

**ADOPTED REGULATION OF THE
SAGEBRUSH ECOSYSTEM COUNCIL**

LCB File No. R045-25

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§ 1-19, NRS 232.162.

A REGULATION relating to greater sage-grouse; defining certain terms relating to the Nevada Conservation Credit System; setting forth certain requirements relating to the certification of a person as a verifier; establishing requirements and procedures for disciplinary actions taken against a verifier; exempting certain land owned by a tribal government from the requirements of the Nevada Conservation Credit System; revising requirements relating to the maintenance of sagebrush ecosystems and the conservation of the greater sage-grouse; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law creates the Sagebrush Ecosystem Council within the State Department of Conservation and Natural Resources and requires the Council to establish a program to mitigate damage to sagebrush ecosystems in this State by authorizing a system that awards credits to persons, federal and state agencies, local governments and nonprofit organizations to protect, enhance or restore sagebrush ecosystems. (NRS 232.162) Existing regulations establish the Nevada Conservation Credit System which requires, with certain exceptions, a person or entity that proposes an activity or project on public lands that will cause an adverse impact to the greater sage-grouse or the habitat of the greater sage-grouse to: (1) submit to the Sagebrush Ecosystem Technical Team certain information about the proposed activity or project; (2) work with the Team to avoid and minimize disturbances before mitigation; and (3) have a verifier quantify such impact in the form of debits. (NAC 232.470)

Once the impact to the greater sage-grouse or habitat of the greater sage-grouse is quantified and approved by the Program Manager of the Team, the person or entity is required to, among certain other requirements, mitigate the adverse impact on the greater sage-grouse or the habitat of the greater sage-grouse by: (1) acquiring from or transferring a sufficient number of credits in the Nevada Conservation Credit System to offset the debits; or (2) developing a mitigation plan that generates enough credits to offset the debits. (NAC 232.470) **Section 17** of this regulation authorizes a person or entity to submit to the Council a written appeal of the calculation of debits. **Section 17** also: (1) requires that any credits acquired or transferred from the Nevada Conservation Credit System must be acquired or transferred before a person causes

the anthropogenic disturbance; (2) authorizes a person to mitigate a disturbance by implementing certain credit projects that have been preapproved by the Council; and (3) sets forth the credit projects that have been preapproved. **Section 18** of this regulation makes a conforming change to account for the approval of a credit project by the Team.

Section 14 of this regulation revises the definition of “public lands” to exclude lands to which title is held by a tribal government, which eliminates the applicability of the Nevada Conservation Credit System to such lands.

Sections 2 and 3 of this regulation define the terms “credit project” and “debit project.” **Sections 13 and 16** of this regulation make conforming changes to account for the definition of the term “debit project.” **Section 15** of this regulation revises the definition of “verifier.” **Section 12** of this regulation applies the definitions in existing regulations and **sections 2-4** of this regulation to the provisions that govern the Nevada Conservation Credit System and **sections 5-11** of this regulation.

Section 5 establishes the qualifications for certification as a field verifier or desktop verifier including certain education, experience and training. **Section 5** further requires a person who wishes to be certified as a verifier to apply to the Program Manager of the Team. Additionally, **section 5** provides that a certification as a verifier is valid for 1 year and may be renewed up to four consecutive times by participating in certain training. **Section 6** provides that if the Program Manager denies an application, the applicant may request from the Program Manager a statement of the reasons for the denial. Further, the applicant may appeal the denial to the Council. **Section 19** of this regulation requires the Team to train and certify persons to be verifiers in accordance with certain requirements set forth in **section 5**.

Section 7 sets forth the grounds for the Program Manager to take disciplinary action against a verifier. **Section 8** authorizes the Program Manager to issue a verbal or written warning that identifies the cause for the warning, any required corrective actions and a timeline for completing such actions. **Section 8** authorizes a verifier who receives such a warning to appeal the warning to the Council within 30 days after receiving the warning. **Section 9** authorizes the Program Manager to issue a notice of a disciplinary hearing if a verifier does not take the proper corrective action in response to a verbal or written warning. **Section 9** requires that such notice and hearing be conducted in accordance with certain provisions of existing law governing contested cases. (NRS 233B.121-233B.150)

Section 4 defines the term “hearing officer” to mean a person who did not take part in an initial disciplinary action and who is appointed by the Program Manager to oversee disciplinary hearings held pursuant to **section 9**.

