

*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 April 26, 2018 Meeting Summary  
Teleconference Meeting  
Lee Metcalf Building, Directors Conference Room 111

**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, by Phone  
Diane Ahlgren, Rangelands Resources Executive Committee, by Phone  
Senator Mike Lang, Malta, by Phone  
Patrick Holmes, Montana Governor's Office, by Phone  
Casey Knudsen, Representative HD 33, by Phone  
Mike Tooley, Montana Department of Transportation, Director  
Martha Williams, Montana Department of Wildlife, Fish and Parks, Director by Phone

**Staff Present**

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

**Call to Order**

00:00:56 Director Tubbs called the meeting to order.

**Cloud Peak Energy's Spring Creek Mine Amendment 5 Transportation Corridor Mitigation Plan**

- 00:00:56 Director Tubbs: Read a briefing of the proposed executive action to consider a Greater Sage-grouse Mitigation Plan for Cloud Peak Energy's Spring Creek Mine proposed mine permit amendment (Amendment 5) to build a new transportation corridor. Asked for introductions from other participants on phone.
- 00:02:55 Ms. Sime: Thanked MSGOT members for accommodating the teleconference meeting to address the timely needs of the EIS process for the Cloud Peak Energy's Spring Creek Mine project.
- 00:03:20 Director Livers: Thanked MSGOT for making special meeting accommodations. This project began in spring 2016 with an EA for proposal of the transportation corridor from Cloud Peak's existing Spring Creek Mine in Montana to their Youngs Creek Mine in Wyoming. The project traverse's sage grouse core habitat and requires deviation from the Executive Order. MSGOT previously agreed on a process for collaboration, and consideration of mitigation measures prior to taking the plan out for public comment. DEQ will incorporate MSGOT's action into the EIS. DEQ asked for approval in consideration of a Greater Sage-grouse Mitigation Plan for Cloud Peak Energy's Spring Creek Mine proposed haul route proposal.

00:05:30 Ms. Sime: Acknowledged support and engagement of DEQ's staff with Program providing technical support and thanked DEQ for hosting. This was an opportunity to see how the Program can provide technical support to agencies. This was a collaborative effort between the DEQ, Spring Creek Mine and the Program. Spring Creek Mine provided field-based data for the review. MSGOT is being asked to approve a proposed corridor, approximately nine miles long that connects two holdings. One in Montana and the other in Wyoming. By statute MSGOT is the entity to review and approve mitigation plans that include a compensatory component. Mitigation was triggered by the Montana Surface Mine and Reclamation Act that requires a proponent to mitigate for potential impact to state species of special concern. While the permit amendment was submitted prior to the implementation of the Program's mitigation framework, it provides a platform for identifying measures that might be incorporated into the project design and implementation. To make sure those impacts are minimized to the extent possible, the Executive Order provided the platform for identifying measures that might be incorporated into the Plan and how the mitigation hierarchy would be applied.

The Program met with DEQ and Cloud Peak to work collaboratively through the mitigation plan, involving several meetings and several drafts. The draft for consideration today represents a plan supported by all parties.

Section 5 of the Plan, focuses on the mitigation hierarchy. It is important to note that Cloud Peak had to balance impacts to sage grouse and those of other resources. Section 5.4 discusses methods the parties used to determine compensatory mitigation. This mitigation plan comes before MSGOT has approved the HQT. That process will begin at the next MSGOT meeting.

The Program developed four different mitigation options for consideration. Two were developed using the draft HQT. One was to bury powerline, another had the powerline overhead. Two options applied the functional acre approach from the Draft HQT. Two other options, applied the physical acre approach. One physical acre approach is specific to the state of Utah with four physical acres exchanged for every four acres disturbed. The other physical acre approach uses methodology from the Keystone pipeline example. After several drafts, the parties agreed to the Keystone methodology for the Mitigation Plan.

Referring to Table 2 in the Mitigation Plan; the physical acre approach selected, is based on physical acres in designated habitat. Once habitat types are delineated, ratios are applied to the physical acres and a monetary value is assigned, based on a USDA National Agriculture Statistics Survey Report value of \$650 per acre. This was the same dollar figure applied to the Keystone project. Table 2 identifies acres assigned to Core Area habitat. Steep acres are subtracted out because they are not likely to provide sage grouse habitat. Averaging is applied to arrive at \$1,779,828.00.

Cloud Peak entered into a Candidate Conservation Agreement with Assurances (CCAA), which has been finalized. During development of the Mitigation Plan, the parties earned that practices can't be used for mitigation where implementation would be required by the CCAA. The actions must be voluntary. This information will be useful in future mitigation considerations. Cloud Peak will be implementing measures above what was agreed to in the CCAA. The Program wanted to acknowledge voluntary actions being taken the company. The CCAA includes 111 acres that were deducted from the amount shown in Table 2. Using the same \$650 per acre valuation, amounts to \$72,000. For a final figure of \$1,707,353 as the amount the parties agreed to and the amount that would be deposited into the Stewardship Account.

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With approval by MSGOT, funds will be deposited into the Stewardship Account. The deposit will be made before construction begins. The Draft Policy Guidance Document up for discussion next week will provide instruction about how funds deposited into the Stewardship Account would be used within three years and within the same service area as the impact. Mitigation would be in place prior to the impact to allow for implementation prior to the impact. This process was a good faith effort by everyone and a good learning experience.

