



**COMMENTS ON FWS' NATIONAL WILDLIFE REFUGE SYSTEM
PROPOSED RULEMAKING**

April 25, 2014

Via e-filing on www.regulations.gov

Ms. Rachel Jacobson
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks
United States Fish and Wildlife Service
Attn: Public Comments Processing
4401 N. Fairfax Drive, MS 2042-PDM
Arlington, Virginia 22203

Re: FWS-HQ-NWRS-2012-0086. *Non-Federal Oil and Gas Development Within the National Wildlife Refuge System*, advance notice of proposed rulemaking published in the Federal Register on February 24, 2014 (79 Fed. Reg. 10080).

Dear Ms. Jacobson:

These comments are filed on behalf of the Independent Petroleum Association of America (“IPAA”) and the American Petroleum Institute (“API”). Together these organizations represent the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts. Any additional regulations will most significantly affect the members of these organizations. API represents over 600 companies involved in all aspects of the oil and natural gas industry, including producers, suppliers, pipeline operators, marine transporters, and service and supply companies. The independent producers IPAA represents drill about ninety-five percent of American oil and natural gas wells, produce about fifty-six percent of American oil, and produce more than eighty-five percent of American natural gas. We appreciate the opportunity to comment on the advance notice of proposed rulemaking and notice of intent to prepare an environmental impact statement.

We ask that the United States Fish and Wildlife Service (“FWS”) carefully consider the concerns discussed in these comments. The imposition of additional regulations on non-federal oil and gas development within the National Wildlife Refuge System is unnecessary, has not been justified by FWS, is constrained by the bounds on FWS’ legal authority, and will only

result in duplicative layers of regulatory oversight.¹ We therefore request that FWS refrain from future rulemaking in this regard.

POLICY AND OTHER CONCERNS

1. A rulemaking is premature.

Questions linger regarding FWS' authority to regulate development within refuge boundaries. To be clear, mineral owners have the legal right to explore for and extract oil and gas from their mineral estates, a fact FWS recognizes.² Mineral rights represent a dominant estate, taking precedence over other rights associated with property, including surface rights.³ As a result, FWS is limited in its authority to inhibit operations, including horizontal drilling from private lands, to access minerals under a refuge, and we would expect FWS to adhere to the legal bounds of its authority.⁴

FWS may also lack the authority to promulgate the rules at issue here. FWS has not identified a specific statutory grant of authority.⁵ In its 2003 report, the Government Accountability Office ("GAO") recommended that FWS work with the Department of the Interior's Office of the Solicitor to seek from Congress any necessary additional authority over outstanding and reserved mineral rights.⁶ In response, the Department of the Interior professed its belief that it had the requisite authority to oversee oil and gas development. As late as 2007, however, GAO disagreed:

[W]e do not believe that DOI has adequate information on which to base this claim. In particular, *FWS . . . has yet to publicly clarify the extent of its current authority over private mineral rights*. We continue to believe that such information is necessary for DOI to adequately inform the Congress regarding the need for additional authority. Moreover, *we believe it is for Congress, not DOI,*

¹ Domestic oil and gas production from lands within the National Wildlife Refuge System is also consistent with federal energy policy, as set forth in the Comprehensive National Energy Strategy announced by the United States Department of Energy in April of 1998, the Energy Policy and Conservation Act, 42 U.S.C. § 6201, et seq., the National Energy Policy, Executive Order No. 13212, 66 Fed. Reg. 28,357 (May 18, 2001), and the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594.

² See, e.g., Nat'l Wildlife Refuge Sys., Oil & Gas FAQs, available at: <http://www.fws.gov/refuges/oil-and-gas/faqs.html>.

³ See, e.g., *Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, 926-27 (Colo. 1997); *DuLaney v. Okla. State Dep't of Health*, 868 P.2d 676, 680 (Okla. 1993); *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 249 (Tex. 2013).

⁴ Nor is the scope of FWS' authority uniform across refuge lands. On each individual refuge, the issue of mineral ownership must be addressed on a case-by-case basis since the law of mineral rights varies among states, the government's land acquisition contracts contain different mineral rights reservations, and contract interpretation may depend on the legal rules in place at the time of the contract. See, e.g., *Petro-Hunt, LLC v. United States*, 365 F.3d 385, 393 (5th Cir. 2004) (concerning private parties' efforts to quiet title to mineral rights in federally-owned land). See also discussion *infra* p. 4 and notes 13-14. With so many variables, any regulatory regime would be confusing, lacking in uniform applicability, and potentially subject to perpetual legal challenges.

⁵ In the Federal Register notice regarding this proposed rulemaking, FWS only points generally to the Property and Commerce Clauses of the United States Constitution and the National Wildlife Refuge System Administration Act of 1966, as amended, for its authority to promulgate these rules. 79 Fed. Reg. 10,080, 10,081 (Feb. 24, 2014).

⁶ GAO, *Nat'l Wildlife Refuges: Opportunities to Improve the Mgmt. & Oversight of Oil & Gas Activities on Fed. Lands*, GAO-03-517 (Wash., D.C.: Aug. 28, 2003).

