

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**

September 18, 2019 Meeting Summary
Montana State Capitol, Room 152

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
Senator Mike Lang, 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
Rhonda Knudsen, Representative HD 34
Jim Halvorson, Montana Board of Oil and Gas, Administrator
Shaun McGrath, Department of Environmental Quality, Director, by Phone

Staff Present

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

Call to Order

00:00:21 Director Tubbs called the meeting to order.

Approval of Minutes

02:00:00 Approval of April 25, 2019 and May 4, 2019 meeting minutes. Director Tooley moved to approve the two meeting minutes. Noted an error in the April 25, 2019 minutes showing him as voting by proxy when in fact he was at the meeting in person. Motion passed unanimously.

Stewardship Account Grants: Select 2019 Projects [Handouts 1, 2, 3 and 4]

03:26:00 Ms. Sime: Stated the meeting will be centered on grants with a number of landowners in attendance to speak as grant applicants. Six projects before MSGOT today; total request is \$3,433,552.00. A total of \$3,760,237.00 is currently available in the Stewardship Account for grants. Three of the applications are for perpetual conservation easements.

MSGOT has seen grant requests for perpetual easements before. Three of the prior grants have closed and the fourth will close by the end of the calendar year.

The Stewardship Account is typically one source of funding. State funds are matched using a variety of funding sources. The grant request is guided by availability of Stewardship funds. The easement documents were drawn up in conjunction with the land trust community and incorporate mitigation language, including language pertaining to the third party right of enforcement and mitigation credits.

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There are three term leases before MSGOT. These are the first term leases considered by MSGOT. Term leases were included in the 2015 Stewardship Act as a project that is eligible to receive funding. The grants can only be awarded to organizations or agencies that hold and maintain conservation easements, leases or are directly involved in sage grouse habitat mitigation enhancement activities. The distinction between an easement and a term lease, is tied to the entity or organization that holds it. If an accredited land trust organization were the entity, it would be called an easement. If the entity were a private organization, under the Stewardship Act it would be considered a term lease. The terms are similar in that the terms are focused on habitat conservation with the difference being the instrument for a term lease resembles a contract.

In the context of mitigation, a term lease is a payment for ecosystem services. In exchange for giving up the ability to develop land, the landowner is receiving a payment from the Stewardship Account. The transaction focuses on the creation of credits where credits are a unit of trade. In the context to term leases these transactions are focused on the creation of credits.

The transaction began with, determining how many credits will be created by the term lease or restoration activity, using the Habitat Quantification Tool (HQT). The landowner chooses what lands would be included. The final number of credits created is determined using the HQT, along with policy multipliers.

The number of credits created is a function of the baseline habitat quality, the size of the lease parcel, duration of the lease and any restoration activities associated with the lease. Adjustments are made, guided by the Policy Guidance document, resulting in the number of credits that make it to market. Restoration activities are given an additional 10% modifier because new habitat is being created.

Landowners proposing the term leases elected durations of 25 to 30 years. Beginning at year 31, adjustments are incorporated into the term lease that decreases the number of credits that actually make it to market, so it is similar to perpetual easements. This policy trade-off was discussed by the stakeholders in recognition with the "all hands all lands" approach. Landowners expressed interest in participating in conservation but felt perpetual easements weren't the right tool. Landowners sought additional tools with fair compensation for restrictions put on their land. There are tradeoffs. The Program must respect the private landowner and their stewardship of their land, while providing policy approaches that attract participation. Another tradeoff is whether or not a 25-year term lease is relevant to sage grouse and has real meaning when considering the weather or economics that affect agricultural landowners.

With respect to the three term leases before MSGOT, the Program developed a draft lease mitigation template, including what the state and landowner expectations might be [Handout 9]. Because of the differences in policy considerations for a term lease, the Program undertook additional calculations so MSGOT can compare them to a perpetual easement. Referencing the 2019 Stewardship Account Grant Cycle Requests and Budget Breakdown table [Handout 4], MSGOT was asked to look at the number of credits per physical acre for each project, with respect of the number of years of the project. Also included in the MSGOT packet was a table of the number of credits created during the first grant process.

