

May 6, 2021

The Honorable Michael Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Regan,

America's first national preserve, Big Cypress National Preserve — part of the National Park system and a vital part of the Everglades — is under imminent threat from oil development.¹ **We ask that you object to the Burnett Oil Company, Inc.'s Section 404 Clean Water Act permit applications requesting to fill in waters of the U.S. to drill for oil in the Preserve.** The proposed oil extraction activities are not in the public's interest,² and would be inconsistent with President Biden's initiatives to combat the climate crisis; protect public health; conserve our lands, waters, and biodiversity; and deliver environmental justice.³

On December 22, 2020, the Environmental Protection Agency (EPA) published in the Federal Register notice of its approval of the state of Florida's application to assume jurisdiction over the Clean Water Act's Section 404 permitting program.⁴ Therefore, the Florida Department of Environmental Protection (FDEP), not the U.S. Army Corps of Engineers, is reviewing the oil company's applications proposing to fill in waters of the U.S. in this national park unit. These applications are some of the first submitted under Florida's newly assumed program. Nonetheless, EPA may, and should, provide comments identifying its views regarding compliance with the Section 404(b)(1) Clean Water Act Guidelines. FDEP must consider and address EPA's views regarding any proposed permit conditions, or objections when determining

¹ Burnett Oil Company, Inc. has submitted two applications to the Florida Department of Environmental Protection seeking Clean Water Act § 404 permits to fill in wetlands in Big Cypress National Preserve to build new oil well pads and access roads (Application Nos.: 323836-004 and 397879-002).

² The activities would require a Section 404 Clean Water Act permit as they would require filling in Waters of the U.S. and in endangered species' habitats, but the action is not water-dependent. 42 Fed. Reg. 37136 (codified at 33 C.F.R. § 320.4(b)(1)).

³ The White House, *Executive Order on Tackling the Climate Crisis at Home and Abroad*, Section 208 (January 27, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

⁴ 85 Fed. Reg. 83,553 (Dec. 22, 2020); Several conservation organizations are challenging the EPA's actions in *Center for Biological Diversity v. U.S. Environmental Protection Agency*, Case No.: 21-cv-119 (D.D.C. January 14, 2021).

whether to issue the requested permits.⁵ Further, EPA has not waived the requirements of Section 404(j) of the Clean Water Act and the regulations adopted thereunder regarding federal review of FDEP permit applications for discharges within critical areas established under state or federal law, including national parks and preserves, and discharges impacting sites that are owned or managed by federal entities.⁶

Congress created Big Cypress National Preserve to conserve and protect the “natural, scenic, hydrologic, floral and faunal, and recreational values” of the Big Cypress watershed and to provide for its enhancement and public enjoyment.⁷ The Preserve is an invaluable part of the Greater Everglades ecosystem, and home to threatened and endangered species like the Florida panther and Florida bonneted bat. It provides approximately 40% of Everglades National Park’s water and recharges underlying aquifers. The Preserve is also home to a great number of cultural and archaeological resources and is utilized by the Miccosukee Tribe of Indians of Florida and Seminole Tribe of Florida for customary and traditional uses.

Despite the resources and values at stake in the Everglades, the Preserve is threatened by new oil drilling. Burnett Oil Company is proposing a new oil well pad south of Interstate 75 with the construction of an access road near a major entrance to the Preserve and the Florida National Scenic Trail, and a second oil well pad less than 500 meters from a Miccosukee Tribe of Indians of Florida reservation.⁸ Both proposed well sites are located in waters of the U.S. and primary Florida panther habitat. These proposed oil wells and their associated land clearing, equipment storage, wetlands filling, hydrologic alterations, staging areas, access roads, drilling rigs, storage tanks, fuel tanks, water wells, disposal wells, reserve pits, grading, erosion, sedimentation, and potential oil spills—on their face—would not be in the public’s interest.⁹

⁵ *Memorandum of Agreement Between the Florida Department of Environmental Protection and the United States Environmental Protection Agency* (July 31, 2020), http://publicfiles.dep.state.fl.us/dwrm/404_Assumption_Application/Assumption_Package/D_EPA_MOA/MOA%20EPA%20Signed.pdf.

