

I. MITIGATION PROGRAM GOALS AND OBJECTIVES

1. At what scale(s) will the net conservation benefit be measured?
2. How does the mitigation program address equitability (i.e. how will the mitigation hierarchy be applied across impact types and land ownerships in an equitable manner)?

II. COVERED ACTIVITIES

1. Will any other regulated resources be covered by the program (e.g. big game winter range, Bald and Golden Eagle Act, wetlands/Clean Water Act, etc.)?
2. What types of development activities will be covered?
3. Do you anticipate adding a process to include other development activities in the future?

III. MITIGATION PROGRAM GOVERNANCE

1. What mechanism (agreement, legislation, etc.) identifies the responsible parties for managing the mitigation program? Please provide a copy of the Articles of Incorporation or a Corporate Charter that will be used for the Exchange Administrator.
2. What role does the state wildlife agency play in overseeing the Exchange Administrator?
3. Will the state (CPW/COGCC) honor/utilize the service area boundaries, HQT, and other mitigation standards if someone does not go through the Exchange for their mitigation? Are these details in an agreement?
4. What compensatory mitigation transaction models will be supported by the Exchange (e.g. conservation banking, permittee-sponsored mitigation, in-lieu fee)?
5. What trigger points can be identified that would indicate that changes to the program's governance, manual, HQT or other program processes are needed and how will changes be implemented?
6. How will the program provide for coordination across jurisdictions (including across states)?
7. The use of contract penalties can contribute to financial assurances, but relying solely on this is risky. For traditional financial instruments (bonds, etc.), will the Exchange (Administrator) have 3rd party enforcement rights?
8. Is integration with state policy dependent on the state signing agreement? Does it apply only to COGCC? What about non O&G impacts? What mechanism will developers not going through COGCC have to use the Exchange? Will this require input or approval from CPW?
9. Fire is considered force majeure in the Exchange. Fires through credit sites could quickly use up reserve credits. Are there any checks in the system that would discourage use of credit sites with high fire risk?
10. Legally, how will the Administrator assess remediation success (and require additional mitigation) for an already permitted project?
11. The Agreement repeats or summarizes many of the detailed components of the Exchange. How will future changes to the components of the Manual or HQT be incorporated in the Agreement?
12. Mitigation Ratios – This is an important piece of the program, but there is not enough information to predict the outcomes of implementing the program. Ratios (or adjustment factors) should help to ensure net benefit from the program. Higher cost of development and higher reward for conservation should be paired with higher habitat importance and probability of grouse use.
13. How are “linkage” areas treated in terms of habitat importance and relative value that would be incorporated into mitigation ratios or adjustment factors applied to HQT scores?
14. How are the proximity of credit and debit projects accounted for in the calculation of credit obligation?

15. Management Activity Types – Are there thresholds for low, medium, and high-quality habitat that would help to define what type of activity (Conservation, Restoration, or Enhancement) a given credit project would be labeled?
16. Conservation Certificate Projects – How will certificates increase future credit availability? Using sales of certificates to fund restoration or enhancement projects may not meet additionality standards if those projects were planned to generate credits. (As the certificates are currently described, it seems problematic for FWS to provide regulatory assurances for those actions.)
17. Biological Monitoring – It is unclear how biological monitoring (mentioned on page 43) will feed back into adaptive management and operations of the program. What are the biological triggers for adaptive management?
18. HQT – Why was invasive grass cover used as a multiplier for adjusting condition scores rather than being included as a factor in scoring habitat condition?
19. Research – it is great to use the Exchange to develop research needs and help implement projects. It is stated that transaction fees may be used to fund these efforts. Careful accounting must be in place so that no monies for on-the-ground mitigation are used for research. Research is not acceptable as compensatory mitigation.

IV. MITIGATION HIERARCHY

A. Avoiding Impacts

1. What triggers review and entry into the mitigation hierarchy process?
2. Are there any avoidance or exclusion areas (e.g. NSO, lek buffers, etc.) on private lands?
3. What measures are used to determine if habitat is avoided? How are direct and indirect impact measures included?
4. Are there any density disturbance caps, and at what scale and in which sage-grouse habitat types does it apply? Do the caps include direct and indirect impacts? What are the data source and methods used to measure avoidance? How will data from the Exchange feed in to monitoring of a cap?

B. Minimizing Impacts

1. What criteria or regulatory mechanisms are used to require and/or enforce minimization? Specifically, what compliance measures are in place to ensure impacts are minimized (e.g. permit denial)?
2. How are minimization measures monitored and are there triggers for adaptive management?

C. Rectifying Impacts

1. Is there an identified timeframe within which rectification must occur?
2. What baseline will be used to determine whether rectification has occurred?
3. How are rectification measures monitored?
4. If rectification measures are not adequate who enforces compliance?
5. Who verifies that rectification is complete and adequate?
6. 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.

