

APPENDIX B - LEASE STIPULATIONS AND NOTICES

Background

The following information pertaining to lease stipulations is taken from the booklet, “Uniform Format for Oil and Gas Lease Stipulations,” prepared by the Rocky Mountain Regional Coordinating Committee in March 1989. These guidelines were developed by the Bureau of Land Management (BLM) and the Forest Service.

Stipulations are conditions that are to be made part of a lease when the environmental and planning record demonstrates the necessity for the stipulations. The stipulation forms, in this appendix, provide standardized structure, wording, and usage. What, why, and how this mitigation/protection is to be accomplished is determined by the land management agency through land management planning and National Environmental Policy Act (NEPA) analysis.

If the determination is made, upon weighing the relative resource values, uses, and/or users, that conflict with oil and gas operations exist and cannot be adequately managed under the Standard Lease Terms, a lease stipulation is necessary. Land use/management plans serve as the primary vehicle for determining the necessity for lease stipulations (BLM Manual 1624). Documentation of the necessity for a stipulation is disclosed in planning documents and through site-specific analysis. Land management plans and/or NEPA documents also establish the guidelines by which future waivers, exceptions, or modifications may be granted. Substantial modification or waiver subsequent to lease issuance is subject to public review for at least a 30-day period in accordance with Section 5102.f of the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

Stipulations may be necessary if the authority to control the activity on the lease does not already exist under laws, regulations, or orders. It is important to recognize that the authorized officer has limited authority to modify the site location and design of facilities, control the rate of development and timing of activities, as well as require other mitigation under Sections 2 and 6 of the Standard Lease Terms (BLM Form 3100-11) and 43 CFR 3101.1-2. Specifically, Standard Lease Terms allow the authorized officer to move a well or other facility site up to 200 meters or delay operations for up to 60 days in a year.

The necessity for individual lease stipulations is documented in the lease-file record with reference to the appropriate land management plan or other leasing analysis document. The necessity for exceptions, waivers, or modifications also will be documented in the lease-file record through reference to the appropriate plan or other analysis. The uniform format for stipulations should be implemented when amendments or revisions of land management plans are prepared or by other appropriate means.

The uniform format for stipulations is designed to accommodate most existing stipulations by providing space to record the local mitigation objectives. The stipulations have been developed for the categories of:

No Surface Occupancy (NSO)

Timing Limitations (TL)

Conditional Surface Use (CSU)

This guidance also includes the use of lease notices. Also, there is provision for special or unique stipulations, such as those required by prior agreements between agencies when the standardized forms are not appropriate. In all cases, use of uniform forms for stipulations requires identification of specific resource values to be protected and description of the specific geographical area covered.

Standard Lease Terms

The Standard Lease Terms (ST) are contained in Form 3100-11, Offer to Lease and Lease for Oil and Gas, United States Department of the Interior, BLM, October 1992. They provide the lessee the right to use the leased land as needed to explore for, drill for, extract, remove, and dispose of oil and gas deposits located under the leased lands. Operations must be conducted in a manner that minimizes adverse impacts to the land, air, water, cultural, biological, and visual elements of the environment, as well as other land uses or users. Federal environmental protection laws such as the Clean Water Act, Endangered Species Act, and Historic Preservation Act, will be applied to all lands and operations and are included in the standard lease terms. If threatened or endangered species; objects of historic, cultural, or scientific value; or substantial unanticipated environmental effects are encountered during construction, all work affecting the resource will stop and the land management agency will be contacted.

Standard Lease Terms provide for reasonable measures to minimize adverse impacts to surface resources. These include, but are not limited to, modifications to the location or design of facilities, timing of operations, and specifications of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.

All leases on National Forest System (NFS) lands contain the “Stipulation for Lands of the National Forest System under Jurisdiction of Department of Agriculture,” requiring the lessee to comply with the rules and regulations of the Department of Agriculture. All leases are subject to regulations and formal orders of the Secretaries of the Interior and Agriculture in effect at the time of issuance.

Definitions

Conditions of Approval

Conditions of Approval (COA) are requirements under which an Application for a Permit to Drill or a Sundry Notice is approved.

Controlled Surface Use

Use and occupancy is allowed (unless restricted by another stipulation), but identified resource values require special operational constraints that may modify the lease rights. Controlled Surface Use (CSU) is used for operating guidance, not as a substitute for the NSO or timing stipulations.

Exception

Exemptions from a lease stipulation can be made on a case by case basis. The stipulation continues to apply to all other sites within the leasehold to which restrictive criteria apply.

Lease Notice

A Lease Notice (LN) provides more detailed information concerning limitations that already exist in law, lease terms, regulations, or operational orders. A lease notice also addresses special items the lessee should consider when planning operations, but does not impose new or additional restrictions. Lease notices attached to leases should not be confused with Notices to Lessees (NTL) (see 43 CFR 3160.0-5).

Modification

A modification is a fundamental change to the provisions of a lease stipulation, either temporarily or for the term of the lease. Therefore, a modification may include an exemption from or alteration to a stipulated requirement. Depending on the specific modification, the stipulation may or may not apply to all other sites within the leasehold to which the restrictive criteria apply.

No Surface Occupancy

Use or occupancy of the land surface for fluid mineral exploration or development is prohibited to protect identified resource values. The No Surface Occupation (NSO) stipulation includes stipulations that may have been worded as “No Surface Use/Occupancy,” “No Surface Disturbance,” “Conditional NSO,” and “Surface Disturbance or Surface Occupancy Restriction (by location).”

Notice to Lessees

A written notice issued by the BLM authorized officer. It implements regulations and operating orders, and serve as instructions on specific item(s) of importance within a state, district, or area.

Stipulation

A provision that modifies standard lease rights and is attached to and made a part of the lease.

Timing Limitation

A Timing Limitation (TL) prohibits surface use during specified time periods to protect identified resource values. This stipulation does not apply to the operation and maintenance of production facilities unless the findings of analysis demonstrate the continued need for such mitigation and that less stringent, project-specific mitigation measures would be in sufficient.

