



Mitigation Regulation Adoption Hearing

Thursday, October 3, 2019

SEP

Kelly McGowan, Program Manager

Katie Andrie, NDOW

Dan Huser, NDF

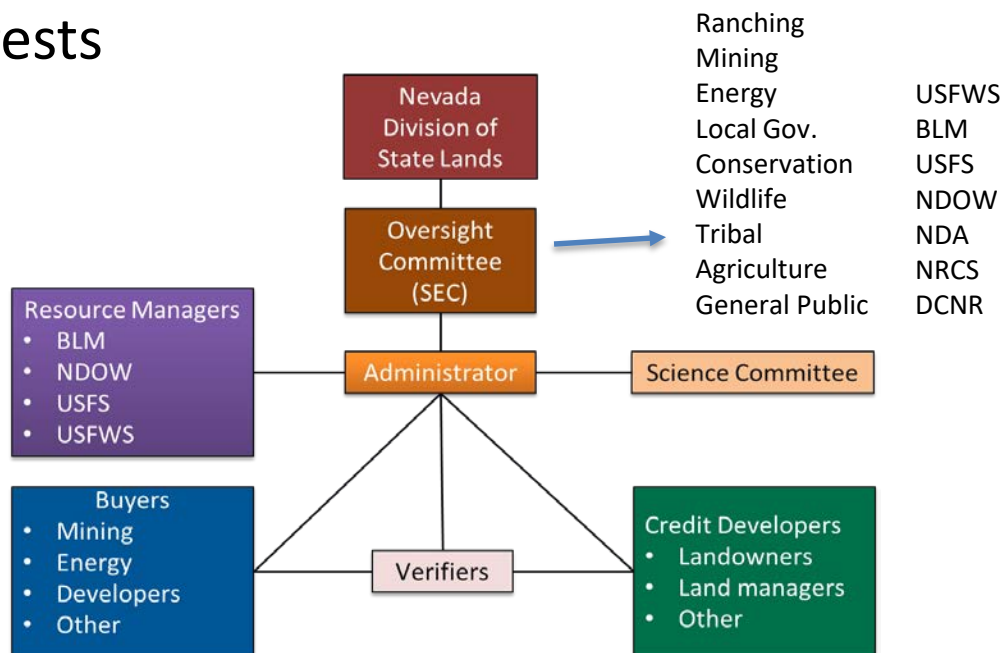
Ethan Mower, NDA

Kathleen Petter, NDSL



Why Regulations are Being Developed

- Take steps to prevent a greater sage-grouse listing as best as possible
 - Creation of a mitigation program to prevent further habitat loss and promote habitat conservation in the state
 - Input and support from many federal, state, and local interests





Why Regulations are Being Developed

- The Nevada Greater Sage-Grouse Conservation Plan requires mitigation through the use of the Conservation Credit System
 - Mitigation on public lands needs to be required
 - In most cases, federal land management agencies may not require it unless the State requires it
- Sagebrush Ecosystem Council Motion
 - October 11, 2018
 - “Proceed with seeking regulation to require a permit for implementation of the CCS system for the mitigation process for any projects undertaken on state or federal land”



Why Regulations are Being Developed

- Executive Order 2018-32 – December 7, 2018

1. The Sagebrush Ecosystem Council shall adopt regulations requiring compliance with the Nevada Sage-Grouse Conservation Plan and Nevada Conservation Credit System for the conservation of the Greater Sage-Grouse and their habitats using compensatory mitigation for anthropogenic disturbances on federal and state lands that cannot be avoided or further minimized as determined through the Conservation Credit System.
2. As these regulations are being developed and finalized, this Executive Order shall serve as direction to state agencies working with their federal counterparts and Nevada stakeholders to implement mitigation strategies in accordance with the Nevada Conservation Credit System.
3. Nevada's Conservation Credit System/Habitat Quantification Tool shall be used as the mechanism to quantify and mitigate direct and indirect impacts to Greater Sage-Grouse habitats as a result of anthropogenic disturbance activities or projects occurring within Greater Sage-Grouse designated habitat areas. The Nevada Conservation Credit System shall be required on lands managed by state or federal agencies. Private land owners will not be required to utilize the Conservation Credit System on private lands but can do so voluntarily.
4. This Executive Order, together with the Nevada Sage-Grouse Conservation Plan and Nevada Conservation Credit System, constitute Nevada's strategy and primary mechanism to conserve and ensure conservation of the Greater Sage-Grouse and their habitats.
5. This Executive Order shall remain in effect in perpetuity, unless rescinded at a future date.



