

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

## **MINUTES MONTANA SAGE GROUSE OVERSIGHT TEAM**

Friday, November 18, 2016 Meeting Summary  
Montana Room, Helena: Room 110

**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. 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, Department of Natural Resources & Conservation, Director  
Jeff Hagener, Montana Fish, Wildlife & Parks, Director  
Tom Livers, Montana Department of Environmental Quality, Director  
Jim Halvorson, Montana Board of Oil and Gas Administrator  
Diane Ahlgren, Rangelands Resources Executive Committee  
Representative Mike Lang, Malta Montana  
Mike Tooley, Montana Department of Transportation, Director

### **Members Voting by Proxy**

Tim Baker, Governor's Office  
Senator Matt Rosendale, Glendive Montana

### **Staff Present**

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

### **Call to Order**

00:00:07 Director Tubbs called the meeting to order  
00:00:22 Montana Sage Grouse Oversight Team Introductions

### **Administrative Matters**

00:01:57 Representative Lang moved to approve the May 24, 2016, draft meeting minutes. Director Livers seconded. Motion carried unanimously. Future meeting dates scheduled for December 6, 2016, at 10:00 a.m.

### **Update on Implementation of Executive Order No. 12-2015**

00:03:13 Ms. Sime introduced Graham Neil who works closely with the implementation of the executive order and the consultation process.

Ms. Sime gave a brief overview of work related to Implementation of Executive Order 12-2015. A total of 811 projects were submitted for review from January 1, 2016 through November 16, 2016. Reviews have been completed and letters sent out for 95.5% [Handout 1]. Hope this alleviates people's concerns that there is delay in the process or burdensome. Ms. Sime also recognized all the contributions by DRNC GIS and OIT.

The contract to develop an existing disturbance layer with a consistent set of rules is wrapping up. The second contract for a new platform, user interface and will provide more user friendly tools and enhance efficiency for staff and proponents. Work is ongoing but expected to wrap up in spring, 2017. We have been very pleased with the work of the contractors so far.

Ms. Sime also provided a brief overview on work with the federal partners. The collaboration continues and has been very productive and positive. Federal partners also very engaged in the mitigation work with stakeholders.

Stewardship Fund Grants: MSGOT reviewed 9 proposals on May 24, 2016, five were selected for funding (Hanson Ranch Conifer Removal, Julie Burk Conservation Easement, Raths Livestock Conservation Easement, Watson Conservation Easement, and 44 Ranch Conservation Easement). MSGOT committed \$3,099,500 at that time and elected to reconsider four projects (Fence Marking, Hanson Ranch Easement, Smith Easement, and Tammy and Kelly Burk Easement). Applicants invited to provide updated information with any changed circumstances. Applicants withdrew Julie Burk Conservation Easement, Fence Marking, Tammy and Kelly Burk Easement proposals. [Handouts 1a and 1b]. Four original projects selected for funding are still active and moving forward. The new total commitment is \$2,677,500 [Handout 6, Table 2]. MSGOT will consider the 44 Ranch Easement for final approval today. Hanson Ranch Conservation Easement and the Troy Smith Conservation Easement still up for reconsideration. Hansen Ranch Conifer Reduction, Raths Livestock Easement, and Watson Easement before MSGOT in December. The Raths Livestock and Watson easements, before you in December would only be the grant agreement itself. Both projects have an NRCS match. NRCS retains third party right of way enforcement along with the state, so we do expect those negotiations to take a little bit longer.

- 00:14:24 Director Tooley: Nothing new to report at this time.
- 00:14:30 Director Livers: In December, will propose an exception for remedial work at Colstrip under an existing administrative order on consent with Talon Energy. This stems from a 2012 settlement for groundwater contamination from the coal ash ponds. Additional monitoring wells also needed. Proposed work is within the existing industrial footprint.
- 00:16:15 Director Hagener: Bird counts were up in the spring and look very good. Currently there are around a half a dozen lawsuits regarding the listing, several of the western states are talking about whether they would intervene or become an amicus on behalf of the USFWS.
- 00:17:00 Rep. Lang: Sage grouse are doing well. Attended the Stakeholders meeting and that was very informative. Wants to move this project forward and get our quantification tool complete. Very happy with environmental, agency, industry and agriculture all bring all the same page.
- 00:18:05 Director Tubbs: DNRC has been working with the Program. Our Eastern Land Office and Southern Land Office have been the point of most activities for DNRC. The Governor's budget was just released and shifted a number of programs into state funds as opposed to on-going general fund revenue because of cash flow concerns and overall general fund balances. This has the Sage Grouse Program being paid for out of the \$10 million in the Stewardship Fund account. That is a fairly large variation from where we left the session last. It's proposed that \$2 million per year from here on out through 2020 for grants. Two million dollars is being reserved to operate the program out of the Fund as opposed to the general fund. Cash balances within the general fund are extremely tight and the state makes payments back to counties early in the fiscal years prior to revenue receipt, so cash flow management including cash flow management projects in this Program will be closely scrutinized as grant projects move forward. We do have permission to approve all recommendations before MSGOT today. It does help that two of the projects have some work to do with NRCS from a cash flow perspective. We can commit to it but that will allow us more time in the state revenue generation process to generate the fund balance behind it to actually pay for the grants.

