



STATE OF NEVADA
SAGEBRUSH ECOSYSTEM COUNCIL
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DRAFT MINUTES

Date: Thursday, October 11, 2018
Time: 8:30 a.m.
Place: Nevada Legislature – Room 1200
401 South Carson Street, Carson City, NV 89701

A full audio recording of this meeting is accessible through the following website
[http://sagebrusheco.nv.gov/Meetings/Sagebrush Ecosystem Council Meeting/](http://sagebrusheco.nv.gov/Meetings/Sagebrush_Ecosystem_Council_Meeting/)

Council Members Present: J.J. Goicoechea, Chris MacKenzie, Steven Boies, Bevan Lister, Gerry Emm, William Molini, Sherman Swanson, Tim Shannon, Meghan Brown for Jerri Conrad-Lewis, Jim Lawrence, Bradley Crowell, Tony Wasley, Carolyn Swed, Ray Dotson, Bill Dunkelberger

Council Members Absent: Allen Biaggi, Starla Lacy

1. CALL TO ORDER

Chairman J.J. Goicoechea called the meeting to order at 8:35am.

2. PUBLIC COMMENT

No public comment

3. APPROVAL OF THE AGENDA - *FOR POSSIBLE ACTION*

Approval of agenda for October 11, 2018 – Member Lister moved to approve the agenda; seconded by Member Boies; motion passed unanimously. ***ACTION**

4. APPROVAL OF MINUTES - *FOR POSSIBLE ACTION*

Approval of minutes from the meeting held on August 30, 2018 – Member Swanson moved to approve the minutes of August 30, 2018, seconded by Member Molini; Motion passed unanimously. ***ACTION**

5. COUNCIL MEMBER ITEMS AND CORRESPONDENCE

Member Swanson gave an update on the Nevada Rangeland Monitoring Handbook. The handbook is done and available for distribution. Member Emm asked about the availability of additional copies. Donations will be accepted to help fund the printing of the handbook.

Kelly McGowan spoke about the U.S. Forest Service Sage Grouse Bulletin number 8 and the timelines surrounding the draft EIS amendment. October 5th was the scheduled release, with a 90 day comment period, the announcement is posted on the Sagebrush Ecosystem website. Another Bureau of Land Management (BLM) Internal Memorandum (IM)

was released relating to flexibility of livestock grazing. The IM is available on the Sagebrush Ecosystem website under agenda item 5.

6. Presentation From The 96 Ranch Regarding Livestock Grazing To Reduce Fuel Loads And Achieve Range Rehabilitation After Wildfire – *Informational Only* *Kris Stewart, 96 Ranch*

Mrs. Stewart communicated the impact of the Martin Fire to the 96 ranch, and suggested reforms to western land management to allow flexibility in grazing and reducing fuel loads. The proposal and the bulk of this presentation was supplied by Mrs. Stewart and is available at the Sagebrush Ecosystem website under this meeting tab, agenda Item 6. Mrs. Stewart expressed frustration with being left out of the local BLM restoration plans. Seeding efforts are included in restoration plans, but no outcome-oriented grazing plans were contained in the planning documents. Restoration funds requested will not be sufficient to mitigate impacts. The 96 Ranch is in a sustainable financial position, however other ranches are not. The continued pattern of large fires will endanger Nevada's ranching culture and the ecosystem in the Great Basin. Mrs. Stewart communicated about private lands that were lost which had great historical and cultural value. Mrs. Stewart related her recent trip to Washington D.C. meeting with Congressman Amodei, Senator Heller, Demar Dahl, the committee of natural resources and public lands committees, and officials for the United States Forest Service (USFS) and the BLM. Mrs. Stewart expressed the purpose of the trip to Washington was in part to communicate the value ranching has to the environment despite black eyes that the ranching community, especially in Nevada, has received in the past. The acting Director of the Forest Service was receptive. Brian Steed of the BLM was very receptive, and Mrs. Stewart expressed hope that the BLM may change in the future. Mrs. Stewart did not feel that the White House secretary she met with was engaged in the issues. President Trump called Mrs. Stewart on the phone to express support for her proposal and for the fuel loading problem. Mrs. Stewart expressed to the President that restoring livestock to effective levels will go far towards solving fuel issues.

Member Boies thanked Mrs. Stewart and asked about the conflicting message where permittees were involved in restoration plans on the Elko side of the burn, but apparently were not involved on the Winnemucca side.

Mrs. Stewart expressed that the Forest Service was helpful, but the BLM was not as helpful. Permittees are still excluded from details of restorations plans. The USFS will allow water developments and extended seasons now.

Member Boies asked if to date Mrs. Stewart had seen any flexibility for the next grazing season.

Mrs. Stewart emphasized that there is nothing to graze. There have been no details provided from the BLM about plans for the next season. She also emphasized that fencing funds will only be available for 6 months, possibly a year. This is not enough time to address the amount of fencing that is required.

Member Boies asked about the requirement of livestock loss reporting within 30 days and who it was to be reported to.

Mrs. Stewart confirmed that it was with the U.S. Department of Agriculture. Mrs. Stewart and Member Boies expressed that this was a requirement that does not make sense for the large scale of Nevada rangelands.

Member Boies expressed that fire risk needs to be factored into permits where calculations and decisions are being made with respect to AMUs.

