

Environmental Assessment
for an
All Activities Amendment to the
Candidate Conservation Agreement/Candidate Conservation
Agreement with Assurances
for the Lesser Prairie-chicken (*Tympanuchus pallidicinctus*) and
Dunes Sagebrush Lizard (*Sceloporus arenicolus*)
in New Mexico

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1. INTRODUCTION

The U.S. Fish and Wildlife Service (Service) has prepared this Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code [USC] 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR §§ 1500, and section 10(a)(1)(A) of the Endangered Species Act (ESA) of 1973, as amended (16 USC § 1532). This EA has evaluated the impacts of implementation of the proposed Amended Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (CCAA) for Lesser Prairie-Chicken and Sand Dune Lizard in New Mexico.

1.1. CCA/CCAA Background

In New Mexico, private property owners, Federal lessees, operators, and permittees, the Service, and Bureau of Land Management (BLM) were concerned about activities on public/Federal lands that might affect the status of two candidate species, the lesser prairie-chicken (*Tympanuchus pallidicinctus*) (LPC) and the sand dune lizard (*Sceloporus arenicolus*), currently referred to as the dunes sagebrush lizard (DSL). As a result of these concerns, in 2003 a working group composed of local, State, and Federal officials, along with private and commercial stakeholders, was formed to address conservation and management activities for the LPC/DSL. This working group, formally named the New Mexico Lesser Prairie-Chicken/Sand Dune Lizard Working Group, worked for 2.5 years and published the Collaborative Conservation Strategies for the Lesser Prairie-Chicken and Sand Dune Lizard in New Mexico (Strategy) in August 2005 (New Mexico LPC/SDL Working Group 2005). This Strategy provided guidance in the development of BLM's Special Status Species Resource Management Plan Amendment (RMPA), approved in 2008, which also addresses the concerns and future management of the LPC and DSL habitats (BLM 2008). Both the Strategy and RMPA prescribe active cooperation among all stakeholders to reduce and/or eliminate threats to these species in New Mexico. As an outcome, the land use prescriptions contained in the RMPA now serve as baseline mitigation (for both species) to those operating on Federal lands or minerals.

The New Mexico Lesser Prairie-chicken and Dunes Sagebrush Lizard CCA/CCAA were signed by federal and state authorities in 2008 for 20 years (2008-2028). The development of these conservation agreements (CCA/CCAA) provides a mechanism for implementing and monitoring conservation measures that are not explicitly addressed or applicable by the RMPA. The primary goal of these agreements is to implement the highest priority conservation measures needed (regardless of land ownership) to reduce and/or eliminate threats to both species in New Mexico, as determined by the FWS, BLM, and New Mexico Department of Game and Fish (NMDGF) with input by the permit holder, the Center of Excellence (CEHMM). Conservation measures voluntarily undertaken by Participating Cooperators as a result of the conservation agreements

are above and beyond those prescribed in the RMPA. Since the CCA is designed to address the activities of lessees, operators, and permittees on Federal lands, the companion CCAA addresses the needs of both species on State and private lands within New Mexico.

Section XI of the CCA and Section V of the CCAA provide an opportunity for the signatories to propose changes to the agreements. 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 CEHMM and the Service to amend the CCA/CCAA to allow for an All Activities enrollment option, re-classifying habitat categories based on LPC habitat and lek locations; 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 reducing initial enrollment fees for new parcel-by-parcel enrollments. The Service has requested that an amendment to the CCA/CCAA be made that will include adding an annual inflation adjustment for all habitat conservation fees. No additional alternatives or options were presented for consideration as amendments.

1.2. Description of the Proposed Action

The proposed action is the amendment of the CCA/CCAA that would result in an All Activities enrollment option, as requested by Participants, to cover all activities for Participants in the Covered Area with reclassified habitat categories based on LPC habitat and lek locations. In addition, the amendment removes barriers to increased participation in the CCA/CCAA, and will result in greater conservation benefits for both species as requested by Participants and, in part, the Service.

Specifically, the amendments include:

1. adding an enrollment option that will cover all activities for Participants in the Covered Area;
2. re-classifying habitat categories based on LPC habitat and lek locations;
3. 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);
4. reducing initial enrollment fees for new parcel-by-parcel enrollments and,
5. adding an annual inflation adjustment for all habitat conservation fees.

1. 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 ESA. 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 for those participants who enroll that option. The purpose of the All Activities option is to allow for operators to receive coverage in areas where they acquire new assets, which in turn ensures that conservation is being implemented on these new and all previously-acquired parcels, encompassing projects that otherwise have no federal nexus. All Activities enrollment will also provide conservation benefits on all of a Participant's acreage in the Covered Area, rather than selective enrolled parcels. Habitat categories will be amended, as described below, in the All Activities option to ensure conservation fees for disturbance are appropriate in relation to occupied LPC habitat.

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. This differs from the current method of enrollment, because there is no defined Covered Area. Currently, existing participants may acquire assets within the Covered Area, but may not enroll them because they were not identified within the company as being within the historic LPC range. By allowing for an All Activities option to be implemented, all lands acquired in the future within the agreement area by Participants will be covered by the CCA/CCAA because a covered area is defined. When exercising the All Activities option, they have agreed that all of their activities in the Covered Area will be subject to implementation of conservation measures and habitat improvement projects funded through conservation fees assessed will continue. Therefore, greater conservation for the subject species will be achieved. With the All Activities enrollment option, all the lands (e.g. oil and gas leasehold, rights of way or ROW, and rights of entry or ROE) held by the Participant within the Covered Area are considered enrolled. Exercise of the All Activities 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, except for those amended as described in sections 4. and 5. below.

Participants that enroll via the All Activities option may add all lands to (and remove all 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. Lands may not be removed where a surface disturbance has occurred due to operations on the enrolled lands.

2. 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. 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.

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 DSL 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 DSL are present and with reclamation and/or restoration could provide connectivity to isolated patches of habitat.

Sparse and 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.

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3. Certificates of Participation and Inclusion, CP/CI for Linear Infrastructure Developers

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, which identifies parcels where conservation measures for the LPC and/or DSL 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 of a Participant's activities in the Covered Area.

By introducing a mechanism for companies that develop linear infrastructure to enroll in the CCA/CCAA, the inability to enroll and implement conservation measures on parcels that have not yet been contractually secured (e.g. easements) will be resolved. For example, companies that construct and maintain electrical distribution lines servicing oil and gas development do not operate within leases with legal descriptions, and therefore may be unable to define precise locations of future projects. 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 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 entry (ROWs/ROEs) are permitted and pay Habitat Conservation Fees for new surface development.

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 (<60 kV) 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.

4. 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. Conservation fees will remain the same based on actual disturbance and development on the ground. The narrative and Table 1 (below) describe and illustrate the new enrollment fee structure and changes/additions to Section VI of the CP/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, electric power distribution (<60 kV), 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/DSL CP and/or CI executed by the Participant).

