

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**

May 4, 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

### **Staff Present**

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

### **Call to Order**

00:00:28 Director Tubbs called the meeting to order.  
00:02:11 Approval of January 30, 2018 Meeting Minutes. Motion to approve by Director Williams, seconded by Director Tooley. Motion passed unanimously.

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

00:02:55 Director Tubbs: Asked for brief reports, in the interest of time.  
00:03:00 Director Tooley: None  
00:03:03 Director Tubbs: None  
00:03:04 Director Williams: None  
00:00:05 Mr. Holmes: None  
00:03:06 Administrator Halvorson: None  
00:03:07 Ms. Ahlgren: None  
00:03:09 Ms. Sime: Introduced Jamie McFadden, newest member of Sage grouse team.

### **Initiation of Second Stewardship Account Grant Cycle [Handout 1]**

00:04:06 Ms. Sime: Agenda item under consideration today is the initiation of the second grant cycle of stewardship grant program. To date, there are four conservation easements. One easement has closed. The other three are pending while the Program continues to

work with the Montana Land Reliance and Nature Conservancy. Through these grants, MSGOT obligated or committed \$3,727,500 of the Stewardship funds. Beginning July 1, 2018, \$1,475,500 will be available for the second grant cycle. If approved by MSGOT, the agenda item would allow time to advertise a granting opportunity, followed by review of submittals and recipient selection, prior to the end of calendar year 2018.

- 00:06:07 Director Tubbs: Asked about potential types of applications MSGOT might receive.
- 00:06:26 Ms. Sime: The Stewardship Account incentivizes voluntary conservation, primarily on private land for the creation of credits. The types of credit projects include preservation, such as an easement or term lease. Restoration could include reseeded. Another project type might be a habitat enhancement project. Stewardship funds could be used for any one of these types of credit projects. MSGOT may want to consider the different credit types such as a permanent easement or a short-term easement. Another consideration could be the location of the conservation easement, to address where credits are available within certain service areas. At this time, there is no third party available for a habitat exchange. A project application could include anything explicit in the statute.
- 00:08:25 Director Tubbs: Asked for public comment.
- 00:09:00 Mr. Glenn Marx, Montana Association of Land Trusts.
- 00:10:22 Mr. Kendall Van Dyke, Montana Land Reliance.
- 00:12:08 Director Tubbs: Asked for additional public comment. None.
- 00:12:20 Ms. Ahlgren: Commended Ms. Sime for the detailed briefing summary. Appreciates the idea of establishing a habitat exchange. Asked for explanation about reimbursing the stewardship account.
- 00:13:30 Ms. Sime: The bullet list on third page of the briefing sheet, reiterates statutory language. Understands it to mean, should MSGOT transfer credits they have created, to a habitat exchange, and those credits were marketed, the exchange would reimburse the Stewardship account once those credits are sold in the market. Stewardship funds would then come back for future grants.
- 00:14:30 Director Tubbs: Stated it would be like a revolving account.
- 00:14:43 Ms. Ahlgren: Asked if the habitat exchange created credits on its own, that would not affect the state.
- 00:15:00 Ms. Sime: Any habitat exchange that develops credits on their own, independent of Stewardship funds, would be retained by the exchange.
- 00:15:44 Mr. Holmes: Based on public discussion, there is a need to look at the multiple layers of MSGOT approval required within the state grant process. Efficiency for partners can be problematic within our complex system. Recommends MSGOT be thoughtful in ways to streamline the process and build consistency.
- 00:16:51 Director Williams: Supports going forward with the next grant cycle. It would be helpful for some clarification and streamlining of the process. Unclear about the timing of the process.
- 00:17:24 Director Tubbs: Staff is taking note and we learned a lot during the first cycle. There are two cues we need to give the applicant. The Program has set criteria to follow when evaluating a project and the final approval criteria to enter into an agreement. In terms of pace, the hope would be to have an application cycle in July.

