

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

September 14, 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
Jim Halvorson, Montana Board of Oil and Gas, Administrator
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
Casey Knudsen Representative HD 33
Tom Livers, Montana Department of Environmental Quality, Director

Staff Present

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

Call to Order

- 00:00:03 Director Tubbs called the meeting to order.
- 00:00:41 Approval of April 26, 2018 and May 4, 2018 Meeting Minutes. Motion to approve by Director Tooley, seconded by Director Williams. Motion passed unanimously.
- 00:01:02 Director Tubbs: MSGOT received a large volume of information pertaining to the Policy and HQT. It became apparent, more time will be needed for MSGOT to review the documents prior to making a decision to approve adoption of the documents and final rules. This meeting will be informational only. Approval by MSGOT will be postponed until October 4, 2018 via a teleconference meeting.
- 00:02:26 Director Tooley: Asked if public comment would be taken at today's meeting.
- 00:02:36 Director Tubbs: Yes, public comment would be taken today and at the October 4th meeting.
- 00:03:28 Senator Lang: Asks about MSGOT's obligation for rule based on public comment. Will decisions be made on October 4th or after public comment.
- 00:03:50 Director Tubbs: The October 4th meeting will include final adoption of the HQT and Policy documents and issuance of the Draft Rule for public comment. The rule will point to the documents. Adoption of the documents will allow public to know what the rule does. Public comments on the draft documents will conclude by the October 4th meeting. The issuance of the draft rule will allow for further public comment with the goal of final adoption in December.

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00:05:17 Ms. Sime: We aim for publication of the proposed rules by October 19th which would allow for 28 or 29 days of public comment. We would review those comments and bring the rule back to MSGOT for a decision in December. If adopted by MSGOT, the rules could be published in early 2019.

00:06:10 Director Tubbs: The December meeting would include final approval of the rule.

Reports and Implementation of Executive Order 12-2015

00:06:44 Director Tooley: MDT continues to work collaboratively with the Program. MDT has submitted 63 projects for review since the initiation of the Program. In 2018, 31 projects were submitted. There were 40 projects in General Habitat and 4 in Core Areas. Thirty-five of the projects were completed within MDT's ROW. Of the 44 projects, 9 occurred within 2 miles of a lek with 7 being completed within MDT's ROW.

00:08:08 Director Williams: Last week, MTFWP presented to EQC the agency's report on sage grouse population report [Notes2, Handout 12]. Would like to walk through the analysis with MSGOT at a future meeting. MTFWP recently hosted a Western Association of Fish and Wildlife Agencies sharp tailed grouse and greater sage grouse workshop. The workshop included a field tour lead by Diane Ahlgren and was well received.

00:09:25 Ms. Ahlgren: Enjoyed the workshop and field tour. Julie Haggarty from MSU, brought a group of professors and PhD students to look at areas that experienced fires to see what has occurred on the land. Would invite MSGOT, the Program or others who might be interested to come tour the area.

00:10:35 Senator Lang: Has been traveling a lot. Concurs that sage grouse are doing well. Anxious to see what goes on during this meeting. Wants to stay with a three-kilometer buffer for tall structures and would oppose anything that is not scientific in that regard.

00:11:15 Representative Knudsen: Echoed the sentiments of Senator Lang. Mitigation costs have been a big concern.

00:11:30 Administrator Halvorson: Complemented the Program for the way it has been working with oil and gas operators. Operators can have significant difficulty getting things done, scheduling, changing operations and sometimes need the Program to review their project quickly. This is working well.

00:12:32 Director Tubbs: Staff and IT support staff have been burning a lot of midnight oil. It has been an amazing grind pulling the materials together. Staff has been addressing concerns from the telecommunications and electric coops. The Program staff has been working diligently with experts at a national level to ensure the science basis for tall structures is there. The HQT is a science-based model that we have to agree to as the fundamental basis of the model. Political decisions can't drive those numbers. The best available science is being used. Hope in the end Senator Lang and Representative Knudsen agree the Program has used the best science. There was a large set of peer reviewers and public providing comments.

Informational: BLM Maintenance Action Regarding Disturbance Management [Handouts 1 and 2]

00:15:34 Mr. John Carlson, Sage Grouse Implementation Lead, State Office, Montana-Dakotas BLM: Reported on the Bureau of Land Management (BLM) maintenance actions made to all Montana BLM plans to align the BLM disturbance cap of 3% to 5%. The BLM and the Program have been working together by applying the Executive Order across all ownerships including BLM lands since January 2016. This is the formalization that

recognizes the BLM's determination that the State Program (and Strategy) is operational, effective, and consistent with BLM goals and objectives for sage grouse conservation. The action also includes the process for deviations and exceptions that had been previously overlooked and not addressed in BLM land use plans. The maintenance action will increase consistency between BLM while implementing their land use plans and the State of Montana and achieve more effective conservation across all lands. The maintenance action allows BLM to consider Executive Order 12-2015, MSGOT actions, along with technical support provided by the Program, when making decisions.

