

MINUTES
MONTANA SAGE GROUSE OVERSIGHT TEAM

May 27, 2022
Meeting Summary
DNRC Building, Montana
Conference Room and
Virtual Zoom Meeting

Members Present

Mr. Michael Freeman, Chairman, Governor's Natural Resource Policy Advisor
Ms. Diane Ahlgren, Rangeland Resources Committee Chairman
Mr. Chris Dorrington, Montana Department of Environmental Quality (DEQ), Director
Mr. Jim Halvorson, Montana Board of Oil and Gas, Administrator
Ms. Amanda Kaster, Montana Department of Natural Resources and Conservation (DNRC), Director, by Proxy
(Proxy Director Dorrington)
Representative Rhonda Knudsen, House District 34
Mr. Malcolm Long, Montana Department of Transportation (MDT), Director, by Proxy (Proxy Director Dorrington)
Senator Mike Lang, Senate District 17
Mr. Hank Worsech, Montana Department of Fish, Wildlife and Parks (FWP), Director

Staff Present

Mr. Mark Bostrom, DNRC Conservation and Resource Development Division, Administrator
Ms. Therese Hartman, Sage Grouse Habitat Conservation Program, Acting Program Manager
Mr. Adam Kauth, Sage Grouse Habitat Conservation Program, Program Biologist
Ms. Jamie McFadden, PHD, Sage Grouse Habitat Conservation Program, GIS Analyst
Ms. Emily Moran, DNRC Conservation and Resource Development Division, Administrative Attachment
Assistant
Ms. Erin Reather, Sage Grouse Habitat Conservation Program, Program Biologist
Mr. Nate Wold, Sage Grouse Habitat Conservation Program, GIS Analyst
Ms. Heather Harris, Montana Fish, Wildlife, and Parks, Wetlands, Grasslands, and Sagebrush Coordinator

Call to Order and Administrative Matters

1:02 pm: Chairman Freeman: Called the March 27th Montana Sage Grouse Oversight Team (MSGOT) meeting to order.

Chairman Freeman: Introduced the Montana Sage Grouse Oversight Team members in attendance; quorum confirmed.

Montana Sage Grouse Habitat Conservation Program Staff introduced. Heather Harris from Montana Fish, Wildlife & Parks introduced.

Director Dorrington: Designated proxy for Director Kaster and Director Long for the May 27th, 2022, MSGOT meeting.

1:07 pm: **Chairman Freeman: Called for a motion to approve the draft February 11, 2022, MSGOT**

minutes.

Chairman Freeman motioned to approve the draft February 11, 2022 MSGOT minutes.

Voice vote conducted: Voted unanimously to approve.

Discussion: None.

Motion passed.

HC Resources Waiver Request Presentation

1:07 pm: Chairman Freeman: Invited HC Resources (HCR) to introduce themselves and present the proposed Howard Coulee Wells Project Waiver Request. The Howard Coulee Wells Project Waiver Request presentation ensued.

1:08 pm: Jon Starkweather, Mike Stearns, Tom Uphoff, Jay Wadman, and Ernie Woods were introduced.

1:09 pm: Presentation from HC Resources

Mr. Stearns: Thanked MSGOT, Director Kaster, the Sage Grouse Habitat Conservation Program staff, specifically, Therese Hartman and past Program Directors for the opportunity to submit their current waiver and to provide public input. HC Resources (HCR) has extensively participated in previous MSGOT meetings.

HC Resources, LLC has been working on project 4519, and its predecessor project, for three years.

Extensive staff experience allows HCR to be committed to responsible stewardship of the environment and environmental concerns. HCR's Geologist, Jon Starkweather, was present at the 2021 sage grouse count for the leks included in their projects.

Mr. Stearns proceeded to discuss the foundation of the submitted waiver request, per the following from an attached letter.

1:31 pm: Mr. Wadman handed out ground photos of existing power lines and structures at the project site. Existing structures are identified by yellow pins and the eight new, proposed, structures are identified by red pins. The green pin represents the center of the lek. Mr. Stearns highlighted the existing road that is within two miles of the lek. Mr. Stearns stated the existing road, poles, and wires near the lek have not affected the Sage Grouse population.

1:35 pm: Mr. Stearns: HCR will reduce their proposed impact of the power poles by adding bird protectors and spikes on the new poles. No bird protectors have been seen on the existing poles. HCR argues the lack of impact from the existing power poles and wires is evidence that the impact from the proposed poles will be minimal. HCR would like to be included in the power pole exemptions.

HCR is requesting a partial waiver, suggesting a mitigation fee of \$20,000 towards the compensatory obligation for the project would be reasonable and manageable.

1:37 pm: MSGOT Discussion

Director Dorrington: What is the vintage of the era of the pre-existing power poles, identified by yellow pins?

Mr. Stearns: They were put in place in the early 1970's.

Director Dorrington: Please clarify HCR's position on the following statement: poles from 1970's that the birds have become familiar with would be analogous to the new, proposed power poles, identified in red, and the birds would not be disturbed by this additional development activity.

Mr. Stearns: There are two different ages of poles. The original poles for the original discovery well were put in place in the 1970's, but new poles were added in 2013 and 2014 for the three new wells.

1:39 pm: Administrator Halvorson: Speaking economics, what is the AFE (Authorized for Expenditure) completed well cost?

Mr. Stearns: Around 400-420 per well.

Administrator Halvorson: What is your estimated ultimate recover per well?

Mr. Stearns: Based on the two wells that are currently on the landscape, somewhere between 50,000 and 75,000 barrels.

Administrator Halvorson: What IP (Initial Production) is needed to consider the well economic?

