

Sagebrush Ecosystem Program

201 Roop Street, Suite 101
Carson City, Nevada 89701
Telephone (775) 687-2000

www.sagebrusheco.nv.gov



Kelly McGowan, Program Manager
Daniel Huser, Forestry/Wildland Fire
Kathleen Petter, State Lands

STATE OF NEVADA
Sagebrush Ecosystem Program

SAGEBRUSH ECOSYSTEM COUNCIL
STAFF REPORT
MEETING DATE: October 1, 2021

DATE: September 24, 2021
TO: Sagebrush Ecosystem Council Members
FROM: Sagebrush Ecosystem Technical Team
Telephone: 775-687-2000
THROUGH: Kelly McGowan, Program Manager
Telephone: 775-687-2001, Email: kmcgowan@sagebrusheco.nv.gov
SUBJECT: White Pine Waterpower, LLC, a subsidiary of rPlus Hydro, LLLP (rPlus) is requesting the Sagebrush Ecosystem Council to review a determination by the Sagebrush Ecosystem Technical Team to not recommend a seasonal restriction exception to the Bureau of Land Management for proposed exploratory geotechnical drilling and associated access.

Background

White Pine Waterpower, LLC (Proponent) has an application pending with the Bureau of Land Management (BLM) for exploratory geotechnical drilling to gather technical information for the planning and design of a pumped storage hydroelectric facility. Much of the proposed geotechnical work is located within Greater Sage-grouse habitat and the proponent has requested an exception to seasonal timing restrictions.

The BLM CA/NV 2015 Greater Sage-Grouse Approved Resource Management Plan Amendment (ARMPA) stipulates certain seasonal or timing restrictions for work in GRSG habitat. However, the ARMPA does allow the BLM, to consider authorizing an 'exception' under certain circumstances. Specifically, the ARMPA states, "The Authorized Officer may grant an exception where an environmental review and consultation with the appropriate state agency (Nevada Department of Wildlife, Sagebrush Ecosystem Technical Team, California Department of Fish and Wildlife) determines that the action, as proposed or otherwise restricted, does not adversely affect GRSG or its habitat. The ARMPA also provides that an exception may also be granted if the proponent, the BLM, and the appropriate state agency negotiate mitigation that would provide a clear net

conservation gain to GRSG and its habitat.” The ARMPA further states, “The Authorized Officer may modify the size and shape of the restricted area, or the period of limitation, where an environmental review and consultation with the appropriate state agency (Nevada Department of Wildlife, Sagebrush Ecosystem Technical Team, California Department of Fish and Wildlife) determines that the action, as proposed or otherwise restricted, does not adversely affect GRSG or its habitat.”

As required by the ARMPA, the project proponent has requested from the Sagebrush Ecosystem Technical Team (SETT) and Nevada Department of Wildlife (NDOW) support to the BLM for lifting the seasonal restriction for the geotechnical project.

The project proponent has completed the required compensatory mitigation requirements for the anthropogenic disturbance of the geotechnical activity by purchasing credits using the Conservation Credit System. However, the CCS is not a tool for mitigating and not requiring necessary avoidance and minimization measures.

Both the SETT and NDOW do not recommend lifting the seasonal/timing restriction for this project.

Rationale For SETT Decision

The reason for the SETT determination to recommend against an exception to the seasonal restriction is due to consistently declining GRSG populations in the area and that an exception would be inconsistent with the “Avoid, Minimize, and Mitigate” standards outlined in the 2019 Nevada Greater Sage Grouse Conservation Plan and the State of Nevada Conservation Credit System Manual documents adopted by the Council.

GRSG Population Decline

The Schell/Antelope Population Management Unit lek counts have declined 76% and 77% from the 10-year average and from 2019, respectively. Trend lek counts in the Schell/Antelope PMU and the Duck Creek Complex follow a similar trend. **(Attachments C & D)**

2019 Nevada Greater Sage Grouse Conservation Plan

A primary foundation of the Nevada’s Greater Sage-grouse Conservation Plan is the concept of “avoid, minimize, mitigate”. The concept is that disturbances in GRSG habitat should be avoided. If disturbances cannot be avoided, then they must be minimized and any residual impacts that could not be avoided or minimized must be mitigated. Seasonal restrictions are identified in the State’s Conservation Plan as a minimization measure and not as a mitigation measure. (see below for applicable language excerpted from the plan)

Section 3 - Conservation Goals and Objectives

3.1.2 Conservation Policies – “Avoid, Minimize, Mitigate”

The State of Nevada’s overriding policy for all management actions within the Service Area is to “avoid, minimize, and mitigate” impacts to sage-grouse habitat.

