

NON-COMPLIANCE ASSESSMENT FACTOR FOR DEBIT PROJECTS

Finding

The Conservation Credit System (CCS) Manual requires in Section 2.5.3 “Pursuant to Nevada Administrative Code (NAC), debit projects permitted through federal and state agencies will use the CCS to purchase credits that fulfill their compensatory mitigation obligations prior to development of the debit project.” However, neither the NAC nor the CCS Manual stipulates consequences in the event of non-compliance with this requirement.

The Sagebrush Ecosystem Council (SEC) previously adopted an improvement that allowed for phasing in transactions in an effort to provide flexibility in the case a debit project is not able to fully offset their mitigation obligation up front. The “phasing” of credits still requires some credits to be obtained prior to disturbance but does allow for remaining credits to be obtained during the construction of the project. Specifically, the “phasing” provides that a minimum of one-third of the total debits must be satisfied prior to the initiation of construction of the debit project and a credit phasing factor of 1.05 is applied to the remaining debits to encourage offsetting the entire obligation at once.

The Sagebrush Ecosystem Technical Team (SETT) recommends adding a factor, similar to the phasing factor described above, to existing non-compliance guidelines in order to dissuade willful non-compliance.

Improvement Recommendation

The Sagebrush Ecosystem Program Procedure in the Event of Non-Compliance will be updated (*new*; ~~removed~~):

Should the SEP become aware of a person or entity’s (*Proponent*) lack of compliance with the requirements set forth in Nevada Administrative Code (NAC) 232.400-232.480, the following shall be completed:

1. The SEP Program Manager will ~~send~~ *issue* the ~~person or entity~~ *Proponent* a letter:
 - a. Explaining the requirements set forth in NAC 232.400-232.480, ~~and~~
 - b. Informing them of their obligation and steps towards fulfilling such obligation, *and*
 - c. *Warning them of the Non-Compliance Assessment Factor that will be implemented in 30 days should they remain out of compliance.*

2. If after 30 days, a resolution is not achieved, the SEP Program Manager will notify the appropriate land management agency of non-compliance. *A 1.05 non-compliance assessment factor*

will be applied to the outstanding credit obligation, and a letter will be issued to the Proponent notifying them of the change in their obligation.

3. If a resolution is not achieved ~~after an additional~~ within 30 days from the second non-compliance notification (step 2), the SEP Program Manager will ~~issue a requirement for~~ request the ~~person or entity~~ Proponent ~~in violation of the requirements noticed above~~ to appear before the Sagebrush Ecosystem Council at the next scheduled Council meeting to explain their non-compliance ~~or their plans to comply~~.

4. Should the minimum obligation not be satisfied within 90 days of issuance of the second letter to the Proponent (step 2), the Proponent will be notified of an additional 1.05 factor being applied to the outstanding obligation, and the process will be repeated every 90 days.

5. Should the ~~person or entity~~ Proponent ~~agree to~~ comply with offsetting their obligation at any point during ~~this process~~ the 90-day compounding period, the process will be halted, including any additional compounding. Should ~~an~~ the Proponent ~~entity~~ fall out of compliance again, including during the phasing process, the SEP Program Manager ~~issue a requirement for~~ request the ~~person or entity~~ Proponent ~~in violation of the requirements noticed above~~ to appear before the Sagebrush Ecosystem Council at the next scheduled Council meeting to explain their non-compliance, and the non-compliance assessment factor will be applied.

Table 1. Example of the Non-Compliance Assessment Factor.

Hot Stuff Geothermal Plant	
Debit Project Length	45 years
Debit Amount	900 term debits / 12 permanent debits
Past Due Obligation	<u>945</u> 45-year term debits / <u>13</u> permanent debits 900*1.05 = new term debits; 12*1.05 = permanent debits
90 days from date of warning letter	<u>992</u> 45-year term debits / <u>13</u> permanent debits 945*1.05 = new term debits; 12.6*1.05 = new permanent debits
Second 90-day period	<u>1,042</u> 45-year term debits / <u>14</u> permanent debits 992.25*1.05 = new term debits; 13.23*1.05 = new permanent debits
Third 90-day period	<u>1,094</u> 45-year term debits / <u>15</u> permanent debits 1,041.86*1.05 = new term debits; 13.89*1.05 = new permanent debits

Manual Updates

The following section will be added to the CCS Manual (*new; removed*):

2.5.4 Debit Project Duration

Failure to Fulfill Obligation (Non-Compliance)

Should the Debit Project Proponent fail to fulfill the minimum mitigation obligation prior to on-the-ground development of the debit project or fail to comply with the requirements set forth in Nevada Administrative Code (NAC) 232.400-232.480 prior to fulfilling their entire obligation, the SEP Program Manager will issue the Proponent a letter; a.) explaining the requirements set forth in NAC 232.400-232.480, b.) informing them of their obligation and steps towards fulfilling obligation, and c.) warning them of the Non-Compliance Assessment Factor that will be implemented in 30 days should they remain out of compliance. If after 30 days, a resolution is not achieved, the SEP Program Manager will notify the appropriate land management agency of non-compliance. A 1.05 non-compliance assessment factor will be applied to the outstanding credit obligation, and a letter will be issued to the Proponent notifying them of the change in their obligation.

If a resolution is not achieved within 30 days from the second non-compliance notification, the SEP Program Manager will request the Proponent to appear before the Sagebrush Ecosystem Council at the next scheduled Council meeting to explain their non-compliance or their plans to comply. Should the minimum obligation not be satisfied within 90 days of issuance of the second letter to the Proponent, the Proponent will be notified of an additional 1.05 factor being applied to the outstanding obligation, and the process will be repeated every 90 days.

Should the Proponent comply with offsetting their obligation at any point during the 90-day compounding period, any additional compounding will be halted. Should the Proponent fall out of compliance again, including during the phasing process, the SEP Program Manager will request the Proponent to appear before the Sagebrush Ecosystem Council at the next scheduled Sagebrush Ecosystem Council meeting to explain their non-compliance, and the non-compliance assessment factor will be applied.