Mr. Stearns: 60 barrels per day.

Administrator Halvorson: How much water?

Mr. Stearns: 10-15 barrels a day.

Administrator Halvorson: Did I understand that HCR is also purchasing the offset wells and facilities?

Mr. Stearns: HCR will be purchasing two wells; the existing facilities will be enough to handle operations.

Administrator Halvorson: A question for the program, has the Program run an HQT with the final small well locations, but ignoring the powerlines?

Therese Hartman: The most recent HQT has been run as a buried power line. Was that the question?

Administrator Halvorson: As the applicant mentioned, there is an ability to exempt the power line mitigation costs. Has the final surface disturbance been run without power lines, or can the Program isolate what the power line cost is?

Therese Hartman: Not for the new lines, but an HQT has been run with the consideration of the existing power lines, it was treated as a desktop third level analysis, and the costs were reduced significantly.

Administrator Halvorson: For HCR, how did you come up with \$20,000?

Mr. Stearns: HCR compared the HQT that included above ground power lines with the HQT that included buried power lines. HCR looked at the difference between the calculated fees, assumed the wires were the difference between the amounts. Again, HCR is willing to pay \$20,000 for the disturbance HCR is creating, which is mainly the well pads. It is HCR's opinion that the wires do not produce any impact or disturbances.

Administrator Halvorson: From the Project Review Summary, the HQT was never run with the smaller surface locations.

Mr. Stearns: It did get re-run; I believe the numbers went from \$103,000 down to almost \$55,000.
Mr. Stearns responded to MSGOT's questions with his perspective.

Administrator Halvorson: To summarize HCR's position, HCR believes \$20,000 would be more than what the HQT would yield if it was re-run without power lines?

Mr. Stearns: Correct, HCR would like to help within reason. When the HQT was run as a test, years ago, it yielded \$6,000 for each well for a total of \$24,000 for four wells. HCR believes \$20,000 is fair.

Administrator Halvorson: As an editorial comment, I would hate to get into economics, it is an everchanging substrate. When the initial HQT was run, oil was about \$20 per barrel. I could accept an argument that the power line would not have impact on the habitat, I just want to make certain that the Program has a firm number that is repeatable for the next applicant that comes forward.

1:46 pm: Chairman Freeman: Question for the Program. There was discussion on exemptions for power lines below 35kv, can the Program clarify the language in the Executive Order? We heard from the applicant that these exemptions were possibly added in previous drafts of the Policy Guidance document but was not included in the final document. This omission represents a choice past MSGOT members made to exclude these types of power lines.

Therese Hartman: The HQT and Policy Guidance documents were all written from the Executive Orders. In Executive Order No.12-2015, the exception is for agricultural and residential power lines; it was never intended to make an exemption across the board. Executive Order No. 12-2015 reads as follows:

Agricultural and residential electrical distribution lines more than 0.6 miles from a lek in Core Areas and 0.25 miles from a lek in General Habitat or Connectivity Areas. Within 0.6 miles of a lek in Core Areas and within 0.25 miles of a lek in General Habitat or Connectivity Areas, no review is required if construction does not occur between March 15 - July 15 and construction does not occur on the lek. Raptor perching deterrents shall be installed on all poles within 0.6 or 0.25 miles, respectively, from leks, if they are proven to be effective according to Avian Power Line Interaction Committee guidance. Other management practices, such as vegetation screening and anti-collision measures, should be applied to the extent possible. Routine maintenance of existing power lines conducted between July 16 - March 14 is also an exempt activity

Mr. Stearns: During the drafting phase of the Policy Guidance document, HCR was present in many drafting sessions. Mr. Stearns continued to respond to MSGOT's question with his perspective.

Chairman Freeman: It seems this specific project has been discussed as an example in the creation of the Executive Order and Policy Guidance document. MSGOT is a creature of Executive Order and Statute, if the authorities that have created the Program have already asked and answered this question, it is important for MSGOT members to consider. The purpose of this program is to balance the decreasing Sage Grouse numbers and development of Montana, so the Sage Grouse are not listed as an endangered species. A goal of MSGOT's is to strengthen the program; recently the Governor's office submitted comments to the BLM's reconsidering of the resource management plans of Sage Grouse. We have argued that Montana's program is the 'Gold Standard'. Adhering to the intent the previous authorities and the process that created the Program and MSGOT should be used to inform this discussion, and for MSGOT members to consider.

1:52 pm: Mr. Bostrom: I was a participant in many of the stakeholder meetings HCR is referring too. Many examples were provided for the scenarios, often the project given had multiple different disturbances, but within the procedure of adopting rule for the final document, there could not have been an addition or subtraction from what action was publicly noticed. What was posted for public

comment is what was voted on and adopted by executive action.

Chairman Freeman: It is not possible for a Policy Guidance document to exist if it conflicts with the Executive Order. The Executive Order gave the authority to create the Policy Guidance document.

1:54 pm: Senator Lang: Does the HQT acknowledge or give positive input to projects where birds are proven to habitat near and/or under power lines? Or is it just an installation of the project?

Therese Hartman: The HQT does capture distance to lek and density.

Dr. Jamie McFadden: Many data layers feed into the HQT to assess impact. Each year, the Program receives lek data from Montana Fish, Wildlife & Parks, which is used as a data layer within the HQT Basemap.

Senator Lang: What is the documentation showing of the history of this area?

Director Worsech: Invited Heather Harris to present any information or data.

