

APPENDIX E

WYOMING BLM MITIGATION GUIDELINES FOR SURFACE DISTURBING AND DISRUPTIVE ACTIVITIES

Appendix C-1 of the draft RMP/EIS has been revised and reprinted in this MSA document (this appendix) to clarify the meaning, intent, and use of the information presented. The evolution of these guidelines is described, from their beginnings as oil and gas lease stipulations to broader use for other land uses and how they are used in land use planning.

About three years ago, BLM developed the "Wyoming BLM Standard Oil and Gas Lease Stipulations." During implementation, it was recognized that various land uses, other than those related to oil and gas exploration and development, should be subject to similar kinds of environmental protection requirements. Using the standard oil and gas lease stipulations as a basis, development of the "Wyoming BLM Standard Mitigation Measures for Surface-Disturbing Activities" began.

The term "guidelines" better describes the intent and use of these mitigation standards than the terms "stipulations" or "measures." These guidelines are primarily for the purpose of attaining statewide consistency in how requirements are determined for avoiding and mitigating environmental impacts and resource and land use conflicts. Consistency in this sense does not mean that identical requirements would be applied for all similar types of land use activities that may cause similar types of impacts. Nor does it mean that the requirements or guidelines for a single land use activity would be identical in all areas.

There are two ways the standard mitigation guidelines are used in the RMP/EIS process: 1) as part of the planning criteria in developing the RMP alternatives, and 2) in the analytical processes of both developing the alternatives and analyzing the impacts of the alternatives. In the first case, an assumption is made that any one or more of the standard mitigations will be appropriately included as conditions of relevant actions being proposed or considered in each alternative. In the second case, the standard mitigations are used 1) to develop a baseline for measuring and comparing impacts among the alternatives; 2) to identify other actions and alternatives that should be considered, and 3) to help determine whether more stringent or less stringent mitigations should be considered.

Some of the seasonal restrictions in the standard oil and gas lease stipulations contain the statement, "This limitation does not apply to long-term maintenance and operation of producing wells." These stipulations were developed specifically for application to oil and gas leases at the time of issuance. At lease issuance, the only action that can be generally contemplated is the possibility that exploratory drilling may occur somewhere on the lease area. Unfortunately, the provision has been interpreted to mean that the seasonal restriction disappears at the operational stage (i.e., if a producing well is attained). It must be understood that at both the exploration stage and the development

stage, additional site specific environmental analyses are conducted and any needed restrictions or mitigations identified become part of the development or operational plan. For example, wells may continue to produce, but related activity may be limited. Thus, it is possible for such seasonal restrictions to be applicable to maintenance and operation of producing wells, if supported by the environmental analyses. The matter has further been confused by using the oil and gas stipulations to develop the more broadly applicable standard mitigations, by extending this provision to "...extended long-term operation and maintenance of the project." This is not appropriate for the broader context of the standard mitigation guidelines and the wording has been changed accordingly.

The RMP/EIS does not decide or dictate the exact wording or inclusion of these guidelines. Rather, the standard guidelines were used in the RMP/EIS process as a tool to help develop the RMP alternatives and to provide a baseline for comparative impact analysis in arriving at RMP decisions. These guidelines will be used in the same manner in analyzing activity plans and other site specific proposals. These guidelines and their wording are matters of policy. As such, specific wording is

subject to change primarily through administrative review, not through the RMP/EIS process. Any further changes that may be made in the continuing refinement of these guidelines and any development of program specific standard stipulations will be handled in another forum, including appropriate public involvement and input.

Purpose

The purposes of the "Standard Mitigation Guidelines" are 1) to reserve, for the BLM, the right to modify the operations of all surface-disturbing activities as part of the statutory requirements for environmental protection, and 2) to inform a potential lessee, permittee, or operator of the requirements that must be met when using BLM-administered public lands. These guidelines have been written to provide a standard format that will allow for 1) their direct use as stipulations, and 2) the addition of specific or specialized mitigation following the submission of a detailed plan of development, or other project proposal, and an environmental analysis.

