

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**

October 4, 2018 Meeting Summary  
DNRC Headquarters, Montana Room

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

### **Members Present**

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

### **Staff Present**

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

### **Call to Order**

00:00:02 Director Tubbs called the meeting to order.

### **Reports and Implementation of Executive Order 12-2015**

- 00:02:03 Ms. Sime: Of the initial nine recipients of grants, four have moved to completion, 44 Ranch, closed in November 2016. The Hanson Livestock easement closes today. Rath's Livestock is in final NRCS review and expected to close in 2018. The Watson easement is in negotiations with the family. The total expected funds for these projects is \$3,040,000. This leaves approximately one million available for future grants. In anticipation of the next grant cycle, will have a briefing at final MSGOT meeting in 2018.
- 00:04:50 Ms. Ahlgren: Attended Western Landowners Alliance meeting in Billings, where the topic was the economics of conservation. Found it to be an interesting meeting.
- 00:05:18 Director Tooley: Nothing new to report.
- 00:05:22 Director: Mathews: Nothing new to report.
- 00:05:25 Mr. Holmes: Thanked the Program for conducting additional analysis and including stakeholders for additional engagement.
- 00:06:06 Senator Lang: At the last meeting mitigation projects were approved. Asked when funds would come in.

- 00:06:27 Ms. Sime: Funds will be deposited in connection with the permitting process and before construction begins.
- 00:07:01 Senator Lang: Wants a Montana sage grouse program. Montana has the habitat and sage grouse populations but were included in the eleven-state group. Sage grouse is not on the endangered species list and there won't be a full review before 2020. Montana has the data to support conservation efforts and effects, but we have not used the data. The NRCS initiated the Sage Grouse Initiative. Millions have been spent in this state to promote habitat.

The President has initiated changes that Montana should capitalize on. Better accountability of the impact of the ESA in relationship to personal property rights and social economic wellbeing. Another change reverses where threatened species have the same restrictions as endangered species and threatened species should not be given the same restrictions as an endangered species. The EO says we shall respect private property rights in equal manner as we manage sage grouse. In July USFWS did revisions to their compensatory mitigation policy for natural resource extraction, stating it lacks authority to require net gain. Montana needs to follow their lead, so the Program doesn't have regulations abusing industry, maintenance and development of our resources.

This committee has talked about adaptive management. Can work with this if we start with the basics and data we have, like strong bird populations, sufficient habitat. We can defend that. We can adapt these changes to be more stringent if we find the birds need them. Once regulations are in place they are very seldom reduced.

At EQC we were told peer review comments were not oppressive to the Program. This is true for the opening statements, but we have many suggestions that are contrary to the Program. Such as credits for mitigation, third-level assessments, incorporation of scientific data into the HQT, reclamation curves need to be lessened, basic cost of the mitigation multiplier. Thinks the \$650 figure for agriculture is way too much. The tall structure format cannot be documented scientifically. Wants to go back and start with 1.5-km for the buffer on tall structures. Electric lines with 115 kV should be treated as 69 kV lines. That's going back to the basics. Wants to start at lower square because we can always go up.

We have a Program that uses GIS called Land Stat. Numerous comments said it is not adequate. We have a new program called Google Earth coming, so that's another way we can adapt. We have resources to figure this out and should proceed with management of the HQT and policy manual that starts with the bird and habitat as a base and make sure the social and economic structures are taken care of.

- 00:11:59 Representative Knudsen: Had conversations with industry and they are frustrated with the costs of mitigation. Thinks the cost is extremely inflated. Being in the real estate industry, he is a firm believer the figures used for a per acre value are inflated.

### **Application of the 3% Discount Method to Re-Calculate American Colloid Company's Contribution to the Stewardship Account for the Daun West Mitigation Plan [Handout 1]**

- 00:13:11 Ms. Sime: MSGOT was asked to approve a mitigation plan for the American Colloid Company, during the September 14 MSGOT meeting. At that meeting there was discussion about application of an alternative 3% discount method. This method could be applied to projects where the proponent chooses to make a deposit in the Stewardship Account, rather than undertake permittee responsible mitigation. The Program asked ACC to consider application of the 3% discounting method as a gesture of good faith. If approved by MSGOT, the method would be incorporated into the

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October Draft Policy Document. The recalculation would result in a savings to ACC in the amount of \$16732. The revised contribution to the Stewardship Account would be \$28,002.40.