SEC Authority

- NRS 232.162
 - Sagebrush Ecosystem Council may adopt regulations specific to the management of sagebrush ecosystem and the establishment and oversight of a mitigation program
 - Established to create and carry out strategies for "the conservation of the greater sage grouse and sagebrush ecosystems in this State"



Widespread Support

• Support from many sources



J.J. Goicoechea
Chair
Sagebrush Ecosystem Council
State of Nevada
201 South Rook Street, Suite 101
Carson City, Nevada 89701

Dear Dr. Goicoechea,

As follow-up to the discussion during the Public Hearing on the proposed Temporary Mitigation Regulations conducted at the March 19, 2019, the Forest Service would like to share the State of Nevada's proposed regulation concerning the greater sage grouse habitat is likely to affect administrative actions on National Forest System (NFS) land.

Under 16 U.S.C. 480, State regulation of persons on a national forest, except to the extent that there is no proposed greater sage grouse regulation is likely to affect administrative actions on NFS land.

In addition, the Forest Service proposes to retain net conservation gain for residual impacts from the proposed greater sage grouse plan and the decision to amend the greater sage grouse plan for releasing for a 60-day objection period in March.

We have identified several differences between the Forest Service greater sage grouse plan and the proposed regulation. The Forest Service plan requires core Priority Habitat Management Areas (GHMA), with the intent of disincorporating the State's proposed regulatory types. The State's proposed regulations (OHM Habitat Management Areas (OHM)) are also intended to provide conservation gain. The Forest Service plan requires the State to provide plans of operation to the extent of the proposed regulation. The Forest Service plan requires the State to provide plans of operation to the extent of the proposed regulation. The Forest Service plan requires the State to provide plans of operation to the extent of the proposed regulation.

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ASSEMBLY JOINT RESOLUTION NO. 3—COMMITTEE ON NATURAL RESOURCES, AGRICULTURE, AND MINING

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON PUBLIC LANDS)

MARCH 14, 2019

Referred to Committee on Natural Resources, Agriculture, and Mining

SUMMARY—Expresses support for the Nevada Greater Sage-Grouse Conservation Plan and the Nevada Conservation Credit System and urges the United States Bureau of Land Management to require compensatory mitigation to offset anthropogenic disturbances in accordance with the Nevada Conservation Credit System. (BDR R-511)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION—Matter in *bolded italics* is new; matter between brackets *(omitted material)* is material to be omitted.

ASSEMBLY JOINT RESOLUTION—Expressing support for the Nevada Greater Sage-Grouse Conservation Plan and the Nevada Conservation Credit System and urging the United States Bureau of Land Management to require compensatory mitigation to offset anthropogenic disturbances in accordance with the Nevada Conservation Credit System.

1 WHEREAS, The State of Nevada is known as the Sagebrush State
2 and the greater sage-grouse (*Centrocercus urophasianus*) is an
3 important species that inhabits much of the sagebrush ecosystem in
4 this State; and

5 WHEREAS, Restoration and maintenance of the sagebrush
6 ecosystem is essential to sagebrush obligate species, wildlife,
7 domestic animals, watersheds, biodiversity, culture and economic
8 productivity in the State of Nevada; and

A.J.R. 3

United States Department of the Interior
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APR 19 2019

air
n Council

t, Suite 101
9701

gement's Implementation Authorities Requiring Compliance with

ie Adoption of Proposed Temporary Mitigation Regulations
cosystem Council meeting on March 19, 2019, the Bureau of Land
! how it would consider the final state regulations when
nds. The proposed state regulation would require project
direct or indirect anthropogenic impacts to Greater Sage-
1 federally administered lands. The BLM conducted a review of
the program areas that could result in anthropogenic
vada (see enclosure).

ve with applicable state law is required under the federal
that could result in anthropogenic disturbance. As such,
posed temporary regulations, the BLM intends to require
component of compliance with applicable state law, and
rm and condition of its authorization for activities on
: BLM Nevada and California are also in the process of
ding that will describe how BLM and the State of
appropriate project design and alignment with the
1 those regarding compensatory mitigation.

