



December 22, 2023

Ms. Jessica Kramer

Ms. Cindy Mulkey

Mr. Gerald Walker

Florida Department of Environmental Protection

3900 Commonwealth Boulevard, MS 49

Tallahassee, FL 32399

Oil and Gas Permit Application 1388, Clearwater L&M

Dear Ms. Kramer, Ms. Mulkey, and Mr. Walker,

This letter constitutes Apalachicola Riverkeeper comments within the 30-day period for the DEP to determine the completeness of an application (Oil and Gas No. 1388) by Clearwater Land and Minerals FLA, LLC (Clearwater L&M) to drill an exploratory (wildcat) oil well between the Apalachicola River, Chipola River, and Dead Lakes. The application was received by DEP on or about December 6, 2023, and we were advised that our comments were required by December 22, 2023, to be considered when determining completeness of the application.

We have also aware that Clearwater L&M intends to submit another application in the same area but, we have no further details.

Apalachicola Riverkeeper, established in 1998, is a non-profit organization dedicated to the protection, restoration, and stewardship of the Apalachicola River, its floodplain, and the Apalachicola Bay. A member of the international Waterkeeper Alliance and Florida Waterkeepers, we are supported by over 1400 members, most of whom use and enjoy the river, its estuary and the Apalachicola Bay. Our mission is to protect the watershed and ecosystem of the Apalachicola River system, and along with our members, are committed to restoring and protecting the Apalachicola River to preserve it for future generations. In advancing that mission, Apalachicola Riverkeeper engages in education and advocacy to the public and to executive, legislative and adjudicative bodies of Federal, State, and local governments.

The Apalachicola River is the largest river in volume in Florida and has the largest and most environmentally sensitive undisturbed floodplain ecosystem in the state. That central feature of the river system is confirmed by the legally recognized status as an Outstanding Florida Water in 1984. Outstanding Florida Waters are a special category of water body set out by section 403.061(27), Florida Statutes. They are waters designated worthy of special protection because of their natural attributes that are of an ecologically outstanding character. For that reason, permits for activities that would degrade them must meet a stringent test – that construction must be “clearly in the public interest,” so long as the proposed activity would take place after the designation of the water body as an Outstanding Florida Water.

This site is located within the Apalachicola River floodplain and close to flowing river waters during normal high flows, such as those in winter months. At those times, about ninety-five percent of the Apalachicola River floodplain is connected aquatic habitat. Moreover, during major flood events, the drilling pad would be surrounded by flowing water.

The Apalachicola River is also connected at high flows to the source of drinking water supplies for the city of Port Saint Joe. Oil drilling and production in the floodplain of any river of this character risks catastrophic damage to the river system.

The Apalachicola River's extensive forested floodplain contains a diverse assortment of aquatic and wetland habitats. About 60 species of trees occur in the bottomland forest of the Apalachicola River floodplain. Mixed bottomland hardwoods are dominated by water hickory, sweetgum, overcup oak, green ash, and sugarberry, and grow in the areas of higher elevation in the floodplain (levees, ridges, and flats). Tupelo-cypress forested wetlands, also called swamps, grow in depressions and areas of lower elevation. Some of these swamps are covered with standing water year-round; others are inundated much of the year but lack standing water during the driest months.

Streams, sloughs, ponds, lakes, and swamps in these floodplains are alternately connected and disconnected from the main river channel as river levels fluctuate. Complex relationships exist between biological communities in floodplain habitats and river flow, with floral and faunal distributions varying spatially, seasonally, and annually. During low-flow periods, shallow waters in the flood-plain provide refuges for fishes from the deep, swiftly flowing waters of the main channel. During flood events, fishes use inundated floodplain forests for food, protective cover, spawning sites and nursery grounds.

As a result, the Apalachicola River's floodplain has the highest species diversity of reptiles (over 80 species) and amphibians (over 40 species) found north of Mexico. It also provides habitat for more than 280 species of birds, over 130 species of fish, over 52 species of mammals, and over 1,300 species of plants – including over 70 different species of trees. Among these species are more than 30 federally threatened or endangered animal species. Listed, rare, threatened, endangered and otherwise imperiled species in the floodplain include Gulf sturgeon, striped bass, spotted bullhead, five species of mussels, Apalachicola dusky salamander, eastern indigo snake, Florida manatee, bald eagle, swallow-tailed kite, Mississippi kite, Barbour's map turtle, and the fox squirrel. Nearly the entire river floodplain is identified by the Florida Natural Areas Inventory as priority rare species habitat.

