

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 January 30, 2018 Meeting Summary
Montana State Capitol, Helena, Room 152

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

Members Present

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

Staff Present

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

Call to Order

00:00:13 Director Tubbs called the meeting to order.
00:02:05 Approval of December 15, 2017 Meeting Minutes. Motion to approve by Director Williams, seconded by Senator Lang. Motion passed unanimously.

Reports and Implementation of Executive Order 12-2015

00:04:35 Director Williams: Announced FWP hosting Western Association 31st Sage and Columbian Sharp-tail Workshop June 19-21 in Billings. Includes an all-day field tour involving public land conservation efforts. FWP shares ongoing coordination with the Program regarding HQT and Legislative Services EQC.

00:06:40 Administrator Halvorson: The price of oil has been going up but there has not been an increase in activity.

00:07:18 Director Tooley: Have submitted their MDT 2017 Governors Report. MDT has submitted 45 projects through the Program in 2017. MDT and the Program have been working well together. MDT will be submitting a list of projects that might have exception to Program consultation. Examples are safety projects, signs or chip seal projects. MDT expects projects that create a lot of noise, should be submitted. Hope to have proposal ready for May MSGOT meeting.

00:09:22 Senator Lang: Working with constituents hoping to see forward movement in the HQT. Senate Bill 261, issue of predation. MSGOT hasn't addressed predation and asks MSGOT to look at it. May have things we don't foresee. Hoping good weather will aid in

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nest success. Hometown paper reported 100 years ago it was 46 degrees below in Malta, so not a lot has changed.

00:11:45 Director Tubbs: Continue to work with the Governor's Office and EQC.

Update on Implementation of Executive Order No. 12-2015

00:12:38 Ms. Sime: The Program has been working on the HQT model. Will be talking about matters needing MSGOT action at today's meeting, including DEQ exemptions and a Conservation Easement. Executive action information was included in the meeting packet.

Update, Federal Agency Partners

00:14:07 USFS – John Hagenruber, US Forest Service State Liaison: Update, the Interior Department's deputy secretary has directed the BLM to get with their respective states on plans during the next couple of weeks, and the USFS plans to surf that wave as they craft ecosystem-wide conservation plans that have consistency while also being flexible with regard to the interests of our individual partner states. USFS received approximately 51,000 comments on the Notice of Intent, but only 237 unique comments. The USFS interdisciplinary team is gearing up to decide how to best address them. After that they will align with BLM and continue with the NEPA process as a cooperating agency to BLM. The goal is to generally end up in the same place as BLM.

Follow up from last MSGOT meeting, sage grouse habitat in the Beaverhead Deerlodge Forest, was not impacted by fires last year.

00:16:03 USFWS – Jeff Berglund, Office Supervisor: Sec. Zinke issued Sec. Order 3360 that rescinds the 2015 Ch 6 Department Manual having to do with landscape scale mitigation policy and 2016 mitigation section of BLM Manual and 2016 BLM Mitigation Handbook. The service will revise and reissue a 2008 Instructional Memorandum having to do with off-sight mitigation. Reminder that Service Mitigation Guidance (including 2016 FWS Mitigation Policy, 2016 ESA Compensatory Policy) is under review. USFWS has been told to implement all policies until told otherwise. In November 2017, USFWS requested additional public comment on the 2016 CCAA regulations. There was a 60-day comment period. Received several hundred comments; however only some were responsive (*substantive*) comments. In November 2017, USFWS requested comments on the proposed Montana CCAA covering four songbirds and sage grouse in sagebrush-grassland habitats. Relatively few comments were received. Recall that Karen Newlon gave a CCAA presentation to MSGOT at an earlier meeting. The Montana CCAA involving ranching and ag lands is complete and documents are available on the USFWS web site. Nature Conservancy and FWS are producing a new brochure. USFWS will continue to work on land use plan revisions.

00:20:05 Senator Lang: Requested federal agencies provide a handout, including a summary of their update information for MSGOT Board meetings. Director Tubbs agreed to consider this for future meetings.

00:21:48 Ms. Sime: Asked how the draft meeting minutes work for this purpose.

00:22:00 Senator Lang: Stated they work but the minutes arrive later than he prefers, to prepare for the next meeting.

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- 00:24:55 Director Livers: DEQ has been working with the program to develop water quality exceptions to the Executive Order consultation requirement. He believes these would be consistent with air quality and waste management exceptions. The DEQ has identified routine activities for water quality projects that would be legitimate exceptions to reduce agency and Program work load.
- 00:28:06 Mr. Holmes: Nothing to report.
- 00:28:36 Rep. Knudsen: Nothing to report.
- 00:28:40 Ms. Ahlgren: Mentioned in her county, they are seeing a number of farmland parcels being converted back to native grass.