Tier	Number of Acres Identified in CP and/or CI that Coverage is Desired	Annual Prepayment	Total Payment Over Three Years
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 (All Activities)	\$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.

a) New Well Location Fees¹

<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 ²	\$ 0-1,000.00/location

b) New Surface Development Fees

For other new surface disturbances associated with Enrolled Lands, but not directly attributable to a new well pad³ 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/powerlines
- 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 and Scattered Population Area	\$3,125.00/acre
Isolated Population Area	\$2,500.00/acre
Estimated Occupied Range Plus 10	\$750.00/acre
Other ⁴	\$0-250.00/acre

¹ Includes well pad and associated access road

² 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.

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

⁴ 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.

5. Inflation/Deflation Adjustment

A final focus of this amendment addresses inflation. The amendment allows for an annual readjustment of habitat conservation fees due to inflation and deflation. Previously the habitat conservation fees were set at one fee based on the estimated cost to restore an acre of habitat when the program was created in 2008. This did not allow for the cost of inflation or deflation which could cause the estimated cost to restore an acre to increase or decrease.

1.3. Incorporation by Reference

The *Environmental Assessment for a Candidate Conservation Agreement/ Candidate Conservation Agreement with Assurances for the Lesser Prairie-chicken and Sand Dune Lizard in New Mexico* (Service 2008) provided NEPA compliance for the CCA/CCAA. The Environmental Assessment (EA) is a programmatic document which identifies alternatives and the potential range of impacts associated with issuance of the CCAA 10(a)(1)(A) Enhancement of Survival Permit (Permit) and implementation of the CCA and CCAA. It also describes the combined ESA Section 7 and ESA Section 10(a)(1)(A) approach in detail. The 2008 EA, the CCA, and the CCAA can be found on the [ECOS species profile page](#).

The implementing regulations for NEPA encourage incorporation by reference. An EA to an amendment need only analyze the changes to, or details of, the original proposal not previously analyzed to determine if any of the changes or details result in potentially significant impacts (40 CFR 1502.20). This EA incorporates by reference the *Environmental Assessment for a Candidate Conservation Agreement/ Candidate Conservation Agreement with Assurances for the Lesser Prairie-chicken and Sand Dune Lizard in New Mexico* (2008 EA). To the extent that any relevant analysis in the 2008 EA is not sufficiently comprehensive or adequate to support further decisions, this EA explains this and provides any necessary analysis (43 CFR 46.140).

1.4. Purpose and Need for Action

1.4.1. Purpose for the Proposed Action

The ESA directs federal agencies to support the conservation of listed species and ensure that their actions do not jeopardize listed species or critical habitat. The Service's purpose in considering the Proposed Action is to fulfill our conservation obligations under the ESA. The All Activities Amendment would provide a means by which this authority can be fulfilled while allowing the CCA/CCAA Participants, the BLM, and the Service to streamline the ESA compliance process for covered actions with the potential to impact LPC and DSL. In the event that either species was listed, the Proposed Action would reduce the need for processing individual consultations and permits and ensure consistent mitigation and minimization measures for covered activities within the CCA/CCAA.

1.4.2. Need for the Proposed Action

The proposed amendment improves the current method of enrollment in the CCA/CCAA. This amendment will allow for efficient enrollment by oil and gas industry Participants within the CCA/CCAA across the Covered Area. As is currently written, Participants enroll parcel by parcel and if either covered species were listed, Participants could no longer enroll new parcels if they obtain new areas where they did not previously hold an interest before a listing. In particular, for linear midstream infrastructure, such as electrical or pipeline infrastructure, enrolling parcel by parcel is not feasible. Oil and gas companies typically obtain a project based on industry or landowner need with little notice. They then develop the project and move on to the next area where more development is needed. For companies with linear infrastructure, they do not have enough lead time to be able to enroll lands that may be developed in the near future. Currently, oil and gas Participants pay conservation fees for pipelines or powerlines that service their infrastructure; however, if a new distribution line services multiple oil and gas Participants it is difficult to determine which of the existing infrastructure is being serviced by the new linear development and who should pay the conservation fees. It becomes even more difficult if not all of the wells or other infrastructure being serviced by the new development is owned by companies enrolled in the CCA/CCAA. The All Activities Amendment will allow Participants to enroll in the entire Covered Area and add parcels as they obtain them, even after a potential listing. In addition, linear development such as electric companies and pipelines will be able to enroll. Other companies will maintain more predictability in how they perform their operations due to being able to add new leases to the CCA/CCAA as they obtain them. The amendment creates a fee structure that can cover development in the entire Covered Area for Participants and allow them to have predictability in how they develop.

Another focus of the proposed amendment aims to correct the previous focus in the CCA/CCAA on high quality habitats on federal lands described in the 2008 RMPA. Since the original CCA/CCAA, additional investigations into high quality habitats have been performed by the LPC Interstate Working Group, that categorize habitat across the LPC range into Focal Areas, Connectivity Zones, Modeled Habitat, and Modeled Non-Habitat. The original CCA/CCAA categories only used BLM management categories, so this amendment seeks to update the habitat categories and the associated fees. High priority LPC and DSL lands across New Mexico, such as private and state lands, will be added into the priority habitat categories based on their importance to the species. This will encourage less development in higher quality habitat and put additional money into conservation for DSL and LPC.

A third focus of this amendment will address the current cost of enrollment for small companies. Current enrollment fees are precipitously high for small companies to enroll. These smaller companies may never have habitat conservation fees and levels of development high enough to warrant the costs of enrollment fees. The amendment allows for reduced fees for smaller companies that enroll fewer acres in the CCA/CCAA. This will encourage more enrollment by smaller companies within the CCA/CCAA. Conservation fees for development on the landscape will be based on actual disturbance and will not change.

A final focus of this amendment addresses inflation. The amendment allows for an annual readjustment of habitat conservation fees due to inflation and deflation. Previously the habitat conservation fees were set at one fee based on the estimated cost to restore an acre of habitat when the program was created in 2008. This did not allow for the cost of inflation or deflation which could cause the estimated cost to restore an acre to increase or decrease.

2. DESCRIPTION OF ALTERNATIVES

2.1 Alternative A - No Action

The No Action Alternative would be to not approve the proposed amendment to the CCA/CCAA. Implementation of the CCA/CCAA would continue without the amendment. Instead of allowing Participants to enroll under All Activities, they would continue enrolling parcel by parcel before a listing. Linear development such as electrical companies and pipelines would continue to find it difficult to enroll. Additionally, parcel by parcel enrollment for small companies would remain prohibitively expensive with little enrollment for small companies. Thus, if either species were listed, linear development, development from small companies who did not enroll, and development on new leases not enrolled in the CCA/CCAA prior to a listing could result in the inability of small companies to obtain authorized take through the permit. In the event of a listing, if activities would result in take that could not be avoided and a federal nexus existed (funded, authorized, or carried out by a federal agency), a non-federal party could receive take coverage through consultation and a Biological Opinion for LPC and/or DSL issued by the Service to the federal action agency. If no federal nexus exists, non-federal parties could develop a HCP for LPC and/or DSL and apply for incidental take authorization from the Service on a project-by-project basis. Each application would require independent evaluation under NEPA.

Under the No Action Alternative, habitat conservation fees would continue to be based entirely on the 2008 BLM RMPA LPC and DSL habitat zones. Important LPC habitat outside of the habitat zones originally designated in the RMPA would not be prioritized and could be developed at the same costs as other less important habitat on private lands outside of the current zones.