Sincerely,

Jon K. Raby
State Director



Carlin





Participants and Collaborators

Much participation and input from many for almost a year

Mt. Moriah Stone Quarries US Forest Service American Exploration and Mining Association
Barrick Gold of North America Nevada Gold Mines NGP Blue Mountain (Cyrq Energy)
Nevada Rural Electric Association True Oil LLC
Nevada Department of Transportation Pheasants Forever Nevada Mining Association
Environmental Incentives Nevada Department of Wildlife Nevada Department of Agriculture
Crawford Cattle The Nature Conservancy Lithium Nevada Corp. Resource Concepts Inc.
Wells Rural Electric Co. US Fish and Wildlife Service Eureka County Governor's Office
FIMCorp. Sunrise Minerals LLC Simplot Silica Products Nevada Division of Minerals
EM Strategies Elko Mining Group Nevada Division of Environmental Protection Stantec
Coeur Mining Conservation Districts Nevada Association of Counties Crowley and Ferrato
Nevada Farm Bureau Nevada Mineral Exploration Coalition Prophecy Development
Fiore Gold US Inc. Humboldt County Commission Ecosynthesis Sagebrush Ecosystem Council
Griffin Company Nevada Backcountry Hunters and Anglers A. Biaggi & Associates, LLC
Natural Resources Conservation Service R&R Inc. Nevada State Conservation Commission
RDD Inc. Attorney General Kelmore Development Western Exploration
Nevada Department of Conservation and Natural Resources McEwen Mining Lander County
Paradise Sonoma Conservation District Bureau of Land Management
Western General Incorporated Senator Cortez Masto



Now We Are Here

Temporary Regulations T006-18

- Adopted April 29, 2019
- Expire November 1, 2019

Permanent Regulations R024-19

- Fully reviewed and approved by LCB in coordination with the SETT
- Once adopted, must be reviewed by LCB again
- If substantial changes are made, may have to go through a 30-day review process again with possibly another adoption hearing required

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Dan Huser, Forestry/Wildland Fire
Kathleen Patter, State Lands
Ethan Mower, Agriculture
Katie Andrie, Wildlife

REVISED PROPOSED REGULATION OF THE SAGEBRUSH ECOSYSTEM COUNCIL LCB File No. R024-19

August 26, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets *[omitted material]* is material to be omitted.

AUTHORITY: §§1-17, NRS 232.162.

A REGULATION relating to the greater sage-grouse; setting forth certain requirements related to the maintenance of sagebrush ecosystems and the conservation of the greater sage-grouse; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law creates the Sagebrush Ecosystem Council within the State Department of Conservation and Natural Resources and requires the Council to establish a program to mitigate damage to sagebrush ecosystems in this State by authorizing a system that awards credits to persons, federal and state agencies, local governments and nonprofit organizations to protect, enhance or restore sagebrush ecosystems. (NRS 232.162) On December 7, 2018, Governor Sandoval issued Executive Order 2018-32 which requires the Council to adopt regulations requiring compliance with the credit system.

Sections 14 and 15 of this regulation require, with limited exception, a person or entity that proposes an activity or project that will cause an adverse impact on the greater sage-grouse or habitat of the greater sage-grouse to: (1) submit to the Sagebrush Ecosystem Technical Team certain information about the proposed activity or project; and (2) have a verifier quantify such impact in the form of debits. Once the impact on the greater sage-grouse or habitat of the greater sage-grouse is quantified and approved by the Program Manager of the Team, the person or entity is required to mitigate the adverse impact on the greater sage-grouse or habitat of the greater sage-grouse by: (1) acquiring from or creating a sufficient number of credits in the Nevada Conservation Credit System established by the Council to offset the number of debits; or (2) developing a mitigation plan that will generate enough credits to offset the debits. Section 15 requires that any such mitigation plan be approved by the Sagebrush Ecosystem Council and sets forth certain criteria that the Council must consider in determining whether to approve the



Comments, Amendments, Action?

