

SUPPORTING STATEMENT FOR INFORMATION COLLECTION
BY THE NATIONAL PARK SERVICE (NPS)
REQUIRED BY REGULATIONS AT 36 CFR PART 9, SUBPART A
FOR MINING OPERATIONS, AND 36 CFR PART 9, SUBPART B FOR NON-FEDERAL
OIL AND GAS OPERATIONS IN THE NATIONAL PARK SYSTEM

OMB CONTROL NUMBER 1024-0064

Terms of Clearance: “Upon the NPS next submission to OMB, NPS shall describe efforts to consult with persons outside of the agency to verify the burden reported for this collection. This effort shall be in addition to the request for public comments.” See Agency Response under A.8 below.

REQUEST FOR APPROVAL UNDER
THE PAPERWORK REDUCTION ACT AND 5 CFR §1320

A. JUSTIFICATION

1. ***Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.***

9A Regulations

In accordance with Mining in the Parks Act of September 28, 1976, 16 U.S.C. §1901 *et seq.*, and the National Park Service (NPS) Organic Act as amended, 16 U.S.C. §1 *et seq.*, the NPS promulgated regulations at 36 CFR Part 9, Subpart A in 1977 to ensure that activities on valid mining claims in units of the National Park System are conducted in a manner consistent with preserving each unit in the system for the benefit of present and future generations. The regulations require claimants to submit specific information describing their future development plans including steps to mitigate the impacts of mining operations, and preclude claimants from conducting any operations until they have NPS approval. NPS uses the information to evaluate proposed operations, ensure that all necessary mitigation measures are employed to protect park resources and values, and to ensure compliance with all applicable laws and regulations.

9B Regulations

In accordance with the Act of August 25, 1916 as amended, 16 U.S.C. §1 *et seq.*, and individual park enabling statutes, the NPS promulgated regulations at 36 CFR Part 9, Subpart B in 1978 to ensure that non-Federal oil and gas activities in units of the National Park System are conducted in a manner consistent with preserving each unit in the system for the benefit of present and future generations. The regulations require operators to submit specific information describing their future oil and gas development plans, including steps to mitigate impacts. NPS uses the information to evaluate

proposed operations (i.e., new plans, supplements to plans, applications for exemption pursuant to §9.32(e)) to ensure that all necessary mitigation measures are employed to protect park resources and values, and ensure compliance with all applicable laws and regulations. Operators must have their operations approved by the NPS before they commence development inside a unit of the National Park System.

Copies of both the 9A and 9B regulations and statutes are attached to this Supporting Statement.

2. ***Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. [Be specific. If this collection is a form or a questionnaire, every question needs to be justified.]***

9A Regulations

The collection of information required by the NPS mining regulations identifies the claim, claimant, and operator (the claimant and operator are often the same) and details how the operator intends to access and develop the minerals associated with the claim. It also identifies the steps the operator intends to take to minimize any adverse impacts of the mining operations on park resource and values. No information, except claim ownership information, is submitted unless the claimant wishes to conduct mining operations.

The information is used by the NPS to maintain files on the parties responsible for mineral development on mining claims in units of the National Park System, to evaluate proposed access and mining operations to ensure that the Service's legal mandates identified in item #1 are satisfied, to ensure that park resources and values are protected from possible damage due to mining operations, and to meet NPS responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 *et seq.*, 40 CFR Parts 1500-1508, and the National Historic Preservation Act of 1966 (NHPA), as amended, 16 U.S.C. §470 *et seq.*, 36 CFR Part 800. The information is required to obtain approval from the NPS to conduct mining operations under 16 U.S.C. §1901 *et seq.* Without the requested information, the NPS cannot make defensible decisions regarding the conduct of mining operations on valid claims in units of the National Park System. Allowing mining operations to occur without collecting the information would violate several statutes, including the Mining in the Parks Act, the NPS Organic Act, the National Historic Preservation Act, the Endangered Species Act, and NEPA, and would result in unnecessary damage to park resources and values, and negatively impact visitor experience. The exact information submitted by any given operator depends on the immediate topography, configuration of the mineral deposit, available extraction technologies for the particular commodity, and the resources and values in the area. The potential environmental effects resulting from mining activity within units of the National Park System necessitate the collection and evaluation of such site-specific data.