Member Emm expressed familiarity with fire restoration plans and surprise with the lack of coordination with local permittees. Member Emm expressed that bringing landowners and management personnel is key to solving problems.

Mrs. Stewart also emphasized the need for collaboration.

Member Emm expressed that FSA is handling insurance and compensation.

Mrs. Stewart expressed that President Trump may speak to Federal Emergency Management Agency (FEMA) about the situation in Nevada. Mrs. Stewart expressed that compensation funds will not be enough to touch the damage, but that access to low interest or no interest loans would help. Mrs. Stewart indicated that just the BLM permit alone has 400 miles of fence that is possibly impacted.

Meghan Brown spoke about the juxtaposition of Mrs. Stewart's lack of involvement with the Winnemucca restoration and planning efforts, and the Elko district permittee's experience with restoration and planning efforts. Mrs. Brown offered to bridge the gap, and emphasized that grazing has a major role in the Elko district planning.

Mrs. Stewart emphasized the need for cooperative agreements that perhaps Nevada Cattleman's association could facilitate. Legal agreements prevented water from being used on the firefighting efforts which might have saved other operations.

Member Swanson expressed appreciation on an emphasis on holistic management which revolves around moving animals and timing of grazing. The monitoring handbook emphasizes the importance of timing as the strategy for short term monitoring. Where there are problems with grazing management it is usually due to an incorrect strategy, not overgrazing. Getting a strategy right is key. Mrs. Stewart emphasized that it is possible to be understocked, but overgrazed by using the wrong strategy.

Mrs. Stewart responded that they will be testing the theory of holistic management and different strategies by running cattle on private ground in the next season.

Member Swanson expressed the importance of timing to address the problem of Cheatgrass, and the challenge of water provided to graze and move a large herd of cattle. Member Swanson asked if the conversation of finding solutions at a local level will empower water developments that can provide time controlled grazing.

Mrs. Stewart indicated that it might. Water developments are probably stopped at a high level. The BLM may be able to provide the framework for water development, but it will vary with the permit. Giving ranchers more surety and flexibility would allow landowners to develop water.

Mr. Jim Lawrence offered a comment that the Department of Forestry is appealing the decision to not approve FEMA funding.

Member MacKenzie expressed appreciation for the tenacity and stewardship of the 96 Ranch.

Mrs. Stewart expressed the feeling that some areas are still at risk.

Member Goicoechea commented that cooperative agreements are important to have in place before the fire season.

***NO ACTION**

7. REVIEW OF CURRENT AND PENDING STATUS OF ALL DEBIT AND CREDIT PROJECTS INVOLVING THE SAGEBRUSH ECOSYSTEM PROGRAM - *FOR POSSIBLE ACTION* Kelly McGowan

Kelly McGowan reviewed a PowerPoint presentation available on the Sagebrush Ecosystem Program's website under agenda item 7. The presentation detailed recent transactions of transferred credits, credit projects with credits available for sale, projects with credits anticipated to be for sale in the near future, the debit projects mitigated through the Conservation Credit System (CCS), the debit projects with confirmed debit calculations, and the debit projects with debits not yet calculated.

Member Goicoechea asked if the credits available for sale or offset on Tumbling JR Ranch were additional to what has been used to date. Mr. McGowan affirmed that they were additional credits that are for sale.

Member Lister asked how baseline had changed on the West IL project and how that affected credit generation. Mr. McGowan communicated that the data had been collected before the Martin fire occurred, and that 1/3 of the credits anticipated for the affected areas would be made available for the restoration, and that the project would restore the area and possibly improve it.

Member Boies asked if the credits on slide 3 were from private land or if there were any public land credits included. Mr. McGowan confirmed that there is no public land currently in the credit system.

Mr. McGowan explained the difference between acreage and credit generation. It is possible to have a small acreage generate large amounts of credits if there is meadow habitat in the project. There may be discrepancies between acreages and credits due to vagaries in habitat.

Mr. Lawrence asked if the 23,789 was cumulative acreage or if it was just a total for page 3. Mr. McGowan confirmed that the total was just for page 3. Cumulative for all projects was approximately 38,000 acres and approximately 10,000 credits available.

Member Molini asked if the recent IM issued by the BLM regarding mitigation has had any effect on what the development companies plan to do.

Mr. McGowan replied that some companies that had started their process early have not changed plans, but that the companies that are deciding and weighing options are unsure about what type of mitigation they will need to do. Mr. McGowan reminded that this program has been and continues to be voluntary. To what degree the IM has affected any decisions is difficult to say.

Member Boies asked if Gold Bar and Gold Rock volunteered to run the Habitat Quantification Tool (HQT).

Mr. McGowan confirmed that was correct.

Member Boies asked if they have no plans to purchase credits.

Mr. McGowan confirmed that Gold Bar has indicated that there are plans to do restoration on public lands, and they will use a different system to measure the positive impacts that take place. In the case of Gold Rock the Record of Decision (ROD) indicates that the majority of compensatory mitigation will be done on BLM land. The ROD does mention that the 23 permanent debits generated by the project may use the CCS. The temporary disturbance will be offset using public lands, but the permanent disturbance may use the CCS.

Member Boies expressed that the State paid money and time quantifying the debits but the projects may not intend to use the CCS.

Member Boies asked if there were projects moving forward that the Sagebrush Ecosystem Technical Team (SETT) and the Sagebrush Ecosystem Council (SEC) is unaware of and are not being quantified?