- Sections 3-13 (Definitions/Terms)
- Section 14 (Applicability and Exemptions)
- Section 15 (Applicability and Process)
- Section 16 (Certification of Mitigation)
- Section 17 (Certified Verifier/SETT Obligations)

- 35 specific categories of comments plus numerous questions
 - Would be happy to sit down and answer any questions regarding the program itself



Proposed Regulation

- **Section 1.** Chapter 232 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.
- **Sec. 2.** *As used in sections 2 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 13, inclusive, of this regulation have the meanings ascribed to them in those sections.*
- **Sec. 3.** *“Anthropogenic disturbance” means any direct or indirect adverse impact on the greater sage-grouse or the **habitat of the greater sage-grouse, as determined by the Sagebrush Ecosystem Council.***
- **Sec. 4.** *“Credit” means a unit of habitat conservation of the greater sage-grouse as quantified pursuant to the habitat quantification tool.*
- **Sec. 5.** *“De minimis impact” means an anthropogenic disturbance for which the adverse impact on the greater sage-grouse or the habitat of the greater sage-grouse **has been determined by the Sagebrush Ecosystem Council to be minor or trivial.***

4 comments



Proposed Regulation

- **Sec. 6.** *“Debit” means a unit of loss or degradation of habitat of the greater sage-grouse caused by an anthropogenic disturbance as quantified pursuant to the habitat quantification tool.*
- **Sec. 7.** *“Greater sage-grouse” means the species of bird classified as *Centrocercus urophasianus*.*
- **Sec. 8.** *“Habitat quantification tool” means the science-based method of calculating debits and credits in the Nevada Conservation Credit System.*
- **Sec. 9.** *“Nevada Conservation Credit System” means the system established by the Sagebrush Ecosystem Council pursuant to NRS 232.162 that calculates:*
 1. *Debits that will be caused by a proposed activity or a project.*
 2. *Credits that are created by persons, federal and state agencies, local governments and nonprofit organizations to protect, enhance or restore sagebrush ecosystems.*



Proposed Regulation

- **Sec. 10.** *“Program Manager” means the program manager of the Sagebrush Ecosystem Technical Team.*
- **Sec. 11.** *“Sagebrush Ecosystem Council” means the Sagebrush Ecosystem Council created by NRS 232.162.*
- **Sec. 12.** *“Sagebrush Ecosystem Technical Team” means the interagency technical team created by the Governor pursuant to Executive Order No. 2012-19 to support the Sagebrush Ecosystem Council.*
- **Sec. 13.** *“Verifier” means a person trained and certified by the Sagebrush Ecosystem Technical Team to use the habitat quantification tool for the purpose of calculating:*
 1. *The debits related to an anthropogenic disturbance; and*
 2. *The number of credits necessary to offset such debits.*



Definition Changes

- Definitions that were removed from the permanent due to the term not being found in the revised regulation
 - Avoid and Minimize
 - Greater Sage-Grouse Habitat Management Areas
 - Nevada Greater Sage-Grouse Conservation Plan
 - Project Proponent
 - Residual Impacts
- Definitions that were removed due to being defined by statute or there is general knowledge of the definition
 - Direct Impacts
 - Indirect Impacts
 - Sagebrush Ecosystem Program
- Definitions that are defined within the document themselves
 - Durability
 - Mitigate
 - Mitigation Plan



Proposed Regulation

- **Sec. 14.** *1. Except as otherwise provided in this section and to the extent it is not prohibited by federal law:*
 - a) The provisions of sections 2 to 17, inclusive, of this regulation apply to any person or entity that proposes an activity or project that will cause an anthropogenic disturbance.*
 - b) No permit or other final approval for a project or activity that will cause an anthropogenic disturbance is effective unless the proponent of the project or activity has complied with the provisions of sections 2 to 17, inclusive, of this regulation.*



