

**Comments on LCB File No. R024-19
Nevada Mining Association**

1. Avoidance and minimization measures. The Council's proposed regulation, as submitted to LCB, required the proponent of a project to consult with the Sagebrush Ecosystem Technical Team and provide the Team with an analysis of the avoidance and minimization measures that have been considered and are planned to be used. The consultation provision does not appear in LCB's revision of the regulation, and we believe it should be added.

2. Role of the Technical Team in the development of a proposed mitigation plan. Again, the regulation as submitted to LCB provided that any proposed mitigation plan was to be developed in consultation with the Technical Team, and that language likewise does not appear in LCB's revision. It should be added.

3. Exception for "routine administrative or emergency functions." The Council's temporary regulation included an exception for "routine administrative functions" conducted by a governmental agency that serve a public purpose, do not require state or federal authorization and do not result in a direct impact or a permanent indirect impact on sage grouse populations or habitat. This language was omitted from the regulation as submitted to LCB and we would like to see it reinstated in the regulation adopted by the Council.

4. Difference in calculation of debits. LCB's revision of the regulation provides, in section 15, that if there is a difference in the number of project-related debits calculated by the verifier and the Program Manager, the Program Manager's calculation prevails. We would suggest that any such conflict be resolved by the Council.

5. Time certain for completion of administrative process. Section 16 of the regulation requires that a certification of mitigation be issued "upon completion of the process set forth in section 15," but there is no other time frame provided for the review process to be completed and the certification issued. Once the information required by the regulation has been submitted by the person or entity desiring to undertake a project or activity, we believe that there should be a specific time limit set forth in the regulation for completion of the administrative review process and issuance of the certification of mitigation.

6. Applicability of the regulation to state and local agencies and officials. The requirements of the regulation apply to "any person or entity that proposes an activity or a project that will cause an anthropogenic disturbance." Generally, the term "person" means a human being or any nongovernmental legal entity, but does not include a governmental agency or a political subdivision such as a county. NRS 0.039. These may or may not be encompassed in the term "entity." In view of the purposes of the regulation, we believe that language should be added to make it explicit that the regulation applies equally to state and local governments, governmental agencies and public officials.



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September 23, 2019

Nevada Sagebrush Ecosystem Program
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**RE: Comments on the Revised Proposed Regulations of the Sagebrush Ecosystem Council
LCB File No. R024-19**

Dear Nevada Sagebrush Ecosystem Program:

Introduction

Thank you for the opportunity to provide these comments regarding the Nevada Sagebrush Ecosystem Council's (NV SEC's) Proposed Compensatory Mitigation Regulation. The American Exploration & Mining Association (AEMA) has been actively involved with the Greater Sagegrouse (GSG) issue since 2011 when the federal land management agencies, the U.S. Bureau of Land Management (BLM) and the U.S. Forest Service first announced plans to amend their land use management plans in areas with GSG habitat. AEMA applauds the NV SEC's efforts to develop the Nevada GSG Conservation Plan and understand that the proposed regulations are designed to implement key elements of that plan.

We also share the NV SEC's goal to take appropriate steps to minimize the potential for the U.S. Fish and Wildlife Service (USFWS) to list the GSG as a threatened or endangered species under the federal Endangered Species Act in response to the 2020 status review. However, as discussed below, we have concerns about how the proposed regulations will adversely impact many AEMA members who are involved with mineral exploration in Nevada and would like to offer a constructive and workable suggestion for mitigating this impact.

Who We Are

AEMA is a 124-year old, 1,700-member national association representing the minerals industry with members residing in 42 U.S. states, seven Canadian provinces or territories, and 10 other countries. AEMA is the recognized national voice for exploration and access to public lands and represents the entire mining life cycle, from exploration to reclamation and closure.

Many AEMA members are involved with mineral exploration and mining in Nevada. Because so many of our members are located in Nevada or have Nevada projects, we hold our annual meetings at the Nugget in Sparks, NV every other year. AEMA's annual meeting is the second largest and

the longest running annual mining convention in the U.S. We are looking forward to our 125th annual meeting, which will take place in Sparks from December 1 – 6, 2019. This year's meeting will feature over 100 speakers and 250 exhibitors. As many as 2,500 people have attended AEMA's past annual meetings in Sparks, which reflects the number of AEMA members actively working in Nevada and demonstrates Nevada's role as the most important mineral exploration and development state in the country.¹

About 25 AEMA corporate members are exploration companies with projects in Nevada and another 74 of our corporate members are vendors who provide goods and services to these and other exploration companies. Additionally, approximately 25 percent of AEMA's 1,400 individual members are involved in mineral exploration and have mineral exploration interests in Nevada. Although AEMA's members include a number of large mining companies, most of our exploration company corporate members and certainly our individual members are small businesses that employ fewer than 150 full-time employees and thus would be categorized as small businesses pursuant to NRS 233B.032.

AEMA members involved with mineral exploration in Nevada will be significantly impacted by the proposed regulations. Thus, AEMA is a significant stakeholders in this rulemaking process.

Mineral Exploration Footprint on Federal Land

Mineral exploration is critical to the future of Nevada's mining industry. New and expanded mineral discoveries are constantly needed to replace mined-out reserves at existing mines and to develop new mines. BLM's Legacy Rehost 2000 (LR 2000)² online database shows that BLM has authorized a total of 7,565 acres of surface disturbance comprised of 6,780 acres of surface disturbance for mineral exploration Plans of Operation and 785 acres of surface disturbance for Notice-level mineral exploration activities on BLM-administered lands throughout the state. The database also shows that BLM has authorized 187,140 acres of surface disturbance for mining Plans of Operation.

