



**NEW MEXICO ARCHEOLOGICAL COUNCIL**  
P.O. Box 25691, Albuquerque, NM 87125

January 25, 2010

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

RE: **RIN 1024-AD78** (submitted via Federal eRulemaking Portal)

Thank you for the opportunity to provide comments on the Advanced Notice of Proposed Rulemaking (ANPR) for the 36 CFR part 9, subpart B (9B regulations) governing nonfederal oil and gas development in units of the National Park System (NPS). It is critical that the existing regulations are strengthened to protect the resources and values of those NPS units that overlay nonfederal oil and gas rights.

The New Mexico Archeological Council (NMAC) is a nonprofit organization whose purpose is to maintain and promote the goals of professional archaeology in the State of New Mexico. Many of our members are professional archaeologists who are permitted to conduct archaeological studies on federal lands subject to the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). We also have members who have extensively studied the archaeology in and around Aztec Ruins National Monument in New Mexico. Aztec Ruins is one of the NPS units that has subsurface nonfederal oil and gas rights and would thus benefit from more stringent 9B regulations.

Aztec Ruins is a large ancestral Pueblo community built and used over a 200-year period between approximately A.D. 1100 -1300. Concentrated on and below a terrace overlooking the Animas River in northwest New Mexico, the people at Aztec built several multi-story buildings called “great houses” and many smaller structures. Associated with each great house was a “great kiva”—a large circular chamber used for ceremonies. Nearby are three unusual “tri-wall” structures—above ground kivas encircled by three concentric walls. In addition, the Pueblo people modified the landscape with dozens of linear swales called “roads,” earthen berms, and platforms. Many Native American Tribes living in the Southwest today maintain deep spiritual ties with this ancestral site through oral tradition, prayer, and ceremony. The site offers visitors opportunities to learn about these remarkable people and their descendants and to forge connections with the Monument’s timeless landscape and stories.

NMAC is providing comments on three of the topic areas for which input is solicited in the ANPR. Our comments and suggestions are provided in detail below.

## I. Regulation of Exempt Operations

According to the ANPR, over half of all the wells in parks today are not subject to the requirements of the 9B regulations because of two broad exemptions that allow these wells to operate without requirements to protect park resources and values. The NPS proposes three options for requiring all previously exempt operations to comply with the 9B regulations. NMAC supports Option #1 as the most effective means for bringing exempt operations into compliance with the 9B regulations. This option would

Require presently exempt operators to submit plans of operations, comply with operating standards, and provide financial assurances by a set date. ANPR at 61598.

A date for requiring compliance should be set within a reasonable amount of time from the date on which the new 9B regulations take effect. This regulatory deadline must be enforceable by park staff to the extent that parks will require operators to shut down wells if these requirements are not met within the regulatory timeframe. A plan of operations is necessary for previously exempt operators to subject these operators to enforceable commitments to minimize impacts to parks and perform total restoration once oil and gas operations have ceased in the park. Such plans must be subject to the National Historic Preservation Act Section 106 process, and require consultation with State Historic Preservation Officers, Tribes, and the interested public. Therefore, NMAC believes that Option #1 will be most protective of park resources while still allowing for continued operation of existing operations.

## II. Directional Drilling

According to the ANPR, operators who locate their facilities outside parks and use directional drilling are exempt from all requirements of the 9B regulations and, therefore, do not have any obligations to protect park resources and values. The assumption is that simply by locating drilling operations outside park boundaries will always “greatly reduce impacts” to parks. Potential indirect impacts to parks from noise, air pollution, visual intrusions, odor, future subsidence, changes in drainage, and spills are not accounted for in directional drilling operations, which is a serious omission that needs to be remedied by this proposed rulemaking. The impacts of off-site operations must be assessed to ensure protection of park resources and values; therefore, NMAC supports 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. ANPR at 61598-99.

NPS cannot simply assume *de minimus* impacts to parks from directional drilling without confirmation that directional drilling never causes significant impacts to parks where it is currently ongoing. NPS views exemption from the 9B regulations as an incentive for operators to choose directional drilling and is concerned that submitting directional drill operations to the 9B

regulations would decrease the incentive to choose directional drilling. This is a reasonable concern; however, the incentive is meaningless if directional drilling is significantly impacting park resources and values.

A potential solutions would be for NPS to examine a representative subset of the parks where directional drilling is occurring to assess the type and degree of impacts that those parks are experiencing from off-site drilling operations, particularly with respect to noise, air pollution, erosion, subsidence, and visual intrusions since these are usually some of the key values that contribute to the visitor experience. NPS may discover a relationship between the degree of indirect impacts to a park and the distance of the drilling operation from the park, for example. Such a finding could be used to require full compliance with the 9B regulations for facilities located within a certain radius of a park, with less stringent compliance requirement for facilities located further from parks. Without any direct evidence that directional drilling does not significantly impact parks, it is not reasonable for NPS to continue to exempt such facilities from compliance with the 9B regulations.

### III. Assessment for Non-Compliance

As stated in the ANPR, a park “Superintendent has no practical method for dealing with minor regulatory infractions that do not rise to the level of suspension, revocation, or judicial intervention.” To address this lack of enforcement for minor infractions, NPS is proposing to empower superintendents to use administrative assessments whereby operators would pay the park a monetary fine “based on an estimate of the cost of damages to park resources due to the operator’s violation of a term or condition of an approved permit. ANPR at 61599. NMAC believes this would be an effective means to address minor infractions and provide an incentive for operators to comply with the regulations. For these administrative assessments to work, however, NPS must also provide parks with the resources to enforce the regulations through regular monitoring of operations. The authority to impose administrative assessments on recalcitrant operators will be hollow if parks do not also have the budget and personnel to monitor the operations to ensure compliance with the regulations.

Imposition of administrative assessments should be combined with requiring bonding and/or money put into a fund before operations begin to protect parks if operators should go out of business before payment of an administrative assessment or reclamation is possible. Requiring financial assurances by the operator prior to drilling activities inside or outside of parks would insure that parks are not left with the bill for remedying impacts from these operations long after the operator has abandoned the drilling site.

Thank you for the opportunity to provide comments on the proposed changes to the 9B regulations. NMAC looks forward to reviewing the NEPA documents prepared as part of this process, and reviewing the proposed and final rules when they are published in the Federal Register.

Sincerely,

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