



STATE OF NEVADA  
**SAGEBRUSH ECOSYSTEM COUNCIL**  
201 South Roop Street, Suite 101  
Carson City, Nevada 89701-5247  
Phone (775) 684-8600 - Fax (775) 684-8604

**APPROVED MINUTES**

**Date:** Thursday, February 8, 2018  
**Time:** 8:30 a.m.  
**Place:** Bryan Building – PEBP Conference Room  
901 South Stewart Street, Carson City, NV 89701

\*Due to a technical error in the PEBP Conference Room, this meeting was not recorded

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**Council Members Present:** J.J. Goicoechea, Chris MacKenzie, Steven Boies, Bevan Lister, William Molini, Sherman Swanson, Starla Lacy, Cheva Gabor for Bill Dunkelberger, John Ruhs, Carolyn Swed, Gary Roeder, for Ray Dotson, Bradley Crowell, Jim Lawrence, Jim Barbee and Tony Wasley.

**Council Members Absent:** Allen Biaggi, Gerry Emm, Bill Dunkelberger and Ray Dotson.

1. **CALL TO ORDER** – Chairman J.J. Goicoechea called the meeting to order at 8:33 a.m.
2. **PUBLIC COMMENT** – None
3. **APPROVAL OF AGENDA – \*FOR POSSIBLE ACTION**  
*Approval of agenda for February 8, 2018* – Member Chris MacKenzie moved to approve the agenda; seconded by Member Sherman Swanson; motion passed unanimously. **\*ACTION**
4. **APPROVAL OF MINUTES – \*FOR POSSIBLE ACTION**  
*Approval of minutes from the meeting held on December 15, 2018* – Member William Molini made a motion to approve the minutes with no noted corrections; seconded by Member Swanson; motion passed unanimously. **\*ACTION**
5. **COUNCIL MEMBER ITEMS AND CORRESPONDENCE** –  
Council members may make comments at this time and the Program Manager will bring forward any pertinent correspondence directed to the Council.  
Mr. Kelly McGowan provided the Sagebrush Ecosystem Council (SEC) with correspondence from Congressman Mark Amodei addressed to Secretary Ryan Zinke, regarding the Department of the Interior's (DOI) Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation. A copy of the letter is located on the program's website. Mr. McGowan further advised the SEC that Earthton Holdings, who was previously approved by the SEC as a project proponent, will not be pursuing entry into the Conservation Credit System (CCS) at this time. Mr. McGowan advised that the funds dedicated to that project could be made available for another project of the SEC's choosing. Mr. McGowan's final update was to note that the Bureau of Land

Management (BLM) would be holding scoping meetings to address firebreaks, fuel treatments and targeted grazing, in the near future.

**6. PRESENTATION AND DISCUSSION ON THE POTENTIAL TAX IMPLICATIONS AND STRATEGIES FOLLOWING CCS CREDIT SALES - \*FOR POSSIBLE ACTION\***

*Robert Veldman-Senior Advisor, Doug Claussen-CPA Principal, Dusty Marquardt-CPA Manager - KCOE*

