

## Appendix I – AMENDMENT: June 2022.

Amendment to the Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (CCAA) for Lesser Prairie-Chicken (LPC) and Sand Dune Lizard (SDL), also known as the Dunes sagebrush lizard (DSL), in New Mexico, dated December 8, 2008.

Section XI of the CCA and Section V of the CCAA provide an opportunity for the signatories to propose changes to the agreement(s). Participating Cooperators enrolled in the CCA and Participating Landowners enrolled in the CCAA, hereafter referred to as Participants, in the oil and gas industry have approached the Center of Excellence (CEHMM) and the U.S. Fish and Wildlife Service (FWS) to amend the CCA and CCAA, jointly referred to as CCA/CCAA. The amendments remove barriers to increased participation in the CCA/CCAA and will result in greater conservation benefits for both species.

The amendments include:

- 1) adding an enrollment option that will cover all activities for Participants in the Covered Area with re-classified habitat categories based on lek locations;
- 2) adding Certificates of Participation and/or Inclusion (CP/CI) for companies that develop linear infrastructure (e.g. midstream, electric power distribution (<60 kV), and utility); and,
- 3) reducing initial enrollment fees for new parcel-by-parcel enrollments.

These changes will allow for Participants to continue to implement conservation actions for both species through the life of the agreement. Amendments are described in the following paragraphs.

### **All Activities Enrollment Option**

The parcel-by-parcel method of enrollment in the current agreement does not allow a Participant to add acreage beyond what is identified in their CP/CI following a threatened or endangered listing decision as defined in the Endangered Species Act of 1973; as amended. Because of the dynamic nature of the oil and gas industry, Participants requested an All Activities option to ensure coverage on acreage that may be acquired following a decision to list and was not previously enrolled. Acreage acquired by a Participant following a listing decision of either or both species will be covered under the All Activities option. All Activities enrollment will also provide conservation benefits on all a Participant's acreage rather than selective enrolled parcels. Habitat categories will be amended in the All Activities option to ensure conservation fees for disturbance are appropriate in relation to occupied LPC habitat.

### **Re-Classify Habitat Categories**

Allowing habitat categories to change upon discovery of new lek locations outside of current occupied habitat will provide for greater protection of the LPC. Upon the discovery of new leks, Participants will be notified of the change of habitat category and conservation fees can be adjusted appropriately. In the event that a federal agency's (e.g. Bureau of Land Management

(BLM)) management plan calls for more stringent conservation action than the CCA/CCAA, the conservation measures may be revised in the CCA, and may be amended in the CCAA through Adaptive Management. Existing CP/CIs will only be amended if agreed to by the Participant.

### **Certificates of Participation and Inclusion, CP/CI for Linear Infrastructure Developers**

By introducing a mechanism for companies that develop linear infrastructure to enroll in the CCA/CCAA, the limitation to enroll locations that have not yet been contractually secured (e.g. easements) will be resolved. A higher degree of conservation for both species will be established on habitat through the conservation measures and fees from these Participants, thus reducing or eliminating direct impact to either or both species. Companies that primarily develop linear infrastructure, including but not limited to midstream, electric power distribution, and utility, may enroll in the All Activities option with no enrollment fee. These Participants will add acreage as rights of way and rights of easement (ROWs/ROEs) are permitted and pay Habitat Conservation Fees for new surface development.

### **Lower Initial Enrollment Fees for Some Participants**

It has been noted that initial enrollment fees may deter operators with less than 10,000 acres from enrolling. In order to encourage enrollment by these operators, this amendment will lower enrollment fees for those operators. Table 1. Annual Prepayment Tiers for Oil and Gas Enrollment, illustrates the new enrollment fee structure.

The CCA/CCAA and respective CP/CI are amended as follows.

### **Certificates of Participation and Inclusion (CP/CI)**

Section VI of the CCA and Section IV of the CCAA describe the process of entering into the agreement by executing a CP or CI, respectively, that identifies parcels where conservation measures for the LPC and/or SDL will be implemented. While the parcel-by-parcel option will remain available to Participants, the All Activities option will also be available to allow enrollment that covers all a Participant's activities in the Covered Area.

### **All Activities Enrollment Option**

The All Activities option is an amendment to the CP/CI. As amended, the All Activities option will be available for current or new Participants to enroll all activities specific to their certificate (e.g. Oil and Gas CP/CI) within the Covered Area. With the All Activities enrollment option, all the lands, (e.g. oil and gas leasehold, ROW, and ROE) held by the Participant within the Covered Area are considered enrolled. Exercise of the All Activity option is only available prior to a decision to list either or both species. All Habitat Conservation Fees and conservation measures described in the initial CCA/CCAA are still applicable.