- 00:15:09 Director Tubbs: Asked for public comment.
- 00:15:14 Mr. Lyndon Bucher, Lands and Environmental Manager, American Colloid Company.
- 00:20:48 Director Tubbs: Asked for additional public comment, none.
- 00:21:03 Director Tubbs: Asked for MSGOT discussion.
- 00:21:05 Senator Lang: Thanked ACC for their reclamation efforts in Phillips County.
- 00:21:41 Director Tubbs: Thanked the Program for working with ACC on this mitigation plan. The Program is listening, working with and adapting to the issues that come before the Program.
- 00:22:08 Mr. Holmes: Made a motion that MSGOT approve application of the 3% discounting method to recalculate ACC's contribution to the Stewardship Account. Senator Lang seconded the motion.
- 00:22:24 Director Tubbs: Asked for a vote. All members present voted aye. Administrator Halvorson and Director Williams voted aye by proxy.

**Proposed Administrative Rules to Adopt the October 2018 v1.0 Habitat Quantification Tool Technical Manual and the October 2018 v1.0 Policy Guidance Document [Handouts 2, 3, 4, 5 and 6]**

- 00:23:19 Ms. Sime: Appreciates the stakeholders and MSGOT for their time, input and substantive comments [HANDOUT 6]. Changes made to the Policy document are primarily in response to economic feasibility. Those concerns were high costs of mitigation and what happens when those costs are high and might affect the viability of a project. In response to Director Tooley's suggestion, the Program looked at broader public interest issues involving telephone communication and electricity in rural areas. The Program was charged with coming up with ideas for adaptive management having to do with economics of particular industry types. Meeting materials were limited to just those areas where changes were made. With respect to the technical manual, the Program responded to comments related to buffers being too high or the correct use of science.

Referring to the Policy Document [HANDOUT 4], page 54, addresses concerns for policy-based tools to address economics. This page includes insertion of a policy tool where MSGOT would set aside 5% of the Reserve Account Credit in a separate pool of credits that MSGOT could use at its discretion.

- 00:26:57 Director Tubbs: Important for everyone to understand, we hear about costs a lot. However, the fundamental basis of what we are doing, is using a model that calculates debits for impacts to sage grouse. Those debits are functional acres and don't have dollar signs in front of them. The Program endeavors to find credits through conservation easements or habitat enhancements to create functional acres. The 5% set aside isn't a dollar amount. Of the debits that are paid for, 5% will be set aside as credit to be used later to address a hardship that debits are creating for certain projects. The user created credits can be tracked but we don't know the costs. Going forward, it is important to distinguish the difference between the functional acres and the dollars.

00:28:50 Ms. Sime: This is important for context. The framers of the Stewardship Act envisioned a market-based approach that would calculate gains and losses. The entities trade with each other, but the costs are up in the air. Be thinking in the contexts of gains and losses in habitat and no net loss. The HQT tool calculates acres lost. The proponent has flexibility to choose how they will create credits. The Stewardship act allows for direct payment but a proponent could undertake conservation actions of their own to generate credits. They could work with third parties or MSGOT to develop credits. All of these mechanisms are available. It is only when discussion moves to direct payment that we begin to discuss a dollar amount. The Program encourages proponents to be thinking creatively when working to keep their cost down. Market signals can help.

When we look at policy tools available to MSGOT, they are covered in section 3.6 (page. 68) of the Policy document. The highlighted items on page 69 have been in the document for some time, but now they are more obvious. One of these are the opportunity for accelerated reclamation. The obligation could be decreased because the proponent brings habitat back sooner. Another highlighted item is a phased credit schedule. A credit schedule could be developed through MSGOT or a third party and the schedule is up to them.

On page 70, section 3.6.1 focuses on feasibility issues raised through public comments. On page 71 phased contributions are discussed. We encourage proponents to mix and match between policy tools and the various mechanisms. The state does have responsibility to share in these things and that they are balanced for the broader public interest.

A new method is discussed adjusting the discount method rate. At a prior meeting 3% was contemplated. Using this method, the total costs would come down. This could be adjusted on a project by project basis. Long duration projects would see the greatest benefit. The method is not as useful when impacts are short term.

Functional gains and losses, credits and debits, (section 3.6.1.2) would allow MSGOT to use a credit matching approach. MSGOT could choose to match a project's credits. Credits could be sourced from the reserve using the 5% set aside, discussed earlier.

00:36:22 Senator Lang: Asked why, on page 70, "Program or interagency review team" is crossed out.

