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STATE OF NEVADA
Department of Conservation and Natural Resources

23 January 2014

Noreen Walsh
Regional Director
Mountain Prairie Region
U.S. Fish and Wildlife Service
134 Union Blvd
Lakewood, CO 80228

Dear Ms. Walsh:

Thank you for this opportunity to provide comments and feedback on the U.S. Fish and Wildlife Service's draft *Greater Sage-Grouse Range-Wide Compensatory Mitigation Framework* (Framework). This is a timely document as the State of Nevada is actively developing and implementing a Conservation Credit System (CCS) to achieve the State's goal of no net unmitigated loss of Greater Sage-Grouse (sage-grouse) due to anthropogenic disturbance. Work on our CCS is concurrent with the development of the State's sage-grouse conservation plan and is a central piece of our vision to stopping the decline of sage-grouse in Nevada. We are well along in our development, with a draft conceptual system expected by the end of February 2014 and a final CCS developed by December 2014.

As we continue to develop the CCS, we are working closely with local Fish and Wildlife Service (Service) and other federal agencies. To that end, the draft Framework is very helpful to us. Overall, we believe the Framework to be well-aligned with the general concept of Nevada's CCS. The recognition of the need for a consistent method to provide regulatory assurances in both listing and non-listing conditions is critical. We believe the expectation of a consistent quantification approach, or metric, that accounts for both direct and indirect impacts, and equivalently assesses both credits and debits, is fundamentally consistent with Nevada's CCS. Finally, the recognition that off-site and out-of-kind mitigations may hold greater value than on-site and in-kind mitigation is critical to provide the opportunities necessary to secure and recover habitat at a landscape scale.

There are areas within the Framework that we would like further clarification on or that we think could be a concern in regards to Nevada's CCS. Some specific comments and concerns include:

- Timing: The issuance of the final Framework may be problematic as Nevada is likely to have developed the fundamental components of its CCS prior to finalization of the Framework.
- Nevada's CCS is intended to function as an advanced credit system, thus, additional clarity on specific expectations is immediately necessary:
 - The mention of additional expectations and forthcoming guidance on advanced credit acquisition standards is welcome, yet must either be provided quickly or the Service should expect to be flexible to accept the proposed standards that the state will put forth in the coming months.
 - Providing a clear path for review or approval for an advanced credit system would allow the state to gain proactive consultation with the Service and alleviate the concern over investing in design only to have the system deemed inconsistent, deficient or otherwise rejected due to divergent opinions of individual staff.
 - The conservation banking agreement (CBA) approach may be sufficient and practical if it can be expanded to apply to a large area. We request a consultation with appropriate Service staff and management to propose a modified agreement outline and a mechanism for review and approval in advance of developing agreement documents.
- In general, the concepts of "Additionality" and "Durability" could be of concern depending on interpretation and application within the CCS. In Nevada, a large component of the CCS will necessarily have to be enacted on public lands. Meeting the requirements of "Additionality" and "Durability" on public lands could be problematic and the CCS has limited management ability which the Service should acknowledge. Specific questions related to these two concepts follow:
 - Clarify language to reduce ambiguity about the potential to produce credits by avoiding risk of loss of existing high quality habitat through preservation projects and actions that increase the resiliency of habitat for populations.
 - The definition of baseline confuses two important and distinct concepts and would benefit from clarification. The current language defines the concept of "pre-project condition." The definition of pre-project condition should also explicitly acknowledge the potential threat of anthropogenic and natural disturbance, as well as the overall landscape resiliency of the credit or debit site. A separate concept of "baseline" should be clarified to be the starting point from which credits and debits are calculated.
 - The Framework can be interpreted as containing conflicting messages related to the "Additionality" of preservation projects. The Framework

states that “actions proposed as compensatory mitigation must provide a level of conservation benefit beyond what would have been achieved anyway under applicable (non-mitigation related) regulations and/or land-use management plans.” This statement can be interpreted as only restoration or enhancement projects would be considered under an acceptable mitigation program, since preservation projects are not beyond current regulations and land-use management plans. However, the Framework also states that the “Additionality” of preservation projects should be evaluated, and credit proportionally assigned, according to the magnitude and likelihood of existing and future threats to the habitat at hand and/or the value of that site to conservation of the species.” We need clarification on this.

