

**MINUTES  
MONTANA SAGE GROUSE OVERSIGHT TEAM**

June 9, 2020 Meeting Summary  
Virtual Zoom Meeting

**Members**

Mr. John Tubbs, Chair, Montana Department of Natural Resources & Conservation, Director  
Mr. Mike Tooley, Montana Department of Transportation, Director  
Mr. Jim Halvorson, Montana Board of Oil and Gas, Administrator  
Mr. Shaun McGrath, Montana Department of Environmental Quality, Director  
Ms. Martha Williams, Montana Department of Wildlife, Fish and Parks, Director (Absent, no proxy)  
Senator Mike Lang, Senate District 17  
Representative Rhonda Knudsen, House District 34  
Ms. Diane Ahlgren, Rangeland Resources Committee (Absent, voting proxy via Senator Lang)  
Mr. Patrick Holmes, Governor's Natural Resource Policy Advisor

**Staff Present**

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

**Calls to Order**

00:40:00 Director Tubbs: Called the meeting to order with instructions on protocol for the Zoom meeting and announced that the meeting is being recorded and public comments are open until June 16, 2020, 5 p.m.

**Approval of Minutes**

00:03:15 Approval of November 18, 2019 meeting minutes. Motion to approve by Director Tooley, seconded by Director McGrath.

00:03:30 Director Tubbs: Called for changes or discussion.

00:03:37 Director Tooley: Indicated that on page 7 at 01:14:06 Senator Lang is referred to as Senator Blaine.

00:04:15 Senator Lang: Asked if the Morgan (Red Lodge, MT) paperwork had been reviewed.

00:04:45 Director Tubbs: Said that the Morgan work had been accomplished in December.

00:05:05 Director Tubbs: Conducted roll call vote. Motion passed unanimously.

00:06:15 Senator Lang: Noted that the minutes included a discussion of a review of the Conservation Assessment 2020 and that the review would be presented to US Fish and Wildlife Service. Senator Lang put forth a motion that the committee see that paperwork prior to it being presented to the US Fish and Wildlife Service.

00:06:42 Director Tubbs: Said that a motion is not in order as this item is not on the agenda, but he committed that the program will provide a draft review to MSGOT prior to issuance to US Fish and Wildlife Service.

**MSGOT, Program, and Partner Reports**

00:08:11 Mr. Kyle Tackett, USDA-NRCS, District Conservationist, Dillon

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NRCS is still very much engaged in the sage grouse world. NRCS allocated approximately \$4.5 million this fiscal year for the Environmental Quality Incentives Program for the Sage Grouse Initiative. This is on par with annual allocations for the last five years. It appears that the program will exceed the demand and be looking for additional funds from states that don't use these funds.

NRCS is seeing a big interest from producers on seeding some marginal crop land back to perennial grazing mixes, which they are excited about. In addition, NRCS continues to work on conifer encroachment with partners where it makes sense. They also continue to work with ranchers on overall range sustainability grazing management—a project that has been ongoing for a decade.

Easements are still in play. Montana NRCS is one of the leaders in the nation in easement allocations every year, no doubt in large part due to the partners and land trust groups in the state.

NRCS is rewriting strategy nationally this summer; an indication from leadership that NRCS is not going anywhere in this work. Mr. Tackett will reach out to partners when re-writing of the NRCS strategy begins.

00:10:15 Director Tubbs: Called for MSGOT member questions. None.

00:11:15 Mr. John Carlson, BLM MT Sage Grouse Implementation Lead

BLM continues sage grouse implementation of the 2015 plans. The Memo Status of Greater Sage-Grouse Report [provided in the packet] from the BLM state director indicates that BLM did not trip any of the identified adaptive management triggers in the land use plans that would require them to change management direction—either from a habitat standpoint or a population standpoint.

