

**SOLID & HAZARDOUS WASTE DIVISION  
STORAGE TANK PROGRAM  
GUIDANCE DOCUMENT #19**

**SUBJECT:** SAGE GROUSE, CULTURAL RESOURCES INVENTORY, AND THREATENED AND ENDANGERED SPECIES SURVEY

**SCOPE:** This document provides guidance to Storage Tank Program (STP) project managers and consultants for implementation of the Governor's Greater Sage-Grouse Core Area Protection Executive Order (Order 2011-5). The document also provides guidance for completion of the Cultural Resources Inventory and Threatened and Endangered Species Survey. In case of conflict with any rule or regulation, the rule or regulation will prevail.

**INTRODUCTION:** The Solid and Hazardous Waste Division (SHWD) has developed an implementation policy to ensure the Governor's Executive Order on sage grouse is followed within the Division. The STP has developed a checklist to ensure the Cultural Resources Inventory and Threatened and Endangered Species Survey are completed.

**GUIDELINES:**

**1. Sage Grouse**

Attached are: 1) the Memorandum of Understanding (MOU) between the Department of Environmental Quality and the Wyoming Game and Fish Department, 2) the SHWD Policy for Implementation of the Governor's Executive Order (revised June 21, 2012), and 3) STP Checklists (December 12, 2012). The SHWD implementation policy and STP checklists will be used for each STP remediation project.

**2. Cultural Resources Inventory and Threatened and Endangered Species Survey**

The checklist for the Cultural Resources Inventory and Threatened and Endangered Species Survey (STP Checklists [December 12, 2012]) attached will be used for each STP remediation project.

**3.** At the start of each project a copy of the checklist will be made. The checklist will be completed as the project progresses. The final checklist will be filed in the project files.

**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.

Memorandum of Understanding  
DEQ & WGFD Regarding Executive Order 2011-5, Greater Sage Grouse Core Area Protection

Page 1 of 5

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, 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.

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.

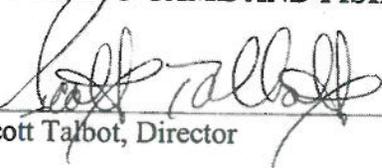
The effective date of this MOU is the date of the signature last affixed to this page.

**DEPARTMENT OF ENVIROMENTAL QUALITY**

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

12/6/12  
Date

**WYOMING GAME AND FISH DEPARTMENT**

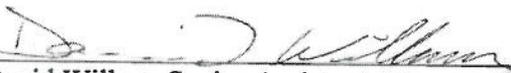
  
\_\_\_\_\_  
Scott Talbot, Director

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

**Solid and Hazardous Waste Division**  
Policy for Implementation of the  
Governor's Greater Sage-Grouse Core Area Protection  
Executive Order (Order 2011-5)

**SHWD activities that will and will not require implementation of the policy:**

The following **will not** require policy implementation. The Project Manager (PM) will make this determination (no need to continue any further in the instructions for such activities):

1. Emergency response activities as described in the September 27, 2011, SHWD Roles and Responsibilities Memo, Section C.11.
2. Activities occurring on a site within the obvious limits of a city/town.
3. Activities existing prior to August 1, 2008, provided they are within a defined project boundary (Executive Order provision no. 2).

The following **will** require policy implementation.

