

**MINUTES**  
**MONTANA SAGE GROUSE OVERSIGHT TEAM**

December 18, 2018 Meeting Summary  
Montana State Capitol, Helena, Room 172

**Note:** Pursuant to Senate Bill 261 Section 1 (2015 Montana Legislature), meetings of the Montana Sage Grouse Oversight Team (MSGOT) are to be recorded electronically. The electronic recording is the official record. These summary minutes provide an abbreviated summary of the action taken and public comment. The time designations listed are approximate and may be used to locate the referenced discussion on the audio recording of this meeting. Access to the electronic copy of these minutes and the audio recording is provided from the Sage Grouse Habitat Conservation Program webpage hosted by the Montana Department of Natural Resources and Conservation at <https://sagegrouse.mt.gov>. The agenda, summary minutes, MSGOT meeting materials, and audio recordings are listed by meeting date on the MSGOT Meeting Archive webpage.

**Members Present**

John Tubbs, Montana Department of Natural Resources & Conservation, Director  
Jim Halvorson, Montana Board of Oil and Gas, Administrator  
Diane Ahlgren, Rangelands Resources Committee  
Senator Mike Lang, SD 17 Malta, Montana  
Mike Tooley, Montana Department of Transportation, Director, by Proxy  
Patrick Holmes, Montana Governor's Office  
Martha Williams, Montana Department of Wildlife, Fish and Parks, Director  
Casey Knudsen, Representative HD 33, by Proxy  
Shaun McGrath, Montana Department of Environmental Quality, Director

**Staff Present**

Ms. Carolyn Sime, Sage Grouse Habitat Conservation Program, Manager

**Call to Order**

00:00:01 Director Tubbs called the meeting to order.

00:02:05 Approval of July 24, 2018, September 14, 2018 and October 4, 2018 Meeting Minutes [Handouts 2, 3 and 4]. Motion to approve by Director Williams, seconded by Mr. Holmes. Motion passed unanimously

**Reports and Implementation of Executive Order 12-2015**

00:02:40 Director Tubbs: Continues to support the Program as they work through the process of the rule and legal review. There are a number of systems in place. Biggest challenge is to take some decisions MSGOT made at the last meeting and put them in place.

00:03:25 Mr. Holmes: Thanked the Program for the hard work to get mitigation plans finalized in time for MSGOT to make decisions at today's meeting. The Western Governors Association adopted a policy resolution last week [Handout 5]. It covers the topic of compensatory mitigation, including principles and values the governors want to see moving forward from our federal partners concerning mitigation strategies. It clarifies what state authorities exist and the principles around mitigation that the states value. The work MSGOT is doing is consistent with the policy. Other states may have diverse approaches, but all 22 governors supported this resolution and it represents where the governors stand on mitigation that extends beyond the sage grouse issue.

00:05:19 Senator Lang: No report.

- 00:05:25 Director McGrath: Looks forward to being a part of MSGOT.
- 00:05:44 Ms. Ahlgren: No report.
- 00:05:50 Director Williams: Will be participating in the Western Association of Fish and Wildlife Agencies meeting in January as a member of the Executive Oversight Committee.
- 00:06:22 Administrator Halvorson: No report.
- 00:06:35 Ms. Sime: The handout Balancing Development and Conservation [Handout 6] describes background work the Program has been doing to balance development and conservation though the combination of Executive Order's consultation requirements and the Stewardship Act's provisions. The handout includes project submitted for review between January 1, 2017 and October 31, 2018. There have been 925 projects submitted for review and consistency with the EO. Of those reviews, we completed 919 projects. Reviews have been completed for four of the remaining projects and one is included in today's agenda for MSGOT approval. One project is currently under review.
- The Programs roll is not to issue permits. That responsibility resides with the respective state and federal permitting agency. The Program recommendations advance with the permit applicant to be considered at that level. The key thing to note is that the Program has reviewed a wide variety of proposed development projects in sage grouse country. Hopes this dispels any lingering concerns that the Program is slowing down projects.
- Based on the first grant cycle, for funds appropriated in 2015 for conservation projects, three grant projects resulted in 43,000 physical acres of sage grouse habitat conserved. This equates to 900,000 credits created as calculated by the HQT tool. There have been expenditures of approximately \$2.8 million from the Stewardship Account. Those funds were leveraged with \$6.6 million in matching funds from state and private sources. These were wise investments by the state terms of conservation.
- The Program will be proofing data queries one last time and have updates just before the legislative session.
- 00:10:39 Director Tubbs: Asked if the 925 and 919 numbers for projects submitted, include only project within sage grouse habitat or includes projects outside of sage grouse habitat.
- 00:10:58 Ms. Sime: These are projects that are within sage grouse habitat, unless the project itself included portions that go beyond sage grouse habitat.
- The Program has been working on the Triangle Communications proposed cell tower in southern Phillips County. This project was discussed off and on for the last several months, including the September 14 MSGOT meeting. Triangle Communications resubmitted the project at the location originally proposed in 2016, at the DY Junction. Triangle Communications submitted a request for a complete waiver of the mitigation on Sunday evening, December 16, with an updated document sent, December 17. The next steps are for the Program will take a more detailed look at the request and meet with Triangle Communications. The Program will complete the review and allow adequate time for public notice and comment, we'll bring it to MSGOT for consideration and decision at the earliest opportunity.
- 00:12:43 Director Tubbs: Invited Tim Nixdorf with Triangle Communications to provide public comment later during today's meeting. Need to allow the Program ample time to complete their review because this is an important decision for MSGOT, since it will be the first waiver request and it needs to be done right. Need to allow enough time for Program staff to put together a solid proposal. MSGOT will hold a meeting in the next

several weeks to consider the waiver. The timing of this proposal prevented it from being presented at today's meeting due to the public notice requirements.

