

NATIONAL PARKS CONSERVATION ASSOCIATION

Protecting Our National Parks for Future Generations

January 25, 2010

Department of the Interior;
National Park Service; Attention: 9B
Rulemaking Team, Geologic Resources
Division, National Park Service,
P.O. Box 25287
Denver, Colorado
80225-0287

Re: Comments on Advance Notice of Proposed Rulemaking for National Park Service Regulations Governing the Exercise of Non-Federal Oil and Gas Rights in Parks at 36 CFR Part 9, Subpart B (RIN 1024-AD78)

To Whom It May Concern:

On behalf of our more than 325,000 members, the National Parks Conservation Association (NPCA) would like to thank you for the opportunity to comment on the advance notice of proposed rulemaking (ANPR) to revise regulations governing nonfederal oil and gas development within the boundaries of units of the National Park System. Our members care deeply for America's shared natural and cultural heritage that has been preserved by the National Park System and want future generations to inherit an even stronger and invigorated system of preserved lands.

Unlike other federal land agencies, the National Park Service (NPS) does not manage for multiple uses on parklands. Instead, the NPS has been mandated through the 1916 National Park Service Organic Act to "conserve the scenery and the natural and historic objects and the wildlife therein...by such means as will leave them unimpaired for the enjoyment of future generations."¹ As such, NPCA believes that oil and gas development is an inappropriate use within the boundaries of national park units.

We understand that certain oil and gas rights predate the enabling statute that created a number of units of the National Park System. Accordingly, we believe that the NPS should use its legal authority under the Property Clause (art. IV, section 3, cl. 2) the Commerce Clause (art. I, section 8, cl. 3) of the United States Constitution, and sections 1 and 3 of NPS Organic Act (16 USC 1 and 3), to ensure that all oil and gas activities on NPS lands are conducted responsibly through guidelines provided under 36 CFR Part 9, Subpart B (or "9B" regulations).

¹ 16 U.S.C. 1a.



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Unfortunately, 361 of the 693, or 53%, of oil and gas operations that are now conducted within the boundaries of national park units are not regulated by the NPS due to loopholes found in the current 9B Regulations, which have been in place since December of 1978. It is crucial that the NPS strengthen these regulations so that they are made at least as strong as that already in place for the Bureau of Land Management (BLM) and Forest Service (FS) who have better tools available (especially on the issue of bonding) to regulate oil and gas activities.

We are pleased that the NPS is moving forward in improving these outdated oil and gas regulations so that they can truly provide the necessary means to ensure that visitors and park resources are protected and preserved.

I. All Oil and Gas Operations Should Be Made Regulated Under 9B to Prevent Damage to Park Resources

Updating 9B regulations is sorely needed since 11 of the 13 park units with oil and gas activities have operations that are not regulated by 9B. Taken together, over half (53 percent) of oil and gas activities within national park boundaries are exempted from the very regulations developed to ensure the protection of park resources. This exemption has failed to prevent the contamination of water resources at a number of parks, raised human health concerns, and put countless park resources, including sensitive species, at risk. The ANPR discusses the two groupings of exemptions as follows:

1. “No Federal Access”

“The existing regulations, as provided at § 9.30(a), apply where an operator’s access is “on across, or through federally owned or controlled lands or waters.” As a result, 109 operations (17%) are currently exempt from the regulatory requirements even though the operations occur inside park boundaries. For example, oil and gas rights under privately owned lands just inside the boundary of a park unit, and for which access to those lands is solely maintained without crossing park owned or administered lands, are not subject to these regulations.”

2. “Grandfathered”

“In addition, under § 9.33, operations covered by a valid state permit in existence at the time the regulations became effective are also exempt (i.e., 255 operations or 37%). Ultimately, as these operations change hands or state permits expire, the exemption no longer applies and operators must comply with the regulations. However, the rate of turnover and permit expiration has been much slower than anticipated by the original drafters of the 9B regulations, leaving a large number of this class of operations outside the scope of the Service’s regulations.”

The American public would expect that NPS would have the strongest regulations in place among the various federal land agencies. Surprisingly, however, this is not the case since the BLM and FS have in place no such exemptions for oil and gas operations.