1. Solid Waste Program:
  - a. New permit or lateral expansion of existing permit.
  - b. Identified illegal disposal sites – remediation/reclamation.
  - c. Cleanup\* outside the boundaries of known/historic solid waste management facilities.
2. Storage Tank Program (STP):\*\*
  - a. Cleanup\* at a site outside of an obvious city or town and not directly associated with existing, active disturbance.
3. Hazardous Waste Program:
  - a. New (post 8/1/2008) treatment, storage or disposal (TSD) permit or expansion of an existing permit.
  - b. Identified illegal disposal sites – remediation/reclamation.
  - c. Cleanup\* outside the boundaries of known/historic TSD facilities.
4. Voluntary Remediation Program/Brownfield/Administrative Order:
  - a. Cleanup\* of a new release/spill site (post 8/1/2008) or recently discovered contaminated site outside of an obvious city or town and not directly associated with existing, active disturbance.
5. Orphan Site Program:\*\*
  - a. Cleanup\* for new release/spill site (post 8/1/2008) or recently discovered contaminated site outside of an obvious city or town and not directly associated with existing, active disturbance.
6. Inspection & Compliance (I&C) Program:
  - a. I&C must be contacted by Hazardous Waste/Solid Waste PM of any imposed stipulations/mitigation that are attached to a site, and check on the implementation of the stipulation/mitigation if inspecting.
  - b. Cleanup\* for non-emergency release/spill site or recently discovered contaminated site outside of an obvious city or town and not directly associated with existing, active disturbance if being overseen by I&C only.

\* Cleanup activities that will trigger the implementation of the policy include, but are not limited to: excavation, land farming, drilling, remediation system installation, etc.

\*\* Storage Tank and Orphan Site PM's must conduct the activities required of a "proponent" as described below if the project is in a Core Area.

## IF A PROJECT QUALIFIES FOR IMPLEMENTATION OF THE EXECUTIVE ORDER....Follow the instructions below

SHWD PM's are required to have the following determinations made for their projects

### Is the project completely (or partially) within a Sage-Grouse Core Area?

SHWD has established a single point of contact for making the determination as to whether a project is in a Core Area. Al Thompson in the Voluntary Remediation Program in Cheyenne will be this person. Al has created a spreadsheet that each PM will fill in and email to Al ([alan.thompson@wyo.gov](mailto:alan.thompson@wyo.gov)).

He will then use that information to look at the GIS maps provided by Chad Kopplin to answer the question regarding proximity to a Core Area<sup>1</sup> and distance to an occupied lek, if outside a Core Area. Al will provide the outcome to the PM by filling in the remainder of the spreadsheet and returning to the PM via email. Al's spreadsheet is attached – please note columns to be filled in by PM identified by red font.

### **IF YES - the proponent must consult with the WGFD and SHWD does not need to determine the distance to an occupied lek**

1. If Al determines that the project is within a Core Area, SHWD PM must notify the WGFD that a proponent will be contacting the WGFD for consultation,<sup>2</sup> provide the WGFD with their (PM's) contact information, and direct the proponent to contact the WGFD. WGFD contacts are:
  - a) [Mary.Flanderka@wyo.gov](mailto:Mary.Flanderka@wyo.gov) or
  - b) [Scott.Gamo@wyo.gov](mailto:Scott.Gamo@wyo.gov), and copied to
  - c) [Gwen.Booth@wyo.gov](mailto:Gwen.Booth@wyo.gov)
2. SHWD PM must receive a copy of the information submitted by the proponent to the WGFD to verify that the consultation was conducted.
3. WGFD will coordinate with SHWD to ensure that protective stipulations and any mitigation measures are agreed to by the PM, are clearly defined and understood by all parties (SHWD PM, WGFD, and project proponent).
4. WGFD will provide a letter to the proponent (cc'd to SHWD PM) which contains WGFD recommendation for protective stipulations and any other mitigation.
5. SHWD PM is expected (if in agreement with the WGFD recommendations) to incorporate the stipulations/mitigations into the project approval documentation.

