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To: Field Managers and Deputy State Directors
From: Associate State Director
Subject: Guidance for Use of Standardized Surface Use Definitions

In response to requests from the Field Offices, our land use planning cooperators, and from an identified need for statewide consistency, a team of specialists from the Wyoming State Office (WSO) has developed a list of standardized surface use definitions that should be utilized statewide in our land use plans and other Bureau of Land Management (BLM) documents. These definitions and guidance have received at least two rounds of review in the Field Offices, and have also undergone extensive interdisciplinary review in the WSO.

The attached definitions are a result of the review of numerous statutes, regulations, executive orders, policy statements, BLM Manuals and Handbooks, and other selected authoritative references. The attached list certainly does not address every term or phrase that might be found in BLM land use plans or other documents, but it does focus on a few of the most controversial, confusing, and commonly used/misused terms and phrases in general use by the BLM and its collaborators. The development team purposely tried to keep the list relatively brief and avoid the inclusion of program specific technical terms (except in a very few, deliberate instances).

These standardized surface use definitions are to be used in all new land use plan and implementation plan (i.e., activity plan) starts, and at the appropriate time as existing plans begin revisions. Existing plans that are some time away from revision should be maintained with the standardized definitions, as appropriate. If it is determined that an existing plan would require an amendment to incorporate the standardized definitions then simply attach a clarifying statement to the plan and wait until the next scheduled revision to incorporate the standardized language in the plan. In this manner, it is expected that over time the standardized definitions can be incorporated with a minimum of extra effort.

It is intended that these standardized surface use definitions shall be used consistently across the BLM in Wyoming. It is also recognized that some existing guidance and directives (e.g., WY BLM Mitigation Guidelines for Surface Disturbing and Disruptive Activities, etc.) will need to be modified on a statewide basis as soon as possible to fully affect this consistency process. Obviously, these modifications will take some time. For this reason each BLM

administrative unit will need to be a little patient and flexible as they incorporate the standardized language, while keeping in mind the basic purpose of this effort as we collectively transition through this process.

If you have any questions about this matter, please contact either Ken Peacock or Dave Roberts of the WSO 930 staff at extensions (307) 775-6329, or (307) 775-6099, respectively.

/s/ James K. Murkin
acting

1 Attachment

1 – Standardized Surface Use Definitions (9 pp.)

Public Land Surface Use Definitions and Guidance

(06/20/07 Vers.)

The purpose of this document is to provide definitions and guidance for several of the most common surface use terms and phrases utilized by the U.S. Bureau of Land Management (BLM) in documents. It is BLM's intention to foster consistency in surface use language definitions in Wyoming planning and environmental documents. BLM intends for this document to provide an explanation of the Bureau's lexicon for interested Public Land users.

The definitions provided below are the broadest meaning and context of a particular term or phrase. **For any specific application the statutes, executive orders, regulations, or other State Director policies relative to the subject activity should be consulted first for a more specific meaning of a particular term or phrase.**

The definitions of the terms and phrases provided below fall into three basic categories: (1) formally established definitions; (2) planning allocation and general use definitions; and (3) requirements for surface use authorizations.

I. FORMALLY ESTABLISHED DEFINITIONS

The following commonly used terms and phrases are drawn from the various statutes, executive orders, regulations, and handbooks applying to the Public Lands. Where these terms are a verbatim recitation of the respective authoritative language, there is very little latitude or license that can be taken with the use of these terms. For this reason, the term is simply listed here, along with the citation where it is defined. Not all of the formally established terms that may be found are presented here.

Best Management Practices (BMPs) – BLM Manual Handbook H-1601-1.

Casual Use - 43 CFR 2741.3(d); 2801.5(a); 2920.0-5(k); and 3809.5; BLM Manual Handbook H-3150-1; Onshore Oil and Gas Order Number 1.

Closed Area – 43 CFR 8340.0-5(h).

Corridor – Sec. 503 of the Federal Land Policy and Management Act (FLPMA); 43 CFR 2801.5(b)

Desired Outcomes – BLM Manual Handbook H-1601-1.

Federal Lands – 43 CFR 3400.0-5(o).

