

CERTIFIED MAIL – RETURN RECEIPT REQUESTED



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019
March 6, 2020

Regulatory Division
SAJ-2016-1849 (RJK)

Burnett Oil Company, Inc.
Charles Nagel, President
801 Cherry Street, Unit 9
Ft. Worth, TX 76102

Dear Mr Nagel:

Reference is made to the U.S. Army Corps of Engineers' (Corps) March 1, 2017, No Permit Required (NPR) determination for oil and gas survey activity(ies) within the wetlands of Big Cypress National Preserve ("Preserve"), Collier County, Florida. The survey activity(ies) were proposed by Burnett Oil Company, Inc. The seismic survey project employs Vibroseis technology mounted on trucks to locate subsurface oil and natural gas deposits within the Preserve. The subject oil and gas survey activity was subsequently conducted by Burnett Oil in the spring of 2017 and 2018 within an area measuring approximately 110 square miles of the Preserve. The Corps is aware that Burnett Oil Company may conduct future oil and gas surveys within the Preserve.

Reference is also made to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, that prohibits discharges of dredged or fill material into waters of the United States unless the work has been authorized by a Department of the Army permit. 33 C.F.R. § 323.2 states:

"The term dredged material means material that is excavated or dredged from waters of the United States...the term discharge of dredged material means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States. The term includes, is not limited to, the following: ...iii) Any addition, including redeposit than incidental fallback, dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, other excavation. The term discharge of dredged material does not include... iii) Incidental fallback. Section 404 authorization is not required for the following: (i) Any incidental addition, including redeposit, of dredged material associated with any activity that does not have or would not have the effect of destroying or degrading an area of waters of the United States ...however, this exception does not apply to any person preparing to undertake mechanized landclearing, ditching, channelization and

other excavation activity in a water of the United States, which would result in a redeposit of dredged material, unless the person demonstrates to the satisfaction of the Corps, or EPA as appropriate, to commencing the activity involving the discharge, that the activity would not have the effect of destroying or degrading any area of waters of the United States...The person proposing to undertake mechanized landclearing, ditching, channelization or other excavation activity bears the burden of demonstrating that such activity would not destroy or degrade any area of waters of the United States.

For purposes of this section, an activity associated with a discharge of dredged material degrades an area of waters of the United States if it has more than a de minimis (i.e., inconsequential) effect on the area by causing an identifiable individual or cumulative adverse effect on any aquatic function. Except as specified in paragraph (e)(3) of this section, the term fill material means material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States.

The Corps has received and reviewed information documenting the condition of the wetland areas that were surveyed by Burnett Oil in the Preserve. The Corps also visited the area in January, 2020. Based on the Corps' review of that information and the site visit and based on the definition of dredge material and regulated activity described above, the Corps concludes that the oil and gas exploration activity that was conducted equates to mechanized land clearing, ditching and channelization. The Corps concludes that the survey activity caused an impact that resulted in a change in the bottom elevation of the wetland, that the activity caused an identifiable individual and cumulative adverse effect on aquatic function, and that the survey had the adverse effect of degrading a water of the U.S. Finally, the Corps concludes that the completed survey activities represent a cumulative adverse impact thereby causing a situation that is not de minimis.

Therefore, by means of this letter, the Corps is advising you that any future oil and gas survey activity by Burnett Oil Company in Big Cypress National Preserve should continue to be coordinated with the Corps in accordance with the Clean Water Act. A permit will be required of you unless and until you can demonstrate to the satisfaction of the Corps or Environmental Protection Agency, prior to commencing the activity involving the discharge, that the activity would not have the effect of destroying or degrading any area of waters of the United States.

If you have any questions, please contact me at Robert.J.Halbert@usace.army.mil or by telephone 904-232-2502.

Sincerely,

Robert Halbert
Chief, Compliance and Enforcement

cc:

Robert Kirby, USACE Enforcement

Ingrid Gilbert, USACE, Miami

Chris Parker, USEPA

Tamara Whittington, Superintendent, Big Cypress National Preserve

Stan Austin, Director, Southeast Region, National Park Service

John Inglehart, FDEP