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Law Corporation

March 15, 2019

SUBMITTED VIA FIRST CLASS MAIL AND EMAIL

Mr. Kelly McGowan, Program Manager
Sagebrush Ecosystem Program
201 S. Roop Street, Suite 101
Carson City, NV 89701

Re: Comments on Proposed Temporary Mitigation Regulations of the Sagebrush Ecosystem Program submitted on behalf of Barrick Gold of North America

Dear Mr. McGowan,

Barrick Gold of North America, on behalf of itself and its affiliates (collectively "Barrick"), through its counsel, and in response to the Notice of Intent to Act upon a Regulation issued by the Sagebrush Ecosystem Program, provides these comments on the Proposed Temporary Mitigation Regulations.

As the Council is aware from comments submitted during the workshop phase of the proposed regulations, Barrick has entered into the Barrick Nevada Sage-Grouse Bank Enabling Agreement (the "BEA") with the Bureau of Land Management ("BLM") and the U.S. Fish and Wildlife Service ("USFWS"). The BEA establishes a conservation bank that allows Barrick to accumulate credits for successful mitigation projects that protect and enhance greater sage-grouse habitat on the company's Nevada ranch lands and on public lands. The BEA specifies that a methodology developed by The Nature Conservancy (that has been agency and peer reviewed) will be used to calculate debits and credits for habitat impacts. The BEA is acknowledged by the 2015 BLM Greater Sage-grouse resource management plan amendment as an approved method for quantifying and mitigating potential impacts.

Barrick is implementing the BEA. The TNC model has been developed, approved and used to quantify projected debits and credits for Barrick activities. BLM and the USFWS have approved private and public land project plans which identify specific treatment measures that have been or will be undertaken by Barrick to generate credits for the bank. In 2017, Barrick began implementing the approved treatment measures under the private land project plan. Measures on public land will begin after BLM has complied with the National Environmental

Mr. Kelly McGowan
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Policy Act ("NEPA") for that plan. To date, Barrick has invested more than \$4.5 million in implementing the BEA. More than 1800 acres of private land have been treated. Under the approved private land plan, Barrick will treat 8,000 more acres. Under the approved public land plan, Barrick has committed to treat over 37,000 acres of public land. We have committed and bonded more than \$14.8 million for on the ground expenditures under the private plan and more than \$33.8 million for on the ground expenditures for public land.

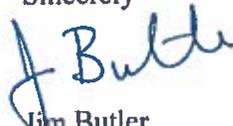
Because of this commitment to the BEA, we ask that any temporary regulations adopted by the Council regarding mitigation explicitly reference the BEA as an approved methodology and strategy for quantifying and mitigating potential impacts to Greater Sage-Grouse habitat.

We understand that it is the Council's intent to exempt the BEA and other existing, approved mitigation programs from the scope of the new regulations. Because the program is so important, we ask that a reference to the BEA (and other existing agreements) be added to Section 2 of the proposed regulation. Specifically, we request that paragraph 2 of that section be revised to read as follows:

2) "Activities using any mitigation agreement or framework authorized by the U.S. Fish and Wildlife Service prior to December 7, 2018, including any "Bank Enabling Agreement" or "Conservation Framework Agreement" between Department of Interior agencies and private companies, or any amendments thereto,"

If you have any questions regarding these comments or the BEA, please contact me by email or at (775) 789-6551.

Sincerely



Jim Butler
Parsons Behle & Latimer
Attorneys for Barrick

Kelly McGowan

From: Ellsworth, Susan - FS <susanellsworth@fs.fed.us>
Sent: Friday, March 15, 2019 12:13 PM
To: Kelly McGowan
Cc: Boatner, Kristie -FS; Shivik, John A -FS; Gabor, Cheva L -FS; Dunkelberger, William A -FS
Subject: HTNF comments on proposed temporary mitigation regulations

Dear Kelly –

We've reviewed the proposed temporary mitigation regulations (http://sagebrusheco.nv.gov/uploadedFiles/sagebrushconvgov/content/Meetings/2018/Notice%20of%20Intent%20to%20Adopt_Final.pdf) and submit the following comments for your consideration:

1. Insert “anthropogenic” into Section 1 as follows (red underline text) to clarify the purpose and scope of the regulations:

The purpose of this regulation, inclusive, is to ensure continued management and conservation of Greater Sage-Grouse and sagebrush ecosystems pursuant to NRS 232.162, NRS 321.592, and NRS 321.594 by setting forth requirements to mitigate certain anthropogenic disturbances in identified Greater Sage-Grouse Habitat.
2. Section 2 states that “Mitigation of residual direct or indirect anthropogenic impacts... is required when the anthropogenic disturbance is subject to state or federal review, approval, or authorization, as ordered by NV EO 2018-32.” Under the Nevada Greater Sage-grouse Conservation Plan, mitigation pursuant to these regulations would be required in PHMA, GHMA, and OHMA. In contrast, the USFS Greater Sage-grouse Plan Amendment (2015) requires compensatory mitigation of residual impacts in PHMA, GHMA, and Sagebrush Focal Areas (SFAs); the USFS is currently analyzing an amendment to the 2015 Plan that would, among other changes, remove SFAs and apply compensatory mitigation of residual impacts in PHMA and GHMA only. While we do not submit any recommended changes to the temporary regulations, we do want to note that coordination between our agencies will be needed to ensure consistent application of both the state regulations and the USFS Plan direction given the differences in the areas of application.
3. Insert the following language (red underline text) in Section 3 to clarify the applicability of the section:

Any Project Proponent proposing an anthropogenic disturbance activity that results in residual impacts to Greater Sage-Grouse Habitat must be fully compliant with these regulations and receive written authorization from the Sagebrush Ecosystem Program Manager indicating mitigation requirements have been met (as defined in 5a and b below) prior to commencement of the anthropogenic disturbance.

We also note that several of the responses in “Form 1: Form for Adoption, Filing Amendment or Repeal of Regulations” are specific to the BLM and do not accurately capture the existing situation for USFS management and direction related to mitigation of impacts in Greater sage-grouse habitat (e.g., items 5a, 6, 7). We would be happy to work with you to revise the statements to more accurately represent current direction for National Forest System lands.

Finally, coordination between the USFS and the SETT will be necessary at all stages of our respective planning and analysis processes to ensure compatibility of the determinations reached by the SETT pursuant to the temporary regulations and those made by the USFS in compliance with applicable federal law, regulation, and policy. We look forward to working with you to conserve Greater sage-grouse and its habitat in Nevada.

Sincerely,
Susan



Susan Ellsworth
Natural Resources and Planning Staff Officer
Forest Service
Humboldt-Toiyabe National Forest

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Kelly McGowan

From: Allen Biaggi <freelpeak@gmail.com>
Sent: Thursday, March 14, 2019 2:15 PM
To: Jim Lawrence; Kelly McGowan; 'JJ Goicoechea, DVM' (jjgoicoechea@eurekanv.org)
Cc: Dana Bennett
Subject: Nevada Mining Association Comments on the Proposed Nevada Greater Sage Grouse Regulations
Attachments: 2019.NvMA Comments on GSG Regulations.docx; 2019.SEC.draft regs.NvMA comments.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Please find attached comments from the Nevada Mining Association concerning the Sagebrush Ecosystem Council's proposed regulations concerning the greater sage grouse and compensatory mitigation.

Note that there are two attachments, a letter outlining the NvMA's concerns and positions on the regulations, and a redline/strikeout version of the regulations with suggested language changes.

We look forward to a constructive and productive discussion of the regulations at the meeting on March 19.

If questions or comments arise, please feel free to contact me.

Allen

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A. Biaggi & Associates, LLC
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**PROPOSED TEMPORARY REGULATION
OF THE SAGEBRUSH ECOSYSTEM
COUNCIL**

March 2019

AUTHORITY: Statutes of Nevada 2013, NRS 232.162 of Assembly Bill No. 461; Statutes of Nevada 2013, NRS 321.592 of Assembly Bill No. 461; Statutes of Nevada 2013, NRS 321.594 of Assembly Bill No. 461

A REGULATION to mitigate certain activities that impact lands identified as Greater Sage-grouse habitat.