Heather Harris: Unfortunately, there is not a lot of history or counts of this specific lek. There is a handful of counts starting back in 1999. Note that the letter submitted by HCR references a 100 bird lek, this is considered a total bird count; Montana Fish, Wildlife & Parks (FWP) uses high male, which is the commonly accepted method to determine Sage Grouse population. The previous year (2021-2022), which are not finalized numbers, yielded 34 males. The 2020-2021 survey yielded 56 males, prior to that the earliest survey was completed in 2011-2012, which yield zero males. In 2006, the survey yielded 37 male counts; the average does seem to be around 37 males, but only six counts have been conducted at this lek. Unfortunately, Sage Grouse surveys are limited by access, weather, time, etc. We do not have much background information on how the existing power line affects the birds.

Mr. Bostrom: Question for Senator Lang. There are varying statuses of leks (provisional lek, active lek, and confirmed active lek) are these what you are trying to reference?

Senator Lang: It seems we have confirmation right now that there are active birds on the leks that have lived around the power lines and power poles for a long time. I could not hear the comments Heather Harris made.

Chairman Freeman: To clarify Senator Lang's question, if there are existing poles and you see birds living around the existing poles, does that count as a credit or does it lessen the HQT score? Referencing Heather's comments, it is very difficult to analyze this question because there is not enough historical data proving or disproving a negative impact. How do you quantify this? Hence why MSGOT and the Program relies upon the Habitat Quantification Tool, which we recognize is a broad system of principles and policies but is the best available science.

Heather Harris: Restated her previous comment. An analysis of the current history of this lek yielded that it is within the top 5% of all leks in Montana for the year the survey found 100 total bird count. It is a good lek, especially for Musselshell County.

Therese Hartman: The Program did take into consideration the existing poles when the project was originally run. Since then, the project has changed multiple times. When the project was originally run, the debits were over \$100,000, the Program then did a 'Desktop Third-Level' analysis, which is where the spatial data of the power lines were incorporated into the HQT Basemap, which lowered the value of the habitat, so it gave the benefit of that reduced habitat quality when the Program re-ran the HQT; this is what brought the debits down to \$54,000. The existing poles were brought into the mitigation cost.

Chairman Freeman: So, to confirm, using the process set out in the Policy Guidance and HQT

documents, you did consider the existing poles, which did lower the price of mitigation.

Therese Hartman: Correct.

2:02 pm: Ms. Ahlgren: Referring the bird count numbers. When talking about 120 birds on the lek, this is referring to total birds?

Chairman Freeman: Yes.

Ms. Ahlgren: When Montana Fish, Wildlife & Parks compiles their reports and gives them to MSGOT and the Program, they are reporting male numbers on leks?

Heather Harris: Yes, whenever a population estimate is run on a lek, we standardly used high male counts, this is because males are easier to see and identify on the landscape, and hen counts can be variable depending on the time of year. Surveys are done from a distance to avoid disturbances and total counts can be unreliable.

Ms. Ahlgren: Thank you, so to clarify for myself, when MSGOT reads any FWP reports, they are referring to high male counts, but in the HCR letter, the 100-120 lek count is referring to the total bird count. For me, the report seems to exaggerate the counts because it does not compare count metrics. A question for Mr. Stearns, is the infrastructure associated with 12.5kv power lines different than 35kv power line infrastructure?

Mr. Stearns: The size of power line and the surrounding electromagnetic field would differ, but the poles would not. Mr. Stearns continued to respond to MSGOT's question with his perspective.

Ms. Ahlgren: Thank you. Another question for Mr. Stearns. It sounds like there is a possibility you may hit a dry hole in that area; from what I have heard, there has been a history of dry holes. Do you have to have the electric lines while drilling?

Mr. Stearns: No, the lines would only come after it is proven that oil can be produced.

Ms. Ahlgren: Okay, that changes my perspective a little bit. Does MSGOT go after this with the assumption HCR is going to hit oil and then have to put in those lines? Would it make sense to do the drilling part first and then add the lines, this may be a question for the Program or other MSGOT members.

Chairman Freeman: I would defer to the program as well.

Mr. Wadman: HCR has no intentions to run power until oil is discovered and the casing is in the ground.

Chairman Freeman: I would like to direct this question to the Program. Obviously, the Program does not dictate what the applicant submits, but the program has no way to analyze an option/disturbance that has not been submitted.

Mr. Bostrom: When a project is proposed, it is operated off the assumption of success, thus the change that came in two sessions ago where the Program is to hold a certain amount in reserve of mitigation in case it is dry hole. In the case of a dry hole, or if other things happen, the Program holds to accounts for oil, one for the production and development, and other for the reclamation. If it's a successful drill, it's going to have a duration and a lifespan that is way different than hitting a dry hole and then reclamation. There will be a difference in cost so the Program holds the difference of costs in a separate account so that it can be related to the company.

Chairman Freeman: At the heart of this issue, there is a question about economic impact of paying full mitigation of a dry hole. It seems there is a provision for that, but if you are producing the

economic impact of the overall project, it would be reversed. To answer the question, MSGOT can only analyze what is submitted to them.

Mr. Bostrom: That is correct and operated on the assumption of success.

Therese Hartman: The Program does have a refund policy. If the applicant were to go in and drill the well and create the disturbances as they've described, there would be a construction cost. If there were to be a dry hole, the applicant would receive all their operation costs back. In this case, about \$52,000 of the mitigation would be refunded.

2:11 pm: Director Worsech: Is the Program concerned about the impacts of the size of the wire because of the potential predator perching sites or because of the electromagnetic field?

Representative Knudsen: Thank you, I was wondering the same thing. What is causing the negative impact? Is it the wire or the poles?

