

These abbreviated summary minutes and the audio recording will become the official adopted minutes at the next Montana Sage Grouse Oversight Team meeting when they will be approved. Until then, they are considered a draft.

MINUTES MONTANA SAGE GROUSE OVERSIGHT TEAM

April 25, 2019 Meeting Summary
DNRC Headquarters, Montana Room

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

Staff Present

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

Call to Order

00:00:02 Director Tubbs called the meeting to order.

Denbury Resources Proposed Permittee Responsible Credit Project Ringling Ranch Limited Partnership (Paul D. Ringling Ranch Conservation) [Handout 1]

00:03:49 Ms. Sime: Introduced the project as the third permittee responsible project brought to MSGOT by Denbury Inc. The proposal is for a permittee responsible credit project to offset future projects in southeastern Montana. Montana Land Reliance (MLR) would hold the easement. The primary funding source is Denbury Resources. Montana Land Reliance (MLR) would be responsible for monitoring. The project involves 19,195 physical acres of General Habitat, located in the Southeastern Service Area. The credit plan describes key requirements including additionality. This refers to the requirement for a credit project to do something more than current site management, by providing uplift. In this case, this involves voluntary participation by a private landowner, Denbury Inc. and MLR. The easement itself will protect the site for as long as the impacts occur. Duration and durability speak to the protection of the habitat for the life of the impact. Financial assurances are met by MLR through their endowment fund. Should anything happen to the site, they are in the position to undertake any restoration that may be required. If something were to happen to the site that is unforeseen, such as an act of God, the reserve account serves as a common insurance pool. The reserve account provides the means to replace those credits or undertake restoration to get the site back on line as soon as possible. The plan speaks to the appropriateness of the credit project itself. The Program looked at the project site for its appropriateness for conservation. Eight leks are within close proximity of the site. From an ecological perspective, the site looks good to a sage grouse.

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The parties are conducting due diligence related to the potential for mineral development. The HQT results in 349,318 total credits after the 40% baseline adjustment. These credits will be available to offset impacts, once the agreement is closed.

The HQT map included in the plan shows habitat quality as well as areas of public land that do not accrue credits. The Program recommends approval of the project.

- 00:11:29 Mr. Rusty Shaw: Denbury takes a lot of pride in putting these types of projects together. The project is well underway and should be fully executed in a month or so.
- 00:12:12 Mr. Kendall Van Dyk: Nineteen thousand acres of baseline is a significant area. Waiting for the ground to dry out to monitor. MLR is expecting a late spring closing. Waiting on Carter County review. Permittee responsible model works well for MLR, in large part due to good partners in Denbury. Paul Ringling was a firm believer in habitat conservation.
- 00:13:37 Director Tubbs: Asked for public comment. Hearing none, asked for MSGOT discussion.
- 00:14:07 Senator Lang: Asked who owns the land where the leks are located?
- 00:14:19 Mr. Van Dyk: Believes it may be the Casselberry's.
- 00:14:32 Ms. Sime: There is a fair amount of BLM checkerboard surrounding the parcel.
- 00:14:45 Mr Van Dyk: Will report back on this.
- 00:14:50 Senator Lang: Asked who holds the mineral rights.
- 00:14:57 Mr. Van Dyk: Mineral ownership is fractured under the ranch. Therein is the need for remoteness test.
- 00:15:18 Senator Lang: Asks if there is a higher percentage of ownership.
- 00:15:23 Mr. Van Dyk: Doesn't know ownership, but it is significantly fractured.
- 00:15:37 Director Williams: Asked if Mr. Ringling held any of the mineral rights.
- 00:15:47 Mr. Van Dyk: He is certain Mr. Ringling does, but not 100% certain.
- 00:16:14 Director Tubbs: This is one of those things MSGOT can consider as a matter of condition. The mineral information is provided with the remoteness test.
- 00:16:36 Mr. Van Dyk: MLR typically doesn't do a full mineral title search.
- 00:16:40 Director Tubbs: MSGOT is not asking for a full mineral search.
- 00:16:45 Mr. Van Dyk: The remoteness test usually satisfies it, otherwise it would be an expensive undertaking.
- 00:16:51 Senator Lang: Asked Mr. Van Dyk to explain the remoteness test.
- 00:16:55 Mr. Van Dyk: A remoteness test is required by federal statute. It requires a geologist to test what formations are underground. Based on market conditions, they determine the likelihood of development. If they can't satisfy the remoteness test, then the landowner can't take that tax deduction and it would reduce the easement value.
- 00:18:49 Director Tubbs: Asked for a motion.