Goal – BLM Manual Handbook H-1601-1.

Guidelines – BLM Manual Handbook H-1601-1.

Limited Use Area – 43 CFR 8340.0-5(g).

Multiple Use – Sec. 103(c) and Sec. 103(l) of the Federal Land Policy and Management Act (FLPMA).

Non-Impairment – Sec. 603(c) of the Federal Land Policy and Management Act (FLPMA); BLM Manual Handbook H-8550-1.

Objective – BLM Manual Handbook H-1601-1.

Occupancy – 43 CFR 2400.0-5(i); 43 CFR 3715.0-5; 43 CFR 8365.1-2 and 8365.2-3.

Open Area - 43 CFR 8340.0-5(f).

Operating Right – 43 CFR 3100.0-5 (d).

Permanent/Permanent Use – 43 CFR 3715.0-5.

Public Lands – Sec. 103(e) of the Federal Land Policy and Management Act (FLPMA); BLM Manual Handbook H-1601-1.

Resource Values/Resource Uses – Sec. 102 (8) of the Federal Land Policy and Management Act (FLPMA); Sec. 103 (l) of FLPMA; 43 CFR 2200.0-5(u) and 2300.0-5(g).

Standard – BLM Manual Handbook H-1601-1.

Sustained Yield – Sec. 103(h) of the Federal Land Policy and Management Act (FLPMA)

Unnecessary and Undue Degradation – 43 CFR 3802.0-5(l) and 43 CFR 2800.0-5(x).

Valid Existing Right – 43 CFR 3802.0-5(k).

Withdrawal /Withdrawn – 43 CFR 2300.0-5(h); Sec. 103(j) of FLPMA.

II. PLANNING ALLOCATION AND GENERAL USE DEFINITIONS

The terms and phrases below are commonly applied when referencing use and management of the Public Lands. These terms are utilized in various planning documents, NEPA analyses, agency reports, technical reports, and briefing papers. Most of these terms are not specifically defined in statutes or regulations; although, in some instances the term is an extension of the regulatory language or is implied by the law. These terms may be used individually or in conjunction with other terms and phrases. Not every allocation and general use term is defined here, only those that are the most controversial or easily confused. **The focus is on those terms that have a broad, cross-resource program usage; no attempt is made to re-define or interpret individual resource use terms. Individual resource programs should be consulted for the use of their respective, technical terminology.**

Authorized /Authorized Use – This is an activity (i.e., resource use) occurring on the Public Lands that is either explicitly or implicitly recognized and legalized by law or regulation. This term may refer to those activities occurring on the Public Lands for which the BLM, or other appropriate authority (e.g., Congress for RS 2477 rights-of-way [ROWs], FERC for major, interstate ROWs, etc.), has issued a formal authorization document (e.g., livestock grazing lease/permit; right-of-way grant; coal lease; oil and gas permit to drill; etc.). Formally authorized uses typically involve some type of commercial activity, facility placement, or event. These formally authorized uses are often spatially or temporally limited. Unless constrained or bounded by statute, regulation, or an approved land use plan decision, legal activities involving public enjoyment and use of the Public Lands (e.g., hiking, camping, hunting, etc.) require no formal BLM authorization.

Avoidance/Avoidance Area – These terms usually address mitigation of some activity (i.e., resource use). Paraphrasing the CEQ Regulations (40 CFR 1508.20), avoidance means to circumvent, or bypass, an impact altogether by not taking a certain action, or parts of an action. Therefore, the term "avoidance" does not necessarily prohibit a proposed activity, but it may require the relocation of an action, or the total redesign of an action to eliminate any potential impacts resulting from it.

Checkerboard – This term refers to a land ownership pattern of alternating sections of Federal owned lands with private or State owned lands for 20 miles on either side of a land grant railroad (e.g. Union Pacific, Northern Pacific, etc.). On land status maps this alternating ownership is either delineated by color coding or alphabetic code resulting in a "checkerboard" visual pattern.

