

# Appendix E. Exception, Modification, and Waiver Criteria

## E.1. Introduction

This appendix addresses the procedure for providing exceptions, modifications, and waivers of stipulations or Conditions of Approval (COAs) placed on oil and gas leases and other surface disturbance and disruptive activity authorizations to protect resource values identified in Chapter 3. These values generally include wildlife, soil, water, recreation, visual, and cultural resources. The Bureau of Land Management (BLM) may apply stipulations or COAs identified in the Standard Oil and Gas Stipulations (Appendix N (p. 1495)) and the Wyoming BLM Mitigation Guidelines for Surface-Disturbing and Disruptive Activities (Appendix M (p. 1489)). The three types of surface stipulations the BLM applies are: 1) no surface occupancy (NSO), 2) timing limitation stipulation (TLS), and 3) controlled surface use (CSU). The surface stipulations are defined below.

- **No Surface Occupancy:** Areas closed to placement of surface facilities such as roads, oil and gas wells, and other facilities. This stipulation may be applied to oil and gas leases only before a lease is issued.
- **Timing Limitation Stipulation:** Areas closed to construction and development activities during identified timeframes. The alternatives vary in the application of TLSs to maintenance activities, including associated vehicle travel, during the closed period unless otherwise specified in the stipulation.
- **Controlled Surface Use:** Areas where surface uses are subject to specified controls or constraints.

The BLM cannot apply an NSO stipulation after oil and gas lease issuance, but can apply TLS and CSU restrictions as COAs after the oil and gas lease has been issued.

An applicant can request an exception, modification, or waiver of a NSO, TLS, or CSU stipulation or a COA. This document identifies the criteria that the BLM would utilize in making the determination to except, modify, or waive the stipulation or COA. The Resource Management Plan (RMP) serves as the vehicle for providing analysis of the conditions under which waivers, exceptions, or modifications of lease stipulations or COAs may be granted.

A request for exception must be initiated in writing before the time that the work was originally proposed to conclude. The unpredictability of weather, animal movement and condition, etc., precludes analysis of requests related to wildlife far in advance of the time periods in question. However, where possible, the applicant should seek the exception at least two-weeks in advance. Analyses of a request include review of potential mitigation measures and alternatives (e.g., traffic restrictions, alternative scheduling, and staged activity). The request is considered as a unique action and is analyzed and documented individually for RMP and National Environmental Policy Act (NEPA) compliance.

Exception requests will not be granted for stipulations or operating standards designed to protect threatened and endangered species, unless the BLM consults with the U.S. Fish and Wildlife Service (USFWS) and reinitiates consultation, if appropriate.

## E.2. Exceptions, Modifications, and Waivers

An applicant may request an exception, modification, or waiver of a stipulation or restriction included in a lease or applied as a COA, as defined below.

- **Exception:** A one-time exemption to a lease stipulation or COA determined on a case-by-case basis.
- **Modification:** A change to the provisions of a lease stipulation, either temporarily or for the term of the lease.
- **Waiver:** A permanent exemption to a lease stipulation.

The person requesting the exception, modification, or waiver is encouraged to submit information that might assist the authorized official in making a decision. The Authorized Officer reviews information submitted in support of the request and other pertinent information. The Authorized Officer may modify, waive, or grant an exception to a stipulation if:

- The action is consistent with federal laws.
- The action is consistent with the RMP.
- The management objectives that led the BLM to require the lease stipulation can be met without restricting operations in the manner provided for by the stipulation given changes in the condition.
- The action and the impacts that would result are acceptable to the Authorized Officer based on a review of the environmental consequences.

## E.3. Standard Exception

An exception may be granted by the Authorized Officer if it can be demonstrated that the ground-disturbing activity/lease stipulation would not cause adverse impacts to the targeted resource, condition, or public interest as defined by RMP objectives, standards, or conditions and:

1. is intended to improve the targeted resource, condition, or public interest (e.g., vegetation treatment in a NSO area to improve wildlife habitat, trail construction in a NSO/CSU area for a Special Recreation Management Area (SRMA) to improve recreational opportunities), or
2. the ground-disturbing activity (mentioned above), by its nature, must be done within the targeted NSO/CSU area (e.g., spring development within a NSO area for riparian-wetland vegetation, installation of brook trout stream barrier in a NSO area for cutthroat trout, or short duration road maintenance).