Proposed Regulation

- **Sec. 14. 2.** *The provisions of sections 2 to 17, inclusive, of this regulation do not apply to:*
 - a) *A direct anthropogenic disturbance on private lands;*
 - b) *An activity or project which was approved by all relevant federal agencies, state agencies and local governments before December 7, 2018, so long as the activity or project maintains compliance with any condition or requirement for any such approval;*
 - c) *An activity or project with a mitigation agreement or framework agreement for greater sage-grouse signed by the United States Fish and Wildlife Service before December 7, 2018;*
 - d) *A mineral exploration project which is limited to a surface disturbance of not more than 5 acres; or*
 - e) *An activity or project that the Sagebrush Ecosystem Council determines:*
 - 1) *Is necessary to protect public health or safety; or*
 - 2) *Will have a de minimis impact on greater sage-grouse and sagebrush ecosystems in this State.*

8 comments



Proposed Regulation

- **Sec. 15.** *1. Any person or entity that proposes an activity or a project that will cause an anthropogenic disturbance shall:*
 - a) Submit to the Sagebrush Ecosystem Technical Team sufficient information for determining the adverse impact the proposed activity or project will have on the greater sage- grouse or the habitat of the greater sage- grouse, including, without limitation, geographic information system data files; and*



Proposed Regulation

- **Sec. 15.** *1. b) Have the direct and indirect impacts of the anthropogenic disturbance:*
 - 1) *Quantified by a verifier in terms of the number of debits that the activity or project will cause. Upon completion of his or her calculations, the verifier shall submit the calculations to the Program Manager. The Program Manager shall use the habitat quantification tool and available field data to conduct a quality assurance of the calculations of the verifier not later than 30 days after the verifier submits his or her final calculations to the Program Manager. If there is a difference between the calculations by the verifier and Program Manager, the calculations of debits by the Program Manager apply to the activity or project; and*
 - 2) *Mitigated by:*
 - I. *Acquiring from or creating a sufficient number of credits in the Nevada Conservation Credit System to offset the number of debits determined pursuant to subparagraph (1); or*
 - II. *Developing a mitigation plan approved by the Sagebrush Ecosystem Council pursuant to subsection 2 that will generate enough credits to offset the direct and indirect adverse impacts the proposed activity or project will have on the greater sage-grouse or the habitat of the greater sage-grouse.*



Proposed Regulation

- **Sec. 15. 2.** *In determining whether to approve a mitigation plan, the Sagebrush Ecosystem Council must consider:*
 - a) The conservation actions that are included in the plan and the number of credits to be generated from such conservation actions;*
 - b) The location where the credits will be generated;*
 - c) The length of time necessary to generate the credits;*
 - d) The length of time the credits will be maintained;*
 - e) Whether the credit durability provisions of the plan include appropriate mechanisms to ensure that a sufficient number of credits will be maintained for the appropriate amount of time; and*
 - f) Whether the financial provisions ensure maintenance of the credits for the duration of the activity or project.*



Proposed Regulation

- **Sec. 16.** *1. Upon completion of the process set forth in section 15 of this regulation, the Program Manager must issue to the person or entity that is proposing the activity or project a certification of mitigation that sets forth:*
 - a) The number of credits that the person or entity will acquire from or create in the Nevada Conservation Credit System; or*
 - b) The mitigation plan approved by the Sagebrush Ecosystem Council pursuant to section 15 of this regulation that will mitigate the direct and indirect adverse impacts that the proposed activity or project will have on the greater sage-grouse or the habitat of the greater sage-grouse.*
- 2. The person or entity to whom a certification of mitigation is issued must ensure compliance with the terms set forth in the certification of mitigation for the duration of the activity or project.*



Proposed Regulation

- **Sec. 17.** *The Sagebrush Ecosystem Technical Team shall:*
 1. *Train and certify persons to be verifiers; and*
 2. *Maintain a list on the Internet website of the Sagebrush Ecosystem Program of all verifiers who have been so trained and certified for the current calendar year.*



Summary of Regulation

- If the regulation is adopted without changes
 - This regulation codifies our program to mitigate damages to sagebrush ecosystems
 - Various exceptions
 - This does not give the state veto power on permits
 - Permits can still be acquired
 - Projects on public land must mitigate for direct and indirect impacts to both public land and private land
 - Projects on private land do not have to mitigate for the direct impacts
 - Should any indirect impacts affect public lands or other private lands, then mitigation is required
 - Can mitigate by purchasing or transferring credits or creating a mitigation plan for debit offset