

ROD APPENDIX B

CUSTER NATIONAL FOREST PLAN AMENDMENT DETERMINATION OF NON-SIGNIFICANCE AND FOREST PLAN AMENDMENT NUMBER 40

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CUSTER NATIONAL FOREST
Forest Plan Amendment Determination of Non-Significance
and
Forest Plan Amendment
Number 40

The National Forest Management Act (NFMA) provides that forest plans may be amended in any manner, but if the management direction results in a significant change in the plan, additional procedures must be followed.

In December 2004, the Forest Service removed the November 9, 2000 National Forest System Land and Resource Management Planning Regulations at 36 CFR 219, subpart A and replaced them with newly adopted regulations. The new regulations set forth a process for land management planning, including the process for developing, amending, and revising land management plans (36 CFR 219.1). These regulations also incorporate effective dates and transition periods. Section 219.4(e) says “Plan development, plan amendments or plan revision initiated before the transition period may continue to use the provisions of the planning regulations in effect before November 9, 2000” – in this case the 1982 regulations.

The Sioux Ranger District Oil and Gas Leasing EIS was initiated before the transition period (starting January 5, 2005), therefore it is being completed under the requirements of the 1982 regulations. The 1982 regulations at 219.10(f) require the agency to determine whether or not a proposed amendment would result in a significant change in the plan. If the change resulting from the proposed amendment is determined to be significant, the same procedure as that required for development and approval of a plan shall be followed. If the change resulting from the amendment is determined not to be significant for the purposes of the planning process, then the agency may implement the amendment following appropriate public notification and satisfactory completion of NEPA procedures.

Forest Service Manual (FSM) 1900, chapter 20, section 1926.51 (WO Amendment 1900-2006-2) identifies criteria to consider in determining whether an amendment is significant or non-significant for those plans using planning regulations in effect before November 9, 2000.

Changes to the land management plan that are not significant can result from:

1. Actions that do not significantly alter the multiple-use goals and objectives for long-term land and resource management.
2. Adjustments of management area boundaries or management prescriptions resulting from further on-site analysis.
3. Minor changes in standards and guidelines.
4. Opportunities for additional projects or activities.

Examples of significant changes include:

1. Changes that would significantly alter the long-term relationship between levels of multiple-use goods and services originally projected.
2. Changes that may have an important effect on the entire land management plan or affect land and resources throughout a large portion of the planning area during the planning period.

Forest Plan Amendment Determination of Non-Significance

I have evaluated Forest Plan Amendment Number 40 pursuant to Forest Service planning regulations and Forest Service Manual direction discussed above as well as information disclosed in the FEIS and administrative record. These considerations are documented below.

Actions that do not significantly alter the multiple-use goals and objectives In the Forest Plan, Forest-wide Management Plan Goals and Objectives are found on pages 3 through 7. Specifically, I reviewed the Forest Plan goals and objectives for prairie dogs, minerals, riparian areas, wildlife and fisheries management, management of Threatened and Endangered plant and animal species, cultural resources management, visual resources, watershed management, and air resource management. I find that Forest Plan Amendment Number 40 does not change any of the overall Forest Plan multiple-use goals or objectives related to these resource values.

I reviewed Forest Plan Table II-1 Projected Outputs and Activities by Time Period (p. 6) and I did not find it helpful, as it projected mineral related outputs by number of cases. A "mineral case" is defined as a single individual mineral management action could consists of actions related to oil and gas, hard rock mining, abandoned mine management or actions associated with aggregate management. The term does not translate into something more easily understood and measurable such as anticipated oil and gas activities. I reviewed the discussion of minerals utilization in the Forest Plan Record of Decision (pp. 14-17). I reviewed the estimated number of wells and the corresponding production as forecasted from the Reasonably Foreseeable Development scenario (Sioux Oil and Gas Leasing FEIS Appendix D) in an attempt to compare potential outputs

resulting from this decision to outputs of the other alternatives. I find that my decision does not alter the long-term relationships between the levels of goods and services projected by the Forest Plan for any resource except oil and gas. The reduction in Sioux RD oil and gas related outputs is projected to drop approximately a third. (See FEIS Table 2-17.) The Sioux oil and gas outputs are a small part of the overall Custer mineral related outputs predicted in 1986 plan. Opportunities to access and develop federal oil and gas resources while ensuring that other natural resource values are protected are provided for by my decision. My decision was additionally guided by the results of a comprehensive analysis that considered the cumulative effects of activities on the natural resources, economics, and social patterns of the planning area. My decision accomplishes a balance of uses, and in so doing I find that the mix of multiple-use goals and objectives disclosed in the Forest Plan is not changed. Therefore the Forest Plan Amendment Number 40 is not significant. I find it is not likely that this amendment would trigger any changes in other outputs.

