

# Supporting Statement A

## Mining Claims and Non-Federal Oil and Gas Rights 36 CFR Part 9, Subparts A and B

OMB Control Number 1024-0064

**Terms of Clearance:** None

### Justification

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The Organic Act of 1916 (NPS Organic Act) (16 U.S.C. §1 et seq.) authorizes the Secretary of the Interior to develop regulations for national park units under the Department's jurisdiction. The Mining in the Parks Act (16 U.S.C. §1901 et seq.) directs the Secretary of the Interior to regulate all operations in park units in connection with the exercise of mineral rights on patented and unpatented mining claims.

The National Park Service (NPS, we) regulations at 36 CFR Part 9, Subparts A and B, ensure that mining and non-Federal oil and gas activities on units of the National Park System are conducted in a manner consistent with preserving each unit for the benefit of present and future generations. Operators must submit specific information describing their future development plans, including steps to mitigate the impacts, and must not conduct any operations until they have NPS approval.

**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.**

The information required by Subpart A 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 required by Subpart B identifies the owner and operator (the owner and operator are often the same) and details how the operator intends to access and develop the oil and gas rights. 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.

Responsible operators should be compiling information required under 36 CFR Part 9, Subparts A and B, 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 in which it is customarily maintained in the industry. There are no forms for submitting information.

- **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 approved under OMB Control Number 1004-0114. BLM implementing regulations are located at 43 CFR Parts 3700 and 3800.
- **36 CFR §9.6** requires claimants to notify us of any changes in claim ownership. We need this information 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 and 9.32** require an approved plan of operations prior to conducting any mining or non-Federal oil and gas operations in a unit of the National Park System. It also requires operators to adhere to the requirements in their approved plan of operations. The information that must be included in a plan of operations is specified in these sections along with additional requirements in 36 CFR §§ 9.7, 9.8, 9.11, 9.13, and 9.36. An approved plan of operations is 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. The plan must be detailed, clearly understood, and accurate. We have issued several publications to assist respondents in preparing plans of operations, and understanding and complying with these requirements.

Names and legal addresses are needed to identify the claim, claimant, and operator for mining operations and the owner, lessee, and operator for oil and gas activities. 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. We need sufficiently specific information that will allow us to perform detailed engineering and environmental analyses necessary to meet the requirements of the laws mentioned above. We will use the information to ensure that the operator will be able to conduct safe and environmentally acceptable operations within the confines of the property right interest.

Because we cannot approve an operation that violates any law or regulation, 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 site is left in a safe and environmentally sound condition during and after operations. The 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 in which he/she plans to conduct operations. This information is also necessary for preparation of NPS documents in compliance with NEPA.

Under the current regulations, some non-Federal oil and gas 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 §§9.10(e) and 9.37(e)** require that prior to approving a plan of operations, the NPS regional director must determine if the proposed operations may affect 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 these sections place the burden on the operator to obtain the information necessary for these determinations, we normally provide the expertise to completely satisfy this requirement to avoid duplication of effort with the respondent and to comply with our responsibilities under the cultural resource laws.
- **36 CFR §§9.10(e)(3) and 9.47(e)** require operators to notify the park superintendent if, during the course of operations, they discover any cultural or scientific resource that may be altered by the operation.
- **36 CFR §§9.12 and 9.40** allow for supplementing or revising an approved plan of operations at the initiation of either the operator or the NPS. To initiate a revision, the operator must submit a written statement for NPS consideration and approval describing and justifying the proposal.
- **36 CFR §§9.13 and 9.48** require a performance bond or security deposit before operations may begin. This enables us to complete the reclamation requirements in the approved plan of operations if the claimant defaults on his/her commitment.
- **36 CFR §§9.14 and 9.49** allow respondents 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 operations.
- **36 CFR §§9.15 and 9.50** require registration of all commercial vehicles with the park superintendent and payment of a registration fee. The operations plan must list the type and number of vehicles to be used.