It should be noted that the LR 2000 statistics include exploration and mining projects on lands in western and southern Nevada that are not GSG habitat. Consequently, Nevada mineral exploration activities affect less than 7,565 acres of GSG habitat and Nevada mining projects impact less than 187,140 acres of GSG habitat.

BLM's 43 CFR Subpart 3809 surface management regulations (3809 regulations) for locatable minerals regulate all surface-disturbing activities associated with mineral exploration, development, and mining. The provisions at 43 CFR §§ 3809.300 - 336 apply to mineral

¹ BLM's Public Lands Statistics show that nearly half of U.S. mining claims are located in Nevada. (*Public Land Statistics 2017*, Volume 202, June 2018, U.S. Department of the Interior Bureau of Land Management, BLM/OC/ST-18/001=1165, P-108-7).

² LR 2000 database information as of July 29, 2019. The Forest Service does not compile similar statistics so this evaluation does not include exploration projects on the Humboldt Toiyabe National Forest (HTNF). However, AEMA believes that most Nevada mineral exploration projects affect BLM-administered lands, with a small subset of projects on the HTNF.

exploration projects that impact less than five acres of public land. These regulations require operators to file a Notice with BLM describing the location and nature of the proposed exploration activities and to provide financial assurance (a reclamation bond) prior to commencing surface-disturbing activities including road building and drilling.

Sections 3809.400 – 434 govern mineral exploration projects that impact more than five acres of public land as well as mineral development and mining projects. Under these regulations, operators must submit a Plan of Operations to both BLM and the Nevada Division of Environmental Protection/Bureau of Mining Regulation and Reclamation (NDEP/BMRR).

In response to a mineral exploration Plan of Operation, BLM must prepare a National Environmental Policy Act (NEPA) analysis – typically an Environmental Assessment (EA) – to analyze the environmental impacts associated with the proposed exploration project. The Council on Environmental Quality (CEQ) regulations implementing NEPA establish the avoid, minimize, mitigate/rectify, and compensate hierarchy at 40 CFR § 1508.20. Section 1502.14 of the CEQ regulations require agencies to evaluate project alternatives that would avoid, minimize, or mitigate environmental impacts.

In order to satisfy NEPA's alternatives evaluation requirement, BLM must consider alternatives to the project proponent's Plan of Operations. This alternatives analysis must assess ways to avoid, minimize, and mitigate impacts to environmental resources present in a project area including but not limited to cultural resources, water resources, wildlife, vegetation, and BLM special status species such as GSG. This NEPA alternatives analysis process dovetails well with the avoid, minimize, and mitigate principles that are the foundation of the NV GSG Conservation Plan. Similarly, the Forest Service must prepare a NEPA document for proposed mineral activities that evaluates alternatives that would avoid and minimize impacts.

The Federal Land Management and Policy Act (43 U.S.C. 1701 et seq) mandates that all activities on public lands must prevent unnecessary or undue degradation (UUD)³. This mandate is not a zero-impact standard and recognizes that some impacts associated with most uses of public lands are necessary and due.

The overarching purpose of BLM's 3809 regulations is to implement the FLPMA UUD mandate for mineral activities on public lands.⁴ The Forest Service's 36 CFR Part 228 Subpart A surface management regulations for locatable minerals (228A regulations) contain a similar environmental protection mandate which requires that mineral activities minimize adverse environmental impacts where feasible.⁵

In order for BLM to approve a Plan of Operations for a mineral exploration or a mining project, BLM must determine that the proposed project prevents UUD. Under FLPMA and the 3809

³ 43 U.S.C. 1732(b)

⁴ 43 CFR §§ 3809.1, 3809.5, 3809.415, and 3809.420

⁵ 36 CFR § 228.8

regulations, BLM cannot approve a project that would create an adverse impact to GSG habitat that could be avoided, minimized, or mitigated by an alternative approach to the project.

At some mining projects, impacts to GSG habitat may be unavoidable and difficult to minimize if the ore body is located in or near an important habitat area or if engineering, technical, and economic constraints dictate that it is not feasible for certain mining facilities to avoid GSG habitat areas. These types of impacts are necessary and due in order for the mine to be developed and are authorized under FLPMA and the 3809 regulations, which require reclamation of these features to the greatest extent possible.

In contrast, at many exploration projects it is feasible to relocate project components like drill roads and drill pads to avoid or minimize impacts to GSG. If relocation is infeasible, it may be possible to avoid or minimize impacts by scheduling project activities to occur outside sensitive times of the year such as the lekking season.

Working together, the NEPA analysis process, the FLPMA UUD mandate, and the 3809 regulations (or the 228A regulations for projects on the HTNF), are avoided and minimized whenever and wherever possible at mineral exploration and development projects.

Reclamation versus Compensatory Mitigation

BLM's and the Forest Service's surface management regulations (e.g., the 3809 and 228 A regulations) and NV State regulations at NAC 519A⁶ require operators to reclaim the surface disturbance at mineral exploration and mining projects and to furnish financial assurance to provide federal and state regulators with sufficient financial resources to reclaim a site in the event a company fails to do so. These federal and state reclamation requirements mean that unavoidable impacts to GSG habitat will be reclaimed at the end of an exploration or mining project.

Generally speaking, the impacts associated with mineral exploration can be completely reclaimed and the land restored to pre-project conditions. Reclamation of exploration drill roads and pads consists of recontouring impacted areas to approximate the original topography and revegetating the recontoured areas with an agency-approved seed mixture that includes desirable plant species that will minimize the spread of non-native annual grasses such as cheat grass.

NDEP/BMRR, BLM, and the Forest Service have entered into a Memorandum of Understanding that outlines the coordination and co-management of these financial assurance instruments. Under this program NDEP/BMRR and the two federal land management agencies co-manage roughly \$3 billion of financial assurance for NV mineral projects.

