
APPENDIX 8—EXCEPTION AND WAIVER CRITERIA

PROCEDURES FOR HANDLING REQUESTS FOR EXCEPTION FROM SEASONAL STIPULATIONS AND/OR CONDITIONS OF APPROVAL

The Bureau of Land Management (BLM) will process requests for exception and waiver in coordination with the Wyoming Game and Fish Department (WGFD). A request for exception must be initiated in writing by the operator 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. 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 Resource Management Plan (RMP) and National Environmental Policy Act (NEPA) compliance. Processing includes coordination with WGFD for seasonal wildlife-based lease stipulations or permit Conditions of Approval (COA).

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 over the RMP, if appropriate.

An exception, waiver, or modification must be based on one of two criteria. According to 43 CFR 3101.1-4, “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 the proposed operations would not cause unacceptable impacts.”

An Exception is a one-time relief from the COAs applied to any surface disturbing or human disruptive activities, such as but not limited to, Application for Permit to Drill (APD), stipulations applied to a right-of-way (ROW), habitat treatments, and range projects. The project lead, operators, and lease holders must initiate requests *in writing*, and this documentation must be received by the BLM at least *2 weeks prior* to the potential activity start date. The request must include the following information:

WHY the operator or lease holder needs the exception. Please include the reason(s) why the action could not be completed within the original stipulation period, any evidence of why the action will not adversely affect the species being protected, or any other information (additional mitigation measures or alternatives) that will help BLM (and WGFD) 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; the approval dates of the APD, sundry or ROW number, lease number, and the American Petroleum Institute (API) number.

WHERE the activity will take place. This must include the legal description (including footage measurements of the well) of the activity, the location of the access roads and pipelines, and a map *clearly* depicting these areas.

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

Requests will be accepted by fax at (307) 367-5329 or hard copy letter (mail or hand-delivery acceptable). Hard copy requests should be mailed to the following address:

Field Manager
Bureau of Land Management
Pinedale Field Office
P.O. Box 768
Pinedale, WY 82941
ATTN: Wildlife Exception Request

Please expect *2 weeks* for processing of all requests. Following BLM review, the operator or lease holder will receive a response granting the request, denying the request, or delaying the action (with a recommendation of what needs to be completed before the request can be granted). These surveys may require additional surveys and field work before a recommendation can be made. These surveys must be coordinated and authorized by BLM biologists in advance. *Please do not complete field surveys for exceptions before contacting the BLM.* Results of surveys completed prior to direction from a BLM biologist may not be used or adequate in granting an exception. If there is any question whether field surveys will be required, contact one of the BLM biologists.

A copy of the crucial winter range exception request must be sent to the WGFD at—

West of Hwy 189:

Gary Fralick
WGFD
P.O. Box 1022
Thayne, WY 83127

East of Hwy 189:

Scott Smith
WGFD
P.O. Box 850
Pinedale, WY 82941

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 re-initiation of Section 7 consultation occurs. This process, depending on the potential impacts and whether incidental take is involved, typically will require 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 BLM.

EXCEPTIONS TO SEASONAL RESTRICTIONS

Activities within the planning area are managed with seasonal restrictions, no surface occupancy, or distance restrictions for sensitive and crucial habitats. Protective wildlife seasonal restrictions are consistent with statewide dates and/or distances. For example, big game crucial winter ranges are protected from November 15 through April 30. This restriction is intended to protect big game if weather or other habitat needs dictate.

The Bureau of Land Management (BLM) can and does grant exceptions to seasonal restrictions if the BLM, in consultation with the WGFD, feels that granting an exception would not adversely impact the population being protected. Please remember that exceptions are for critical situations that may cause the applicant to be out of compliance with the timing stipulations attached to the COAs of their APD, ROW Grant, or other contract. They are NOT intended to be used to extend normal operations into the timing

stipulation period. The BLM uses a set of criteria when considering a request for an exception. Professional judgment plays a key part in the BLM's decision on whether to grant exceptions. No clear formula exists.

The following section is an example of factors considered by the BLM when determining whether a request for an exception to crucial big game winter range should be granted. Similar criteria and/or data are used when considering granting exceptions for other protected species, such as greater sage-grouse, elk calving areas, mountain plover, and pygmy rabbits.

GENERAL GUIDELINES FOR TIMING STIPULATION AND SURFACE USE RESTRICTIONS

Professional judgment plays a key part in a biologist's recommendation to the BLM Field Manager, and there is no clear formula for arriving at these biological recommendations. Wildlife biologists will consider the general criteria below when evaluating an exception request. These factors will be considered as a whole and not individually. Please remember that animal presence/absence based on one site visit will not be the sole criterion for granting an exception request.

Factors Considered

1. Resource Concerns
 - Animal presence or absence
 - Additional or new resource concerns
 - Potential for increased wildlife accidents or poaching
 - What are the WGFD coordination and recommendations?
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/birth rate
3. Climate/Weather
 - Snow conditions (depth, crusting, 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 (i.e., early or late in the stipulation period, length of activity, time of day, how much winter is remaining)
- Kind and duration of potentially disruptive activity
- Likelihood of animals habituating to the proposed activity
- Are the factors that led to the seasonal stipulations or COA for wildlife still valid?
- Will granting the exception cause less long-term impact to the resource than whatever short-term impact might occur?
- Are there other mitigation measures or alternatives that would allow for granting the exception and still meet the intended objective of the stipulation/COA?
- What is the severity of the proposed action and the potential impact?

MODIFICATION OR WAIVER OF LEASE STIPULATIONS

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.

Terms Defined:

- A **Condition of Approval** means a site-specific and enforceable requirement included in an approved Application for Permit to Drill (APD) or Sundry Notice that may limit or amend the specific actions proposed by the operator. Conditions of Approval minimize, mitigate, or prevent impacts to resource values or other uses of public lands.
- A **Lease Stipulation** is a condition of lease issuance that provides a level of protection for other resource values or land uses by restricting lease operations during certain times or locations or to avoid unacceptable impacts, to an extent greater than standard lease terms or regulations. A

stipulation is an enforceable term of the lease contract, supersedes any inconsistent provisions of the standard lease form, and is attached to and made a part of the lease. Lease stipulations further implement the Bureau of Land Management's (BLM) regulatory authority to protect resources or resource values. Lease stipulations are developed through the land use planning process.

- An **exception** is a one-time exemption for a particular site within the leasehold; exceptions are determined on a case-by-case basis; the stipulation continues to apply to all other sites within the leasehold. An exception is a limited type of waiver.
- A **waiver** is a permanent exemption from a lease stipulation. The stipulation no longer applies anywhere within the leasehold.
- A **modification** is a change to the provisions of a lease stipulation, either temporarily or for the term of the lease. Depending on the specific modification, the stipulation may or may not apply to all sites within the leasehold to which the restrictive criteria are applied.