*to weigh the needs of the refuge lands and the interests of mineral owners and, ultimately, to determine what oversight authority would be appropriate.*⁷

Since 2007, FWS has not publicly clarified its authority in this regard. Such clarification should be the first step before FWS proceeds with a rulemaking.

FWS also fails to provide a legitimate purpose and need for additional regulation. In particular, there is insufficient data to support the necessity of a rulemaking at this time. While FWS has begun to collect information on “Oil-Related Leaks and Spills on National Wildlife Refuges,”⁸ that data set is limited, and the information reflects only the identity of the substance leaked and the quantity discharged. It does not conclude that such spills have had an adverse impact to the refuges or that operators categorically fail to address and remediate spills. To the contrary, FWS personnel have indicated they are working positively with operators.⁹ Combined with this data collection, in April 2012, FWS introduced a management program handbook: “Management of Oil and Gas Activities on National Wildlife Refuge System Lands.” Insufficient time has passed to allow either FWS or oil and gas operators to determine the efficacy of that tool. A rulemaking premised on these same un-tested management guidelines is premature.

In addition, FWS appears to believe that the current regulatory structure leads to “an uncertain and inconsistent regulatory environment for oil and gas operators on refuges.”¹⁰ Our members, who include the vast majority of such operators, do not support this concern. To the contrary, as discussed further below, the existing regulatory structure provides operators and mineral estate owners with the flexibility needed to develop mineral interests consistent with their legal rights.

2. Sufficient regulations already exist to protect Refuge resources.

Federal regulations already apply to development of non-federal minerals (*see, e.g.*, 40 C.F.R. 60, 61, 63), as do state and tribal regulations. FWS suggests that additional regulation is necessary because state oil and gas commissions have a different mission, suggesting that they do not adequately address environmental concerns. This contention is incorrect. In every state in which FWS has identified active and inactive wells,¹¹ oil and gas commissions have adopted regulations that protect the environment through comprehensive drilling, development, and production standards; setbacks; ground water protection measures; financial assurance requirements; spill reporting; and reclamation requirements.¹²

⁷ GAO, *U.S. Fish & Wildlife Serv.: Opportunities Remain to Improve Oversight & Mgmt. of Oil & Gas Activities on Nat'l Wildlife Refuges*, GAO-07-829R (Wash., D.C.: June 29, 2007) (emphasis added).

⁸ *See* U.S. Fish & Wildlife Serv., “Oil-Related Leaks & Spills on Nat'l Wildlife Refuges” provided to the Committee on Natural Resources (undated).

⁹ *Id.* at 1.

¹⁰ 79 Fed. Reg. at 10,081.

¹¹ *See* discussion of this data, *infra* p. 5.

¹² *See, e.g.*, La. Admin. Code tit. 43: IX, XI, XIII, XVIII, XIX (2013); Okla. Admin. Code §§ 165:10-1-1 (2013), *et seq.*

3. A “one size fits all” approach does a disservice to the diversity of the Refuge System.

Unlike other federal lands programs, the National Wildlife Refuge System is unique in terms of how the United States came to acquire the land. Each Refuge carries a different acquisition history, which means that the federal government’s interest in, and administration of, each Refuge must vary. For example, the Lower Hatchie National Wildlife Refuge in Tennessee was acquired by deeded conveyance from a private owner and subject to existing easements for pipelines, public highways and roads at the time of the government’s acquisition.¹³ Nearby Reelfoot National Wildlife Refuge, conversely, is comprised of 2,300 acres that FWS owns outright and 7,860 acres that the State of Tennessee leases to the United States.¹⁴ In addition to differences in ownership conditions, certain Refuges are subject to unique management mandates; the National Wildlife Refuge System in Alaska, for instance, is subject to a unique statutory regime under the Alaska Native Claims Settlement Act¹⁵ and the Alaska National Interest Lands Conservation Act of 1980.¹⁶ Various refuge lands come with different easement and access exceptions, different mineral extraction rights, and different obligations to facilitate oil and gas development. FWS personnel must also engage in differing levels of intergovernmental cooperation from refuge to refuge.

Each Refuge is further subject to a different conservation plan. In 1997, Congress enacted the National Wildlife Refuge System Improvement Act,¹⁷ amending the Refuge Act and mandating that FWS develop comprehensive conservation plans (“CCP”) for each national wildlife refuge.¹⁸ Adoption of a CCP involves a deliberation process that includes a public comment period. Congress directed FWS to manage each refuge in a manner consistent with the completed CCP and to revise the plan at any time if conditions that affect the Refuge are deemed to have changed significantly.¹⁹ The development of the CCP often includes a public NEPA process resulting in the preparation of an Environmental Assessment. For several refuges, the CCP also requires adoption of an additional Management Plan. These extensive proceedings for developing refuge-specific CCPs underscores that a “one-size fits all” approach to oil and gas regulation is incompatible with the needs of any specific refuge.

