

# CLARIFICATION OF POLICY CONCERNING MITIGATION FOR PERMITTED ACTIVITIES PRIOR TO DECEMBER 07, 2018 THAT REQUIRE AN EXTENDED TERM

## Finding

With a few exceptions, under NRS 232.400-232.480, “any person or entity that proposes an activity or a project on public lands, subject to state or federal review, approval or authorization, that will cause an anthropogenic disturbance” within the vicinity of greater sage-grouse habitat on or after December 7, 2018, is required to work with the SETT to assess potential mitigation and mitigate if necessary through the Conservation Credit System (CCS).

However, intent on how the Program should handle disturbances that were authorized prior to that date, but whose authorized terms have expired and require a renewal action by the authorizing agency requires clarification. These projects may encompass rights of ways (permanent or of varying lengths), easements, etc. These authorized activities are numerous and would be difficult to track, analyze effectively, and apply mitigation to consistently. Examples may include: a powerline requiring a renewal of a right of way or a state route that is authorized through a permanent easement, but still requires periodic review.

## Improvement Recommendation

### Specific Improvement Recommendation

For the sake of clarity, the SETT recommends adding the following in green within the Manual under 2.5.1 Debit Service Area:

- An activity or project on public lands which was subject to state or federal review, approval, or authorization before December 7, 2018, so long as the activity or project maintains compliance with any condition or requirement for any such approval.
  - Authorized projects/activities that were approved prior to December 7, 2018, will not be required to mitigate if the renewal is exclusive to an extension of the term.
  - Should the project/activity require state or federal review, approval, or authorization to alter the authorized project, project boundary, or propose new activity or disturbance, the project proponent may be subject to mitigation through the Conservation Credit System for those proposed activities that occur on public lands.

### Rationale Supporting Recommendation Details

#### Practicality and Applicability

The number of projects that require renewals is likely to be high with potentially limited administrative effort spent on tracking or pursuing formal state or federal review, approval or authorization. Some project proponents may be subject to a NEPA decision for renewals, while others may not, which creates challenges in the SETT’s ability to apply mitigation consistently

1 to projects exclusively requiring an extension of their authorized term. This improvement  
2 provides further clarification on the intent within the regulation for existing projects and  
3 mitigation requirements.

4 For clarification, projects/activities authorized on or prior to December 7, 2018 that require state  
5 or federal review, approval, or authorization for any expansion, modification, or new proposed  
6 disturbance (even if associated with a ROW renewal) would be required to work with the SETT  
7 to determine whether mitigation is necessary for the newly authorized activity. A Notice of  
8 Intent (NOI) will most often trigger consultation for these endeavors and authorizations will  
9 often include all issued decisions associated with Environmental Impact Statements,  
10 Environmental Assessments, Determination of NEPA Adequacy, and Categorical Exclusions.  
11 This policy has remained consistent and unchanged.  
12

### 13 References

14 Sagebrush Ecosystem Program. Conservation Credit System Manual. Version 1.6.21. State of Nevada:  
15 Carson City, Nevada. 2021.

### 17 Updated CCS Manual Content

#### 18 **2.5.1 DEBIT SERVICE AREA**

19 The CCS service area is the mapped geographic region where credits  
20 are required to offset debits that occur when disturbances are proven  
21 unavoidable, and minimization does not provide for complete direct or  
22 indirect impact avoidance.<sup>1</sup> Debits on public lands within the service  
23 area will be tracked and mitigated through the CCS. The service area  
24 designation has important implications for the viability of the CCS  
25 transactions and for the ability of the System to generate a net benefit  
26 for greater sage-grouse habitat from the impacts from anthropogenic  
27 disturbances.

28 The current mapped BSUs are the CCS service area. The boundaries of  
29 this area are based on the range of the species in the State of Nevada  
30 and are aligned with State of Nevada development project review  
31 requirements. Anthropogenic disturbances to habitat on BLM, USFS,  
32 and State of Nevada lands within the service area require consultation  
33 with the SETT and the appropriate government agency, as defined in  
34 the Nevada Greater Sage-Grouse Conservation Plan. Exemptions to  
35 this include:

- 36 • An activity or project on public lands which was subject to state or federal review, approval, or  
37 authorization before December 7, 2018, so long as the activity or project maintains compliance with any  
38 condition or requirement for any such approval.

