



STATE OF NEVADA
SAGEBRUSH ECOSYSTEM COUNCIL
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DRAFT MITIGATION REGULATIONS HEARING MINUTES

Date: Monday, April 29th, 2019
Time: 8:30 a.m.
Place: Nevada Department of Wildlife
6980 Sierra Center Parkway #120, Reno, NV 89511

Council Member Present: JJ Goicoechea, Steven Boies, Sherm Swanson, Allen Biaggi, Chris MacKenzie, Bevan Lister, William Molini, John Raby, Jim Lawrence for Bradley Crowell, Justin Barrett, Cheva Gabor for Bill Dunkelberger, Tony Wasley.

Council Members Absent: Gerry Emm, Starla Lacey, Ray Dotson, Jennifer Ott.

1. OPEN HEARING, INTRODUCTION

Chairman Goicoechea opened the hearing at 8:36 AM.

2. PUBLIC COMMENT

Mr. Barrett commented that an alternate to the word “listed” be used on page 9 in the definition portion of the regulations. Mr. Barrett also commented that the definition was somewhat lacking and offered assistance in defining the species. Chairman Goicoechea asked Mr. Wasley what language he would prefer relating to status and definition. Mr. Wasley indicated that the Nevada Department of Wildlife’s State Action Plan uses the phrase “species of conservation priority” and that language would be fine. Member Biaggi asked if there was a definition in the Nevada State Plan of the Sage Grouse. Member Swanson asked if the name choice will cause it to be inclusive of the Bi-State territory. Member Swanson wondered if the topic of defining the name in the regulations was germane to being inclusive of the Bi-State Sage Grouse. Chairman Goicoechea expressed that USFWS and NDOW have the Sage Grouse defined somewhere. The Nevada State Conservation Plan does not have a definition of the Greater Sage Grouse. Chairman Goicoechea asked if “identified” or “described” should be used, and if the term “bird of conservation priority” should be included. Mr. Barrett concurred, Mr. Wasley concurred. The term “identified as” will be used. Mr. Barrett wanted clarification of the language on page 11, section 2, subsection 3, and whether the language describes action taken on private land that are being conducted by the landowner, or if the language was referring to any actions on private land? Mr. Lawrence indicated that the intent is not to require mitigation for actions on private land. Mr. Barrett asked if that applied to the landowner only, or actions on private land in general. Mr. Lawrence affirmed the intent was in general as far as the direct impacts were concerned. Chairman Goicoechea clarified that the intent of the council for the last five years has been that mitigation would not be required on private land, and that the section in question is meant to reinforce that intent. Mr. Lawrence concurred that the guidance of the executive order and the regulations in question were meant to exclude private land, and commented that further discussion may be had later on the agenda. Ms. Gabor commented that the USFS will supply a letter explaining how the USFS authorities will interact with the proposed regulations. Ms. Gabor summarized the letter. This letter can be found on the Sagebrush Ecosystem Program website. Ms. Gabor communicated that the USFS will require compliance with state law. There are a few differences between the state requirements and federal requirements, and the more restrictive requirement would take precedence. Member Swanson asked in instances where the Forest Service may require mitigation and the State would not, if the CCS tools would still be used evaluate impacts and the associated mitigation. Ms. Boatner

indicated that the Forest Service plan amendment references the standard for net conservation gain and the avoid, minimize and mitigate hierarchy, and the plan does indicate that the USFS preferentially uses the CCS or a standardized tool like the HQT to accomplish that. It is not a standard to give the USFS flexibility if circumstances change over time. Member Biaggi asked if the letter which will be supplied will need to change based on a ROD being signed in the future. Ms. Gabor answered that it depends on changes made before the ROD is signed. Ms. Gabor did indicate however that if a change was needed it might look similar to the letter of authorities supplied by the BLM, and it wouldn't be an extreme departure away from the intent of the letter. Ms. Gabor also commented that the letter will include language that allows the re-visitation of the MOU between the USFS and the SEP/DCNR to reflect new requirements.

Mr. Jeremy Drew representing the Nevada Association of Counties presented suggested amendments to section 2 of the proposed regulations. The proposed amendment can be found on the Sagebrush Ecosystem Program website. Mr. Drew commented that the reasons for the amendments is targeting the timeliness of emergency and public health and safety functions. Mr. Drew commented that the council never intended to retroactively apply the CCS to infrastructure that was already present, but that the State Plan is silent on administrative functions where it is not silent on other activities being classified as anthropogenic disturbances. Mr. Drew mentioned that the proposed regulations should clarify this silence especially in situations where federal plans may reference state plans which may have insufficient clarity regarding administrative functions. Member MacKenzie asked, in section number seven, if redundancy is created with the clause "or that do not result in an additional direct impact or permanent indirect impact?" Mr. Drew acknowledged that it was possibly redundant, but more is better.

Member Boies asked Member Biaggi if roads leading to de minimis projects would be classified as part of the de minimis project, or if they are a separate project? Member Biaggi deferred to Mr. Mike Visher. Mr. Visher indicated that if roads were pre-existing and not altered, and if travel does not increase the footprint of the road, the road would not be part of the project. If roads are improved in any way, the portions of the improvements are made part of the project and would add to the acreage of the project.

3. PRESENTATIONS AND DISCUSSION OF PROPOSED REGULATION

Member MacKenzie called attention to section 2, subsection 4, regarding the exemption of the mineral exploration exemption of 5 acres or less. Member MacKenzie expressed concern over the impact this may cause. Chairman Goicoechea commented that the USFS has a more restrictive requirement which will require mitigation of these exempted sites.

Member Biaggi thanked Mr. John Raby for the supplied letter and table of authorities which resolved many questions. Chairman Goicoechea concurred.

Mr. McGowan called attention to one of the amendments made on page 11, section 2, subsection 2, where the word "endorse" was inserted instead of "signed" at the request of the USFWS.

Member Lister commented the relevancy of a "sunset clause" and a safe harbor agreement to these temporary regulations. Those ideas may be pursued in the process for permanent regulations. Mr. Stockton commented that these temporary regulations will expire on November 1st.

Member Lister moved to accept the amendments provided by the Nevada Association of Counties. Member Boies seconded the motion.

Chairman Goicoechea asked for a motion to approve the regulations with the definition corrections discussed previously, and the word endorsed instead of signed. Member Mackenzie moved for the adoption of the regulations. Member Biaggi seconded the motion.

4. PUBLIC COMMENT

Mr. J.A. Vaca asked for a clarification on when these regulations become legally active? Mr. Stockton clarified that subsequent to the adoption by the council the temporary regulations go to the Legislative Council Bureau. If any state legislator objects, a meeting of the state legislative committee will be convened to review the regulations. If no objection is found it may be filed with the Secretary of State and is effective at that point. 35 days are required as a timeline. If no legislator objects to the regulation, it will not be put on the agenda for the legislative committee meeting.

5. ADJOURNMENT

Hearing was adjourned at 9:04 AM.

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