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- 00:18:50 Director Williams: Made motion to approve Denbury Resources' permittee responsible credit project for a perpetual conservation easement on the Ringling Ranch Limited Partnership. Director Tooley second.
- 00:19:08 Director Tubbs: Asked for additional MSGOT discussion on the motion. Hearing none, asked for a vote. All voted yes. Representative Knudsen voted yes by proxy.
- 00:19:51 Director McGrath: Asked if the motion included an adjustment based on the remoteness test.
- 00:20:00 Director Tubbs: The motion did not reflect it, but the process will. When MLR gets the geologist report the easement will be a yes or no.
- 00:20:34 Mr. Van Dyk: MLR will provide the remoteness test letter. The easement doesn't not preclude oil and gas development. If development were to occur MSGOT can take another look at it.
- 00:21:07 Senator Lang: Restated, the easement does not preclude oil and gas development.
- 00:21:17 Director Tubbs: If oil or gas development were to occur MSGOT would take another look at it.
- 00:21:33 Director Williams: If it turns out that the likelihood of mineral development is not as remote to be negligible, would hope MSGOT would still consider the easement because it has value and should be considered.

DY Junction Communication (Cell) Tower Mitigation Plan and Triangle Communication System Inc's Mitigation Obligation Waiver Request [Handout 2]

- 00:22:55 Ms. Sime: This agenda item picks up from the December 18th MSGOT meeting with a proposed mitigation plan. The request is for approval of a 100% waiver from mitigation. The Program works collaboratively with proponents on sections 1 through 4 of the mitigation plan. Section 5 is completed entirely by Triangle. The Program provided input and pointers where it was warranted. Sections 1-4 describe how Triangle Communication proposes a communication tower located at the DY Junction. This would be a tall structure and is located in a Core Area. As with most cell towers, the direct footprint is small. There is 430 feet of buried electrical line, 253 feet of buried fiber optic and the tower would be 199 feet tall. Through commitments for management of the site by the proponent, the project qualifies as a non-nest supporting structure.

The plan before MSGOT today, includes some slight amendments from the December meeting materials. Section 1 describes the project. Page 4, Figure 2 shows three different locations. Site 1 is Triangle's preferred location. Site 1 was originally proposed in 2016. The Program expressed resource concerns. The project was withdrawn and resubmitted at another location (site 2) to the north. The Program completed the consultation letter for site 2, in 2017. Site 2 was later removed due to access issues, making the site unavailable. Site 3 was submitted, reviewed and a Program letter completed in Spring 2017. Triangle reinitiated consultation for site 1 in February 2018.

Site 1 is what is discussed in the plan. Table 1 represents the functional acres lost when the project is initiated. The direct impacts from the tower are relatively small, in part due to other buried features. Because the tower is non-nest facilitating, the indirect impacts were adjusted following the Policy document.

Table 2 shows a policy multiplier for the reserve account. A policy multiplier is included for advance payment to the Stewardship Account rather than apply permittee responsible mitigation. The HQT model results plus policy multipliers are shown on Table 3 of the mitigation plan. This represents the total number of debits associated with the project should the proponent apply permittee responsible mitigation. Table 4 represents the total, if the proponent elects to make a donation to the Stewardship Account. In the case of Triangle's DY Junction proposed location, is \$231,459.62.

Top of page 14, is where the Program works through the compensatory mitigation. This is where Triangle indicates their decision to make a payment to the Stewardship Account.

00:31:55 Mr. Tim Nixdorf, Triangle Communications: Stated that section 5 had a lot of influence by the Program as well. Wasn't planning to talk about the specifics because he felt MSGOT had heard enough about the project already. The DY Junction site is a salvage yard at an intersection of two highways. Triangle went to great lengths to find a location because this area is absent a good cell signal. When accidents occur people walk a mile, mile and a half to make a 911 call. Triangle sought to find a location with existing disturbance and be off of any ridges. The further they locate the tower away, it increases the tower height, and they would disturb more things. There is a huge hill that blocks the view to the closest lek, so you only see the top 16 feet of a 199-foot tower. The analogy of a regular size Snickers bar turned sideways at the 50-yard line so wouldn't impact the closest lek. Not sure how to get cell coverage in this area short of this location. Feels Triangle exhausted all efforts to find a location with the least impact.