Cherry-stemmed/Cherry-stemming – This term refers to a narrow, linear, intrusion or extrusion of a delineated block of Federal lands resulting in what appears on a map as a boundary inlet or peninsula. Although this term may be used in any resource program, the most common use is in relation to dead-end road intrusions along WSA boundaries.

Deferred/Deferred Use –To set-aside, or postpone, a particular resource use(s) or activity(ies) on the Public Lands to a later time. Generally when this term is used the period of the deferral is specified. Deferments sometimes follow the sequence timeframe of associated serial actions (e.g., action B will be deferred until action A is completed, etc.).

Disruptive Activities –Those Public Land resource uses/activities that are likely to alter the behavior, displace, or cause excessive stress to existing animal or human populations occurring at a specific location and/or time. In this context, disruptive activity(ies) refers to those actions that alter behavior or cause the displacement of individuals such that reproductive success is negatively affected, or an individual's physiological ability to cope with environmental stress is compromised. This term does not apply to the physical disturbance of the land surface, vegetation, or features. Examples of disruptive activities may include noise, human foot or vehicle traffic, domestic livestock roundups, or other human presence regardless of the activity. When administered as a land use restriction (e.g., *No Disruptive Activities*), this term may prohibit or limit the physical presence of sound above ambient levels, light beyond background levels, and/or the nearness of people and their activities. The term is commonly used in

conjunction with protecting wildlife during crucial life stages (e.g., breeding, nesting, birthing, etc.), although it could apply to any resource value on the Public Lands. The use of this land use restriction is not intended to prohibit all activity or authorized uses.

Emergency Use – These are activities occurring on the Public Lands outside the scope of normal resource use and operations, and which require immediate attention. Emergency use activities are typically driven by imminent concerns for human health and safety, or protection of property (e.g., wildfire suppression, HAZMAT response, disease outbreaks, etc.). Emergency use is typically exempted from other land use restrictions, with the exercise of reasonable and prudent care.

Exclusion Areas – An area on the Public Lands where a certain activity(ies) is prohibited to insure protection of other resource values present on the site. The term is frequently used in reference to lands/realty actions and proposals (e.g., rights-of-way, etc.), but is not unique to lands and realty program activities. This restriction is functionally analogous to the phrase "no surface occupancy" used by the oil and gas program, and is applied as an absolute condition to those affected activities. The less restrictive analogous term is avoidance area.

Land Locked – This term refers to the situation when any parcel of land (i.e., private, State, or Federal) has no legal access without crossing another ownership due to the existing land ownership pattern.

Land Tenure Adjustment(s) – This term refers to a change in land ownership patterns, or legal status, to improve their administrative manageability and/or their usefulness to the public.

Policy – This is a statement of guiding principles, or procedures, designed and intended to influence planning decisions, operating actions, or other affairs of the BLM. Policies are established interpretations of legislation, executive orders, regulations, or other presidential, secretarial, or management directives.

Restriction/Restricted Use - A limitation or constraint on Public Land uses and operations. Restrictions can be of any kind, but most commonly apply to certain types of vehicle use, temporal and/or spatial constraints, or certain authorizations.

Split Estate – This is the circumstance where the surface of a particular parcel of land is owned by a different party than the minerals underlying the surface. Split estates may have any combination of surface/subsurface owners: Federal/State; Federal/private; State/private; or percentage ownerships. When referring to the split estate ownership on a particular parcel of land, it is generally necessary to describe the surface/subsurface ownership pattern of the parcel.

Surface Disturbing Activities – An action that alters the vegetation, surface/near surface soil resources, and/or surface geologic features, beyond natural site conditions and on a scale that affects other Public Land values. Examples of surface disturbing activities may include: operation of heavy equipment to construct well pads, roads, pits and reservoirs; installation of pipelines and power lines; and the conduct of several types of vegetation treatments (e.g., prescribed fire, etc.). Surface disturbing activities may be either authorized or prohibited.

Surface Use(s) – These are all the various activities that may be present on the surface or near-surface (e.g., pipelines), of the Public Lands. It does not refer to those subterranean activities (e.g., underground mining, etc.) occurring on the Public Lands or federal mineral estate. When administered as a use restriction (e.g., *No Surface Use [NSU]*), this phrase prohibits all but specified resource uses and activities in a certain area to protect particular sensitive resource values and property. This designation typically applies to small acreage sensitive resource sites (e.g., plant community study enclosure, etc.), and/or administrative sites (e.g., government warehouse, etc.) where only authorized, agency personnel are admitted.

