STATE OF NEVADA
SAGEBRUSH ECOSYSTEM COUNCIL

DRAFT MINUTES

Date: Monday, April 22, 2013
Time: 9:00 a.m. – 4:00 p.m.
Place: The Bryan Building, PEBP Conference Room, 901 S Stewart Street, Carson City, NV 89701

Video Conference was made available at Elko UNSOM Griswold Hall, Room 31; Great Basin College, Winnemucca Campus, Room 201; and Great Basin College, Ely Campus, Room 111.

A full recording of this meeting is accessible through the following website – http://sagebrusheco.nv.gov/Meetings/Sagebrush_Ecosystem_Council_Meeting/

Council Members Present: Allen Biaggi, Steven Bois, Doug Busselman, Jeremy Drew, Bill Dunkelberger, Gerry Emm, JJ Goicoechea, Ted Koch, Amy Lueders, and Tina Nappe.

Council Members Absent: Kent McAdoo, Starla Lacy.

Others Present: Leo Drozdoff, Tony Wasley, Jim Barbee, Jim Lawrence, Tim Rubald, Cassandra Joseph, Cory Hunt

1. CALL TO ORDER – Chairman Goicoechea called the meeting to order at 9:07 a.m.

2. PUBLIC COMMENT – No public comment in Elko or Ely

a. John Fallon, rancher from Winnemucca. Mr. Fallon recently represented the Public Land Council on a trip in Washington D.C. He noted that Senator Reid said that he thought the option to avoid listing was land designation. He requested a conference call with Chairman Goicoechea, Joe, Desi, and Casey.

b. Fred Fulstone, rancher from Smith Valley. Mr. Fulstone argued that the Sage-grouse needs a chance to come back before it is listed. Mr. Fulstone feels that animals that have been listed in the past aren't helped more than they were prior to the listing, and that the communities will feel a negative impact if the bird is listed. He asked the council to work with the agriculture people and permitees on-the-ground in obtaining facts about the Sage-grouse. Mr. Fulstone provided his notes to the recording secretary and is available upon request.

c. Pam Robinson, representative from Senator Heller's Office. Ms. Robinson shared that Senator Heller's Office is committed to working with the council and with multiple-users on-the-ground. The Senator recognizes the negative economic impact a listing decision would have. They're looking, as a delegation, at ways they can help support a non-listing.

d. Cliff Gardner, representing the Rural Heritage Preservation Project. Mr. Gardner referenced articles and affidavits he submitted to the council for review at its last meeting March 27, 2013. He urges the staff to look closely at those documents as he believes they create a credibility gap amongst several agencies involved in Sage-grouse conservation. Mr. Gardner submitted another document regarding the desert tortoise for the council's consideration. The document is available upon request.

3. **REVIEW AND CONSIDERATION OF APPROVAL OF AGENDA**

A motion to approve the agenda was made by Member Nappe, seconded by Member Boies, all in favor, none opposed, motion carried. ***Action**

4. **REVIEW AND CONSIDERATION OF APPROVAL OF MINUTES**

A. *Approval of Minutes from the meeting held February 21, 2013.* – A motion to approve the minutes was made by Member Biaggi, seconded by Member Drew, all in favor, none opposed, motion carried. ***Action**

5. **COUNCIL MEMBER ITEMS AND CORRESPONDENCE:**

a. Member Drew read a letter he received from Jim Jeffres, a former wildlife biologist with NDOW. Mr. Jeffres encourages the work of the council. He is concerned with sportsman's funds being used to help set up an initial investment on the process. Mr. Jeffres hopes to see other funding sources come forward to share the financial burden of the effort. Member Drew would like to look at leveraged all-partner funding as they move forward. A copy of Mr. Jeffres' letter is available upon request.