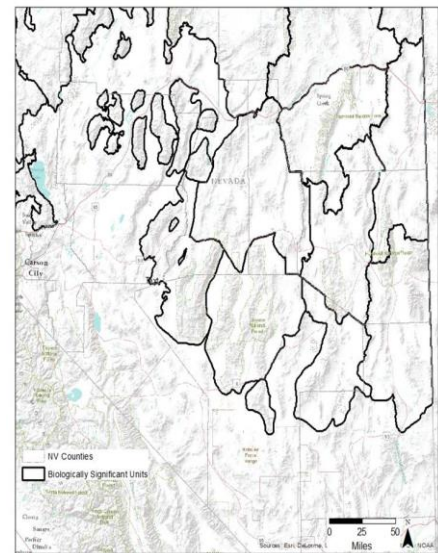


Figure 16: Greater sage-grouse service area

<sup>1</sup> US Fish and Wildlife Service. Greater Sage-Grouse Range-Wide Mitigation Framework Version 1.0. September 3, 2014. Page 6.

- Authorized projects/activities that were approved prior to December 7, 2018, will not be required to mitigate if the renewal is exclusive to an extension of the term.
- Should the project/activity require state or federal review, approval, or authorization to alter the authorized project, project boundary, or propose new activity or disturbance, the project proponent may be subject to mitigation through the Conservation Credit System for those proposed activities that occur on public lands.

- An activity or project using a mitigation agreement or framework agreement for greater sage-grouse signed by the United States Fish and Wildlife Service before December 7, 2018, and any amendments thereto;
- A mineral exploration project which is limited to a surface disturbance of not more than 5 acres; or
- An activity or project that:
  - Is necessary to protect public health or safety; or
  - Will have a de minimis impact to greater sage-grouse and sagebrush ecosystems in this State.
- Any emergency activity or routine administrative activity that:
  - Is performed by a federal agency, state agency, local government or utility for a public purpose; and
  - Does not require any additional approval from the Federal government or the State.

While the Service Area broadly defines the domain of the CCS, the Mitigation Ratios establish incentives to offset debits using credits generated in close proximity to debit sites. [Section 2.2.2: Mitigation and Proximity Ratios](#) describes how the WAFWA Management Zones, Nevada BSUs, and the NDOW PMUs are incorporated into the proximity ratio. In addition, three Management Categories are also incorporated into the Mitigation Ratios to encourage the generation of credits and discourage debits in PHMA and GHMA Management Category Areas, which are estimated to have high space-use by greater sage-grouse. Credits and debits will be tracked in the CCS Registry and reported by the Administrator by WAFWA Zones and PMUs.

## 2.5.2 DEBIT PROJECT TYPES

Proposed anthropogenic disturbances to habitat on BLM, USFS, and State of Nevada lands within the Service Area require consultation with the SETT and the appropriate government agency, as defined in the Nevada Greater Sage-Grouse Conservation Plan. Anthropogenic disturbances are considered debit projects when they are proven to be unavoidable, and when minimization does not provide for complete direct or indirect impact avoidance<sup>2</sup>. A debit project may be a new anthropogenic disturbance, an expansion in the operation of an existing anthropogenic disturbance, or an extension in duration of an existing anthropogenic disturbance.

As defined in the Nevada Greater Sage-Grouse Conservation Plan, an anthropogenic disturbance is defined as any human-caused activity or action or human-created physical structures that may have adverse impacts on greater sage-grouse or their habitat. Anthropogenic disturbance project categories include:

- Mineral development and its associated infrastructure;
- Mineral exploration, which includes exploration associated with mining, oil and gas, renewable, and other CCS defined anthropogenic disturbances;
- Renewable and nonrenewable energy production, transmission, and distribution and its associated infrastructure;
- Paved and unpaved roads and highways;
- Cell phone towers;
- Landfills;
- Linear Rights of Way (e.g., pipelines, fiber optic cables, etc.);

<sup>2</sup> US Fish and Wildlife Service. Greater Sage-Grouse Range-Wide Mitigation Framework Version 1.0. September 3, 2014. Page 6.

1 Residential and commercial subdivisions;  
2 Activities undertaken pursuant to special use permits and right-of-way grants; and  
3 Other infrastructure development.

4  
5 Livestock operations and agricultural activities and infrastructure related to ranch and farm businesses (e.g. water  
6 troughs, fences, etc.) are not included in this definition of debit project types. Section 7.5 and Appendix A of the  
7 Nevada Greater Sage-Grouse Conservation Plan address how to minimize impacts to greater sage-grouse and  
8 their habitat from these activities.