



"Scott Taylor"
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m>

05/31/02 11:50 AM
EST

To: <ken_mcmullen@nps.gov>
cc: "Jock Whitworth (E-mail)" <jock_whitworth@nps.gov>,
<jfwhitworth@aol.com>
Subject: Information for Meeting 06/03/02 · 9 am · Lemon/Lemon Seed
Permit Application

Ken:

Pursuant to our conversation, attached hereto you will find 4 brief documents that collectively explain a clear, sound, legal and environmentally responsible rationale for issuing a FONSI without a second round of public review. I hope these documents will be of assistance to you and Jock in preparation for our meeting next Monday. These materials have also been shared with Jake Hoogland and Barry Roth.

I look forward to hearing from you to confirm that we will attempt to get both Jake and Barry involved in our meeting by conference call at 9 am next Monday.

If for some reason I do not speak with you before Monday, have a great weekend. In the meantime, if you need anything further, please do not hesitate to call.

Sincerely,

H. Scott Taylor
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<<NEPAanalysis.DOC>> <<facts.DOC>>



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**ADVERSE IMPACTS OF ANOTHER ROUND OF EA REVIEW FOR THE
LEMON/LEMON SEED PERMIT APPLICATION**

I. Environmental Impacts

- A. Permit approval delay due to additional review will result in an estimated 83 eighteen-wheeler truckloads of material unnecessarily being moved from the Tomato site up the 14 mile stretch of beach during the height of sea turtle nesting season. Conversely, if the Lemon/Lemon Seed permit application is approved by the middle of June, these 83 truckloads can instead be moved the short 3-4 mile stretch to the Lemon/Lemon Seed location, thereby greatly reducing beach truck traffic during the nesting season.
- B. The reduction in truck traffic suggested in A above would also substantially reduce impacts on visitor experience at PINS, since most of the park guests camp within the northernmost 4 miles of beach and would be unaware of BNP's activities some 10 miles down the beach.
- C. Additional review will push BNP's activities into the height of hurricane season, and this will result in increased risks to the environment associated with storm surges. While BNP's planning documents contain an extensive set of hurricane response procedures, avoiding the peak of hurricane season during exploration activities is clearly the safer approach.

II. Social Impacts

- A. The Permanent School Fund of the State of Texas will receive a 20% royalty from the sale of hydrocarbons produced from the wells that are the subject of this permit application. Based upon BNP's estimates of the hydrocarbon reserve potential of the Lemon/Lemon Seed prospects, the Permanent School Fund potentially could receive \$40 million in royalties associated with this exploration effort. Any further delay in the exploration would adversely affect the fund by delaying the payment of royalties and by subjecting those payments to commodity price risk (possibility that natural gas prices decline substantially), together with time value of money losses. The permit process for these two wells has taken over 6 months to date, and absent any evidence that a further delay will result in a substantially better operational plan, the State has a duty to see that its economic interests are pursued.
- B. In addition to the Permanent School Fund, the State's general revenue fund stands to receive several million dollars in severance tax revenue associated with the sale of hydrocarbons produced from the wells in question. Further delay in the permitting process may reduce current cash flows to the general fund.
- C. County governments also receive ad valorem taxes associated with producing minerals. In this instance, Kleberg County will forego this revenue during the delay in permitting.
- D. A delay in the permitting process directly contradicts the Bush Administration's energy policy, and such delay would fly directly in the face of the president's Executive Order requiring the expediting of energy-related permits.
- E. Further delays and costs associated with permitting discourage operators from spending capital on domestic energy production. Instead, much of this capital is likely to be invested in foreign oil and gas exploration activities. This will result in an increase in our nation's dependence on foreign sources of energy at a time

when national security dictates that we should be doing everything in our power to reduce such dependence.

III. Impacts on BNP

- A. BNP has invested more than \$1.5 million in acquiring leases from the State covering the two exploration prospects affected by the permit in question. Delays in permitting would result in lower return on investment due to time value of money and borrowing costs associated with this capital investment.
- B. BNP's leases contain 5 year primary terms, and in the event no drilling operations are commenced within such terms, the leases will terminate. Additionally, if BNP fails to establish production from the leases within the first two years, the company will be forced to pay an increased royalty of 22.5% instead of the 20% royalty paid if production is established prior to the second anniversary date of the leases. If BNP is forced to pay the higher royalty rate, BNP's potential return on investment will be reduced by several million dollars based on its reserve estimates for the prospects in question. Finally, BNP must pay rentals on each anniversary date of the leases for the privilege of deferring drilling operations for one year. In this case, BNP will be forced to make a rental payment of approximately \$44,000 if the permitting process is delayed, but this rental payment can be avoided if operations are commenced prior to July 10.
- C. If the pending permit is delayed, BNP will incur approximately \$50,000-\$75,000 in mobilization costs that could otherwise be avoided by moving the rig and equipment currently at PINS directly to the next location. Additionally, BNP would face uncertainty associated with the costs of the rig and other goods and services provided by third parties in BNP's exploration activities. Finally, BNP would have to face the uncertainty of availability of a rig and equipment that are suitable for conducting operations in this sensitive environment.
- D. In the event of further delay, BNP will be affected by similar economic factors that affect the public interests discussed above, namely time value of money losses, commodity price risk, and reduction in cash flows. Additionally, BNP's borrowing costs will be higher as a result of its inability to generate revenues from its capital investment.