Adjustments of management area boundaries or management prescriptions

This amendment does not change any management area boundaries. The management emphasis of affected management areas is not changed since the amendment only adjusts Forest Plan standards and stipulations distance zones and seasonal timing periods as specified on page 19, Forest Plan Amendment Number 1, and Forest Plan Amendment Number 12. These resource protections are applied to all management areas found within the analysis area. Therefore, I find that Amendment Number 40 does not represent a significant change in the management area boundaries or management prescriptions pertaining to Forest Plan goals, objectives or standards.

Minor changes in standards and guidelines As discussed above, Forest Plan Amendment Number 40 makes minor, project-specific adjustments to Forest Plan standards and stipulations distance zones and seasonal timing periods, shown in Table B-1. Forest Plan Amendment Number 40 does not change the intent of the plan, as resource protections in the form of standards and stipulations are already in place. Rather, it makes clear what standards and stipulations apply and in which management area they apply. These minor changes to the standards/stipulations contained in Amendment Number 40 are applicable only to the project area addressed by the FEIS, the South Dakota portion of the Sioux Ranger District, and only for oil and gas activities. This is approximately seven percent of the total National Forest System lands covered by the Forest Plan.

Note: If a particular issues/resource does not appear in Table B-1 below, that issue/resource is not being changed by Forest Plan Amendment 40.

TABLE B-1

Resource	Stipulation	Explanation of Change and Rationale for Minor Changes in Standards and Guidelines
Sage and Sharptail grouse	NSO	<p>Sage and Sharptail grouse. Forest Plan Amendment Number 1 stipulated no surface occupancy (NSO) within 200 feet of grouse dancing grounds in management areas B and D. Amendment to the Forest Plan (FP) is needed to enlarge the no surface occupancy zone from 200 feet to one-quarter mile and to apply this stipulation to other management areas where the leks/dancing grounds may be found. This reflects new information in the scientific community regarding grouse sensitivity to persistent disturbances during the breeding and nesting season. Forest Plan Amendment Number 40 does not add a no surface occupancy stipulation to grouse dancing grounds for Management Areas B and D since the NSO stipulation already existed, but does increase the size of the no surface occupancy zone from 200 feet to ¼ mile from the lek. See the definition for lek included with this amendment. The definitions for active leks and active nests are provided to clarify Forest Plan definitions for the same terms.</p>
Golden eagles and prairie falcons.	NSO	<p>Golden eagles and prairie falcons. Forest Plan Amendment Number 1 stipulated no surface occupancy in Management Area B if a limited surface use stipulation would not sufficiently provide for the mitigation of wildlife impacts. Forest-wide standards on page 19, stipulates for eagles, a ¼ mile no surface occupancy zone (regardless of season). For falcons the Forest Plan stipulates a ¼ miles no disturbance (no surface occupancy) zone (regardless of season). A Forest Plan amendment is needed to enlarge the Forest Plan no disturbance zone from ¼ mile to ½ mile for both species, and to other management areas where nests may be found. This reflects new information in the scientific community regarding adequate buffer distances for eagles and falcons.</p>
Merlins	NSO	<p>Merlins. Forest Plan Amendment Number 1 stipulated, for Management Area C, F, L, O, no surface occupancy, as shown in the Key Species/Critical Timing Periods section II would be applied where applicable. Amendment Number 1 also noted that distances may be reduced if the area is screened by topography or vegetation. . Amendment to the Forest Plan (FP) is needed to apply the no surface occupancy stipulation zone to other management areas where merlin nest may be found.</p> <p>This does not change any Forest Plan goal or objective, nor does it alter any management area boundary or management prescription. The intent of Forest Plan standards and Forest Plan Amendment Number 1 are clear. Forest Plan Amendment Number 40 does not change that intent. This is a minor change in the standard, making clear that the no surface occupancy applies within all the management areas where merlin nest might be found. This stipulation applies only to oil and gas activities, and does not alter the opportunities for projects or activities since it still provides for access to oil and gas resources.</p>