00:14:07 Ms. Sime: The Conservation Assessment for 2020 will be a topic of discussion for Director Williams during the Western Association of Fish and Wildlife Agencies meeting in January. At practically every turn, a status review was range-wide, with a special look at a couple of localized populations. Montana, Wyoming, and Oregon continue to be strong holds. Idaho is a close fourth. These areas have large blocks of habitat largely still intact. Most recently, comprehensive status reviews in 2010 determined sage grouse protection was "warranted but precluded" and in 2015 the Service determined the protection was "not warranted", largely because the states and federal land management agencies had plans that would adequately address the causes of habitat loss and fragmentation and would likely be successful.

Montana will need to address, what is happening to the land, and how are the birds doing? Preparations for the assessment have been underway for about a year now, and even longer in some respects. States will have to report on implementation of their state strategies individually. States will need to address, what commitments were made in the state plans? Have the plans been implemented and have the plans been changed. If so how? How have the state plans addressed the causes of habitat loss and fragmentation? Any change in sagebrush availability between what was measured in 2015 and 2020?

Montana will analyze our data and provide information about habitat gains and losses. This information will primarily come from the Program and the federal land management agencies and any additional conservation partners. This could include land trust organizations and activities on private lands.

The key focus is what happened on the land, based what the Service relied on when making their decision in 2015. The second key focus will be on how the bird is doing. States will be asked to report on the long-term trends for sage grouse populations not just since 2015. Have the numbers trended up or down? What do we know about possible weather events. FWP is the key partner in reporting those numbers.

The Program and FWP will be working with the Western Association of Fish and Wildlife Agencies, other state sage grouse programs and fish and wildlife agencies. All the western states will contribute their information and are expected to write individual narrative reports. Federal agencies (NRCS, BLM, USFS) will be contributing their information. There is also interest in considering other conservation work by private organizations and private landowners. A conservation assessment team will compile it all and provide a single report to the U.S. Fish and Wildlife Service.

To meet the timeline for this process, states are expected to start compiling information now. The narrative report about commitments and implementation is due in the fall of 2019. States will be contributing conservation-orientated data through June 2019. FWP will be contributing population data through to 2020. Final Western Association of Fish and Wildlife Agencies Report expected October 2020.

When the 2015 "not warranted" decision was made, Montana's program had not yet been fully implemented. Executive Order 12-2015 had just been issued and Stewardship Act had just passed. Montana had just put the regulatory framework in place but had a long history of monitoring. Montana had collaborative partnerships in place with BLM, NRCS, and USFS. There was a strong foundation of stewardship of sagebrush grasslands by private landowners and the agricultural community. Montana may be late bloomers, but we have not only caught up, but surpassed many people's expectations and are setting examples for other states to follow. This is especially true for the mitigation framework and analytical methods. Our worst fears have not come true. The Program has not

halted Montana's economy and sage grouse populations are secure. Acknowledged the Program staff, DNRC, private individuals and organizations, industry and hunters for their contributions.

- 00:24:43 Director Tubbs: Recognized the public, stakeholders and key partners who have helped with discussions related to the HQT and policy documents. The input was also useful for Department of Interior and the federal Resource Management Plans.
- 00:26:03 Senator Lang: Asked if the assessment would include participation by private landowners, at the table when compiling the data.
- 00:26:57 Ms. Sime: The goal is to include private landowner contributions. The assessment team has not been formed yet. How data contribution will be accomplished is still being determined. It could be through a web site where entities would upload information. The key is to quantify work and may be harder to quantify on private land.
- 00:27:40 Senator Lang: All federal agencies work closely with land stewards or ranchers. There is a story to tell. Takes objection that bureaucracies and land trust organizations take the benefit for this. This wouldn't happen without the cooperation of those on the land. One of the questions he is asked by the public is, how Montana is credited for good works when the state is convoluted together with 11 other states. Montana has to take the brunt of others who may have misappropriated their sage grouse management over time. We just heard that sage grouse populations are good in Montana. Montana has not changed habitat in the last 35 years. Asks if some of the requirements applied over the 11 western states, would not apply to Montana because we are special. Asks if there is a way around this or we are just in the group that gets beat up for an endangered species.
- 00:29:52 Director Williams: How Montana gets the benefit for good work and habitat conserved on the ground is a good question. FWP is looking at this in relation to a number of species. We need to continue to do good work and be engaged. The ESA doesn't allow a listing or delisting to be carved out on a state boundary basis. That doesn't mean it should be a disincentive to do good works.
- 00:31:06 Director Tubbs: Wyoming is one of the stronger sage grouse conservation programs in the nation. Our shared populations in Montana gives us an indication were doing a great job. Genetics of the bird tell us there isn't much difference between the populations between the 11 states. We get tripped up between the other states when someone isn't satisfied. But for sage grouse, there is a unified voice out there. The population in Montana, Wyoming and Idaho has got a consistent program that will help us. Hopefully the USFWS will recognize that there are good investments being made in these three states. The bird is not a federally listed species and management remains with Montana. What we are doing here will insure we won't see a listing. Without a Montana sage grouse conservation program, litigation would cause the bird to be listed.