Representative Lang: Of the ten million, is two million being used for administration?

Director Tubbs: Correct, from the beginning of the 2018 fiscal year. We have our budget for the current fiscal year but the proposal to the appropriations committee will be to expend the balance from the grant account to operate Program expenses.

Representative Lang asked: If we had ten million dollars of easements or projects that could go forward today, do we have the ten million dollars or do we have to get approval from the Governor's Office?

Director Tubbs: Yes, we would probably have to get approval. Today's balances, based on the Program's recommendations, are approved by the budget director. We can move forward with a planned grant process for the future, but we just have to be very mindful about making additional commitments and when those commitments will need to be funded. There will be ways to manage timing so that there's no delay in closing deals. We're all in this together.

00:23:57 Diane Ahlgren: Carolyn Sime came out and we did some touring and visiting on ranches and with landowners. We also went to some grazing district meetings. Heard about predators and that the state continues hunting sage grouse. Heard a lot of consistent interest in term easements or lease options. At our last range committee meeting, learned that about 400,000 acres of CRP will be coming out next year and we talked about how to encourage producers to put it back into rangeland rather than cultivating it again. Also discussed a range improvement loan program and whether MSGOT could help with that. Listened in on the Stakeholders meeting and was very beneficial in helping to learn the process and heard some great ideas. Would like to thank Carolyn for her work on the rules process. I felt she got a lot put together in a short period of time. Thanks to Rusty Shaw for his initiative in getting a draft HQT Tool out there for people to see; it was a great start.

00:26:57 **Director Livers Agenda item, Department of Environmental Quality Internal Guidance Document for Implementing Executive Order # 12-2015:** [Handout 2]. After many of our permitting programs met with the Sage Grouse Program individually, we felt it would be beneficial to provide clear internal guidance Department-wide to ensure we are implementing Executive Orders and are consistent while recognizing differences in the various DEQ program areas. Expect it to be a living document and could be a model for other agencies with permitting programs.

00:29:27 Kristi Ponzoso, DEQ Public Policy Director: Provides overview of the DEQ Internal Guidance Document.

00:35:53 Representative Lang asked: Is DEQ working with the correct map given MSGOT's changes and updates?

00:36:48 Director Tubbs and Carolyn Sime: Yes. MSGOT authorizes changes and updates and the DNRC GIS Group makes them. Also incorporated corrections relative to some BLM habitat designations. DEQ document shows the appropriate link to the Program's web page. Anyone using the map on the Program's webpage is using the most current, accurate map.

00:39:06: Representative Lang would prefer to see when a permit that is up for renewal that it be renewed without having to jump through hoops.

00:40:03 Director Livers: There was internal discussion and may be room for more precise language for some permits. About 40% of water discharge permit renewals change conditions of the permit and not all are in sage grouse habitat; sometimes these changes

are minor but sometimes they are major changes. It's a legitimate point of discussion for MSGOT consideration. Could clarify the intent for a simple renewal where there is no change in conditions and could identify that in our permit review. If there are data needs for the program, we could look at other ways to supply them internally.

- 00:42:55 Representative Lang asked whether changes to an existing permit has to be reviewed by the Program.
- 00:43:18: Director Livers: Yes.
- 00:43:21 Ms. Sime: Recall that MSGOT previously granted exceptions to the consultation process for certain kinds of permits and activities. To date they were primarily though DEQ but also with the Department of Labor and Industry. The Program can continue meeting with DEQ and the water permitting staff to see if exceptions to the consultation process could be developed for MSGOT's future consideration.
- 00:44:34 Additional MSGOT discussion.
- 00:46:22 Ms. Sime: The type of water permit being discussed is a five year permit. So some situations where conditions change do warrant review. There are situations where a review would not be warranted; sometimes we don't know until the permit holder initiates the process. Request that the Program be given time to work more closely with DEQ to develop better clarity and some very specific and targeted ways to streamline the process. Statistics show that even when changes are straight forward it moves through the process in days, provided we have all the information. Documentation of our work and clarity in how this state is implementing the Executive Order should be first and foremost in your mind. Will work with DEQ and bring something back to MSGOT.
- 00:48:16 Director Tooley asked Director Livers on open cut revegetation p. 5 of Draft Internal Guidance Document: The two agencies have different permit processes and different goals but can the agencies coordinate and simplify the process for applicants?
- 00:48:49 Director Livers: Yes, our programs are already coordinating. If there are areas with common requirements, can cross walk those and streamline the process.
- 00:49:15 Director Tooley: Note a misspelling on pages two and seven.
- 00:49:45 Director Tubbs: In general the document is good to move forward because staff needs a road map. Hope the Program and Director Livers take the conversation to heart and help us manage that over the next few months. I do agree with staff that they have been able to move these projects through quickly when there is no disturbance. Director Livers, what the action that you want the team to take?
- 00:51:18 Director Livers: We will follow this in spirit, make sure it's consistent with Program needs and continue working on it. We'll be back in December or May with a final version to endorse. The conceptual endorsement is there and we'll nail down the last details.
- 00:52:15 Director Tubbs: Let's turn to the Cloud Peak Energy Haul Road Corridor. [Handout 3]
- 00:52:24 Director Livers: Cloud Peak Energy is proposing a haul road between Spring Creek Mine in Decker and Young's Creek Mine in Northern Wyoming. Cloud Peak has been working with the U.S. Fish and Wildlife Service and others in Wyoming and expects participate in a candidate conservation agreement which would allow certain activities to proceed under certain conditions even if a species is listed. DEQ must prepare an environmental impact statement (EIS) and would like MSGOT to endorse the process of using the Thunder Basin Grassland Prairie Ecosystem Association as a mechanism to identify any