D. Compensating (Offsetting) for Unavoidable, Residual Impacts

a) Impact (Debit) Assessment

1. Will habitat measures take in to account rarity, vulnerability, or conservation priority?

2. How will the impact assessment method address direct impacts, indirect impacts, and cumulative effects?
3. Who can measure impacts? Will these calculations be verified?
4. Research on tall structures indicates direct and indirect effects to grouse. P.24 states that only direct footprint is considered. Is there another way the indirect impacts are captured?

b) Offset (Credit) Assessment

1. What is the science basis for using 20% as the regional average site-scale?
2. The credit calculation per map units takes the highest difference or uplift for one of the three seasonal habitat types. Does this method constrain ability to focus efforts on a seasonal habitat type that may be limiting or of concern, regardless of how much uplift it could get?
3. Will a credit developer be guaranteed a minimum number of credits on a given site? If credits for a site are only available for release post-restoration of the whole site, it will be challenging for long term agreements to do restoration without income along the way (also the HQT may change along the way). Concern this is a disincentive for long-term agreements. Perhaps for long term agreements there is either a minimum credit guarantee or credits can be released as performance standards are met thought that would mean the site would need approval, financial assurances, etc. in place before full restoration. P.58
4. If pre- and post-project boundaries have to be the same on a site, does the credit developer have to complete another separate agreement for expanding the site? Is there a way to phase in projects on one site under one agreement/financial instrument/easement/etc.? P. 58
5. Determining Credit Amount – is it feasible for a Buyer to run a draft calculation on their own and purchase or hold credits until a more formal assessment is complete? P.67
6. Is the base contribution of 4% of total site credits required in whole during first credit transfer or proportional to that particular credit transfer? It looks like for split estate, it is 7% for each transfer, correct? P.46-47
7. If a site has credits released over time (is that even possible?), and credit calculations are refined over time, how can it not affect the previously released credits?
8. How will duration of impacts (e.g. temporary versus permanent) factor into offset calculations?
9. Who can measure offsets? Will these calculations be verified and by whom?
10. How labor intensive is site-level data collection? Who can do this – landowners or only qualified agents? P.33

c) Impact to Offset (Debit or Credit) Relationship

1. How will the outcomes of the debit and credit metrics combine into a credit quantity to ensure that impacts are offset such that there is a net gain to sage-grouse (e.g. via ratios, multipliers)?
2. How will the timing of mitigation implementation (e.g. in advance of, concurrent with, or subsequent to impacts) factor into offset calculations (e.g. with ratios, caps on actions that result in time lags in critical areas, etc.)?
3. Under what circumstances would demonstration of functional mitigation in advance of impacts be required?
4. What criteria will be used to determine when in-kind or out-of-kind mitigation for habitat types (e.g. brood rearing, wintering, and nesting) is more appropriate?
5. What process is in place to adaptively manage the metrics?
6. What process is in place to approve new metrics?
7. Will there be a mechanism to allow for trades to occur outside of service areas?
8. What mechanisms are in place to provide for or use credit available in other programs or states?
9. Can dynamic term offsets be aggregated, i.e. can a 30 year debit be satisfied by purchase of 3, 10-year credits at one time? This is not explained in the manual. This section language seems to

suggest that is can. Will the liability of the buyer transfer to the Administrator if dynamic offsets are used?

10. Mitigation Ratio – why specific input from FWS on final ratio – is this not actually the role of CPW/BLM pre-listing? P. 46

d) Criteria for Compensatory Mitigation (Offset) Projects

1. What criteria are used for locating and prioritizing sites for compensatory mitigation?
2. Is there a preference for compensatory mitigation on a particular land ownership type (e.g. public, private) and why?
3. What pre-conditions must a site meet before being able to provide mitigation credits?
4. What constitutes on-site versus off-site mitigation, and when, if ever, is on-site mitigation preferred?
5. What is the process when impacts are proposed near or on compensatory mitigation sites?
6. Is credit provided for avoided loss? Under what circumstances?
7. What constitutes additionality (e.g., above and beyond legal requirements, above business as usual, etc.)? Does this differ by land ownership and if so, why? If not, why?
8. What are the mechanisms for ensuring durability of protection on various land ownership types? How are split estates handled?
9. What conservation types (e.g., preservation, enhancement action, etc.?) and actions (e.g. juniper removal, fence marking) can generate credits?
10. Who verifies credits (e.g., permitting agencies, third parties, etc.)?
11. Who approves the final mitigation agreement for a site and certifies release of credits?
12. How do you ensure that the credits represent the right conservation in the right locations?
13. What role, if any, can public funds or restricted conservation dollars play in mitigation (e.g., Farm Bill dollars)? Can other resources be stacked on sage-grouse mitigation sites (e.g. carbon, wetlands)? How will ongoing stewardship be ensured (e.g., proof of endowment or maintenance funds, when funds should be set aside, designation of a steward, qualifications of a steward)?
14. What performance standards and monitoring techniques/durations will be applied at mitigation sites? Will there be standardized defaults, or will everything be site-specific?
15. What content needs to be in the monitoring reports and how often and to who are they submitted?
16. What constitutes success? Does it include presence of the species?

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?
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.
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).
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.
5. Sec 4.05(C). HQT Modification. It's good 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.
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.”