Section 10 authorizes the Program Manager to summarily suspend a certification as a verifier if the Program Manager finds that, based upon the evidence in the possession of the Program Manager, the actions of the verifier pose a threat to life, limb or property or will cause immediate and irreparable harm to the interests of this State which requires emergency action and the immediate summary suspension of the certification. **Section 10** further requires the Program Manager to provide notice of such a suspension and initiate proceedings for a contested case.

Section 11 authorizes a person whose certification as a verifier was suspended or revoked to reapply for certification after not less than 5 years after the date on which his or her

certification was suspended or revoked. **Section 11** further: (1) provides that the person will be on probationary status for 5 years; and (2) requires the Program Manager to immediately initiate disciplinary action against a person who is issued a certification under such circumstances, if the Program Manager has cause to believe that the person has engaged in an activity that is grounds for disciplinary action.

Section 1. Chapter 232 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *“Credit project” means a project or other activity that preserves or improves the habitat of the greater sage-grouse and creates a credit.*

Sec. 3. *“Debit project” means a project or other activity that causes an anthropogenic disturbance and creates a debit.*

Sec. 4. *“Hearing officer” means a person who did not take part in an initial disciplinary action and who is appointed by the Program Manager to oversee a disciplinary hearing conducted pursuant to section 9 of this regulation.*

Sec. 5. 1. *To qualify for an initial certification as a verifier, a person must:*

(a) For a field verifier:

(1) Hold a bachelor’s degree in natural resources management, ecology, forestry, wildlife management or environmental science or have experience equivalent to such a degree;

(2) Have at least 2 years of experience with standard quantitative vegetative field data collection methods, including, without limitation, experience with line-intercepts, Daubenmire plots and photo point monitoring;

(3) Have at least 1 year of experience using a global positioning system; and

(4) Successfully complete the training offered by the Sagebrush Ecosystem Technical Team pursuant to NAC 232.480 for an initial certification, including, without limitation, achieving a passing score on any exam offered during such training.

(b) For a desktop verifier:

(1) Hold a bachelor's degree in geographic information systems, natural resources management, ecology, forestry, wildlife management or environmental science or have experience equivalent to such a degree;

(2) Have at least 2 years of experience using a comprehensive geospatial platform to conduct spatial analysis; and

(3) Successfully complete the training offered by the Sagebrush Ecosystem Technical Team pursuant to NAC 232.480 for an initial certification, including, without limitation, achieving a passing score on any exam offered during such training.

2. A person who wishes to be certified as a verifier shall apply to the Program Manager, on a form prescribed by the Sagebrush Ecosystem Technical Team. The Program Manager shall approve or deny the application for certification. The Program Manager may deny certification to a person who:

(a) Does not satisfy the requirements set forth in subsection 1, as applicable; or

(b) Has practiced, or attempted to practice, any deception or fraud in the certification or examination of the applicant, or in securing the certification of the applicant.

3. A certification as a verifier is valid for 1 year and may be renewed annually up to four consecutive times by participating in training offered by the Sagebrush Ecosystem Technical Team pursuant to NAC 232.480 for the purpose of renewing a certification. After the fourth

renewal, a person who wishes to be certified as a verifier must submit a new application for certification in accordance with subsection 1 to remain certified as a verifier.

Sec. 6. If the Program Manager denies an application for certification submitted pursuant to section 5 of this regulation, the applicant may:

1. Request that the Program Manager provide the applicant with a statement of the reasons for the denial. The Program Manager shall provide the statement upon receiving such a request.