Thanked FWP staff that helped work through some of the population analysis. As BLM moves forward, the reporting to this committee will become more robust with the help of FWP staff. BLM is integrating into the FWP program and using the priority habitat areas that are identified as trigger analysis areas—BLM is becoming more closely aligned with the state in how it does assessments of the status of the bird.

Work continues on habitat treatment projects in the various field offices as well as coordinating effects analyses, trigger analyses, and mitigation. Not getting as many calls from field offices; indicating that many previous issues and concerns have been addressed and overcome.

Reports from field offices indicate that lek monitoring numbers are up considerably due to a “Goldilocks” situation where things were just right in sage grouse habitat—birds were able to survive and reproduce. BLM is seeing success with the quality and quantity of habitat. The weather helps drive that success. BLM continues to work to keep quality habitat in order that the birds can respond adequately when weather conditions are favorable.

00:14:59 Director Tubbs: Called for questions or comments from MSGOT members. None. Asked for public comment.

00:15:40 Ms. Mary Manning, US Forest Service

Reported that the Beaverhead-Deer Lodge has partnered with the US Fish and Wildlife Service and FWP to do a nest study looking at nest success after hens have left the nest site and using the habitat assessment framework to look at the habitat characteristics where the hen has nested and also to look at where the nest is in relation to conifers and powerlines. This is believed to be year three of the study. Field sampling was done to determine if the 2003 Connelly et. al. Guidelines are appropriate for southwest Montana. This is an exciting effort and a great partnership. There have also been new lek sites observed in the Big Hole.

00:17:15 Director Tubbs: Called for questions on Mary's update and public comment. Director Tubbs noted that this is really good information and the kind of research that will be needed over the years to continue to

make sure that the sage grouse protection plan is robust and as effective as possible. The issue of conifer encroachment is an important one because of the cost. Conifer encroachment data is going to be very useful in prioritizing affected areas.

- 00:17:46 Ms. Manning: Will provide report to Carolyn when it is ready.
- 00:18:04 Pause in the meeting to address technical difficulties.
- 00:20:20 Public Comment from Mr. Timothy Nixdorf: Does the state of Montana Program follow what all the other states are doing, or only focus on Montana?
- 00:20:51 Director Tubbs: Montana resources are for Montana specific issues only. The Department of Fish Wildlife and Parks is the population agency for Montana. We are also well connected with the US Fish and Wildlife Service and Carolyn is constantly working with our federal partners as the entire nine-state region moves forward with Sage Grouse issues. Meetings this year were cancelled. We participate in the regional effort and with our federal agencies. Montana is in a unique position in that when the Montana Sage Grouse Plan was adopted it allowed for BLM resource management plans to be more closely aligned with the Governor's Executive Order. As a result, some of the litigation and other issues that are faced by other states are not as relevant in Montana. We do track regional activity.
- 00:22:05 Ms. Sime: Added that she and FWPs Catherine Wightman both participate in monthly conference calls scheduled through the Western Association of Fish and Wildlife Agencies that include regular updates from all the states within the range.

### **Spring Creek Mine TR1 Permit Revision, Greater Sage Grouse Mitigation Measure**

- 00:23:06 Mr. Shaun McGrath - Director, Montana Department of Environment Quality.

Director McGrath provided highlights of the information provided in the packet:

Spring Creek Coal Company applied to DEQ for the major revision TR1 project at the Spring Creek Mine, in November 2013. The TR1 project will add approximately 977 acres of disturbance within that existing permit boundary.

The Executive Order does not apply in the case for two reasons. First, the mine was originally permitted prior to the effective date of the Executive Order. Second, the new disturbance will occur within that existing defined project boundary of the previously-permitted mine.

Spring Creek Coal's requirement to mitigate for Greater Sage-grouse Habitat impacts is required of MSUMRA (the Montana Strip and Underground Mining Reclamation Act). The TR1 mitigation measure was based on the analysis that DEQ did in the EIS (Environmental Impact Statement). An approach to provide compensatory mitigation off-site was pursued because DEQ determined that opportunities for effective on-site sage grouse habitat were limited.

