

MONTANA SAGE GROUSE HABITAT CONSERVATION PROGRAM
2019 ANNUAL REPORT

THIS REPORT COVERS THE PERIOD JANUARY 1 THROUGH DECEMBER 31, 2019



MONTANA SAGE GROUSE
Habitat Conservation Program

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EXECUTIVE SUMMARY

The Sage Grouse Habitat Program provides numerous interim reports and briefings throughout each calendar year. A formal written report is produced on a calendar year basis. This report covers the period from January 1 to December 31, 2019. Additional information about the strategy can be found at www.sagegrouse.mt.gov.

History and Background

The Greater Sage-grouse (*Centrocercus urophasianus*) was once a candidate for listing under the federal Endangered Species Act across its range in 11 western states. Montana and 10 other western states developed conservation strategies to conserve sage grouse and address threats caused by habitat fragmentation, development, loss of sagebrush, and invasive species. These state commitments, in conjunction with revised federal land management plans, led the US Fish and Wildlife Service (USFWS) to decide listing was not warranted. The decision was announced on September 22, 2015.

The 2015 Legislature passed the Montana Greater Sage Grouse Stewardship Act (Act) in 2015. Governor Bullock signed Executive Orders (EO or Order/s) 12-2015 and 21-2015 in 2015. The Act was amended in 2017 and 2019. Some provisions of Executive Order 12-2015 are codified in statute. The Executive Orders took effect on January 1, 2016. They are based on recommendations from an advisory council, which itself met ten times from 2013 through 2014. Additionally, seven public hearings were held in Montana. Montana's Sage Grouse Conservation Strategy (Strategy) is based on an "All Hands, All Lands, All Threats" approach which relies on the ongoing, successful collaboration of a diverse group of stakeholders, private landowners, the Montana Legislature, and state and federal agencies.

Taken together, the Act and Executive Orders 12-2015 and 21-2015 comprise Montana's Sage Grouse Conservation Strategy (Strategy). Montana's Strategy mirrors the approach taken in the State of Wyoming. Montana aims to balance conservation and development. Montana's goals are to: 1. maintain viable sage grouse populations and conserve habitat; 2. maintain flexibility to manage our own lands, our wildlife and our economy; and 3. fulfill commitments in our Strategy so that a listing under the federal Endangered Species Act is not warranted. These goals are shared by Montanans who understand the implications if federal protections are imposed.

Implementation Framework

The Sage Grouse Habitat Conservation Program (Program) is charged with implementing the Act and the Executive Orders across state government, coordinating with federal land management agencies as they implement the sage grouse conservation provisions in their land use plans, and working with other partners, especially private landowners who conserve the majority of important sage grouse habitat in Montana.

The Montana Sage Grouse Habitat Conservation Program is overseen by the Montana Sage Grouse Oversight Team (MSGOT), whose duties were established by the Act. MSGOT's composition is also established by statute. MSGOT establishes broad policy and implementation guidance and is administratively attached to the Montana's Governor's Office. The Program is administratively attached to and hosted by Montana Department of Natural Resources and Conservation (DNRC). DNRC provides critical administrative, fiscal, legal, and information technology support to the Program and MSGOT.

MSGOT meets at least four times a year to address timely issues related to implementing the Orders and the Act. These include: coordinating conservation and permitting efforts with state and federal agencies, selection of projects to receive funding from the Stewardship Account, oversight of the habitat mitigation framework and habitat quantification tool (HQT), and addressing concerns and priorities from various stakeholders as to the implementation and focus of the Program and Montana's Strategy overall.

Executive Order 12-2015 applies to all Executive Branch state agencies and is mandatory. EO-12-2015 requires the Program to review all proposed activities that require a state permit for implementation in sage grouse habitats designated as a Core Area, General Habitat, or a Connectivity Area by the map contained in Executive Order 21-2015. Statutory definitions of these habitat areas are also provided for in the Act. If the proposed activity will take place outside of these designated areas or a state permit, authorization or state funds are not involved, Program review is not required.

Scientific studies have shown that sage grouse are very sensitive to habitat loss, fragmentation, and disturbance particularly during the breeding, nesting, and early brood-rearing seasons. Sage grouse are nearly 100% dependent on sagebrush throughout their life history. Through consultation and implementation of the Executive Orders, Montana aims to first avoid adverse impacts to birds and their habitats, then minimize impacts, and then restore habitats. If residual impacts to habitat still remain after these measures, compensatory mitigation is required.

