



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply Refer to:
3160 (WYP070)
WYW133615, WYW133617, WYW139093, WYW139094

October 22, 2012

To: Wyoming State Office
From: Buffalo Field Office
Subject: No Surface Occupancy (NSO) Lease Modification Request, Leases WYW133615, WYW133617, WYW139093, WYW139094

Formal Recommendations to Modify Leases WYW133615, WYW133617, WYW139093, WYW139094 Stipulations

By letter dated August 21, 2007, Yates Petroleum Corporation (Yates) filed a request with the BLM Wyoming State Office to waive the current No Surface Occupancy (NSO) stipulation for Federal leases WYW133615, WYW133617, WYW139093, and WYW139094. The waiver request including a list of “several non-standard lease development practices” Yates would consider to minimize impacts to the resident elk population. Leases WYW133615, WYW133617, WYW139093, and WYW139094 are in a portion of Yates’ Elsie plan of development (POD). BFO appropriately analyzed the request as a proposed stipulation modification rather than a waiver. The Environmental Assessment (EA number WY-070-EA11-214) for Elsie POD analyzed the proposed stipulation modification and was posted for public review on August 31, 2012.

Powder River Basin Resource Council (PRBRC) submitted comments on Yates’ request to waive lease stipulations in a letter to the BLM Wyoming Deputy State Director, Larry Claypool, dated September 27, 2012. PRBRC’s comments content that BFO did not provide proper notification for the public to make comment, the analysis related to the waiver request is lacking, and that BLM does not have substantial basis for waiving or modifying the lease stipulations.

By regulation 43 CFR § 3101.1-4, lease waivers and modifications are subject to a 30-day public review period but the regulation is not clear as to how the public is to be notified. BFO issued a decision on the Elsie POD that disclosed the Yates’ request which was posted on August 31, 2012. The Environmental Assessment WY-070-EA11-214 includes considerable analysis of the potential effects to elk and their habitat (EA at pp.73-80; 102) with the plan modifications as well as the recommended mitigation measures (EA at p. 82) consistent with BFO’s lease modification recommendations (EA at p. 100) to minimizing impact and meet the performance standards described in the 2011 Fortification Creek Planning Area RMP Amendment (WY-080-135). The basis for BFO’s recommendation to modify the NSO lease stipulations is that it supports the objective of providing for reasonable mineral resource development while maintaining a viable resident elk population with in Fortification Creek Planning Area. The plan objectives and performance standards set forth in the 2011 Fortification Creek Planning Area RMP Amendment, Appendix B make the protection provided by the NSO stipulation no longer justified.

Surface occupancy associated with nine (9) APDs, well locations, access roads, and associated infrastructure on federal leases WYW133615, WYW133617, WYW139093, and WYW139094 were evaluated under Alternative B in WY-070-EA11-194.

The NSO stipulations applied to federal leases WYW133615, WYW133617, WYW139093, and WYW139094 are described as follows:

Lease No.: WYW133615

- Elk Calving NSO 3 – No surface occupancy or use is allowed on the lands described below. (1) ENTIRE lease (Township 51 North, Range 75 West; Section 5, Lots 5, 6, 11-14, 19, 20); For the purpose of: (2) protecting elk parturition area in Fortification Creek.

Lease No.: WYW133617

- Elk Calving NSO 3 – No surface occupancy or use is allowed on the lands described below. (1) ENTIRE lease (Township 52 North, Range 75 West; Section 33, Lots 1-6, 11, 12); For the purpose of: (2) protecting elk parturition area in Fortification Creek.

Lease No.: WYW139093

- Elk Calving/Winter NSO – No surface occupancy or use is allowed on the lands described below. (1) ENTIRE lease (Township 52 North, Range 75 West; Section 29, Lots 1-16; Section 32, Lots 3-5; For the purpose of: (2) Fortification Creek Plan; (3) protecting crucial elk parturition calving and wintering habitat.

Lease No.: WYW139094

- Elk Calving/Winter NSO – No surface occupancy or use is allowed on the lands described below. (1) ENTIRE lease (Township 52 North, Range 75 West; Section 30, Lots 9, 16; Section 31, Lots 13, 17-20; For the purpose of: (2) Fortification Creek Plan; (3) protecting crucial elk parturition calving and wintering habitat.