Spring Creek Coal is required to provide these funds (\$107,727) as a condition of DEQs final permit approval which was issued March 27, 2020. If MSGOT accepts these funds, it would target future Stewardship Account grants for the Southeastern Montana Service Area.

In 2010, the BLM completed an environmental assessment that analyzed the environmental impacts of modifying two existing leases to include a tract of Federal coal reserves in the TR1 project area. As part of the environmental review a habitat recovery and replacement plan was developed between Spring Creek Coal and BLM. That was done in consultation with Montana Fish, Wildlife and Parks and DEQ. The HRP included 14 stipulations to mitigate the loss of sage grouse and other wildlife habitat within the disturbance areas. Spring Creek Coal has worked to implement the required stipulations. However, the requirement to deposit the compensatory funds into the Montana Fish Wildlife and Parks Landowner Incentive Program (LIP Account) has not been fulfilled because that LIP fund no longer

exists. In a letter to BLM and Fish, Wildlife and Parks, DEQ requested that BLM and FWP first concur with sage grouse impact analysis in DEQs MEPA review of that TR1 major revision proposal and secondly to agree that DEQ mitigation measure satisfies the condition in the HRP for Spring Creek Coal to provide funds to the now defunct LIP program. In BLM and FWP response letters back to DEQ, both respectively, mutually agreed and concurred with DEQs mitigation measure and the placement of the mitigation funds in the Stewardship Account. The TR1 mitigation measure was based on the TR1 Greater Sage-grouse Habitat Assessment Memorandum in DEQ's EIS. The TR1 EIS for the Greater Sage-grouse mitigation measures were informed by the TR1 Greater Sage-grouse Habitat Assessment Memorandum. Finally, the assessment memorandum estimated a compensatory mitigation payment of \$107,727. What's before us today, Mr. Chairman, is for MSGOT to consider accepting these funds into the Stewardship Account.

- 00:28:15 Director Tubbs: Called for public comment on the acceptance of compensatory mitigation of \$107,727 associated with this agenda item. No comment.
- 00:28:48 Director Tubbs: Called for a motion for approval of acceptance of compensatory mitigation.
- 00:29:02 Director McGrath: I will so move. The motion was seconded.
- 00:29:11 Director Tubbs: Called for discussion by MSGOT members.
- 00:29:33 Senator Lang: Asked if the money will go into the Stewardship Account and will be used by the MSGOT.
- 00:29:48 Director Tubbs: Responded to Senator Lang—Yes, the money would be deposited in the Stewardship Account and limited to MSGOT use. Any approval of use would take a further action by MSGOT.
- 00:30:08 Director Tubbs: Thanked the program staff and DEQ staff for working through this change of ownership and is now back on track for Spring Creek Mine TR1 sage grouse mitigation.
- 00:30:25 Director Tubbs: Called for a vote on the motion to accept compensatory mitigation. Motion approved unanimously.

### **Modified Mitigation Policy Approach for Development Projects Utilizing Trenchless Methods**

[See Brief Sheet, presentation, and Trenchless narrative document]

- 00:31:12 Ms. Carolyn Sime – Program Manager, Montana Sage Grouse Habitat Conservation Program  
Brief Sheet and PowerPoint presentation in printed meeting materials and included in the Notes online.
- 01:06:39 Director Tubbs: Called for public comment following Ms. Sime's presentation.
- 01:07:14 Mr. Gary Wiens (Montana Electric Cooperatives Association): Said the association supports the proposal and thanked DNRC for working with the stakeholders. Appreciates the latitude given in this proposal that provides for the ability to deal with situations that are outside of the right of way on private property while still meeting the intent of the co-located facilities. Said more work needs to be done on other aspects of *de minimis* impacts, but the plan does meet one of the primary needs of co-location.
- 01:08:15 Director Tubbs: Called for additional public comment.
- 01:08:44 Mr. Scot Buerkle (Mid-Rivers Communications): Thanked Carolyn and her team for the presentation; all worked together to come up with a very workable solution going forward that allows Mid-Rivers to place fiber optic facilities to members in their area.
- 01:09:23 Director Tubbs: Called for additional public comment.