Summary:

NRS 232.162 provides authority for the Sagebrush Ecosystem Council to adopt regulations specific to the management of sagebrush ecosystem and the establishment and oversight of a mitigation program to offset certain disturbances to Greater Sage-grouse habitat. The Sagebrush Ecosystem Council is a governor-appointed council, established to create and carry out strategies for "the conservation of the Greater Sage-grouse and sagebrush ecosystems in this State" as well as other strategies outlined in NRS 232.162. NRS 321.592 and NRS 321.594 provides authority for the Division of State Lands to adopt regulations for the oversight and administration of a program to mitigate damage to sagebrush ecosystems.

Section 1 states the purpose and authority of the regulations.

Section 2 outlines the instances where the regulation is applicable, as well as certain exceptions to the mitigation requirements.

Section 3 outlines the process to which a Project Proponent must adhere in order to satisfy their mitigation obligations.

Section 4 outlines the requirement of state agencies to receive certification of satisfactory mitigation requirements prior to authorization of activities resulting in anthropogenic disturbance in Greater Sage-grouse Habitat on state-owned land.

COMPENSATORY MITIGATION REQUIREMENTS

Definitions. As used in the regulation below, unless the context otherwise requires, the words and terms defined herein have the meanings ascribed to them in those sections.

“Avoid” defined. “Avoid” refers to eliminating conflicts by relocating disturbance activities outside of Greater Sage-grouse habitat where feasible in order to conserve Greater Sage-grouse and their habitat.

“Credits” defined. “Credits” are quantified habitat benefits to Greater Sage-grouse.

“Debits” defined. “Debits” are quantified impacts to Greater Sage-grouse habitats from anthropogenic disturbances.

“De minimis” defined. “De minimis” is defined as an anthropogenic disturbance that is too trivial or minor to merit consideration for mitigation. These actions are determined through the Nevada Greater Sage-grouse Conservation Plan and by the Sagebrush Ecosystem Program.

“Direct Impacts” defined. “Direct Impacts” is defined as Greater Sage-grouse Habitat loss that is caused by or will ultimately result from anthropogenic disturbances within the project footprint.

“Durability” defined. “Durability” is defined as Credit projects that demonstrate habitat functionality performance prior to credit release to be maintained throughout the project’s duration.

“Greater Sage-grouse” defined. “Greater Sage-grouse” (GRSG) is defined as any large ground dwelling bird listed under the name *Centrocercus urophasianus*.

“Greater Sage-grouse Habitat” defined. “Greater Sage-grouse Habitat” is defined as any area identified as Priority, General, or Other Habitat Management Areas in the Nevada Greater Sage-grouse Conservation Plan.

“Habitat Quantification Tool” defined. “Habitat Quantification Tool” (HQT) is defined as a set of metrics (i.e. measurements and methods) within the Nevada Conservation Credit System, applied at multiple spatial scales, to evaluate current conditions and changes in conditions indicative of habitat quality, baseline, and mitigation ratios necessary to determine the amount of total credit or credit obligation debit resulting from credit and debit projects.

“Indirect Impacts” defined. “Indirect Impacts” is defined as impacts to Greater Sage-grouse populations or habitat that are caused by or will ultimately result from anthropogenic disturbances. Indirect impacts could occur at some point in the future or outside of the direct footprint of the disturbance area.

“Minimize” defined. “Minimize” refers to impacts that will be minimized by modifying proposed actions where feasible or developing permit conditions to include measures that lessen the adverse effects to Greater Sage-grouse and their habitat.

Commented [AB1]: This definition is open and undefined. It provides for too much discretion of the Sagebrush Ecosystem Program. For example, would this preserve the current 5 acre exemption criteria for mineral exploration? Significant clarity is needed here.

Commented [AB2]: This language is speculative, undefined and open ended from the perspective of the project proponent.

“Mitigate” defined. “Mitigate” refers to an action required when impacts can are not be avoided, and, after required minimization measures are implemented, result in residual adverse effects on Greater Sage-grouse habitat.

“Mitigation Plan” defined. “Mitigation Plan” is defined as a contract that outlines the steps that have been or will be taken to fulfill mitigation requirements and includes the contract timeline and length, the debit and the offsetting credit amount, and the actions necessary to fulfill the requirements.

“Nevada Conservation Credit System” defined. “Nevada Conservation Credit System” (CCS) is defined as a pro-active solution to ensure direct, indirect, term, and permanent impacts from certain new, renewed, modified, or not previously authorized anthropogenic disturbances generate a net conservation gain for Greater Sage-grouse, while enabling human activities vital to the Nevada economy and way of life. Major updates to the CCS are completed annually and are approved through the Sagebrush Ecosystem Council during public meetings.