There are two main differences between reclamation and compensatory mitigation. First, reclamation occurs onsite and addresses the site-specific impacts associated with a mineral project. In contrast, compensatory mitigation occurs off-site and addresses impacts unrelated to the mineral

⁶ NRS 519A and the NAC 519A regulations govern mineral exploration and development projects that affect more than five acres of land and apply to both public and private lands.

project. Secondly, reclamation occurs at the end of a mineral project whereas compensatory mitigation occurs simultaneously at an off-site location while the mineral project is underway.

Because mineral deposits are rare and exceedingly difficult to find⁷, most exploration projects are unsuccessful; they do not discover a mineral deposit that can be developed into an economic mine. Consequently, most exploration projects last just a few to several years and are reclaimed as soon as possible so the operator can recoup the reclamation bond monies once the agencies determine the reclamation of the project area complies with standardized reclamation objectives. Because operators have a financial incentive to reclaim a project as soon as possible in order to have the reclamation bond monies refunded, there is typically minimal lag time between project cessation and reclamation.

Suggested Modification to the NV SEC's Proposed Compensatory Mitigation Regulation

AEMA very much appreciates the NV SEC's intention to minimize impacts to mineral exploration by exempting projects that affect fewer than five acres. However, AEMA believes that this exemption for mineral exploration projects doesn't go far enough to achieve the NV SEC's intent to limit the impacts on mineral exploration companies, most of which are Nevada small businesses as defined in NRS 233B.0382.

AEMA acknowledges the efforts that NV Sagebrush Ecosystem personnel devoted to analyzing the impact of the proposed regulation on small businesses and preparing Form 4, Small Business Impact Statement, pursuant to NRS 233B.0609. In response to this evaluation, the Nevada Division of Minerals estimated that the proposed regulation could impact 66 small Nevada businesses in the minerals sector. One such company, a small Nevada-based exploration company, stated that the regulations could create a financial hardship for them.

According to the Small Business Impact analysis included with the NV SEC's Notice of Intent to Adopt a Regulation, there was some confusion regarding the proposed regulation. Notwithstanding this confusion, the small business analysis concluded that the proposed regulation would create undue financial hardships on "Notice-level Mineral Exploration entities."⁸ AEMA believes that this analysis does not properly characterize the Nevada mineral exploration sector or fully assess the impact that this proposed regulation will have on Nevada exploration companies. Many small businesses that operate as Nevada mineral exploration companies have both Notice-level mineral projects that impact less than five acres of public land and Plans of Operations for exploration projects that disturb more than five acres.

The Small Business Impact analysis does properly note that "Small industry businesses may have a difficult time with the new regulations due to the additional cost during their startup, especially

⁷ According to the National Academy of Sciences, 1,000 mineral targets must be identified and evaluated to discover a deposit that can become a mine. (Hardrock Mining on Federal Lands, 1999, National Research Council, National Academy of Sciences, 247 p.

⁸ See page 16 of the NV SEC's Notice of Intent to Adopt a Regulation.

mineral exploration companies.”⁹ It also accurately acknowledges that the proposed regulation would restrict the formation, operation, or expansion of a small business. However, the small business impact analysis incorrectly assumes that exempting Notice-level projects will fully address the adverse impacts to small businesses. As explained below, this is not the case because many small Nevada mineral exploration companies operate projects with Plans of Operation that would be subject to the regulations as currently drafted.

BLM’s above-cited LR 2000 database statistics show that nearly 90 percent of the BLM-authorized mineral exploration surface disturbance is associated with Plans of Operation (6,780 acres out of the total 7,565 acres of exploration surface disturbance). Only about 10 percent of the authorized disturbance acres (785 acres out of 7565 acres) are attributable to Notice-level projects.

Thus, in order to minimize the adverse impact this regulation will have on the small businesses that are a significant component of the Nevada mineral exploration sector, AEMA requests that the regulations be modified to exempt all mineral exploration projects from the mandatory compensatory mitigation requirement. We believe this modification would be consistent with the NV SEC’s objectives to minimize the impact of this regulation on mineral exploration activities. We also believe that modifying this regulation to exempt both Notice-level and Plan-level exploration projects would be consistent with the directives in directives in NRS 233B.0608.1(b) and 2(a) and the requirement at NRS 233B.0608.2(c) to “[c]onsider methods to reduce the impact of the proposed regulation on small businesses.”

Because exploration projects impact less than 7,565 acres of GSG habitat in Nevada, are typically short-lived, must be designed and implemented to avoid impacts wherever possible, must be reclaimed and can typically be fully reclaimed, and must provide state and federal regulators with reclamation bonds, AEMA suggests that compensatory mitigation is not necessary to mitigate the impacts of these mineral exploration projects on GSG habitat. With this in mind, AEMA believes that exempting all mineral exploration projects that are permitted and fully bonded under the State’s NAC 519A regulations, BLM’s 3809 regulations, or the Forest Services’ 228A regulations should qualify for the proposed exemption from the NV SEC’s compensatory mitigation regulation.

Eliminating the mandatory compensatory mitigation requirement for exploration projects would not preclude exploration companies from using the Nevada Conservation Credit System (NCCS) to conduct voluntary, offsite compensatory mitigation. Some companies may elect to perform compensatory mitigation to satisfy corporate objectives. This may be especially true of companies that own or have access to ranches or other private lands where NCCS habitat credits are located.