Therese Hartman: The Program is concerned about the impact from the poles, the wires do come into play and that is when we make adjustments for big powerlines based on voltage. The poles are evaluated if they are or are not nest supporting, typically the large power lines are nest supporting; this is when the voltage of the wire comes into play. A pole is considered the same, no matter what the wire size; poles are seen as a perching opportunity.

Mr. Stearns: HCR will be placing avian deterrents on the poles.

Therese Hartman: The HQT was run with non-nest supporting poles.

Chairman Freeman: Were the benefits of the avian deterrent measures were taken into consideration when the HQT was run?

Therese Hartman: Correct.

Director Worsech: How is perching ability incorporated into the HQT? Birds may still perch on the wire even with avian deterrents on the poles. Is this taken into consideration?

Therese Hartman: The objective of the avian deterrents, or spikes, would be to prevent nesting. The nesting birds are a large issue, birds that opportunistically fly by and land on a wire, are less of an issue.

Chairman Freeman: So, there will be some impact from perching birds, but less than nesting birds.

Therese Hartman: Correct.

Representative Knudsen: Question for HCR. If you did not have electric lines coming into the site, is it possible to have a diesel-powered pumping system.

Mr. Stearns: Yes.

Representative Knudsen: Follow up question for the Program. If the project included diesel-powered pumps instead of power lines, what impact would be reflected in the HQT?

Therese Hartman: The project has changed frequently and significantly, so I cannot say for sure. The prior version of the project was run with buried power and the mitigation costs were \$29,500. The current iteration of the project changed since then and they are now utilizing an existing facility, so I believe it may be less. Nothing is final until the HQT is run again, every change made affects the score.

Representative Knudsen: So, do you know specifically if there are negative impacts of bringing in diesel-power versus electricity to a production site that are reflected in the HQT?

Therese Hartman: If it is a diesel engine, it could produce too much noise and have a negative impact, sometimes that is mitigated with having the equipment in an insulated building. But with how close this project is to a lek, I would assume noise would have a negative impact.

Representative Knudsen: In my opinion, it seems electrical power lines are the lesser of the two evils.

Mr. Stearns: The emissions emitted by a diesel energy is also to be considered. Diesel generators are also cost prohibitive.

2:18 pm: Chairman Freeman: I had helpful thoughts when reviewing this request. The nature of a waiver request in general, in some sense, implies second guessing the expertise and effort that went into creating the rule. Certainly, if you are a legislator, rule maker, or regulator and you put effort into making a law or rule, and there is a waiver provision, generally, you enforce the regulation or the law. When MSGOT analyzes the waiver requests, there needs to be a significant force or need for the waiver. The other thing to consider, is the purpose of the Program and MSGOT. Our job is to impose costs for loss of habitat and to ensure there is no net loss of habitat; this helps preserve economic development in Montana and fending off a listing of sage grouse under the Endangered Species Act. These rules are here for a reason. In the creation of this program, there was a lot of effort, negotiations, blood, sweat, and tears, so I am hesitant to second guess the wisdom of those who worked on this for so long and who came before me. The HQT is the best available science, which is not perfect. This was understood when the tool was set up. Just remember that waivers are not standard course and that the rules we are considering waving are the result of a lot of hard work and have impact on a larger context, federally as well as a state level.

Director Worsech: I agree with you 100% on your rationale.

Administrator Halvorson: I could not hear the last comment made in the room.

Director Worsech: Yes, I agreed with the Chairman on this issue. My experience is anytime you try to set precedents, it never works out well.

Administrator Halvorson: We like oil and gas because they pay to keep our doors open. I tend to say that I support the request, but the difficulty I have that is just an offer that is not backed by hard numbers. We haven't seen a lot of activity, but we've heard a lot of rumors about coming activity to Central Montana. I wouldn't want the waiver to be an offer from an applicant without some basis in the HQT. That is the reason I am hesitant not to support this, though I have not made my mind up. I don't see any foundation of the \$20,000. I think if we depart from our policy; it needs to be quantified and justified.

Ms. Ahlgren: I agree with Mr. Halvorson. Although I don't want to stifle industry in any way, this, as you said, has been put together with a lot of blood, sweat, and tears and I have to rely upon our Program Experts. Mr. Halvorson has a lot of insight to this topic, so I put a lot of weight on his opinion. I also have troubles granting the waiver, at this point; I appreciate all that HCR has done to mitigate and avoid. I also appreciate all the work the Program has done to try to prevent a large expense. I would also have trouble granting the waiver request in the same sense of Chairman Freeman's comments; it is a slippery slope that we need to be careful with, in my opinion. Thank you.

Representative Knudsen: I am going to take the other side of this argument. I think we have clearly seen that there is already an exemption for agricultural and residential electrical distribution lines, under 35kv. I don't see how running a power line to an oil well is going to cause any more negative ecological impacts than a power line to a homestead or a large farmyard, which, would take up a

larger area. I think we have the justification; we already make exemption for agriculture and residential and I think under that premise, it would be alright to make an exemption for this project as well.

Senator Lang: Will there be discussion after the vote, or are we discussing it now?

Chairman Freeman: I guess we are discussing it now.