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- 01:09:41 Ms. Amy Seaman (Director of Science & Policy, Montana Audubon): Expressed appreciation in the thoroughness of the project and presentation. Said the process was a good example of how the committee and stakeholders can keep working together as changes come about.
- 01:10:26 Director Tubbs: Called for additional public comment. None.
- 01:10:41 Director Tubbs: Called for a motion to approve the Modified Mitigation Policy Approach for Development of Projects Utilizing Trenchless Methods.
- 01:10:57 Director Tooley: I move approval, seconded by Senator Lang.
- 01:11:08 Director Tubbs: Asked for any discussion by MSGOT members. None.
- 01:11:22 Director Tubbs: Commended Carolyn and her staff on conducting multiple stakeholder meetings, fortunately, before COVID restrictions hit the state. Expressed that this is a positive step for sage grouse conservation, incentivizing trenchless technology; providing an option that would be less expensive from the sage grouse conservation perspective as well as being more protective. Said that this type of product is very much in the spirit of how MSGOT was started and the direction of the Executive Order.
- 01:13:02 Director Tubbs: Called for vote for approval for the Modified Mitigation Policy Approach for the Development of Projects Utilizing Trenchless Methods. Passed unanimously.

### **Board of Oil and Gas Conservation Implementation of Senate Bill 299**

[See Brief Sheet and Notice to Operators]

- 01:14:42 Mr. Jim Halvorson - Administrator, Montana Board of Oil and Gas

Presentation has two parts. One is informational in terms of how the Board of Oil and Gas approaches its part of Senate Bill 299. We also have a recommendation for MSGOT's discussion on a part of Senate Bill 299 that applies to wells drilled after the implementation of the Executive Order.

The major part of SB 299 is that the bill became effective in May of 2019. The principle impact to the Board of Oil and Gas was that land uses and activities that were permitted prior to September 8, 2015, are exempted from the Sage Grouse Program as established by the Executive Order and that includes primarily the wells that were drilled prior to the effective date of the Executive Order (referring to Section 1 of SB 299).

The second part that has some impact to the Board is Section 3, which required that the regulatory agencies cooperate with MSGOT and the Program to determine what maintenance activities are exempt from the habitat quantification tool and that would apply primarily to the wells permitted or drilled after the effective date of the Executive Order.

The meeting package contains a summary sheet and the notice to operators that the Board prepared after the passage of Senate Bill 299. These have been reviewed with the DNRC and with the Governor's Office. The Board's primary authority is for oil and gas and Class II injection wells located on private or state mineral ownership. We also have Class II injection authority co-shared with the Bureau of Land Management on federal lands. The Board can issue Class II injection permits for those federal lands. The primary permits that are issued by the Board are drilling permits, injection permits, and we also approve well plugging and abandonment plans. Our rules require a lot of notice to the Board of activities that impact subsurface well configuration or construction. The primary purpose of those requirements is to maintain accurate records of what's going on under the ground.

There can also be some impacts to the mineral estate through recompletion of wells or perforating a new zone or even a construction change that has potential environmental impacts. We refer to those, even though they come in on the same form, as more like notifications to us. The majority of those

could not be denied by us, but they may require future follow-up through the Board for things such as a correlative rights protection.

Our main challenge was trying to figure out what is “discretionary” and what is “non-discretionary” (or maintenance activities). We decided to base our definition on whether or not the proposed action was consistent with the original permit that was issued. Our short definition would be (and it’s included on the summary sheet): “non-discretionary activities” are those necessary to keep a well producing or injecting, as authorized under the original drilling permit, but only if the well has been continuously active and the action cannot reasonably be undertaken outside of a seasonal closure period.

