

– ESTABLISHING AN APPEALS PROCESS AND EDITS TO RELEVANT SECTIONS WITHIN THE CCS MANUAL

Finding

Section 2.1.1 Governance Roles, Oversight Committee – An appeals process does not exist to address disputes 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.

A5.4 Resolve Outstanding Disputes – Now refers to Section 2.1.1 to detail the established appeals process

Improvement Recommendation

Specific Improvement Recommendation

New language is underlined in green below, removed language is ~~struck in red~~.

The SETT recommends:

1. Section 2.1.1 Governance Roles, Oversight Committee be amended to include:
“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. The Oversight Committee or a subcommittee of the Oversight Committee resolves policy and regulatory disputes that cannot be resolved independently or in consultation with the Administrator. If there is a disagreement on a policy or regulatory decision, the disputer may request that their dispute be considered for a scheduled Sagebrush Ecosystem Council meeting. The disputer and Administrator will present information relevant to the issue and the SEC will issue a final determination.”
2. “Resolves policy and regulatory disputes ~~among CCS participants~~ that cannot be resolved independently or in consultation with the Administrator” be added to the Oversight Committee Key Responsibilities: Participant Oversight list in Section 2.1.1.
3. Section 2.1.9 Reserve Account Management and Use of Financial Assurances, Use of Reserve Account and Financial Assurances be renamed to “Credit Project Failure.” Creating an intro for the Section that states:
“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

1 execute the required Management Actions according to the terms and conditions of
2 execution or the Administrator determines that site-specific performance measures are
3 not maintained based on an evaluation of the Management Plan, field data, and the
4 Habitat Quantification Tool (taking into account natural climate variability). The SETT
5 will coordinate with the Credit Project Proponent to consider whether adaptive
6 management measures can be implemented to remediate a Credit Project prior to
7 concluding there has been a Credit Project failure.

8 If the Credit Project Proponent and Administrator cannot agree as to whether there has
9 been a Credit Project failure or the determination of whether it was an Intentional or
10 Unintentional Reversal, then the Project Proponent may request an appeal as specified in
11 Section 2.1.1.

12 Depending on the specific cause and circumstances of a credit project failure,
13 invalidated credits can be either temporarily or permanently replaced using a
14 combination of the reserve account and financial assurances, as illustrated in Figure 9
15 below.”

- 16 4. Section 2.1.9 Reserve Account Management and Use of Financial Assurances, Intentional
17 Reversals be amended to include:

18 “Anything not covered under unintentional reversals may be considered an intentional
19 reversal. ~~In the case of an intentional reversal, such as not~~ Examples may include but are
20 not limited to; not implementing management activities to achieve habitat quality as
21 defined in the Management Plan, decreased habitat quality due to over-utilization,
22 intentional ~~mineral~~ disturbance, development, or inappropriately managed or
23 unaddressed known risks. Prior to a finding by the Administrator, the Credit Project
24 Proponent and Administrator will determine if an agreed-upon remedial action plan can
25 be implemented or if credits must be replaced either by transferring available credits
26 generated by the credit project proponent or by purchasing available off-site credits. If a
27 remedial action plan cannot be agreed upon, and the Administrator determines the
28 reversal to be intentional, then the Project Proponent may request an appeal. Following
29 a finding by the Administrator or the Sagebrush Ecosystem Council of Credit Project
30 failure due to an Intentional Reversal, all payments to the Credit Project Proponent
31 immediately cease. ~~The Credit Project Proponent and Administrator determine if a~~
32 remedial action plan can be developed or if credits must be replaced off-site. The Credit
33 Project Proponent is responsible to the Administrator for the entire cost of acquiring
34 replacement credits from a different credit site, any associated legal fees, and an
35 additional ~~10%~~ administrative fee (i.e. contract penalty). If there is a time lag between
36 the intentional reversal and the recovery of the site, or a time lag between the intentional
37 reversals and when the Administrator secures new credit contracts, the Administrator
38 will withdraw from the reserve account for a limited duration to prevent any gaps in
39 coverage for sold credits. The credit withdrawal from the reserve account reverts back to
40 the account as credits are acquired to cover the remainder of the contract. See section
41 2.5.4 for information on matching credit duration for more information.

1 [For details regarding Credit Project failures and the requirements of both parties, please](#)
2 [see the Participant Contract.](#)”

3 5. Section 2.3.3 Credit Site Eligibility, Site Protection be amended to include:

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

22
23 6. Glossary

24 [“Credit Project Failure: Unintentional or intentional reversal of a credit project, whether](#)
25 [in its entirety or a portion thereof.”](#)

26 “Reversal ([Intentional or Unintentional](#)): Credit project that does not persist for the full,
27 required, duration due to natural or man-made causes.”

28
29 7. A5.4 Resolve Outstanding Disputes

30 ~~“As defined in the dispute resolution process defined in Step D3, the Oversight~~
31 ~~Committee or a subcommittee of the Oversight Committee resolves disputes between~~
32 ~~CCS participants that cannot be resolve independently or in consultation with the~~
33 ~~Administrator. If the dispute is in reference to regulatory requirements, the regulatory~~
34 ~~agency has the final decision-making authority. [“Refer to Section 2.1.1.”](#)”~~

35 Rationale Supporting Recommendation Details

36 Proposed language in Numbers 1-3 above regarding the definition of intentional reversals and the
37 dispute process can be found in Sections 13.b.3 and 14. of the Participant Contract.

38 Proposed language in Number 4 above regarding the definition of intentional reversals and the dispute
39 process can be found in Section 13.b.3 of the Participant Contract.

1 Proposed language in Number 5 above is adapted from USFWS Conservation Banks language and
2 offers additional protections to the solvency of the Program.

3

4 References

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