

**TESTIMONY OF STEVE GUERTIN, DEPUTY DIRECTOR
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DEPARTMENT OF THE INTERIOR
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON FISHERIES,
WILDLIFE, OCEANS, AND INSULAR AFFAIRS
OVERSIGHT HEARING ON “OIL AND GAS ACTIVITIES WITHIN OUR NATION'S
WILDLIFE REFUGE SYSTEM”**

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Good afternoon Chairman Fleming, Ranking Member Sablan, and Members of the Subcommittee, I am Steve Guertin, Deputy Director for the U.S. Fish and Wildlife Service (Service) within the Department of the Interior. I appreciate the opportunity to testify before you today regarding oil and gas activities on National Wildlife Refuge System (Refuge System) lands and the Service’s interest in ensuring a predictable and consistent approach to regulating that development and protecting taxpayer investments in the Refuge System.

National Wildlife Refuge System

The Refuge System is the world’s premiere network of public lands devoted solely to the conservation of wildlife and habitat. The Refuge System, which encompasses over 150 million acres of land and water, preserves a diverse array of land, wetland, and ocean ecosystems—from remote Pacific islands, north to the high arctic of northern Alaska, east to the rugged coastline of Maine and south to the tropical U.S. Virgin Islands. National wildlife refuges are found in every U.S. State. In total, the Refuge System now contains 562 refuges.

The Refuge System offers about 47 million visitors per year the opportunity to fish, hunt, observe and photograph wildlife, as well as learn about nature through environmental education and interpretation. These visitors make refuges an important economic driver, generating nearly \$2.4 billion for local economies each year. In Fiscal Year 2011, the Refuge System supported over 35,000 private-sector jobs. Investing in the Refuge System is a sound use of taxpayer dollars as each dollar appropriated for the Refuge System returns nearly five dollars in economic benefits. Refuges also provide local communities with other ecosystem services such as improved water quality and access to quality wildlife-dependent recreation. With its widespread presence and history of working with partners, the Refuge System plays a key role in supporting innovative, community-level efforts to conserve outdoor spaces and connect people with nature.

State of Oil and Gas Activities on Refuges

There is a long history of private oil and gas development on national wildlife refuges. Service policy is to purchase the minimum interest necessary to accomplish its conservation mission. In many cases, oil and gas production is ongoing at the time of land acquisition making the purchase of the mineral rights prohibitively expensive. Often, the mineral rights have been severed prior to federal acquisition of the property. In other cases, the property owner sells to

the United States, but retains the mineral rights. Consequently, oil and gas development can be found on nearly half of the Nation's 562 refuges. Federal oil and gas leasing is provided only in situations where adjacent non-federal development drains resources from the federal mineral estate (50 CFR 29.31).

Over 200 refuges have existing oil and gas infrastructure (e.g., active and inactive wells, pipelines). Of these, 103 refuges, and 4 Wetland Management Districts have active oil and gas wells. Over 5,000 wells occur on Refuge System lands and almost 1,300 miles of pipelines cross refuge fee-title lands. Of the 5,000 wells, 1,700 are active and the remaining are inactive or of unknown status. The Service is assessing the status of these wells and is finding many have been inactive for years and even decades. The Service is also identifying wells that no longer have responsible parties (*i.e.*, orphaned wells) and is finding there are many of these wells on refuges.

The Service recognizes that private oil and gas rights holders are fully entitled to reasonable access to explore and develop their oil and gas resources. The Service has had many local successes working with oil and gas operators to achieve appropriate resource protections. However, there are many more examples of unnecessary impacts on resources and refuge management. The cost of addressing these impacts is largely borne by state and federal taxpayers. Examples of these impacts are described in the following two case studies.

Case Study: St. Catherine Creek National Wildlife Refuge

Due to extensive agricultural development and flood control, the hydrology of the Mississippi River and its floodplain was modified resulting in the loss of 20 million acres of bottomland hardwood forests along the Mississippi River. St. Catherine Creek National Wildlife Refuge (Refuge), established in 1990, preserves 24,931 acres of the Mississippi River floodplain two miles south of Natchez, Mississippi. Acquisition of the floodplain habitat included remnants of bottomland hardwood forest, fallow fields, cleared land, and cypress swamps.

Mineral rights were excluded from the land purchased for the Refuge and are privately owned. Since the 1950s, numerous oil wells, pipelines, and oil and oilfield brine storage tanks have been located on lands that are now within the Refuge. While there are relatively few active oil and gas wells on the refuge, the Service has used best available data to identify over 500 inactive wells. Many of the inactive wells have not been properly plugged and abandoned. Since the establishment of the refuge, spills, and leaks from oil wells and pipelines have plagued the Refuge.