“Nevada Greater Sage-grouse Conservation Plan” defined. “Nevada Greater Sage-grouse Conservation Plan” (State Plan) is defined as a document, representing best available scientific information, as well as stakeholder input, that provides broad goals, objectives, and management actions to ameliorate the primary threats to Greater Sage-grouse in Nevada. This is meant to be a “working document” that will be updated as new science emerges and lessons are learned through its implementation.

“Project Proponent” defined. “Project Proponent” is defined as a person or entity that proposes or implements an anthropogenic disturbance within Greater Sage-grouse habitat.

“Sagebrush Ecosystem Council” defined. “Sagebrush Ecosystem Council” (SEC) is defined as the governor- appointed, legislatively-established, council comprised of representatives from conservation interests, industry, ranching, and government which is responsible for overseeing the operations of the Conservation Credit System and making policy decisions.

“Sagebrush Ecosystem Program” defined. “Sagebrush Ecosystem Program” (SEP) is a collaborative, multi-disciplinary program made up of the governor-appointed Sagebrush Ecosystem Council and the Sagebrush Ecosystem Technical Team, established to protect and enhance the sagebrush landscape.

“Sagebrush Ecosystem Technical Team” defined. “Sagebrush Ecosystem Technical Team” (SETT) is responsible for administering the Nevada Conservation Credit System and serves as staff to the Sagebrush Ecosystem Council.

“Verifier” defined. “Verifier” is defined as a person certified by the Sagebrush Ecosystem Program that leads the implementation of the Habitat Quantification Tool to quantify and verify credit and debit calculations.

Section 1. Purpose. The purpose of this regulation, inclusive, is to ensure continued management and conservation of Greater Sage-grouse and sagebrush ecosystems pursuant to NRS 232.162, NRS 321.592, and NRS 321.594 by setting forth requirements to mitigate certain disturbances in identified Greater Sage-grouse Habitat.

Sec. 2. Applicability of regulations. Mitigation of direct or indirect anthropogenic impacts, as defined by the Nevada Greater Sage-grouse Conservation Plan, within Greater Sage-grouse Habitat on lands managed by state ~~or federal~~ agencies is required when the disturbance is subject to state ~~or federal~~ review, approval or authorization, as ordered by Nevada Executive Order 2018-32, signed on December 7, 2018. The following are not subject to these regulations:

- 1) Activities that are in compliance with a Record of Decision that was signed prior to December 7, 2018,
- 2) Activities using any mitigation framework authorized by the U.S. Fish and Wildlife Service prior to December 7, 2018,
- 3) Direct impacts of projects or actions located on privately owned lands,
- 4) Mineral exploration activities causing surface disturbance of five (5) acres or less,
- 5) De minimis activities as identified in the Nevada Greater Sage-grouse Conservation Plan, or
- 6) Anthropogenic disturbances outlined in the Nevada Greater Sage-grouse Conservation Plan which directly address public health and safety, through the approval of the Sagebrush Ecosystem Program Manager.
- 7) Activities using any mitigation agreement or framework authorized by the U.S. Fish and Wildlife Service prior to December 7, 2018 including any "Bank Enabling Agreement" or "Conservation Framework Agreement" between the Department of the Interior and private companies, or any amendments thereto.

Sec. 3. ~~Except for projects and activities enumerated in Section 2, a~~Any Project Proponent proposing an activity on state ~~or federally~~-owned lands that impacts Greater Sage-grouse Habitat must be fully compliant with these regulations and receive written authorization from the Sagebrush Ecosystem Program Manager indicating mitigation requirements have been met (as defined in 5 ~~a and b below~~) prior to commencement of the anthropogenic disturbance.

- 1) Any Project Proponent proposing such activity shall submit geographic information system data files sufficient to indicate any ~~existing, authorized, and~~ proposed, ~~existing, and authorized~~ disturbances, and any ~~other additional~~ information required by the Sagebrush Ecosystem Technical Team in order to assess potential impacts to Greater Sage-grouse Habitat as a result of the proposed activity.
- 2) The Project Proponent ~~shall~~ will also consult with the Sagebrush Ecosystem Technical Team and provide an analysis of the Avoidance and Minimization measures considered and those planned to reduce impacts.