Prairie Dogs	NSO	Prairie Dogs. Forest Plan Amendment Number 1 stipulated no surface occupancy within 100 feet of prairie dog towns in management areas B and D. Amendment to the Forest Plan (FP) is needed to apply the no surface occupancy stipulation zone to other management areas where prairie dog habitat may be found. For management areas B and D, application of a no surface occupancy stipulation is already consistent with Forest Plan Amendment 1; therefore, no amendment is needed to stipulate no surface occupancy for prairie dog towns in those management areas.
Golden Eagles	TL	Eagles. See the description above under golden eagles and prairie falcons for the no surface use part of the plan amendment. Forest Plan Amendment Number 1 stipulated, for Management Area E, that timing limitations, as shown in the Key Species/Critical Timing Periods section II would be applied where applicable. Amendment Number 1 also noted that distances may be reduced if the area is screened by topography or vegetation. A Forest Plan amendment is needed to adjust the current seasonal timing limitation of February 15 to July 15 to February 1 through July 31 within a ½ mile no disturbance zone during nesting. The amendment also is needed to apply this timing limitation to management areas B, D, F, L, M, N, O, and P. This reflects new information in the scientific community regarding adequate buffer distances for eagles and falcons.
Prairie Falcons	TL	Prairie Falcons. See the description above under golden eagles and prairie falcons for the no surface use part of the plan amendment. Forest Plan Amendment Number 1 stipulated, for Management Area E, that timing limitations, as shown in the Key Species/Critical Timing Periods section II would be applied where applicable. Amendment Number 1 also noted that distances may be reduced if the area is screened by topography or vegetation. A Forest Plan amendment is needed to adjust the current seasonal timing limitations from March 15 to July 20 or fledging to March 1 through July 31. The amendment also is needed to apply this timing limitation to management areas B, D, F, L, M, N, O, and P. This lengthens the seasonal restriction period from the current Forest Plan guidance of March 15 to July 20 or fledging (FP, p. 19). This reflects new information in the scientific community regarding adequate buffer distances for eagles and falcons.
Sage grouse	TL	Sage grouse. See the description above under grouse for the no surface use part of the plan amendment. Forest Plan Amendment Number 12 (10/24/1991) changed the dates for protection of prairie grouse dancing grounds from 3/1 to 4/15 annually to 3/1 to 4/30 annually. This timing limitation applied to a ¼ mile no disturbance zone. A Forest Plan amendment is needed to adjust the current seasonal timing limitation from March 1 to April 30 annually, to March 1 to June 15 annually and to apply this timing limitation to a 2.0 miles no disturbance zone. The amendment also is needed to apply this timing limitation and no disturbance zone to management areas B, D, E, F, L, M, N, O, and P. This reflects new information in the scientific community regarding adequate buffer distances and seasonal timing restrictions for sage grouse. This clarifies seasonal timing restrictions for grouse identified in the FP, page 19, and Forest Plan Amendment Number 12.
Sharp-tail grouse	TL	Sharp-tail grouse. See the description above under grouse (sage and sharp-tail) for the no surface use part of the plan amendment. Forest Plan Amendment Number 12 (10/24/1991) changed the dates for protection of prairie grouse dancing grounds from 3/1 to 4/15 annually to 3/1 to 4/30 annually. This timing limitation applied to a ¼ mile no disturbance zone. A Forest Plan amendment is needed to adjust the current seasonal timing limitations from March 1 to April 30 annually, to March 1 to June 15 annually and to apply this timing