Raths Livestock Conservation Easement Final EA, Proposed Decision Notice [Handouts 3 and 4]

- 00:18:00 Ms. Sime: This action would consider approval of the Raths Livestock Conservation Easement to be held by the Montana Land Reliance. The approved grant award was for \$812,500. The appraisal came back with less than what was expected so the grant agreement has been amended to reflect the final market appraisal. The decision before MSGOT today, is to approve and adopt the decision notice. It is expected the closing would be by the end of the year.
- 00:19:19 Director Tubbs: Asked for public comment.
- 00:19:34 Mr. Glenn Marx, Montana Association of Land Trusts.
- 00:22:30 Mr. Kendall Van Dyk, Montana Land Reliance (MLR).
- 00:23:44 Director Tubbs: Asked for Discussion by MSGOT.
- 00:23:48 Senator Lang: Asked if we have an estimate of what the available credits might be for this ranch.
- 00:24:12 Ms. Sime: The estimated number of credits accounting for the adjustment of 40% to the baseline, are 286,489 credits over the 100 years of the easement.
- 00:24:51 Ms. Ahlgren: Question for Mr. Van Dyk. Thinks this is a good project but concerned that the final appraisal value had dropped by almost a half. Curious how this occurred.
- 00:25:34 Mr. Van Dyk: It is a chicken and egg kind of thing. When applying for NRCS funding there is a range of values arrived at to estimate the value of a property. This range was used to determine the amount of NRCS funds MLR applied for. The Raths need 100% funding so MLR determined the request based on the high-end estimated value. In the case of NRCS funding you can't go back and ask for more money later, so the request is made on the high end of the estimated value to get the most out of the NRCS funds.
- MLR appreciates the difficulty for MSGOT to keep track of this moving funding target and will make an effort to try to provide more accurate numbers with future applications.
- 00:27:56 Ms. Ahlgren: Has concerns that the \$3.2 million-dollar figure had been publicized and would like to see this corrected.
- 00:28:24 Mr. Van Dyk: He had discussed this with the Raths and it could be resolved. The Program was going off MLR's MSGOT application and didn't have the final appraisal. This was a communication failure on MLR's part. When it is published in the future the corrected amount will be presented. Part of the issue is MLR doesn't want to spend \$20,000 on the front end to have an appraisal done until they are confident the easement will go forward.

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- 00:30:08 Ms. Ahlgren: Appreciates that it is complicated and this has been a learning experience.
- 00:30:22 Mr. Van Dyk: There are several things MLR is committed to do to streamline the process.
- 00:30:37 Director Tubbs: When we are working with MRL dollars they will probably be on the high end. That dynamic and how we describe it in the future would be a good idea.
- 00:31:20 Director Tubbs: Asked for a motion.
- 00:31:22 Director Williams: Moved that the Program approve the Decision Notice and authorize the Program to transfer \$425,000 from the Stewardship Account so that The Montana Land Reliance can purchase a perpetual conservation easement on the Rath's Livestock Corporation ranch.
- 00:31:45 Director Tubbs: Asked for a second. Ms. Ahlgren seconded.
- 00:31:49 Director Tubbs: Asked for discussion by MSGOT.
- 00:31:55 Director Williams: Thanked the Rath's family for allowing MTFWP to conduct research on their property.
- 00:32:09 Director Tubbs: Asked for additional discussion. Hearing none, asked for a vote. All in favor. The motion passes unanimously.

KXL Pipeline and Associated Facilities Conservation and Mitigation Plan [Handouts 5 and 6]

- 00:32:36 Director Tubbs: Opened the discussion on the KXL Pipeline Conservation and Mitigation Plan.
- 00:32:46 Director Livers: Introduced the project. In 2012 DEQ certified aspects of the Keystone pipeline project under the Major Facility Siting Act. DEQ conducts some of the analysis for siting and economics associated with the pipeline. State Lands is responsible for major river crossings. Montana's regulatory authority over pipelines is limited. The Pipeline and Hazardous Materials Administration under the US Department of Transportation has the primary responsibility for overseeing the project.

The pipeline enters the state from Canada near the Port of Morgan in Phillips County and travels 285 miles south east of Baker. It is a crude oil pipeline with capacity to carry 800,000 barrels per day.

The Siting Act Certificate covers the pipeline and associated facilities, including six pump stations, three transmission lines, shut off valves and associated power supplies and temporary storage areas, access roads, yards and temporary work areas.

This action predated the Executive Order, but the project does have a pre-EO management plan that mitigates for sage grouse habitat. The scope of this agenda item is limited to the Montana Sage Grouse Oversight Team's (MSGOT) consideration of whether to accept a financial contribution to the Stewardship Account for compensatory mitigation and award the funds through Stewardship Account grants, as directed by the Greater Sage-Grouse Conservation Plan for the Keystone XL Project (April 2017 Plan or Plan).

The April 2017 Plan was voluntarily negotiated between TransCanada Keystone Pipeline LP (Keystone) and entities with the State of Montana and the Montana Bureau of Land Management (BLM). For reasons beyond the scope of MSGOT, the Project was not

constructed immediately after the Montana Certificate was issued. Federal authorizations were not issued at that time, but federal environmental reviews were reinitiated in 2017-2018. The Certificate requires construction to be completed by March 30, 2022 (ten years from the date of issuance) unless extended by DEQ. The Project's requirement to mitigate for sage grouse impacts originates in the Montana Certificate and its Attachments.