In summary, the environment will not receive any substantive benefits from further delays in the permitting process. However, the costs to the environment, to public policy objectives, and to BNP will be significant in the event of such delays.

EFFECT OF DELAY ON INTERIOR BUREAUS

Biologists and managers of the National Park Service, U. S. Fish and Wildlife Service, and U. S. Geological Survey have been thorough in recognizing and evaluating the real and potential impacts of the BNP operations on Padre Island National Seashore. They have prescribed actions necessary to prevent problems with endangered turtles and other natural resources. BNP employees have not only met those requirements, but have taken additional actions to assure good stewardship of the resources. All reasonable actions needed for protection of the resources have been identified and are being met.

By providing a second comment period:

- 1- There is a very small potential for recognizing and addressing impacts beyond those already recognized and addressed.
- 2- The resulting delay will necessitate much greater beach traffic and associated activity, thereby resulting in more, not less, potential impacts to Park resources. Further, a second comment period will potentially increase other risks to the operation, the public interest and the environment. The result will be the direct opposite of that intended by adding a second comment period.

The effect of a second comment period will be delay, additional review of comments, additional paperwork and response to issues already addressed. It will be an additional paperwork exercise for no additional benefit to the resources, and by requiring additional beach traffic, the additional comment period will result in a potential for greater impacts on the resources. It will be a step backwards, with no benefit to the resources.

IT IS UNNECESSARY TO CIRCULATE A REVISED EA FOR A SECOND ROUND OF PUBLIC COMMENTS

The comments provided by Sierra Club, the National Parks Conservation Association (NPCA) and the US Fish and Wildlife Service (FWS) do not raise "major substantive issues not covered adequately in the EA" or present new alternatives not addressed in the EA so as to warrant revision of the Environmental Assessment (EA) and recirculation for a second round of comments. See DO-12 Handbook at 75. Rewriting and reissuing the EA would not advance the goals of NEPA and would not improve the decisionmaking process for this permit.

The NPS Has Made A Diligent Effort to Involve the Public In this Proposal

The standard set for public involvement in the DO-12 Handbook has been met. The National Park Service (NPS) has been "diligent" in providing the public with an opportunity to participate in the NEPA process. Indeed, this is the third time that the public has had an opportunity to comment on BNP's operations.

- *First*, the NPS prepared a detailed Environmental Impact Statement (EIS) for the Oil and Gas Management Plan of the Seashore. This programmatic analysis provided the public an opportunity to comment on a range of alternatives for existing and anticipated oil and gas operations within the Seashore over a 15-20 year period. The DPEIS was sent to the Sierra Club who failed to comment.
- *Second*, building upon the EIS foundation, the NPS prepared an EA for the Tomato (Dunn-Murdock) well. This was also subject to 30 days of notice and comment. In fact, neither Sierra Club nor NPCA provided any comments on that EA.
- *Third*, the Lemon/Lemon Seed EA was noticed for public comment on April 4, 2002 and transmitted to an interested person's list including Sierra Club and NPCA. Notice of availability of the EA was also published in a local paper soliciting the public's input on the specific proposed operations at the Lemon/ Lemon Seed location and a copy of the EA is available on the NPS web page. Extensive comments were received from non-governmental organizations and federal agencies including FWS.

Thus, consistent with the Handbook, there has been a full and open evaluation of the potential impacts of this project. The NEPA analysis has been tiered and the public has had an opportunity to comment at all levels of the analysis. See 40 C.F.R. § 1502.20. An additional round of comments on a revised EA will not add to the quality of the decisionmaking. "Ultimately, of course, it is not better documents, but better decisions, that count. NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action." Handbook at 8 (citing 40 C.F.R. § 1500.1). Incorporating the comments of Sierra

Club and NPCA into the final decision document will meet these goals while avoiding needless delay in the process.

The Comments Do Not Raise Any New Or Substantive Issues Not Previously Considered By The NPS.