6. **FEDERAL AGENCY UPDATES:**

A. *US Fish and Wildlife Service* – Member Koch will provide updates under other agenda items.

B. *Bureau of Land Management* – Member Lueders provided an agency update on the following topics:

1. The Mining Industry, BLM, and Forest Service MOU for mitigation for mining projects as the mitigation credit system is established. Member Busselman asked if the council would have the ability to make recommendations or have input with regards to an MOU between the Mining Industry, the BLM, and the Forest Service Member Lueders replied that the mitigation credit system will be a more robust mechanism; the MOU is more of an interim step. Member Biaggi agreed that the MOU is a bridge document between now, the mitigation bank, and the EIS. The document provides certainty for the mining industry on a project by project basis. The same model might be usable for the future for other industries as well. It will provide a method as to how on-site habitat assessments are made. The effort is voluntary; any company can work on their

own on a case by case basis with the federal agencies. The document will also be accessible for use from the Exploration Community in the mining industry. Member Lueders noted the MOU also has a component of the technical team providing input on off-site mitigation. Member Drozdoff said that the intent of the MOU is not to steer the discussion of the mitigation credit system. He also agreed with Member Biaggi that other sectors can pursue the strategy. Chairman Goicoechea asked if the document would be made available to the other industries as it is available. Member Biaggi said that the document is public, and as soon as it is available, it will be distributed to the council members.

2. The Resource Plan Amendment is finalized and ready for review and signature. She feels this will assist in the process moving forward in a consistent manner. Member Dunkelberger and Member Lueders both anticipate having the agency-developed alternative out to the cooperating agencies for review before the end of April. The EIS Administrative draft will be released to the cooperating agencies for review in the second two weeks of June and will be published in the federal register by the end of September. Member Nappe asked Member Lueders how NDOW fits into the process currently. Member Lueders said that with the nationally issued Interim Guidance, there's a role for the state wildlife agency to provide comments regarding Sage-grouse and Sage-grouse habitat projects.

C. *US Forest Service* – Member Dunkelberger said that his people where vetting the MOU and then will be happy to share it and work with the mining industry. He's been hiring seasonal fire crews and is gearing up for a possibly busy fire season. He's looking forward to participating in the Pinyon Juniper Project.

7. **STATE AGENCY UPDATES:**

A. *Department of Conservation and Natural Resources* – Director Drozdoff spoke of the changes in AB461, saying that there would be three state ex-officio council members; in addition to the three federal ex-officio. The three state members being the Directors of DCNR, NDOW, and the Dept. of Agriculture. Member Drozdoff also noted that Mr. Rubald and the technical team will take on more of a leadership role during the meetings. AB461 had a hearing in Assembly Ways and Means; the majority of the comments supported the bill. Two discussion points about AB461—the bill doesn't have to meet deadlines that are self-imposed, and there were no fiscal notes for the bill.

Member Drozdoff attended the Western Governor's Task Force meeting April 9th and 10th. After the meeting a letter came from USFWS to the State of Idaho that provided feedback on the Idaho plan. Member Drozdoff felt that the letter said that there wasn't a way that the federal l and managers would be able to implement the plan moving forward. He thinks the best path for the council would be to put pieces of the state's plan into operation and have it endorsed by USFWS. That would

hopefully allow the Forest Service and the BLM to get behind them as well. He thinks that the mitigation credit system, put together with the input of the USFWS, BLM, and USFS will be a better option for the state than getting a state-approved plan.

Member Drozdoff noted the former NDOW Director, Ken Mayer was hired as the point person and will be working with the fire and wildlife aspects of the WAFWA Fish and Wildlife Service Cooperative Agreement.

Member Drozdoff addressed the topic of funding. He noted the senators want to be helpful. They do seem to be contemplating a land designation approach, and are in the information gathering stage. The council will be included in the discussions the senators have regarding the Sage-grouse. He and Member Wasley have worked together to find respective ways that their agencies can fund the mapping. The map will be funded 50/50; DCNR will fund their portion with money from the Q1 program. Member Drozdoff would still like to see other industries step forward to help with funding, but didn't want to wait any longer to establish maps with Dr. Coates. There will be additional costs for the mitigation crediting system; this will require help from other funding sources. He doesn't feel the agencies funding efforts will be sustainable past this biennium. Member Nappe requested a copy of the budget, the sources, and the longevity for the members of the council, and expressed concern about the money coming out of NDOW and potentially being taken from projects. Member Drozdoff agreed to provide the budget to the council. Member Drozdoff explained that a possible option beyond the biennium would be to use the Tahoe Team model; using the mitigation crediting system to help with the funding issue to sustain the program with 96% out on the range and the remaining 4% to fund the council and technical team.