Grant Agreement Executive Action: The Nature Conservancy Hansen Livestock Company Conservation Easement [Handout 1]

- 00:29:52 Ms. Sime: This agenda item seeks MSGOT approval of the Hanson Conservation Easement. If approved would obligate funds and pave the way for the parties to enter formal negotiation for the perpetual easement and begin the EA process for public comments and public review of terms.
- 00:31:40 Director Tubbs: Asked for public comment.
- 00:32:00 Jim Berkey, The Nature Conservancy: Available to take questions.
- 00:32:50 Director Williams: Made a Motion to approve the Program to execute the Grant Agreement with contingencies. Seconded by Director Tooley.
- 00:33:05 Director Tubbs: Called for Discussion. This is standard DNRC Grant Agreement language. First Drafts of the conservation easement have been reviewed and he anticipates MSGOT approval at the May meeting.
- 00:33:55 Senator Lang: Asks how many leks are on this property and percent cover etc.
- 00:34:12 Ms. Sime: Does not have details but this information would have been included in the Spring 2016 meeting materials.
- 00:34:43 Director Williams: FWP found this to be very high-quality habitat.
- 00:35:00 Mr. Berkey: There are three leks on the property. Eight leks within 10 miles of the property. This property is in the heart of sage grouse habitat. Eleven thousand acres are sage brush habitat.
- 00:36:00 Ms. Ahlgren: Asked, with added funds, would this up the acres available for credit to the state.
- 00:36:44 Ms. Sime: Credits would be created on the full acreage of the easement. The conifer work would not generate additional credits because this work was completed prior to the close of the easement and contributes to the baseline. The estimation of credits would focus on the full 13,890-acre easement itself, less any existing disturbance.
- 00:37:30 Director Tubbs: The number of acres in the easement would not change.

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- 00:37:43 Ms. Sime: The easement acres remain the same within the easement. MSGOT combined the award amount so funds were moved to a single award and put towards the easement.
- 00:38:20 Director Tubbs: Asks for vote. All members voted aye, with exception of Mr. Knudsen who was opposed. Motion passes.

DEQ Water Protection Bureau Programmatic Exception from the Consultation Requirement for Renewal and Modification of Certain Pollutant Discharge Elimination System and Montana Ground Water Pollution Control System Permits [Handout 2]

- 00:39:10 Ms. Sime: MSGOT is asked to consider approving a Programmatic Exception to the Consultation requirement for certain water quality permits.
- 00:39:38 Director Livers: These exceptions would be specific water quality permits for modifications of permanent facilities, minor modifications to existing permits with no new disturbance or disrupting activities.
- 00:40:29 Dr. Jon Kenning, DEQ Water Quality Bureau Chief: The DEQ seeks exception to consultation for existing facilities. Per DEQ rules, these facilities need to renew their permit every five years. There are some permit renewals that include modification. Typically, these are situations where there are no new land disturbances. Modifications could include monitoring or change of name of owner. Occasionally, there may be land disturbance included in a permit renewal but these are not included in this request.
- 00:41:40 Director Tubbs: Asks for further presentation from the Bureau. Asks for public comment. No public comments were made.
- 00:42:00 Director Tubbs: Asks for motion. Mr. Holmes moved to approve the exception. The motion was seconded by Mr. Knudsen.
- 00:42:21 Senator Lang: Asks if there is land disturbance, for example a lagoon in a fenced area, how would it be handled.
- 00:43:08 Director Livers: One condition would be if there are no incursions outside of the existing footprint. If there are additional disruptive activities proposed, there might be a need to go to the Program.
- 00:44:10 Dr. Jon Kenning: Occasionally there might be a new disturbance within the site but would be within the footprint of the site. These permits would be included in the exception.
- 00:44:30 Senator Lang: Asks if any disturbance within the existing footprint would be excluded from Consultation.
- 00:44:43 Dr. Jon Kenning: Stated this is correct.
- 00:44:52 Administrator Halvorson: Asks for clarification about the phrase “no disturbance or disrupting activity” and what is the guideline for disruptive activity.
- 00:45:17 Ms. Sime: It’s important to clarify that disruptive activity has an anchor in the Executive Order. The activity may not be just moving dirt – a surface disturbance. If a disruptive activity would occur close to a lek, during lekking, breeding or nesting season, the stipulations would still apply. Things to think about would be the permit boundary. If the permit boundary were in proximity to a lek and there were disrupting activities there may

be a time of day limitation or potentially a seasonal restriction could apply. Ms. Sime stated she would amend the DEQ response; if the activity were to occur within the permit footprint and it was close to a lek, the EO could apply. Referring to the meeting materials, Figure 1 and Table 1 show that the locations of currently permitted facilities are not located near any leks. The Program would want to confirm that.