Finally, FWS’ own data refutes the conclusion that oil and gas production has impacted refuges universally. The National Wildlife Refuge System includes more than 560 refuges, 38 wetland management districts and other protected areas encompassing 150 million acres of land and water from the Caribbean to the remote Pacific. There is at least one national wildlife refuge in every state and territory. Yet FWS’ Fact Sheet on “Nonfederal Oil and Gas Development on National Wildlife Refuge System Lands” recognizes that half of all active wells are found on just *five refuges*. Information FWS compiled²⁰ shows that despite the fact that the System contains

¹³ See *Burlison v. United States*, 533 F.3d 419 (6th Cir. 2008).

¹⁴ See *Bunch v. Hodel*, 793 F.2d 129 (6th Cir. 1986).

¹⁵ Pub. L. No. 92-203, 85 Stat. 688 (1971).

¹⁶ Pub. L. No. 96-487, 94 Stat. 2371 (1980).

¹⁷ Pub. L. No. 105-57, 111 Stat. 1252-1260 (codified as amended at 16 U.S.C. §§ 668dd-668ee).

¹⁸ 16 U.S.C. § 668dd(e)(1)(A).

¹⁹ 16 U.S.C. § 668dd(e)(1)(E).

²⁰ FWS provided this information to the Committee on Natural Resources with a disclaimer noting limitations on the source of the information, including an explanation that “[e]rrors are inherent in the collection of data on thousands of wells.”

over 600 protected areas, only 46 have known and confirmed active wells, and 23 of those have five or fewer active wells.

State	Refuge	Active Wells	Inactive Wells	Status Not Available
Alabama	Cahaba River NWR	14		
Alaska	Kenai NWR	80	5	
Arkansas	Bald Knob NWR			3
	Cache River NWR			2
	Felsenthal NWR			57
	Overflow NWR			1
	White River NWR			2
California	Hopper Mountain NWR	13	3	
	Guadalupe-Nipomo Dunes NWR		2	
	North Central Valley Wildlife Mgmt. Area	1	2	
	Seal Beach NWR	11	18	
	Delevan NWR		1	
Indiana	Patoka River NWR	15	72	
	Big Oaks NWR		5	
	Muscatatuck NWR		1	
Kansas	Quivira NWR	6	21	
Louisiana	Atchafalaya NWR	4	42	
	Bayou Cocodrie NWR		49	
	Bayou Sauvage NWR		4	
	Bayou Teche NWR	1	34	
	Big Branch Marsh NWR		4	
	Black Bayou Lake NWR	60	25	
	Breton NWR		3	
	Cameron Prairie NWR		14	
	Cat Island NWR		5	
	Catahoula NWR	6	69	
	D'Arbonne NWR	100	183	
	Delta NWR	21	342	
	Grand Cote NWR		2	
	Lacassine NWR	5	75	
	Lake Ophelia NWR	1	55	
	Mandalay NWR	1	42	
	Red River NWR	2	55	
	Sabine NWR	17	81	
	St. Catherine Creek NWR		6	
	Tensas River NWR	4	108	
	Upper Ouachita NWR	928	482	

Michigan	Kirtlands Warbler Wildlife Mgmt. Area	1	1	
Mississippi	St. Catherine Creek NWR	13	20	
Missouri	Big Muddy Nat'l Fish and Wildlife Refuge		4	
Montana	Benton Lake NWR		2	
	Benton Lake Wetland Mgmt. Dist.	3	8	
	Bowdoin NWR	1	1	
	Bowdoin Wetland Mgmt. Dist.	18	5	
	Hailstone NWR		1	
	Halfbreed Lake NWR		5	
	Hewitt Lake NWR	9	5	
	Lake Mason NWR		2	
	Medicine Lake NWR	2	3	
	Northeast Montana Wetland Mgmt. Dist.	2	16	
New Mexico	Bitter Lake NWR	13		
North Dakota	Lake Ilo NWR	1		
Oklahoma	Deep Fork NWR	149	60	
	Little River NWR	1		
	Optima NWR	4	3	
	Salt Plains NWR	3	1	
	Tishomingo NWR	1		
	Washita NWR		1	
Texas	Anahuac NWR	4	7	
	Aransas NWR	8	56	
	Attwater Prairie Chicken NWR	10	10	
	Big Boggy NWR		1	
	Brazoria NWR	3	16	
	Caddo Lake NWR	4		
	Hagerman NWR	50	43	
	Laguna Atascosa NWR	1	7	
	Lower Rio Grande Valley NWR	68	91	
	McFaddin NWR	6	14	
	San Bernard NWR	13	14	
	Texas Point NWR		2	
	Trinity River NWR		2	
Utah	Colorado River Wildlife Mgmt. Area	1	1	

The figures are similar for pipelines.²¹ Just under half of the affected refuges have two or fewer miles of pipeline, and one-quarter of all pipeline miles are concentrated in three refuges, including 101 miles in the Kenai National Wildlife Refuge, which is uniquely subject to regulation under the Alaska National Interest Lands Conservation Act.²²

A blanket approach to the entire refuge system is an inefficient and ineffective way to address the needs of these few active areas of oil and gas development in a limited number of refuges.