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- 00:18:52 Ms. Sime: Have not laid out a timeline yet. Director Tubbs identified two points, the selection of the applicant and execution of a grant agreement. Asked how MSGOT would like to be involved in the preparation of an EA and public comment process. At the time we entered the grant agreement with Montana Land Alliance, we had not begun negotiations. If negotiations are not completed prior to the grant cycle or grant agreement it may require that third touch while moving through an EA process with public involvement. This was an important part of the first round of grants. There may be an option for creativity in the MEPA process with a programmatic EA and or checklist.
- 00:20:38 Director Tubbs: Suggests there may be additional opportunities to discuss timing during the latter part of the meeting today. MSGOT can guide the process as we move on. Asks for motion to have the process for the second cycle of grants to begin.
- 00:21:28 Mr. Holmes: made a motion to begin the process for the next cycle of Stewardship grants. Ms. Ahlgren seconded the motion. All voted in favor, motion passes unanimously.

### **Draft Mitigation HQT Technical Manual Document [Handout 2]**

- 00:22:18 Ms. Sime: Power Point Presentation, Draft HQT Technical Manual.
- 01:00:00 Director Tubbs: Asked MSGOT to have the presentation on the Policy Guidance side of the HQT, opening for questions on the technical manual. A presentation of the policy document will explain why we care about direct and indirect impacts. The policy is what makes the difference and will link it together.

### **Draft Mitigation Policy Guidance Document [Handout 3]**

- 01:02:56 Ms. Sime: Presentation Part 2, Draft Mitigation Policy Guidance Document.
- 001:42:00 Director Tubbs: Asked if an entity works with a private market entity and not the Stewardship account, would the policy credit and debit multipliers be the same.
- 01:43:14 Ms. Sime: The model results are policy neutral. We want to provide clear policy signals regardless of who is engaged. The credit price is dependent on the credit actors. If a credit or debit vendor other than MSGOT is involved, they are free to negotiate their own price for a credit.
- 01:44:10 Director Tubbs: A third party vendor is sought after. All the state has to offer is a cost-based model. Not a value model. In a market driven system, there would be a demand driven price and the price for a credit could be higher or lower than what we see here.
- 01:44:44 Mr. Holmes: Looking at a project on existing disturbance. Asked for explanation why the direct impact score is not zero.
- 01:45:14 Ms. Sime: It's not zero because there is still some underlying habitat value on the land greater than zero.
- 01:45:41 Mr. Holmes: Does the existing HQT distinguish between different types of habitat disturbance. Asked if a cultivated field is treated differently than an existing road or well pad or pipeline.
- 01:46:14 Ms. Sime: All disturbances are not created equal. The model looks at each disturbance type differently. Literature is used to inform what the impacts might be and to create buffer distances. The same buffer distances are used to create the basemap. There is consistency within the model in the way all anthropogenic disturbances are treated if

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existing or a new project. They can vary depending on the disturbance type. The disturbance types are listed in the appendices of the technical document.

- 01:47:12 Director Williams: Asks if the location, type, size, and duration of a project matters if it is existing or new disturbance and would it be calculated differently.
- 01:47:38 Director Tubbs: To incentivize construction on existing disturbance the program assumes the direct impacts would be zero and we would not run the HQT on the direct footprint within existing disturbance but would run it on the indirect impacts.
- 01:48:26 Ms. Sime: The model will just run and we should get more detailed numbers at the end. The model will still report the direct impacts but the only thing that advances through to the dollar amount, is the portion associated with the indirect impacts.
- 01:49:00 Director Tubbs: Defining what disturbance is, becomes critical. Not clear in oil and gas field how we treat the well pad and the small spaces in-between.
- 01:49:56 Ms. Sime: What is disturbance and how do we define it. If a site is disturbed or not applies the definition in the EO. This is what was used to create the heads up digitized layers to calculate DDCT results. The Program will have the same data for General Habitat. The guidance document gets its definitions from the EO, which provides definitions for both existing and unsuitable habitat.
- 01:59:10 Lunch Break
- 02:34:18 Ms. Sime: Recap of principles presented so far. Beginning with slide "What drives the number of debits?"
- 02:46:00 Director Tubbs: Asked for Next Steps slide. Looking at draft rules but will not entertain a motion. Will allow stakeholders an opportunity for more time to review the material. Concurrence of documents in parallel with the rule. Would like to allow the public opportunity for input on the peer review. The group will not change anything staff has recommended. Final hours and want to get it done right. No final actions will be taken today. A deliberate and short term peer review of the two documents and public comment for the documents can be done concurrently. Asks MSGOT to be flexible for a meeting time. Will add two weeks to allow for review.
- 02:51:10 Director Tubbs: Asks for public comment.
- 02:51:17 Rusty Shaw, Denbury Resources Inc.
- 03:08:30 Glenn Marx, Montana Association of Land Trusts.
- 03:15:50 Dave Galt; Consultant with Browning, Kaleczyc, Berry and Hoven.
- 03:22:17 Len Barson, The Nature Conservancy.
- 03:38:03 Kendal VanDyke, Montana Land Reliance.
- 03:42:20 John Bradley, Montana Wildlife Federation.
- 03:45:17 Lauren Asmith, Environmental Defense Fund.
- 03:46:11 Steve Platt, Montana Chapter of Montana Hunters and Anglers.
- 03:47:40 Alan Olson, Montana Petroleum Association.

