STATE OF NEVADA

SAGEBRUSH ECOSYSTEM COUNCIL

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DRAFT MINUTES

Date:	**Thursday, October 3rd, 2019**
Time:	**8:30 a.m.**
Place:	**Nevada Department of Wildlife**
	6980 Sierra Center Parkway #120, Reno, NV 89511

A full audio recording of this meeting is accessible through the following website http://sagebrusheco.nv.gov/Meetings/Sagebrush_Ecosystem_Council_Meeting/

Council Members Present: JJ Goicoechea, Chris MacKenzie, Allen Biaggi, Steven Boies, Bevan Lister, Sherm Swanson, Starla Lacey, William Molini, Cheva Gabor for Bill Dunkelberger, Justin Barrett, Jon Raby, Karri Honaker for Ray Dotson, Jim Lawrence for Bradley Crowell, Jennifer Ott, Tony Wasley.

Council Members Absent: Gerry Emm.

1. CALL TO ORDER

Chairman JJ Goicoechea called the meeting to order at 8:31 AM.

2. PUBLIC COMMENT

No public comment.

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

Member Mackenzie moved to approve the agenda, Member Molini seconded the motion. ***ACTION**

4. APPROVAL OF MINUTES - *FOR POSSIBLE ACTION*

Member Biaggi moved to approve the minutes, Member Swanson seconded the motion. ***ACTION**

5. COUNCIL MEMBER ITEMS AND CORRESPONDENCE

No correspondence.

6. REVIEW AND DISCUSSION OF THE PROPOSED IMPROVEMENT TO THE CONSERVATION CREDIT SYSTEM TO ADDRESS EXPLORATION DRILLING THAT EXCEEDS FIVE ACRES OF DISTURBANCE - *FOR POSSIBLE ACTION*

Ms. Andrle gave a presentation that can be found on the program website under agenda item 6. Member Biaggi asked who attended the working group that Ms. Andrle had mentioned that had developed this improvement. Ms. Andrle responded that there were multiple stakeholders on the working group including state, federal, two representatives from exploration companies, and the division of minerals. Member Biaggi asked if there was general consensus in that

