

Public Comments on Environmental Assessment

Via Email and US Mail

Mr. Colin Campbell, Superintendent
Padre Island National Seashore
P.O. Box 181300
Corpus Christi, Texas 78480-1300

Re: Environmental Assessment: BNP Petroleum Corporation Dunn-Peach #2, 3, 4, 5
and 6 wells

December 22, 2004

Dear Mr. Campbell,

The following comments are submitted by Kristin Gaston and Scott McLain. We have a strong interest in preserving the water quality and beauty of the Padre Island National Seashore, and are interested in the recovery of the endangered sea turtles in this region. We believe the Environmental Assessment for the five proposed wells fails to adequately address the cumulative impacts from the proposed oil & gas operations. These operations clearly would exacerbate the existing risks faced by the sea turtles and other endangered and threatened species, flora and fauna.

Regulations Require Preparation of an EIS

We respectfully request the preparation of a full Environmental Impact Statement (EIS) on this proposed project. The Department of the Interior's regulations for implementing the National Environmental Policy Act (NEPA) clearly require such a document. Regulations adopted by the Department of the Interior for the purpose of implementing NEPA set forth considerations that the National Park Service (NPS) must take into account in determining whether or not to prepare an EIS. In addition, an EIS

would provide a more detailed alternative analysis than the “alternative” analysis set forth in the Environmental Assessment (EA). Especially because the proposed drilling, if permitted, will occur on property protected by the National Park Service mandate, the No Action alternative is the best option. Furthermore, the proper avenue for consideration of a full range of alternatives is an EIS.

The existing EA is wholly inadequate to support a Finding of No Significant Impact. The NPS recognizes, both implicitly and explicitly, the potentially serious impacts to geology and soils, water resources and floodplains, wetlands, vegetation, natural soundscapes, wildlife, state and federally protected and species. Detailed comments on these issues will follow.

1.0 PURPOSE AND NEED

Project Description is Inadequate

The NPS provides three objectives for this project. In short, they are: 1) Provide BNP Petroleum Corp *reasonable access* for exploration and development, 2) Avoid, minimize, or mitigate impacts on park resources, visitor use and experience, and human health and safety, and 3) Prevent impairment of park resources and values. EA at 2 (emphasis added).

First, the NPS fails to show that *reasonable access* requires the drilling of five new wells *at all* (there is no showing that the five additional wells will access different reservoirs or different zones than the existing wells or than each other), and further, there certainly is no evidence that it is necessary to drill these five wells sequentially. Drilling

the five wells sequentially will almost guarantee that some of the drilling will occur during the sea turtle nesting season.

In addition, there has not been enough study about the potential effects to the wells and production facilities from the uniquely harsh environment of Padre Island National Seashore. The NPS acknowledges, “barrier islands consist of constantly moving sands, movement that is sometimes increased by extreme weather events.” EA at 29. Also, “developments are vulnerable to the harsh corrosive salt-air atmosphere and require constant maintenance.” EA at 37. Further, “the barrier island is a dynamic system subject to many geological forces and climatic events. The barrier island was formed and is continually being reshaped by the actions of wind, gulf current, and waves.” EA at 42. Despite these admissions, there is no discussion of the impact that this constantly changing harsh environment will have on the production facilities that, by BNP’s own account, could be in place for more than twenty years. Nor is there a discussion about the need for any special equipment or procedures necessary to deal with this unusual environment.

Operator Liability is Unclear

The EA is unclear with respect to potential operator liability. The NPS states, “pursuant to 36 CFR § 9.51(a) an operator shall be held liable for *any* damages to federally-owned or controlled lands, waters, or resources, resulting from his failure to comply with ...his plan of operations.” EA at 5. However, later in the EA, there is a reference that states, “the regulations limit the liability amount for the operation of a single well to \$50,000.” EA at 26. There is also a reference to the fact that “the approval of the Plan of Operations will be conditioned upon the operator tendering a performance

bond not to exceed \$200,000 for operators by a given operator.” EA at 26. These references are inconsistent and confusing. Arguably, BNP should be required to show financial ability to complete its operations *and* respond to any environmental disasters caused by their operation. Also, if liability really is limited to \$50,000, then BNP must be required to conduct all phases of its operations in an extremely prudent manner.