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<sup>1</sup> If SHWD staff are interested, there are two public sources for maps of the Core Areas. The first map is imbedded in the WGFD website at <http://wgfd.wyo.gov/web2011/wildlife-1000382.aspx> and is titled *Sage Grouse Management and Connectivity Areas version 3*. The second map provides a more detailed look at the extent of the core areas relative to Township and Range (zoom in to see the T & R boundaries). This is helpful if it looks as though the proposed activity could be in a Core Area. This map is on the WQD/Storm water permit webpage. [http://deq.state.wy.us/wqd/WYPDES\\_Permitting/WYPDES\\_Storm\\_Water/downloads/Sage\\_Grouse\\_web\\_map.pdf](http://deq.state.wy.us/wqd/WYPDES_Permitting/WYPDES_Storm_Water/downloads/Sage_Grouse_web_map.pdf)

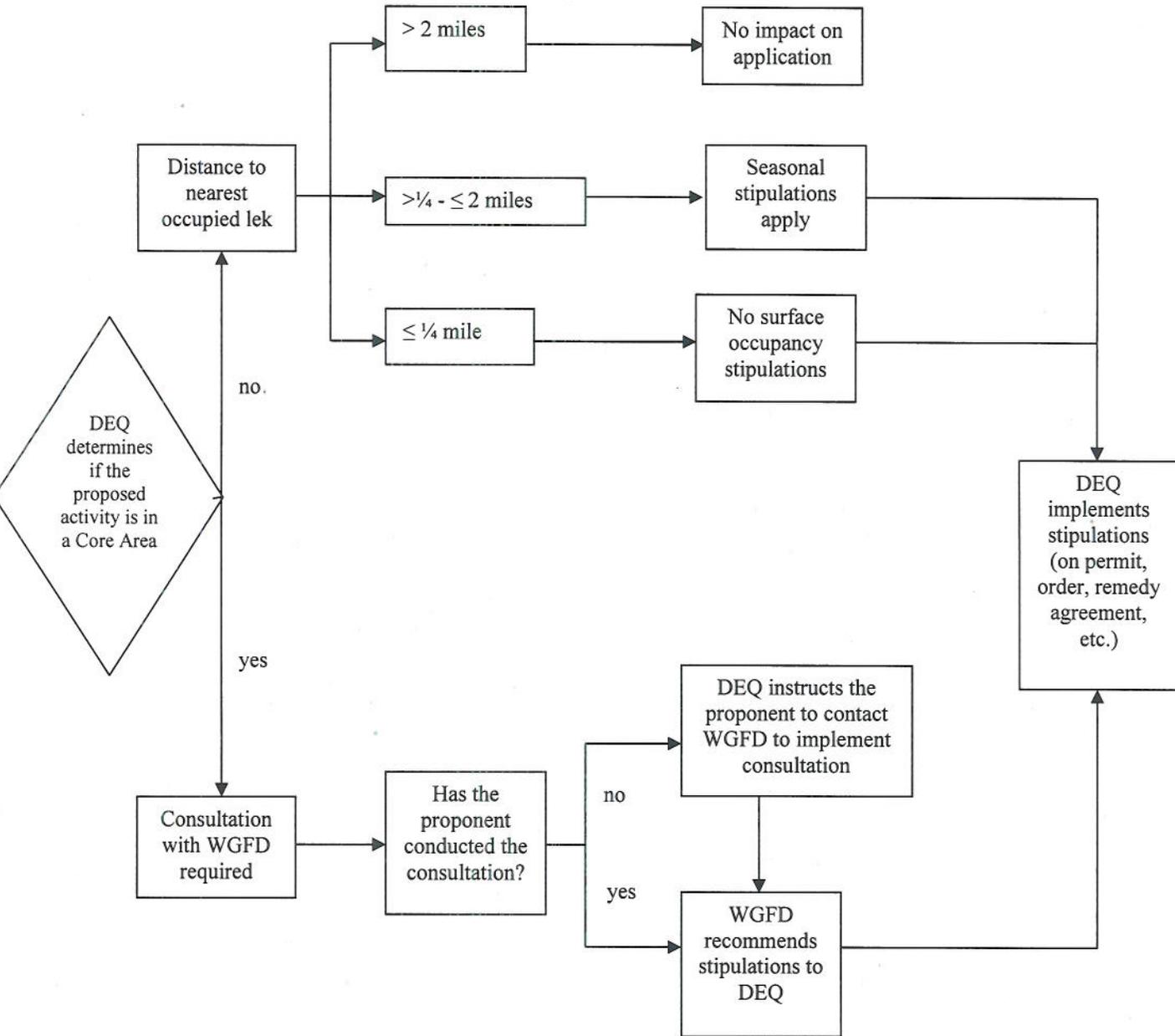
<sup>2</sup> Consultation includes running an analysis tool called Density Disturbance Calculation Tool (DDCT). The DDCT is found at [http://wgfd.wyo.gov/web2011/Departments/Wildlife/pdfs/SAGEGROUSE\\_DENSITYTOOL0002017.pdf](http://wgfd.wyo.gov/web2011/Departments/Wildlife/pdfs/SAGEGROUSE_DENSITYTOOL0002017.pdf) It is expected that the proponent will run this calculation unless they are too small to have the resources and personnel to perform the DDTC. In this case, WGFD has agreed to run it. For a DEQ initiated project (orphan/STP) in a Core Area, DEQ will be expected to perform the DDTC and submit all other necessary project information to the WGFD. The Land Quality Division will assist an orphan site PM with the DDCT, as needed. STP contractors will be conducting the DDTC on those projects, as needed.