Plans of operations are required before conducting mining activities on a claim pursuant to 36 CFR §§ 9.3, 9.7 and 9.9. In Alaska, 43 CFR Part 36 governs access to claims pursuant to 36 CFR §9.3, and form SF 299 - Application for Transportation or Utility System and Facilities on Federal Lands, OMB No. 1004-0060, must generally be submitted to obtain approval for access. Outside Alaska, claimants do not need to submit a request for access distinct from their plan of operations. To conduct mining operations associated with claims in Alaska, operators must obtain NPS approval of a proposed plan of operations pursuant to 36 CFR §§9.7 and 9.9.

36 CFR §9.5 requires recordation of unpatented mining claims with the Bureau of Land Management (BLM) in accordance with 43 U.S.C. §1744 and 43 CFR §3833. This section of the NPS regulations serves simply to notify claimants that they must comply with BLM regulations and information collection requirements, which have been assigned OMB clearance number 1004-0114. This section of the NPS regulations has been modified by legislation stemming back to 1992 when Congress first directed that unpatented mining claimants pay an annual maintenance fee instead of performing annual assessment work to keep their claims. BLM implementing regulations are located at 43 CFR Parts 3700 and 3800.

36 CFR §9.6 requires claimants to notify the NPS of any changes in claim ownership. There is no particular form for submitting this information to the NPS. The information is needed to identify and communicate with persons legally responsible for ensuring that all activities on a claim are conducted in compliance with applicable laws and regulations.

36 CFR §9.9 requires prospective operations to obtain an approved plan of operations prior to conducting any mining operations in a unit of the National Park System. It also requires claimants to adhere to the requirements in their plans of operations as approved. The information that must be included in a plan of operations is specified in this section along with additional requirements in 36 CFR §§ 9.7, 9.8, 9.11 and 9.13. An approved mining plan of operations is in effect a legally binding contract between the operator and the NPS to conduct operations only in the manner as stated and approved, with penalties for noncompliance. Thus, the plan must be detailed, clearly understood, and accurate. The NPS has prepared several publications to assist mining claimants in preparing plans of operations, and understanding and complying with these requirements.

The collection of information required by 36 CFR §9.9(b) is discussed in detail below.

Names and legal addresses are needed to identify the claim, claimant, and operator. The map(s), descriptions of the mode of transport and major equipment, proposed operations with development timeframes, and the nature and extent of the known deposit are needed to enable the NPS and any interested public reviewers to evaluate the proposed operations. The NPS also needs information sufficiently specific to enable the Service to perform detailed engineering and environmental analyses necessary to meet the requirements of the laws mentioned above. The NPS uses the information to ensure that

the operator will be able to conduct safe and environmentally acceptable mining operations within the confines of the mining claims.

Because the NPS cannot approve an operation that violates any law or regulations, documentation of compliance with applicable Federal, State and local laws and regulations is also required (this can be satisfied by supplying copies of permits, licenses, etc.). The reclamation plan is needed to ensure that the claim is left in a safe and environmentally sound condition during and after mining operations. The environmental report and the discussion of the park's planning documents and mitigation measures demonstrate that the operator has considered and understands the nationally significant resources and values in which he/she plans to conduct mining operations. This information is also necessary to facilitate preparation of NPS documents in compliance with NEPA.

36 CFR §9.10(e) requires a determination by the NPS Regional Director prior to approval of a plan of operations whether the proposed operations may have an effect on certain cultural resources, in compliance with the National Historic Preservation Act of 1966. Prospective operators must also comply with the requirements of the Archeological Resources Protection Act (ARPA), 16 U.S.C. §§470aa-mm, and 43 CFR Part 7. Although 36 CFR §9.10(e)(3) places the responsibility on the operator to obtain the information necessary for these determinations, in practice, the NPS has normally provided the expertise to completely satisfy this requirement to avoid duplication of effort with the claimant, due to NPS's own responsibilities under the cultural resource laws. This section also requires the operator to notify the park Superintendent if any cultural and/or scientific resource is discovered during the course of operations that may be altered or destroyed by the operation.

36 CFR §9.12 allows for supplementing or revising an approved plan of operations at the initiation of either the operator or NPS. To initiate a revision, the operator must submit a written statement for NPS consideration and approval describing and justifying the proposal. There is no standard form for this statement.

To enable the NPS to complete the reclamation requirements in the approved plan of operations in the event the claimant defaults on his/her commitment, 36 CFR §9.13 requires a performance bond or security deposit before operations may begin. No standard form exists for filing a bond or security deposit.