This is a fundamental hierarchical decision process that seeks to:

Avoid – Eliminate conflicts by relocating disturbance activities outside of sage-grouse habitat in order to conserve sage-grouse and their habitat. Avoidance of a disturbance within sage-grouse habitat is the preferred option. If impacts are not avoided, the adverse effects will need to be both minimized and mitigated.

Minimize – Impacts will be minimized by modifying proposed actions or developing permit conditions to include measures that lessen the adverse effects to sage-grouse and their habitat. **This will be accomplished through Site Specific Consultation Based Design Features (Design Features), such as reducing the disturbance footprint, seasonal use limitations, co-location of structures, etc.** Minimization does not preclude the need for mitigation of a disturbance. Any disturbance in habitat within the Service Area will require both minimization and mitigation.

Mitigate – If impacts are not avoided, after required minimization measures are specified, residual adverse effects on designated sage-grouse habitat are required to be offset by implementing mitigation actions that will result in replacement or enhancement of the sage-grouse habitat that will result in net conservation gain of habitat from the disturbance activity. This will be accomplished through the Conservation Credit System.

3.1.2.4 Management Action: Minimize disturbance activities near leks during lek season (i.e., when males are inattentive and most vulnerable to predation) and near nest sites during nesting season that may result in adults flushing off nests or away from young. (In this instance, disturbance activities are anything that may cause birds to flush such as startling noise [explosions], road traffic, human presence, etc.). Use seasonal restrictions on activities, when appropriate, to minimize disturbances.

Section 6 – Anthropogenic Disturbances

6.1.1 Objective: Achieve net conservation gain of sage-grouse habitat due to new anthropogenic disturbances and any associated facilities and infrastructure within the Service Area that impact habitat to maintain stable or increasing sage-grouse populations.

6.1.1.3 Management Action: If adverse impacts to sage-grouse and their habitat cannot be avoided, require project proponents to minimize impacts by employing Site Specific Consultation-Based Design Features (Design Features; see Appendix A) appropriate for the project. **This may include seasonal operational restrictions,** noise restrictions, clustering disturbances, and placing infrastructure in previously disturbed locations.

6.1.2.1 Management Action: While SETT Consultation and the “avoid, minimize, mitigate” process do not apply retroactively to existing anthropogenic disturbances, encourage existing operators to incorporate the Design Features outlined in Appendix A and contact the SETT for timely input on techniques and practices to avoid and minimize existing impacts to sage-grouse and their habitat.

Appendix A: Site Specific Consultation Based Design Features

- Manage on-road travel and OHV use in key grouse areas to avoid disturbance during critical times such as winter and nesting periods.
- Consider road removal, realignment, or seasonal closures where appropriate to avoid degradation of habitat and/or to avoid disturbance during critical periods of the sage-grouse life cycle.

Appendix G: Nevada Energy and Infrastructure Development Standards to Conserve Greater Sage-grouse Populations and their Habitats (Attachment A)

State Of Nevada Conservation Credit System Manual

The Guiding Principles of the CCS manual clearly states that “the Credit System works within the regulatory *mitigation* hierarchy, where anthropogenic disturbance impacts are first avoided, then minimized, and then the residual unavoidable impacts are mitigated using the Credit System”. The CCS further states that “Credits are used to offset debits that occur when disturbances are proven unavoidable, and minimization does not provide for complete direct or indirect impact avoidance”.

Simply put, the CCS is not designed to provide mitigation for lifting seasonal restrictions. The CCS was designed to mitigate residual impacts and, as such, the success of the CCS is based on following the avoidance and minimization prior to mitigating through the CCS. Again, seasonal restrictions are considered a minimization measure and not a mitigation measure.