We use the information collected to: (1) evaluate proposed operations, (2) ensure that all necessary mitigation measures are employed to protect park resources and values, and (3) ensure compliance with all applicable laws and regulations, including the National Environmental

Policy Act (NEPA) (42 U.S.C. §4321 et seq.) and 40 CFR Parts 1500-1508, and the National Historic Preservation Act of 1966 (NHPA), as amended (16 U.S.C. §470 et seq.) and 36 CFR Part 800.

**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.**

Approximately 25 percent of respondents typically submit information via email or other electronic means.

**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 other offices of the NPS or other Federal agencies collect this information. Because the information requested is specific to the claim, operator, and operations, duplication of effort and information does not occur.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The information burden of a respondent depends upon the nature of the proposed operation. The information required is the minimum necessary to allow us to make decisions on approving or disapproving proposed plans of operations while meeting NPS 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. The NPS has publications available to assist respondents 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 we 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 could degrade park resources and jeopardize visitor safety. Over the course of an operation, we only require a one-time submittal of a complete plan of operations; therefore, 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.

There are no circumstances that require us to collect the information in a manner inconsistent with OMB guidelines.

**8. 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.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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.**

On July 20, 2012, we published in the Federal Register (77 FR 42760) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited public comments for 60 days, ending on September 18, 2012. We did not receive any comments.

In addition to the Federal Register notice, we solicited comments from persons outside NPS regarding (1) whether or not the information is useful and necessary, (2) if our estimates of burden hours are correct, and (3) if the instructions are clear.

After litigation in 1985, interest in mining on units of the National Park System decreased dramatically. We have only approved a few operations since 1985; the last approval occurred in 2003. Therefore, it was not practicable to contact mining operators for feedback on the information collection requirements in Subpart A. For oil and gas operations, we contacted:

Justin Rowland, Sr. Biologist/Regulatory Permit Coordinator Dixie Environmental Services Co., LP 26902 Nichols Sawmill Magnolia, Texas 77355 (281) 252-9799	Mark Wagaman Cimarex Energy Company 1700 Lincoln St. Denver, Colorado 80203 (303) 285-5814 mwagaman@cimarex.com
Kelly Vaquez Famcor Oil Inc. 7887 San Felipe St. Houston, TX 77063 (713) 974-0002 kellyv@famcor.com	

Mr. Rowland was the only person who responded. He indicated that his company had used NPS guidance documents, including the 9B Operator Handbook, and initially found the documents very helpful, but believed some updates and clarification are needed. He stated that NPS staff have been very helpful with developing and implementing the plan of operations. However, for large scale seismic operations, he did not believe the burden estimate of 176 hours was reasonable due to the complexity and sensitive environmental resources.

Mr. Rowland’s opinion as to the 176 hours represents one operation of the highest level of complexity. When compared to a variety of oil and gas operations proposed in the NPS, we believe 176 hours represents an average completion time, as explained in item 12. Therefore, we did not make any changes to our burden estimate. The NPS is updating and revising the 9B regulations through a rulemaking effort and will undertake a complete update of the 9B Operator’s Handbook when the revised rule becomes final. At any time, if operators or their contractors identify gaps in the Handbook to the NPS, the NPS will consider revisions to the Handbook and update the Handbook as necessary.

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

We do not provide payments or gifts to respondents.

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

Under the regulations in Subpart A, confidentiality may be provided for some of the submitted information in accordance with 43 CFR Part 2. Under Subpart B, section 9.52 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.

**11. 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.**

We do not ask questions 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.**
- \* 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.**

The total estimated annual burden for this information collection is 3,696 hours.

As explained in item 8, activity under Subpart A has nearly ceased; however, we are estimating one annual response as a placeholder for the regulatory requirements in Subpart A. Under Subpart B, we estimate that we will receive 20 responses annually.

