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HERITAGE AND ENVIRONMENT RESOURCES OFFICE

Megan Mills
Florida Department of Environmental Protection
P.O. Box 2549
Fort Myers, FL 33902-2549

Re: Burnett Oil Company's Responses to the First Requests for Additional Information for the Nobles Grade and Tamiami Prospect State 404 and Environmental Resource Permit Applications.

Dear Ms. Mills:

The Seminole Tribe of Florida ("Seminole Tribe") provides these additional comments regarding Burnett Oil Company, Inc.'s ("Burnett") Section 404 and Environmental Resource Permit ("ERP") applications for the Tamiami Prospect (application numbers 0397879-001 and 0397879-002) and Nobles Grade Prospect (application numbers 323836-003 and 323836-004). These comments are provided in response to the Request for Additional Information ("RAI") responses Burnett provided to the Florida Department of Environmental Protection ("FDEP") in 4 letters dated July 22, 2021.

The Seminole Tribe is a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended. The Seminole Tribe's Big Cypress Reservation abuts Big Cypress National Preserve ("BCNP") to the north, approximately 5 miles away from the Nobles Grade Prospect site. BCNP holds great significance to the Seminole Tribe as part of the Tribe's historic and cultural home. As a result, there are sites that hold historic and cultural significance to the Seminole Tribe located throughout BCNP and BCNP's ecological mosaic provides habitat for numerous animal and plant species that also hold cultural significance to the

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Tribe. The Seminole Tribe also has reserved rights for usual and customary use and occupancy of the BCNP, including the right to hunt, fish, and trap on a subsistence basis and the right to perform traditional tribal ceremonials. Big Cypress National Preserve Enabling Legislation, Pub. L. 93-440, §5, (1974). Members of the Seminole Tribe also hold permits to live within BCNP south of the Tamiami Prospect site. Considering this, please accept the following comments:

Tamiami Prospect Site

Section 404 Application:

- 1. Alternatives Analysis:** The alternatives analysis provided by Burnett Oil in response to RAI 3 is incomplete. Florida Administrative Code Section 62-331.053, requires an applicant to provide an alternatives analysis completed as provided in Section 62-331.053 and the State Section 404 Applicant's Handbook. Burnett Oil's response makes reference to "discussions of alternatives" that were included in Burnett's Operations Permit Application to the National Park Service ("NPS") for Drilling and Production as well as the Cultural Resources Assessment Survey ("CRAS"), neither of which were provided along with the RAI Response. We recognize that under Subsection 62-331.053(1)(d), F.A.C., practicable alternatives identified and evaluated under other planning processes shall be considered by the reviewing agency. That provision also provides, however, "where such evaluation does not contain all information required under [Section 62-331.053], the additional information shall be provided to the Agency for review." As written, Burnett's response to RAI 3 does not include all information required under the State 404 Regulations and the 404 Applicant's Handbook. Since Burnett did not provide the other alternatives analysis referenced in RAI response 3 the administrative record is incomplete and we cannot determine whether Burnett needs to provide information to supplement the analysis provided in the NPS Drilling and Production Permit application and the CRAS.
- 2. Secondary and Cumulative Impacts Analysis:** Burnett's Secondary Impacts analysis is incomplete. Burnett's analysis provided in RAI response 4 does not include any analysis on the effects that increased traffic to and from the site will have on wildlife species such

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as the Florida Panther. Further, Burnett’s analysis does not include potential secondary impacts—such as hydrologic impacts and aesthetic impacts—to the ceremonial grounds, which are located in close proximity to the Tamiami Prospect Site. Based on the fact that there are other potential lease sites that could apply, a robust cumulative impact analysis is required to contemplate future impacts.

3. **Mitigation:** Burnett states that it “will finalize vetting the designated mitigation sites” upon commencement of its proposed drilling project. This is unacceptable pursuant to the State 404 rules. Mitigation must be fully designated and vetted prior to permit approval.
4. **Western Everglades Restoration Project (WERP) Effects on Hydrology:** Burnett’s RAI responses related to hydrology do not account for changes in hydrology that WERP will have. WERP is a project in planning under the Comprehensive Everglades Restoration Plan (CERP) that will restore freshwater flow paths, flow volumes and timing, seasonal hydroperiods, and historic distributions of sheetflow to reestablish ecological connectivity and ecological resilience of the wetland/upland mosaic found within Big Cypress National Preserve and the Western Everglades. Although WERP is still in planning, the project is likely to receive Congressional approval and begin construction within the project timeframe for Burnett’s proposed activities. Significant modeling has been performed on the alternative that will become the Tentatively Selected Plan, Alternative H Revised, and the project will likely cause significant changes in the hydrology in the proximity of both the Tamiami Prospect site and the Nobles Grade site. WERP is of great interest to the Seminole Tribe, and it has invested significant amounts of time and resources in assisting in WERP’s planning and development. It is not clear from Burnett’s application or its responses to any of the RAIs whether Burnett’s hydrologic modeling and analysis accounted for changes in hydrology that WERP will cause. If not, please provide updated analysis taking into consideration WERP hydrologic changes.

