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SAGEBRUSH ECOSYSTEM PROGRAM
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J.J. Goicoechea, Chairman
Nevada Sagebrush Ecosystem Council
210 South Roop St., Ste. 101
Carson City, Nevada 89701

Re: Comments on and Considerations for Revisions to the Nevada Conservation Credit System Manual and Habitat Quantification Tool (Dec. 12, 2014)

Dear Chairman Goicoechea:

On December 4, 2014, the Nevada Sagebrush Ecosystem Council (“SEC”) approved the final Conservation Credit System (“CCS”) Manual and Habitat Quantification Tool (“HQT”), with the qualification that future revisions to the documents would likely be made through the “adaptive management” process. Specifically, the SEC anticipated that corrections would be necessary to some mitigation ratios and other variables to better balance the calculation of credits and debits for projects of similar scale. The primary concern is that inequities in the manner in which debits and credits are calculated could lead to a situation where credit projects would be unable to generate sufficient credits to offset the potential debit projects in sage-grouse habitat, defeating the purpose of the Nevada Sage-Grouse Conservation Plan to balance land uses while providing for sage-grouse conservation in Nevada. With this in mind, the Nevada Mining Association respectfully submits the following comments for consideration for the modification of the referenced documents.

This letter first discusses four of the variables that currently lead to inequities and should be changed to better balance debits and credits generated by projects under the CCS. The second portion of the letter provides other substantive comments and suggested revisions to the CCS Manual and HQT. Finally, the third portion of the letter lists several typographical errors that should be fixed in the CCS Manual.

Variables Applied to Adjust Credits and Debits

The functional acreage calculations set out in the HQT for valuing the benefits of credit projects and impacts of debit projects apply equally to credit and debit projects. However, once the functional acreage scores are calculated for a project, several additional factors are applied to adjust the credits or debits assigned to a project. Each of the four adjustment factors (i.e., habitat importance ratios, limiting habitat ratios, calculation of baseline habitat function, and delineation of the project impact area) is

201 West Liberty Street
Suite 300
Reno, NV 89501
(775) 829-2121 TEL
(775) 852-2631 FAX
www.nevadamin.org

based at least in part on policy choices, not science. The effect of the application of the adjustment factors is that debit projects accrue substantially more debits than the amount of credits earned by credit projects of similar scale and character. The SEC should change the adjustment factors to better balance the potential credits and debits generated by similar projects. It is understandable that the CCS would take a precautionary approach to conservation of the sage-grouse, but the CCS is arbitrary in assigning very different values to things that are, for all relevant purposes, the same. The following table summarizes the factors at issue, and suggests reasonable changes:

Variables Applied to Calculating Credits and Debits Under Nevada CCS		
Variable	Description and Concern in Application	Suggested Change
Habitat Importance Mitigation Ratio – <i>CCS Manual at 39, Tables 5 & 6</i>	A multiplier is applied to credit/debit projects depending on whether they occur in core, priority, or general habitat. The factors that apply to debit projects are core (2.0), priority (1.5), and general (1.0). The factors that apply to credit projects are core (1.1), priority (1.0), and general (0.85). The concern is that the inequities in mitigation ratios lead to inflated debit calculations, and deflated credit calculations for projects of similar scope and magnitude. For example, building a road in core habitat could generate almost twice as many debits as credits could be generated from removing the same road in core habitat.	The mitigation ratios should be brought closer together, recognizing that the debit factor must be some degree higher than the credit factor to ensure a “net benefit” to the sage-grouse. A more appropriate set of mitigation ratios is set out below, although there are other possibilities: Debit Projects <ul style="list-style-type: none"> • Core (1.5) • Priority (1.2) • General (0.85) (this would encourage siting projects with locational discretion in general habitat) Credit Projects <ul style="list-style-type: none"> • Core (1.3) • Priority (1.1) • General (0.85)
Limiting Seasonal Habitat Factor, <i>CCS Manual at</i>	A multiplier is applied for benefits/impacts to seasonal habitat that is limited in the project area (i.e., a project improving the only wet meadow [late-brood rearing habitat] in the area will receive exponentially more credits, and a project impacting that same habitat will accrue	The limiting seasonal habitat multiplier is applied equally to credit and debit projects. However, some adjustment to the factors may be warranted given the large debits/credits