Under the No Action Alternative, inflation would not be accounted for in the habitat conservation fees. The amount of money that industry put into the program to mitigate for development would remain at one rate. Although inflation could cause the cost of restoration to be much higher than the 2008 rate, the same fee amount would come in per acre of disturbance and that fee amount may not be able to cover conservation on the ground equal to disturbance. There would also be room for deflation in the case that the cost of reclamation decreases.

2.2 Alternative B – Approval of the CCA/CCAA Amendment (Preferred Alternative)

The preferred alternative would be the approval of the All Activities Amendment, re-classifying habitat categories based on LPC habitat and lek locations; 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); reducing initial enrollment fees for new parcel-by-parcel enrollments; and adding an annual inflation/deflation adjustment for all habitat conservation fees. Participants would be able to enroll in the entire action area, gaining coverage and mitigating for development in the entire action area even after a potential listing. This would allow for greater predictability, planning, and forecasting of costs and time involved for development within the DSL and LPC range in New Mexico. If enrolled in the CCA/CCAA across the range and if either species were to be listed, the company would not have to go through consultation on projects involving a Federal nexus or apply for a permit on projects lacking a Federal nexus. Companies involved in linear development and small companies with limited development would help increase the total area where conservation measures are applied by being able to enroll and be afforded the same protections and assurances as other development achieves from CCA/CCAA enrollment (as described in the 2008 EA). Because the proposed action will allow Participants to be covered in areas that they have not yet identified where there are no current assets, these lands will be subject to all stipulations of the agreement. Implementation of conservation measures on these lands would not occur if Participants were unable to add those lands to their agreement if acquired after a decision to list. Habitat conservation fees would more accurately reflect the importance of habitat disturbance on the ground to LPC and DSL, promoting greater conservation of high priority areas.

3. AFFECTED ENVIRONMENT

The CCA/CCAA would cover all lands currently occupied or potentially occupied by the LPC or DSL in New Mexico. This includes approximately 2,200 square miles (mi²) in the southeastern section of the state within portions of the counties of Lea, Eddy, DeBaca, Curry, Roosevelt, Quay, and Chaves (As described in the 2008 EA). The 2008 EA analyzed the impacts of implementing the CCA/CCAA on the resource areas listed above. Updates to the affected environment are provided only when the information is relevant to potential impacts of the Proposed Action. The affected environment section of this EA incorporates by reference the affected environment described in the 2008 EA. The full analysis of potential impacts in the CCA/CCAA may be found at the [CCA/CCAA for LPC and DSL page](#) on ECOS.

Resources considered for analysis under the 2008 EA included soils, vegetation, wildlife, listed, proposed, and candidate species, land use and ownership, air quality, noise pollution, water resources, cultural resources, and socioeconomics. Of these, the resources selected for further evaluation include soils, vegetation, wildlife, listed, proposed, and candidate species, and land use and ownership. The remaining resources were excluded from further consideration because the proposed actions were expected to have either no effect to these resources or the effects to these resources would be insignificant.

3.1. Soils

Soil descriptions provided for the Covered Area based on regional soil types for New Mexico is provided in the 2008 EA, which is incorporated herein by reference.

3.2. Vegetation

The vegetative communities in the Covered Area are primarily comprised of shinnery oak or sand sagebrush dominated shrublands, honey-mesquite shrublands, grasslands, or agricultural fields. These communities are described in the 2008 EA, which is incorporated herein by reference.

3.3. Wildlife

The wildlife communities in southeastern New Mexico are described in the 2008 EA, which is incorporated herein by reference.

3.4. Listed, Proposed, and Candidate Species

Several other federally listed species (15), as well as one candidate species also occur in the Covered Area and are briefly discussed in the 2008 EA, which is incorporated herein by reference. Since the 2008 EA, Wright's Marsh Thistle has been proposed as a threatened species and Texas Hornshell has been listed as endangered. However, due to differences in habitat requirements between most of the listed species, including the two listed since the 2008 EA and the two species of focus for the CCA/CCAA (LPC and DSL), it is unlikely that lands occupied by federally listed species will be enrolled in the CCA/CCAA.

3.5. Land Use and Ownership

Land use and ownership is described in the 2008 EA, which is incorporated herein by reference. Under the Preferred Alternative, more operators of small companies and midstream (linear development) companies could receive the benefits of enrolling in the CCA/CCAA as stated in the 2008 EA, which is a high degree of certainty under the CCA and assurances under the CCAA that more stringent restrictions or additional conservation measures would not be required of them in the event the DSL and/or LPC become listed under the ESA. Increased conservation would occur because the proposed action will allow Participants to be covered in areas that they have not yet identified because they are not current assets. Once enrolled, these lands will be subject to all stipulations of the agreement, which would not be possible if Participants were unable to add those lands to their agreement if acquired after a decision to list.

4. ENVIRONMENTAL CONSEQUENCES

The No-Action Alternative is typically considered in an EA to provide a baseline to which the Proposed Action can be compared. However, the impacts of the No-Action Alternative considered in this EA would differ very little from the impacts of the Proposed Action, as the conservation measures already described in the CCA/CCAA will continue to be implemented. The CCA/CCAA is a large-scale program that has been underway for more than 10 years and will continue to provide ESA coverage and mitigate for lost habitat to meet program goals. If the amendment was not approved, the CCA/CCAA parties may, on a case-by-case basis, still implement measures that would benefit the covered species when it is determined that possible take may occur from an individual project being implemented; however the measures would be developed through individual HCPs or ESA Section 7 consultations. For this reason, a separate analysis by resource area for the environmental consequences resulting from the No-Action Alternative is not included in this Environmental Consequences section because no additional impacts are anticipated.

The CCA/CCAA covered actions and the conservation plan as outlined in the CCA/CCAA would not change under the Proposed Action. The 2008 EA (page 15) defines energy development activities as the drilling of oil and gas wells, the development of infrastructure (i.e. roads, powerlines, and pipelines) associated with oil and gas wells, and the activities associated with oil and gas production. The proposed amendment to the CCA/CCAA would not change the types of activities (and their associated impacts) that can be enrolled, including linear infrastructure directly associated with oil and gas development (i.e. pipelines, electrical distribution infrastructure, and other utilities), if conducted in accordance with applicable statutory and regulatory standards. The linear infrastructure portion of amendment would reduce barriers to enrollment by allowing companies that may not be operating on owned properties or easements, but operating rights of way and rights of entrance, to enroll and pay Habitat Conservation Fees. As such, the impacts associated with enrollments for linear infrastructure are identical to those contemplated for other oil and gas development enrollments in the CCA/CCAA that may include the same activities. The same conservation measures would apply to all oil and gas enrollees regardless of enrollment type (linear infrastructure or more general oil and gas development). In accordance with 43 CFR 46.140, the conditions and environmental effects described in the 2008 EA have been reviewed and determined to be still valid. The environmental consequences analysis is focused on only the potential impacts of implementing the Proposed Action and No-Action Alternatives to determine if there would be any impacts that were not adequately described in the 2008 EA.

