FWS/R6/ES

Memorandum

To: Assistant Regional Director – Ecological Services, FWS R6, Lakewood, CO

From: Field Supervisor, Lakewood, CO, Ecological Services Field Office

Subject: Set of Findings and Recommendations for Issuance of a Section 10(a)(1)(A) Enhancement of Survival Permit to the Western Association of Fish and Wildlife Agencies (WAFWA) in Association with the Range-Wide Oil and Gas Candidate Conservation Agreement with Assurances for the Lesser Prairie-Chicken

I. DESCRIPTION OF THE PROPOSED ACTION

The proposed action is the issuance of a section 10(a)(1)(A) enhancement of survival permit (Permit) and the approval of the Range-Wide Oil and Gas Candidate Conservation Agreement with Assurances for the Lesser Prairie-Chicken (Range-wide Oil and Gas CCAA) between the U.S. Fish and Wildlife Service (Service), WAFWA (Permit Holder) and participating oil and gas operators. The Range-wide Oil and Gas CCAA has been developed to provide for the conservation needs of the LEPC in the face of oil and gas development activities within the Covered Area in Colorado, Kansas, Oklahoma, New Mexico, and Texas. The Covered Area includes the estimated currently occupied range plus 10 miles (EOR+10) (for details, see Section VIII and the Range-wide Oil and Gas CCAA). The Range-wide Oil and Gas CCAA would have a duration of 30 years. The Permit would authorize a specified amount of incidental take anticipated from implementation of oil and gas development activities on properties enrolled in the CCAA, including seismic and land surveying, construction, drilling, completion, and workovers (recompletion), routine operations and maintenance, and oil and gas remediation, and habitat enhancement and restoration activities.

Oil and gas operators can voluntarily enroll non-Federal oil and gas properties in the Range-wide Oil and Gas CCAA, at which point they are Participants. WAFWA would approve enrollment by issuing Participants Certificates of Inclusion (CIs) under the Permit.

Participants would implement the CCAA's conservation measures to avoid, minimize, and mitigate impacts to the LEPC on enrolled properties (for full description of the measures, see section XII of the CCAA). In return for properly implementing the CCAA and CIs, the Service would provide WAFWA and Participants assurances that for the duration of the CCAA and the Permit, it would not impose additional commitments or land, water, or resource use restrictions beyond those voluntarily agreed to and described in the CCAA, should the LEPC become listed in the future, unless otherwise agreed to by WAFWA and Participants.

The Range-wide Oil and Gas CCAA tiers to, and incorporates, *The Lesser Prairie-Chicken Range-wide Conservation Plan* (RWP), which includes a conservation strategy and mitigation framework developed by the Interstate Working Group[1] (IWG). This CCAA uses the same biological goals, conservation measures, impact metrics, and conservation delivery system, applicable to oil and gas activities, as the RWP. The overall goal of the RWP is to conserve the LEPC for future generations while facilitating continued and uninterrupted economic activity throughout the entire five-state LEPC range. The RWP identifies a two-pronged strategy for LEPC conservation: (1) the coordinated implementation of incentive-based landowner programs, and (2) the implementation of a mitigation framework that incentivizes avoiding impacts in higher quality habitats in higher priority areas and provides funding for offsetting impacts and implementing additional conservation in higher quality habitats in higher priority areas.

The RWP's conservation strategy is intended to provide a net long-term benefit to LEPC and other listed and candidate species in the following ways:

1. Identifies a desired average population goal of 67,000 birds to be achieved within a 10-year period, which represents an increase of 9.4 percent from the current 10-year average of 60,702 birds (Van Pelt et al. 2013). Additional population and habitat goals are also provided in the RWP.
2. Concentrates resources for species conservation in the higher quality habitat in the LEPC range, namely the focal areas and the connectivity zones, allowing for the restoration, enhancement, and maintenance of large blocks of habitat needed by LEPC and minimizing fragmentation into small local patches of habitat that may not support desired population levels.
3. Provides conservation measures to avoid, minimize, and mitigate habitat loss, collisions and other sources of mortality, and disturbance of breeding and nesting LEPC.

[1] The IWG is comprised of biologists who are LEPC experts from the State wildlife agencies for each state in the range of the species.