The Program recommended funding all six projects at the full funding request amount. Each project offers varied benefits. The top three projects ranked by peer reviewers were the Sauerbier Ranch Conservation Easement, King Ranch 30 Year Term Lease, and Willow Basin Conservation Easement. None of the peer reviewers classified a project as do not fund.

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00:15:25 Director Tubbs: There are no projects in the southeastern zone [Handout 5]. We will need conservation in the south east part of Montana in the future, based on development activity.

Willow Basin Ranch Conservation Easement, The Nature Conservancy [Handout 10 with PowerPoint Presentation]

00:16:36 Jim Berkey, The Nature Conservancy. Willow Basin Ranch Conservation Easement Project Sponsor. PowerPoint Presentation.

00:30:43 Director Tubbs: Asked for landowner comments, hearing none, asked for the next project presentation.

Marc Lewis Property Conservation Easement, Montana Land Reliance [Handout 11 with PowerPoint Presentation]

00:31:30 Brad Hansen, Eastern Manager Montana Land Reliance. Marc Lewis Conservation Easement Project Sponsor. PowerPoint presentation.

00:39:28 Director Tubbs: Asked for landowner comments, hearing none, asked for the next project presentation.

Sauerbier Ranch Conservation Easement, Montana Land Reliance [Handout 12 with PowerPoint Presentation]

00:40:07 Jessie Wiese, Southwest Manager, Montana Land Reliance, Sauerbier Ranch Conservation Easement Project Sponsor.

00:47:33 Director Tubbs: Asked for landowner comments.

00:47:50 Mr. Sauerbier (Landowner): Noted the Sauerbier family is dedicated to being good stewards of the land using rest rotation and leaving behind forage for sage grouse in winter.

00:49:44 Director Tubbs: Asked for presentations for term lease easements.

King Ranch 30-Year Term Lease and Restoration, Petroleum County Conservation District [Handout 13]

00:50:10 Ms. Carie Hess, District Administrator, Petroleum County Conservation District, King Ranch Project Sponsor.

00:50:40 Mr. Chris King (Landowner): Pleased MSGOT is willing to consider term leases. Provided comments on Habitat Quantification Tool (HQT) process and third level assessment adjustment. Agrees plowed habitat is not good habitat but hay ground is good sage grouse habitat. The HQT represents hay fields as low-quality habitat. Doesn't feel the fields and little used roads should be counted as low quality habitat. A lek in the analysis area is represented as being in blue habitat. He is concerned the documents prevent the Program from adjusting the HQT score appropriately.

00:57:29 Ms. Hess: Handed out background information about the County Conservation Districts [Handouts 14 and 15]

01:00:16 Ms. Brenda Brady, Board Member, Petroleum County Conservation District. Stated the two projects have support of the Petroleum County Conservation District Board.

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Schultz Grand Prairie Ranch 25-Year Term Lease and Restoration, Petroleum County Conservation District [Handout 16]

- 01:00:53 Mr. Nick Schultz, representative for Schultz Ranch. Presented slide show of photos of the ranch operation.
- 01:10:51 Ms. Hess: Described the funding request.

Burgess 30-Year Term Lease and Restoration, Garfield County Conservation District [Handout 17 and PowerPoint Presentation]

- 01:12:07 Mr. Dominic Burgess (Landowner): Stated the ranch as historically grown wheat. Proposes seeding 2737 acres back to native grass and 136.85 acres back to sagebrush. Proposes high intensity short term grazing.
- 01:15:07 Shaelyn Bauer, Ranch Management Consultant: Presented a ranch management plan proposal.
- 01:25:54 Ms. Sime: Distributed a letter to MSGOT from the Garfield County Conservation District [Handout 18].

Public Comment

- 01:26:16 Director Tubbs: Asked for public comment.
- 01:26:26 Mr. Brian Ohs, Montana Grazing Association.
- 01:27:56 Mr. Glenn Marx, Montana Association of Land Trusts.
- 01:41:46 Director Tubbs asked for additional public comment. Hearing none, asked for MSGOT discussion.

