billings Division Ninth Circuit Court of Appeals	Citizen suit challenging regulated discharges.
NPRC v. BLM, Fidelity, et al.	CV-01-96-BLG-RWA No. 04_35002	US District Court for the District of Montana, Billings Division Ninth Circuit Court of Appeals	Lawsuit challenging BLM's compliance with NEPA process.
TRWUA, NPRC, and MEIC v. MT DEQ and Fidelity	CDV-2001-258 <i>consolidated with</i> BDV 2001-258	Montana First Judicial District Court, Lewis and Clark County	Lawsuit claiming that regulated discharges violate environmental standards.
NPRC v. Fidelity	CV 01-137-BLG-RWA	US District Court for the District of Montana, Billings Division	Citizen suit challenging pond construction.
NPRC v. BLM, Gale Norton, Kathleen Clarke, and Martin Ott (Defendants), and Fidelity, <i>et al.</i> (Intervenors)	CV-03-069-BLG-RWA <i>consolidated with</i> CV-03-078-BLG-RWA	US District Court for the District of Montana, Billings Division	Lawsuit challenging BLM's compliance with NEPA process.

<u>Case</u>	<u>Cause Number</u>	<u>Court</u>	<u>Complaint Allegations</u>
WORC, Jeanie Alderson, Wally McRae, WOC, NRDC, and PRBRC v. Kathleen Clarke, BLM, Gale Norton, and DOI (Defendants), and Fidelity, <i>et al.</i> (Intervenors)	CV-03-70-BLG-RWA (Montana)  04-CV-0018-J (Wyoming)	US District Court for the District of Montana, Billings Division  US District Court for the District of Wyoming	Lawsuit challenging BLM's compliance with NEPA process.
ALA, BCA, and George Wuerthner v. BLM and Gale Norton (Defendants), and Fidelity, <i>et al.</i> (Intervenors)	CV-03-71-BLG-RWA (Montana)  04-CV-0019-J (Wyoming)	US District Court for the District of Montana, Billings Division  US District Court for the District of Wyoming	Lawsuit challenging BLM's compliance with NEPA process.
Northern Cheyenne Tribe and Native Action v. Gale Norton, Kathleen Clarke, and Martin Ott (Defendants), and Fidelity, <i>et al.</i> (Intervenors)	CV-03-78-BLG-RWA <i>consolidated with</i> CV-03-69-BLG-RWA	US District Court for the District of Montana, Billings Division	Lawsuit challenging BLM's compliance with NEPA process.
T & Y Irrigation District, NPRC, and MEIC v. MT DEQ and MBOGC (Defendants) and Fidelity (Intervenor)	BDV-2003-579	Montana First Judicial District Court	Lawsuit claiming that agencies' actions violated state constitution and statutes.
NPRC v. BLM and Martin Ott (Defendants) and Fidelity (Intervenor)	CV-03-185-BLG-RWA	US District Court for the District of Montana, Billings Division	Lawsuit challenging adequacy of environmental analysis for Fidelity's Badger Hills Project.
Northern Cheyenne Tribe v. BLM, Martin C. Ott, and David M. McIlroy (Defendants) and Fidelity (Intervenor)	CV-04-17-BLG-RWA	United States District Court of Montana, Billings Division	Lawsuit challenging adequacy of environmental analysis for Fidelity's Badger Hills Project.