00:36:42 Ms. Sime: This was a clerical edit that should have been made a long time ago and doesn't belong with this section and is covered elsewhere.

Page 74, section 3.6.1.3 offers a policy tool to waive all or some of the mitigation obligation for a particular project. This contemplates that MSGOT would need to make up for it in some other way to keep the scale balanced. It is anticipated that MSGOT would require some kind of contribution in keeping with the "all hands all lands" approach (notion of a public/private endeavor to create a match to share that obligation). To avoid a listing does require an all hands all lands approach. Under this waiver, MSGOT could choose to accept all of the obligation, but it would need to be fulfilled in a different way.

Section 3.6.1.4 outlines the process an industry proponent would use to take advantage of one of these tools. Developers would do what they could to plan their project to avoid and minimize their impacts, and then work with the Program to fine tune the project. After that the Program would work with the proponent to work out the mitigation to offset impacts using various mechanisms.

Page 74 describes how developers who utilize these more flexible tools will be required to bring something to the table such as avoidance and minimization, to share in the

match that MSGOT would consider when applying these tools. At the end of the year, the Oversight Team would sit down and look at the ledger and consider gains and losses and determine if there is a need to make any adjustments through adaptive management.

- 00:41:21 Director Tubbs: Clarifies the Oversight Team could accept a proposal as is, or modify it, or deny it. MSGOT doesn't have the experience or data to apply a categorical exclusion of certain project types but can evaluate these in the future, as we learn more. The initial year would be a one by one review but assume we may have an exception process in the future.
- 00:43:03 Ms. Sime: Materials were added to the Adaptive Management section on page 84, in consideration of economics by various industries. Page 86 describes the process and participation by industry to provide input for the Program to better understand their costs. We currently don't have this information. Sharing of data information from various industries can better inform the Program in decisions going forward through the adaptive management process.
- 00:44:36 Senator Lang: Asked what data would be requested.
- 00:44:49 Ms. Sime: Not sure, but don't envision bank statements. Just looking for an understanding of the cost of implementing a particular project. For example, what would be the cost associated with reclamation. What are the debits and were you able to obtain credits. We do want to understand the real costs, so we can fine tune the process. We're not looking for tax returns. We want to understand the facts around the cost of implementing a project and mitigation, so we can fine tune how we apply these policy tools going forward.
- 00:46:12 Senator Lang: We have data like property taxes or whatever that a coop or company is paying the state. Asked if this would be part of the data collection. If a company is paying half million dollars in taxes and they want to do a project that increases their taxes by \$250,000, that becomes part of the play of what we have to decide. The revenue to the state, justifying what they are going to do, and how much stipulation we want to put on them for this \$250,000 increase in revenue to the state.
- 00:47:18 Director Tubbs: A number of commenters said they wanted a percentage of project costs as a cap. We don't have this kind of information. If we go this way, we would require much more information to determine that cap. This is more of a quality control opportunity for industry to voluntarily work with the Program concerning what the economics cost of a project are and how the Program will impact industry.
- 00:48:27 Director Tooley: Referring to the annual review. If you want to be adaptive don't paint yourself into a once a year review. If you find an example of a \$400,000 cost project with a \$1,000,000 mitigation cost and you want to adjust that but can't until next year. As a minimum make the review annual but make provision for an "as needed option" to truly be adaptive.
- 00:49:20 Mr. Holmes: It is intended to be as flexible as possible. There needs to be a predictable system. We need a commitment to do this at a minimum annually, but we have tools to address these issues as they arrive with the waivers and credit matching to deal with these issues as they arrive and to get us by, until that annual review. We can't have substantive changes without updating the rule. There are non-substantive issues we can update more frequently. We need to make good use of these flexibilities on a case-by-case basis.
- 00:50:30 Director Tooley: Asked the Chair if he is satisfied we have the flexibility to make these changes as needed.

