



Linda Dansby

06/19/02 07:38 AM
MDT

To: Ken McMullen/PAIS/NPS@NPS, Darrell Echols/PAIS/NPS@NPS,
Arlene Wimer/PAIS/NPS@NPS

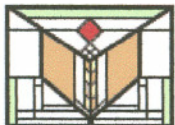
cc:

Subject: Re: Review of Lemon/Lemon Seed BA

Eddie Kassman has looked at my review comments on the BA - I referred him specifically to my comments #1,7 and 8. We discussed 13 yesterday. Bellow is Eddie's email, along with his attachment with recommended changes in track changes.

Linda

----- Forwarded by Linda Dansby/SANTAFE/NPS on 06/19/02 07:34 AM -----



Edward Kassman

06/18/02 03:09 PM
MDT

To: Linda Dansby/SANTAFE/NPS@NPS

cc: Carol McCoy, Jim C Woods

Subject: Re: Review of Lemon/Lemon Seed BA 

Linda:

Per our conversation, please see attached file. Re: #'s 1 and 8, I excerpted language from the draft BA and have recommended changes in blueline/strikeout. Re: #7, I agree that the RMCs are not specifically enforceable, but act as notification to potential lessees. We have already discussed and resolved #13.

If you have any questions, please call (303)-969-2146.

Cheers,

Eddie



BA - Lemon ek.doc

Linda Dansby



Linda Dansby

06/17/2002 08:51 AM
MDT

To: Edward Kassman/DENVER/NPS@NPS

cc:

Subject: Review of Lemon/Lemon Seed BA

Hi Ed:

Here are my review comments on the "draft" rewrite of the Biological Assessment (BA) for the Lemon/Lemon Seed Plan of Ops/EA - in particular, please see comments #1, 7 and 8. Could you also weight in on my comment #13 - at first glance, I thought it was strategic for the park to identify future research needs and this needed information is not necessary to provide scientific information to support our evaluation and decisions to approve the Lemon/LS wells to be explored and produced - would you agree?

Linda

----- Forwarded by Linda Dansby/SANTAFE/NPS on 06/17/02 08:43 AM -----



Linda Dansby

06/12/02 05:17 PM
MDT

To: Darrell Echols/PAIS/NPS@NPS

cc: Arlene Wimer/PAIS/NPS@NPS

Subject: Review of Lemon/Lemon Seed BA

Darrell:

Thanks for the opportunity to review the BA. I just did a quick review today. My comments are enumerated below. I suggest you share the BA with Eddie Kassman before it is reviewed in final and concurred with by FWS so he can help you fine-tune the 9B/regulatory language. Some of my comments highlight areas I think Eddie should take a look at. I think you did an excellent job and that once the other technical folks help to tweak it, you'll have a very good model for future applications. Thanks again.

Overall, this is an impressive Biological Assessment. I wouldn't doubt that this becomes a model not only for the NPS but that FWS will be asking to share it with other federal entities needing to prepare BAs.

1) Section 5, Purpose and Need, page 1, 3rd paragraph. Recommend Eddie review this section.

Page 3 - Figure 1, Project Location. Should the "analysis area" be the area described and mapped in the EA? Would it include the access route from the northern entry via Park Road 22 to the 4WD sign on the Gulf Beach, and along the Gulf Beach corridor. The ground-disturbing activities associated with the proposal would begin with the cut through the foredune, and construction of the access road, wellpad, and flowline.

Suggest adding in brackets after the 2nd sentence [36 CFR § 9.30] to denote the section where this text was derived.

2) Section 7, Project Team and Consultants, page 2. Dr. Loyal Mehrhoff's name is misspelled. His title is "National Endangered Species Coordinator, NPS Biological Resource Management Division, CO.

Suggest you insert a sentence before the table to explain that "The following individuals assisted in the preparation of the Biological Assessment." This will clarify the difference between the list of preparers of the EA and this list of preparers of the BA. You might also consider revising the title to be more descriptive.

3) Section 8, Project Objective. Suggest you use the same 3 objectives presented in the EA.

4) Section 9, Description of the Proposed Action, Access Road. The 2nd paragraph would be better presented first.

Please also clarify in the 2nd paragraph what is the designated vehicle access corridor on the Gulf Beach - the zone above the wet/surf zone but not extending into the dune-forming area.