**The application for this wildcat drilling is incomplete.** Moreover, there is sufficient precedent and reason to deny the application now based on the DEP rules and Statutes. The application and denial thereof would fall squarely within the four corners of the recent DEP decision to deny an application to drill an oil and gas well north of the Immokalee Airport.

DEP stipulated at hearing that the Immokalee application complied with all Oil and Gas Rules at 62C-25 through 30, FAC and Chapter 377, FS, except Section 377.241(3), F.S. This provision regards the "Proven or Indicated *Likelihood* of the presence of oil in such quantities as to warrant the exploration and extraction of such products on a commercially profitable basis".

At the hearing, a DEP consultant testified, and the Administrative Law Judge (ALJ) found, that “the failure rate for wildcats outside of existing fields is 98.8 percent (%)”. The ALJ made the Finding of Fact that “Consistent with [the expert’s] testimony and given the failure rate, it is unreasonable to proceed with an oil exploration project in Florida outside of an existing, established field. [The expert’s] opinion is credible and persuasive with regard to the Petitioner’s proposed project.”

Notably, the unsuccessful applicant had been successful at finding and producing oil at a location 7 miles away from the denied site. The applicant was basically suggesting that there were structures at the proposed location like those where he and other companies had succeeded at locations between 5 and 10 miles away.

By contrast, the Clearwater project bases its “likelihood” through analogy with the nearest oil fields that are about 125 miles away in Jay, Florida. **For reference, the historical failure rate of wells drilled in Calhoun County and adjacent Gulf, Gadsden, Franklin, Liberty, and Washington counties is 100% (70 dry holes out of 70 wells actually drilled).**

Another reason to deny, is that beyond any argument, the nature of the lands involved in the Clearwater L&M application is vastly more sensitive than the degraded land near Immokalee. For these reasons, DEP can and should move straight to denial. This would avoid the unnecessary use of time and resources for the applicant, the DEP, and the public.

At the very least, the application is incomplete. It is unclear if the applicant holds an environmental resource permit (ERP). ERP permitting should be integrated with oil and gas permitting for the proposed application, especially due to the requirement to consider the nature of the lands involved per Section 377.241(1), F.S.

DEP should require that Clearwater L&M submit a Section 404 permit application given the location of the project in the Apalachicola River floodplain, in or near Waters of the U.S (WOTUS). At minimum, there should be a decision in the record as to why such a permit is not required, if indeed it is not required.

DEP should request more information and include it in the public record regarding the applicant’s prospects of finding oil in commercial quantities. Presently, it appears that the DEP can decide to issue or to deny a permit using rationale and information outside of the public view or reach. Apalachicola Riverkeeper would be willing to sign a non-disclosure agreement (NDA) to see the geological and economic information that underpins this prospect.

DEP should plan and conduct a public meeting at an early date to explain how the DEP will review this application and to plainly describe how it weighs the factors and determines whether to issue a permit using the three criteria at 377.241(1, 2 and 3), F.S.

Apalachicola Riverkeeper may wish to add more completeness comments by the date (presumably January 5, 2024) DEP sends the applicant any request for any additional information (RAI). We would request that DEP will at a minimum attach our additional comments to a RAI letter to the applicant.

We are heartened by Governor DeSantis’ comments during the present campaign on drilling in Florida. We would agree that Florida does not have much onshore oil and has many sensitive

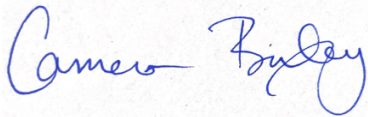
Ms. Jessica Kramers, Deputy Secretary  
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environments onshore and offshore. Today, the U.S. is producing more oil than ever. Almost all the additional oil, as noted by the Governor, comes from the vast Permian Basin outside of Florida. In such areas, hundreds of drilling projects conducted year in and year out have success rates in producing oil much greater than 50%. Almost all the oil that is commercially produced comes from such well-known zones.

In summary, there is presently sufficient rationale to deny this application and, clearly, the application is incomplete.

Please call on me for further discussion as needed. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Cameron Baxley". The signature is written in a cursive style with a light blue background behind it.

Cameron Baxley

Riverkeeper

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