



"JFrench"
<jfrench@stx.rr.com>
04/29/02 03:39 PM
EST

To: <Ken_McMullen@nps.gov>
cc: "Pat Suter" <phsuter@aol.com>, "Allan Strand"
<allan_strand@fws.gov>
Subject: Fw: Comments on Lemon/Lemon Seed EA, etc.

Ken:

I originally sent these comments to Pat Suter, thinking she'd forward them to the Sierra Club, which might in turn incorporate parts of them in its own comments. She's just asked me to send them to PINS directly. Please add them to the official list of comments, and try not to take them personally.

Best regards,

Johnny

----- Original Message -----

From: JFrench

To: Pat Suter

Cc: Carlos Guerra

Sent: Tuesday, April 09, 2002 4:41 PM

Subject: Comments on Lemon/Lemon Seed EA, etc.

I have reviewed copies of the Padre Island National Seashore's (PINS) March 2002 *Environmental Assessment - BNP Petroleum Corporation Lemon/Lemon Seed Unit Wells No. 1-1000S and No. 1-1008S Padre Island National Seashore, Texas* (EA) and the accompanying documents *STATEMENT OF FINDINGS FOR EXECUTIVE ORDER 11990 (PROTECTION OF WETLANDS)* [SOF for EO 11990] and *STATEMENT OF FINDINGS FOR FLOODPLAINS*. These are my general and specific comments on them.

GENERAL COMMENTS

The EA is apparently intended to tier off the PINS' March 2001 *Final Oil and Gas Management Plan/Environmental Impact Statement for Padre Island National Seashore* (FEIS), because the EA relies heavily on the latter document for statistics and mitigation measures to support its findings, and because the EA nowhere mentions the commonest purpose of an environmental assessment: the determination of significant impacts requiring the preparation of an environmental impact statement. The EA should indicate up front if this is its intent, and make the larger FEIS readily available. Since I haven't seen the FEIS, and it's been two years since I saw its draft, this hinders my ability to make meaningful comments on the EA.

The EA repeatedly makes findings of direct and cumulative damages to the PINS' resources, then invariably concludes that despite these frequently quantified adverse impacts each resource will nonetheless suffer "no impairment." My dictionary defines impairment as damage, so there is an obvious semantic problem here. Furthermore, there may be a legal problem, since the EA states the National Park Service (NPS) must avoid impairment. The EA should clarify in objective terms what is meant by its use of the word impairment, and demonstrate that NPS' application of the term in the EA is what was intended by Congress.

The EA proposes to apply a NPS policy not to require compensation for the loss of less than 0.1 acre of wetlands per project. However, since the EA lacks an assessment of cumulative impacts to wetlands, there is no way to determine the appropriateness of this policy application in light of existing and

reasonably foreseeable wetland losses at PINS. The EA should quantify cumulative wetland losses at PINS; identify what, if any, compensation has been required previously for these losses; and discuss in light of this information how failure to require compensation for the current project's wetland losses complies with Executive Order 11990 and NPS rules concerning impairment of park resources.

The EA identifies two situations involving drilling rig lights and vehicular movements whereby sea turtles may be taken as a result of the proposed project. Although methods are proposed to reduce the likelihood of such taking, neither BNP nor the PINS have incidental take statements that would offer them protection against violation of section 9 of the Endangered Species Act should BNP or its agents kill or injure a sea turtle. Since these situations may affect species federally listed as threatened and endangered, it is recommended that PINS formally consult with the Fish and Wildlife Service about impacts to sea turtles from this and similar projects.

According to the EA, PINS and BNP have agreed to numerous conditions or mitigation measures which if carried out are expected to avoid and/or minimize impacts to PINS resources, including sea turtles. However, the EA does not identify how PINS is prepared to monitor compliance with said conditions, nor explain what recourse PINS would have should BNP fail to carry them out adequately. The EA should verify that PINS has committed the manpower and fiscal resources to enforce the mitigative conditions upon which it relies to reach the repeated conclusions that the proposed project would not impair the environmental resources of the park. Furthermore, the EA should explain the circumstances under which BNP's permit for the project would be revoked for violating the agreed-upon conditions and/or causing more environmental damage than can be covered by the statutorily-limited bonds BNP is required to provide.

The EA summarily dismisses the alternative of drilling to the two proposed bottom hole locations beneath the Gulf of Mexico from a surface location(s) offshore from the Gulf beach. The EA is unclear as to the exact waterward boundary of PINS, but, if it lies two miles off the beach as the EA implies, one of the proposed bottom hole locations would be closer to an offshore rig situated just beyond this boundary than the proposed onshore surface site. The EA should provide more discussion of the pros and cons of drilling both wells from two miles offshore, particularly since this alternative would eliminate most of the impacts associated with the BNP's proposed site alternative.