00:35:46 Mr. Cory Baker, Westech: Worked with Triangle on the project most recently and was not involved in the beginning. Tried to look at this objectively with goal to look at it scientifically. Seems, the site was the one first proposed but, in consultation and collaboration with the Program, came up with other sites to minimize impacts to sage grouse. Sites 2 and 3 were evaluated but the original site 1 never was reviewed. Not clear why, seems unfair and the basis for the argument for the mitigation cost. The mitigation cost for the other sites were waived but the same offer isn't applied to site 1.

Direct impacts at \$13 per acre are about 4.94 debits for land taken off the landscape for sage grouse. The indirect impacts are speculative because there isn't a lot of literature that talks about impacts from cellular towers. Looked at data and is looking into research through universities.

00:39:34 Director Tubbs: Asked for additional public comment. Hearing none, asked Mr. Nixdorf to provide more information. MSGOT's decision today is based on granting a 100 % waiver. Asked Mr. Nixdorf to explain the economic hardship waiver requested. The high priority for public safety is identified, but Triangle did not address economic hardship.

00:41:10 Mr. Nixdorf: Triangle is a small carrier with 3600 customers in N. Central Montana. Funding mechanism is from customers. Wouldn't be able to build the cell tower with the mitigation burden. Cost \$300,000 to build a cellular site. The additional cost at the alternate locations adds to the cost of building. Power cost \$30,000 per mile. DY Junction financially makes sense. Triangle won't make any money on the site. It fills a gap for customers to travel through, for public safety. Willing to put some money at risk and allows others to access the site for roaming. The site will never be a feasible site to begin with.

00:43:18 Director Tubbs: Asks if there is any capacity for mitigation.

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- 00:43:29 Mr. Nixdorf: Triangle took steps to find mitigation. A cellular tower was removed in 2014 but wouldn't qualify for mitigation. Not able to find anything else.
- 00:44:42 Director Williams: The question before MSGOT is about setting a precedent when a waiver is appropriate. How it would apply when no other sites are economically feasible. Sees where site 3 is more expensive to build but the costs are not explained. Understands site 1 was preferred and site 2 is no longer available and site 3 was more expensive. Asked how much more expensive.
- 00:45:50 Mr. Nixdorf: \$100,000-150,000 more. Site 3 would need new power and fiber, more steel, lights and maintenance.
- 00:46:18 Director Williams: Asked how much more it would cost to build in site 1 compared to site 3.
- 00:46:33 Mr. Nixdorf: Site 1 was going to cost \$320,000 to build. Site 3, \$450,000.
- 00:47:13 Ms. Ahlgren: Thanked Triangle for the work done on this. Stated a 100% waiver is not an option for her. The state has gone a long way to mitigate the costs. Would be willing to reduce the costs but, a 100% waiver is not a good precedence to set. Asked if there are any fees the COOP can charge to offset costs.
- 00:48:50 Mr. Nixdorf: Roaming does not generate much in fees anymore. Triangle Mobil expects to make \$180.00 per month in roaming fees. Triangle Mobile is a for profit company, (a subsidiary of Triangle COOP). Nonprofits get money through the federal system to offset cost. Triangle Mobil doesn't get federal aid.
- 00:50:36 Ms. Ahlgren: Asked why, in section 5, it states the parent company holds credits but choose not to apply them to this project.
- 00:51:07 Mr. Nixdorf: These are two separate companies. The parent company, Triangle COOP, needs the credits for their own projects.
- 00:51:49 Director Tooley: The map in the plan shows a cluster of crashes at the Missouri river. Asked if the tower will service this area.
- 00:52:22 Mr. Nixdorf: The signal won't reach the river bottom. This is the reason for locating the tower as far south as possible. Accidents off the highway are critical for hunters. If the tower were farther north, they would lose a half mile to one mile of coverage close to the river.
- 00:53:23 Director Tooley: Believes a lot of the accidents are animal collisions. There is discussion of a big hill south of the DY intersection and impact from only the very top of the tower to sage grouse. Asks if this was quantified in any way.
- 00:54:56 Director Tubbs: There is no elevation sensitivity in the current HQT.
- 00:55:14 Ms. Sime: In this case the Program did offer to do a third level analysis. However, it would take more time to develop an analytical approach. Triangle did provide the Program with a map, but assumptions were not stated. What the Program discussed is that raven and sage grouse move. Here are two points in space within visibility but assumes that nobody moves. This isn't supported by literature. While the Executive Order is lek centric, most sage grouse nest within four miles of where they breed. We

need to think ecologically. Birds move out away from the lek and spend the brood rearing period within four miles. It's more than just the lek point itself. It is the habitat surrounding the lek and its functionality in connection with intact sage brush. The Program reviewed a large amount of science and refers MSGOT to the policy guidance document.