4. The scope of the Environmental Impact Statement is too indefinite.

FWS issued this Notice of Intent to start the scoping process for a Programmatic Environmental Impact Statement (“PEIS”) to focus on the national effects of the rulemaking. The Notice provides, “[a]s part of the scoping process, the Service seeks public comment on the scope of the proposed rule; the NEPA alternatives to be considered; and the physical, biological, social, and economic effects that should be analyzed in the draft PEIS.”

NEPA requires government agencies “to consider every significant aspect of the environmental impact of a proposed action.”²³ But FWS has not proposed any particular or specific action. Without a specific “proposed action,” we are at a loss responding to this request. If FWS proscribes certain methods to manage recovered fluids, for example, our comments would be very different if the regulations were to require tanks than if the proposed rules were to permit operators to choose the storage solution most appropriate from an economic, environmental and operational standpoint. Likewise, FWS fails to identify any alternatives to regulation despite NEPA’s “range of alternatives”²⁴ requirement. The utility of a PEIS as a tool for decision-making, and our ability to comment on a proposal for such a PEIS, is questionable without a clear statement of purpose and proposed rule.

SPECIFIC ISSUES IDENTIFIED IN THE ADVANCE NOTICE

There are significant policy reasons why FWS should not proceed with a proposed rulemaking. Although we firmly believe that a rulemaking is unnecessary and potentially outside the bounds of FWS’ legal authority, we recognize that it is possible FWS will proceed as outlined in the Advance Notice. It is difficult to provide meaningful comment on such an ill-defined request. To the extent FWS’ scoping announcement allows for comment, specific concerns are introduced below.

²¹ See **Appendix A**.

²² 16 U.S.C. § 3161.

²³ *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 553 (1978).

²⁴ See *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 72 (D.C. Cir. 2011) (“Regulations implementing NEPA (promulgated by the Council on Environmental Quality) require that an agency developing an EIS evaluate ‘all reasonable alternatives,’ including a no-action alternative.”) (quoting 40 C.F.R. § 1502.14). The regulations describe the alternatives analysis as “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14.

1. Issue 1: Plans of Operations and Special Use Permits

Neither the National Park Service (“NPS”) nor the United States Forest Service (the “Forest Service”) manage federal lands in a manner that should serve as a model for managing oil and gas operations on Refuge System lands. First, these agencies’ rules are duplicative of state permitting requirements addressing, *inter alia*, exploratory drilling; production (site selection, well pad development, drilling, stimulation, and production); gathering, storage, processing, and transport of petroleum products; inspection, monitoring, and maintenance of equipment; well “work-over” activity; well plugging and abandonment; and surface reclamation.

Second, both NPS and the Forest Service overreach in their requests for information from oil and gas operators. The focus of any application should be limited to the plan of operation at hand. Using the permitting process as a fishing expedition to gather unnecessary information about costs, Best Management Practices and voluntary mitigation measures that are not appropriate for the specific project and therefore will not be implemented in any given case, diverts time and attention from the appropriate focus of the agencies’ analyses. And requests for a specific scope of activity far into the future ignore the dynamic nature of the oil and gas industry and the proprietary nature of an operator’s long-term development plans. Finally, requests that compel operators to disclose sensitive, confidential, or trade secret information must not be included in any regulations. The fact that such information is “for SUP approval purposes only” does not adequately protect information that operators spend years and millions of dollars developing. The Freedom of Information Act may have an exception for trade secrets and other confidential business information, but litigation over confidentiality adds risk to the operator and further burdens agency personnel’s time and attention.²⁵ It also discourages operators from investing in innovations, including those that reduce environmental impacts.

Third, operators, with good reason, expect an additional layer of permitting will drag the process out even longer. FWS’ sister agencies²⁶ already experience long delays in processing applications. Bureau of Land Management statistics reveal inordinate delays between receipt and approval of an Application for Permission to Drill: 162 days in Farmington, New Mexico; 181 days in Dickinson, North Dakota; 211 days in Canon City, Colorado; 215 days in Price, Utah; 226 days in Meeker, Colorado; 233 days in Lander, Wyoming; 271 days in Rawlins, Wyoming; 359 days in Milwaukee, Wisconsin; 518 days in Kemmerer, Wyoming; 635 days in Moab, Utah; and 952 days in Buffalo, Wyoming.²⁷

Finally, many Refuges have limited staff resources. Only 10.5 FWS employees have core duties related to oil and gas issues, and only one of those employees is a licensed petroleum engineer. Region 2 (including the Hagerman NWR and Lower Rio Grande Valley NWR) only has three employees, and Region 4 (covering the Upper Ouachita NWR and D’Arbonne NWR) only has two employees. While FWS has undertaken efforts to educate employees on the oil and

²⁵ See the Freedom of Information Act, 5 U.S.C. § 552(b)(4); the Trade Secrets Act, 18 U.S.C. § 1905. See also *Chrysler Corp. v Brown*, 441 U.S. 281, 293-94 (1979) (exemplifying litigation which ensues if federal agencies disclose information that falls within the exceptions).