- 00:50:46 Director Tubbs: A lot of work has gone into this over the past two weeks, to incorporate that flexibility. After a couple of cycles, we'll get good at it.
- 00:52:08 Ms. Sime: MSGOT should contemplate the documents together. There is flexibility incorporated on the policy side and some flexibility incorporated in the HQT as well.
- 00:53:02 Ms. Jamie McFadden: Summarized changes in HQT document [HANDOUT 5]. Nothing technically has changed. The Program took a deeper dive looking at the literature. Page 124 includes a table of take home information. There were no changes to tall structures. What the Program endeavored to do is separate scientific literature, where the publication talks about tall structures or transmission lines. The Program discussed the inferences from the studies. The Program contacted authors of the published scientific papers used by the Program to develop buffer distances. All of the authors confirmed that the Program correctly reported the results of these studies. Page 136 includes a table specific to transmission literature. The Program cited some of the same papers for both tall structures and transmission lines. In these instances, the author reported results for both.
- 00:56:34 Ms. Sime: Provided a summary of the proposed Administrative Rules [HANDOUT 3]. Language for the Administrative Rules are the same as what we were providing on September 14. The proposed rules point to the October 2018 Policy and HQT documents and they work together. Adaptive management review is considered an annual process, at a minimum. This allows for major and minor revisions. The rules apply to both credit and debit projects. Future rule making can occur in one of three ways. The rule itself may require a change or an entity could petition MSGOT for a change or MSGOT could elect to initiate a change. Nothing is set in stone with either document. A hearing date is set for November 9, 2018 for oral comments.
- There are two key definitions. One being definition number 11, Major Version. Think of this as involving major updates. Changes the calculations or multipliers. Definition number 12, Minor Version. Includes routine updates such as swapping out old data layers for new ones. These rules speak to how we work through time to make changes and improvements.
- Proposed rule 14.6.102 is specific to the grants program. This rule will have the Oversight team give greater priority to mitigation projects in a core area. MSGOT may still consider funding conservation activities in general habitat and connectivity areas where high resource values for sage grouse exists.
- New Rule I, focuses on HQT itself and its designation. Major version would prompt new rule making to incorporate big changes. New Rule I, Number 3, Minor versions changes are things the Program would undertake on their own with MSGOT and public input.
- New Rule I, Number 4, parts A–C include grandfathering. When a project goes through the process the version that was used stays with that project. Part B describes how a project involving a permit amendment, resulting in something more or different, there would be a formal amendment process and the current HQT would apply.
- New Rule I, Number 5, would have the Program put information on the web site, so the public knows what the current HQT version is. Past versions would be archived.
- New Rule I, Number 6, says credit providers must apply the current version of the tool. In summary the new rules set in place a process for updating and revising the tool and technical manual.

New Rule II Compensatory Mitigation System. These are similar concepts. The mitigation system policy document could undergo major revisions that trigger new rule making. Minor version changes could be made with MSGOT input and public input. The current version would be available on the web site. Anytime there is a process to amend a permit having new or different activity, the current version would apply.

New Rule II, Number 8 says that all parties are using the same rules.

New Rule II, Number 9 affirms language in the Stewardship act. There are three ways to create credits through preservation, restoration or reclamation. Using a conservation bank, participating in a habitat credit exchange, contributing to the Stewardship Account or funding a stand-alone mitigation action.

New Rule II, Number 10 establishes all mitigation plans will be consistent with policy guidance. During the 2017 session the act was amended to say in consideration of applicable USFWS sage grouse policies.

New Rule II, Number 11 is a point of clarification, research or educational endeavors don't qualify for credit

New Rule III, discusses the creation of a registry. MSGOT is required to track credits and this rule sets out how we do that. It requires each credit and debit have a unique number. Number 5 requires the registry to be available to the public.

Proposed New Rule IV, describes how MSGOT will track the use of Stewardship funds using a database and tracking system to allow for review of how the Stewardship Account is creating credits.

The public comment period for the proposed rules will be open until November 19<sup>th</sup>. Comments can be submitted on line or at the hearing.

01:11:32 Director Tubbs: Clarified, in order to move forward with rule making, an affirmative vote would be required for the October documents.

01:11:51 Ms. Sime: With an affirmative, the Proposed Administrative Rules point to the October Policy and HQT documents, these then become the operative documents.

01:12:18 Director Tubbs: When asking for an action, it applies to the two underlying documents.

### **Public Comment**

01:12:50 Director Tubbs: Asked for public comment.

01:12:56 Ms. Gretchen Boardman, Big Flat Electric Coop Malta.

01:17:00 Mr. Jack Hamlin, Ekalaka Electric Coop.

01:19:37 Mr. Rollie Miller, Dillon Electric Coop.

01:24:43 Mr. Mark Hayden, Missoula Electric Coop, Chairman of Electric Cooperative Legislative Committee.

01:25:46 Mr. Mark Grotgo, Ravalli Electric Coop.

01:27:07 Mr. Dave Kelsey, Huntly MT. Triangle Cooperative.

