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I. MITIGATION PROGRAM GOALS AND OBJECTIVES

1. At what scale(s) will the net conservation benefit be measured?
 - a. Programmatically – across the range of sage grouse in CO
 - b. Additional measures of net benefit could occur at the service area scale
Need to ensure that compensatory mitigation does not detract, or the impacts compensated for do not detract, from other conservation actions needed to preclude the need to list.
Specifically, need to understand if conservation certificates will be included in measuring net gain.
CHE to flesh out, with more information on how net benefit will be measured.
Will's 3/31 email:
CHE measures net benefit by tracking credits and debits to ensure the total number of credits within the program equal or exceed debits.

Net benefit results when credits are equal to or greater than debits. This occurs in 3 ways within the CHE:
 - 1) *The HQT is used to measure both credits and debits, ensuring consistency between impact and offset*
 - 2) *The HQT measure both direct and indirect effects, ensuring debit and credit measurements capture all impacts and don't unduly award credits for benefits in low quality landscapes*
 - 3) *The HQT was constructed using conservative assumptions, meaning the HQT fully measures impacts*
The use of a Reserve Account ensures an amount of credits are held in reserve, creating more credits in the program than debits.

Finally, Conservation Certificates held by the program should be included in the calculation of net benefit as these are verified functional acres that are not associated with impacts.

Will achieve net benefit programmatically, will ensure no net loss at a project scale.
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)?
 - a. The Colorado Habitat Exchange ("CHE") is designed to provide an efficient and effective mechanism for compensatory mitigation offsets.
 - b. Buyers of Credits will arrive at the Exchange either voluntarily or because they have engaged in a state or federal regulatory program that has applied the mitigation hierarchy and determined residual impacts remain after avoidance and minimization efforts have been accounted for.
 - c. The residual impact will be measured by the Exchange using the HQT to determine debits (measured in functional acres) resulting from the proposed project. The Exchange facilitates the purchase of credits to match or exceed the required debits.
Clarification: this question has more to do with different types of development, and different industries having different regulations/requirements. Also different land ownerships.

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CHE has not seen that the ownership of land would influence the operation of the Exchange?

Exchange can only do so much (can't control who uses it and how much of mitigation hierarchy they go through) but can help equalize...

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.)?
 - a. At the start of the CHE, only GrSG will be covered. The program anticipates additional species and/or resources could be covered by the program, and mule deer is a species CPW would like to see included next. However at this point, we are only seeking consideration of the CHE with a HQT built specifically for GrSG.
2. What types of development activities will be covered?
 - a. The CHE has been designed with Oil and Gas interests at the table and development activities related to Oil and Gas are the primary consideration.
 - b. However, the HQT is designed to measure impacts resulting from the following development activities:
 - i. Oil and Gas Wells (producing and nonproducing)
 - ii. Towers (cell, met, etc)
 - iii. Transmission Lines
 - iv. Mines (active and inactive)
 - v. Agriculture (tilled and untilled)
 - vi. Urban Development
 - vii. Roads (interstates, state highways, unpaved)
 - c.
3. Do you anticipate adding a process to include other development activities in the future?
 - a. As stated above, the HQT is designed to measure impacts from several types of development.
 - b. Impacts from wind turbines / towers are under consideration by the Science Team
 - c. The CHE has an adaptive management system that will allow further consideration of other development activities as they indicate interest in the credit market.

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.
 - a. The CHE Agreement (submitted in draft form on Dec 31) outlines the responsible parties including members of the Oversight Committee and a description of the entity who will serve as Exchange Administrator.
 - b. We will provide Articles of Incorporation in the weeks ahead.

WY Exchange piloting the administrator establishment, CHE plans to learn from that process.

Want to see a high level of oversight from the state.

The state will have 2 seats on the Oversight Committee (CPW & State Land Board, or 2 CPW). State will be approving the CHE and authorizing the Exchange to function in the state.

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Administrator must be able to ensure/enforce compliance in the program

The state does not have enforcement ability over the CHE other than the seats on the oversight board, by making sure the administrator is appropriately running the program. Contracts within the CHE will be legally enforceable, the administrator will be involved in tracking and taking action on those contracts.

Funding to run the program will come from transaction fees from Exchange but recognize seed monies may be needed to get it started, especially to get credits on the ground prior to debits. Conversations on-going.

