

AGENDA

Montana Sage Grouse Oversight Team (MSGOT)

November 21, 2019: 1:00 – 3:00 p.m.

**Montana State Capitol
Room 152**

1:00 – 1:10: Call to Order and Administrative Matters, John Tubbs, MSGOT Chair and DNRC Director

- Introductions
- Approve Minutes: September 18, 2019

1:10 – 1:40: MSGOT, Program, and Partner Reports

1:40 – 2:00: Montana Fish, Wildlife & Parks 2019 Greater Sage-grouse Population Report

2:00 – 2:15: Policy Direction for Staff Concerning Term Lease and Term Easement Negotiations for Future Stewardship Account Grants

- Introduction: John Tubbs, MSGOT Chair
- Public Comment
- MSGOT Discussion and Potential Executive Action

2:15 – 2:25: Watson Conservation Easement: Increase Stewardship Grant Award

- Introduction: Carolyn Sime, Sage Grouse Habitat Conservation Program Manager and Montana Land Reliance
- Public Comment
- MSGOT Discussion and Potential Executive Action

2:25 – 2:45: Update on Implementation of Senate Bill 299

- Carolyn Sime, Sage Grouse Habitat Conservation Program Manager, and MSGOT Members
- Public Comment

2:45 – 3:00: Public Comment on Other Matters

NOTE: Agenda item times are approximate. Actual times may vary by up to one hour. Attendees who may need services or special accommodations should contact Carolyn Sime (406-444-0554 or csime2@mt.gov) at least 5 working days before the meeting.



**MINUTES
MONTANA SAGE GROUSE OVERSIGHT TEAM**

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

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

Members Present

John Tubbs, Montana Department of Natural Resources & Conservation, Director
Diane Ahlgren, Rangelands Resources Committee
Senator Mike Lang, Malta, Montana
Mike Tooley, Montana Department of Transportation, Director
Patrick Holmes, Montana Governor's Office
Martha Williams, Montana Department of Wildlife, Fish and Parks, Director
Rhonda Knudsen, Representative HD 34
Jim Halvorson, Montana Board of Oil and Gas, Administrator
Shaun McGrath, Department of Environmental Quality, Director, by Phone

Staff Present

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

Call to Order

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

Approval of Minutes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public Comment

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

MSGOT Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Asked for a motion.

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

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

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

Public Comment on Other Matters

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

02:44:38 Gary Wiens, Montana Contractor Association

Adjournment

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

Chair for this meeting:

/s/

Director John Tubbs



MONTANA FISH, WILDLIFE & PARKS

Montana Greater Sage-grouse Population Report

September 3, 2019

Montana Greater Sage-grouse population estimates and associated uncertainty, and the number of known breeding sites (called leks) are presented here in compliance with MCA 87-1-201(1)(11), as amended in 2017.

Montana Fish, Wildlife and Parks (FWP) biologists work with our federal agency and non-governmental organization partners and volunteers to count the number of displaying males at lek sites across the state in spring of each year. Counts are conducted at leks 1 – 3 times within a season; however, all leks are not monitored in every year. Each lek is also categorized based on activity status, such as confirmed active or confirmed inactive, according to established definitions (see below). FWP manages the sage-grouse lek count and activity status database for the State of Montana.

Population Estimates - Methods

Montana FWP worked with Dr. Paul Lukacs, University of Montana, to estimate sage-grouse population numbers based on counts of displaying males at leks using *N*-mixture models. This modeling approach is a robust analytical method for estimating population size and trend over time for species like sage-grouse that congregate at discrete breeding sites (McCaffrey et al. 2016). Although FWP maintains a database of male counts at leks that date back to 1952, only data from 2002 onward could be used with this modeling approach.

Some Caveats...

All models are approximations and rely on certain assumptions. The assumptions that were made in the development of these population estimates include:

- FWP does not count females but can estimate the number of females based on an assumed sex ratio. We used an average ratio of 2.45:1 females to males based on published literature (Taylor et al. 2011). True population numbers may be larger or smaller than estimated depending upon the actual ratio in each year.
- Only data from known leks were used in the calculations. This could lead to under-estimating the true population if there were a sizeable number of unknown leks.
- Models assumed each male visited one lek. This could lead to over-estimating the true population if individual males visited and were counted at multiple leks.
- Models assumed each male was detected independently. This could lead to under-estimating the true population if detection of some individuals was dependent upon detection of other individuals.

It is also important to recognize these models use algorithms that will estimate similar, but not precisely the same, population numbers each time the models are run. This means that population estimates may vary slightly from the previous report but are well within reported confidence limit bounds.

Population Estimates – Results and Discussion

The *N*-mixture models estimate that there were approximately 43,887 ($\pm 9,911$) sage-grouse in Montana in spring 2019 (Figure 1, Table 1). The recent apparent declining trend in sage-grouse estimates is likely a result of the extreme drought in eastern Montana in summer 2017. By September 2017, every county in eastern Montana that supports sage-grouse except Carbon County was considered extremely or exceptionally dry (https://mslservices.mt.gov/Geographic_Information/Maps/drought/). This extreme drought meant that wet areas with critical food resources during the late summer brood-rearing season were very limited. Of the three vital rates affecting sage-grouse populations - nest success, chick survival, and hen survival (Taylor et al. 2011) - chick survival and possibly hen survival were likely impacted by the limited late summer resources. This would have led to low recruitment in to the 2018 spring population, and hence lower count numbers in 2018. Data from FWP's sage-grouse research project in central Montana suggests nest success, chick survival, and hen survival remained comparatively low in summer and fall 2018 (Berkeley et al. 2019). Assuming these data are representative of statewide patterns, they may explain the lower population estimates in spring 2019. Sage-grouse population numbers oscillate over a period of 8 – 10 years across large scales (Fedy and Doherty 2011). Thus, the apparent decline in estimated population numbers in 2018 – 2019 is likely a result of natural fluctuations and does not warrant immediate concern.