**Informational: Montana Fish Wildlife & Parks, Montana Greater Sage-grouse Population Monitoring [Handout 7]**

- 00:36:16 Catherine Wightman, FWP Wildlife Habitat Coordinator, Powerpoint Presentation
- 01:00:30 Director McGrath: Asked why the confidence interval narrows at lower numbers, as shown on the graph, page 5 of the report.
- 01:01:00 Ms. Wightman: This is an artifact of the model. FWP had less variability and more confidence in the data for those years. Larger confidence intervals are shown in years where there is more diversity in the counts.

- 01:02:04 Director McGrath: Asked if the data would be comparable across state lines.
- 01:02:38 Director Williams: FWP is coordinating with the other states so data are compatible across state lines.
- 01:03:02 Ms. Wightman: There are coordinated efforts that incorporate management zones made at the range wide scale.
- 01:03:35 Director Tubbs: Asked for updates from federal partners.
- 01:03:47 Mr. Kyle Tackett, Natural Resources Conservation Service: NRCS will be participating in the 2020 review. Everything goes into an aggregate system and will be presented as one response, nationally. Private landowner efforts will be included, but landowner identification will be kept confidential. A new farm bill should be signed soon. Since 2015, NRCS focus was to work with landowners to keep rangelands intact. This is accomplished through easements. NRCS has closed over 100,000 acres of easements in sage grouse habitat and developed over 700,000 acres of planned grazing systems. NRCS objective is to keep ranching sustainable and landowners vested in the community NRCS has seeded over 15,000 acres back to perennials Expect to exceed 20,000 acres seeded in the next couple of years. Acknowledged partners like FWP, land trusts, state lands and conservation districts who collaborate with NRCS.
- 01:06:44 Mr. Tom Watson, State Conservationist, Natural Resources Conservation Service: New to position. Traveling around the state to meet partners.
- 01:07:38 Director Tubbs: The NRCS contribution to sage grouse conservation is invaluable. The way the field offices work allows private landowners to engage with technical experts to protect habitat.
- 01:08:37 Mr. John Carlson, Bureau of Land Management. BLM's acting state director, John Raby is leaving for a position in Nevada. BLM continues to implement state land use plans.

**Conservation Spotlight: An Introduction to the Rangeland Analysis Platform [Handout 8]**

- 01:11:12 Dr. Matthew Jones, Remote Sensing Ecologist and Dr. Brady Allred, Rangeland Ecologist, University of Montana, Powerpoint Presentation.
- 01:33:10 Director Tubbs: Appreciates that this is a free on-line tool, available to the public.
- 01:34:26 Ms. Ahlgren: Has monitored her ranch lands for 20 years and thinks the tool could be very useful for the program.
- 01:34:57 Director Tubbs: Asks, if there is a feedback loop for a conservation manager, back to the platform developers that would allow for input of local knowledge to the application.
- 01:35:32 Mr. Allred: Currently there is not but there are ideas being discussed that might allow that feedback. This is just another tool in the tool box and is meant to be used in conjunction with the landowners or managers on the ground, to inform decisions.
- 01:36:17 Director Tubbs: On the Montana state page, there is a data collector for draught conditions that could be helpful.
- 01:37:15 LUNCH BREAK

01:37:16 Director Tubbs: Called meeting to order. The first order of business is the adoption of the Rules. Adoption of the rules provides authority for the Program to make recommendations and MSGOT to make decisions.

**Final Adoption of Proposed Administrative Rules on Stewardship Grants and Mitigation.  
Executive Action to Adopt Proposed Administrative Rules: [Handout 9]**

01:38:22 Ms. Sime: MSGOT is asked to consider approval of the Administrative Rules. The proposed rules will knit together the two documents and the Executive Order and Stewardship Act in a comprehensive way. The proposed rules were reviewed on May 14, and again on September 14. After additional public comment, MSGOT approved the underlying policy guidance and HQT documents during the October 4th meeting. The Administrative Rules direct the implementation of those documents. The rules were published in the Montana Administrative Register. There was a 30-day formal public comment period and one public hearing. Six people attended the hearing with two offering oral comment. The Program received seven written public comments.

Changes to the proposed rules are included in the handout. Under New Rule I, on page 1, Number 3, language was added to clarify when public comment would be triggered in connection with minor version changes. New Rule I, Number 4, involves a terminology clean up. The change deletes the word credits and refers to them as functional acres gained and deletes the word debit and refers to them as functional acres lost. Under New Rule I, Number 4a also involves a terminology clean up by changing credits or debits to functional acres gained or lost, respectively. A comment received stated the phrase "all affected parties" was overly broad. This was changed to "every party to the mitigation transaction for the project" for clarity. The underlying concept was related grandfathering so that only those directly engaged in a transaction would need to sign off on changes made.