Mr. McGowan expressed that most of the time the SETT learns of the projects after the plan of operations has been reviewed and they are already in the federal approval process. The SETT typically gets notice through the State Clearinghouse. The SETT typically has to reach out in the middle of the approval process. Member Boies mentioned that this will not change until the program is mandatory. Mr. McGowan agreed.

Mr. Lawrence added that Gold Bar and Gold Rock invited SETT involvement was due to a requirement in the MOU with the BLM and the Forest Service stating that the CCS was to be used as an alternative in the environmental document. The development companies complied with that requirement. Mr. Lawrence also emphasized the fact that the SETT and the SEP only gets notice through the public notice process.

Member Molini asked if the SETT has tried to get the BLM to notify them when they receive a plan of operations.

Mr. McGowan responded that the SETT has had conference calls with all the BLM field offices to try and engage in the process and had suggested that the SETT participate in monthly internal coordination calls that already happen between field offices. He has suggested that at some point during those calls the SETT could be included in discussions about what projects are possible in the future. No progress has been made on this front. Mr. McGowan indicated that part of this failure may be due to a lack of outreach, but that he expected that the Memorandum of Understanding (MOU) might have precipitated information sharing that is not happening. Mr. McGowan called attention to the fact that for many of the projects the approval process was started before the CCS was finalized.

Member Swanson asked if the CCS could be used to determine the credits that are generated by mitigation on public lands and if Gold Bar and Gold Rock had a thought process about how to do develop credits on public lands in the future?

Mr. McGowan answered that Gold Rock's measurements are proprietary, but the SETT has expressed a desire to run a desktop on the project sites so that we have at least an estimate to determine the uplift. The CCS does not project restoration efforts. We have been persistent with Gold Rock to run a desktop model to compare debit offsets. It will not be able to be verified in the field.

Member Swanson asked if the desktop will have the benefit of projections by the BLM for what they expect the mitigation projects to accomplish.

Mr. McGowan replied that that is a difficult question to answer due to developers picking and choosing how to mitigate with different methods. There is a disconnect between mitigating for direct disturbances, and what happens on the landscape due to indirect disturbance, and using different methods for mitigation is creating a difficulty for reporting.

Member Goicoechea commented that Eureka County comments on every planning document they receive asking for agencies to use the CCS.

Bill Dunkelberger hoped that the Forest Service involvement was sufficient.

Mr. McGowan responded that it was, but setting up some more structured involvement would be helpful. Mr. Dunkelberger also commented that the Raft River power line will be buried through priority habitat due to the success of an avoidance and minimizing effort.

Member Goicoechea asked why exploration projects are not rolled into the CCS.

Mr. McGowan responded that it is an issue, the CCS cannot currently quantify exploration as a disturbance, and it is an improvement planned for later in the agenda and is a correction to be made. Mr. McGowan also stressed the importance of quantifying impacts of exploration prior to development so that the habitat quality is not lost in the HQT if verification is completed later when the mine develops. Mr. Goicoechea indicated that Eureka County has 3 Environmental Assessments (EA) for exploration sites that are significant impacts and this is an issue that needs to be addressed.

Mr. McGowan discussed the comparison of direct impacts vs. indirect impacts. Most of the habitat impacts come from indirect impacts, and not acknowledging these impacts is undervaluing the impacts occurring. The maps in the presentation will explain why some cumulative effects for some projects are higher than others. The Twin Creeks Sage Tails project has a relatively small indirect impact into lower quality habitat (General Habitat Management Area (GHMA) and Other Habitat Management Area (OHMA)) which have lower mitigation ratios associated with them. The weights and distances of the project footprint are low due to the distance to Habitat Management Area (HMA). The Greater Phoenix Phase 1 generated 211 debits due to the direct footprint being outside HMA, and the indirect impact being limited as well.

Member Molini asked what was depicted by the blue lines in Greater Phoenix Phase 1.

Mr. McGowan responded that the blue lines indicated map units. The outer blue line represents the analysis area. If the whole project were within HMA, the blue line would extend all the way around the project. This is the area where field data is collected. The black line is analyzed for existing disturbance within that area. The area between the blue line and black line (6 and 12 Kilometers) is where outside influences can have an impact within the project area.

Mr. Lawrence asked if the 27,998 indirect impact areas was total impact acreage, or if it was restricted to just HMA impact acreage?

Mr. McGowan responded that it was only HMA acreage.

Mr. McGowan gave a discussion on Gold Rock which had a significant impact. The footprint is mainly within HMA and featured 1800 direct impact acres and approximately 35,000 indirect impact acres, which translated to approximately 3000 credits. The Gold Bar project had a smaller footprint, but it was all within priority habitat. The habitat did not have much outside influence on the habitat and 6800 debits were generated. Mr. McGowan indicated that these examples show that the CCS is operating as it is designed to operate. It emphasizes collocation, and expansions, and areas where there are already significant disturbances happening. Projects that go into new, pristine habitats are going to have significant debits generated.

Member Goicoechea asked how ground truthing relates to Pinyon/Juniper (PJ).

Mr. McGowan acknowledged that this area had significant PJ impacts, and this credit generation was done before the PJ was taken into account into the system. The understory however was still in good condition despite the PJ.