- 00:57:39 Director Tubbs: Reminded MSGOT this is not what is on the table. The question before MSGOT is the 100% waiver.
- 00:58:27 Director Tooley: Asks if the decision is for a 100%, or none.
- 00:58:40 Director Tubbs: The request is for a 100% waiver. There is nothing in policy that restricts MSGOT to an up or down vote. It is MSGOT's authority to say no. MSGOT can decide to accept, deny or modify as three options.
- 00:59:11: Director McGrath: Asked about the importance of the cell tower. The policy guidance talks about being within the two-mile radius of a lek as a trigger. Asked how leks within that four to four-and-a-half-mile radius are considered. Here, there is not just one but multiple leks. Asked how that changes the multiplier?
- 01:00:00: Ms. Sime: There are several leks within the immediate area that could be affected by the project. Each lek is fairly large, above average in size. Breeding density is factored into the HQT, so the results are higher where there are higher densities of birds. Within proximity to site 1, preferred location, there are leks that are potentially impacted. Because the habitat around the preferred site is of high integrity, it falls below the disturbance thresholds, in that sense the habitat around it is intact and undisturbed with exception of the highway. The introduction of a new tower can begin the process of additional disturbance.
- 01:01:28 McGrath: Notes it is interesting that one lek is 4.1 miles, which is just outside that trigger. The tower is called out as being non-nesting so wonders if this includes something to make it unavailable for perching.
- 01:02:23 Ms. Sime: Where tall structures currently don't exist, this introduces a new predator subsidy, either for nesting or perching. In this case, Triangle is committed to management practices to discourage nesting. The results are lower because of this commitment. The perching potential may still exist in the lattice structure of the tower. Be thinking how sage grouse experience something new in their environment where there are currently only distribution lines for electricity. There is an avoidance factor and potential for increased predation.
- 01:03:41 McGrath: Asked about the process for waivers for the other proposed locations.
- 01:04:11 Ms. Sime: In dialog with Triangle in 2016, it was clear there was an interest in having a tower at this general location. When thinking about sites 2, or 3, one key thing the Program looks at is guidance from the Executive Order. That is where the four-mile threshold comes in. Avoid if you can. If placement beyond four miles is not economically feasible then stay out of the No Surface Occupancy buffer and co-locate if possible. The Program completed consultation for site 2 and site 3 in 2017. They were competed and at that time MSGOT had not finalized the HQT tool. These projects were grandfathered, and the Program understood those options were still on the table.
- 01:05:52 Director Tubbs: Doesn't see this as precedent setting. This project came in early in the program history. It was withdrawn but a tower in this area was intended. Looks at this as a legacy issue for MSGOT because there will be no more projects before MSGOT with

this kind of history, but the project has changed. MSGOT adopted the HQT and is available now for anyone coming to the Program. This was not the case for DY Junction. He noted, a 100% waiver is not acceptable for Ms. Ahlgren. He finds it a step too far to say none. There are project proponents committing funds from cooperatives and for-profit corporations. Suggests for discussion, that site 2 was once available, but the access changed hands. It would be grandfathered and if you want to hit the lowest impact alternative Triangle proposed but did not come to fruition. That represents about 35% of the current proposal. Suggest asking Triangle to find funds that would allow up to ten years to repay the amount. Perhaps \$6000.00 per year over a ten-year period. At any point in time they could come up with a project that developed credits and could pay it off, if in time they made a good faith effort to get it to that level. Sees similarities to how MSGOT did Big Flat.

