



State of Nevada Sagebrush Ecosystem Program

APPEALS PROCESS AND OTHER EDITS



May 2021

FINDING

- Section 2.1.1 Governance Roles, Oversight Committee
 - An appeals process does not exist to address disputes between the Project Proponent and Administrator on matters related to the implementation of policy or regulatory decisions.
- Section 2.1.9 Reserve Account Management and Use of Financial Assurances, Use of Reserve Account and Financial Assurances
 - Clarification is needed regarding Project Failures, specifically a guideline for determining project failure, especially intentional reversal.
- Section 2.3.3 Credit Site Eligibility, Site Protection
 - Previously this section did not provide for protections due to trespass or unlawful entries that may negatively impact the functional habitat value of a site.

RECOMMENDED MANUAL UPDATE

- Section 2.1.1 Governance Roles

- Oversight Committee

- “The SEC serves as the CCS Oversight Committee. State of Nevada statute NRS 232.162 established the SEC; it also directed the SEC to institute and oversee a program to mitigate damage to sagebrush ecosystems. Statute NRS 232.162 also defines the membership, duties, and other aspects of the SEC, including the oversight of any team within the Division of State Lands of the Department of Natural Resources and Conservation, which provides technical services concerning sagebrush ecosystems. The SEC contains nine voting members representing specific constituencies that are appointed by the Governor, and seven ex-officio members representing specific State and Federal agencies.

The SEC is responsible for overseeing the operations of the CCS, making high-level CCS management decisions, and conducting other critical ongoing duties described in Table 2. If there is a disagreement on a decision between the Project Proponent and Administrator, the Project Proponent may request that their dispute be considered for a scheduled Sagebrush Ecosystem Council meeting. The Project Proponent and Administrator will present information relevant to the issue and the SEC will issue a final determination.”

Oversight Committee Key Responsibilities

Ensure Program Performance	<ul style="list-style-type: none"> Pursues the memorandum of understanding (MOU) with BLM and potentially programmatic agreements with USFWS and other participating agencies; and participates in negotiations with USFWS and other participating agencies to amend the agreements as necessary. Oversees Administrator’s implementation of the CCS policy and technical components. Evaluates annual reports from the Administrator that include assessment of the effectiveness of credit projects in relation to both species habitat and overall programmatic performance goals of the CCS and provide reports to USFWS, BLM and other participating agencies as necessary. Executes annual audit, or contract for the auditing of, the Administrator’s finances and operations, and determine if corrective actions are needed to ensure finances and operations are sufficiently in order for the ongoing, consistent operations of the CCS. <u>Settles disputes between a Project Proponent and Administrator</u>
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Table 2: Key Responsibilities of the Oversight Committee

RECOMMENDED MANUAL UPDATE

- Section 2.1.9 Reserve Account Management and Use of Financial Assurances
 - Use of Reserve Account and Financial Assurances
 - Rename to “Credit Project Failure”
 - “The Credit Project Proponent or Administrator must notify the other party as soon as possible and not later than 30 days following the occurrence of an event that may cause a finding of Credit Project failure. This may include but is not limited to failure to execute the required Management Actions according to the terms and conditions of execution or the Administrator determines that site-specific performance measures are not maintained based on an evaluation of the Management Plan, field data, and the Habitat Quantification Tool (taking into account natural climate variability). The SETT will coordinate with the Credit Project Proponent to consider whether adaptive management measures can be implemented to remediate a Credit Project prior to concluding there has been a Credit Project failure.
 - If the Credit Project Proponent and Administrator cannot agree as to whether there has been a Credit Project failure or the determination of whether it was an Intentional or Unintentional Reversal, then the Project Proponent may request an appeal.
 - Depending on the specific cause and circumstances of a ~~reversal~~ credit project failure, invalidated credits can be replaced using a combination of the reserve account and financial assurances, as illustrated in Figure 9 below.”
- Proposed language in prior slide and in above can be found in Sections 13.b.3 and 14. of the Participant Contract.

RECOMMENDED MANUAL UPDATE

- Section 2.1.9 Reserve Account Management and Use of Financial Assurances
 - Intentional Reversals
 - “Anything not covered under unintentional reversals may be considered an intentional reversal. ~~In the case of an intentional reversal, such as not~~ Examples may include but are not limited to implementing management activities to achieve habitat quality as defined in the Management Plan, decreased habitat quality due to over-utilization, intentional mineral development, or inappropriately managed or unaddressed known risks. Prior to a finding by the Administrator, the Credit Project Proponent and Administrator will determine if an agreed-upon remedial action plan can be implemented or if credits must be replaced either by transferring available credits generated by the credit project proponent or by purchasing available off-site credits. If a remedial action plan cannot be agreed upon, and the Administrator determines the reversal to be intentional, then the Project Proponent may request an appeal. Following a finding by the Administrator or the Sagebrush Ecosystem Council of Credit Project failure due to an Intentional Reversal, all payments to the Credit Project Proponent immediately cease. ~~The Credit Project Proponent and Administrator determine if a remedial action plan can be developed or if credits must be replaced off-site.~~ The Credit Project Proponent is responsible to the Administrator for the entire cost of acquiring replacement credits from a different credit site, any associated legal fees, and an additional ~~10%~~ administrative fee (i.e. contract penalty). If there is a time lag between the intentional reversal and the recovery of the site, or a time lag between the intentional reversals and when the Administrator secures new credit contracts, the Administrator will withdraw from the reserve account for a limited duration to prevent any gaps in coverage for sold credits. The credit withdrawal from the reserve account reverts back to the account as credits are acquired to cover the remainder of the contract. See section 2.5.4 for information on matching credit duration for more information.
For details regarding Credit Project failures and the requirements of both parties, please see the Participant Contract.”
- Proposed language above regarding the definition of intentional reversals and the dispute process can be found in Section 13.b.3 of the Participant Contract.

RECOMMENDED MANUAL UPDATE

- Section 2.3.3 Credit Site Eligibility

- Site Protection

- “Although different site protections are expected on private and public lands, Credit Project Proponents must show evidence of site protection for the duration of the contract period on private lands. The only exception is when anthropogenic disturbances are removed on public lands rights of way to generate credits without the expectation for maintenance and monitoring into the future. Regardless, a Participant Contract is required for all credit projects, and a Participant Contract that commits the Credit Project Proponent to maintain habitat function above the minimum performance standard is the minimum level of site protection for credit projects that generate credits on land under the control of the Credit Project Proponent. The Participant Contract includes contractual language and references any other legally binding agreements, such as conservation easements. Where lands are located interspersed with public land and fencing does not enable control over multiple grazing permittees, it will be made clear to credit developers that the responsibility for habitat quality remains with the credit developer regardless of the source of negative impacts due to grazing. The credit developer must undertake reasonable actions to prevent the unlawful entry and trespass by people, feral or stray horses and livestock whose activities may degrade the functional values as quantified by the HQT calculation. In these circumstances, eligibility will be at the discretion of the administrator.”

- Proposed language above is adapted from USFWS Conservation Banks language and offers additional protections to the solvency of the Program.