Senate Bill 299 required that the regulatory agency apply timing stipulations. Timing stipulations vary whether you are in General Habitat, Core Area or Connectivity Habitat (which has the same requirements as General Habitat). We chose to take the approach that we are going to try defer all activity in either General or Core habitat or at least make the operator recognize if they are in sage grouse habitat that they may have stipulations applied. They may need to think about that when they are putting together a program. The consistency with the original Board-approved permit, and that’s based off of the assumption that a person is granted a permit to drill and produce a well, so there is a certain amount of maintenance activity that is going to be required to maintain that production. The notice that we prepared to the industry is attached (2 pages). The primary considerations were that any activity that results in new surface disturbance is subject to the Sage Grouse Program. The activities that we are considering only apply within the original footprint that was authorized by the original permit. We also stressed that an operator has to think about (if they are in Core or General habitat) the timing stipulations. We are going to encourage them to avoid any activity. The real purpose in that is that we don’t want to get into a position of playing a game of Battleship where an operator proposes to work on 3 wells and he is going to have to drop or delay 1 well in his program because it ends up within 2 miles of a lek. We want them to think about that continually and not get into a position where we are causing undue expense or delay. If they can plan their activity outside of the closure windows, which is usually March 1 or March 15 through July 15, we are all better off.

These timing stipulations have not been a major issue in the years that the Sage Grouse Program has been in effect. Primarily because spring is not a good time to do work. With the amount of moisture we have had the last few years and recently this year, there are almost no discretionary activities going on in sage grouse country. Sage grouse country has an awful lot of mud and slick roads. It is not uncommon for operators to plan all of their discretionary work for later in the year anyway.

To put some magnitude on this, I did a review of all of the approvals that we have done during 2020. There is one major operator in Montana that has a lot of activities and ongoing projects in sage grouse habitat and that is Denbury Resources. This year we have approved 11 applications from them. All of the work has either been postponed to after July 15 or it was completed during February. All of those activities missed the timing stipulations. Other operators amounted to 7 approvals total for 6 different operators. None of those occurred or were impacted by the timing stipulation. It is not often that we are going to have to apply those stipulations.

The hourly restrictions we will apply as they are set forth. This primarily has to do with noise at lek boundaries. We do need an updated lek map. We have had one in place for about a year now and I’d like to see an update of that.

Finally, if you would turn to the 2-page document that we prepared to distribute to operators. This generally has been in effect since SB 299 became effective, which has been almost a year now. We haven’t run into any real complexities. The exclusion that if there is any new surface disturbance, operators automatically have to go to the Sage Grouse Program is stressed. We have identified the “discretionary” vs. “non-discretionary” activities and warned them that any activities viewed as “discretionary” will be subject to the timing stipulations.

I am going to skip the middle part of the first page because that gets to the recommendation that we are going to make to the Oversight Team (to discuss and consider adopting). The bottom part of the page are our Guidelines and again stressing stay away from March to July, if you can. If you can’t, you

will likely have stipulations in General Habitat that is going to be primarily based on lek locations. And a statement that the hourly restrictions will be applied.

The second page of the handout is just how we tried to break out “non-discretionary” and “discretionary” activities, with an allowance for emergency response: spill releases, fires.

The other thing that happens a lot in the oil industry (especially with our notices that are required for different levels of subsurface work) is that we may approve a type of work and then when operators get into it they find out that they have to do some additional work that requires another permit from us. So, we are going to treat that under the stipulations of the original permit that got them there.

There is also a certain amount of work that can be done without any notice to us. If you are on a well with a rig doing work that doesn't require notice to us and you find out that you have to take two or three hours to a cement squeeze or something, we are not going to make them (operators) stop working. That scenario is covered by Section 2.

We also have the federal underground injection control program that has been delegated to us by the EPA. It has its own requirements. There is some flexibility in our application of that, but there are certain things that have to be done to injection wells that have a timeframe that's covered in number 3 under “non-discretionary” activities. Finally, we stressed again that the well has to be continuously active if you want us to consider it to be a “non-discretionary” activity. I think that is the first time we have ever addressed this -- the work may be necessary to get the well back to production, but if you waited 4 or 5 months to do it then we will expect you to wait until a period outside of the (seasonal) closure period to do that work.