Twenty-three (23) APDs associated with leases WYW133615, WYW133617, WYW139093, and WYW139094 were denied. Two (2) APDs at a single location proposed in the NSO portion of lease WYW133617 were deferred pending the 30 day public comment period. This deferral included the two APDs and their associated access road and infrastructure as listed below. The final decision is pending Wyoming State Office concurrence to modify the lease stipulation from a No Surface Occupancy to Controlled Surface Use (CSU) stipulation.

The 2 APD locations, access roads, and associated infrastructure listed below were onsite in the Yates Petroleum Corporation’s Elsie POD:

	Well Name & No.	Qtr/Qtr	Sec	TWP	RNG	Lease No.
1	NE Snell Canyon Federal 3	SWNE	33	52N	75W	WYW133617
2	NE Snell Canyon Injector 1	SWNE	33	52N	75W	WYW133617

Formal Recommendations to Modify Lease WYW84917 Stipulations

As required in 43 CFR 3101.1-4, the analysis in EA number WY-070-EA11-194 demonstrates that protection of the Fortification Creek elk herd can be achieved by use of CSU and TL stipulations and will not cause unacceptable impacts. Therefore, the Buffalo Field Office (BFO) recommends the NSO lease stipulation on leases WYW133615, WYW133617, WYW139093, and WYW139094 be modified to CSU and TL stipulations. BFO recommends the CSU stipulation be applied to the entire area of the 4 leases, which lie entirely within the Fortification Creek Planning Area. BFO further recommends that the TL stipulation for elk calving areas be applied to the area of the leases that lies within the elk parturition range and the TL stipulation for elk crucial winter areas be applied to the area of the leases that lies within the elk crucial winter range. The legal land descriptions of the recommended stipulation changes are outlined below.

Lease Stipulations (Recommended Modification)

Lease Stipulations WYW133615, WYW133617, WYW139093, WYW139094

- CSU (1) Surface occupancy or use is subject to the following special operating constraints:
 - (a) Surface disturbing and disruptive activities shall only be approved with adequate mitigation to ensure compliance with the Fortification Creek Resource Management Plan Amendment (2011) performance standards.
- CSU (2) On the lands described below:
 - WYW133615 – T51N,R75W; Section 5, Lots 5, 6, 11-14, 19, 20
 - WYW133617 - T52N,R75W; Section 33, Lots 1-6, 11, 12

- WYW139093 - T52N,R75W; Section 29, Lots 1-16; Section 32, Lots 3-5
- WYW139094 - T52N,R75W; Section 30, Lots 9, 16; Section 31, Lots 13, 17-20
- Within the Fortification Creek Planning Area (See Figure 1)

CSU (3) For the purpose of:

- Protecting elk population viability and effective calving habitat.

- TL (1) No surface use is allowed during the following time period(s). This stipulation does not apply to operation and maintenance of production facilities.

(a) WGFD designated elk calving areas.

(b) WGFD recommended dates: May 1 - June 30 [WGFD 2009].

(c) Surface disturbing and disruptive activities shall only be approved with adequate mitigation to ensure compliance with the Fortification Creek Resource Management Plan Amendment (2011) performance standards.

TL (2) On the lands described below:

- WYW133615 – T51N,R75W; Section 5, Lots 5, 6, 11-14, 19, 20
- WYW133617 - T52N,R75W; Section 33, Lots 6, 11, 12
- WYW139093 - T52N,R75W; Section 29, Lots 5, 6, 10-16; Section 32, Lots 3-5
- WYW139094 - T52N,R75W; Section 30, Lots 9, 16; Section 31, Lots 13, 17-20
- Elk Parturition Range as mapped by the WGFD (See Figure 1)

TL (3) For the purpose of:

- Protecting elk calving area(s).

- TL (1) No surface use is allowed during the following time period(s). This stipulation does not apply to operation and maintenance of production facilities.

(a) WGFD designated elk crucial winter areas.

(b) WGFD recommended dates: November 15 – April 30 [WGFD 2009].

(c) Surface disturbing and disruptive activities shall only be approved with adequate mitigation to ensure compliance with the Fortification Creek Resource Management Plan Amendment (2011) performance standards.

TL (2) On the lands described below:

- WYW133615 – None
- WYW133617 - None
- WYW139093 - T52N,R75W; Section 29, Lots 2-6, 11-13
- WYW139094 - T52N,R75W; Section 30, Lots 9, 16
- Elk Crucial Winter Range as mapped by the WGFD (See Figure 1)

TL (3) For the purpose of:

- Protecting elk crucial winter area(s).

If there are any questions, please contact Jim Verplancke (307)684-1057 or Tom Bills (307)684-1133.

Figure 1