²⁶ FWS’ sister agencies include, but are not limited to, the Bureau of Land Management, the Forest Service, and NPS.

²⁷ S. Zimmerman, *W. Lands & Energy Newsletter* (June 26, 2013), available at <http://www.nortonrosefulbright.com/knowledge/publications/100086/western-lands-and-energy-newsletter>.

gas industry, this does not translate into the ability to exercise independent judgment on complex technical and legal issues that require substantial experience and expertise.

2. Issue 2: Operating Standards

Any regulations must promote flexibility to account for different habitats, operating conditions, technical feasibility, and economic realities. The low-lying, coastal environment of the Delta National Wildlife Refuge in Louisiana, for example, logically requires different operating standards than the sandstone plateaus of the Colorado River Wildlife Management Area in Utah. FWS' regulations and policies already acknowledge that the Refuge Manager is in the best position to work with operators on a specific development project.²⁸

The current regulations also reflect this need for flexibility through consistent use of the term “practicable”:

“Persons holding mineral rights in wildlife refuge lands. . . shall, *to the greatest extent practicable*, conduct all exploration, development, and production operations in such a manner as to prevent damage, erosion, pollution, or contamination to the lands, waters, facilities and vegetation of the area.”

“*So far as is practicable*, such operations must also be conducted without interference with the operation of the refuge or disturbance to the wildlife thereon.”

“Oil field brine, slag, and all other waste and contaminating substances must be kept *in the smallest practicable area*, must be confined so as to prevent escape as a result of rains and high water or otherwise, and must be removed from the area *as quickly as practicable* in such a manner as to prevent contamination, pollution, damage, or injury to the lands, waters, facilities, or vegetation of the refuge or to wildlife.”²⁹

These regulations provide sufficient ability for the FWS to perform its duties under the Refuge Act, as amended, while still recognizing the legal rights of mineral owners.

Finally, Ms. Roya Mogadam, Senior Congressional Affairs Specialist with FWS, in responding to an inquiry from Mr. Harry Burroughs, Republican Staff Director for the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, represented if an individual has a private mineral right under a Refuge and they are drilling from private lands, FWS does

²⁸ See 50 C.F.R. § 35.6(e) (“The number, nature, and extent of such temporary structures and services will be controlled through regulations and special use permits issued by the Refuge Manager [...]”); Compatibility Policy, 603 FW 2 (FWM # 360 DATE: Nov. 17, 2000) (“Included in a finding, determination, or decision made through the exercise of sound professional judgment is a refuge manager’s field experience and knowledge of the particular refuge’s resources.”).

²⁹ 50 C.F.R. § 29.32.

not, and will not prescribe the method of extraction.³⁰ We expect to see this representation reflected in any proposed regulations.

3. Issue 3: Financial Assurances

FWS' Management Guide points out that the agency does not have authority in all instances to impose a bond. In those instances where FWS does have authority, operators request that FWS rely on the nationwide or statewide bonds that different agencies already require under independent regulatory authority. If an adjustment is needed to an existing bond, then the adjustment should be limited to a specific circumstance, *e.g.*, reclamation. Across-the-board bond increases punish prudent operators and are ineffective for bringing non-compliant operators into compliance. This is likewise true of orphan well funds, which should also be excluded from any new regulations.

4. Issue 4: Access Fees

Existing law provides for access to the mineral estate by allowing subsurface owners reasonable use of the surface estate.³¹ Any conditions placed on access must fall within that parameter. Operators are already incentivized to use existing roads where such roads are adequate, as it reduces operating costs. If access fees are required, we believe access should be granted free from conditions. And should FWS impose access fees that diminish the value of the mineral estate, FWS must be prepared to pay just compensation to operators whose property interest has been injured.

5. Issue 5: Noncompliance

FWS acknowledges that it has worked positively with operators to address spills.³² This type of cooperation allows operators to address any concerns FWS may have and is an effective and productive method to remedy noncompliance and avoid future challenges. Accordingly, compliance issues should be addressed on a case-by-case basis pertinent to the violation, with cooperation anticipated to be the primary method of dealing with noncompliance.

6. Issue 6: Existing Operations

The current regulations explicitly recognize the rights of mineral interest holders to develop their interests: "Nothing in this section shall be applied so as to contravene or nullify rights vested in holders of mineral interests on refuge lands."³³ We request that FWS "grandfather" existing operations and refrain from retroactive application in order to further recognize these important legal rights.

³⁰ Email from Roya Mogadam, Senior Congressional Affairs Specialist, United States Fish and Wildlife Service, to Harry Burroughs, Republican Staff Director, Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, Committee on Natural Resources (April 01, 2014, 11:42 AM).

³¹ *See supra* p. 2 and note 3.