2:27 pm:

Senator Lang: I have a few comments I would like to make. Number one, the reason we have waivers, with my experience on MSGOT and the bill drafting experience, is because we knew the HQT could not answer everything, so wavier opportunities were to be used by a judgement call of MSGOT. The Habitat Quantification Tool is a fine document, and is better than anything else in the nation, but I do not count it as perfect science, nor as anything with the sage grouse counts. The one thing I think we are missing, is that 20+ poles already exist on this site, we are going to add eight more, the additional eight are not going to have perching. We know that there are sage grouse in the area. I think there has been due diligence to try to make the project better, environmentally, and I want the group to remember that we are talking as if the HQT is perfect science, which it is not, but it is the best we have. Director Worsech can comment that in my area, a lot of bird counts are not made in the high snow areas. But from my own bird science, the bird populations in my area are doing very well. I am seeing more birds in places I have not seen in years, to me, that a good thing. The other thing to remember, is when this was written, there was no consensus in the Executive Order for predation. There were some studies that were not allowed to be into the development of this program, and that's fine. But Executive Orders are Executive Orders, and as we have seen in the history of this nation, they have been changed and re-done. I am not saying we need to change the Executive Orders, but we need to be very factual. I am willing to stand with the HQT and science that we have, but I am not solid on the fact that it is perfect science. If you want to know, I will accept the \$20,000 waiver. The other thing we have not answered, if we would allow the \$20,000, can mend the law that allows a refund for dry holes? In other words, if we go with the full \$54,000 and HCR have a dry hole, they receive a certain percentage back. Can we reduce the cost so HCR has to pay \$20,000 and if they have dry hole, they get nothing back, but if they have a positive hole, they can expand?

Chairman Freeman: My initial reaction would be that we have to remember that the purpose is for mitigation of habitat loss and that we have the refund policy provisions. The number is more about compensating for habitat loss, but I would ask the Program for their opinion.

Senator Lang: That's the point. We're saying that \$54,000 will be their production cost, nobody has said what percentage of that will be refunded if they find a dry hole. Let's make it a hard number.

Chairman Freeman: We do have a number if they were to hit a dry hole?

Therese Hartman: About \$52,000.

Chairman Freeman: They will get about \$52,000 back if they drill a dry hole.

Senator Lang: So, we will do a \$54,000 mitigation, they hit a dry hole and receive \$52,000 back, is that correct?

Therese Hartman: \$51,623

Senator Lang: Okay, so we have the disturbance from drilling the hole, which we will receive nothing if they get a dry hole. I am saying the offer could be \$20,000 mitigation waiver and if they hit a dry hole, they get nothing in return. The disturbance of drilling the habitat will still have happened.

Chairman Freeman: My initial thought is we would be unjustly enriched by that. But Mark, please weigh in.

Mr. Bostrom: Senator Lang, I understand where you are going with that, but in deference to the legislature, that provision is set in law, it's in statute. The Technical Manual and Guidance Document are in rule, and generally when a law is passed by the legislature, it stands firm above and beyond.

2:34 pm: Director Dorrington: Thank you, I would like to throw my two cents in. I think, our jobs as MSGOT members, is to implement what we have in front of us, which is a project, which the HQT was run on the proposal. I agree with Senator Lang, I think we are far from perfection on anything, however, there is a model and there is a project, and the outcome is a number. As presented, I don't think a power line built in 1978 has any bearing on the development proposed here, and the development was analyzed. The outcome was presented, and I believe we should stand by it. The waiver should be used as an exception, and I don't think this is one of the situations in which I support an exemption.

2:35 pm: Director Worsech: I would like to clarify the terms residential and agricultural were added to the exemption on purpose, correct?

Therese Hartman: Yes, I spoke to Shawn Thomas, with State Trust Lands. He was involved with the Advisory Council that worked on the recommendations that were used to create the Executive Order. He said that everyone on the council agreed that power lines are impactful to sage grouse, but felt the small agricultural, e.g., a powerline to a water well, or powerline to residential should be exempt. The Program does not charge mitigation for someone building a house, so electric lines to a house are exempt because of the private property issues. That was the rationale for that advisory group, which then provided the recommendations for the Executive Order.

Director Worsech: So, the commercial aspect was discussed, as well?

Therese Hartman: Yes, correct. It was agreed that power lines were accepted as impactful, and in fact, there is literature cited within the HQT Document that says that power lines as small as 12.5kv are impactful. I don't think that is the question.

Chairman Freeman: Just for clarification, and I had discussed this a bit earlier. It seems like this question had been debated in the development of the program. Both Representative Knudsen and Senator make good points that are well heard. For me, as someone who is not a legislator or elected representative, I feel as though I should follow the guidance and direction of those that are elected and follow the Program documents and law, as written. I am hesitant to change what the Program predecessors created. Is there any further discussion?

2:38 pm: Mr. Stearns: Suggested that the majority of the cost of mitigation is due to the powerline.

Therese Hartman: I disagree, the \$51,600 cost is for the entire project. Your entire project's operation costs include, two well locations, facilities, pipelines- over 20 years life of operations.

Mr. Stearns: Mr. Stearns responded to Therese's comments with his perspective.

Chairman Freeman: I believe I see Administrator Halvorson's hand raised.

2:41 pm: Administrator Halvorson: My question and resistance to grant the waiver would be lessened if we acknowledge that the Oversight Committee decided the power line had no impact and ran the HQT to come up with a number. I would hate to see the future of the program to be based off waivers where the applicant makes an offer that's not based in part of our process. The applicant said that they thought it would be less than \$20,000 if the power line was taken out and they offered \$20,000; I would just like to see the actual number.

Chairman Freeman: Is there any other discussion? We will need a motion at some point.

Director Worsech: Can Mr. Halvorson clarify what he is looking for?

Administrator Halvorson: My point is that I don't want the waivers to be based off an auction. My discomfort with waivers come from when we entirely depart from the HQT rather than removing the disturbance from the HQT analysis. For example, if we were to decide the power line had no impact, let's run an HQT and produce the actual number. We may lose money if it comes in less than \$20,000, but at this point, we just don't know. I also agree that the statute is fairly concrete if it's a dry hole we give the money back. I don't recall a loophole in there where we can keep the money.