Mr. Robert Veldman introduced Mr. Claussen and Mr. Marquardt who then reviewed a PowerPoint presentation titled, "Tax Implications and Strategies Following CCS Credit Sales." A copy of the PowerPoint presentation can be found on the program's website. Messrs. Claussen and Marquardt advised the SEC of the possible tax implications on the sale of credits and the possible ways to mitigate the tax liability. Mr. Marquardt stated that the research their firm has performed would indicate that conservation credits would be considered by the Internal Revenue Service (IRS) as a restrictive covenant, identified as an asset, and would be a taxable event for the landowner. Mr. Marquardt further stated that a landowner should carefully consider the available options far in advance of the sale of the credits to reduce the tax liability, and that such planning could include assuring that the sale is treated as a long term capital gain, rather than ordinary income; sell a smaller number of credits at a time in order to not be considered a dealer of credits; structure the credit sale as an installment sale to spread out the tax burden over a longer period of time; use the existing basis in the land to offset part of the sales proceeds; and engage in additional tax planning prior to and after the sale. Member Lacy asked if the land basis would be the current appraised value of the property or the original purchase price. Mr. Marquardt replied that the basis would be the original purchase price of the property. Member Lacy then replied that the CCS requires landowners to maintain and monitor the project over a thirty-year period, which would include thirty-years of expenses and it is not reasonable for the landowner to pay the tax liability in year one. Mr. Claussen replied that a landowner could enter into an installment contract with the credit buyer and then the landowner would pay the tax liability as the payments were received, rather than in an up-front lump sum. Member Lacy inquired if there had been any federal legislation proposed to reduce the tax burden on the landowner. Mr. Claussen replied that he had not heard of any federal legislation at this time. Mr. James Lawrence said that this is an emerging market and because of that, the IRS rules are uncertain, but the project proponents need to know the facts. Mr. Lawrence said that legislation should be explored and they could possibly look for partners to assist in carrying out the lobbying and sponsoring of this legislation. Chairman Goicoechea advised that more discussion is needed on this subject and they will work with Nevada's federal delegation to come up with a solution. **\*NO ACTION**

**7. REVIEW AND POSSIBLE APPROVAL OF THE 2017/18 CONSERVATION CREDIT SYSTEM CONTINUAL IMPROVEMENT RECOMMENDATIONS - \*FOR POSSIBLE ACTION\***

*SETT Staff*

Mr. Kelly McGowan reviewed a PowerPoint presentation titled, "2017/18 Draft Findings & Improvement Recommendations Report," a copy of which is available on the Program's website. Mr. McGowan stated that the Sagebrush Ecosystem Technical Team (SETT) is recommending three improvements to the Conservation Credit System (CCS), previously discussed by the SEC on December 15, 2018, as well as one additional new improvement as follows:

- 1) Allow term credits to offset permanent impacts;
- 4) Reclassify powerline subtypes to incorporate new research;
- 5) Create new anthropogenic disturbance subtypes to categorize ancillary features;
- 6) Conifer removal; and
- 7) Alternate methods to more efficiently analyze debit projects within the CCS.

Mr. Kelly McGowan reviewed Finding 1 with the SEC advising that permanent credits, in some circumstances, may not be a feasible option for either the credit developer or the credit buyer. Mr. McGowan noted that in some situations only a small portion of debits generated from a debit project must be offset with permanent credits; the cost of financial assurances is significantly higher for permanent credits than for temporary credits; credit developers are unlikely to be interested in generating both temporary and permanent credits from the same credit project; and credit developers are unlikely to sell or transfer permanent credits without clear understanding of the demand. Mr. McGowan then presented the SETT's improvement recommendation

to allow term credits to offset permanent impacts utilizing a 3:1, 4:1, 5:1 or 6:1 ratio, rather than the 12:1 ratio offered at the December 15, 2017 meeting. Mr. McGowan provided new rationale for the ratios by stating that several states require that a 99-year lease is the longest possible contract for a lease of real estate by statute, resulting in a 3 times multiplier. Mr. McGowan also provided that Minimum Viable Populations (MVPs) and Population Viability Analyses (PVAs) are tools that can be used to predict population persistence over a defined time period and that MVPs were defined as one with a 99% probability of persistence for 40 generations and that the average life span of 3-5 years for a sage-grouse results in a multiplier from 4 to 6. Member MacKenzie advised that he had discussed the issue with the SETT and he thought basing the multiplier on the life of the sagebrush, rather than sage-grouse would be more logical. Member MacKenzie advised that he had discussed the issue with the SETT and he thought basing the multiplier on the common law Rule Against Perpetuities, which precludes perpetual estate planning, and substituting the life of the sagebrush, rather than sage-grouse would be more logical. Mr. MacKenzie said he believed the life span of sagebrush was 100 years, plus the 21 year time frame established in the Rule Against Perpetuities, equated to a rounded number of 120 years, and that calculation would result in a 4:1 ratio using 30 years as a standard term credit duration. This was considered equivalent to the rule against perpetuities as a basis of comparison. Some members of the SEC disagreed with the 100-year life span stating that it was closer to 60 years. Member Swanson advised that the 4:1 ratio would allow the SEC a more conservative approach. Member Swanson moved to allow term credits to offset permanent impacts utilizing the ratio of 4:1; seconded by Member Bevan Lister; there was discussion on the motion; motion passed unanimously.