group of the presented methodology. Ms. Andrle responded yes, after multiple meetings that there was consensus. Member Biaggi asked if the intent of the greater analysis area presented was to provide flexibility in where the exploration infrastructure would be located. Ms. Andrle replied that the intent was flexibility in analyzing the project due to the nature of exploration not always being spatially explicit. The average habitat value of the project area would be applied to the actual direct disturbance. Member Biaggi asked for confirmation that the exact position of infrastructure is not needed, but an exact acreage of disturbance will need to be known. Ms. Andrle replied that was correct. Member Swanson commented that roads created for exploration may have long term effects and asked about the assumptions that underlie the classification of the roads as temporary. Ms. Andrle responded that the temporary effect of roads depend on the reclamation plans. If reclamation is not done then the road, whether or not it gets use, would be classified as permanent. If the road was existing before the exploration disturbance, than the standard would be to analyze it within the project as an existing road. Member Swanson asked for confirmation that the proposed improvement does not change any existing tools? Ms. Andrle confirmed. Mr. McGowan commented that in most cases new roads that are put in for temporary use will be required to be reclaimed. Member Boies asked how the quantification would happen if the same company made disturbances in different locations at different times? Ms. Andrle replied that if the disturbance is under 5 acres than it would not be analyzed, and if it is above 5 acres the proponent would be going through the NEPA process. Through that NEPA process the total acreage of disturbance would be outlined with some sort of timeline. That can then be analyzed, in a phased fashion. It would not matter where the disturbance occurred, as long as the total acreage for the first phase was supplied. Ms. Andrle replied that she was confident that the appropriate analysis could happen within a specific phase of a project. Chairman Goicoechea asked what the NEPA looks like on the federal end for disturbance over 5 acres. Mr. Raby replied a project proponent comes and identifies the general number and locations of drill sites along with proposed roads. The vast majority of proposed sites are utilizing existing roads. A decision record would be issued based on that analysis. If something was proposed outside of the original project, a supplemental NEPA or new NEPA process would be initiated. Ms. Gabor indicated that the process would be largely the same from the USFS, and noted that the Forest Service maintains the compensatory mitigation requirements and exploration under 5 acres for oil, gas, and geothermal would require mitigation. Chairman Goicoechea asked for confirmation that the USFS would be asking for mitigation in that circumstance, but the State would not? Ms. Gabor confirmed, with a caveat that the proposed USFS land use plan has not yet been signed. Member Swanson asked if it was under 5 acres, and the State did not require mitigation, would the USFS use the CCS. Ms. Gabor replied that the intention of the USFS is to use the CCS, it is not required, but that it is the intention. Chairman Goicoechea asked Mr. Stockton if it was acceptable if a vote is not taken at this time, until after the regulation hearing. Mr. Stockton replied yes and recommended that the item is tabled, and public comment is taken at that time. Chairman Goicoechea asked if there was public comment at this time. Ms. Debbie Struhsacker representing the American Exploration and Mining Association, Ms. Struhsacker commented that she appreciated the council's ongoing efforts to minimize the impacts to exploration activities, but that the 5 acre exclusion does not exclude a number of small businesses in Nevada. Many small businesses that are not attached to a producing mine or a revenue stream, usually only propose areas that have specificity and do not have the flexibility to go anywhere in a large plan of operations. Companies propose large plans of operations to give them the flexibility to perform many activities in the same area without having to repeat analyses. Ms. Struhsacker hopes that the approach could accommodate this flexibility, and that the companies that propose small plans of operations would have a focused analysis on those areas. Chairman Goicoechea asked Ms. Andrle if that was actually what is intended in the improvement in option 2? Ms. Andrle responded that yes, that flexibility is available and intended in this improvement. If the company knows exactly where the disturbance will occur, than that area can be analyzed with the standard HQT practices. Even though the Plan of Operations may be large, it does not magnify the actual disturbance calculation. Ms. Struhsacker appreciated the clarification, and that it sounded very workable. Ms. Struhsacker described the flexibility of a large plan of operation is often called a "blanket approach." Member Boies asked if a disturbance that incorporated a lek would be analyzed differently than a disturbance that did not contain a lek. Ms. Andrle responded that yes, the Distance to Lek GIS layer is analyzed in the proposed plan of operations and would be reflected in the total score of the area. Mr. Kim Summers from RDD Inc. commented that this improvement is too relaxed because the exploration roads that are reclaimed, remain on the landscape and have continued impacts. Mr. Summers expressed that this gives breaks to mining and exploration interests that are not given to permittees and the public. Mr. Summers commented that an assessment of the impact needs to be made. Member Mackenzie concurred and commented that those roads do persist on the landscape, and what the reclamation process looks like. Mr. Raby commented that each proposal has a unique aspect, and the terms and conditions of the proposed project might include different requirements, but that roads that are open, are open to the public. Roads that are closed and reclaimed are closed to the public. Ms. Gabor commented that the USFS do not allow the use of roads that are not in the road system, and any use of such roads is illegal. Chairman Goicoechea commented that there are people everywhere, regardless of enforcement. Chairman Goicoechea asked how to make sure that the scar on the land is quantified appropriately. Ms. Gabor commented that

that was a valid concern. Mr. Summers commented that this discussion goes to the heart of his point, which is that shortening the duration of the cost of the impact to the exploration community by reducing the cost of the HQT and resultant debits that are created and that the cost to the exploration community is less, but the cost to the habitat and to the bird is greater. Someone should pay the cost for the habitat damage. Through this program the purchase of credits that were created to preserve habitat of zero impact and that the purpose of the program is negated by this. Mr. McGowan commented that there is usually bonding is required, and that the bond is held until the reclamation is complete, and that this was the exact discussion that the working group had, which was the reclamation, the effectiveness of it, how it was released, what the results of the reclamation were, etc. Chairman Goicoechea commented that the NEPA process provides for input regarding the impacts felt by the proposed action. Mr. Raby responded that was correct. Many processes provide oversight, and staff assures that objectives are achieved, and he Mr. Raby cautioned against addressing unauthorized uses that are outside the scope of legitimate authorized activities to address a different type of problem. Member Swanson asked if the CCS had any mechanism to address creep that may happen with authorized uses. Mr. McGowan answered no, that the CCS cannot go after the fact to reanalyze disturbances. Mr. Raby answered that there were two scenarios. If the authorized use did not reclaim properly, that can be fixed. Or there might be unauthorized use after reclamation is done, in that case the responsible party is required to fix it. Ms. Struhsacker commented that the exploration projects are fully bonded, and the companies have incentives to do successful reclamation and get bond money back. There are specific revegetation criteria to meet before bonding can be released, and it is highly regulated. Mr. Sam Nunamaker offered a comment that reclamation did not use to happen until bonding was required. Bonding is required to be revegetated for 10 years, and that the companies are incentivized to reclaim in a way that allows the release of funds, and that in the last 15 years reclamation has improved. Mr. Lawrence commented that increased coordination between federal agencies and the SETT will prevent project creep, and that while indirect impacts are not being assessed here, if exploration sites move into production than indirect impacts will be assessed. Mr. Lawrence also acknowledged the lack of alignment with the USFS, but that the USFS would be more stringent, and that this improvement would provide an expeditious timeframe. Ms. Gabor clarified that the differences are for oil, gas, and geothermal, and that the State regulations would rule in the case of locatable minerals. Member Biaggi commented that he appreciated the effort for this improvement. Chairman Goicoechea concurred. Action was deferred until after the regulation hearing. After the hearing was concluded Member Biaggi moved to approve the improvement, Member Lacey seconded the motion. Motion passed. ***Action**