### **Enrollment of Linear Infrastructure (Midstream and Utility) Companies**

The CP/CI is also amended to include enrollment of companies that develop linear infrastructure such as construction of pipelines, utilities and electric power distribution lines. Companies that

engage in these activities are eligible to participate in the CCA/CCAA through the execution of an All Activities CP or CI with no initial enrollment fee.

Section VI of the CP/CI is amended by adding:

All Activities Enrollment: Transfers and Additions

Participants that enroll via the All Activities option may add any lands to (and remove Enrolled Lands from) the CP/CI at any time, including after any decision to list a Covered Species. A Participant enrolled in All Activities will provide updated GIS shapefiles reflecting additions or removals of properties on an annual basis, no later than October 1.

**Covered Area**

The Covered Area for the All Activities option remains the historic range of the LPC in New Mexico and includes six different habitat categories (Figure 1). Habitat categories are derived from the BLM Special Status Species Resource Management Plan Amendment (RMPA) of 2008 and the University of Kansas Southern Great Plains Crucial Habitat Assessment Tool (CHAT). With exception of the 'Other' habitat class, all habitat categories contain suitable and occupied DSL habitat. Habitat categories were previously determined and described in the 2008 RMPA.

**Characterization of Habitat Categories**

Appendix B of the CCA and Exhibit B of the CP/CI are amended by adding Characterization of Habitat Categories and Figure 1. Candidate Conservation Agreements for the Lesser Prairie-Chicken and Dunes Sagebrush Lizard All Activities Habitat Categories.

The habitat categories, as defined below, were determined by location of active LPC leks, connectivity between active leks, suitability of habitat, potential for restoration or reclamation, the estimated occupied range of the LPC, and the historic range of the LPC. The RMPA zones and CHAT tool are useful resources in planning of development in relation to the conservation of LPC and SDL habitat.

Core Management Area (CMA) and Primary Population Area (PPA) – Areas where LPC populations are well-distributed, intact, and provide connectivity to smaller, occupied patches of habitat.

Habitat Evaluation Areas and Habitat Areas (HEA or HA) – Areas within the Isolated Population Area where habitat characteristics for LPC and SDL are present and with reclamation and/or restoration could provide connectivity to isolated patches of habitat.

Sparse & Scattered Population Area (SSPA) – Areas where leks are sporadically distributed, and local extirpation of LPC may occur.

Isolated Population Area (IPA) – Areas in the historic range of the LPC where it is nearly extirpated.

Estimated Occupied Range Plus 10 (EOR+10) – Areas that are in the estimated occupied range of the LPC buffered by ten miles but are outside of the zones described above.

Historic LPC Range (Other) – Areas outside of the zones listed above that were historically occupied by LPC.

**Habitat Conservation Fees and Payments for an All Activities Option CP or CI**

The CP/CI is amended by addition of Table 1. Annual Prepayment Tiers for Oil and Gas Enrollment and language describing application.

Upon the execution of a CP or CI, an Oil and Gas Participant will create a Habitat Conservation Fund in accordance with the schedule in Table 1, Annual Prepayment Tiers for Oil and Gas Enrollment. The initial payment will be made on the date the CP and/or CI is executed with subsequent payments on the first and second anniversary of the execution date of the CP and/or CI. The Participant may, at their discretion, pay more than the required amount into their Habitat Conservation Fund Account. Conservation fees for development will be deducted from this fund.

Existing Oil and Gas Participants that convert to an All Activities enrollment will be credited for prepayments and will not pay additional fees unless the resulting enrolled acreage is at a higher tier differential from the previous enrolled parcels. After the initial three-year period, any enrolled lands added by addendum to an All Activities CP and/or CI will require a one-time payment of \$4,000.00 into the Habitat Conservation Fund per tier increase (e.g. if the Participant goes from Tier 2 to Tier 3, a one-time payment of \$4,000.00 will be required). Once a Participant has entered Tier 4, no further payment will be required to add acreage in an All Activities enrollment.

Linear infrastructure Participants (e.g. Midstream and Utility) are not required to prepay but will pay conservation fees as projects are initiated. Participants that do not choose the All Activities option but wish to have coverage for specific parcels may enroll those parcels according to the following schedule.

**Table 1.** Annual Prepayment Tiers for Oil and Gas Enrollment (No previous LPC/SDL CP and/or CI executed by the Participant).