Waiver

Permanent exemption from a lease stipulation. The stipulation no longer applies anywhere within the leasehold.

No Surface Occupancy Stipulation Guidance

The No Surface Occupancy (NSO) stipulation is intended for use only when other stipulations are determined insufficient to adequately protect the public interest. The land management plan/NEPA document prepared for leasing must show that less restrictive stipulations were considered and determined by the authorized officer to be insufficient, i.e., show why the NSO stipulation is needed. The planning/NEPA record must also show that consideration was given to a no-lease alternative when applying an NSO stipulation. An NSO stipulation is not needed if the desired protection would not require relocation of proposed operations by more than 200 meters (43 CFR 3101.1-2).

The legal subdivision, distance, location, or geographic feature, and resource value of concern must be identified in the stipulation and be tied to a land management plan and/or NEPA document.

Land description may be stated as:

The “Entire Lease”

Distance from resources and facilities such as rivers, trails, campgrounds, etc.

Legal description

Geographic feature such as a 100-year floodplain

Municipal watershed, percent of slope, etc.

Special areas with identified boundaries--area of critical environmental concern, wild and scenic rivers, etc.

Other description that specifies the boundaries of the lands affected.

The estimated percent of the total lease area affected by the restriction must be given if no legal or geographic description of the location of the restriction is given. In other cases the estimated percent is optional (see Example B-1).

This Land and Resource Management Plan identifies the specific conditions for providing waivers, exceptions, or modifications to lease stipulations. Waivers, exceptions, or modifications must be supported by appropriate environmental analysis and documentation,

and are subject to the same test used to initially justify the imposition of this stipulation. Language may be added to the NSO stipulation form to provide the lessee with information or circumstances under which waivers, exceptions, or modifications would be considered. A waiver, exception, or modification may be approved if the record shows that circumstances or relative resource values have changed or that the lessee can demonstrate that operations can be conducted without causing unacceptable impacts, and that less restrictive stipulations will protect the public interest. Waivers, exceptions, or modifications can only be granted by the authorized officer. If the waiver, exception, or modification is inconsistent with the land management planning document, that document must be amended or the change disallowed.

If the authorized officer determines, prior to lease issuance, that a stipulation involves an issue of major concern, modification or waiver of the stipulation will be subject to public review (43 CFR 3101.1-4). The land management plan also may identify other cases when a public review is required for a waiver, exception, or modification. In such cases, wording such as the following should be added to the stipulation form to inform the lessee of the required public review: “A 30-day public notice period is required prior to modification or waiver of this stipulation.”

Timing Limitations Stipulation Guidance

The Timing Limitation (TL) Stipulation prohibits fluid mineral exploration and development activities for time periods less than yearlong. When using this stipulation, assure date(s) and location(s) are as specific as possible. ***A timing limitation stipulation is not necessary if the time limitation involves the prohibition of new surface-disturbing operations for periods of less than 60 days*** (43 CFR 3101.1-2).

The land use plan/NEPA document prepared for leasing must show less restrictive stipulations were considered insufficient. The environmental effects of exploration, development, and production activities may differ markedly from each other in scope and intensity. If the effects of reasonable foreseeable production activities necessitate timing limitation requirements, this need should be clearly documented in the record. The record should (shall?) also show that less stringent, project-specific mitigation may be insufficient. In such cases the stipulation language should be modified on a case-by case basis to clearly document that the timing limitation applies to all stages of activity.

The legal subdivision and resource value of concern must be identified in the stipulation and be tiered to a land use planning and/or NEPA document. The timing limitations for separate purposes may be written on separate forms or as combined stipulation (see Example Timing Limitations). During the review and decision-making process for Application for Permit to Drill (APD) and Sundry Notices, the date(s) and location(s) should be refined based on current information.

The Beaverhead-Deerlodge Forest Plan identifies the specific conditions for providing waivers, exceptions, or modifications to lease stipulations. Waivers, exceptions, or modifications of this stipulation, such as continuing drilling operations into a restricted time period, must be supported with appropriate environmental analysis and documentation. They will be subject to the same test used to initially justify the imposition of this stipulation. Language may be added to the stipulation form to provide the lessee with information or

circumstances under which waiver, exception or modification would be considered. The need for one-time, case-by case exceptions of timing limitations stipulation may arise from complications or emergencies during the drilling program. The need for timely review and decision making is great in such cases. For this reason, it is desirable that land use plans/NEPA documents clarify how the review procedures and other requirements, if any, would apply in such cases.

A waiver, exception, or modification may be approved if the record shows how circumstances or relative resource values have changed or that the lessee can demonstrate operations can be conducted without causing unacceptable impacts, and that less restrictive stipulations would protect the public interest. If waivers, exceptions or modifications are inconsistent with the land use planning document - and that document does not disclose the conditions under which such changes would be allowed - the plan or NEPA document must be amended as necessary, or the change disallowed.

If the authorized officer determines, prior to lease issuance, a stipulation involves an issue of major concern, modification or waiver of the stipulation would be subject to public review (e.g., 43 CFR 3101.1-4). The land use plan also may identify other cases where a public review is required for waiver, exception, or modification. In such cases, wording such as the following should be added to stipulation form to inform the lessee of the required public review: "A 30-day public notice period is required prior to modification or waiver of this stipulation."

Controlled Surface Use Stipulation Guidance

The Controlled Surface Use (CSU) stipulation is intended to be used when fluid mineral occupancy and use are generally allowed on all or portions of the lease area year-round, but because of special values or resource concerns, lease activities must be strictly controlled. The CSU stipulation is used to identify constraints on surface use or operations that may otherwise exceed the mitigation provided by Section 6 of the standard lease terms and the regulations and operating orders. The CSU stipulation is less restrictive than the NSO (No Surface Occupancy) or Timing Limitation stipulations, which prohibit all occupancy and use on all or portions of a lease for all or portions of a year. The CSU stipulation should not be used in lieu of an NSO or Timing Limitation stipulation. This stipulation should be limited to areas where restrictions or controls are necessary for specific types of activities rather than all activity.