Commented [DB3]: A state regulation cannot compel a federal agency to comply.

Commented [AB4]: The NvMA questions if a governor's Executive Order can or should be cited within a regulation, or used as a basis for a regulatory action.

Commented [AB5]: A reference is needed here to better define and provide context to what a Record of Decision is, the federal process and the agencies that make those determinations.

- 3) Following incorporation of the Avoidance and Minimization measures into a final project proposal~~plan of operation~~, the Project Proponent, in coordination with the Sagebrush Ecosystem Technical Team, shall quantify the impacts associated with the planned disturbance using the most current version of the Nevada Conservation Credit System and Habitat Quantification Tool.
- 4) The number of Debits resulting from the proposed project shall be confirmed by the Sagebrush Ecosystem Program Manager within thirty (30) days of a final and complete Verifier submittal.
- 5) Confirmed impacts to Greater Sage-grouse Habitat in the form of Debits shall be deemed to have adequate mitigation measures under the following circumstances:
 - a) The Project Proponent has secured through a Nevada Conservation Credit System contract the purchase or transfer of an equal or greater number of Credits to offset the number of Debits generated from the project; or
 - b) A Mitigation Plan developed by the project proponent in coordination with the Sagebrush Ecosystem Technical Team and approved by the Sagebrush Ecosystem Program Manager or the Sagebrush Ecosystem Council that considers the following factors:
 - i) Conservation activity (e.g. pinyon/juniper removal, cheatgrass treatment, fire restoration, etc.),
 - ii) Location of the mitigation,
 - iii) Durability of the mitigation,
 - iv) Credit generation term,
 - v) Number of Credits generated or estimated using the most current version of the Habitat Quantification Tool, and
 - vi) Any other information thing else deemed appropriate by the Sagebrush Ecosystem Council.
- 6) Upon confirmation of adequate mitigation in accordance ~~compliance~~ with Section 5(either-5(a) or 5(b)) of these regulations, have been met, the Sagebrush Ecosystem Program Manager shall provide written notification~~a letter~~ to the Project Proponent and the authorizing land agency certifying that mitigation measures have been or are expected to be met.

Sec. 4. Authorization for the use of state lands within Greater Sage-grouse Habitat:

- 1) The State Lands Registrar shall receive a letter from the Sagebrush Ecosystem Program Manager certifying that mitigation requirements have been satisfied prior to issuing an authorization for any use, activity, or project that results in anthropogenic impacts to Greater Sage-grouse Habitat.
- 2) Prior to any state agency or department authorizing a project that results in anthropogenic disturbances to Greater Sage-grouse Habitat, the authorizing agency must receive certification from the Sagebrush Ecosystem Program Manager that all mitigation requirements have been satisfied.

Commented [AB6]: This seems very open ended and subject to potential abuse. Additionally, in Section 3, subsection 1 it is the SETT that can request additional information. Should it be the SETT here as well rather than the council?

Commented [AB7]: It is suggested a time deadline be placed into this section for the notification.



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March 14, 2019

Mr. Kelly McGowan, Program Manager
Sagebrush Ecosystem Program
201 South Roop Street, Suite 101
Carson City, Nevada 89701

RE: "Proposed Temporary Regulation of the Sagebrush Ecosystem Council"

Dear Mr. McGowan:

The Nevada Mining Association (NvMA) respectfully submits the following comments related to the "Proposed Temporary Regulation of the Sagebrush Ecosystem Council" dated March 2019.

First organized in 1913, NvMA consists of more than 470 companies that comprise Nevada's mining industry and rely, in whole or in part, on this state's foundational industry. These member companies are engaged across the broad spectrum of the industry and the state, from exploration and discovery to development and construction through operation and production and to closure and reclamation. NvMA provides a voice for Nevada's mining industry in federal, state, and local policy matters, community engagement, public education, and workforce development.

The mining industry has been a partner in the state's sage grouse conservation efforts since the establishment of Governor Brian Sandoval's Greater Sage Grouse Recommendation Committee, and participation has continued with the Sagebrush Ecosystem Council. The industry strongly supports the protection and rehabilitation of Nevada's sagebrush habitat, and our members are leaders in on-the-ground conservation efforts through agreements with state and federal agencies and early participation in Nevada's Conservation Credit System.