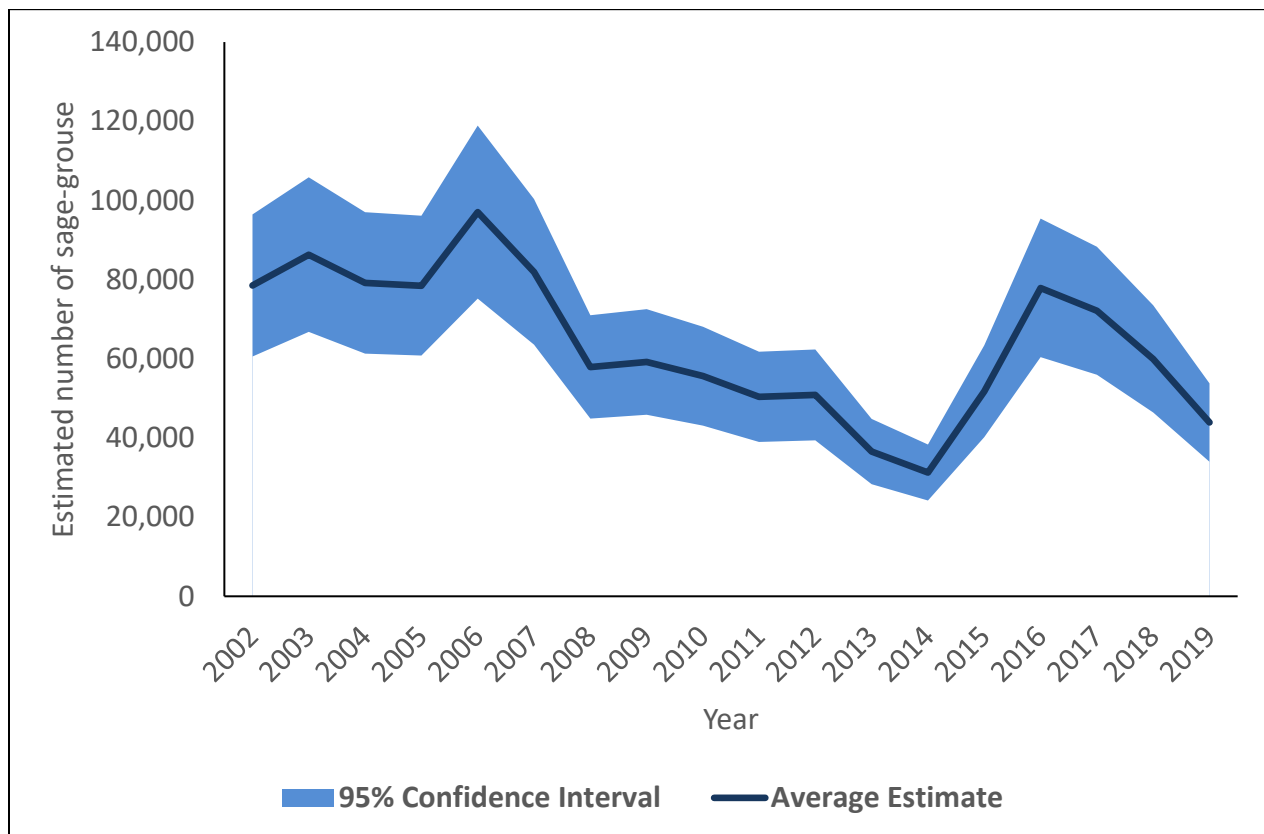


Figure 1. Graphical representation of Greater Sage-grouse population estimates and associated uncertainty from *N*-mixture models in Montana, 2002 – 2019. In general terms, confidence intervals are the range of values that describe the uncertainty around the population estimate.

Table 1. Numerical estimates of Greater Sage-grouse population numbers and associated confidence intervals from *N*-mixture models in Montana, 2002-2019.

Year	Population Estimate	Confidence Range	
		<i>Lower Bound</i>	<i>Upper Bound</i>
2002	78,489	60,560	96,417
2003	86,310	66,772	105,848
2004	79,171	61,286	97,056
2005	78,467	60,827	96,107
2006	97,044	75,194	118,894
2007	81,935	63,551	100,319
2008	57,914	44,868	70,960
2009	59,194	45,881	72,508
2010	55,620	43,143	68,096
2011	50,421	39,027	61,815
2012	50,871	39,385	62,357
2013	36,587	28,347	44,827
2014	31,265	24,209	38,321
2015	51,797	40,166	63,427
2016	77,887	60,389	95,385
2017	72,106	55,950	88,262
2018	59,951	46,410	73,492
2019	43,887	33,976	53,798

There are other analytical models that have utility for estimating population size and trends, such as Integrated Population Models. However, these models require additional demographic information, such as recruitment data, that are currently unavailable statewide. FWP may explore additional modeling techniques in the future as new data become available.

Number of Leks - Summary

FWP maintains a spatial database of Greater Sage-grouse leks, summarized by activity status in Table 2. FWP staff are continually working to confirm and record new lek locations and update lek status. In 2018, FWP added a new status category, *Provisionally Active*, to alert the Montana Sage Grouse Habitat Conservation Program, the Bureau of Land Management, and industry proponents of newly discovered leks immediately. Two survey years are required to meet the definition of a Confirmed Active lek; thus, without a Provisionally Active status option, there was a delay of over one year before resource agencies and industry were notified of newly discovered leks. Provisionally Active status is meant to be temporary. If data are not sufficient to meet the definition of Confirmed Active after a second year of surveys, a Provisionally Active lek will revert to Unconfirmed and would not be evaluated under state or federal assessments for new development. If data is sufficient in the second year of surveys, the lek will immediately be classified as Confirmed Active.

Table 2. Number of known Greater Sage-grouse leks in Montana by classification status, 2002 – 2019.*

Year	Confirmed Active	Confirmed Inactive	Confirmed Extirpated	Provisionally Active^	Never Confirmed Active	Unconfirmed	Total
2002	548	79	17	.	29	514	1187
2003	613	84	17	.	47	521	1282
2004	650	88	19	.	56	532	1345
2005	675	94	19	.	64	545	1397
2006	718	96	19	.	67	605	1505
2007	753	98	20	.	72	631	1574
2008	809	100	22	.	75	592	1598
2009	851	104	25	.	91	553	1624
2010	948	110	40	.	118	446	1662
2011	971	125	50	.	150	383	1679
2012	979	133	50	.	180	353	1695
2013	978	144	59	.	200	332	1713
2014	985	154	65	.	227	293	1724
2015	988	172	65	.	242	269	1736
2016	990	186	66	.	256	268	1766
2017	1007	200	66	.	252	276	1801
2018	1014	219	66	(3)	260	249	1808
2019	1017	231	66	3	263	238	1818

*FWP's database is dynamic and the status of a lek can change retroactively based on new information entered at any time. Reviewers may notice small changes in classification numbers from what was reported in previous reports. These are not errors; rather they are the most up-to-date numbers as of this report.

^New status created in 2018. See definition below. Provisionally Active status is only relevant for the current year; leks categorized as Provisionally Active in previous years have been moved to Confirmed Active or Unconfirmed status, as appropriate. The number of leks that met the Provisionally Active criteria in 2018 is noted in parenthesis.

Lek Status Definitions

Confirmed Active - Data supports existence of lek. Supporting data defined as 1 year with 2 or more males lekking on site followed by evidence of lekking (Birds - male, female or unclassified; -OR- Sign - vegetation trampling, feathers, or droppings) within 10 years of that observation.

Confirmed Inactive - A Confirmed Active lek with no evidence of lekking (Birds - male, female or unclassified; -OR- Sign - vegetation trampling, feathers, or droppings) for the last 10 years. Requires a minimum of 3 survey years with no evidence of lekking during a 10 year period. Reinstating Confirmed Active status requires meeting the supporting data requirements.

Confirmed Extirpated - Habitat changes have caused birds to permanently abandon a lek (e.g., plowing, urban development, overhead power line) as determined by the biologists monitoring the lek.

Never confirmed active – An Unconfirmed lek that was never confirmed active. Requires 3 or more survey years with no evidence of lekking (Birds - male, female or unclassified; -OR- Sign - vegetation trampling, feathers, or droppings) over any period of time.

Provisionally Active – Preliminary data supports existence of an active lek. This status can only apply during the first year of detection. Supporting data defined as 1 observation with 2 or more males lekking on site AND sign of lekking (vegetation trampling, feather, or droppings) or followed by a 2nd observation of 2 or more males lekking within the same survey year.

Unconfirmed - Possible lek. Grouse activity documented. Data insufficient to classify as Confirmed Active status.

References

- Berkeley, L., M. Szczypinski, J. Helm, and V. Dreitz. 2019. The impacts of grazing on greater sage-grouse habitat and population dynamics in central Montana, FY2019 Annual Progress Report. Montana Fish, Wildlife and Parks, Helena.
- Fedy, B.C. and K.E. Doherty. 2010. Population cycles are highly correlated over long time series and large spatial scales in two unrelated species: greater sage-grouse and cottontail rabbits. *Oecologia*; DOI 10.1007/s00442-010-1768-0
- McCaffrey, R., J.J. Nowak, and P.M. Lukacs. 2016. Improved analysis of lek count data using N-Mixture models. *Journal of Wildlife Management*; DOI: 10.1002/jwmg.21094.
- Taylor, R.L., B.L. Walker, D.E. Naugle, and L.S. Mills. 2011. Managing multiple vital rates to maximize Greater Sage-grouse population growth. *Journal of Wildlife Management*; DOI: 10.1002/jwmg.267

MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET
NOVEMBER 21, 2019

**AGENDA ITEM: POLICY DIRECTION FOR STAFF CONCERNING TERM LEASE AND TERM EASEMENT NEGOTIATIONS
FOR FUTURE STEWARDSHIP ACCOUNT GRANTS**

ACTION NEEDED: CONSIDERATION OF POLICY DIRECTION AND EXECUTIVE ACTION

BACKGROUND:

During the September 18, 2019 Montana Sage Grouse Oversight Team (MSGOT) meeting, MSGOT considered six projects proposed for funding through the Sage Grouse Stewardship Account. MSGOT awarded funding to all six: three perpetual conservation easements, one 30-year term lease, one 30-year term lease with a restoration component, and one 25-year term lease with a restoration component.