The stipulation should explicitly describe the activity to be restricted or limited, or the operation constraints required, and must identify the applicable area and the reason for the requirement. The record must show that less restrictive stipulations were considered and determined to be insufficient. The legal subdivision, distance, location, or geographic feature, and resource value of concern must be identified in the stipulation and be tied to a land management plan and/or NEPA document.

Land management plans and/or NEPA documents should identify the specific conditions under which waivers, exceptions, or modifications to lease stipulations would be considered. Waivers, exceptions, or modifications of this stipulation must be supported with appropriate environmental analysis and documentation, and will be subject to the same test used to

initially justify the imposition of this stipulation. Language may be added to the stipulation form to provide the lessee with information or circumstances under which a waiver, exception, or modification would be considered. A waiver, exception, or modification may be approved if the record shows that circumstances or relative resource value have changed or that the lessee can demonstrate that operations can be conducted without causing unacceptable impact, and that less restrictive stipulations would protect the public interest. Waivers, exceptions, or modifications can only be granted by the authorized officer. If the waiver, exception, or modification is inconsistent with the land management planning document, that document must be amended as necessary or the change disallowed.

If the authorized officer determines, prior to lease issuance, that a stipulation involves an issue of major concern, modification or waiver of the stipulation would be subject to public review (e.g., 43 CFR 3101.1-4). The land management plan also may identify other cases when a public review is required for waiver, exception, or modification. In such cases, wording such as the following should be added to the stipulation form to inform the lessee of the required public review: “A 30-day public notice period is required prior to modification or waiver of this stipulation.”

Special Administration Stipulation Guidance

There is no required or suggested uniform format for special administration stipulations. They are usually provided by another agency or organization. However, other agencies are encouraged to use the uniform stipulation format.

Special Administration stipulations are used in situations where the three uniform stipulation forms or lease notices do not adequately address the concern. A Special Administration stipulation are used only when special external conditions, such as pre-existing agreements with other agencies, require use of a one-of-a-kind stipulation that is not used in any other area or situation. The resource use or value, location, and specific restrictions must be clearly identified. In addition, the external agency, agreement, or pre-existing use that dictates the special restrictions must be identified. The stipulation should state if and under what circumstances a waiver, exception, or modification may be allowed.

STIPULATIONS

PRESCRIBED STIPULATIONS - This section describes the stipulations that will be attached to Beaverhead National Forest leases. Conditions are also described for waivers, exceptions, and modifications as follows:

Eligible Scenic and Recreation Segments of Wild and Scenic River Candidates

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| Stipulation: | Controlled Surface Use - ¼ mile buffer |
| Mapping Criteria: | Scenic and Recreational River Segments GIS layer s21_ScenicRecRivers |
| Objective: | To protect scenic and recreational river values along the river corridor and within a buffer zone of ¼ mile on either side. Proposed activities must be designed or located in such a manner as to not affect the eligibility of the river segment. |
| Waiver: | This stipulation may be waived if it is determined the entire lease no longer contains a scenic and recreational river candidate area. |
| Exception: | An exception may be granted if the operator can demonstrate in a surface use plan of operations that the scenic and recreational river values of the area can be maintained at a level acceptable to the authorized forest officer. |
| Modification: | This stipulation may be modified if it is determined portions of the lease no longer contain scenic and recreational river candidate areas. |
| Justification: | The area is a candidate area for wild and scenic rivers designation. Therefore, a Controlled Surface Use stipulation is necessary to notify potential lessees of the resource concern and restrictions on activities. Under Standard Lease Terms some impacts could be mitigated but operations could not be denied if all the scenic and recreational values could not be protected. The No Surface Occupancy or No Lease stipulations were not considered appropriate since impacts can be mitigated using a Controlled Surface Use stipulation and not leasing could subject the federal mineral estate to drainage from adjacent leased lands. |

Research Natural Areas

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| Stipulation: | No Surface Occupancy |
| Mapping Criteria: | Research Natural Areas GIS layer s23_ResearchNatAreas |
| Objective: | To preclude surface disturbance and maintain near natural conditions for future research. |
| Waiver: | A waiver may be granted if it is determined the entire leasehold no longer contains portions of a Research Natural Area. |
| Exception: | None |
| Modification: | A modification may be granted if the Research Natural Area boundaries have changed. |
| Justification: | A commitment has been made to maintain the area in near natural conditions for future research and use and a No Surface Occupancy stipulation is deemed necessary to protect the area in such a condition. Also, the area contains unique resources that cannot be provided elsewhere on the forest. If the operations within these areas would be allowed under either a Controlled Surface Use or Timing Limitation stipulations, or under Standard Lease Terms, natural conditions and value for future research within the area could be affected. The |

No Lease stipulation is not considered appropriate since impacts can be mitigated using a No Surface Occupancy stipulation and not leasing could subject the federal mineral estate to drainage from adjacent leased lands.

Eligible Wild Segments of Wild and Scenic River Candidates

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| Stipulation: | Administratively Unavailable. |
| Mapping Criteria: | One quarter mile buffer around segments. GIS layer s22_WildRivers |
| Objective: | n/a |
| Waiver: | n/a |
| Exception: | n/a |
| Modification: | n/a |
| Justification: | n/a |

Inventoried Roadless Areas

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| Stipulation: | Controlled Surface Use |
| Mapping Criteria: | 2001 Roadless Area Conservation Rule FEIS Inventoried Roadless Areas GIS layer s25_ira |
| Objective: | To preclude new temporary roads, permanent roads, road construction or reconstruction as defined in 36 CFR 294.11 |
| Waiver: | This stipulation may cease to apply in the event the District Court orders reinstating the 2001 Rule are reversed, set aside, or if the Forest Service determines that other events have caused the 2001 rule to no longer be in effect. |
| Exception: | Same as waiver |
| Modification: | Same as waiver |
| Justification: | Compliance with Orders of the District Court C05-03508 and C05-04038 |