Temporary/Temporary Use - This term is used as the opposite of the term permanent/ permanent use. It is a relative term and has to be considered in the context of the resource values affected and the nature of the resource use(s)/activity(ies) taking place. Generally, a temporary activity is considered to be one that is not fixed in place and is of short duration.

III. REQUIREMENTS FOR SURFACE USE AUTHORIZATIONS

All stipulations are derived from, and are supported by, the land use plan (i.e., RMP) decisions and guidance. The term “stipulation” refers to requirements placed on resource use authorizations to mitigate impacts of surface resource uses and manage the conduct of these activities. Stipulations may prohibit or limit surface use, allow only certain types of surface uses, allow surface use only under certain conditions, allow surface use only during certain times, or allow surface use only in certain locations. These authorizations may include: oil and gas leases, right-of-way grants, special recreation permits, timber sale contracts, etc. If applicable, an oil and gas lease stipulation will be attached as a COA for an approved APD. "Stipulations" may be referred to by other names when applied to other than oil and gas leasing activities (e.g., special conditions for cultural permits, terms and conditions of grazing permits, etc.). The stipulations and other conditions of approval apply only to the specific actions for which they are prescribed. **Each resource program operates within the Bureau based on specific statutory and regulatory guidance, and directives which sometimes prescribe the use of standard forms and formats in the authorization documents.** Examples of some of these standard program definitions and formats are shown below.

For Oil and Gas Leases:

Public Land oil and gas lease stipulations follow the format and detailed use guidance presented in the document entitled "Uniform Format for Oil and Gas Lease Stipulations" (sometimes referred to as the "Rimrock Report" of March - 1989). In accordance with the Rimrock Report, the terms used for Public Land oil and gas lease stipulations are written as follows:

No Surface Occupancy (NSO) Stipulation – No surface occupancy or use is allowed on the lands described below (*fill in the legal subdivision or other description*) . . . for the purpose of (*fill in the reason for protecting this parcel of land with the NSO stipulation*).

NOTE: This is a term used to prohibit the physical presence of oil and gas operations and associated facilities on the surface of Public Lands in a specified area to protect sensitive surface resource values. **The NSO provision is reserved for use in fluid**

mineral land use planning allocation decisions and lease stipulations. Other terms, such as restricted area, avoidance area, exclusion area, etc., are used with non-fluid mineral functions.

Timing Limitation Stipulation (TLS) – No surface use is allowed during the following time period(s) (*fill in the time period of the restriction*) . . . on the lands described below (*fill in the legal subdivision or other description*) . . . for the purpose of (*fill in the reason for protecting this parcel of land with the TLS stipulation*) .

Controlled Surface Use (CSU) Stipulation – Surface occupancy or use is subject to the following special operating constraints (*fill in the appropriate use restriction*) . . . on the lands described below (*fill in the legal subdivision or other description*) . . . for the purpose of (*fill in the reason for protecting this parcel of land with the CSU stipulation*) .

For Lands/Realty Grants:

Stipulations for Public Land right-of-way grants follow the format and detailed use guidance presented in the BLM Handbook H-2801-1. An example stipulation used for a Public Land right-of-way follows:

Authorized construction, routine maintenance, or surface disturbance is not allowed during the period from (*fill in the beginning date of the restriction*) to (*fill in the ending date of the restriction*) for the protection of (*name the resource value*).

For Grazing Permits/Leases:

Stipulations for Public Land grazing permits and leases follow the format and detailed use guidance presented in the BLM Handbook H-4130-1. The grazing permit or lease is the authorizing federal action, but terms and conditions are sometimes attached to grazing bills. An example term or condition used for a Public Land grazing lease follows:

You (*lessee*) are authorized to make grazing use of lands under the jurisdiction of the Bureau of Land Management and covered by this lease upon your acceptance of the terms and conditions of this lease, and payment of grazing fees when due: Allotment (*No. and Name*); Pasture (*Name*); Livestock (*No. and Kind*); Grazing Period (*Begin and End*); Public Land (*Percentage*); Type of Use (*Active, etc.*); and AUMs (*No.*). Those holding permits or leases must own or control, and be responsible for, the management of livestock authorized to graze.