Previously, MSGOT adopted final administrative rules pertaining to Stewardship Account grants and mitigation at the December 18, 2018 meeting. The rules became effective on January 12, 2019 (Rule: 14.6.104). By design, these rules reference the "Montana Mitigation System Policy Guidance Document for Greater Sage Grouse, Version 1.0, October 2018" (Guidance). Pages 26-28 of the Guidance address preservation credit sites. Specifically, page 28 sets policy for term leases and term easements regarding baseline adjustments (**bold font added**):

"Term Easements or Term Leases: Montana's Mitigation System recognizes the duration of term easements or term leases as being the number of years declared in the easement or lease. However, the minimum duration of the term easements is 15 years under Montana law [MCA § 76-6-202]. Montana's Mitigation System also requires a minimum duration of 15 years for term easements or leases used to offset impacts of development in designated sage grouse habitats.

There will be no adjustment to baseline for term easements or term leases when the term is 15 - 30 years, in part because of the relatively short duration compared to perpetual easements (set at 100 years for purposes of calculating credits). By making all credits available, Montana hopes to attract landowners who may not otherwise participate if a perpetual easement is the only option for a preservation credit site.

MSGOT may approve up to a 10% adjustment above or below the default (30% - 50%), as described above and similar to perpetual easements."

First impression may be that MSGOT is tied to a "no baseline adjustment" policy for term leases or term easements having a duration between 15 and 30 years, as the bolded language in the second paragraph suggests. However, the third paragraph provides a wide range for MSGOT to consider. When the Guidance was adopted, MSGOT retained authority to direct staff to apply no adjustment to baseline or apply a range from 20 percent to 60 percent for baseline adjustments to term leases or term easements.

At the September 18, 2019 MSGOT meeting, Sage Grouse Program staff presented three perpetual easements and three term leases and recommended approval for all. The perpetual easements were negotiated where credits generated by the Habitat Quantification Tool (HQT) are reduced by 60%, a 40% baseline adjustment. The term leases were negotiated where 100 percent of credits calculated by the HQT were awarded (no baseline adjustment) because all three had a duration of 30 years or less. Both negotiating approaches are consistent with Guidance, respectively.

Public testimony at the meeting raised concerns over applying a baseline adjustment to the total number of credits created by perpetual easements while no baseline adjustment was applied to the term leases. The



public concerns were shared by some MSGOT members during discussion. Prior to voting on whether to award funding to the proposed term lease projects, the Chair stated that no additional term leases would be included on future MSGOT agendas before revisiting this policy.

The three term leases presented at the September meeting were the first term leases that MSGOT considered for action. Often, when policy is applied for the first time, it leads to questions about the policy. This is true in this case. However, it was the juxtaposition of the proposed 25 or 30-year term leases with the proposed perpetual easements that provided the contrast on how baseline is applied. The number of credits created by perpetual easements and made available in the mitigation marketplace is reduced to 40% of the HQT results. Term leases or term easements see no reduction for projects having a 15-30-year duration. In other words, temporary protection of 30-years or less is incentivized by making 100% of the credits calculated by the HQT available for mitigation, while only 40% of the credits calculated by the HQT are available for perpetual easements which protect habitat permanently.

POLICY DIRECTION:

The policy issue in question is whether MSGOT should continue incentivizing short-term sage grouse conservation (i.e. 15-30-year term leases or term easements), over long-term sage grouse conservation, (i.e. perpetual easements).

To understand the policy issues, it is useful to provide an example that compares the two instruments. For this example, it is assumed that the only difference is the term: a perpetual easement versus a 30-year term lease. Using the HQT, the term lease and the perpetual easement generate the same number of credits over the first 30 years. For illustration, it is assumed the HQT generates 100,000 credits in the first 30 years. At that point, the term lease ends as do the credits generated. However, the perpetual easement continues.

The next step is the baseline adjustment to determine the total number of credits attributed to the project and made available for mitigation. There is a range of options allowed for in policy. Using the current application of Guidance, HQT credits for perpetual easements are reduced to 40% of the HQT results or, in this example 40,000 credits for the first 30 years. In contrast, there is no baseline adjustment for the term lease and the full 100,000 credits generated are awarded for the same 30-year period.

The 60,000-credit differential demonstrates the incentive built in for 15-30-year term leases or term easements over perpetual easements. It is equally clear that perpetual conservation easements provide permanent protection and offer greater conservation of sage grouse habitat. Term leases provide protection for the term. This is a measurable difference where current policy promotes temporary protection over permanent protection.

Should MSGOT continue promoting short-term sage grouse conservation over long-term sage grouse conservation? One justification is found in the policy statement: “By making all credits available, Montana hopes to attract landowners who may not otherwise participate if a perpetual easement is the only option for a preservation credit site.”

There are landowners who are not interested in perpetual easements but are interested in term leases. The three landowners requesting term leases at the MSGOT’s September meeting represent this group of landowners. If the choice were binary, term leases or no term leases then statute and rule answer. Term leases are authorized, and MSGOT directed staff to provide them as an option. However, MSGOT can offer term leases while treating each instrument the same regarding baseline adjustment. This approach would bring consistency and avoid creating perverse incentives to provide shorter-term habitat protection.

Further, credit generation is a separate issue from negotiation of the grant amount. While credit generation informs the value of the underlying conservation using the HQT, negotiations over grant amounts can consider other information. For example, in the case of perpetual easements, a package of

grants and private contributions are used to generate the revenue necessary to close the transaction. Promoting term leases that are matched by non-state contributions is an option that could be pursued. Negotiating term leases that include matching funds from other sources would be consistent with negotiations for perpetual easements.

RECOMMENDATION:

As chair, I recommend that MSGOT direct staff to apply baseline adjustments consistently between perpetual easements and term leases or term easements, regardless of the duration of the term. In the future, negotiations for term leases or term easements should proceed after having applied a 40% baseline adjustment to determine the number of credits made available for mitigation.



MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET
NOVEMBER 21, 2019

AGENDA ITEM: WATSON CONSERVATION EASEMENT: INCREASE STEWARDSHIP GRANT AWARD

ACTION NEEDED: CONSIDERATION AND EXECUTIVE ACTION

BACKGROUND:

The Watson Conservation Easement was selected for funding by the Montana Sage Grouse Oversight Team (MSGOT) in 2016. The Montana Land Reliance (MLR) requested \$162,500 from the Stewardship Account based on the preliminary market appraisal available at that time. This project is also supported by \$487,500 in matching funds from the Natural Resources Conservation Service (NRCS) through the 2016 Farm Bill Agricultural Land Easement (ALE) program and \$50,600 from private sources.

The Watson Conservation Easement is located in south Phillips County (see attached maps). The project is 2,833 acres total, spread across four individual parcels in a Core Area. The parcels are primarily bordered by U.S. Bureau of Land Management (BLM) lands and state trust lands. The Watson family leases about 3,100 acres of BLM land and 213 acres of state trust land. The easement directly or indirectly affects about 5,157 acres of federal land and 640 acres of state land.

For reasons personal to the Watson family, the project did not immediately move forward. Nonetheless, the Watson family has remained fully committed to eventually closing this conservation easement.

The Montana Land Reliance recently received the final appraisal. The market value of the easement has increased significantly over the value estimated by the preliminary appraisal. The Watson family still wants to enter the conservation easement with MLR, but additional funds are now needed.

The Montana Land Reliance was informed by the NRCS that the 2016 Farm Bill has closed, and NRCS could not provide any additional funds. Additional new private funds are available through MLR's own resources and the Watson family. However, MLR is seeking an additional \$100,000 in Stewardship Account funds to complete the project.