7. REVIEW AND DISCUSSION OF THE PROPOSED IMPROVEMENT TO THE CONSERVATION CREDIT SYSTEM OF CERTAIN CREDIT PROJECTS TO BE DEVELOPED ON PUBLIC LANDS - *FOR POSSIBLE ACTION*

Mr. Mower gave a presentation that can be found under agenda item 7 on the program website. Member Biaggi asked what an internal transfer was and how that applied to public land management. Mr. Mower replied that the debit project proponent are the entities that will be responsible for developing the credit project and then those companies may transfer the developed credits for their own debit purposes. Member Biaggi asked for confirmation that this would apply to debits created on public land and for credits created on public land. Mr. Mower confirmed that was correct. Mr. Mower continued the presentation. Chairman Goicoechea asked about the requirement for invasive weed treatment in phase 2 PJ removal projects, and if it would be required for hand thinning as well? Mr. Mower replied that the intent was mechanical removal, and that in phase 2 machinery might be used in conjunction with a degraded understory. Chairman Goicoechea asked if the intent was to require machine removal in phase 2, or if hand thinning was possible. Mr. Mower replied that hand thinning was possible, and that the regular PJ removal factors would still apply. Member Boies commented about the amount of PJ which is available and that might flood the credit market in areas with a lot of PJ, and asked how many acres of PJ was removed on federal land? Mr. Raby replied that 100,000 acres was performed this year. Member Boies asked if the permittee helped financially with the process. Mr. Raby replied that those treatments were under contract through the fuels management program but the amount contributed to by the permittees were a very small percentage. Member Boies asked for clarification about how the permittee works into the system that is being proposed. Mr. Mower replied that this would need to be a project proponent driven process. Member Boies then asked if the permittee would apply to the BLM for this type of project. Mr. Mower replied that the permittee would need to approach a debit project needing credits and work out a system because it is a project needing credits that need to perform the actions so that the credits could be transferred internally. Member Boies asked if the project proponent would be responsible for paying for NEPA. Mr. Mower responded that yes, they would need to possibly pay for that. Chairman Goicoechea expressed that he did not agree with the approach presented, he felt that as a private property owner he should be allowed to cut PJ on his allotment and access this tool. Chairman Goicoechea expressed a foundational problem with this approach which does not allow someone who is not a gold mine or an energy company to use this approach. Chairman Goicoechea expressed that it

