

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 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).

An Exception is a one-time relief from the COAs applied to an Application for Permit to Drill (APD) or from the stipulations applied to a right-of-way (ROW). Operators and lease holders must initiate requests *in writing* and 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 starting date, ending date, and time of day/night when activities will occur.

Requests will be accepted by fax at (307) 367-5329, e-mail, 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 U.S. Fish and Wildlife Service (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.

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:

- 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?
- What are the WGFD coordination and recommendations?
- Is the animal present or absent?
- What is the habitat potential or current use?
- What is the weather severity and condition? (big game only)
- What is the animal condition? (big game only)
- Where is the site?

- When will the action occur? (i.e., early or late in the stipulation period, length of activity, time of day, how much winter is remaining)

CRUCIAL BIG GAME WINTER RANGE:

November 15 Through April 30

The “surface disturbance and disruptive activities” restriction in *crucial* big game winter ranges is intended to provide secure habitat for big game species and is dependent on weather and habitat conditions. Flexibility of this restriction is possible depending on weather conditions, animal presence, and season. Exception requests made early in the season (November 15–30), as well as short-term requests (involving less than 5 days), will result in the most flexible response. The criteria listed above will be applied for *crucial* big game winter range exception requests, and the recommendation from the WGFD will be considered.

BIG GAME PARTURITION AREAS:

May 1 Through June 30

This stipulation provides protection for big game parturition areas on delineated parturition (birthing and calving) areas. An exception can be granted if field surveys determine that no big game species are using the area. This determination will be made in coordination with the WGFD. The same criteria will be used as previously described in the *crucial* big game winter range section.

SAGE-GROUSE WINTER HABITAT:

November 15 Through March 14

Surface use and disruptive activity restrictions are intended for protection of wintering sage-grouse and their delineated winter habitat. A determination will be made if a location has known winter use or evidence of previous winter use by using survey data and personal observations. If no data are available, winter habitat availability and use will be determined during a site visit and/or if conditions warrant, through collection of data during a winter sage-grouse survey. If birds are present, or if signs of use are documented, the exception will be denied, and activities will be postponed until March 15. If birds are not present, and no sign of winter use is documented, the request for the exception could be granted.

SAGE-GROUSE LEKS:

March 1 Through May 15 (Avoid human activity between 8:00 p.m. and 8:00 a.m.) and Controlled Surface Use Within ¼ mile of the Perimeter of Occupied Leks

This seasonal stipulation is intended for active sage-grouse leks, *either* established or new. Definitions and protocol are defined by the WGFD, and a determination of whether a lek is active or inactive will be made following a minimum of three surveys within the same year as the proposed activity. Surveys are coordinated by the WGFD, and BLM participates in those survey efforts. If a lek is found to be active, an exception will be denied, and surface use and disruptive activities will be delayed until May 16. If a lek is determined to be inactive, an exception could be granted, and activities could be allowed to begin (providing that access and other activities do not affect other active leks).

SAGE-GROUSE NESTING/EARLY BROOD-REARING HABITAT:

March 15 Through July 15; Controlled Surface Use Within 2 Miles of an Occupied Lek, or in Identified Sage Grouse Nesting and Early-Brood Rearing Habitat Beyond 2 Miles of the Lek

Surface use and disruptive activity restrictions are intended for the protection of nesting sage-grouse hens and their nesting and early-brood-rearing habitat. If an active lek is within 2 miles of a location, or if there is suitable nesting habitat available and the data suggest that birds might be nesting nearby, or if there is evidence of historical nesting in the area, no exception requests will be granted between March 15 and July 1. If after July 1 an exception is requested, a field survey could be completed to determine nesting and habitat use. *This survey must be coordinated with, and authorized by, the BLM Field Manager, prior to completion of the exception request.* If this survey determines that nesting is present, no exception will be granted until nesting is complete. If this survey determines that there is no nesting activity, an exception could be granted. If there are no active leks within 2 miles of the location and there is no evidence of previous nesting or nesting habitat is not available or suitable, an exception could be granted. If a lek is inactive for a season but it is considered occupied, and nesting habitat is present, an exception request could be granted after review, which may include surveys and/or onsite visits (coordinated and authorized by the BLM Field Manager prior to completion).

If a lek has been determined to be inactive for a season and has been unoccupied in past seasons, or no nesting habitat is present, an exception could be granted or no stipulations will be applied (during the NEPA review process).

PRIORITY RAPTOR NESTS (EXCEPT BALD EAGLE):

February 1 Through July 31, No Surface Disturbing and Human Disruptive Activity, Within ½ mile (1 Mile for Ferruginous Hawks); No Surface Occupancy (Year-Round) Within 825 Feet (1,000 Feet for Ferruginous Hawks)

The seasonal stipulation period is intended for all previously known, active, priority raptor nests and newly established nests. The seasonal stipulation for some raptor species, such as the merlin, northern goshawk, peregrine falcon, and prairie falcon, will extend until August 15. All surface disturbing and human disruptive activity is restricted within ½ mile of an active raptor nest, and activities are restricted within 1 mile of active ferruginous hawk nests. The stipulation period can be shortened, depending on nesting chronology of individual species, nest site location, and topography. Permanent surface occupancy is not allowed within 825 feet of an *active* nest and is not allowed within 1,000 feet of an active ferruginous hawk nest. A determination will be made for each raptor nest regarding whether it is active or inactive. This determination is usually made through field visits during the appropriate nesting season. (The timing will be adjusted for individual species.) An operator or lease holder can complete these field surveys if they are coordinated and authorized by the BLM Field Manager in advance. If a nest is determined to be active, no exception will be granted unless raptor dependence on the area is no longer necessary (usually 2 weeks post-fledging). If a nest is determined to be inactive, or activity is out of the line-of-sight of an active nest (with no anticipated impacts), an exception could be granted.

In this case *active* is defined as: fresh materials added to the nest, eggs present (or adults displaying egg incubation behaviors), or chicks or fledglings present.

Inactive is defined as chicks, fledglings, and adults no longer present. (Please note that the status of the nest, whether active or inactive, is determined by BLM, and multiple nest surveys may be required to determine this status.)

BALD EAGLE NESTS:

February 1 Through August 15, No Surface Disturbing and Human Disruptive Activity Within 1 Mile; No Surface Occupancy Within ½ mile (2,600 feet) Year-Round

BALD EAGLE FORAGING AND WINTER ROOST AREAS:

November 1 Through April 1, No Surface Disturbing and Human Disruptive Activities Within 1 Mile of Occupied Winter Roosts; No Human Disruptive Activity in Foraging Areas Within 2.5 miles of Occupied Winter Roosts or Nest Sites

Bald eagles are listed as “threatened” species and receive protection under the Endangered Species Act (ESA), as amended. No take, as defined by ESA, is authorized for federal actions (authorized, funded, or carried-out).

Exceptions to this stipulation will not be granted unless a BA is completed. If this BA includes a “no effect” determination, an exception can be granted (for inactive nests). If the BA includes a “may affect” determination, then Section 7 consultation regarding the ESA must be completed with the USFWS. No exception will be granted until that consultation is completed. The BA must be completed by the operator or lease holder and coordinated with a BLM biologist. The BA must be adequate for submission by the BLM to the USFWS, and all protections that are the outcome of the Section 7 process must be followed. Failure to follow these procedures could result in violation of the ESA and will result in penalties for involved parties.