Conclusion

AEMA applauds the NV SEC’s multi-year efforts to develop and implement the NV GSG Conservation Plan. We very much appreciate this opportunity to provide comments on the proposed compensatory mitigation regulations. Our members take great pride in protecting the

⁹ *Ibid*, Page 17.

environment while exploring for and producing the minerals America needs for every aspect of our lives. The U.S. mining industry is the most environmentally responsible mining industry in the world. Mining and environmental protection are compatible, and mineral products make possible both the development of our society and the mitigation of modern society's impact on the environment.

AEMA believes our suggested modification of the proposed compensatory mitigation regulation would be consistent with the NV SEC's stated intentions to limit impacts on Nevada's mineral exploration sector, which is comprised of many small business entities. We also believe that our suggested modification would make the proposed regulation more consistent with the directives in NRS 233B.0608 to take appropriate steps to limit the impacts of proposed regulations on Nevada's small businesses.

Please do not hesitate to contact me if you would like to discuss AEMA's proposed modification in more detail. We stand ready to work with you on this regulation to limit its adverse impacts on mineral exploration and to advance our mutual goals to maintain the GSG's status as not warranted for listing as a threatened or endangered species.

Thank you for your consideration.

Sincerely,



Mark Compton
Executive Director



September 25, 2019

Sent via email: kmcgowan@sagebrusheco.nv.gov

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

Re: Notice of Intent to Act upon a Regulation
NRS 232.162(6)(a) – management of sagebrush ecosystem and establishment and oversight of mitigation program

Dear Mr. McGowan,

The Nevada Mineral Exploration Coalition (NMEC) appreciates this opportunity to provide comments on the Mitigation Regulations proposed by the Sagebrush Ecosystem Program (SEP) under the Sagebrush Ecosystem Council.

The NMEC is a coalition of individuals and small companies engaged in and supporting mineral exploration in Nevada. As an industry, we use state of the art science and technology to search for and develop the natural resources of the state. As an organization, we advocate for and provide a voice for the thousands of entities involved in this critical activity. Mineral exploration is the essential research and development segment of the broader mining industry.

We recognize that a great deal of work and consideration has gone into these regulations over a significant period of time; however, we continue to have significant concerns.

Please note our comments and concerns:

- Creates another level of bureaucracy with a completely new, government-mandated industry of “approved” verifiers and “approved” owners of credits.
- Who will be responsible for the costs of paying the verifier? Will the verifier be employed by the state, or will private industry be required to hire and train this new type of position?
- Section 15 requires, among other things, for a Program Manager to “conduct a quality assurance of calculations of the verifier not later than 30 days after the verifier submits his or her final calculations to the Program Manager.” This seems an unnecessary delay in bringing projects to fruition unless the additional 30 days run concurrent with the time frame under BLM and USFS regulations.



- The hiring and selection process of the “Program Manager” is undefined, and it is unclear what revenues will be used to compensate said program manager. Will there be new fees required on behalf of explorers and other land-users, or will fees get diverted to this new program instead of existing programs?
- The proposed requirement for a mineral explorer to obtain the opinion of a “verifier” regarding credits is an extra step with no benefit to the explorer, the state, nor the public.
- How are the fees charged by the verifier determined? Who regulates his/her professional conduct? Who oversees the quality/accuracy of their work in cases of dispute?
- The proposed regulation fails to define any qualifications, experience, or education that a verifier would need to possess. Further, how and by whom will they be trained?
- How does the project manager ensure compliance? What enforcement mechanisms are available to the project manager?
- The exploration exclusion referenced in section 14(2)(d) which limits projects to less than 5 acres (notice level disturbance) is too restrictive and will lead to significant economic damage to small explorers, and ultimately the mineral supply chain where explorers are on the leading edge.
- The determination that “impacts to State or Local Lands is anticipated to be insignificant” in our view is not accurate. For small explorers, the costs associated with both the new burden of hiring a verifier and the imposition of an additional delay of 30 days for a permit to drill small exploration holes will be substantial.

We thank you for your attention to these concerns, and I apologize if these concerns were already addressed during regulation workshops. Our organization looks forward to providing further input, as appropriate.

Respectfully submitted,

David Shaddrick

Dave Shaddrick
President, Nevada Mineral Exploration Coalition
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From: [Barrett, Justin](#)
To: [Kelly McGowan](#); [Kathleen Petter](#)
Cc: [Lara Enders](#)
Subject: Proposed mitigation regulations
Date: Friday, September 27, 2019 10:49:29 AM

Dear Kelly,

We have reviewed the proposed mitigation regulations (http://sagebrusheco.nv.gov/uploadedFiles/sagebrushconvgov/content/Meetings/2019/Notice_of_Workshop.pdf) and are submitting the following comment for your consideration:

Section 14. 2. (c) -" An activity or project with a mitigation agreement" should be changed to "An activity or project *using* a mitigation agreement". The Barrick and Newmont mitigation agreements, which this exception is intended to capture, do not have debit projects tied to them. Therefore there are no debit projects *with* said mitigation agreements. The agreements are mechanisms for creating credits; debit projects can *USE* those mitigation agreements to fulfill their obligation.

We appreciate the efforts of the state to require mitigation as a tool for greater sage-grouse conservation.

Thank you!

Have a great weekend!

Justin

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FI^QRE GOLD

September 27, 2019

Delivered via email
Friday, September 27
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Kelly McGowan, Program Manager
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RE: COMMENTS ON THE REVISED PROPOSED REGULATIONS OF THE SAGEBRUSH ECOSYSTEM COUNCIL LCB File No. R024-19

Dear Mr. McGowan:

Please find below Fiore Gold (US) Inc.'s (Fiore Gold) comments related to the Revised Proposed Regulations of the Sagebrush Ecosystem Council LCB File No. R024-19:

General Comments on the Process Predator control

The Sagebrush Ecosystem Council (SEC), the Sagebrush Ecosystem Technical Team (SETT), these proposed regulations, the Conservation Credit System (CCS) and the Habitat Quantification Tool (HQT) have all come about in an effort to avoid the listing of the greater sage-grouse (GSG) on the list of endangered species. The bird was not listed and we applaud the part that SEC played in that decision. However, the SETT process, using the HQT was developed very quickly and fails to acknowledge the most current research related to the survival of the GSG. The HQT relies solely on habitat improvement for mitigation of potential impacts and includes no system for such things as raven or other predator impact reduction through such things as aversion training or carrion removal.