The Orders, along with market-based forces and incentives, help guide where and how development and other activities occur in the designated sage grouse habitat areas. Certain limitations, stipulations, or conditions may apply, depending on the project or activity, when it would be implemented, and where it would be implemented. Other components establish general practices that apply to everyone, such as noxious weed control. Mitigation may be required in some cases. Some activities are exempt from the Orders' requirements by the Orders themselves, by subsequent MSGOT decisions, or subsequent amendments to the original 2015 Act. Other activities may be "grandfathered" because the permitting process had been completed and a permit issued prior to January 1, 2016 (the effective date of Orders).

The Executive Orders apply to all programs and activities of state government, including permitting, grant programs, and technical assistance. Through a consultation process, the Program will work with project proponents to first avoid impacts, minimize impacts, and restore impacted areas. Restoration is already required by state law or administrative rule for some permitted activities. Compensatory mitigation may be required for residual temporal or spatial impacts that remain after avoidance, minimization, and restoration measures.

The Act provided that compensatory mitigation obligations can be fulfilled through transactions in a mitigation marketplace where providers of sage grouse habitat can sell mitigation credits to developers whose activities have residual impacts so that the impacts can be offset. Alternatively, if sufficient mitigation credits were not available in the mitigation marketplace, developers could offset their impacts and fulfill their compensatory mitigation obligations through a payment to the Montana Sage Grouse Stewardship Fund. A habitat quantification tool (a GIS model) has been developed to estimate the number of mitigation credits created through conservation efforts and the number of debits (residual impacts) due to development activity.

The Act had also created the Stewardship Account (Account or Fund; a special revenue account), and the 2015 Montana Legislature appropriated \$10 million. The purpose of the Stewardship Account is to maintain, enhance, restore, expand, or benefit sage grouse habitat and populations. The fund is a source of competitive funding to facilitate free-market mechanisms for voluntary, incentive-based conservation of private lands (and public lands as needed). Through a competitive grant process, organizations or agencies could receive funds to conserve habitats on private lands and create mitigation credits which would then become available in a Montana sage grouse mitigation marketplace to offset impacts of development elsewhere. MSGOT may transfer the mitigation credits created through Stewardship Account grants to an independent third party and recover the proceeds of any sales the third party makes. The Fund would be reimbursed when those credits were sold. The reimbursed funds will then be used to finance other habitat conservation projects. As of December 31, 2019, no third-party credit developers have entered Montana's mitigation marketplace to conduct individual credit-debit transactions with developers and entities who may create credits. That means the primary options available to developers to offset impacts are permittee-responsible projects they implement on their own behalf or to make a contribution to the Stewardship Account equivalent to the cost of credits created through Stewardship Account grants.

In 2017, the development and implementation of the Sagegrouse.mt.gov Version 2.0 website was finalized and replaced Version 1.0 on April 7, 2017. Website Version 2.0 (SG2.0) was in place and utilized throughout 2018 and 2019. The website offers developers an easy way to determine whether their project would occur in designated sage grouse habitat. If so, developers submit their consultation request and project information through the website. The Program is automatically notified that a new project has been submitted and the project is assigned a unique project identification number so it can be tracked throughout the review process until completion. The website automates many calculations, but presently, HQT calculations are performed on a desktop computer by Program staff. In mid-2019, the Program entered a contract with the original developer of the SG2.0 to enhance features, incorporate the mitigation aspect and habitat quantification tool, and make a credit-debit registry available to the public.

Summary of 2019 Program Consultation Performance

The Program completed reviews on the vast majority of projects for which a consultation was requested. In 2019, the Program received a total of 381 requests and carried over work on two projects initiated in 2018. As of December 31, 2019, the Program completed reviews for 288 projects (75%). Of the remaining 95 projects, 68 projects were carried forward into 2020. Additional information necessary to complete reviews on 55 of the 68 (80%) projects had been requested from the developer but had not been received by the Program as of December 31, 2019. The Program had all necessary information for the remaining 13 projects, but work carried forward into 2020 because these projects were either submitted late in 2019 or were larger / more complicated projects which require more time and collaboration with the developer. Some projects were withdrawn by developers of their own accord. Most development projects reviewed by the Program in 2019 were proposed in General Habitat (n=277, 72% of 383 projects) compared to a Core Area (n=106, 28% of 383 projects).

Version 2.0 of the web application prompts developers to provide information necessary for the Program to complete its review. However, it is often the case that details were lacking in specific areas that affects the outcome of the review (e.g. project description or implementation dates). Lack of having complete information pauses the Program's review while developers provide the additional necessary information. The web application automatically calculates the duration of a

project review and what proportion of the total review days are attributed to the Program actively performing its work vs. waiting for additional information. Across all projects, a total of 8,191 days were required to complete reviews, including the 1,207 days (15% of total), for which the Program was waiting for additional information necessary to complete the review.