4.1. Soils

Potential impacts to soils evaluated in the 2008 EA included impacts from oil and gas and associated development, livestock grazing, agriculture, and vegetation management. Amending the CCA/CCAA to provide a more direct mechanism for enrollment of linear infrastructure appurtenant to oil and gas development (i.e., pipelines, electrical, and utility distribution), and

the No-Action Alternative would not create any additional impacts to soils beyond those described and fully analyzed in the 2008 CCA/CCAA EA. Further analysis of the effects of the alternatives on soil is not considered necessary.

4.2. Vegetation

Potential impacts to vegetation evaluated in the 2008 EA included impacts from oil and gas and associated development, livestock grazing, agriculture, and vegetation management. Amending the CCA/CCAA to provide a more direct mechanism for enrollment of linear infrastructure appurtenant to oil and gas development (i.e., pipelines, electrical, and utility distribution), and the No-Action Alternative would not create any additional impacts to vegetation beyond those described and fully analyzed in the 2008 CCA/CCAA EA. Further analysis of the effects of the alternatives on vegetation is not considered necessary.

4.3. Wildlife

Potential impacts to wildlife evaluated in the 2008 EA included impacts from oil and gas and associated development, livestock grazing, agriculture, and vegetation management. Amending the CCA/CCAA to provide a more direct mechanism for enrollment of linear infrastructure appurtenant to oil and gas development (i.e., pipelines, electrical, and utility distribution), and the No-Action Alternative would not create any additional impacts to wildlife beyond those described and fully analyzed in the 2008 CCA/CCAA EA. Further analysis of the effects of the alternatives on wildlife is not considered necessary.

4.4. Listed, Proposed, and Candidate Species

Potential impacts to listed, proposed, and candidate species evaluated in the 2008 EA included impacts from oil and gas and associated development, livestock grazing, agriculture, and vegetation management. Amending the CCA/CCAA to provide a more direct mechanism for enrollment of linear infrastructure appurtenant to oil and gas development (i.e., pipelines, electrical, and utility distribution), and the inclusion of conservation measures to avoid, minimize, and mitigate disturbances would not create any additional impacts to listed, proposed, and candidate species beyond those described and fully analyzed in the 2008 CCA/CCAA EA. Potential impacts to lands covered under the CCA/CCAA and the offsetting protection and restoration actions applied under the agreements are both scalable to the total amount of covered lands, so that the result of both the Proposed Action and the No-Action Alternative would be a net conservation benefit to covered species. Therefore, with the proposed amendment including enrollments for linear infrastructure associated with oil and gas development, impacts to listed, proposed, and candidate species would continue to be consistent with those identified as being “major beneficial and long-term” within the 2008 EA (page 25). Further analysis of the effects of the alternatives on listed, proposed, and candidate species is not considered necessary.

4.5. Land Use and Ownership

Potential impacts to land use and ownership evaluated in the 2008 EA included impacts from oil and gas and associated development, livestock grazing, agriculture, and vegetation management. Amending the CCA/CCAA to provide a more direct mechanism for enrollment of linear infrastructure appurtenant to oil and gas development (i.e., pipelines, electrical, and utility distribution), and the inclusion of conservation measures to avoid, minimize, and mitigate disturbances would not create any additional impacts to beyond those described and fully analyzed in the 2008 CCA/CCAA EA. By providing a more direct mechanism for linear infrastructure and reducing barriers to enrollment, more landowners, Federal lessees and permittees, and operators, would receive a high degree of certainty under the CCA and assurances under the CCAA that more stringent restrictions or additional conservation measures would not be required of them in the event the LPC and DSL become listed under the ESA, should they choose to enroll. Further analysis of the effects of the alternatives on land use and ownership is not considered necessary.

5. CUMULATIVE EFFECTS

Cumulative impacts are the incremental impact of activities associated with implementing the Proposed Action when added to other past, present, and reasonably foreseeable future activities regardless of what agency (federal or non-federal) or person undertakes such other actions (40 CFR 1508.7). Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts are most likely to arise when a relationship exists between a proposed alternative and other actions that have occurred or are expected to occur in a similar location or time period, or that involve similar actions. Projects in close proximity to the Proposed Action would be expected to have more potential for cumulative impacts than those more geographically separated. The Federal action agency (the Service) must determine whether impacts of the proposed action, in this case the approval of the All Activities Amendment to the New Mexico DSL and LPC conservation agreements (CCA and CCAA), when taken together with other actions would result in a significant environmental impact.

The 2008 EA (Cumulative Impacts, Section 6.0) includes a detailed cumulative impact analysis that evaluates cumulative impacts both on a project and individual resource basis during the 20-year term of the CCA/CCAA. The cumulative impacts analysis in the 2008 EA evaluated a range of potential impacts from oil and gas construction, production, reclamation, and cattle grazing, but as discussed in the 2008 EA, implementation of CCA and CCAA would reduce the ongoing increase in overall surface disturbance due to these various land use practices. These cumulative beneficial impacts would serve to minimize or completely eliminate some of the threats to the DSL and LPC. Although there will be more enrollment by smaller companies and midstream companies due to the All Activities Amendment, impacts would be within the range of the potential impacts of the general categories evaluated in the 2008 EA.

As detailed in Sections 4.1- 4.5 of this EA, the Proposed Action would not result in changes to the resource areas evaluated in the 2008 EA. This is because all impacts will continue to be offset with the conservation and avoidance measures proposed, and increases in participation and Conservation Fees contributed would provide additional funding for restoration activities. The All Activities Amendment to the CCA/CCAA would achieve the goal to avoid, minimize, and mitigate adverse effects of covered activities to the DSL and LPC, and contribute to their recovery; therefore, there would be no negative cumulative impacts resulting from the Proposed Action, and no change to the cumulative impacts analyzed in the 2008 EA. No further cumulative impact analysis was found to be necessary.

6. CONCLUSION

As a result of the analyses contained within this EA it is anticipated that Alternative B (Approval of the Amendment to the CCA/CCAA) will provide the greatest benefit to the resources within the Covered Area. The beneficial impacts resulting from the activities associated with Alternative B would make this the Preferred Alternative. These include the enrollment of all parcels owned by Participants that will allow for conservation and avoidance measures throughout the Participants land where applicable (i.e. where suitable and/or occupied habitat exists or has potential to exist). The Preferred Alternative and its associated activities will not have significant impacts to resources either by themselves or cumulatively. It has been determined that an environmental impact statement (EIS) will not be required for this project and thus will not be prepared for the implementation of the Preferred Alternative.

7. COORDINATION AND PREPARATION

The development of this environmental assessment was a coordinated effort between the Service, CEHMM, and the BLM. Input was requested for the amendment of the CCA/CCAA during a meeting held on May 7, 2019 in Carlsbad, New Mexico and July 11, 2019 in Roswell, New Mexico. Public notification of the availability of the Draft Environmental Assessment and Amendment will be published in the *Federal Register*. All concerned individuals and agencies will be provided a hard copy upon request for review and comment.