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- 03:50:47 Gary Weins, Rural Electric Coop.
- 03:51:27 Shelby Demars, Montana Association of Oil, Gas and Coal Counties.
- 03:52:13 Janet Ellis, Montana Audubon.
- 03:55:31 Geoff Feiss, Montana Telecommunications Association.
- 03:58:49 Jodi Bush, US Fish and Wildlife Service.
- 04:00:50 Director Tubbs: Asks for MSGOT comments.
- 04:00:54 Director Tooley: The public comments were enlightening. Concerned about the 65/35 issue and looks forward to resolving this.
- 04:01:32 Director Williams: Agrees we have come far and there is more to learn and people need to process the information. Looks forward to discussing the timing and process. FWP will have comments.
- 04:02:09 Mr. Holmes: Appreciates the heavy lift and substantive comments. Values this collaborative effort and hard work. Incumbent on MSGOT to reflect on the substantive comments and provide an adaptive approach moving forward. This won't be the last bite at the apple. Appreciates everyone's hard work on this and there is more work to be done.
- 04:03:40 Senator Lang: Got involved to keep bird off the list and produce economic value in Montana. The process has gotten complicated. HQT can get us there simply when following stipulations. Not for the appraisal value. It is the private landowner's decision what the value of his land is and he should make choices about what is in the easement. Mitigation cost but it's a choice and can be in there.

Wants to see a copy of Appendix E mentioned by Mr. Barson.

There is not one thing in the room that will change what has happened to the bird in the past three years. Two things we don't want to address that affect the bird are mother nature and predation. Model predictions say the numbers will be down due to draught. Flooding and snow has been going on for hundreds of years. The predation issue seems to be something we don't to want to handle. No one seems to want to accept that predation is an issue. Studies show 52-67% of bird nest problem is due to predation. We want to just make people pay more to do things. Idaho went into their predation issue and are in a lawsuit with the watershed people to stop that.

Wish we had started with HQT and put it out the door two months ago and went with adaptive management. The Governor in his letter to the BLM, said he didn't like adaptive management and wanted concrete stuff. There is mention the birds don't adapt but the birds do adapt. See the birds at the Phillips County, 1920 Bodine gas field. Trying to make someone else feel guilty because you ruined the environment and want someone to pay for it. When it's housing development that is taking out habitat.

If we want to get after private people we're going to have to entice them. What is wrong with a 45-year lease. If you haven't solved the problem in 45 years you are no good at it. It doesn't have to go on for perpetuity. It's bad the way we have designed it. When there might be the best habitat, best birds, best land, but you're going to penalize him because he only wants a 45-year lease. That's a penalty. Other than the land guys, asks if anyone has gone out and talked to the landowners. Most people don't want to tie up their land in perpetuity. They want the birds and to be good stewards of the land. Suspects

we won't have the acres we will need. Would love to see an all-day meeting with the directors to go into the tool and see what goes on. Wants to know what we bought for the taxpayers. What are we getting for our buck. We need to know we spend the taxpayer's money wisely.

04:10:10 Administrator Halvorson: Looks forward to peer review and public comment on some of the parameters cited in literature in the HQT. Peer review doesn't mean it's right just internally consistent. Particularly where we changed the distance for a well between the two versions.

04:11:15 Ms. Ahlgren: Looks forward to public comment. Need stakeholder meeting to go over changes. Happy to hear private landowner acknowledged. Landowners seem to be good at sitting back, waiting to see what happens but we need to be involved to make this work. Doesn't like perpetual easements, as a landowner. There may be opportunity in term leases.