The Handbook requires the NPS to screen comments to "determine whether any important new issues or reasonable alternatives or mitigation measures have been suggested." Handbook at 75. The standard for when a new EA would have to be prepared is based on whether the comments raise "major substantive issues not covered adequately in the EA." *Id.* This is a relatively high standard that prevents the agencies from engaging in an endless cycle of comments on revised drafts. Here, an analysis of the comments received by the NPS do not raise any issues that are sufficiently new or important to warrant reissuance of the EA for further public comment. While the issues may not have been covered to the extent desired by the commenters, they were nevertheless sufficiently identified. As FWS acknowledged, while certain issues ought to be better explained, that can be accomplished by issuing "a Finding Statement that includes a full discussion of how comments were addressed " rather than recirculating a new EA for public comment.

The following addresses the comments received. (See also the attached "Fiction v. Fact on the BNP Lemon/Lemon Seed Permit Application").

- Impacts on sea turtle populations: Contrary to Sierra Club's comments, Table 2 (at 8) and the issues narrative (at 9, § 1.4.3) of the EA specifically identify sea turtle impacts as a discrete issue and note that monitors would be used during the Turtle nesting season. This builds on the EIS generic T/E discussion. See EIS at 4-45 through 4-48. Further, the Section 7 informal consultation process should result in a fuller discussion and analysis of this issue in the Final decision documents.
- Beach closure during turtle nesting season as a discrete alternative: The Handbook does not require that every alternative raised during the comment period be analyzed as a discrete alternative. Under the Handbook, the EA should discuss "reasonable alternatives." Handbook § 5.4(D). That term is defined as " those that are technically and economically feasible and that show evidence of common sense. They also meet project objectives, resolve need, and alleviate potentially significant impacts to important resources." Handbook § 4.5(E)(3). Here, the EA defines project purpose and need as providing "a decision making framework for the NPS to approve the use of parklands for BNP to explore and develop its mineral rights, while protecting and preventing impairment to park resources and values and allowing for visitor experience." EA at 1, § 1.0. The EA alternatives analysis meets that goal by addressing the applicants proposed alternative, the no action alternative (required by the Handbook for comparison purposes) and identified alternatives that were dismissed from further analysis because they would not further the project purpose. The issue of beach access during

the turtle nesting season was specifically addressed within the discussion of the Preferred Alternative (under mitigation measure number 55). Defining beach closure as a discrete alternative and providing further opportunity for public comment in a revised EA would not likely provide any new or additional information for the NPS decision makers.

- Cumulative impacts analysis of 15 potential wells: The EA fully disclosed the cumulative impacts of the alternatives considered, consistent with the criteria in the Handbook and the CEQ regulations. Section 2.9(C) of the Handbook references the section 15-8.7 of the CEQ regulations noting that "as a general rule, the farther removed an action is from the project area or the project start date, the less need there is for a detailed and exact analysis of the action's cumulative impacts." Handbook at 26. Here, the EIS for the final Oil and Gas Management Plan contains a detailed discussion of the cumulative impacts of various programmatic alternatives. Sierra Club failed to comment on that document. Given that the EIS addressed cumulative impacts generically and that the future development of 15 new wells is highly speculative, it was reasonable for the Lemon/ Lemon Seed EA to only address cumulative impacts for that particular well. Further public comment on that issue would not aid the NPS decision makers.
- Visitor use and experience: Section 5.4 of the Handbook states that an EA must focus on "real environmental issues" and be "concise, clear and a useful tool for decision makers." Handbook at 72. Here, Section 3.7 of the EA addressed "Impacts to Natural Landscapes." The EIS also fully considered Impacts to Visitor Experience on various generic alternatives. None of the comments present any significant new information that would trigger the need for further public comment.

The EA Should Not Be Further Expanded

As acknowledged in the Handbook, the NEPA regulations require that the documents be "concise, clear, and to the point." Handbook at 6 (citing 40 C.F.R. § 1500.02). By definition, an EA is a "concise" document that serves to "briefly provide sufficient evidence and analysis" for determining whether to prepare an EIS. See 40 C.F.R. § 1508.9. Towards these ends, the EA must provide "brief discussions . . . of the environmental impacts of the proposed action and alternatives." 40 C.F.R. § 1508.9(b).

The CEQ's Forty Most Asked Questions notes that "[w]hile the regulations do not contain page limits for EAs, the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages." Question 36(a). The CEQ further explains:

Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9

and where it is extremely difficult to determine whether the proposal could have significant environmental effects.

Question 36(b). Moreover, the Handbook cautions that, "[a]n EA that is longer than 50 pages may just be an EIS in disguise." Handbook at 70. Therefore, the suggested maximum length of an EA is 50 pages. Finally, when the NEPA analysis is tiered, the level of detail in the project-specific EA is not as detailed.

Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.