The reviewers attempted numerous times to obtain a copy of the Plan of Operations for the Dunn-Peach wells #2, 3, 4, 5, and 6, but did not receive one from Padre Island National Seashore. As a result, it is possible that one or more of the issues discussed in these comments can more fully be understood after reading the Plan of Operations. However, it is unlikely that all the concerns raised in these comments were adequately addressed in the Plan of Operations, especially with regard to the mitigation measures.

Issues and Impact Topics Eliminated from Further Analysis

There is insufficient evidence in the EA to conclude that Socioeconomics, Environmental Justice, Cultural Resources, and Air Quality can be eliminated from further analysis. For example, the NPS’ 2001 Air Emissions Inventory for the Padre Island National Seashore states, “*the principal air quality issue in the vicinity of the park relates to oil and gas exploration and production.*” Given the NPS’ own admission that oil & gas production is the *principal* air quality issue in the park, it is inexplicable that the NPS has chosen to eliminate this impact topic from further analysis.

Further, the 2001 air emissions inventory contains *no information* regarding the existing compressor for the two active wells (as of 2001) except for the fact that the compressor is “operated continuously.” The size of the engine and the quantity of gas

produced and consumed are not known. Therefore, the NPS must begin by obtaining accurate information regarding the *existing* operations and then evaluate the cumulative impacts to air quality from the proposed oil & gas operations. If the five additional wells are drilled and produced, an additional compressor or compressors would be necessary. EA at 55. It clearly is premature to eliminate this topic from any further analysis.

2.0 ALTERNATIVES

Analysis of Alternatives is Inadequate

The so-called “alternatives analysis” for this proposed project is insufficient. According to the EA, there are only two alternatives: 1) drill *no* wells (the required no-action alternative) or 2) drill *five* wells. Certainly, at least one additional alternative would be the drilling of less than five wells. No explanation is provided for why there is a need for five wells, let alone five wells drilled sequentially. At least one other alternative would be to drill just *one* well, give the island and its inhabitants a respite for recovery, and then drill another if there is still a showing of need. An additional alternative would be to permit the drilling at a slower pace by prohibiting any drilling during the peak turtle nesting season.

3.0 AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

In general, the EA contains inconsistent statements and conclusions regarding potential impacts to the environment. For example, with regard to impacts to wetlands¹, the NPS recognizes the seriousness of the oil & gas operations:

¹ This same incomplete and inconsistent analysis is repeated with regard to impacts to geology and soils, water resources and floodplains, vegetation, wildlife, sea turtles, loggerhead shrikes, neotropical migrating songbirds, and visitor use and experience.

flowlines. The NPS states that soil sampling will be performed before construction and at the completion of operations. EA at 24. It is unclear what “completion of operations” refers to—and if it purports to mean either the end of drilling or the end of the producing life of the well—it would be grossly inadequate. Soils samples should be taken periodically on an ongoing basis to ensure that no contamination has occurred. Further, BNP (and the NPS) should be required to consult with proper environmental professionals regarding the advisable number, type, location, and frequency of sampling. In the same section, the NPS discusses removal of contaminated soil (EA at 24), but nowhere does it address remediation of contaminated water or removal of free product (LNAPL).

The NPS makes a conclusory statement that the five new wells would be drilled *and may be produced*, resulting in an additional 1.24 acres of disturbance to expand the wellpad. The mitigation measures are not fully detailed, but appear to consist only of a liner essentially at surface level to contain any spilled substances. However, a well most likely would leak below the depth at which the liner is placed; yet the NPS does not provide any mitigation measures in place for the impacts to the geology or soils if there were a serious leak from one of the proposed wells. Moreover, the NPS wholly ignores the possibility of flowline leaks. The NPS acknowledges, “the dunes are fragile and once impacted, can easily be destroyed through erosion and wind action.” EA at 42. Despite this, the NPS explains that soils would be temporarily displaced while additional flowlines are buried, but concludes only that “once the flowlines are buried, soils would be replaced.” EA at 41. This explanation is inadequate to describe the impact to the dunes from the potential drilling and does not address how merely replacing the soils would

restore the fragile dunes. Nor does the NPS assess the impact on soils of widespread remediation activities. Leaks could potentially contaminate acres of soil including soils underneath fragile dunes, yet this possibility is not even discussed.