- 01:29:50 Mr. John Burgmaier, Sun River Electric.
- 01:30:47 Mr. Dean Peterson, Rancher, Big Hole Vigilante Coop Dillon.
- 01:32:26 Mr. Clyde Robinson, Big Flat Electric Coop.
- 01:33:39 Mr. Allen Martinell Vigilante Electric Coop, Three Rivers.
- 01:35:21 Mr. Doug Hardy, Montana Elec Coops.
- 01:43:16 Mr. Tim Nixdorf, Triangle Communications.
- 01:50:12 Mr. Duane Klindworth, Big Flat Electric Coop.
- 01:54:35 Ms. Shelby DeMars, Association of Oil Gas and Coal Counties.

Discussion by MSGOT

- 01:57:57 Director Tubbs: Opened the meeting for MSGOT discussion.
- 01:58:24 Senator Lang: Asked how amendments can be made to the Rules. Made a motion to exempt 115 kV power lines and smaller from the cost of mitigation requirements; to be exempt as stated by Mr. Hardy. Also, reduce, until we have further study, because he feels the studies are inconclusive, tall structure buffer to 1.5-km in the HQT. Representative Knudsen seconded.
- 01:59:26 Director Tubbs: asked for MSGOT discussion.
- 01:59:28 Director Tooley: Asked if we are amending the rule.
- 01:59:30 Director Tubbs: For clarification, the motion was to exempt 115 kV lines from the mitigation requirement and reduce the buffer for tall structures to 1.5-km. These are in the underlying documents, not the rule.
- Asked for MSGOT discussion.
- A concern with straight exceptions is how we balance impacts to the bird not being offset. The business of no net loss; how do we make up the known impacts today if we accept this.
- 02:00:28 Senator Lang: Doesn't believe the research is 100% accurate. Hasn't read all of the literature but in one study the birds were captured and flew 8 km away. They didn't return that year because they were scared away after being captured and collared. The premise is adaptive management. In a year from now we can look at this. The birds aren't going to go extinct in the next 12 months. Let's get down to the scale that is low that we know. We have lived with cell towers, power lines and rancher stewardship. We haven't talked about predators. Believes avian predators aren't the biggest issue. We probably have more problems with swift fox, coyotes and raccoons. These predators know the hen has to get off the nest in four days and they are going to go rob it. That's been proven by Moynahan who found 67% of predation in Phillips county was done during nesting. Those are the things we have with us so start there now. We can go back up in 12 months if we have to. Wants to credit Montana for having the birds we have. That's the structure we have today, not the structure we're trying to create. If we see fit we can go there. We need more study in Montana. We know the data is not topographical and not looked from a point of view of seeing what's going on. We've seen the conversation and conflicts. There are conflicts. If we start low we can go up if we



have to. That's where our policy of adaptive management in this case should be. Let's get some programs going and look at it a year from now and change it if we need to.

- 02:03:09 Director Tooley: Senator Lang put out 1.5-km. Asked where does that come from?
- 02:03:16 Senator Lang: That's the number for wind towers right now. Tall structures and cell towers are 3-km. Wind turbines are taller than cell towers so let's go there. They have blades. There's going to be a lot of discussion on that. I believe in renewables. I believe in the bird and the processes were doing but we have to put it into perspective. What is wrong with renewables today? There's no storage. Once we solve that it will be a bigger thing. In Montana, if you have five turbines, that is a pain in the butt for everybody. If you go to Judith Gap you have 150 turbines. That's a manageable situation. That's a good thing. Everybody involved knows what's coming out of that. If you have seen in a sock center, what happens, the people that are looking at this wind. They are looking at the wind up in Portland to come into Montana within five hours, so they can adjust power. It's taken a long time to get that stuff in there. This is a long process we were working with. So let's start with now and start low and we can build it up if we have to. That's what the citizens have told us they want. Believes in the science and Mother Nature we have today. If the science tomorrow says different let's go for it.
- 02:05:08 Mr. Holmes: Reserved comments on the broader set of policy issues and focus on the motions before MSGOT right now. Important to take these as two separate issues. One is the proposal for the exemption; the other is considering a reduction in the indirect impacts to reflect the lowest values we were seeing in the science. It is important to consider programmatic approaches for exemptions. There have been proposals brought forward by the communication industry who have asked us to look at and do some evaluation. We need to do the same thing with the proposal that's been brought before MSGOT in considering single pole, 115 kV structures and factors that were brought forward for exemption. Does not feel we have done the due diligence to make a decision today but it does warrant further discussion.
- The second piece of the proposal is where MSGOT has been asked to consider the lower range for indirect impacts. We have done the due diligence here. Doesn't know if all members have had a chance to review it but he feels satisfied the Program has done a thorough job, best in the country look at the science and documented this in a transparent way that everyone can understand exactly how they relied upon it. The proposal the Program has brought forward is to consider a mid-point. It is within the discretion of the body to consider adjustments from that midpoint. The midpoint as proposed is accurate in what is in the science.
- Hearing the concerns around indirect impacts; the concerns are in part cost and part uncertainty in science. On the cost side, we have policy tools in place. Prefers to deal with cost on the policy side and not the impact and science side. Science is going to be the ledger by which we will be judged and it's important that we have credibility and a science-based decision. The specific proposal of 1.5-km, tiering off wind is a different set of science and doesn't have solid footing based on the review the Program did. There are lower bounds in the studies and upper bounds. Looking at the science one of the greater issues is raptor predation. There was an effort to look at nest facilitating and non-nest facilitating to create incentives to create better projects through the system. Prefer not to go back to a one size fits all approach. Would not be prepared to support a lower bound not grounded in science.
- 02:09:29 Ms. Ahlgren: Asked if topography is a layer in the model.
- 02:09:53 Director Tubbs: We need to stick to the motion and limit comments to Senator Lang's motion to accept all lines 115 kV single pole, and a 1.5-km buffer for tall structures.