was not acceptable to lease a ranch to industry. Mr. Mower expressed that the difficulty lies with the new commodity of habitat conservation if credits developed on public land were meant to be sold on the open market. The federal agencies have indicated that an interest is present to figure that aspect out, but that would be a lengthy process. Mr. Mower said that the best situation available right now is for permittees to link up with debit project beforehand and handle it internally. Mr. Lawrence added that the council has directed the SETT for many years to figure out how to get credits on public land, which have always ended in three sticking points. One point was durability which is addressed with the reserve account, additionality which is addressed with the uplift credits, and generating a new commodity on federal land. The SETT was able to come up with a recommendation that everyone could live with and meet all the different authorities. This discussion is not intended to be the last discussion, it is only the first step and a step taken due to a sense of urgency. Member Boies expressed that this does not benefit a small operator and the only person benefiting from this improvement is large industry. Member Mackenzie expressed that he liked the concept of the debit producer being the one to develop the credits. Member Mackenzie expressed that this approach keeps the value of private land credits. Member Mackenzie expressed that small permittees do benefit from having habitat improvement done on public allotment which might increase grazing opportunities. Member Mackenzie expressed that this is a good approach which does benefit the private landowner. Member Biaggi asked why phase 3 and 4 PJ was not available in this framework. Mr. Mower expressed that the understory is likely to be far degraded and improvements are a big lift in those areas. Ms. Gabor commented that for the USFS encroaching happens generally in phase 1 and 2, phase 3 is often supposed to be present and serves other roles. Mr. McGowan also commented that new tools anticipated from the USGS that might highlight areas that could open corridors for other areas, and that it might be opened up in the future as it is informed by science. Member Biaggi asked if the proximity factors would still apply. Mr. Mower replied yes. Member Biaggi expressed satisfaction that we were finally making strides in getting credits on public land. Mr. Mower expressed that the first project that might occur will be a pilot project and things will get tweaked in the future. Member Swanson commented that he liked the fact that public lands will be available because that is where the bulk of the problem and solutions lie. Member Swanson commented that he liked the focus on phase 1 and 2, and that current science indicates that 100,000 acres per year are crossing ecological thresholds which is a bad situation. Member Swanson asked about opening the framework to landowners with stewardship responsibilities on the land in question and if there is some kind of possibility to amend the process today to include those people? Mr. Mower indicated that additionality must occur, and uplift must be done. Member Swanson clarified that he was referencing uplift treatment activities, which are also available on private lands. Ms. Gabor commented that extensive conversation has been had on that topic, and the potential for getting there is high. What has been brought forward today is a framework that has gotten consensus. Ms. Gabor expressed that getting agencies on the same page about profit generation will be difficult, and that the first project will have a steep learning curve. Mr. Vacca expressed that the sticking point is the fiduciary trust responsibilities of the federal government. The federal government has a way to link a mitigation action with treatments to offset other actions, and are actively exploring options such as stewardship agreements to allow permittees the ability to produce commodities, but another sticky area is for someone to come in as a purely financial endeavor. The BLM requires grazing permit fees, and the BLM requires royalties, and so the fiduciary component of producing credits for financial benefit is a complex subject. A pilot project in the Dakotas area is looking at producing credits through section 302 lease under FLPMA, the proponent will pay fair market value to lease lands and within that lease there are some mechanisms to protect the lease value, but the lease can still be terminated at any time. This is a new level of activity for the federal government, and the intent with this proposal was to step forward with a framework that could be agreed upon by all. Member Swanson commented that the economic opportunity seemed like a red herring, and that the general public is interested in the stewardship of the land, and what has been frustrating to ranchers is that they have diminishing AUMs on their allotment due to things that are out of their control, they are not allowed to use normal control mechanisms that they would if it was private land, and the expansion of the PJ diminished the value of the land. If we allow the permittee to do projects on the part of the land where they already have stewardship responsibilities for, it would not be any citizen anywhere, it would not be without federal approval, and it would be with cooperation with federal agencies to do things that are of great value. Chairman Goicoechea expressed acknowledgement for the comments made so far, and asked what would happen if a mine came to a permittee and expressed the desire to develop credits, there was PJ present on that permittees allotment, what does the paperwork look like that allows them to do work on their allotment. And are the credits locked in for 30 years and does that affect the permit. Chairman Goicoechea expressed uncertainty about the responsible parties, which might be a mine, yet it is a permitee's allotment. Mr. Vacca commented that in that scenario it would be a 3rd party sit down where a cooperative agreement would be worked out, excluding the financial benefit component. The NEPA for the credits developing actions would be wrapped into the proposed action, a cooperative management agreement is worked out where the land gets treated on the ranchers permit, and the project proponent is on the hook for the post-treatments, and the rancher is simply agreeing and supporting the work, or could even be the one contracted to do the work, the piece that is sticky is the 3rd party development of financial benefit from federal land with no process in

