QUADRENNIAL ENERGY REVIEW

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Panel 3: Data Needs, Mitigation Methods, and Tools for Siting and Permitting

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The Greater sage-grouse (sage-grouse) is a ground dwelling bird utilizing large areas of western North America's sagebrush ecosystems. Sage-grouse require large**,** contiguous tracts of habitat where they use distinct seasonal habitat types. Males are known for their distinctive courtship displays when gathering at leks in early spring to compete for females. The species currently occupies 56 percent of its historic range, and overall abundance has decreased by up to 93 percent from presumed historic levels. These decreases are the result of habitat loss, fragmentation, and degradation as the result of agricultural conversion, increased fire regimes, and energy development as well as diseases such as West Nile virus. Development in the western United States continues to create additional conflicts with the species.

Recent attempts to reverse the sage-grouse decline include regulatory changes and conservation programs. These include classifying the sage-grouse as a candidate species under the Endangered Species Act and as a "sensitive species" by the Bureau of Land Management, state actions, and coordinated conservation planning. State and industry stakeholders expressed concern over the potential economic impacts of a federal threatened or endangered listing. On the state level, the Wyoming Governor's Executive Order established sage-grouse core population areas and regulations to ensure development in these areas was compatible with maintaining administrative sage-grouse populations. These regulatory and conservation efforts precluded federal listing and created a market demand for conservation banking. Habitat conservation banking provides mitigation credits available to offset impacts to sage-grouse habitat in the bank's service area. Conservation banking will be a critical factor for recovery of sage-grouse, especially as the U.S. Fish and Wildlife Service considers whether the species should be listed as a threatened species pursuant to a federal court order, which mandates that the listing determination shall be made no later than September 2015.

The Sweetwater River Conservancy Greater Sage-Grouse Habitat Bank, LLC (SRC) is proposing to establish a Greater Sage-Grouse Habitat Conservation Bank (HCB) to conserve sage-grouse habitat in central Wyoming on a landscape scale. The HCB is likely to encompass nearly 100,000 acres of private land together with associated state and federal lands held under state grazing leases and federal grazing permits. All told, in the near term, the HCB could encompass nearly 1 million acres of land along the Sweetwater and North Platte Rivers, is bounded by three mountain ranges (Seminoe, Pedro and Ferris Mountains) and embrace wide swaths of the Oregon Trail and other historical sites.

In its most simple form, the HCB is a parcel of land containing natural resource values that will be conserved and managed in perpetuity, through a conservation easement. The bank will be specifically managed and protected by the banker for certain natural resource values, with these values being translated into quantified "credits" that may be bought, sold, or traded for the purposes of offsetting the impacts of private, State, local, or Federal activities within the bank service area. At its core, the conservation bank is a market-based system that incentivizes the investment of private capital to develop a supply of credits that will ultimately be used to facilitate responsible energy development. This is a win-win marketplace for private enterprise, development and resource conservation.

In addition to satisfying project mitigation requirements, HCBs provide other benefits. The HCB

will provide regulatory compliance *in advance of* development impacts to the sage-grouse, a species which has been the source of considerable and costly analysis, reanalysis and litigation. This approach assures the up-front protection of the habitat for the species. Thus, once the conservation bank is established, each credit that is sold becomes part of the secured, environmental baseline for the species. As a result, future project evaluations and listing or delisting decisions can be made in a more stable ecological context. In the event that a species that is protected by a conservation bank is listed, the HCB is a functional tool to more efficiently achieve the policy goals for both the Section 7 and Section 10 processes under the ESA.

The SRC approach dovetails with the recently issued U.S. Department of the Interior Order No. 3330, entitled *Improving Mitigation Policies and Practices of the Department of the Interior.* The Order contemplates certain "central" elements of an overall mitigation strategy at the Department of the Interior. First among these elements is to use a "landscape-scale approach to identify and facilitate investment in key conservation priorities in the region." Second, is the notion of "early integration of mitigation considerations in project planning and design." Third is ensuring "the durability of mitigation measures over time." Fourth, the Department is directed to ensure "transparency and consistency in mitigation decisions." The fifth element focuses the Department's attention on mitigation efforts that would improve the resilience of the country's resources in the face of climate change.

The Order goes on to charge each federal agency to identify improvements to mitigation policies "to provide project developers with added predictability, facilitate landscape-scale mitigation based on conservation plans and regional environmental assessments, facilitate interagency mitigation plans where appropriate, and ensure accountability and long-term effectiveness of mitigation activities." Federal agencies are directed to coordinate a Department-wide, science-based strategy to enhance mitigation strategies to "effectively offset impacts of large development projects of all types through the use of landscape-level planning, banking, in lieu fee arrangements, or other possible measures," which should "promote permit efficiencies and financial predictability for developers and also enhance the ability of the Federal and state agencies to invest in larger-scale conservation efforts." The SRC HCB is tailored to fit the appropriate rigor of Secretarial Order 3330.