36 CFR §9.14 allows claimants to file formal written grievances with the NPS Regional Director if they believe that erroneous decisions have been made regarding their requests for approval to conduct mining operations. No standard form exists for submitting an appeal.

36 CFR §9.15 requires registration of all commercial vehicles with the park Superintendent, and payment of a registration fee. The type and number of vehicles to be used in the mining operations must be listed in the plan operations.

9B Regulations

The collection of information required by the NPS's non-Federal oil and gas regulations identifies the owner and operator (the owner and operator are often the same) and details how the operator intends to access and develop the non-Federal oil and gas right. It also identifies the steps the operator intends to take to minimize any adverse impacts on park resources and values. No information is submitted unless the owner wishes to conduct oil and gas operations.

The information will be used by the NPS to evaluate proposed access and non-Federal oil and gas operations to ensure that the Service's statutory mandates identified in item #1 are satisfied, to ensure that park resources and values are protected from possible damage due to oil and gas operations, and to meet NPS responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 *et seq.*, 40 CFR Parts 1500-1508, and the National Historic Preservation Act of 1966 (NHPA), as amended, 16 U.S.C. §470 *et seq.*, 36 CFR Part 800. Operators must submit the information to obtain approval from the NPS to conduct oil and gas operations under 16 U.S.C. §1 and §3, and individual park enabling acts. Without the requested information, the NPS cannot make defensible decisions regarding the conduct of oil and gas operations in units of the National Park System. Allowing oil and gas operations to occur without collecting the information would violate several statutes, including the NPS Organic Act, the National Historic Preservation Act, the Endangered Species Act, and NEPA, and would result in unnecessary damage to park resources and values. The exact information submitted by any given operator depends on the immediate environment, configuration of the deposit, available extraction technologies, the resources in the area, and the operator's commercial interests. The potential effects resulting from oil and gas activity within units of the National Park System necessitates the collection and use of such site-specific data.

Approved plans of operations are required before conducting oil and gas activities pursuant to 36 CFR §§ 9.32 and 9.36. One plan may cover, and usually does cover, more than one operation. Under the current regulations, some operations in park units qualify for an exemption from the plan of operations requirement if the operation existed on the effective date of the regulations or an operator can obtain access to the outstanding oil and gas right inside a park unit without crossing federally owned or controlled lands or waters. Because adverse impacts to park resources and visitor safety result from these exemptions, the NPS intends to eliminate the regulatory exemptions in the near-term.

36 CFR §9.32 requires an approved plan of operations prior to conducting any oil and gas operations in a unit of the National Park System. It also requires operators to adhere to the requirements in their plan of operations as approved. An approved oil and gas plan of operations is in effect a legally binding contract between the operator and the NPS to conduct operations only in the manner stated and approved, with penalties for noncompliance. Thus, the plan must be detailed, clearly understood and accurate. The NPS has prepared several documents to assist oil and gas operators in preparing plans of operations, and understanding and complying with these requirements.

The collection of information requirements of 36 CFR §9.36 (b) is discussed in detail below.

Names and legal addresses are needed to identify the owner, lessee and operator. The map(s), descriptions of the mode of transport and major equipment, proposed operations with a development timetable, and the nature and extent of the known deposit are needed to enable the NPS and any interested public reviewers to evaluate the proposed operations. The information must be sufficiently specific to enable the NPS to perform detailed engineering and environmental analyses necessary to meet the requirements of the laws mentioned above. The NPS will use the information to ensure that the operator will conduct a safe and environmentally acceptable operation within the confines of the property right interest.

Because the NPS cannot approve an operation that violates any law or regulation, an affidavit of compliance with applicable Federal, State, and local laws and regulations is also required (this can be satisfied by supplying copies of permits, licenses, etc.). The reclamation plan is needed to ensure that the site of operations is left in a safe and environmentally sound condition during and after operations. The operator's environmental report and the discussion of the park's planning documents and mitigation measures demonstrate that the operator has considered and has some understanding of the nationally significant resources and values present where he/she plans to conduct operations. This information is also necessary to facilitate preparation of NPS documents in compliance with NEPA.

