

– ESTABLISHING POLICY REGARDING POTENTIAL COMPETING LAND USE CONFLICTS BETWEEN CREDIT AND DEBIT PROJECTS

Finding

Section 2.1.9 Reserve Account Management and Use of Financial Assurances in the CCS Manual outlines the process of how to handle a Credit Project impacted by competing land uses on adjacent sites. How that is handled in the CCS varies according to who is considered a valid project first. While it is already defined as to when credits become valid, the aim is to define when a Debit Project is determined to be a valid project and is considered a competing land use, as well as redefining the process that occurs when non-transferred credits are impacted by a competing land use.

For example, a Debit Project Proponent has contacted the SETT to begin the mitigation process for a large Debit Project – “Steambath Geothermal” - in an area. Around the same time, a Credit Project Proponent has contacted the SETT to begin the process of establishing Credit Project “Bo Peep Ranch” within 6km of the proposed Steambath Geothermal.

Under current guidelines, if Steambath Geothermal established before Bo Peep Ranch, then the geothermal plant would be considered an anthropogenic disturbance, which reduces the habitat quality (credits) of the ranch. If Bo Peep Ranch signed their management plan before the Steambath Geothermal is considered a valid Debit Project, then the Credit Project Proponent’s current sellable credits would not be reduced by the anthropogenic disturbance. Once Steambath Geothermal becomes a valid Debit Project, then the impacted credits would either be replaced by the public lands reserve account (if the affected credits have not been transferred) or Steambath Geothermal would be required to replace the impacted credits (if the affected credits have been transferred).

The first dilemma is timing – currently there is no guidance as to when a debit project is considered “valid”. However, a credit project is considered “valid” when the management plan is signed.

The second dilemma is solvency - currently there are no public land reserve account credits in the CCS to cover any impacted non-transferred credits, with no public land credit projects presently planned. The public land reserve account is generated from contributions from public land credit projects and should be used to cover impacted credits from those public lands credit projects exclusively.

Improvement Recommendation

Specific Improvement Recommendation

1. The SETT recommends that a Debit Project qualifies as a competing land use when
 - a. Debit Review form is submitted to and reviewed by the SETT with proof of the start of NEPA (e.g., project initiation form) or state equivalent on state-owned land, or
 - b. The Debit Project Proponent first transfers credits to offset the disturbance.

2. The SETT recommends that impacted credits that have not yet been transferred be replaced by the Debit Project, which is the current process for impacted credits that have been transferred.

Rationale Supporting Recommendation Details

1. Timing

Section 2.1.9 Reserve Account Management and Use of Financial Assurances in the CCS Manual discusses competing land uses, and what happens when they occur. While a Credit Project is defined as valid when the Management Plan is signed, there is no definition as to when a Debit Project becomes a valid project. Normally, this is not an issue, but there are instances when a Debit Project and a Credit Project are proposed to enter the CCS near the same time, and the proposed Credit Project falls within the direct or indirect boundary of the potential Debit Project.

There are different impacts to the Credit Project depending on when the Debit Project becomes valid. Should a Credit Project become valid before a Debit Project, then the Debit Project must replace the credits impacted by the disturbance. Under this scenario, the Credit Project is not affected by the disturbance unless they choose to renew their credits at the end of their term. It is important to note that the replacement credits may not be purchased from the Credit Project that was impacted.

Should a Debit Project become valid before a Credit Project, then the Credit Project would have decreased habitat functionality (fewer credits) or may not be eligible for credit generation within the CCS. Section 2.3.3 Credit Site Eligibility in the CCS Manual states that for a credit project to be eligible, there cannot be evidence supporting imminent threat of direct or indirect disturbance by land uses that will cause the habitat function of the total credit site to be less than the minimum performance standard referenced above as measured by the HQT.

The major point of discussion is at what point the Debit Project becomes valid.

Option 1: Debit Review form is turned in to the SETT with proof of the start of NEPA (e.g., project initiation form) or state equivalent on state-owned land

A Debit Project can qualify as a competing land use when a Debit Project Proponent submits a signed Debit Review form, with proof that NEPA is starting on the federal side or state equivalent on state-owned land, to ensure that the project is legitimately moving forward (First Notification). This could protect a Debit Project Proponent from a Credit Project Proponent establishing credits in the area while the Debit Project is being considered, which otherwise would require the Debit Project Proponent to purchase more credits than originally anticipated. This scenario would also be the most conservative in terms of impacts to habitat functionality within the CCS by preventing a credit project from becoming impacted soon after establishment because the anthropogenic disturbance would now be considered existing. This option will also serve to maintain the integrity of mitigation projects within the CCS whose quality could be diminished over time. However, it could be years between First Notification and the actual

impact, and in the meantime, the Debit Project could fail to move forward. So, a potential Credit Project could be impacted before the disturbance is realized, if ever. But, if that is the case, the Credit Project can be reevaluated at the 15-year validation or sooner if requested and regain the credits that had been removed due to the disturbance. Should a debit project fail to move forward, its status could also be discontinued as soon as this information is reported.

