

#### IV. Mitigation Hierarchy (comments from 4/22/15)

##### C. Rectifying Impacts

1. Q's 2-5 below do not apply to the current CHE framework but are covered by the regulatory framework for development. Since our focus has been on oil and gas development, a description of COGCC reclamation regulations is utilized to answer questions in this section.
2. Is there an identified timeframe within which rectification must occur?
  - a. The CHE is designed to offset unavoidable, residual impacts.
  - b. Rectifying impacts, to the extent required, will be covered by the voluntary or regulatory framework governing the initial impact.
  - c. COGCC Regulations 1000 series regulations control reclamation activities for oil and gas. In general, the rules state that, "The surface of the land shall be restored as nearly as practicable to its condition at the commencement of drilling operations."
    - i. For interim reclamation the rules state, that: "All disturbed areas affected by drilling or subsequent operations, except areas reasonably needed for production operations for subsequent drilling operations to be commenced within 12 months, shall be reclaimed as early and as nearly as practicable to their original condition of their final land use as designated by the landowner. . ." Interim reclamation shall occur no later than 3 months on crop land or 6 months on non-crop land with option for COGCC extension for conditions outside of the control of the operator.
    - ii. For final reclamation, all reclamation activities must occur within 3 months of plugging a well (on crop land) and 12 months (on non crop land). Director may grant an extension for unusual circumstances but every reasonable effort shall be made to complete reclamation before the next local growing season.

Will term of debit account for the potential window of reclamation, which can be up to a year?

Think so... will follow up.

See page 45 manual.

Still unsure how you will get more credits out of developers at the end of their contract...
3. What baseline will be used to determine whether rectification has occurred?
  - a. Interim reclamation, on non-crop land, of all disturbed areas no longer in use shall be considered complete when all ground disturbing activities at the site have been completed, and all disturbed areas have been stabilized in such a way as to minimize erosion, or a uniform vegetative cover has been established that reflects pre-disturbance or reference area forbs, shrubs and grasses with total percent plant cover of at least 80% of pre-disturbance levels or reference areas. For crop land, all segregated soil horizons removed from crop lands shall be replaced to their relative positions and contour.
  - b. Final reclamation on crop land - successful reclamation of the well site and road will be considered complete when reclamation has been performed and observed by COGCC over two growing seasons has indicated no sig unrestored subsidence.
  - c. Final reclamation on non-crop land - successful reclamation of the well site and road will be considered complete when reclamation has been performed and disturbed areas have been stabilized or a uniform vegetative cover has been established that reflects pre-disturbance or reference areas forbd, shrubs, and grasses with a total percent plant cover of at least 80% of pre-disturbance or reference area levels as determined by COGCC through a visual appraisal.
4. How are rectification measures monitored?

- a. For interim reclamation, the operator submits a Form 4 which describes the interim reclamation procedures and any associated mitigation measures performed, any changes to the landowners designated final land use plan, and min of 4 pictures to document success of reclamation.
  - b. For final reclamation, Form 4 submitted by operator which describes the final reclamation procedures and any changes in the landowner designated final land use plan, and mitigation measures associated with final reclamation as performed. Also, a final reclamation inspection is conducted by COGCC.
5. If rectification measures are not adequate who enforces compliance?
  - a. COGCC for oil and gas development
6. Who verifies that rectification is complete and adequate?
  - a. COGCC for oil and gas development
7. Debit Projects – Will the exchange administrator be responsible for determining if remediation has occurred? How will this work with the regulatory agencies? Will the Exchange even have right to access property? It seems this process would have to be connected to the original permit. P.37-38, 45.
  - a. The EA, or its assigned designee (i.e. 3<sup>rd</sup> party verifier) will coordinate with COGCC to determine if a debit project has been remediated as part of the process to determine whether a term debit has expired.

#### Exchange Agreement Questions and Comments

1. Sec 2.03(A)7 (p.14) – The Service reserves the right to access participating properties. This is not reflected in the Manual. If species not listed, is this a good idea? If mitigation is for COGCC, why does the Service need access?
  - a. Many members of the working group would prefer to not grant the Service access to participating properties, yet others believe it might be necessary for the Service. There is probably a distinction between what is necessary if the species is not listed versus if it is listed. A discussion would be useful here.
2. Sec 2.03(B)2-4. Inconsistent language referring to when relevant documents are needed for credit release. In particular, financial assurances are not mentioned as needed for restoration projects.
  - a. Financial Assurances are specifically identified in Sec 2.03(B) as part of the criteria required for all credit types. It did not seem necessary to list financial assurances under each credit type.
3. Sec 2.06(B). Easements. Reconcile with language in Manual, which indicates that the state will have 3rd party right of enforcement on easements (not mentioned [here](#)).
  - a. Please provide citation with reference in Manual that the “state will have 3rd party right of enforcement.” Having trouble finding that reference in the Manual.
4. Sec 3.01. Transaction fees shall be used to pay for administration of the Exchange. However, in the manual there is mention of these fees being put toward research. Please clarify.
  - a. The Manual allows for the use of Exchange funds (transaction fees) [section A2.2, p74 Manual]
  - b. Research conducted through the Exchange would be limited to issues related to the HQT or other critical Exchange operations. It is envisioned the Exchange Administrator would seek external funding where possible to address research needs.
  - c. The use of Exchange funds for research would not create mitigation credits.

**Comment [SG1]:** Manual p.31 (site protections evidence is defined in Exchange Agreement),

Manual p. 38. (Participant contracts and mgmt. plans will include right of enforcement by the Admin and Regulators)

*FWS Questions on CHE 4-21-15- draft for discussion only*

blue= CHE written responses; red = CHE oral responses; green = FWS notes/responses/clarifications

5. Sec 4.05(C). HQT Modification. We appreciate that modified HQT will not be applied retroactively to enrolled participant property/credits. However, the newer HQT will apply to debits that may use credits from the old HQT. There should be a clear plan for how to handle this.
  - a. We do not anticipate this being a substantial issue for several reasons
    - i. HQT unlikely to be dramatically overhauled in any given round of adaptive management
    - ii. Unlikely that a large number of landowners will create credits and allow them to sit on the exchange unsold for any long-period of time. The economics of creating a credit (financial assurances, etc) suggest that landowners will likely undertake some level of restoration activities to increase their functional acre score and then wait until credit demand is sufficiently high before posting large number of credits on the Exchange.
6. Sec 4.07(D). Can we agree to provide notice of a FOIA, especially for the purpose of allowing the Administrator or Participant to “prepare a notification requesting that any confidential personal or commercial information be withheld.”
  - a. Is this asking for some language in the Agreement that limits the FWS from submitting CHE information through a FOIA, but would require the FOIA request to be passed along to the exchange administrator for response?
  - b. We should have further legal discussions about how the Exchange would be impacted by FOIA if approved by FWS.

**Comment [SG2]:** I think this was an internal FWS question...