Mr. Bostrom: Not unless the money is donated. The action item is at your discretion.

2:44 pm: Chairman Freeman: I would like to resolve the issue today. It is hard to say how large the mitigation costs would be without running the HQT. I think given the Program and larger context between the federal government and state to make sure we're preserving a strong sage grouse program, the fact that waivers should be few and far between for exceptional circumstances, I don't know if running a new HQT would impact my decision. I am open to more discussion.

Mr. Bostrom: I would note that Mr. Stearns perceives the power line is 80-90% of the impact, and it is significant. The duration of a full operation for 20 years is a significant factor in this as well. The direct impacts of wells and well pads, as well as the indirect impacts that flow off of that, over the course of 20 years are significant. A new HQT would need to be run to have a concrete assessment that Mr. Halvorson is looking for.

Chairman Freeman: I agree with Mr. Halvorson, but that information was not provided for the meeting today. As the governor says, 'part of providing regulatory certainties is providing an answer'.

Representative Knudsen: "It depends", is that a good answer?

Therese Hartman: If I understand Administrator Halvorson's ask, the \$20,000 is arbitrary and he wants to find out what the power line amount would be. We can certainly run the HQT and find that number, but if you entertain my opinion as a biologist, and I welcome other biologists to speak up, I am concerned about the perceptions that we would be sending that power lines aren't impactful, in this case, and that would be a concern for me and the Program. This affects all projects that the Program sees; as a biologist, I am not willing to accept that there are no impacts.

Representative Knudsen: I don't think we are saying that there is no impact, we are saying that they are exempt. We are just exempting the impact from the equation.

Therese Hartman: I am cautioning that would be a huge impact on the Program.

Chairman Freeman: From a 30,000-foot view of the Program, it is something we'd have to consider moving forward. From a regulatory consistence perspective, we have certain tools (i.e., the HQT) that have been recognized within the Executive Order and legislature as what we are to use. I don't want to second guess the legislature and the Executive Order that create MSGOT, in terms of applying the laws as it was written and as intended. I think combining that with the fact that waivers should only be applied in extraordinary circumstances, I don't know if this is an extraordinary circumstance, as feel as though we will run into this situation repeatedly. And if there are changes to the regulatory processes, it would be a misuse of our waiver authority to make regulatory changes to the program.

Mr. Bostrom: I do appreciate the exemption because it was granted to agriculture and residential properties. Often the biggest impacts in projects occurring in sage grouse core area are the power lines. I can foresee the division happening if someone one wanted to do a 64kv powerlines, but

instead using four exempt 12.5kv power lines, it would defeat the purpose of the Program, entirely.

Mr. Stearns: Noted that HCR is not claiming that 12.5kv power line do not have an impact, but rather, that they have a minimal impact on the habitat. Also, the difference in electrical capabilities between the 12.5kv and 64kv power lines are not linear.

Jon Starkweather: HCR is a small company with lots of personal money invested.

Chairman Freeman: Thank you.

2:52 pm: Therese Hartman: I also wanted to add that there is an option for phased payments that HC Resources could consider.

Chairman Freeman: Has there been discussion about phase payments? Is this something that is up for discussion with the applicant?

Mr. Stearns: That has been visited a few years ago. HCR believed phased payments should have been used from the beginning. We would like the opportunity for partial payment, regardless of the waiver outcome.

Mr. Bostrom: In the last MSGOT meeting there was a discussion about the status of the credit and debits balances in the different service areas. This project is occurring in the Central Service Area, which does have a deficit. In the last meeting, Senator Lang noted that in order to cover any kind of reductions for industry, we would have to borrow from a different service area.

Chairman Freeman: Thank you. If there is no further discussion, I would entertain any public comment.

Public Comment

2:54 pm: Brad Hansen- Eastern Manager for Montana Land Reliance:
Montana Land Reliance is Montana's largest land trust and have partnered with over 1,000 to protect a little over 1.3 million acres of working ranchlands, farmlands, wildlife habitat, etc. The area I work in is central and eastern Montana, I do a lot of conservation work with landowners in Musselshell County, where I believe this project is located. I thought it would be helpful to provide a slightly different perspective as you consider whether or not to approve this waiver. The perspectives I will be providing is a) from the land trust community and b) from the landowners and ranchers who want to participate in this Program doing either term conservation easements, perpetual conservation easements, and of course, restoration work, all of which generate these mitigation credits which are then sold as debits to industry.

First, from my perspective, if you keep giving waivers, you're going to run out of money to fund the Program, that seems to be straight forward. The second thing is, as Mr. Bostrom mentioned, the central service area is already in a deficit. Do you want to keep going into the red when you're not sure you have enough credits coming in to offset the debits going out?

I will quickly go back to 2015-2016 when the Sage Grouse Program Policy was being written, there was a need to create a number to quantify how much will industry be charged to pay for the credits. The first grant cycle had four conservation easement projects and it was determined, based on the ask of the first four projects, that the \$13 per credit being paid to the landowner or \$13 per debit would be charged to industry to pay for the credits or the debit was what there were going to use. In the beginning, this was fundamentally flawed because those four projects brought in \$7.1 million of federal NRCS Sage Grouse Initiative funding. The amount the state Program and MSGOT gave out was only \$3.1 million. That \$3.1 million is how \$13 per credit was determined. In the beginning, the Program was set up to be highly sufficient or highly reliant on federal dollars, not to mention the half a million dollars that came in on landowner donated value, which means landowners settled for less

than what the fair market value was on their land. From the beginning, the Program was flawed in that the \$13 per credit paid to the landowner and the \$13 per debit charged to industry was not based on the true cost of generating those new credits.