In compliance with the National Historic Preservation Act of 1966, 36 CFR §9.37 (e) requires the NPS Regional Director to determine whether a proposed operation may have an effect on certain cultural resources. Although the responsibility is on the operator to obtain the information necessary for this determination, in practice, the NPS has normally provided the expertise to completely satisfy this requirement to avoid duplication of effort with the operator, due to the NPS's own responsibilities under the cultural resource laws. Prospective operators must also comply with the requirements of the Archeological Resources Protection Act (ARPA), 16 U.S.C. §470aa-mm and 43 CFR Part 7.

36 CFR §9.47 (e) requires the operator to notify the park Superintendent if any cultural and/or scientific resource is discovered during the course of operations that may be altered or destroyed by the operation.

36 CFR §9.40 allows for supplementing or revising an approved plan of operations at the initiation of either the operator or NPS. To initiate a revision, the operator must submit a written statement for NPS consideration and approval describing and justifying the proposal. There is no standard form for this statement.

To enable the NPS to complete the reclamation requirements in the approved plan of

operations in the event the operator defaults on his commitment, 36 CFR §9.48 requires a performance bond or security deposit before operations may begin. No standard form exists for filing a bond or security deposit.

36 CFR §9.49 allows operators to file formal written grievances with the NPS Regional Director if they believe that erroneous decisions have been made regarding their requests for approval to conduct oil and gas operations. No standard form exists for submitting an appeal.

36 CFR §9.50 requires registration of all commercial vehicles with the park Superintendent, and payment of a registration fee. The type and number of vehicles to be used in the oil and gas operations must be listed in the plan of operations.

3. ***Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements].***

The required information is unique to each specific site, operator, and operation. There is no information collection burden unless the operator initiates a request to conduct mining operations or non-Federal oil and gas operations (except for the requirement to notify NPS of a change in claim ownership). The nature of the data does not lend itself to the use of "improved information technology" as a way to reduce the burden on operators. At operators' discretion, they may submit information to the NPS electronically. The data is technical and must be reviewed by subject matter experts in a variety of fields. The information is vital to park resource protection and management, and is kept on file.

4. ***Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.***

No similar information is collected by the NPS or other agencies. Federal requirements take precedence over any State and local requirements for information of this sort. Because the information requested is specific to the claim, operator, and operations, duplication of effort and information is not possible.

5. ***If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.***

The information burden on a prospective operator depends on the nature of the proposed operation. The size of business makes no difference. The information required is the minimum necessary to allow the NPS to make decisions on approving or disapproving

proposed plans of operations while meeting NPS's responsibilities under the laws and regulations listed above to ensure protection of park resources and values. The NPS encourages operators to contact appropriate NPS staff for assistance in designing environmentally sound development strategies and in providing guidance on how to prepare an acceptable plan of operations and other required documents. The NPS has prepared publications to assist prospective operators in meeting these requirements.

6. ***Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.***

If the NPS did not require operators to submit proposed plans of operations for review and approval prior to commencing development, the NPS would fail to carry out its statutory mandates and mining and non-Federal oil and gas operations would degrade park resources and jeopardize visitor safety. Over the course of an operation, the NPS only requires a one-time submittal of a complete plan of operations. Thus, collection frequency cannot be reduced.

7. ***Explain any special circumstances that would cause an information collection to be conducted in a manner:***
- ***requiring respondents to report information to the agency more often than quarterly;***
 - ***requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;***
 - ***requiring respondents to submit more than an original and two copies of any document;***
 - ***requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;***
 - ***in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;***
 - ***requiring the use of a statistical data classification that has not been reviewed and approved by OMB;***
 - ***that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or***
 - ***requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.***

None.

18. ***If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past three years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.] Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.***

71 FR 34158 – 34159 (June 13, 2006). The NPS received no comments in response to the *Federal Register* Notice (see attachment).

The paperwork burden on the affected regulated public (i.e., 9A and 9B operators) reported by the NPS encompasses the following 2 parts: an estimate for the number of responses, and an estimate on the amount of time individual respondents spend complying with the Service's regulatory requirements. It is important to keep in mind that the number of operators subject to this regulatory requirement is extremely limited, i.e., an estimated 4 responses per year for prospective operators under the Service's 9A regulations, and 20 responses for operators under the Service's 9B regulations. In determining the number of responses that fall within the scope of the regulations the NPS uses the actual number of regulatory actions submitted in prior years adjusted up or down depending on external factors like the price of gold and oil and gas. As the price for commodities increases, interest in developing marginal deposits or plays increases, making it more likely that the NPS will witness more applications from prospective operators. With respect to the second element making up the Service's estimate of the paperwork burden, the NPS uses a range to account for the breadth of actions operators may seek to undertake in parks to develop their private mining rights or oil and gas rights. These individual actions may also vary in complexity.