Member Koch noted there are uncertainties about the ability to mitigate sagebrush ecosystems on a landscape scale. While the state is working to get the project on the ground, he encourages others to pool their resources and share information. He said while the government is investing money early, there may be an opportunity for more investment over the next six months.

B. *Department of Wildlife* – Director Wasley expressed that he was happy to be at the meeting as a formalization of NDOW's part in the process. He agreed with Member Drozdoff that the budget was cobbled together and won't be sustainable in the long term.

NDOW staff and biologists assisted with Sage-grouse capture in early April, supporting UNR graduate student with her research, which encompasses the Sheldon, Northern Massacre, and Eastern VYA PMUs. Lek-counts continue across the state using ground and aerial surveys using fixed-wing aircrafts using infrared technology. A number of western states are experimenting with the technology. They can detect

leks and eventually hope to count individual birds. USGS led a range wide connectivity study. Field staff from the Tonopah Office, Inyo National Forest personnel, and Nevada portion of White Mountain BMU performed a capture effort, and deployed radio transmitters on a couple of male grouse.

C. *Department of Agriculture* – Director Barbee has met with the technical team to discuss the noxious weed program and invasive species mapping relative to the Sage-grouse effort. They have met with Member Wasley and discussed hiring seasonal staff to cross train in the field with NDOW and anticipate having them on-the-ground by next spring.

D. *Division of State Lands* – Administrator Lawrence shared that Lands is currently recruiting and hiring the Conservation District Program Lead and the Elko and Winnemucca field positions.

8. **DISCUSSION OF GUNNISON SAGE-GROUSE DETERMINATION BY USFWS – Ted Koch, USFWS**

Member Koch provided and update regarding the determination of the USFWS on the Gunnison Sage-grouse. He noted Gunnison Sage-grouse were proposed for listing as endangered earlier this year. It occurs primarily in Southwestern Colorado; there are 5,000 birds and six populations; threats are habitat loss, degradation and fragmentation due to residential, exurban, and commercial development; other threats are improper grazing, predation facilitated by human development or disturbance, drought, genetic risks, inadequate local, state, and federal regulatory mechanisms. He noted smaller threats are fences, invasive plants, climate change, fire, renewable and fossil fuel energy development, pinyon juniper encroachment, reservoir creation disease, drought, and recreation. There's one strong population left of the six for the Gunnison grouse; the remaining range is on private land. A lot of pivotal habitat is on private land and is threatened by residential and exurban development.

Discussion regarding lessons to be learned from the Gunnison Sage-grouse. Gunnison is similar to Bi-state, but also has differences in the favor of grouse conservation in the Bi-state. Bi-state and Gunnison have similar number of birds and populations, and similar threats. Bi-state has two relatively strong populations instead of one, and 85% of rangeland for the Bi-state is federally managed; Gunnison Sage-grouse inhabit less than 7% of their historic range and Bi-state inhabit less than 50%; lastly there is a Bi-state local working group that has a good plan, and has shown a lot of good work.

9. **DISCUSSION OF THE COUNCIL'S WORK TIMELINE**

A. A Technical Team member will present and explain the work timeline developed at the request of the Council. – *Melissa Faigeles.* Melissa Faigeles gave a PowerPoint presentation and a packet with the timelines to the council members. She explained the first item presents a proposed work program timeline: The first timeline is the known timeline and dictated by two federal processes. The second timeline is the proposed

work plan for working inside the realm of the two federal processes and how the council and technical team's priorities will fit into them. Ms. Faigeles said that the bulk of what the council does will have to be ready for September 2014, when a proposed listing decision will be made for Greater Sage-grouse. The Bi-state was included on the timeline as well.