Over the course of the three grant cycles, The Montana Land Reliance, and the Nature Conservancy, brought in 15 projects, during the time the state has obligated \$12.8 million from the Conservation Fund; the federal government, through the Sage Grouse Initiative easement programs, has contributed \$29.3 million. The only reason why this Program works, is because of those federal dollars. The amount of donated match, this is, landowners, ranchers, your friends and neighbors, who are trying to make a go of it in eastern and central Montana, are getting paid 60%,70%, sometimes 50% on the dollar to make this Program work. So, when I, the Land Trust guy, reach out to landowners to say, 'let's do a conservation easement' or, 'let's try to keep your ranch intact', have to tell them they're going to get \$0.50 on the dollar, it's a hard sell.

As Mr. Freeman mentioned, in February 2022 the governor's office sent a letter to the Bureau of Land Management National Sage Grouse Coordinator outlining the reasons why the BLM Land Use Plans should not be changed. Of course, everyone who ranches in central and eastern Montana relies upon the BLM land management pieces to make their operations function. If the federal government comes in and changes those AMU numbers, that is going to significantly impact the people I work with and those who make a living on those federal lands. If they reduce the number of AUM's allowed because the federal government is going to manage the sage grouse differently, that is a huge impact we haven't talked about, and I think it's important that MSGOT considers.

In addition, from the Montana Land Reliance perspective, the incredible amount of federal sage grouse dollars that has come in, has essentially been subsidizing industry to get a crazy good price of \$13 per credit. The true cost of generating these new credits, according to my calculations, is between \$25-\$75 depending on what part of the state you're doing the conservation. \$13 is nowhere near enough to pay a landowner's fair market value for that conservation easement, whether it's term, perpetual, or for the restoration work. Those numbers are from 2016, all of you know that land values in Montana have increased significantly, especially within the last two years, and that is very important.

From our perspective on the Land Reliance side, we don't feel good morally about sage grouse dollars through the sage grouse initiative; those federal dollars are essentially coming here to generate credits as match, to subsidize industry, which, is going out and destroying more sage grouse habitat. So, to hear about a waiver, that doesn't work for us in the Land Trust community.

Finally, going back to what is on the line here. Currently, I have submitted eight projects in the central and southeast service area preapplications to the Program. Those eight landowners are very excited about participating in the Program. Their projects generate roughly 400,000 credits, with more to come once the restoration work is calculated. However, I can tell you that if the committee continues to give out waivers, it doesn't motivate me to go out and talk to landowners and put in the work if they're not going to get a fair shake when it comes to funding time. So that is my concern from the Land Trust; I am on the side of the ranchers here, who, I think, should get a fair market value for their easement or restoration work. It is very tough to do that without money in the bank or money in the Program.

Again, I would just say, please consider these factors as you make your decision. Also think about your friends and neighbors at home, in your communities, and in central and eastern Montana; we are trying to keep the ranches together, trying to do succession planning, and who can use this tool to keep Montana, that we all love, which is based in ranching, especially in the central and eastern part of the state, intact. I think the Program is good for ranches and I think it is good for the bird. I, and the Montana Land Reliance, am very committed in continuing to work with landowners, and you as a committee, to make this happen. We are doing everything on our end to maximize every credit we can out of these properties, and we hope you will meet us halfway in doing what you can to make sure the Program remains solvent, and make sure there is money there to pay these

landowners for their good work. Thank you.

3:02 pm:

Ernie Woods- HC Resources:

What I would like to mention, that as Mr. Stearns indicated, we did go to almost all of those meetings, through the three- or four-year period. I guess I'd like to pass along this time, whenever we came to an impasse, such as, I don't know if the wire lines were discussed, they may have been. But I do know, that one of the things that was discussed was that the road that they were counting at the time, little two-line tracks were going in, were not in the HQT or they were in the HQT, but they weren't going to be counted, or they shouldn't be counted. Now there's conversation back and forth at that time, but I do remember the conversation that I had that, where I was told that that's why we have waivers in the Program. So now, I find it interesting that there seems to be a new leadership that is saying waivers are sacramental and they should all be handed out from time to time. Well, are we shooting ourselves in the foot because, I don't know how many waivers you've been asked for, but has there been many? Because my point with, that is, it just the luck of the draw that you haven't given out or have given out waivers in the past and now you're at a point where you don't want to give anymore. Am I being clear?

Chairman Freeman: Yes, and I think from the position of MSGOT, we have to evaluate every individual application on the merits of that individual application. We have to decide the case on the record presented, we use our best judgement because it is our job to make these decisions.

Ernie Woods: I understand that, but am I incorrect in understanding that you said a waiver is something that should only be given out on a very infrequent basis now? Because that was not the case, or at the time that these regulations were put together.

Chairman Freeman: I did not say that exemptions should be granted in a certain time distance between each other. I said, there was an exceptional circumstance. Waivers, the very nature of a waiver is the exception to a rule, and if you apply the waiver to the extent that you swallow the rule, you do a disservice to those that were instituting the rule in the first place.

Ernie Woods: Okay, I don't think I'm alone here, but I think many of us saw a real change here, then in the way that I guess as to what we were told, and the way things seem to be now, and waiver is one of those. I don't mean to be argumentative here, but I do need to point to the fact that there were certain things that we were believing, one is in the waiver system, that we could go and get our case heard and it wouldn't be based on the fact now that waivers are something that are seemingly against the entire Program, I'm starting to rant here, so I'll quit. But please understand it I have done, permitting in the western half the United States and I don't recall the instances, that I do in this sage grouse Program with any other the other agencies, there seemed to be a little bit more continuity, let me say. So, okay I'm done, thank you for your time.