place. Mr. Vacca expressed that he thought there was existing paperwork for this type of agreement already. Chairman Goicoechea expressed that every day PJ is encroaching, and what is his incentive to do anything to remove that PJ if it might be worth more to someone to remove later. Member Lister commented that there is not yet a market, and that internal transfers continue to be opened up as an opportunity, to the detriment of private land credits and negation of the whole CCS idea. If it is all based on internal transfer, then there is not incentive for private land owners to produce credits. Member Lister asked where required design features are located in this proposed process to prevent mosaic treatments and if we were requiring clearcutting? Mr. Mower commented that the required design features are baked into the federal approval process, and that the council will be able to weigh in on the proposed projects. Mr. McGowan also commented that generally if a credit producer is doing PJ project, all trees are required to be removed in the CCS system, and that the SETT will stand firm that every tree within the treatment area will be removed, and that consecutive treatments will be done. Member Lister commented that if no money is changing hands, how will we enforce this? Mr. McGowan commented that to the extent allowable, if the approval of 100% tree removal cannot be obtained, the SETT would not recommend that project to go forward and the project would need to go back to the drawing board to work something else out. The SETT will also have the ability to work with the federal process and proponents to make sure that the CCS requirements are fulfilled, and that the council has ultimately some authority on the approval of projects. Member Starla Lacey expressed support for the improvement from the perspective of a company needing debits, and the ability that this improvement afforded to get projects in proximity, and the consultation process that had been discussed. Mr. Mower concurred that the proximity goal was one of the major factors in the consideration of this improvement. Member Mackenzie acknowledged the frustration of Member Lister in the lack of market demand for credits, but also commented that if the regulation is passed that the market will exist. Member Mackenzie also asked for confirmation that two options will still be available to acquire credits, and that the purchasing of credits will be the most expeditious and simple route for debit projects, and it will set a value for the private land credits? Mr. Mower confirmed, and commented that the SETT performed many scenarios and models to assess the cost of activities on public lands, and that it was not a cheap option. Chairman Goicoechea commented that the council needs provide a pathway for actions on the ground. Member Boies asked if a permittee spent money to fence a riparian area, if that was something that could qualify. Mr. Mower answered yes, but that it is the value of habitat uplift that would be rewarded. Member Boies commented that he had an inherent disagreement with only awarding uplift credits, and that it did not provide enough incentive for permittees to improve allotments that might be in good condition. Member Boies then asked if a permittee was to change grazing methods if that would qualify. Mr. Mower commented again that it is habitat improvement that is measured, not actions, and that no credits would be awarded for changed actions, unless it resulted in measurable habitat uplift, but deferred to Ms. Gabor. Ms. Gabor commented that it has been made clear that grazing management is not an acceptable method for generating credits, and is a non-starter for conversations going forward. Ms. Gabor made it clear that at the present moment, the USFS is not willing to consider that a method to generate credits. Member Boies asked if Mr. Raby agreed with that assessment. Mr. Raby responded that the BLM has current rangeland health standards, and any changes to grazing permits would be made to achieve those standards, whether or not the state considers that a credit is a conversation that is worth having, but that the federal government considers that type of action an action that tries to achieve the standards as part of the authorization for the grazing action. Ms. Gabor also commented that the federal agencies generally defer to that state when deciding what a credit is and is not, however to the degree that the USFS has to accept those credits as compensatory mitigation is an area of discomfort, which makes the problem two-fold: 1. What is required or what should be required for the grazing permittee, and 2. In the USFS requirements of compensatory mitigation it is not felt that grazing management is where credits should be coming from. Member Boies then asked in what scenario did Mr. Mower feel that this approach would work in in riparian areas. Mr. Mower responded that the SETT envisioned combining meadow enhancements within PJ removal projects, and the SETT did not specify any actions that can or cannot be done as long as the actions are done by the project proponent. Mr. McGowan commented that if a proponent proposes a PJ project in an area with an incised channel, and the greenbelt has decreased. If the project proponent installed structures that assisted in the re-deposition, raising water tables, which then might expand the greenbelt, it would be the greenbelt expansion that would produce the credits. Another example would be an area that was heavily impacted by animal grazing by wild horses, fencing as well as external water development might allow a meadow to rest and recover and improve the habitat quality. Member Boies asked if a public land allotment was in a good area, good condition, no wild horses, no PJ, probably would not be participating in this tool. Mr. Mower confirmed, and commented that it is not a dead discussion, but that currently it would not be available to areas like that. Member Boies commented that we were setting up a situation where in house transfers would be common and Member Boies expressed that it might result in more ranches being sold to industry. Member Boies expressed the desire to see a different approach that might facilitate ranch planning that could include PJ, riparian, and a lot of things that could represent the whole. Member Boies expressed that ranches are being pushed aside by the direction we are going. Mr. Mower expressed that the specific goal of this improvement was to get large-

