



STATE OF NEVADA  
**SAGEBRUSH ECOSYSTEM COUNCIL**  
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**MITIGATION REGULATIONS WORKSHOP MINUTES**

**Date:** Tuesday, December 20, 2018  
**Time:** 11:00 a.m.  
**Place:** Humboldt County Courthouse Room 201  
25 W. 5th St, Winnemucca, NV 89445.

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**1. OPEN WORKSHOP, INTRODUCTION**

Kathleen Petter called the workshop to order at 11:00 AM.

**2. PUBLIC COMMENT**

Ms. Petter called for public comment, however, there was no public comment.

**3. PRESENTATIONS AND DISCUSSION OF PROPOSED REGULATION**

Ms. Petter introduced the proposed action and language of proposed regulations. The presentation can be found with the supplemental documentation to this workshop.

**4. PUBLIC COMMENT**

Public comment was opened at 11:07 AM.

Mr. Tim Crowley, representing McEwan Mining and Lithium Nevada. Mr. Crowley commented that McEwan mining has a Record of Decision, and this record has a provision that allows for a proponent driven mitigation plan. McEwan mining is moving forward on this plan. McEwan mining will be submitting written comments to make sure that they will not be left out of consideration for a pre-existing plan. Mr. Crowley also represents Lithium Nevada for Thacker Pass. The plan of operation will be completed soon. They have ideas for a proponent driven mitigation plan as well and they view these regulations as precluding actions that will fulfill the mission of protecting sage grouse and improve habitat by limiting them to the Conservation Credit System (CCS) program. The word "existing" is troubling language for them and indicates a lack of flexibility which limits the sagebrush restoration efforts. They encourage more flexibility for companies to be creative in their mitigation plans. These will be submitted via formal comments.

Mr. Bevan Lister asked what the challenges are related to the CCS that makes Mr. Crowley desire a different approach? Mr. Crowley responded that they are concerned about the formula that calculates indirect impacts, and the cost. A proponent driven plan allows them to apply resources more effectively in the immediate area of the mine. Mr. Crowley feels that this will accomplish more good effects.

Kim Summers representing credit producers within the CCS. Mr. Summers felt like section 2 of the proposed regulation needs to be more stringent, not less. Other states in the West have done what we are doing in regards to developing a credit system. Much time and money has been spent develop credits within the state and to give anthropogenic disturbance a way out will promote more disturbance and promotes less accountability. Language that states "an approved existing mitigation program or some combination therein" is not needed. The CCS is well designed and works

well for our state. To use another program because it is cheaper for industry is not to our benefit as a State, habitat, or the Sage Grouse. For the CCS to be effective and long lasting needs to attract private landowners that will develop and maintain credits for a 30 year term. If the time, money, and effort is spent to develop credits and there exists a cheaper option, the program will fail. New participants will not be attracted, the program will not function, and habitat will continue to decline. One of the purposes of the program is as a deterrent to development, and disturbance should have a long term cost to replace an equal or greater amount of habitat. Existing programs will be grandfathered in as they have already been filed, but there should be a solid date set where subsequent projects will be required to use the CCS. Mr. Summers stated that the Executive Order should serve as that date. If the project is subsequent to that date, it will be required to go through the CCS. The date needs to be stated clearly so that there is no ambiguity as to the date. Mr. Summers felt that federally managed wildlife preserves should be required to mitigate damage caused by mismanagement of fine fuels that results in destruction of habitat from wildfire. There is now an opportunity to have teeth in the program and loopholes will be a wrong move because they will become larger, not smaller. This effort is about preserving habitat, not encouraging disturbance.

Shane Hall representing Crawford Cattle. There was ambiguity and grey areas as a new credit producer and if mitigation will happen it needs to be through a specific channel. This process needs to continue and credit producers are on the hook for 30 years. New participants need to be attracted to the program, and that needs to be done fiscally. Credit Producers would like to see habitat improved, more Sage Grouse, and also Mr. Hall desires to see mining continue as well. Mr. Hall felt that this program can work for everyone. There is too much grey area right now, but everything needs to be funneled through the credit system. Ms. Petter asked where the grey areas were. Mr. Hall responded that right now projects do not need to go through the state, and thus mitigation can be done in many different ways. Ms. Petter responded that that was accurate right now, but the proposed regulations would require every project to use the CCS, Barrick agreement, or the agreement with Newmont. Mr. Hall expressed that he felt that the previous situation was one he was uncomfortable and agreed with the direction of the proposed regulation. The bottom line was that things needed to be firmed up from the current situation which discourages credit producers from participation.

Jim French representing the Humboldt County Commission. Mr. French had an issue with definitions that are found within the policy. The designation of critical habitat is different among agencies. What is critical within the application of that policy is that we apply it to critical habitat. We should not have an arbitrary line drawn on the map. Mr. French talked about his experience as a wildlife biologist for the Nevada Department of Wildlife. Mr. French was disappointed in the proposal of habitat that was protected under this rule. Mr. French commented that this policy will not be accepted widely unless money is applied directly to greater sage grouse habitat. Mr. French related that in his experience compensatory mitigation was used offsite and for things other than the animal that was targeted under the compensatory program. That situation will not work this time. The primary threat to Sage Grouse habitat is wildfire and noxious weed invasion and monocultures. Mr. French stated that any money raised through this policy should be applied directly to not only the mitigation of the direct loss but also to the reclamation of that loss as well.