For Special Recreation Permits (SRPs):

Stipulations for Public Land special recreation permits follow the format and detailed use guidance presented in the BLM Handbook H-2930-1. An example stipulation used for a Public Land special recreation permit for a guide and outfitter follows:

When feed for livestock is provided by the permittee, it must be certified weed-seed free by the county weed and pest control. It is recommended that weed-free oats or pelleted feeds be used rather than hay. Forage products subject to this weed-free rule includes oats, hay, cubes or other pelleted feeds, straw, and mulch.

IV. GUIDANCE AND DISCUSSION

Land use plan (LUP) decisions are basically of two types: (1) land (i.e., resource) use allocations presented as desired outcomes (i.e., goals and objectives); and (2) allowed (including restricted or prohibited) uses and actions anticipated to achieve the desired outcomes (BLM Handbook H-1601-1). Management actions presented in the LUP should be at the broad scope and scale. The surface disturbance and restriction definitions listed above serve the latter LUP function.

Within BLM (Wyoming), some specific Public Land surface use restrictions (e.g., NSU and NSO) have typically been identified as a decision within the land use plan. Where specific surface use restriction decisions have been made in the LUP, removal of those restrictions typically requires a revision, amendment, or maintenance of the land use plan.

The planning allocation and general definitions provide a framework, or context, for management. The authorizations for specific resource uses (e.g., permits, grants, etc.) will contain the necessary management prescriptions and constraints (i.e., stipulations, terms and conditions, conditions of approval, etc.) for the conduct of long-term operations and maintenance of the various resource uses/activities. In some cases (e.g., an oil field development, a grazing allotment, a wildlife habitat management area, etc.), a plan of operations, or an activity plan, is developed to address the long-term management of the operational and maintenance activities taking place at a specific location.

Stipulations applied to a land use authorization are for that resource use and action only. For the protected resource value, some activities may be prohibited, while others are allowed. For example, a CSU stipulation prohibiting surface use for oil and gas activities may exist, while a research study for a paleontological excavation may be allowed. Scientific studies and research are often exempted from normal surface use restrictions. However, when exercised, surface use restrictions must be consistently applied across resource uses. Site specific stipulations or COAs should be derived from the NEPA analysis. Whenever any site specific stipulation or COA is applied for the protection of any resource value, the least restrictive measure should be applied that accomplishes the protective intent. The NSO phrase is used as a stipulation on fluid mineral leases where the mineral resource could be recovered by directional drilling or underground operations, while still protecting the public interest in the surface resource values (see stipulations). No surface occupancy designations should be used with care when applied to large areas. Avoid using this designation for other more appropriate and traditional use exclusions, such as withdrawal from mineral entry, OHV closure, restricted to existing roads and trails, no surface disturbing or disruptive activities, etc.

Most resource protective measures should be broadly addressed in the land use plan, and again specifically in the NEPA analysis for a specific action. Any un-mitigable problem with a generalized surface use proposal(s) should be resolved at the time of the land use plan, or with a site specific proposal at the time of NEPA documentation (probably with a modification, or denial, of the proposal). Once a decision is made to authorize a proposed action (particularly narrow, linear actions like a ROW grant), the proponent then has authorization to occupy and use

the surface of the Public Lands. In most instances (particularly narrow, linear actions like a ROW grant), NSU stipulations, exclusions areas, and use of set-back distances should have already been resolved by the time the authorization is issued, and therefore, are generally moot as a stipulation on a formal authorization.

Some Public Land acreage has been previously encumbered, either by statute, or by prior authorizations, at the time a new resource use proposal is presented. These prior authorizations have "valid existing rights", and often may have a legally "grandfathered" protection from additional use restrictions or conditions imposed by any new land use authorizations at the same location.

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