scale landscape type projects. This PJ process was envisioned to require 1000's of acres to generate the credits that are needed to offset disturbance. Whether that pencils out to be better done on public or private lands financially, the SETT is not in a position to determine that currently. The SETT does not believe that this will be an easier option for anyone, and that this will result in large scale projects that are limited. Mr. Mower acknowledged that figuring out how to include private operators has not been figured out, but that it is something that continues to be desired and worked on. Member Boies commented that ranchers often approach public agencies with a willingness to perform labor and supplies for actions, if the NEPA can be done, which is an approach that is currently done, and Member Boies would like to see this type of approach. Mr. Mower commented that the intention is for landowners to link up with people needing credits and handle the situation in that way. Chairman Goicoechea asked if seeding is required, because livestock closure might be required. Mr. Mower clarified that we were not requiring seeding, for this reason. Mr. Raby commented that the BLM will make sure that does not happen. Public Comment was opened for this agenda item, Mr. Jeremy Drew, representing the Nevada Pinyon-Juniper Partnership commented that the partnership advocates for figuring out how to get credits on public land and more PJ removal done. Mr. Drew supports credits on public lands as it relates to PJ removal. The NEPA process used to be the backlog, now the bottleneck is funding and this improvement helps. Mr. Drew commented that a credit developer finished treating PJ on all private lands, and commented that there were many more areas of connectivity that could be treated and if the person were incentivized to perform that work, it would be of great benefit. Mr. Drew strongly recommended that private credit developers be allowed to generate credits. Mr. Drew expressed the feeling that credit producers should be allowed and not only debit project proponents and that public/private partnerships can be a powerful tool. Mr. Drew also commented that water rights should be left alone in these discussions. Chairman Goicoechea asked if there were any impacts to multiple users through NEPA processes. Mr. Drew responded that there have not been limitations on multiple uses that he has seen. Mr. Kim Summers, representing RDD Inc. gave an impassioned comment about the opportunity that there will now be competition for credits within the CCS, and that the competition would be sourced from his permit, where he owns the water, and the permit. Mr. Summers expressed the feeling that options are being given to go around the purpose of the CCS and his purpose of joining with the program was to produce credits and protect habitat. Mr. Summers expressed that the program is allowing the people who destroy habitat every opportunity to get around it. Mr. Summers expressed that it was wrong and should be voted down. Mr. Summers expressed that the BLM seemed to not want permittees to make money off credit development on public land, but that the program would allow companies to develop the credits and sell to themselves. Mr. Summers expressed that it was unfair to the people who re-use land and have to protect the land for future use, and the program was providing an easy way out for those companies who destroy the land, and taking options away from private lands credit developers. Mr. Summers expressed the feeling that programs try to make things easy on industry and hard on ranching. Mr. Summers expressed that companies who impact habitat should have to pay more for the impacts. Mr. Summers expressed the opinion that an option to develop credits on public land which does not include permittees should not be available unless there are no credits available from private land. Mr. Summers expressed that cattlemen have been protecting the landscape for 100's of years and an option to get around those cattlemen should not be allowed. Member Swanson commented that the point is all about the sagebrush ecosystem and that the most benefit should be squeezed out of every dollar spent for sage grouse. Member Swanson commented that restrictions which inhibit that aspect are not consistent with the purpose of the program. Member Swanson commented that Programmatic EIS' may be employed in the case of phase 1 and 2 PJ removal which would empower people to go and perform the work. Chairman Goicoechea asked whether action should be taken or if action should be deferred. Mr. Lawrence clarified that this process does not allow for a process which cuts permitees out of the process. Mr. Lawrence commented that it would be a 3-party contract where concurrence would be needed from permittees, and the concurrence discussions would be a private discussion. Mr. Lawrence also commented that analysis had been done in order to ensure that undercutting and false competition would not occur, and that public land project will need to be large in scale which provides balance. Mr. Lawrence also commented that the private transactions would be the most expeditious option. Chairman Goicoechea commented that his hang-up was with the fact that unless there is a connected action which can provide for internal transfers the development of credits is not an option. Chairman Goicoechea commented that unless it can be explained what the exact method to get around that hang-up is, it did not feel right to him. Member Biaggi moved to defer the item back to the staff to recognize the roles of permittees and others, and come back with a revised process. Member Boies seconded the motion. Member Boies asked if there was a permittee or a landowner involved in the development of this improvement. Member Boies commented that the landowners might be able to save time and energy if people are involved in the development process, and that this improvement hit him by surprise, and that he was surprised that this improvement was even proposed in this forum. Chairman Goicoechea commented that the motion was to bring the improvement back with local involvement fleshed out. ***Action**

8. UPDATE AND DISCUSSION ON THE RESPONSES RECEIVED FROM ENTITIES THAT DO NOT INTEND TO USE THE CCS FOR MITIGATION. DEVELOPMENT AND ADOPTION OF A POLICY FOR NOTIFIACTION TO ENTITIES THAT ARE NOT IN COMPLIANCE WITH STATE MITIGATION REQUIREMENTS. - *FOR POSSIBLE ACTION*