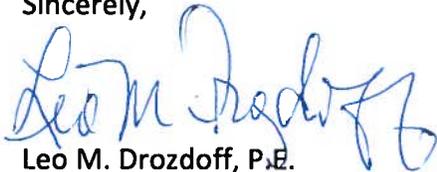
- Given the potential importance of preserving current habitat that is at-risk for development and from large-scale wildfire, as well as the long timeframes for growing new sagebrush habitat, it is important for mitigation programs to encourage the preservation of existing habitat as well as the restoration and enhancement of existing habitat and the establishment of new habitat. Recognizing preservation of high quality habitat for credit sites as “additional” would reward historically good land stewards.
- Clarification is needed on the concept of Additionality as it relates to crediting and what is acceptable. For example, can credit be received by expanding already planned work? If an agency is already planning a project that would be consistent with conservation goals for sage-grouse, and through the credit system, the project was able to be expanded, would the project be considered additional? Not all credit and mitigation work will be brand new initiatives; the Service should acknowledge these actions as acceptable credits.
- Durable mitigation on public lands is necessary, and the Department of the Interior is uniquely positioned to help states by developing concrete mechanisms and legal land protection to alternative mitigation sites on public lands. It is essential that these mechanisms and protections can function without the need for an Endangered Species Act listing.
 - Durability is a complicated issue and likely requires new mechanisms, particularly related to defining durability assurances for credits generated on public lands.
 - It will be extremely valuable if the Service engages with BLM and provides concrete suggestions for using legal land protection mechanisms on public lands. This issue will be relevant to all states in the range, and well-vetted and consistent mechanisms will create efficiencies for all programs under development in the range.
- Innovative actions should be encouraged within the limits of a clear focus on outcomes and programmatic and site-scale adaptive management.

- The statement in the Framework that “actions that are unproven or have significant lag time before providing conservation benefits shouldn’t be prioritized for compensatory mitigation” is problematic. First, restoration or establishment projects are likely to need significant time for vegetation to grow. Second, encouraging innovation in new conservation methods is essential to ensuring investments in the species become more efficient and effective over time.
- Unproven actions can be encouraged without causing significant environmental risk by allowing a portion of credit to be released for implementation of actions, and holding back the majority of credit until defined and observable performance criteria related to habitat quality are achieved. The outcomes of unproven actions are inherently uncertain and thus additional monitoring may be necessary.
- Metrics measure meaningful outputs of credit and debit projects tied to species success, not population counts.
 - Population monitoring is an essential element that will be built into the CCS and used to calibrate the relationship between the metrics of habitat quality and actual changes in population.
 - The Framework states that “metrics used must tie back to populations and clearly show conservation benefit to the species.” Metrics that measure changes in habitat and habitat threats, tie directly to species success without creating the uncertainties related to population count changes that may result from factors far from the control of credit developers.
- Does “no net population loss to the species” mean no loss of habitat area, functional habitat, or something else?
 - It would be helpful to clarify whether the Framework is describing no net loss of habitat area or functional habitat, considering both the quality and quantity of habitat. In other words, are habitat area and functional habitat measurements acceptable to demonstrate no net loss to the species?
- Does “landscape mitigation” mean across the state, a region or a population?
 - The definition of “landscape” is critical to the overall functions of the CCS and the cost and practicality of mitigation. If landscape is defined to mean a specific sub-population, the restrictions for mitigation may not provide opportunities to increase the resiliency of other populations that are in need of enhancement.
 - Mitigation ratios may be appropriate mechanisms to inform trade-offs between creating credits that will benefit different populations than the population impacted by an anthropogenic disturbance.
- Under definitions, Compensatory Mitigation, what is the Service’s definition of “unavoidable adverse impacts?”

- On Page 4, “the Service may propose a special rule under section 4(d) of the ESA...” – we note this applies to “net benefit” and not to “no net loss”. Additionally, “may” does not provide strong assurance to participants developing credits within the CCS. We also note again that it is essential that this program function outside of the realm of an ESA listing or a 4(d) rule.
- The Framework states “Programs that provide only no net loss will be evaluated more conservatively by the Service” and “strive to achieve net positive conservation”. While that is a goal within the CCS, there needs to be some recognition that the threats in Nevada are primarily fire and invasives (as opposed to development elsewhere in the range).
- How does the Service see the rights provided under the 1872 mining law play out with the concept of “Be Consistent and Fair”?
 - What happens if a mining company indicates that required mitigation would make a project economically infeasible?

Again, thank you for the opportunity to provide feedback on the Framework. Nevada’s interagency team is ready to assist you with further information or clarification as needed.

Sincerely,



Leo M. Drozdoff, P.E.
Director

cc:

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