BLM Milestones:

- The draft EIS (the Administrative Draft) becomes available to cooperating agencies – Mid June of 2013.
- The draft EIS published and available to the public – available September 2013.
- The Final EIS published – March of 2014.
- EIS record of Decision.

The Bi-State timeline will be July 2013 for the draft and January 2014 for the final. Member Koch clarified that the listing program has been core-driven for the past year, and the deadline of each year for decisions is Sept. 30th. If the Service determines that listing is warranted, they would also list critical habitat at the same time.

Milestones for the Council:

- Mitigation credit system development – the team will start on it immediately with the goal to have it finished in September 2013.
- Implement the program – October 2013 through September 2014. Goal to have the program up and running by the time that USFWS will start their 12-month review process.
- Implementing on-the-ground projects – Fall of 2014.
- October 2014 – Implement developments on-the-ground.

The team will work with the EIS Alternative late April 2013 through August of 2013. They will continue to develop the plan for submittal between the Administrative Draft and when the Draft goes out to for public comment. The Team will also work on the Nevada State Plan during the above time frame, but will focus on the EIS because of federal deadlines.

Member Lueders noted it is unlikely to see major changes in alternatives between the administrative draft and the published draft because the time between the two deadlines is tight. Changes are more likely to occur between the published draft and the final. The finalizing of Nevada State Plan will occur well in advance of the September 2014 publication date.

A discussion ensued regarding the deadlines and what can be submitted to the draft. Cooperating agencies will have the administrative draft for review the weeks of June 17 and June 24.

Mapping:

- The Coates Model Map developed September/ October 2014
  Member Drozdoff requested that Ms. Faigeles ask Dr. Coates for interim milestones throughout the process.

- *Fish and Wildlife Service Data Call* – the list of projects the Team presented at the last meeting are in progress.
  Member Koch encouraged anyone who provides information for data call to put it into context. Chairman Goicoechea added that the location of the data was also important for its context. Member Drozdoff said that at a minimum, they would advance ideas to the Service through the Council, but that the Western Governors' Task Force will be an appropriate vehicle as well. ***No action taken.**

10. **DISCUSSION OF USFWS SEPTEMBER 14, 2012 DRAFT COMMENTS ON NEVADA'S GREATER SAGE-GROUSE CONSERVATION STRATEGY**

A. Technical Team members will discuss and suggest recommendations on possible resolutions to the issues brought forward by USFWS regarding the "State Plan"; and also discuss the Nevada EIS Alternative – *Lara Niell and Melissa Faigeles* - Lara Niell met with Steve Able from USFWS and Steve Segal from NDOW to discuss Fish and Wildlife comments on the 2012 State Plan. Steve Able is supportive of NDOW's habitat categorizations and supportive of the Coates Model because it is a quantitative system. They discussed conceptual framework of avoid, minimize, mitigate, no net loss, and acts of God as well as management areas and mapping efforts that have been done so far. Ms. Niell reviewed the 2010 listing decision and its mechanisms with Ms. Faigeles and determined what Fish and Wildlife found inadequate: 1.) lack of specificity, 2.) ensuring that they're implemented, and 3.) ensuring that they're consistently applied.
Fish & Wildlife's concerns are the justifications on the methods used and they want decisions to be rigorous and scientifically defensible. They're very supportive of state transition models in determining priority areas and recommend they be used to compliment the Coates Model. Chairman Goicoechea asked that the seasons be figured into the Coates Model. Member Koch stated critical areas will be addressed whether by mitigation credits or set-aside. Ms. Niell and Ms. Faigeles fielded questions by the council and reviewed the timeline create by the technical team and distributed to the council; they also fielded questions about management involving avoid, minimize, mitigate practices. Member Lueders provided updates on deadlines to be incorporated in the timeline.

Chairman Goicoechea led the council and meeting attendees in a moment of silence at the Governor's request for the Boston Marathon bombing victims at 11:50 am.

The Council convened for lunch at 12:05 pm.
The Council reconvened at 1:15 pm.