- 00:47:39 Administrator Halvorson: Asks, would a new facility permitted after the Program was initiated, be different than an older facility. Where an older facility wouldn't have had the benefit of addressing the stipulations when it was first permitted?
- 00:48:00 Ms. Sime: How the Program distinguishes the difference has two threshold questions. Is there something about the original permit that is changing, resulting in a larger footprint? This is a threshold question. For new facilities or permit actions after the effective date of the EO, the Program would go through the consultation process to work with the permitting agency to find the best way to isolate out project activity to find the greatest amount of efficiency for Program and permitting agency. Keeping habitats intact remains an important part of the Program's strategy and purpose.
- 00:50:45 Director Livers: Consistent with Carolyn's response, the DEQ is looking at how the activity changes the baseline conditions. An expansion or temporary activity that wasn't part of the baseline would be new and subject to the EO. If permit renewal included a new outlet, it would potentially be a change in baseline. If there is disrupting activity it is typically temporary and if there are no other changes geographically it wouldn't change the baseline.
- 00:52:34 Administrator Halvorson: An activity could be inside the footprint but could have disrupting activity that is subject to restrictions. It seems this would need to be analyzed even if it is in the footprint.
- 00:53:23 Director Livers: If there is some regular activity already occurring, there wouldn't be a change to the baseline for a temporary disturbance. There wouldn't be a net difference. There may be differences when applied to oil and gas.
- 00:53:50 Director Tubbs: The exception request is for permit renewals. A new facility would get the full review of the program. A new facility would presumably be placed in a better place to minimize impacts to sage grouse. These exceptions for permits would be things like name changes, simple renewal where there are no changes in condition.
- 00:55:51 Senator Lang: Asked if someone had a permit prior to SB 261 going into effect and that permitted project wanted to renew the permit, could it go forward as just a renewal.
- 00:56:30 Director Tubbs: If it is just a renewal the Program wouldn't need to see it. If there is a deficiency involving additional noise or other ground disrupting activity they would need to go through the Program review. The goal of the DEQ exception request is to provide more efficiency when a permit would or would not need to go through consultation.
- 00:57:028 Director Tubbs: Asks for additional discussion. Hearing none. All MSGOT members voted aye. Motion passed unanimously.

Conservation Spotlight: Management to Remove Encroaching Conifers, NRCS, Kyle Tackett
[Handout 3]

- 00:58:15 Kyle Tackett, USGS: Provided NRCS agency update. SGI funds were authorized through the Farm Bill which expires this year. 4.5 million dollars to put on the ground to address threats to sage grouse. Will use funds to work with landowners on voluntary

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basis to seed marginal crop land back to perineal grass. Funds will be used for conifer removal and some funds may be available for conservation easements.

- 01:00:00 Kyle Tackett, USGS Power Point Presentation.
- 01:12:49 Senator Lang: Asked what they are doing with the trees.
- 01:12:59 Mr. Tackett: The trees are bucked up to 10-foot lengths after being trimmed to remove green limbs which are allowed to decompose on site.
- 01:13:38 Director Tubbs: Asked how many acres of treatment has occurred.
- 01:13:50 Mr. Tackett: 2000 acres were treated near Dillon with another 2000 planned in summer 2018. Once the word got out, others have expressed an interest in doing these projects on their land.
- 01:14:20 Director Tubbs: Asked about the term of effectiveness, if the investment is likely to be maintained with new seed sources affecting long term success.
- 01:14:48 Mr. Tackett: They will need to stay ahead of regrowth, similar to noxious weed control and then follow-up with spot treatments.
- 01:15:15 Director Tubbs: Asked if there could be benefits from grazing as a tool to control invasion.
- 01:15:32 Mr. Tackett: Sustainable grazing can keep the ecosystem healthy. If it impacts conifer encroachment is unknown.
- 01:15:55 Director Williams: Understands the NRCS has been working with FWP biologist with overlapping habitat issue with conifer for mule deer.
- 01:16:08 Mr. Tackett: There has been coordination with overlapping projects between the FWP and NRCS.
- 01:17:05 BREAK