Contact with persons outside the agency

Below is a description of the actions the NPS took to comply with the “Term of Clearance” attached to the previously OMB approved information collection budget for the Service’s minerals management regulations at 36 CFR Part 9: “Upon the NPS next submission to OMB, NPS shall describe efforts to consult with persons outside of the agency to verify the burden reported for this collection. This effort shall be in addition to the request for public comments.”

9A Regulations

Currently, 1321 mining claims exist in 18 units of the National Park System. The majority of the claims exist in two units: Mojave National Preserve in California with 511 claims, and Wrangell-St. Elias National Park and Preserve in Alaska with 324 claims. Mojave National Preserve was added to the National Park System in 1994 via the California Desert Protection Act.¹

Prior to 1985, numerous mining operations on claims occurred in parks, especially in 3 units in Alaska. However, in 1985, a coalition of environmental groups successfully sued the NPS in Federal District Court in Alaska over the agency’s failure to properly implement the 9A regulations and the National Environmental Policy Act at three NPS-managed units in Alaska. The case was appealed to the 9th Circuit Court of Appeals, which upheld the lower court’s ruling.

In the aftermath of the litigation, interest in mining on mining claims in units of the National Park System dramatically dropped off. Only a few operators have sought to conduct mining operations on mining claims in park units. The last approval occurred in 2003 for a proposed mining operation at Wrangell-St. Elias National Park & Preserve. At present only 2 mining operations on mining claims exist in the National Park System, the aforementioned operation and the Billy Mine at Death Valley National Park, which was approved back in the late 1970s/early 1980s and which accesses the park underground through a mine portal on adjacent lands managed by the Bureau of Land Management.

While the level of activity and interest by potential respondents under the 36 CFR Part 9A regulations has nearly ceased, the NPS nonetheless has included an estimated average of 4 respondents and 4 plans per year to account for the Service’s legal obligation to maintain an active paperwork budget for these regulations given that outstanding mining claims exist in parks and market forces could change to renew interest in mining these claims. Because of the lack of activity under these regulations (1 data point in over 10 years), it was not practicable to directly contact mining operators for feedback as to the reasonableness of the NPS estimate of the incremental time involved to comply with Service’s 9A regulatory requirements. The NPS used a range, based on

¹ The statute added Mojave National Preserve and expanded the acreage and number of claims at Death Valley National Park and Joshua Tree National Park.

historic data, to generate the estimate for these regulations. If the lack of interest in obtaining approved 9A plans continues over the next 3 years, the NPS will further reduce the estimated collection budget under these regulations at the next submission.

9B Regulations

Summary: Four industry representatives from four different companies were contacted to obtain their views on the availability of data, frequency of collection, the clarity of instruction and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported for the 9B regulations. Three out of the four stated that the NPS estimate of 176 hours (160 hours + 10%) was a reasonable estimate of the burden hours a prospective operator could expect to spend in preparing and submitting information to the NPS to obtain an approved plan of operations under the 9B regulations considering that some documents and information that need to be included in a plan may already be completed and available, while in other instances that same information may need field work to be developed. They recognized that all plans of operations are not created equal. Some plans are highly complex, while others are quite simple. The fourth respondent declined to comment as to whether the estimate was reasonable because he felt he did not have enough experience in seeking approval under the 9B regulations.

All respondents stated that they were pleased with the assistance and guidance available from NPS staff at the park, regional and Washington Office to aid them comply with the 9B regulations. All stated that the written and verbal guidance helped them reduce the time and paperwork necessary to comply with the regulatory requirements. They also stated that the Service's 9B Operator's Handbook was a very helpful document in facilitating the compliance procedures.