Variables Applied to Calculating Credits and Debits Under Nevada CCS		
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40-41	exponentially more debits, than impacts to habitat that is abundant). The multipliers can be as high as 200 for potential effects to limited late brood-rearing habitat.	generated by relatively small projects. A cap on this multiplier, particularly for debit projects, might also be considered.
Baseline Functional Acreage – <i>CCS Manual at 46-47 (credits); 63-64 (debits)</i>	The baseline functional acreage from which credits and debits are calculated is different for credit projects and debit projects. Whereas the on-site conditions control for debit projects, the baseline for credit projects is a factor of local-scale habitat function and the typical site-scale habitat for the relevant region (which does not take into account actual on-the-ground conditions). The purported purpose of this difference is to avoid a perverse incentive for landowners to artificially degrade habitat before signing up for a credit project, so that more credits can ultimately be generated against baseline. This approach, however, also disincentivizes restoration of habitat that is already degraded below baseline. Further, it does nothing to address the exact same perverse incentive that could apply to debit projects, where project proponents might also be motivated to degrade pre-project conditions to reduce the baseline and reduce debits.	The CCS should apply site-specific habitat function as the baseline for both credits and debits. The concern that onsite conditions will create a perverse incentive to degrade habitat (and, thus, reward “bad actors”) could be addressed through the site-eligibility review for ownership and stewardship.
Treatment of Indirect Effects – <i>HQT at 20-22 (debits); CCS Manual at 37, (Application of the HQT, which applies to indirect impacts of debit</i>	The debits/credits associated with indirect effects of a project are treated differently for credit and debit projects. The functional acreage calculation for debit projects applies to indirect impacts in surrounding habitat, regardless of ownership. For instance, a transmission line on public land may have a project area limited to a 200-foot right-of-way, but the indirect impacts (and the debits associated with the project) will be calculated based on decreased habitat function out to six kilometers from the project boundary. By contrast, a credit project that removed that	The CCS should specifically encourage and give credit for one-time vegetation treatment or infrastructure removal projects, and should reward credit developers for indirect effects extending beyond the limited project area. While it may be appropriate to discount the credits for benefits to adjacent lands where the credit developer has less control, they should not

Variables Applied to Calculating Credits and Debits Under Nevada CCS		
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<i>projects, but not credit projects), at 50-56 (credit durability requirements)</i>	<p>same transmission line would receive credit only for the indirect benefits that could be measured within the project area (the area under ownership or control by the project proponent—the 200-foot right-of-way). While surrounding lands out to 6 kilometers may benefit, no credits can be generated unless the proponent can encompass those lands in a management plan that ensures the benefits will be maintained for the duration of the credit (a near-impossibility on public land where other uses cannot be precluded without a right-of-way or other instrument). Thus, the calculation of debits and credits for the exact same project can be hugely disproportionate.</p> <p>Further, there is no clear way to obtain credit for one-time projects on public land (without a long-term maintenance component), such as piñon-juniper removal, cheatgrass treatments, road/powerline removal, etc. For example, how do financial assurance requirements, habitat stewardship requirements, and other long-term commitments apply to one-time projects on public lands?</p>	<p>be ignored entirely. The reserve account concept appears to address one-time projects on public lands by requiring a larger reserve account contribution. The CCS Manual does not otherwise address how credits will be calculated for those projects. This deficiency could be addressed through presentation of how such credits would be equitably calculated.</p>

Other Comments on the CCS Manual and HQT

The following comments apply to the December 2014 version of the CCS Manual.

Other Comments on the CCS Manual and HQT		
Location	Comment	Suggested Edits
Page 18, 2nd ¶ (Credits, Debits, and Credits Obligations)	The CCS Manual explains that to calculate credits or debits for a particular map unit within a project area, the HQT calculates the functional acre value of each seasonal habitat in the unit (breeding, late brood-rearing, and winter), but then, only the habitat value for the most valuable seasonal habitat counts in	Rather than calculating credits and debits based on the most valuable habitat in a map unit, account for all habitat types in the calculation