00:37:05 Ms. Sime: The Certificate was completed, and a mitigation plan was developed and finalized in conjunction with the Certificate. In 2017, the parties took the prior mitigation plan and provided some updates related to the federal lands portion. The updated mitigation plan would have deposited into the Sage Grouse Stewardship Account *instead of* being deposited with FWP and DEQ and that the funds be used within the counties where the pipeline is located. Funds are to be used within three years of being deposited in the Stewardship Account. The compensatory mitigation contribution to the Stewardship Account would be \$761,519.

The Keystone approach for estimating mitigation is done using a physical acre approach which is different than the state's current HQT method (functional acres) under development. The Keystone approach method uses a \$650.00 per acre figure to arrive at the dollar amount.

00:39:44 Director Tubbs: Asked for public comment. Seeing none, asked for discussion by MSGOT.

00:40:06 Senator Lang: Made a motion that MSGOT accept the Program's recommendation to accept the funds to be contributed to the Stewardship Account. Seconded by Mr. Holmes.

00:40:28 Director Tubbs: This is a decision by MSGOT. However, there is a pending decision to be made by BLM. This allows the BLM to go ahead with their decision but, any transfer of funds is pending the BLM decision and is not pre-decisional until it closes.

00:41:09 Director Tubbs: Asked for a vote. All in favor. The motion passes unanimously.

Denbury Cedar Creek AnticlineCO₂ Pipeline Mitigation Plan [Handouts 7 and 8]

00:41:23 Ms. Sime: This agenda item comes with gratitude and acknowledgement from the Program for the leadership and support provided by Denbury and Mr. Shaw. The agenda item asks MSGOT to consider approval of Denbury's Cedar Creek AnticlineCO₂ Pipeline Mitigation Plan. The pipeline route includes BLM lands, so the plan includes consideration for the BLM approval process. The Program, BLM and proponent worked collaboratively on the plan to satisfy the requirements of both the EO and Stewardship Act and the requirements of the BLM. In agreement with Denbury, the Program applied the July version of the HQT and Policy documents. The BLM is in the process of reviewing public comment and finalizing their EA.

The mitigation plan incorporates the entire mitigation hierarchy and provides an example of creativity on the part of the proponent. Denbury has taken a permittee responsible approach for mitigation. This approach lessens the responsibility for the state. Denbury worked with Montana Land Reliance to secure a perpetual conservation easement in the near vicinity of the pipeline. A second piece of their mitigation plan is to provide restoration work on federally leased lands, that would permanently plug and abandon 17 existing oil and gas wells. This is a good example of restoration approach and diverse way to put a project together.

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In calculating the functional acres lost from the pipeline project and the functional acres gained from the conservation easement and restoration project there will be a surplus of credits. Denbury anticipates future activities and development in that part of the state and those credits will be available to them to be used in the future.

- 00:45:26 Director Tubbs: Asks if the credit calculations are shown on page 37 of the mitigation plan.
- 00:45:30 Ms. Sime: In MSGOT's packet, page 37, Table 10 is a summary of all calculations. Denbury offered some additional voluntary multipliers including 10% for net conservation gain and 10% because a portion of the project goes through two separate Core areas.
- 00:46:30 Director Tubbs: Asked for public comment.
- 00:46:44 Mr. Kendall Van Dyke, Montana Land Reliance.
- 00:47:55 Mr. Rusty Shaw, Environmental Compliance Manager, Denbury Inc.
- 00:52:26 Director Tubbs: Asked for additional public comment. Hearing none, asked for MSGOT discussion.
- 00:52:30 Director Tooley: Likes this project. Glad to accept money but this project generates extra credits and leaves the landscape in better shape than it was before.
- 00:53:08 Director Tubbs: Asked for a quick synopsis of the four mitigation hierarchy steps Denbury has taken with this project (referencing the maps in the mitigation plan).
- 00:53:54 Mr. Shaw: One of the two maps in the plan shows the pipeline overlaid on the basemap from the HQT. You can see the existing disturbance from the ONEOKs Bakken pipeline and existing Trans Canada pipelines and the new pipeline following those existing lines. Where not collocating with existing pipelines Denbury is collocating with existing roads plus Denbury navigated through the area avoiding leks for avoidance and minimization. On the restoration side, the construction timeframe will be June 15 to December 1, then one year to address other wildlife stipulations. With one year one of construction the project will be complete. That's 8000 debits required for the pipeline, 6000 debits are for construction by itself. We heard boisterous comment at EQC about 75 years for the habitat to come back. It's not just grass. Sage grouse need more than grass. The science tells us that sagebrush takes 75 years to come back. Most of the work is in the construction phase and the disturbance is underground. We hope to have reclamation start in winter of year 1. There are only a small number of debits applied to the 75-year reclamation phase.

On a well pad with a thirty-year operation life, it's going to be big numbers and is why Denbury is looking ahead to the need for extra credits. On the compensatory mitigation piece, Denbury has 17,000 debits that need to be offset. The state side will depend on what MSGOT approves with the new rules. On the BLM side there is a unique situation because the federal administration has backed down on landscape scale mitigation, net gain. Those concepts have been stricken from the federal mitigation policy, but the Resource Management Plan has those concepts in it. It's voluntary on the state side but not the BLM side. To change it would require a lengthy process of an RMP Amendment, that could take 3-5 years. The other method could be a congressional action. The way we dealt with it was to work with the BLM using a maintenance action. This allows the mitigation piece to move forward to satisfy the RMP requirements. Outside the RMP requirements there wouldn't be a mitigation need because they are avoiding, minimizing and working within the sage grouse timing stipulations.