A leaking oil well discovered by a Refuge law enforcement officer in April 2012 led to an investigation by the Mississippi State Oil and Gas Board and the Mississippi Department of Environmental Quality. A review of the well's history revealed the well was 6,000 feet in depth and had been plugged and abandoned in 1983. Although the well was never properly plugged and abandoned in 1983, the State's policy transferred the responsibility of re-plugging the well and site cleanup to the surface owner, in this case, the Service. The Refuge wildlife officer reported the leaking well to the National Response Center as an oil spill with the potential to reach the Mississippi River. The report initiated a response from the U.S. Coast Guard and the

Environmental Protection Agency (EPA). Because of the severity of the leak, EPA took jurisdiction of the site and assumed all costs for plugging the well and site cleanup.

Re-plugging the well required drilling, cementing and testing at a cost of approximately \$95,000. Few states have bond requirements that adequately cover the actual costs to re-plug a well. Mississippi requires only a \$10,000 bond for a well. Only two states have regulations with a bond amount sufficient to cover the costs for plugging a well of this size and none require posting a bond in the amount to properly reclaim and restore the site.

Site restoration followed completion of the plugging. All surface contaminants were removed from the well site. The site was seeded and covered with mulch to control erosion. Plugging the well, site restoration and vegetation planting cost \$260,000. After much work, trees and grasses are finally becoming re-established at the site.

Case Study: Lower Rio Grande National Wildlife Refuge

What happens to long-billed curlews, one of North America's most threatened shorebirds, and thousands of migrating geese, ducks and endangered piping plover when oil and gas infrastructure are abandoned to rust and corrode around lakes that are roosting and nesting habitat?

That question faced the Lower Rio Grande Valley National Wildlife Refuge in Texas when the operator of three wells on East Lake abandoned the sites in the early 1990s. The previously privately-owned and operated wells had been drilled in 1948 and there was no liable owner to pay for the cost of the cleanup. Before cleanup, the abandoned production facilities, including storage tanks and sections of rusted pipe, extended into East Lake, and threatened contamination of the adjacent wetlands that are habitat for endangered piping plover in the winter. They also posed potential health risks to other native wildlife. Oil sheens were visible in East Lake near one of the abandoned wells.

After 15 years of working with the Texas Railroad Commission (TRRC), the state's oil and gas regulatory agency, the TRRC began plugging the wells in June 2011. The cost to taxpayers was approximately \$1.2 million to clean up the abandoned well sites and remove the oil and gas equipment from the refuge.

Transport of cleanup and plugging equipment brought its own set of problems: track buggies, which delivered the equipment, became mired in the lake bed and dug ruts in the substrate. The substrate then had to be restored. Storage tanks, pipes, and other oil production equipment were removed from the three well sites. Metal that could be recycled was taken to a metal salvage yard. Refuge habitat was restored. Immediate plugging and equipment removal would have lessened the costs and impacts to the refuge, state regulatory agencies, and the taxpayers.

Need for Revised Oil and Gas Regulations

In order to keep pace with increased development pressure, protect taxpayer investments in the Refuge System, and to bring needed consistency and predictability to the holders of mineral

rights in the Refuge System, the Service is considering promulgating regulations for oil and gas operations in the Refuge System. The Service is considering such regulations pursuant to recommendations made by the Government Accountability Office (GAO). Such regulations would be similar to those already in place by other land management agencies.

In 2003 and 2007, the Government Accountability Office (GAO) issued reports to Congress recommending the Service clarify permitting authority for non-federal oil and gas operations. In the 2003 Report to Congress (GAO-03-517), GAO highlighted the opportunities to improve management and oversight of oil and gas operations on the Refuge System. One of the main recommendations of the report was to clarify the Service's permitting authority of non-federal oil and gas operations through regulations. Currently, the primary regulation the U.S. Fish and Wildlife Service uses for management of non-federal oil and gas development on Refuge System lands comes from 50 CFR 29.32. This regulation pertains to non-federal mineral rights on Refuge System lands. The current regulation does not provide the Service with adequate authority to ensure the protection of refuge resources. An update by GAO in 2007 (GAO-07-829R) followed the 2003 report reasserting the recommendation that the Service take the necessary steps to apply a consistent and reasonable set of regulatory and management controls over oil and gas activities occurring on the Refuge System to protect the public's surface interests.