40 C.F.R. § 1502.20.

The Lemon/Lemon Seed EA is already 49 pages long. Further expansion of this document would thwart the fundamental goal of providing the public a brief, and concise statement of the impacts and alternatives. The level of detail of the draft EA is sufficient to afford the public a clear picture of the potential impacts of this project and the range of alternatives reviewed. Further expansion of this discussion would not appreciably add to the decisionmaking process.

Further Delay Would Conflict With Executive Order 13211's Requirement that Energy-Related Projects Receive Expedited Review

Revising the EA and allowing for another 30 days of public comment would directly conflict with Executive Order 13212. See Executive Order No. 13212, 66 Fed. Reg. 28,357 (May 18, 2001) ("Actions to Expedite Energy-Related Projects"). EO 13212 requires that there be no further delay in this process. See 66 Fed. Reg. at 28357. The EO states:

For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

Id. Another round of unnecessary drafting and comment would thwart the goals of the EO.

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FICTION VS FACT ON THE BNP LEMON/LEMON SEED
PERMIT APPLICATION

Fiction: Trucks will make as many as 40 trips per day for a period of 141 days.

Facts: Actual beach traffic will be much less than alleged. BNP has voluntarily limited the number of trucks to about a third of the ideal number of vehicles for the operations, and far less than the alleged number. A total of 83 loads will be needed to move the rig to the next location. This will take place over a period of about five days. In addition, all BNP vehicles will travel in convoys where feasible. During this time, BNP will deploy additional trained sea turtle monitors along the four-mile affected stretch of beach. Relocation of the rig directly from the Tomato site to the new Lemon/Lemon Seed site will reduce traffic by moving the 83 loads four miles along the beach instead of moving the entire 14 miles out of PINS and then moving the same 83 loads back in to the new location at a later date. Storing solids and excess liquids on location until after turtle nesting season will reduce future traffic (after the rig mobilization has been completed) to an absolute minimum.

Fiction: The impacts of the trucks are greater than that of "ordinary" vehicles.

Facts: Unlike the public, BNP's trucks are restricted to 10-15 mph and will have ATV escorts driven by trained sea turtle monitors. In addition, BNP's trucks only operate during the day, and BNP has equipment on the beach to repair all ruts as they occur.

Fiction: BNP's operations will: (1) interfere with mating and imprinting through introduction of noise, vibrations, smells, and night-time activity, (2) cause direct injuries to sea turtles, egg clutches or hatchlings, (3) create ruts that pose obstacles to hatchlings safely reaching the ocean, and (4) compact sand and create ruts, preventing breeding and egg laying.

Facts: None of these impacts are expected to occur due to the following actions undertaken by BNP: (1) no excessive noise, vibrations or pollution will be caused by the operations, (2) all oversized vehicles will be escorted by ATVs driven by sea turtle-trained operators, (3) vehicles will not drive close to the dunes where turtles lay their eggs, (4) hatchlings are not released anywhere near BNP's operations and, in any event, ATV monitors are trained to spot them if they do appear, (5) all BNP personnel are trained in sea turtle awareness, (6) all ruts will be smoothed over by BNP and are further smoothed frequently by wave action, and (7) all lights are shielded and directed. In addition to these points, it should be noted that renowned Kemp's ridley salvage expert Donna Shaver has played an integral role in the development of BNP's operational plans and is consulted frequently as the operations are carried out. Finally, it should be noted that a BNP contractor found one of the first nests after following the correct protocol, resulting in the recovery of over 90 eggs, and that the Padre Island National Seashore already has experienced record nesting this season (18 nests discovered to date).

Fiction: BNP's operations are "impairing" the Seashore.

Facts: The PINS legislation preserves the dominance of the mineral estate. BNP's mineral exploration is consistent with the purposes of the PINS. An off-shore rig would result in greater view shed impacts. The rig is located behind the dune, and is barely visible unless you are right near it. BNP has employed a diesel electric rig and greatly reduced noise impacts. Shielded, directional lighting avoids impacts to night sky and visitor experience.



PETROLEUM CORPORATION.

May 15, 2002

VIA U. S. MAIL

Ken McMullen
Padre Island National Seashore
P.O. Box 181300
Corpus Christi, TX 78418-1300

RE: BNP Petroleum Corporation's response to comments
Lemon/Lemon Seed Plan of Operations
Padre Island National Seashore, Texas

Dear Mr. McMullen:

Pursuant to our prior conversations, please allow this letter to serve as BNP Petroleum Corporation's response to comments concerning the proposed operation identified in the referenced Plan of Operations. Padre Island National Seashore ("PINS") and/or U. S. Fish & Wildlife Service ("FWS") have specifically requested that BNP address certain issues in this correspondence. As such, this letter will be divided into four parts. Part One will address the impacts to oil and gas operations associated with a seasonal beach closure. Part Two will address the potential reduction in impacts associated with heavy truck traffic associated with mobilizing the existing rig and equipment directly from the current Dunn/Murdock location to the Lemon/Lemon Seed location. Part Three will discuss the additional mitigation measures and techniques that BNP is prepared to employ in order to further reduce truck traffic and in order to further protect against any possible impacts to nesting sea turtles. Finally, Part Four will specifically address some of the public comments objecting to the proposed operation.