- 01:00:05 Director Tubbs: This gives a real example of how a company was able to navigate a major capital investment. It is important to note that this is a buried feature and the impacts are for one year. Projects are evaluated based on the construction phase, then the operational phase. In this case the operational phase is zero because they are underground and go right into the reclamation phase. Where we will see the big numbers, as Rusty pointed out, will be if you occupy the surface permanently or for a long period of time. Those debits will keep hitting you every year of operation. That's where you will see the real difference between a gravel pits that are long term in their nature. Anything that remains constant for a long duration is going to drive the debits. This is an example of a company that avoided, minimized and identified restoration opportunities with a project that really bumps up sage grouse habitat. They are not just protecting existing habitat. Restoration of an old oilfield provides uplift. If you look at the reclamation curve, you have rapid regrowth of vegetation early on. It just takes 75 years to come back to existing condition. The debits are reduced quickly in reclamation, but it still takes a long time for the ground to return to the natural state. But reclamation is not a driver in the debits. MSGOT needs to focus on what is driving the numbers.
- 01:03:09 Senator Lang: Seconded Director Tooley's opinion about the project. Thanked Denbury for their professionalism. Montana taxpayers will welcome them once the project gets going. The project is CO₂ recovery and part of energy in Montana. Very happy they are here, and he will be voting yes on the project.
- 01:03:48 Ms. Ahlgren: Appreciated Mr. Shaw's call and explanation of the project. It looks like a good precedent-setting project of how it should and could work. Ask if there is mitigation necessary for Denbury to conduct while they are conducting the well restoration project.
- 01:04:39 Director Tubbs: Clarified, would the process of restoration cause any debits.
- 01:04:50 Ms. Sime: The July HQT was applied to the restoration work. The math is in reverse. The basemap shows the presence of the wells today as disturbed features on the landscape. Referring to the map titled Mitigation Field Hamond Federal Leases, in the packet. The green circles represent present day with the wells on the landscape. Currently they are blue. When the HQT is calculated, the math is reversed, and that disturbance is removed mathematically. The number of credits are added for each well. This would be the same process if you removed other infrastructure from the landscape. For example, removal of obsolete transmission lines, as a permittee responsible mitigation option. They are taken out of the basemap to determine the number of credits generated.
- 01:06:54 Ms. Ahlgren: Asking about the restoration process, if making noise while plugging and reclaiming, is that activity a disturbance for the sage grouse.
- 01:07:18 Ms. Sime: It could be. In this situation, Denbury will be conducting the work in the fall, within days and are consistent with the Executive Order.
- 01:07:52 Director Livers: Expressed appreciation for Denbury's approach and cooperation.
- 01:08:04 Director Tubbs: Had it not been for Denbury's high priority for this project we wouldn't have had the resources, during the past the three years in developing the HQT. Denbury has proved themselves to be a positive actor in both the economy and protection of the bird. Asked for a motion.
- 01:08:52 Mr. Holmes: Made a motion that MSGOT approve the Denbury Cedar Creek Anticline CO₂ Pipeline Project Greater Sage-grouse Mitigation Planning Approach Document and permittee responsible mitigation actions. Seconded by Director Tooley.

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00:09:30 All voted in favor. The motion passed unanimously.

ONEOK Elk Creek Pipeline Project Mitigation Plan [Handouts 9 and 10]

01:09:49 Ms. Sime: ONEOK proposes to build a 188-mile-long pipeline in Carter, Wibaux and Fallon Counties. The Program began working with ONEOK four months ago. The Program applied the July 2018 version of the HQT and Policy Guidance so that ONEOK could begin construction of the project as soon as possible. ONEOK met with the program in Helena to expedite the process. The company opted to make a contribution to the Stewardship Account rather than develop permittee-responsible mitigation. Application of the 2018 documents resulted in a total obligation of \$169,6612.

This project is longer in length than the Denbury project, but they also incorporated some avoidance and minimization mitigation measures. The project is co-located with the existing Bakken Natural Gas Liquids pipeline. Also, fewer linear miles occur within designated habitat. As a result, the total number of debits is less than the Denbury project.

01:12:35 Director Tubbs: Asked for public comment.

01:12:44 Mr. Eddie Zedaker, ONEOK Environmental Project Manager.

01:13:19 Director Tubbs: Asked for additional public comment. Hearing none, asked for MSGOT discussion.

01:13:41 Director Williams: Appreciates that this project also adheres to the mitigation hierarchy through avoidance and minimization. While not providing permittee-responsible mitigation they are making a deposit into the Stewardship Account.

10:14:09 Director Tubbs: Hopes there is a feeling the process is working, and projects are getting on the ground. There is documentation for the Fish and Wildlife Service that were conserving sage grouse. There will be changes to the July documents and thanks these proponents for working with the Program to move their projects forward, so they can be brought to MSGOT for approval while MSGOT works through the process. Asked for a motion.

01:15:33 Director Tooley: Made a motion that MSGOT approve the ONEOK Elk Creek Pipeline Project Greater Sage Grouse Mitigation Plan. Seconded by Senator Lang.

01:15:53 All voted in favor. The motion passed unanimously.