Negotiations between MLR, the Watsons, and the Program are completed. The NRCS has completed its final review. The Watson family and MLR want to close the transaction by December 31, 2019.

The Watson Conservation Easement would generate 28,934 total credits after the 40% baseline adjustment is applied. All credits created belong to MSGOT. This project is currently the only Stewardship Account grant project located in the North Central Service Area north of the Missouri River.

If MSGOT increases the award amount by \$100,000, a total of \$262,500 of Stewardship Account funds would be invested, and the project could close in December, 2019. If MSGOT declined MLR's request, MLR and the Watson family would have to find additional funds elsewhere, which could delay the project or terminate it altogether.

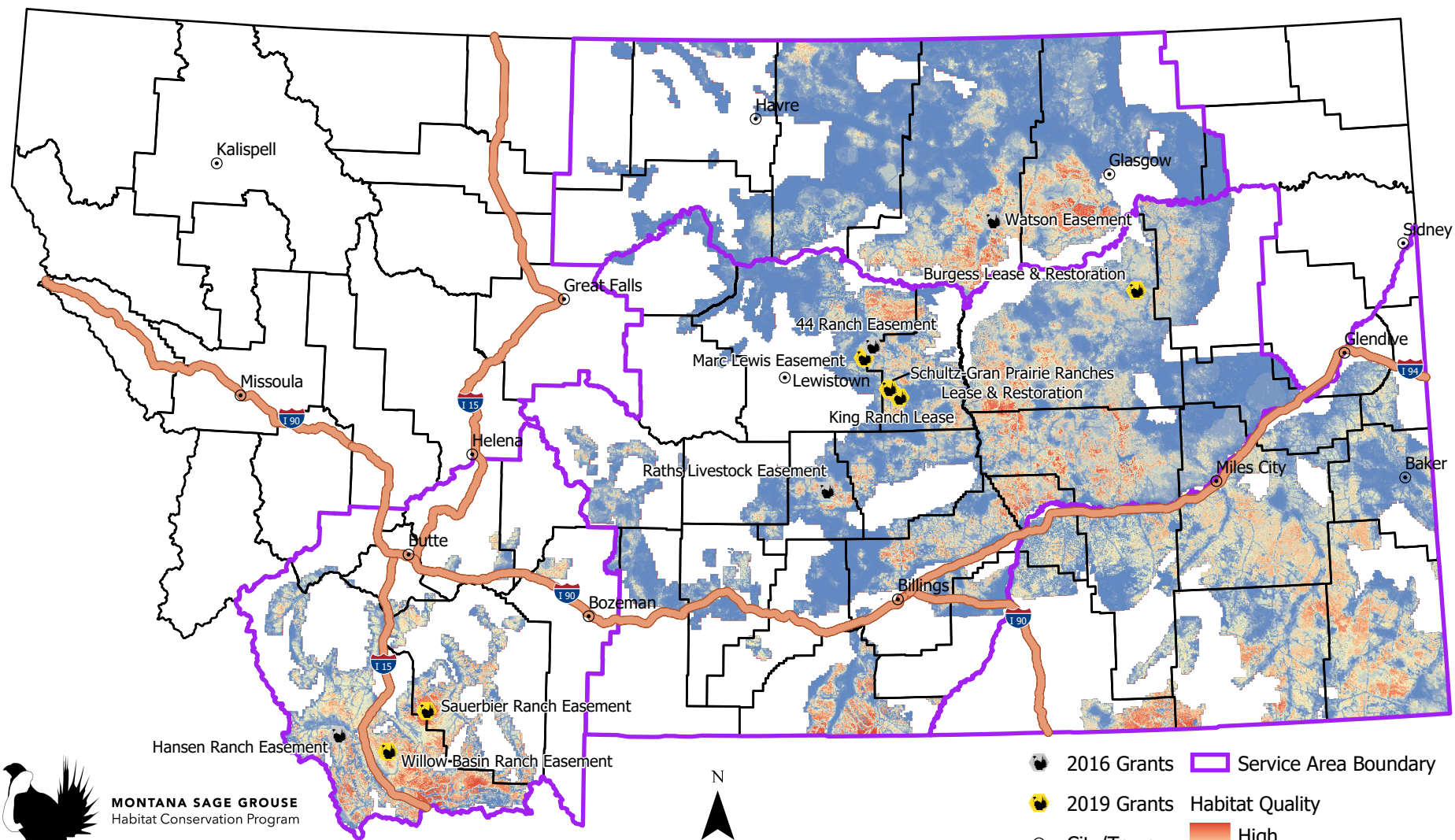
After accounting for the 2019 grant projects MSGOT selected for funding during the September 18, 2019 meeting, the Program has confirmed that the Stewardship Account has sufficient funds to grant MLR's request.

RECOMMENDATION:

The Sage Grouse Program Manager recommends MSGOT increase the 2016 Watson Conservation Easement Grant award by \$100,000 in consideration of the final appraised value of the easement.



MSGOT-Approved Sage Grouse Stewardship Account Grants by Service Area




Interstate, Counties, and Cities provided by Montana State Library.
 Map Date: 10/22/2019
 Path: G:\CARD\10 Sage Grouse HCP\Grant Program
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EXHIBIT D

WATSON PROPERTY
PROXIMITY TO PROTECTED LANDS

Date: March 15, 2016

 Subject Property
Property Acreage: 2,833

 State Trust
 BLM

RECEIVED

APR 08 2016

Dept. of Natural
Resources & Conservation

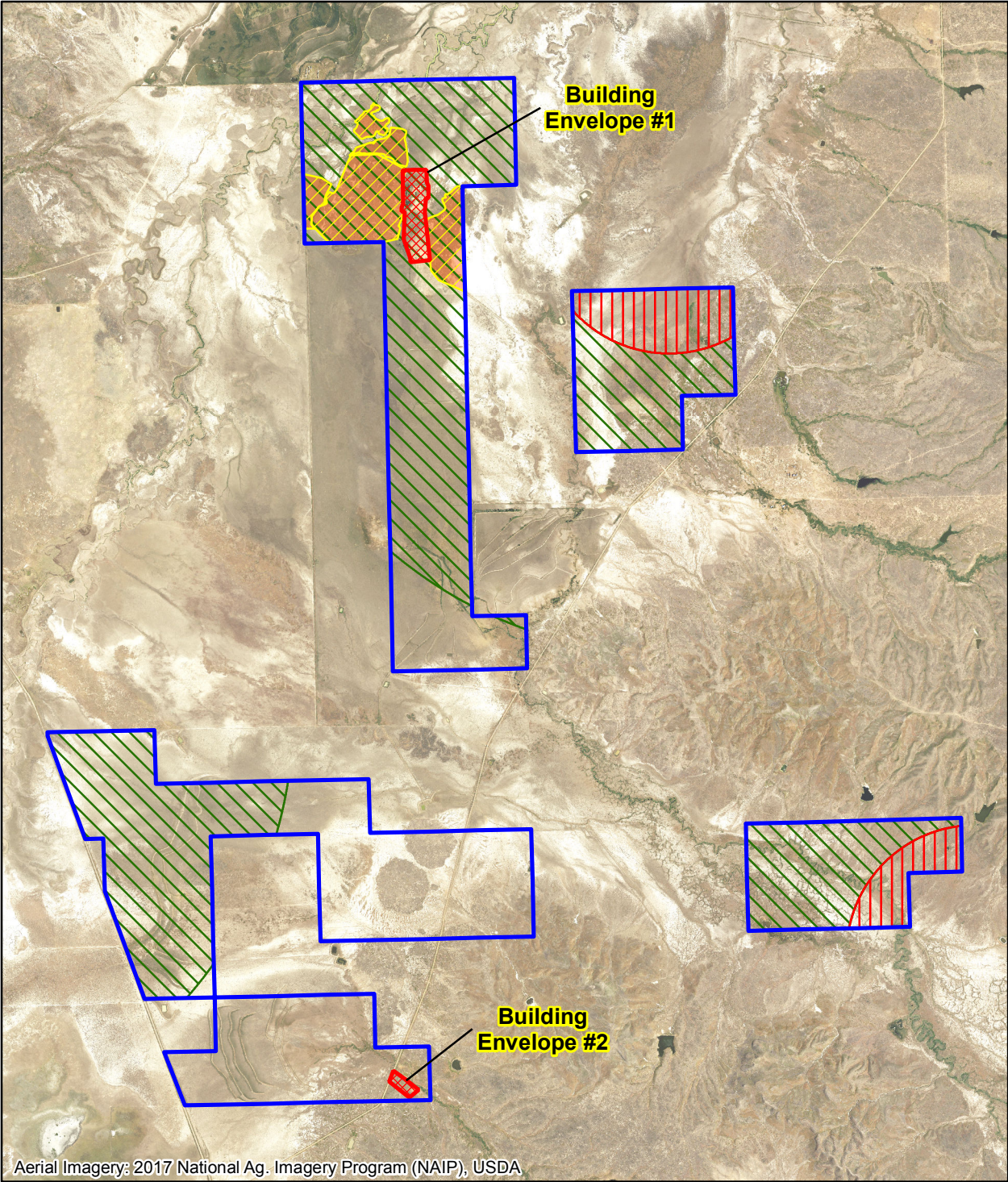
Public Lands and Conservation Easement Data
from Montana Department of Revenue database.








