

DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE

**FINDING OF NO SIGNIFICANT IMPACT**

Issuance of an Amended Section 10(a)(1)(B) Permit for Incidental Take of the Northern and Southern Distinct Population Segments of the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*; LEPC) to Lesser Prairie-Chicken Conservation LLC for the *Renewable (Wind and Solar) Energy, Power Line, and Communication Tower Habitat Conservation Plan for the Lesser Prairie-Chicken*; Colorado, Kansas, New Mexico, Oklahoma and Texas

The U.S. Fish and Wildlife Service (Service), has conducted an environmental analysis in accordance with the National Environmental Policy Act of 1969<sup>1</sup> (NEPA), as amended. The final environmental assessment (EA) dated March 2025, for the proposed amendment of the Renewable (Wind and Solar) Energy, Power Line, and Communication Tower Habitat Conservation Plan for the Lesser Prairie-chicken; Colorado, Kansas, New Mexico, Oklahoma and Texas (HCP) addresses the potential effects of approving the proposed amendment and authorizing an amendment to the 2021 incidental take permit (permit) (Permit Number ES89394D) in accordance with Section 10(a)(1)(B) of the Endangered Species Act (ESA) held by LPC Conservation LLC (applicant) for implementation of the HCP.

The final EA, incorporated herein by reference, evaluates two alternatives in detail: the No Action Alternative and the Proposed Action Alternative (i.e., Preferred Alternative).

Preferred Alternative

The Preferred Alternative involves the issuance of an amended 10(a)(1)(B) permit to the applicant and approval of the proposed amendment of the HCP. The HCP was originally approved and permitted by the Service on December 1, 2021. At the time of approval and permit issuance, the plan area for the HCP was the 2013 LEPC Estimated Occupied Range (EOR) boundary plus a 10-mile buffer. In 2022, after the Service's approval of the HCP and issuance of the permit, the Lesser Prairie-Chicken Interstate Working Group revised the EOR of the LEPC to expand the range boundaries north and east to include LEPC occurrence documented in Colorado and to connect to the Kansas Shortgrass/Conservation Reserve Program Mosaic. The proposed amendment updates the HCP and permit to incorporate the revised EOR boundary and expand the plan area boundary in the HCP accordingly.

The proposed amendment includes updated text, figures, and captions resulting from the update to the EOR and plan area. In addition, the amendment includes updates to terminology used in figure

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<sup>1</sup> Executive Order 14154, Unleashing American Energy (Jan. 20, 2025), and a Presidential Memorandum, Ending Illegal Discrimination and Restoring Merit-Based Opportunity (Jan. 21, 2025), require the Department to strictly adhere to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq. Further, such Order and Memorandum repeal Executive Orders 12898 (Feb. 11, 1994) and 14096 (Apr. 21, 2023). Because Executive Orders 12898 and 14096 have been repealed, complying with such Orders is a legal impossibility. The [bureau] verifies that it has complied with the requirements of NEPA, including the Department's regulations and procedures implementing NEPA at 43 C.F.R. Part 46 and Part 516 of the Departmental Manual, consistent with the President's January 2025 Order and Memorandum.

legends; miscellaneous formatting, spelling, or grammatical corrections; and updates to the certificate of inclusion (CI) application found in Appendix B of the HCP. No changes are proposed to the duration of the HCP and associated permit, covered activities, or original incidental take estimates.

### No Action Alternative

The Service analyzed a No Action alternative in addition to the proposed alternative.

Under the No Action Alternative, the Service would not approve the proposed amendment and would not issue the amended permit. In this case, the plan area for the HCP would remain as defined in the approved HCP and permit.

### Public Participation

A Notice of Availability of the draft EA, amended HCP, and amended permit application published in the Federal Register on January 14, 2025 (90 FR 3241 pg. 3241-3243). We accepted public comments through February 13, 2025, and received four comment letters. The comments did not identify any significant new environmental impacts not addressed in the original EA or any further information that improved the final EA for the proposed amendment.

Two of the comments received were non-substantial and one comment was supportive of the amendment. The final comment asked if the Service had fully evaluated the effects of noise of the covered activities on the LEPC. While this comment was beyond the scope of the proposed amendment, the Service wrote a response which documents that we fully considered the effects of noise of the covered activities on the LEPC prior to approving the original HCP and there is no new scientific information available on this issue. Two comments received were anonymous, the comment in support was from Colorado Parks and Wildlife, and the final comment was from a graduate student. Full responses to all comments are in the Appendix E of the final EA.

