

Dear Chair Mackenzie and Program Manager Steele,

I'm asking you to provide this as correspondence to the full Council regarding the disturbance caps agenda topic.

I have completed some **non-exhaustive** research regarding this issue. The SEC, with the support of the SETT, has discussed disturbance caps very many times over the years and considered whether or not to include this concept into the State Plan very many times as well. There are many examples where the SEP/SETT, SEC, and Governor have previously noted the use of disturbance caps as inconsistent with the State Plan. Some of these are attached and include, without limitation:

- 12/12/2013 Memo from the SETT to the SEC with a red-lined copy of the draft State Plan where a previous draft had an entire section on "Maximum Allowable Disturbance" that was not approved by the SEC and completely removed with an explanation by the SETT to instead implement "a 'soft cap' of an increased mitigation rate, instead of a 'hard cap' of disallowing further development. Since the contract with Environmental Incentives, LLC to develop the Conservation Credit System (CCS) is underway; the SETT recommends that the SEC direct the SETT to work with the CCS contractor to consider cumulative impacts on sage-grouse habitat at the population level in the development of the CCS metrics."
- 5/13/2014 SEC minutes where disturbance caps were discussed and direction provided to DCNR (Jim Lawrence), NDOW (Tony Wasley) and Environmental Incentives (CCS development consultant) to complete analysis on the CCS vs. disturbance caps. This was based on feedback from USFWS (Ted Koch) regarding "the importance of demonstrating how the mitigation strategy [CCS] will adequately avoid impacts in quality habitat and that being vitally important."
- 6/23/14 presentation by Environmental Incentives to the SEC concluding, based on their analysis they were directed to do at the 5/13/14 meeting, "Disturbance caps and surface-disturbance based mitigation ratios allow for increased habitat fragmentation, significant net functional habitat loss, impacts to scarce seasonal habitat" and that the CCS "provides significant habitat function improvement and surface disturbance caps allow significant net loss in habitat function."
- 6/19/2015 Memo from the SETT through SEP Manager Kacey KC to the SEC identifying "differences between the proposed plan in the LUPA/ FEIS and the State Plan/ Alternative" for development of protest points. The memo specifically notes disturbance caps "are in direct conflict and inconsistent with the State of Nevada's 2014 Nevada Greater Sage-Grouse Conservation Plan (State Plan). The State Plan does not allow for exclusion zones or disturbance caps, but instead provides an "avoid, minimize, mitigate" process to address impacts from anthropogenic disturbances (pages 12 – 18, 61 – 66, 69 – 70 State Plan). The

State contends that these additional restrictions are not needed if the “avoid, minimize, mitigate” process is adhered to, including the complete adoption of the Conservation Credit System.”

- 6/23/2015 minutes of the SEC documenting discussion and action by the SEC where “Ms. KC noted the SETT is looking for clear direction on what the Council does and does not want to move forward with in both the Governor’s Consistency Review and the protest period, including clear direction on what the Council thinks are the issues to be addressed with each process, and anything the Council thinks has been omitted” and the SEC discussed disturbance caps at length. Tony Wasley, NDOW Director, noted “ If you look at the way disturbance is calculated in the CCS, it is with much greater detail than what the BLM is proposing by calculating range-wide because they need a consistent approach state to state so they do not have different states using different methodologies. The methodology the BLM is proposing is not nearly as rigorous as the CCS and does not take into account indirect effects. Therefore, what three percent is in the CCS is not three percent in the BLM system.” The SEC took action to protest the disturbance caps.
- 6/29/2015 protest letter from the SEP, signed by Program Manager Kacey KC, protesting the disturbance caps and clearly stating “A disturbance cap is inconsistent with the State Plan...” and “These actions are in direct conflict and inconsistent with the State Plan. The State Plan does not include disturbance caps, but instead provides an “avoid, minimize, mitigate” process to address impacts from anthropogenic disturbances” among many other salient, related points.
- 7/20/2015 letter from the Sagebrush Ecosystem Program, signed by Program Manager Kacey KC, to Governor Sandoval with “main issues the SEP would outline for your inclusion in your consistency review” and specifically noting:
 - “A disturbance cap is inconsistent with the State Plan, as applied in the LUPA/FEIS is inconsistent with best science, does not adequately address the threats identified in the Conservation Objectives Report (COT), and will inadvertently impact the effectiveness of the Conservation Credit System. The disturbance cap fails to account for the quality of habitat and seasonal habitat types, which should be considered based on best available science. A disturbance cap is not a useful management tool given Nevada’s spatial distribution of seasonal habitats. In many instances greater than three percent disturbance in winter habitat, where winter habitat is the majority of the landscape within a BSU, would not have a negative impact on populations, whereas less than three percent disturbance on limited brood rearing habitat could have a detrimental impact. A disturbance cap creates another exclusion area, restricting certain land use allocations. The CCS and the State Plan more adequately account for quality of habitat and available of seasonal habitat types by:
 - Consistently defining habitat quality and availability at the site, local, and landscape scales for both impacts from development (debits) and benefits from enhancement and protection (credits) using ‘functional acres’ as the