- 00:18:18 Director Tubbs: Asked for Public Comment on the topic of Cloud Peak proposal prior to the MSGOT discussion (change in agenda).
- 00:18:57 Darryl Maunder Director Environmental and Regulatory Affairs with Cloud Peak Energy, expressed support of the Mitigation Plan offered.
- 00:22:15 Director Tubbs: Asked for additional public comment, hearing none, asked for MSGOT discussion.
- 00:22:45 Senator Lang: Supports approving the Plan but wants to leave the door open to be adaptive.
- 00:23:27 Ms. Ahlgren: Asked if the \$650 per acre value is a straight market value.
- 00:23:59 Ms. Sime: Can't confirm if this is a purchase or rental price at this time.
- 00:24:26 Director Tubbs: Will try to get an answer to that question today. Understands this is a Keystone physical acre approach based on rangeland values in Montana.
- 00:24:54 Ms. Ahlgren: Asked if the HQT would be applied later.
- 00:25:06 Ms. Sime: If MSGOT approved this mitigation plan, effort to develop mitigation would be a done. . MSGOT has offered to approve projects on a case-by-case basis in an effort to be adaptive and move projects though in a timely manner.
- 00:25:48 Director Tubbs: This will be a component within the draft EIS the DEQ is working on to allow for public comment. There are still many more steps to go in DEQ's EIS process.
- 00:26:25 Ms. Ahlgren: Throughout the proposal Cloud Peak and Spring Creek Mine are used interchangeably. Asked if the two are interchangeable in signing the contract.
- 00:27:00 Director Livers: For purposes of today, they are interchangeable and effective for the decision to be made.
- 00:27:36 Ms. Ahlgren: Referring to page 24 and 25, voluntary mitigation link to grazing on the land. Mitigation measures should not negatively affect grazing.
- 00:28:30 Director Tubbs: Cloud Peak's staff are probably working with lessees.
- 00:28:55 Mr. Maunder: Happy to discuss grazing. Grazing programs targeted at protecting sage grouse can be chosen. These were not one of the selected measures. Believes grazing is compatible with sage grouse. No impact to grazing in the area. These are Cloud Peak lands and the company is careful how the land is grazed. The land is managed to be compatible with sage grouse. If land is managed well for cattle it should be good for sage grouse.
- 00:31:05 Ms. Sime: Getting back to Ms. Ahlgren's question about the Keystone land valuation figure of \$650/acres. The value came from a 2016 publication following a survey-based

approach. The survey asks landowners questions about land values. Not sure if it is based on market appraisal. The survey included values of pasture land in 2015 and 2016, as reported by the landowner.

- 00:31:56 Senator Lang: Asked if these are Montana or national values.
- 00:32:05 Ms. Sime: The reported value was for Montana.
- 00:32:21 Director Tubbs: This was a survey of producers, they then averaged the responses.
- 00:32:39 Director Williams: Asked if it would be good policy to distribute funds specific to the service areas.
- 00:33:04 Director Tubbs: Per the draft Guidance Documents, where funds are provided up front, the funds would be used within the service area where the disturbance occurred.
- 00:33:40 Ms. Sime: This may be something to be incorporated into a motion for this specific project because that level of detail is not addressed within the draft plan being considered today.
- 00:34:17 Director Tooley: Asked how the figure for compensatory mitigation was determined. This process appears to be time consuming. Asked if the process was burdensome.
- 00:34:54 Ms. Sime: This was a negotiated outcome without formal guidance from a state mitigation plan. This was a learning process all along the way. The parties had four to five meetings prior to a final version.
- 00:36:00 Director Tooley: Noted the project crosses the state line with Wyoming. Asked if there are requirements for Wyoming to collaborate
- 00:36:26 Ms. Sime: The Program did not collaborate with Wyoming. Those discussions had already been finalized prior to initiation of the negotiations in Montana.
- 00:37:00 Director Livers: Confirmed the project was already permitted on Wyoming side. Regarding directing mitigation to a specific service area, suggested MSGOT could incorporate this language into the action for this project only and have further discussion about service areas at the next MSGOT meeting.
- 00:38:06 Director Tubbs: MSGOT will continue to be a decision-making body. Will have discussion about adjacency and the public will have opportunity for comment in the future. The priority would be to apply mitigation to the service area where the project disturbance occurs. The Stewardship Account funds will be expended to address impacts within three years of the impact.
- 00:39:44 Director Livers: MSGOT could defer discussion until next week. MSGOT could come back and condition the action at that time.
- 00:40:11 Director Tubbs: MSGOT could make that part of the motion. MSGOT decision should not impact the company's ability to continue forward with DEQ's EIS process. MSGOT can have further internal discussion at a later time.
- 00:40:54 Senator Lang: The decision should be deferred until the next MSGOT meeting.
- 00:41:25 Director Tubbs: Asked for additional discussion.
- 00:41:30 Ms. Ahlgren: Agrees it should be deferred until later.

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- 00:41:55 Director Williams: Asked if the motion remains as is, could MSGOT amend the decision next week.
- 00:42:20 Director Tubbs: This is the subject of the May 4<sup>th</sup> MSGOT meeting.
- 00:42:33 Director Tubbs: Asked for motion.
- 00:42:38 Director Livers: Moved that MSGOT accept the recommendation and approve the Sage Grouse Mitigation Plan for Cloud Peaks Haul Road Project. Seconded by Director Tooley. All MSGOT members voted aye, motion passed unanimously.
- 00:43:30 Director Tubbs: Asked for public comment on other issues. None heard.

### **Adjournment**

- 00:43:56 Director Livers moved to adjourn. Director Tooley seconded. Motion passed unanimously. Meeting Adjourned.

Chair for this meeting:

/s/ Director John Tubbs

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