### Determination

Significance, as used in NEPA, requires considerations of both context and intensity. Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. While the proposed amendment expands the plan area slightly, it does not significantly change the previous impacts that were evaluated during the original evaluation of the HCP and the FONSI developed in 2021. The HCP area is still (i.e., area subjected to effects resulting from the proposed action) is limited to portions of Colorado, Kansas, Oklahoma, Texas, and New Mexico. The amended action area of the HCP increased from 92,224,490 acres to 92,957,555 acres (an increase of less than 1%). The amendment does not change the authorized take originally analyzed prior to HCP approval in 2021. Therefore, the context of the impacts (both negative and beneficial) is considered negligible for the County and the remainder of the State.

Intensity refers to the severity of the impacts. We have considered the following regulatory factors in evaluating intensity.

- (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

The EA shows no additional impacts to the LEPC would result from approving the amendments as there is no change to negative and beneficial activities included in the original HCP. Additionally, the amended EA shows temporary and minor impacts to soils; and, minor short- and long-term impacts to vegetation, wildlife, State-listed species and land use are expected to result from the proposed action. The proposed amendment is expected to have minor short- and long-term benefits to the above-listed resources in the additional areas covered through implementation of proposed minimization and offsetting measures. The extent of these benefits will depend on the level of enrollment in the HCP.

No significant adverse or beneficial impacts to cultural resources, socioeconomic environment, or water resources are expected to result from the proposed action.

- (2) The degree to which the proposed action affects public health or safety.

The EA indicated that no significant effects to any environmental factors are expected to result from the proposed action. Therefore, no significant effects to public health or safety are expected to result from the proposed action.

- (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

The EA indicated that no significant adverse long-term impacts to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas are expected to result from the proposed action.

- (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

We have no evidence to suggest that the effects on the quality of the human environment are likely to be highly controversial.

- (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

None of the effects of the amended HCP are highly uncertain because we know the effects of the covered activities on the human environment. None of the effects of the HCP involve unique or unknown risks. Many of the proposed conservation measures in the HCP are focused on avoiding and minimizing impacts to suitable LEPC habitat, along with activities to mitigate impacts which cannot be avoided. None of the conservation measures are utilizing practices that are not already common.

- (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

Future actions would be reviewed on their own merits. Thus, the amended HCP would not establish a precedent for future actions or represent a decision in principle

about future actions with potentially significant environmental effects.

- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

The amended HCP is not directly related to any other action.

- (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

The EA has indicated that no adverse impacts to districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places; nor are adverse impacts to significant scientific, cultural, or historical resources expected to result from the proposed action.

- (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

The EA does include any additional impacts to threatened or endangered species that were not analyzed in 2021 prior to HCP approval. The original EA indicated that although some suitable LEPC habitat would be permanently lost or fragmented due to wind, solar, power line, and communication tower development, the habitat mitigation that would occur under the proposed HCP would fully offset these impacts. Therefore, the degree of intensity of both short- and long-term effects to LEPC is characterized as low. In addition, we have reviewed the proposed action under section 7 of the ESA. Our biological opinion concluded that issuance of the permit will not jeopardize the continued existence of the covered species in the wild. No critical habitat has been designated for the covered species; thus, none will be affected.

The HCP only covers the LEPC; participants must avoid or receive separate take authorization, as necessary for other federally listed species that occur within their respective project area(s) to be eligible for enrollment in the HCP. Prior to enrollment in the HCP, all prospective participants must provide documentation of ESA compliance for species not covered under the permit.

- (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

As written in the amended HCP, the purpose of the proposed action is to meet the statutory requirements of a Section 10(a)(1)(B) permit and to provide regulatory assurances and streamline the permitting process for wind, solar, power line, and communication tower companies seeking to construct projects within the HCP permit area for the LEPC. Implementation of the amended HCP would not violate applicable

Federal, State, or local law or requirements imposed for the protection of the environment.

Based upon information contained in the EA and HCP and supporting data in FWS files, we have determined that issuance of this permit is not a major federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the NEPA. Accordingly, the preparation of an environmental impact statement on the Proposed Action is not warranted.

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