



Edward Kassman
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MST

To: Colin Campbell/PAIS/NPS@NPS, Darrell Echols/PAIS/NPS@NPS
cc: Mark Biel/PAIS/NPS@NPS, Carol McCoy/DENVER/NPS@NPS, Lisa
Norby/DENVER/NPS@NPS, Pat O'Dell/DENVER/NPS@NPS, Linda
Dansby/SANTAFE/NPS@NPS
Subject: Taylor Response v.2

Colin:

Please see attached draft letter (version 2) to Scott Taylor and BNP. Per the Regional Director's request, this version include language reiterating the status quo at the site. The chages are in paragraph 1 and 2 of page one, and the last paragraph on page 3. Rob Eaton has reviewed this version and his comments have been incorporated.

Eddie



11-22-06 Taylor Response.doc

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DRAFT

November XX, 2006

H. Scott Taylor
Branscomb P.C.
802 N. Carancahua, Suite 1900
Corpus Christi, Texas 78470

Dear Mr. Taylor:

This letter responds to your November 20, 2006, letter requesting on behalf of BNP Petroleum Corporation (BNP) temporary approval to continue operations on the expanded A-3 Well Site at Padre Island National Seashore. At the outset, the National Park Service (NPS) agrees that the relationship with BNP has been positive and professional since BNP began conducting operations in the park. We want to continue that relationship and work with BNP to enable the company to exercise the rights associated with its lease, while meeting the NPS's requirement to comply with all applicable laws and regulations.

As stated in Superintendent Campbell's November 17, 2006 letter, BNP may continue to conduct operations on the area originally authorized under the ratified plan of operations (approximately 1.7191 acres). However, as discussed below, I have determined that the law allows me no discretion to temporarily approve the continued use of the recently disturbed area under 36 CFR §9.38. Accordingly, if BNP wishes to use the "expansion area," then BNP will need to submit to the NPS information necessary to supplement its plan of operations. We also look forward to reviewing the information that BNP is assembling regarding the proposed A3 workover operations and will determine an appropriate course after that review is complete. Park staff is available to further discuss this matter with you and BNP representatives at your convenience.

BNP's Additional Surface Disturbance Activity

Initially you note in your letter that BNP's recent surface expansion activities were conducted in close coordination with park staff, and that BNP representatives relied upon oral communications from park staff during an October 24, 2006, onsite meeting to undertake surface expansion activities. BNP's approved plan states that:

[s]urface operations will take place only at the existing facility sites and via existing roadway access. No additional land will be utilized without express written consent of the NPS. No additional land will be utilized without submitting an addendum to the approved plan of operations.

See, Section V.M.1 (Miscellaneous Operating Standards) (emphasis added). The NPS representative who was at that meeting has a different recollection of what transpired. However, given BNP's plan requirement, it is immaterial who said what at the October

24th meeting, or the extent of prior surface disturbance near the site. BNP's approved plan requires that it supplement its plan in writing to the NPS and obtain express written consent from the NPS prior to any expansion of the previously approved A-3 and A-8 area of operations (approximately 1.7191 acres - see Plan, Section II, Drawing 02). We agree that the acreage access road crossing the western expansion area was approved under BNP's approved plan. However, the remaining acreage of surface disturbance is out of compliance with the approved plan and hence the 9B regulations. Superintendent Campbell's November 17th letter provided you with guidance on that matter, and I incorporate that guidance by reference here.

Use of Temporary Approval Authority Under §9.38

Based on the specific fact surrounding BNP's operations, I cannot authorize the granting of temporary approval for the use of this additional disturbed area. You cite 36 CFR §9.38(a)(2) as a possible solution to remedy this violation. This section authorizes the Regional Director to approve on a temporary basis "the continuance of existing operations." However, existing operations are defined under the regulations at §9.33 as applying to "any persons conducting operations on January 8, 1979 in accordance with a Federal or State issued permit." Section 9.33 allows these operations to continue under "grandfather status" until the operator's permit(s) expire(s). At that time, an existing operator must come into compliance with the 9B regulations. Therefore, section 9.38(a)(2) does not apply to this situation.

Although you did not cite §9.38(b) in your letter, we have also examined the potential applicability that provision, which authorizes the Regional Director to temporarily approve "new operations." Under this section the Regional Director is authorized to issue temporary approval when he/she finds that:

- (1) ... the operations will not cause significant environmental damage or result in significant new or additional surface disturbance; and either
- (2) The operator can demonstrate a compelling reason for the failure to have had timely approval of a proposed plan of operations; or
- (3) The operator can demonstrate that failure to grant such approval will result in an unreasonable economic burden or injury to the operator.

36 CFR §9.38(b)(1) – (3). This provision is prospective in application, applying to situations where an operator is contemplating new operations and, under limited situations, can meet the strict regulatory criteria to obtain temporary approval of its plan of operations. BNP has already caused additional surface disturbance outside the scope of its plan of operations, and, therefore, §9.38(b) does not apply to the facts present in this case.

The 9B regulations specifically address the supplementation of plans of operation at 36 CFR § 9.40. If BNP requires the use of the additional surface already disturbed at the site, it must supplement its plan of operations in accordance with that provision.

While the NPS has examined available pathways to meet the parties' objectives in this case, I note that an action under either §9.38 or 9.40 would constitute a federal action requiring compliance with the National Environmental Policy Act. The current environmental assessment governing activities on this pad contemplates neither new drilling operations nor expansion of the pad beyond the dimension covered in the existing approved plan of operations. Assuming, *arguendo*, that the NPS could issue temporary approval under either 9.38(a)(2) or (b), the nature of the surface disturbance at the site requires the preparation of an environmental assessment, along with a public review and comment period. At a minimum, this process will take 60 days to complete, and may require up to 120 days. For the same reasons, supplementation of a plan of operations will require the same compliance.

We will do everything we can to expedite our review of any plan supplement submitted by BNP. We also look forward to reviewing the information BNP is assembling regarding the proposed A-3 workover operation. Please contact Darrell Echols, Chief of Resources, Padre Island National Seashore (361) 949-8173, if you have questions or concerns regarding this letter.

Sincerely,

Mike Snyder
Regional Director