³² *See* U.S. Fish & Wildlife Serv. "Oil-Related Leaks & Spills on Nat'l Wildlife Refuges" provided to the Committee on Natural Resources (undated).

³³ 50 C.F.R. § 29.32.

Economics are already driving the same result that FWS desires to see; older equipment is being replaced with upgraded, more efficient, technologically-advanced equipment. The use of such new equipment is expected to continually address the impact of oil and gas operations on surface lands, including the Refuge System, without the imposition of additional, duplicative regulations.

7. Issue 7: Impacts from the Proposed Rulemaking

Among the four guiding principles for the management of the Refuge System is “partnership,” including partnership with industry.³⁴ We believe there are better ways to partner with operators to address specific issues at specific locations than to move forward with an overly broad rulemaking. Representatives from our members are available at FWS’ convenience to discuss any operational, environmental, or management concerns.

CONCLUSION

IPAA and API appreciate this opportunity to comment on FWS’ proposal regarding additional regulation of non-federal oil and gas development within the National Wildlife Refuge System. As these comments demonstrate, however, the imposition of such additional regulations is unnecessary, is constrained by the bounds on FWS’ legal authority, and will result in duplicative layers of regulatory oversight. Accordingly, we request that FWS not move forward with either a rulemaking or a PEIS regarding this issue.

Sincerely,



Dan Naatz
Vice President of Federal Resources
Independent Petroleum Association of America



Richard Ranger
Senior Policy Advisor, Upstream
American Petroleum Institute

³⁴ Exec. Order No. 12,996, 61 Fed. Reg. 13647 (March 28, 1996).

APPENDIX A
Pipelines

Region	State	National Wildlife Refuges	Miles	Total Pipelines	Gas	Liquids
4	AL	BON SECOUR NATIONAL WILDLIFE REFUGE	1	1	1	
4	AL	GRAND BAY NATIONAL WILDLIFE REFUGE	1	2	1	1
4	AL	WHEELER NATIONAL WILDLIFE REFUGE	4	2	2	0
7	AK	KENAI NATIONAL WILDLIFE REFUGE	101	7	5	2
4	AR	BALD KNOB NATIONAL WILDLIFE REFUGE	31	13	11	2
4	AR	BIG LAKE NATIONAL WILDLIFE REFUGE	0	1	1	
4	AR	CACHE RIVER NATIONAL WILDLIFE REFUGE	6	3	2	1
4	AR	FELSENTHAL NATIONAL WILDLIFE REFUGE	6	1	1	
4	AR	LOGAN CAVE NATIONAL WILDLIFE REFUGE	0	2	2	
4	AR	OVERFLOW NATIONAL WILDLIFE REFUGE	11	1	1	
4	AR	POND CREEK NATIONAL WILDLIFE REFUGE	3	1		1
4	AR	WHITE RIVER NATIONAL WILDLIFE REFUGE	13	3	3	
2	AZ	HAVASU NATIONAL WILDLIFE REFUGE	8	10	10	
2	AZ	KOFA NATIONAL WILDLIFE REFUGE	93	4	4	
8	CA	ANTIOCH DUNES NATIONAL WILDLIFE REFUGE	0	1	1	1
8	CA	BITTER CREEK NATIONAL WILDLIFE REFUGE	4	1	1	
8	CA	CIBOLA NATIONAL WILDLIFE REFUGE	2	1	1	1
8	CA	COACHELLA VALLEY NATIONAL WILDLIFE REFUGE	5	2	1	1
8	CA	DON EDWARDS SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE	0	0	1	1
8	CA	ELLICOTT SLOUGH NATIONAL WILDLIFE REFUGE	0	1	1	1
8	CA	HAVASU NATIONAL WILDLIFE REFUGE	4	8	11	11
8	CA	KERN NATIONAL WILDLIFE REFUGE	5	2	1	1
8	CA	PIXLEY NATIONAL WILDLIFE REFUGE	0	1	1	1
8	CA	SACRAMENTO RIVER NATIONAL WILDLIFE REFUGE	1	2	1	1
8	CA	SAN JOAQUIN RIVER NATIONAL WILDLIFE REFUGE	2	2	1	1
8	CA	SEAL BEACH NATIONAL WILDLIFE REFUGE	1	1	1	1
8	CA	SUTTER NATIONAL WILDLIFE REFUGE	1	2	2	2
6	CO	ARAPAHO NATIONAL WILDLIFE REFUGE	1	1	1	
6	CO	MONTE VISTA NATIONAL WILDLIFE REFUGE	2	1	1	
6	CO	ROCKY FLATS NATIONAL WILDLIFE REFUGE	3	2	2	
6	CO	ROCKY MOUNTAIN ARSENAL NATIONAL WILDLIFE REFUGE	4	3	2	1
4	FL	LAKE WALES RIDGE NATIONAL WILDLIFE REFUGE	0	1		1
4	GA	SAVANNAH NATIONAL WILDLIFE REFUGE	5	1	1	
3	IL	CRAB ORCHARD NATIONAL WILDLIFE REFUGE	4	2	1	1
3	IL	PORT LOUISA NATIONAL WILDLIFE REFUGE	1	2	2	