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site-specific mitigation DEQ would identify in the EIS. It's robust enough to satisfy the federal government and hinges on a federal process. Site-specific measures would be identified to mitigate the development of this haul road. The overall framework for identifying those would be based largely or possibly wholly on these two agreements. We would be back in December with a little more detail on that and request that MSGOT endorse that process. We would anticipate coming back at the May meeting with specific measures identified for alternative routes to present for MSGOT as well.

00:56:19 Director Tubbs: I understand it is almost a parallel path through Montana Sage Grouse Programs mitigations and ultimately we have to get those lines to join back up together at the end so the Executive Order and the federal process are satisfied.

#### **Stakeholder Presentation of Habitat Quantification Tool Development Option [Handout 4]**

00:57:26 Presentation: Rusty Shaw – Environmental Compliance Manager with Denbury Resources and Len Barson – The Nature Conservancy, Senior Policy Advisor, Western Sage Grouse Team.

01:05:11 Director Hagener: So June of 2017 is when you expect to submit something to the U.S. Fish and Wildlife Service (Service) for them to review and approve the tool?

01:05:24 Director Tubbs: let's back up to the April time frame. My understanding is that in April we will have a product that will be provided to the MSGOT as the goal. The Service is working hand in hand with the development of this tool so that in the end the Service will essentially build the bricks so that in the end all agencies will be in agreement. We will figure out ways to comply with the Executive Order and the Service in terms of final approvals.

01:06:16 Len Barson: One of the reasons that the rule of approval was postponed today was because of the change in the terminology. In working with FWS it would not be a formal process so much as a sufficiency review. Carolyn Sime has been working to change the terminology and come up with language on how the process would work.

01:06:58 Director Tubbs: I think that's been a matter of some discussion. If ultimately we need to amend the Executive Order to reflect that language for anything of statute that would also be part of the collaborative discussion. Certainly in the case of Wyoming, they had more than one Executive Order.

01:07:28 Diane Ahlgren: I just want to make sure that landowners and stock growers are considered in this process because it's a huge process for us as well. I really want to emphasize that I hope we can be involved and have input as well as keeping it flexible for input down the road also.

01:08:14 Director Tubbs: You didn't get to see the slides but those names were on it as well. I really appreciate all your efforts and have been watching the hours that have been put in to get us here today so thank you all. We are moving from a proposed rule of adoption to an informational item on a rule that is in flux.

01:09:12 Ms. Sime: As we learned in the presentation, there has been a lot of work behind the scenes to get us to the point we are at today. Back to your question Director Hagener: the statute directs and authorizes rule making for certain things. In recognition that there is a lot of diverse expertise and resources interested in the topic, we have been working through some collaborative conversations with some fairly diverse people. I want to do a shout out to the people, their generosity, time and expertise has allowed us to move a long ways down the road in a very short period of time. The time line that we developed yesterday is aggressive but that would have us complete our work on the technical aspects as well as the policy guidance and a users manual in April. Then pose to that you