Member Goicoechea communicated that the presence of PJ is driving the desire for the project to do mitigation on public lands.

Member Boies commented that indirect impacts seem very large, but that a credit developer also can experience indirect impacts degrading habitat to the point where it may not be worth participating in the program. Mr. McGowan agreed.

Dan Huser commented that distance to the direct impacts are factored into the debits generated using the weights, distances, and disturbance curves determined for each anthropogenic disturbance type which take into account the best available science. Also because we have a greater sample size we have a greater ability to show that the system is working as intended.

Member Boies asked if any credits have gone out on the open market to be purchased.
Mr. McGowan answered in the negative.

Mr. Lawrence commented that he appreciated seeing a breadth of calculations. He was assured that the process achieves a goal that projects collocate, and discouraging projects that are not collocated. Also he stressed the importance that credit generation, not only preservation but also enhancement and restoration projects, be moved forward with options to generate credits on public lands using the CCS and HQT.

Kris Stewart commented that allowing landowners to develop water improvements could possibly be worked into the system as range improvements and could generate enhancement credits.

***NO ACTION**

8. REVIEW OF EXISTING OR PROPOSED ACTIONS TAKEN BY OTHER WESTERN STATES REGARDING COMPENSATORY MITIGATION REQUIREMENTS FOR THE CONSERVATION OF GREATER SAGE GROUSE - *FOR POSSIBLE ACTION* *Ethan Mower*

Mr. Mower indicated that each state has different challenges and consequently have developed different strategies. Answers to questions on the presentation are quite general.

Member Goicoechea asked where in Lieu fees go and how they were calculated.

Mr. Mower replied that he did not know, and the calculations go into a tool where the process is unclear.

Member Lister asked if anyone has addressed private land.

Mr. Mower responded that most states have indicated that private lands are not to be included in mitigation requirements.

Member Lister asked for confirmation that states are working towards Memorandum of Agreements (MOAs) with federal agencies on how to do mitigation.

Mr. Mower responded in the affirmative.

Member Swed expressed that USFWS staff have a different understanding of how these state strategies work. She offered staff assistance to provide clarification about whether compensatory mitigation frameworks extend to land ownerships beyond state lands.

Mr. Mower accepted the offer for assistance.

Mr. Wasley commented that the Nevada Division of Wildlife's (NDOW) understanding is that the Montana compensatory framework was to apply to private lands, and that Wyoming application to federal administered lands was a key component. Mr. Wasley also offered the assistance of NDOW to obtain clarification where it is needed.

Member Goicoechea commented that his reaching out to Colorado involved different answers in the course of the same conversation.

Mr. Mower emphasized that this information was preliminary and that he was not able to communicate directly with some people who could speak authoritatively on the matters involved.

***NO ACTION**

9. DISCUSSION ON POTENTIAL OPTIONS THE SAGEBRUSH ECOSYSTEM COUNCIL MAY CONSIDER TO ENSURE COMPENSATORY MITIGATION IS CARRIED OUT TO OFFSET CERTAIN DISTURBANCES TO GREATER SAGE GROUSE HABITAT - *FOR POSSIBLE ACTION* *Jim Lawrence, Nevada Department of Conservation and Natural Resources; Pam Robinson, Office of the Governor*

Mrs. Robinson discussed the different efforts and groups that are involved with the efforts to refine and leverage mitigation in western states that included the Western Governors Association (WGA) and the Sage Grouse Task Force. Mrs. Robinson indicated that Nevada's position is unique due to the amount of federal land present in the state.

Mr. Lawrence discussed compensatory mitigation options. Mr. Lawrence provided a memo that is posted on the Sagebrush Ecosystem website under this agenda item. Mr. Lawrence emphasized the requirement to have a mitigation program is clearly within state law, both within the SEC authority and within the Nevada Division of State Land (NDSL) authority. It does not require the use of the program. Page 3 of the Memorandum states that the council may adopt regulations, and the duties of the council include establishing a program to mitigate damages to Greater Sage-grouse (GRSG) habitat. Page 4 and 5 of the Memorandum states that the council and the NDSL has rulemaking authority to go through the regulation process. Any regulation adopted now would be temporary due to the timing with the legislative session. The regulation process would be a transparent process. NDSL is the entity that is required to authorize land uses on state owned lands. Much of this authorization is in the form of easements. The main criteria in granting the easement is whether or not granting the request is in the best interest of the State. Coupling that provision with the requirement of establishing a mitigation program, and the duties of the council would all be factored into any decision process NDSL would have to abide by. It does appear that the regulatory authority is available, particularly where the requirement would be on state owned land. Requiring mitigation on federal land is unclear. The original question posed at the previous SEC meeting was what regulations are in place requiring the use of the CCS on state owned land, there is that mechanism in place specific to requiring the CCS on state lands. Another option is a statutory amendment. It will not be as timely. It takes some time to get a bill through committees, and it would not be effective until July 2019, and it may change while it is in committee. Another option is an executive order. Governor Sandoval has already used executive orders to support the program. The first executive order 2012-09 established the Advisory Council, and Executive Order (EO) 2012-19 came later which established the council and the CCS. A possible Executive order would have to be specific and narrow directing the NDSL to use the CCS if any development crossed state lands in sage grouse habitat. Montana's EO would possibly apply to private lands. There is a number of options, but the timeliest option would be an executive order. Most states that have issued an executive order have followed with regulations later.