Mr. McGowan presented projects that had been discussed at a previous council meeting regarding mitigation. The discussed projects were Rossi mine expansion, Gold Bar mine, Gold Rock mine expansion, and the Prospect mine expansion. Letters had been sent to Rossi, Gold Bar, and Gold Rock. The Prospect mine has agreed to work with the SETT to use the CCS. A response was sent from the Gold Bar mine, explicitly stating that the project intends to stick with a proponent driven process. This process intended to perform some restoration activities within the Three Bar area which incorporated some PJ removal, seeding, fire breaks etc. The EIS has yet to be completed and the ROD has not been signed. An extension was granted, which expired Oct 1st. Mr. McGowan was not sure what the direction would be going forward. Mr. McGowan commented that the HQT was run on the analysis area, and the debit obligation is known, and that the intention is to use the HQT to assess the uplift. Mr. McGowan commented that the areas provided to the SETT come up well short that the planned mitigation would fall vastly short of the debit obligation. Mr. McGowan commented that the Gold Rock project had a ROD and an FEIS completed in advance of the Executive Order and the temporary regulations. The Gold Rock project also had uplift planned in the FEIS in a proponent driven process on public land. The SETT continues to work with Gold Rock to have an understanding of where the mitigation will occur and that the intention to use the HQT to assess the uplift has been communicated. Mr. McGowan commented that the HQT was run in advance, and the debit calculation is known, the Gold Rock project did not use those assessed debit numbers in the FEIS. The numbers used were from permanent debits which are not intended to be reclaimed and there exists a disparity between the number calculated and the number used in the EIS. Mr. McGowan commented that the SETT will continue to work to try and get as much mitigation as possible, and that it has been communicated that a deficit might exist within the mitigation system. Mr. McGowan commented that the Rossi mine fell within a timeframe where the BLM communicated the lack of authority to require mitigation, the executive order and temporary regulations were not in place, and the Rossi Mine elected to do no mitigation. A letter has been sent communicating that they are required to follow all state laws and regulations, and that before the ROD was signed the council had adopted temporary regulations, which Rossi was made aware. Rossi has not responded. Mr. McGowan referenced the process which will be used to inform projects in the future of non-compliance. This procedure and the above reference correspondence can be found on the program website under agenda item 8. Member Biaggi asked about steps 3 and 4 which references regulations, and member Biaggi asked where in the regulations the process occurs? Mr. McGowan commented that a specific appeal in event of non-compliance is not included in the regulation, it is a policy which would be adopted by the council. Member Biaggi commented that the document needs to be clarified. Chairman Goicoechea clarified that this was a policy and not regulation. Member Lister mentioned that it might need to be a part of the regulation. Mr. Stockton commented that public meetings provides enough appeal ability, but that future changes to statute might be recommended. Member Biaggi commented that the policy was adequate for now, provided the language is cleaned up. Mr. Stockton commented that policy does not have the force of law. Chairman Goicoechea asked if force of law is given through statute? Mr. Stockton replied in the affirmative. Mr. Mackenzie asked about enforcement of this policy. Mr. Raby responded that this process might work similar to other environmental laws which are administered by state agencies, authorization cannot be given to begin work until compliance with state law. Mr. Mackenzie commented that this program might not need teeth if the BLM will not authorize actions without compliance. Mr. Raby answered that he is working to get legacy projects in compliance with state law. Mr. Raby commented that his goal is to be in compliance with state law. Mr. Stockton commented that other permits levy fines for non-compliance, and this program might need to investigate that option. Mr. Mackenzie commented that ultimately approval from BLM would not be given without compliance if that is the ultimate goal. Mrs. Gabor commented that it would be a condition of the federal permit as well. Chairman Goicoechea asked what happens with an accelerated EIS process, and the CCS process of non-compliance which may slow the whole process down. Mr. Raby commented that he cannot think of a situation where additional time would need to be requested. Member Lister asked about an appeal process. Mr. Stockton replied that this is a policy and does not have the force of law, and 233B has provisions for judicial review of agency actions. For purposes of judicial review the decision by the council would serve as final agency decision. Member Biaggi moved to approve the process, and for the staff to refer to regulations accurately in sections 3 and 4. ***ACTION**

9. UPDATE AND DISCUSSION ON THE RECENT AMENDMENTS TO THE ENDANGERED SPECIES ACT AND HOW IT MAY IMPACT THE PROCESS USED BY THE U.S. FISH AND WILDLIFE SERVICE TO ASSESS AND ADMINISTER THE ACT - *FOR POSSIBLE ACTION*