Currently, 11 of the 13 national park units that do have oil and gas operations within their boundaries fall under one or both of these exemptions. These parks include:

- Alibates Flint Quarries National Monument
- Aztec Ruins National Monument
- Big Thicket National Preserve
- Big South Fork National River and Recreation Area
- Cuyahoga Valley National Park
- Fort Union Trading Post National Historic Site
- Gauley River National Recreation Area
- Lake Meredith National Recreation Area
- New River Gorge National River
- Obed Wild and Scenic River
- Tallgrass Prairie National Preserve

However, the number of park units who are exempted from the 9B regulation could grow considerably in the coming years due to the increasing development of the “Marcellus Shale” deposit, which is found in New York, Pennsylvania, Virginia, West Virginia, Ohio, Tennessee, and Maryland. The deposit underlies or is in close vicinity to 35 national park units and poses a particularly serious threat to Upper Delaware Scenic and Recreational River in New York and Pennsylvania.

The challenge posed by the management of approximately 300 oil and gas wells within Big South Fork National River and Recreation Area illustrates why having a strong regulation in place is imperative. During the 1970s and 1980s there was considerable oil and gas activity in the park, but many of these companies soon faltered leaving behind a management conundrum for the NPS due to the considerable health, safety, and environmental risks associated with the uncapped wells, as well as the fact that financially appropriate bonds were not in place. Even though Tennessee has laws in place requiring that unattended oil and gas wells be capped, only limited funds from the state or park have been available until only recently. According the NPS:

“These abandoned wells pose environmental risks and public safety threats, including resource damage from the release of contaminants as deteriorating pressure control equipment fails; subsurface contamination of groundwater absent proper well plugging; personal injury and property damage from spontaneous release of pressurized and highly flammable well fluids; and continued disturbance from unreclaimed oil and gas development. Some wells are located in areas easily accessible by hunters and others who visit the park, creating health and safety hazards for these users.”²

² Big South Fork National River and Recreation Area. “Scoping Newsletter: Well Plugging and Reclamation.” 2009.



Fortunately, the NPS is beginning to make progress in locating funding and moving forward in capping many of the parks' abandoned wells. The State of Tennessee recently provided money for capping 14 wells and 45 or more wells will soon be capped and reclaimed through funding for the NPS under the American Recovery and Reinvestment Act of 2009.

Big South Fork National River and Recreation Area is currently updating its' Oil and Gas Management Plan to guide oil and gas activities for the next 15 to 20 years and for it to be consistent with the final updated 9B rule the NPS is concurrently developing. According to the Final Internal Scoping Report on the parks' Oil and Gas Management Plan (updated January 2006), a new plan is needed because many of the past and existing oil and gas operations are "adversely impacting resources and values, human health and safety, and visitor use and experience; most are not in compliance with federal and state regulations, most notably, the National Park Service 36 CFR Part 9B regulations."

The Final Internal Scoping Report also states that the park provides outstanding "habitat for a world-class freshwater mussel assemblage and are an important refuge for many endangered mussel species. Few other river systems support this level of mussel diversity." Finally, the river "is also significant because it is considered an Outstanding National Resource Water, Tier III under the Clean Water Act. This designation indicates that water quality must be maintained and protected and only short-term changes may be permitted."

Until the two exemptions under the 9B regulation are eliminated, Big South Fork National River and Recreation Area and the other 11 park units with exempted operations will continue to face unacceptable risks to park resources and public safety. It also leaves American taxpayers vulnerable to having to pay for reclaiming abandoned oil and gas operations whose ownership may have folded and did not have sufficient bonds in place to fund the necessary work.

In order to bring all oil and gas activities within park boundaries under the 9B regulation, NPCA supports a combination of the requirements found in Option # 2 and # 3 for Question # 1 in the ANPR. Specifically, we believe that all currently exempted operators should within 1 year

- Submit plans of operation;
- Provide documentation of the legal basis for their respective oil and gas activities within the park unit;
- Prove they are in compliance with operating standards, which would be enforceable by park staff; and
- Require companies to provide a performance bond to cover each of their drilling sites.