On the top of page 2, New Rule I, Number 4a iv, any affected third party was stricken as this was meant to include only those directly involved in a transaction.

New Rule I, Number 5 clarifies language so that past versions of the HQT and the technical manual itself would be blocked from further use as new versions are used in the future.

New Rule I, Number 6 clarifies language, functional acres lost or gained when talking about the HQT model. The HQT is applied by the Program to perform the calculations. The Program will develop a way for the public to access the tool in the future. New Rule I Number 6a and 6e clarify functional acres gained rather than credits.

New Rule II (14.6.104) refers to compensatory mitigation and the policy guidance document. Number 1 corrects a typo. Number 4 adds language to clarify when public comment would be triggered in connection with minor version changes. The difference being that these minor changes would not initiate new rule making.

Language was inserted in New Rule II, 6a to clarify it only references those directly involved in the transaction.

New Rule 11 number 8, references the policy guidance document and the Program performs the calculations as appropriate for the project.

New Rule III Methods to Track and Maintain the Number of Credits and Debits Available. In response to public comment, language was inserted to include the service area.

New Rule IV Methods to Administer the Review and Monitoring of MSGOT Funded Projects. New language was inserted to include the legal description and added service areas.

- 01:50:36 Director Tubbs: Asked for public comment.
- 01:50:55 Mr. Jeff Feiss, General Manager Telecommunication Association.
- 01:53:53 Director Tubbs: Asked for additional public comment. Hearing none, asked for MSGOT discussion.
- 01:54:18 Administrator Halvorson: Ask for an explanation on the distinction between major and minor.
- 01:54:50 Ms. Sime: Major and Minor are a way to keep track of the magnitude of changes in the documents through time. Major changes on the policy side could involve changing the multipliers. The outcomes could result in significant changes. Those type of changes rise to the level where MSGOT should go through formal rule making. All GIS models require a certain amount of care and feeding. Updating lek layers for example could be annual. The learn as you go situations may be brought before MSGOT, where the decision to make a change at the next adaptive management update or go through new rule making could be determined. It is about how big the change is and how likely it is to impact results. Basic care and feeding would be considered minor.
- 01:56:54 Administrator Halvorson: Page 1 of the Rule, debits and credits were changed to functional acres but on page 3 it goes back to debits and credits. Asked if the definitions in the rule cover those two different uses.
- 01:57:55 Ms. Sime: There are already statutory definitions for HQT, credit and debit. There are definitions in the underlying documents as well. If a definition isn't in the rules it is in the documents.
- 01:58:19 Director Tubbs: Understands that functional acres were used when referring to HQT output and credits or debits when referring to the policy guidance.
- 01:58:52 Ms. Sime: The statutory definition of credit and debit as a unit of trade.
- 01:59:10 Ms. Ahlgren: On bottom of page 2 and 3 there are two number 8's. Speaking to the telecommunication concerns, this has been thrashed and hashed out and we know it isn't perfect. She will vote to approve the rule because there is enough flexibility to tweak or change what we need to as we go along. Sometimes you just must take the plunge and work through it.
- 02:00:33 Senator Lang: Where it says, every party to the mitigation transaction for the project, including but not limited to, we took out all affected third parties. Asks who are the other parties, if third parties can't be involved. Couldn't that have been simpler? Seems like were leaving a door open.
- 02:01:26 Director Tubbs: Third party is a broad category. We are limiting it to every party to the transaction. The landowner or the land trust are parties to the transaction. It's not just limited to the three cases listed below.
- 02:02:18 Senator Lang: Asks if it includes other people, rather than just those three listed.
- 02:02:24 Director Tubbs: That is correct.

- 02:02:47 Director Williams: Appreciates the Program answering and adjusting the rules based on the public comments. It's not possible to perfectly address all comments. The Program made a strong attempt to address the comments; more comfortable with the product going forward. Believes there will be opportunities to address economic infeasibility going forward.
- 02:03:39 Director Tubbs: Parameters within the documents provide MSGOT with a set of tools to address the economic concerns presented by the telecommunications representatives, as discussed at the last MSGOT meeting. Asked MSGOT to take a plunge forward after three years of working on this. Will maintain open communication because this is the strength of the Program. Aware of the Governor's concerns about managing the state's economy. The Program has reviewed 919 projects with 30 new cell towers included. New fiber optics equaled 605 miles. We need to insure debits accurately reflect the technology of the tool. Once the rule making is approved, staff will have more time to work on these things. If MSGOT fails to approve the rule today, the rest of the agenda is terminated.
- 02:06:10 Director Tubbs: Called for a motion.
- 02:06:11 Mr. Holmes: Moved that MSGOT take executive action to adopt as final the proposed administrative rules. Seconded by Director Williams.
- 02:06:38 Senator Lang: Asked if there needed to be a super majority.
- 02:07:14 Director Tubbs: No, it does not need to be a super majority. Called for a vote. Senator Lang voted no, and Representative Knudsen voted no by proxy. All other MSGOT members voted aye, Director Tooley voted aye by proxy. Motion passes.

