

Environmental Assessment
For
Amendments 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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1.0 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, transmission 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, transmission 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.

Candidate Conservation Agreements for the Lesser Prairie-Chicken and Sand Dune Lizard All Activities Habitat Categories

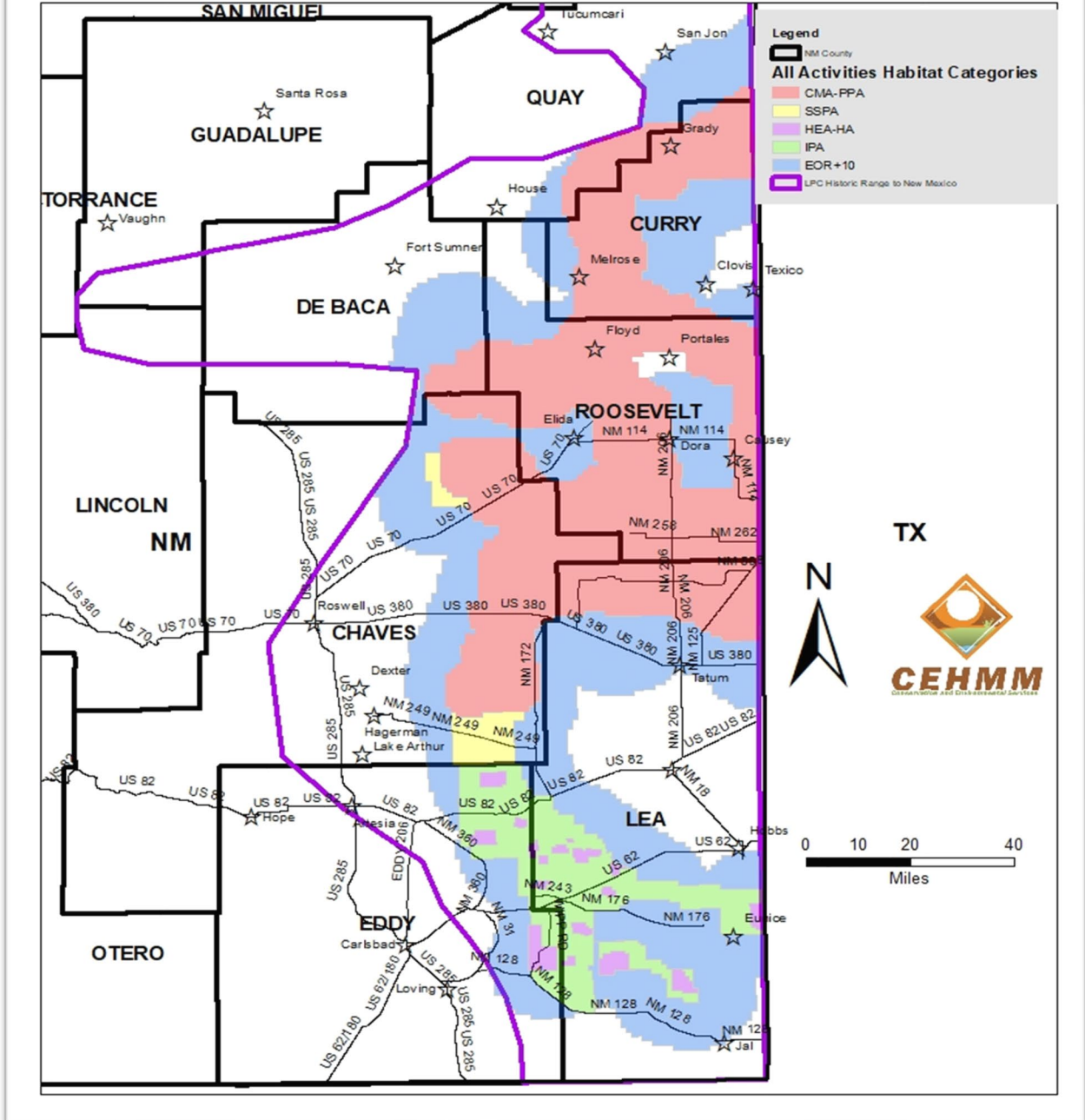


Figure 1: Covered Area including Core Management Area and Primary Population Area (CMA-PPA), Habitat Evaluation Areas and Habitat Areas (HEA-HA), Sparse and Scattered Population Area (SSPA), Isolated Population Area (IPA), Estimated Occupied Range Plus 10 (EOR+10), and Historic LPC Range (Other)

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, a transmission line company does 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, transmission, 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 transmission 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.

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

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

Upon the execution of a CP or CI, an Oil and Gas Participant will create a Habitat Conservation Fund in accordance with the schedule in Table 1, Annual Prepayment Tiers for Oil and Gas

Enrollment. The initial payment will be made on the date the CP and/or CI is executed with subsequent payments on the first and second anniversary of the execution date of the CP and/or CI. The Participant may, at their discretion, pay more than the required amount into their Habitat Conservation Fund Account. Conservation fees for development will be deducted from this fund.

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

Linear infrastructure Participants (e.g. Midstream, Transmission, 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

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.

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 areas ⁴	\$ 0-250.00/acre

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 CCAA can be found at: https://ecos.fws.gov/ecp/report/conservation-plan?plan_id=4213.

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.

2.0 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, transmission 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.

3.0 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 https://ecos.fws.gov/ecp/report/conservation-plan?plan_id=4213.

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.

4.0 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. 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 development, livestock grazing, agriculture, and vegetation management. Implementation of the Proposed Action or 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 development, livestock grazing, agriculture, and vegetation management. Implementation of the

Proposed Action or 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 development, livestock grazing, agriculture, and vegetation management. Implementation of the Proposed Action or 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 development, livestock grazing, agriculture, and vegetation management. Implementation of the Proposed Action or the No-Action Alternative 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. 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 development, livestock grazing, agriculture, and vegetation management. Implementation of the Proposed Action or the No-Action Alternative would not create any additional impacts to 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. Further analysis of the effects of the alternatives on land use and ownership is not considered necessary.

5.0 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.

6.0 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.

7.0 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.

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Requests for additional information can be submitted to:

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8.0 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.

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