Development of Sage Grouse Mitigation Informational: Special Focus on Portions of the July DRAFT Guidance Document & How the HQT and Guidance Work Together [Handout 4]

- 01:37:20 Ms. Sime: PowerPoint Presentation (Part 1)
- 02:07:28 Director Tooley: Asks if the appraisal is adjusted for current market values.
- 02:08:00 Director Tubbs: At this stage cost basis is used for price. The demand side hasn't been figured out. If a market is developed, it would be demand driven. Right now, it's not what the market sets, it is what was paid for the conservation easement. It is not known if it would be one credit for one acre or some other basis. Once the market is established, it will drive the cost.
- Per discussion from the Stakeholder group, asked if there is a concept of adjacent service area exchange?
- 02:10:48 Ms. Sime: This is a point of discussion; what happens when there aren't credits available where a project is located. It could be based on special relevancy to the bird. The Stewardship Act allows for the average price of a credit to be used. There is still work ahead on this.

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- 02:12:00 Director Tubbs: Asked where the conservation easements MSGOT has approved currently are located.
- 02:12:38 Ms. Sime: There are no easements in the southeastern area of the state.
- 02:12:45 Director Tubbs: MSGOT might want to steer conservation easements to where there are none in specific service areas.
- 02:13:30 Director Tooley: Said, with experience in wetland mitigation, this is something that makes sense and is something MSGOT could work with.
- 02:13:46 Director Williams: Asks how much of a bright line we want in creating these service areas, as example, if the river is a division. Perhaps a sliding scale to account for availability of credits in one service area verses another.
- 02:14:37 Senator Lang: Likes the four service areas and ability to use adjacent service areas. We want it to work for industry and the bird to benefit all of Montana.
- 02:15:49 Director Tubbs: Explained, as related to functional credits associated with a conservation easement, 60% of the conservation easement value for a basis of how many credits would move forward, was presented to MSGOT as a default. In the interim MSGOT should look at an approach for determining this percentage. One approach would be where each individual conservation easement would determine the percentage. Another approach might be to look at a larger pool of conservation easement values to determine the mean change in value as the basis. MSGOT might look to FWP to consider an average. There is a lot of art in determining value in appraisals.
- 02:18:56 Senator Lang: Asks, if the HQT gives us a functional acre number, why aren't we using this same number for the value.
- 02:22:00 Ms. Sime: Explained, the functional acre number comes out of the HQT model. It measures habitat gains or losses as a result of a conservation action but it doesn't connect the value to the market. A functional acre needs to move into the market and have a dollar amount assigned to it. Stakeholders have discussed, one credit is the same as one functional acre. Looking to the appraisal would allow a bridge from the scientific number that comes out of the HQT model to a dollar value for the credit.
- 02:21:51 Senator Lang: Questions if it matters to the bird as long as were providing acres to protect them.
- 02:21:56 Director Tubbs: As a starting point, this would be one pathway to establish a value for a credit to offset a debit based on cost.
- 02:23:00 Director Williams: Looking at presentation slide - "*A: Stewardship Acct credit price determined by cost of the development rights purchased by the CE and the number of Fx acre credits created*": Functional acres are used as the basis that are then multiplied by the diminution in value shown in the appraisal to determine the credit dollar value.
- 02:23:54 Director Tubbs: As example, in a 2-million-dollar purchase, what MSGOT bought was the 20% change in market value, these are the rights to develop. This is the cost basis that would sell at the market.
- 02:25:04 Director Williams: Looking at presentation slide - "*Nutshell: Guidance Document Part 1*": The functional credit is a product of the quality of the habitat. A credit is the combination of the functional acres and the diminution of value. Sometimes the diminution of value

isn't always correlated to rights purchased. Sometimes the value of an easement is high because the demand for the property is high.