**\*ACTION.**

Ms. Katie Andrie presented the SETT's Finding 4, reclassifying powerline subtypes to incorporate new research noting that scientific research is lacking on the indirect impacts between powerline structural types on the sage-grouse population. Ms. Andrie said that recently acquired data on raven nesting frequency along distribution lines justifies additional classification and clarification of powerline subtypes within the CCS. Ms. Andrie said that the SETT's recommendation is that three phase distribution lines with a single cross arm be classified in the 25% weight/6 kilometer (km) disturbance powerline category and that powerline subtypes be redefined from "monopole" to "single phase" and "transmission – distribution" to "three phase." Member Swanson advised the he did not agree with the redefinition and initially suggested that the SETT utilize "nest augmented powerlines." After discussion, the SEC decided instead of "single phase" or "three phase" as the new subtype category was initially proposed by the SETT, "nest facilitating" and "non-nest facilitation" seemed more appropriate. This terminology more appropriately described the impact the power pole structure rather than the phase itself. Member Lacy asked if a distribution powerline was fitted with perch deterrents if the weight would then be 25%. Ms. Andrie responded affirmatively if the perch deterrent was documented to be successful. Ms. Andrie advised the SEC that in order to classify a single cross arm three phase line within the single phase subtype, the following conditions must be met: At least 3km of continuous line consisting of single cross arm structures; no more than one double cross arm structure within 6km of continuous line. Ms. Andrie provided the SEC with data collected by the Wells Rural Electric Association showing a 210% increase in the frequency of nesting on a three phase powerline compared to a single phase powerline and a 158% increase in frequency of nests on double cross arm three phase powerlines compared to the single cross arm three phase powerline. The SEC had further questions and discussions regarding Improvement 4.

Ms. Andrie continued the PowerPoint presentation with Finding 5: Create new anthropogenic disturbance subtypes to categorize ancillary features by stating that anthropogenic disturbance categories do not differentiate ancillary features from their associated primary anthropogenic features; however, the disturbance results in significant increases in debit estimates and the indirect effects should be more appropriately calculated. Ms. Andrie noted that the SEC improvement recommendation is that ancillary features be classified to half the weight and distance of their associated anthropogenic disturbance features. Ms. Andrie noted the lack of scientific data on ancillary features and the application of a more appropriate indirect impact associated with these ancillary features will result in a reduction of the indirect impact area requiring field sampling, increase efficiency, and reduce time, effort and costs during field sampling. Ms. Andrie provided the SEC with a graph outlining the debits generated when comparing a separate surface disturbance footprint as the full impact of a large mine to half the weight and distance of the same disturbance categorized as an ancillary

feature. Member Lister asked how this improvement would affect the credit developer. Ms. Andrie said that this improvement could benefit a developer if the project area was located in the area of a mine that contained identified ancillary features.

Chair Goicoechea called for a recess at 10:56 a.m., and reconvened at 11:05 a.m.