3.2 *Impacts on Water Resources and Floodplains*

The NPS begins with the assumption that there is no practicable alternative to the location of the proposed well pad expansion, because the entire park (with the exception of the higher dunes) is located *within* floodplains. The NPS goes on to explain, “mitigation measures are in place to restore the loss of water resources.” This analysis is flawed for several reasons. Most importantly, the mitigation measures are not explained, and there is no quantitative analysis of the expected loss of water resources. The NPS also references a previously drilled water well and acknowledges that the “potential impact associated with utilizing a water well includes depletion or contamination of the aquifer in the Goliad formation located between 1400 and 1700 feet.” EA at 45. The TCEQ has identified useable-quality groundwater in this zone, but there is no detailed information to explain how the drilling, production and plugging operations would not affect groundwater quality.

3.3 *Impacts to Wetlands*

The proposed project apparently will “directly impact” wetlands with the construction of additional flowlines. Therefore, the project requires a U.S. Army Corps of Engineers Section 404 Permit. Apparently, the impact will be less than 0.5 acre and falls under Nationwide Permits (NWP) 12 and 14. In order to comply with these permits and

the “no-net loss” policy for wetlands protection, the drilling of Dunn-Peach well #1 required the placement of 17 culverts as compensatory mitigation to keep the hydrology of the area intact. EA at 46-47. However, there is no evidence that the Army Corps of Engineers has evaluated whether or not the additional five wells and flowlines would require additional compensatory mitigation for the additional wetlands impacts. It is reasonable to assume that if 17 culverts were required to mitigate the drilling of the Dunn-Peach well #1 and its associated flowline, then additional mitigation measures would be required if five more wells are drilled and five new flowlines are constructed.

In addition, the EA does not contain an analysis of the hydrology in the area or how the hydrogeological features would influence a potential leak or spill of hydrocarbons. The water table in the proposed drilling area is very shallow. At one point the NPS states that the water table is 80 inches (EA at 38). Later, the NPS states that the water table is from 2 to 5 feet (EA at 43). If these wells are produced, there will be condensate in the flowlines. Condensate is a Light Non-Aqueous Phase Liquid (LNAPL). If there is a leak in the flowlines, the condensate will float on top of the groundwater and travel with the groundwater. The NPS acknowledges that “drainage from rainfall events tend to accumulate in lower-lying areas before seeping into the groundwater, draining to the Laguna Madre tidal flats or evaporating.” EA at 43. However, the EA contains no discussion of the possibility that condensate leaks from the pipeline would accumulate on the groundwater and travel to the Laguna Madre tidal flats. There is also no analysis of the hydrology in the area, and no mention of the potentially disastrous environmental impacts of hydrocarbons from a leaking flowline that could reach either the Gulf of Mexico or the Laguna Madre.

3.4 *Impacts on Vegetation*

Again, as with the previous sections regarding impacts, the EA makes reference to “flowlines” but there is not even an estimate of the length of pipe that would be required for up to five new flowlines if these wells go into production. However, it appears that if five new flowlines are installed in the existing trench, as much as 3.5 miles of new pipeline could result. The length and location of the flowlines is an important factor in determining whether or not there will be impacts to vegetation and whether or not the routes for the flowlines will be placed in the area with the least impact to the native vegetation. The harm to vegetation resulting from the heavy machinery and equipment required for installation of flowlines has not been addressed either. It is not clear that the proposed mitigation measures are sufficient to restore the long-term loss of native vegetation on 3.08 acres.

3.5 *Impacts to Natural Soundscapes*

The effect of the drilling rig and constant truck traffic cannot accurately be described as resulting in cumulative impacts “similar to those described under No action.” EA at 55. An occasional honking horn or loud radio is not a fair comparison to the sound of a drill rig running 24 hours a day, seven days a week for the length of time it will take to drill five new wells, potentially eight months or longer. Depending on the geological features in the area, and the difficulties inherent in directional drilling, it likely will require several months to complete the drilling of just one well. The NPS also mentions that production operations would result in localized, long-term adverse impacts from the “use of a compressor to remove gas if necessary.” EA at 55. Using the Dunn-

Peach well #1 or other existing producing wells as a model, it certainly would be feasible to provide more details about the use of a compressor, its decibel level, and frequency of use. The EA mentions that “to the extent possible...the operator will use a diesel electric rig or similar rig to drill the well so that impacts to the natural soundscape are minimized.” EA at 26. If a drill rig will be used to drill five wells over an eight-month (or longer) period, the NPS should *require* the use of the drill rig that results in the least increase in noise. By prefacing the mitigation measure with the language “to the extent possible,” there is no guarantee that noise impacts will be reduced. Further, there is no quantitative analysis of the potential reduction in decibel levels with the use of such a drill rig. The impacts to the natural soundscape from the use of a compressor and/or other production equipment at this location have not been adequately evaluated in the EA.