Contact 1: Contact Made: 01/16/07

Walter Dueease, Jr., Regulatory Affairs Coordinator
XTO Energy, Inc.
810 Houston St.
Fort Worth, Texas 76102
(817) 885-2621

XTO Energy operates gas wells at Aztec Ruins National Monument, NM. Mr. Dueease prepared the plan of operations for XTO Energy, which the NPS approved in 2004. Mr. Dueease stated that he had access to the NPS's guidance documents, including the NPS's 9B Operator's Handbook, and that he used the expertise of GRD and park personnel to help guide him through preparation of the 9B plan of operations. Through his work with GRD and park staff, Mr. Dueease stated that his preparation time was streamlined and, in turn, the paperwork burden reduced. Mr. Dueease stated that the NPS estimate of an

average time of 176 hours (160 hours + 10 %) to obtain and produce information for a 9B plan of operation was “within the range” and was a reasonable estimate, particularly with the expert guidance on compliance with the 9B regulations that was available from the Service’s Geologic Resources Division and the park.

Contact 2: Contact Made: 01/18/07

Marc Kainer, Senior Project Manager
Blanton & Associates, Inc.
5 Lakeway Center Ct., Suite 200
Austin, Texas 78734
(512) 264-1095 X19

Blanton & Associates, Inc. is a contractor hired by oil and gas companies to develop NPS 9B plans of operations and handle the necessary compliance work to obtain plan approval for the operator. Mr. Kainer has personally worked on approximately 7 different 9B plans of operations for operators at Big Thicket National Preserve, Beaumont, TX. Mr. Kainer uses the Service’s Operator’s Handbook and has found that guidance document to be most helpful in reducing the time and paperwork involved in preparing plans for oil and gas companies. He stated that he frequently calls park staff and staff in the regional offices with expertise in the 9B regulations to seek guidance in preparing plans. Mr. Kainer said that NPS staff assistance is invaluable to him in reducing his preparation time and, in turn, the paperwork burden. Mr. Kainer expressed his view that the NPS’s estimate of an average time of 176 hours (160 hours + 10 %) to obtain and produce information for a 9B plan of operation was a reasonable estimate given the wide range of plans that are proposed by operators.

Contact 3: Contact Made: 1/18/07

Charlie Belaire, President
Belaire Environmental
1802 Baywood Drive
Rockport, Texas 78382
(361) 729-2948

Belaire Environmental is a contractor hired by oil and gas companies to develop NPS 9B plans of operations and handle the necessary compliance work to obtain plan approval for the operator. Mr. Belaire has worked for several companies on a variety of plans of operations at Padre Island National Seashore, Corpus Christi, Texas. Mr. Belaire uses the Service’s Operator’s Handbook and has found that the informational checklists and guidance provided in that handbook “couldn’t be better.” Mr. Belaire said that what is even better is the assistance provided by park staff. He said that park staff is “as good as they can be” and that this assistance does cut his time and paperwork down to the minimum necessary. Mr. Belaire expressed his view that the NPS’s estimate of an average time of 176

hours (160 hours + 10 %) to obtain and produce information for a 9B plan of operation was reasonable, especially in light the assistance provided to operators by the NPS.

Contact 4: Contact Made: 1/18/07

Michael S. Bell, President and Chief Operating Officer
Kindee Oil and Gas Texas, LLC
10375 Richmond Ave, Ste 298
Houston, TX 77042
713.334.0986

Kindee Oil and Gas Texas, LLC is in the process of drilling its first well at Padre Island National Seashore, Corpus Christi, Texas. It has one other approved 9B plan of operations for a future operation at the park. Mr. Bell stated that the NPS's regulatory process is well thought out and represents a reasonable balance between preservation and the mineral owner's right of access on the surface estate. He stated that the Service's Operator's Handbook is well done and also commended park staff for their knowledge of the regulatory process, and their availability to help him with plan development. Mr. Bell stated that his time "was spent productively" when working with the park to develop his plans and that the process reduces his time and paperwork to a minimum. Mr. Bell stated because he has limited experience developing plans of operations, he could not commit one way or another as to whether the NPS's estimate of an average time of 176 hours (160 hours + 10 %) was reasonable. However, he did state, as other contacts have, that whether the estimate is reasonable depends on what type of documents and information is already available, e.g., wetland or cultural surveys, either at the park or from other sources.

9. ***Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.***

None

10. ***Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.***

9A Regulations

Under the regulations, where appropriate, confidentiality may be provided for some of the submitted information in accordance with 43 CFR Part 2.

9B Regulations

Section 9.52 of the regulations provides for confidentiality of appropriate information. This section further notes that the availability of records under the regulations is governed by the rules and regulations at 43 CFR Part 2.