Mr. Dan Huser continued the PowerPoint Presentation with Finding 6: Conifer removal. Mr. Huser stated that the methods initially established to quantify the impacts of conifer removal and the credits awarded from the implementation of such actions are no longer viable due to recent changes in the CCS. Mr. Huser also stated that Dr. Pete Coates is preparing products focused on conifer removal and its effect on the sage-grouse habitat for the SETT, but they are not yet available and it is unknown as to whether they will offer a solution to quantifying credits when conifer is removed. Mr. Huser said that the SETT improvement recommendation is that for phase 1 map units with between 1 and 10% conifer cover, the local scale habitat quality is to be multiplied by 1.2 to determine the immediate uplift credits. Mr. Huser further said that phase 2 map units with between 10 and 20% cover are multiplied by the local scale habitat function by 1.5. Mr. Huser said that phase 3 map units would generally not be included in credits projects. Chairman Goicoechea asked if we planned to use a map to characterize the phases of conifer. Mr. Huser confirmed that using a map to characterize the phases of conifer by percent cover was a good way to standardize the process, yet due to the multiplicative nature of the HQT, credits would likely vary considerably after HSI, field data collection, and anthropogenic disturbance are taken into account. Carolyn Swed of USFWS expressed concern that the SETT had assessed economics and profit potential in the selection of different multipliers for phase 1 and 2 removal and wanted to ensure the improvement was instead rooted in science. Mr. Huser stated that the higher multiplier was necessary in areas of Phase 2 removal to account for the added benefits to GRSG when phase 2 PJ is removed, as well as the likelihood of reduced credit yields where higher conifer cover exists (due to reduced HSI values and reduced habitat quality reflected in onsite sampling results), and to incentivize projects to also include Phase 2. Member Swanson stated he believed removal should take place in areas where the understory allows for removal at higher percentages of cover than the 20% cover threshold, in which case these areas should also be treated as Phase 2 conifer. Mr. Huser stated that his recommendation made sense as a relatively high quality understory would be required regardless for a project to yield meaningful credits, and the upper threshold of 20% cover for phase 2 would be removed. Mr. Huser continued by saying that verification would occur every fifth year as with all credit projects but would also require confirmation that no trees are present. Mr. Huser said that the map units will be delineated as usual for each project, except that the conifer map units will be determined in the conifer layer map in ArcGIS. Mr. Huser stated that phase 1 map units found not to meet an average conifer coverage threshold of 1.0% will be treated as typical maintenance associated with credits projects and would not be eligible for uplift credits from the conifer removal. Mr. Huser then advised the SEC that the previous map approved at the December 15, 2018 SEC meeting, under Improvement 2, has been reconstructed to display a finer scale of conifer cover to be compatible with use in delineating map units and the SETT recommends the reconstructed map be adopted by the SEC. The map is contained in the PowerPoint presentation available on the Program's website. Mr. Huser pointed out the dominance of phase 1 on the landscape in Nevada in comparison to phase 2, and that phase 1 removal would make up the majority of conifer removal projects associated with the CCS as a result. Mr. Huser went on to state the importance of selecting quality projects and that some of the preferred project conditions the SETT will analyze when assessing potential projects are: existing onsite high-quality Greater Sage Grouse (GRSG) habitat, with a good understory, viable seed nearby, or a plan to ensure post-removal habitat improvement; immediate adjacency to open, tree-less, high quality GRSG habitat; removal is proposed at locations and siting likely to benefit GRSG; and with relatively minimal risks of invasion of cheatgrass or other annual grasses in the area. Mr. Huser said that the SETT will use all available tools, including gathering opinions from Nevada Department of Wildlife (NDOW) and United States Fish and Wildlife Services (USFWS) staff to determine credit project eligibility. Mr. Huser provided the rationale for Improvement Recommendation 6 stating that it is known that conifer removal benefits GRSG habitat when conducted in the right circumstances and that when phase 2 pinyon juniper (PJ) is cut, there are significant, unquantifiable added