Big Game Winter Range

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| Stipulation: | July 2006, Montana Fish, Wildlife, and Parks - Big Game Winter Range. GIS layer s05_BigGameWinterRange |
| Mapping Criteria: | Timing Limitation |
| Objective: | To preclude surface disturbing activities in big game winter range. Big game can be adversely affected by drilling activity, causing increased stress and/or displacement during the critical December 2 to May 15 time period. |
| Waiver: | A waiver may be granted if habitat studies, in coordination with Montana Fish, Wildlife, and Parks, conclude the area affected by this stipulation is no longer used as big game winter range. |
| Exception: | An exception may be granted if seasonal conditions are such that the animals have moved and are not using the specified area during the time they would normally be expected. |
| Modification: | A modification of the stipulation may be granted if habitat studies show that a portion of the area is not important winter range. |

Justification: Standard Lease Terms provide for delay of activities for up to 60 days. Since the critical period extends for approximately 166 days, the Standard Lease Terms would not be adequate. The No Lease or No Surface Occupancy stipulations are overly restrictive since operations conducted outside the winter range period would have a minimal effect on big game.

Trumpeter Swan Nests

Stipulation: Timing Limitation

Mapping Criteria: Within ½ mile of known trumpeter swan nests.
GIS layer s06_Nests

Objective: To preclude surface disturbing activities near nests which may cause increased stress and/or displacement of birds during the critical April 1 to September 1 time period.

Waiver: A waiver may be granted if new habitat studies, in coordination with Montana Fish, Wildlife, and Parks, conclude the area affected by this stipulation is not critical for trumpeter swans.

Exception: An exception may be granted if the operator demonstrates in a plan of operations, that impacts from the proposed action are acceptable or can be adequately mitigated.

Modification: A modification of the stipulation may be granted if new habitat studies show a portion of the area is not used by trumpeter swans.

Justification: Surface activities within these areas could adversely impact trumpeter swans. If operations were allowed to occur under Standard Lease Terms or Controlled Surface Use, swans could be displaced. The No Surface Occupancy and No Lease stipulations are overly restrictive since impacts can be avoided by using the Timing Limitation stipulation.

Bald Eagle and Peregrine Falcon Nests

Stipulation: No Surface Occupancy

Mapping Criteria: One half mile around bald eagle and peregrine falcon nests from February 1 to September 1.
GIS layer s07_BaldEagleETALL

Objective: To protect habitat and to facilitate recovery of the species.

Waiver: A waiver may be granted if new habitat studies, coordinated with the US Fish and Wildlife Service, conclude the area affected by this stipulation no longer contains an eagle or falcon nest.

Exception: An exception may be granted if the operator demonstrates, in a plan of operations, that impacts from the proposed action are acceptable or can be adequately mitigated.

Modification: Same as waiver.

Justification: A No Surface Occupancy stipulation is necessary to ensure continued use of the nest. If operations within these areas were to be under either a Controlled Surface Use or Timing Limitations stipulation, or under Standard Least Terms, the use of these areas by eagles or falcons would be affected. The No Lease stipulation is not considered appropriate since impacts can be mitigated using a No Surface Occupancy stipulation. No Lease could expose the federal mineral estate to revenue losses as a result of drainage from adjacent leased lands.

Bald Eagle and Peregrine Falcon Habitat

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| Stipulation: | Timing Limitation |
| Mapping Criteria: | An additional one half mile from No Surface Occupation area. GIS layer s07_BaldEagleETALL |
| Objective: | Buffer is and additional ½ mile to preclude surface disturbing activities around nests. Disturbance may cause increased stress and/or displacement of eagles or falcons during the critical February 1 to September 1 time period. |
| Waiver: | A waiver may be granted if new habitat studies, coordinated with the US Fish and Wildlife Service, conclude the area affected is not critical for eagles or peregrine falcons. |
| Exception: | An exception may be granted if the operator demonstrates, in a plan of operations, that impacts from the proposed action are acceptable or can be adequately mitigated. If the nest area contains only a peregrine falcon nest, an exception to the timing limitation from February 1 through March 31 would be considered. |
| Modification: | A modification of the stipulation may be granted if new habitat studies show a portion of the area is not used by eagles or peregrine falcons. |
| Justification: | Surface activities within these areas could adversely impact bald eagles or peregrine falcons. If operations were allowed under Standard Lease Terms or Controlled Surface Use, eagles and peregrine falcons could be displaced. The No Surface Occupancy and No Lease stipulations are overly restrictive since impacts can be avoided by using a Timing Limitation stipulation. |

Grizzly Bear Habitat

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| Stipulation: | Controlled Surface Use |
| Mapping Criteria: | Grizzly Bear Amendment for the Greater Yellowstone Ecosystem Occupied Habitat as mapped by Kim Barber (USFS, 2006). GIS layer s08_GrizzlyHabitat |
| Objective: | To ensure proposed activities do not adversely affect the viability of grizzly bears. Operations will be designed and/or located to not adversely affect grizzly bears. Coordination of timing and timing adjustments in activities within grizzly use areas may be necessary. Noise levels may also be limited. |
| Waiver: | A waiver may be granted if habitat studies, in coordination with Montana Fish, Wildlife, and Parks, conclude the area affected by this stipulation is no longer used as grizzly bear habitat. |
| Exception: | An exception may be granted if the operator demonstrates, in a plan of operations, that impacts from the proposed action are acceptable or can be adequately mitigated. |
| Modification: | A modification of the stipulation may be granted if new habitat studies show that a portion of the area is not used by grizzly bears. |
| Justification: | Surface activities within these areas could adversely impact grizzly bears. If operations were allowed to occur under Standard Lease Terms, the bears could be displaced. No Surface Occupancy and No Lease stipulations are overly restrictive since impacts can be avoided by using a Controlled Surface Use stipulation. |