3	IL	UPPER MISSISSIPPI RIVER NATIONAL WILDLIFE AND FISH REFUGE	4	4	4	
3	IN	PATOKA RIVER NATIONAL WILDLIFE REFUGE	5	7	7	
3	IA	NEAL SMITH NATIONAL WILDLIFE REFUGE	2	1		1
3	IA	PORT LOUISA NATIONAL WILDLIFE REFUGE	1	2	2	
3	IA	UPPER MISSISSIPPI RIVER NATIONAL WILDLIFE AND FISH REFUGE	6	3	3	
6	KS	FLINT HILLS NATIONAL WILDLIFE REFUGE	19	7	7	
6	KS	QUIVIRA NATIONAL WILDLIFE REFUGE	9	2	1	1
4	KY	CLARKS RIVER NATIONAL WILDLIFE REFUGE	2	3	3	
4	LA	ATCHAFALAYA NATIONAL WILDLIFE REFUGE	21	8	6	2
4	LA	BAYOU COCODRIE NATIONAL WILDLIFE REFUGE	1	1		1
4	LA	BAYOU SAUVAGE NATIONAL WILDLIFE REFUGE	22	10	9	1
4	LA	BAYOU TECHE NATIONAL WILDLIFE REFUGE	28	26	22	4
4	LA	BIG BRANCH MARSH NATIONAL WILDLIFE REFUGE	11	5	4	1
4	LA	BLACK BAYOU LAKE NATIONAL WILDLIFE REFUGE	9	7	7	
4	LA	BOGUE CHITTO NATIONAL WILDLIFE REFUGE	3	1		1
4	LA	BRETON NATIONAL WILDLIFE REFUGE	1	2	2	
4	LA	CAMERON PRAIRIE NATIONAL WILDLIFE REFUGE	12	3	3	
4	LA	D 'ARBONNE NATIONAL WILDLIFE REFUGE	20	8	8	
4	LA	DELTA NATIONAL WILDLIFE REFUGE	41	14	5	9
4	LA	GRAND COTE NATIONAL WILDLIFE REFUGE	2	1		1
4	LA	HANDY BRAKE NATIONAL WILDLIFE REFUGE	2	6	6	
4	LA	LACASSINE NATIONAL WILDLIFE REFUGE	34	14	14	
4	LA	MANDALAY NATIONAL WILDLIFE REFUGE	4	4	3	1
4	LA	RED RIVER NATIONAL WILDLIFE REFUGE	10	8	7	1
4	LA	SABINE NATIONAL WILDLIFE REFUGE	69	10	10	
4	LA	UPPER OUACHITA NATIONAL WILDLIFE REFUGE	12	2	1	1
5	MA	ASSABET RIVER NATIONAL WILDLIFE REFUGE	1	1	1	
5	MA	GREAT MEADOWS NATIONAL WILDLIFE REFUGE	1	1	1	
3	MI	SHIAWASSEE NATIONAL WILDLIFE REFUGE	2	1	1	
3	MN	CRANE MEADOWS NATIONAL WILDLIFE REFUGE	0	1	1	
3	MN	MINNESOTA VALLEY NATIONAL WILDLIFE REFUGE	6	5	4	1
3	MN	SHERBURNE NATIONAL WILDLIFE REFUGE	16	1		3
3	MN	UPPER MISSISSIPPI RIVER NATIONAL WILDLIFE AND FISH REFUGE	1	1	1	