4. Encourages conservation of higher quality habitat through higher mitigation fees in the focal areas and connectivity zones and, conversely, lower mitigation fees in areas of lower quality habitat in the Covered Area.
5. Where avoidance and minimization of such impacts is not possible, the RWP mitigation framework quantifies the impacts of development, quantifies the amount of mitigation necessary to offset the impacts, and then requires the payment of mitigation fees by Participants for these mitigation actions. A habitat impact is defined as potential LEPC habitat that has been rendered unusable by LEPC based on direct or indirect habitat loss related to development. Indirect habitat loss refers to avoidance of potential habitat by LEPC around an impact site.

Mitigation would be accomplished by a strategy that would encourage the concentrated placement of mitigation (habitat improvement and restoration) in focal areas and connectivity zones, supported through the WAFWA Mitigation Framework in the RWP. Mitigation would be used to offset habitat loss and impacts based upon the impact buffer area for the type of infrastructure constructed. The mitigation framework requires that impacts will be offset with mitigation at a 2:1 ratio of acres of habitat of equal or greater quality than impacted habitat acres. Twenty-five percent of the resulting mitigation units are targeted toward permanent conservation easements to support long-term conservation and population strongholds. The remaining seventy-five percent of the mitigation efforts are targeted toward short-term contracts (5 to 10 years) with willing landowners to carry out habitat restoration and management. Funding for implementation of mitigation activities on permanent easements and short-term contracts will be provided through a non-wasting endowment partially established with mitigation and enrollment fees paid by Participants in the Range-wide Oil and Gas CCAA.

In order to provide time for WAFWA to generate offset units during the first year of the CCAA, it incorporates the RWP's waiver period until March 30, 2015 in which impacts from limited oil and gas development could go unmitigated for the first year of its implementation. The Service is concerned about the potential of a year of unmitigated impacts combined with other ongoing impacts, the potential continuation of drought in large areas of the LEPC range, and potential continuing decline of LEPC population numbers. Accordingly, the Service and WAFWA developed a strategy to allow time for WAFWA to develop offset units while still limiting the amount of unmitigated impacts to occur during the first year. The Permit will contain stipulations for limiting the amount of unmitigated take during any given time within the first year. WAFWA will provide results from the 2014 spring surveys to the Service by July 1, 2014. If the 2014 spring surveys indicate a 20 percent decline in the population from the 2013 population estimate

(14,092 birds or less), the following limitations on take would apply: no more than 5,109 Habitat Units of unmitigated take in CHAT; 7,664 Habitat Units in CHAT 2; and 11,495 Habitat Units in CHAT 3, from the effective date of the Permit through March 30, 2015**.** During that period, if any take of Habitat Units is documented to be fully offset, further take of Habitat Units would be authorized, as long as the unmitigated limit of Habitat Units in each CHAT is not exceeded. The Permit will also require WAWFA to provide reports to the Service every four months after July 1, 2014, and through March 30, 2105, with documentation of the level impacted Habitat Units and credited Offset Units in each of CHATs 1-3.

For mitigation activities, conservation practices were selected that will develop conditions on that land that will: (1) provide shelter, cover, and food in proper amounts, locations and times to sustain LEPC during all phases of its life cycle, or (2) enable movement. The primary conservation practices that will be used for the mitigation framework will be: prescribed grazing, brush management, prescribed burning, and range planting. These practices are the same conservation practices that are used by the NRCS to benefit to the LEPC, as provided in their Lesser Prairie-Chicken Initiative (LPCI) (http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/null/?cid=nrcsdev11_023912). Additionally, mitigation will include reclamation or remediation of inactive or abandoned facilities and infrastructure within the Covered Area that is under the control of the Participants, in compliance with applicable state rules and regulations.

The CCAA will utilize adaptive management strategies to allow for mutually agreed-upon changes to occur in response to changing conditions or new information, including those identified during monitoring and from emerging science. Some of the factors that will be evaluated regularly through adaptive management include LEPC population sizes, progress toward habitat goals, conservation practice costs, avoidance of high priority conservation areas, and management prescriptions. Changes would be evaluated and identified through a formal evaluation process. Mitigation fees would be reviewed on an annual basis and can be adjusted annually up to 3 percent to account for inflation and up to 4 percent to account for changes in necessary additional mitigation costs.