3.6 *Impacts on Wildlife*

The NPS recognizes that there is a potential for leaks and spill during all phases of oil and gas operations that may result in serious impacts. EA at 60. However, despite a list of proposed mitigation measures, there are insufficient assurances to conclude that there would be “no impact to wildlife” from the drilling of these wells. The NPS completely ignores the impact of a major leak that could, *inter alia*, result in petroleum hydrocarbons reaching the Laguna Madre where the pollution would kill marine life and creatures depending on marine life such as the Brown Pelican. Also, although a diesel electric rig is mentioned, the mitigation measure states only that it will be used “to the extent possible.” The EA states that hospital mufflers will be used to reduce noise (and seems to assume that this alone will reduce impacts to wildlife), but nowhere is there a

description of what exactly a hospital muffler is, how it is used, and to what extent it can reduce the impacts to wildlife.

There is insufficient information regarding the number and size of the trucks, heavy machinery, and other equipment that will be used for the drilling of these proposed wells, and although the EA acknowledges that shorebirds, for example, will “take temporary flight when vehicles approach too close,” it assumes that birds will “resume their activity” after vehicles have passed. But the impacts to birds and wildlife could vary greatly depending on whether there is one 18-wheeler traveling along the shore once a day, or whether there are twenty 18-wheelers constantly disrupting the birds and wildlife for ten to twelve hours at a time. Because other wells have already been drilled, NPS should have sufficient historical knowledge regarding truck traffic to provide more details about the impacts to wildlife. For example, how many “incidental” takes occurred during the drilling of the two wells that have already been completed? Can the NPS provide actual, documented evidence that “wildlife will return after becoming acclimated to some noise disturbance?” This information is available and should be studied and included in this EA. Therefore, the approval of five additional wells at this time is premature.

3.7 Impacts on State and Federally Protected Species

Project May Adversely Affect Listed Species

As a result of the high number of “threatened” and “endangered” species currently listed under the Endangered Species Act (ESA) in this area, the National Park Service is “pursuing formal consultation with the U.S. Fish and Wildlife Service (USFWS)” as

required under the ESA. 16 U.S.C. § 1536 (a)(2). EA at 63. However, the NPS states, “several drilling operations could take place in the winter 2004 and spring of 2005.” EA at 26. Clearly, the USFWS consultation will not be completed in time for the public to review and comment on its conclusions before BNP plans to begin drilling. Because consultation on this issue is not yet complete, the NPS’s assertion that existing impacts range from no impact to moderate is misguided, without scientific evidence, and beyond the National Park Service’s ability to conclude at this point in time. One mere conclusory sentence: “the resulting Biological Opinion *could* have additional mitigation measures” is clearly insufficient. Under the ESA, the NPS has the responsibility to “insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.” 16 U.S.C. § 1536(a). The Biological Opinion may conclude that the operations are likely to “jeopardize the continued existence” of one or more endangered or threatened species *or their habitat*. A FONSI should not be issued before the Biological Opinion is completed and finalized.

On a related point, the EA also contains the following remarkable statement, “In the future, biological surveys would be performed *prior to selecting a proposed oil and gas development site* or conducting park operations; thereby identifying whether the species is in the proposed project vicinity or if suitable habitat exists so that avoidance and minimization of impacts can be planned. EA at 69 (emphasis added). It is unclear whether this statement relates only to the Texas indigo snake, but even so, is essentially an admission that a biological survey was *not* performed prior to the preparation of the EA. Such an assessment or survey *should have been conducted*, because the NPS admits

that the drilling will result in a direct loss of habitat: “the short-term loss of suitable habitat... on 1.24 acres and long-term occupancy of 3.08 acres.” EA at 70. Loss of habitat is a critical issue because it is one of the primary reasons that many of these species are listed as threatened and endangered; therefore, additional loss of habitat requires a “hard look” into the results of the drilling—and does not support the finding that “no impairment to the Texas indigo snake suitable habitat would result.” EA at 70.

