APPENDIX 5—WYOMING BUREAU OF LAND MANAGEMENT MITIGATION GUIDELINES FOR SURFACE DISTURBING AND DISRUPTIVE ACTIVITIES

INTRODUCTION

These guidelines are for the primary purpose of attaining statewide consistency in how requirements are determined for avoiding and mitigating environmental impacts and resource and land use conflicts. "Consistency" 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 mitigation guidelines are used in the resource management plan (RMP) and environmental impact statement (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 mitigations will be appropriately included as conditions of relevant actions being proposed or considered in each alternative. In the second case, the mitigations are used to develop a baseline for measuring and comparing impacts among the alternatives; to identify other actions and alternatives that should be considered, and to help determine whether more stringent or less stringent mitigations should be considered.

The EIS for the RMP does not decide or dictate the exact wording or inclusion of the mitigation guidelines. Rather, the guidelines are 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. The guidelines will be used in the same manner in analyzing activity plans and other site-specific proposals. The mitigation 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 that conducive to appropriate public involvement and input.

PURPOSE

The purposes of the "Wyoming BLM Mitigation Guidelines" are (1) to reserve, for the Bureau of Land Management (BLM) the right to modify the operations of all surface and other human presence disturbance 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. The guidelines have been written in a format that will allow for their direct use as stipulations and for the addition of specific or specialized mitigation following 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 stipulations or as conditions of approval, or as a baseline for developing specific stipulations for a given activity or program.

Because the 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 or mitigation requirements derived through the guidelines will provide more consistency with planning decisions and plan implementation than has occurred in the past. Application of the mitigation guidelines to all surface and other human presence disturbance activities concerning BLM-administered public lands and resources will in turn provide more uniformity in mitigation than has occurred in the past.

SPECIFIC GUIDELINES FOR MITIGATION

1. Surface Disturbance Mitigation Guideline

Surface disturbance will be prohibited in any of the areas or conditions listed below. Exception, waiver, or modification of this limitation may be approved in writing, including documented supporting analysis by the Authorized Officer.

a. Slopes in excess of 25 percent

b. Within important scenic areas (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. When performing construction with frozen material or during periods when the soil material is saturated 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 conditions (1a through 1e above) exist, surface-disturbing activities will be prohibited unless or until a permittee or his designated representative and the surface management agency (SMA) arrives at an acceptable plan for mitigation of anticipated impacts. This negotiation will occur prior to development.

Specific criteria (for example, 500 feet from water) have been established based on 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 through this guideline must be based on environmental analysis of proposals (for example, activity plans, 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 apply to defined big game birthing areas from May 1 to June 30.

Application of this limitation to operation and maintenance of a developed project must be based on environmental analysis of the operational or production aspects.

Exception, waiver, or modification of this limitation in any year may be approved in writing, including documented supporting analysis, 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 apply to defined raptor and game bird winter concentration areas from November 15 to April 30.

Application of this limitation to operation and maintenance of a developed project must be based on environmental analysis of the operational or production aspects.

Exception, waiver, or modification of this limitation in any year may be approved in writing, including documented supporting analysis, 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 habitat [for example, sage-/sharp-tailed grouse breeding grounds, and/or other species/activities].

Exception, waiver, or modification of this limitation in any year may be approved in writing, including documented supporting analysis, 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 or 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 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 [for example, seasonal use restrictions, occupancy limitations, facility design modifications].

Guidance

The Wildlife Mitigation Guideline is intended to provide two basic types of protection: seasonal restriction (2a and 2b above) and prohibition of activities or surface use (2c above). Item 2d above is specific to situations involving threatened or 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 on current biological data, prior to the time of processing an application and issuing the use authorization. The legal description must eventually become a part of the 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, prohibition of activity or surface use, is intended for protection of specific wildlife habitat areas or values within the use area that cannot be protected using seasonal restrictions. These areas or values must be factors that limit lifecycle activities (for example, sage grouse strutting grounds, known threatened and endangered species habitat).

Exception, waiver, or modification of requirements developed from this guideline must be based on environmental analysis of proposals (for example, activity plans, 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 the potential for affecting characteristics that qualify a cultural property for the National Register of Historic Places (National Register), 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 Wyoming State Historic Preservation Officer for arriving at determinations concerning 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 also may 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, cultural resource permit stipulations, and other policy issued by BLM. The reports must provide sufficient information for Section 106 consultation. Reports shall be reviewed for adequacy by the appropriate BLM cultural resource specialist. 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 Wyoming Protocol to the National Programmatic Agreement.

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 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 the Federal Land Policy and Management Act (FLPMA), Section 102(a)(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 [within a specific distance of the resource value or between one date to another date] in [legal description].

Application of this limitation to operation and maintenance of a developed project must be based on environmental analysis of the operational or production aspects.

Exception, waiver, or modification of this limitation in any year may be approved in writing, including documented supporting analysis, 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 restrictions must be clearly identified. A detailed plan addressing specific mitigation and special restrictions will be required prior to disturbance or 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 on environmental analysis of proposals (for example, activity plans, 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 description] because of [resource value].

Example Resource Categories (select or identify category and specific resource value):

a. Recreation Areas (for example campgrounds, historic trails, national monuments)

b. Major reservoirs/dams

c. Special management area (for example, known threatened or endangered species habitat, areas suitable for consideration for wild and scenic rivers designation)

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 description and resource value of concern must be identified and must 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 the requirement's 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 (for example, environmental assessment, EIS as necessary) to provide the basis for a waiver or exception to an NSO planning decision. Modification of the NSO requirement will pertain only to refinement or correction of the location(s) to which it applied. If the waiver, exception, or modification is found to be consistent with the intent of the planning decision, it may be granted. If found inconsistent with the intent of the planning decision, a plan amendment would be required before the waiver, exception, or modification 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 on stringent standards described in the land use planning document. Because 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