MSGOT Discussion

- 01:41:50 Director Tubbs: Opened the meeting to discussion by MSGOT. Noted MSGOT has done permanent easements and knows what to expect for the closing. MSGOT might not have all of the answers for term leases at this time. Prior conservation with DNRC, Montana land trust organizations and landowners, have gone through the whole cycle and all parties learned a lot. There is now a template for perpetual easement agreements. The term agreements are still in negotiations. Term agreements have never been done through DNRC, so are modeled after the Montana Fish, Wildlife & Parks term agreements. This is a contractual relationship, as opposed to a property relationship. The lease with the Conservation District is new and may generate policy questions.
- 01:44:30 Director Williams: Commented the projects are strong and exactly what the Program was looking for and appreciates the conservation easements are perpetual.
- 01:45:06 Director Tubbs: Asked for a motion.
- 01:45:16 Director Williams: Moved to approve the three perpetual conservation easements. Mr. Holmes seconded.
- 01:45:33 Senator Lang: Stated 6000 feet in elevation is high for sage grouse.

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- 01:46:03 Director Williams: Noted the elevation may be high, but Mr. Sauerbier (*landowner*) has said it is excellent habitat.
- 01:46:23 Ms. Ahlgren: The Marc Lewis project mentions parcels that might be donated. Asks for clarification.
- 01:46:47 Mr. Hansen: Originally MLR applied for funding for only the parcels that scored the highest, with parcels C and D to be donated. The application was amended by request of the Program, to include parcels C and D, due to the uniqueness of the habitat and location within a Core Area.
- 01:48:06 Ms. Ahlgren: Noted that parcels C and D are blue (*lower quality habitat on the HQT map*) and ask if there had been farming on the land in the past.
- 01:48:13 Mr. Hansen: The HQT uses data that classifies good sagebrush for sage grouse as very tall in Montana. Sagebrush found on the Mark Lewis property is short and combined with grasses which give it a lower HQT score. It is outlined in the project summary that the habitat is undervalued for this reason.
- 01:48:16 Ms. Sime: After conducting a site visit, it was clear the sagebrush supports sage grouse. The areas shown in blue on the HQT map are largely because of cultivation to the west. The bird experiences impacts from the borders of the fields. In this case, the presence of the cultivation to the west and state highway running through parcel D has devalued the property. There is value to the project and asks MSGOT to consider the project as a whole package.
- 01:51:22 Mr. Hansen: Stated there is no cropland or farming taking place on the parcels from present day back to 50 years ago.
- 01:51:53 Senator Lang: Asked Mr. Hansen, who owns the private property between the Mark Lewis property and Bureau of Land Management.
- 01:52:30 Mr. Hansen: Does not have that information and would have to get back to MSGOT.
- 01:52:51 Senator Lang: The four parcels are distinguished by themselves.
- 01:52:58 Mr. Hansen: The Lewis family owns additional property in the vicinity, but the easement package represents only the parcels the family wants included in the lease.
- 01:53:20 Director Tubbs: Asked for additional discussion.
- 01:53:30 Representative Knudsen: Asked Ms. Wiese about monitoring to ensure lease agreements are upheld.
- 01:54:28 Ms. Wiese: The Montana Association of Land Trusts members have an obligation to monitor annually and in perpetuity. Land trust organization staff tour the property with the landowner to ensure the terms of the lease agreement are upheld.
- 01:55:25 Representative Knudsen: Asked if sage grouse would be monitored by the land trust.
- 01:55:39 Ms. Wiese: Sage grouse monitoring is not proposed. The land trust ensures specifics of the MSGOT terms of lease are monitored but doesn't count birds.
- 01:56:10 Director Tubbs: There are specific provisions from the Program that are added to the lease agreement to address sage grouse habitat. Notes MSGOT is not buying sage

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grouse, it is buying habitat. Language in the lease agreement was developed by the land trust organization and lawyers to protect certain habitat amenities. Land trust organizations manage for other things, such as a grazing plan. When monitoring for MSGOT's needs, they typically look for weeds, new development and quality of the habitat. There would be trouble if the owner built a structure where there wasn't supposed to be a structure. Term leases will need further MSGOT discussion. There is a long history of enforcement related to perpetual easements. Conservation Districts will be tested where there is a violation or when landownership changes. This needs to be figured out.