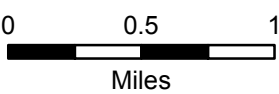
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Aerial Imagery: 2013 National Ag. Imagery Program (NAIP), USDA

EXHIBIT E



-  Easement Boundary
-  Building Envelopes
-  No-Build Area (0.6 Mile Lek Buffer)
-  2 Mile Lek Buffer
-  Cropland Area



Location: T26N, R32E; T25N, R31E; T25N, R32E

Watson Property
Map Creation Date: August 02, 2019

Handouts Distributed During the Meeting

In instances where Stewardship Account funds are not involved in creating credits, credit providers and project developers freely negotiate credit prices and determine all financial transaction details. MSGOT is not a party to the transaction but will seek confirmation that all requirements of this Policy Guidance are met.

4.4 Adaptive Management

Adaptive management is a fundamental principle of the Montana Mitigation System. When it comes to conserving GRSG populations, much is known about the species' habitat preferences and population responses to the loss and fragmentation of sagebrush habitats. However, less is known about how GRSG populations respond to some specific anthropogenic disturbance types and more generally to mitigation measures which are intended to offset anthropogenic disturbance. Furthermore, Montana's Mitigation System includes assumptions in both the Policy Guidance and the HQT Technical Manual in the absence of perfect knowledge or experience in implementation. For these reasons and others, the Montana Mitigation System implements an adaptive management approach to periodically evaluate whether mitigation effectively offsets impacts in space and through time, sage grouse populations are sustained, and to assure Montana achieves the standard of no net loss of habitat.

As importantly, implementation of mitigation presents both new opportunities for conservation, as well as a new way of approaching development and economic activity in sage grouse habitats. Montana has historically not required mitigation for habitat impacts to aid conservation of sensitive species. Adaptive management principles are particularly well suited to considering the how mitigation affects regulated industries.

This Section describes a process for transparent, science-based, and inclusive adaptive management of the Policy Guidance, HQT Technical Manual, and associated products. Adaptive management is fundamental to making sure that the Montana Mitigation System is effective and successful, as is the broader conservation strategy. Adaptive management is also fundamental to making sure that Montana is effectively balancing conservation needs with its economic development goals and the broader public interest.

Adaptive management is a systematic, but dynamic approach for improving natural resource management, with an emphasis on learning from management outcomes and incorporating what is learned into ongoing management. Uncertainty in management outcomes is addressed through the incorporation of procedures that seek to periodically review, revise, and update tools, strategies, and approaches in response to changing conditions or new information.

Adaptive management strategies allow for changes to the overall conservation strategy to occur in response to changing conditions or new information, including those identified through monitoring. The power of adaptive management lies in its ability to provide a viable path forward for management when information is lacking. By recognizing that management or implementation questions initially remain unanswered, information may be gained through this cyclical process of continuous evaluation and improvements with the goal to resolve outstanding questions and uncertainties through time through transparent processes based on the best available science. By definition, adaptive management requires a commitment to change approaches when appropriate and necessary in response to the previous cycle's acquisition of new information.

To ensure Montana meets the goals outlined in Section 1.1 of this document and specific measurable objectives that arise from those goals, an adaptive management review will occur

annually. Adaptive management will require consideration of both habitat outcomes and population status and trends over time, in concert and at multiple spatial scales. The Program will focus on habitat outcomes, while sage grouse population monitoring, population estimation and reporting, and harvest management will remain the purview of MFWP.⁸⁵ The Program will collaborate with MFWP and others as described more fully below.

Specific habitat-based objectives can be stated as follows:

- Meet the mitigation standard of no net loss, net gain preferred.
 - The number of functional acres created should be equal to or greater than the number of functional acres lost (i.e., HQT results prior to application of modifiers).
 - The number credits created should be greater than or equal to the number of debits.
- Maintain sufficient credits in the reserve account to replace lost or impaired credits.
 - The reserve account should have a sufficient number of reserve credits to replace lost or impaired credits listed and already used and assigned to offset debits.
- Produce and maintain an adequate credit supply, regardless of the entity who creates them.

Specific metrics that will be summarized include: (1) the number of functional acres gained compared to the number of functional acres lost; (2) the number of credits created compared to number of debits created; (3) the number of credits available in the reserve account to replace impaired or lost credits; and (4) the supply of credits already developed and available in the registry, as well as those that could potentially be developed. Sources of data for habitat metrics can include: the registry, development projects reviewed by the Program, data contributed by other participants in the Mitigation System, other state and federal agencies, universities, non-governmental organizations, and conservation projects funded using funds from the Stewardship Account.

Consideration of population trends at multiple scales and through time with respect to conservation habitat efforts, development, and mitigation will enhance Montana's understanding about how populations at multiple scales are doing and may be influenced by changes in habitat quality and quantity (both development and conservation).

Specific population-based objectives are listed below. It is recognized that populations will vary naturally over time and across regions.

- Maintain a stable population within the range of natural variation.
- Reverse or stabilize negative population trends.
- Maintain a performance standard of 6.9 – 18.78 males / active lek, based on the number of displaying males determined by a statistically-valid analysis over a 10 year-period, as required by EO 12-2015.
- Maintain at least as many active sage grouse leks as documented in 2015 when the Strategy was first implemented.

Sources of sage grouse population and lek information include the FWP lek database, the Montana Greater Sage-grouse Population Report prepared annually by MFWP, data contributed by participants in the Mitigation System, and other state and federal agencies, universities, private landowners, and non-governmental organizations.

⁸⁵ See Mont. Code Ann. 87-1-201(11) (2017) (requiring MFWP to report sage grouse population numbers, including number of leks on an annual basis, seasonal and historic population data).

Habitat and population metrics will be analyzed, summarized and reported at several scales, including: statewide, Western Association of Fish and Wildlife Management Zones, each respective Mitigation System Service Area, MFWP harvest management zones, within and among Core Areas, and between Core Areas and non-Core Areas, and any report unit relevant to BLM and USFS managers and land use plans. Site-specific, project-level scale analyses may also be conducted.

Human dimensions and social science metrics may also be considered for inclusion in adaptive management reviews in the future. For example, obtaining feedback directly from participating private landowners regarding their experience, interest, and satisfaction with the Mitigation System should also inform adaptive management changes since the primary source of credits is expected to be private lands.

Industry participation in the annual review process will be solicited. Information regarding the number of projects, mitigation costs relative to capital costs, or other business-oriented economic metrics will be specifically requested. While the Program can glean some basic information from its consistency review database (e.g. number of mining projects reviewed and associated mitigation vs. number of pipeline projects), the Program and MSGOT lack the economic and fiscal insights for specific industries and particularly how mitigation obligations may be affecting businesses. MSGOT will need data to determine whether Montana is appropriately considering public benefits and public safety in its efforts to balance conservation and development. Absent that data and industry insights, MSGOT cannot fully or properly assess whether or not mitigation is posing excessive hardships and if so, what revisions may be warranted.

