Major Facility Siting Act Overview

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MFSA regulates :

- Most large electric transmission lines greater than 69 kV and more than 10 miles long
- Most large oil and gas pipelines greater than 25 inches inside diameter and more than 50 miles long
- Geothermal generation more than 50 MW
- Hydroelectric projects more than 50 MW
- Legacy authority at Colstrip Units 1-4
- Nuclear generation

MFSA Purpose is to ensure

- **Protection of environmental resources**
- **Consideration of socioeconomic impacts**
- **A chance for citizen participation**
- **Coordination of all permits required for regulated facilities**

Findings required before approval

- the basis of the need for the facility;
- the nature of the probable environmental impact;
- that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- What part, if any, of the line would be located underground;
- that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;
- that the facility will serve the public interest, convenience, and necessity;
- that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and
- that the use of public lands or federally designated energy corridors for location of the facility was evaluated and public lands or federally designated energy corridors were selected whenever their use is compatible with criteria listed above

Public interest, convenience and necessity considerations:

- **Need and impacts**
- **Benefits to the applicant and the state**
- **Effects of economic activity resulting from the facility**
- **Public health, welfare and safety**
- **Any other factors the director considers relevant**

Required Input from other state Agencies

- **DOT, FWP, DNRC, DOR, PSC, & Consumer Council shall report to DEQ information relating to the impact of the proposed project on each dept.'s area of expertise.**
- **The report can include opinions as to the advisability of granting, denying, or modifying the certificate.**
- **DEQ can allocate funds obtained from the filing fee to these Departments to reimburse them for the cost of compiling these reports.**

MFSA Projects & Sage Grouse

- **DEQ seeks out assistance from the local FWP biologists:**
  - **develop inventory parameters for surveys**
  - **Develop conditions/mitigations**
  - **Active role during construction**

Example: Keystone XL Pipeline

- **Worked with FWP to develop these Certificate conditions for sage grouse:**
  - Prior to the start of construction, the OWNER shall conduct surveys to determine the locations of greater sage-grouse leks and the peak number of males in attendance at these leks within three miles of the facility, unless the facility is screened by topography. The OWNER shall use survey methods approved by DEQ, FWP, and BLM. Results of the surveys shall be presented to the STATE INSPECTOR.
  - Pipeline construction within three miles of active greater sage-grouse leks in suitable nesting habitat not screened by topography from March 1 to June 15 is prohibited with the following exceptions:
    - The OWNER may pass equipment as a single group along the permitted right-of-way or approved location though a restricted lek buffer area.
    - Equipment will only pass through a restricted lek buffer between 10:00 am and 2:00 pm, to avoid disturbing displaying birds during critical times of the day.
    - If major grading is required to pass equipment along the permitted right-of-way or approved location, this grading will take place outside of the March 1 through June 15 restriction period.
    - As the equipment passes through the areas, if any large hummocks or rocks impede the travel lane, the lead dozer will lower its blade on the way through to move the obstruction to the side and/or smooth out any larger hummocks or rocks.

Example: Keystone XL Pipeline continued

- The OWNER shall contact BLM and FWP to determine what mitigation measures are needed for a lek found within the construction ROW and implement those measures.

- In sagebrush habitat, the OWNER will reduce the mound left over the trench in areas where settling would not present a path for funneling runoff down slopes. In these areas additional measures shall be taken to compact backfilled spoils to reduce settling.

- The OWNER shall establish a compensatory mitigation fund to be used by DEQ, BLM, and FWP to enhance and preserve sagebrush communities for greater sage-grouse and other sagebrush-obligate species in eastern Montana. The size of the fund will be based on the acreage of silver sagebrush and Wyoming big sagebrush habitat disturbed during pipeline construction within greater sage-grouse core habitat mapped by FWP and important habitat between approximate mileposts 96.5 to 130.5. For each acre disturbed, the OWNER shall contribute $600 to the fund.

Example: Keystone XL Pipeline continued:

- During operations, inspection flights shall be limited to afternoons from March 1 to June 15 as practicable in sagebrush habitat designated by FWP (considering weather conditions and federal inspection requirements).

- The OWNER shall fund a study under the direction of DEQ, FWP, and BLM that would show whether the presence of the facility has affected greater sage-grouse numbers, based on the peak number of male greater sage-grouse in attendance at leks. For a period of four years, the agencies shall annually monitor, compare, and report the peak number of male greater sage-grouse at three leks within three miles of the pipeline that are not screened by topography, to the number of males in attendance at three leks more distant than three miles from the facility, before and after construction of the pipeline. At the end of this four year period, DEQ, FWP, and BLM will determine whether there has been a change in the number of male greater sage-grouse in attendance. If there is a decrease, the OWNER will be required to increase the numbers of greater sage-grouse elsewhere to offset the observed reductions. Documented greater sage-grouse population increases as a result of expenditures from the compensatory mitigation fund, above, may be used to fulfill this requirement.

Example: Keystone XL Pipeline continued

- The OWNER shall implement reclamation measures (e.g., application of mulch or compaction of soil after broadcast seeding, and reduced seeding rates for non-native grasses and forbs) that favor the establishment of silver sagebrush and big sagebrush in disturbed areas, where compatible with the surrounding land use and habitats, unless otherwise requested by the affected LANDOWNER.
- Prior to construction, the OWNER shall conduct studies along the route to identify areas that support stands of big sagebrush and silver sagebrush and incorporate these data into reclamation activities to prioritize re-establishment of sagebrush communities, as required above.
- Unless otherwise requested by the LANDOWNER, in areas supporting stands of big sagebrush and silver sagebrush, the OWNER shall monitor establishment of sagebrush on reclaimed areas annually for at least four years to ensure that sagebrush plants become established at densities similar to densities in adjacent sagebrush communities, and implement additional seeding or plantings of sagebrush if necessary. Reports of this monitoring activity shall be submitted to the DEQ annually.
- The OWNER and DEQ shall establish criteria in conjunction with FWP and BLM to determine when reclamation of sagebrush communities has been successful, based on the pre- and post construction studies described above. This shall not relieve the OWNER of its responsibility to meet the revegetation standards in Appendix B.

Example: MSTI project - not quite completed

- **BLM suggested late in the EIS process to start looking for additional large alternatives to avoid impacts**
- **Funding of a before and after study of the impacts of the project**
  - **Framework in place with agencies oversight in how to direct mitigation for possible impacts**
- **Mitigation Bank**
- **Construction BMPs similar to the Keystone XL project**

Questions