**Rosebud Coal Mine AM5 Greater Sage-grouse Mitigation Plan: [Handout 10]**

- 02:08:00 Ms. Sime: The Rosebud coal mine is a permit amendment. Would increase the Area B permit area by 9,108 acres and the new disturbance area will include 5,547 acres. The project is being analyzed under an EIS through the Department of Environmental Quality. MSGOT is asked to consider this project at this time so DEQ can continue to work through the EIS. The October 2018 policy guidance and HQT documents were applied as amended on October 4. Western Energy decided to make a donation to the Stewardship Account with application of the 3% discounting method.
- Page 11 of the mitigation plan includes a map showing the habitat functional value as being low quality to begin with, which results in a lower score. Page 12 shows the habitat after the project is implemented and demonstrates that the habitat is bluer.
- Page 13 includes the results. Because Western Energy opted to contribute to the Stewardship Account an additional 10% is added. The Program recommends MSGOT approve this mitigation plan.
- 02:12:35 Director Tubbs: Asked for public comment. Hearing none, entertained a motion.
- 02:12:49 Senator Lang: Moved that MSGOT approve the Rosebud Coal Mine mitigation plan. Seconded by Administrator Halvorson.
- 02:13:02 Director Tubbs: Asked for MSGOT discussion. While we have Core, General and Connectivity areas delineated, the tool is just analyzing the data. Even though this project is in General Habitat, debits is driven by the information in the GIS database, not the line that divides habitat categories. Sometimes we might have habitat that is great in



General Habitat or habitat that is not great in a Core Area. The line doesn't drive the score.

02:14:27 Director Tubbs: Asked for additional MSGOT discussion. Hearing none, called for a vote. All MSGOT members voted aye, Director Tooley and Representative Knudsen voted aye by proxy. Motion passes.

**American Colloid Company Amendment 5 Permit Amendment to Opencut Permit 8 Warren Mine Site Sage Grouse Mitigation Plan: [Handout 11]**

02:14:52 Ms. Sime: American Colloid proposes to amend an existing bentonite mining permit to add an additional 175 new acres of disturbance over a 15-year period. The Program has been working with ACC and the BLM on this project for quite a while. The Program applied an earlier version of the model and a later version of the Policy Guidance document. This was to ACC's benefit. Page 21 of the mitigation plan describes the summary results for this project. In this case, ACC opted to make a contribution to the Stewardship Account. The amount, after applying the 3% discount would be \$25,280.87. The project is in the Central Montana Service area. Program recommends MSGOT approve this mitigation plan.

02:17:21 Director Tubbs: Asked for public comment.

02:17:33 Ms. Mary Corina, American Colloid Company.

02:18:31 Director Tubbs: Asked for additional public comment. Hearing none, asked for a motion.

02:18:45 Senator Lang: Moved that MSGOT approve the American Colloid Amendment 5 mitigation plan. Seconded by Mr. Holmes.

02:00:00 Director Tubbs: Asked for MSGOT Discussion. Asked for the debit obligation of 3383 debits, be included in the project discussion. Wants practitioners to focus on the debit and credit number. How you achieve it is a project proponent's choice. The last two projects chose a contribution. There are other choices being made by applicants. State the debits that are overcome. There are other options like the transmission project that got credit through their good work of burying lines.

02:20:19 Director Tubbs: Called for a vote. All MSGOT members voted aye, Director Tooley and Representative Knudsen voted aye by proxy. Motion passes.

**NorVal Cooperative Inc. Black Coulee Transmission Line Project Mitigation Plan [Handout 12]**

02:20:38 Ms. Sime: The following three projects are transmission line projects in conjunction with the Keystone pipeline. While there is litigation pending for the Keystone pipeline, these projects are in association with the pipeline. The Program has worked with the rural coops and their consultants to try to move these projects forward, so they can be ready to implement once any legal challenges have been resolved. The proponents asked to be on today's agenda, so their projects can be implemented without delay from MSGOT's scheduling.

NorVal Coop proposes to construct 50 miles of 115kV transmission line, approximately 22 miles of distribution line and two substations in Valley and McCone counties in association with the Keystone pipeline. Permitting includes the DEQ and BLM. NorVal has done great work to minimize their impacts, in part by burying lines. NorVal has opted for permittee responsible mitigation by identifying areas where they could bury additional lines. They have either recently buried or will bury an additional 66 miles of transmission

lines by the end of 2019. Those segments created surplus credits. On page 19, Table 9 of their mitigation plan shows a credit project, Project 3303, that created 25,975 credits. A policy incentive of 10% is added for newly created functional acres. A second credit project, Project 3308 resulted in 109,823 credits after adding the 10% policy incentive. When you compare the credit projects with the debit project, NorVal has a 101,266-credit surplus. NorVal can choose to use these credits for their own future work or they may work with other proponents who may need credits. This is a choice NorVal can make.