Westslope Cutthroat Trout in Fish Key Watersheds

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| Stipulation: | No Surface Occupancy |
| Mapping Criteria: | Fish Key Watersheds GIS layer s09_Alts_Wct |
| Objective: | To prevent negative effects to westslope cutthroat trout populations critical to species viability. |
| Waiver: | None |
| Exception: | None |
| Modification: | None |
| Justification: | Forest plan direction precludes multiple management activities from these watersheds to ensure viability requirements are met. |

Westslope Cutthroat Trout Conservation Populations

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|-------------------|---|
| Stipulation: | Controlled Surface Use |
| Mapping Criteria: | Watersheds with westslope cutthroat trout conservation populations outside of fish key watersheds GIS layer s09_Alts_Wct |
| Objective: | <p>To minimize effects to westslope cutthroat trout populations important to meet conservation objectives, mitigation will be applied to:</p> <p>Ensure no net increase in sediment over existing condition. Off-site mitigation may be required within the occupied reach of stream.</p> <p>Centralize drilling or production pads to minimize road network.</p> <p>Require that any proposed linear feature, pipeline, road, utility, etc. crossing a conservation population stream, be mitigated by special engineering or underground construction measure.</p> <p>Limit number of stream crossings.</p> <p>Ensure operations will not affect stream water quality and quantity.</p> |
| Waiver: | None |
| Exception: | If a population is determined extinct, and the State of Montana and Beaverhead-Deerlodge National Forest biologists determine the watershed is not critical for future restoration of westslope cutthroat trout, an exception may be granted. |
| Modification: | None |
| Justification: | Standard lease terms were determined inadequate to meet conservation objectives. Mitigation under Controlled Surface Use ensures water quality, quantity, and habitat, adequate to maintain conservation populations. No Surface Occupancy was determined unnecessary because viability requirements were met through the NSO for Fish Key Watersheds Stipulation and the CSU mitigation on conservation populations outside of fish key watersheds. |

Arctic Grayling

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| Stipulation: | Controlled Surface Use |
| Mapping Criteria: | <p>The Ruby River from the forest boundary to its headwaters near Divide Creek. On the east side of the river the CSU buffer will be ½ mile wide and ¼ on the west side. The east side requires a wider buffer because the slopes are less stable than those on the west side.</p> <p>National Forest System within the Trail Creek Hydrologic Drainage up to the confluence with May Creek.</p> <p>Tributaries to the Big Hole River where sediment introduction is affecting grayling habit: Lower Steel, Squaw, Sawlog, Shaw, Papoose, Toomey, Tucker, and Walker creeks. The main branch of Steel Creek will be buffered from the forest boundary, upstream for 2 miles to Moose Meadows. The buffer on the north side of the creek will be a ½ mile wide and 1 mile on the south side. This configuration follows the hydrologic boundaries of this portion of the drainage. On all other listed streams, CSU will apply to the National Forest System within their hydrologic drainages.</p> <p>GIS layer s10_Grayling</p> |
| Objective: | <p>To protect Arctic Grayling in the Big Hole and Ruby river drainages. To meet conservation objectives mitigation measures will apply to:</p> <p>Ensure no net increase in sediment over existing condition. Off-site mitigation may be required within the occupied reach of stream.</p> <p>Centralize drilling or production pads to minimize road network.</p> <p>Require any proposed linear feature, pipeline, road, utility, etc. across arctic grayling streams be mitigated by special engineering or underground construction measures to protect the stream.</p> <p>Limit the number of stream crossings</p> <p>Ensure operations will not affect stream water quality and quantity.</p> |
| Waiver: | None |
| Exception: | If the Ruby River Population is determined extinct and the State of Montana and Beaverhead-Deerlodge National Forest biologists determine the stream reach is not critical for future restoration of arctic grayling, an exception may be granted. |
| Modification: | None |
| Justification: | Standard lease terms were determined inadequate to meet conservation objectives. Mitigation under Controlled Surface Use ensures water quality, quantity, and habitat adequate to maintain conservation. |

Slopes over 60%

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|-------------------|---|
| Stipulation: | No Surface Occupancy |
| Mapping Criteria: | <p>Slopes over 60%</p> <p>GIS layer s11_Slopes60</p> |
| Objective: | To minimize the potential for adverse effects to soil and water. |
| Waiver: | None |
| Exception: | An exception may be granted if the operator can demonstrate, in a surface use plan of operations that adverse effects can be minimized and activities safely conducted. |
| Modification: | A modification may be granted if an on-the-ground inspection of a proposed well site or facility shows that an area of less than 60% slope exists or that design of the site can mitigate erosion and reclamation concerns. |

Justification: This stipulation is necessary to protect the basic soil and water resources. Soils disturbance of an area required for a well pad on steep slopes would be difficult to reclaim and could result in unacceptable soil loss through erosion, displacement, and compaction and could potentially increase the sediment load of streams. If operations within these areas were to be allowed under Standard Lease Terms, erosion and reclamation could result. The No Lease option is not considered appropriate since impacts can be mitigated using a Controlled Surface Use stipulation. No Lease could expose the federal mineral estate to revenue losses as a result of drainage from adjacent leased lands.

Areas of Mass Failure

Stipulation: No Surface Occupancy

Mapping Criteria: Areas where potential exists for mass failure
GIS layer s12_AreasMassFailure

Objective: To preclude construction of well sites and related facilities in areas where the potential for mass failure exists because these areas of high erosion and stability hazard are difficult to reclaim.

Waiver: None

Exception: An exception may be granted if the operator can demonstrate in a surface use plan of operation that adverse effects can be minimized and activities safely conducted.

Modification: A modification may be granted if an on-the-ground inspection of a proposed well site or facility determines a low risk of mass wasting or that site design can mitigate failure and reclamation concerns.