II. ENHANCEMENT OF SURVIVAL PERMIT CRITERIA – ANALYSIS AND FINDINGS

As set forth in 50 CFR 17.32 (d)(2), the Service finds that the section 10(a)(1)(A) issuance criteria for a Candidate Conservation Agreement with Assurances permit are met and are detailed below:

A. The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Agreement.

The Service finds that proposed take of the LEPC would be incidental to otherwise lawful activities. These activities would occur as a result of the implementation of the conservation measures described in the Agreement. The incidental take authorization of the Permit would not take effect unless, and until, the LEPC becomes federally listed under the ESA.

B. The Agreement complies with the requirements of the Service's Candidate Conservation Agreement with Assurances policy.

Pursuant to the Service's CCAA policy, the Service is required to determine whether the Range-wide Oil and Gas CCAA satisfies the CCAA standard for permit issuance. The standard is that the benefits of the conservation measures implemented under the CCAA, when combined with those benefits that would be achieved if it were assumed that the conservation measures were also to be implemented on other necessary properties, would preclude or remove the need to list the covered species. As part of determining whether the proposed Range-wide Oil and Gas CCAA satisfies the CCAA standard, the Service is required to determine that the conservation measures within the CCAA would be sufficient to remove and/or significantly reduce the threats to the covered species over which WAFWA and Participants would have control.

The Service has concluded that the Range-wide Oil and Gas CCAA meets the CCAA standard as described above by providing 1) a series of avoidance and minimization measures that reduce oil-and-gas-related threats to the LEPC, and 2) a mitigation framework that will not only offset impacts by Participants but also result in additional conservation benefits. The Range-wide Oil and Gas CCAA addresses one of the causes of the primary threat to the LEPC – fragmentation due to habitat loss and degradation from oil and gas development. Other causes of such fragmentation include, but are not limited to wind energy, transmission, road, and other infrastructure development, and crop conversion. If conservation measures similar to those in the Range-wide Oil and Gas CCAA were also implemented for wind energy, transmission, road, and other infrastructure development and crop conversion on other necessary properties, the resulting benefits combined with those expected from the Range-wide Oil and Gas CCAA would greatly reduce the need to list the LEPC. This conclusion is a result of the consideration of the large scale of the Range-wide Oil and Gas CCAA (encompassing the entire currently occupied LEPC range in five states) in which 1) threats, over which WAFWA and Participants have control, will

be considerably reduced within the areas providing the highest quality remaining LEPC habitat (i.e., focal areas and connectivity zones), and 2) conservation practices through mitigation requirements will expand, improve and maintain LEPC habitat within those focal areas and connectivity zones, thus providing a substantial and coordinated conservation benefit to the LEPC in the most important areas for the species' survival and recovery. Before coming to this conclusion, the Service also weighed the potential adverse effects and incidental take from implementation of the Range-wide Oil and Gas CCAA against its overall benefits (for a thorough analysis of the negative and positive effects, see the section on Effects of Implementation of the CCAA in the Service's conference opinion, pursuant to section 7 of the ESA).

The Range-wide Oil and Gas CCAA incorporates the overall population goal identified in the RWP for 67,000 birds, as an annual spring time average, to be achieved within the first 10 years of the implementation of the RWP. Using the best available science, the IWG also identified the following corresponding population objectives for the LEPC: 1) increase populations numbers to ensure a sustainable long-term population within each of the four delineated ecoregions for the next 10 years of the RWP implementation; 2) maintain and expand the current distribution of the LEPC across its estimated occupied range; and 3) maintain higher population sizes in areas where they currently occur and are stable. Additional population and habitat goals have been identified in the RWP that collectively work towards supporting the overall population goal of 67,000 birds within a 10-year period. The Range-wide Oil and Gas CCAA would help achieve this population goal through the combination of the conservation measures, mitigation framework, and adaptive management strategy adopted from the RWP.

The following discussion provides the reasoning behind our conclusion and is organized into the two primary elements considered for determining that the CCAA standard is met: 1) Threats Reduction, and 2) Conservation Benefits - Habitat Improvement and Expansion.