01:11:42 Senator Lang: Thinks they should have a zero cost. On page ten of the request it talks about the effects. Agrees with Mr. Baker. Doesn't think the data suggest that tall towers are such a bad thing. Concentric circles were discussed. Anyone who's been around sage grouse knows the circles are not there. They are multi directional in topography. Disagrees with Ms. Sime on topography. Trucks are using Jake brakes, blowing whistles and making a lot of noise. In theory, sage grouse may be using the area on the east side of those leks and don't want to go close to the highway. There is nobody here that can tell him otherwise, yea or nay. Assumes grouse want to get away from highways. The tower deserves the right place to go. Hopes we can put Christmas lights on it to make the DY look nice at certain times of the year. Safety is a big thing. Everybody is using a cell phone anymore. There was a 12,000-acre fire in the Little Rocky Mountains, nine miles from the junction and cell phones were working because of Nemont and Triangle. A fire south of Havre, Triangle was out there. With this tower you will get cell signal all the way. The Missouri Breaks are a great place to hunt. If you ask Phillips Co. you can't believe how many guys climb out to try to make a call, so somebody could come save them. If you go to the south side of the river, emergency services at Winifred, almost goes broke pulling people out of there. You can't put an economic value on this. This tower needs to come down to zero. Thinks the science is poorly understood. The stuff that he's read doesn't show it. Five cell towers in Phillips County have a lek within 500 yards. He thinks the impacts are overstated.

Made a motion that MSGOT charge \$30,000 over ten years for the Triangle DY Junction Project. Seconded by Director Tooley

01:17:30 Director McGrath: To the motion and issue of the waiver. Agrees the value of the project is not in dispute. What MSGOT is talking about is the level of mitigation. Believes this should be considered in some context. Asks what the science tells us and the value of this area and what is the threat the tower poses. It is MSGOT's discretion applying policy tools; asked if it's the economic impact and whether someone is economically capable of doing this. Asks, what was the scrutiny or mechanism to make that determination. There is something in the policy guidance document that is important to note, when speaking to economic issues. It describes this very situation. Is there discretion if the very definition of financial hardship is this type of cell tower. Trying to understand how MSGOT approaches this. Don't see the basis for a 100% waiver but not certain that \$30,000 is the right outcome.

01:19:49 Senator Lang: The motion could be amended.

01:19:51 Director Tubbs: Asked for more discussion on motions.

01:20:07 Director Williams: Is not comfortable with a full waiver and not in favor of the motion in hand.

Speaking to the discussion of the development of the HQT and whether indirect impacts are real or speculative. Will not vote as a member of this body for a waiver or \$30,000 and have it implied that impacts are not real and or speculative. Feels it is her job to adhere to the HQT that MSGOT has gone through and adopted. Could be comfortable with something less than \$230,000 but not comfortable with \$30,000.

- 01:21:27 Mr. Holmes: Concurs that this project does not represent a precedence. Must be thoughtful about achieving balance in making our decisions. Agrees that this is a caliber of legacy projects that was in process at various stages in conceptual design or other things. To the motion, part of the challenge is not understanding Mr. Nixdorf's business model. Questions if we take him at his word, that the revenue sources are revenue based and not some other structure. Would like to ask clarity on that. Base decisions on the output of the model and not what may be viewed as arbitrary. There are several multipliers based on policy where MSGOT may have some flexibility.
- 01:23:59 Administrator Halvorson: Economic feasibility is a tough road to go down. It is especially hard to do when there is little data provided. Willing to support a lower mitigation or waived mitigation since this project was started before 2017 and assumes it was withdrawn because of some estimation of what the mitigation might be. It is a unique case. For a request for economic feasibility in the future, he would like to see more data.
- 01:25:10 Director Tubbs: Asked for vote.
- 01:25:36 Director Williams: Asked Director Tubbs to repeat the motion.
- 01:25:40 Director Tubbs: The motion was for Triangle to make a contribution amount of \$30,000 over a 10-year period, which would be a \$3000 requirement per year.
- 01:26:00 Mr. Holmes: Asks if Triangle could bring forward any other possible credit project to fulfill that obligation.
- 01:26:12 Director Tubbs: Like any amortized loan, they can pay off the balance at any time.
- 01:26:49 Senator Lang: Amended the motion, to allow Triangle to make a payment in cash or in the form of a credit project.
- 01:27:11 Mr. Holmes: Asked Mr. Nixdorf for more information about their business model.
- 01:27:34 Mr. Nixdorf: Triangle has other multi-tenant sites so there can be more than one carrier. The roaming revenue is based on tenths or hundredths of a cent. Can't divulge amount but it is less than a penny. It takes a lot of megabytes to equate to dollars. The traffic at this site will be about \$180 per month. Puts the burden on the subscribers.
- 01:30:11 Mr. Holmes: The investment is about expanding service to Triangle customers and signing up additional customers. Questions if MSGOT should be considering the cost revenue for this project or the whole service area.
- 01:31:11 Mr. Nixdorf: You can divide 3700 customers over the service area, but it is a small impact. It relates to what is gained.
- 01:31:48 Mr. Holmes: Asks what the range is for monthly rent of space to another carrier on a Triangle cell tower.
- 01:32:00 Mr. Nixdorf: Triangle has none in rural areas. Would be less than \$2000 with several close to \$1000. Some work with emergency services is carried out over ten years.

