

governing permits for endangered species are at 50 CFR 17.22.

The CDC plans to construct and operate a prison on a 634.83-acre parcel, which is located approximately 3 miles northwest of Delano, Kern County, California. The parcel includes the western half of Section 5 and the eastern half of Section 6 in Township 25 South, Range 25 East (Mount Diablo Baseline Meridian). The proposed State correctional facility consists of a 2,450-bed prison that comprises a 1,750-bed reception center, 500-bed medium-security facility, and 200-bed minimum-security support facility. Other facility structures include a warehouse, vehicle maintenance building, fire station, central kitchen building, and a firing range. These structures will permanently eliminate 287.32 acres of endangered species habitat. In addition, operation activities (e.g., driving to and from facility) may effect additional take of endangered species remaining on the unused portion of parcel or adjoining land. CDC proposes to compensate the incidental take via several on-site and off-site mitigation measures. Such measures include the off-site acquisition and fencing of 514 acres of endangered species habitat, a maintenance endowment of \$514,200 for the acquired habitat, the revegetation of disturbed sites outside the prison operation area with native plants, the attempted removal of endangered species from the future operation area, and various on-site measures to be undertaken by CDC during construction and operation of their facility.

Although the CDC considered two alternative sites, both parcels were rejected because of endangered species impacts, impacts to adjoining agricultural lands, local concerns, and/or high acquisition cost. CDC maintains that the failure to complete this project at "the selected site would result in unacceptably high levels of inmate overcrowding in the state-wide prison system." The selection of either alternative site would result in a construction delay of seven months to a year according to the CDC. Selection of a new alternative site would delay construction an additional year.

Dated: November 30, 1989.

Susan Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

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Minerals Management Service

Refunds Due Payors as a Result of Federal Regulatory Commission Orders Nos. 451 and 451-A

November 28, 1989.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice to stop 2-year period under Section 10 of the Outer Continental Shelf Lands Act.

SUMMARY: The purpose of this Notice is to announce that the 2-year period prescribed in Section 10 of the Outer Continental Shelf Lands Act is stopped for refund requests resulting from a recent court decision invalidating Federal Energy Regulatory Commission (FERC) Order Nos. 451 and 451-A.

EFFECTIVE DATE: December 5, 1989.

ADDRESSES: All written requests for further information should be submitted to the Minerals Management Service, Royalty Management Program, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Whitcomb, Rules and Procedures Branch, FTS 326-3432, (303) 231-3432.

SUPPLEMENTARY INFORMATION:

I. Background

The FERC Order No. 451 which was published in the Federal Register on July 18, 1986 (51 FR 22166), allowed producers to renegotiate the prices they received for interstate gas qualifying under NGPA sections 104 and 106 (old interstate gas). Under Order No. 451, which was effective July 18, 1986, producers were allowed to negotiate with their purchasers for a price higher than the then current NGPA maximum lawful price (MLP) for any of their old interstate gas, up to a price equal to the MLP for Post-1974 gas.

Producers could obtain a higher price for their old interstate gas through price nomination under the "Good Faith Negotiation" (GFN) procedures or through voluntary renegotiations with their purchasers outside of the scope of the GFN procedures. The GFN procedures also authorized purchasers to negotiate lower prices for new gas under any contracts covering both old and new interstate gas. Under Order No. 451, the GFN procedures could not be implemented until after October 31, 1986, however, voluntary negotiations could commence any time after July 18, 1986. Order No. 451 also provided for certain gas contracts to be abandoned if negotiations under the GFN procedures were not successful. Once abandoned, that gas was eligible for prices up to the

MLP for Post-1974 gas under any new contract that the producer could secure. Under Order No 451-A, which was published in the Federal Register on December 24, 1986 (51 FR 48762), FERC modified and clarified the procedures for price renegotiations and extended the starting date of the implementation of GFN procedures to after January 23, 1987.

On February 5, 1988, FERC issued Order No. 490, which was published in the Federal Register on February 12, 1988 (53 FR 4121). This rule, which was effective April 12, 1988, permitted abandonment of old interstate gas under contracts that terminated, expired, or were modified after the effective date of the Order. Consequently, such gas would become eligible for prices up to the MLP for Post-1974 gas in accordance with Order No. 451.