ERP Application:

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1. **Secondary and Cumulative Impacts:** Burnett’s response to RAI 5 does not address potential impacts to significant historical and archaeological resources, including the ceremonial grounds, located near the Tamiami Prospect site, as the Applicant’s Handbook Volume 1, Section 10.2.7 requires. Based on the fact that there are other potential lease sites that could apply, a robust cumulative impact analysis is required to contemplate future impacts.
2. **Outstanding Florida Waters:** BCNP is designated as an Outstanding Florida Water. Florida Administrative Code Section 62-4.242 prohibits FDEP from issuing permits for any activity or discharge within an Outstanding Florida Water or which, significantly degrades, either alone or in combination with other stationary installations, any Outstanding Florida Waters, unless the applicant affirmatively demonstrates that the proposed activity is clearly in the public interest and the “existing ambient water quality within Outstanding Florida Waters will not be lowered as a result of the proposed activity or discharge, except on a temporary basis during construction for a period not to exceed thirty days; lowered water quality would occur only within a restricted mixing zone approved by [FDEP]; and water quality criteria would not be violated outside the restricted mixing zone.” 62-4.242(2), F.A.C. Among the factors that FDEP must consider when evaluating whether the proposed activity is clearly in the public interest, are whether the activity will adversely affect significant historical and archaeological resources and the current condition and relative value of functions being performed by areas affected by the activity. How will the proposed project meet the this non-degradation requirement?

The public interest analysis Burnett provides in RAI 8 does not address potential affects to the ceremonial grounds located near the Tamiami Prospect site. Additionally, the Seminole Tribe has customary use rights throughout BCNP. Big Cypress has been severely degraded over the years due to fragmentation and over-drainage caused by roads, canals, and other development. These impacts lead to destructive fires and cause other harms that threaten wildlife and plants that are integral to the Seminole Tribe customary uses

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of BCNP. Burnett's public interest analysis does not address why further development and fragmentation of BCNP is clearly within the public interest.

Further, Burnett's public interest analysis indicates that Burnett's project will help meet Florida's demand for energy produced from oil and gas. Please provide evidence that any oil or gas produced at the Tamiami Prospect and Nobles Grade Prospect sites will be used to meet Florida's demand.

Burnett's public interest analysis also states, "FDEP has regularly stated that providing energy is in the public interest" and cites a case from 1994. In the nearly 20 years since that case, our understanding of the public harm caused by the production of energy generated by fossil fuels has advanced significantly such that it is no longer clear that production of energy from fossil fuels is clearly in the public interest.

3. **Historic Discharge Rates:** Applicant's Handbook Volume 2 requires discharge rates to be limited to rates that will not cause adverse impacts and historic discharge rates. Burnett's answer to RAI 18 does not address historic discharge rates.
4. **Runoff Treatment System Design:** RAI 33 asks Burnett to provide a runoff treatment system design or calculations that demonstrate the runoff from the approximately 6 acres of new impervious area will not cause any degradation of the receiving waters. Burnett's response provides neither, and instead indicates that the access road designs are consistent with conservation practice standards outlined by the NRCS, but notes that the proposed design has no roadside swales, which were removed at the direction of NPS. Burnett provides no demonstration that these modified roadways will not cause degradation of the receiving waters.
5. **WERP:** The changes in hydrology around the project area that WERP will cause raise the same issues and concerns for the ERP permit application as they do for the Section 404 Permit application. Any permit application information that relies on hydrologic analysis must consider the hydrologic changes that WERP will cause to avoid potentially costly

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impacts in the future, this includes but is not limited to RAI responses 2, 5, 8, 18, 36, 37, and 38.

Nobles Grade Prospect

Section 404 Application:

- 1. Alternatives Analysis:** The alternatives analysis provided by Burnett Oil in response to RAI 3 is incomplete. Florida Administrative Code Section 62-331.053, requires an applicant to provide an alternatives analysis completed as provided in Section 62-331.053 and the State Section 404 Applicant's Handbook. Burnett Oil's response makes reference to "discussions of alternatives" that were included in Burnett's Operations Permit Application to the National Park Service ("NPS") for Drilling and Production as well as the Cultural Resources Assessment Survey ("CRAS"), neither of which were provided along with the RAI Response. We recognize that under Subsection 62-331.053(1)(d), F.A.C., practicable alternatives identified and evaluated under other planning processes shall be considered by the reviewing agency. That provision also provides, however, "where such evaluation does not contain all information required under [Section 62-331.053], the additional information shall be provided to the Agency for review." As written, Burnett's response to RAI 3 does not include all information required under the State 404 Regulations and the 404 Applicant's Handbook. Since Burnett did not provide the alternatives analysis referenced in RAI response 3 the administrative record and permit application is incomplete. Burnett needs to provide the alternatives analysis that was provided to the NPS for review so that DEP can determine whether additional information is needed to supplement the analysis for 404 purposes.
- 2. Secondary and Cumulative Impacts Analysis:** Burnett's Secondary Impacts analysis is incomplete. Burnett's analysis provided in RAI response 4 does not include any analysis on the effects that increased traffic to and from the site will have on wildlife species such as the Florida Panther.. Based on the fact that there are other potential lease sites that

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could apply, a robust cumulative impact analysis is required to contemplate future impacts.

3. **Mitigation:** Burnett states that it “will finalize vetting the designated mitigation sites” upon commencement of its proposed drilling project. This is unacceptable. Mitigation must be fully designated and vetted prior to permit approval.
4. **WERP:** Burnett’s RAI responses related to hydrology do not account for changes in hydrology that WERP will have. WERP is a project in planning under the Comprehensive Everglades Restoration Plan (CERP) that will restore freshwater flow paths, flow volumes and timing, seasonal hydroperiods, and historic distributions of sheetflow to reestablish ecological connectivity and ecological resilience of the wetland/upland mosaic found within Big Cypress National Preserve and the Western Everglades. Although WERP is still in planning, the project is likely to receive Congressional approval and begin construction within the project timeframe for Burnett’s proposed activities. Significant modeling has been performed on the alternative that will become the Tentatively Selected Plan, Alternative H Revised, and the project will likely cause significant changes in the hydrology in the proximity of both the Tamiami Prospect site and the Nobles Grade site. WERP is of great interest to the Seminole Tribe, and it has invested significant amounts of time and resources in assisting in WERP’s planning and development. It is not clear from Burnett’s application or its responses to any of the RAIs whether Burnett’s hydrologic modeling and analysis accounted for changes in hydrology that WERP will cause. If not, please provide updated analysis taking into consideration WERP hydrologic changes. WERP analysis is implicated by RAIs 6 and 7.

ERP Application

1. **RAI 1:** Burnett’s response indicates that it has not yet determined the most practicable route from the Mile Marker 63 Rest Area through NPS and Florida Department of Transportation lands. Yet, Burnett’s alternatives analysis, provided in the Nobles Grade

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Section 404 RAI does not indicate this to be the case. Please provide clarification on whether Burnett has determined which route is the most practicable route and any analysis that went into this determination.

2. **Outstanding Florida Waters:** Burnett's public interest analysis for the Nobles Grade Prospect site is lacking for the same reasons that were discussed above for the Tamiami Prospect site. Thus, those same comments apply here, except Nobles Grade is not located near a ceremonial site that we are aware, so those concerns are limited to the Tamiami Prospect site. How will the proposed project meet the non-degradation requirement?
3. **Historic Discharge Rates:** Applicant's Handbook Volume 2 requires discharge rates to be limited to rates that will not cause adverse impacts and historic discharge rates. Burnett's answer to RAI 17 (5 in the stormwater portion of the response) does not address historic discharge rates.
4. **Runoff Treatment System Design:** RAI 30 (18 in the stormwater portion of the response) asks Burnett to provide a runoff treatment system design or calculations that demonstrate the runoff from the approximately 15 acres of new impervious area will not cause any degradation of the receiving waters. Burnett's response provides neither, and instead indicates that the access road designs are consistent with conservation practice standards outlined by the NRCS, but notes that the proposed design has no roadside swales, which were removed at the direction of NPS. Burnett provides no demonstration that these modified roadways will not cause degradation of the receiving waters.
5. **WERP:** The changes in hydrology around the project area that WERP will cause raise the same issues and concerns for the ERP permit application as they do for the Section 404 Permit application. Any permit application information that relies on hydrologic analysis must consider the hydrologic changes that WERP will cause to avoid potentially costly impacts in the future, this includes but is not limited to RAI responses RAIs 2, 3, 5, 17 (numbered 5 in the stormwater portion of the response), 30 (18), 32 (20), 34 (22), and 35 (23).

The Seminole Tribe has significant interest in these applications and the areas that will be negatively impacted as a result of the proposed activities. We respectfully request that DEP

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include our comments and additional questions as part of your next iteration of RAI letters on the applications.

Sincerely,



Paul Backhouse, Ph.D., RPA

Senior Director, Heritage and Environment Resources Office and Tribal Historic Preservation officer, Seminole Tribe of Florida

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