Additionally, the new transmission lines NorVal proposes will either be buried or will be non-nest facilitating. Otherwise the project is consistent with the Executive Order. The Program recommends MSGOT approve this mitigation plan.

- 02:26:38 Director Tubbs: Asked for public comment.
- 02:26:43 Ms. Patty Hamblock, Water & Environmental Technologies, consultant for NorVal Electric Cooperative.
- 02:28:37 Director Tubbs: Asked for additional public comment. Hearing none, asked for a motion.
- 02:28:48 Director Williams: Moved that MSGOT approve the NorVal Black Coulee Transmission Line Mitigation Plan. Seconded by Senator Lang.
- 02:28:59 Director Tubbs: Asked for MSGOT discussion. Complemented the Coop for figuring out the Program and taking advantage of the incentives available as well as generating credits beyond their needs. This demonstrates where we hope to be using foresight and investment. Acknowledged this comes at an expense to them. Comfortable that MSGOT meets the federal constraints on project implementation because these are pre-permit transactions that prepare the projects for implementation should the federal court give a green light for the substations to proceed.
- 02:30:29 Director Tubbs: Called for a vote. All MSGOT members voted aye, Director Tooley and Representative Knudsen voted aye by proxy. Motion passes.

### **Big Flat Electric Cooperative PS-09 Transmission Line Project Mitigation Plan: [Handout 13]**

- 20:30:50 Ms. Sime: The Big Flat Electric Cooperative Transmission Line Project includes installation of 115kV transmission lines, and one substation. The route was originally proposed in prior to the 2015 BLM land use plan amendments for sage grouse and Montana's Executive Order 12-2015. There were five alternatives on the table when the program began working with Big Flat Electric Cooperative (BFEC). They have been narrowed down to two. This project is brought before MSGOT to consider approving both alternatives with mitigation outlined in their mitigation plan so that BFEC can continue to explore their options.

Page two of the mitigation plan outlines the two options. One alternative is the Proposed Centerline and the second is Alternative 3. The key Program concern about the Centerline is the route goes through an NSO of one lek and is within two or four miles of others. The Alternative 3 Route adds 3 miles to the route and is the most consistent with the EO. Table 3 on page 12 gives a side by side comparison of both alternatives. Alternative 3 is the states preferred route. The route results in fewer debits but comes with higher construction costs and need for additional cultural surveys and three new rights-of-way.

Page 13 - 14 of the mitigation plan describes the differences in a narrative format and how BFEC would fulfill their obligation. One facet of the project is its uncertainty.

Because Alternative 3 came about later in the negotiations and BFEC's planning process they haven't had time to fully consider the route. They would like to leave the opportunity decide how they will fulfill their obligation open at this time.

If BFEC opts to make a contribution to the Stewardship Account, the Program is asking MSGOT to recognize the additional \$1,010,000.00 costs that would be incurred by BFEC if they were to implement Alternative 3. The Program proposes MSGOT credit BFEC for the additional mitigation obligation in the amount of \$455,671.94

If BFEC opts to apply permittee responsible projects, their obligation would be proportional. If 100% of BFEC mitigation was met through permittee responsible credits their obligation would total 61,796 debits.

If BFEC chose some combination of permittee responsible and a donation to the Stewardship Account, they would be applied in proportion to the obligation. BFEC may also choose to work with a third party. The document preserves all the options for BFEC. They do not anticipate having to come back to MSGOT to seek approval of one of the economic feasibility policy tools. They ask for more time to consider the options while waiting for a decision from the courts on the associated Keystone pipeline. The project is within the Central Service Area.

MSGOT has options to make up the difference. Asked MSGOT to consider and recognize that BFEC will have additional costs if the route is changed to reduce impacts to sage grouse. The Program recommends MSGOT approve this mitigation plan.

- 02:40:42 Director Tubbs: Asked for public comment.
- 02:40:49 Mr. Doug Hardy, Montana Electric Cooperative Association, General Manager Big Flat Electric Cooperative.
- 02:41:09 Director Tubbs: Asked for additional public comment. Hearing none, asked for a motion.
- 02:41:15 Senator Lang: Moved that MSGOT accept the Big Flat Cooperative PS09 project. Seconded by Director Williams.
- 02:41:27 Senator Lang: Asked, if MSGOT approves this today and BFEC comes back and says they are going with the alternative line, could MSGOT give them a waiver to decrease the costs today, or does MSGOT have to do it later.
- 02:42:39 Ms. Sime: Today's decision is in the absence of a waiver. BFEC has indicated they are prepared to fulfill the obligation in full on their own accord. If that changes they would need to come back before MSGOT.
- 02:43:06 Director Tubbs: Asked for clarification about the Alternative 3 recommendation by the Program. We are recognizing the million-dollar expense to move the line to avoid leks. Asks if we are allocating credits worth a million dollars.
- 02:44:00 Ms. Sime: That is correct.
- 02:44:03 Director Tubbs: Asks, to offset those credits, if that is a donation. We are balancing credits and debits. It's not a negative gain proposed.
- 02:44:26 Ms. Sime: That is correct.