Requiring operators to prove they have legal authority to undertake any operations and verify that their operations will meet standards is reasonable, as is submitting a plan detailing their mining activities. Increasing bonds as necessary for each oil or gas site is also an appropriate requirement and will be detailed in the next section.



Since there have been accidents in the past in capping wells within the National Park System that have inflicted considerable damage to park resources, we would like you to respond to the following question:

Would park resources be better protected if the NPS issued specific guidelines through the 9B regulation regarding standards for how best to collaborate with appropriate federal and state agencies and other stakeholders?

II. Directional Drilling For Oil and Gas Resources Within Park Boundaries Should be Encouraged, But Still Regulated

The current 9B regulation needs to be strengthened to sufficiently ensure the protection of park resources from oil and gas operations that may function adjacent to park boundaries and utilize directional drilling techniques. Currently, operators may be granted an exemption that does not require that they submit a proposed plan to the NPS or get a performance bond if they directionally drill. According to the ANPR:

“When an operator takes advantage of the directional drilling provision of the regulations and locates its surface facilities outside park boundaries, the operator has significantly reduced direct impacts to park resources and values... While potential indirect impacts of sight, sound, artificial light, odor, and spills may exist from drilling operations outside a park, they are usually much reduced relative to surface operations in a park.”

We strongly agree that it is generally preferable for operators to be outside park boundaries to preserve park resources. However, as the ANPR points out, these adjacent operations can have serious negative impacts on parks resources, including water and air quality. Accordingly, we believe that the current exemption for completing an operations plan or having a bond should be eliminated, with an alternative incentive developed.

NPCA strongly endorses Option # 2, which would “Expand the regulation to cover all activities associated with directional drilling operations which may affect park resources and values, both the downhole operations in the park and the surface location outside the park.”

III. The Current 9B Bonding Cap Puts Park Resources at Risk, Puts an Undue Financial Burden on the NPS, and is Otherwise Entirely Inadequate

The current 9B regulations are exceedingly outdated and problematic in that it places a bonding cap of up to only \$200,000 per operator, per NPS unit. This amount is entirely insufficient since capping and reclaiming even a single oil or gas site can easily exceed this amount and many operators have numerous sites in a particular park.



Amazingly, the NPS has much weaker standards than those already in place for the BLM and FS. Unlike the NPS, these two agencies attempt to set bonds based on the realistic costs of plugging wells, reclaiming and restoring the site, and cleaning up the sites, which includes disposing of potentially dangerous chemicals and equipment, such as oil tanks that can often hold anywhere between 100 and 500 barrels of oil or leftover sludge. However, even the BLM and FS policies fail to go far enough in that they are designed to ensure compliance, but not necessarily 100% of the of the necessary recovery costs.

Depending on the operating agreement with the two agencies, companies can have bonds for specific sites, groupings of sites, sites within an entire state, or sites across the nation. In developing bonds, the agencies consider each companies operating record and whether they have a number of inactive wells that, if the company folded, would pose a tremendous liability to land managers. Furthermore, the BLM has the authority to increase any bond at any time

“for factors, including but not limited to, a history of previous violations; a notice from the Minerals Management Service (MMS) that there are uncollected royalties due; the total number, location, and depth of wells; the age and production capability of the field; unique environmental issues; or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount by an unacceptable amount.”³

While neither the BLM nor FS have a bonding cap, they are unable to exact a bond that is more than the total cost of plugging all of their wells. Even this limit, however, is unrealistic since it does not cover associated financial needs that may be necessary to “kill” wells from building up perilous amounts of pressure and blowing out and putting the public and environment at even greater danger.

In sum, NPCA supports putting in place a strong performance bond based on the realistic costs of plugging wells, reclaiming and restoring the site, cleaning up the sites, and undertaking broader efforts that may involve work to alleviate dangerous amounts of pressure that may be created below the ground surface. Bonds should also be set taking into consideration the company’s operating history and be provided the same authority as the BLM to increase bonds at any time.

IV. The Plan of Operations Must Establish Enforceable Measures to Avoid or Mitigate Adverse Air Quality and Other Environmental Impacts Associated with All Activities Related to Oil and Gas Development

³ United States Department of the Interior and United States Department of Agriculture. “The Gold Book: Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development.” 2007. <http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy/oil_and_gas.Par.18714.File.dat/OILgas.pdf>.