<b>Tier</b>	<b>Number of Acres Identified in CP and/or CI that Coverage is Desired</b>	<b>Annual Prepayment</b>	<b>Total Payment Over Three Years</b>
1	0-2,500	\$5,000.00	\$15,000.00
2	2,501-6,250	\$12,000.00	\$36,000.00
3	6,251-9,999	\$16,000.00	\$48,000.00
4	> 10,000	\$20,000.00	\$60,000.00

The total acreage enrolled in an All Activities CP and/or CI, and the resulting annual prepayment, will be recalculated on the remaining anniversary dates of the three-year cycle. No annual prepayment will be required after the initial three-year period, but Habitat Conservation Fees will remain in effect.

## Habitat Conservation Fees

Exhibit B of the CP/CI is amended by replacing the scales for 1) New Well Location Fees and 2) New Surface Development Fees. The habitat conservation fee for new wells and new surface development associated with oil and gas development activities will be calculated using the following scales. The scales also apply to third parties doing work for the Participant either on or off the Participant's enrolled lands, regardless of who constructs or operates the facility. The Participant may prepay habitat conservation fees at any time at their discretion. The participant must notify CEHMM prior to conducting any surface disturbing activities associated with this CP on or off the enrolled lands either by the Participant or third-party subcontractors. The habitat class of the new surface disturbance or well site is determined by the location of the activity being developed, not actual habitat found on site.

All habitat conservation fees will be adjusted once yearly by CEHMM. This will account for inflation or deflation. The term "Base Habitat Conservation Fee" shall refer to the values of the habitat conservation fees set forth in this Exhibit. For purposes of this section, the term "CPI-U" shall refer to the Consumer Price Index for All Urban Consumers, U.S. City Average, all items less food and energy (base 1982 – 84=100), not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics. The Maximum Annual Inflation Increase shall be based on the percent increase between the annual average CPI=U for the calendar year that precedes the date of adjustment ("Current CPI-U") and the annual average CPI-U for calendar year 2020 ("Base CPI-U"). The Maximum Annual Inflation Increase shall be calculated as follows:

Maximum Annual Inflation Increase=

$$\text{Base Habitat Conservation Fee} \times [(\text{Current CPI-U} - \text{Base CPI-U}) / \text{Base CPI-U}].$$

Increases, if any, shall occur on the January release date of the CPI-U. The Maximum Annual Inflation Increase will reflect the most recent revision to the annual average Current CPI-U, if any. CEHMM will send Participants a notification, both electronically and by mail, each year at the time the fees are adjusted.

If the annual average CPI-U is unavailable for a calendar year, no increases will be made. If the CPI-U is discontinued entirely or unavailable for a period longer than two calendar years, CEHMM will consult with the Participant to select an appropriate alternative index.

## 1) New Well Location Fees<sup>1</sup>

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area and Core Management Area	\$20,000.00/location
Habitat Evaluation Area	\$15,000.00/location
Scarce and Scattered Population Area	\$12,500.00/location
Isolated Population Area	\$10,000.00/location
Estimated Occupied Range Plus 10	\$ 3,000.00/location
Other <sup>2</sup>	\$ 0-1,000.00/location

## 2) New Surface Development Fees

For other new surface disturbances associated with Enrolled Lands, but not directly attributable to a new well pad<sup>3</sup> and associated road, the Habitat Conservation Fee will be based on the following scale:

New surface developments include but are not limited to the following:

- Buried pipelines
- Above ground power lines
- Central Tank Battery
- Frac Ponds
- Caliche Pits
- Frac Pits

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area and Core Management Area	\$5,000.00/acre
Habitat Evaluation Area	\$3,750.00/acre
Scarce & Scattered Population Area	\$3,125.00/acre
Isolated Population Area	\$2,500.00/acre
Estimated Occupied Range Plus 10	\$ 750.00/acre
Other areas <sup>4</sup>	\$ 0-250.00/acre

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<sup>1</sup> Includes well pad and associated access road

<sup>2</sup> Includes areas outside the RMPA planning area boundary and CHAT zones, but within historic range of LPC in New Mexico. Fees are dependent on presence of shinnery oak using the shinnery oak habitat map layer.

<sup>3</sup> Co-located wells that require an increase in the size of the existing pad will be assessed by new acres disturbed.

<sup>4</sup> Includes areas outside the RMPA planning area boundary and CHAT zones, but within historic range of LPC in New Mexico. Fees are dependent on presence of shinnery oak using the shinnery oak habitat map layer.