Justification: This stipulation is necessary to protect the basic soil and water resources. Soil disturbance of an area required for a well pad on mass wasting soils would be difficult to reclaim, could result in unacceptable soil loss through erosion, and potentially increase the sediment load of streams. If operations within these areas were to be allowed under Controlled Surface Use or Timing Limitation stipulations, or under Standard Lease Terms, erosion and reclamation of the area could be affected. The No Lease option is not considered appropriate since impacts can be mitigated using a No Surface Occupancy stipulation. No Lease could expose the federal mineral estate to revenue losses as a result of drainage from adjacent leased lands.

Areas Prone to Failure with Slopes over 35%

Stipulation: No Surface Occupancy

Mapping Criteria: Current soil survey overlaid with slopes over 35%
GIS layer s13_ProneFailureGT35

Objective: To preclude construction of well sites and related facilities in areas which would be difficult to rehabilitate and to preclude surface disturbing activities on areas that have a high erosion/stability hazard rating

Waiver: None

Exception: An exception may be granted if the operator can demonstrate in a surface use plan of operations that adverse effects can be minimized and activities safely conducted.

Modification: A modification may be granted if an on-the-ground inspection of a proposed well site or facility shows an area of less than 35% slope exists and mass wasting - prone soils do not exist or that design of the site can mitigate erosion, failure, and reclamation concerns.

Justification: This stipulation is necessary to protect the basic soil and water resources. Soil disturbance of an area required for a well pad on steep slopes or mass wasting soils would be difficult to reclaim, could result in unacceptable soil loss through erosion, and could increase the sediment load of streams. If operations within these areas were to be allowed under Controlled Surface Use, Timing Limitations, or Standard Lease Terms, erosion, failure, and reclamation of the area could be affected. The No Lease stipulation is not considered appropriate since impacts can be mitigated using a No Surface Occupancy stipulation. No Lease could expose the federal mineral estate to revenue losses as a result of drainage from adjacent leased lands.

Areas Sensitive to Soil Compaction

Stipulation: Controlled Surface Use

Mapping Criteria: Areas where soil has a high compaction /displacement hazard.
GIS layer s14_SensitiveSoilCompaction

Objective: To protect areas where soil conditions are such that the site would be difficult to rehabilitate and have a high compaction/displacement hazard. Reclamation standards will include: control of species, planting rate and methods, seed bed preparation method, and quality and handling of available topsoil.

Waiver: None

Exception: An exception may be granted if the operator can demonstrate in a surface use plan of operations that adverse effects can be minimized and activities safely conducted.

Modification: A modification may be granted if an on-the-ground inspection of proposed well site or facility shows an area of sensitive soils does not exist or that site design can mitigate erosion, failure, and reclamation concerns.

Justification: This stipulation is necessary to protect the basic soil and water resources. Soil disturbance on sensitive soils in an area of the size required for a well pad would be difficult to reclaim and could result in unacceptable soil damage, compaction, and displacement, it could also increase the sediment load of streams. If operations within these areas were to be allowed under either a Timing Limitation stipulation or under Standard Lease Terms, sensitive soils could be affected and reclamation would be difficult.

Heritage Resource Sites and Traditional Cultural Properties

Stipulation: No Surface Occupancy

Mapping Criteria: Heritage resource sites larger than 40 acres
GIS layer s15_CulturalSites

Objective: To meet forest plan objectives to preserve in place significant heritage resources and to avoid disturbance to traditional cultural properties. Stipulations will be applied to ensure proposed activities do not adversely affect heritage resource sites larger than 40 acres. Heritage sites smaller than 40 acres will also be stipulated NSO but it is assumed operations will be designed and/or located to not adversely affect the heritage resource site.

Waiver: None

Exception: If the on-site inspection reveals archaeological or historic material that does not constitute a heritage site, or an archaeological site exists but is not significant, an exception may be granted. No exceptions will be given for traditional cultural properties.

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| Modification: | None |
| Justification: | To prevent the construction of well sites, support facilities and access roads on heritage sites eligible for inclusion in the National Register of Historic Places, or on sites whose significance has not been determined. |

Grasshopper and Rock Creek Recreation Areas

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| Stipulation: | Controlled Surface Use |
| Mapping Criteria: | Management Area 28 and 30 from the 1986 Beaverhead Forest Plan. GIS layer s16_RecAreas |
| Objective: | To control surface occupancy and new surface disturbing activities in these recreation areas by requiring activities to be located and operations conducted in a manner that will minimize the effects on the characteristics of the area. Extensive reclamation will be required. |
| Waiver: | A waiver may be granted if these areas cease to be managed for their recreational values. |
| Exception: | Same as Waiver |
| Modification: | Same as Waiver |
| Justification: | A Controlled Surface Use stipulation is considered necessary to protect the recreation experience. By enforcing a CSU stipulation, noise, lights, and other disturbances to the visitors at the recreation area should be minimized. The No Surface Occupancy or No Lease stipulations are overly restrictive since operations within the area can be mitigated using a Controlled Surface Use stipulation. |

Special Use Recreation Residences

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| Stipulation: | Controlled Surface Use |
| Mapping Criteria: | A quarter mile buffer around Special Use Recreation Residences GIS layer s17_RecreationResidences |
| Objective: | To control surface occupancy and new surface disturbing activities for special use recreation residences by requiring activities to be located and operations conducted in a manner that will minimize the effects on the characteristics of the area. Extensive reclamation will be required. |
| Waiver: | A waiver may be granted if the recreation residence is moved or eliminated. |
| Exception: | Same as waiver |
| Modification: | Same as waiver |
| Justification: | A Controlled Surface Use stipulation is considered necessary to protect the recreation experiences of the special use recreation residences permittees. By enforcing a CSU stipulation, noise, light, and other disturbances to visitors at the residence should be minimized. A No Surface Occupancy stipulation or No Lease are overly restrictive since operations within the area can be mitigated using a Controlled Surface Use stipulation and occupation of the sites is not year-round. |

Developed Campgrounds and Administrative Sites

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| Stipulation: | No Surface Occupancy |
| Mapping Criteria: | Sites within one half mile of developed campgrounds, or administrative sites |