In general, this section fails to recognize the magnitude of harm that could result from a leak or spill. The NPS provides a table of potential impacts to the species and recognizes that “in the event of a spill from offshore oil and gas operations or tankers, impacts could be widespread, with negligible to moderate indirect, adverse impacts...” to all five species of sea turtles, the Eastern Brown Pelican, Black Terns, and Piping Plovers. EA at 63-66. However, the NPS seems to completely ignore the fact that leaks and spills from *BNP’s operations* would have the very same effect. How would the impacts from *offshore* leaks and spills be different from *onshore* leaks and spills? Indeed, for many species, onshore leaks and spills could be more devastating, yet this very real potential impact is ignored. Similarly, the NPS recognizes that any leaks or spills from oil & gas operations could have *major adverse impacts* on grasslands “preferred by” the Loggerhead Shrike and Neotropical Migratory Songbirds. EA at 66.

There are 42 listed federal and four state protected species that potentially occur at Padre Island National Seashore. EA at Appendix 1. The NPS concludes that only 26 species have actually been documented at Padre Island National Seashore, but there is insufficient information provided in the EA to support that determination. Specific failings in the analysis of impacts to several of the threatened and endangered species

nests found have the uppermost eggs within only an inch or two of the sand surface. EA at 74.

4. Patrollers and monitors locate nests primarily by searching for the tracks left in the sand by the nesting females. However, the nesting turtles do not always leave visible tracks on the beach, particularly in areas with very hard packed sand, very soft and blowing sand, and thick seaweed. EA at 74.
5. The 35 Kemp's Ridley nests found on the Texas Coast during 2002 were documented along the entire beach width, from high tide line into the dunes. One would expect the beach position distribution of undetected and detected nests to be similar but that was not the case. Perhaps other nests went undetected at lower beach positions but did not survive to hatching because of beach driving, human disturbance, predation, or high tides occurring lower on the beach. EA at 74.
6. Vibration and noise caused by moving vehicles on the beach could frighten nesting turtles causing them to abandon their nesting attempt (false crawl). EA at 74.
7. Turtle hatchlings and smaller stranded sea turtles could become trapped in the ruts for short or long periods of time causing them to weaken, invert, or succumb due to predation. Deeper and more steeply sloped ruts will cause the greatest impact. EA at 75.
8. A study in Florida found that vehicles can also compact sand making it more difficult or impossible for nesting turtles to excavate a nest cavity leading to increased false crawl and nests with shallow egg chambers. Compaction could also make it more difficult for hatchlings to emerge from an undetected nest. EA at 75.
9. Large vehicles associated with oil and gas operations can produce deeper ruts in the sand which could affect movements of nesting females and hatchlings. To reduce direct impacts that can occur from rutting the park requires operators to mitigate the impacts by backfilling ruts. However, since backfilling ruts and leveling of the beach surface may cause indirect and direct impacts (including compaction of sand, covering and removing tracks, and crushing of nests and

turtles) *existing methods used to fill ruts will be reviewed and monitored on a periodic by the NPS and USFWS.* EA at 75. (emphasis added).

10. Vibrations could also harm incubating eggs. EA at 75.

11. There has been no documented case of a crushing of a nesting sea turtle within the park but during 2002 14 were crushed and killed by passing vehicles at two nest sites outside the park. EA at 76.

Yet, despite NPS' recognition of the very real threat of harm to the sea turtle's recovery from additional oil & gas operations; and despite NPS' own goal to "develop a plan to phase out beach driving on important local or regional nesting beaches" (O&GMP March 2001), the NPS concludes that "no impairment to sea turtles would result from the drilling." This conclusion flies in the face of the overwhelming evidence that vehicular traffic, especially from trucks, poses a real and dire threat to these endangered species.

The proposed drilling schedule contemplates drilling up to *seven* wells during an eight-month period starting in the winter of 2004. There is no way this can be done without extending into the peak turtle nesting period. The cumulative impacts to the sea turtles from this intense drilling schedule is not analyzed.

3.8 Impacts on Visitor Use and Experience

The NPS states that the Dunn-Peach "project area" encompasses the first 6.9 miles of "South" beach and acknowledges that "most camping and a large portion of beach day use occur on the first five miles of "South" beach." EA at 95. Although the EA lists impacts from visual obstruction due to increased truck traffic, and additional noise from large drilling and production vehicles, there is no mention here of the permanent chain link fence that will be installed around the well and production facilities. What effect will

that have on the view? Nor is there adequate discussion of the impacts on visitor use and experience from the potential loss of wildlife, birds, and plant life—the very reason that many visitors travel to Padre Island National Seashore. Moreover, what impact would extensive hydrocarbon contamination of the Laguna Madre have on visitor use and experience?

Other Impacts Not Addressed in the EA

Inadequate analysis of impacts from installation of flowlines.