Member Goicoechea asked if an executive order which was followed up with regulations after the legislative session would be feasible. Member Goicoechea expressed the desire to see it in regulations, which may be more acceptable.

Mr. Bradley Crowell indicated that it was feasible, especially if backed by an EO. Mr. Crowell indicated that it would be useful to get clarification from the BLM or DOI about what will satisfy BLM.

Mrs. Robinson indicated that an EO would satisfy the BLM. Mrs. Robinson indicated that the BLM would like to see Nevada get to a place where the CCS is used. Mrs. Robinson indicated that regulations could start when we wanted them to start. Mrs. Robinson indicated that statutory requirements might not be the best because to change the language would require another statutory change if something did not work. It would be better to have statutory language directing regulations. The outcome is also very hard to control if statutory changes are pursued. Mrs. Robinson has been working with agencies to include language in the MOA to cover state agency's needs.

Member Swanson asked about the language in Montana's EO applying to private lands and whether it would apply if an entity needed to do something on federal lands, but needed a state permit?

Mr. Lawrence replied that he believed so, but he would follow up and check.

Member Swanson asked if Nevada had any permitting requirement for actions on federal lands.

Mr. Lawrence answered that the Division of Environmental Protection has some permitting actions, but most of the authority stems from the federal clean air and clean water acts.

Member Swanson asked Mr. Wasley if any of those permitting requirements on public lands flow through the Department of Wildlife?

Mr. Wasley answered yes, some directly, but most are indirect through the National Environmental Policy Act (NEPA) process. Each state is unique and each state will need a unique solution. WGA is trying to address mitigation broadly, not specific to sage grouse. Offsetting the impacts to sage grouse, through the CCS, only on state lands will look different than some other efforts. A minority of projects that NDOW comments on through NEPA would not require a state permit. The State's role on commenting in NEPA is called specifically in NEPA, and there may be some way to reference the NEPA angle.

Mrs. Robinson commented that we are trying to solve a small problem, in a way that is significantly bigger in Nevada because of the layers of federal land issues. Mrs. Robinson emphasized that we are the Sagebrush Ecosystem Council, and that entails enhancing habitats across species. Compensatory mitigation that the BLM doesn't have the authority to require is not specific to sage grouse. It is a broad definition of mitigation that may or may not have a species affiliated with the mitigation action. This presents a challenge to finding a solution.

Member Goicoechea agreed with Mr. Wasley and expressed frustration that the NEPA process does not seem to function when it is asked that the CCS be used. Member Goicoechea expressed that he did not want to pursue a route through NEPA because it gets ignored. If mitigation will ever be required at the federal level, it needs to be required at the state level. State lands are small, most lands are already conserved anyway. It should not be a big lift to ask that mitigation is used on state lands which can then be used as model on federal lands.

Member Boies asked if that was working in other states and expressed that he sees evidence of these requirements in other states and he perceives that it is not working otherwise. Member Boies expressed that it is time to take some action.

Mrs. Swed asked Mr. Wasley for clarification of what he meant with a previous comment. Was there an avenue for the state to exert through executive order or some other means, its authority whenever reviewing an action?

Mr. Wasley indicated that was correct. Mr. Wasley indicated that the language in the Montana EO that says that projects subject to state review could trigger the use of the CCS.

Mrs. Swed shared that Montana was specifically acknowledged for the robustness of its program, and that that provision in its language may have caused that acknowledgment by the United States Fish and Wildlife Service (USFWS).

Member MacKenzie asked if it was state land specific or if it would have crossed over to federal review?

Mrs. Swed replied that she was not certain how the Montana language would cross over to federal lands, but that it was her understanding that when the state is reviewing actions that may extend to federal lands there is an opportunity for the state mitigation system to be triggered. Mr. MacKenzie indicated that we need clarification and if there is an opportunity for that to be an option we need to pursue it. The system needs to explore all options, not just a state based regulatory action.

Member Molini asked if anyone has challenged the BLM IM.

Mrs. Robinson answered not to her knowledge, but that question would better be directed to the BLM. Mrs. Robinson discussed where the IM came from. Mrs. Robinson emphasized the need for uplift and enhancement on public lands. Mrs. Robinson indicated that the governor has invested significant time and effort into this cause and the Governor's office desires to help solve the problem before the administration changes.

Member Molini wondered if any environmental advocacy groups had challenged the IM and asked if anyone has challenged the authority the SEC has to put the CCS into place.

Mrs. Robinson replied no, and the reason for that is because it is a voluntary program.

Member Goicoechea wondered if the BLM could weigh in, and commented that whatever happens we could refer back to any actions when commenting through the NEPA process. Member Goicoechea asked Mr. Vaca what the BLM needs.

Mr. Vaca replied that he was not the solicitor, and issues are being discussed at higher levels in the Department of Interior (DOI). Mr. Vaca offered that in other states where there was a citing authority requiring mitigation, the federal government is equally requiring those measures on federal lands. The IM makes it clear that mitigation where it is required by state laws is still a consideration. Required compensatory mitigation is wrapped into the terms and conditions of where state and federal law requires. BLM needs to cite some state law that allows them to include that in their planning process. If the state had permitting authority requiring mitigation, the BLM could then tie-in to that authority and would be able to indicate why the BLM is requiring mitigation.

