



STATE OF NEVADA
SAGEBRUSH ECOSYSTEM COUNCIL
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MITIGATION REGULATIONS WORKSHOP DRAFT MINUTES

Date: Tuesday, December 11, 2018
Time: 8:30 a.m.
Place: Capitol Building – Guinn Room
101 North Carson Street, Carson City, NV 89701

Council Member Present: Chris MacKenzie, Allen Biaggi, Steven Boies, William Molini, Sherman Swanson, Brian Amme, Meghan Brown for Jerri Conrad-Lewis, Jim Lawrence, Bradley Crowell, Carolyn Swed, Gary Roeder for Ray Dotson, Cheva Gabor for Bill Dunkelberger, Pam Robinson, Sheila Anderson.

Council Members Absent: Starla Lacy, J.J. Goicoechea, Bevan Lister, Tony Wasley.

1. OPEN WORKSHOP, INTRODUCTION

Vice-Chairman Chris MacKenzie called the workshop to order at 8:49 AM.

2. PUBLIC COMMENT

No comment was brought forward at this time.

3. PRESENTATIONS AND DISCUSSION OF PROPOSED REGULATION

Mr. Kelly McGowan introduced the purpose and background for the workshop, and explained that there will be additional opportunities for public comment. Mr. McGowan provided the authority for adopting regulations, and the authority for the Division of State Lands to adopting regulations. Actions that precipitated the seeking of regulations as well as justification for doing so were presented. Proposed regulation language was presented.

4. PUBLIC COMMENT

Vice-Chairman Chris MacKenzie called for Public Comment.

Member MacKenzie asked for a definition of “existing mitigation programs.” Mr. McGowan responded that this language was specific to the Barrick Bank Enabling Agreement and the agreement with Newmont mining. Member Molini asked if “notice level exploration” had a definition. Mr. McGowan responded that he understood it to be 5 acres or less.

Member Biaggi clarified that this language represent the status quo.

Member Boies asked if the intent is that future projects will need to use the Conservation Credit System (CCS). Mr. McGowan responded that the intent was that the projects existing today could use existing agreements, but that future projects would need to use the CCS and no new mitigation programs would be created.

Mr. Lawrence clarified that this public hearing is designed to collect comments and that based on comments language can be constructed for regulations.

Member Biaggi asked that there is a definitive statement within the language of the proposed regulations that state “this requirement of using the CCS does not apply to mitigation agreements in place prior the effective date of these regulations.” The intent of this statement is to make clear that there is no effort to shoehorn past efforts into the CCS.

Member Biaggi asked for an outline of the approval process for these regulations. What happens after the workshop, and who approves the regulations? Brian Stockton explained that this is a process for temporary regulations, after the 2nd workshop the Sagebrush Ecosystem Technical Team (SETT) will draft regulation language, it will be submitted to the Legislative Council Bureau and it will come back to the Sagebrush Ecosystem Council (SEC) for approval. Once approved it will be filed with the Secretary of State and become effective. It will be effective until 11/1/2019. On July 1st, 2019 the process for permanent regulations can be initiated, workshops will be held again, a second approval process will be conducted. The regulation will need to go through the Legislative Commission and the Secretary of State to become permanent.

Member Biaggi asked if the latest version of the Bureau of Land Management’s (BLM) Land Use Amendment Plan used the term “no net loss” instead of “net conservation gain?” Matt Magaletti answered that BLM did not replace the net conservation gain standard, it removed it altogether to align with the latest mitigation policy. When the Proposed Land Use Plan Amendment becomes the Record Of Decision, it will no longer contain the net conservation gain standard. Member Biaggi asked if the proposed language for the regulation is in any way in conflict with the BLM’s policies. Mr. Magaletti answered no.

Member Biaggi asked what the nexus was between the State adopting regulations for mitigation that is supposed to bind federal agencies to require mitigation when Internal Memos make clear that the BLM in this case does not have the authority to require mitigation. Mr. Magaletti answered that he has no clear answer, but the solicitors are working on the clarification. For discretionary activities BLM policy will be to defer to that state when it comes to compensatory mitigation and the net conservation gain standard. Mr. Magaletti does not know how that would impact the 1872 mining law. The BLM will work on formalizing the coordination process for implementing state plans on federal lands through a Memorandum of Agreement.

Member Biaggi wondered if there were other activities outside of mining and exploration that could be classified as de minimus.

Member Molini asked how the regulations would interface with the executive order, specifically if the regulations were not adopted if the Executive Order would still apply into the future. Mr. Stockton answered that yes, the Executive Order would still be in place.