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| | GIS layer s18_Campgrounds_AdminSites |
| Objective: | To preclude surface occupancy and surface disturbing activities. |
| Waiver: | A waiver may be granted for campgrounds or administrative sites if the site is moved or eliminated. |
| Exception: | An exception may be granted for campgrounds or administrative sites if the site is moved or eliminated. |
| Modification: | Same as waiver. |
| Justification: | Construction of site developments allocates those specific lands to a specific use. A No Surface Occupancy stipulation is deemed necessary to protect the capital investment. If operations were to be allowed within these areas under either a Controlled Surface Use or Timing Limitations stipulation, or under Standard Lease Terms, the capital investment and/or recreational setting could be affected. The No Lease option is not considered appropriate since impacts can be mitigated using a No Surface Occupancy stipulation and not leasing could subject the federal mineral estate to drainage from adjacent lease lands. |

National Scenic and Historic Trails

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| Stipulation: | No Surface Occupancy |
| Mapping Criteria: | One quarter mile corridor of the Continental Divide National Scenic Trail or half mile buffer along the Nez Perce and Lewis and Clark national historic trails. GIS layer s19_NationalTrails |
| Objective: | To preclude surface occupancy and surface disturbing activities |
| Waiver: | None |
| Exception: | An exception may be granted if a surface occupancy plan shows that the designated routes, recreation experiences along those routes, and historic resources are protected. |
| Modification: | Same as exception. |
| Justification: | These National Trails have been designated to protect historic resources and to provide recreation opportunities. If operations were to be allowed within these areas under either a Controlled Surface Use or Timing Limitations stipulation, or under Standard Lease Terms, the capital investment and/or recreational setting could be affected. The No Lease option is not considered appropriate since impacts can be mitigated using a No Surface Occupancy stipulation and not leasing could subject the federal mineral estate to drainage from adjacent lease lands. |

Specific Semi-Primitive Recreation Areas

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| Stipulation: | Controlled Surface Use |
| Mapping Criteria: | GIS layer s04_Alts_PrimitiveSemiprimitive (1986 Beaverhead National Forest Plan MA 8 and the current West Big Hole Management Area.) |
| Objective: | To maintain semi-primitive values of the area through use of extensive reclamation requirements. The stipulation will also require activities to be located and operations conducted in a manner that will minimize the effects on the area characteristics. |
| Waiver: | A waiver may be granted if the area is no longer managed for semi-primitive values. |
| Exception: | None |

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| Modification: | This stipulation may be modified if it is determined portions of the lease are no longer managed for semi-primitive recreation opportunities. |
| Justification: | These areas have been recognized for their high value as primitive and semi-primitive areas. Application of a Controlled Surface Use stipulation protects the surface resources and does not preclude development of potential oil and gas resources. If operations were allowed under Standard Lease Terms, the roadless character and recreational value of the area could be impacted. A No Lease stipulation is not necessary since the application of a Controlled Surface Use stipulation protects the resource concern and provides some opportunity to explore for oil and gas. Oil and gas exploration activities can be located or mitigated so the integrity of the area will not be affected. |

Areas of High Scenic Value

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| Stipulation: | No Surface Occupancy |
| Mapping Criteria: | Forest plan management areas with a high scenic objective and one half mile buffer on Concern Level One routes and sites. GIS layer s20_SenicValue |
| Objective: | To provide high scenic integrity |
| Waiver: | None |
| Exception: | An exception may be granted if the operator can demonstrate in a surface use plan of operations that the objectives for scenery can be met. |
| Modification: | None |
| Justification: | Areas are designated as high value because of natural beauty in proximity to travel routes or sites where users expect and desire a natural appearance. Therefore, a No Surface Occupancy stipulation is deemed necessary to notify potential lessees of the resource concern and restrictions. |

Areas of Moderate Scenic Value

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| Stipulation: | Controlled Surface Use |
| Mapping Criteria: | All areas that do not meet the criteria for high scenic value and are outside of the Tie-Johnson and Bryant Creek Mass. GIS layer s20_ScenicValue |
| Objective: | To ensure the scenic integrity of the area is maintained, proposed activities would be required to be located or designed to meet a minimum moderate scenic integrity level. |
| Waiver: | None |
| Exception: | An exception may be granted if the operator can demonstrate in a surface use plan of operations that the objectives for scenery can be met. |
| Modification: | If the area is determined to be not visible from those sensitive routes and sites listed above mitigation for scenery may not be needed. |
| Justification: | Application of the Controlled Surface Use stipulation identifies the standard an operator must meet and provides the opportunity to conduct activities as long as the standard is met. The No Lease or No Surface Occupancy stipulations are deemed overly restrictive because visual impacts to the scenic integrity level can often be mitigated by vegetative or topographic screening Under the Standard Lease Terms some impacts could be mitigated but operations could not be denied if the moderate scenic integrity level could not be mitigated. |

Lease Notice Background

Lease notices are attached to leases to transmit information at the time of lease issuance to assist the lessee in submitting acceptable plans of operation or to assist in administration of leases. Lease notices are attached to leases in the same manner as stipulations. However, there is an important distinction between lease notices and stipulations: lease notices do not involve new restrictions or requirements. Any requirements contained in a lease notice must be fully supported either in a law, regulation, standard lease term, or an onshore oil and gas order. A lease notice is not signed by the lessee. Guidance in the use of lease notices is found in BLM Manual 3101 and 43 CFR 3101.1-3.

A lease notice should contain the following elements:

- The resource/use/value,
- The lands affected, if applicable,
- The reason(s),
- The effect on lease operations or what may be required, and
- A reference to the lease term, regulation, law, or the order from which enforcement authority is derived.

If a situation or condition is known to exist that could affect lease operations, there should be full disclosure at the time of lease issuance via a lease notice. If a lessee may be prevented from extracting oil and gas through a prohibition mandated by a specific non-discretionary statute, such as the Endangered Species Act, then a stipulation may be used even though a lease notice would be sufficient. It is at the discretion of the authorized officer whether a situation is sufficiently sensitive to warrant the use of a lease stipulation.