⁶ *Id.*

⁷ Pub. L. 93-440, § 1, 88 Stat. 1258 (Oct. 11, 1974), 16 U.S.C. § 690f(a), An Act to Establish Big Cypress National Preserve, as Amended by P.L. 100-301, The Big Cypress National Preserve Addition Act.

⁸ See White House, *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* (January 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-ontribal-consultation-and-strengthening-nation-to-nation-relationships/>.

⁹ 42 Fed. Reg. 37136 (codified at 33 C.F.R. § 320.4(b)(1)).

Notably, and pursuant to permits issued by both FDEP and the National Park Service, Burnett Oil Company has already caused extensive damage to wetlands and endangered species habitats during its first of four planned phases of oil exploration within a 110-square mile area of the Preserve in 2017 and 2018.¹⁰ This damage included soil rutting and compaction by driving 33-ton “vibro-seis” trucks and other off-road vehicles through wetlands, resulting in channelization and individual and cumulative adverse effects on an aquatic function and changes to the bottom elevation of a water of the United States.¹¹ Ancient dwarf cypress trees were also cut down or run over and valuable periphyton was impacted. Burnett Oil Company has not yet completed the required compensatory wetland mitigation or monitoring required by its state and federal permits, demonstrating that the FDEP should not authorize any further oil and gas activities in the Preserve.

We support President Biden’s campaign promise of “banning new oil and gas permitting on public lands and waters,”¹² and the President’s forward-looking climate initiatives, including analyzing “potential climate and other impacts associated with oil and gas activities on public lands.”¹³ Filling in waters of the U.S. to accommodate new oil drilling inside a National Park unit like Big Cypress National Preserve is inconsistent with these initiatives and protecting the Preserve from oil drilling would better serve President Biden’s goal of conserving at least 30 percent of our lands and waters by 2030.¹⁴

The Preserve is a vital part of the Everglades and must not be further degraded if we are to ensure that extensive state and federal investments in Everglades restoration will result in success. We respectfully request that EPA exercise its oversight and enforcement responsibilities and **object to FDEP’s issuance of Burnett Oil Company’s state Section 404 Clean Water Act permits to accommodate oil drilling in Big Cypress National Preserve.**¹⁵ We sincerely

¹⁰ <https://www.nrdc.org/sites/default/files/letter-oil-drilling-big-cypress-20210203.pdf>.

¹¹ The Army Corps of Engineers determined that oil exploration activities should have required a Section 404 Clean Water Act permit, but reversed course a month later following Burnett Oil Company’s correspondence and meeting request. See <https://biologicaldiversity.org/w/news/press-releases/army-corps-abruptly-rescinds-its-position-on-seismic-exploration-in-floridas-big-cypress-2020-04-14/>.

¹² <https://joebiden.com/climate-plan/#>.

¹³ The White House, *Executive Order on Tackling the Climate Crisis at Home and Abroad*, Section 208 (January 27, 2021).

¹⁴ *Id.* section 216.

¹⁵ FDEP agreed to consider and address EPA’s concerns, proposed permit conditions, and objections when determining whether to issue a permit. Further, EPA has not waived the requirements of Section 404(j) and the regulations adopted thereunder regarding federal review of FDEP permit applications for discharges within critical

appreciate your efforts, Administrator Regan, to steward the public lands and waters of this country and are grateful for your time and consideration.

Thank you,



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On behalf of the 82 undersigned organizations:

areas established under state or federal law, including but not limited to national and state parks and preserves, and discharges impacting sites that are owned or managed by federal entities. *Memorandum of Agreement Between the Florida Department of Environmental Protection and the United States Environmental Protection Agency* (July 31, 2020), http://publicfiles.dep.state.fl.us/dworm/404_Assumption_Application/Assumption_Package/D_EPA_MOA/MOA%20EPA%20Signed.pdf.

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