

**Center for Biological Diversity – Conservancy of Southwest Florida – Earthworks
National Parks Conservation Association – Natural Resources Defense Council
Sierra Club – South Florida Wildlands Association**

May 16, 2014

Pedro Ramos
Superintendent
Big Cypress National Preserve
33100 Tamiami Trail East
Ochopee, Florida 34141

Dear Superintendent Ramos:

On behalf of the undersigned organizations, and our members in Florida and nationwide who are dedicated to protecting federal lands and national park sites, we write to express our concerns about the current status of oil and gas exploration, production, and clean-up activities in the Big Cypress National Preserve (BICY). In particular, our concerns include the lack of updated 36 C.F.R. 9(B) regulations, the lack of a consistent, up-to-date oil and gas management plan for oil and gas activities throughout BICY (a “Preserve-wide Oil & Gas Plan”) and Environmental Impact Statement (EIS) for same, and Burnett Oil Company, Inc.’s (Burnett’s) proposal for geophysical exploration in BICY, as described in its state permit application.¹

National park sites are some of the most special places in America, and our organizations have a long history of working to protect and restore BICY, Everglades National Park (ENP), and the greater Everglades ecosystem. Our priorities include protecting and restoring water flows, wildlife habitat, and the natural abundance of flora and fauna in and around BICY.

Upon its establishment, BICY was envisioned as “a nationally significant ecological resource” and “a primitive area where ecological processes are restored and maintained.”² It was set aside to ensure the preservation, conservation, and protection of its natural scenic, floral, faunal, and recreational values, and for its importance as a watershed for Everglades National Park. It is home to many important species, including the endangered Florida panther—one of the most endangered mammals in the country—as well as the wood stork, red-cockaded woodpecker, Florida black bear, bobcat, manatee, and rare plants like the ghost orchid. It is also beloved for the many outdoor recreation opportunities it provides. At the same time, there are dozens of existing oil and gas sites, including producing oil wells, plugged wells, dry wells, injection wells, and other older wells of unknown status in BICY.³ The future could bring even more oil and gas development to BICY.

¹ Florida Department of Environmental Protection, Oil and Gas Program Application No. G-169-14 and Environmental Resource Permit Program Application No. 11-0323836-001.

² National Park Service, Big Cypress National Preserve, General Management Plan and Final Environmental Impact Statement, Volume I, 1991.

³ Florida Department of Environmental Protection Oil and Gas Permit Database, Pre-permit Oil and Gas Wells Database, and OCULUS database.

Impacts of Oil and Gas Activities

Every stage of oil and gas development, including exploration, construction, drilling, stimulation, processing, waste management, transportation of materials, ongoing production, plugging and abandonment, and site reclamation can have significant impacts on land, water, air, habitat, and other natural values. These impacts present significant threats to the many sensitive values in BICY, including: (a) wildlife mating, feeding, nesting, spawning, and migration routes, including those for threatened and endangered species; (b) watercourses, streams, wetlands, floodplains, water wells, springs, and other water sources; (c) archeological, historical and cultural resources; (d) opportunities for human recreation; (e) local economies dependent on fishing, recreation, tourism, and other social and economic values; (f) clean air and the airshed; (g) natural beauty, solitude, and visual resources; (h) soils, vegetation, and landscape; (i) the preservation of the natural soundscape of the Preserve; and (j) lands with wilderness characteristics.

It is critical to assess and document the specific impacts of any proposed oil and gas activities in BICY, since technologies, chemicals, equipment and infrastructure have changed and continue to change over time—just as the ecosystems and natural conditions in which they are applied change. Of particular concern in this regard are acidizing and acid fracturing, well stimulation practices involving dangerous acids and potentially other chemicals, including hydrochloric and hydrofluoric acids,⁴ pumped at high pressures into a well. Records show that acidizing has taken place in the Preserve since the 1970s.⁵ It is for these reasons that we are reaching out to you to express our concerns about the ongoing oil and gas activities in BICY.

Present Oil and Gas Regulatory Scheme in BICY

Congress authorized BICY on October 11, 1974. The original boundary of BICY is presently governed by a General Management Plan, including a Minerals Management Plan (MMP) regulating Oil and Gas activities, and an EIS dating from 1991. Subsequently, the Big Cypress National Preserve Addition Act of 1988 expanded the Preserve by 147,000 acres (the Addition). The Addition is governed by a 2010 General Management Plan and EIS. The 2010 General Management Plan for the Addition states:

“Currently, oil and gas exploration in the Addition is managed in accordance with [the 1998 Lands Exchange Act]. A Preserve-wide oil and gas management plan is currently in preparation by the National Park Service. When completed, this plan will provide guidance for oil and gas exploration for the entire Preserve, including the Addition.”