Similarly, participation by individual landowners or third party credit providers will be solicited. Their information and suggested economic metrics will provide useful insights into how effectively Montana is incentivizing private land stewardship. Recognizing that the state is not a party to these types of private credit transactions, data availability may be limited.

Future adaptive management reviews will also focus on other areas of this Policy Guidance where there was specific uncertainty, where assumptions were made or stakeholders disagreed, and where public comment or peer review identified potential areas for future improvement. Examples include:

- more explicit incorporation of full cost accounting methods;
- baseline for perpetual preservation credits and whether it significantly and/or negatively skews credit supply too high or too low and whether there should be a baseline adjustment for term leases or easements;
- multipliers and whether they are too high, too low, or present disparate enough policy incentives to encourage or discourage development and/or conservation actions in Core Areas vs. General Habitat appropriately;
- the initial price of \$13.00 for perpetual preservation credits given the uncertainty about whether this price will provide a sufficient revenue stream that is adequate to set an initial price signal to incentivize private landowners to voluntarily participate; and
- the discounting method and percentage discount where the cost of a credit is discounted into the future for each year of a development project corresponding to the total number of years for the life of the project.

The Program will host adaptive management workshops to gather information and to present results and discuss ideas with stakeholders, Mitigation System Participants, and interested publics.

The Program will prepare an adaptive management report, assessing whether the Program is meeting goals and objectives, including, as a part of fulfilling its other reporting requirements:⁸⁶

- a report of performance and operational findings, including a synthesis of monitoring and tracking of pre-project and post-project conditions for both crediting and debiting projects based on the Program's own experience and those of others engaged in the Mitigation System;
- identification of any overarching lessons learned;
- a quantification of the total debit impacts and credit project benefits provided by mitigation projects in terms of functional habitat acres;
- a summary of sage grouse monitoring information and populations at multiple spatial scales;
- a summary of economic metrics and more specifically about the economic impacts of mitigation by industry type;
- a summary of economic metrics associated with private credit activity, commensurate with available data;
- consideration of how Montana is balancing conservation with the economics of mitigation and incentivizing private land stewardship (i.e., both debit and credit side) and the broader public interest;
- a list of recommended changes to the Policy Guidance and HQT Technical Manual and associated documents, processes, and tools needed to meet (or continue to meet) program goals and objectives;
- a list of monitoring and research findings and needs to better guide mitigation efforts, developed in collaboration with MSGOT, scientific experts, and stakeholders; and
- a prioritized list of recommendations.

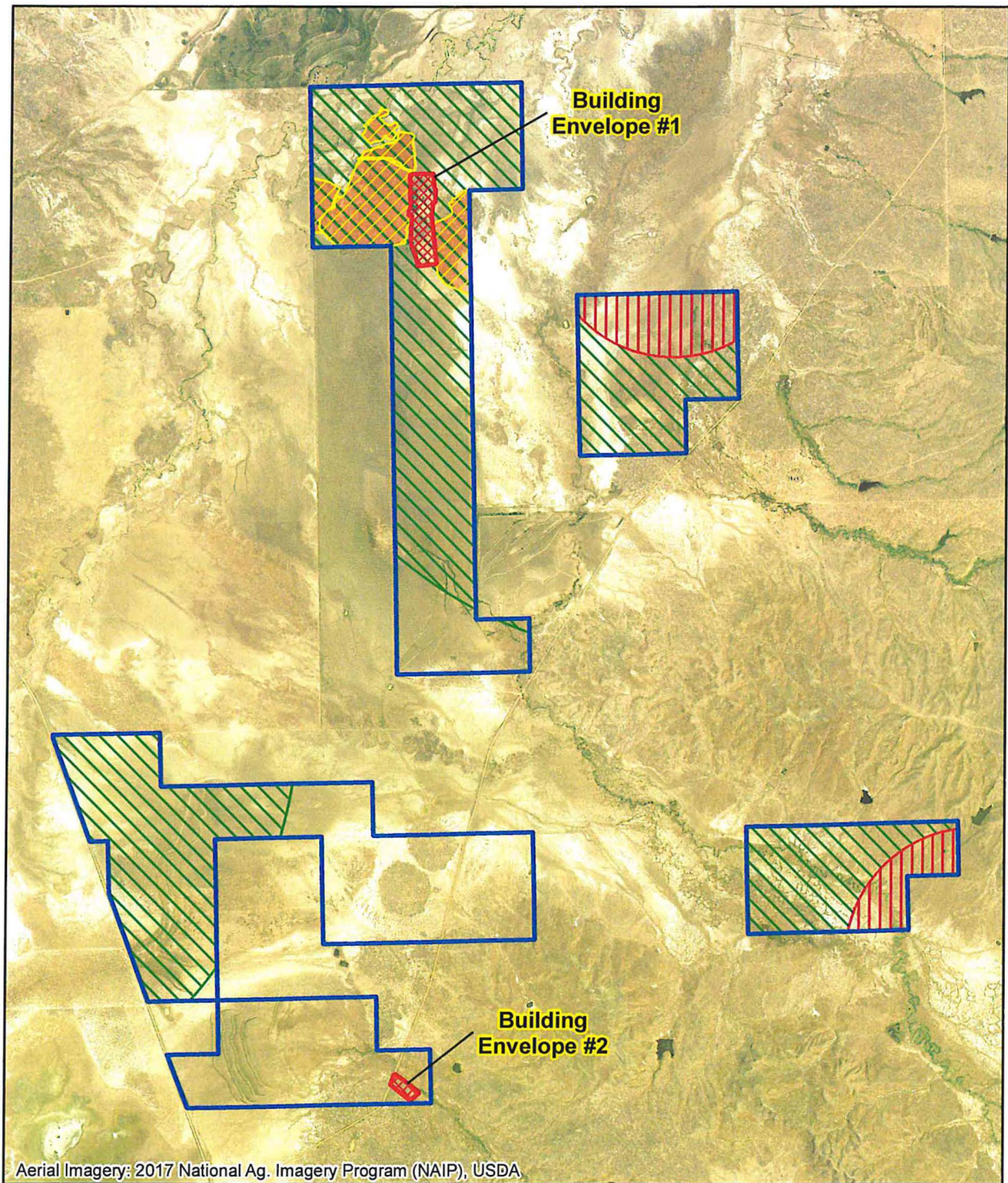
On an annual basis, the MSGOT will review the adaptive management report at a publicly noticed meeting to share the results of the adaptive management review and report, describe suggested changes, processes, or tools, and receive stakeholder feedback. There will be an assessment of whether major or minor changes to the approach are needed, and the recommendations will be prioritized. Progress towards meeting goals and objectives will be considered.

Changes deemed to be necessary or beneficial should be considered for possible adoption by MSGOT. MSGOT must provide public notice of any major or minor changes it is contemplating and provide the opportunity for written and oral comment prior to making final decisions. MSGOT has discretion to initiate rulemaking at any time.

Within five years, the Program and MSGOT will review progress towards meeting the objectives and determine whether significant changes to the mitigation approach are needed. This review would be more thorough and recommendations for more substantive changes may emerge. Because changes at the five-year mark are likely to be more substantive and material, MSGOT will be required to undertake new administrative rulemaking to formally update the Policy Guidance Document and the HQT Technical Manual to subsequent versions.

⁸⁶ For example, see the State of Nevada Conservation Credit System 2017/2018 Findings and Improvement Recommendations Report, March 13, 2018, available at: <https://www.enviroaccounting.com/NVCreditSystem/News/Display/1077>.