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- 01:32:51 Director Williams: Asked if there would be potential for other towers at the site.
- 01:33:16 Mr. Nixdorf: Within the tower there are gates with sections for another carrier's equipment on the same tower. Co-locating lessens the impact.
- 01:33:40 Director Williams: It does but it doesn't because of the added perches.
- 01:33:47 Director Tubbs: It could reduce it because it is a lattice structure and they could add spikes.
- 01:34:05 Director Williams: There is mixed literature on the effectiveness of spikes.
- 01:34:20 Director Tubbs: Agreed this should not be a debate about the HQT. Understands the proponent disputes it. That is not on the table. MSGOT is not debating the science.
- Called for Vote: Director Williams, Director McGrath Mr. Holmes, Director Tooley, Ms. Ahlgren, Director Tubbs, voted No. Senator Lang, Representative Knudsen, Administrator Halvorson Yes. Motion failed.
- 01:35:23 Mr. Holmes: Offered a new motion to consider just the functional acres lost component of debits and waiving the policy multipliers, for a total amount of \$48,556.53. Following similar rules to the prior motion, for a period to repay using all available credit options available to MSGOT. Also wrestling with opportunity Triangle might make in the future to support research with university partners. That could count towards credit. Knows that by in large MSGOT's not considered doing research to count towards credit. As this is a legacy project, there might be some flexibility.
- 01:36:52 Director Tubbs: Repeated the motion. The Mitigation obligation for the Triangle DY Junction project would be \$48,556.53 which is the debits of 5205.54 associated with site 2. Logic there is that this was the least impactful alternative site Triangle considered. Divide \$48,556.53 over ten years would be about a \$4850 payment per year, over ten years and could be reimbursed in full either through credits or cash contribution, including a cash contribution towards research and the research could be over time as well.
- 01:37:43 Senator Lang: Asked if Triangle can then build on site 1.
- 01:37:54 Director Tubbs: They can build on site 1. Using the measure of site 2 to anchor MSGOT's decision.
- 01:38:08 Director McGrath: Suggested with ten-year repayment period, the balance could be completely waived if future science or research indicates that towers are not conclusively an impact to sage grouse.
- 01:38:55 Mr. Holmes: Conclusive is a hard thing to pin down. Supports the motion but wrestles with how as a body MSGOT would get to that determination.
- 01:39:03 Director Tubbs: If in the future, MSGOT makes a decision, there is no impact from cell towers, then MSGOT can waive any future payments. As opposed to making an assumption science can be perfect. Asked if all members are ok with that.
- 01:39: 24 All, stated yes.
- 01:39:35 Director McGrath: Seconded the motion for purpose of discussion. Asked if the motion could be amended to give it context. One being that this is a legacy site. Even though MSGOT doesn't think it is precedent setting, it is given context. Secondly, speak to the

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issue of the waiver and the economic feasibility determination MSGOT must make. Callout that this project is in a rural area and supplies a need for cell coverage.

01:40:33 Director Tubbs: Asked for further discussion.

01:40:33 Director Williams: Appreciates the amendment, thought and the rational around the amount determined. Cannot support it and would rather see some combination of mitigation mechanism, permittee responsible, in-lieu fee contribution to the Stewardship Account. Would like to see something more and these are reasons she does not find this amount acceptable. As Director of the agency would rather see the investment in site 3 vs paying the stewardship account for almost \$50,000.00.

01:43:00 Director Tubbs called for a vote. Director Williams voted no; all other MSGOT members voted yes.

Mud Springs Wind Facility Voluntary Mitigation Plan Presentation Informational Only – No MSGOT Executive Action Proposed [Handout 3]

01:42:57 Mr. Jess Petersen, Agriculture Policy Advisor. The project was initially developed by EverPower who merged with Innogy in 2018. EverPower began the project in 2017. PacifiCorp proposes to build and develop the project now.