- 02:10:20 Ms. Ahlgren: Would like to see this as two motions. Would be inclined to wait to do an exemption on the lines. Wants to see more study and thought on that. Asks if this is something MSGOT can do at a later date. As far as buffer goes, inclined to lower that but wonders if there is a median to the median. Appreciates the work that has gone into this, since were building the runway as we take flight.
- 02:11:50 Ms. Sime: Speaking as a scientist with 20 plus years' experience and not the Program manager, having read the literature. The Stakeholders had very explicit discussion about the science and what universe should be used, and where we should get it. In the HQT document, beginning on page 25 it is described how we prioritized what science we would draw from and its importance by priority. The first was peer reviewed literature, dissertations specific to Montana, second are gray literature, agency management reports or datasets for studies in Montana. Third is peer reviewed literature, dissertations specific to the Rocky Mountain portion of the range, including Wyoming. Trying to avoid literature for the Great Basin because it is a different ecological system. Lastly, professional judgement.
- In comparing the project types of wind, we specifically relied on Chad LeBeau. This is addressed in Appendix E. While he detected no decrease in habitat use in proximity to turbines, by hens, he did detect a decrease in nests out to 5-km. There is wind specific literature that suggests higher buffers than what the Program put forward.
- Secondly, there is specific literature the Program brought forward, for tall structures communication towers and transmission towers. From the Program's perspective the stakeholder's intent has been honored in the way the Program applied the science. The Program has brought forward, in the most transparent way, a discussion of the conclusions from those papers.
- 02:14:52 Senator Lang: The reason he went to 1.5-km was because of the turbines. He thinks they are a bigger structure than cell towers or other tall structures. Asked Rusty Shaw what number did the stakeholders bring up for tall structures? Since were putting a lot of faith in the stakeholders.
- 02:15:38 Mr. Rusty Shaw: Where we left it for tall structures was 3-km. The 1.5-km for wind turbines stayed the same from where we left it in the September version.
- 02:16:06 Director Tubbs: Asked of the electric cooperative representatives in the audience: how many coops have a proposed a powerline to be permitted before December 18, in the Program's system now? One, Big Flat, and one cell tower. Raised this because the stakes are extremely high, and MSGOT has another opportunity to review the policy on December 18<sup>th</sup>. Asked about electric lines proposed for 2019 construction. One in Carter County, and one in McCone County. Wanted to get a scope of what the Program is up against for implementing policy.
- 02:18:09 Mr. Holmes: Knows the issue of affordability and reliability were raised and there is some unpredictability of what comes forward. MSGOT may have to work quickly to provide certainty.
- 02:18:24 Director Tubbs: Wanted a see if there are a large number of projects or just a couple now. With a couple the Program can work with the proponent to work through the uncertainty in the Guidance Document today. Asked if you go from a lower kV to a higher kV line, do you need some state approval in some way? For basic maintenance you don't even come to the Program. Only a new storm water permit would trigger a Program review. Asked Senator Lang to bifurcate the motion into two.