Those resource activities or programs currently without a standardized set of permit or operation stipulations can use the mitigation guidelines as conditions of approval or as a baseline for developing specific stipulations for a given activity or program.

Because use of the mitigation guidelines was integrated into the RMP/EIS process and will be integrated into the site specific environmental analysis process, the application of stipulations derived through the guidelines will provide more consistency with planning decisions and plan implementation than has occurred in the past. Application of the standard mitigation guidelines to all surface and other human presence disturbance activities on BLM-administered public lands will provide more uniformity in mitigation than has occurred in the past.

1. Surface Disturbance Mitigation Guideline

Surface disturbance will be restricted in any of the following areas or conditions. Modifications to this limitation may be approved in writing by the Authorized Officer.

- a. Slopes in excess of 25 percent.
- b. Within important scenic areas identified in a land use plan (Class I and II Visual Resource Management Areas).
- c. Within 500 feet of surface water and(or) riparian areas.
- d. Within either one-quarter mile or the visual horizon (whichever is closer) of historic trails.
- e. Construction with frozen material or during periods when the soil material is saturated, frozen, or when watershed damage is likely to occur.

Guidance

The intent of the SURFACE DISTURBANCE MITIGATION GUIDELINE is to inform interested parties (potential lessees, permittees, or operators) that when one or more of the five (1a. through 1e.) conditions exists, surface-disturbing activities will be restricted or prohibited, unless or until the permittee or their designated representative and the surface management agency (SMA) arrive at an acceptable plan for mitigation of anticipated impacts. This negotiation will occur prior to development.

Specific criteria (e.g., 500 feet from water) have been established, based upon the best information available. However, such items as geographical areas and seasons must be delineated at the field level.

Exception, waiver, or modification of requirements developed from this guideline must be based upon environmental analysis of proposals (e.g., plans of development, plans of operation, Applications for Permit to Drill) and, if necessary, must allow for other mitigation to be applied on a site specific basis.

2. Wildlife Mitigation Guideline

- a. To protect important big game winter habitat, activities or surface use will not be allowed from November 15 to April 30 within certain areas encompassed by the authorization. The same criteria applies to defined big game birthing areas from May 1 to June 30. This limitation may or may not apply to extended long-term operation and maintenance of a developed project, pending environmental analysis of any operational or production aspects.

Modifications to this limitation in any year may be approved in writing by the Authorized Officer.

- b. To protect important raptor and(or) sage and sharp-tailed grouse nesting habitat, activities or surface use will not be allowed from February 1 to July 31 within certain areas encompassed by the authorization. The same criteria applies to defined raptor and game bird winter concentration areas from November 15 to April 30. This limitation

may or may not apply to extended long-term operation and maintenance of a developed project, pending environmental analysis of any operational or production aspects.

Modification to this limitation in any year may be approved in writing by the Authorized Officer.

c. No activities or surface use will be allowed on that portion of the authorization area identified within (legal description) for the purpose of protecting (e.g., sage/sharp-tailed grouse breeding grounds, and(or) other species/activities) habitat.

Modifications to this limitation in any year may be approved in writing by the Authorized Officer.

d. Portions of the authorized use area legally described as (legal description), are known or suspected to be essential habitat for (Name) which is a threatened/endangered species. Prior to conducting any onsite activities, the lessee/permittee will be required to conduct inventories or studies in accordance with BLM and U.S. Fish and Wildlife Service (USFWS) guidelines to verify the presence or absence of this species. In the event that (Name) occurrence is identified, the lessee/permittee will be required to modify operational plans to include the protection requirements of this species and its habitat (e.g., seasonal use restrictions, occupancy limitations, facility design modifications).