Of the 288 development projects for which the Program completed reviews in 2019, 83% (n=238) of projects were reviewed within 42 days of being submitted to the Program. The Program completed reviews on 151 projects (52% of 288) were reviewed within 20 days of being first submitted to the Program. Reviews were completed on a total of 77 projects (26.7% of 288) within 10 days of being received.

2019 Development in Sage Grouse Habitats

Of the 16 major project types reviewed in 2019, 32.6% (94 of 288 total projects) was related to oil and gas development. Of the remaining major project types, Communication, Mining, Transmission Lines, and Wind combined accounted for 22.9% of the total projects reviewed (66 of 288). Four projects entailed reviewing a major pipeline.

Of the total 288 projects which reached Completed Review in 2019, an HQT was calculated was 151 projects (52%). Of those, a total of 132 development projects resulted in a mitigation obligation (45.8% of 288), whereas 156 projects did not. Of the 151 projects for which an HQT was calculated, six projects had a mathematical result of zero (4%), 12 projects were subject to a more detailed desktop analysis and no mitigation was ultimately required for reasons unique to those projects (8%), and 1 project received an MSGOT waiver. Across these 151 projects, a total of 59,638.11 functional acres were lost (58% in Core Areas and 42% in General Habitat. The greatest loss of functional acres was documented in the Southeastern Service area (68% of total), consistent with this Service Area having the greatest number of total development projects reviewed.

After accounting for policy multipliers, a total of 88,894 debits accrued across all Service Areas, with 66% of all debits being associated with the Southeastern Service Area (n=78 projects). Of the total debits, 29,256.68 are attributed to policy and site-specific multipliers, with deviations from the seasonal use stipulation of Executive Order 12-2015 accounting for 12,636.46 debits (43% of the total multiplier debits) and the Reserve Account accounting for 11,925.65 debits (40% of the total multiplier debits). Again, most multiplier debits accrued in the Southeastern Service area (18,547.09 debits, 63.3% of the total), with deviations from the seasonal use stipulation and the Reserve Account each accounting for about half of the total policy and site-specific debits within the Southeastern Service Area.

A developer presently has three mitigation mechanisms available to offset the impacts of their projects: permittee responsible actions, a contribution to the Stewardship Account, or a combination of those. In 2019, of the 132 projects for which a mitigation obligation was documented, impacts were offset by making a contribution to the Stewardship Account for 80 (61%). The remaining 52 development projects were offset through permittee-responsible actions implemented by the single developer who implemented their own credit projects.

Developers who select the Stewardship Account mechanism are asked to deposit the funds *after* receiving all necessary permits but immediately *before* implementation. That way, contributions are only made for projects which will move forward, and the developer retains full discretion to determine permitting and implementation timelines. A total of \$506,806.18 has been contributed to the Account by developers, of which \$345,627.18 was deposited in the 2019 reporting period.

An additional \$1,449,688.10 is expected if all projects which reached Completed Review are permitted and actually implemented. The amount of any single contribution in 2019 varies widely, in keeping with the wide variation in impacts attributed to specific projects. The smallest single contribution was \$2.21 and the largest contribution was \$85,878.01. Impacts and mitigation obligations can vary significantly due to a variety of factors, such as: project type, above vs. below ground, the number of individual disturbances included in the project, the project duration, the project location relative to habitat quality, and the degree to which the project is consistent with Executive Order 12-2015. Mitigation is proportional to the total impacts of a project, and market-based incentives exist to encourage voluntary efforts to impact as little habitat and local sage grouse populations as possible.

Stewardship Account Grants and Other Sources of Credits to Offset Development

Credits created through Stewardship Account grants are used to offset impacts of development projects for which the contribution is made. The first grant cycle was completed in 2016-2017, and of the original pool of projects awarded funding, some were withdrawn by the applicants. This left a total of four projects would eventually be implemented. Three of the four projects had closed by December 31, 2019. The fourth project was placed on hold by the family. The second grant cycle was completed in late 2019. A total of 6 projects were awarded funding. Of those six, two were withdrawn by the applicant which leaves 4 projects having a high likelihood of closing in 2020 or 2021. The three 2016 grants that have closed, a total of 958,352 credits were created, which accounts for 62% of *all* available credits created. An additional 502,524.70 credits are anticipated to be created from the five 2019 grants with a high likelihood of closing future years.