An attempt to determine what discretionary activities again -- recompletion, deepening, stimulation, or abandonment of a well that's been inactive, and, you are not there because of a previously approved action in either 2 or 3 of the prior section. A statement that any activities that require prior approval at a well that has been inactive for 1 year and that is based off a Board rule that has specific requirements for wells that have not produced or injected for 1 year.

We sent a message to the operators that we're not going to order them to do work that would put them in violation of a timing stipulation.

Let's go back to the middle of the first page of the operator handout, dealing with Section 3 of SB 299. Any well that was permitted after September 8, 2015, is still under management through the Sage Grouse Program and the Executive Order. For those wells, operators still have to contact the Program for recommendations or stipulations before we approve those activities. We incorporate any stipulations from those in our approval of the proposed work. So, we are the primary agency monitoring whether or not those stipulations are followed.

Finally, in Section 3 it said that the permitting agency is required to work with the Oversight Team as to when the habitat quantification tool should be applied. Our recommendation after our review is the habitat quantification tool should be applied only when the proposed activity includes new surface disturbance. With any other activity not requiring surface disturbance, being consistent with the permit that authorizes them to drill and produce their well.

1:30:09 Director Tubbs: I am going to break this up in to two parts. First is that Senate Bill 299 has a notification from permitting agencies/regulatory agencies to MSGOT as to how they are going to implement and apply Section 1, and that does not require concurrence. It's more of a recording keeping item so that we can know that various permitting agencies are implementing Senate Bill 299, and we are aware of how they are implementing it.

The second part of the discussion is about Section 3, which is the operation and maintenance of, in this case, oil and gas wells permitted after the effective date of the Executive Order. That does require MSGOT concurrence, and that is why it is a discussion item here is to make sure we are ready to take that vote at a future MSGOT meeting. I do think that it is important to have this discussion because oil

and gas has taken a lead here. I think we need to discuss, especially the Section 3 approvals, in the context of how it might set some precedence for other agencies as they come forward and help guide those other agencies as they approach MSGOT for their notification and approval under SB299 as well.