111. ***Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.***

All information requirements are directly related to the status of a mining claim, proposed mining operation, or non-federal oil and gas operation. There is no requirement to submit any personal information of a sensitive nature.

12. ***Provide estimates of the hour burden of the collection of information. The statement should:***
- ***Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.***
 - ***If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.***
 - ***Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.***

9A Regulations

The estimated annual burden of the collection of information requirement is 704 hours based on the following estimates:

- i. The NPS estimates that between 3 and 5 respondents will submit plans annually with 1 response per respondent. This averages about 4

respondents and 4 plans per year. Also, it is important to note that a plan may cover, and usually does cover, more than one operation.

- ii. Depending on the level of complexity of the proposed operation, a complete plan could consist of 10 pages of text *plus* 2-10 pages of illustrations inclusive of location maps, site plans and cross-sections to 100 pages of text *plus* several volumes of supporting material. The latter type of plan for hardrock mining is a rarity in the NPS. The time to prepare a plan could range from 24 hours to 6 months for a very complicated plan. Because the content of each plan is specific to the operation and site, and each operation and site presents a unique set of circumstances, it is difficult to identify an "average" plan on which to base an estimate of preparation time. The NPS thus chose to use 160 hours (4 weeks) for purposes of this analysis. When applied to the range of anticipated plans, the total estimated time to prepare such plans ranges from 480 to 800 hours. Using the average of 4 complete plans per year, the estimated total amount of time involved to prepare plans of operations is 640 hours.
- iii. The NPS added ten percent (i.e., 64 hours) to the total time to prepare complete plans of operations to account for the time consumed by minor correspondence.

The annualized estimated cost to all the respondents' ranges from \$10,560 to \$105,600. This was determined as follows:

- i. Nationwide, 4 plans of operations and associated information (e.g., bond, commercial vehicle registration) are expected annually from different operators;
- ii. Using an estimate of 160 hours to prepare documents for a plan complete with attachments at a cost of \$15 to \$150 per hour the cost to prepare a plan could range from \$2,400 to \$24,000.
- iii. The NPS added ten percent (i.e., \$240 to \$2,400) of the cost to prepare a plan of operations to account for administrative costs associated with changes in claim ownership, etc.

An operator with experience in preparing plans of operations likely can prepare an acceptable plan for a moderately complex operation in a few weeks, since most of the components of the plan are compiled during the course of normal business activities. Many of the information requirements of the regulations should be compiled by a responsible operator as part of normal business activities to minimize liabilities, maintain business records for tax and other purposes, obtain financial backing, and ensure a safe, efficient, and well-planned operation. Under the regulations, information may be submitted in the manner which it is

customarily maintained in the industry. The reclamation plan and environmental report requirements, 36 CFR §§9.9(b)(6) and (9), respectively, comprise the bulk of the information collection burden associated with these regulations. There is no standard form for submitting information. The NPS makes pertinent environmental information in park files available to prospective operators to aid in the preparation of proposed plans of operations.

9B Regulations

The estimated burden of the collection of information requirement is 3520 hours based on:

- i. The NPS estimates that between 15 and 25 respondents will submit plans annually with 1 response per respondent. This averages about 20 respondents and 20 plans per year. Also, it is important to note that a plan may cover, and usually does cover, more than one operation.
- ii. Depending on the complexity of the proposed operation, an acceptable plan could consist of 10 pages of text *plus* 2-10 pages of illustrations inclusive of location maps, site plans and cross-sections to 100 pages of text plus several volumes of supporting material. The estimated time to prepare a plan ranges from 24 hours to 6 months for a very complicated plan, where little preexisting environmental data is available. The content of each plan is specific to the operation and site, and each operation and site presents a unique set of circumstances. Therefore, the determination of how much time will be involved to prepare a given plan is difficult to assess. For purposes of this analysis, the NPS used 160 hours (4 weeks) for the representative plan preparation time. When applied to the range of anticipated plans, the total estimated time to prepare such plans ranges from 2400 hours to 4000 hours. Using the average of 20 complete plans per year, the estimated total amount of time involved to prepare plans of operations is 3200 hours.
- iii. The NPS added ten percent (i.e., 320 hours) to the total time to prepare complete plans of operations to account for the time consumed by minor correspondence.

The total annualized cost for all respondents to comply with the paperwork requirements under the 9B regulations ranges from \$52,800 to \$528,000. This was determined as follows:

- i. Nationwide, 20 plans of operations and associated information (e.g., bond, commercial vehicle registration) are expected annually from different operators.