- 01:58:57 Ms. Ahlgren: Asked about federal requirements for land trust organizations.
- 01:59:13 Ms. Wiese: For a land trust organization to be able to take a tax deduction, there are requirements to monitor annually. This is also a requirement for a land trust to meet accreditation.
- 01:59:48 Director Tooley: Asks if land trust organizations have developed Best Management Practices (BMP's) for monitoring that can be passed onto the Conservation Districts.
- 02:00:27 Ms. Wiese: There are standards and practices in place within a federal agency and land trust perspective. Stewardship and monitoring are part of the criteria. Through the state of Montana each land trust has a unique model in the way monitoring is conducted. If that were applicable for a Conservation District she doesn't know.
- 02:01:24 Director Tubbs asked for further MSGOT discussion. Reminded MSGOT the motion was for all three.
- 02:01:30 Senator Lang: Asked for the motion to be separated.
- 02:02:08 Director Williams: Amended the motion. Moved to approve the Marc Lewis Property Conservation Easement, Mr. Holmes seconded.
- 02:02:20 Director Tubbs: Asked for any additional MSGOT discussion on the Marc Lewis Property Conservation Easement. Hearing none, called for a vote. Director Williams, Mr. Holmes, Director Tooley and Ms. Ahlgren and Director McGrath voted aye to approve. Senator Lang and Representative Knudsen were opposed.
- 02:03:17 Director Williams: Moved to approve the Sauerbier Ranch Conservation Easement, Mr. Holmes seconded.
- 02:03:25 Director Tubbs: Asked for additional discussion on the Sauerbier Ranch Conservation Easement. Hearing none, called for a vote. Director Williams, Mr. Holmes, Director Tooley, Ms. Ahlgren, Senator Lang and Director McGrath voted aye. Representative Knudsen was opposed.
- 02:03:46 Director Williams moved to approve the Willow Basin Ranch Conservation Easement, Mr. Holmes seconded.
- 02:03:59 Director Tubbs: Asked for additional discussion on the Willow Basin Ranch Conservation Easement. Hearing none, called for a vote. Director Williams, Mr. Holmes, Director Tooley, Ms. Ahlgren, Senator Lang and Director McGrath voted aye. Representative Knudsen was opposed.
- 02:04:06 Director Tubbs: Asked for discussion of term lease agreements. Appreciates the Program's nomenclature because there are differences in the agreements that MSGOT will need to consider. The agreements were negotiated under the Program's policies

MSGOT adopted. There is a price point that was agreed upon based on these policies. These three projects represent a large amount of Core Area habitat and landowners that were less likely to have participated without this option. Even a term lease is conserved for decades.

02:06:37 Mr. Holmes: Thanked the Program, land trust conservation community, Conservation Districts and landowners for pulling together these projects. There are now a good set of tools for the Program. Encouraged that the Program has been working closely with landowners bringing these tools forward. There is benefit in understanding the needs of the landowners. Touched on Mr. Marx's concerns about enforcement and how baseline would apply to these types of projects. A third topic needing discussion is timeliness of restoration. Related to the topic of enforcement, there are many mitigating factors around the risk of breach of contract. One important mitigating factor is that there is a long tenure and commitment by landowners for conservation and land restoration presented today. Do need to think about the potential for changes in land ownership. There is much to learn from land trust organizations how to solve those issues. Asks Ms. Sime to walk through a scenario how the Program would enforce a breach of contract.

02:10:05 Ms. Sime: There are a wide variety of provisions in the draft lease agreement. Expertise was shared through contributions made by the DNRC Chief Legal Counsel and the land trust community. The draft was informed by land trust templates.