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	determining credits or debits. So if 49% of the habitat is breeding, and 51% is winter, only the winter habitat value counts. <i>See also</i> Table 10, page 42. It is unclear why the CCS does not use a sum of the functional acreage values for each habitat type.	through stratification
Page 19, No. 5 (Generating Credits)	Maintenance of performance standards must be confirmed annually. The cost of monitoring on an annual basis may be prohibitive.	Depending on the type of credit project and goals, annual monitoring should not be required. For example, a piñon juniper removal project may not require annual monitoring. Further, monitoring should provide the information needed to determine if the applicable performance standards are being achieved and not lead to collection of ecological attribute information not needed for the compliance determination.
Page 37-38, § 2.2.1 (Field Data Collection Timing)	Without exception, field data to support site-scale vegetation measurements must occur in precise seasonal windows. Such an absolute is not necessary. Further, such temporal constraints create unnecessary delays and increase costs for projects – both debit and credit.	In the section entitled “Field Data Outside of Permissible Windows,” add language that data collected outside the windows will be considered on a case-by-case basis to determine its adequacy. In addition, certain attributes can be determined regardless of season. In these cases, flexibility should

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		be provided in data collection windows.
Page 39, § 2.2.2 (Credit and Debit Mitigation Ratios)	The credit and debit mitigation ratios are based on whether the area is in core, priority, or general habitat. This assumes that the core, priority, and general habitat delineations are final and does not allow a process for field verification and adjustment of those designations on a project-by-project basis.	A process must be included to allow for a “true-up” of the three habitat designations based on site-specific information.
Page 46, § 2.3.3 (No Imminent Threat)	The last sentence explains that to do a credit project on land covered by a grazing permit, the project developer must either be the permit holder or have an agreement with the permit holder to ensure grazing practices are compatible with the project. This seems unduly limiting for one-time projects like removal of a power line or piñon-juniper removal, which may not implicate grazing practices.	Suggest revising to say “[T]he Credit Developer must either be the permittee or have an agreement with the permittee, <u>if grazing practices are relevant and necessary to achieve the performance standards defined in the Management Plan.</u> ”
Page 47-48, § 2.3.5 (Developing Credits on Public Lands)	The CCS contemplates that credits will be available for projects on federal lands, but does not address how the durability and management plan requirements would apply to federal projects. That is, would a project proponent have to ensure that other uses are managed for compatibility in the project area, and if so, under what mechanism?	Additional details should be incorporated in the Strategic Action Plan or MOU with the BLM.
Page 53, § 2.4.3 (Ability to Control)	The ability to control wildfire will serve as a factor in determining the percentage of credits that must be contributed to the reserve account. Table 14 in the November draft CCS set percentages for the ability to control wildfire, with high control requiring a 0% contribution and low requiring a 2% contribution. The December version has deleted those percentages and states that they are “TBD,” leaving credit developers with substantial uncertainty about the percentage of the reserve account contribution.	The percentages included in the November draft should be included into the Table and the checklist should be developed, subject to public comment.

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	Further, whether a project is subject to high, moderate, or low risk of fire will be determined based on a "site-level assessment checklist that has not yet been developed."	
Page 55, § 2.4.4 (Stewardship Management Actions)	This section explains how credits will be released on a schedule determined by the management plan when performance standards are met. What is not clear is how credit duration is affected for a 10-year or 30-year project when it may take several years to reach the point of credit release. Presumably, the credit duration available for sale is limited to the remaining project life after the preconditions for credit release have been met. For example, for a 30-year project, if it takes 10 years to reach performance standards, the credits are only good for a 20-year duration. Further, if credit release is staggered over time, one project may generate credits of varying duration.	The credit life as related to project life should be explained in this section.
Page 61, § 2.5.2 (Debit Project Types)	The end of the first paragraph states that a debit project may be a new anthropogenic disturbance, an expansion in operation of an existing anthropogenic disturbance, or an extension in duration of an existing disturbance. This last category for existing disturbances conflicts with the Nevada Plan, which applies only to new anthropogenic disturbances. This language should be qualified so that consultation is required only for extended duration of projects permitted post-Nevada Plan.	Clarify that extending the duration of an existing project does not trigger SETT consultation for projects already existing on the landscape before the Nevada Plan became final in October 2014.
Page 76, Section D and B	There is no provision for appeal of any determination made by the Administrator, including calculation of functional acreage, determination of credits, adequacy of contract provisions and financial assurances, or any other consultation requirement. The CCS should include an appeal procedure to the Oversight Committee.	The CCS should include an appeal procedure to the Oversight Committee, with escalation provisions, for both credit developers and buyers.
Page 78, § 3.2	The second sentence states that "Credit Buyers	Credit purchase should