In situations where a ground-disturbing activity/lease stipulation is excepted, the activity could be subject to additional COAs, reclamation measures, or best management practices. Measures applied will be based on the nature, extent, and values potentially affected by the ground-disturbing activity. Excepted ground-disturbing activities/lease stipulations are given on a one-time case-by-case basis and would not necessarily constitute subsequent approvals.

## E.4. Resource Specific Exceptions

### E.4.1. Wildlife

Activities within the planning area are managed with stipulations or COAs to protect important times of the year and habitats for wildlife. A NSO or CSU stipulation may be placed on oil and gas leases to protect greater sage-grouse breeding areas or habitat for other special status species from surface-disturbing activities. TLSs or COAs may be used to protect wintering or birthing big game, nesting greater sage-grouse, raptor, mountain plovers, or spawning trout. Application of TLSs to maintenance and operation of a developed project varies by alternative. Protective wildlife seasonal restrictions are developed consistent with statewide dates and in coordination with the Wyoming Game and Fish Department (WGFD) and/or the USFWS.

The BLM may grant exceptions to seasonal restrictions if the BLM determines that granting an exception would not jeopardize the wildlife population being protected. The BLM uses a set of factors when considering a request for an exception. The professional judgment of the BLM and the wildlife agencies play a key part in the BLM's decisions on whether to grant exceptions. No clear-cut formula exists.

The following section describes some of the factors considered by the BLM when determining whether a request for an exception to wildlife seasonal stipulations or COAs should be granted.

1. Resource Concern
  - Animal presence or absence
  - Additional or new resource concerns
  - Potential for increased wildlife accidents or poaching
2. Animal Conditions
  - Physical condition of individual animals (e.g., fat reserves)
  - Local animal population condition (animal density)
  - Potential for additive mortality
  - Likelihood of introduction or increased incidence of disease
  - Likelihood of decreased recruitment/natality
3. Climate/Weather
  - Snow conditions (depth, crusting, and longevity)
  - Current and historic local precipitation patterns
  - Current and historical seasonal weather patterns
  - Recent and current wind-chill factors (indication of animals' energy use)
  - Duration of condition
  - Short- and long-range forecasts
4. Habitat Condition and Availability
  - Water and forage condition (availability, quality, and quantity)
  - Competition (interspecific, intraspecific)
  - Animal use of available forage
  - Suitable and ample forage immediately available and accessible
5. Spatial Considerations
  - Migration/travel corridors

- Winter range, foraging, parturition or breeding
- Topography (plains vs. mountains)
- Topographic/geographic limitations (barriers)
- Presence of thermal cover (e.g., protection from wind)
- Proportion of range impacted
- Juxtaposition and density of other activities/disturbances in the vicinity
- Cumulative impacts

6. Timing

- When proposed activity would occur in the stipulation period
- Kind and duration of potentially disruptive activity
- Likelihood of animals habituating to the proposed activity

## **E.4.2. Cultural Resources**

The areas around and including special Sacred, Spiritual and/or Traditional Cultural Properties such as Castle Gardens (called “restriction zones”) are managed with surface occupancy and disturbance stipulations which vary by alternative. The BLM may grant exceptions to these stipulations subject to Standard Protocol and National Historic Preservation Act (NHPA) measures. The BLM would consult with affected tribes to ascertain their opinion on the proposal. The BLM would follow the tribes’ opinion regarding restriction zone activities in all but the most extraordinary circumstances.

## **E.4.3. Oil and Gas Actions**

Title 43 CFR 3101.1-4 establishes procedures for granting modifications or waivers to oil and gas lease stipulations, as stated below:

A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. If the Authorized Officer has determined, prior to lease issuance, that a stipulation involves an issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is required before modification or waiver. If subsequent to lease issuance the Authorized Officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for at least a 30-day period.

The modification or waiver of an oil and gas lease stipulation implies that the sensitive resource for which the protective measure was considered is in some way not present in the area or in some way no longer in need of the protective measure. In either case, consideration of a modification or waiver of a lease stipulation would require environmental analysis and may result in an amendment to the land use plan.

## E.5. Procedures for Exceptions

Requests for exceptions may, in general, be made at any time. In the case of seasonal restrictions for the benefit of wildlife, the request should be made within 2 weeks of conducting the proposed work. The unpredictability of weather, animal movement and condition, precludes analysis of requests related to wildlife concerns far in advance of the time periods in question. The request is considered as a unique action and is analyzed and documented individually for RMP and NEPA compliance. The request must include the following information:

**WHY** the public land user needs the exception. Include the reason(s) why the action could not be completed within the original stipulation period, any evidence of why the action would not adversely affect the resource or species being protected, or any other information (additional mitigation measures or alternatives) that would help the BLM (and WGFD or USFWS) in reviewing the request.