One of the biggest flaws in the EA for the Dunn-Peach wells #2–6 is its failure to address potential leaks from the flowlines. For example, there is no reference to a pipeline maintenance plan. Given the harsh and corrosive conditions on Padre Island National Seashore and the NPS' mandate to preserve and protect the environment, BNP should be required to: 1) thoroughly assess the conditions, such as soil corrosivity, and soil pH, which will affect the pipeline; 2) utilize state of the art corrosion control and leak prevention methods; and 3) utilize frequent, if not constant, and the most effective available leak detection methods. Other than one passing reference to cathodic protection, no mention is made of these issues.

Further, the flowline corridor is 20 feet wide and 3,700 feet long (EA at 1), and BNP proposes to lay a flowline for each new well. EA at 21. If all five wells are produced, this could result in an additional 18,500 feet (3.5 miles) of additional flowlines. However, the EA contains no discussion regarding the corrosivity of the soils, or what steps (if any) BNP will take to ensure that their flowlines do not leak. The EA does not provide information regarding how line leaks or other losses would be detected. For

example, there should be detailed information regarding the frequency of leak surveys along the flowlines, or whether or not corrosion control methods in addition to cathodic protection would be installed on the lines². Nor is there any reference to how the production will be metered (at the wellhead and/or at a separation or compression facility) and how often the meters will be monitored to look for leaks. There is one reference to a well gauger who will check the facilities daily (EA at 26)—but there are no details provided as to what the gauger will be looking for or what facilities will be checked. Certainly the gauger would not be able to check buried pipe or other buried facilities on a daily basis. It is improbable to conclude that the addition of 3.5 miles of potentially leaking pipelines (carrying quantities of condensate and brine that have not been calculated) will not have a significant cumulative impact.

There is an underlying assumption throughout the EA that any leaks will be localized and short-term, but there is no scientific support for this assumption. The flowlines are the part of the production operations that are most likely to leak, and because the flowlines are buried, leaks could last for months or years before they are discovered. Indeed, there are many documented cases of flowlines leaking for long periods before detection, resulting in environmental catastrophes as well as personal injuries and death. If the flowlines leaked, the petroleum hydrocarbon contamination could be both widespread and permanent, and would wreak havoc on the environment. Yet the NPS does not discuss how or why a leak would be localized or short-term from a qualitative perspective, let alone attempt to assess the impact in any quantitative way.

² For example, no mention is made of internal corrosion control, which is not addressed by cathodic protection.

Inadequate analysis of impacts to water quality and water resources.

The NPS repeatedly states, “Impacts from spills could be localized to widespread, with minor to *major impacts on water resources and floodplains*. However, with mitigation measures and prompt response in the event of a spill, the intensity of impacts would be reduced.” EA at 39 (emphasis added). This is a complete dereliction of duty. The EA acknowledges that spills or leaks could have major widespread impact on water resources, for example, but assumes without any support whatsoever that the spill would be promptly discovered and mitigated. This is like saying that you don’t really need to quit smoking, because even though cigarettes cause cancer, with prompt diagnosis and aggressive chemotherapy, you probably won’t die. Of course, the flaw in this reasoning is that if the diagnosis does not occur early enough, or if the chemotherapy is ineffective—you will die.

Analysis of Cumulative Impacts is Inadequate

NEPA requires that an environmental analysis for a single project consider the cumulative impacts of that project together with “past, present and reasonably foreseeable future actions.” C.F.R. §§ 1508.7, 1508.25, 1508.27 (b)(7) 2001. CEQ regulations specifically caution agencies that cumulative impacts “can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. §§ 1508.7. The cumulative impacts analysis in this environmental assessment is inadequate for the following reasons.

The National Park Service prepared a Reasonably Foreseeable Development (RFD) scenario in 1999, and concluded that up to 18 wells could be drilled and produced

over the next 30 years. EA at 12. BNP drilled the Dunn-Murdock #1 well in June 2002, the Dunn-Peach #1 well in April 2004, and has permits to drill two additional wells, the Lemon/Lemon Seed wells, although construction has not yet begun. EA at 13. Now, BNP is proposing five additional wells in a single Environmental Assessment, and mentions in passing the "possible drilling of the proposed Novus Manzano well," (EA at 26), yet nowhere has there been a comprehensive cumulative impacts analysis for the 18 wells that could be drilled and produced over the next 30 years.