folks for consideration during the month of May. As a result of development of language around the rule, I will give you a quick overview of that. The stakeholders have expressed a very strong interest in completing a final rule by February 2017. Folks are very aware of the statutory requirements for public comment notice and so the timeline does account for that, but I would like to clarify that the absence of the rule or the delay to date in developing the technical aspects of the HQT in no way would delay or hold up any single project from moving forward. The Oversight Team does have the discretion to take a project-by-project approach under the Executive Order if something needs to move through the process before our work is complete. As I have described in the revised brief sheet, during the meeting on November 1<sup>st</sup> with the stakeholders, I presented a draft rule to them for their review and consideration which was followed by a great deal of discussion. The stakeholders then provided their comments to me and I have incorporated nearly all of their comments. On November 16<sup>th</sup> the stakeholders reviewed the incorporation of their comments and spent all afternoon going through them. The version that's in your packet reflects my incorporation of their comments, not the result of the discussion this week. After the discussion of this week, a smaller group will initiate incorporation of the comments. That version of the draft will go back to the stakeholders to have the opportunity to review those changes. We will continue working with DNRC Legal Unit, which has provided substantial support. We will reformat any additional comments and get those into the official format for the Secretary of State's Office and bring those to you December 6<sup>th</sup>. So I am withdrawing my recommendation that you approve what was in your meeting materials based on guidance and agreement from the stakeholders this week. The new proposed schedule for rulemaking is addressed on page two of the revised brief sheet. Essentially we would come back to you December 6<sup>th</sup> with a cleaned up rule after a final review by stakeholders. We would anticipate three public hearings for Malta, Roundup and Dillon. Statutorily, the first one could not occur until January 12<sup>th</sup> and public comment would run through February 3<sup>rd</sup>. We would incorporate/consider comment, get back with stakeholders in that same timeframe and then propose a final rule for you at a later point in February and consider a final rule. I would characterize the work today as not only rewarding but very substantive and intense. There is a lot of expertise in the room, and it takes that diversity of expertise to really focus on a topic like mitigation. The rule that is before you has a June 1<sup>st</sup> date; in recognition of the complexity of the subject matter the stakeholders recommended a June 1<sup>st</sup> deadline for the oversight team to designate the tool. The statutory language says MSGOT shall designate a Habitat Quantification Tool and so we have selected June 1<sup>st</sup> as the deadline by which you as a group would do that. Again Director Hagener, back to your question - we would complete our technical work, we would look towards an MSGOT meeting during May for your consideration so we can formally designate by June 1<sup>st</sup>.

01:15:20 Director Tubbs: Again, thanks Carolyn and staff for all the work. The call for public comment was because we were going to adopt a draft rule for notice. I will open it up for comment but what we're really going to do is look for approval of a draft rule. It's important to understand that even after this process what we will approve is a draft for broad public comment. Representative Lang, I think the other thing in the schedule that you must recognize is that we are trying to hit a pre-transmittal date so that the legislature has full knowledge and can accept what we're doing or direct us otherwise in the process. So that's part of the reason to push it to no later than the end of February. I would also ask that you take a message back to your leadership that as of January 2<sup>nd</sup> we need a reconfirmation of the MSGOT members so that a February meeting can be held with legislative participation. No public comments.

#### **Stewardship Fund Grants**

01:17:20 Carolyn Sime: The first on our list is the 44 Ranch Conservation Easement. [Handout 5] This project was approved for funding in May and it is before you today for final approval to direct implementation and execution of the grant agreement and all the associated

documents that go with this project. Since May, we have been working very intensively with the parties to develop agreeable language related to the grant agreement the easement terms and an environmental assessment to comply with MEPA and that also incorporated public comment. Thank you to Danna Jackson and the legal team who provided significant support. The first item in your packet was the decision notice and environmental assessment. This is a recommendation from the Program that you as a group adopt the proposed final environmental assessment and the Program's recommendation to complete this project and execute the transfer of funds so that Montana Land Reliance, our grant recipient, can purchase the easement. This is in fulfillment of our requirements under the Montana Environmental Policy Act. If you give approval today, either Mr. Baker or Mr. Tubbs would sign the decision notice. The environmental assessment provides greater detail about the project. It provides an overview of the terms of the easements, context of the decision before you today, as well as responses to public comments. It includes final maps. Appendix B is the actual grant agreement. I want to point out some key language in the grant agreement. As we worked with the parties, we were mindful of the statutory requirements, for example, having to do with how credits can be generated and the language here in the grant agreement was agreed to during the negotiations. The first page of the grant agreement includes some recitals in recognition of the purpose of the grant and other facets of the context of the funding and its use. In Section 10, we caught a typographical error so our final agreement will reflect that correction. Section 16 contains the key language specific to conservation credits and this fulfills the statutory requirements for any leases or easements that are purchased using Stewardship funds. We would retroactively calculate and make conservation credit available upon completion of the HQT under the administrative rules. Another clerical correction deleted the return between Sections 19 and 20. I know these corrections seem minute, but it's our obligation to make sure you're clear on what changes were made and what the final documents will look like. The scope of work for the easement is covered in Attachment A for the grant agreement. These are the obligations of the parties. In terms of the scope of the easement, the easement itself appears in Appendix C. At the time of your meeting materials, the parties were still finalizing details and clarifying a number of items, but there are no substantive changes in terms of the easement itself. Mr. Van Dyke, note I inserted the side notation on the first page of the actual easement just to make sure and draw your attention to those tract changes. Those are things that were still in the process of being cleaned up.

Director Tubbs asked for clarification of the budget.