American Colloid Company Daun West Mitigation Plan [Handouts 11 and 12]

01:16:11 Ms. Sime: Daun West is a bentonite mining project in Carter County. American Colloid has a mining permit and wishes to amend their permit to add acres to the mine site. The permitted acres will be 1344 acres adding 893 acres of disturbance to the site. The permit would run until 2048. Appreciates the cooperation of ACC throughout this long journey. The company would like to move forward to complete their amendment process. This project took time while working through the BLM and what processes were needed. The Program applied the July 2017 HQT model and the July 2018 Policy Guidance document as these provided the most benefit to ACC's Daun West project. The Program applied flexibility in this case resulting in a lower total obligation.

ACC opted to make a contribution to the Stewardship Account rather than develop permittee-responsible mitigation. The total is \$44,734.61.

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- 01:19:04 Director Tubbs: Asked for public comment.
- 01:19:09 Ms. Melody Smith, Environmental Coordinator, American Colloid Company.
- 01:19:51 Director Tubbs: Asked for additional public comment. Hearing none asked for discussion from MSGOT.
- 01:20:08 Director Tubbs: Takes to heart that mining of bentonite is dependent on where the resource is. Gravel is another one of those type of projects that can be hard to find and you get it where you can. Asked for a motion.
- 01:20:49 Senator Lang: Made the motion that MSGOT approve the Daun West Permit Amendment to Permit 670 Sage Grouse Mitigation Plan. Seconded by Director Williams.
- 01:21:04 All voted in favor. The motion passed unanimously.

Break

- 01:21:44 Director Tubbs: Called the meeting back to order.

Informational: Montana Mitigation System: Policy Guidance Document September 2018 v1.0 and Habitat Quantification Tool Technical Manual September 2018 v1.0 [Notes 2, Handout 1, 2, 3, 4, 5, 6, 7 and 8]

- 01:22:39 Ms. Sime: Power Point Presentation, What is Mitigation.
- 01:31:11 Ms. Therese Hartman: Power Point Presentation, Summary Public Comments.
- 01:35:51 Ms. Sime: Power Point Presentation, Summary Peer Review Comments.
- 02:02:00 Ms. Jamie McFadden: Power Point Presentation, Summary HQT Updates.
- 02:14:20 Director Tubbs: Asked for public comment.
- 02:14:9 Senator Lang: Asked for clarification about changes to wind.
- 02:14:20 Director Tubbs: There was no change to wind. The wind industry did not comment.
- 02:15:39 Ms. Sime: Most of the public comment centered around cell towers and transmission. One comment letter included concern for wind however, those concerns had already been addressed earlier drafts. There was some misunderstanding that we were including unconfirmed leks. That was clarified in prior drafts.
- 02:16:29 Director Tubbs: The buffer distance for indirect impacts was the key issue. Asked what the buffer distance is for wind.
- 02:17:38 Ms. Sime: There are just a few primary scientific literature papers specific to wind. The primary author is LeBeau. Each appendix contains a literature cited section.
- 02:18:01 Senator Lang: Asks if wind towers are not susceptible to nesting.
- 02:18:19 Ms. Sime: Yes. Wind towers lack the lattice structure to support a nest. Some literature suggests that wind turbines can discourage raptors due to the mobility of the blades.
- 02:18:56 Director Tubbs: Asked for additional public comment.

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- 02:19:20 Tim Nixdorf, Director of Wireless Communications, Triangle Communications. Asked for clarification about nesting vs non-nesting structures.
- 02:20:50 Director Tubbs: Described the difference between nesting vs non-nesting structures. Electrical Transmission industry has guidelines and standards to reduce nests. Asks if the cellular communication industry has such guidelines they would be helpful to the Program. A cell tower without a structure to support a nest could be non-nest supporting compared to a structure that provides 20-30 places where a nest could be built.
- 02:22:22 Mr. Holmes: In the absence of an industry standard it would be the duty of the proponent to make a case why a particular structure would not support a nest.
- 02:22:56 Director Tubbs: We look to the applicant, if there is something operational that would prevent nest building, such as a maintenance plan that would include taking down nest if they were to be built.
- 02:26:50 Mr. Nixdorf: Unsure how the HQT handles buried fiber optic lines.
- 02:28:01 Ms. Sime: The HQT handles a fiber optic and pipeline similarly because they are a buried feature. A fiber optic line would be similar to a water pipeline and the math would capture that and any accelerated reclamation that might occur.
- 02:29:57 Mr. Holmes: The expectation is there will be interest in seeing examples of more projects to reflect the changes in the documents. Probably within the next two weeks.
- 02:34:00 Director Tubbs: Asked for additional public comment.
- 02:34:07 Mr. Gary Wiens, Montana Electric Coops Association.
- 02:35:24 Mr. Jonathan Madill, WyoBen Inc.
- 02:41:50 Mr. Richard Stoker, Rancher.
- 02:46:43 Mr. John Bradley, Montana Wildlife Federation.
- 02:48:24 Mr. Mike Zook, Triangle Communications.
- 02:52:33 Mr. Mark Peterson, Hill County Commissioner.
- 02:57:06 Ms. Mckinsey McCarthy, Environmental Defense Fund.
- 03:01:00 Mr. Jeff Berglund, U.S. Fish and Wildlife Service, for Ms. Jody Bush.
- 03:02:01 Ms. Gretchen Boardman, Big Flat Electric.
- 03:03:43 Director Tubbs: Asked for MSGOT discussion.
- 03:03:58 Director Tubbs: Some of the materials came in as late as last night and this is why this is not a decision making meeting but informational. Asked Mr. Nixdorf, there were alternative sites proposed for the DY Junction site that would have been beyond the 4-mile buffer of a lek, but these were not pursued. Asked, what was the reason was for not using those sites that could have had a cost savings.
- 03:05:39 Mr. Nixdorf: In 2016 they were asked to look at alternative locations. They looked for locations that would provide enough power at key locations and fulfill desire to be able to cover certain areas of the highway. One location on Highway 66, would have been a