5) page 5, under Production Facilities, 3rd line, insert an apostrophe in pads to read "pad's."

6) Section 10, Alternative Locations and Discussion, 1st paragraph, 4th line. Delete "Denver Support Office" as there is only 1 Regional Support Office - predominantly we are in Denver and Santa Fe, but we also have staff in satellite offices in Phoenix, Austin, Salt Lake City, etc.

7) Page 6, Gulf of Mexico Alternative, 2nd paragraph. The first 3 lines do not correctly describe the 2- to 3-mile setback. Neither NPS nor GLO may require it be applied because we have no authority to require it. We negotiated with GLO in the early 1980's to have it included by the GLO as a Resource Management Code. The GLO provides the RMC's merely as advisory to their state lessees. When we are not successful in having it applied, we revert to encouraging the operator to drill directionally from behind the foredunes. This section should be revised because as it is currently described, folks could misconstrue that the NPS has authority to require it when we don't.

8) Page 8, 2nd paragraph beginning "The beach is also considered a roadway by the Texas Open Beaches Act, which allows unrestricted public vehicle access to the Gulf of Mexico." Please delete this sentence, as it not relevant. Padre Island National Seashore is administered under federal laws and these take precedence over state laws.

9) Pages 9 - 11, Visitor Use. The detailed description about visitor use is not relevant for this BA.

I suggest that this section be shortened. Further, please consider including references from surveys that make a link between visitor use and experience and the park's T/E. For example, can you quote specific research/survey data that supports that visitors come to the park to view specific T/E species, participate in the turtle hatchling program, etc.?

10) Pages 11-14. There are duplicative descriptions of the proposal which were described earlier under Section 9 (page 4). Suggest this repetitive text be deleted. Maps/figures should be moved to section 9.

11) Section 12, pages 14-16, Vegetation Classifications. Why not include a reference back to Figure 1 which shows not only the project area but does so on a landcover class map? Is it also possible to include a map of the vegetation in the analysis area to go with Photos 2 and 3 and the text on page 15?

12) Page 23, 4th paragraph, beginning "Operation of vehicles..." Rutting and compaction of sand by vehicles are direct impacts, not indirect impacts. After first describing the direct impacts by vehicles on the Gulf beach, which include rutting and compaction, indirect impacts to sea turtles should follow, which include sea turtles expending more energy to carry themselves over deep ruts to nest sites and to dig nests in compacted sand, or hatchlings falling into deep ruts and being unable to get out.

Page 24, 2nd paragraph, similarly, vehicle lights would cause direct not indirect impacts on nesting turtles.

13) Page 25, Conclusion, 1st paragraph, last sentence. Good to see the park identify future research needs.

14) Page 60, under Site Visit Dates, 2nd line, correct spelling for "proposed" locations.

Nice job on the species descriptions and potential impacts - I like the standard format.

Linda

1) RE: COMMENT #1 PURPOSE AND NEED. MY EDITS ARE AS FOLLOWS.

"5. PURPOSE AND NEED:

Padre Island National Seashore was established by Congress on September 28, 1962 (16 U.S.C. §459d, *et seq.*), "In order to save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped..." 16 U.S.C. §459d.

At the time of the park's establishment, surface ownership was held by the State of Texas or by private landowners. In 1963, the surface estate owned by the State of Texas was conveyed to the U.S. Government, while those surface rights held by private landowners were acquired by the federal government through condemnation in 1965 and 1966. All subsurface mineral interests underlying the park were retained by private owners. Those underlying the submerged lands under the Laguna Madre and Gulf of Mexico were retained by the State of Texas and are administered by the Texas General Land Office. Thus, the federal government does not own any of the subsurface oil and gas rights in the park. However, Congress directed in the park's enabling act that nonfederal oil and gas development be regulated. 16 U.S.C. §§459d-3, 459d-4.