**IF NO - SHWD must determine if an occupied lek is within 2 miles of the project boundary**

1. AI will determine the distance of the project boundary from an occupied lek using the information submitted by the PM on the attached spreadsheet.
  - a) If an occupied lek is further than 2 miles away from the project boundary, no stipulations are needed;
  - b) If an occupied lek is > than .25 miles but < 2 miles from the project boundary, there are seasonal timeframe stipulations where disturbances should be limited. WGFD asks that disturbance be reduced or stopped between March 15 and June 30 if possible. If not possible, activity should be limited to between 8 am - 6 pm. If questions arise as to what would be considered a disturbance, contact the WGFD. Operation and Maintenance activities are permissible anytime.
  - c) If an occupied lek is within .25 miles of the project boundary, there can be no surface occupancy. This means no surface facilities including roads can be put in place. How this would be interpreted for a cleanup project would need to be discussed on a case-by-case basis with the WGFD.
2. If thresholds b) or c) are met for a project area, the SHWD PM is expected to apply the appropriate and applicable stipulation(s) to the project approval documentation and ensure that they are being followed by the proponent.
3. The locations of occupied leks **are not available to the public** which is why AI and Chad are our sources for this information. Consequently, do not share any lek location information with the public or project proponents/volunteers.

PLEASE SEE THE FOLLOWING FLOW CHART  
FOR AN OVERVIEW OF THIS PROCESS

### Decision Tree for SHWD Implementation of the Sage Grouse Executive Order



## STP CHECKLISTS

### Sage Grouse Executive Order STP Implementation Checklist

- \_\_\_ Work will be conducted within a city or town limit, OR work will be conducted as part of an emergency response, OR work was initiated prior to August 1, 2008, AND is within a defined project boundary. No further action is necessary.
- \_\_\_ Work will be conducted outside of a city or town limit, or is not part of an emergency response, or was not started after August 1, 2008. Spreadsheet completed and submitted to Alan Thompson for Core Area determination. Date submitted\_\_\_\_\_.
- Project is determined to be within a Core Area. Date of determination\_\_\_\_\_.
- \_\_\_ STP project manager provides email notification to WGFD ([Mary.Flanderka@wyo.gov](mailto:Mary.Flanderka@wyo.gov) or [Scott.Gamo@wyo.gov](mailto:Scott.Gamo@wyo.gov) and copied to [Gwen.Booth@wyo.gov](mailto:Gwen.Booth@wyo.gov)) that a pending project review is underway. WGFD will notify the STP project manager with contact information.
- \_\_\_ Engineer is instructed to contact WGFD using the contact information provided by WGFD in the step above. Date instructed\_\_\_\_\_.
- \_\_\_ Engineer submits information (including the output of the Density Disturbance Calculation Tool [DDCT]) to WGFD and copies STP Project Manager. Date copy received\_\_\_\_\_.
- \_\_\_ WGFD provides letter with recommended protective stipulations and other mitigation measures. Date letter received\_\_\_\_\_.
- \_\_\_ A meeting with WGFD is needed to negotiate stipulations and mitigation measures: Yes \_\_\_  
No \_\_\_. If yes, date of meeting\_\_\_\_\_.
- \_\_\_ STP Project Manager verifies WGFD stipulations and measures are incorporated into the construction plans and specifications for the project. Date verified\_\_\_\_\_.
- Project is determined not to be within a Core Area. Date of determination\_\_\_\_\_.
- \_\_\_ An occupied lek is greater than 2 miles from the project. No WGFD stipulations are needed.