1. Threats Reduction

The LEPC requires large parcels of intact native grassland and shrubland to maintain self-sustaining populations. The life history of the species, primarily its lek breeding system and behavioral avoidance of vertical structures that increase predation risk, make it especially vulnerable to ongoing impacts on the landscape. Oil and gas development activities such as construction of oil and gas pads, compressor stations, roads, distribution lines, and industrial buildings can replace or alter LEPC habitat or cause LEPC to abandon habitat. The resulting reduction in the total area of available

habitat can negatively influence biologically important characteristics such as the amount of space available for establishing territories and nest sites. As the distance between habitat fragments increases, dispersal between the habitat patches may cease, impacting population persistence and perhaps even leading to both localized and regional extinctions. Thus, fragmentation that results in habitat loss, reduced function and size, and lack of connectivity can significantly impact LEPC life-history requirements, demographic stability, and genetic exchange for maintaining variability to adapt to changing conditions. For a full explanation of effects of the threat of habitat loss and fragmentation on LEPC see the Service's LEPC proposed listing rule (77 FR 73828).

Field development (well pads, roads) and facility construction and ancillary facilities such as compressor stations, pumping stations and electrical generators would result in direct loss of habitat and habitat fragmentation if these activities occur in or near LEPC habitat. Other threats associated with oil and gas activities that can reduce LEPC numbers or interfere with their life-history requirements include collision mortality with fences, power lines, structures or vehicles; increased predation due to availability of perches on structures; and nest or lek abandonment due to human presence or high noise levels. Construction, maintenance, seismic surveys, off-road travel, and other activities would result in disturbance of lekking behavior, breeding, and nest and brood attendance. In addition, construction and maintenance may result in increased travel on primary and secondary roads that could increase disturbance to LEPC beyond existing levels. And finally, although ultimately beneficial, conservation practices for mitigation, such as prescribed grazing, prescribed burning, brush management, and range planting, all have the potential to result in some low levels of incidental take of LEPC through disturbance and mortality.

Conservation Measures

The conservation measures in the Range-wide Oil and Gas CCAA would avoid or minimize impacts from the threats described above. The measures are to be implemented in accordance with the hierarchy of avoidance, minimization, and mitigation of impacts. The standard for avoidance is to prevent impacts wherever feasible alternatives to impact activities are available. The standard for minimization is to reduce impacts through design, siting and other available methods, but some impact is expected to remain. The standard for mitigation is to fully offset in kind any remaining impacts. For this CCAA, mitigation will also include providing additional conservation benefits to the LEPC beyond offsetting impacts.

Avoidance of Impacts - The Range-wide Oil and Gas CCAA incorporates the RWP strategy that encourages conservation of higher quality habitat in the high priority

areas, namely the focal areas and connectivity zones in in the higher categories of the Southern Great Plains Crucial Habitat Assessment Toll (CHAT; http://kars.ku.edu/geodata/maps/sgpchat/), namely CHATs 1 and 2, by requiring costly mitigation fees for development in these areas. Conversely, it identifies areas more suitable for development by requiring lower mitigation fees in areas of lower quality habitat in low priority areas (CHATs 3 and 4). For example, mitigation fees for a 5-acre well pad in the sand sagebrush ecoregion in the CHAT 4 category in low quality habitat could be $1,336, while mitigation fees in high quality habitat in CHAT 4 area could be $26,729. In comparison, the mitigation fees for a 5-acre well pad in low quality habitat in CHAT 1 category (i.e., focal areas) would be $2,088 while the mitigation fees in high quality habitat in CHAT 1 would be $41,764. A development contained within already impacted habitat will result in no mitigation costs beyond enrollment fees. Based on information in the RWP, the required mitigation fees in the high quality habitats in CHAT 1 and 2 categories are expected to be high enough to discourage most Participants from developing in these areas. Instead, oil and gas development is likely to be focused on lands already altered or cultivated (i.e., row crop agriculture) and away from areas of undeveloped native grass or shrublands. In those cases where a Participant determines that the financial benefits of minerals extraction outweighs the mitigation fees and costs to implement minimization measures, the required mitigation fees would be used to fully offset the impacts and provide additional conservation, as detailed in the section on Habitat Improvements and Expansion below. Furthermore, the Range-wide Oil and Gas CCAA incorporates the RWP's caps on the amount of total development that can occur in focal areas and connectivity zones. No more than 30 percent of the focal areas and 60 percent of the connectivity zones can be impacted by development. If these impact levels are surpassed for an individual reporting unit, the impacts above the caps must be remediated. These caps will help ensure that sufficient habitat will remain in focal areas to sustain 75 percent of the desired population goal of 67,000 birds (the remaining 25 percent of the population goal will be provided by the remainder of the EOR+10 in the CHAT 2, 3 and 4 categories).