If the five additional Dunn-Peach wells are approved, at least *nine* wells will have been drilled or approved *for BNP Petroleum Corporation alone* in the five years since the RFD was completed. Either the RFD's well estimate is not accurate, or the NPS is permitting operators to drill at a much faster pace than the RFD anticipated. Slowing the pace of the drilling would reduce the cumulative impact, give Padre Island time to recover, ensure that the operators are acting prudently, and allow the NPS to adequately assess impacts from existing operations before it allows future drilling. The NPS mentions the concept of pacing by stating, "it is reasonable to assume that as some wells are being drilled and produced that others would be plugged and abandoned." EA at 12. But by approving wells so quickly, the NPS is ignoring any concept of pacing. Moreover, as stated earlier, the EA does not demonstrate a need to drill any of these five wells, let alone drill five at one time. According to the information provided in the EA, the true vertical depth of all five wells is in the range of 8200 feet (8205, 8300, 8200, 8160, 8420) suggesting that all wells could be producing from the same zone. EA at 17. This raises the question as to whether all five wells are really necessary. The agency cannot escape a

hard look at the cumulative impacts analysis merely by approving the wells one by one, and alleging that each well alone would not have cumulative impacts.

Notably absent from the cumulative impacts analysis is any specific reference to the number, size, length, and specific location of the flowlines if the wells are placed in production. There is a general reference to the size of the trench necessary for the flowlines, but this information is insufficient for determining cumulative impacts. EA at 21. Clearly, the installation of flowlines is a “reasonably foreseeable future action” and therefore, must be addressed in the cumulative impacts analysis of this EA or should lead to the preparation of an EIS. In addition, the EA glosses over the fact that if these wells are placed in production, the “production unit may need to be resized per future volume demands.” EA at 19. The size of the production unit, the number of compressors and/or separator units, are important elements in determining the environmental impacts that will result from the drilling of the wells. The agency must use the EA to address “reasonably foreseeable future actions” and the details of the production facility are key among these future actions. More detail is necessary before the NPS can issue a FONSI.

In a brief reference to the existing BNP well, Dunn-Peach #1 (drilled earlier this year), the EA acknowledges that “reservoir and production data acquired from the on-line operations of the Dunn-Peach #1 well would help determine the best option for flowline requirements.” EA at 21. This statement points out one of the primary reasons that approval of five additional wells is premature at this time. Before five new wells are permitted, NPS should require detailed reports from the operations of the first Dunn-Peach well and an analysis of the environmental impacts from the drilling of the first well in order to more accurately evaluate the cumulative impacts from the additional wells and

the potential for serious harm to the environment. Further, BNP should be required to operate the Dunn-Peach well #1 for a long enough period of time to establish that it can be safely produced and that BNP will be a prudent steward of this pristine and unique environment.

Cumulative Impacts of past operations

More than 73 oil and gas operations have occurred on Padre Island National Seashore since 1951. EA at 12. At least four of these operations are currently involved in ongoing cleanup and remediation activities that resulted from past leaks, spills, or other releases and have contaminated the environment with hazardous substances. The NPS merely mentions, “until cleanup is successfully completed, impact on park resources and values persist.” EA at 12. This casual reference to the remediation activities does not provide enough detailed information to determine the impact of additional remediation activities should they be necessary. The park has obviously been damaged by at least four different oil and gas operations and the potential impacts of yet another spill, leak, or release must be evaluated in the cumulative impacts analysis. Nowhere in the EA does the NPS even address the impact of potential future remediation activities themselves on the environment, even though the fact that remediation could be required is repeatedly recognized³.

Increased truck traffic

The NPS should quantify both the short-term and long-term increases in truck traffic that will result from the drilling of five additional wells, yet the EA does not even

³ Remediation activities could include the drilling of recovery wells, digging trenches, leveling of sand dunes to access contaminated soils, extensive disturbance of habitat to dig up and haul away contaminated soils, and the utilization of pump and treat, vapor extraction, or other remediation systems.

Immediately foreseeable future development

Although the NPS mentions the possible drilling of the proposed Novus Manzano well, which is located “near” the Dunn-Peach location, the cumulative effects of an additional well placed “near” these wells is not evaluated in this EA. This is another flaw in the cumulative impacts analysis. For example, the location of the proposed Novus Manzano well should be included on the maps showing the proposed Dunn-Peach wells, the impacts from the installation of any flowlines from the Novus Manzano well should be considered, the increase in drilling noise and truck traffic should be evaluated, and the loss of vegetation and wildlife habitat should be evaluated in this EA. None of these impacts were considered.