Ms. Robinson asked that the regulations be clear so that state agencies are not inadvertently captured by the regulations when they do work in Grouse habitat, but where the work does not constitute anthropogenic disturbance. Jim Lawrence responded that the State Plan includes activities that are anthropogenic and that this would provide guidance. Ms. Robinson responded that the Governor’s Office intent was not to supersede state agencies other regulatory processes.

Member Boies asked if during the process there was any way to simplify the process of requiring mitigation on public lands and not private lands in a checkerboard area. The process might be confusing in the future if development is happening on public as well as private land.

Mr. Doug Busselman, representing the Nevada Farm Bureau offered a statement that was also submitted in writing. The statement is attached to these minutes.

Mr. Kim Summers offered a comment that asked that current development projects be grandfathered in the way they are, but that it is written clearly that all new projects be required to go through the CCS. The regulations should support a program that deters the disturbance of habitat. Encumbering private lands with a 30 year preservation contract is a big deal to credit producers. Mr. Summers expressed the thought that credit producers are at monetary risk, while development is allowed to pay money and then generate revenue from the disturbance. He expressed that there should exist some offset that contributes to conservation. Mr. Summers emphasized that for the program to exist in perpetuity it has to have value for private landowners. As much value as gold and silver. Mr. Summers challenged the

Council to remember the private landowners during the development of regulations and to have the regulations reflect the value of the time and energy of private landowners.

Mr. Richard Perry representing the Nevada Department of Minerals suggested that these regulations should address a number of concerns, and that a trigger for the implementation of the regulations should probably be National Environmental Policy Act (NEPA) related. An Environmental Assessment or an Environmental Impact Statement should probably be a trigger. Mr. Perry offered his assistance in developing language.

Mr. Brian Amme made a comment that public safety actions should probably be exempted.

Member Swanson asked regarding Section 1 of the proposed regulations if there are discrepancies in anthropogenic disturbances that the Federal agencies review vs. what the State reviews? How would this be resolved? Member Swanson expressed concern that where there may be no requirement for the State to review proposed actions, the federal government would therefore not be allowed to apply a mitigation standard.

Member Molini expressed that the Nevada Department of Wildlife may be a useful organization due to its generally recognized standing.

Member Biaggi asked Ms. Swed for information regarding the intent of a species review in 2020 for the potential listing of the Greater Sage Grouse (GRSG). Ms. Swed related a desire for the U.S. Fish and Wildlife Service (FWS) to conduct an assessment in 2020 of the GRSG, but the review will not be for the intent of a determination of a formal listing of the GRSG. It will be an opportunity to conduct an assessment of the ongoing conservation efforts.

Member Swanson asked about whether Candidate Conservation Agreements with Assurances (CCAA) could apply in these situations? Ms. Swed replied that there was no straightforward answer to this question. The FWS has the option to offer a number of programs like CCAAs, and the FWS has evaluated how the CCS could integrate with these options, but that there are no straightforward answers yet. There may be means to provide assurances in the event of a listing, but that the FWS is hopeful that through conservation actions this would not be needed. Member Swanson asked if there was anything within the current rulemaking process that would make it possible to provide assurances later. Ms. Swed answered that it is important for the State to remain committed to net conservation. The State needs to maintain acknowledgement that anthropogenic disturbance is a key cause for the decline of the GRSG, and to remain committed to ensuring the anthropogenic disturbance is adequately offset.

Member Boies asked for clarification of the process for reviewing the status of the GRSG in 2020, specifically if the review will start at square one for the review? Ms. Swed indicated that there has been a shift in responsibilities and that the State will take the lead in conducting the evaluation. Deputy Secretary Bernhardt has indicated that he sees no obligation from the FWS in that evaluation. It will not be a formal evaluation for listing. Litigation could compel the FWS at any time to reexamine the 2015 decision. If a ruling to reexamine occurred, all information would have to be gathered to determine whether a listing is warranted.

Ms. Meghan Brown asked for clarification that Nevada State Agencies would conduct the evaluation in 2020, and not the Nevada State FWS office? Ms. Swed answered that yes, the State Agencies would be leading the evaluation, with input from the FWS.

Member MacKenzie commented that it was important for the State to show that it is contributing at a large scale to the greater conservation effort. Ms. Swed responded that our challenge is to figure out how to make conservation effective at a range-wide level.

Vice-Chairman Mackenzie asked for more public comment. There were no further comments.

5. CLOSE OF WORKSHOP

The workshop was closed at 9:54 AM.

6. ADJOURNMENT

The workshop was adjourned at 9:54 AM.