The following individuals assisted in the preparation of this environmental assessment:

- Jennifer Davis, Fish and Wildlife Biologist, USFWS, New Mexico Ecological Services
- Vance Wolf, Fish and Wildlife Biologist, USFWS, New Mexico Ecological Services
- Debra Hill, NM Energy Streamlining Program Coordinator, USFWS, New Mexico Ecological Services
- Michelle Durflinger, Fish and Wildlife Biologist, USFWS, Region 2

Requests for additional information can be submitted to:

U.S. Fish and Wildlife Service
New Mexico Ecological Services Field Office
2105 Osuna Rd., NE
Albuquerque, NM 87113

6. REFERENCES

- Bureau of Land Management [BLM]. 2008. Special Status Species: Record of Decision and Approved Resource Management Plan Amendment. Pecos District Office, Roswell, New Mexico. 32 pp.
- New Mexico LPC/SDL Working Group. 2005. Collaborative Conservation Strategies for the Lesser Prairie-Chicken and Sand Dune Lizard in New Mexico. 163 pp.
- U.S. Fish and Wildlife Service [Service]. 2008. Guidance on Using Existing Tools to Expand Cooperative Conservation for Candidate Species on Mixed Federal and Non-Federal Lands. Washington, D.C. Office. 6pp.

APPENDIX 1 – Comments Received on the Amendment and Draft EA and Service Responses

Public Comments and Responses on the Draft Environmental Assessment for the Amendment to the Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (CCAA) for Lesser Prairie-Chicken (LPC) and Dunes sagebrush lizard (DSL), in New Mexico

In accordance with the National Environmental Policy Act, the Draft Environmental Assessment (EA) was circulated for public review and comment on February 9, 2022. Concurrently, the Draft Amendment to the CCA and CCAA were also published for public review and comment. The public review period was initiated with the publication of the Notice of Availability in the Federal Register (87 FR 7492), and the 30-day public comment period ended on March 11, 2022, and was subsequently extended for seven days. The public comment period ended on March 18, 2022. Comments were received from Common Ground Capital (CGC), Center for Biological Diversity (CBD), Xcel Energy (Xcel), and Permian Basin Petroleum Association, and two comments from the public; these were taken into account in assessing Project impacts. The Service's responses to comments on the Draft EA and Draft Amendment are below.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
1	Common Ground Capital	The draft environmental assessment (EA) for the amendment does not analyze the environmental impacts of adding coverage for “linear infrastructure” to the CCA/CCAA. This is curious for a number of reasons, not the least of which is that the vertical structures required for transmissions lines are well known to affect the behavior of lesser prairie chickens. (Lawrence et al 2021, USFWS LPC Conservation Framework 2021, Van Pelt, et. Al 2013). The draft EA states that “[t]he affected environment section of this EA incorporates by reference the affected environment described in the 2008 EA.” But the 2008 EA contains no discussion of the impact of midstream pipelines, electric transmission lines, and utility lines on habitat for the LPC or DSL. USFWS apparently has not evaluated the impacts of linear infrastructure, as required by the National Environmental Policy Act (NEPA).	Yes. Replaced “transmission line” with “electric power distribution (<60 kV) lines” and “transmission” with “electric power distribution (<60 kV)” in EA and Amendment.	The proposed action analyzed in the 2008 Environmental Assessment (Assessment) was the issuance of an Enhancement of Survival Permit (Permit) and the implementation of the Candidate Conservation Agreement and Candidate Conservation Agreement with Assurances (Agreements). The proposed action analyzed in the Service’s 2021 Assessment was the issuance of an amended Permit and the implementation of the amended Agreements. The Assessment for this action is required to evaluate the effects of the proposed action on the natural and human environment, compared to the effects of the No Action alternative (which includes the continued implementation of the existing Agreements, and ongoing oil and gas activities in the action area). The Agreements include a variety of conservation and mitigation measures that oil and gas operators and landowners would agree to implement if they choose to enroll. The original Assessment, which is incorporated by reference, identified energy development activities as; oil and gas wells, infrastructure (i.e. roads, powerlines, and pipelines) and activities associated with oil and gas wells. The original Assessment provided the placement of new pipelines and power lines as an example of an action that may occur under the Agreements. For those reasons we believe the 2008 Assessment did consider the impact of pipelines and electric lines. Additionally, the language in the draft 2021 Assessment and Amendment has been modified to reflect the analysis in the 2008 Assessment by replacing “electric power distribution (<60 kV) lines” and “transmission” with “electric power distribution (<60 kV)”, clarifying that the scope does not incorporate transmission lines as a new covered activity.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
2	Common Ground Capital	As the Service stated in the EA, the NEPA regulations require that “an EA to an amendment must analyze the changes to, or details of, the original proposal not previously analyzed to determine if any of the changes or details result in potentially significant impacts (40 C.F.R. 1502.02).” (p. 11). That is not possible where, as here, the original EA did not assess the impact of linear infrastructure on the two species. The NEPA regulations require that an environmental assessment include the environmental impacts of the proposed action, 43 C.F.R. 46.310(a)(3), and “objective analyses” that support the conclusions in the EA. 43 C.F.R. 46.310(g). The draft EA for the CCA/CCAA amendment contains neither with respect to the impacts of linear infrastructure. The draft EA references the 2008 EA to explain the impacts on the species, though there is more current information available in the recent Species Status Assessment for the LPC and monitoring data and various reports on the DSL.	Yes. Replaced “transmission line” with “electric power distribution (<60 kV) lines” and “transmission” with “electric power distribution (<60 kV)” in EA and Amendment.	See response to Comment #1 above. In drafting our Assessment, the Service extensively evaluated all of the science around this topic and incorporated the most recent information relevant to the analysis in this document. In 2021 the Service published the Species Status Assessment Report for the lesser prairie-chicken (prairie-chicken) which provides a comprehensive overview of threats associated with oil and gas development and associated activities, agricultural development, and livestock grazing. The Service has also assessed more current information available on the dunes sagebrush lizard (sagebrush lizard) throughout the development of the sagebrush lizard Species Status Assessment. Specific threats to threatened, endangered, and candidate species can be found in the updated Conference Opinion.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
3	Common Ground Capital	The EA asserts, with no supporting evidence, that a “higher degree of conservation for both species will be established on habitat” from the participation of companies building linear infrastructure. This is despite the fact that those participants will be allowed to enroll in the All Activities option with no enrollment fees! (p. 8) It simply is not possible to credibly argue that there will be conservation benefits associated with enrollment by participants that will not even be required to contribute money to the plan.	None.	While companies building linear infrastructure will not be required to pay an enrollment fee when enrolling into the All Activities enrollment option, these Participants will be required to pay Habitat Conservation Fees for new development. The lack of enrollment fees is intended to encourage more enrollment into the Agreements, and subsequently increase the amount of lands where conservation measures (including avoidance, minimization, and mitigation) are being implemented. In addition, the Service expects that under the All Activities enrollment options, the amount of land where habitat conservation fees may be required will increase, thereby increasing the amount of funds available for habitat improvement projects in high priority areas. Consequently, increased enrollment will increase the net conservation benefit of the Agreements.
4	Common Ground Capital	Linear infrastructure should be removed from the final amendment, if USFWS goes forward with this proposal.	None.	The Service is modifying the language used in the amendment to clarify the intent of covering distribution lines, but enrollment of linear infrastructure (midstream, utility, pipeline) companies will remain as an amendment to the Agreements. Coverage of linear infrastructure is not new to these Agreements. Oil and gas Participants currently pay conservation fees for pipelines or powerlines that service their infrastructure; however, when a new distribution line services multiple oil and gas Participants it is difficult to determine which of the existing infrastructure is being serviced by the new linear development and who should pay the conservation fees. This Amendment is simply providing a path forward for companies that develop linear infrastructure to directly enroll into either Agreement.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
5	Common Ground Capital	Despite this clear language, USFWS proposes to approve an amendment requested by the oil and gas industry to the New Mexico CCA/CCAA that would extend incidental take coverage to activities not currently covered by the CCA/CCAA, through a program that does not meet the conservation criteria in the Framework.	None.	See response to Comment #4 above. The Service recognizes that the metrics used to quantify impacts and required mitigation to the prairie-chicken in the Agreements and Amendment do not reflect metrics identified in the Service's Framework for the Review of Lesser Prairie-Chicken Voluntary Conservation Programs. The original Agreements have been in place since 2008, preceding the conservation criteria outlined in the Framework. Participants in the Agreements have agreed to the guidelines set forth in the original Agreements, and updating them today to more closely resemble the conservation framework would substantially change the Agreements agreed to by Participants. The permit associated with the Candidate Conservation Agreement with Assurances has a duration of 20 years and expires in 2028. It is likely that at that time both Agreements will be re-evaluated in the context of the Framework to promote consistency. Additionally, it is worth recognizing that the framework is not the only path forward for the conservation of the prairie-chicken. The Agreements provide a mechanism for implementing and monitoring conservation measures on federal and non-federal lands and are not solely dependent on mitigation to reach habitat and population goals. For impacts, it first incentivizes and requires avoidance and minimization to eliminate or reduce the magnitude of potential impacts. Furthermore, it also provides for common targeting of all State, federal, and private lesser prairie-chicken conservation programs to produce quality habitat in the best locations and spatial arrangement to help attain those goals. Taken as a whole, the actions will provide consistent delivery of targeted lesser prairie-chicken conservation actions.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
6	Center for Biological Diversity	To make matters worse, the EA makes no attempt whatsoever to estimate the potential impacts to the dunes lizard or the lesser prairie chicken from the expansion of linear infrastructure. This is particularly odd in the case of transmission lines because it is well known that vertical structures significantly impact lesser prairie-chicken behavior. (Lawrence et al 2021).	Yes. Replaced “transmission line” with “electric power distribution (<60 kV) lines” and “transmission” with “electric power distribution (<60 kV)” in EA and Amendment.	The Service recognizes that the scope and analyses of the Assessments are limited to the conservation actions of the Conservation Agreements. The federal action is the approval of the amendment to the 2008 Agreements for the lesser prairie-chicken and dunes sagebrush lizard in New Mexico, and the issuance of the Permit that would provide incidental take coverage should activities addressed in the Candidate Conservation Agreement with Assurances result in take of the covered species, if listed. The Service does not authorize nor regulate lawful activities on private lands lacking any federal nexus or jurisdiction, except for the prohibition against take of a federally listed species as defined in Section 9 of the Act. Lawful activities occurring on private property, including oil and gas development, are therefore part of the environmental baseline and analyzed under the No Action Alternative. The Candidate Conservation Agreement with Assurances reduces threats and impacts to the unlisted lesser prairie-chicken and dune sagebrush lizard, and their habitat, from lawful industrial and commercial activities on private property that are the causes of habitat destruction and degradation. Approval of the amended Candidate Conservation Agreement with Assurances and issuance of an amended Permit does not cause habitat destruction because the activities are legal and unlisted species are not regulated under the Endangered Species Act. The conservation measures provided in the Agreements are designed to, among other things, minimize habitat fragmentation and degradation. Additionally, the Service has removed the term transmission line from the Amendment and Assessment and replaced it with the term "distribution lines" as that was the intended addition.