Member Crowell asked how the BLM state office would implement the guidance that the State came up with.

Mr. Vaca replied that it would be similar to how it functions currently but it would be more efficient with it being a requirement. When BLM issues a ROD or notice to proceed, it is contingent upon all permitting being complete. The NEPA analysis could include the requirement to use the CCS, but if it is also a state requirement, the BLM could become less involved and just require a state permit to be in place before the notice to proceed. The BLM could have a check box asking what the HQT results are, what are the committed mitigations, and how has the project met some standard. In some ways, part of the mitigation could be removed out of the BLM's hands, but that the details would need to be worked out with MOUs.

Member Swanson asked how we currently deal with mine land reclamation currently within state laws.

Mr. Lawrence replied that reclamation standards mandate that mines be restored to the previous condition. There is no specific reclamation provision that calls out a species habitat.

Member Swanson asked if there was a requirement for people to get a permit to construct a mine and the permit was contingent on successful reclamation and if that occurs on public land as well as private land.

Mr. Lawrence replied that that was correct.

Mr. Vaca commented that the BLM has stated that reclamation is aside from mitigation. Mitigation is limited to offsite actions. There needs to be a clear distinction between reclamation and mitigation requirements.

Member Swanson replied that he was trying to verify that there was a precedent set requiring state permits for activities on public land and there are requirements associated with those that set a precedent. We can make requirements and they can be the CCS, but at least a precedent has been set.

Mrs. Swed asked if Mr. Vaca could envision a path that if the state acknowledged that there was a permitting nexus with some state agency that it could trigger the authority of the SEC and thus the CCS. Is the path independent of which state agency the authority resides under as long as the authority is stated?

Mr. Vaca replied that where the authority and regulation comes from would not matter, so long as the intent is carried out through the requirement to have a permit in place and a condition of that permit is the requirement to offset impacts to the GRS and its habitat.

Mrs. Robinson commented that permits and regulations are different, and that you can have a regulation without a permit thus we have to be careful with the language if we are requiring a permit. Having regulatory authority is what is important, and perhaps a permit is not required, but that we have a regulation clearly stated.

Mr. Vaca replied that all of this is new ground and the details would need to be worked out, but an EO that cites something that requires mitigating adverse impacts solidifies better than where we currently are at. The agency is looking at Wyoming, Colorado and Oregon, and acknowledging that if a statute is in place requiring mitigation, BLM will honor that. States that don't have that statute in place, and mitigation is voluntary, the BLM will also mirror that.

Member MacKenzie asked if it was determined that this council had authority through regulation and rulemaking to do a permit process and would that be acknowledged by the BLM, even if it were not an executive order and not a statute?

Mr. Vaca replied that he was not the solicitor, but that it was the requirement that was the important thing. What satisfies the legal standing is unclear, but it would be a step in the direction that the IM is requiring.

Member MacKenzie asked if there was any internal declaration that there needed to be an executive order or statute or if it could be through regulation without those avenues.

Mr. Vaca answered that his gut reaction was yes.

Member MacKenzie commented that it would still require statutory authority to enact any regulations. It would ultimately have to come from statute.

Member Goicoechea asked if we proceed with an EO could we then go with the regulation avenue. We have the statutory authority to do that as outlined in the memo from Mr. Lawrence, that we have the authority to make rules. Member Goicoechea expressed his hesitancy to bring anything before the legislature. He expressed doubt that it would succeed and remain unchanged in the process. With the EO we can give a nudge in the right direction.

Bryan Stockton commented that states which have had an executive order have followed them up with regulatory and statutory changes and he would advised that both be required. Mr. Stockton commented that he did not know if it would be challenged, but a regulation would withstand a challenge better than an executive order. There is an argument that this is more of a legislative realm.

Member Boies asked if this would be specific to state lands.

Mr. Goicoechea replied that the requirement would be specific to state lands but that he would like to see language asking for the CCS to be used on federal lands. Member Boies agreed with that.

Member Boies commented that the price for doing nothing would be high.

Member Goicoechea commented that he believes action is needed.

Member MacKenzie made a motion to have legal counsel provide an opinion as to whether or not this board has the authority to enact a regulation for permitting process that would apply to federal lands as well as state land, and to require the CCS mitigation system to be used and a permit required and he would appreciate an opinion so that the council could explore that.

Mr. Stockton commented that would entail an official attorney general opinion which takes longer than we have. Mr. Stockton advised that the council does have the authority, with some weaknesses, but that there are strategies to work past challenges.

Mr. MacKenzie moved that we proceed with seeking regulation to require a permit for implementation of the CCS system for the mitigation process for any projects undertaken on state or federal land.

Member Goicoechea asked for a second.

Member Boies seconded the motion.

Member Goicoechea asked if the council needed or wanted to issue a permit. Do we need that language?

Member Lister asked if that motion included asking the governor for an executive order in the short term, or does the council just start the regulation process.

Mr. MacKenzie commented that an amendment to the motion to include a request for an EO would be good, but a regulation was probably needed. Member Goicoechea agreed that a regulation was better, but in the interest of time an EO would help. Mr. Vaca commented that having something in place before the Resource Management Plan (RMP) or MOAs are in place was not needed because the BLM would follow current policy even after the RMP is implemented. Mrs. Robinson clarified that if the executive order is needed to kick start things, it will be narrow in order to not usurp authority needed from final regulations. Mrs. Robinson emphasized the need for teamwork. Member Goicoechea commented that the motion on the table was asking if an EO could be done. Member Goicoechea indicated that if an EO was not possible, they would still move forward with regulations.