In the existing disturbance examples, that is going to need to be defined because there could be a huge dollar difference. Has struggled with appraisal approach. Need to get credit values defined. Don't understand the percentages and would like to listen in on stakeholders to better understand the issue. Looking at it from what would benefit the landowner.

04:14:35 Director Tubbs: Appreciates that it is daunting to pick up the documents a couple of weeks before the meeting. Need to make sure we have a definition of existing disturbance. The base layer drives everything of direct and indirect. Need to make sure we define and understand direct and indirect. Need to understand construction, operation and recovery. Didn't talk about prior and existing rights but is backbone of EO. There is quite a bit of things to consume. MSGOT needs to look closer to the ground and engage partners at a deeper level.

#### **Proposed Administrative Rules to Adopt the Draft Mitigation HQT Technical Manual and the Draft Mitigation Guidance Document.** [Handout 4]

04:18:42 Mark Bostrom, Operations Manager CARDD: The proposed rules would have MSGOT and the Program implement the *Mitigation Habitat Quantification Tool Technical Manual* and the *Mitigation Policy Guidance* documents. The way it is structured, the rule is going to have the process of administration that the Program is going to incorporate into the documents (the HQT and the policy Guidance Document) as an initial version and subsequent versions, because of the way the statute was structured, has MSGOT at the designation of sub components. Version 1.0 will be the initial layout. Incremental changes could be made with an MSGOT published, publicly noticed meeting. At five years there will be a policy revision and audit looking at a major change. Reading from the Briefing Sheet. Specifically, the proposed rules describe the process that MSGOT and the Program will use to administer the mitigation system through time. Adaptive management is a core principle for continuous improvement. Both the proposed rules and the documents contain specific sections about how MSGOT will adaptively manage the review and update of the HQT, the Habitat Quantification Tool Technical Manual and the Mitigation System Policy Guidance. Both the proposed rules and the documents have sections specifically devoted to adaptive management.

The HQT Technical Manual and the Policy Guidance document will each undergo an annual review involving stakeholders, agency partners, and others participating in the mitigation system. After the annual review, MSGOT could make changes to the documents, but only after notice and public comment and during a publicly-announced MSGOT meeting. Changes anticipated on an annual basis include: updating spatial data layers, refining methodologies, and the HQT base map (update anthropogenic

disturbance layer and incorporate new credit site data). MSGOT and the Program may also consider updates to incorporate new science. Mitigation would also be addressed in the Program's annual reports.

Every five years, a more substantive review will occur. Methods and data sources will be thoroughly evaluated. The five-year review could yield significant changes. If so, the outcome would be development of a new, subsequent version of the HQT Technical Manual and Policy Guidance, which in turn triggers new rulemaking. Changes would only be undertaken after notice and comment through publicly-announced MSGOT meetings and in a collaborative spirit with participants engaged in mitigation.

MSGOT is free to initiate rulemaking at intervals shorter than five years.

Looking at the draft rule itself, new terminology has been added as well as definitions. These are reflected in the HQT and Policy Document. Adaptive Management, Additionality, Durability, HQT, Mitigation System and Mitigation Sequence. This follows the hierarchy of avoid, minimize, reduce and compensatory mitigation.

Definitions for the manual and document include a version number. This will be how the Program tracks methodology through time. This is important because the HQT and Policy version you use should follow you through time so future changes don't affect you.

Mr. Bostrom briefly went through the new draft rule language.

- 04:33:00 Director Tubbs: Asked about concurrent reviews, administrative action. Some of the public comment expressed concern for peer review prior to publication of rule. Seems we're setting up a framework here that is somewhat independent of what would be adopted as Version 1.0.
- 04:34:03 Mr. Bostrom: You could incorporate peer review changes to this document as Version 1.0 as the base version. Any changes that come could be 1.1.
- 04:34:30 Director Tubbs: Until it is adopted the first time, it would be 1.0 and a draft. This is the first review. Once we have a final draft it would be Version 1.0. Once adopted is when the numbering takes over.
- 04:35:15 Mr. Bostrom: Asked if the timeline would be helpful.
- 04:35:29 Ms. Sime: At January MSGOT meeting it was discussed that peer review would be concurrent with public comment to move things forward. We can always change these timelines. Envisioned peer review as neutral parties with no vested interest, to review draft. Possible to be concurrent in part because the process is transparent. Peer review can inform but peer review comments may not agree. We will have to reconcile comments from peers.
- 04:37:34 Director Tubbs: What is before us is the decision how to direct not adopt. The next big decision is to approve the draft. Given a few weeks of time, would call MSGOT back to provide a published version of the draft. The rule is 20 days past publication we can ask for a 30-day public comment period. The Program will need time to consume the comments. Then the final rule addresses all public comment.
- 04:39:30 Director Tubbs: asks for public comment on the rule. None.
- 04:39:50 Administrator Halvorson: Asked if there will be two processes. Approval of the two documents or would they be concurrent.