7	Center for Biological Diversity	Because listing is imminent and the New Mexico CCA/CCAA has not demonstrated significant benefits for the covered species, we strongly oppose the Service's eleventh-hour suggestion to add an enrollment option that will cover all activities for participants in the covered area. The Service's proposed All Activities enrollment option appears simply to be an end run around the Section 7 consultation and Section 9 habitat conservation plan (HCP) processes that should kick in after listing. While this proposal may provide significant benefits to the oil and gas industry, it offers little apparent benefit to either species. Adding this option at this time effectively limits the value of the endangered listing for the lesser prairie chicken and would merely speed fragmentation of habitat areas that are needed for the bird's conservation.	None.	The existing Agreements and the proposed Amendment address threats from ongoing energy development, mesquite encroachment, and land conversion by collecting funds to mitigate development on enrolled lands. These funds are used to implement a variety of habitat restoration and enhancement projects, including the treatment of and removal of mesquite, removal of vertical structures, reclamation of abandoned well pads and roads, and rangeland improvement projects. If the amendment is approved, it is anticipated that any additional mitigation fees associated with new Participants as a result of the Amendment will support additional restoration projects. Since inception, 12,123 acres of impacts have occurred in areas with the potential to support prairie-chicken, while 29,889 acres of habitat has been restored and improved in areas that are known to support prairie-chicken or that provide connectivity between known occupied habitat. Along with the restoration of acres in the core areas of prairie-chicken habitat, suitable and/or occupied sagebrush lizard habitat has been avoided by participants in 680 documented instances by relocating well pads and rights of way outside of the parameters defined in the Agreements. Dunes sagebrush lizard habitat was also protected by eliminating seismic operations that occurred in 4,354 acres of habitat. The Service has carefully evaluated the issuance criteria in 50 CFR part 17 and has determined that the Candidate Conservation Agreement with Assurances meets regulatory criteria, including that implementation of the terms of the Candidate Conservation Agreement with Assurances is reasonably expected to provide a net conservation benefit to the lesser prairie-chicken and dunes sagebrush lizard. For federal lands, the issuance of a conference opinion constitutes section 7 consultation, if either species is to be listed that conference opinion will be converted into a biological opinion. The conference opinion covers the effects of implementing the Candidate Conservation Agreement. All other federal actions that may impact either species, once listed, will require separate section 7 consultation. Additional discussion can be found in the Service's Conference Opinion and Findings document.
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Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
8	Center for Biological Diversity	Similarly, the Service’s desire to add Certificates of Participation and/or Inclusion for companies that develop linear infrastructure such as the construction of pipelines, utilities and transmission lines is problematic in at least two respects. First, the amendments do not even require linear infrastructure proponents to specify where the projects will be built to obtain coverage. The EA allows companies to obtain blanket coverage for future projects on lands they have not even secured.	Yes. Replaced “transmission line” with “electric power distribution (<60 kV) lines” and “transmission” with “electric power distribution (<60 kV)” in EA and Amendment.	A similar approach to cover activities on Participant’s future lands has been implemented in other Candidate Conservation Agreements, including the Texas hornshell Candidate Conservation Agreement and Candidate Conservation Agreement with Assurances, also administered by the Center of Excellence for Hazardous Materials Management, and the Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands. For the purposes of this All Activities amendment, existing and new Participants will be able to enroll all of their operations into the Conservation Agreements without having to add new parcels that they may acquire or trade for in the future, even after a decision to list either species. This amendment will encourage consistent land management, will help maintain enrollment, and will allow adoption of conservation measures on all lands enrolled in the Agreements, contributing to increased habitat management for both species. Participants enrolled in the All Activities enrollment option will provide updated GIS shapefiles reflecting additions or removals of properties on an annual basis, no later than October 1. The effectiveness of the conservation measures, monitoring methods, and new technologies will be reviewed by the Service, Bureau of Land Management, and New Mexico Department of Game and Fish on an annual basis as described in Section X of the Candidate Conservation Agreement. Upon such evaluation, appropriate modifications to the conservation measures will be incorporated to further enhance the goals of these Agreements.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
9	Center for Biological Diversity	The EA gives no explanation as to why or how a “higher degree of conservation for both species will be established on habitat” through unspecified conservation measures and fees from these proposed participants.	None.	The Candidate Conservation Agreement and Candidate Conservation Agreement with Assurance are voluntary agreements providing for conservation measures to reduce threats from ongoing otherwise lawful activities on federal lands, state lands, and private property. These conservation measures appropriately provide for feasibility in implementation. All activities undertaken pursuant to the conservation agreements and the Candidate Conservation Agreement with Assurance’s associated permit must follow all applicable local, state, and Federal laws and regulations. Habitat conservation fees as a result of disturbance on the ground, including in areas where impacts to either species are low, fund chemical and mechanical treatment of mesquite, removal of vertical structures, reclamation of abandoned well pads and roads, and other rangeland improvement projects. Conservation actions funded by habitat conservation fees are prioritized in high priority habitat to reduce fragmentation and contribute to an overall higher degree of conservation for both species.
10	Center for Biological Diversity	Moreover, the EA states that “companies that primarily develop linear infrastructure, including but not limited to midstream, transmission, and utility, may enroll in the All Activities option with no enrollment fee.” (p. 8). So how is it even possible to assess the conservation benefits of enrollment when the participants won’t even have to contribute monetarily to the plan?	None.	See response to Comment #3.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
11	Center for Biological Diversity	Nor can the Service tier this expansion of coverage for linear infrastructure to the prior Environmental Assessment for a Candidate Conservation Agreement/Candidate Conservation Agreement with Assurances for the Lesser Prairie-chicken and Sand Dune Lizard in New Mexico (Service 2008), because that document never considered linear infrastructure at all. As the Service recognizes, “an EA to an amendment must analyze the changes to, or details of, the original proposal not previously analyzed to determine if any of the changes or details result in potentially significant impacts (40 CE 1502.02).” (p. 11). That is not possible where, as here, the original EA did not ever consider linear infrastructure’s potential effects on the two species.	Yes. Replaced “transmission line” with “electric power distribution (<60 kV) lines” and “transmission” with “electric power distribution (<60 kV)” in EA and Amendment.	See response to Comment #1.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
12	Center for Biological Diversity	Quite frankly, we find inclusion of this All Activities and Linear Infrastructure proposals at this time to be wholly inconsistent with what is required to save lesser prairie-chicken from extinction. The EA never even discusses the latest species status report or endangered listing proposal, which represent the most recent biological findings for species. Likewise, the EA does not include any of the latest information on the dunes lizard which is overdue for a 12-month finding. The Service should not rely solely on the 2008 EA for information on species impacts when more recent and robust information is available.	None.	See response to Comment #2.