good location. It involved a landowner connected with a grazing association land swap proposed in the future. The new landowner did not want a cell tower on his property. Another location was off the highway but the cost of \$30,000 per mile to bring in power and fiber optics was too high. This cell site is not a money-making project but for public safety. The DY Junction is a better location for their needs.

- 03:09:31 Director Williams: Surprised by Mr. Nixdorf's comment on conserving sage grouse not having to do with habitat. Asked Ms. Sime to describe how the Program came to focus on the habitat and not the bird numbers.
- 03:10:12 Ms. Sime: Sage grouse are dependent on sagebrush for nearly every phase of their life history. They nest almost exclusively under sagebrush and represents 95% of their diet in winter. They are not particularly resilient to the loss of sagebrush regardless of the cause. Where sagebrush is eliminated the birds just don't make it. Focusing on habitat has been a long-standing tradition in Montana for wildlife conservation and is particularly pertinent for this species due to their dependence on sagebrush.
- 03:11:22 Director Tubbs: Another criticism is that we're not killing predators. FWP is aware of the pressures that predators cause. Asked Director Williams if FWP is seeing or documenting areas where sage grouse population decline is connected to predators.
- 03:12:41 Director Williams: Understanding is that FWP has focused on habitat.
- 03:13:03 Director Tubbs: Asks if there is a particular local area where they are seeing a sage grouse population decline due to predation, maybe we could address it.
- 03:13:28 Ms. Catherine Wightman: FWP does not have any information that would suggest sage grouse populations are being unduly impacted by predators. Don't have the data to say in a particular part of the state predators are impacting population trends. FWP will continue to monitor populations and plans to dig down in scale and develop a more comprehensive look at populations in the coming years.
- 03:14:20 Director Tubbs: This is a species that has always been a food source for predators and evolved that way. If there is science to show us we have a problem, it is likely to be a local problem and we can address that. There once was a time when they put out poison to kill prairie dogs and were not going back to that. As we get more information we will get it to Senator Lang and his constituents so they know that we are keeping an eye on it.
- 03:16:18 Senator Lang: Anthropogenic human cause. Asks how a tower can result in such a high number. The square footage is 75 feet by 75 feet. The tower can possibly be seen by sage grouse two miles away. With Jake breaks and everything else along the highway, and now center stripe thunder strips causing noise along the highway, thought being a little over two miles it would not be an issue. Finds it hard to accept that the tower can create a human environment that you have to go out 6 and 8 km. Maybe we do a study and see what the affect is. We have good birds in Montana. Wants an explanation how the number got so high when it's just a cell tower.
- 03:18:57 Ms. Sime: The two-mile distance is a timing stipulation. That is the beginning of our analysis. Four miles comes from the Executive Order related to transmission lines and communication towers and has to do with nesting. Most sage grouse nest within four miles of a lek in Montana. To reconcile the small direct footprint of a cell tower with the larger buffer distances, each activity has some associated indirect impacts and considers the zone of influence beyond the direct footprint and how that might affect habitat or chick survivorship, and populations.

The proponent provides the Program with the direct footprint including roads or additional buried fiber optics. Everything new is assigned an indirect buffer. The buffers come from peer reviewed scientific literature. Some project types have a lot of scientific literature to tell us what the buffer should be, others may not have as much but the Program used the science to determine the buffers.