Member MacKenzie asked for clarification that the EO would not be a prerequisite to moving forward with regulations. Member Lister confirmed that the motion was just to request that the Governor issue an EO which would be helpful for the short term approach until a regulation could be done.

Member Swanson seconded the motion.

Member Goicoechea asked for a debate on the amendment of asking the Governor's office for an EO but that it would not limit the ability going forward to enact regulations.

Member Swed expressed hesitation around limiting the actions to state and federal lands and not private lands. Mrs. Swed asked the body not to preclude the applicability of the CCS to private lands. Member Boies commented that this is the route to have a positive impact on private lands. Mr. Boies expressed that including private lands would be a hurdle to success. Mrs. Swed asked if there was a need to specify the land ownership in the actions. Some states may have deliberately chosen not to define the land ownership in their actions to leave room for later debate on the issue. If the goal is to adequately conserve GRS habitat and preclude a listing, binding language may be adverse.

Member Goicoechea clarified that the motion is to apply the CCS to state and federal lands, but mentioned it would also apply to private lands because that is where credits are generated. Member MacKenzie commented that including private lands would have a chilling effect on the credit system. Mr. MacKenzie commented that he did not think the support is present for including private lands and would not be good for generating credits. Member Swanson commented that the motivation for the conversation is the new policy from the Secretary of Interior, and overreaching should be avoided. Member Goicoechea commented that he has heard from many people to not make this mandatory on private property or there would be adverse effects. Member Goicoechea agrees with the sentiment. Member Lister commented that much of this discussion would have chances through the regulatory process to be debated. Member Lister recommended to take action, and let details be worked out in the future.

Member Goicoechea asked for any other debate.

Member Goicoechea asked for a vote on the amendment. Should Governor Sandoval feel it appropriate, the council asks for an executive order related to the use of the CCS on federal and state lands. Unanimous vote in the affirmative.

Member Goicoechea asked for a vote on the motion that the SEC goes forward with the regulatory process to create regulations applying the CCS to state lands and also asking that they be applied to federal lands going forward and a permit be issued in accordance with those regulations. Member MacKenzie clarified that we are not "asking". Member Goicoechea amended to say "requiring". Unanimous vote in the affirmative.

***ACTION**

10. REVIEW AND GUIDANCE OF LETTER FROM THE SAGEBRUSH ECOSYSTEM COUNCIL TO THE SECRETARY OF INTERIOR ADVOCATING THE USE OF NEVADA'S CONSERVATION CREDIT SYSTEM AND ITS HABITAT QUANTIFICATION TOOL IN THE APPLICATION OF COMPENSATORY MITIGATION WITHIN HABITAT MANAGEMENT AREAS (HMAs) IN NEVADA - *FOR POSSIBLE ACTION* Kelly McGowan, SEP Manager

Member Goicoechea recommended, based on the previous actions that no action be taken on this agenda item.

***NO ACTION**

11. REVIEW THE DRAFT LIST OF POTENTIAL IMPROVEMENTS TO THE CCS FOR 2018-2019 - *FOR POSSIBLE ACTION* SETT Staff

Mr. McGowan introduced a presentation of improvements recommended for the CCS. This presentation is available on the Sagebrush Ecosystem Program website under this agenda item.

Member Boies asked at what level re-verifications will be done at?

Mr. McGowan replied that they would be done at a 75% reduction. Member Boies expressed reluctance of backing off of the re-verifications and desiring to keep the integrity of the land intact.

Member Boies asked if it had to be done at that level.

Mr. McGowan replied that those questions will be looked at and several options will be returned to the council and the cost of re-verification is not the only consideration. The SETT will be cognizant of the integrity of the land. Mr. McGowan expressed the desire to collect data that is relevant to the landscape.

Member Molini asked how enhanced annual monitoring overall influences the outcome in the CCS.

Mr. McGowan replied that the annual monitoring is meant to be a checkbox compared against activities that are proposed and performed. Photo points will play a large role.

Member Molini asked if this is a concern about expenses, can an enhanced annual monitoring effort be effective if there are 10 years between verifications.

Mr. McGowan replied that that will be a consideration in the options being brought back to the council. Ms. Brown commented that the annual monitoring can be done more frequently in places of concern if the monitoring brings something to the SETT's attention. Narratives from annual monitoring can help trigger more monitoring. Mr. McGowan commented that looking at problem areas with the same frequency but with enhanced effort is also an option and there are many options on the table.

Ms. Brown asked if there were predetermined locations for the re-verifications.

Mr. McGowan replied that there were no predetermined locations for monitoring. Ms. Brown asked if a more strategic approach would be better, allowing the annual monitoring to dictate where the re-verification is to occur.

Member Swanson commented that the Rangeland Monitoring Handbook can provide some guidance. A combination of short term monitoring and long term monitoring is necessary. A standard protocol is not recommended, instead, a customized monitoring plan should be figured out and is what is needed. Member Swanson suggested using the handbook for each area, although it may not be a standard solution everywhere.

Mr. McGowan acknowledged that the handbook would be used in the process. Financial assurances dictate that monitoring is anticipated in advance which presents a challenge to customized and dynamic solutions.