Guidance

The WILDLIFE MITIGATION GUIDELINE is intended to provide two basic types of protection, seasonal restriction (a and b) and prohibition of activities or surface use (c). Item (d) is specific to situations involving threatened and endangered species. Legal descriptions will ultimately be required and should be measurable and legally definable. There are no minimum subdivision requirements at this time. The area delineated can and should be defined as necessary, based upon current biological data, prior to the time of processing an application and issuing the use authorization. The legal description must eventually become a condition for approval of the permit, plan of development, and(or) other use authorization.

The seasonal restriction section identifies three example groups of species and delineates three similar time frame restrictions. The big game species including elk, moose, deer, antelope, and bighorn sheep all require protection of crucial winter range between November 15 and April 30. Elk and bighorn sheep also require protection from disturbance from May 1 to June 30, when they typically occupy distinct calving and lambing areas. Raptors include eagles; accipiters; falcons (peregrine, prairie, and merlin); buteos (ferruginous and swainson's hawks); osprey; and burrowing owls. The raptors and sage and sharp-tailed grouse require nesting protection between February 1 and July 31. The same birds often require protection from disturbance from November 15 through April 30 while they occupy winter concentration areas.

Item 2c, the prohibition of activity or surface use, is intended for protection of unique wildlife habitat areas or values within the use area. These areas or values must be factors

that limit life-cycle activities (e.g., sage grouse strutting grounds, known threatened and endangered species habitat) that cannot be protected using seasonal restrictions.

Exception, waiver, or modification of requirements developed from this guideline must be based upon environmental analysis of proposals (e.g., plans of development, plans of operation, Applications for Permit to Drill) and, if necessary, must allow for other mitigation to be applied on a site specific basis.

3. Cultural Resource Mitigation Guideline

When a proposed discretionary land use has potential for affecting the characteristics which qualify a cultural property for the National Register of Historic Places, mitigation will be considered. In accordance with Section 106 of the Historic Preservation Act, procedures specified in 36 CFR 800 will be used in consultation with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation in arriving at determinations regarding the need and type of mitigation to be required.

Guidance

The preferred strategy for treating potential adverse effects on cultural properties is "avoidance." If avoidance involves project relocation, the new project area may also require cultural resource inventory. If avoidance is imprudent or unfeasible, appropriate mitigation may include excavation (data recovery), stabilization, monitoring, protection barriers and signs, or other physical and administrative measures.

Reports documenting results of cultural resource inventory, evaluation, and the establishment of mitigation alternatives (if necessary) shall be written according to standards contained in BLM Manuals, the cultural resource permit stipulations and in other policy issued by the BLM. These reports must provide sufficient information for Section 106 consultation. Reports shall be reviewed for adequacy by the appropriate BLM archaeologist. If cultural properties on, or eligible for, the National Register are located within these areas of potential impact and cannot be avoided, the Authorized Officer shall begin the Section 106 consultation process in accordance with the procedures contained in 36 CFR 800.

Mitigation measures shall be implemented according to the mitigation plan approved by the BLM Authorized Officer. Such plans are usually prepared by the land use applicant's contract archaeologist according to BLM specifications. Mitigation plans will be reviewed as part of Section 106 consultation for National Register eligible or listed properties. The extent and nature of recommended mitigation shall be commensurate with the significance of the cultural resource involved and the anticipated extent of damage. Reasonable costs for mitigation will be borne by the land use applicant. Mitigation must be cost effective and realistic. It must consider project requirements and limitations, input from concerned parties, and be BLM approved or BLM formulated.

Mitigation of paleontological and natural history sites will be treated on a case-by-case basis. Factors such as site significance, economics, safety, and project urgency must be taken into account when making a decision to mitigate. Authority to protect (through

mitigation) such values is provided for in FLPMA, Section 102(8). When avoidance is not possible, appropriate mitigation may include excavation (data recovery), stabilization, monitoring, protection barriers and signs, or other physical and administrative protection measures.

