

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**

Tuesday, December 6, 2016 Meeting Summary
Montana Room, DNRC Headquarters, 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, Montana Department of Natural Resources & Conservation, Director
Jeff Hagener, Montana Department of Fish, Wildlife & Parks, Director – Voting by Proxy
Tom Livers, Montana Department of Environmental Quality, Director
Jim Halvorson, Montana Board of Oil and Gas, Administrator
Diane Ahlgren, Rangelands Resources Executive Committee
Senator Matt Rosendale, Glendive, Montana – Participating by Phone
Representative Mike Lang, Malta, Montana
Mike Tooley, Montana Department of Transportation, Director
Tim Baker – Montana Governor’s Office, Voting by Proxy

Staff Present

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

Call to Order

00:00:07 Director Tubbs called the meeting to order.
00:00:20 Montana Sage Grouse Oversight Team Introductions.

Update on Implementation of Executive Order No. 12-2015

00:01:17 Director Livers: We are continuing to work on the internal guidance that we presented last meeting and make the changes we discussed.

00:01:27 Director Tooley: Nothing since the last meeting.

00:01:32 Representative Lang: I was very satisfied with the stakeholder meetings and Carolyn pushing things forward for the HQT.

00:01:48 Diane Ahlgren: Nothing to report.

00:01:53 Jim Halvorson: Nothing to report.

00:02:00 Senator Rosendale: I agree with Representative Lang. I am very pleased that the HQT is moving forward, as it’s a critical component of the work that we’re doing. I feel very strongly that we need to examine the possibility of granting exemptions for the unincorporated town. I realize that any request that they had made recently seems to have been moving forward but it seems to me that it’s an additional part of a process that should not be required for them. It would be pretty simple to define some boundaries around these unincorporated towns and get these towns exempt from this process.

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- 00:02:49 Director Tubbs: We continue to support the Program. I know there have been some good meetings with our database contractor. As far as Trust Lands, we continue to process anything that's necessary in order to go through the Program and it's been a good response.
- 00:03:12 Carolyn Sime: Covered the statistical results for how the Program is doing. The overall response rate is 97.49%. [Handout 1] Reviews are continuing for a few projects that are proposed for core areas and a few others are still under review in general habitat. We do have a very rapid turnaround time for projects that may still come in outside of the Executive Order sage grouse habitat areas. We continue to receive a great deal of support from DNRC IT and really appreciate their work. Program is undertaking efforts to develop some outreach materials for the legislative session. One would be a very short executive summary format. John Grassy with DNRC has been very helpful. We are also preparing a narrative annual report. The annual report is a statutory requirement and some very specific things the Program will be addressed. We will also include some additional material that readers may find helpful that would encompass all the work that the Program has done since September 2015. We are coming to a close on one IT contract that had to digitizing existing disturbance. This product is in final review. In working with the IT staff we would transition implementing that layer effective January 1, 2017. There are some technical steps that would have to occur in terms of replacing that layer but that is work that we will be finalizing in the next 2-3 weeks of year. Anything that has been submitted up until January 1, 2017, will stay with current layer. Anything that comes in after January 1, 2017, will be subject to the new information. The second IT contract that's still on-going to develop the next generation website we call "SG2.0." The contractor was here last week. We had some very productive discussions about developing the front end user experience as a proponent would experience when they first open the new website, as well as the database portion that facilitates our review. Also discussed this as being the database source of information for the U.S. Fish and Wildlife Service status review. That would be the information source for Montana's responses to questions that we expect from the U.S. Fish Wildlife Service.
- Grant Program: The 44 Ranch Conservation Easement closed on Nov. 29. This Montana Land Reliance Proposal was previously funded and given final MSGOT approval on Nov. 18, 2016. Congratulations to MSGOT, MLR and especially the landowners. Thanks to the MLR professionals, DNRC Legal and Fiscal staff. Mr. Van Dyke shared some comments from the Delaney's saying that they wanted to thank us for making it a reality and that Mr. Delaney was out on the north part of the ranch and saw about 100 sage grouse. Thanks again to all. At the last meeting, MSGOT awarded funding for Hansen Livestock Conservation Easement contingent on The Nature Conservancy securing matching funds by September 30, 2017, which corresponds with the 2017 federal fiscal year end. Your packets have a letter that we received from the Hansen's after your last meeting. [Handout 2] The Troy Smith Easement and the Weaver Conservation Easement will be on the agenda a little later today. Negotiations for the Hansen Livestock Conifer Reduction Proposal (funded May 24, 2016) are still on-going between The Nature Conservancy, the landowner, and the Program. Terms are not settled enough on the various agreements for the Hansen Conifer Reduction Project for today's agenda, but do expect to have all that in February 2017.
- 00:09:25 Director Tubbs: In response to Senator Rosendale's question about unincorporated communities and how can we get the Program's attention on that. As a result of their being unincorporated they don't belong to the League of Cities and Towns and there is no advocacy group for the unincorporated. Is there a way for the process to move forward so that Senator Rosendale's question is responded to?
- 00:10:16 Carolyn Sime: Delineating the unincorporated areas could be undertaken using remote imagery where we could hand digitize the perimeter of the development. A couple

considerations: (1) the resources to accomplish that work - we're already focused on a number of high priorities including the development of the HQT as well as other demands on the Program and the GIS crew; and (2) exurban development has been identified as a threat by the U.S. Fish and Wildlife Service and is one way that habitat could be lost or fragmented due to human development. How we approach contemplating where that boundary is drawn in anticipation of future development or some sort of buffer would be additional considerations. It may be worthwhile to schedule a meeting with U.S. Fish and Wildlife Service to explore that issue a little more. We also need to recognize that land use planning by Montana statute is the purview of local government. Local government would not be subject to the Executive Order in that sense and those decisions, in residing with local government are not something we can affect.

00:11:56 Director Tubbs: I think what Senator Rosendale's point is that we have existing disturbance that are called unincorporated towns and it's really an identification of that existing footprint on the landscapes so that activity within the footprint is exempted from the Executive Order because the disturbance already exists. Let's see if there are resources that can help us put boundaries on those communities. It may be easy for some places and take time for others.

00:12:47 Senator Rosendale: I would reach out to Harold Blattie with MACO. I believe he would be very interested in helping with that process.

00:13:08 Director Tubbs: Very good. Are we ready to turn it over to DEQ?

00:13:18 Carolyn Sime: Yes.

Cloud Peak Energy Proposed Haul Road in Southeast Montana [Handout 3]

00:13:27 Director Livers: The purpose of this is to coordinate various pieces of environmental review so that we don't get to the end of an EIS process and have surprises and to make sure we're doing a good substantive job of dealing with potential mitigation measures because of the haul road transportation corridor. It's a transportation corridor between the existing Spring Creek Mine near Decker in Montana to the Youngs Creek Mine in Wyoming. The basic action being requested is to endorse using the candidate conservation strategy and that strategy would form the basis for selecting mitigation measures that would be incorporated into our environmental review. This is an attempt to coordinate all the pieces with a robust and sanctioned process at the federal level into the state decision making process.

00:15:33 Carolyn Sime: We have several members of DEQ and a Cloud Peak Energy representative here today to answer any questions you may have. The intent is to provide for your consideration and to seek your endorsement of an approach for a project that has been anticipated by both DEQ and Cloud Peak. We have had several meetings and the approach before MSGOT has been developed in a collaborative and proactive way and we appreciate the efforts of DEQ as well as Cloud Peak. Cloud Peak has applied for an amendment to their existing permit to develop the haul road which would be roughly 8 ½ to 9 miles, it would cover private surface lands so no state trust lands or federal lands would be involved. To that credit, Cloud Peak has done a lot of work ahead of time to determine potential impacts to sage grouse and other wildlife in the area. Cloud Peak identified several areas in the Executive Order where there are sage grouse concerns and there may need to be an approval by the MSGOT for deviations to the stipulations of the Executive Order. For example, the road itself would be a brand new activity in the core area. Adding that road alone would push the thresholds for surface disturbance above the 5% cap. Noise is likely to be an issue through use of the road in hauling materials as well as other machinery. There is the possibility that the road itself or the right of way would go through a no surface occupancy buffer area. Cloud Peak

has also identified that in trying to avoid some sage grouse issues, other resource issues come up, such as raptors. The other resource concerns are not within MSGOT's scope, but it is something that the Program works with. State permitting agencies as well as project proponents try to find the best balance for resources going forward. Cloud Peak has been very proactive and participating in the development of the Thunder Basin Grasslands Prairie Ecosystem Association. Other members include agencies, industry, private landowners, and federal agencies such as BLM and FWS. The coverage area is about 13.2 million acres and includes Northeastern Wyoming and Southeastern Montana. It is a voluntary collaborative conservation organization, so that makes it a 501(c)3 and federal agencies are also involved and have seats on the board. There is also an advisory committee, where a lot of the more direct conversation and dialog occurs relative to conservation activities on conservation side or the conservation measures that would be implemented to address impacts to resources. Over the last several years the Association has been working directly with the Service to develop not only the strategy but also candidate conservation agreements that would have assurances and would come with incidental tag permits for any of the species that are covered if they were listed under the federal Endangered Species Act in the future. Under that agreement, members would voluntarily engage in certain activities to get the regulatory assurances.

An important distinction between the work of this body and the voluntary nature is participation in a voluntary endeavor such as Thunder Basin does not fulfill the regulatory requirement that a project proponent may have, so that's why there is collaboration with DEQ, the permitting agencies / process, and MSGOT. The conservation agreement and the incidental take permit would run roughly 30 years. The conservation strategy provides a categorical menu of conservation measures that members such as Cloud Peak could select in order to offset impacts from whatever their project might be. Again, it's really intended to proactively address conservation needs but it is voluntary. Another consideration of the Thunder Basin Conservation Strategy and the Agreement and the Board is that the Board itself does not review site specific work, site specific proposals, site specific reviews at the agency level which would be DEQ. There is good synergy between the conservation measures identified as well as those measures that Cloud Peak has already identified during our collaborative meetings.

Presently, the actual agreement itself does not exist. U.S. Fish and Wildlife Service is in the process of doing an environmental assessment through the federal register and taking public comment. Currently, the environment assessment was published November 28, 2016, and the public comment period closes December 28th. The Service will review public comment and make a final determination. It is expected that the Service will complete its work and finalize the agreement by the spring of 2017 (projected to be March, 2017). See the flow chart that shows we are currently between steps two and three. Cloud Peak has already identified some specific measures. I am confident that the measures would fulfill any requirements for mitigation as well as address sage grouse concerns. This recommendation comes to you as a result of the collaborative conversations between DEQ, Cloud Peak and the Program and I recommend MSGOT endorse the process as presented. A draft EIS would be reviewed by MSGOT after additional details are developed and we identified what conservation measures Cloud Peak would consider and DEQ would incorporate within the preferred alternative of the EIS as mandatory stipulations in the permit.

00:23:23 Director Tubbs: Opening up to public comment on the Cloud Peak Energy Haul Road.

00:23:47 Todd O'Hare – Senior Government Affairs Manager for Cloud Peak. I will attempt to answer any questions you may have. I want to thank DEQ and Carolyn Sime for their efforts.

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- 00:23:39 Director Tubbs: Any additional public comments? With no additional comments, I will open it up to the Committee. As a point of clarification, I do believe there were some state lands involved but that was prior to the Executive Order.
- 00:25:25 Senator Rosendale: Not sure if this is for Carolyn or Mr. O'Hare but at the bottom of page three of the summary sheet we have it says that our endorsement of this process can be contingent on the USFWS execution of the final Association Conservation Strategy and Agreements. My question is if Carolyn says that she is confident that these measures would fulfill any requirements that would be necessary. I want to make sure that we don't go into the same conflict that we were going into with the HQT as it was initially proposed giving the U.S. Fish and Wildlife Service the approval. If in fact they are unwilling or unable to provide such approval, should we have language that says that it will be submitted to USFWS for sufficiency?
- 00:26:46 Director Tubbs: The CCAA process is an active decision making process in the service that has authority under current law to grant a CCAA to the coal mine.
- 00:27:47 Carolyn Sime: The U.S. Fish and Wildlife Service has been an active partner in developing the conservation strategy for Thunder Basin all along. If the Service does get to the other end and issues a decision in support of the Strategy and executes the actual Conservation Strategy and the take permits, that almost by default becomes the Service approval for any member of the Thunder Basin Association who would engage voluntarily in that process, so it should be covered.
- 00:28:42 Director Tubbs: Other representatives in the room are in concurrence that we're on a good path.
- 00:28:56 Director Tooley: Is there an existing connection right now between Spring Creek and Youngs Creek mine? If so, what facilities are they using to establish that connection?
- 00:29:17 Todd O'Hare: The Youngs Creek property is an undeveloped mine at this time. We have a permit to develop the mine, but as of today there is no disturbance. It would be what's considered a Greenfield mine. Due to the high cost of infrastructure it makes most sense to transport coal from the future developed mine to our existing infrastructure at the Spring Creek Mine.
- 00:30:13 Director Tubbs: Any additional questions? I would entertain a motion, and the recommendation was to endorse the process as presented. Director Livers moved and seconded by Representative Lang. No additional discussion. All present vote aye. Director Hagener and Mr. Baker vote aye by proxy. Motion passes.

Colstrip Steam Electric Station Administrative Order on Consent: [Handout 4]

- 00:31:28 Director Livers: This is a request for an exemption based on an existing industrial disturbance with a fair amount of activity going on ranging from disposal ponds, monitoring wells, to capture wells, to work on the ponds. All would require going to the Program on an individual basis without an exemption.
- 00:32:43 Carolyn Sime: This agenda item was developed collaboratively between Talen Montana, DEQ and the Program. Today's focus is on the next steps for the site and how they would be able to be fulfilled given Executive Order 12-2015. Talon Montana is required to undertake a number of activities at Colstrip that came about due to a combination of factors. Our task is to find the best path forward that offers the greatest efficiency for Talon, as well as DEQ and adequate consideration for sage grouse conservation. We are recommending that MSGOT consider and approve exempting the activities that Director Livers mentioned that would need to be undertaken at the site without requiring

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each individual to go through Program review. This would enable Talon to proceed with fulfilling their obligations and their work coordinating directly with DEQ. All work would occur within the boundary of the Administrative Order on Consent. There would be no new surface disturbance outside of the Administrative Order boundary. No localized populations of sage grouse exist in the area currently and the closest leks are about 12 and 22 miles away. My conclusion is that this will not exacerbate threats for sage grouse so the Program does recommend that MSGOT authorize an exemption from the consultation requirement.

00:36:01 Director Tubbs: Public Comment? None.

Any comments or discussion from committee members? None.

Director Tooley moved and was seconded by Director Livers to approve the exemption from the consultation requirement. Director Tubbs says that having been around this particular project, there is some chance that at a future date wells may be required outside of the current AOC. When that day comes, MSGOT can have another discussion. I think that this is an excellent start in terms of efficiency for DEQ to move forward with this process.

All MSGOT members vote aye, with Mr. Baker and Director Hagener voting by proxy. Motion passes.

Habitat Quantification Tool and Mitigation Rulemaking [Handout 5]

00:38:12 Carolyn Sime: Brief review of presentation that Rusty Shaw and Len Barson provided that outlined the work that has been done to date. There are three key pieces; the tool itself which is the scientific method of measuring gains or losses in habitat. The second key piece is guidance or policy for how mitigation is implemented within the context of the Conservation Strategy overall. The third piece is the rule making. Because of strong stakeholder interest to begin the rulemaking process, we introduced the rule to you at the November 18th meeting. There is still some work to be done on the technical facet of not only the tool itself but some of the policy facets.

The stakeholders would like to see the rulemaking move forward while we continue our work up until June 1, 2017. This is a self-imposed deadline by the stakeholders as well as the Program. The document you have before you today does reflect the collaborative outcomes of the stakeholders through November 18th. I received some e-mail comments on November 22nd and 23rd as well as November 30th. Those comments are in the public comments folder and encouraged the stakeholders to submit those in the event that MSGOT approves the rule today. The stakeholders agreed that they were comfortable with this draft moving forward for general public comment, but wanted to make sure that everyone understood that individual stakeholders would submit their own individual comments representing their unique interests.

There are a couple items for MSGOT consideration prior to executive action. This draft proposed rule reflects fulfillment of a number of requirements and best practices when it comes to rule making, as compared to the document presented on November 18. Today's document reflects full legal review by DNRC Legal Unit, as well as official formatting from the Secretary of State's Office. There are some minor edits needed. If MSGOT approves this draft proposed rule, we would have one final proofread and then it would be sent to the Secretary of State's Office for publication in the December 23, 2016, edition of the Montana Administrative Register. There is a hearing schedule correction on page 1 of the proposed rule: the January 12 meeting would actually be in Dillon at the Beaverhead-Deerlodge National Forest Office, 420 Barrett St. and the January 16 meeting would be in Roundup at the Musselshell County Ambulance Barn. The January

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17 meeting stays the same. Under this draft we would accept public comment through January 22, 2017. I would anticipate a meeting with the stakeholders to review and discuss any public comments on the proposed rule, as well as discuss the final language for the rule and documents, and then would bring forward for MSGOT consideration.

Another change on page 2: added a definition of material change and on page 3 there is a proposed definition for sufficiency review. Also on page 3 there is an addition to existing Administrative Rule 14.6.102 for the grants where we are suggesting a clarification but also some flexibility in terms of how grant proposals are reviewed and prioritized to be more consistent with the statutory requirements. On page 6, Roman numeral (ii), we have changed the title. Pages 10-11, these are proposed new rules. One to track and maintain the number of credits and debits available and used. The other new rule is Rule IV Method to Administer the Review and Monitoring of MSGOT Funded Projects. Both are required by statute. I recommend approval of this draft and initiate the formal rulemaking process.

- 00:50:42 Director Tubbs: Public comment?
- 00:50:56 Dave Galt – Consultant with Browning, Kaleczyc, Berry and Hoven representing coalition of industry. We appreciate the level of focus the Team has given and we want to see this rule adopted. We will provide comments in the end. A personal observation, when the rule is adopted people will see only the Rule and not the work and all the documents behind the work. Carolyn has put this document together very nicely.
- 00:52:42 Len Barson – The Nature Conservancy: We strongly support publishing this rule and anticipate submitting comments.
- 00:55:50 Jody Bush – U.S. Fish and Wildlife Service: Wanted to go on record that the U.S. Fish and Wildlife Service is very supportive of getting the rules published.
- 00:56:14 Director Tubbs: Additional public comment? Seeing none, I would entertain a motion. Representative Lang moved to go forward with the rulemaking process. Motion seconded by Senator Rosendale. Discussion by MSGOT.
- 00:57:31 Senator Rosendale: Representative Lang, is there a bill draft in process right now to repeal the language and statute which references U.S. Fish and Wildlife Service approval so that we have a process and statute which is consistent with the process that has truly been authorized and would be undertaken?
- 00:58:05 Representative Lang: No there is not specific to that. There is a bill draft in to leave the door open if we need to change SB 261 in any way to make it fit the format that we are proceeding on.
- 00:58:24 Director Tubbs: So is that generally like a revised title?
- 00:58:25 Representative Lang: Yes.
- 00:58:26 Director Tubbs: Any additional discussion?
- 00:58:38 Diane Ahlgren: I like the change on the sufficiency review from approval. Wondered if there was a time frame for U.S. Fish and Wildlife Service to complete the sufficiency review?
- 00:59:27 Carolyn Sime: The question has not been formally asked, but have had informal discussion about what form that sufficiency review might take and how long that may

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take. Our sense is that review would not take long since the U.S. Fish and Service has been involved all along.

01:00:21 Jody Bush: We are very engaged with the sufficiency review process and we will jump right on any request for sufficiency review. I can't give a timeline, but it will be as quick and we can do it. Regional Office will also be involved in the review, but this is a priority for us and will move it along.

01:00:56 Director Tubbs: Any additional discussion? None. We have a motion on the table. All MSGOT members vote aye, Mr. Baker and Director Hagener vote aye by proxy. Motion passes.

Stewardship Fund Grant Agreement for Thomas L. Watson Conservation Easement and Raths Livestock Easement [Handout 6, 7, and 8]

01:01:36 Carolyn Sime: Handout 6, Tables 1-4 summarize MSGOT decisions and disposition of Stewardship Account grant proposals. The key focus is Table 4. Table 4 represents funding that MSGOT has committed from the Stewardship account as of November 18, 2016. If the Nature Conservancy does acquire matching funding for the Hansen Ranch Conservation Easement by September 30, 2017, MSGOT will have committed \$3,427,500.

The Grant Agreements before you are the Thomas L Watson Conservation Easement and the Raths Livestock Easement. [Handouts 7 and 8] Both are Land Reliance proposals, and they have already been awarded matching funding from the NRCS Agricultural Lands Easement Program. We are recommending execution of these grant agreements at this time, with the contingencies that are shown on the cover sheet. NRCS match is a process that entails some extra steps in developing the final document. So these projects are expected to take a little bit longer to negotiate and finalize, likely 4-6 months. It is unlikely that a closing date would come before June or July of 2017. This would place closing in state fiscal year 2017. We are proposing that we enter these agreements with these contingencies that allow the process to stop if one of the contingencies actually occurs. Negotiations would move forward to develop the documents (grant agreement and easement) and the Program would complete an EA to fulfill MEPA requirements.

01:05:28 Director Tubbs: Public comment on the grant agreement? See none, I would entertain a motion. Director Tooley motioned for MSGOT to approve and execute grant agreements for the Watson Conservation Easement and the Raths Livestock Conservation Easement, respectively. Motion was seconded by Jim Halvorson. Any Discussion?

01:06:23 Representative Lang: Concerned that the tax payer money well spent and that if something goes wrong that the money still protected. Everything has to be correct for the tax payer money to be protected.

01:07:15 Senator Rosendale: Have previously stated opposition to conservation easements and will again vote "no" on these.

01:07:01 Director Tubbs: With the governor's budget, we are cash constrained. We have the authority and statute to issue up to \$5,000,000 prior to the HQT being adopted. However the cash in the general fund budget is being restricted for very good reasons that will become apparent during the legislative session. Carolyn's indication of closing in the second fiscal year gives me the comfort that that we will not run into a negative within the account or concerns with the budget director. With that I will ask for a vote.

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Senator Rosendale votes no. All other MSGOT members vote aye, with Mr. Baker and Director Hagener voting by proxy. Motion passes.

Public Comment on Other Matters

01:09:13 No Public Comment.

Adjournment

01:09:51 Adjournment.

Acting Chair for this meeting:

/s/ John Tubbs _____
Director John Tubbs