2. Appeal the denial to the Sagebrush Ecosystem Council. The appeal must be heard by a hearing officer appointed by the Program Manager or, at the request of the applicant, the Sagebrush Ecosystem Council. If the hearing officer or Sagebrush Ecosystem Council, as applicable, determines that the application should not have been denied, the hearing officer or Sagebrush Ecosystem Council, as applicable, will order the Program Manager to approve the application.

Sec. 7. 1. The Program Manager may take disciplinary action against a verifier for the following causes:

(a) Activity which is incompatible with the conditions of certification of a verifier or that violates state or federal law;

(b) Disgraceful or discourteous treatment of the public, the Sagebrush Ecosystem Technical Team or another verifier;

(c) Incompetence, inefficiency or inexcusable neglect of duty that creates an undue burden on the Sagebrush Ecosystem Program;

(d) Deception or fraud relating to the Nevada Conservation Credit System;

(e) Abuse of, damage to or the waste of public equipment, property or supplies because of inexcusable negligence or willful acts;

(f) Conviction of any criminal act involving moral turpitude;

(g) Any act of violence that arises out of or during the performance of the official duties of the verifier;

(h) Repeated violations of any regulation of the Sagebrush Ecosystem Council;

(i) Failure to participate in any investigation conducted by or at the request of the Program Manager or the Sagebrush Ecosystem Council into the verifier's performance of his or her duties as a verifier;

(j) Failure to act as an unbiased third party and objectively verify project conditions while acting as a verifier; or

(k) Acting as a verifier on any debit project:

(1) In which the verifier or a family member of the verifier has a pecuniary interest; or

(2) That is for a person to whom the verifier or an employee of the verifier has a commitment in a private capacity.

2. The Program Manager shall not take disciplinary action against a verifier in response to questions, comments or constructive criticism of the Nevada Conservation Credit System or in retaliation against a verifier.

3. As used in this section, "commitment in a private capacity," with respect to the interests of another person, means a commitment, interest or relationship of a verifier or an employee of the verifier to a person:

(a) Who is the spouse or domestic partner of the verifier or an employee of the verifier;

- (b) Who is a member of the household of the verifier or an employee of the verifier;*
- (c) Who is related to the verifier or an employee of the verifier, or to the spouse or domestic partner of the verifier or an employee of the verifier, by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity;*
- (d) Who employs the verifier or an employee of the verifier, the spouse or domestic partner of the verifier or an employee of the verifier or a member of the household of the verifier or an employee of the verifier;*
- (e) With whom the verifier or an employee of the verifier has a substantial and continuing business relationship; or*
- (f) With whom the verifier or an employee of the verifier has any other commitment, interest or relationship that is substantially similar to a commitment, interest or relationship described in paragraphs (a) to (e), inclusive.*

Sec. 8. 1. *If the Program Manager has cause to believe that a verifier has engaged in any action that constitutes grounds for disciplinary action pursuant to section 7 of this regulation, the Program Manager may:*

- (a) Issue a verbal warning to the verifier. The Program Manager shall document the verbal warning, including, without limitation, the cause for the warning and any required corrective actions, and upon the request of the verifier, provide such documentation to the verifier.*
- (b) Issue a written warning by personal delivery or by certified mail at the mailing address identified on the most recent application for certification or application for renewal, as*

applicable. The written warning must include, without limitation, the cause for the warning, any required corrective actions and a timeline for completing such actions.

2. Within 30 days after receiving a verbal or written warning, a verifier may appeal the warning to the Sagebrush Ecosystem Council. The appeal must be heard by a hearing officer or, at the request of the verifier, the Sagebrush Ecosystem Council. If the appeal is heard by:

(a) A hearing officer, the hearing officer will hold a meeting with the verifier and determine whether the warning was appropriate; or

(b) The Sagebrush Ecosystem Council, a meeting must be held in compliance with chapter 241 of NRS at which the Council will determine whether the warning was appropriate.