- 01:31:41 Director Tubbs: Called for public comment and discussion with MSGOT on application of Section 1. Section 1 does not require concurrence; it is recording keeping so that MSGOT knows when and how various permitting agencies are implementing Section 1 of Senate Bill 299.
- 01:32:08 Mr. Alan Olson (Executive Director, Montana Petroleum Association): Thanked Mr. Halvorson for the work he has put into this and believed the information presented fell in line with discussions that Senator Lang and he had had with Mr. Halvorson and Patrick Holmes at the last meeting. This comes close to full compliance with the intents of Senate Bill 299.
- Operations and maintenance on flow lines and injection lines aren't normally regulated by the Board of Oil and Gas but could require a permit by the BLM. In that instance would the BLM have to forward that to the program, and would there be required compensation on those issues?
- 01:33:22 Director Tubbs: Said he will refer this question back to program staff.
- 01:33:44 Mr. Rusty Shaw (Denbury Resources, Environmental Compliance Manager): Said Denbury supports what Mr. Halvorson is proposing and that the Oversight Team should adopt. Said Denbury also supports the discretionary and nondiscretionary type activities. Stated Mr. Halvorson is correct, in that most of the time Denbury cannot conduct operations during the stipulation periods so it shouldn't affect operations going forward. Restated support of the proposal on behalf of Denbury.
- 01:35:07 Ms. Seaman (Director of Policy & Science, Montana Audubon): Commented towards the permit question that Mr. Olsen raised; perhaps there should be a more detailed process similar to what the Trenchless Working Group provided. Said she would be happy to participate in a more detailed process with this agency, if they are willing. Montana Audubon would like to see more detail given the increasing number of abandoned wells or the increasing threat of that happening. It is difficult to track individual wells and a more streamlined, clear process is needed. Appreciated hearing about an upcoming planned conservation assessment to help inform these processes while there is conversation open to how we address these issues.
- 01:37:22 Director Tubbs: Called for additional public comment.
- 01:37:34 Director Tubbs: There is no motion. Section 1 is a communication from the Board of Oil and Gas to MSGOT as to how they are applying Section 1.
- 01:37:46 Director Tubbs: The discussion which I will open up to MSGOT members on Section 3 and Administrator Halvorson, I am going to say some words and hopefully you can chime in and see if I heard you correctly.
- 01:38:01 Director Tubbs: Called for discussion of Section 3 of SB299 from the 2019 legislative session. Section 3 is the operation and maintenance of, in this case, oil and gas wells permitted after the effective date of the Executive Order (relative to designating as exempt from the HQT certain operations and maintenance activities that require a permit and whether the activities may still be subject to stipulations such as the seasonal use period and also relative to "discretionary" maintenance). This *does* require MSGOT concurrence and why it is a discussion item (informational) today. The purpose of discussing it today is to prepare for a vote at a future MSGOT meeting.
- 01:39:01 Mr. Halvorson: Yes, I agree.
- 01:39:07 Director Tubbs: This has not been discussed before by MSGOT. It is something that MSGOT will need to approve, which is why I wanted to have it as a discussion during this meeting as opposed to making a decision. Also, I am a little hesitant as Director Williams is not present and I want to make sure she has the opportunity to take a look at this.



In general, we are trying to understand what operation and maintenance activities are, in this case for oil and gas specifically. A key distinction is—they can access the well head, but if they are to disturb the land, then it becomes a new activity. All activity, based on what the Board is putting forward, should take place outside of the timing stipulations. I can get behind those two fairly easy. I think the application of “discretionary” is where the focus needs to be, so that we can see those timing stipulations and how they are imposed. Again, if it’s “non-discretionary” operators would not be subject to them. But, any “discretionary” activity during the seasonal restrictions would be subject to mitigation.

- 01:40:33 Director Tubbs: Called for discussion by MSGOT members, keeping in mind other programs and projects and how that might be implicated as well.
- 01:41:00 Ms. Sime: Suggested that as the Oversight Team thinks about this informational item it might be helpful to rename it. She stated that clearly observing the seasonal periods when activities would occur in areas near leks is a minimization measure, which is a positive thing for birds and a positive thing that seasonal restrictions haven’t proved to be a limitation for industry, in most cases. Encouraged Oversight Team to think about how Montana could track and be able to actually report minimization measures that are being undertaken as a positive benefit to birds and that the state is taking with respect to future conservation assessments or status reviews by the US Fish and Wildlife Service. She noted sage grouse litigants have been winning in court lately so Montana might do well to come up with a way to capture, record and report minimization measures under either Section 1 or Section 3 of Senate Bill 299.
- 01:42:49 Director Tubbs: Called for additional discussion for MSGOT members. None.
- 01:42:55 Said a future MSGOT meeting agenda item will be set to consider final approval. Will consider other ways to provide comprehensive detailed information based on Ms. Seaman’s comments so that MSGOT, stakeholder groups, as well as the public are involved.
- 01:43:26 Director Tubbs: Called for public comment on any matter not on the agenda.
- 01:43:50 Alan Olsen (Director, Montana Petroleum Association): Said that Montana Petroleum Association has sent communications to Ms. Sime, Director Tubbs and Mr. Holmes inquiring about mitigation compensation if a project does not come to fruition, mainly mitigation for the operations phase of a project. Expressed hope that this issue be considered at a future meeting.
- 01:44:19 Director Tubbs: Thank you for the reminder. In the world of oil and gas, often times speculation plays a roll. You could come up with a dry hole—you go in with the intention of developing oil and gas and you find out that there is no reserve to develop. Presently, full compensation will be requested. Mr. Olsen, as well as one of the members of his Association, has raised a legitimate issue on how we deal with the situation where a hole was dry and the long term impact of a new well does not exist since it was not developed / was a dry hole, although MSGOT has been compensated for it. That’s a very legitimate issue to discuss and will be a subject of the next meeting.
- 01:45:36 Director Tubbs: Asked for additional public comment. Seeing none Director Tubbs invited Ms. Sime to comment on program grant status.
- 01:46:04 Ms. Sime: Provided an update on the status of the Stewardship Account Grants since November 2019.