Minimization of Impacts – Implementation of additional voluntary and required conservation measures in the CCAA will result in minimization of habitat loss and alteration and impacts to birds during the breeding season, as well as reduction in risks of mortality and injury year round. To reduce habitat impacts, Participants can elect to locate multiple types of infrastructure in common rights of way, cluster facilities, and directionally drill. They are also required to use best management practices for any herbicide application.

Oil and gas operations must avoid the area within 1.25 miles of active leks (i.e., active within previous 5 years) during the breeding season, with some exceptions for emergencies and some necessary operations and maintenance; however, the latter are required to be implemented outside the critical hours for lekking, nesting, and brood rearing activities. To identify where minimization measures for seismic activities are appropriate, LEPC surveys are required in CHATs 1 through 3 prior to breeding season seismic activities. Seismic activities involving off-road travel cannot be conducted in rangeland or grassland within 1.25 miles of active leks during the breeding season, with some exceptions (e.g., if birds are not using the area that season). These measures, and a requirement for providing year-round noise abatement within 1.25 miles of active leks, will avoid or greatly reduce disturbances to LEPC during the breeding season.

Other conservation measures will reduce the risks of mortality and injury to LEPC from infrastructure strikes, vehicle collisions, increased predation, and drowning. Participants are required to bury new distribution lines within 1.25 miles of active leks – this will prevent line strikes and artificial raptor perches in those areas. Participants are also required to install fence markers within 0.25 miles of active leks to reduce strikes, minimize traffic volume and control speeds to reduce vehicle collisions, and install escape ramps in water tanks to reduce drowning. Other discretionary measures, such as using common rights of way for infrastructure, installing raptor deterrents, and horizontal drilling, can further minimize these types of impacts.

2. Conservation Benefits - Habitat Improvement and Expansion

Mitigation Framework - In situations where impacts occur that cannot be fully addressed through avoidance and minimization procedures, the CCAA will utilize the mitigation framework in the RWP. This mitigation strategy improves and expands LEPC habitat and provides for the concentration of blocks of contiguous habitat, which is anticipated to result in increased distribution and population numbers of LEPC. Mitigation, implemented through conservation practices, will be concentrated in focal areas and connectivity zones. WAFWA will use the mitigation and enrollment fees collected from enrolled oil and gas operators to establish contracts with willing landowners to carry out LEPC habitat restoration and management. The conservation practices of prescribed grazing and burning will improve LEPC habitat by increasing vegetative cover, structure, and diversity, which will provide better cover and forage for birds. The conservation practices of range planting and brush management will create and restore LEPC habitat, resulting in larger, more

contiguous blocks of suitable habitat that provide support for population growth and greater connectivity between populations.

We anticipate that the Range-wide Oil and Gas CCAA will result in a net conservation benefit for the LEPC because mitigation will be required at a 2:1 ratio of conserved acres to impacted acres, and offset units (i.e., mitigation units) must be of the same or higher quality CHAT category as the impact units. Permanent easements will be established for 25 percent of offset units to support long-term conservation and population strongholds. The remaining 75 percent of the offset units will be provided through term contracts (5-10 years, with options for extensions). Despite the temporary nature of individual contracts for this 75 percent, the strategy is to always have that 75 percent in conservation contracts. In other words, while some contracts may not be renewed, others will have been established to maintain the 75 percent goal. Although permanent easements are typically more desirable for long-term conservation, it is highly unlikely that enough funding would ever be available to buy permanent easements at the scale needed for the LEPC. Therefore, a moving mosaic of temporary conservation contracts would provide benefits in the absence of permanent easements beyond the 25 percent.