- 02:21:11 Director Tooley: Senator Lang has a motion that would change part of the HQT document. Would this be a major change or minor change?
- 02:21:29 Ms. Sime: This would be a major change.
- 02:21:40 Director Tubbs: If we adopt this change, it gives MSGOT the power to accept it.
- 02:22:00 Ms. Sime: These documents are constructed in observance of language in the Executive Order. Cautions to be mindful, if any of the decisions today result in a conflict with language in the EO from language in the documents. That may require additional study.
- 02:22:34 Director Tubbs: Asks if there wasn't already a way to waive the mitigation requirements, in the Policy Document.
- 02:23:01 Ms. Sime: In the Policy Document there is a policy-based tool that allows MSGOT to waive the obligation and have MSGOT take on that obligation in whatever way seen fit. Such as matching credits from the Stewardship Account, Reserve Account or by some other mechanism. It's described on page 74.
- 02:23:41 Mr. Holmes: In the past, this body has approved a categorical exemption for things like agricultural irrigation. Asks, for purposes of the rule, would a fiber optic or 115 kV transmission line project go through a similar process or would we have to restart the rule making process.
- 02:24:24 Ms. Sime: For the prior exemptions MSGOT has granted, they have fallen under the EO itself to exempt from review and compliance certain project types or activities.
- 02:24:54 Mr. Holmes: This body has the discretion to offer further exceptions within the confines of the EO. MSGOT has the opportunity to do that and incorporate it in subsequent rule making. MSGOT's ability to make these changes moving forward can be considered in this process.
- 02:25:31 Director Tubbs: Expressed a preference that we exercise MSGOT's authority in the policy world. Doesn't like the 1.5-km buffer change. A basic request at MSGOT's last meeting, was we should stick to the science. MSGOT can exercise authority in the policy.
- In responding to public comment, we asked, and the Program performed, a detailed review of the literature. If MSGOT makes changes in the policy and the U.S. Fish and Wildlife Service criticizes those changes, MSGOT can respond to that. Opposed to MSGOT making arbitrary changes to the science. Asked public to continue to challenge the Program and bring forward new science if they have it.
- Interested in the powerline exception because in some cases it may be just a change to an insulator and wouldn't change the habitat for the bird. He would like the Program to have the opportunity to tell MSGOT if that is correct. MSGOT can probably carve out something that relies on the science and shows that we don't have to have a debit for that type of project. A brand new 115 kV powerline across the landscape would have an effect and would result in a debit. I would like the Program to be able to weigh in, what literature says. The EO says service lines are excepted but that's where it stops.
- 02:28:49 Senator Lang: Respects the fact we had stakeholders here for a couple of years. Satisfied with going with 3-km. Somewhere we need to start this, and we can change things in a year. Willing to change the 1.5-km to 3-km. When he looks at a cell tower and wind tower he doesn't see a lot of difference from his personal view, not a scientific

view. Need to bring the 115 kV down to the 69kV regulation and change the radius. Agreed to amend the motion to two. Just wants a vote on the thing.

02:30:00 Director Tubbs: This will be an important vote. Takes Senator Lang's motions very seriously and wants to be thoughtful on this.

02:30:17 Ms. Sime: It would help if the motion could be restated.

02:30:37 Director Tubbs: Offered to restate the motion.

02:30:520 Senator Lang: Carolyn can make the motion, just go ahead and make it 3-km on tall structures.

02:30:58 Director Tubbs: One thing he wanted to know, is the exception for transmission and the indirect buffer for tall structure.

02:31:06 Senator Lang: Tall structures is 3-km on the buffer. The exception is for transmission lines. Take 115 kV down to 69 kV and go to a 3-km, 4-km area there.

02:31:23 Director Tubbs: Now you just added stuff.

02:31:25 Senator Lang: Stated, ok, where are we at.

02:31:34 Director Tubbs: Called for a break.

Break

02:31:35 Resume after the break, Director Tubbs proposed an amendment to the motion. On the issue of the 115 kV or possibly 116 kV line exception, asked Senator Lang to withdraw this as a motion and then direct MSGOT to analyze that as an exception as MSGOT has done before. First, the exception gets requested, then MSGOT asks the Program staff to analyze and then come back before MSGOT with a recommendation.