\_\_\_ An occupied lek is greater than 0.25 mile and less than 2 miles from the project. Clarification letter requested and received from WGFD on limiting/stopping disturbances between March 15 and June 30, or limiting disturbances to between 8 a.m. and 6 p.m., and what actions constitute a disturbance. (Routine O&M [not drilling] are permissible anytime.

Date requested\_\_\_\_\_. Date received\_\_\_\_\_.

\_\_\_ An occupied lek is within 0.25 mile of the project. Meeting with WGFD to clarify 'no surface occupancy' stipulation and a letter requested and received from WGFD specifying allowed actions. Date of meeting\_\_\_\_\_. Date letter received\_\_\_\_\_.

\_\_\_ STP Project Manager verifies WGFD stipulations and measures are incorporated into the construction plans and specifications for the project. Date verified\_\_\_\_\_.

NOTE: Locations of leks are not available to the public. Do not share lek location information.

### **Cultural Resources Inventory and Threatened and Endangered Species Survey Checklist**

\_\_\_ Cultural Resources Inventory and Threatened and Endangered Species Survey report received from consultant as stipulated in STP Project Scope of Work.

\_\_\_\_\_ Date Received

\_\_\_ Cultural Resources Inventory and Threatened and Endangered Species Survey report reviewed by project manager and forwarded on WDEQ letterhead to: *State Historic Preservation Officer, Wyoming State Historic Preservation Office, 2301 Central Ave., Cheyenne, WY 82002.* (See copy of example transmittal letter attached)

\_\_\_\_\_ Date Sent

\_\_\_ Response to Cultural Resources Inventory and Threatened and Endangered Species Survey report received by WDEQ from Wyoming State Historic Preservation Office and forwarded to Consultant.

\_\_\_\_\_ Date Response Received from SHPO

\_\_\_\_\_ Date Forwarded to Consultant

PRINTED ON DEQ LETTERHEAD AND SIGNED BY DEQ PROJECT MANAGER (NOT  
CONSULTANT)

**EXAMPLE COVER LETTER**

Date

Ms. Mary Hopkins, State Historic Preservation Officer  
Wyoming State Historic Preservation Office  
2301 Central Ave.  
Cheyenne, WY 82002

**RE: Threatened, Endangered, and Candidate Species Surveys and Cultural Resources Inventory for the  
PROJECT NAME Storage Tank Remediation Project**

Dear Ms. Hopkins:

The Wyoming Department of Environmental Quality (WDEQ) Storage Tank Program (STP) is conducting a soil and groundwater remediation project in the **Project Location** area of sites with previously leaking aboveground and underground storage tanks. As part of this project, WDEQ/STP contracted with **Contractor Name** to have species surveys and a cultural resources inventory completed at the **number of sites** sites within the project. This letter transmits a copy of the final document prepared by **Name of Firm Authoring Report (Example; Real West Natural Resources Consulting)**.

Please call me at (307) **xxx-xxxx** if you have any questions or concerns regarding the enclosed report.

Sincerely,

**Project Manager Name**

WDEQ/STP District #**X** Project Manager

Enclosure: Threatened, Endangered, and Candidate Species Surveys and Cultural Resources Inventory

cc: **XXX** Project File: SRF **XXX**, **XXX** County