With funding from Fiore Gold the USGS conducted a 5-year study of GSG in the area of the Pan Mine and Gold Rock property owned by Fiore Gold. The USGS's empirical observations of sage-grouse are inconsistent with the CCS habitat evaluation methodology and with the habitat-only view of sage-grouse conservation in the Gold Rock region. (Delehanty, L.B., S.D. Malone, A.L. Stephenson, E.E. Warnock, and R.L. Kelble (lead scientists: P.S. Coates and M.A. Ricca). 2017. Annual Data Summary 2013-2017: Monitoring and Research on Greater Sage-Grouse in the Pancake and White Pine Mountain Ranges of Eastern Nevada. Final Data Summary, 20 December 2017. USGS Western Ecological Research Center, Davis, CA.)

[file name]

The proposed regulations make it “required” to only mitigate using the HQT and so only habitat improvement is included. It provides no way to fix the actual problem of predation. Because of this, even if every project is mitigated with the required credits the HQT tool indicates are needed greater sage-grouse numbers will likely still go down and eventually the species could be lost.

Numerous publications and presentations from USGS, and others, show that predation of GSG nests is very high (50% or more) and increases with raven densities to the point that with >0.4 ravens per hectare there is no possibility of GSG reproduction. Moreover, USGS indicates that it is primarily the non-resident adult ravens (those not holding a nest territory) that are the primary cause of GSG nest predation.

See USGS reference: Coates, P.S., B.E. Brussee, M.A. Ricca, J.E. Dudko, B.G. Prochazka, S.P. Espinosa, M.L. Cassazza, and D.J. Delehanty. 2017. Greater Sage-Grouse (*Centrocercus urophasianus*) Nesting and Brood-Rearing Microhabitat in Nevada and California - Spatial Variation in Selection and Survival Patterns. USGS Open File Report 2017-1087, prepared in cooperation with the Bureau of Land Management and Nevada Department of Wildlife.

Ravens do not prey on adult or large juvenile GSG. Since predation on GSG nests is only possible for a period of 1-2 months (shorter?) during the spring, ravens must have alternate food sources during the rest of the year. The best such food supply is fresh carrion, which comes from two major sources: road kill and deceased large mammals including livestock, native herbivores (specifically pronghorn antelope), and especially wild horses.

These food sources are especially important for non-territory-holding ravens, which forage over wider geographic areas than do pairs that have a territory. And those are exactly the birds that are responsible for the majority of the predation on GSG nests.

The Conservation credit System (CCS) makes no quantitative allowance for roadkill removal as a project mitigation strategy; this may well be more important than any amount of minor incremental improvement of existing GSG habitat.

The state has declined to take any action related to livestock and its impacts on GSG or habitat, and it is reasonable to assume that the populations of species such as pronghorn are stable or decreasing, so these sources of carrion can be regarded as constants, irrespective of other anthropogenic (e.g., project-related) impacts on habitat.

However, populations of feral horses have increased greatly in recent years. The most recent estimate for Nevada is 43,281 horses and 4,187 burros, which exceeds the Appropriate Management Level of 12,811 by 34,657 animals (<https://www.blm.gov/programs/wild-horse-and-burro/about/data/population-estimates>). Though not all of these inhabit the same areas as GSG, dead individuals provide raven food supplement even when not located in GSG habitat. Looking only at feral horses for the moment, using the 2019 BLM population estimate and a lifespan of 25-30 years and adult body mass of 800 pounds, there would be on average about 1,443 to 1,731 of them that die every year, providing 1,154,400 to 1,384,992 pounds of body mass. The amount available as raven food is somewhat less, because older horses that die each year might weigh less, some of the body mass (e.g. bones) is not raven food, and there are other carrion scavengers than ravens. But this estimate still shows that some 1 million pounds of potential raven food might be supplied annually by deceased wild horses.

Thus, the overpopulation of feral horses and other anthropogenic food supplements may well swamp any GSG habitat mitigation efforts, and must be taken into account in any requirement for project impact and mitigation quantification. The number of roadkill jackrabbits surely varies by season and year, but reported numbers are in the range of one or two per kilometer of paved highway; presumably this means every day, since various scavengers remove most or all carcasses daily. Our observation is that this food supply is not strictly seasonal: many are seen when traveling Nevada highways in winter. That's another major year-round source of anthropogenic food supplement for ravens, removal of which must be evaluated quantitatively in any program to mitigate inferred project effects on GSG. Having a plan of any kind that does not address raven reduction and control is definitely not “best available science.”

Possible flaws in the HQT methodology

The HQT valuation of late brood rearing habitat fails to take into account the importance of shrub cover for this life stage, despite published research that clearly demonstrates that shrub cover is very important in habitat selection during this life stage (USGS habitat OFR, tables XX YY ZZ).

The HQT valuation of winter habitat fails to take into account proximity to other used habitats, which the USGS monitoring data from the Midway Subregion shows is an important spatial factor (need to recheck the maps and confirm).

The CCS methodology provides a conifer cover class data layer that is not accurate, but there is no opportunity or procedure to make improvements in site-specific accuracy within a given project effects study area. Areas with substantial invasive annual grass cover can be identified, but not conifer cover that is prohibitive for GSG habitat use. In some project areas, this is a considerable source of over-estimate of habitat values.