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(Acquiring Credits)	<p>include entities mitigating for impacts to fulfill regulatory requirements, and entities seeking to improve the environment.” This implies that any party can purchase credits under the system, which raises two concerns:</p> <ol style="list-style-type: none"> 1. Buyers could speculate by purchasing available credits and reselling them for a profit; and 2. Buyers could purchase all available credits to preclude their purchase by debit projects, and effectively precluding any new anthropogenic disturbances in sage-grouse habitat. <p><i>See also</i> Section B.2 and B.2.1 referring to purchase of credits “to achieve unique investment goals.”</p>	<p>be limited to buyers who will use the credits to offset debit projects thus precluding speculation and inappropriate accumulation of credits.</p>
Page 18, § 3.2.2	<p>In calculating limiting seasonal habitat, the percentage of a particular seasonal habitat should be measured as a proportion of all the sage-grouse habitat in the analysis window. Consistent with the language on page 40 of the CCS Manual, any areas already affected by disturbance or non-habitat (mountain peaks, etc.) should be excluded from the analysis window as available habitat.</p>	<p>Under “Calculation Method,” the second paragraph, should read, “Areas that do not provide sage-grouse with functioning habitat due to high density of anthropogenic disturbance . . . , <u>other disturbance such as wildfire, or areas of non-habitat</u> are eliminated from the seasonal habitat maps.” The third paragraph should read, “The total surface area of each seasonal habitat occurring within the analysis window is quantified and the total surface area values of</p>

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		each seasonal habitat are then converted to proportions of the total area, <u>excluding disturbed and non-habitat</u> , within the analysis window.”
Page 23, Table 3	The distance decay curves applied to mining projects are arbitrary, without meaning, and fail to reflect the variability within the mining industry. The 60-acre threshold for large v. medium and small mines is without support. More important than total area are the mine design and engineering. Mine sites are not uniform and they evolve over time, with shifting impacts in both degree and location. Moreover, underground and open-pit mines may have vastly different impacts that are not accounted for in Table 3. Table 3 should not paint with such a broad brush and at the very least should allow for case-by-case analysis and exception based on project design. The distinction among active and inactive mines is similarly undefined and appears arbitrary.	Table 3 should be refined to better reflect mine variability, or to clarify that the decay curves associated with “mines” may be adjusted based on whether the mine is underground or open pit, the density and types of activities in the project area, and the design of the component parts.

Technical Edits

Citation	Edit
CCS, page vii	Edit to “Area of Critical of Environmental Concern”
CCS pagination	The pagination jumps from small Roman numerals to page 12.
CCS, page 16, last sentence.	Remove the “s” on “Providers” so that the sentence reads, “There is no formal process to designate or certify a Technical Support Provider.”
CCS, page 17 “Key Terms” text box, definition of “Credit Obligations.”	Change “Quantify” to “Quantity.”
CCS, page 33, 2nd ¶,	Add the word “been” so the sentence reads, “Rather the reserve account

2nd sentence	includes verified, released credits that are providing greater sage-grouse benefits and have not <u>been</u> used to offset debit projects.”
CCS, page 33, 4th ¶, 1st sentence	Remove “un” from “unintentional” so that sentence reads, “The Administrator manages the reserve account and uses credits in the reserve account to temporarily cover credits invalidated due to unintentional or intentional causes as described in this section.”
CCS, page 51	The title of Equation 4 should be “Total reserve account contribution percentage <u>amount</u> equation”
CCS, page 53	Delete the second “to” in the first sentence so that it reads, “Factoring the ability to control wildfire into the overall reserve account contribution...”
CCS, page 53, 4th ¶	In two instances, “completing land uses” should be changed to “competing land uses.”
CCS, page 53, 5th ¶	The first sentence should read, “Important credit site characteristics related to the probability of competing land uses are expected to arise that do not justify a different contribution percentage than defined by the tables below.”
CCS, page 55, 2nd ¶	The first sentence should read, “For credit projects containing restoration management actions and <u>where</u> habitat quality is anticipated to significantly improve”
CCS, page 59, 2nd full ¶	The second sentence states that payments may be “on years,” and should say “in years.”
CCS, page 91, 1st ¶, 1st sentence	“Resolve” should be “resolved,” so that the phrase reads, “cannot be resolved independently.”

Conclusion

We respectfully request that the SEC consider the above comments and proposed revisions to the CCS Manual and HQT. Please feel free to contact me if you have any questions regarding this letter.

Sincerely,



Dana R. Bennett
President

cc: Kacey KC, Program Manager, Nevada Sagebrush Ecosystem Technical Team