EXHIBIT E



-  Easement Boundary
-  Building Envelopes
-  No-Build Area (0.6 Mile Lek Buffer)
-  2 Mile Lek Buffer
-  Cropland Area

0 0.5 1
Miles



Location: T26N, R32E; T25N, R31E; T25N, R32E

Watson Property
Map Creation Date: August 02, 2019



EXHIBIT D

WATSON PROPERTY PROXIMITY TO PROTECTED LANDS

Date: March 15, 2016

 Subject Property
Property Acreage: 2,833

 State Trust
 BLM

RECEIVED

APR 08 2016

Dept. of Natural
Resources & Conservation

Public Lands and Conservation Easement Data
from Montana Department of Revenue database.

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MEMORANDUM

To: Mr. Kolman, Legislative Environmental Policy Office

From: Carolyn Sime, Sage Grouse Habitat Conservation Program Manager

Date: September 20, 2019

Re: Summary of Sage Grouse Stewardship Act Activities

Thank you for the opportunity to provide a written report to the Environmental Quality Council for the September 2019 meeting. This summary will address activities by the Sage Grouse Habitat Conservation Program (Program) primarily for the calendar year 2018, with some additional information provided for 2019 to date.

The Program implements the Stewardship Act (Act) and Executive Order 12-2015 under the oversight of the Montana Sage Grouse Oversight Team (Oversight Team or MSGOT). Key areas of implementation focus on Stewardship Account (Account) Grants and review of development proposed in designated sage grouse habitats. Other facets of Program development and ongoing improvement occur simultaneously to those core functions.

2018 Activities

Stewardship Account Grants

One of the original Stewardship Account grants closed during calendar 2018, bringing the total number of Stewardship Account projects completed from the first grant cycle to three by the end of the year. A total of 36,149 acres of Core Area habitat was conserved through conservation easements.

Review of Development Projects Proposed in Sage Grouse Habitat

Taken together, Executive Order 12-2015 and the Stewardship Act set out a process whereby development projects proposed in designated sage grouse habitats that require a state permit or that are not otherwise exempted by the Executive Order or the Oversight Team are reviewed first by the Program. The proponent then submits the Program's review, along with the permit application to the permitting agency.

The overall process is shown in Figure 1. The portion of the process shown in the shaded light blue area is the responsibility of the Program. Once the Program completes its review, the proponent works directly with the respective state permitting agency/ies. Once the proponent obtains their state permits, the proponent implements the project.

Figure 1 partitions out the overall review process into stages for which the Program is responsible for actively working to complete reviews (right side). This is referred to as "active review time" and it represents time during which the ball is squarely in the Program's court because the Program has all the information it needs to complete its work. The portion of the process for which the proponent (i.e. the developer) is responsible are shown on the left and corresponds to time during which the ball is squarely in the proponent's court.

Projects Reviewed: During calendar year 2018, the Program received requests to review 532 projects proposed in designated sage grouse habitat and for which consultation was required. Of the 532 proposed projects, the Program completed reviews for 443 projects (83% completion rate). The remaining 89 projects were:

- returned to the project proponent because additional information was needed for the Program to complete its work (n=42);
- withdrawn by the project proponent of their own accord (e.g. changed their mind) or decided to wait to reinstate the review process until a later time (n=40); or
- were still being reviewed by the Program as “due diligence” (n=7).

Review Duration: Of the 443 projects for which the Program completed reviews in 2018, the Program completed 415 project reviews (94%) within 42 days and 64% of all 2018 completed reviews were finalized within 14 days. More specifically, the Program reviewed and completed its work for:

- 122 projects within five days;
- 96 projects within 10 days;
- 67 projects within 15 days;
- 57 projects within 20 days;
- 40 projects within 25 days;
- 15 projects within 30 days;
- 10 projects within 35 days;
- 7 projects within 40 days; and
- 25 projects took greater than 40 days.

Stated succinctly, the Program completed its review of 49% of all projects within 14 days. This means that almost half of all proponents can submit their permit application to the respective permitting agency within 14 days of starting the review process with the Program. When a proponent actually does initiate the permitting process is not known by the Program, nor is whether or not a project is actually implemented. Thus, the Program can't report on the number of projects that did or did not proceed after the Program's review was completed.

While the Program works in close coordination with proponents through the consultation process for each project review, the Program may have to request additional information from proponents to complete the review. When the Program needs to reach back out to the proponent, the Program uses a project review stage called “Return” in order to **return** the project editing capabilities within the online web application so that the proponent can make changes or add new information. See Figure 1 and definitions. The proponent can then add the necessary information and resubmit the project so the Program can complete its work with all necessary information in hand.

In 2018, the total number of review days across all completed projects was 9,699 days. This represents the total number of days when a project is in an active review stage with the Program (i.e. the ball is in the Program's court) plus the total number of days when a project is in the returned stage and the Program is waiting for the additional necessary information (i.e. the ball is in the Proponent's court).

In 2018, 29% of the total number of “review” days for a project can be attributed to days for which the ball was in the proponent's court and the Program was awaiting the additional information (n = 2,804 days). See Figure 2. Proponents could complete the process faster by having all their information ready when the review process is first initiated.

the Habitat Quantification Tool and the Policy Guidance documents occurred from July 5 to August 16, 2018. MSGOT took additional public comment in October and November, 2018, respectively.

Administrative Rulemaking: MSGOT initiated rulemaking to adopt the Policy Guidance Document (v1.0, October 2018) and the Habitat Quantification Tool Technical Manual (v1.0, October 2018). The draft administrative rules were published in the Montana Administrative Register and public comment was taken via postal mail, electronically through the online comment submission tool, and during a public hearing. In December, MSGOT formally adopted the proposed administrative rules. Final administrative rules were published in the Montana Administrative Record on January 11, 2019 and took effect on January 12, 2019.

2019 Activities

Stewardship Account Grants

The fourth project selected by MSGOT for funding in the first grant cycle is expected to close by December 31, 2019. This project conserves an additional 2,657 acres of Core Area habitat through a perpetual conservation easement.

This brings the total number of acres conserved through the first grant cycle to 38,806 acres. By applying the MSGOT-approved Habitat Quantification Tool retroactively, a total of 987,287 credits were created from a total of four Stewardship Account grants. There was a total of \$3,067,000 expended from the Account, which was leveraged with \$7,851,865 of matching funds from other sources.

In early 2019, the second Stewardship Account grant cycle was announced. Complete applications were due in May. On September 18, 2019, the Oversight Team awarded funding to six conservation projects:

- Three conservation easements were selected for funding, conserving an additional 15,420 acres of Core Area habitat.
- Two 30-year term lease projects were selected for funding which would conserve 24,604 acres for the duration of the lease. One of the 30-year term leases selected for funding includes a habitat restoration component by converting 2,765 acres of previously cultivated land back to native species and by actively reseeding about 167 acres of sagebrush.
- One 25-year term lease project was selected. It also includes restoring approximately 98 acres back to native rangeland.

If all six 2019 projects close successfully, a total of 835,344 credits will be created.

Considering all ten projects awarded funding from the Stewardship Account in both grant cycles, a total of 1,822,629 credits will have been created. Credits created through the Stewardship Account are used to offset the impacts of development when proponents opt to make a contribution to the Stewardship Account instead of implementing their own permittee-responsible mitigation projects.

Review of Development Projects Proposed in Sage Grouse Habitat

The Program review process in 2019 continues to follow that shown in Figure 1, with the new inclusion of mitigation. Because the reporting period adopted by the Program is the calendar year, data are not yet compiled. However, preliminary review statistics follow.

- The Program has been actively implementing SB299 during the project review process since it became law. For example, a project may have already had a permit issued, but required additional or amended permits because the project changed, or additional area was to be included in the project. Only the newly-proposed portion of the project was analyzed for purposes of compensatory mitigation.
- The Oversight Team was in a position to directly consider the applicability of SB299 Section 1 with respect to a proposed wind facility in Carbon County that has been in development since at least 2010. A storm water discharge permit (pollution prevention plan permit) was issued in April, 2014 by Montana Department of Environmental Quality (DEQ). The Oversight Team decided that the stipulations of Executive Order 12-2015 would not apply to infrastructure sited within the boundary of the 2014 permit issued by DEQ, including compensatory mitigation because it was permitted, but not yet constructed.