While stronger performance bonds based on the entirety of the costs in reclaiming and restoring park landscapes will help preserve park resources in the future, the mere operation of facilities has negative direct impacts of its own on wildlife and other park resources. As such, we encourage the NPS to require that the plan of operations include enforceable measures to avoid or mitigate adverse air quality or other environmental associated with all activities related to oil and gas development. To ensure that the park service may fulfill its obligation to conserve park resources by means that leave them unimpaired for the enjoyment of future generations, it is imperative that the adverse impacts on wildlife and their critical habitat, air and water quality, and other park resources will be avoided or mitigated throughout the life of the operation. We would like the NPS to respond to the following:

Do you agree that there are negative impacts on park resources, especially wildlife and air quality during the life of an oil or gas development activity that should be avoided or mitigated as an obligation under the 9B regulation?

The NPS's permitting of oil and gas operations should incorporate enforceable measures to reduce air pollution through stringent emission limits and state-of-the-art pollution controls. In addition, the plan of operations should include mitigation efforts to avoid or diminish impacts on air quality associated with planned or incidental development operations.

Oil and gas operations emit a cocktail of pollutants that adversely impact people and park resources. These air pollutants include: fine and course particulate matter (PM), nitrogen oxides (NO_x), sulfur dioxide (SO₂), hydrogen sulfide (H₂S), carbon monoxide (CO), volatile organic compounds (VOCs), Polycyclic aromatic hydrocarbons (PAHs) and methane (CH₄). NO_x and VOCs, for example, are precursors to ground-level ozone or smog. The effects of ground level ozone include damage to plants and reductions in forest growth and crop yield. Ground level ozone also causes respiratory and other health problems as does H₂S. PM, NO_x, SO₂ and VOCs are haze-causing pollutants that obscure scenic vistas in national parks by impairing a viewer's ability to see long distances, color and geologic formation. Methane is a greenhouse gas that is about 20 times more potent than carbon dioxide, thus emissions of this contaminant contribute to the impact of climate change on national park ecosystems and wildlife.

The impact of these emissions and strategies to avoid or minimize their harm must be accounted for by park managers, companies, and other stakeholders charged with designing the plan of operations for oil and gas development. In most instances, these parties have parallel responsibilities under a number of Clean Air Act programs designed to prevent or limit air quality degradation from new and existing sources of pollution. As such, we support the inclusion of language calling for the avoidance and mitigation of air quality impacts in this body of regulation that enhance and complement existing responsibilities of the park service.

In addition, we encourage the NPS to consider the cumulative effects of the pollution created by oil and gas operations, especially class I area parks that could put park resources and visitor health at unacceptable risk.



V. The NPS Should Consider Expanding the “9B” Regulation to Govern Non-Federal Mineral Rights, Such as Sand, Gravel, and Coal

The legal authorities that provide for the NPS to regulate oil and gas activities within the boundaries of national park units also provide the authority, which we believe the NPS should invoke, to regulate other nonfederal minerals such as sand, gravel, and coal. As is the case with oil and gas, the extraction of sand, gravel, and coal can seriously harm and potentially impair park resources. Requiring a plan of operation, performance bond, and other management tools under 9B would transfer well to regulating these additional activities and could forgo the need to develop a separate regulation.

As such, do you agree that sand, gravel, and coal is currently putting park resources at risk and is in need of regulation? Moreover, do you believe that the extraction of these minerals could become part of a revised 9B regulation?

VI. Conclusion

We are pleased that the NPS is moving forward in updating its regulations for non-federal oil and gas operations in the parks. As discussed, the current 9B regulations are weaker than those regulations already in place for the BLM and FS and are simply not providing the necessary safeguards for America’s national park heritage. Furthermore, it makes American taxpayers vulnerable for having to fund the reclamation of abandoned and defunct oil and gas operations. NPCA looks forward to working with the NPS on finalizing a strong oil and gas regulation that ensures that our national parks are preserved for future generations. If you have any questions regarding our comments and recommendations please contact me at 202-419-3700.

Sincerely,

Bryan Faehner
Associate Director for Park Uses