Member Busselman made a motion for the technical team to proceed in developing the Coates Model, with specific attention to consideration and tracking the season use of habitat; seconded by Member Nappe. Member Biaggi made a friendly amendment for the technical team to look at using the model toward tracking management on-the-ground. Member Nappe seconded the amendment, all in favor, none opposed, motion carried. ***Action**

Member Busselman made a motion for the technical team to develop a crosswalk report between the NDOW classification processes, how it evolved to become the preliminary priority and the preliminary general process, and compare it with the Coates Model; seconded by Member Nappe, all in favor, none opposed, motion carried. ***Action**

Member Busselman made a motion that the technical team to develop a Decision Tree for the Council's evaluation, in reference to avoid, minimize, and mitigate; seconded by Member Bois, all in favor, none opposed, motion carried. ***Action**

Member Busselman made a motion to have the technical team research and provide a report detailing how the USFWS, the USBLM, the USFS, and other agencies involved with wildlife and habitat management define "occupied". Member Biaggi expressed concern about the technical team's workload with a preference toward the priority being the mitigation bank, and Member Koch agreed and suggested laying all the ideas out and prioritizing them at the end of the meeting. Member Lueders suggested focusing more on the objective than defining the habitat. She encouraged the council and technical team to look at defining the habitat and its value, how it's managed, and how they'll use the Coates Model to manage habitat. Member Koch agreed with Member Lueders and suggested the technical team take on the question of defining the terms; Fish and Wildlife will focus more on a measure of habitat suitability or quality through out the range, and agreed with Member Lueders' thought that the information needed to be relevant to the group, and asked the technical team for comparisons with neighboring states. – Member Busselman restated the motion for the technical team to research and provide a report with proposed management guidelines that translate to the Coates Model into on-the-ground applications; seconded by Member Bois, all in favor, non opposed, motion carried. ***Action**

Member Biaggi made a motion to direct the staff to further investigate the use and application of available state and transition models that will complement the Coates Model; seconded by Member Drew, all in favor, none opposed, motion carried. ***Action**

Ms. Faigeles said the technical team's recommendation is to further develop the State Plan and EIS Alternative. The council discussed the importance of focusing on mapping and mitigation crediting. Member Lueders agreed that mapping and the mitigation credit system were important, however, urged the council to consider the timeline for addressing clarity or inconsistencies with the draft EIS during the comment period and before analyzing final alternatives. After further discussion Member Nappe made a motion for the technical team to develop the Nevada State Plan and EIS Alternative; seconded by Member Drew, all in favor, none opposed, motion carried. ***Action**

11. **DISCUSSION OF USFWS COT REPORT** – Ted Koch, USFWS

A. Discussion regarding the recently released USFWS Conservation Objectives Team (COT) Report with the Council. Member Koch said that the main focus of the report was to "stop the decline." It identifies conservation objectives; some people feel that they're too constraining while others feel that they're not constraining enough. Conservation success is achieved by removing and reducing threats to the species so the population is increasing, even if it doesn't get back to historic levels. The report suggests that it will be alright if there will be less Sage-grouse habitat in the future, so long as the decline is stopped and the most important habitats are conserved. Member Koch sees the report as a list of ideas to apply to Nevada.

Member Drozdoff expressed his concern about the COT report, particularly that there was a significant changes between the draft and final copy, that the report might support those who might say it's not enough to conserve every bird, and about how parts of the report might be used by potential litigants.

Member Koch suggested that the voting members of the council move for the technical team to sit down with USFWS, USBLM and the NTT report to evaluate the two reports and identify them in a way that supports an approach within Nevada. He feels that it's very important that the council take steps to show how a product meets/doesn't conflict with the directives in the COT or NTT report. In doing so, a final product should be strengthened against litigation. Member Koch said that he saw the COT and NTT reports as resources of information; the work of the council is a good example of science in action.