4	MS	DAHOMY NATIONAL WILDLIFE REFUGE	5	4	4	
4	MS	GRAND BAY NATIONAL WILDLIFE REFUGE	1	2	1	1
4	MS	HOLT COLLIER NATIONAL WILDLIFE REFUGE	1	1		1
4	MS	MISSISSIPPI SANDHILL CRANE NATIONAL WILDLIFE REFUGE	1	2	1	1
4	MS	PANTHER SWAMP NATIONAL WILDLIFE REFUGE	22	4	3	1
4	MS	SAM D. HAMILTON NOXUBEE NATIONAL WILDLIFE REFUGE	2	3	3	
6	MT	CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE	0	2	2	
8	NV	STILLWATER NATIONAL WILDLIFE REFUGE	1	1		1
5	NJ	CAPE MAY NATIONAL WILDLIFE REFUGE	1	1	1	
5	NJ	GREAT SWAMP NATIONAL WILDLIFE REFUGE	8	4	4	
5	NJ	WALKILL RIVER NATIONAL WILDLIFE REFUGE	1	1	1	
2	NM	BITTER LAKE NATIONAL WILDLIFE REFUGE	7	2	2	
2	NM	BOSQUE DEL APACHE NATIONAL WILDLIFE REFUGE	13	1		1
2	NM	MAXWELL NATIONAL WILDLIFE REFUGE	1	1	1	
2	NM	SEVILLETA NATIONAL WILDLIFE REFUGE	28	2	1	1
5	NY	MONTEZUMA NATIONAL WILDLIFE REFUGE	8	5	3	2
4	NC	PEE DEE NATIONAL WILDLIFE REFUGE	4	1	1	
4	NC	POCOSIN LAKES NATIONAL WILDLIFE REFUGE	9	1	1	
4	NC	ROANOKE RIVER NATIONAL WILDLIFE REFUGE	1	1	1	
3	OH	OTTAWA NATIONAL WILDLIFE REFUGE	0	1	1	
2	OK	DEEP FORK NATIONAL WILDLIFE REFUGE	8	4	3	1
2	OK	LITTLE RIVER NATIONAL WILDLIFE REFUGE	1	1	1	
2	OK	SALT PLAINS NATIONAL WILDLIFE REFUGE	8	2	1	1
2	OK	SEQUOYAH NATIONAL WILDLIFE REFUGE	0	1	1	
2	OK	WASHITA NATIONAL WILDLIFE REFUGE	0	1	1	
1	OR	MALHEUR NATIONAL WILDLIFE REFUGE	15	1		1
1	OR	MCNARY NATIONAL WILDLIFE REFUGE	2	1		1
1	OR	SILETZ BAY NATIONAL WILDLIFE REFUGE	0	1	1	
1	OR	TUALATIN RIVER NATIONAL WILDLIFE REFUGE	0	1	1	
5	PA	ERIE NATIONAL WILDLIFE REFUGE	2	1	1	
5	PA	JOHN HEINZ NATIONAL WILDLIFE REFUGE AT TINICUM	4	7	6	1
4	SC	CAROLINA SANDHILLS NATIONAL WILDLIFE REFUGE	6	1	1	
4	SC	ERNEST F. HOLLINGS ACE BASIN NATIONAL WILDLIFE REFUGE	0	1		1
4	SC	SAVANNAH NATIONAL WILDLIFE REFUGE	3	1	1	
4	TN	HATCHIE NATIONAL WILDLIFE REFUGE	7	1	1	
2	TX	ARANSAS NATIONAL WILDLIFE REFUGE	5	2	2	

2	TX	ATTWATER PRAIRIE CHICKEN NATIONAL WILDLIFE REFUGE	6	5	3	2
2	TX	BRAZORIA NATIONAL WILDLIFE REFUGE	122	29	11	18
2	TX	BUFFALO LAKE NATIONAL WILDLIFE REFUGE	1	1	1	
2	TX	CADDO LAKE NATIONAL WILDLIFE REFUGE	1	2	2	
2	TX	HAGERMAN NATIONAL WILDLIFE REFUGE	2	1		1
2	TX	LAGUNA ATASCOSA NATIONAL WILDLIFE REFUGE	7	1	1	
2	TX	LOWER RIO GRANDE VALLEY NATIONAL WILDLIFE REFUGE	14	23	23	
2	TX	MCFADDIN NATIONAL WILDLIFE REFUGE	5	3	3	
2	TX	MULESHOE NATIONAL WILDLIFE REFUGE	1	1	1	
2	TX	NECHES RIVER NATIONAL WILDLIFE REFUGE	5	3	1	
2	TX	SAN BERNARD NATIONAL WILDLIFE REFUGE	87	58	18	40
2	TX	TEXAS POINT NATIONAL WILDLIFE REFUGE	5	4	1	3
2	TX	TRINITY RIVER NATIONAL WILDLIFE REFUGE	28	20	12	8
6	UT	BEAR RIVER MIGRATORY BIRD REFUGE	5	1		1
6	UT	OURAY NATIONAL WILDLIFE REFUGE	3	1		1
5	VA	FEATHERSTONE NATIONAL WILDLIFE REFUGE	2	1		1
5	VA	GREAT DISMAL SWAMP NATIONAL WILDLIFE REFUGE	7	1	1	
1	WA	MCNARY NATIONAL WILDLIFE REFUGE	6	2	1	1
1	WA	NISQUALLY NATIONAL WILDLIFE REFUGE	1	1	1	
1	WA	UMATILLA NATIONAL WILDLIFE REFUGE	3	1	1	
5	WV	CANAAN VALLEY NATIONAL WILDLIFE REFUGE	1	1	1	
5	WV	OHIO RIVER ISLANDS NATIONAL WILDLIFE REFUGE	0	1	1	
3	WI	UPPER MISSISSIPPI RIVER NATIONAL WILDLIFE AND FISH REFUGE	0	1	1	
3	WI	WHITTLESEY CREEK NATIONAL WILDLIFE REFUGE	1	1	1	
6	WY	BAMFORTH NATIONAL WILDLIFE REFUGE	1	1	1	
6	WY	MORTENSON LAKE NATIONAL WILDLIFE REFUGE	2	1	1	
6	WY	PATHFINDER NATIONAL WILDLIFE REFUGE	8	1		1
6	WY	SEEDSKADEE NATIONAL WILDLIFE REFUGE	1	1	1	