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- 04:40:09 Director Tubbs: They will occur at the same meeting on a parallel track. May look at rule differently if peer review finds a need for changes in the framework. Would like to finish this up while under this administration. Need to meet the needs of stakeholder group, to have the group come together on the last 5% of disagreement. Another stakeholder meeting is key. May still have division and may need to make policy call. Feels the stakeholders are ready for this with the adaptive management approach. Suggests rule notice begin with public meetings beginning June 28. MSGOT would need to meet.
- 04:43:25 Ms. Sime: There was discussion of a MSGOT teleconference meeting within two to three weeks.
- 04:43:56 Director Tubbs: Suggests June 12 with publication of June 22. Take September meeting and move out two weeks to first week of October. Stakeholder meeting in next three weeks. Hope for concurrence.
- 04:45:30 Senator Lang: Why do we need this rule stuff when we don't have an HQT or manual yet. The rule is how we will implement the HQT and Policy manual. Asks if MSGOT can pull out things we don't agree with so the process can go through. If it's something we need we can adapt later.
- 04:46:47 Director Tubbs: MSGOT can make those motions. Cautions changes to the science based processes of the HQT. The Policy Document can be changed by MSGOT based on the desire of MSGOT. Would like to have value of stakeholder meeting to work out differences first. The documents will be available for comments together. After that MSGOT can proceed with draft rule or change what the program is recommending. If there isn't concurrence after the stakeholder meeting MSGOT will have to decide.
- 04:50:20 Director Williams: Has always thought proposed rules were a starting place. Comfortable with the process being concurrent if stakeholder group meets and MSGOT can discuss changes not agreed on. Asks how long peer review will take.
- 04:52:00 Ms. Sime: As outlined originally at tentative closing date was set for public comment and peer review for July 10. Mid-May to mid-July were dates set for review. Recognize reviewers may be out doing field work during this time.
- 04:53:20 Director Tubbs: Don't mind adding this to the end of their review time. Issue the current draft now and let them know we may have another version after the stakeholder meeting. If we notice June 12 gives the group more time.
- 04:54:47 Mr. Holmes: Important we include all individuals that should be part of the group. Wants to insure we have the right peer review group. Information should be passed along to the stakeholder group. Wants to see areas of disagreement flagged and identified. Prefers stakeholder group input first.
- 04:56:22 Director Tubbs: Peer reviewers may not be able to answer the policy issues.
- 04:56:34 Ms. Sime: As a peer reviewer if asked to review a preliminary product won't take much time on it. Preference is that the peer reviewers are looking at our best work.
- 04:57:23 Senator Lang: Can MSGOT select peer reviewers.
- 04:57:35 Director Tubbs: If you have names to nominate pass them along. Carolyn has already done a lot of work putting the list together. If there are new names get them in the door within a couple of weeks.

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- 04:58:41 Ms. Sime: Because these are public documents, anyone can solicit comments from others they think have information to offer.
- 04:59:16 Director Tubbs: if you have name forward them after looking at the criteria for peer review selection.
- 04:59:58 Director Tubbs: June 12 meeting notice needs to include stakeholder input. The meeting can be remote for MSGOT members who don't want to travel. Meeting arranged for October 2. Cancel the September meeting.

#### **Public Comment on Other Matters**

- 05:12:53 Director Tubbs: Asked for public comment
- 05:04:00 Dave Gault. Consultant with Browning, Kaleczyc, Berry and Hoven.

#### **Adjournment**

- 05:04:52 Moved to adjourn. Halvorson made a motion to adjourn, Mr. Holmes seconded. Motion passed unanimously. Meeting Adjourned.

Chair for this meeting:

/s/ Director John Tubbs

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