Further, the NPS recognizes the potential that one or more of these proposed wells will require workover operations at five to ten year intervals. It is unclear whether this permit provides for such workovers, or whether additional permits will be necessary, but either way, because the need for workovers is immediately foreseeable, the cumulative environmental impacts should be discussed in this EA.

BNP Petroleum Corporation’s Environmental Compliance History

The NPS should take into account the environmental compliance of BNP Petroleum Corporation in its drilling of the first Dunn-Peach #1 well and any other locations where BNP’s environmental record can be evaluated. Such information will provide actual results regarding the effectiveness or ineffectiveness of any “mitigation measures” and will also provide “real-world” data regarding the environmental impacts. For example, in a February 2002 letter to the Texas Railroad Commission, BNP reported that it had lost a well-logging tool with 16 curies of radioactive americium and beryllium

in a well hole for the Dunn-Campbell well.” Sierra Club press release available at: <http://www.texas.sierraclub.org/press/newsreleases/062702.html>. BNP also reported the incident to the Texas Bureau of Radiation Control (BRC) and BRC’s inspection report states that “potential exists for other stuck tools under similar geologic conditions.” Id. However, nowhere does the EA for the five new wells address the potential risks of other such accidents involving radioactive materials or the impact of radioactive material on water quality, plant or animal life on Padre Island National Seashore. Similarly, BNP’s operations at other locations show that it is not a good environmental citizen.

As an example, Tom Gill Services, LLC., (a company owned by BNP Petroleum Corporation’s owner Paul Black) was cited for numerous violations at a oil & gas waste disposal site in Hidalgo County. During an inspection for the “proposed” disposal site in 1995, the inspector discovered that the site was already “active” although the permit application process had not been completed. Also in 1995, Tom Gill Services was cited for a violation because “an unidentified oily residue oilfield waste was disposed into the minor permit landfarming site. A yellow crystallized solid and an oil residue remained at the surface.” In 1997, the Railroad Commission cited Tom Gill Services for dumping a truckload of unauthorized waste material. The waste (produced fracturing fluid) measured 39,000 ppm chlorides, in violation of the permit limits of 2500 milligrams per liter chlorides. In 1999, the Railroad Commission cited Tom Gill Services for illegally disposing of three truckloads of illegal oil waste “flowback” fluids, and also for dumping solid waste in a non-permitted area. Such disregard for regulatory compliance at a relatively small landfill is bad enough, however, if BNP failed to comply with its own plan of operations or any of the proposed mitigation measures for the drilling of these

five new wells, such non-compliance could lead to catastrophic results and extreme harm to the wildlife, vegetation and water quality of the Padre Island National Seashore.

Project Inadequately Analyzes and Mitigates Impacts from Toxic Substances

This project, the drilling of five new wells in federally protected national park land, poses significant risks to wildlife, birds, and water quality associated with toxic substances. Although the EA mentions existing remediation projects at four different locations on the island (EA at 16), there is no meaningful analysis of the incremental impact of yet another potential leak or spill and subsequent remediation project.

NPS Did Not Provide Adequate Public Notice

Finally, publication in the Federal Register and the *Corpus Christi Caller-Times* was not calculated to reach the maximum number of people. The potential impacts of the project affect individuals and agencies in at least four counties (Nueces, Kleberg, Kenedy, and Willacy) and require publication in several other local newspapers, specifically, the *Valley Morning Star*. Further, it appears that the public notice was available only in English and should also have been published in Spanish-language newspapers. Kenedy county's population is nearly 80% Hispanic, Willacy county's population is more than 80% Hispanic, and Kenedy county's population is nearly 70% Hispanic. NPS's failure to give adequate and appropriate public notice violates one of the most fundamental requirements of NEPA.

Conclusion

The goal of an EA is to answer one question: *Does the proposed action have the potential for a significant impact on the quality of the human environment?* The answer to the question for this project is *yes*. The EA identifies myriad potential significant impacts, but does not adequately explain how these impacts will be avoided, mitigated, or otherwise reduced *below significance*. Therefore, the EA is insufficient.

The potential environmental impacts of this proposed project clearly establish the necessity of preparing a full EIS. The impacts to water quality, wildlife, birds, and federally protected threatened and endangered species will be tremendous. These environmental impacts deserve a more complete evaluation in order to accurately determine whether the benefit to a small number of individuals from this project justifies such a high degree of risk to Texas' unique and diminishing coastline.

Sincerely,



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