

PC Oil Drilling in a Wildlife Refuge

By Pamela S. Snyder and Jane S. Shaw

“A Refuge Is No Place for Oil Rigs!” says a flyer issued by the National Audubon Society, which opposes oil drilling in ANWR, the Arctic National Wildlife Refuge in Alaska.

Yet since the early 1950s, 37 wells have pumped natural gas (and a small amount of oil) at various times from Audubon's Paul J. Rainey Sanctuary, a 26,000-acre preserve at the edge of the Intracoastal Waterway and Vermillion Bay in Louisiana. These wells have produced more than \$25 million in revenues for the Society.

The apparent inconsistency between Audubon's policy on ANWR and its actions on Rainey has embarrassed Audubon officials. This has led them to revamp the Rainey tale in a way that makes it more palatable to today's environmental activists.

In a 1991 World Energy Council Journal article, the Audubon Society stated that it had been compelled to allow drilling within Rainey. It explained the matter this way:

The original donors of the preserve had “retained part of the mineral rights beneath the sanctuary.” Under Louisiana law, a “partial owner of the mineral rights cannot refuse access to any other owners of rights over the surface of the land.” If Audubon had refused to sign a lease allowing exploration, the other owner of the mineral rights “could have exercised his rights under state law” and allowed drilling crews “to come into the sanctuary and do whatever they wished.” The article, authored by the National Audubon Society, summarizes: “Thus, in effect, we had a choice of allowing the drilling with Audubon safeguards in place, or with no Audubon safeguards at all.”

In 1994, Frank Dunstan, Audubon's Vice President for Sanctuaries, responded to a query in a similar vein, saying that "Audubon and the other mineral rights owners collectively initiated mineral development, recognizing that a surface owner cannot exclude a mineral rights owner from developing their assets."

However, a look into Louisiana law and a review of the deed donating the sanctuary to Audubon cast doubt on this version of the story. It is true that Louisiana law generally doesn't allow a surface owner to prevent a mineral rights owner from developing his or her assets. But when Grace Rainey Rogers donated her brother's waterfowl hunting preserve to the Audubon Society in 1924, she did not retain any mineral rights. Audubon owned them all.

Moreover, the deed of donation signed by Mrs. Rogers stipulated that the land was to be used as a sanctuary for wildlife, primarily wild birds. Any exploration and drilling would violate the "wildlife sanctuary only" condition and would empower the donors to demand the property back.

Thus, contrary to the impression given by current Audubon officials, Audubon was not compelled to develop the energy resources. It was, in fact, prevented from doing so by the condition in the sanctuary deed.

The discovery of natural gas in the marsh just west of the Rainey Sanctuary around 1940 changed everything. The deed restriction became a hindrance to Audubon. According to Silas B. Cooper, the Audubon Society's attorney in Louisiana, when neighboring wells became enormously productive, Audubon went back to Grace Rainey Rogers to seek her agreement about drilling on Rainey. Mrs. Rogers agreed to allow it and to split the royalties 50/50. (Later, her heirs voluntarily reduced their share to 40%.)

Why isn't Audubon headquarters forthright about Rainey? The answer is image. Audubon sees itself as a protector of nature and these days takes the position that energy development is exploitation of nature.

Yet Audubon's experience at Rainey clearly demonstrates the feasibility of extracting natural gas from land without causing environmental harm. The refuge serves as a resting and feeding ground for over 100,000 migrating snow geese. It is home to ducks, wading birds, deer, shrimp, crab, and fish. Not only has there been no measurable damage from drilling, but the income has enabled Audubon to undertake a marsh management program it could not have adopted otherwise. (For the record, Silas Cooper believes that the fragility of ANWR's ecosystem justifies Audubon's opposition to drilling there, while Rainey's lush environment enables it to accommodate energy development.)

Is Audubon hypocritical for earning \$25 million from mineral resources on its own land and yet opposing it on public land? Not really. The inconsistency between Audubon's actions on Rainey and its rhetoric over ANWR reflects the different incentives that drive decisions about the use of private and public lands.

Decisions about public land are entangled in a never-ending political process. Control is always up for grabs in a "winner takes all" setting. If energy companies win the right to explore ANWR, environmental groups will have little ability to control exploration or production. On the other hand, environmental groups win if they prevent energy development. And when they "win," they capture the benefits of a pristine environment while bearing only a trivial fraction of the cost. That is, since public land belongs to everyone, the cost of giving up revenues from energy development is shared by everyone. So Audubon has an incentive to fight politically to "win."

In contrast, on its own land, Audubon has an incentive to find balance. If Audubon chooses to keep the environment pristine, it must bear the full cost of lost income; it doesn't get a free ride the way it does through the political system. If Audubon allows development, it is free to place whatever controls it thinks appropriate on the development. The goal is to find the best

combination of environmental protection and revenue generation, not to have one policy trump the other.

So what should be the policy for ANWR? One approach is to give environmental groups such as Audubon the opportunity to bid on government oil and gas leases. As lessees, Audubon would essentially have ownership control. Both the costs and benefits would belong to Audubon, as they do at Rainey. Audubon could choose to not develop the resources or to allow drilling on its own terms.

The incentives facing property owners encourage balance and creative solutions, while public land engenders political confrontation. Rainey needn't be an embarrassment to the Audubon Society. It should be a flagship.

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