01:47:34 Mr. Ken Clark, PacifiCorp. Gave an overview presentation about the project. Expressed PacifiCorp's interest in developing the project if they can complete the project by 2020 to take advantage of federal PCT tax incentives. If they can't meet that deadline the project won't be viable for PacifiCorp. PacifiCorp anticipates tying into the existing transmission line going to Wyoming. PacifiCorp would need to petition PacifiCorp Transmission after they own the project for it to be an approved qualifying facility. Not having to run a second transmission line would be the main benefit of having PacifiCorp as the owner of the project.

PacifiCorp is proposing 119 turbines. If they can acquire larger turbines they may be able to reduce the number of turbines to 105. PacifiCorp understands Innogy offered \$300,000 for mitigation. There is some confusion about the project boundary. The original 2014 DEQ SWPPP map is different than the 2017 DEQ SWPPP map. PacifiCorp is considering adding state lands to the project boundary, if those lands could be included in the project boundary.

01:57:34 Director Williams: Asked why there were leases include the green areas shown on the maps but mitigation offered in 2017 did not include those areas.

01:58:10 Mr. Clark: PacifiCorp doesn't know why some areas were excluded in the 2017 DEQ SWPPP.

01:59:06 Director Tubbs: The decision before MSGOT today is to determine what area is grandfathered.

01:59:45 Mr. Clark: PacifiCorp has gone through their files but has not been unable to make a determination.

01:59:59 Director Williams: The three DNRC sections were not included but fit within the map.

02:00:02 Director Tubbs: Administrator Thomas said PacifiCorp needed to let State Trust Lands know if they might want the state sections included.

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02:00:53 Mr. Clark: PacifiCorp is committed to a project layout that will avoid being within 0.6 miles of any lek. This would be the heart of their mitigation plan. Decisions must be made to meet their deadline for Mid-May.

The project will be limited to 240 MW, 121 turbines. Will commit to vegetation removal following seasonal stipulations. Innogy's \$300,000 mitigation commitment would be hard to fulfill after purchasing the project from Innogy. The agreement would need to be in place before the purchase.

Engineers are in the process of moving the layout of some turbines to address U.S. Fish and Wildlife Service eagle permitting issues. They need to do geotech work to determine turbine site suitability. There may be changes before they get to a final layout.

They will conduct six years post construction monitoring within two miles of a lek depending on landowner permissions.

02:07:00 Director Tubbs: Asked about the time sensitivity of the project to make allowances for MSGOT public notice.

02:08:05 Mr. Tim Volk, PacifiCorp, Director of Development for Energy: PacifiCorp is close to finalizing negotiations to purchase the project. Will need a decision from MSGOT within the next three weeks.

02:09:42 Mr. Bill Bullock, Carbon County Commissioner: The County commission meeting is May 9.

02:11:37 Director Williams: Asks, what is the decision before MSGOT.

02:11:47 Director Tubbs: This is one of those legacy projects. The Program will work on the grandfathering. In terms of MSGOT the decision, the project is expected to change, and it appears some components will be outside of the grandfather portion. The question then is what mitigation would be required. MSGOT's first decision is will it all grandfathered or just a portion? Would go through the HQT on the areas not grandfathered?

02:13:42 Mr. Holmes: Depending on the decision before Governor Bullock, concerning Senate Bill 299, there may be a new statutory definition for grandfathered projects.

02:14:03 Mr. Clark: One way to mitigate the project is not having the overhead transmission line.

02:14:44 Ms. Ahlgren: Asked if the entire project is in a Core Area.

02:14:52 Mr. Clark: It is all within a Core Area but is already disturbed habitat.

02:15:40 Director Tubbs: Habitat quality won't be a consideration for the area that is grandfathered. There will be a public meeting allowing for public comment once the project is submitted.

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Public Comment on Other Matters

- 02:18:19 Director Tubbs: Asked for public comment on other matters.
- 02:18:45 Wyatt Smith, Wyoming Audubon.
- 02:19:39 Jeff Herbert, Montana Sportsman Alliance.
- 02:22:09 Director Tubbs: The Program has begun discussion with the U.S. Fish and Wildlife Service in discussion about provisions that allow take for avian predators.

Adjournment

- 02:23:13 Meeting adjourned without a formal motion.

Chair for this meeting:

/s/ Director John Tubbs _____