I. Impacts Associated with Seasonal Beach Closure

A seasonal beach closure during the summer would have tremendous negative impacts on any proposed oil and gas operations. A beach closure would effectively prohibit access to substantially all of Padre Island National Seashore during the term of the closure. A beach closure during sea turtle nesting season would force all operations to be conducted during the peak of hurricane season and/or during the height of the winter nesting season for the Piping Plover. Obviously, conducting operations during hurricane season increases the likelihood for catastrophic damage to both humans and sensitive PINS resources through the increase potential for spills, etc. Likewise, pushing operations into the peak of the winter Plover nesting season increases concerns over potential impacts to yet another endangered and/or threatened species.

Mineral owners have a legal right of access to Padre Island National Seashore for the purposes of exploration due to the fact that the federal government did not purchase the minerals underlying the Park, and based upon the state and federal regulatory framework pursuant to which the national seashore was established. The legal rights of minerals owners are contrasted with the privilege granted to the general public by PINS. Thus, BNP's right of access is protected by law, while the public's access to the beach is

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not. Many of the concerns associated with BNP's operations during the sea turtle nesting season apply to the general public. Indeed, most of the general public has not been educated through sea turtle awareness training, unlike the employees and contractors of BNP. Further, there are no monitors escorting the general public up and down the beach, while BNP has trained monitors escorting all of the larger trucks to and from location. Finally, the general public is authorized to travel at greater speeds (25 mph) up and down the beach than the speeds to which BNP has voluntarily restricted itself (15 mph). Thus, it seems that any consideration of a beach closure reasonably should apply to the public at large to a much greater extent than it should apply to BNP insofar as the public at large is not subject to the monitoring, training and reduced speed restrictions designed to ensure the safety of nesting sea turtles. This inconsistent standard advocated by certain groups is troubling.

Operationally, a seasonal beach closure would pose many difficulties for companies such as BNP. Some of such difficulties may be summarized as follows:

1. A seasonal ban could actually increase truck traffic associated with oil and gas operations. Without a seasonal ban, operators can make use of efficiencies created by moving the drilling rig and equipment one time, and by potentially moving such rig and equipment to subsequent locations directly without mobilizing out of the Park only to return at a later date. With a seasonal beach closure in effect, operators would be faced with the possibility of having to move a rig in prior to the seasonal beach closure only to shut down an operation in midstream and to move the rig out during the beach closure. Then, the operator would have to move the rig and equipment back into location a second time following the seasonal beach closure. Thus, what could have been done absent a seasonal beach closure in one round trip would result in at least two round trips for each operation being conducted.
2. A seasonal beach closures increases what is already a very uncertain process in terms of timing. Based upon results to date, it takes operators approximately six (6) months to finalize any given permit to conduct oil and gas exploration activities at Padre Island National Seashore. Due to substantial uncertainty and inherent delays, it is very difficult to estimate when any given permit will actually be issued. Thus, temporary closures could actually have a much greater impact on BNP's operations. For example, if BNP attempted to secure a permit in January with the objective of completing operations before a restricted season that might begin in April, and the permit was delayed until February, BNP may actually delay until after the seasonal ban in order to avoid the possibility of the operations spilling over into the restricted season. This would effectively result in a much greater ban than simply the 2-3 months, and one must bear in mind that oil and gas leases in the State of Texas are customarily for short terms (3-5 years). The difficulties in assessing sites to drill, securing rigs, equipment and personnel to drill wells, and the already lengthy permitting process already present challenges to operators to perpetuate leases under the existing rules and regulations. A seasonal ban would only further decrease the likelihood that operators will be able to comply with the time restrictions in oil and gas leases in conducting activities within the National Seashore.
3. A seasonal beach closure would substantially hinder scheduling for multi-well programs. Subcontractors, personnel and rig operators would find other work sites if shut down by BNP for a substantial time period.
4. In the case of producing wells, a seasonal ban on beach access would result in wells being shut in due to the operator's inability to transport liquids to and from the well locations. The shutting in

of producing wells for long periods of time eliminates all cash flows associated with the operations. Additionally, such action has the potential to cause damage to the subsurface reservoir limit and to the ultimate hydrocarbon recovery.