Several other land management agencies have regulations that cover oil and gas development, including the Department of the Interior's National Park Service (NPS) and the U.S. Department of Agriculture's Forest Service (FS). A comprehensive and cohesive oil and gas management program for the Service could help achieve an appropriate balance between the Refuge System mission and the reasonable exercise of private oil and gas rights. To that end, the Service is considering a rulemaking for the management of non-federal oil and gas operations in the Refuge System. The goal of such a regulation would be to achieve the necessary protections for ecosystems and wildlife on refuges while respecting the property rights of the holders of private mineral rights.

On February 24, 2014, the Service announced an Advanced Notice of Proposed Rulemaking (ANPR) and notice of intent to prepare an environmental impact statement on Non-federal Oil and Gas Development on Refuge System Lands. Through this transparent, public process, the Service is seeking public input at the initial stages of the process of considering rulemaking. The ANPR provides us with the opportunity to meet with stakeholders from the public, oil and gas industry, conservation groups, and tribes to include their expertise and comments as early as possible in the process of considering rulemaking. Working in collaboration with these stakeholders will improve the Service's ability to ensure landscapes are capable of supporting sustainable populations of fish and wildlife while also providing for the energy needs of local communities – now and in the future.

A fundamental aspect of a new rule could be to improve regulatory consistency to the benefit of both refuge managers and oil and gas operators. Regulations should be standards-based as opposed to prescriptive. Both resource managers and project proponents should have the flexibility to design and conduct activities tailored to each refuge's unique habitats and management objectives in consideration of operational needs of oil and gas project proponents.

Specifically, the new rule could help address the following impacts of oil and gas development on refuge resources.

- Leaks and spills of oil, brine, or other contaminants. Human health and safety can be compromised without adequate safeguards. In addition, soils, vegetation, water quality, fish and wildlife, and air quality can all be harmed by the release of contaminants.
- Alteration of Fish and Wildlife Habitat. Habitat can be altered, fragmented, or eliminated through oil and gas activities. These activities can also disturb and displace wildlife, cause physiological stress, and even result in wildlife deaths.
- Introduction of invasive species. The introduction of invasive species, especially along road and pipeline routes, can alter habitat. Disturbance caused by oil and gas activities can result in fundamental changes in ecological functions and processes, and lead to increased predation of declining species, reduced reproduction, and increased susceptibility to disease.
- Adverse impact to public access and use. Public uses of refuge areas may be restricted or prohibited by oil and gas operations. Although the areal extent of oil and gas exploration and production may be limited, the cumulative effects may extend to a much larger area.
- Costs to taxpayers. Poorly maintained sites or abandoned wells and infrastructure can place a burden on taxpayers as the cost of cleanup is borne by the federal government. In many cases, wells and infrastructure are abandoned due to inadequate finances by an operator. Having financial assurance to properly reclaim a site can save taxpayers from bearing the entire expense.

State oil and gas regulatory programs provide some level of Refuge System resource protection, but fundamentally have different roles and responsibilities. The Service is focused on meeting its legal mandate without duplicating state oversight. Our goal is to complement state regulatory programs to the benefit of the surface estate and the resources with which we are entrusted.

The Service has made progress in other areas to better address the complex challenge. We have formalized a Refuge System Energy Program and charged it with providing coordination and guidance to the Service leadership in promulgating the oil and gas regulations. Two major components of this coordination and guidance include: (1) improving consistency in oil and gas management; and (2) engaging Service staff, other federal agencies and the public in revising regulations. Also, the Energy Program collaboratively develops and implements communication strategies to convey accurate information to a broad range of audiences and to engage the public and governmental entities in the rulemaking process.

The Service has hired three regional and three national oil and gas experts, including an environmental contaminants specialist and a petroleum engineer to support this effort. They provide assistance to Refuge System field staff and help develop national guidance and training. Other ways the Service is addressing this issue is the development of a national database of oil and gas wells and other structures on refuges. We have implemented annual oil and gas

management training for nearly 200 Service staff. We are developing Service policy on management practices and have issued a Service handbook on management of oil and gas on refuges. These actions all contribute towards the core mission of the Service.

Conclusion

The Service's mission is working with others to conserve, protect, and enhance, fish, wildlife, plants, and their habitats for the continuing benefit of the American people. A strong and effective oil and gas management program for the Refuge System that respects private property rights is essential to avoid unnecessary impacts that undermine the Service's ability to meet its statutory mandates and its mission. We have made strides in this area. Promulgation of revised regulations could help solidify progress that the Service has already made, and advance protection of trust resources for decades to come.

We believe rulemaking could support the Service in creating a consistent and reasonable set of regulatory management controls for non-federal oil and gas activities occurring on refuges to both protect the public's surface interests while also providing reliable processes for industry.

We look forward to working with the Subcommittee, as well as stakeholders, as we continue the process of considering rulemaking.