Sec. 9. 1. If a verifier does not take the proper corrective action in response to a verbal or written warning issued pursuant to section 8 of this regulation, the Program Manager may issue a notice of a disciplinary hearing to suspend or revoke the certification of the verifier. Such notice and hearing must comply with the provisions governing contested cases in NRS 233B.121 to 233B.150, inclusive. The hearing officer, or at the request of the verifier, the Sagebrush Ecosystem Council, will preside over the proceedings.

2. Upon the written agreement of all parties, the date of the hearing may be changed.

3. Except as otherwise provided in NRS 233B.126, a verifier may communicate with the Program Manager to seek an explanation of the reasons for the disciplinary action and the related disciplinary procedures.

4. A verifier may waive in writing his or her right to a disciplinary hearing. Upon the receipt of such a waiver by the hearing officer or the Sagebrush Ecosystem Council, as

applicable, the certification of the verifier must be immediately suspended or revoked, as applicable.

Sec. 10. *1. The Program Manager may summarily suspend the certification of a verifier without complying with the requirements of section 9 of this regulation if the Program Manager finds that, based upon the evidence in the possession of the Program Manager, the actions of the verifier pose a threat to life, limb or property or will cause immediate and irreparable harm to the interests of this State which require emergency action and the immediate summary suspension of the certification of the verifier.*

2. If the Program Manager suspends a certification pursuant to subsection 1, the Program Manager shall provide notice of the summary suspension to the holder of the certification by certified mail at the most recent mailing address identified on the application for certification and initiate proceedings for a contested case in accordance with NRS 233B.121 to 233B.150, inclusive, and section 9 of this regulation.

Sec. 11. *1. A person whose certification as a verifier was suspended or revoked may submit an application for certification pursuant to section 5 of this regulation not less than 5 years after the date on which his or her certification was suspended or revoked. The Program Manager may issue a new certification to such a person provided that the person has complied with any orders that arose from the prior disciplinary proceedings.*

2. If a person is issued a certification pursuant to subsection 1, the person will be placed on probationary status for 5 years after the date the certificate is issued. If the Program Manager has cause to believe that a verifier has engaged in any action that constitutes grounds for disciplinary action pursuant to section 7 of this regulation during the

probationary period, the Program Manager shall immediately initiate disciplinary action against the person pursuant to section 8 of this regulation by issuing a written warning.

Sec. 12. NAC 232.400 is hereby amended to read as follows:

232.400 As used in NAC 232.400 to 232.480, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 232.405 to 232.450, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 13. NAC 232.433 is hereby amended to read as follows:

232.433 “Nevada Conservation Credit System” means the system established by the Sagebrush Ecosystem Council pursuant to NRS 232.162 that calculates:

1. Debits that will be caused by a proposed ~~activity or a~~ *debit* project.
2. Credits that are created to protect, enhance or restore sagebrush ecosystems.

Sec. 14. NAC 232.440 is hereby amended to read as follows:

232.440 “Public lands” means all lands within the exterior boundaries of the State of Nevada except lands to which title is held by any private person, private entity , *tribal government* or local government.

Sec. 15. NAC 232.450 is hereby amended to read as follows:

232.450 *1.* “Verifier” means a person trained and certified by the Sagebrush Ecosystem Technical Team to use the habitat quantification tool for the purpose of calculating:

~~1-1~~ *(a) The credits that will be generated by a credit project;*

(b) The debits related to an anthropogenic disturbance; and

~~1-2~~ *(c)* The number of credits necessary to offset ~~such debits.~~ *a debit project.*

2. The term includes a field verifier and a desktop verifier.

Sec. 16. NAC 232.460 is hereby amended to read as follows:

232.460 1. Except as otherwise provided in this section and to the extent it is not prohibited by federal law, the provisions of NAC 232.400 to 232.480, inclusive, *and sections 2 to 11, inclusive, of this regulation* apply to any person or entity that proposes ~~an activity or~~ a *debit* project on public lands subject to state or federal review, approval or authorization . ~~that will cause an anthropogenic disturbance.~~

2. The provisions of NAC 232.400 to 232.480, inclusive, *and sections 2 to 11, inclusive, of this regulation* do not apply to:

- (a) A direct anthropogenic disturbance on private lands;
- (b) An activity or project which was approved by all relevant federal agencies and state agencies before December 7, 2018, so long as the activity or project maintains compliance with any condition or requirement for any such approval;
- (c) An activity or project using a mitigation agreement or framework agreement for greater sage-grouse signed by the United States Fish and Wildlife Service before December 7, 2018, and any amendments thereto;
- (d) A mineral exploration project which is limited to a surface disturbance of not more than 5 acres;
- (e) An activity or project that:
 - (1) Is necessary to protect public health or safety; or
 - (2) Will have a de minimis impact to greater sage-grouse and sagebrush ecosystems in this State; or

(f) Any emergency activity or routine administrative activity that:

(1) Is performed by a federal agency, state agency, local government or utility for a public purpose; and

(2) Does not require any additional approval from the Federal Government or the State.

Sec. 17. NAC 232.470 is hereby amended to read as follows:

232.470 1. Any person or entity that proposes ~~an activity or~~ a *debit* 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~~ *debit* 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~~ *debit* 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}~~ *debit* project . ~~{;and}~~

The person or entity proposing the debit project may submit a written appeal of the calculation of the debits to the Sagebrush Ecosystem Council. The Council will consider the appeal at its next regularly scheduled meeting, at which time the Council will render a decision on the matter by formal action.

(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}~~ *before the person or entity causes the anthropogenic disturbance;*

(II) Developing a mitigation plan with the Sagebrush Ecosystem Technical Team approved by the Sagebrush Ecosystem Council pursuant to subsection ~~{2}~~ *3* that will generate enough credits to offset the direct and indirect adverse impacts the proposed ~~{activity-or}~~ *debit* project will have to the greater sage-grouse or the habitat of the greater sage-grouse ~~{;}~~ *; or*

(III) Subject to the approval and administration of the Sagebrush Ecosystem Technical Team, implementing a credit project set forth in subsection 3 that has been preapproved by the Council. The Sagebrush Ecosystem Technical Team shall consider the factors set forth in subsection 2 to determine whether the credit project will generate enough credits to offset the direct and indirect adverse impacts the proposed debit 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 ~~{;}~~ *developed pursuant to subparagraph (II) of subparagraph (2) of paragraph (b) of subsection 1*, 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~~ *debit* project.

3. The following credit projects are preapproved by the Council:

- (a) Meadow improvement;***
- (b) Pinyon-juniper woodland removal;***
- (c) Fire restoration or rehabilitation;***
- (d) Invasive weeds treatment; and***
- (e) Anthropogenic disturbance removal.***

Sec. 18. NAC 232.475 is hereby amended to read as follows:

232.475 1. Not later than 10 working days after completion of the process set forth in NAC 232.470, the Program Manager must issue to the person or entity that is proposing the ~~activity or~~ *debit* project a certification of mitigation that sets forth:

- (a) The number of credits that the person or entity will acquire from or transfer to the Nevada Conservation Credit System; ~~or~~

(b) The mitigation plan approved by the Sagebrush Ecosystem Council pursuant to NAC 232.470 that will mitigate the direct and indirect adverse impacts that the proposed ~~{activity or}~~ *debit* project will have to the greater sage-grouse or the habitat of the greater sage-grouse ~~{}~~ ; or

(c) The preapproved credit project that the person will implement approved by the Sagebrush Ecosystem Technical Team.

2. The person or entity to whom a certification of mitigation is issued must ensure compliance with the terms set forth in the certification of mitigation for the duration of the ~~{activity or}~~ *debit* project.

Sec. 19. NAC 232.480 is hereby amended to read as follows:

232.480 The Sagebrush Ecosystem Technical Team shall:

1. Train and certify persons to be verifiers ~~{}~~ *in accordance with the requirements set forth in section 5 of this regulation;* and
2. Maintain a list on the Internet website of the Sagebrush Ecosystem Program of all verifiers who have been so trained and certified for the current calendar year.