

**Non-Coal
Standard Operating Procedure
(SOP) No. 3.6**

Land Quality Division

**SUBJECT: Consultation with the Wyoming Game and Fish Department
Concerning Sage Grouse in LQD Permitting Actions.**

Forward

The attached Standard Operating Procedure is the policy of the Land Quality Division of the Wyoming Department of Environmental Quality covering the topic of Consultation with Wyoming Game and Fish Department Concerning Sage Grouse in LQD Permitting Actions. Staff shall make no significant deviations from this policy without the prior approval of the District Supervisor and the Administrator.

Signed this 18th day of May, 2015.



Kyle Wendtland
Administrator, Land Quality Division

Table of Contents

I.	<u>Introduction</u>	3
II.	<u>General Sage Grouse Management</u>	3
III.	<u>Grandfathering Determination</u>	4
IV.	<u>Permit Actions Not Subject to Sage Grouse Consultation or Stipulation</u>	4
V.	<u>Permit Actions Subject to Sage Grouse Consultation and/or Stipulation</u>	4
VI.	<u>Consultation Process Outline</u>	5
VII.	<u>Attachments</u>	
	A.	
	LQD-WGFD Sage Grouse Consultation Process Decision Tree	6
	B.	
	Sample Consultation Memorandum	7

I. Introduction:

The Department of the Interior was petitioned to list the greater sage-grouse as a threatened or endangered species. As a consequence of this action, Governor Freudenthal convened local sage grouse working groups and a Sage Grouse Implementation Team (SGIT). The SGIT was charged with developing a strategy for sage grouse protection that would provide adequate protections to keep the sage grouse out of threatened or endangered status, thereby allowing the state to retain management authority over the species. The SGIT recommended the core area strategy. The United States Fish and Wildlife Service reviewed this strategy, and in May of 2008 found that core areas are “a sound framework for a policy by which to conserve greater sage-grouse in Wyoming”. The Governor issued Executive Order 2008-2, “Greater Sage-Grouse Core Area Protection” on August 1, 2008.

On March 5, 2010 the USFWS published their finding that the greater sage-grouse is warranted but precluded from listing. This means that the listing status will be reviewed annually, and sage grouse status can change to listed, remain the same, or become not listed. The original SGIT recommendations were based on research from oil and gas development, and were difficult to apply to the mining industry. The SGIT re-convened with representatives from the uranium (Donna Wichers) and bentonite (Jonathan Madill) industries, and a DEQ representative (Carol Bilbrough) was added to the team. The SGIT was charged by the Governor to re-evaluate core areas based on the most current biological data (e.g. lek counts, sagebrush habitat), develop and specify application of guidelines, and consider the needs for research, inventory, and habitat protection. Governor Freudenthal issued a second Executive Order 2010-4, replacing the 2008 executive order. The SGIT re-convened again under Governor Mead, this time with John Corra representing the DEQ. Governor Mead issued a new Executive Order 2011-5 on June 2, 2011, with only minor changes to the 2010 Executive Order.

The purpose of core areas is to act as mitigation for development occurring outside the core areas. Therefore, development inside the core areas may be restricted and development outside the core areas is encouraged. The core areas contain approximately 80% of sage-grouse in the state, as counted by males on leks. The standard for determining if protection is succeeding is counts of birds. Our goal is to keep the numbers at the current or higher levels. A reduction in sage-grouse numbers will be a determining factor in the USFWS’s decision to list the bird.

Further information can also be found in the Governor’s executive order found at <http://psc.state.wy.us/pscdocs/download/SageGrouseExecOrder2011-5.pdf> and the Memorandum of Understanding between the DEQ and the Wyoming Game and Fish Department specifically addressing sage grouse consultation.

II. General Sage Grouse Management:

The WGFD currently manages sage-grouse and recommends stipulations for protection of the sage-grouse. The DEQ will apply stipulations recommended by WGFD. If the sage-grouse is listed as an endangered species, the USFWS will be the agency that manages the bird and determines restrictions. The USFWS currently has no role in sage grouse consultations unless

the bird is listed. Until or unless stipulations are developed specific to mining, each permit action inside core area will be treated on a case by case basis.