2. What role does the state wildlife agency play in overseeing the Exchange Administrator?
 - a. When formed, CPW will be a voting member of the Oversight Committee
See previous notes
Science committee is listed as having one non-voting seat...
There is likely to be overlap between CPW and science committee
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?
 - a. The CHE is a voluntary program. Developers will be encouraged and incentivized to utilize the Exchange to meet mitigation obligations, but mitigation obligations will not be required to be met solely by the standards of the CHE.
Short answer is no. Consultation with CPW can be informed by the CHE program elements. FWS encouraged CPW to find ways to align standards.
4. What compensatory mitigation transaction models will be supported by the Exchange (e.g. conservation banking, permittee-sponsored mitigation, in-lieu fee)?
 - a. The CHE was built from a conservation banking model with additional mechanisms added to create the Exchange / trading platform and the HQT to measure functional acres.
 - b. Perhaps we should discuss to make sure we have interpreted the question completely.
In response to Shauna's question re: can conservation banks be used: Absolutely. That would actually be a good way to get the program started. Also, not envisioning any sort of ILF set up though the program may need seed monies to get credits on the ground (but won't convert debits to dollars to get to credits); also PRM is not part of this (state won't require CHE).
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?
 - a. See section 4.05 of the submitted CHE Agreement and section 3.3 of the CHE Manual
 - b. For trigger points and types of changes see sections A1.1 and A5.1 on page 72 of the Manual. Related, section 4.05(B) of the Agreement describes the timing of review and adaptive management
 - c. For implementation process see sections A1.2-A1.3 and A5.2-5.4. In addition see section 4.05(C) of the Agreement.
Ideas for adaptive management enter the system in 2 ways: science committee can recommend changes to the administrator (then approved by the oversight committee), and the oversight committee can bring up issues/changes.
Oversight committee will get input from stakeholders on an ongoing basis.
External parties could go through their respective oversight committee representatives.

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Agreed that it is a pretty soft trigger, wanting to be flexible.

Manual could retain flexibility, but the agreement could add specificity [?]

How will the Oversight Board determine if something is worthy of editing (consensus, majority?)

Page 18 of Manual: desire to have consensus, but 2/3 majority can drive decisions (and 2 of the 8 are state agency reps)

6. How will the program provide for coordination across jurisdictions (including across states)?
 - a. The CHE is designed to operate solely within CO. A very similar Habitat Exchange is under development and FWS consideration in WY.
Encouraging states to keep the possibility open, especially within MZs

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?

CHE could take action on breach of contracts.

Bond/endowment is in place for parties to call upon within the existing contract (not causing a breach of that contract)

Flexibility with parameters given for the type of financial assurances that are acceptable within the CHE.

Want to make sure the Admin. can call upon those financial assurances.

Page 48 of Manual lays out guidance for financial assurances.

Looking at example/template contract could clarify this issue.

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?

- a. DNR is currently working on securing approval for the exchange, and would be a signatory to the exchange agreement. At least initially, the exchange would fit into existing COGCC rules. There is the potential for the exchange to also function for mining permits, although conversations have not yet begun with the mining industry or DNR's division of mines and reclamation.
- b. After the initial launch of the exchange the state will look to expand opportunities for the exchange to function in other regulatory arenas. Since CPW will sit on the Oversight Committee CPW will be heavily involved in these future actions.
Flagged for future discussion. Madeleine will be able to discuss on a future call, FWS will want people from FO on for this discussion.

Comment [SG1]: Does approval mean the Exchange is ok to use to offset impacts or that is ok to use to calculate impacts and offsets? Does CPW have to sign off on this use for individual projects or can an entity voluntarily use the Exchange without consultation with CPW?

Comment [SG2]: Depending on the role of CPW as a signatory, it might be very different than the role of other signatories (BLM, FWS). Do you still envision one Agreement and how do you plan to parse out these various roles?

Comment [SG3]: What does "would fit" mean? Be incorporated? Be a requirement? How would this occur, through an MOU with COGCC? Through a change in the COGCC rules?

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?

Really a CPW/USFS question.

Flagged for future discussion, what is the standard for force majeure?

10. Legally, how will the Administrator assess remediation success (and require additional mitigation) for an already permitted project?

- a. Remediation success will be verified using a 3rd party verifier to determine the debit sites has returned to pre-project condition (pg 45, Manual)
- b. Project duration and related post-permit requirements is an ongoing discussion within the Working Group.