		<p>limitation to a 1.0 mile no disturbance zone. The amendment also is needed to apply this timing limitation and no disturbance zone to management areas B, D, E, F, L, M, N, O, and P. This reflects new information in the scientific community regarding adequate buffer distances and seasonal timing restrictions for sharp-tail grouse. This clarifies seasonal timing restrictions for grouse identified in the FP, page 19, and Forest Plan Amendment Number 12.</p>
Riparian	CSU	<p>Riparian. Forest Plan Amendment Number 1 requires a Lease Notice for riparian areas. A Forest Plan amendment is needed to stipulate controlled surface use (CSU). New leases for lands within the project area will be subject to a controlled surface use stipulation for riparian areas. Drill pads will be located where they minimize total impacts to the area. Drill pads will not be located within riparian areas and will be located to avoid disturbance to the distinctive plant communities within the riparian ecosystems. Access routes will be located to cross riparian areas at right angles to minimize road length, to maintain stream gradients, and to minimize sediment delivery to the streams.</p>
Forested Lands (Previously discussed as Canyon Complexes or Heads of Canyons)	CSU	<p>The term "Forested Areas" is used in stead of "Canyon Complexes or Heads of Canyons" which previously appeared in the Forest Plan and Amendments 1 and 12 to the Forest Plan. A CSU stipulation is intended to protect and maintain biodiversity values and seclusion for big game in all management areas within the project area. Forest Plan Amendment 1 specifies a controlled surface use stipulation to areas known for their value to big game species in Management Areas B and D. In addition to management areas B and D, this amendment extends the application of a controlled surface use stipulation to protect and maintain areas known for their values to big game species now applies to management areas E, F, L, M, N, O, and P.</p>

Opportunities for additional projects or activities This decision does not alter the opportunities for projects or activities since it still provides for the access to oil and gas resources.

Based on the above discussion and the evaluation of each of the changes disclosed in Table B-1 above, I find that this amendment does not alter the long-term relationships between goods and services projected by the Forest Plan. This decision only affects approximately 7% of the land covered by the Forest Plan. Therefore, this amendment is not significant as described pursuant to Forest Service Manual 1900, chapter 20, section 1926.51. The full text of Amendment Number 40 and rationale for site specific, project related changes follows below.

**CUSTER NATIONAL FOREST
FOREST PLAN AMENDMENT
NUMBER 40**

Billings, Montana

The Land and Resource Management Plan for the Custer National Forest and National Grasslands (hereafter referenced as the Forest Plan) is hereby site-specifically amended as follows:

- The seasonal restriction periods and disturbance zones shown for key species found on Forest Plan pages 19, 170 through 172, as amended by Forest Plan Amendment Number 1, and Forest Plan Amendment Number 12, are hereby site specifically amended to include the stipulations or lease notice that appears in the following table. These stipulations/lease notices are only applicable to oil and gas activities in the management areas identified within the project boundary of the Sioux Ranger District Oil and Gas Leasing FEIS (South Dakota portion of the Ranger District).

Kate Walker

for STEVE E. WILLIAMS
Custer Forest Supervisor

3/15/07

DATE

<p><u>Management Area(s) in which leasing stipulation would apply</u></p>	<p><u>Stipulations - These stipulations may be waived, modified or exempted (WEM) in certain situations. Conditions for a WEM are not made part of a the Custer Forest Plan but can be found in FEIS Appendix B.</u></p>
<p>All Management Areas within the Project Area (B, D, E, F, L, M, N, O, and P)</p>	<p>Sage and Sharptail Grouse. No surface occupancy or use is allowed within ¼ mile of sage and sharptail grouse leks.</p>
<p>All Management Areas within the Project Area (B, D, E, F, L, M, N, O, and P)</p>	<p>Golden Eagles and Prairie Falcons. No surface occupancy or use is allowed within ½ mile (line of site) of golden eagle and prairie falcon sites that have been active within the previous 5 years.</p> <p>All access and other development and production related facilities will be prohibited. Seasonal exceptions may be allowed for the construction of buried pipelines or powerlines from August 1 through February 28 (non-breeding season) for prairie falcons, and from August 1 through January 31 (non-breeding season) for golden eagles.</p>
<p>All Management Areas within the Project Area (B, D, E, F, L, M, N, O, and P)</p>	<p>No surface occupancy or use is allowed within 1/4 mile (line of site) of merlin</p>
<p>All Management Areas within the Project Area (B, D, E, F, L, M, N, O, and P)</p>	<p>Prairie Dogs. No surface occupancy or use is allowed within the boundaries of prairie dog towns, and within 100 feet of the boundaries of prairie dog towns.</p>
<p>All Management Areas within the Project Area (B, D, E, F, L, M, N, O, and P)</p>	<p>Golden Eagles. Timing Limitation: No surface use is allowed within ½ mile of active eagle nests during the following time period (this does not apply to the operation and maintenance of production facilities): February 1 through July 31.</p>
<p>All Management Areas within the Project Area</p>	<p>Prairie Falcons. Timing Limitation: No surface use is allowed within ½ mile of active prairie falcon nests from March 1 through July 31 (this does not apply to the operation and maintenance of production facilities).</p>