Lag time of up to 8 years is likely to occur between initiation of some conservation practices (such as range planting and brush removal) versus when the conservation practices provide actual benefits to LEPC on the ground. To address this issue, WAFWA will ensure every year that the number of impact units will be offset with an equal number of mitigation units in the same CHAT category or better within in each ecoregion. WAFWA will rely on a number of strategies to achieve this. First, oil and gas Participants must pay fees immediately upon enrollment in the Range-wide Oil and Gas CCAA, which will provide WAFWA with substantial resources to immediately begin securing contracts with landowners to implement conservation practices for generating offset units. At this writing, WAFWA has already begun processing applications for 330,052 acres in landowner contracts to implement conservation practices. WAFWA will also focus conservation practices in contracts with landowners on prescribed grazing and prescribed burning, which will provide benefits within 1-2 years of implementation. Finally, implementation of other conservation measures, such as removal of existing infrastructure, would provide immediate benefits to the LEPC. For the first three years of the CCAA, WAFWA will provide more frequent monitoring reports (biannually) on the administration of contracts with landowners generating offset units. This increased reporting would alert the Service to potential situations where offset unit generation may lag behind impacts and allow the Service and WAFWA to determine the best solution for maintaining the balance between impact and offset units.

The waiver period in the RWP gives WAFWA until March 30, 2015 to generate offset units for impacts incurred during the previous year; thus, impacts from oil and gas development could go unmitigated for the first year of its implementation. Considering that a year of such impacts combined with other ongoing impacts, potential continuation of drought in large areas of the LEPC range, and potential continuing decline of LEPC population numbers, such a scenario may affect the species' resiliency that would prevent it from recovering even if the oil and gas impacts on enrolled properties are fully offset at the end of the year. Acknowledging the need for time to generate offset units while ensuring that implementation of the Range-wide Oil and Gas CCAA would meet the CCAA standard, the Service is providing stipulations in the Permit for limiting the amount of unmitigated take during any given time within the first year. If the 2014 spring surveys indicate a 20 percent decline in the population from the 2013 population estimate, the amount of authorized take will capped at progressively smaller levels for progressively higher priority CHAT categories (see Description of the Action for details). If offset of impacts are achieved, further take would be authorized as long as the unmitigated limit in each CHAT category is not exceeded. With these take limitations, we find that potential impacts from implementation of the Range-wide Oil and Gas CCAA during the waiver period would not add to adverse effects on LEPC resiliency. When evaluating whether the Range-wide Oil and Gas CCAA meets the CCAA standard, we consider the impacts and conservation benefits of its implementation during the term of the CCAA. With the Permit conditions on the waiver period, offset of impacts on enrolled oil and gas properties after one year, and all the other anticipated conservation benefits of the Range-wide Oil and Gas CCAA over its term, we find that the waiver period would not preclude the Range-wide Oil and Gas CCAA from meeting the CCAA standard.

Adaptive Management

The CCAA will utilize an adaptive management strategy to allow for mutually agreed-upon adjustments to or addition of conservation measures in response to changing conditions or new information, including those identified during monitoring and from emerging science. Implementation of the mitigation and conservation activities will be monitored to identify whether or not they are producing the required results. Some of the factors that will be evaluated regularly include LEPC population sizes, progress toward population and habitat goals, conservation practice costs, progress of conservation practices, avoidance of high priority conservation areas, and management prescriptions. For these elements, Table 1 of the CCAA identifies evaluation frequency, triggers, potential corrective actions, and required responses,

among others. Furthermore, mitigation fees would be reviewed on an annual basis and can be adjusted annually up to 3 percent to account for inflation and up to 4 percent to account for changes in mitigation costs. Thus, the CCAA's adaptive management strategy provides support for meeting CCAA goals in the face of uncertainty, changing conditions, and new science.