4. Special Resource Mitigation Guideline

To protect (resource value), activities or surface use will not be allowed (i.e., **within a specific distance of the resource value or between date-to-date**) in (*legal subdivision*).

This limitation may or may not apply to extended long-term operation and maintenance of a developed project, pending environmental analysis of any operational or production aspects.

Modifications to this limitation in any year may be approved in writing by the Authorized Officer.

Example Resource Categories (Select or Identify Category and Specific Resource Value):

- a. Recreation areas.
- b. Special natural history or paleontological features.
- c. Special management areas.
- d. Sections of major rivers.
- e. Prior existing rights-of-way.
- f. Occupied dwellings.
- g. Other (Specify).

Guidance

The SPECIAL RESOURCE MITIGATION GUIDELINE is intended for use only in site-specific situations where one of the first three general mitigation guidelines will not adequately address the concern. The resource value, location, and specific restriction must be clearly identified. A detailed plan addressing specific mitigation and special restrictions on development will be required prior to development and will become a condition for approval of the permit, plan of development, or other use authorization.

Exception, waiver, or modification of requirements developed from this guideline must be based upon environmental analysis of proposals (e.g., plans of development, plans of operation, Applications for Permit to Drill) and, if necessary, must allow for other mitigation to be applied on a site specific basis.

5. No Surface Occupancy Guideline

No surface occupancy will be allowed on the following described lands (legal subdivision/area) because of (resource value).

Example Resource Categories (Select or Identify Category and Specific Resource Values):

- a. Recreation areas, (e.g., campgrounds, historic trails, national monuments).
- b. Major reservoirs/dams.
- c. Special management areas (e.g., ACEC, known threatened and endangered species habitat, wild and scenic rivers).
- d. Other (Specify).

Guidance

The NO SURFACE OCCUPANCY (NSO) MITIGATION GUIDELINE is intended for use only when other mitigation is determined insufficient to adequately protect the public interest and is the only alternative to "no development" or "no leasing." The legal subdivision and resource value of concern must be identified and be tied to an NSO land use planning decision.

Waiver of or exception(s) to the NSO requirement will be subject to the same test used to initially justify its imposition. If, upon evaluation of a site-specific proposal, it is found that less restrictive mitigation would adequately protect the public interest or value of concern, then a waiver or exception to the NSO requirement is possible. The record must show that because conditions or uses have changed, less restrictive requirements will protect the public interest. An environmental analysis must be conducted and documented (EA or EIS, as necessary) in order to provide the basis for a waiver or exception to an NSO planning decision. If the waiver or exception is found to be consistent with the intent of the planning decision, they may be granted. If found inconsistent with the intent of the planning decision, a plan amendment would be required before the waiver or exception could be granted.

When considering the "no development" or "no leasing" option, a rigorous test must be met and fully documented in the record. This test must be based upon stringent standards described in the land use planning document. Since rejection of all development rights is more severe than the most restrictive mitigation requirement, the record must show that consideration was given to development subject to reasonable mitigation, including No Surface Occupancy. The record must also show that other mitigation was determined to be insufficient to adequately protect the public interest. A "no development" or "no leasing" decision should not be made solely because it appears that conventional methods of development would be unfeasible, especially where an NSO restriction may be acceptable to a potential permittee. In such cases, the potential permittee should have the opportunity to decide whether or not to go ahead with the proposal (or accept the use authorization), recognizing that an NSO restriction is involved.