- ii. Using an estimate of 160 hours to prepare a plan complete with attachments at a cost of \$15 to \$150 per hour, the cost to prepare a single plan could range from \$2,400 to \$24,000.
- iii. The NPS added ten percent (i.e., \$240 to \$2,400) of the cost to prepare a plan of operations to account for administrative costs associated with changes in claim ownership, etc

The range reflects the differences in types and numbers of operations that may be included in a single plan and the wide variations in the environmental settings in which non-Federal oil and gas development occurs in parks, and the availability of pre-existing environmental data from parks. Much of the information required by 36 CFR §9.36 should be compiled by a responsible operator as part of his/her normal business activities, to minimize liabilities, maintain business records for tax and other purposes, obtain financial backing, and ensure a safe, efficient, and well-planned operation. The information may be submitted in the manner in which it is customarily maintained in the industry. The NPS does not require conformance with a standardized format. The reclamation plan and environmental report requirements, 36 CFR §9.36(a)(12) and (16), respectively, comprise the bulk of the information collection burden associated with these regulations. The NPS makes pertinent environmental information in park files available to prospective operators to aid in the preparation of proposed plans of operations.

Total Estimated Hour Burden of the Collection of Information for the 9A and 9B Regulations

9A Regulations:	704
9B Regulations:	+ <u>3520</u>
TOTAL:	4224 Hours

- 13. ***Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).***
 - ***The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital***

and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- *If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.*
- *Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.*

No costs beyond the hours to prepare the requisite information exist. The NPS has neither fees nor forms associated with these regulations.

114. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

9A Regulations

The annualized cost to the Federal Government to process the projected number of plans of operations is estimated to be \$52,777.47. This figure was determined as follows:

- i. As an average, the NPS used salary costs to process the required information based on a GS-12/step 5 Denver locality salary (\$74,968) plus 28% benefits (FERS employees) (Total = \$95,959.04). In reality, actual time spent processing a plan of operations entails staff time at the GS-5 to GS-15 levels; however, GS-11 to 13 specialists account for the majority of time spent processing the collected information.
- ii. Nationwide, an average of 4 plans of operations are expected annually, with approximately 30 person days necessary to evaluate each plan, perform the necessary environmental compliance, and prepare the administrative record and letters. This equates to 120 person days annually. A Federal Government work year consists of 247 workdays (i.e., 260 calendar workdays minus 13 paid Federal holidays). Thus for this analysis, we used one half of one year's salary plus benefits yielding a cost of approximately \$47,979.52.
- iii. The NPS added ten percent (i.e., approximately \$4,797.95) of the salary cost for equipment and incidental expenses.

9B Regulations

The annualized cost to the Federal Government to process plans of operations is estimated to be \$211,109.88. This figure was determined as follows:

- i. As an average, the NPS used salary costs to process the required information based on a GS-12/step 5 Denver locality salary (\$74,968) plus 28% benefits (FERS employees) (Total = \$95,959.04). In reality, actual time spent processing a plan of operations entails staff time at the GS-5 to GS-15 levels; however, GS-11 to 13 specialists account for the majority of the time spent processing the collected information.
- ii. Nationwide, the Service expects to receive 20 complete plans of operations annually with approximately 30 person days necessary to review each plan, including NEPA compliance. This translates into 600 person days. A Federal work year consists of 247 workdays (i.e., 260 calendar workdays minus 13 paid Federal holidays). Thus, the NPS used 2.0 FTEs at the GS-12 level, including benefits, yielding a staff cost of \$191,918.08.
- iii. Ten percent (i.e., approximately \$19,191.80) of the salary cost was added for equipment and other incidental expenses.

15. ***Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.***

Re: Adjustment in item 13, OMB Form 83-I. There is an upward adjustment (+1232) in the annual reporting hour burden due to the increase in average number of non-federal oil and gas operators/respondents complying with the 9B Regulations. The increase in number of respondents is due to the increase in oil and gas prices and corresponding industry interest in exploration and development of oil and gas resources nationwide.

16. ***For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.***

The required information will not be published for statistical use.

17. ***If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.***

There is no standard form for submitting information.

18. ***Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.***

Reason for exception to 5 CFR §1320.9(i): The pool of respondents is not conducive to the use of statistical survey methodologies.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

1/16/07