The U.S. Court of Appeals for the Fifth Circuit recently vacated FERC Orders 451 and 451-A in *Mobil Oil Exploration and Producing Southeast Incorporated et al. v. Federal Energy Regulatory Commission* (No. 86-4940, September 15, 1989). The court held that FERC exceeded the scope of its authority under the NGPA in promulgating Order No. 451. In addition, the appeals court determined that pregranted abandonment did not comply with the requirements of section 7(b) of the Natural Gas Act of 1938. Therefore, any prices higher than the NGPA-established MLP for old interstate gas paid pursuant to any negotiation or renegotiation under Order Nos. 451 or 451-A are invalidated under this decision. This includes prices paid pursuant to (1) voluntary renegotiations, (2) renegotiations under the GFN procedures, (3) new contracts covering gas abandoned under the GFN procedures, and (4) new contracts covering gas abandoned pursuant to Order No. 490.

Federal and Indian lessees who paid royalty based on the higher negotiated or renegotiated prices may be due a refund on the portion of royalty based on the portion of the price in excess of that permitted in the *Mobil v. FERC* decision if that decision is upheld. The FERC has requested that the Fifth Circuit reconsider its decision.

II. Section 10 Notice

For Outer Continental Shelf (OCS) leases, applicants are referred to Solicitor's Opinion M-36942, 88 I.D. 1090 (1981), regarding the 2-year period for filing of refund requests under Section 10 of the OCS Lands Act of 1953, 43 U.S.C. 1339. Notice is hereby provided that MMS is stopping the running of the

2-year period as of September 15, 1989, the date of the Fifth Circuit's decision, for refunds resulting from this decision. Therefore, royalty payors may wait until a final decision in *Mobil v. FERC* and the issuance of any FERC refund procedures before filing royalty refund requests with MMS. It is not necessary for payors to file preliminary or contingent refund requests to stop the running of the 2-year period in Section 10. Refund requests should follow the procedures in Section 4.4.2 of the *MMS Oil and Gas Payor Handbook*.

III. Unauthorized Recoupments

Payors may not recoup any amount they claim as a result of the decision in *Mobil v. FERC* against a current or future royalty payment obligation without following the procedures prescribed in Section 4.4.2 of the *MMS Oil and Gas Payor Handbook*. See *Santa Fe Energy Company*, 106 IB 333. Taking unauthorized recoupments may result in enforcement action, including the assessment of civil penalties authorized under 30 CFR 241.51 (1988). See 30 U.S.C. 1719 and 43 U.S.C. 1350.

Dated: November 28, 1989.

Jerry D. Hill,

Associate Director for Royalty Management.
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National Park Service

Extension of Period of Availability of Draft Environmental Impact Statement/General Management Plan/Minerals Management Plan (EIS/GMP/MMP) for Big Cypress National Preserve, FL

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a Draft Environmental Impact Statement on the General Management Plan/Minerals Management Plan for Big Cypress National Preserve. The GMP/MMP presents a basic management philosophy that meets the legislative requirements for resource protection and for public use and enjoyment of the preserve. It guides the National Park Service in addressing issues and achieving management objectives over a 10- to 15-year period. This document was previously made available for public comment for a period of 90 days ending December 1, 1989.

DATES: Comments on the Draft EIS/GMP/MMP will be accepted for an additional period of 90 days ending on March 1, 1990.

ADDRESSES: Comments should be sent to the Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303. Copies of the EIS/GMP/MMP are available for review at the following locations.

National Park Service, Southeast Regional Office, 75 Spring Street, SW., Atlanta, Georgia

Broward County Public Library, 1301 West Company's Road, Fort Lauderdale, Florida

Homestead Public Library, 700 North Homestead, Homestead, Florida

Miami-Dade Public Library, 101 West Flagler Street, Miami, Florida

Collier County Public Library, 650 Central Avenue, Naples, Florida

Everglades National Park Headquarters, Homestead, Florida

Big Cypress National Preserve, Headquarters and Oasis Ranger Station, Ochopee, Florida

Big Cypress Land Acquisition Office, 201 8th Street, South, Naples, Florida.

FOR FURTHER INFORMATION CONTACT: Fred Fagergren, Superintendent, Big Cypress National Preserve, Star Route Box 110, Ochopee, Florida 33943, Telephone (813) 695-2000.

Robert F. Newkirk,

Regional Director, Southeast Region.

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INTERSTATE COMMERCE COMMISSION

[Docket No. AB-88 (Sub-No. 4X)]

Bessemer and Lake Erie Railroad Co.—Abandonment Exemption in Butler County, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.8-mile line of railroad between milepost 7.1, near Boyers, and milepost 9.9, near Hilliards, in Butler County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 81 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 4, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 15, 1989.³ Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 26, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kimberly J. Gallagher, Bessemer and Lake Erie Railroad Company, P.O. Box 68, 135 Jamison Lane, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 8, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 184 (1987).

³ The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.