Carolyn Sime: The budget in the grant agreement was included in the actual application and there has been no change in the request amount. Director Tubbs stated that it was just a title/column correction. Carolyn Sime: What you see in the grant agreement is as it was originally submitted by the applicant. We can certainly make the correction in the final grant agreement for the budget. The requested amount from the stewardship fund was 1.5 million and the matching contribution was \$375,000.

Director Tubbs: The information is correct. It's just the heading change that I wanted to be accurate before the document is signed.

Carolyn Sime: During the course of our negotiations, we learned a few more details on the ranch and the current land uses on the ranch. None of those new facts really altered the value from a resource perspective for sage grouse. At this time, I'd like to turn it over to Ms. Jackson who will walk you through some of the last minute facets of the easement to illustrate consistency with the purpose of the Stewardship Act and statutory requirements.

01:25:40 Ms. Danna Jackson, DNRC Chief Legal Counsel: First of all, in the recitals similar to the grant instrument, it was important to us that when someone picked up the easement they

understood the purpose was about the bird, so we did insert statutory language right there in the recitals so it's clear that's what this is about. The Act contemplated that for an easement such as this, the state has a third party right of enforcement. You will see this first mentioned in Section 2, letter D, as well as in the Breach and Restoration Section 5. The Act states that the Oversight Team shall retroactively calculate and make available credits for leases and conservation easements purchased with state funds. The rest of Section 2 breaks out the state's rights and interests related to this and as you can imagine there was a lot of discussion about how to do this since the HQT isn't created yet and the fact that our mitigation program is not up and running. It's my job to protect the state's liability. so you'll see typical indemnification language towards the end of the agreement.

- 01:27:20 Director Tubbs: I would also like to add that in addition to our legal staff that both land trust entities have spent a lot of time with their legal and the private land owners have spent a lot of time/money for their lawyers. As with any program in the startup phase those hours are longer than the hours of the future applicants will go through. I am very pleased that we were able to make it to this meeting.
- 01:28:10 Ms. Sime: The last item in this packet relative to the project is titled Memorandum Livestock Grazing Plans. The parties wanted to handle this aspect of the project in this way by mutual development and agreement. I wanted to make you aware of some clerical corrections to what in your packet and those related to the addresses of the parties right at the top. You also see public comments as they were submitted during the environmental assessment process. With that, I do recommend final action.
- 01:29:10 Director Tubbs: The motion would be to approve the grant agreement and easements?
- 01:29:23 Ms. Sime: The grant agreement would enable the state to transfer funds so the motion could incorporate the grant agreement as well as adopt a final decision notice.
- 01:29:33 Director Tubbs: Ok, that would be a motion that the chair would entertain.
- 01:29:38 MSGOT Vote: Rep. Lang moved to approve the 44 Conservation Easement; Director Tooley seconded the motion.
- 01:29:51 Director Tubbs: opened for public comment. None. Discussion by the Sage Grouse Oversight Team.
- 01:30:00 Diane Ahlgren: I am a little disappointed that our credits will not be available until 2020, is that right Carolyn?
- 01:30:33 Carolyn Sime: During the course of negotiations, we learned that nearly the entire acreage of the ranch is currently under a contract with NRCS. The presence of the contract creates some ambiguity about timing for when the state could move forward with implementing and making credits available in a mitigation market place. At this point I would characterize federal policy as somewhat unsettled in this regard. One of the concerns the federal agencies will have would be double dipping or duplication through federal programs but to the extent that this project is entirely funded through the stewardship account and through private source match, The Conservation Fund, which Montana Land Reliance brings to the table as well as contributions in kind from the land owner. The presence of the NRCS contract may not in fact constitute double dipping when it comes to the easement, so at this time we do expect that credits absolutely would be developed. However, the precise timing of that relative to federal policy could delay that until the expiration of the NRCS contract, which is December 31, 2019.