Conclusion

The Range-wide Oil and Gas CCAA provides conservation measures that address threats to the LEPC from oil and gas development by avoiding or reducing impacts. Mitigation fees are structured to incentivize oil and gas development to avoid development in higher quality habitat in the most important areas for the LEPC. Conservation practices that will be implemented as part of the mitigation requirements in the CCAA will offset any remaining habitat impacts and provide additional conservation benefits through habitat improvements and expansion in focal areas and connectivity zones. The benefits provided by the combination of the conservation measures, mitigation framework, and adaptive management in the CCAA will result in reduced threats to LEPC and improved and expanded habitat concentrated in larger blocks of contiguous habitat. These conditions are expected to 1) result in an increase in LEPC populations throughout the currently occupied range, 2) maintain and expand the current distribution of the LEPC across its estimated occupied range, and 3) increase population numbers that will result in a sustainable long-term population within each of the four delineated ecoregions, as described in the RWP. Therefore, we conclude that if these measures were also implemented to address other types of development threats on other necessary properties throughout the LEPC range, the benefits combined with those from the Range-wide Oil and Gas CCAA would likely preclude or remove the need to list the species.

The Service has also determined that the Range-wide Oil and Gas CCAA contains and adequately addresses all the required elements of a CCAA as described in the CCAA policy and regulations.

C. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species.

The ESA's legislative history establishes the intent of Congress that this issuance criterion be identical to a regulatory finding of no jeopardy under section 7(a)(2) (see 50 CFR 402.03). Therefore, the potential effects to candidate and listed species of issuance of this section 10(a)(1)(A) permit was reviewed by the Service under section

7 of the ESA. In the Service's conference opinion, the Service concluded that issuance of the Permit will not jeopardize the continued existence of the lesser prairie chicken or any federally listed or candidate species.

D. Implementation of the terms of the Agreement is consistent with applicable Federal, State, and Tribal laws and regulations.

The Service is not aware of any law or regulation that would prevent the implementation of the Range-wide Oil and Gas CCAA and the accompanying Permit. The CCAA does not preclude the need for WAFWA and Participants to comply with any Federal, State, or Tribal laws, but solely serves as an instrument to comply with certain provisions of the ESA under which the Permit is being sought. The Permit will include a specific condition that requires the Permit Holder to be in compliance with any applicable State, Federal, or tribal law or regulation. Failure to comply with this term and condition can result in suspension or revocation of the Permit.

E. Implementation of the Agreement will not be in conflict with any ongoing conservation programs for species covered by the Permit.

Numerous Federal, state, and private programs currently exist that provide conservation benefits to the LEPC and seek to address threats to the species.

Some of these programs include:

- RWP
- The Oklahoma Lesser Prairie Chicken Habitat Conservation Program – Oklahoma Department of Wildlife Conservation provides technical and financial assistance to help private landowners develop, preserve, restore, enhance and/or manage wildlife habitat on their land.
- Texas Lesser Prairie Chicken Wildlife Management Plan – Texas Parks and Wildlife Department provides free technical assistance to landowners and land managers interested in wildlife management through the private lands enhancement program.
- Working Lands for Wildlife Program (WLWP) – A NRCS program to work with landowners to conserve seven priority species, including the LEPC.
- Three regional LEPC CCAAs for agricultural practices and oil and gas development in Texas, Oklahoma, and New Mexico.
- Lesser Prairie-Chicken Initiative – A cooperative effort by NRCS and other Federal and State agencies to assist producers to implement conservation practices to benefit the LEPC. It is also a delivery program for WLWP.

- Farm Bill – NRCS and Farm Service Agency administer Farm Bill conservation programs, such as the Grassland Reserve Program and Conservation Reserve Program, for LEPC habitat conservation.
- Service's Partners for Fish and Wildlife Program – Program staff provide technical assistance to private landowners for habitat conservation on working lands, including the LEPC.
- Bureau of Land Management (BLM) LEPC Special Status Species Resource Management Plan – directs BLM's land management activities, including specific guidelines for oil and gas development and other development activities to minimize impacts to LEPC.
- U.S. Forest Service (USFS) National Grasslands – USFS addresses threats to LEPC on National Grasslands, such as invasive species, grazing, and altered fire regimes.
- Various State Rules and Regulations governing oil and gas development.

See the Final Environment Assessment prepared by the Service for detailed information on current LEPC conservation programs.