- 02:44:30 Director Tubbs: In that way he is comfortable. It is not a waiver in the sense of that process, but it does set a precedence. While not awarding the benefit to the centerline, there is a cost to doing business to accommodate the EO. MSGOT recognizes this and there are state purchased credits to reflect the additional costs of avoidance. There are costs and incentives to comply with the EO and avoid impacts.
- 02:46:00 Director Tubbs: Asked for additional MSGOT discussion.
- 02:46:07 Ms. Ahlgren: Had concerns and it was confusing having two alternatives. In the summary it states the project is in association with the Keystone pipeline. Does Keystone contribute if you are putting in a line specifically for this pipeline.
- 02:47:17 Senator Lang: That is for the permitting process, DEQ. They work together. Keystone did a lot of the work.
- 02:47:43 Director Tubbs: There is a rate-based system and there are a set of charges once they hook up.
- 02:47:55 Mr. Doug Hardy: It is different for every coop. Sometimes a coop will incur the costs and have financial guarantee of usage. Other times the larger company will put the money up front. They make sure the citizens don't incur the costs.
- 02:48:35 Director Williams: Understands the decision to want some assurance ahead of knowing if the Keystone pieces will fall in place. Here we have a number of variables working together. Concerned with the precedence of going forward and not knowing which alternative they will use and the contingency of everything falling in place. Asks if we are wanting to reward creativity and adhere to the incentives of the program and allows for more financial security moving forward. Questions the reason to move this forward when there are so many contingencies in place.
- 02:50:20 Ms. Gretchen Boardman, Big Flat Electric Cooperative, Project Manager: Alternative 3 came late after the company was set to implement the Centerline Alternative. The biggest caveat is knowing if they can get the ROW's in place. A lot depends on how those negotiations go and BFEC can better negotiate those ROW's if there are options. BFEC will do all they can to implement Alternative 3.
- 02:51:16 Director Tubbs: Each of the variables has an outcome where we can measure the debits and credits. If the approach varies from what is in the plan, they will need to come back. They want to get past the MSGOT approval step and get onto their next challenge.
- 02:52:04 Director Tubbs: Called for a vote. All MSGOT members voted aye, Director Tooley and Representative Knudsen voted aye by proxy. Motion passes.

**TRECO Fallon Transmission Line for Keystone XL Pump Station 13 Sage Grouse Mitigation Plan: [Handout 14]**

- 02:52:34 Ms. Sime: This project includes a 16 mile 115-kV transmission line and a new substation, and the line will service and existing substation. The project is in connection with the Keystone pipeline. The project footprint is entirely within private lands and most of the project is within the unincorporated municipality of Fallon.

The Program is asking MSGOT to consider a waiver. Most of the direct impacts are within the town of Fallon or within already disturbed habitat. As a result, the HQT score was very low. A small portion of the projects indirect impacts are on the opposite side of Interstate 94 and the Yellowstone River. Justifications for a waiver are listed in the mitigation plan. For example, the majority of the project's direct footprint is completely

outside of sage grouse designated habitat. Only 8% of the direct footprint is within General Habitat. The nearest lek is approximately 11 miles away. The number of debits the project would incur total 2,784.8. If approved by MSGOT, the mitigation obligation would be waived, and the rural electric coop would be relieved of having to secure credits. MSGOT could use state credits to offset it. The Program recommends MSGOT approve this mitigation plan.

- 02:57:06 Director Tubbs: Asked for public comment. Hearing none, asked for a motion.
- 02:57:18 Ms. Ahlgren: Moved that MSGOT accept the TRECO Fallon Transmission Line mitigation plan for the Keystone pump station. Seconded by Senator Lang.
- 02:57:30 Director Tubbs: Asked for MSGOT discussion. It seems there is one option where MSGOT accept a debit and kind of write it off. Or that we account for it by obligating an equal amount of credits that the state has purchased. Values state credits and wonder how we ignore the 2784 debits. Asked for policy discussion how MSGOT would document to the service that this is essentially zero impact. Our computer model didn't capture that your 11 miles from a lek and in the middle of a river, a highway or farm field disturbed habitat. It doesn't say zero. How do we get to zero?
- 02:59:13 Senator Lang: It's one of the things of the project we've tried to design. We've come up with this credit thing, but you can surely look at the thing and see its convoluted with the river and highway, farm fields. There are no sage grouse there.
- 02:59:33 Director Tubbs: Likes zero but needs some rule to get to zero so that we don't just have fractional corners nipped off because the Service will pay attention to any arbitrary approach.
- 02:59:56 Ms. Sime: Very much appreciates the spirit of the dilemma with facts like these. Right to ask, what is the justification to get to zero. The aerial imagery on page 2 of the mitigation plan shows that the indirect impact area includes the river and a fair amount of cultivated land, which is one reason why the HQT score is low to begin with. Zero may not be the strongest answer Montana could advance to the Service.
- 03:00:49 Director Tubbs: Asked for other ideas from MSGOT. Could we develop more objective guidance so that when we get to a fractional component it wouldn't be arbitrary? Asks if there is a different way to look at the model. Anecdotally, we can all come to the conclusion that there are no sage grouse impacts associated with this line in Fallon County. If we go zero, 2700 debits will be in the back of his mind as not being credited.
- It's kind of like when MSGOT excluded incorporated cities. MSGOT found a way to define it. One of the dilemmas here is that this particular town is not incorporated so it doesn't show up in our prior exception. Asks that MSGOT consider the zero value and ask the Program to report back at a future meeting (not necessarily the next meeting but maybe the one after that) and in terms of their ability to identify some thresholds. Let's not allocate the credits just yet. If in discussions with FWS about policy, can we develop an objective methodology that we can apply to future projects, so we aren't being arbitrary.
- 03:03:00 Director Williams: Curious to understand the 2876 perspective; where that falls within other projects. If we were to develop thresholds, would want to have some basis to understand what that means, it seems like a low number compared to others.
- 03:03:54 Ms. Sime: At the heart of it, the HQT looks at the difference in values between what is out there now and after a project is implemented. The results of the HQT model are very sensitive to the base map. You can take a 5-acre gravel pit and put it in high quality