In summary, the increased uncertainties that would be associated with a seasonal ban would create tremendous operational hardship and financial hardship on oil and gas operators. Indeed, a seasonal ban on beach access could very well make otherwise economic projects uneconomic, and such a ban could be considered an unconstitutional taking of otherwise valuable mineral resources.

II. Advantages Associated with Mobilizing Rig and Equipment Directly to Lemon/Lemon Seed Location

As we have previously discussed, removal of the current rig and equipment situated at the Dunn/Murdock well site will necessitate transportation of 83 loads of 18-wheeler trucks approximately 14 miles north along the beach. Obviously, these loads can be moved in a coordinated fashion over several days of daylight only operations. However, to the extent the Lemon/Lemon Seed Plan of Operations is approved in a timely fashion, the current rig and equipment can be transported to the new location. This would involve moving the vast majority of the 83 truck loads of rig and equipment only four (4) miles north along the beach. Thus, by moving the rig and equipment to the new location, a substantial amount of truck traffic would be avoided until after the peak turtle nesting season has come and gone.

In assessing the benefits of moving the rig and equipment directly to the next location, an inquiry has been made as to the possibility of leaving the rig and equipment situated at the current location for an extended time period until sea turtle nesting season is over. This would have two serious detrimental effects on BNP's operations. First, by leaving the rig and equipment at the current location, BNP would be unable to set up its production facilities for the current well due to a lack of space on the existing pad. Thus, BNP will be put in the situation of having spent millions of dollars in preparing for and drilling the current well without being able to place the well to sales and to realize cash flow from such efforts. Operationally, leaving a completed well shut-in due to an inability to set up production facilities has the potential to cause damage to the subsurface reservoir. Such damage would in essence be a taking of the minerals insofar as the hydrocarbons could not be produced due to reservoir damage.

In addition to the lost economic opportunity associated with leaving the rig and equipment idle on the current location for an extended duration, BNP would incur standby charges for the rental of the drilling rig and other equipment in an approximate amount of \$25,000.00 per day. BNP would be able to idle the rig and equipment for approximately two weeks without incurring such charges. However, any extended downtime would result in the daily charges estimated above.

III. Additional Mitigation Measures Contemplated by BNP

At the suggestion of the PINS officials, BNP has agreed to deploy its monitors on 4-wheel all terrain vehicles instead of the current practice of having monitors driving in pick up trucks. This will substantially increase the field of vision of the monitors in order to better spot sea turtles, nests and/or tracks. Additionally, during the time periods of increased traffic when the rig and equipment is mobilized from the current location to the Lemon/Lemon Seed location, BNP can deploy additional monitors along the 4-mile stretch of beach in order to provide further safe guards to prevent impacts to turtles. Also, during the hauling of caliche necessary for building the road and pad for the Lemon/Lemon Seed location,

BNP will coordinate with PINS and schedule the truck traffic during daylight hours only and at time periods designed to minimize the likelihood of encountering nesting turtles.

Operationally, BNP estimates that by storing drilled solids and excess liquids in a lined pit on the location for the Lemon/Lemon Seed operation, BNP can defer an estimated 125 18-wheeler truckloads of traffic until after the peak turtle season. BNP estimates approximately 75 loads of solids hauling would be deferred, and 50 loads of liquids hauling would be deferred. In addition to the deferred traffic, BNP would eliminate the need all together for approximately 10 loads of frac tanks and three loads of open top tanks. However, this elimination would be offset by the need for approximately 10 loads of additional caliche in building the location in order to expand the pad and to create a berm around the solids and liquids storage area. Attached to this letter is a revised version of the drilling rig plat contained in the Lemon/Lemon Seed Plan of Operations. The plat depicts a slightly larger pad size in order to accommodate what would be a lined area surrounded by a berm where drilled solids and excess liquids would be stored during operations. The existing pad would have to be expanded by approximately 10 to 20 feet in order to provide enough area for the storage of the drilled solids and excess liquids.

In summary, direct mobilization from the existing well site to the Lemon/Lemon Seed well site, combined with the storage of drilled solids and liquids on location for removal after turtle nesting season will result in an overall reduction in 18-wheeler truck traffic necessary during turtle nesting season by approximately 200 truckloads. Those trips that are essential will be accompanied by increased turtle monitors.

IV. Response to Public Comments

BNP has reviewed the public comments submitted by the following: Sierra Club; National Parks Conservation Association; Patricia H. Sutter on behalf of the Coastal Bend Sierra Club and the Coastal Bend Environmental Coalition; and Johnny French. This section represents BNP's general response to such comments.