Many of these programs provide technical and financial assistance to property owners for habitat management for LEPC. Other programs, such as agricultural and oil and gas CCAAs in Oklahoma, Texas, and New Mexico, provide for voluntary conservation by landowners and oil and gas developers through avoidance, minimization, and mitigation measures along with conservation practices to enhance and expand LEPC habitat. Several other programs address industry siting; best management practices; and avoidance, minimization and voluntary mitigation of impacts to the LEPC. Additional programs provide for protection and/or direct management of LEPC habitat on public or other lands within LEPC range.

The Service finds that the Range-wide Oil and Gas CCAA would not be in conflict in any ongoing conservation programs for the LEPC, and, in fact, would complement these other conservation efforts.

F. The applicant has shown capability for and commitment to implementing all the terms of the CCAA.

WAFWA has demonstrated their commitment to LEPC conservation primarily through extensive efforts to develop the RWP in partnership with Federal, State, and local governments, as well as the scientific community, stakeholders, and environmental organizations. The individual State wildlife agencies in WAFWA have also carried out their own programs, population surveys, and coordination efforts with private land

owners for LEPC conservation and habitat management. These agencies and their staff have extensive experience and expertise in carrying out a variety of conservation programs for LEPC and other species of risk. Not only does WAFWA have the capability for administering the CCAA, it is also the best suited entity for doing so, given their mission and relationships with landowners. Furthermore, the five State wildlife agencies in the LEPC range that are part of WAFWA can provide adequate staffing for administering and overseeing CCAA implementation across the large plan area.

WAFWA's administrative and financial capabilities and responsibilities for implementation of the CCAA are detailed in the Business Plan in the RWP. The five State wildlife agencies in WAFWA have managed budgets for a variety of programs and, therefore, are capable of administering the financial elements for implementation of the CCAA. Mitigation fees would be adequate to pay for conservation practices to offset impacts and provide additional conservation, because the calculation of the fees are based on actual NRCS costs for restoring and maintaining habitat to ensure biologically relevant mitigation and effective conservation delivery. Furthermore, the RWP and CCAA include provisions for adjusting mitigation fees annually, if necessary, to account for inflation up to 3 percent and increased conservation costs up to 4 percent. Paid mitigation fees will be invested in a perpetual non-wasting endowment that will ensure generation of funds to cover costs of conservation practices for the duration of the CCAA Furthermore, at this writing WAFWA has already enrolled 1,838,071 acres for oil and gas activities in under the RWP, which will be transferred to the Range-wide Oil and Gas CCAA after Permit issuance. This significant head-start on the enrollment process also demonstrates commitment on the part of WAFWA and oil and gas operators.

III. GENERAL CRITERIA AND DISQUALIFYING FACTORS

The Service has no evidence that the permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21 (b-c). WAFWA has met the criteria for the issuance of the permit and does not have any disqualifying factors that would prevent the permit from being issued under current regulations.

IV. PUBLIC COMMENTS

The Service published a Notice of Availability of WAFWA's permit application, the draft Range-wide Oil and Gas CCAA, and the draft environmental assessment, pursuant to the National Environmental Policy Act (NEPA), in the Federal Register on December 18, 2013 (78 FR 76639). Publication of the notice initiated a 30-day public comment period, which closed on January 17, 2014. The Service initiated consultation with American Indian tribes and organizations per Executive Order 13175, Secretarial Order

3206, and the Department of the Interior Policy on Consultation with Indian Tribes. Letters were sent to the 68 tribes on December 12, 2013, informing them of the proposed project and soliciting comments. The letters also provided tribes with the opportunity to be involved in the environmental compliance process.

The Service received 23 comment letters and emails from the public on the CCAA and no responses from any tribes. Our responses to comments are in Appendix A of our Finding of No Significant Impact, pursuant to NEPA.

V. RECOMMENDATIONS ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend issuance of a section 10(a)(1)(A) Enhancement of Survival Permit to the Western Association of Fish and Wildlife Agencies (WAFWA) to authorize the incidental take of the lesser prairie-chicken in accordance with the Candidate Conservation Agreement with Assurances.

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Assistant Regional Director – Region 6 Ecological Services Date