The "dos and don'ts" are spelled out. There is less ambiguity in the draft and it provides a fair amount of clarity to all parties. The lease runs with the land. If there is a change of landowner or lessee, the lease provisions apply. Notification is required, and the document is filed with the county. Anyone considering development of the property would find the lease with the title. The lease includes an assignment provision. Because the state retains a third party right of enforcement, notice is required for any assignment of the lease. There is a notice provision, should the landowner be contemplating doing something they are unsure about or not clearly outlined in the "do or don't" list. If a landowner wants to undertake an activity that might impact sage grouse habitat, there must be notification to the District. The District is then required to notice the State.

Specific to breach, if for example a building were put up where it shouldn't be, the landowner has an opportunity to fix it, of the landowners' own accord. Some conversation would occur around how, when the fix would occur.

Monitoring the lease includes provision for access to the property. The state retains the right to access the property during regular monitoring or any other time, within a reasonable time and manner allowing the state to conduct its own monitoring.

The state retains a right of third party enforcement. There could be recovery for liquidated damages. Should the landowner assign the land to another person or sells the land, and the new landowner doesn't want to continue the lease, the state could recover the pro-rated balance in the remaining lease, plus 25%.

If we get to the point where the landowner is ready to sign a lease, they are all in. Some of the initial projects the Program considered, couldn't get there. Lastly, if the whole thing falls apart, there is a mediation process. If all else fails, there are provisions to seek an injunction through the courts. There are many ways risks to the State and landowner have been talked about and mitigated to get to the draft before MSGOT today.

02:16:49 Director Williams: Asked procedural questions. The broader issue is one of enforcement and stewardship monitoring. While accreditation is necessary for land trust organizations organizations, Fish, Wildlife & Parks makes sure the agency adheres to these standards. Part of that is land trust organizations have adopted policies in place so

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that if an enforcement issue comes up there is a plan in place. Asks if there is a way to help Conservation Districts to develop those policies.

- 02:18:43 Mr. Marx: Thinks the more Conservation Districts learn about enforcement, stewardship, standards and practices and accreditation of the Land Trust Alliance the better. The Conservation Districts could sign up to an email, for more information. There is a body of law specifically for conservation easements. Land trust organizations would like to work with the Program and Conservation Districts to cross train using comparable documents. Land trust organizations have dedicated staff to maintain relationships with the landowner and to monitor stewardship and enforce the documents. Land trust organizations have a national insurance pool and in house legal counsel that Conservation Districts don't have. You need some infrastructure to get started.
- 02:20:45 Director Tubbs: Have policy issues that need to be discussed. Asks if there is a deadline for these projects to proceed. A time limit in which the project must be approved and closed, to meet some deadline. MSGOT could provide preliminary approval now, if MSGOT wants to negotiate an agreement with the Conservation Districts separate from the term leases. The leases could then be executed at a later date.
- 02:23:28 Mr. Shultz: Has a couple of projects in his proposal that include NRCS projects and he has agreed to sign contracts with NRCS through their standards. He does have a timeline with the NRCS and tax needs so would like a decision by Dec 1.
- 02:23:43 Senator Lang: Commented DNRC is the agency Conservation Districts work through. The Program wouldn't have term leases without the Conservation Districts. Has faith these landowners are the stewards of the land and can work with the agency. MSGOT should go with adaptive management to get it done.
- 02:24:58 McGrath: Asked about reporting requirements and oversight by Program.
- 02:25:43 Ms. Sime: The Program envisions a collaborative effort by landowners and the Program to develop a monitoring plan. Would be patterned similarly to land trust organization criteria. Annual monitoring is required for all credit sites. There will be eyes on the land by the District or land trust organization. The Program hopes to develop a plan as soon as possible.
- 02:26:50 Director Tooley: The Program has done a good job following the rules and negotiating with landowners. Comfortable with going forward with those negotiations because landowners have an investment having managed the land for a long time. There is risk, but level of discomfort is 2 on a scale of 1-100. Feels these landowners will follow through with commitments. As a point forward, this could be risk in future if presented with different scenarios.
- 02:28:05 Mr. Holmes: The enforcement issue is best tackled by MSGOT, the Department, Conservation Districts and land trust organizations coming together to discuss capacity training and this (DNRC) may inform policy changes in light of best management practices. Baseline issue does need to be talked about because that is what sets the value of the project and influences the landowner's desire to enter into an easement. Setting a baseline is important for precedence going forward.
- 02:29:13 Director Tubbs: Referencing page 3 in the Willow Basin Easement Project Summary, where it states the 40% baseline is not applied to a term lease of less than 30 years. Implementation of the HQT and Policy document, adopted by MSGOT, states no adjustment will be made to the baseline for project of less than 30 years. The Policy document does go on to say MSGOT may approve up to 10% adjustment above or below the 40%. The Program negotiated in good faith with no baseline adjustment. There is a