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- 01:32:27 Diane Ahlgren: I guess I just wanted to make sure I was clear on that. It's pretty disappointing to me. That's why we got this thing going – it was to make sure we were going to have some credits available.
- 01:32:46 Director Tubbs: Part of it I think is actually quite useful. You can never test a federal policy position unless you challenge the federal policy position. This isn't a direct attack on a federal policy position but certainly allows Montana to raise the question about what was described as double dipping. My perspective is that I want Montana's Sage Grouse Program to be seen as a credit. That's the purpose of the appropriation. There are discussions going on in federal agencies as to how to measure credits. I don't have a hard time when the federal government is talking about federal conservation investments on federal lands, but I do have a chip on my shoulder when it comes down to state investments on private lands. I see this as an opportunity to push what Carolyn has described clearly as a state investment/private investment on private land that should be able to accept credits, not only by Montana but the federal agencies.
- 01:34:19 Carolyn Sime: An additional clarification is that our understanding of the current Conservation Stewardship Program contract relates to grazing and various other practices. This particular grant would clearly eliminate the threat of cultivation, changes and other land use practices that would potentially impact the conservation values of that parcel for Sage Grouse. Under federal policy, again still as yet unsettled, elimination of a threat is something that is different from what's currently contracted for stewardship practices under the NRCS program. That difference again, may enable us to move forward with marketing credits sooner than that contract expires.
- 01:35:08 Director Tubbs: Any further questions?
- 01:35:10 Diane Ahlgren: Thank you for that clarification. I do hope that we are up for the challenge, and I hope that we can get those credits sooner.
- 01:35:25 Director Hagener: Appreciate that it was more clearly designated on the no-build development areas and that helped address a lot of what our concerns were in that they were a bit ambiguous.
- 01:35:38 Rep. Lang: I need clarification - will we be able to go forward with credit on this project right away?
- 01:35:59 Director Tubbs: First we have to wait for our HCT to be developed, so hopefully by June we will have a mechanism to determine credits. The agreements certainly allow us the authority to generate those credits for the state for this investment. The only question is will the federal government recognize those credits. As soon as we have a tool that can measure the habitat values that we are conserving, we will generate Montana credits. What I think industry needs from us is to make sure that our federal partners accept those credits in a future market place. December 2019 does not dissuade me from the value that this particular easement provides, and it allows us to bring that decision by the agencies to a head as to the credits that Montana is generating. I think that will allow the federal agencies to have something tangible to respond to us. Over the course of the next six months this will be a good topic to drive home.

No further discussion. All those in favor say aye. Senator Rosendale votes no, and Mr. Baker votes aye, both via proxy. Motion passes.

#### **Stewardship Fund Grant Proposals for Reconsideration [Handouts 6 and 7]**

- 01:38:12 Ms. Sime: In May, the Oversight Team opted to reconsider a number of proposals and two remain. One is the Hansen Ranch Conservation Easement Proposal. The Program recommends that the Oversight Team elect to fund this proposal at this time. Back in

May, we discussed that the pre-reviewers ranked this as the second highest and noted the resource values associated with it. At that time, the Oversight Team opted to split out the conifer portion of the application for funding and that is still moving forward. Today's focus is the easement portion of that parcel. It still has very strong resource values and a very strong likelihood of generating credits. Your meeting packets include a letter from the applicant, Jim Berkey, which describes his continued efforts to secure matching funding for this project. As MSGOT considers this proposal, the absence of a match may be something that you're contemplating as important. The Program has been in discussion with the applicant and other applicants for development of some contingency language. Should you opt to select this for funding, we can incorporate some contingency language in that grant agreement as we continue working to develop other documents related to the proposal.

- 01:40:47 Jim Berkey: Thank you for reconsidering this proposal. Last year we had to reconsider this conservation easement because of lack of funding from the NRCS due to a technical issue, which will not be present during this NRCS application cycle for matching funds. NRCS is expecting to receive a larger allocation of funds this next year. NRCS has also adjusted their criteria at the state level which will benefit this project because it adjusted the scores throughout the state and provided a little bit stronger scores to areas outside of Management Zone 1. Hansen Ranch will receive higher points. We can't guarantee that we will be funded by the NRCS; however, we have every signal right now that our prospects are better than last year. The Nature Conservancy has established a template with the NRCS for easement terms, so we feel like our negotiations to the finish line with the easement terms is going to be easier and great clarification of what the easements are going to look like in the end. The Hansen's remain committed to seeing that their management of the ranch is consistent with protection and conservation of sage grouse habitat. We will stay at the table as long as needed to see this conservation easement through.
- 01:44:09 Director Tubbs: Can you describe the benefits of an approval today?
- 01:44:14 Jim Berkey: Benefits of the approval will be funding. If the state does not match the funding we will need to start looking for other sources and in some ways it is a diversion of our attention, capacity and clarity on whether we'll really be able to bring this project to fruition. NRCS funding will provide up to 75% for this project and are mandated to come up with at least 12.5% of the remainder so we are on the hook to find the funds. If the state decides against funding it will delay the project. We will be much more ready to close once we get the approval from the NRCS in the spring if we already have the state's dollars obligated.
- 01:45:19 Director Hagener: My concern is tying up the \$750,000 indefinitely. Would you have a problem if we put an end date of giving you a contingency if you don't have contributing funding by X date?
- 01:45:41 Jim Berkey: No, I think Carolyn has already proposed a date of June 1<sup>st</sup> and that may be a little too tight because NRCS has not actually announced their schedule for proposals and decision dates. August or September would give us a little more breathing room but I am very comfortable with a deadline.
- 01:45:08 Director Tubbs: No further questions. Do we have any public comment on Hansen Conservation Easement?
- 01:45:35 Glen Marx, Montana Association of Land Trusts: Everything Jim Berkey said was absolutely true and relevant. This is a great project for this Program to fund. The NRCS would see positive action by this group as a very positive sign. A little deference on that contingency date would be of help, but I know that the NRCS has expressed significant

support for MSGOT making a positive decision. They would see that as a very positive sign for this project and for Montana Sage Grouse Conservation.