The council discussed the COT and NTT reports, how to use them as a checklist/measurement for the State Plan and that being more informed earlier will save time later. Member Busselman made a motion to evaluate the COT and NTT report with care that they don't replace the plan the committee devised last year; seconded by Member Nappe, all in favor, none opposed, motion carried. ***Action**

12. **PRESENTATION REGARDING "BEST AVAILABLE SCIENCE" STANDARDS -- DR. STEVEN COURTNEY, DIRECTOR OF COLLABORATIVE SCIENCE, *RESOLVE*:**

A. Dr. Courtney provided a presentation to the council and an explanation on what the legal standards are for "best available science", and how it can be used as a framework for establishing a common basis for collaborative decision making. He reminded the council that "best available science" is a legal term not a scientific term. He said lawsuits are lost on process, not on science and that relevant science is better than best available. He noted the importance of credibility, peer review, and stakeholder buy-in with a level of transparency. Dr. Courtney will hold a presentation at the Richard Bryan Building tomorrow from 9am – Noon in the Tahoe Room. Dr. Courtney's presentation is available upon request.

13. **DISCUSSION AND CONSIDERATION OF A PROCESS TO DETERMINE THE BEST MECHANISM TO BE USED REGARDING DEVELOPMENT OF A MITIGATION CREDIT SYSTEM**.

A. Mr. Rubald explained the various options available for developing the structure of a mitigation crediting system. For profit, non profit, credit system, credit trading system. He noted the importance of having the USFWS sign-off on the option they decide upon. A discussion ensued. Mr. Rubald suggested the best process to use from a resource economics standpoint would be the "request for information" (RFI). The technical team will put together a draft RFI by the May 3, 2013 meeting for the councils review and comments. Council recommendations may be sent to Mr. Rubald via email to incorporate their ideas into the RFI. The DAG advised the council not to have full council correspondence via email as it would constitute a quorum. Once the draft is complete, the RFI will be posted and will allow prospected vendors to respond. Chairman Goicoechea made a motion for the technical team to draft the RFI for review and comments at the May 3 council meeting; seconded by Member Biaggi, all in favor, none opposed, motion carried. ***Action**

14. **DISCUSSION OF FUTURE PRESENTATIONS BY TECHNICAL TEAM** -

A. Mr. Rubald will delegate sections on a threat base to technical team members. Member Drozdoff said that selecting the threats in a thoughtful way would ensure the threats are addressed and that conceptual evaluation of the threat and management would be achieved. The technical staff will provide briefing papers (white papers) as their staff report format to the council. Mr. Rubald provided a recap of the items assigned to the technical team. He will be in tasked with prioritization the items for the team members.

- Proceed with Coates Model – adaptive management
- Develop sample decision tree
- X-walk COT & NTT report foundations; technical team review of the reports
- Further develop the state plan and EIS, coordinating with USFWS
- Draft RFI for May 3, 2013 – noting June 17 would be the comment period deadline
- Mitigation credit system

***No action taken.**

15. **DISCUSSION REGARDING SETTING REGULAR MEETING DATES** –

A. The council members discussed setting a regular meeting date/time for meetings of the council. It was determined at this time with the legislative session, it difficult for the council to set a standard date. However, the next three council meeting dates were slated for May 3, 2012 – Facilitated collaborative meetin /business meeting covering the RFI, at the NRSC office in Reno; May 31, 2013 – Business meeting, location TBD; and June 17, 2013 – Business meeting, location TBD.

16. **PUBLIC COMMENT –** No public comment in Elko, Ely or Winnemucca

a. Mr. Gardner address the council and expressed he didn't feel his right of due process is not being recognized. He referenced a study he presented to the council at their last meeting and is concerned that it has been ignored, not by

just this body, but by many federal and state agencies. He noted he wanted the council to fairly consider his findings and facts and to allow time for them to be reviewed and discussed under an agenda item affording him his right to due process.

b. Floyd Rathbun, Certified Range Management Consultant, Fallon, NV – Expressed his concern that there must be adequate peer review in this process. He noted that state transition models are often built with false assumptions and provide inaccurate data and findings. He encouraged the council to review the Office of the Governor's Ethics website.

17. **ADJOURNMENT –** Chairman Goicoechea made a motion to adjourn the meeting, seconded by Member Nappe, meeting adjourned at 4:12 pm.