MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET

OCTOBER 27, 2020

AGENDA ITEM: MODIFIED MITIGATION POLICY APPROACH FOR UNSUCCESSFUL OIL AND GAS WELLS (DRY HOLES) IF PROPERLY PLUGGED AND ABANDONED

ACTION NEEDED: EXECUTIVE ACTION TO APPROVE THE PROPOSED MODIFIED MITIGATION POLICY APPROACH AND IMPLEMENTATION PROCESS

SUMMARY:

This agenda item addresses circumstances unique to the oil and gas industry, and its scope is limited to specific circumstances outlined below.

The MSGOT-approved sage grouse mitigation framework incorporates the Habitat Quantification Tool (HQT) to estimate changes in vegetation and environmental conditions and to quantify and calculate debits associated with a development project. Here, the focus is on drilling a new well that is regulated by the Montana Board of Oil and Gas Conservation (MBOGC or Board) and that turns out to be unsuccessful.

The HQT looks at changes in functional habitat attributed to the direct and indirect impacts of a project for the length of time a developer expects the project to be on the landscape. Using data provided by developers, the HQT results scale proportionally to the project type and any new permanent or temporary features like roads, the project size, whether the project is above or below ground, and the underlying habitat quality at the project location. Lastly, the HQT results also scale to and incorporate the element of time (or project duration). The HQT recognizes three phases over the full life of a project: Construction, Operations, and Reclamation. Results reflect changes in habitat quantity and quality in each phase, respectively, and ultimately, for as long as a project is on the landscape.

In Montana, one estimate is that one out of every ten exploratory oil and gas wells drilled in sage grouse habitat is successful, and the remaining nine are not. An unsuccessful well means that the Operator experienced a "dry hole" that will not produce oil or gas in sufficient economic quantities to transition the well to produce for years to come, or, alternatively, drilled the hole in a location that is not suitable for an injection well. The assumption of "success" did not bear true. Thus, the developer terminates efforts to further develop the well within a short period of time after the initial drilling activity.

However, the mitigation framework requires that impacts be estimated and offset prior to implementation of development projects, consistent with universal mitigation principles. For developers who decide to offset impacts by making a contribution to the Stewardship Account instead of implementing their own mitigation projects, the contribution is made *after* obtaining a permit and deciding to drill the well but *before* the start of drilling activity. The contribution, therefore, is made without knowing whether the well will be successful or not and what the project's actual duration will be. An Operator's assumed success, the actual uncertainty around whether or not a well will be successful, and the requirement to mitigate for the full life of a project up front do not align well for new oil, gas, or injection wells.

In the case of oil, gas, or injection wells, this means that an Operator's contribution to the Account presently includes the HQT Operations phase, based on the assumption of success. The total amount includes the Operations phase, even if the well turns out to be dry hole and the well does not convert to production (or injection activities). In reality, unsuccessful wells or dry holes do not have an Operations phase once the well is properly plugged and the site properly restored according to the laws and regulations implemented by the Board.

The proposed modified policy approach for unsuccessful wells accommodates the speculative nature of the industry and the uncertainty around whether or not a well will be successful. At the same time, the proposed approach ensures that mitigation is provided in advance and in full, if in fact, the well does turn out to be successful.

Under the proposal, all Operators complete consultation with the Program. Mitigation is determined prior to the Operator submitting an application to drill to the Board. During the consultation process, the HQT results will be partitioned out as the Construction phase (drilling), Operations (operational life of the well assuming it's successful), and Reclamation (period of time required for the site to resume providing pre-project level functionality and vegetative cover after removal of all infrastructure). Upon receiving a permit to drill and immediately prior to drilling activity, Operators who select the Stewardship Account Option, make their contribution to the Account–assuming success.

If the well is unsuccessful (i.e. a dry hole), the Operator provides their required notice to the Board and begins efforts to properly plug the well and reclaim the site. Upon satisfying the regulatory requirements set forth in law, administrative rules, and as implemented by the Board, the Operator may submit a refund request to the Program equivalent to the Operations phase portion of the original contribution. Refund requests must be submitted within two years of the date plug/abandon efforts were approved by the Board. This provides ample time for an Operator to submit a refund request, while also assuring that all statutory and administrative rule requirements implemented by the Board were met and that the well is properly plugged and abandoned.

If the well is successful, the Operator moves forward and interacts with the Board over the life of the well. No refund opportunity is afforded.

Any additional surface disturbance required to drill the well (e.g. new roads) is also included in HQT calculations. These new temporary or permanent features will also be tracked as a part of this modified mitigation policy process. If the well is unsuccessful, the ultimate disposition on the landscape of these additional features, whether reclaimed fully and removed from the landscape or left in place after the well is properly plugged and abandoned will determine whether or not it is included within the scope of the refund. Specific details, including private landowner preference, will be considered on a case by case basis.

PROGRAM RECOMMENDATION:
The Program Manager commends MSGOT approve the modified mitigation policy approach for unsuccessful oil and gas wells or dry holes and the implementation process flow chart when the well is properly plugged and abandoned, and the site is reclaimed according to the legal requirements implemented by the Montana Board of Oil and Gas Conservation.