All of the above referenced comments represent conclusions that BNP's activities will adversely effect sensitive park resources. Yet these conclusions are not supported by any facts. Admittedly, BNP's operations will result in nominal temporary impacts. However, BNP has taken operational measures to mitigate all of these impacts in order to avoid any impairment to Park resources. Furthermore, during scoping and throughout the permit process, BNP and PINS officials thoroughly analyzed alternatives to the proposed operation. The results of such analyses indicated that the alternatives considered would result in more severe impacts to Park resources than the temporary impacts associated with the proposed operation that can be fully mitigated.

Specifically, the alternative of an offshore drilling location outside of the Park boundaries would result in substantial impacts to Park visitors' experiences. In order to accomplish this result, a shallow water offshore jack-up rig would have to be set within one mile of the beach posing a substantial visual presence to the Park visitors. This contrasts starkly with the proposed location behind the dune lines that will be barely visible during drilling, and that will be invisible without traveling behind the primary dune line in the event of a producing well. An offshore platform would be a permanent structure in the event a producing well is established. A second reason for avoiding the use of an offshore drilling platform is due to the subsurface geology. By using the proposed location, BNP is able to target multiple subsurface objectives in drilling a single well bore from west to east. By using an offshore platform based operation, BNP would have to drill multiple wells using multiple platforms to test the same objectives.

As discussed earlier, a beach closure during sea turtle nesting season would result in operators being forced to conduct activities during the volatile hurricane season and/or during the wintering season for the threatened Piping Plover. The concerns associated with operating during these seasons are no less than those associated with protecting and preserving nesting sea turtles, and by law, operators must be provided reasonable access for the contemplated mineral exploration. BNP is taking significant mitigation measures to ensure that no impacts to the nesting sea turtles will occur. These measures include sea turtle awareness training for all personnel involved on location, trained monitors leading all oversized vehicles to and from location on 4-wheel all terrain vehicles, additional monitoring during mobilization, the requirement that all vehicles associated with BNP's operation travel at speeds 10 miles per hour below the posted speed limit, and the placement of front-end loaders along the beach access route to immediately smooth any rutting caused by BNP's vehicular traffic.

It is worth noting again the general public has free access to the beach during sea turtle nesting season on a 24 hours a day, 7 days a week basis, and such access is unencumbered by any of the mitigation measures noted above. Further, there has been no evidence submitted whatsoever that BNP's activities inhibit sea turtle nesting or represent a threat to such activities. Indeed, the evidence to date is quite to the contrary. Last year, Padre Island National Seashore discovered a total of three Kemp's ridley sea turtle nests. To date, during BNP's operations a total of 11 Kemp's ridley sea turtle nests have been found within Padre Island National Seashore, and the nesting season is less than half over. Indeed, the first of these nests was found with the assistance of a BNP contractor, Tommy Paxton, who followed the established protocol and assisted in the recovery of some 90 eggs.

The adverse public comments received urge the National Park Service to look at the cumulative effects of the many operations that are speculated to occur over the next several years. The cumulative effects associated with reasonably foreseeable developments scenarios have already been thoroughly analyzed in the Park Service's Oil and Gas Management Plan/Environmental Impact Statement dated March 2000. This programmatic analysis will be supplemented by permit-specific analyses when such information becomes available as the project progresses. Such permit-specific analyses will, in turn, build upon the base of the programmatic analysis and of previous analyses. As indicated in the comments by Mr. Johnny French, the NPS Organic Act prohibits impairment of Park resources "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." The standard clearly contemplates discretionary decision making by the Park manager after a careful analysis of the facts. This standard of discretionary decision making was properly implemented in the case of the Dunn/Murdock Plan of Operations and is entitled to substantial deference.

Mr. French's comments further quote the NPS Organic Act as indicating that "NPS must leave Park resources and values unimpaired, **unless a particular law directly and specifically provides otherwise.**" Here, specific laws clearly contemplate Padre Island National Seashore providing reasonable access to the mineral owners. Indeed, the Padre Island National Seashore enabling legislation provides that the Secretary of Interior "shall permit a reservation by grantor of all or a part of the oil and gas minerals in such land or waters and of other minerals therein that can be removed by similar means **with the right of occupation and use of so much of the surface of the land or waters as may be required by all purposes reasonably incident to the mining or removal of such from beneath the surface of these lands and waters and the lands and waters adjacent thereto, under such regulations as may be prescribed by the secretary with respect to the mining or removal.**" The enabling legislation clearly contemplates continued access for oil and gas activities as consistent with the establishment of the Seashore. Additionally, the State of Texas enabling legislation is instructive in this regard. Such

legislation provides that the State when authorizing the acquisition of Padre Island National Seashore by the federal government clearly preserved the dominance of the mineral estate under Texas law as a condition of such acquisition, and the federal government, by accepting this condition, acquiesced to the access that must be provided to the mineral owner.