<p><u>Management Area(s) in which leasing stipulation would apply</u></p>	<p><u>Stipulations - These stipulations may be waived, modified or exempted (WEM) in certain situations. Conditions for a WEM are not made part of a the Custer Forest Plan but can be found in FEIS Appendix B.</u></p>
<p>(B, D, E, F, L, M, N, O, and P)</p>	
<p>All Management Areas within the Project Area (B, D, E, F, L, M, N, O, and P)</p>	<p>Sage Grouse. Timing Limitation: No surface use is allowed within 2.0 miles of sage grouse leks during the following time period (this does not apply to the operation and maintenance of production facilities): March 1 through June 15.</p>
<p>All Management Areas within the Project Area (B, D, E, F, L, M, N, O, and P)</p>	<p>Sharptail Grouse. Timing Limitation: No surface use is allowed within 1 mile of sharp-tail grouse leks during the following time period (this does not apply to the operation and maintenance of production facilities): March 1 through June 15.</p>
<p>M</p>	<p>Riparian. Surface occupancy and use is subject to the following operating constraints: avoid the location of drill pads within the aquatic ecosystem, and avoid disturbance to the distinctive vegetative communities within the riparian ecosystem.</p> <p>Access through riparian areas to development and production facilities will be allowed, provided there is not another route that is less environmentally disturbing and the route crosses the riparian areas at right angles to minimize the riparian disturbance.</p>
<p>All Management Areas within the Project Area (B, D, E, F, L, M, N, O, and P)</p>	<p>Forested Areas. The term” Forested Areas” is used in stead of “Canyon Complexes or Heads of Canyons“ which previously appeared in the Forest Plan and Amendments 1 and 12 to the Forest Plan. A controlled surface use stipulation will be applied to areas known for their values to big game species and goshawk and seclusion. These areas are usually small, less than one square mile.</p>

GLOSSARY OF TERMS

The following definitions of selected terms are provided for the readers benefit. These same definitions can be found in the Glossary of the Sioux Ranger District Oil and Gas Leasing FEIS (October 2004) and are only applicable to this project area.

Active Lek - A Lek{ XE "Lek" } displaying grouse{ XE "grouse" } present during the spring breeding season at least 1 year within a period of 5 consecutive years. Leks{ XE "Leks" } are assumed to be active in the absence of 5 consecutive years of data collected according to scientific methods that shows the lek to be inactive. Scientific data collection assumes qualified observers, survey times and conditions appropriate to detect breeding activity, and subsequent written reports. Results of surveys and a list of active leks{ XE "active leks" }{ XE "leks" } are part of the Custer Forest Plan Monitoring and Evaluation{ XE "Monitoring and Evaluation" } Report.

Active Nest – A nest with an adult pair present at least 1 year within a period of 5 consecutive years. Nests are assumed to be active in the absence of 5 consecutive years of data collected according to scientific methods that shows the nest to be inactive. Scientific data collection assumes qualified observers, survey times and conditions appropriate to detect nesting{ XE "nesting" } activity, and subsequent written reports. The reporting process for results of surveys and a list of active nests{ XE "active nests" } are part of the Custer Forest Plan Monitoring and Evaluation{ XE "Monitoring and Evaluation" } Report. Evidence that a pair is present within a nesting territory can be based on evidence that eggs were laid or observations of 2 breeding-age birds that appear to be paired. In some species, the presence of a nest that has been recently built, repaired, or decorated may constitute evidence for occupancy because nest building behavior is probably elicited by the presence of a mate.