Also, pursuant to its authority at 16 U.S.C. §3 and several other park enabling statutes, the NPS promulgated regulations at 36 CFR Part 9, Subpart B ("9B Regulations") to provide a systemwide regulatory scheme governing the exercise of nonfederal oil and gas rights. The purposes of the regulations are to "insure that activities undertaken pursuant to [nonfederal oil and gas rights] are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment and other resource values, and to insure to the extent feasible that all units of the National Park System are left unimpaired for the enjoyment of future generations." 36 CFR §9.30

The 9B regulations fall within the broad scope of authority granted to the NPS from Congress under the NPS Organic Act - authority that includes the power to regulate conduct that occurs on or off federal land, which may affect federal lands. The regulations are designed to control conduct associated with private mineral rights on federal land to avoid or minimize harm to park resources and values. Thus, the United States need not own the mineral interest beneath Padre Island National Seashore to regulate rights associated with that interest that may affect the federally owned surface.

Based on 9B regulations and the park's enabling legislation, nonfederal oil and gas operations can only be conducted in accordance with an approved plan of operations. A plan of operations outlines the process, precautions, and regulatory requirements that will be utilized or adhered to by a specific oil and gas operator. To evaluate a plan of operations for approval, the NPS must

comply with requirements of the the National Environmental Policy Act, consultation requirements under the Endangered Species Act and National Historic Preservation Act, and other applicable federal laws.

Padre Island National Seashore is therefore considering the submittal of a Plan of Operations by BNP Petroleum Corporation (BNP) for the proposed Lemon/Lemon Seed Unit Wells No. 1-1000S and No. 1-1008S. The proposed location of this operation is 12.5 miles south of the end of Park Road 22, and approximately 900 feet inland from the Gulf of Mexico within Padre Island National Seashore (Figure 1). This operation will involve the development of an access road, construction of a well pad, establishment of a water well, establishment of two gas wells, and the creation of a production facility with its associated flow line if one or both wells are productive. "

2) RE: COMMENT #7 ON GLO'S RESOURCE MANAGEMENT CODES.

Linda: you are correct in stating that the RMCs are not mandatory requirements. My understanding is that they are to notify potential lessees of likely stipulations that may apply to an operation within the leased tract. The RMCs purpose is to give potential lessees full and fair notice of what to expect. As such, the RMC provide a modicum of cover to the state, should a lessee claim a diminution of value of their property right via application of a specific stipulation. Neither the state of Texas, nor the NPS enforces the RMCs under any statute or regulation.

3) RE: COMMENT #8 ON TEXAS OPEN BEACHES ACT

The nonfederal mineral owners hold a right of reasonable access across the federal surface to explore for and develop their mineral interest. The NPS, however, has the right under federal law to reasonably regulate access to protect park resources and values. While federal law is supreme to and supplants state law that is in conflict withit, Congress has recognized the exercise of oil and gas rights at Padre Island N.S. The NPS has neither found, nor has it been presented with data that would support a decision for a seasonal beach closureapplied to oil and gas operators. The NPS will attach reasonable mitigation measures to an oil and gas operator's access, e.g. speed limits, monitors, that are designed to provide protection against harm to park resources an values.A seasonal closure may also require that the drilling rig(s) to be demobilized and moved repeatedly up and down the beach, or to have more than one rig operating at a time. Impacts associated with the repeated mobilization of the drilling rig and associated equipment would increase impacts to visitors, other non-sea turtle species of concern, vegetation habitats, and increase the operating costs to the contractor. Such a closure would result in a concentration of impacts over a shorter amount of time, and may not allow for natural recovery of the beach and associated access routes between operations.

Some benefits may occur to shoreline species, e.g. Piping Plover, that utilize the beach to nest, forage, or loaf during a closure. The public would not be subjected to the type of traffic volume during high visitation periods, and the risk of crushing or impacting nesting sea turtles, their nests, or any hatchlings left on the beach would be somewhat reduced. There would, however, still be potential impacts from public use and recreation of the beach during this seasonal closure. Even though there are added benefits to sea turtles and summer visitors, the potential for greater impacts due to heavier concentration of oil and gas activities created by the seasonal window outweighed the potential benefits.

Based on the lack of data supporting a seasonal beach closure as applied to oil and gas operator access in particular, the greater concentration of impacts in the short-term, the increased risk to equipment and personnel, the health and safety issues related to hurricanes, the potential impact to Piping Plovers and other protected and non-protected species of shorebirds, and the expected increase in economic costs associated with more frequent or repeated mobilization of the drilling rig and associated equipment, this alternative was dismissed.