The system erroneously assigns the highest value to whichever life stage it scores best, with no consideration of which stages are limiting for GSG survival and reproduction. There is a huge abundance of winter habitat (judged solely by the CCS calculations), whereas late brood rearing habitat is well known to be the most limiting habitat type (more so even than nesting habitat). Considering that the CCS calculations for late brood rearing habitat values are so fundamentally incorrect when judged against the best available science (USGS habitat OFR), this is a major flaw in constructing a balanced impact-mitigation program.

Debit/Credit Balance

For the CCS approach to be required of all projects, there must be a reasonable expectation that sufficient credits can be feasibly created to offset the calculated debits. While the CCS website identifies several "credit transfers", some, or many of these, are not in fact transfers, but instead use of credits by mining projects or companies that own the ranches where those credits are generated. There is not in fact a market for credits at all: they are nearly all generated by the same overarching entity as are the debits. Simply put, it's not feasible for every proposed project with GSG habitat debits to buy a ranch.

Prior to adoption of the proposed ordinance, the SETT should disclose in clear terms: 1) how many credits have been transferred by a credit generator that is not owned by the debit creating entity; 2) how many credits are truly available on the "open" credit market; and, 3) how many debits are estimated for currently approved or proposed projects. If the figures for #2 and #3 are strongly out of balance, that is an indication that the CCS program as currently conceived and constituted cannot function to mitigate habitat impacts of projects.

Moreover, it is obviously impossible for all debits created on federal lands in the state to be mitigated by creation of credits on the small proportion of GSG habitat that occurs on private land. Nevada is 84.9% federal land, leaving only 15.1% state and private land (2014 BLM Annual Report on Public Land Statistics). And not all of this private land is sage grouse habitat. In order to impose the proposed CCS requirement, it must be made contingent upon the existence of a federal commitment to allow for credit generation on federal lands, and must include language that the CCS requirement does not go into effect until the procedures for credit creation on federal lands are finalized, and that the requirement terminates if and when the federal agreement to allow credit generation is modified or eliminated. To our knowledge, there is no "enforceable" opportunity for a debit creating project on federal land to be able to create credits on federal lands.

Transparency

In addition to the above comments, we are not able to fully comment and evaluate the system because the science behind all of the components within the HQT have not been made available to the public for review. Any tool such as this must be fully transparent.

**In addition to the above, we suggest the following recommendations for changes to the Proposed Regulations
Comment 1**

Sections 14 and 15; This process is too onerous and too complicated to be functional or affordable for the average mining company. As mentioned above, the HQT calculations are not transparent and the rationale is not apparent for predicting mitigation. There are a range of simpler alternatives that would arrive at mitigation requirements in a more transparent and defensible manner. In addition, a proponent has to contact a listed credit provider and negotiate on the open market to get a price for credits. In our case, where the credits will not be required for several years, it is not possible to get an accurate and guaranteed price, and a guarantee that they will still be available in several years. An accurate price is necessary for planning purposes and to provide accurate information to existing and potential investors.

Fiore Gold suggests that a simple method of determining how many acres of habitat will be lost by direct impacts and then requiring that number of acres to be reclaimed or replaced within the local area would be easier, less costly and more effective.

Comment 2

Section 3; Indirect impacts are too vague and the current science to understand them is insufficient to base regulation upon. The current Habitat Quantification Tool (HQT) creates debits for indirect impacts based on distance from a lek, but does not give credit for indirect or direct positive effects such as raven or other predator control measures and activities such as carrion reduction as discussed above or raven aversion training (Aversive Conditioning to Reduce Raven Predation on California Least Tern Eggs. Author(s): Michael L. Avery, Mark A. Pavelka, David L. Bergman, David G. Decker, C. Edward Knittle, George M. Linz. Source: Colonial Waterbirds, Vol. 18, No. 2, (1995), pp. 131-138. Published by: Waterbird Societ or carbon footprint reductions such as solar or wind systems, or simple energy reductions.)

Fiore Gold suggests that indirect impacts should not be used to calculate credits or debits from a proposed project.

Comment 3

Section 8; As discussed above, the HQT is not transparent enough for use in regulation. When a calculation method is used by a government to levy millions of dollars' worth of mitigation from companies the entire process must be transparent, defensible and explainable to the public. The HQT is unnecessarily complicated with hidden calculations and is not transparent.

Fiore Gold suggests the HQT be dropped in favor of a more simple, direct impact versus replacement process.

Comment 4

Section 14. 1. (b); This statement is over-reaching and for just one example does not separate out the effects of climate change. As stated, a permit or final approval for a project which only affects climate change, such as a solar or wind project outside of sage grouse habitat, would require following the provisions of sections 2 to 17 as climate change is an "anthropogenic effect to greater sage-grouse".

Fiore Gold suggests re-writing these regulations in light of a better understanding of the effects of climate change on greater sage-grouse consistent with best available science.

Comment 5

Section 14. 2. (b); The inclusion of the requirement of the activity to "maintain compliance with any condition or requirement for any such approval" is vague and unenforceable. Maintaining compliance with conditions and requirements is often complicated by factors beyond the control of the proponent, the approving agency or other involved parties. Determining who or what is at fault for any small delay or non-compliance issue would be fraught with litigation and cost implications. This would also broaden beyond the authority of the agency. It implies that the Sagebrush Ecosystem Council would make enforcement determinations outside of its scope of authority and in areas where compliance determinations are delegated to other agencies.

Fiore Gold suggests striking the part of the sentence beyond "December 7, 2018".

Kelly McGowan, Program Manager, September 27, 2019

Closing

Thank you for this opportunity to comment. I hope that you will fully consider our comments.