**WHO** is filing the exception request. This must include the company name, the name of the contact person, and the address, telephone number, e-mail address (if available), and fax number of the contact person.

**WHAT** is being requested. This must include a detailed description of the activity including types of equipment or vehicles required and the number of trips expected. Please include the name and/or number of the authorization (i.e. application for permit to drill, sundry, right-of-way) and the affected stipulation/restriction.

**WHERE** the activity would take place. This must include the legal description of the activity, the location of the access roads and pipelines, and a map clearly depicting these areas. Proponent prepared GIS layers meeting BLM requirements will expedite the processing.

**WHEN** the activity would occur. This must include the start date, end date, and time of day/night when activities would occur.

Requests must be made in writing and hard copy delivered to the Lander Field Manager at the physical address of the office. When time is of the essence, the process may be initiated by fax or electronic delivery of a scanned copy but the original must be received by the Lander Field Office within 3 working days. No exception, waiver, or modification will be issued until the hard copy request is received.

BLM may consider verbal requests for and grant verbal approvals of exceptions in Designated Development Areas. However, the operator must submit a written notice within 7 days after the verbal request. A verbal request is considered a unique action and should be used only if serious economic or public health and safety problems could result from denial of the request.

Exceptions will not be granted for stipulations or COAs resulting from Section 7 consultation regarding the Endangered Species Act with the USFWS for listed species unless a biological assessment (BA) is completed and reinitiation of Section 7 consultation occurs. This process, depending on the potential impacts and whether incidental take is involved, typically requires 3 to 6 months for completion. The operator or lease holder is responsible for the BA, which must be satisfactorily completed in accordance with the requirements of the BLM.

# Appendix F. Lander Air Resources Management Plan

## F.1. Purpose

The purpose of this air resources management plan is to address air quality issues identified by the Bureau of Land Management (BLM) in its analysis of potential impacts to air quality resources for the Lander Field Office Resource Management Plan (RMP). This plan outlines the specific requirements for managing air resources and authorizing activities that have the potential to adversely impact air resources within the Lander Field Office planning area. The plan also outlines specific requirements for proponents of projects that have the potential to generate air emissions and adversely impact air resources within the planning area.

## F.2. Air Quality Issues

The BLM based its identification of air quality issues on the following information:

- The air emissions inventory compiled for the planning area which estimated potential emissions of air pollutants for maximum allowable development and authorizations under each alternative
- Existing air monitoring data from the South Pass and Lander State and Local Monitoring Site (SLAMS) stations, the South Pass and Sinks Canyon National Atmospheric Deposition Program (NADP) sites, and the Bridger and North Absaroka Interagency Monitoring of Protected Visual Environments (IMPROVE) sites.
- The Reasonable Foreseeable Development (RFD) Scenario for Oil and Gas (BLM 2009d), Mineral Occurrence and Development Potential Report (BLM 2009c), and potential levels and location of development identified in Chapter 4 of the RMP.

### F.2.1. Magnitude of Emissions

An air emissions inventory was compiled for the planning area to determine the relative magnitude of total air pollutant emissions and to compare emissions between alternatives. Emissions were calculated using conservative assumptions about the likelihood of potential activities occurring under each alternative that result in maximum air emissions being estimated. For example, air emissions from oil and gas activities assume that all of the potential development identified in the RFD will occur. The RFD is based upon known geologic conditions, current development technology, and industry-provided data about future planned development. Future pricing and economic or technical viability of geologic plays were not taken into account. Air emissions from non-oil and gas mineral development, such as uranium mining, were calculated assuming maximum development scenarios even though these activities are vulnerable to economic variability. Assumptions regarding the use of air emission control technologies were also very conservative. For example, air emissions from drilling activities assume a mixture of Tier 1 – Tier 3 diesel engines. However, it is likely that significant improvement in emissions could be realized over the life of the plan through the use of alternative drilling technologies.

As a result, the compiled air emissions inventory represents the emissions of air pollutants based on best available but very speculative information for future development projections. It is very likely that the emissions inventory over-estimates projected future emissions due to the