Depending on the level of complexity of the proposed operation, a complete plan could consist of as little as 10 pages of text plus 2-10 pages of illustrations (inclusive of location maps, site plans and cross-sections) to as much as 100 pages of text plus several volumes of supporting material. The time to prepare a plan could range from 24 hours to 6 months depending on the complexity of the operation, including the differences in types and numbers of operations that may be included in a single plan, 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. Because the content of each plan is specific to the operation

and site, and each operation and site present a unique set of circumstances, it is difficult to identify an "average" preparation time. For the purpose of this analysis, we are estimating 160 hours (4 weeks) as an average completion time for most plans. We then added 10 percent (16 hours) to account for the time consumed by minor correspondence and other unplanned information exchange, resulting in a total completion time per response of 176 hours.

We estimate that the total dollar value of the annual burden hours is \$556,248. Plans consist of materials that are both clerical in nature (e.g., photocopies of lease documents, other permits) and professional in nature (e.g., surveyed location plats, engineering design). Thus, labor costs can range depending on the level of expertise. The vast majority of respondents hire environmental and technical consulting firms to prepare plans of operations. To determine the hourly labor cost, we contacted a top environmental consulting firm that does work for operators who propose mineral activities in NPS units. Depending on the specifics of the plan, the labor will be conducted by either an entry level consultant (\$60.00 per hour), a top level consultant (\$155.00 per hour), or a mid-level consultant at an hourly wage somewhere in between. Therefore, we have used an average of \$107.50/hour for this analysis. We multiplied the rate by 1.4 to account for benefits, in accordance with BLS news release USDL 12-2404, December 11, 2012, resulting in an hourly cost factor of \$150.50.

Activity	Annual Number of Respondents	Annual Number of Responses	Completion Time Per Response (Hours)	Total Annual Burden Hours	\$ Value of Annual Burden Hours (\$150.50/hr)
9A Regulations	1	1	176	176	\$26,488
9B Regulations	20	20	176	3,520	\$529,760
<b>Total</b>	<b>21</b>	<b>21</b>		<b>3,696</b>	<b>\$556,248</b>

**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 already reflected in item 12.)**

- \* **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 for form processing). 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.

We have not identified any nonhour cost burden.

**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.**

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3We estimate that the total annual cost to the Federal Government to administer this information collection is \$410,666.

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5To calculate salary costs, we used the Office of Personnel Management Salary Table 2012-DEN to determine the hourly rate. We multiplied the rate by 1.5 to account for benefits, in accordance with BLS news release USDL 12-2404, December 11, 2012.

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Grade/Step	Hourly Rate	Hourly Rate Including Benefits	Percent of time spent on collection	Weighted Average (\$/hr)
GS-13/5	\$47.69	\$71.54	80%	\$57.23
GS-14/5	\$56.35	\$84.53	20%	\$16.91
<b>Total</b>				<b>\$74.14</b>

7

**8Salary Costs - \$373,666 (rounded)**

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10Nationwide, we estimate receiving 21 responses annually, each requiring 240 hours of Federal staff time to evaluate the plan, perform the necessary environmental compliance, and prepare the administrative record and letters. (21 responses x 240 hours x \$74.14/hr = \$373,665.60)

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**12Other Costs - \$37,000**

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14We estimate approximately \$37,000 for equipment and other incidental costs.

**15. Explain the reasons for any program changes or adjustments in hour or cost burden.**

We are estimating 21 annual responses totaling 3,696 burden hours, which is an adjustment decrease of 3 responses and 528 hours from our previous submission. Since we have not approved any mining operations since 2003, we are only reporting one response as a placeholder for the regulatory requirements in Subpart A.

**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.**

We do not publish the results of this information collection.

**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 are no forms for submitting information. However, we will display the OMB control number and expiration date on other appropriate materials.

**18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

There are no exceptions to the certifications required by 5 CFR 1320.9 and the related provisions of 5 CFR 1320.8(b)(3).