- 02:26:59 Director Tubbs: In an area where threat from subdivision is not high an appraiser would take that into consideration for the value. The same would occur where oil and gas development would create a high value. In Carbon County where there are ranches broken into subdivisions, property value would have a huge decrease.
- 02:28:40 Director Williams: The risk of development could be high and people would pay more because it is such a desirable place.
- 02:29:08 Director Tubbs: This is one area MSGOT will need to work through.
- 02:29:20 Senator Lang: Looking at slide - "*A: Stewardship Acct credit price determined by cost of the development rights purchased by the CE and the number of Fx acre credits created*": Asked if the functional acre score of 7383 represents acres that are still intact or are taken down to 1476.
- 02:29:48 Ms. Sime: Described the values shown on the slide. The habitat is intact but is no longer at risk of development. This is functional habitat available to the bird and represents potential for a developer to look to offset their impacts at a different location.
- 02:30:36 Senator Lang: The question remains, what are the functional acres available for credits or are you trying to decrease it. What is the good of the HQT? Asks if it should be telling us what the habitat is and what's available for the bird?
- 02:31:20 Director Tubbs: The functional acres drive the credits to the market but 100% of the value is not taken to market.
- 02:31:56 Director Williams: You need the next step because it depends on the type of project.
- 02:32:20 Ms. Sime: Noted this would become a lot clearer after they see the rest of the presentation.
- 02:32:50 Director Livers: The functional acres do not change; the units are a bridge to get to a cost basis.
- 02:33:50 Ms. Sime: PowerPoint Presentation (Part 2)
- 02:40:58 Director Tubbs: In an example like a pipeline, the disturbance is removed and reclamation would be immediate.
- 02:41:20 Ms. Sime: This is an important distinction and the construction or operation phase would be different for every project. A solar farm would have a completely different reclamation curve than a pipeline because of a longer surface disturbance lifetime.
- 02:51:21 Director Tubbs: Questions if a dense array of solar panels would be able to meet the Executive Order criteria. If you have an impactful project it could trigger all of the EO stipps and 10% multipliers.
- 02:52:13 Ms. Sime: The stakeholders discussed this. Using a lek NSO, as example, if you have a solar farm within an NSO in operation for 50 years, you can expect the lek would be extirpated. The time value for a project would be specific to a particular type of activity so the stipps and multipliers will vary. But some multipliers like net conservation benefit are universal to all projects.

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- 02:53:20 Director Tubbs: If the proponent could move their project location, they could reduce the impacts of violating stipulations and the multipliers m applied to their project.
- 02:53:46 Director Williams: It's meant to incentivize minimizing impacts.
- 02:53:54 Ms. Sime: If a project were moved to General Habitat, this is how the policy would apply and could reduce the impact and cost to the proponent. The raw score would be lower because the habitat quality would be lower. There is a 5% landscape multiplier for General Habitat, which is half the Core Area multiplier. This is a way to incentivize development outside of Core Areas. The proponent can see significantly lower cost. This is the way policy can encourage certain things or discourage certain things.
- 02:56:19 Director Williams: This provides for the incentive to move away from Core and the application of stipulations shown in the tables, incentivize adhering to the Executive Order (stipulations) in three steps.
- 02:56:48 Ms. Sime: The policy is meant to send clear, transparent, predictable signals. Where is your project on the landscape, what are you doing once you get there and how long are you going to be there?
- 02:57:15 Director Tubbs: In a solar farm you have choices. Where oil and gas are concerned you don't have those options. The resource drives the location. Some industries will have less/more flexibility.
- 02:58:09 Ms. Sime: To recap, for the General Habitat Solar Farm example: the raw score would be lower where the habitat is bluer. Risk and uncertainty is the same, Landscape policy multiplier matters because you are still in sage grouse habitat. As a matter of policy MSGOT could choose modifiers.

Public Comment on Other Matters

- 03:12:08 Len Barson, The Nature Conservancy.
- 03:14:25 Dave Galt; Consultant with Browning, Kaleczyc, Berry and Hoven representing coalition of industry.
- 03:23:06 John Bradley, Montana Wildlife Federation.
- 03:24:10 Gary Weins, Montana Electric Cooperatives.
- 03:28:50 Director Tubbs: Asked for additional discussion from MSGOT.
- 03:29:04 Director Williams: Would like to hear more public comment before moving forward on Proposed Rules in May.
- 03:29:40 Director Tubbs: If you have additional comments on today's meeting, get them in quickly. In May, MSGOT can take more comment. This will trigger the broader public comment and peer review of the documents and proposed rules.
- 03:30:09 Ms. Sime: Comments on the July document were provided to MSGOT in August. Asked interested parties, if they have additional comments get them to the Program by February 9, 2018.
- 03:33:00 Director Tubbs: Focus on summary of remaining issues where there is not consensus. There should be no need to spend time on areas where there is already agreement. Asked for any additional discussion. Hearing none asked for motion to adjourn.

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Adjournment

03:34:02 Director Williams moved to adjourn. Director Tooley seconded. Motion passed unanimously. Meeting Adjourned.

Chair for this meeting:

/s/ John Tubbs

Director John Tubbs