The industry has been actively engaged in the conservation of sagebrush habitat, even though mining is not a major threat to the greater sage grouse in Nevada. The greatest threats, by far and as you know, are invasive species and wildfire. In a short period of time, one fire alone – such as 2018's Martin Creek Fire—can destroy as much or more acreage than mining's total footprint in the State of Nevada. Recent fire seasons' impacts have exceeded, year over year, the number of acres approved for mining disturbance.

Despite its minimal impact, the mining industry has arguably contributed more funding, more time, and more human-power in the conservation and restoration of sagebrush habitat than any other industry in this state. We have participated in the development of Nevada's Conservation Credit System and support its goals. We look forward to a robust program that includes the potential for public land-based projects. The industry is committed to continuing that important work and values partnerships with federal, state, and local agencies who are also working hard toward those same goals.

The industry also recognizes that government agencies may need to promulgate regulations to move that good work forward, and we are committed to working with such agencies to develop, in a legal and transparent manner, regulations that outline fair and reasonable programs.

In that light, we have reviewed the “Proposed Temporary Regulation of the Sagebrush Ecosystem Council” and are concerned about its potential adverse impact on the mineral exploration and production industry and other public land users in Nevada. We respectfully request that the Sagebrush Ecosystem Council fully consider and evaluate the following comments before proceeding with the promulgation of this temporary regulation:

1. The statutory authority for the regulation is not clearly identified. A review of Assembly Bill 461 (Chapter 513, Statutes of Nevada 2013), cited by the proposed regulation, does not appear to provide a strong foundation. We also question the reliance on an Executive Order for regulatory authority. Whether temporary or permanent, the regulation should be carefully evaluated to ensure that it properly comports with federal and state laws.
2. It is unclear how a state regulation can compel federal land management agencies to require compensatory mitigation as specified in Section 2 of the proposed regulation. We are aware there has been substantial discussion between the State of Nevada and the Bureau of Land Management on this issue, but a definitive determination of how this process will work has not been made public. We ask that the exact state and federal mechanisms and authorities to be used to mandate compensatory mitigation be identified and clearly stated in the public record. This is necessary to ensure those mechanisms are in conformance with all state and federal land management laws and requirements.
4. Existing mitigation or conservation programs and already-executed agreements between private companies and federal or state agencies should be specifically recognized as in compliance with any state compensatory mitigation program.
5. Language should be specific and concise. For example, the proposed definition of “indirect impacts” is speculative, undefined, and unacceptably open-ended. The addition of “any other ... deemed important” to a list of requirements is also vague and open-ended.
6. Confirmation of acceptable mitigation plans should be provided in writing; confirmation or rejection should be determined within a specified timeframe or by a date certain; and an appeal process should be provided for rejections.
7. References to the Habitat Quantification Tool (HQT) should recognize that the HQT is dynamic and will be updated in the future.

Finally, we question whether the temporary regulatory process is the appropriate method by which to develop such important regulations. Should a temporary regulation be approved, it will need to be reviewed again or expire. Consequently, we respectfully request that the development of regulations relating to the use of compensatory mitigation for certain activities on public or private lands fully comply with Nevada’s Administrative Procedures Act.

I wish to emphasize that NvMA does not oppose the development of a regulation on this topic; indeed, NvMA welcomes the clarification and consistency provided by the rulemaking process and outcomes. As this process continues to unfold, you may find it helpful to refer to various

amendments offered by some of our members to the proposed temporary regulation. Those suggestions may be found in the attached document. But the current draft is not ready for action by the SEC, and we suggest that any such action be postponed until the regulatory language has been fully vetted by all stakeholders.

The Nevada Mining Association recognizes that compensatory mitigation programs can be useful when human activities on public lands are determined to adversely impact sagebrush habitat, and our members are proud of the many conservation and mitigation programs already initiated by the mining industry. We participated in the development of the Nevada Conservation Credit System, and the mining industry was the first to utilize it. We share the Sagebrush Ecosystem Council's concern about Nevada's sagebrush habitat, and we look forward to a continuing dialog with the Council and the Technical Team to develop fair and consistent regulations on this topic.

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Dana R. Bennett', with a long horizontal flourish extending to the right.

Dana R. Bennett, PhD
President, Nevada Mining Association