Ongoing discussion about legal recourse/requirements following the end of a permit.

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Flagged for future discussion.

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?
 - a. The Agreement is the controlling legal document. It attempts to outline components of the Exchange that would require approval by all signatories of the Agreement. This is admittedly a delicate balance to provide control to the signatories while allowing for flexible program management through changes in the Manual that are approved by the Oversight Committee and that are not directly outlined in the Agreement.
Flagged for future discussion, especially given the roles of CPW/FWS in different listing scenarios,
What is the process for making changes to the agreement, and what changes could be made without interrupting implementation of the program?
More flexibility in CHE → More flexibility in the predictability supplied by FWS Agreement could specify that FWS will serve on the oversight committee (as a non-voting member), which could boost our comfort level.
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.
 - a. Ratios are considered an Adaptive Management issue and can be refined over time to ensure programmatic net benefit for the sage grouse.
FWS may recommend how to get more confidence in NNL or NB
HQT identifies habitat value and prioritizes habitat
HQT is a quantitative, we may need a qualitative factor/weighting
Example: a specific population may need higher protection or improvement
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?
CPW's involvement could improve our confidence here
14. How are the proximity of credit and debit projects accounted for in the calculation of credit obligation?
 - a. Credit projects are currently required within the service area where the debit project exists. In this way, credit projects are linked to the subpopulation being impacted.
 - b. Aside from service area requirement, there are no additional factors to account for the proximity of credits and debits.
 - c. Given the strong behavioral avoidance exhibited by GrSG, determining an appropriate (desired) proximity may be difficult and is not something the science team has agreed on.
Incentivizing credit/debits within a specific population could be beneficial
Service areas were delineated taking into account populations
This will likely be a question for the SLT to consider
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?
 - a. The discussion of baseline (section 2.3.1, pg 33 of the Manual) outlines the suggested thresholds as follows:

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- i. Conservation projects – typically above the 60% threshold required for final project site-scale functional score (see section 2.2.5 for Minimum Performance Requirements, pg 31 of Manual); these projects don't involve enhancement, so the starting functional score needs to be above the minimum required at end of project life.
- ii. Enhancement – typically between 20% and 60% functional score; these projects use the 20% to calculate credit release and include some enhancement management activities to increase the functional acre score.
- iii. Restoration – typically below 20% functional score; these projects use pre-project condition functional score instead of the regional baseline (20%) to calculate credit release.

1/3 credit release for conservation actions performed under restoration projects, not enhancement or conservation projects.

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.)

- a. We are not seeking credit approval for actions resulting from Conservation Certificate projects.
- b. These are designed as a mechanism for any entity that wants to voluntarily invest in GrSG habitat uplift, whether a company seeking to enhance their sustainability claims, a community group seeking to donate to a good cause or a conservation actor seeking to improve habitat.
- c. Conservation Certificate projects could result future credits if the landowner decides at the end of the contract (or some other point in the process) to undertake the process to create a credit (financial assurances, enhanced verification, reserve account contribution, etc).
- d. Whether a Conservation Certificate project becomes a future credit is a decision for each landowner to consider within their broader business and financial planning. Any uplift resulting from a Conservation Certificate should be considered additional as there would be no corresponding debit offsetting the uplift.

Comment [SG4]: See above discussion/concern of using Certificates to count toward net benefit.

Same additionality standards (in terms of using federal funds) would apply to certificates as apply to credit projects. Additionality is tied to the federal contracts.

We usually talk about additionality related to public funds, not limited to strictly federal funds.

Comment [SG5]: ? Confused...

General question: How to respond to these types of concerns?

Work these changes in to the degree that you can, some of these things may be issues that we need FWS leadership direction for.

Process for defining what topics there are still questions or concerns on? Identifying key remaining issues will be helpful.

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?

Biological monitoring will be developed. Choosing triggers is something that can be put to the science team, but if FWS has guidance that would be helpful.

FWS SLT will not be able to provide guidance for a while.

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BLM/States have been working out monitoring and triggers, may want to coordinate with the state plans and RMPs, then adjust if needed. Near-final RMP document in CO will be released in late May (as a goal).

CHE can coordinate with CPW people involved in the RMP process

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?
 - a. This has been changed in the latest version of the calculator.
 - b. Cheatgrass is now a 4th order modifier as is conifer cover recorded at the map unit level.
Probably a question for the SLT.
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.

Note taken.