Mr. Justin Barrett gave a presentation regarding the endangered species act. This presentation can be found under agenda item 9 on the program website. Member Biaggi asked about the scope of the effort to revisit the listing decision of 2020. Mr. Barrett explained that it was never intended to be a complete review, but that the service was going to evaluate the effectiveness of conservation. It is now a state decision. Mr. Wasley explained that the Secretary of the Interior made it clear that the USFWS was under no obligation to conduct a status review. The WAFWA Sagebrush Oversight Committee has created tools to assess conservation efforts, which is a state and partner led effort. Member Boies asked about the economic changes to the review actions. Mr. Barrett explained that the change is related to Section 4, and the change which was made was the listing decisions were to be made without regard to economic impacts, and that has been removed. Multiple places in the changes state the listing decisions will be made on the best science available. Mr. Goicoechea asked what the foreseeable future was. Mr. Barrett referred to the presentation for changes to the process. ***NO ACTION**

10. NOTICE OF PUBLIC HEARING – POSSIBLE ADOPTION OF THE PERMANENT MITIGATION REGULATION - (REFER TO SEPARATE MINUTES FOR HEARING) - *FOR POSSIBLE ACTION*

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

Future items include a review of mitigation plan template, a discussion centered around challenges that are related to credits on public land, Member Lister requested a fire update that includes rehab efforts. Member Swanson wanted to hear about the accumulation of fine fuels. Member Boies related the desire to have NDOW provide an update on the triggers that have been reached, and also the next round of potential credit project approvals. Next meeting scheduled for December 5th, 2019. ***Action**

12. FEDERAL AGENCY UPDATES AND COMMENTS:

A. US Fish and Wildlife Service

Bi-State Sage Grouse listing decision will be April 1, 2020. Please do not resubmit comments if comments have already been submitted previously. 2012-2018 conservation report available. Field supervisor remains Lee Ann Carranza.

B. Bureau of Land Management

Draft PEIS for fuel breaks will cover 11,000 miles of strategic fuel breaks, released in Nov-Dec and can be tiered to for fuels work. Targeted grazing EA is being worked on to address fine fuels problems. Outcome based grazing projects continue. Mitigation MOU was signed with partners. Eleven ESR plans approved covering 39,000 acres with $3.2 million. Wildfire statistics for 2019 are 26,000 acres burned in priority, 10,000 general, 13,000 in other, and 31,000 non-habitat. WHB gathered 6,000 horses this fiscal year, 7,000 by January. Lease of oil and gas continue and have sage grouse protections.

C. US Forest Service

Ms. Gabor mentioned that the objection period for the plan amendment closed on Oct 1st. Cooperating agencies have automatic standing as interested parties, but still need to request to be an interested party. Objection resolution period is 90 days.

D. USDA – Natural Resources Conservation Service

Karri Honaker communicated a new ranking process with a new tool which should help applications achieve conservation.

E. Other

13. STATE AGENCY UPDATES AND COMMENTS:

F. Office of the Governor

G. Department of Conservation and Natural Resources

Jim Lawrence mentioned that Bettina Scherer is leaving the state and the position is being recruited for. Multiple forums are ongoing that are trying to address catastrophic wildfire.

H. Department of Wildlife

A draft of the sagebrush conservation strategy is out for peer review. Fire restoration efforts are ongoing, 19,000 acres is contracted to control Cheatgrass with 1.2 million worth of seed. NDOW is working with private landowners and the USFS to control 1800 acres of Medusahead. Member Biaggi asked about sage grouse recruitment. Mr. Wasley responded that recruitment is down 20% and might be due to cyclic population variation.

I. Department of Agriculture

J. Conservation Districts Program

K. Sagebrush Ecosystem Technical Team

Another meeting date might be required to accommodate the state solicitation effort. $750,000 is available through the state solicitation. The SETT will conduct regional information meetings explaining the adaptive management program, council members are encouraged to attend. Member Boies asked about participation in the meetings. Mr. McGowan answered that the goal is to be collaborative as possible, and should not be limited to the same LAWG members. Mr. Barrett commented that ½ hour may not be sufficient. Mr. Mower responded that there would be plenty of time for questions. Mr. McGowan mentioned that improvements would be moved up to October to allow for earlier verifier training in January or February.

L. Other

Mr. Stockton commented that he would no longer serve as the Deputy Attorney General for the council, the new Deputy would be Tori Sundheim.

14. PUBLIC COMMENT

No public comment.

15. ADJOURNMENT

Member Biaggi moved to adjourn the meeting. Member Boies seconded the motion. Meeting was adjourned at 5:03 PM.