III. Determination if an action is grandfathered:

Operators may continue to operate in compliance with mine and reclamation plans approved prior to August 1, 2008 (date of the first Executive Order, 2008-2) no matter the location, inside or outside core area.

IV. Permit actions NOT SUBJECT to Sage Grouse consultation and/or stipulations:

The following permit actions do not require LQD to consult with the WGFD nor do they require any Sage Grouse specific stipulations.

- A. Any ownership transfer (e.g. permit transfer, LMO or DN assumption).
- B. Any type of bond action that adds, releases, or replaces bonds (LOC renewal, self-bond renewal).
- C. Any revision that does not alter, expand, or reduce the disturbance area.
- D. Any action outside core area and greater than 2.0 miles from a sage-grouse lek perimeter.
- E. Any surface disturbance activity related to underground mine safety and health as described in the Executive Order Attachment B; Specific Stipulations Section 2(d), no matter the location.

V. Permit actions that ARE SUBJECT to Sage Grouse stipulations and/or consultation:

The following section applies only to actions that are in Greater Sage Grouse Core Area, within 2.0 miles of a lek if outside core area, or were approved after August 1, 2008. Also, **sage-grouse specific consultation with the WGFD is only required if the action occurs within core area.** Sage Grouse specific consultation may occur concurrently with rule mandated wildlife consultation (Non-coal Chapter 2 section 1(f)), but does not take the place of the required general wildlife consultation by the LQD/DEQ with the WGFD. At the reviewer's discretion, Sage Grouse specific consultation may also occur outside of core area in areas in close proximity (less than 2 miles) to a lek.

The following permit actions require that the LQD consult with the WGFD and may require Sage Grouse specific stipulations.

- A. Any changes to a permit or authorization that either increases disturbance area or changes the location of a disturbance area. This includes amendments, updates, incidental boundary revisions, and any revisions that add or change the location of disturbances areas.

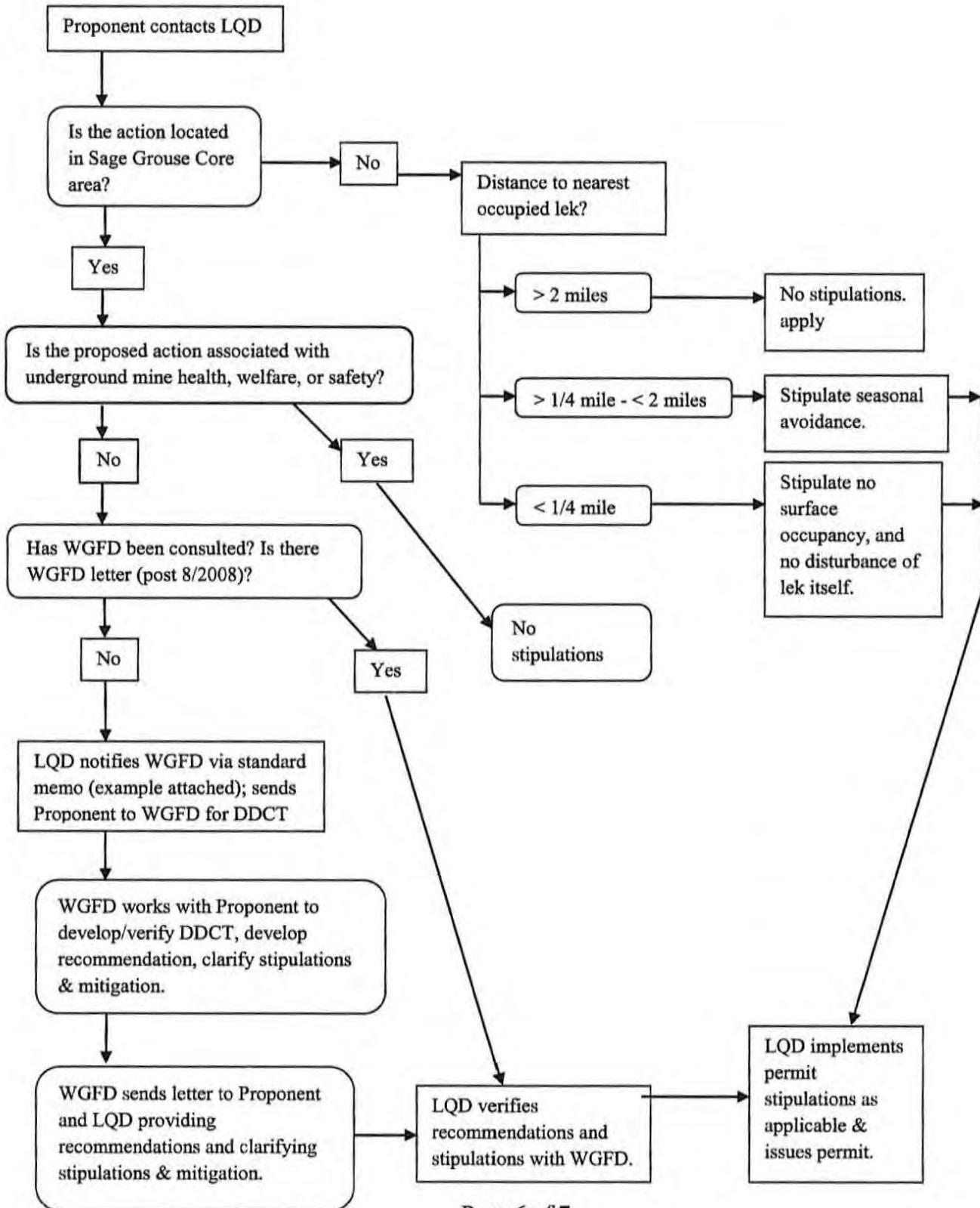
B. All new permits or authorizations (CN, DN, LE, LMO, PT, SMP).