As for the buffer, Director Tubbs said he may violate his standard and go into the science. For the buffer there is a range in the science. Cautions there may new science that could inform a year from now. Could accept as a motion that MSGOT reduce the criteria for tall structures to 6-km and 3-km for those structures that are nest preventing. It would be 6km if you don't take additional measures for nest preventing. Then for power, reducing the greater than 116 kV or 115 kV to 6-km and for lines below that to 3-km. Thinks we could get support for that.

02:34:45 Senator Lang: Withdrew his motions.

02:34:55 Mr. Holmes: Made a motion to make amendments the HQT document, to provide buffer for tall structure and for transmission lines that distinguishes between nest facilitating and non-nest facilitating at 6km. In accordance with the existing rubric. Right now, there is 6-km and 3-km for nest facilitating and non-nest facilitating for tall structures. Powerlines are broken out at different capacity levels. In lieu of the 8-km and 6-km that are proposed in the draft the motion is to adjust those to 6-km and 3-km. Seconded by Senator Lang.

02:35:57 Director Tubbs: In the HQT, on page 126, referring to the flowchart, distance from leks, less than 4 miles, would be 3-km and distance from lek greater than four miles would go to 6-km. Then on page 139, three different sizes; change, greater than 115 kV km to 6-km and for 69 kV lines 6-km to 3-km.

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- 02:39:41 Representative Knudsen: Asked if someone could restate motion.
- 02:39:57 Mr. Holmes: The motion is to keep the existing framework but modify the indirect buffers such that the current 8km distance is now 6-km and the 6-km buffer is now a 3-km buffer. There would be no other changes to the way they are calculated.
- 02:40:23 Director Tubbs: Asked for additional MSGOT discussion. Hearing none asked for a vote. All voted in favor.
- 02:40:38 Director Tubbs: Asked for additional questions from MSGOT for the underlying documents regarding the HQT.
- 02:41:50 Ms. Ahlgren: Had questions about how topography was addressed but now understands that the Stakeholders felt it would be too complicated to include. The Program does address it on a case-by-case basis during project review.
- 02:42:33 Director Tubbs: Science is a problem there too because we don't have good science around topography.
- 02:43:47 Ms. Ahlgren: Asked if a payment comes to the Program, is it in the document that it needs to be spent within three years in the same service area.
- 02:43:14 Ms. Sime: It is in the document, just not in the pages provided at the meeting today.
- 02:43:28 Ms. Ahlgren: Knew that MSGOT had talked about it and thinks it's a good thing.
- 02:43:45 Director Tubbs: Asked for additional questions.
- 02:43:58 Mr. Holmes: One issue raised but not addressed is certainty and predictability in the program going forward. Responsibility of this body to balance economic needs and conservation needs on the landscape. Particularly when it comes to rural and underserved areas and the need for infrastructure. Those details were written in the EO and codified in the waivers and exceptions and other policy tools. Pleased to see we've affirmed that it is this body's job to consider those issues and act with a certain level of reasonableness as we deal with these issues moving forward. Realizes that landowners, through good stewardship provide the habitat. There is a need for greater predictability and certainty. We can work through these issues with some of the projects we have. Encourage proponents to work with the Program as we work through the unpredictability moving forward. Acknowledged the concerns were heard.
- 02:46:19 Director Tubbs: Asking for a motion on the two underlying documents as a package. Reminded MSGOT timing is such that only an affirmative will allow the Program to begin. EQC Chair spoke to the Program at their last meeting stating, he supported the Program, but "you need to bring this home and bring it home now". With the changes made to the proposed HQT, Director Tubbs requested a motion to adopt the two underlying documents.
- 02:47:40 Director Tooley: Moved that MSGOT approve the two underlying documents, Version 1.0 as amended today. Ms. Ahlgren second the motion.
- 02:47:54 Director Tubbs: Asked for MSGOT discussion. Hearing none, asked for a vote. All voted in favor with exception of Representative Knudson who voted no. Motion passes.
- 02:48:25 Director Tubbs: Asked for motion to approve issuance of the draft rule for public comment.

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02:48:54 Mr. Holmes: Made a motion to move forward with the draft rule. Director Tooley second All in favor, except Representative Knudson who voted no.

**Public Comment on Other Matters**

02:49:25 Director Tubbs: Asked for public comment on matters not on the agenda. None

**Adjournment**

02:49:00 Representative Knudson moved to adjourn. Motion passed unanimously. Meeting Adjourned.

Chair for this meeting:

/s/ \_\_\_\_\_

Director John Tubbs

DRAFT