In effect, oil and gas activities within the entirety of BICY are governed by the 1991 MMP, a plan that is more than 23 years old. That 1991 MMP requires NPS to follow a process outlined in 36 C.F.R. 9(B).

⁴ Hydrofluoric acid is extremely toxic and exposure to it can be life threatening. The hazards of hydrofluoric acid are unique among other inorganic acids because the fluoride ions penetrate quickly and deeply into the body. At low concentrations, such as those used in the oil and gas industry, the symptoms of exposure may be delayed by up to a day, meaning that extensive damage may be done before harm is detected.

⁵ “Calumet Florida, Inc. Master Plan of Operations,” prepared by Calumet Florida, Inc. November 30, 1994.

Lack of Updated 36 C.F.R. 9(B) Regulations

The Preserve presently follows a process outlined in 36 C.F.R. 9(B), a rule promulgated in December 1978, to regulate non-federal oil and gas activities in all units of the national park system. In general, these regulations require non-federal parties to submit a “Plan of Operations,” or “POP,” for proposed oil and gas activities on federal lands. However, the federal regulatory process for reviewing POPs is now 40 years old, and thus long outdated in light of recent advances in oil and gas technology. Indeed, in November 2009, the NPS initiated rulemaking to modify this regulation, which some of our organizations commented on but which NPS has not finalized.

The undersigned are therefore extremely concerned and urge NPS to expedite the process of finalizing the modifications to 36 C.F.R. 9(B) regulations through an EIS. We support stronger statutory environmental protections than the outdated 36 C.F.R. 9(B) regulations and an EIS which includes a thorough, scientific analysis of all of the modern techniques for performing oil and gas exploration, including seismic testing through vibroseis, as well as all extraction and clean-up methods. Such stronger rules are necessary to adequately protect BICY during any future oil and gas activities.

Lack of an Up-to-Date, Preserve-wide Oil and Gas Management Plan and EIS for BICY

We are also concerned at the lack of an up-to-date, Preserve-wide Oil & Gas Plan to replace and supersede the 1991 MMP and 1998 Lands Exchange Act. We urge NPS to expedite the development of a Preserve-wide Oil & Gas Plan specific to BICY in addition to an updated set of 36 C.F.R. 9(B) regulations, and to expedite an EIS for the new Preserve-wide Oil & Gas Plan that includes a thorough analysis of the modern techniques for performing oil and gas exploration (including seismic testing through vibroseis), extraction, and clean-up activities. A new EIS should consider conservation alternatives that go beyond current NPS requirements.

We support a Preserve-wide Oil & Gas Plan for BICY with stronger environmental protections than the long outdated 1991 MMP. A more environmentally protective Preserve-wide Oil & Gas Plan for BICY would be consistent with BICY’s enabling legislation, which clearly states that the Preserve was created “in order to assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed in the State of Florida and to provide for the enhancement and public enjoyment thereof,” despite non-federal mineral ownership.

Moreover, while the enabling legislation for BICY accounts for oil and gas activities within the Preserve by mineral in-holders, it also explicitly authorizes the Secretary to acquire any lands, waters, or interests therein which are located within the boundaries of the Preserve and the Addition. For the above reasons, we also believe that a thorough EIS for an updated, Preserve-wide Oil & Gas Plan should consider as one alternative a buy-out option of the mineral estate in-holdings in BICY, and a complete ban of oil and gas activities on fully federally owned lands within BICY.

Burnett's Proposal for Seismic Testing in BICY

There are several ongoing oil and gas activities within BICY of concern to the undersigned, including a proposal by Burnett Oil Company, Inc., to perform seismic testing for oil in BICY.

In particular, Burnett has submitted a state permit application (Application G-169-14) to Florida's Department of Environmental Protection (FDEP) to perform geophysical exploration on 366 square miles, or approximately one-third, of BICY. While NPS may not yet be considering a formal Plan of Operations for this proposed project pursuant to 36 C.F.R. 9(B), we want to let you know of our concerns as early in the process as possible.

Based on information provided in the state permit application, the proposed source and receiver lines could total more than 1500 miles of disturbance in the Preserve in Phase I alone.⁶ The type of geophysical exploration proposed by Burnett—3-D seismic surveys using vibroseis—can cause significant environmental impacts. These include: removal of large amounts of trees and other vegetation; surface and sheet flow disturbance from vehicle paths of vibroseis trucks that may weigh up to 62,000 pounds,⁷ cut lines, helicopter and equipment staging areas;⁸ noise from helicopters, vehicles, engines, and generators; and reduced access for visitors. The cut lines can be equivalent to roads, and range in size up to fifty feet wide.