- 03:21:35 Director Tubbs: Asked for specifics related to tall structures since a lot of comments were related to that project type.
- 03:21:58 Ms. Sime: The tall structure section lists all the literature that was used. We can provide them by mail if requested. A tall structure could be a weather station, cell tower or any other type of tall structure. The papers we used show the outer limit of impacts could be out to 18 km. That would suggest that some leks just don't make it. Other literature suggests the zone of influence could be smaller. We have endeavored to find something in the middle, on the conservative side, that is supported by literature.
- 03:23:40 Senator Lang: Asked if wind turbines can be closer to a lek or further away, cost more.
- 03:24:09 Ms. Sime: The total cost of a project is going to vary by where it's located. If a project is located where the habitat is very red indicating high quality habitat, it will cost you more money. If you take the exact same footprint and locate it in blue lower quality habitat the cost will come down. That is one way operators can adjust siting their project location to bring their cost down. In the case of mining or oil and gas the resource is where it is.
- 03:25:07 Senator Lang: We all want to partake in the Executive Order and the four distinctions we have to do. What has not been listened to is economic feasibility. From talking to Director Tooley it seems economic feasibility of a wetland is more costly than what we are talking about with sage grouse. We have heard about economic problems with paying mitigation. In the COOP way, they are directed in their process to get communication out to rural areas. They get a grant, but any deviation means less service to the people. Safety hasn't been talked about enough. Asks, who gets to decide economic feasibility. In the bill we left that word in there for underground vs overhead. Underground is more costly. They just want to be heard, their economics are not affordable to this stuff. Predation, would like to see data for all of the leks under powerlines in Montana. We have powerlines in Core Areas and should be looked at. Haven't received that data. There is a lot of variation shown in the handout from FWP today. The numbers vary and that's the distinction of sage grouse. Weather and mother nature are a bigger player. The data coincide with how the populations move up and down by weather. Region 6 hasn't changed for 150 years. The only thing that's changed is chicken crews aren't there so predators aren't controlled that way. There has been no build out of cities or ranches. It is sagebrush that's keeping these animals there. We can show we had a big drop when 1080 went away. We don't want that but were lucky that populations have stayed because predation has not been addressed. We talk about avian on the towers and we have to talk about racoons and foxes. One thing about the coyote if you get too many they get a disease and go away. Predation is an issue. Hopes some of the money gets used for predation studies or implementation of predation. Respects FWPs study of how we come up with these numbers because we have to. It is not 100% scientific, so many leks looked at in a period of years and that's how we come up with. There is a lot of variance from 2002 to 2018. It's not how the landscape changed. It is mother nature and predation. Ranching and farming in the area has sustained their way of life since then.
- 03:30:12 Director Tooley: Thanked the staff for being responsive to public comment. The tool is meant to be objective. It's not necessarily garbage in garbage out but data in data out. Today we're learning more about the economic impacts of what the tool spits out in the end. An objective tool isn't going to take into consideration other important factors we

need to consider. You can't do all this with a tool. What about the greater public good of some of these projects that aren't there for profit reason. It's there for public good from a small cooperative that doesn't have 1.8 million dollars to pay for anything. Asks if there isn't a way, after the tool is finalized, to apply other factors that may be more subjective. A tower for Triangle isn't a tower for Verizon. Verizon may pay 1.8 million. As we go forward were talking about two different things. We have to ask: how do you quantify the impacts to sage grouse and as we go forward, how do you prevent larger impacts than intended to small Montana businesses. We might want to break this issue into two parts. You have the quantification and you have the effect on Montana business.

03:32:38 Director Tubbs: We have a policy tool here.

03:32:42 Mr. Holmes: Echo those sentiments and appreciate all those who have made time to share their comments. What we have demonstrated today is we are willing to make changes as we improve the process working with certain industries. For those industries where we haven't had the opportunity to do that and commitment to have those meetings to learn more about your business and how we can adjust over time. The tool and policy have done a great job of balancing the ledger from a science-based approach. It's analytically rigorous. It's transparent and right now is treating all industries fairly and equitably. A problem is a disproportionate impact on some industries and I don't think we have fully considered the broader challenges of balancing the public good and other public needs. There are more changes that MSGOT is going to have to make. One specific change centers around adaptive management. The Program had excellent criteria and objectives around habitat balance and population and numbers of what's happening to the bird. There is an opportunity to look at impacts to regulated industry and the share of costs relative to capitol cost for projects. Some continual learning about how we are balancing conservation needs and economic development goals for the state are needed for this body to be effective. One caution is that this information resides with the industry. This body will need strong partnerships to get good information to make sound decisions. Need to be thinking about the balance for public safety and how we can demonstrate a level of conservation to avoid a future listing.

03:35:54 Ms. Ahlgren: Agree with the comments that have been made and heading down the right road. Hopes the media will give this a chance to work. The Program has made a big effort here and is interested in knowing what others think once they have had a chance to look at these new numbers. Hopes folks will communicate if it is working. Living in rural Montana, knows coops are not self-sustaining and increases in fees would take us out. Economics has got to be considered. Conservation is great, but economics has got to be considered with it. Eastern Montana struggles with being so rural. Don't have answers but confident we can get there. The Program is receptive and hopes everyone will give the process a chance.

03:38:13 Director Tubbs: Asked telecommunication and rural coops to step up. It's not useful to hear criticism of the Program without reference to the scientific reports industry is relying on that says the impacts don't exist. If industry has science that adds value to our ability to understand industry and how it might affect sage grouse, were open to receiving it. That is why there was a peer review and included everyone who signed up, to give you an opportunity have professionals that are aware of your industry to participate in the review. Other than Denbury and coal companies, that are in it for the long run, the idea of permittee responsible investment has gone through a lot of thought. There truly are opportunities for coops to take advantage of, such as removing old poles, adding new technologies, that can add up credits as shown by Denbury with the closing of an old oil field, that generated several hundred thousand credits. Encourage industry to work with the Program to help us understand other opportunities. We've only recently been looking at nesting and non-nesting industry standards. Encourage industry to work with the Program to start banking credits. The least cost way forward is like Denbury did in

