

**SAGE-GROUSE  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY AND  
THE WYOMING GAME AND FISH DEPARTMENT REGARDING EXECUTIVE  
ORDER 2011-5, GREATER SAGE-GROUSE CORE AREA PROTECTION**

1. **Parties.** This Memorandum of Understanding (hereinafter referred to as 'MOU') is made and entered into by and between the Wyoming Department of Environmental Quality (hereinafter referred to as DEQ), whose address is 122 West 25th Street, Herschler Building, 4 West, Cheyenne, WY 82002, and the Wyoming Game and Fish Department (hereinafter referred to as WGFD), whose address is 5400 Bishop Boulevard, Cheyenne, WY 82006.

2. **Purpose.** The purpose of this MOU is to clarify the roles and responsibilities of the two signatory Agencies in completing consultation for the protection of greater sage-grouse during permitting actions and other DEQ activities, in compliance with Executive Order 2011-5, *Greater Sage-Grouse Core Area Protection* (SGEO).

3. **Term of MOU.** This MOU shall commence upon the date last signed and executed by the duly authorized representatives of the parties to this MOU and shall remain in effect until terminated. This MOU may be terminated, without cause, by either party upon thirty (30) days written notice, which notice shall be delivered by hand or by certified mail.

4. **Payment.** No payment shall be made to either party by the other party as a result of this MOU.

5. **Responsibilities of Wyoming Department of Environmental Quality (DEQ).**

A. In accordance with SGEO, and the authorities granted to DEQ under the Environmental Quality Act the DEQ will focus on how its activities can support the maintenance and enhancement of greater sage-grouse core habitats, populations, and connectivity areas, and work collaboratively with other entities to accomplish this goal.

B. The DEQ will review and determine if a proposed project/permit will be in sage grouse core area, and if WGFD consultation is required. If consultation is required, DEQ will request the project proponent to initiate consultation with the WGFD.

C. The DEQ will provide written notification to WGFD Habitat Protection Program point of contact on pending project/permit review requests. This notification will provide contact information for a DEQ Point of Contact. This notification may be via email.

D. The DEQ will direct the project proponent to the WGFD Habitat Protection Program for required Density/Disturbance Calculation Tool (DDCT) analysis and project review for compliance with SGEO guidelines. The DDCT process will be conducted by the proponent using the web application.

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E. The DEQ will coordinate with WGFD to relay protective stipulations and mitigation commitments to the DEQ, WGFD, and the project proponent.

F. The DEQ will ensure that upon project approval or permit issuance by DEQ the protective stipulations and mitigation measures are incorporated as conditions in the permit, as authorized by applicable statutes, rules, regulations, and the SGEO.

G. General permits issued by DEQ do not provide a mechanism for adding conditions as indicated in paragraph F. above. In these circumstances, applicants for coverage under the associated general permits for activities affecting sage grouse core areas will be required to provide a certification of their intent to comply with the recommended sage-grouse protection measures. Failure to provide such certification may result in denial of an authorization under the general permit and require the processing of an individual permit.

H. DEQ projects proposed in core areas are also required to comply with the SGEO. DEQ will provide WGFD a project description (using the worksheet referenced in 6.B.), including stipulations and any proposed mitigation, for WGFD review and comment. If necessary, DEQ will perform the DDCT and consult further with WGFD.

I. DEQ will meet quarterly with WGFD to discuss proposed, pending and recently approved projects/permits unless deemed unnecessary by both parties.

J. If it appears a permit applicant is unable to conduct a DDCT either by means of capacity or technology, the applicant will be referred to the DDCT committee (WGFD, DEQ, OS LI, GPO, WYDOT, CIO) for review and determination if assistance is warranted. If warranted, the committee will document the factors justifying the decision to provide assistance.

**6. Responsibilities of Wyoming Game and Fish Department (WGFD).**

A. In accordance with the SGEO, WGFD will facilitate review and analyses of potential impacts from proposed projects upon sage-grouse and core areas and recommend possible conditions and mitigation measures where appropriate. WGFD, however, has no authority to either approve or deny a project.

B. WGFD will direct project proponents to use the web application to access the DDCT worksheet which will be submitted to the WGFD as part of the DDCT package and will be used to determine compliance with the SGEO.

C. WGFD will review and verify the DDCT analysis, and work with the project proponents to resolve any discrepancies, omissions, or other questions.

D. WGFD will review the proposed project for compliance with sage-grouse core area habitat protection as required by the SGEO.

E. WGFD will coordinate with DEQ to relay protective stipulations and mitigation measures clearly to DEQ, WGFD, and project proponent.

F. Should special circumstances apply, such as valid and existing rights, WGFD will work with the permit applicant and DEQ to identify ways to minimize impacts from development based upon appropriate local conditions, limitations, and recommendations of the WGFD local biologist.

G. WGFD will provide the project proponent (copy to DEQ Point of Contact) with a letter that verifies the accuracy of the DDCT, recommends stipulations, verifies compliance with the conditions of SGEO, and recommends mitigation actions if such are required.

H. WGFD will complete reviews of DEQ-related projects or permits, and provide recommendation letters within 30 days of receipt of complete DDCT package from the proponent.

I. If DEQ itself is proposing a project in a core area, WGFD will complete review and comment within 30 days, unless additional time is required for a DDCT and additional analysis.

J. WGFD will defend its recommendations specific to sage-grouse in any appeal process of a DEQ permit/action.

K. WGFD will meet quarterly with DEQ to discuss proposed, pending and recently approved projects/permits by the DEQ unless deemed unnecessary by both parties.

L. If it appears a proponent is unable to conduct a DDCT either by means of capacity or technology, the applicant will be referred to the DDCT committee (WGFD, DEQ, OSLI, GPO, WYDOT, CIO) for review and determination if assistance is warranted. If warranted the committee will document the factors justifying the decision to provide assistance. Regardless of which agency provides support for completing the DDCT the permitting agency for the specific project will still be responsible for determining compliance with the SGEO.

## 7. General Provisions.

A. **Amendments.** Either party may request changes in MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, executed and signed by all parties to the MOU.

B. **Applicable Law.** The construction, interrelation and enforcement of this MOU shall be governed by the laws of the State of Wyoming. The courts of the State of

Wyoming shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming. Should this MOU conflict with any statute, the statute shall prevail, the remainder of the MOU shall continue in full force and effect.

**C. Entirety of Agreement.** This MOU, consisting of five (5) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

**D. Prior Approval.** This MOU shall not be binding upon either party unless this MOU has been reduced to writing before performance begins as described under the terms of this MOU, and unless this MOU is approved as to form by the Attorney General or his representative.

**E. Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

**F. Sovereign Immunity.** The State of Wyoming, the Wyoming Department of Environmental Quality and the Wyoming Game and Fish Department do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

**G. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

**8. Signatures.** In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

**DEPARTMENT OF ENVIROMENTAL QUALITY**

  
\_\_\_\_\_  
Todd Parfitt, Director

12/6/12  
Date

**WYOMING GAME AND FISH DEPARTMENT**

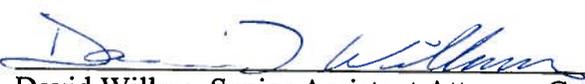
  
\_\_\_\_\_  
Scott Talbot, Director

12/3/12  
Date

**ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**

  
\_\_\_\_\_  
Luke Esch, Senior Assistant Attorney General  
Representing the Department of Environmental Quality

11-30-12  
Date

  
\_\_\_\_\_  
David Willms, Senior Assistant Attorney General  
Representing the Wyoming Game and Fish Department

12/3/12  
Date