**LEASE STIPULATIONS USING THE UNIFORM FORMAT FOR
OIL AND GAS LEASING STIPULATION**

Subsequent to implementation of the 1988 Pinedale RMP, the BLM adopted the Uniform Format For Oil And Gas Lease Stipulations. The stipulations were based on the Standard Mitigation Guidelines for Surface Disturbing Activities (Appendix P). The Uniform Format stipulations are grouped into one of four categories; Lease Notices (LN), No Surface Occupancy (NSO), Timing Limitation Stipulations (TLS), or Controlled Surface Use (CSU). Lease Notice 1 format is very similar to Standard Mitigation Guideline 1, except that the Lease Notice also prohibits surface disturbance within 200 feet of Highway, within 500 feet of Interstate Highways, and within ¼-mile of occupied dwellings. The NSO format remained essentially the same. The TLS is the same as Wildlife Mitigation Guidelines A and B. The CSU format is similar to Wildlife Mitigation Guidelines C and D, the Cultural Resource Protection Guideline, and the Special Resource Mitigation Guidelines. The following is a listing of the stipulations used in the Pinedale Field Office for Oil and Gas Leasing:

LEASE NOTICES

LN-1 Applies to all lease parcels to protect slopes over 25 percent, riparian areas, Highway/Interstate Highway corridors, and occupied dwellings. Also prohibits construction with frozen soil.

TIMING LIMITATION STIPULATIONS

TLS-1 Protects big game crucial winter range from November 15 through April 30 .

**TLS-2 PROTECTS BIG GAME PARTURITION AREAS FROM MAY 1
THROUGH JUNE 30.**

TLS-3 Protects sage grouse nesting habitat from February 1 through July 31.

NO SURFACE OCCUPANCY STIPULATIONS

NSO-1 Prohibits surface occupancy/disturbance on (1) elk feedgrounds.

NSO-2 Prohibits surface occupancy/disturbance on HUD designated Zone A (100 year) flood hazard areas on perennial water courses.

NSO-3 Prohibits surface occupancy/disturbance within established campground.

NSO-4 Prohibits surface occupancy/disturbance on National Register Cultural Resource Sites 48SU301, 48SU350, and 48LN300

NSO-5 Prohibits surface occupancy/disturbance on the NADP Acid Rain Monitoring Site.

CONTROLLED SURFACE USE STIPULATIONS

- CSU-1 Restricts or prohibits surface occupancy or use within 1/4 mile of campgrounds and associated recreation values unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-2 Restricts or prohibits surface occupancy or use within 1000 feet of Beaver Creek or on slopes greater than 25 percent in the Beaver Creek ACEC to Class A Colorado River cutthroat trout habitat unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-3 Restricts or prohibits surface occupancy or use within the Cora Stock Driveway from June 1 through June 30 and from Oct 1 through Oct 31 unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-4 Restricts or prohibits surface occupancy or use, including snow removal and vehicle operations (over-the-snow vehicles excepted), on the Continental Divide Snowmachine Trail (CDST) from December 1 to April 30, unless the operator and the surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-5 Restricts or prohibits surface occupancy or use within HUD designated Zone A (100 Year) flood hazard areas not protected by NSO unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-6 Restricts or prohibits surface occupancy or use within the Sublette County Landfills unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-7 Restricts or prohibits surface occupancy or use within the Upper Green River Special Recreation Management Area and Wild & Scenic River Study Area unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-8 Restricts or prohibits surface occupancy or use within 1/4 mile of a sage grouse strutting grounds leks) unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts. Surface use and human activity will not be allowed within a 1/2-mile radius of active leks between midnight and 9:00 AM from March 1 through May 15. These

restrictions may apply to the operation and maintenance of production facilities, as well as development activities.

- CSU-9 Restricts or prohibits surface occupancy or use between Feb 1 and July 31 within a radius of up to 1 mile of occupied or active raptor nest sites unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-10 Restricts or prohibits surface occupancy or use within the Soaphole Basin unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-11 Restricts or prohibits surface occupancy or use within 1/4 mile or the visual horizon (whichever is closer) of contributing segments of the Lander Cut-off of the Oregon Trail unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-12 Restricts or prohibits surface occupancy or use within Class I and II Visual Resource Management Areas unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.
- CSU-13 Restricts or prohibits surface occupancy or use on slopes 10 percent or steeper and/or within 100 feet of ephemeral, intermittent, and perennial water courses in the Long Island watershed unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts.