

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**

July 24, 2018 Teleconference Meeting Summary
Montana Department of Natural Resources and Conservation Headquarters
Montana Rooms North and South
1539 11th Ave, Helena

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, by Phone
Jim Halvorson, Montana Board of Oil and Gas, Administrator, by Phone
Tom Livers, Montana Department of Environmental Quality, Director
Casey Knudsen, Representative HD 33, by Phone
Diane Ahlgren, Rangelands Resources Executive Committee, by Phone
Senator Mike Lang, Malta, Montana, by Phone
Mike Tooley, Montana Department of Transportation, Director, by Proxy
Martha Williams, Montana Department of Wildlife, Fish and Parks, Director
Patrick Holmes, Montana Governor's Office, by Proxy

Staff Present

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

Call to Order

00:00:03 Director Livers called the meeting to order.

Hansen Livestock Company Conservation Easement: Final Environmental Assessment and Proposed Decision Notice [Handout]

00:02:09 Ms. Sime: The purpose of this teleconference meeting is for MSGOT to consider a final environmental assessment (EA) and proposed decision notice to transfer Stewardship Account funds to The Nature Conservancy (TNC) for its purchase of a perpetual conservation easement on the Hansen Livestock Company in Beaverhead County. If approved MSGOT would authorize transfer of Stewardship funds to secure the Hansen Livestock Company perpetual easement. The state's share includes 14 to 15% of the total cost. The total cost of the easement is \$6,600,000.

In 2016, TNC proposed a conifer reduction project in combination with a perpetual easement. MSGOT funded only the conifer reduction portion of the project in 2016. That work was accomplished with other funds. MSGOT then approved reallocation of the conifer reduction project funds towards the easement. TNC secured matching funds. The total award from the Stewardship Account is \$952,500.

The project is in Core Habitat. There are active leks on or near the property. It is located within the proposed southwest Montana service area. In 2016, Program staff toured the property. The easement would protect 13,535 physical acres of habitat and includes the area involving the conifer treatment.

The easement prohibits new development and allows for continued agricultural use. The easement provides for the creation of credits. The final EA is dated June 26, 2018. Terms are settled and under review by NRCS.

This project came before MSGOT several times since 2016. The draft EA process included public scoping and public comments. Two comments were received. The Program recommends approval of the easement because the project is in high quality habitat, connects southwest Montana sage grouse to sage grouse in Idaho populations. The Hansen family have been good stewards of the land.

Public Comment

- 00:07:44 Director Livers: Asked for public comment.
- 00:08:38 Mr. Mark Aagenes, The Nature Conservancy.
- 00:11:26 Mr. Alan Olson, Executive Director Oil and Gas Association.
- 00:04:30 Mr. Glenn Marx, Montana Association of Land Trusts.
- 00:16:00 Director Livers: Asked for additional comments.
- 00:16:15 Mr. Jim Berkey, The Nature Conservancy.

MSGOT Discussion and Executive Action

- 00:17:04 Director Livers: Asked for additional questions from MSGOT.
- 00:17:37 Director Williams: Asked of Glenn Marx, his experience with mineral ownership.
- 00:18:06 Glenn Marx: Stated landowners who don't own subsurface rights, don't have authority over subsurface minerals. The 44 Ranch easement did not restrict subsurface development because the surface owner did not own the subsurface rights.
- 00:19:27 Ms. Sime: The remoteness report was negligible for the 44 Ranch, having to do with the potential for future development.
- 00:18:06 Glenn Marx: Development of the subsurface rights are not a requirement of the department. Rather they are covered under an arrangement between the surface and subsurface owners. Development of those rights are up to the owners of those rights. In the case of the Hansen easement project, the owner of the subsurface rights has decided to retire those rights.
- 00:21:16 Ms. Sime: The subsurface rights involved with the Hanson Livestock easement are partially owned by Hanson Livestock and other members of the Hanson family. The terms of the easement are those made by the landowner and the land trust organization. The state's interests are centered around the value of the habitat and the credits that can be produced. The state does not view surface conservation and subsurface rights to be mutually exclusive.
- 00:22:34 Jim Berkey: Confirmed that the Hanson's and various other family members are the owners of the subsurface rights.

