

MEMORANDUM

DATE	March 2015
FROM	Upper Green River & Wyoming Conservation Exchange Advisory Group
TO	Conservation Bank Review Team
RE	Guide to December 2014 Exchange Manual Revisions

This memo provides an overview of the revisions made to the Wyoming Conservation Exchange Manual (Exchange Manual) since the May 2014 draft reviewed by the CBRT. **This memorandum is intended to summarize changes. For further detail and clarification, please look to the language in the Manual.**

OVERVIEW OF CHANGES

The table below describes the major changes to each section in this version of the Exchange Manual.

Section 1: Exchange Overview

All Sections

- Language revised to reflect statewide focus of Wyoming Conservation Exchange (WCE) for greater sage-grouse.
- References to mule deer and hydrologic services have been maintained in introductory language but minimized in later sections of the Manual to reflect current focus of the document on greater sage-grouse.

Section 2: Program Elements

2.1 Governance (formerly Organizational Structure)

- Terminology:** The term governance replaces the term organizational structure to align with the USFWS Range-wide Framework for Greater Sage-Grouse guidance.
- Board of Directors:** Additional information on the composition and responsibilities of the Board of Directors is included. Consistent with the draft Articles of Incorporation, this draft includes a seven-member Board: two representatives each from landowner, commercial industry and conservation interests and one member representing the Science Advisory Committee. The Board may elect to include up to an additional four members representing state and federal agencies. Terms of Board Members will be three years in length.
- Technical Advisory Committee:** The current Advisory Committee will transition to become the Technical Advisory Committee upon incorporation of the Exchange.
- Compliance & Enforcement:** The roles of the Exchange Administrator are expanded to include the following duties:
 - Ensure programmatic compliance of the Exchange with relevant FWS policies.
 - Work with Credit Developers to implement corrective actions through remedial action plans when appropriate in cases of intentional and unintentional reversals.
 - Enforce contract compliance and contract penalties in cases of intentional reversals.
- Changes to HQT by Science Advisory Committee:** Changes to the HQT and the Exchange must be approved by the Board of Directors.
- Definition of Best Available Science:** Best available science means scientific data and information with the greatest degree of excellence, sound reasoning and evidence that are available at the time and that are accurate, reliable and relevant for use.
- Relationship to Regulatory Authorities:** To address CBRT concerns about oversight and latitude of the Exchange Administrator, a new subsection describes how regulatory agencies will provide oversight, especially during the initial years

of the Exchange. USFWS provides primary oversight for greater sage-grouse credits issued through the Exchange. However, WGFD, SGIT, and BLM also have jurisdiction or will provide guidance and review of both credit and debit projects. OSLI and BLM have jurisdiction over projects on state and federal lands.

2.2 Federal Regulatory Predictability (formerly Federal Regulatory Assurances)

- **Revised language for consistency with GRSG Range-wide Mitigation Framework :**
 - ‘Pre-listing mitigation credits’ is the term the USFWS is using for mitigation credits purchased while a species has candidate status under the ESA. This replaces the term ‘advance credit acquisition.’
- **Introduce Exchange Agreement:** The Exchange Agreement is introduced as the legal document that will be signed by the Regulators and the Board of Directors to authorize the Exchange.
- **Clarify options for regulatory assurances:** Information was added to describe how the Exchange can be used in conjunction with regulatory permits as authorized by the relevant state authority or by the BLM and, as appropriate, associated ESA Section 7 or Section 10 ESA mechanisms.

2.3 Integration with State Policy

- **Mitigation Hierarchy:** The Exchange is intended to be used in the context of state and federal policies that require the full mitigation hierarchy sequence (e.g. avoidance, minimization, compensatory mitigation). The Exchange supports the state’s core areas strategy by providing compensatory mitigation for disturbances that are proven unavoidable.
- **Role of permitting agencies:** Buyers who purchase credits to fulfill regulatory requirements for compensatory mitigation are responsible for meeting all requirements of the relevant permitting process through the state, BLM, or other federal agency. Buyers provide documentation of the permit stipulations and debit project design documents to the Exchange Administrator to identify service area, credits needed, and duration.
- **Offset Order of Preference:** Buyers and Credit Developers are encouraged to consult with the WGFD and SGIT, as appropriate, when identifying potential credit projects through the Exchange. To address CBRT concerns that offsets be located within an appropriate proximity to impacts, debit projects should follow the order of preference identified by the SGIT for locating offsets to impacts as relates to the Core Areas.

2.4 Accounting System Overview (formerly Accounting Period)

- This section now describes the components of the Exchange’s accounting system, which includes:
- **Exchange Registry:** used for tracking credits, debits, and transactions.
 - **Annual Performance Reports:** use registry outputs and the adaptive management process to report on the total number of confirmed credits and debits each year, and other information needed by state and federal regulatory agencies.