As the Park Service has indicated in its written materials, Congress specifically mandated when Padre Island National Seashore was created that the mission of preservation of national resources must co-exist with responsible mineral development. The current plan, with the stipulations and conditions contained in the environmental assessment meets this mandate, complies with federal and state law, and is a reasoned and well thought out approach to balancing the need to protect and preserve the environment with the need to responsibly produce our domestic energy resources.

BNP appreciates the opportunity to comment on the matters contained herein. Should you require any further information, please do not hesitate to call.

Sincerely,

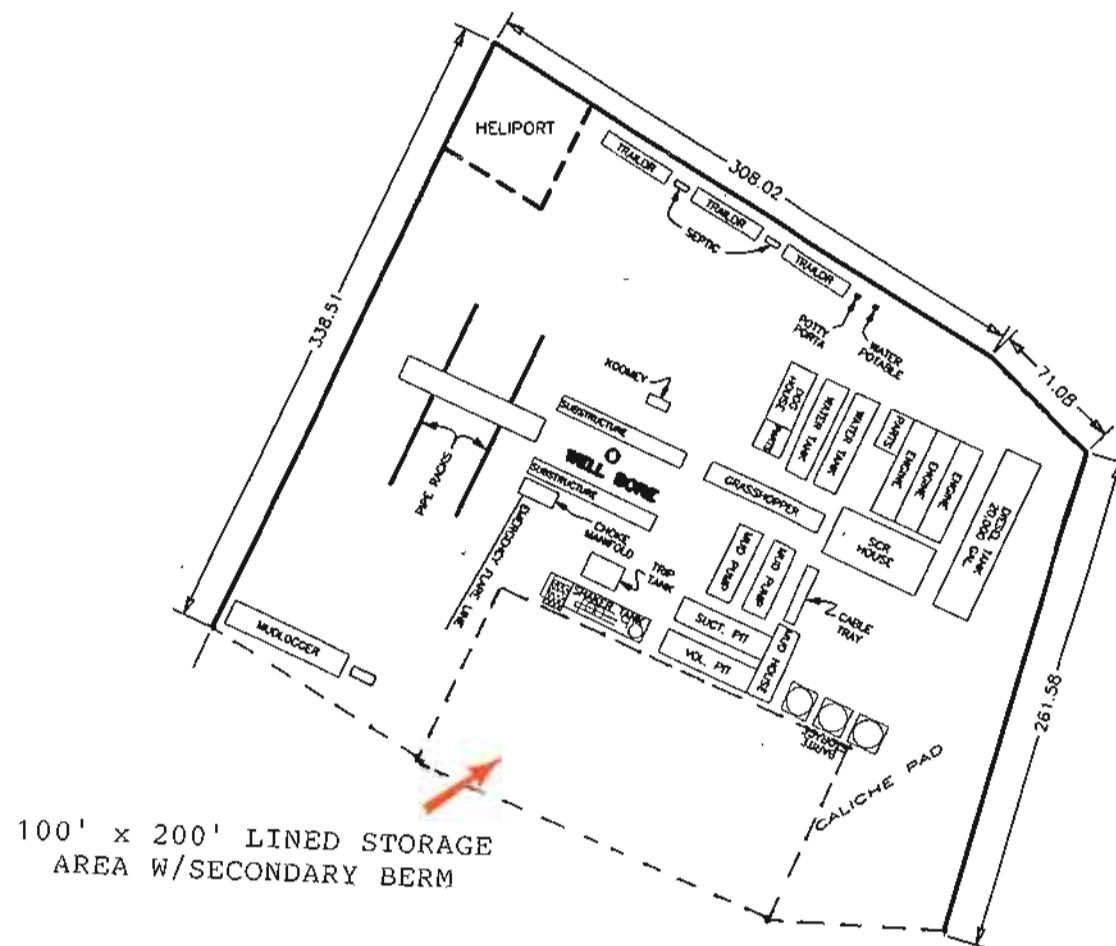
BNP PETROLEUM CORPORATION



H. Scott Taylor
Vice President Land/Regulatory Affairs

cc: Arlene Wimer
Allan Strand, USFWS

PAD REVISION FOR ONSITE
STORAGE OF DRILLED SOLIDS
& LIQUIDS



100' x 200' LINED STORAGE
AREA W/SECONDARY BERM

PLAT OF:

GENERIC RIG PLAT FOR:
BNP PETROLEUM CORP.
LEMON/LEMON SEED UNIT #1 1000S
KENEDY COUNTY, TEXAS

Completion Date: 11/07/01	File Name: 010546Z.DWG
Scale: 1" = 100'	Surveyed by: AW/CW
Drawn by: CH	Checked by: RH

PLOT DATE: 11-07-01 6:34 PM REVISED

INSTRUMENT # 571

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