BEAVERHEAD NATIONAL FOREST LEASE NOTICES

The following language provides example language for lease notices. Since lease notices transmit information about laws, regulations, or orders, the language in the lease notices may change if the underlying law, regulation, or order changes.

NOTICE FOR LANDS OF THE NATIONAL FOREST SYSTEM UNDER JURISDICTION OF DEPARTMENT OF AGRICULTURE

The permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of Interior in the permit. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by an exploration plan approved by the Secretary of the Interior.

All matters related to this stipulation are to be addressed to:

Forest Supervisor or District Ranger

who is the authorized representative of the Secretary of Agriculture.

CULTURAL RESOURCES - The FS is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures, in accordance with the Archaeological Resources Protection Act of 1979, the National Historic Preservation Act of 1966 (as amended), and the American Indian Religious Freedom Act of 1996. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified to the contrary by the FS, shall:

1. Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required, then:
2. Engage the services of a cultural resource specialist acceptable to the FS to conduct a cultural resource inventory of the area of proposed surface disturbance. The operator may elect to inventory an area larger than the area of proposed disturbance to cover possible site relocation which may result from environmental or other considerations. An acceptable inventory report is to be submitted to the FS for review and approval at the time a surface disturbing plan of operation is submitted.
3. Implement mitigation measures required by the FS and BLM to preserve or avoid destruction of cultural resource values. Mitigation may include relocation of proposed facilities, testing, salvage, and recordation or other protective measures. All costs of the inventory and mitigation will be borne by the lessee or operator, and all data and materials salvaged will remain under the jurisdiction of the U.S. Government as appropriate.

The lessee or operator shall immediately bring to the attention of the FS and BLM any cultural or resources or any other objects of scientific interest discovered as a result of surface operations under this lease, and shall leave such discoveries intact until directed to proceed by FS and BLM.

Vertebrate Paleontology Notice - The FS is responsible for assuring that the leased lands are examined to determine if paleontologic resources are present and to specify mitigation measures, in accordance with Organic Act, and the National Forest Management Act of 1976

Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified to the contrary by the Forest Service, shall:

1. Contact the Forest Service to determine if a site-specific vertebrate paleontologic inventory is required. The Forest Service will conduct inventories and surveys as part of the field review for the proposed activity on the lease. The operator may voluntarily engage the services of a qualified paleontologist to conduct the inventory.
2. Implement mitigation measures required by the Forest Service and Bureau of land management to preserve or avoid destruction of vertebrate paleontologic resources. Mitigation may include relocation of proposed facilities or other protective measures.
3. The lessee or operator shall immediately bring to the attention of the Forest Service any vertebrate paleontological resources discovered as a result of surface operation under this lease, and shall leave such discoveries intact until directed to proceed by the Forest Service.

FLOODPLAIN AND WETLANDS - The lessee is hereby notified that this lease may contain land within a riparian ecosystem. All activities within this area may be highly restricted in order to comply with Executive Order 11988 - *Floodplain Management* and Executive Order 11990 - *Protection of Wetlands*, in order to preserve and restore or enhance the natural and beneficial values served by floodplains and wetlands.

Riparian ecosystems will be managed by the Forest Service to protect from conflicting uses in order to provide healthy, self-perpetuating plant and water communities that will have optimum diversity and density of understory and overstory vegetation. Occupancy and use of lands within riparian ecosystems proposed in a proposed Surface Use Plan of Operations will be considered in an environmental analysis done to identify the mitigation measures necessary to protect the riparian area. Special

measures such as road design, well pad size and location or directional drilling, may be made part of the permit authorizing the activity.

THREATENED, ENDANGERED, AND SENSITIVE PLANT OR ANIMAL SPECIES LEASE NOTICE

The lease area may contain threatened and endangered species or habitat necessary for the continued existence of threatened, proposed, candidate or endangered species which are protected by the 1973 Endangered Species Act, as amended (16 USC 1531 et seq.) and implementing regulations (50 CFR 402 et seq.). The lease area may also contain habitat or species, which may require protective measures to prevent them from being listed as threatened or endangered; or result in a loss of viability or biological diversity

(36 CFR 219.19 or 219.26). A biological evaluation of the leased lands may be required prior to surface disturbance to determine if endangered, threatened, proposed, candidate or sensitive plant or animal species or their habitat are present and to identify needed mitigation measures. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator shall:

1. Contact the Forest Service to determine if a biological evaluation is required. The Forest Service is responsible for ensuring that the leased land is examined through a biological evaluation, prior to undertaking any surface-disturbing activities, to determine effects upon any plant or animal species listed or proposed for listing as threatened, endangered, or a sensitive species.
2. The lessee or operator may choose to conduct the evaluation on the leased lands at their discretion and cost. This biological evaluation must be done by or under the supervision of a qualified biologist/botanist approved by the Forest Service. An acceptable report must be provided to the Forest Service identifying the anticipated effects of a proposed action on endangered, threatened, proposed, candidate or sensitive species. An acceptable biological evaluation is to be submitted to the Forest Service for review and approval no later than that time when an otherwise complete application for permit to drill or subsequent surface-disturbing operation is submitted.
3. Implement mitigation measures required by the Forest Service. Mitigation may include the relocation of proposed lease-related activities or other protective measures. The findings of the biological evaluation, analysis and consultation may result in restrictions to the operator's plans or even disallow use and occupancy to comply with the 1973 Endangered Species Act (as amended), threatened and endangered species regulations and Forest Service statutes and regulations.

If endangered, threatened, proposed, candidate or sensitive plant or animal species are discovered in the area after any required biological evaluation has concluded; an evaluation will be conducted to assess the effect of ongoing and proposed activities. Based on the conclusion drawn in the evaluation, additional restrictions or prohibitions may be imposed to protect the species or their habitats.