Credits are also created periodically by project sponsors undertaking restoration or enhancement actions like reseeded, mesic habitat restoration, or permanently plugging and abandoning oil or gas wells and reclaiming the site. Where the project sponsor does not wish to become a mitigation marketplace actor and retain those credits for eventual sale to a developer, the credits are retained by the state and pooled with credits created by the Stewardship Account. These projects result in a relatively small number of credits, but are still important to document. Credits can also be created through permittee-responsible projects by individual developers to offset the impacts of their own projects. Denbury Resources alone created a total of 590,649.18 through their permittee responsible projects in the Southeastern Service Area. Typically, these developers retain their credits for their own projects. Combined, these other and permittee-responsible credits amounted to 596,858.5 credits created as of December 31, 2019.

Across all Service Areas and credit-producing entities, a total of 1,555,211.30 credits were created as of December 31, 2019, with approximately 70% attributed to projects located in a Core Area. The Central Service Area accrued the greatest number of credits (668,226.29, 43%), followed by the Southeastern Service Area (590,996.16, 38%), the Southwestern Service Area (295,987.16, 19%), and the North Central Service Area with 1.68, <1.0%). The vast majority of credits were created through perpetual conservation easements (91%, 1,555,211.30) through three 2016 Stewardship Account grants that had closed and Denbury Resources' permittee-responsible easements. The remaining 9% of total credits were created through restoration or enhancement efforts.

Synthesis of 2019 Mitigation Outcomes

Montana has achieved its goal of balancing conservation with development. Montana met its mitigation specific habitat-based objectives in 2019. On a statewide basis, the total number of credits created exceeds the total number of debits. After subtracting the total number of debits

from the total number of credits, there is a surplus credit balance of 1,466,316.49 as of December 31, 2019. A surplus exists in three out of four individual Service Areas, with a deficit of 4,853.92 documented in the North Central Service Area. This deficit will be overcome as soon as the remaining 2016 Stewardship Account grant, which is located in the North Central Service Area, closes in 2020.

With the adoption of final administrative rules, all contributions to the Stewardship Account in 2019 and thereafter should be allocated towards Stewardship Account grants to offset the impacts for which the contributions were made. The timing of subsequent grant cycles will be determined by when developers make their contributions and how fast the Account balance is replenished after the 2019 grant award funds are transferred to close those projects.

Presently, there are no third-party conservation banks or habitat exchanges operating in Montana. Stewardship Account grants or permittee responsible projects are the only mechanisms available to developers at this time. Permittee responsible projects are rare, but always possible.

Adaptive Management and Conclusions

Adaptive management discussions after this first mitigation year will likely focus on the first minor revisions to the basemap through updating of individual GIS layers with the most currently-available data. Another topic for exploration relates to the Program's observation that implementation of the strategy overall could be improved by creating a feedback looping mechanism between developers, state permitting agencies, and the Program to overcome the Program's lack of knowledge about the status and disposition of projects (i.e. permitting process, implementation schedule, or whether a project was cancelled altogether). Closing this loop would improve data accuracy and integrity, accuracy of disturbance data, fiscal management of the Stewardship Account, and most importantly, the accuracy and reliability of the credit/debit registry. Additional topics may be identified by MSGOT or stakeholders for this first review, but major overhauls are not expected and would not be warranted given one-year's experience and the available data. Any limitations or unexpected outcomes have been successfully resolved at the Program level or through MSGOT.

The mitigation framework is working and effective. All limitations or unexpected outcomes of the framework were successfully at the Program level or through MSGOT. Stewardship Account grant funds were wisely spent and those funds were well-leveraged with matching sources.

Montana's conservation strategy is science-based, but also crafted by and continuously improved through stakeholder engagement and pragmatic problem-solving by all parties. Montana continues to work collaboratively with private landowners, state and federal agency partners, industry and conservation organizations, and elected officials. Conservation exceeded development, and no projects were barred by the Program, MSGOT. Based on reports from Montana Fish, Wildlife & Parks, the population is secure. The number of confirmed active leks has held steady since 2015, with minor increases or decreases in individual years.

Going forward, Montana is well-positioned for an assessment of conservation efforts across 11 western states, set to take place in 2020-2021. A formal status review in the future is possible, but presently unknown. Montana has implemented the commitments it made in 2015, along with its partners, and our efforts have been effective. The future of sage grouse in Montana and whether protections are warranted in the future both depend on our collective efforts. Through pragmatic problem solving and continuous improvement, Montana can continue to achieve our goals.