benefits of reclaiming unused habitat and stopping the conversion to phase 3. Mr. Huser then displayed a table depicting how many uplift credits might be awarded when phase 1 and 2 conifer removal were completed as part of CCS projects. He expressed that due to the multiplicative nature of the HQT, the results are dynamic and commensurate with habitat quality and that the process works similarly to the meadow factor within the CCS. Mr. Huser concluded with stating that the higher multiplier was necessary in areas of Phase 2 removal to account for the added benefits to GRSG when phase 2 PJ is removed, as well as the likelihood of reduced credit yields due to reduced HSI values and reduced habitat quality reflected in onsite sampling results where higher conifer cover exists, and incentivize projects to also include Phase 2. Huser stated that despite the appearance of offering a greater incentive for removal of Phase 2, he instead envisions the incentives more on the same plane due to reduced HSI values in Phase 2, the likelihood of field data in these areas representing reduced habitat quality due to added conifer cover, and other factors Chair Goicoechea asked for a motion to adopt findings 4, 5 and 6; motion by Member Swanson; seconded by Member Steven Boies; there was discussion on the motion; motion passed unanimously. **\*ACTION.**

Ms. Kathleen Petter, SETT continued with the PowerPoint presentation with Finding 7: Alternate methods to more efficiently analyze debit projects within the CCS. Ms. Petter stated that the SETT is attempting to find alternative methods to more efficiently analyze debit projects. Ms. Petter said that for debit projects, the Habitat Quantification Tool (HQT) analyzes an area up to 6km from the direct surface disturbance area when calculating the effects of direct and indirect impacts on sage-grouse habitat, creating a very large project area in which field data collection is required. Ms. Petter said that developing a debit site screening tool to enhance the ability of a project proponent to examine meaningful impact reductions pre-project would be of great benefit. Ms. Petter also said that the purpose of the debit site screening tool would be to allow debit project proponents to estimate debit obligations and cost-effective opportunities to reduce obligations by rapidly evaluating different locations and configurations for debit projects without having to invest significant time or financial resources; and establish the site scale habitat function as 100% in order to achieve the most conservative debit estimate possible in the absence of collecting field data. Ms. Petter said that this tool would create a systematic and consistent approach to calculating credit obligation for debit projects. Member Lister asked if this was mostly a pre-planning tool and once the project proponent moved forward, actual field site work would be commenced. Ms. Petter replied in the affirmative. Member Boies made a motion the approve Finding 7; seconded by Member Swanson; motion passed unanimously. **\*ACTION.**

Member Boies then asked if the improvements voted on today would affect or impact current credit developers. Mr. McGowan replied that if the credit developer had already signed a management plan the improvements would not be applied unless the changes occurred within 6 months of executing the plan.

**8. REVIEW OF THE UPDATES TO THE CCS MANUAL AND SCIENTIFIC METHODS DOCUMENT/HABITAT MADE QUANTIFICATION TOOL (HQT) - \*FOR POSSIBLE ACTION\***  
*SETT Staff*

Mr. McGowan presented the SEC with the expected changes to the CCS Manual, HQT and User's Guide, a copy of which is located on the Program's website. The council members reviewed the document and Chair Goicoechea advised that the document does not require an action from the SEC.

**9. REVIEW OF ACTION ITEMS AND FUTURE AGENDA ITEMS DISCUSSED DURING THIS MEETING AND SCHEDULING THE NEXT SEC MEETING – FOR POSSIBLE ACTION**

- A. With staff assistance, the Council will review items discussed, as well as items acted upon during this meeting, and determine which of those they wish to direct staff to do further work on, as well as which items the Council wishes to act on that may not have been acted upon during earlier discussion.
- B. Presentation by various presenters containing new science and research.
- C. The Council scheduled their next meeting for Tuesday, March 13, 2018, location and time to be determined.

## **10. FEDERAL AGENCY UPDATES AND COMMENTS –**

A. U.S. Fish and Wildlife Service – (USFWS) No updates

B. Bureau of Land Management (BLM) – Mr. John Ruhs advised that BLM is in the midst of public meetings with regard to the fuel breaks and fuel reduction scoping comments. Mr. Ruhs stated that the BLM released its Instruction Memorandums with regard to Order 3353, containing changes to habitat, thresholds and responses, among other items, and the documents are available on BLM's website. Mr. Ruhs also said that BLM will be finalizing cooperating agency agreements in the near future.