Website Updates: The Program has contracted with the original developer of the Program' web application to add the Habitat Quantification Tool process, the credit/debit registry and other enhancements. The additions and enhancements can and will be implemented and available to proponents and the Program on a rolling basis as they are developed. When completed and deployed to the "live" web, these additions and enhancements will enable proponents to proactively design and site development projects in a way to minimize impacts and ultimately compensatory mitigation. The project is expected to wrap up in late 2020.

WIND FARM INVOLVEMENT TIMELINE

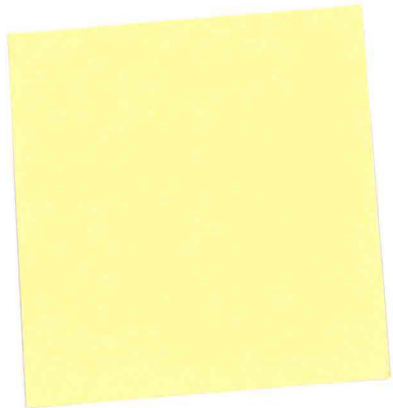
Jim and Sandy Morgan

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Bridger MT 59014

(406)425-1315, (406)425-1852

jimandsandymorgan@gmail.com



April 4, 2014	Mud Springs received approved DEQ permit
June 24, 2014	Signed permit authorization for wind
July 18, 2014	Map with us receiving 20+ wind turbines
July 31, 2014	Wind Ranch Easement draft with lawyer comments
Aug 5, 2014	Mud Springs LLC applied to Carbon County for a development permit
Sept 9, 2014	Executive Order 10-2014 establishment of Montana Sage Grouse Oversight Team (MSGOT)
Nov 14 2014	Carbon County Development Permit Application Approval
Dec 31 2014	Signed Wind Ranch Easement with Guaranteed 20 turbine minimum payment annually with a \$40,000 ranch encroachment annual payment. Guaranteed annual payment of \$180,000 for 30 years with option to renew.
March 15, 2015	Recorded Wind Easement
Sept 8, 2015	Executive Order 12-2015, clarifying EO 10-2014 paragraph 23; existing activities in Sage Grouse core areas.
March 6, 2019	Executed First Amendment to Wind Ranch Easement Agreement
May 6, 2019	Received Landowner estoppel from Innogy
May 14, 2019	Pacificorp, County Commissioner and MSGOT meeting in Helena; MSGOT determined boundary of wind farm from 2014 DEQ permit which excluded our land
May 14, 2019	Returned signed Landowner Estoppel for Pacificorp purchase
July 15, 2019	Received "letter of intent" to start construction in the 2 nd half of 2019 along with lease payment from Pacificorp



Aug 16, 2019

Learned via phone call with Ken Clark of PacifiCorp we were excluded from wind project due to not being on 2014 DEQ permit (grandfathered area)

Aug 28, 2019

Sent letter of Appeal to MSGOT to reconsider their decision to exclude our land from the wind project.

We feel we have been unfairly excluded from the wind farm project by the State of Montana (MSGOT). We have emails from PacifiCorp expressing their frustration and disappointment in dealing with MSGOT regarding our land as we were actively involved before the first executive order was signed. We also have the best wind in the project; proven by met tower data.

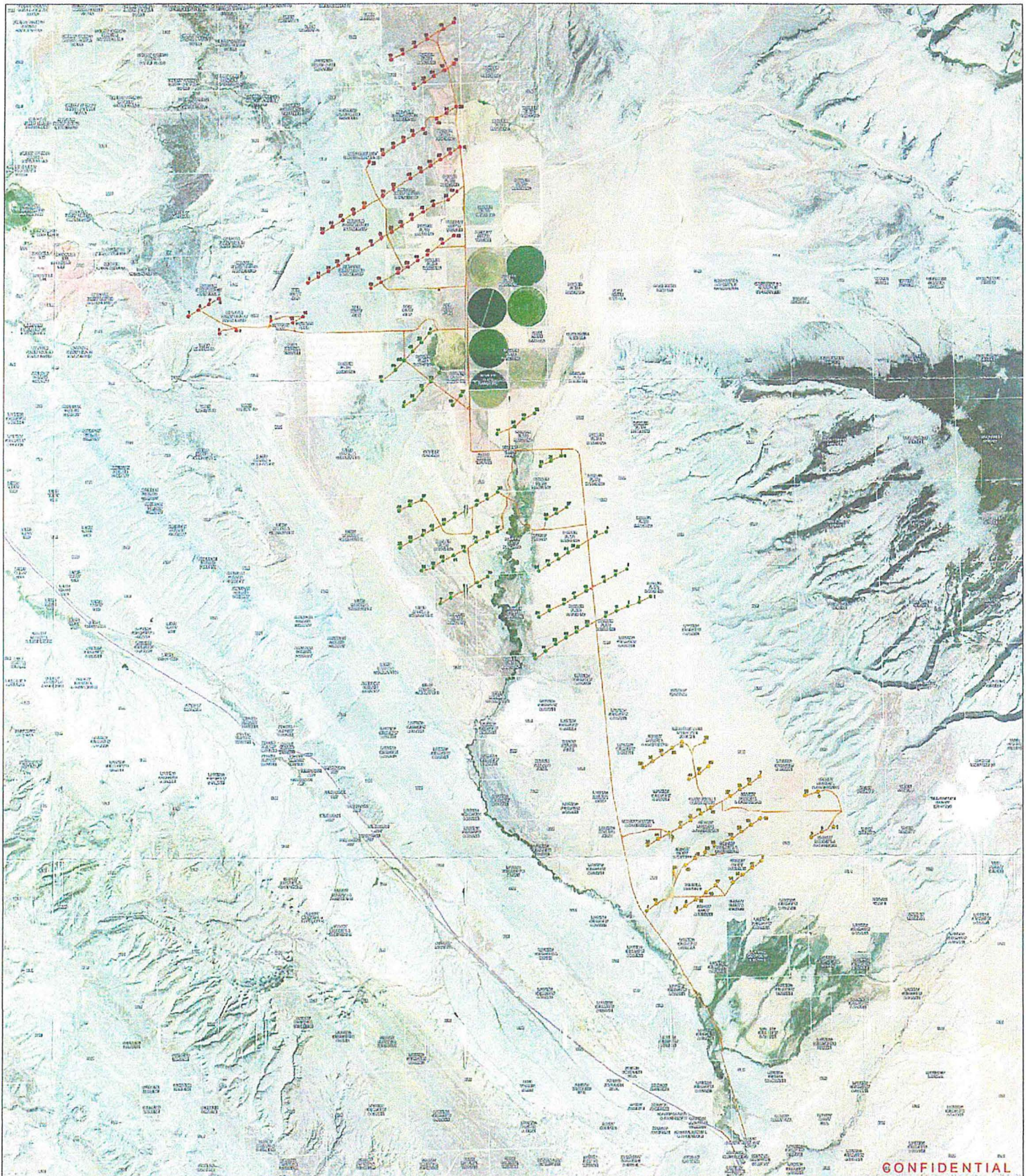
Thank you,

Jim and Sandy Morgan

JS Morgan Ranch LLC

LANDOWNERS (L21)
Mud Springs - Carbon County, MT

everpower™



CONFIDENTIAL



1 inch = 2,000 feet

0 2,000 4,000 6,000 ft



<p>Project Phase</p> <ul style="list-style-type: none"> • Phase I ○ Phase II ○ Phase III 	<p>Transportation Network</p> <ul style="list-style-type: none"> — Proposed Access Roads - L21 — Parcels
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Map created by Everpower Wind Holdings, Inc. on September 3, 2014
Using ESRI ArcGIS Desktop Standard 10.2.1

Projected Coordinate System:
NAD 1983 UTM Zone 12 North

Information on this map is provided for purposes of discussion and visualization only.
Source: ESRI, EverPower

Preliminary HQT Results: King - Petroleum CD