2.5 Credit Obligation Provisions and Credit Investment Strategies		
2.5.1	Debit Service Area	All sites must be located in or within 6 km of mapped BSUs
2.5.2	Debit Project Types	Anthropogenic disturbances to greater sage-grouse habitat on state and federal lands within the current BSUs
2.5.3	Mitigation Hierarchy and Permit Requirements	<p>Debit Project Proponents</p> <p>Credits are used to offset debits that occur when disturbances are proven unavoidable and minimization does not provide for complete <i>direct or indirect impact</i> avoidance</p> <p>Debit projects must fulfill regulatory requirements and seasonal restrictions of relevant public agency permitting process</p>

GRSG Administrative Regulation – Nevada Administrative Code (NAC) 232.400 - 232.480

The Sagebrush Ecosystem Council adopted NAC 232.400 – 232.480 requiring mitigation for certain anthropogenic disturbances in GRSG habitat. Consistent with the 2019 GRSG Conservation Plan and the CCS manual, the adopted regulations require that the project proponent provide information that avoidance and minimization of adverse impacts must occur to the greatest extent possible. Again, seasonal restrictions are identified as a minimization measure and the SETT believes that is possible for the project proponent to adhere to that minimization measure.

Further, the regulations state that to mitigate the disturbance, it must be quantified in terms of the number of debits that the activity or project will cause. There is not a methodology for quantifying the number of debits created by granting a seasonal exception.

NAC 232.470 Duties of person or entity proposing activity or project on public lands that will cause anthropogenic disturbance; submission of certain information to Sagebrush Ecosystem Technical Team; criteria for approval of mitigation plan by Council. ([NRS 232.162](#))

1. 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 shall:

(a) Submit to the Sagebrush Ecosystem Technical Team sufficient information for determining the adverse impact the proposed activity or project will have to the greater sage-grouse or the habitat of the greater sage-grouse, including, without limitation, geographic information system data files and work with the Sagebrush Ecosystem Technical Team to avoid and minimize such adverse impact to the greatest extent possible; 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 a difference between the calculations of debits by the verifier and Program Manager, the Program Manager will work with the verifier to finalize the calculation. If there is still a difference between the calculations of debits by the verifier and the Program Manager, the calculations of debits by the Program Manager apply to the activity or project; and

(2) Mitigated by:

(I) Acquiring from or transferring 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 with the Sagebrush Ecosystem Technical Team 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 to 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.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

PREVIOUS ACTIONS

June 11, 2021. SETT completes the Quality Assurance assessment on the proposed project and notifies the proponent of the credit obligation. **(Attachment B)**

August 17, 2021. NDOW issues letter to BLM outlining the reasons why a waiver would not meet the intent outlined in the 2015 ARMPA for Borehole 3, specific to the proximity of winter habitat near the borehole and portions of the access route being within mapped winter habitats. **(Attachment C)**

August 23, 2021. NDOW issues letter to BLM outlining the reasons why a waiver would not meet the intent outlined in the 2015 ARMPA for Borehole 1, Test Pits 1- 4 and access to Borehole 2. **(Attachment D)**

September 10, 2021. SETT issues letter to rPlus informing them that their compensatory mitigation obligation of nine debits has been fulfilled. **(Attachment E)**

September 20, 2021. rPlus formal request for consideration of an exception at the next SEC meeting is received by the SETT. **(Attachment F)**

September 21, 2021. SETT and NDOW receive a letter from rPlus requesting the SEC to consider alternative mitigation that achieves net conservation gain and could allow for an exception to be considered by the BLM, allowing the project proponent to proceed. **(Attachment G)**

ADDITIONAL CONSIDERATIONS

The SETT's assessment assumed that the seasonal timing restrictions would either; a.) not be necessary (avoidance) or b.) the project would not be authorized if avoidance was not attainable.

The site is a high elevation site (6,000' - 8,000') and if significant stoppages occur due to weather conditions either halting or delaying access, road maintenance/repair, water delivery, or drilling operations, then the anticipated timeline may not be met.

It is our understanding that if the geotechnical study provides the data necessary for potential development, a fully developed project would likely require an amendment to the 2015 GRSG ARMPA prior to authorization due to the No Surface Occupancy status for this type of development in priority habitats.

Attachments:

- A:** Updated 2019 Greater Sage-Grouse Plan – Appendix G
- B:** SETT Quality Assurance Letter
- C:** NDOW Waiver Letter – Borehole 3
- D:** NDOW Waiver Letter – Boreholes 1 and 2; Test pits 1-4
- E:** SETT Mitigation Obligation Letter
- F:** rPlus Request of Exception at SEC Meeting
- G:** rPlus Letter Requesting Consideration of Alternative Mitigation
- H:** Draft EA and Final EA Estimated Operational Schedules
- I:** NAC 232.400-23.480
- J:** Seasonal Timing Restrictions