C. US Forest Service (USFS) – Ms. Cheva Gabor advised that USFS has closed the comment period on the Notice of Intent to Prepare an Environmental Impact Statement for the Amendments to Land Management Plans for Greater Sage-Grouse Conservation. Ms. Gabor said that the USFS has treated invasive plants via aerial treatments and they are preparing an Environmental Assessment (EA) on 52,000 acres in the Ruby Mountains.

D. US Department of Agriculture (NRCS) – Mr. Gary Roeder advised that NRCS had not received many applications for the Regional Conservation Partnership Program (RCPP) funding and they are considering extending the application period. Mr. Roeder further advised that NRCS has some funding left for the remainder of this fiscal year, as well as available easements and they are working closely with the United States Navy and NDOW to target military installations.

E. Other – No update.

## **11. STATE AGENCY UPDATES AND COMMENTS**

A. Office of the Governor – No update.

B. Department of Conservation and Natural Resources (DCNR) – No update.

C. Department of Wildlife (NDOW) – Mr. Tony Wasley stated that In 2017, NDOW (with contributions from several NGOs such as NBU, NV Chukar Foundation, NV Muleys, Carson Valley Chukar Club, Barrick and Newmont) purchased \$1.2 million worth of seed, spent \$360K in seed application costs (aerial or drill seeded) and spent \$289K on herbicide. Over the last two months, seed and herbicide application was spread across approximately 12 major wildfires across the state. Mr. Wasley said the NDOW estimates that 275,706 acres of priority habitat burned and 311,493 acres of general habitat burned during 2017 for a total of 587,199 acres (an area larger than the Sheldon National Wildlife Refuge). Mr. Wasley also said that at the last meeting, NDOW reported on the annual sage-grouse wing bee and provided a preliminary recruitment value of 1.05 chicks per hen. However, once all wings were analyzed, the final statewide recruitment value was actually 0.98 when accounting for Sheldon, Tuscarora and Desatoya wings. The long-term average recruitment value for Nevada is 1.6 chicks per hen. In 2017, Wyoming reported a recruitment value of 1.2 chicks per hen and Idaho reported 1.13 chicks per hen so recruitment values across the range are considered low. Mr. Wasley also provided that annual data summaries for each of the study sites across Nevada (12 study areas) were provided by the USGS in January. Some of the metrics provided in these reports that are used as indicators of population health include things like annual survival, nest survival and brood survival. Overall, annual survival dipped to 51% in 2017, down from 68% and 69% in 2015 and 2016 respectively. Nest survival was estimated at 31% in 2017, which is consistent with the short-term average of 29%. And brood survival was estimated at 46% which is almost 10% lower than the long term average of 55%. These figures, along with low recruitment rates in 2017 lead to concern regarding the short-term prognosis for sage-grouse populations.

D. Department of Agriculture (NDA) – Mr. Jim Barbee advised that NDA was still working on completing the App demonstrated at the last meeting.

E. Conservation Districts Program – Ms. Bettina Scherer advised that the Conservation District (CD) program has a competitive grant due and that the next CD meeting is scheduled for March 9. Ms. Scherer also advised that the CD team is working closely with the Local Area Working Groups.

F. Sagebrush Ecosystem Technical Team (SETT) – Mr. Kelly McGowan reported that the NDA will be closing the job announcement for the NDA position on the SETT and a list of candidates is expected soon with interviews possibly being held in February. Mr. McGowan also advised that there is the potential for a presentation at the March meeting of the SEC for an update on the use of drones for remote sensing CCS projects.

G. Other – No update.

## **12. PUBLIC COMMENT**

Mr. Gerry Miller Co-Chairman, Northeastern Local Area Working Group provided the SEC with an update on the LAWG's recent activities.

**13. ADJOURNMENT** – There being no further business to come before the Council, Chair Goicoechea adjourned the meeting at 12:22 p.m.