Initially, the SRC will be seeking sage grouse habitat conservation bank credit for its privately held acreage that is currently providing quality habitat for the species. Through the application of thoughtful grazing management and other recognized habitat restoration practices, SRC is confident that it can improve sage grouse habitat that is currently less productive. In the event that it gains "lift" in habitat value, SRC may seek additional credit for the improvements it makes to the private land habitat within the bank.

Credits will be quantified based on the premise of "functional units" of sage-grouse habitat, not the number of individual birds within the HCB. In most cases it is not possible to determine the *exact* number of birds lost at an impact site or present within the bank area. However, it is possible to determine whether sage-grouse are present, have been present or will likely be present in the future. Using habitat to derive credit will provide a meaningful yet straightforward way to quantify impacts and determine the number of credits required to offset those impacts.

Numerous studies suggest sage-grouse have large home ranges and complex habitat selection patterns selecting multiple habitat types during their annual cycle. The characteristics of high-quality habitats will differ depending on the time of year, and consequently, credits need to be quantified in a way that addresses the seasonally-specific habitat requirements of sage-grouse. Accordingly, credits within the HCB are being developed within 'functional units' i.e. contiguous blocks of land that provide habitat for lekking, breeding, late-summer brood rearing, and winter habitat.

In order to quantify the "functional units" that exist on SRC lands, the SRC has relied on state-of-the-art monitoring techniques. First, it has completed on-the-ground vegetation surveys to ensure that the habitat within the HCB is of sufficient quality and health to support credits. The SRC has also funded extensive efforts to collar and track birds using telemetry. The telemetry has demonstrated that the habitat that was characterized during the vegetation surveys is actually used by sage-grouse. Further, the telemetry has allowed the SRC to specifically identify whether the habitat in question constitutes lekking, breeding, late-summer brood rearing or winter habitat, thus supporting the notion that a "functional unit" is present on the landscape. Finally, and most significant, the SRC has funded hyperspectral imaging of all of the private, federal and state trust lands within the HCB. Such imaging goes far beyond the collection of vegetation and other data at single points dotted across the property and provides a detailed understanding of the entire million acre landscape at 2 meter resolution.

Functional units are likely to comprise parcels of land that are larger than the deeded SRC lands, and will extend onto adjacent public (Bureau of Land Management or Wyoming State Trust) lands. The SRC is currently working with the Wyoming Office of State Lands and Investments to develop a process by which the Wyoming Board of Land Commissioners, which is comprised of the five statewide elected officials charged with overseeing state trust lands in Wyoming, can approve the inclusion of state lands into the HCB. Such approval contemplates continued payment of state grazing lease fees and the payment of a royalty for the credits that are sold from state trust lands.

In terms of federal lands that are associated with the HCB, the SRC continues to work with the Bureau of Land Management to determine the mechanism by which those lands can be managed consistent with the conservation values of the HCB, while ensuring that the same lands meet the mandate that they be available for multiple use. While, the SRC believes that the HCB is sustainable irrespective of the Bureau of Land Management's approach to the management of adjacent federal lands, as the bulk of these lands have little value for mineral or other development, the SRC is interested in ensuring that its management of the HCB (and thus the habitat of the sage-grouse) has minimal potential to be compromised by activity on federal lands.

Further, the SRC is interested in partnering with the Bureau of Land Management to not only preserve existing habitat conditions on federal lands, but to enhance those conditions for the benefit of the sage-grouse and the landscape generally. The question for the Department of the Interior is whether processes exist to allow improvements on federal lands, yield benefits for the species and achieve "lift" of the habitat, with such lift resulting in additional credits for the SRC and potential benefit to the federal government.

One final point of interest for the SRC in relation to federal land management in the context of habitat banking is the question of how credits may be transacted to offset impacts on federal lands. Because mineral and other development activities permitted on federal lands have the potential to serve as a central marketplace for the sale and use of credits, it is critical for federal permitting agencies to define if and how credits are to be used to mitigate impacts to other resources – in this case, sage-grouse. Because HCBs have a relatively expansive history and have been used extensively to offset impacts to federal lands and resources, particularly in Texas, California and the southeast, the SRC is hopeful that similar processes can be employed in Wyoming to ensure that credits can be used to mitigate impacts to sage-grouse on federal lands.

In sum, the SRC HCB is a unique, landscape-level conservation bank that will compensate for impacts to, and conserve and protect, the habitat of the sage-grouse and unlock development opportunities throughout Wyoming and, potentially, across the entire range of the sage-grouse. Beyond sage-grouse, the SRC HCB will preserve and/or enhance the habitat of elk, mule deer, pronghorn, bald and golden eagles, other raptor species, migratory birds, and other wildlife and promote improved water quality and quantity within the SRC HCB, while irrigating crop and range lands in a manner that permits the property owners to retain the water rights that have been allocated to those lands pursuant to Wyoming law and regulation. Further, the SRC HCB will maintain open space, enhance recreational opportunities and improve range health through livestock grazing. In an age of declining federal budgets to aid in wildlife and land conservation, it is clear that the private sector will play a central role in funding and moving this conservation forward into the future. If incentives are aligned properly, investment in such efforts will be considerable, netting a benefit not only for the land, water and species, but also providing multiple layers of economic benefit to our nation.