***NO ACTION**

12. REVIEW OF ACTION ITEMS AND FUTURE AGENDA ITEMS DISCUSSED DURING THIS MEETING AND SCHEDULING NEXT SEC MEETING - *FOR POSSIBLE ACTION*

Member Goicoechea proposed reviewing the improvements and updates to the CCS in future meetings, and regulations as well.

Member Lister proposed evaluating state lands, who manages what and how the management plan will apply to those state lands.

Mr. Lawrence acknowledged that it would be very easy for state lands to come back with a map of where state lands are within habitat and who manages what.

Member Swanson commented that there may be a Governor's consistency review and some federal agency plan evaluation steps in the future. Member Goicoechea commented that will be supplied as the plans come out.

Next meeting will be Tuesday December 11th, 2018.

13. FEDERAL AGENCY UPDATES AND COMMENTS:

- A. USFWS --- No updates
- B. BLM --- Sage Grouse Proposed Plan Amendment will be published on November 2nd, followed by a 30 day protest period and 60 day Governor's consistency review. BLM is working on 27 ES&R plans, 11 in Elko, 5 in Winnemucca, 1 in Carson City, 4 in Ely, 1 in Southern Nevada, and 5 in Battle Mountain. Emergency

Stabilization and Rehabilitation (ESR) budget will possibly be 15.5 million dollars. 873 wild horses and burros were removed from the range during the Owyhee gather, and 887 removed from Antelope Valley and Goshutes. The BLM has planned gathers scheduled for late fall and early winter.

Member Lister asked that out of the 1600 head gathered, what percentage of each herd management area did this gather encompass?

Mr. Shannon replied that he did not know the percentages, but the targets were reached.

- C. USFS --- USFS came out with a plan amendment. The comment period is open and closes January 3rd. A final EIS and draft ROD will be completed in Feb, followed by a 60 day protest period, the final ROD will be signed in May or July. The expected EIS is range-wide but state RODs will be issued. There are no expected public meetings, however, there may possibly be some virtual meetings via WebEx, on Wednesday, November 8th, from 10:00 AM – 12:00 PM, and Thursday November 14th from 5:00 PM – 7:00 PM. USFS reported that 12 cooperating agency agreements have been signed. Vicki Christiansen was sworn in as USFS Chief. The Lamoille Canyon fire is 99% contained. USFS noted that the largest issue is access through winter, the guardrails were burned and possible landslides will most likely close the canyon through the winter. Ray Dotson and Bill Dunkelberger are working on a joint chiefs' agreement to supply fire aid.
- D. NRCS --- NRCS has had some administrative changes combining with other agencies. On November 13th and 14th, the Nevada Association of Conservation Districts have a meeting in Elko.

14. STATE AGENCY UPDATES AND COMMENTS:

- A. DCNR --- The Division of Forestry will appeal the Fire Management Assistance Grant (FMAG) request, although there is no idea on timeline. Also, DCNR will be signing an MOU with Pheasants Forever for meadow enhancement.
- B. NDOW --- It was confirmed through a colleague that Wyoming requires mitigation on state and federal land, but it is voluntary on private land. NDOW has purchased approximately \$609,000 of seed for fire restoration using external and internal funds, and Imazapic has been purchased for aerial application on 24,000 acres. NDOW is working with private landowners within fire affected areas to assist with the restoration efforts, NDOW has put 2.5 million towards fire restoration in 2018. NDOW staff and volunteers fenced late brood rearing habitat in central Ruby Valley which was being negatively impacted by horses. 7000 feet of pipe rail fence was installed. NDOW is working with Kinross to fence habitat in Long Valley slough, NDOW is also fencing late brood rearing habitat in the Snowstorm Mountains collaboratively with Orovada. NDOW is working with BLM to fence habitat in Washoe County and is seeking bids to fence around meadow complexes. The final numbers for lek counts in 2018 were: 961 leks counted, with 542 active. The peak male total was over 9000. The 161 trend leks averaged 20 males per lek, which is a 20% decline over 2017. The average attendance rate for 2018 was 23% below long term average attendance of 26.5 males per lek.

Member Molini asked about the health of NDOW staff injured in helicopter crash.

Mr. Wasley responded that those employees were on the mend.

- C. NDA --- The rangeland monitoring app is out and available. Dave Voth continues to attend rangeland monitoring handbook trainings, and trainings for this app will continue. EddMaps training continues with sister agencies. The Department of Agriculture is working on gathering information to bring more information about the impacts of fire and when decisions are made regarding fire aid on a federal level.
- D. SETT --- The SETT asked that Regional Conservation Partnership Program (RCPP) announcement be distributed to any who may benefit. There is \$1.2 million available and fire affected people are the focus of this effort, however only with one funding cycle left, we just want to get the money spent.

15. PUBLIC COMMENT

Mr. Floyd Rathbun commented that he would like to see the Bi-state Sage Grouse included in the CCS, and that land treatments and existing rights such as water be used for credit development in the CCS. Mr. Rathbun also asked how the SEC was to deal with habitat needs of the sage grouse when water is being diverted to Walker Lake.

Mr. Swanson asked if RCPP funds could be used on public lands. Member Dotson replied in the negative

16. ADJOURNMENT

Meeting was adjourned at 1:51 PM.

DRAFT