common unit of measure, accounting for both direct and indirect effects of anthropogenic disturbances, and

- Rigorously addressing limiting habitat needs within a given project effects' area.

Greater sage-grouse conservation is better served by the rigor of the CCS program rather than a three percent disturbance cap. If the disturbance cap remains in the LUPA/FEIS, additional conditions should be inserted whereby the cap is a temporary backstop to give time for the CCS to prove its effectiveness. When the CCS is prove to be effective the disturbance cap would no longer be required.”

- 7/29/2015 Governor Sandoval Consistency Review letter stating:
 - “The disturbance cap concept should be removed from the preferred alternative. The State of Nevada spent considerable time, resources and funding to create the rigorous and scientifically based CCS. The CCS adequately account for the quality of habitat and the availability of seasonal habitat types both at the BSU level and the project level, and makes a disturbance cap unnecessary, even possible counter-productive to achieving net conservation gains. If a disturbance cap remains in the LUPA/FEIS, additional conditions should be inserted whereby the cap at the BSU level is a temporary backstop to give time for the CCS to prove its effectiveness. When the CCS is prove to be effective the disturbance cap would no longer be required. I also recommend that if a disturbance cap remains that the cap be calculated solely at the BSU level and not the project level”
- 9/4/2015 Governor Sandoval Appeal of rejection of consistency review recommendations with a direct statement that “the DCP [Disturbance Cap Protocol], as currently written, is inconsistent with the State Plan, numerous local plans, multiple-use mandates, and best available science. If the DCP must remain, the approach of the project-scale calculation must be eliminated entirely, or at the very least, significantly revised. The BSU-scale analysis should exist only as a temporary backstop until implementation of the CCS is show to be effective.”
- June 2018 SEP Semi-Annual Report citing Governor Sandoval’s consistency letter “identifying inconsistencies with State and local plans, policies, and programs; and outlining recommendations to address those inconsistencies. Such areas include... Anthropogenic Disturbance Caps.”

There is not much I could find about the SEC discussing disturbance caps after 2015. While the SEC minutes may not have much documentation regarding SEC discussion of disturbance caps, I know it was one of the primary topics being discussed and addressed during BLM 2018/2019 RMPA process because I was actively involved in that representing Eureka County as a cooperating agency. The Governor’s consistency review in December 2018, also attached, does not mention disturbance caps. Of note, the 2019 BLM ARMPA removed the disturbance caps where “For BLM land in the state of Nevada only, the following disturbance management protocol is intended to

provide for a 3 percent limitation on disturbance, except in situations where a net conservation gain to the species is achieved as a component of compliance with a state mitigation plan, program, or authority, such as required by the State of Nevada's Executive Order 2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law)" (ROD and ARMPA p. 2-7). The 2018/2019 Governor's consistency review did not mention the disturbance caps likely because the 2018/2019 BLM RMPA deferred to the CCS, deferred to the State's Adaptive Management Process, and clarified how disturbance caps would not apply in Nevada when the CCS was followed.

Thank you.

Jake Tibbitts

Eureka County Natural Resources Manager

PO Box 682

Eureka, NV 89316

775-237-6010

JTibbitts@EurekaCountyNV.gov