13	Center for Biological Diversity	The Service developed guidelines last summer for new lesser prairie-chicken mitigation programs. U.S. FWS, Framework for the Review of Lesser Prairie- Chicken Voluntary Conservation Programs (July 2021). That document describes in some detail the species' habitat needs and would seem to be a good start for evaluating both habitat quality and impacts to habitat. It is not, however, mentioned in the EA. More explanation of the Service's approach to identifying and protecting higher quality habitat areas under the CCA/CCAA is needed. Aligning habitat classifications and standards more closely to those intended for HCPs could also help improve the effectiveness of the program.	None.	See response to Comment #5 above. Oil and gas operators contribute habitat conservation fees that are used to fund conservation projects, restoration projects, and research. Conservation, improvement, restoration, and research project proposals are submitted annually to the Center of Excellence. The ranking team, consisting of representatives from the Bureau of Land Management, the Service, Center of Excellence, New Mexico State Land Office, the New Mexico Department of Game and Fish, one participating cooperator from the oil and gas industry, and one participating cooperator from the ranching community, then ranks the projects in order of conservation priority. Projects that are believed to directly contribute to a gain in habitat for either species are prioritized, especially when in priority habitat. Priority habitat for lesser prairie-chicken is identified using lek data and the Southern Great Plains Crucial Habitat Assessment Tool created by the Western Association of Fish and Wildlife Agencies.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
14	Center for Biological Diversity	We also question why the Service would reduce enrollment fees for new parcel-by-parcel enrollments. While we understand the general desire to enroll landowners who might otherwise not participate, there's little evidence in the EA that cost considerations are preventing landowners from enrolling. We also question changes that potentially reduce funding for the program, but we do so in part because it is not clear where the money CEHMM has collected is going. And that is perhaps the bigger problem with the NM conservation plan. Other than removal of some mesquite and woody brush, what exactly has the plan achieved in its nearly 15 years? Where are the conservation benefits that correlate with the investments received to date?	None.	The amendment to lower initial enrollment fees will only apply to new participants who choose to enroll in the parcel-by-parcel enrollment option and have less than 20,000 acres. Enrollment fees are just one of the ways conservation actions are funded through either Agreement. Habitat conservation fees paid by oil and gas operators when disturbance occurs (fee depends on where habitat disturbance occurred) also exist. Under the Agreements, the Center of Excellence is permitted to use no more than 10% of contributed funds for administrative responsibilities. All other contributed funds are used for implementing the conservation goals of the Agreements, such as, planning and implementation of habitat restoration and enhancement projects, project monitoring, research, education, and outreach. An audit accounting for expenditures and accomplishments is conducted annually by an independent party. Since inception, 105,664 acres of mesquite have been treated, 14,154 acres of dead standing mesquite have been removed, and 159 acres of roads, pads, and caliche have been removed and reseeded. Community outreach events and research projects instrumental to learning more about either species have also been funded using enrollment and habitat conservation fees. A table of projects funded to date, their cost, and the amount funded, can be found in the Center of Excellence's publicly available annual reports.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
15	Center for Biological Diversity	We support the amendment allowing for an annual readjustment of habitat conservation fees due to inflation but question whether it is necessary to permit readjustment for deflation. The Service offers no explanation for that provision beyond the cursory statement that “[t]here would also be room for deflation in the case that the cost of reclamation decreases.” (p. 14). We find that unlikely and believe that it is unnecessary to include provisions for reduction of fees at this time.	None.	This amendment will simply allow for the readjustment of habitat conservation fees when appropriate following a standard consumer price index.
16	Center for Biological Diversity	Finally, if either species is listed, participants should not be able to enroll new parcels in the CCAA if they obtain new lands or easements where they did not previously hold an interest. Participants can seek coverage for such areas via an HCP.	None.	See response to Comment #8.
17	Xcel Energy	The costs, however, to enroll new transmission associated with renewable energy projects in the Conservation Plan for the Lesser Prairie Chicken ² (“Renewable Energy HCP”) would potentially make it economically infeasible to develop future transmission projects that move renewable energy in the LEPC’s range.	None.	Thank you for your comment. The Renewable Energy Habitat Conservation Plan is not within the scope of this Candidate Conservation Agreement and Candidate Conservation Agreement with Assurances.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
18	Xcel Energy	The LEPC habitat suitability assessment and lek survey helped inform the site boundaries and turbine layout. Following meetings with environmental groups, the Service and the New Mexico Department of Game and Fish, the developer and Xcel Energy agreed to modify the southern boundary of the project by eliminating 53,700 acres and 135 potential turbine locations from the project to avoid CHAT 1 and 2 areas. An additional 19,897 acres were removed from the project area as part of the location approval pursuant to a voluntary agreement between the project developer, Xcel Energy, and New Mexico Public Regulation Commission staff. Overall, the project footprint was reduced by 30% in order to avoid leks as well as LEPC connectivity zones. As a result, ninety-eight percent of the project is sited in CHAT 3 and 4 habitat. Xcel Energy committed to these measures to avoid and minimize potential impacts to LEPC habitat within the project area. While these are important steps to protect the LEPC, we also recognized the need to mitigate for any potentially unavoidable impacts. We voluntarily committed to investing in several thousand acres of preservation and restoration credits from the Lost Draw Conservation Bank in New Mexico; the first USFWS-sanctioned LEPC conservation bank.	None.	Comments noted. The Service appreciates Xcel Energy's commitment to lesser prairie-chicken conservation.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
19	Xcel Energy	New transmission will be needed to support such an acceleration in wind and solar energy deployment. The proposed amendments to the CCA/CCAA provide an opportunity for linear infrastructure projects to provide mitigation for impacts to LEPC habitat in a cost-effective manner. These amendments will benefit the LEPC by expanding adoption of conservation measures and helping to address climate change.	None.	Thank you for your comment. The language in the draft 2021 Assessment and Amendment has been modified to reflect the analysis in the 2008 Assessment by replacing “transmission line” with "distribution line".
20	Permian Basin Petroleum Association	A wide range of PBPA’s member companies are participants in various voluntary programs focused on conservation of various species and their habitat that overlap with oil and gas operations in the Permian Basin. Over the past decade, the PBPA and its members have a demonstrated record of constructive engagement with state and federal agencies to identify strategic conservation opportunities. PBPA and its member companies have been involved in the development and on-going support of Candidate Conservation Agreements with Assurances (CCAA) for the Dunes Sagebrush Lizard (DSL), Lesser Prairie Chicken (LPC), and the Texas Hornshell Mussel (THM) and the Pecos Watershed Conservation Initiative (PWCI).	None.	Comments noted. The Service appreciates Permian Basin Petroleum Association's commitment to conservation of listed and at-risk species.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
21	Permian Basin Petroleum Association	As stated in the Draft EA the amendments are not expected to result in the impacts beyond those identified in the original EA. The proposed CCA/CCAA amendments are not expected to significantly affect industry or ranching activities but would help support these activities by streamlining ESA compliance and maintaining the historically beneficial conservation efforts for the LPC and DSL. Additionally, the summary of Impacts to Resources in the 2008 EA, which addresses soils, vegetation, wildlife; listed, proposed, or candidate species; and land use and ownership, indicated that impacts from the preferred alternative - approval and implementation of a CCA and CCAA - would be “major, beneficial and long-term”. We anticipate that the proposed amendments to the CCA/A would achieve the same successful results that have been realized with the implementation and management of the programs.	None.	Thank you for your comment.
22	Permian Basin Petroleum Association	The PBPA is in favor of amendment to add an enrollment option to cover all activities for participants in the covered area.	None.	Thank you for your comment.
23	Permian Basin Petroleum Association	This amendment provides a unique opportunity for industry participants to institute additional commitments to conservation. Conservation measures and activities are conducted for their covered activities on all lands held by the participant withing the covered area.	None.	Thank you for your comment.