Mr. Doug Busselman representing the Nevada Farm Bureau. Written comments have been submitted to the staff. Mr. Busselman commented that there will need to be some type of agreement between the State of Nevada and the federal agencies in order to implement mitigation on federal lands. The federal agencies currently do not have legal authority to move forward any mitigation requirement. The only chance that the federal agencies have to implement that States requirements is through the memorandum of agreement. That needs to be clearly outlined as the proposed regulations go forward. There needs to be a nexus that allows people to understand how the regulations translate to implementation. Mr. Busselman urged that a complete analysis be done that identifies how implementation will work. Using the need for that memorandum of agreement is perhaps a way to get more assertion of the Nevada Conservation Plan integrated into the Land Use Plans that are being created by the federal agencies. The Bureau of Land Management's Environmental Impact Statement has been released and Mr. Busselman feels that there are illusions that they are more compliant with what the Nevada Plan outlines. Mr. Busselman does not feel like the Environmental Impact Statement is compliant with the State Plan. The Forest Service's draft EIS misses the point on many places especially in the area of wildfire and the real threats toward the Nevada Landscape and towards Sage Grouse. The Nevada Plan should be a stronger component in how the federal land management agencies operate than is currently the case. Mr. Busselman feels the ability negotiate a working memorandum as being the leverage we need to make the federal plans match up with the State Plan. Especially in the area of progress in wildfire, managing fuel loads, protecting good habitat from fire. This is something that the Farm Bureau has stressed for multiple administrations. The only way we can accomplish this is through policy changes, and the only way policy change will get

done is by playing hardball with the federal agencies to bring about improved conservation on the ground. Mr. Busselman expressed that he found it difficult to provide comments when he did not know what the final regulation package will look like, or how the Memorandums would interlock the federal agencies, but he expressed that he would provide comments in the future.

Mr. Joe Sicking representing the State Conservation Commission and the Chairman of the Paradise-Sonoma Conservation District. Mr. Sicking expressed that he was glad to see the proposed regulations and he fully agreed with them. Mr. Sicking has worked on many projects that have dried up due to the mining companies not buying credits. Mr. Sicking would like to see this take effect and expressed the desire that if additional proponent driven mitigation projects were allowed that they have to comply with a “no net loss” requirement. Conservation credit projects are valuable because they enhance sage grouse habitat, and making more habitat. Mr. Sicking agreed with the fire sentiments discussed previously and expressed support for this concept.

Mr. Bevan Lister asked what projects occur on federal land or state administered land that don’t require a permit from the state. Are there things that happen that will fall through the cracks that may require a federal permit but may not require a state permit? Ms. Petter responded that the SETT has that in mind as they try and cover all the bases. Mr. Lister commented that one of the components to the MOU should be that there is coordination on those types of things because Mr. Lister could think of several things that occur where the state has no voice in permitting. Mr. Lister expressed that until he could see detailed language it was hard to make substantive comments. Mr. Lister encouraged the development of more detailed language so that more comments can be made.

Mr. Ethan Mower commented that one of the purposes for this public workshop was to solicit feedback regarding suggested language so that it can be incorporated into the language of the regulation. Mr. Lister responded that it was difficult if there was not even a structure for what the components of the regulation might be.

Mr. Thad Ballard representing Wells Rural Electric Company. One of the purposes of the CCS was to facilitate projects. If the regulations are too tight Mr. Ballard was concerned that this would be just as onerous as the systems put in place by the federal government that they were trying to find a workaround with the CCS. Mr. Ballard understood the need to create an incentive for the credit producers and some certainty for them, but Mr. Ballard asked to not lose sight of the mission at the beginning which was to facilitate economic development in spite of regulations which would come with the sage grouse.

Mr. Sicking commented that an alternative to this included a proposal from a senator which would shut down mining in Northern Nevada. That would be an economic downturn because the economy is based on mining. We need to take whatever is available for mitigation and make it work so that does not happen.

Mr. Summers also commented and clarified that the CCS is the program for Nevada. The language can be worked out and argued over, but that the language needs to be present that all disturbance needs to go through the CCS. Mr. Summers commented that some of this situation was forced upon Nevada by the federal government which said that if a listing was to be avoided conservation needed to happen. Mr. Summers expressed frustration that the federal government seems to desire to give development a way out. The language needs to be consistent, clear, and concise that if you cause a disturbance in the CCS needs to be used. Mr. Summers expressed that mining and power lines are needed and Gas and Oil are needed. But the development of these things should not disturb habitat. Mr. Summers expressed that he thought the purpose of this program was to protect habitat. Mr. Summers reiterated that his desire is to see language that strongly states that the CCS is the approved program for mitigation.

Mr. Jim French commented that the Humboldt County Commission would like to see language included that exempts public projects. Expansions of landfills, road development, gravel pits, and public safety communications systems are all activities that Mr. French does not want to see the state taxing further.

## **5. CLOSE OF WORKSHOP**

The workshop was closed at 11:37 AM.

## **6. ADJOURNMENT**

The workshop was adjourned at 11:37 AM.