- 01:46:53 Director Tubbs: Any additional public comment? No comments. You now have before you a decision to approve the Program to move forward on working with TNC and Hansen Ranch to develop for approval by MSGOT a conservation easement.
- 01:47:14 Director Hagener: I would make that motion with the contingency date at August 2017, so that if it does not happen, we will have the ability to use that money on another project. Director Livers seconded the motion.
- 01:47:30 Director Tubbs: Discussion?
- 01:47:32 Director Tooley: Mr. Chairman, as long as we are already moving it out to August 1<sup>st</sup>, we're into another state fiscal year. Why don't we just consider moving it to September 30<sup>th</sup> to match up with the federal fiscal year. By September 30<sup>th</sup> they would clearly have to have something ready by then.
- 01:47:69 Director Hagener: I accept that as a friendly amendment. I know it's important that we have an end date at some point.
- 01:48:43 Director Livers: I agree with Director Tooley. It makes sense on the timing with the federal fiscal year. The only question I've got is related to that opportunity cost and tying up the money. I don't see a large opportunity cost to date to doing that, but do we have any sense of an additional proposals may be before us?
- 01:49:11 Director Tubbs: I believe the Program is going to propose a grant cycle.
- 01:49:16 Carolyn Sime: It's our understanding from the NRCS that Farm Bill Program funding for this type of matching source for the Stewardship Account peaks in federal fiscal 2017 and as we have tried to sync our funding opportunities to match with the NRCS funding opportunities. We would also look to entertain a second grant cycle, possibly as early as early 2017. That could happen as early as January and might be a topic for the December 6<sup>th</sup> meeting.
- 01:50:07 Director Tubbs: I would like to have some discussion in front of legislature as to the demand for this program, the Governor's proposal and matching needs.
- 01:51:02 Diane Ahlgren: Question directed to Carolyn Sime: I wondered what are we actually paying for? How is that money prorated out? Are we paying for specific acres? When we're in partnership with the ALE (NRCS Agricultural Land Easement fund), how is that prorated out?
- 01:51:25 Carolyn Sime: I believe the match is 70% federal, with 30% state match.
- 01:51:48 Diane Ahlgren: Are we paying for nesting habitat? What will our credits be for?
- 01:52:00 Ms. Sime: This particular ranch has several leks in the vicinity and it offers nesting habitat, and I would suspect some degree of winter habitat. I have visited this ranch when we did a field tour for the conifer removal project and certainly the resources values are there in multiple seasons.
- 01:52:31 Director Tubbs: We would just be a component of the all conservation easement on the ranch in its entirety, not in specific acres carved out within the ranch. Our credits would flow to the investment we make into the ranch and how much credit this landscape generates. NRCS would just be a funding partner.

- 01:53:01 Diane Ahlgren: That answers my question. I guess I just wandered when credits go into the credit bank and someone comes in and they have disturbed nesting habitat will there be credits available from this project for that?
- 01:53:18 Director Tubbs: Yes, we will be generating credits if this deal goes forward. As Carolyn has said this is excellent habitat. The state investment component we can count on generating credit. Any additional discussion?
- 01:53:47 Director Livers: Appreciates Mr. Marx's comments with respects to testimony from Mr. Berkey.
- 01:54:05 Director Tubbs: All those in favor of the Hansen Ranch Conservation Easement, say aye. Mr. Baker votes aye by proxy. Representative Lang votes no. Senator Rosendale votes no by proxy; motion passes.

### **Troy Smith Conservation Easement [Handout 8]**

- 01:54:46 Carolyn Sime: This is the second of the two grant proposals before you for reconsideration - the Troy Smith Conservation Easement in Beaverhead County. The program also included correspondence from the grant applicant, Montana Land Reliance, and Mr. Van Dyke. The Program is recommending that MSGOT decline to grant funding for this proposal. I went back and reviewed pier comments and contemplated the information that was provided by the grant applicant. I think that overall, the pier-reviewers contemplated the size of the parcel (288 acres) within largely a sea of public land managed by the BLM as priority habitat. I also considered the size of the parcel relative to the building envelope. The map in your packet shows the "no build" zone shown in yellow that covers roughly 2/3 of the property. The landowner is interested in retaining one building envelope of approximately two acres and it would be placed in the hatched area somewhere. The exact location has yet to be determined. One two-acre building envelope in that small of an area could have additional fragmentation effects on the parcel. That fragmentation of the remaining piece of land could negatively impact credit generation. So in anticipation of what that fragmentation might look like, I thought that proportionately fewer credits could be generated. Director Hagener asked for clarification on which map Carolyn was referring to. I will point out that the next map shows removal of a center pivot and restoration of that area into primarily grasslands. It's not clear that sage brush was incorporated into that; so far as the sage brush component is concerned it appears to be somewhat low.
- 01:57:52 Director Tubbs: I will open for applicant comment on Troy Smith Conservation Easement and then public comment.
- 01:58:11 Mr. Van Dyke, Montana Land Reliance: Brief overview of the acreage center pivot removal to create additional range. When I presented this back in May there were a couple issues at hand. One was the size of project and it has not gotten any bigger since then. The other issue that came up in the technical team comments was that the Smith's wanted to place a building within the two mile buffer but have since decided to site the building outside that two mile buffer. Our easement template with NRCS has not been approved so there is no easement draft, no rush because of NRCS timeline. This is a late 2017 project before closure, so there is no rush. I would ask the committee to consider that the land owners know they are applicants for public money and they know that there is a possibility that they will be declined. I would suggest this committee dedicate the money until such time as the HQT is created, with the contingency that once the HQT is created that there is a demonstrated conservation benefit. If not, rescind that approval and then the Smith's will know that they have been subject to a completely object process; or at a minimum leave the project in the folder and take action once the HQT is created. When you look at the technical scoring, two of the five