SPECIFIC COMMENTS

EA Section 1.2.1. NPS Organic Act and General Authorities Act, p.2 - - The EA states: "Current laws and policies require the analysis of potential effects to determine whether or not actions would impair park resources. While Congress has given the NPS the managerial discretion to allow certain impacts within parks, that discretion is limited by the statutory requirement (enforceable by the federal courts) that the NPS must leave park resources and values unimpaired, unless a particular law directly and specifically provides otherwise. (2001 Management Policies, Sec.1.4)"

"The impairment that is prohibited by the Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that would otherwise be present for the enjoyment of those resources or values. Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts."

Although Congress in these Acts sought to permit impairment only by law and in specific instances, the EA's definition of impairment as quoted above thwarts Congress' purposes by making impairment subjective and non-specific. As a consequence, each time the EA identifies the destruction or diminishment of a PINS resource or value, the impact is dismissed without explanation as resulting in no

impairment, at least in the eyes of some NPS manager. The EA should go back to the usage of impairment which Congress intended, that is, the plain definition found in dictionaries and used in federal courts, and then explain for each identified adverse impact which particular law directly and specifically provides for that impairment to occur.

EA Table 2. Issue Statements, Threatened and Endangered Species, p. 8 - - This issue statement discusses potential impacts to sea turtles from vehicle traffic on the Gulf beach and from lighting at the proposed well sites. See General Comments above regarding this topic. On the subject of the shielding or redirecting of lights, consideration should be given, since the topmost lights on the derrick will have to be unshielded to comply with FAA regulations, to relocating the well pad farther west, away from the beach. Also, experienced monitors, rather than drilling crews alone, should be assigned to see that the shielding and redirection of lights is effective.

EA Section 2.2. Alternative B, Access, p. 16 - - There is a brief discussion here of cutting an access road through the dunes. The EA should describe where the sand from the initial excavation and subsequent maintenance of the road would be placed, and how would it be stabilized.

EA Section 2.2. Alternative B, Use of Water for Drilling, p. 17 - - The EA mentions the possibility of a high-pressure gas kick. If it is not already part of the proposed action, PINS should require constant monitoring of shale densities during drilling, at least subsequent to the setting of surface casing, to allow anticipation of and preparation for over-pressured sands.

EA Section 2.2. Alternative B, Conditions of Approval, p. 25 - - The EA discusses the statutory limitation of bonds and liability to \$50,000 for the operation of a single well and a maximum overall bond of \$200,000 for any given operator within a single unit of the National Park System. The EA should discuss who would be responsible for paying for the damage incurred to park property from a catastrophic event, such as a well blowout or a grassfire caused by the proposed action.

EA Section 2.3. Alternatives Considered but Dismissed from Further Analysis, Gulf of Mexico Alternative, p.26 - - See General Comments on this topic.

EA Section 3.5. Impacts on Wetlands, pp. 37-39 - - Unlike the cumulative impact estimates given for other resources (cf. water resources and floodplains, vegetation, and wildlife) the EA does not quantify the existing and future expected cumulative loss of wetlands. The EA should provide the missing cumulative impact data, and include an estimate of how much of the lost wetland acreage has been subject to replacement through compensation. It should also consider alternative wording for the *non sequitur* represented by the first two sentences at the top of p. 38: "The NPS adheres to the administration's "no-net loss principle for wetlands protection. The adversely impacted area represents less than one tenth of an acre, therefore compensation for the disturbed wetland is not required."

SOF for EO 11990, WETLAND AVOIDANCE, MINIMIZATION, MITIGATION, p. 10 - - The wetland to be impacted by the proposed pipeline is described as "a continuous feature that runs perpendicular to the pipeline route." The estimation of the amount of impact to this linear wetland feature is apparently calculated based upon the theory that all the project's impacts to it would be confined to the 25-foot-wide right-of-way. This estimate neglects to consider the possibility that impacts to this wetland may also occur outside the R-O-W due to interference with hydrology caused by trenching and compaction, and by the movement of disturbed sediments onto adjoining areas. The EA should discuss these indirect effects to the remaining wetland area, as well as the need to counter or compensate for such effects, especially as they could exceed the EA's optimistic estimate of the affected acreage.

This concludes my comments.

Johnny French
4417 Carlton St.
Corpus Christi, TX 78415
(361) 853-9331