2.5 Adaptive Management

- **Adaptive Management:** Executed annually to ensure continuous improvement of the Exchange’s design and implementation over time.

2.6 Participant Confidentiality

- **Expectation of disclosure:** It may be necessary for federal and state agencies to evaluate individual actions in order to properly assess the effectiveness of the Exchange. Language is added to set expectations that participant information may be divulged if necessary and with advance notification and opportunity to appeal.
- **Aggregated information:** The Exchange Administrator will provide aggregated information in the form of an annual report to the USFWS and other regulatory agencies that protects confidential information regarding individual sites enrolled in the Exchange (i.e., there is no change to this section, however language has been

clarified.)

2.7 Transaction Strategies

- **Role of Exchange Administrator:** The Exchange Administrator will work with Credit Developers and Buyers to determine the most appropriate transaction mechanism.
- **Transaction Fees:** Transaction fees will be collected per credit or per credit project to fund the administration of the Exchange. The Exchange Administrator will work with the Board of Directors to set an initial transaction fee structure and amount, which will be periodically reviewed in the program-wide adaptive management process.

2.8 Habitat Quantification Tool (formerly Habitat Quantification Tool Relationship to Credits & Debits)

- Updated overview of the HQT and the calculation of functional acres and credits and debits.

2.9 Credit & Debit Baseline (formerly Baseline)

- **Site-specific baseline:** Credit baseline is a product of a regional standard site scale (4th order) function and the site specific 3rd and 4th order function. This means each credit site will have a unique baseline. New language and a table for illustration are added to clarify this.
- **Prior degradation:** Degradation language clarified to state both credit and debit projects that have experienced significant changes in vegetation structure and composition that affect habitat function occurring within the past ten years may be considered when determining baseline.
- **Debit project alternative baseline:** The Buyer may decide it is more cost-effective not to verify pre-project site-scale conditions, and instead may assume a site-scale habitat function of 100%, modified by local and landscape-scale habitat function.

2.10 Mitigation Ratios

- Placeholder language until HQT is finalized

2.11 Service Areas

- **Statewide Service Areas:** Five service areas for the state are based on the populations and subpopulations identified in the COT report. The service areas reflect the recommendations of the CBRT and the USFWS Greater Sage-grouse Range-wide Mitigation Framework and are delineated based on existing Local Working Group boundaries.
- **Flexibility:** Credits must be located in same service area as debits in the same service area unless the USFWS and the Exchange Administrator agree the purchase of credits in service areas other than the one in which the debit project is located produces an equivalent or preferable benefit to sage-grouse.

2.12 Credit Project Requirements (formerly Credit Site Eligibility)

- **Minimum Performance Standard:** Performance standards may be assessed at one or more scales (2nd, 3rd, or 4th orders). Language is added clarifying that the eligibility requirement is specific to the 4th order. Placeholder language is included for setting performance standards as eligibility requirements at the 2nd and 3rd orders.
- **Development Risk:** For cases where the credit project has an elevated risk of being developed over the project duration, the Exchange Administrator will work with the Credit Developer to ensure that the potential benefit for the species of enrolling the credit project outweighs the risk of future development. A refined list of

considerations is included to help the Exchange Administrator determine when the site has an elevated risk of development. Sites with elevated risk must demonstrate how credits generated by their project will not be invalidated.

- **Site Protection:** Language added to clarify that Credit Developers must show evidence of site protection for the duration of the contract period including a contractual agreement or other legally binding agreements such as a covenant, conservation easement, deed restriction, or similar device.
- **Requirements for Management Plans and Participant Contracts:** A list of required information within Management Plans and Participant Contracts is included.
- **Additionality:** Credit Developers must demonstrate that the credit project site exceeds legal requirements. Credit Developers must also describe how federal funds have been previously or currently used to support the development and management of the credit project site. Credit Developers must demonstrate that the credit project site will provide additional benefit to the species than those generated through the application of existing public funds.

2.13 Project Duration (formerly Project Life)

- **Credit Project Duration:** Language added to reinforce that credit projects should be a reasonable duration relative to the management actions proposed. For example, restoring sagebrush requires time, and shorter term contracts are not compatible with this type of project.
- **Debit Project Duration:** Language clarified to indicate that a term debit project ends when third-party verification demonstrates that the habitat has returned to pre-project baseline as measured by the HQT.
- **Dynamic Permanent Considerations:** New subsection outlining considerations for Exchange Administrator to track and report on in order to ensure dynamic offsets are generating net benefit for greater sage-grouse.