were ranked fairly high, a six out of nine. There was some dissension within the technical committee. Three of them ranked it fairly low and I would guess because of its relative size and some unanswered questions. Since then, those questions have been answered. We are very pleased that the stakeholders have taken the initiative to get the HQT up and going. We would ask that this team hold this easement at a minimum or dedicate the funds until it can be assessed by an objective process that is agreed upon by all stakeholders and the State of Montana. One thing I would argue with staff's recommendation to not fund is the threat of fragmentation of a property with the two acre building envelope that is permanently protected by a conservation easement. I am not aware of anything that protects that property from small scale sub-division as we sit here today. There is a road, power and infrastructure to the property. There is nothing to suggest that the Smiths could not develop that property. They do have a 5,000 acre BLM allotment, so the question that I would pose before the Team is what is the potential negative impact of not protecting that property? I think that is the real question. So are they asking for essentially cow camp on the dwelling unit? Yes, that's not going to change. I am suggesting that the team either dedicate the money with the contingency that it is demonstrated to create credits once the tool is created, or at a very minimum, hold it in the folder. There is no reason in my mind for the team not to make that consideration. I'd like to thank you for allowing us to do that, and Ms. Sime for the soliciting additional information on the project.

02:06:57 Director Tubbs: Now I open the floor to public comments.

02:07:07 Glen Marx, Montana Association of Land Trusts: I just wanted to reemphasize a few things that Kendal said. I want to quote a little portion of a one page memo that Ms. Sime has provided you for this discussion. It says, although the parcel offers habitat values for sage grouse, it is small and largely surrounded by the Bureau of Land Management lands which are classified as Priority Habitat Management, which is comparable to our core areas. You have a small parcel of quality habitat that could conceivable impact a much broader area of federal priority habitat. You have heard some discussion about the development of a Habitat Quantification Tool and among the things that the stakeholders group discussed is the concept of buffering and on a conservation easement like this that could offer buffered protection for BLM Priority Sage Grouse habitat is something that is important and I think it certainly worth holding this file open until the HQT is developed MSGOT and staff can take a look at this. Yes the project is small but if the potential impact to sage grouse could be larger. I would also say that the applicant is asking for \$36,000. For sage grouse conservation as you know that's not a lot of money but it's possible that when the HQT is developed you might get a pretty good buy for credits on the amount of money that you would actually spend. I don't think there is any risk at all on this project by allowing the project to play out and addressing some of the topics we have presented here. Thank you.

02:10:02 Director Tubbs: Additional public comment? No additional comments. I would entertain a motion; the program recommendation is to deny applicants request for a deferral or acceptance.

02:10:30 Director Livers: If we don't move anything at this time then we essentially just keep it in our folder?

02:10:39 Director Tubbs: Correct, it would move down to the same status as the group that is not active. I have some empathy for our applicants. They jumped in early, on an unknown process. For the applicant, this is them moving forward. This is their personal property so I take to heart Kendal's concerns about the property and the owners. Do I have a motion?

*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.*

- 02:11:46 Diane Ahlgren: I would be inclined to keep it on the table. Kendal made a good promotion for his case and we should look at it again when we have our HQT in place.
- 02:12:19 Director Tubbs: Is that pretty much the consensus? Ok, we will defer action.
- 02:12:27 Director Livers: Question for Mr. Van Dyke: Have the Smith's agreed to restrict their potential building to outside the two mile buffer?
- 02:12:55 Mr. Van Dyke: Yes.
- 02:12:57 Director Livers: It might be worth having the Program consider that as well as it moves forward for consideration.
- 02:13:03 Director Tubbs: As a deferral it would stand as additional information for future review. Action deferred. Do I have a motion to adjourn? Director Hagener motioned and Representative Lang 2<sup>nd</sup> the motion. Motion passed.

**Public Comment on Other Matters**

02:13:35 No Public Comment.

**Adjournment**

02:13:49 Adjournment.

Acting Chair for this meeting:

/s/ John Tubbs  
Director John Tubbs