VI. Consultation Process Outline:

- A. LQD receives application for new DN, CN, LE, LMO, SMP, PT, amendments, updates, or IBRs to approved permits or requests for new disturbance areas not approved in the mine plan as of August 1, 2008.
- B. If the application does not include a sage-grouse specific consultation with the WGFD or a demonstration that one is not needed, the LQD determines if consultation is necessary.
- C. Determination for need of consultation: **Consultation is required any time an action is proposed within core area.** No consultation is required if the action is outside of core area however, standard sage-grouse stipulations (Executive Order 2011-5; Item 7) may still apply based on the proximity to a lek. An LQD reviewer may choose to consult with WGFD on a proposed project outside of core area if he feels the situation warrants closer scrutiny.
- D. If consultation is necessary, LQD notifies the WGFD via standard consultation memo (example attached), and ensures the proponent contacts and works with the WGFD to provide the needed information for WGFD to make a determination and recommendation for stipulations or mitigation. The LQD memo includes a short description of the permit action, location of the proposed area, number of acres, legal description of the area, map of the area, and request for response from WGFD including specific recommendations for the permit action.
- E. LQD reviews, verifies, and implements recommendations of the WGFD as applicable to the permit action.

Attachment A

LQD-WGFD Sage Grouse Consultation Process Decision Tree



Attachment B

Sample Consultation Memorandum to the WGFD

MEMORANDUM

TO: Mary Flanderka and Gwen Booth - Wyoming Game and Fish Department,
Habitat Protection, 5400 Bishop Blvd., Cheyenne, WY 82006

FROM: Craig Smith; DEQ/LQD-District II, Environmental Scientist

DATE: May 9, 2012

SUBJECT: Notice of Pending Limited Mining Operation Application
Stephen and Audrey Smith, TFN 5 1/323

Application Information

Operator: Stephen and Audrey Smith
LQD Temporary Filing No. : TFN 5 1/323
Location: All lands are within Park County Wyoming
Commodity & Mine Method: Open pit sand and gravel mining.

Legal Description:

SENE and NESE of Section 20, Township 49N, Range 100W: owned entirely by project proponents.

Approximate Total Disturbance: Permit application for **4.0 acres.**

Notes: This is a request to identify any WGFD sage-grouse specific concerns for this area that should be addressed in review of this application. A map of the proposed permit area is attached. The proposed mining area is within a core area and is approximately 2.6 miles from a lek.

cc: DEQ/LQD Cheyenne DEQ/LQD – TFN 5 1/323
DEQ/LQD District _____ – TFN 5 1/323