Sincerely,

Tom Williams

Vice President of Environmental Affairs
Fiore Gold (US) Inc.
8310 South valley Highway, Suite 180
Englewood, Colorado 80112

September 27, 2019

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

Re: Comments on Revised Proposed Regulation

Dear Mr. McGowan,

This letter presents comments on the Revised Proposed Regulation of the Sagebrush Ecosystem Council LCB File No. R024-19 dated August 26, 2019 on behalf of Nevada Gold Mines (“NGM”). NGM is a joint venture between Barrick Gold Corporation and Newmont Goldcorp Corporation combining eight operating mines in Nevada that produced an estimated four million ounces of gold in 2018. NGM has a direct and substantial interest in the revised proposed regulations. Both Barrick and Newmont commented on prior versions of the proposed regulations and participated in earlier stages of this rulemaking. As explained in those previous comments NGM has made substantial investments in improving sage-grouse habitat in Nevada under the provisions of NGM’s Bank Enabling Agreement (“BEA”) and Conservation Framework Agreement. Those previous comments are incorporated by reference into these comments. It is also anticipated that some future NGM projects will provide compensatory mitigation under these regulations.

1. The regulations should clearly recognize existing compensatory mitigation agreements, including future amendments to such agreements.

Section 14.2.(c) of the proposed revised regulations acknowledges that the compensatory mitigation provisions of the regulations do not apply to “an activity or a 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.” This language is similar to language in the temporary regulation and clearly includes the existing NGM agreements. Both agreements provide for amendments in certain circumstances. We request that the regulations be clarified by adding “or any amendment to such mitigation agreement or framework agreement” at the end of subsection (c) quoted above.

2. The applicability of the rule is written too broadly and should be revised.

Section 14.1(a), defines the scope of the rule and states that the regulation applies “to any person or entity that proposed an activity or project that will cause an anthropogenic disturbance.”

This language omits two important limitations that were contained in Executive Order 2018-32 and the temporary regulation: that the proposed activities must occur “within Greater Sage-Grouse designated habitat areas,” and that the activity is “subject to state or federal review, approval or authorization.” The regulation should be modified to include those limitations and to read “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 anthropogenic disturbance within Greater Sage-Grouse designated habitat areas and is subject to state or federal review, approval or authorization.”

3. The requirements for the “grandfather” for prior approved projects are written too broadly. The requirement is impractical and should be written more clearly.

Section 14.2(b) states that prior approved projects are not subject to the compensatory mitigation requirement. As written, the section excludes “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 of such approval.”

There are several significant problems with the language of the proposed revised regulation. First, the requirement for approval by “all relevant” agencies extends the provision far beyond the scope of the temporary regulations. The intent of the program is to avoid, minimize and compensate for surface disturbance of designated sage-grouse habitat. Federal, state and local approvals for a project or activity will likely include many permits that are unrelated to land disturbance. For example, in the case of mining, a mining plan of operations approved by BLM and a reclamation permit issued by NDEP would authorize surface disturbance. But, many of the other required permits such as approval from MSHA or business licenses to operate, are unrelated to land disturbance.¹

The proposed revised regulation also goes beyond the authority of Executive Order 2018-32 by adding a reference to “local governments.”

Finally, the proposed regulation extends the grandfather “so long as the activity or project maintains compliance with any condition or requirement for such approval.” That condition is not authorized by Executive Order 2018-32 or statute and is completely impractical as it places the Council in a position of enforcing every requirement of every permit issued prior to December 7, 2018. For example, under the regulation as written, a mine approved well before the date of the Executive Order might be required to retroactively compensate for sage-grouse habitat impacts if it is issued a violation order from MSHA or a notice of violation under an air permit. The purpose of the grandfather language in the regulation was to acknowledge that the Council could not retroactively enforce the mitigation requirements in the Executive Order. The compliance status of any permit for a grandfathered operation is irrelevant and the regulation cannot allow the

¹ For a list of permitting requirements see Nevada Bureau of Mines and Geology, Special Publication L-6, “State and Federal Permits Required in Nevada Before Mining or Milling Can Begin.” Last revised June 2018.

Council to reach back and apply the mitigation requirement to a project that was authorized prior to December 7, 2018.

These problems should be addressed by revising the proposed revised regulation to read:

Section 14.2(b) “An activity or project with authorized land uses that were approved prior to December 7, 2018.”

4. Section 14.1(b) is beyond the Council’s legal authority and should be deleted.

Section 14.1(b) says that “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 provision of Sections 2 to 17, inclusive, of this regulation.”

This provision is completely unnecessary. Section 15 imposes an affirmative obligation on any project within the scope of the regulations to have potential impacts quantified and to provide appropriate mitigation as approved by the Council.

The Council has no legal authority, either from the Executive Order or any statute, to delay or impair the effectiveness of a permit issued by another federal or state agency. The effectiveness of such permits is defined by federal and state laws and regulations. The Council has no authority to amend those laws and regulations to declare that duly issued permits are not effective until a permittee complies with the Council’s requirements. This is also a highly impractical provision as implementation of it could raise serious questions about the validity of preexisting permits (such as mine plans or reclamation permits) that are being amended to add new surface disturbance subject to these regulations. This provision should be deleted.

5. The exemption for certain government actions should be reinstated.

The temporary regulations included an exemption from the requirement for “routine administrative or emergency functions conducted by federal, state or local government that serve a public purpose that do not require federal or state authorization or that do not result in additional direct impact or permanent indirect impact.”

That exemption is important to allow for continued operation of certain key government functions (such as road maintenance) or response to emergency conditions (such as fires and floods). The language from the temporary regulations should be restored.