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24	Permian Basin Petroleum Association	The All-Activities enrollment option provides for post-listing adjustments to acreage thereby expanding the incentives for companies to enroll.	None.	Thank you for your comment.
25	Permian Basin Petroleum Association	The post listing option provides participants with the regulatory assurances afforded by a CCAA and further promotes the conservation goals targeted by the programs.	None.	Thank you for your comment.
26	Permian Basin Petroleum Association	PBPA is a proponent for using the most up to date information and best available science to direct conservation. We are therefor in favor of this amendment to the CCA/CCAA. It stands to reason, that the conservation efforts that have been employed since the inception of the CCA/CCAA in 2008 has improved habitat beyond the current occupied habitat. By allowing habitat categories to change with the discovery of new leks, the CCA/CCAA can provide greater protection of the LPC. It shows a commitment to the use of best available science to clearly identify areas across the landscape where the LPC have established populations and presence patterns for their biological needs (breeding, nesting, brooding, foraging, wintering, etc.) and where conservation should be afforded.	None.	Thank you for your comment.

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27	Permian Basin Petroleum Association	There are currently 41 oil and gas operators enrolled in the New Mexico CCA/CCAA's with an estimated 2,189,006 acres ¹ of conservation commitments under these agreements. The addition of CP/CI's tailored to companies that develop linear infrastructure has the potential to increase conservation commitment, and beneficial conservation activities across the covered area for the species.	None.	Thank you for your comment.
28	Permian Basin Petroleum Association	Reducing parcel by parcel enrollments affords small operators with less than 10,000 acres in the covered area a cost-effective opportunity to enroll and engage in conservation commitments consistent with their more limited financial resources. An annual inflation adjustment provides a mechanism for sound financial viability of the program into the future.	None.	Thank you for your comment.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
29	Private Citizen (Megan Billedeaux)	We think you are doing an excellent job trying to protect the lesser prairie chicken and the sand dune lizard. We do wish that you had a link to the original EA listed so that we could easily view the proposed changes, but we agree with what we have seen in the current report. You have an uphill battle with the sheer number of landowners and businesses that reside in the critical habitat for the species, competing for the resources and space. We appreciate that you are trying your best to accommodate both and think that making it easier to enroll in the CCA is a good move because it increases awareness and offers incentives to individuals to help with your cause. By doing so, involved landowners should see the benefit to saving a vulnerable species and be proud to have done their part, however small. They may consider becoming more involved as a result. Getting enrolled is the first step, though, and making that easier or more attractive is definitely beneficial.	None.	Thank you for your comment.

Comment #	Commenter	Comment (excerpt or in entirety)	Changes made to EA or Amendment	Response
30	Private Citizen (Jean Pubilee)	save the prairie chicken and the lizard. all of us need to watch the actions of the usfws because they are sneaky and behind the scenes always act to kill wildlife,. They are not friends of wildlife., everybody they hire is an enemy of wildilfe. they do not hire animal compassionate friends of animals. they hire hunters. they work for hunters and farmers only. they take all their ranks from animal killers. so this agency when it tells you it is acting to protect is probably acting in teh exadtly opposite direction to kill, injure, murder and make money off the dead bodies of animals. some of the agents look to put big money intheir own pockets too and an investigation needs to be made of the employees of this agency who all get pretty rich from their employment. is it selling off our land that belongs to all of us. how about an investigation of this agency. i am asking for one. this commetn is for the public record. please receipt. jean pubilee jeanpublic1@yahoo.com	None.	Thank you for your comment.