working independently and closing their own deal. We don't know what the credits cost. They closed their own deal. Presumably it was less than they would have paid through the state. All we know is it generated so many credits and they offset the debits they created with their project. There are other options shown today. One is to make a donation to the Fund but that's when you don't have another idea. It's not a cash cow. It's to provide industry a way to move forward. If we did not have a Stewardship Account, the projects that were approved today would not have been able to proceed, because there are no credits that they saw that they could buy. Stay engaged and keep communicating. The management control is the policy. The less we touch the HQT unless you have science to change it we should stay away from it. That is the basis. If we muck with the science without science behind it, we will have no floor to stand on and will cave to the politics of the time and the FWS might as well just manage the bird. It won't work for Montana if that's what we get to. We have a policy document and is what generates the credits and debits. We have gears, so we don't have to push the Program to question their science. The legislature has given fairly broad authority in how we use the funds. Open to innovative ways that we can assist public service investments. Maybe the State can bank credits for public service, so the general taxpayer is footing the bill. If we don't have credits to sell or they are overpriced, we won't have a functioning system. The Governor changed Director Tubbs with two tasks. Protect the bird, protect the economy. The story in the Havre paper was based on fear and some mis-information. It is true there is no more patience with this legislature for the Program to delay. It's not an option. The Program will continue to work with industry, but we must move forward and put the tool in operation. There needs to be a team of people representing a broad coalition that believes were on the right track and we need to get there by January.

- 03:47:30 Ms. Sime: In light of earlier discussion, would like to go back and recalculate numbers for the Elk Creek Pipeline and ACC Daun West projects using the discounting method.
- 03:48:20 Director Tubbs: Would not be adverse, as a onetime deal.
- 03:48:48 Director Tooley: Wouldn't have an objection for these projects. The discounting going forward, applying the discount as deflation, but questions if you aren't getting a double whammy when you have inflation increasing 3% per year. In the end you purchase future credits you're doing it with devalued money.
- 03:49:25 Director Tubbs: We're using a real discount rate rather than a nominal discount rate so were protected against that. The discount rate is anchored to the BLM RMP's.

Informational: Proposed Administrative Rules to Adopt the Draft Mitigation HQT Technical Manual and the Draft Mitigation Guidance Document [Notes 2, Handout 10 and 11]

- 03:50:09 Mr. Mark Bostrom, Division Administrator, CARDD: Informational presentation in preparation for executive action on this matter on October 4th. Not a lot has changed since the May document. Changes to the draft rule statement of Reasonable Necessity (page 2) was bolstered to include, "In particular, the terms related to the mitigation system and the documents describing the technical function of the Habitat Quantification tool and policy for application of its outputs and how changes to those are managed through time are new introductions to administrative rules."

This is a dynamic system where there can be minor or major revisions to the tool and the changes are not necessarily predictable. Operator generated inputs, fire etc. can affect the basemap, so there is a need for the program to pull this information in as a minor version change. A minor revision is not the type of change that would require rule making. Major changes would come from an annual or five-year review that would be

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substantive. MSGOT could decide they want to do rule making at any time. Edits for clarity should move forward without rule making.

New Rule 1 Item (2, talks about accepting written or oral comment for proposed new major versions. Item (4) allows versioning to apply to the current activity if new activities are proposed.

- 03:56:19 Director Tubbs: So, this would be an example, if we changed the policy document a year from now that would require oil and gas industry to produce 10% more credits. If your project was approved with the current basemap and prior policy, you stay with the prior requirements and don't have to find 10% more credits. This would be true if it goes the other way. Your bargain is done when the Program issues its final decision.
- 03:57:00 Mr. Bostrom: That is correct. It's just grandfathering.
- 03:57:18 Director Tubbs: On the conservation end, when we determine what the credits are, those stick. Any subsequent change to the baseline is not going to change the credits.
- 03:57:34 Mr. Bostrom: That is correct. New Rule 2 mirrors Rule 1 and talks about how the Policy document is changed in versioning. While not a technical document having dynamic input, the changes to the Policy document would be editorial or changes needed to synchronize the documents over time, keeping them concurrent in numbering. New Rule 3 and 4 have not changed.
- 03:59:08 Ms. Sime: The Rules and all of the materials are currently on the web site with exception of the Powerpoint, which will be on the web site as soon as possible.
- 03:59:52 Mr. Bostrom: Path forward, the HQT and Policy documents follow with the Rule. MSGOT will make a decision at the October 4th meeting. Filing with the Secretary of State would occur October 9th, followed by the Secretary of State publication of the Rule October 19, that initiates a public comment period for the rule making portion. A public meeting will be held in Helena on November 9th. End of the Rule public comment period would be November 19th. Final adoption would be at the December MSGOT meeting.
- 04:01:10 Director Tubbs: Asked for public comment on the draft rule. Hearing none asked for MSGOT discussion. No further MSGOT discussion.

Public Comment on Other Matters

- 04:02:39 Director Tubbs: Asked for public comment.
- 04:03:00 Ms. Algren: Asked when the next period would open for application of credit projects.
- 04:03:22 Ms. Sime: Have not had time to focus on it but have reached out to the land trust community. Would like to pick their brains for ideas how to improve the process.
- 04:04:02 Director Tubbs: Recommends giving an update at the October 4th meeting. We'd like to see more habitat investment that restores or enhances habitat. These projects carry their weight. Every acre is 100% positive so would like to encourage these types of projects. Need strong discussion for a third-party banker so there is an independent broker.

Adjournment

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04:06:09 Moved to adjourn. Senator Lang moved to adjourn; Director Tooley seconded. Motion passed unanimously. Meeting Adjourned.

Chair for this meeting:

/s/ Director John Tubbs