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- 00:23:18 Director Tubbs: In the EA, under Land and Soil Resources, the mineral estate was evaluated (page 21 and 22).
- 00:24:02 Senator Lang: Asks if the MEPA review would reveal the mineral rights.
- 00:24:37 Ms. Sime: The language referenced by Director Tubbs states, reasonable use of the surface is allowed.
- 00:25:03 Director Tubbs: One of the issues, when conducting a full minerals search is the cost. The EA acknowledges the mineral estate exists. The conditions of the easement then state if the rights are to be exercised or not. We are well within the bounds of state law and the protection of the mineral estate is strong. It would cost tens of thousands of dollars to conduct full research into mineral ownership.
- 00:17:37 Director Williams: A conservation easement document cannot abrogate Montana law. Montana law states that the mineral estate is dominant. The conservation easement doesn't have to reference that for that law to stand.
- 00:27:10 Mr. Olson: Not arguing the point. Page 10 of the easement says no exploratory wells, no new roads. Who will stick up for that in court. Concern there is boilerplate language that can't be enforced.
- 00:28:17 Director Livers: Mr. Olson used the term these are boiler plate documents but, in this case, the mineral ownership is resolved because of the ownership. Asked if the concern is that MSGOT should use caution in using boiler plate language going forward.
- 00:29:05 Mr. Olson: If the surface owner is the same as the mineral owner why have that language in the document. If you can't do a mineral research to see who might be affected that brings up issues. If you can't deny someone from developing their mineral estate, don't put in there they can't drill an exploratory well.
- 00:30:10 Senator Lang: Asked for an explanation from TNC about the \$647,500 participation from the landowner. Asked how that comes about.
- 00:30:36 Mr. Berkey: This is the donated portion of the easement. The Hansen's agreed to a bargain sale. In other words, they are selling below market value. A licensed appraiser calculated the value, and this represents money the Hansen's will not receive. There is also \$50,000 TNC is donating to make up the full appraised value.
- 00:31:42 Senator Lang: This raises more questions. Asked if donate mean it goes to TNC. Is this treated as income by the IRS as a profit? Do we need tax documents on this?
- 00:32:20 Mr. Berkey: This is a below market sale through a charitable organization and could be used as a charitable gift. The Hansen's have chosen not to take this benefit. Because TNC will own the easement they own the value and are receiving a guardianship, liability over time. It is not a marketable interest.
- 00:33:32 Senator Lang: If I were to own something worth \$100,000 but sell it for \$80,000. If the state by giving them \$952,500 minus \$647,000 would give them \$300,000 in cash of taxpayer's money.
- 00:34:05 Director Tubbs: The certified appraiser evaluates the land without the easement then when the easement is imposed, establishes the taxable amount. The owner is allowed to use the donation of the difference between the appraised land and the value with the

easement as a tax deduction for the owner. It isn't hard currency, it's the difference in appraised value.

- 00:45:42 Mr. Max Hansen: Legal counsel to the Hansen's: In communication with the accountant for the Hansen Livestock Company. If the Hansen Livestock Company wanted to use the charitable donation for this transaction based on their ownership, they cannot use the appraisal done by TNC. The amount they would be able to claim was found to be insufficient to cover costs of a second appraisal.
- 00:37:07 Director Livers: Asked for additional questions from MSGOT. Asked for a motion.
- 00:37:31 Director Williams: Moved MSGOT approve the Decision Notice and authorize the Program to transfer \$952,500 from the Stewardship Account so that The Nature Conservancy can purchase a perpetual conservation easement on the Hansen Livestock Company ranch. Seconded by Director Tubbs.
- 00:37:07 Director Livers: Asked for additional MSGOT discussion.
- 00:38:05 Senator Lang: Related to the 13,500 deeded acres, what are the functional acres that come back to the state in respect to credits?
- 00:38:28 Ms. Sime: Preliminary numbers using the July version of the HQT, the physical acres result in 290,000 functional acres or credits. Subject to change should the HQT change.
- 00:39:33 Senator Lang: Asked what the functional acres are.
- 00:39:40 Ms. Sime: For the physical acres on the property there are approximately 290,000 functional acres.
- 00:39:33 Senator Lang: Acres or credits? Asking about functional acres. There are 13,500 deeded acres.
- 00:40:08 Ms. Sime: The number of functional acres is the same as the number of credits. When we put the physical acres into the model, it becomes 290,000 functional acres. That becomes 290,000 credits available to offset impacts. It's a 1 to 1 ratio.
- 00:41:04 Senator Lang: I guess I am really confused.
- 00:41:05 Director Tubbs: A disconnection is it is the number of physical acres, multiplied by the number of years in a perpetuity easement to get to the 290,000.
- 00:41:37 Senator Lang: Asks are we using 100 years.
- 00:41:40 Ms. Sime: Yes.
- 00:41:49 Senator Lang: From what we have seen at these meetings, were coming back to 290,000 functional acres.
- 00:42:12 Ms. Sime: To clarify if you use the physical acres under the term of the easement over 100 years it is 290,000 functional acres or credits. For comparison using the same math and July HQT, for the 44 Ranch, it's 381,000 functional acres of habitat or credit available.

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- 00:43:27 Director Livers: Asked for additional discussion or questions.
- 00:43:38 Representative Knudsen: For the record, thinks the continued use of perpetual easements is infiltration of the government into private land ownership through non-profits and other land organizations. It ends up being an end run around regulations governing the purchase of land by the government. For that reason, votes no.
- 00:44:13 Director Livers: Asked for additional discussion. None.
- 00:44:24 Director Livers: Called for a vote on the motion. Ms. Ahlgren had to leave the teleconference meeting early and did not vote by proxy. Administrator Halverson, Director Williams, Director Tubbs and Director Livers vote in favor. Representative Knudsen and Senator Lang vote no. Director Tooley and Mr. Holmes vote yes by proxy. Motion passes 6 to 2 in favor.

Public Comment on Other Matters

- 00:46:18 Director Livers: Asked for public comment on other matters. None.

Adjournment

- 00:47:00 Senator Lang moved to adjourn. Director Williams seconded. Motion passed unanimously. Meeting Adjourned.

Chair for this meeting:

/s/ _____

Director Livers