Mr. Stearns: I would like to follow that Mr. Chairman, what Ernie just said. It's my experience again, we were talking about the rules and guidelines, well, it is those very guidelines that provide this provision. There is a provision in there, it's 3.6.1.3 that allows us to ask for a waiver, so these are part of the regulations. That's all, thank you.

Mr. Bostrom: There's been two waivers out of 5000 projects that have been granted, so it is incredibly infrequent when these are requested, this is the third, and I think, to the other point, you know this program was based off of Executive Order that existed in Wyoming. Wyoming does not necessarily grant waivers they are a black and white type of state, and they have no problem saying no. They built their map different; they built their map around corridors for industry development, and we didn't have; ours was based off of the general and core habitat Fish, Wildlife & Parks map from back in the day. So, having at least a system for granting a waiver, I think, made sense, I do remember this from conversations early on. How frequently it is used, and obviously this process is working because of the request before us, today.

Chairman Freeman: Yes, and I would say yes, a waiver provision is in regulation. I think everybody

here today can see that we're taking this very seriously and debating it from almost every angle; this is a serious question and we're taking this process seriously. There are ramifications on all sides, we're currently working to keep the sage grouse from being listed, and that was the purpose of The Program in the first place, and part of the reason why it wasn't listed was the robustness and the strength of various States programs. I think our task that was decided by the people that came before me. We're tasked with applying the rules and regulations as they're drafted, again, I wasn't in discussions in 2015 2016 in Montana. I can only look to the text of the regulations, the text of the statutes, the text of the Executive Orders and try to carry out the original intent of that language and that's what I'm trying to do here today.

Ernie Woods: We were also assured, because everybody realizes that the HQT is not a perfect science, that we would be allowed to go to our where our project is and be able to look around the area and be able to give a measurement that we were going to learn how to do at a school in Helena. The HQT it doesn't really reflect the conditions of the land where our project is, we're showing as being in Core but we're right on the very edge. I think the photographs that were used, probably at the time, as you say, back in the day, are not really indicative of the sage grouse conditions where we're at. If you'll notice, in most of those pictures there's hardly any sage grouse or sage brush, excuse me in the area. So, I guess keep it simple, do we have an opportunity to prove that the HQT does not reflect the nature of our project location?

Chairman Freeman: I would defer this to the Program.

Therese Hartman: The Program did take into consideration what is on the landscape, HC Resources did provide us with spatial data for the power line and we did incorporate that, which reduced the habitat quality. As far as the Project being in Core habitat versus General habitat, the Program does not create those boundaries, they are set by Montana Fish, Wildlife & Parks; I don't see those boundaries changing just because sage brush is not seen, there is a lot more that goes into that. We have taken into account the on the ground habitat.

Ernie Woods: Is that available to the rest of us?

Therese Hartman: That is included in the HQT we gave you.

Ernie Woods: And it says in the HQT we have been onsite here and looked at the area? The HQT does reflect what the location is like?

Therese Hartman: Yes, sir.

Ernie Woods: Did you send that to us?

Therese Hartman: Yes.

Ernie Woods: Okay, thank you. I like everybody okay, but this is serious business for us, as Jon indicated, we're a small group and we were insured through all of this, that we will take in fact you guys are a small group. You know, and now there's a whole new parade that would appear to me. I understand, sir, that you could not be there when all of this was put together and so you're working strictly with the guidance that you have, but please understand there was a lot of reflection about the HQT and the quality of it and how well proven is it, to be making these types of decisions. So okay, thanks again.

Executive Action

3:14 pm: **Chairman Freeman: Called for a motion to approve or deny the waiver request.**

Director Worsech: I move that we don't approve the request.

The reason why I do not want to approve the motion is because we have it set up where we took into consideration residential and agricultural, this is not that. We have also taken into consideration and given credit for the preexisting, yellow, power poles; we don't know what the impact rate would be for the new ones, even though they have the avian deterrents installed, we do know that power poles can affect the habitat. From my perspective, as an agency, I am in the middle of putting more pressure on leasing long-term, 10–40-year leases in sage grouse area just to prevent them from being listed. Our goal is to get 500,000 acres within 5 years to protect the habitat.

Second: Director Dorrington

Voice vote conducted:

Aye: Chairman Freeman, Director Worsech, Director Dorrington, Ms. Ahlgren, Administrator Halvorson, Director Long (by proxy), Director Kaster (by proxy)

Nay: Representative Knudsen, Senator Lang

Discussion: None.

Motion passed.

3:17 pm: MSGOT took a five-minute recess due to technical difficulties. Meeting resumed at 3:23 pm.

Rule Making Change for HQT Technical Manual

3:23 pm: Program Presentation- Rule Making Change: HQT Manual

Dr. McFadden presented an error found in the HQT Manual.

Public Comment

3:31 pm: Doug Hardy- Central Montana Electric Power Cooperative.

Executive Action

3:32 pm: **Chairman Freeman: Called for a motion to initiate the rule making process.**

Director Worsech: Moved MSGOT initiate the rule making process.

Second: Ms. Ahlgren

Voice vote conducted: Voted unanimously to approve.

Discussion: None.

Motion passed.

Public Comment on Any Other Matter

3:32 pm: None.

3:33 pm: **Chairman Freeman moved to adjourn the meeting.**

Seconded: Director Worsech.

Meeting Adjourned at 3:33 pm.

Chair for this meeting:

/s/ x



Michael Freeman, Governor's Natural Resource Policy Advisor