habitat and get a high number. Take that same 5-acre gravel pit and put it in an area where the habitat map is very blue, you would get a small number. As far as the range it's probably not the right path to think about it in absolute value sense because it is relative to the size of the project, where its located as well as it's duration. If that 5 acres were a buried feature your impact time is the 1 -2 years it takes to bury it. But if that same 5 acres is something above ground on the landscape for a long time, then time is included. It's the difference between a buried feature like a buried pipeline, having fairly low numbers, and a transmission line above ground for a long period of time. A number of variables affect the absolute number when you run the same project through the tool. Rather than absolute values maybe there is a way to develop a tiering structure. If a project is in Core Habitat vs. General. What are those major breaks that suggest to us we would have a stronger concern or less strong concern.

03:06:06 Director Tubbs: Another way to look at it is an error in the model. Looking for a motion to vote not provide any credits for the remainder and allow the Program six months to consider what that means, and we can find a proper way to describe that is objective and not subjective so that common sense has some grounding. If at that point in time we were to reconsider it, could consider and allocating state credits to offset the debits. We would leave the Coop out of the discussion, so they can proceed with business.

The motion is to approve with zero credits allocated with a revisit in six months to consider if we have a long-term policy we can adopt, or we need to allocate credits at this time.

03:08:05 Director Williams: Moved to substitute the motion, approve the Tongue River Electric Cooperative Transmission Line plan with none of the credits allocated and for the Program to spend the next six months to determine the policy procedures to implement such a policy, if not MSGOT will come back and apply state credits. Seconded by Mr. Holmes.

03:08:55 Director Tubbs: Asked for additional MSGOT discussion.

03:08:57 Senator Lang: Asked if they can proceed with their project and within six months we tell them if they have to fulfill their debits.

03:09:12 Director Tubbs: MSGOT will tell ourselves if we need to apply state credits to the project or we accept it as an error. Tongue River Electric Cooperative is done.

03:09:30 Director McGrath: With that we will be developing our own policy around this issue.

03:09:37 Director Tubbs: Possibly, MSGOT may decide that debits are debits and you need to allocate the credits. There is a way to look at the puzzle to get to 0 but not ready to look at it today. Ultimately it will be status review and determination of warranted or not warranted in 2021.

03:10:19 Director Tubbs: Called for a vote. All MSGOT members voted aye, Director Tooley and Representative Knudsen voted aye by proxy. Motion passes.

### **Public Comment on Other Matters**

03:10:37 Director Tubbs: Asked for public comment.

03:10:56 Jody Bush, U.S. Fish and Wildlife Service. Montana's HQT is a useful effort and one of the leaders for the 11 states in the range of sage grouse. The HQT is just a tool. The Service encourages that the HQT reflects reality and the existing conditions. When developing a policy, when it doesn't make sense to have a debit in an area that is

swamped by other impacts, is something the Service supports. The Service wants real facts and number across the range. Where we can factually address where it doesn't make sense we want to do that. Offered assistance by USFWS staff if needed.

- 03:13:01 Mr. Tim Nixdorf, Triangle Communications.
- 03:18:24 Mr. Doug Hardy, Montana Electric Cooperative Association.
- 03:19:56 Mike Laphe, Nemont Telephone Cooperative.
- 03:21:06 Director Tubbs: Asked for additional public comment.
- 03:21:15 Director Mc McGrath: Was with Western Governors Association ten years ago. At that time a resolution was adopted that addressed wildlife corridors. The governors had been frustrated over the conflicts that came up over wildlife and development. They looked for the causes of these conflicts and how to get ahead of them. As an example, different agencies were not talking to each other. Wildlife was considered late in the process etc. Excited to see MSGOT is doing exactly what the governors were trying to address. Congratulated the team for work they are doing.
- 03:24:25 Director Tubbs: There will be challenges that come up in the legislative session about the team ability to get the job done. MSGOT took a big step today. Hope that people see that we are progressing. With about a million credits the state has invested we have the ability to access additional funds for conservation and preservation projects. Encourage partners to be creative to find ways to build credits.

### **Adjournment**

- 03:27:18 Moved to adjourn. Meeting adjourned without a formal motion.

Chair for this meeting:

/s/ Director John Tubbs