price point that drives the decision. Stated he doesn't like this policy. The protection afforded to a term lease is the same as for a perpetual lease for the first 30 years. The perpetual easement gets protection for 100 years, so there are 70 more years of protection. However, for the perpetual easement, we dock the land trust organizations 60% of the credits. A term lease gets 100% of the credits. MSGOT needs to discuss this at a future meeting. This wasn't the discussion and deal that was made with the landowners for the term leases MSGOT is discussing today. States he would vote for these term lease projects now but does not want the Program to advance further term lease projects until MSGOT has an opportunity to discuss this for future projects. Would like the Program to work with legal counsel to develop a parent agreement for a policy initiative outlining relationship between the District and the State that MSGOT can monitor without involving the landowner. Would like to seek approval for these three term leases but wants to include an agenda item in November for adaptive management to address the bigger policy issues on enforcement and baseline.

Asked for a motion.

- 02:34:30 Ms. Ahlgren: Stated she is happy for this option for landowners. Economic and ecological service is worth something. There is no history of monitoring in this instance. Landowners do monitoring for small projects, for example 310 permits. Conservation Districts have a longevity structured for 80 years. Conservation Districts are a bottom up entity. The Districts are structured under state law through the DNRC. The Conservation Districts will be very receptive to the needed training with DNRC. Garfield and Petroleum counties are on board and ready to move forward for their landowners. These particular term lease projects are amazing. To let that go would be a bad decision, considering the leks within the area.
- 02:37:48 Senator Lang: Made a motion to approve all three term lease projects, The Shultz, King and Burgess Ranch projects. Director Williams seconded the motion.
- 02:38:05 Director Williams: Understands the policy in place now and good faith negotiations that brought MSGOT these projects today but expressed concern about setting a precedence and wants agreement there will be discussion about the policy implications at the next MSGOT meeting.
- 02:39:12 Director Tubbs: Suggested a motion be made to that effect.
- 02:39:36 Ms. Ahlgren: Asked there also be discussion about updating the sage brush layer.
- 02:40:30 Director Williams: Asked to make a friendly amendment to the motion.
- 02:30:38 Senator Lang: It sounds like we are going to change policy. There are lots of policies that need to be addressed. Asked why we don't just put it on the agenda and talk about it.
- 02:41:23 Ms. Sime: Shares MSGOT's thoughts about the uncertainty. The baseline discussion has already been flagged in the bullet list for adaptive management in the Policy Guidance document. Asks MSGOT to consider implications of grabbing one piece of the mitigation system and looking at it in isolation, without looking at all of the pieces built around it. As an example, looking at the sage brush layer at the next MSGOT meeting, opens up the whole HQT. Asks MSGOT to consider an adaptive management review for all pieces and parts the stakeholders have flagged that should be talked about.
- 02:42:55 Director Tubbs: Assured MSGOT members there will be discussion about term leases at the next meeting. There will not be a term lease project on the agenda in the future until

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an MSGOT policy discussion takes place. Stated his willingness to vote on these three projects today but wants MSGOT discussion on this issue.

02:43:54 Director Tubbs: Called for the vote. All voted in favor of the three term leases presented today.

Public Comment on Other Matters

02:44:15 Director Tubbs: Asked for public comment.

02:44:38 Gary Wiens, Montana Contractor Association

Adjournment

02:46:57 Director Tubbs: Meeting adjourned without a formal motion.

Chair for this meeting:

/s/ John Tubbs

Director John Tubbs