



Carol McCoy

09/10/02 03:54 PM MDT

To: Linda Dansby/SANTAFE/NPS@NPS

cc:

Subject: Response to French's Q: re: the 9B regulations

Hi. I should have copied you on my original note. Sorry. Carol

----- Forwarded by Carol McCoy/DENVER/NPS on 09/10/02 03:53 PM -----



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09/10/02 03:52 PM MDT

To: Ken McMullen/PAIS/NPS@NPS

cc: Edward Kassman/DENVER/NPS@NPS, Jim C Woods/DENVER/NPS@NPS, Dave

Shaver/DENVER/NPS@NPS

Subject: Response to French's Q: re: the 9B regulations

Ken--

Hi. Here's what Eddie and I worked up as *suggested responses* to French's comments contained on page 22 of your comment/response document. The questions posed by French are in his paragraph that begins with "Section 1.2.3 NPS Oversight and Monitoring of Nonfederal Oil and Gas Operations.."

FIRST QUESTION: "However, does holding any person strictly liable for damages or injury also mean the person will be held wholly liable?"

Suggested Response: Section 1.2.3 of the EA discusses two different authorities the NPS has for holding operators liable for damages to park resources if they fail to adhere to the terms of their approved plan of operations. The first authority, the 36 CFR 9B regulations, sets forth a means for revoking plan approval and recovering damages to federally-owned or controlled lands, waters, or resources through a trespass action in federal court. The second authority, 16 USC section 19jj, is a strict liability statute for recovering damages to park system resources. As a strict liability statute, 16 USC 19jj provides a means for the Federal Government to recover damages without having to establish the intent of the operator. In pursuing legal action under both authorities, the NPS will seek recovery from all responsible parties, who may be wholly or partially liable for damages.

SECOND QUESTION: The last sentence in the paragraph asks, "Is it correct to assume the NPS would be stuck with paying for damages exceeding \$50,000 per well?"

Suggested Response: No. The \$50,000 represents a regulatory limit on the amount the NPS can require to bond against the liability imposed by section 9.51(a) ("damages to federally owned or controlled lands, waters, or resources"). The performance bond requirement is a mechanism that allows the NPS to respond to resource damage and to restore resources if the operator fails to take action. The bond limitations under section 9.48 do not, however, represent a cap on total damages the NPS may seek to recover in court.

Carol

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