The Watson Conservation Easement: Montana Land Reliance requested additional funds due to increase in the appraised value. MSGOT approved. The project successfully closed May 29, 2020. The total award from MSGOT was \$265,500 and was matched with NRCS funds.

Willow Basin Conservation Easement: During the 2019 grant cycle, MSGOT selected the Willow Basin Conservation Easement in southwest Montana. That was a Nature Conservancy proposal. The project successfully closed March 20, 2020, with a total award of approximately \$240,000 of state funds matched with NRCS funds.

The Burgess Ranch Term Lease: This was a 30-year term lease from the 2019 grant cycle. The lease also incorporated restoration and reseeded components. That term lease closed in April 2020. As a lease, it falls under contract law not Montana's Open Space Act addressing easements. The Restoration Plan has been finalized, in conjunction with the landowner and the Conservation District. Reseeding efforts are underway. This project will take approximately two years to complete the restoration efforts. The Program, the landowner and the Garfield County Conservation District are continuing work to complete an initial condition report to establish the baseline of the property at the time the lease was executed.

Final agreements were not reached on the King Ranch Term Lease or the Shultz-Gran Prairie term lease projects. We worked together very closely until earlier this Spring, but neither project could move forward. Could not reach agreement on the lease terms. There may have been other concerns on the part of the families. We appreciate their willingness to explore the tool. These two term lease projects provided great opportunity to understand more from a landowner perspective on this tool as well as to develop template agreements that would be available in the future when MSGOT is ready to entertain term leases.

Two remaining 2019 MSGOT funded projects are Mark Lewis and Sauerbier Ranch, both Montana Land Reliance projects. The Mark Lewis project is in active negotiations and expected to close in in 2020. The Sauerbier Ranch is more likely to close in 2021 because it has an NRCS match, which typically takes longer to close. We have fully executed grant agreements for both of those projects. The final EAs have been completed, so we will work at the pace set by the Montana Land Reliance as well as the landowner to get those projects closed.

Lastly, MSGOT's Stewardship Grant discussions in the past included concern about adequate monitoring and enforcement of term leases. Concerns were expressed that a grant sponsor may not have the capacity or be able to monitor with the rigor of MSGOT's expectation. I want to provide you with a confidence and the reassurance that the Program has developed a term lease monitoring protocol document very similar to what Montana Fish, Wildlife and Parks would do or the land trust organizations themselves would do to monitor perpetual easements. So be confident that we have set a high standard for how all these term leases would be monitored.

Also, know that comments from the Garfield County Conservation District and the Burgess Ranch. That lease is now in place and will be implemented by the conservation district. The Program will provide technical assistance upon the district's request. We will work with the conservation district and the landowner to complete the initial condition report. It has technical components to ensure that that initial condition report has enough detail that serves the conservation district (as well as MSGOT needs) and is agreeable to the landowner.

- 01:52:27 Director Tubbs: Asked for any additional public comment. None.
- 01:52:47 Director Tubbs: Thanked everyone for their time and patience with new Zoom technology.
- 01:53:00 Director Tubbs: Called for motion to adjourn.
- 01:53:07 Senator Lang: Motion to adjourn. The motion was seconded. Approved unanimously.
- 01:53:27 Meeting adjourned.

Chair for this meeting:

/s/ John Tubbs

Director John Tubbs