6. The rules should only apply to disturbance in “Greater Sage-Grouse Habitat Management Areas.”

Section 15.1 is written broadly to apply the regulation to “any person or entity that proposes an activity or a project that will cause an anthropogenic disturbance.” The term “anthropogenic disturbance” is defined to mean 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.”

September 27, 2019

Page Four

The Council determines habitat by designating Greater Sage-Grouse Habitat Management Areas. The mapped habitat is an important tool for project screening to determine whether the rules apply and for designing surface disturbance to “avoid and minimize” impacts to habitat.


The limitation should be made clear by amending the definition of “anthropogenic disturbance” to add at the end “through designated Greater Sage-Grouse Habitat Management Areas.”

7. The concept that operators should “avoid and minimize” potential impacts and compensate for “residual impacts” through mitigation should be restored.

Executive Order 2018-32 authorizes the Council to adopt regulations “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.” In several provisions the temporary regulations explicitly acknowledge that persons causing disturbance in designated sage-grouse habitat are expected to “avoid and minimize” potential impacts before turning to the Conservation Credit System to offset residual impacts. This concept has been completely removed from the revised proposed regulations. NGM believes that the “avoid, minimize and compensate” policy is an important part of the Nevada program and an important means of coordinating the Nevada program with federal requirements, including the Endangered Species Act. The proposed revised regulations should be amended to explicitly acknowledge that policy.

Thank you for considering our comments.

Sincerely,



Jim Butler

Parsons Behle & Latimer

Attorneys for Nevada Gold Mines



September 27, 2019

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

RE: “Proposed Regulation of the Sagebrush Ecosystem Council, LCB File No. 024-19”

Dear Mr. McGowan,

The Nevada Rural Electric Association (“NREA”) respectfully submits the following comments in the matter of the “Proposed Regulation of the Sagebrush Ecosystem Council, LCB File No. 024-19”.

The NREA was founded in 1974 to represent the collective interests of public power utilities and their consumers across Nevada. NREA member utilities include Alamo Power District No. 3; Boulder City Municipal Utility; Deseret Power Electric Cooperative; Harney Electric Cooperative, Inc.; Lincoln County Power District No. 1; Mt. Wheeler Power; Overton Power District No. 5; Plumas-Sierra Rural Electric Cooperative; Raft River Electric Cooperative; Surprise Valley Electrification Corporation; and, Wells Rural Electric Company. Our members’ service territories cover much of the state and several include sagebrush habitat areas.

Rural Electrics are unique both in principle and in their organization. These utilities formed in communities too sparsely populated to entice the investment of corporate shareholders. They operate as not-for-profits and are democratically controlled by their consumers through an elected board of directors or government body.

NREA members have actively participated in state and federal efforts throughout the West to conserve sagebrush habitat. We support enhanced cooperation and coordination between state and federal agencies in the establishment of habitat management protocols and support this Council’s efforts to find creative ways to mitigate potential impacts to these sensitive ecosystems. However, our members are concerned that the proposed regulation as currently drafted may have unintended consequences. We would respectfully request that the Council consider the following comments as it weighs the proposed language:

1. The scope of the regulation should be clearly defined. Whereas previous versions of the proposal have included a reference to “routine operational, maintenance or administrative functions” in the list of projects or activities which do not require mitigation, that limitation was removed in the most recent draft (024-19RP1). Further, the language as currently drafted states that “no permit or other final approval...is effective unless the proponent of the project or activity has complied with [the regulation]”. We believe that the original intent of the Council and interested stakeholders was to encourage coordination between state and federal agencies.



2. Construction and maintenance of power lines, which requires little active surface disturbance, should be considered for placement on the list of projects and activities which do not require mitigation or the use of credits. We would respectfully suggest that language to that effect be placed alongside the current exemption for “A mineral exploration project which is limited to a surface disturbance of not more than 5 acres.”
3. Not-for-profit associations of persons and political subdivisions of the State should be given the same ability to generate credits as other stakeholders in the Conservation Credit System (“CCS”) process.
4. A method for review or appeal of decisions for approval or denial of an application for mitigation plan or calculation of credits should be clearly delineated. Where applicable, any discrepancy between the calculation of credits required for a project between a verifier and the Program Manager should be considered by the Council and subject to review.

The Nevada Rural Electric Association appreciates the opportunity to provide input during this regulatory process and we look forward to continuing the dialogue with the Sagebrush Ecosystem Council and its partners.

Respectfully Submitted,

A handwritten signature in black ink that reads 'Carolyn Turner'.

Carolyn Turner
Executive Director, Nevada Rural Electric Association

Amendment to Proposed Regulation 024-19

Proposed by Nevada Rural Electric Association

Contact: Hank James – 775.275.0439 / hjames@nrea.coop

Carolyn Turner – 702.343.0974 / cmturner@nrea.coop

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original regulation; (2) variations of green bold underlining is language proposed to be added in this amendment; and (3) ~~red strikethrough~~ is deleted language in the original regulation.

Sec. 5. *“De minimis impact” means and 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}~~ Technical Team in cooperation with the project proponent and land manager to be minor or trivial.*

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 project.

2. Credits that are created by persons, entities, federal and state agencies, local governments and their subdivisions, and nonprofit organizations and associations to protect, enhance or restore sagebrush ecosystems.

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}~~ State or federal review, authorization, approval or grant 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.

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 or linear 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.

(3) Consists of routine operational, maintenance or administrative functions.

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

(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 no difference between the calculations by the verifier and Program Manager, the calculations of debits by the Program Manager apply to the activity or project subject to review by the Sagebrush Ecosystem Council; 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.

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~~{,}~~; and

(g) Any discrepancy between the debits and credits quantified by a verifier and the debits and credits quantified by the Program Manager.