If NPS has not finalized a new Preserve-wide Oil & Gas Plan or a new set of 36 C.F.R. 9(B) regulations that include a thorough, scientific analysis of the impacts of vibroseis by the time Burnett submits a complete POP for such testing, NPS will be relying on the outdated MMP and regulations which do not properly account for the significant negative impacts to the human environment caused by seismic testing by vibroseis. Therefore, an EIS should be conducted for Burnett's POP pursuant to the National Environmental Policy Act (NEPA). The scope and gravity of the impacts of the Burnett proposal will potentially cause significant impacts on the human environment that will exceed well beyond what can be analyzed in an Environmental Assessment (EA).

Regardless of the status of an up-to-date Preserve-wide Oil & Gas Plan or updated 36 C.F.R. 9(B) regulations, review of any POP submitted by Burnett for the Nobles Grade 3-D Seismic Survey outlined in Application G-169-14 should also require a formal consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service pursuant to Section 7 of the Endangered Species Act (ESA), as well as review and consultation with other agencies pursuant to all other applicable governing laws to ensure the protection of our precious environmental, cultural, historical, and biological resources, prior to the approval or rejection of such POP.

⁶ Calculations based on the following information found in the Nobles Grade 3-D Seismic Survey, Application for Permit to Perform Geophysical Exploration, Permit No. G-169-14, page 3: "The initial survey design for NG3-D PHASE I consists of 64 source lines and 167 receiver lines oriented generally east/west and north/south, respectively. The 64 source lines are approximately 1,155 feet apart with source point station spacing of 82.5-foot intervals. The 167 receiver lines are approximately 495 feet apart with receiver point spacing of 165± feet."

⁷ <http://www.terrexeismic.com/terrex-seismic/equipment/vibroseis-trucks.aspx>

⁸ The state permit application includes a proposal to construct five (5) staging areas, only some of which will be on pre-existing well-pads.

In closing, we urge NPS to diligently begin the process to develop a new Preserve-wide Oil and Gas Plan for BICY, as well as updated 36 C.F.R. 9(B) regulations. Both should include strong environmental protections as well as a thorough analysis of all alternative methods of oil and gas exploration, production, and clean-up, including conservation alternatives such as a buy-out option and complete ban of oil and gas activities on fully federally owned Preserve land. We also support formal consultation under the ESA for the activities proposed by Burnett in Application G-169-14, as well as development of an EIS should Burnett submit a complete POP for same to NPS for review prior to the institution of updated oil and gas regulations and a new Preserve-wide Oil and Gas Plan.

We look forward to working with NPS to ensure the future preservation of BICY for all of its uses and values, and to provide constructive and positive feedback throughout the POP and NEPA processes for all oil and gas activities taking place, or proposed to take place, in BICY. Please feel free to contact the undersigned with any questions or for additional information.

Sincerely,

John Adornato III
Regional Director
National Parks Conservation Association
450 N. Park Road, Suite 301
Hollywood, FL 33021
jadornato@npca.org
(954) 961-1280

Amy Mall
Senior Policy Analyst
Natural Resources Defense Council
1152 15th Street, N.W., Suite 300
Washington, D.C. 20005
amall@nrdc.org
202-513-6266

Jaclyn Lopez
Staff Attorney
Center for Biological Diversity
P.O. Box 2155
St. Petersburg, FL 33731
jlopez@biologicaldiversity.org
(727) 490-9190

Bruce Baizel
Energy Program Director
Earthworks
P.O. Box 1102
Durango, CO 81302
bruce@earthworksaction.org
(970) 259-3353

Jennifer Hecker
Director of Natural Resource Policy
Conservancy of Southwest Florida
1495 Smith Preserve Way
Naples, FL 34102
jenniferh@conservancy.org
(239) 262-0304 x250

Matthew Schwartz
Executive Director
South Florida Wildlands Association
P.O. Box 30211
Ft. Lauderdale, FL 33303
southfloridawild@yahoo.com
(954) 634-7173

Alexis Meyer
Associate Organizing Representative
Sierra Club
Florida Panther Critical Habitat Campaign
alexis.meyer@sierraclub.org
(727) 488-3710

Brian Scherf
1060 Tyler Street
Hollywood, FL 33019
scherfb@bellsouth.net