Option 2: The Debit Project Proponent first transfers credits to offset the disturbance (whether internally or externally transferring)

Another option to determine when a Debit Project qualifies as competing land use is when the Debit Project first transfers credits to offset the disturbance, when the Debit Project is most imminent. Because this can occur years after First Notification of the potential disturbance, this could allow potential Credit Project Proponents to establish credits before they are impacted by the disturbance. However, under this scenario, a Debit Project Proponent would be required to offset impacted credits that were not accounted for at First Notification in addition to their initial estimated mitigation obligation. This scenario would reward a Credit Project for habitat that would be impacted soon after establishment.

2. Solvency

Section 2.1.9 Reserve Account Management and Use of Financial Assurances in the CCS Manual states that verified credits (i.e., have a finalized Management Plan) that are not transferred and are impacted by a competing land use will be replaced by the public lands reserve account. However, currently there are no credits in the public lands reserve account to withdraw. This policy would impact our public lands reserve account to cover impacts to private land credit projects, reducing the coverage for public land credit projects who contributed to the reserve account.

Per Section 2.1.9 Reserve Account Management and Use of Financial Assurances, if the impacted credits had been sold, they are required to be replaced by the Debit Project Proponent, prorated for the remaining term. A similar policy could be adopted to cover verified credits (i.e., have a signed Management Plan) that are not yet transferred, to be offset at the same term as the Debit Project. This would ease the burden from the public land reserve account, which was originally intended for temporarily offsetting impacts to public land credit projects. However, under this scenario, a Debit Project Proponent would be required to offset impacted credits that were not accounted for at First Notification in addition to their initial estimated mitigation obligation.

The CCS Manual will be updated with the final decisions. New language is underlined in green below, removed language is ~~struck in red~~.

- Section 2.1.9 Reserve Account Management and Use of Financial Assurances, Competing Land Uses in Adjacent Sites will be adjusted to include:

“There may be cases where verification shows that competing land uses on sites adjacent to enrolled credit project sites have occurred, which impairs the ability of the enrolled credit project site to generate benefit for the species. A debit project qualifies as competing land use when the debit project ...¹ The effect of competing land uses on sites adjacent to the enrolled credit project sites are determined using the anthropogenic disturbance curves defined in *Section 3.3.1: Cumulative Anthropogenic Disturbances* in the *HQT Scientific Methods Document*. These occurrences are out of the direct control of the Credit Project Proponent.”

- In the same paragraph in the CCS Manual as referenced above, the language will be altered appropriately to reflect the impacted credits decisions made.

“Therefore in cases of unintentional reversals on private lands due to impacts from adjacent sites (public land), valid credits (i.e., have a signed Management Plan) ~~which have been sold and are~~ that become invalidated by ~~those activities~~ the disturbance will ~~be~~ not ~~be~~ ~~invalidated~~ impact for the credit producer’s total credits. ~~Instead, the impacted credits will be but will instead be required to be~~ replaced by the debit project proponent prorated for the remaining term. If no term is in place, then the offset will be the same term as the Debit Project. ~~Credits which have been entered into the system, and are awaiting sale (i.e. have a signed Management Plan) and are invalidated will be replaced by the public lands reserve account at the time of sale. If~~ When the ~~SEC~~ SEP is made aware of impacts occurring from adjacent sites which are not required to mitigate (i.e., private land), reserve credits from ~~private lands~~ the appropriate reserve account will be used to offset those impacts.”

- Appendix A: Glossary, Debit Project Definition will also be adjusted to reflect the approved change:

“An anthropogenic disturbance that creates a debit. A debit project qualifies as competing land use when the debit project ...¹”

References

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

¹ Either “signs and submits the Debit Review Form to the SETT with proof of the start of NEPA (e.g., project initiation form) or state equivalent on state-owned land” or “first transfers credits, either internally or purchased externally, to offset the authorized disturbance”.