2.14 Credit Release

- **Enhancement Projects:** Enhancement projects are incorporated into Stewardship projects. Any stewardship project may set a goal of increasing habitat function over time and create a credit release schedule in the Management Plan.
- **Role in Risk Management:** Language is added to clarify how the Exchange uses credit release schedules to manage risk and uncertainty by releasing credits only when specific performance criteria are met.
- **Adaptive Management Subsection:** Each credit project has a required Management Plan and Participant Contract that specifies if performance standards are not met, the Credit Developer and Exchange Administrator must develop a remedial action plan to determine how the project can meet performance requirements or other appropriate remedies.

2.15 Verification

- **Verification Timing:** Language is clarified on the timing of verification of credits and debits.
- **End of Debit Project:** If, at the end of the debit project's duration, the site has not been remediated to recover lost productivity, the relevant permitting agency can extend or adjust permit requirements and the debit project owner may seek a new transaction through the Exchange to meet the new permit requirements.
- **Reduced Impact:** If third party verification demonstrates a reduction in the impact and amount of credits needed as an offset, the Buyer may sell or transfer surplus credits to another debit project or entity.
- **Credit Variability & Verification Results:** The Credit Variability section is now a subsection of Verification and combined with a refined description of how verification results are used.
- **Burden of periodic spot checks and audits:** The Exchange Administrator will not repeatedly spot check the same credit or debit sites so as to not overly burden the Credit Developer or Buyer.

Credit Variability

■ Moved into Verification Section

2.16 Financial Assurances (formerly Performance Assurances)

- **Minimum Requirements for Financial Assurances:** Language clarified to ensure funds are available to cover all anticipated costs expected to perform standard maintenance of the project as defined in the Management Plan for the duration of the contract and to ensure contingency funds are available for all credit types.
- **Long-term Stewardship Funds:** The term 'endowments' has been replaced with 'long-term stewardship funds' to allow for more flexible investment and management of funds.
- **Contract Penalties:** Contract penalties can be defined and required by the Exchange Administrator. In the case of intentional reversals, the Credit Developer pays contract penalties to the Exchange Administrator to ensure sufficient funding to purchase credits from another credit project site.

2.17 Reserve Account

- **Reserve Account Management:** The reserve account should be managed to maintain a balance of credits sufficient to ensure resilience against stochastic events. The reserve account contribution should be greater than the expected risk of credit invalidation until that balance of credits is achieved.
- **Base Reserve Account Contribution:** To address CBRT concerns about the reserve account being too low, a reserve account contribution of **12%** is required from all Credit Developers with each credit transaction. The base contribution is required due to the risk of force majeure events, wildfire, climate change, and other unpredictable events. The base contribution also includes the risk of split estate development on the credit project site.
- **Low-Risk Mineral Discount:** Credit Developers with split estate that can demonstrate a legal agreement with the mineral rights owner that will guarantee the protection of the habitat function on the credit site may receive up to a 5% discount in the reserve account contribution (i.e., a total reserve account contribution of 7% rather than 12%). A mineral remoteness assessment that indicates negligible mineral development potential on the site may also be sufficient to receive up to a 5% discount in the reserve account contribution.
- **Revisions To Improve Clarity:**
 - Clarifications added to explain how and when contributions of credits are made to the reserve account (Buyer or Credit Developer can contribute).
 - Equations added to clarify how the base contribution and low-risk mineral discount are combined to create a total reserve account contribution.

2.18 Credit Project Reversals

- Previously a component of the Reserve Account section, now its own section
- **Clarifications:** Diagrams and text were added to explain how the reserve credits are used to cover credit losses due to different types of invalidations, with additional language describing invalidations and fees as appropriate.

2.19 Credit & Payment Stacking (Formerly Stacking of Credits & Payments)

- **Revisions to Improve Clarity:**
 - Clarification added describing under what circumstances stacking of multiple credit types is allowed
 - Clarification added describing requirements for stacking with federal programs both inside and outside of federal contracts
- **Public Lands:** Additionality considerations previously described in the Public Lands section are moved to new subsection in this section
- **CCA/CCAAs:** A subsection on integration with CCA/CCAAs is added

2.20 Public Lands

- **Durability:** Additional language added regarding requirements to ensure sufficient site protection on public lands.
- **State Lands:** A new subsection describes considerations for projects on state lands.

**Credit Project
Types
(removed)**

- **Removed:** now briefly described in Credit Release section to avoid confusion that multiple credit types exist.

Section 3: Exchange Operations

All Sections

- Revisions made to improve alignment with Habitat Exchange Agreement
 - Revisions made to improve clarity on forms and processes
 - Management Plans now required for all projects
 - Regulatory agencies provided opportunity to review debit project estimates before purchase of credits is approved by Exchange Administrator
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Appendices

**Appendix A:
Glossary**

- Updated to include additional terms and improve definitions
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**Appendix B:
Forms and
Instructions**

- New appendix with overview of the list of forms and associated guidance for Exchange participants.
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**Appendix C:
Dynamic
Offsets
Considerations**

- New appendix with in-depth discussion of dynamic offsets.
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