

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
500 Gold Avenue SW
Albuquerque, New Mexico 87102

FINDING OF NO SIGNIFICANT IMPACT

Issuance of an Amended Section 10(a)(1)(A) Enhancement of Survival Permit for Incidental Take of the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*) and Dunes Sagebrush Lizard (*Sceloporus arenicolus*) to the Center for Excellence for the *Amended Candidate Conservation Agreement and Candidate Conservation Agreement with Assurances for the Conservation of the Lesser Prairie-Chicken and Dunes Sagebrush Lizard in Southeastern New Mexico*

I. Introduction

We prepared an Environmental Assessment for the issuance of an amended section 10(a)(1)(A) Enhancement of Survival permit (Permit) and approval of the amendments to the Candidate Conservation Agreement and Candidate Conservation Agreement with Assurances (collectively referred to as Conservation Agreements) that will result in the conservation of the lesser prairie-chicken (*Tympanuchus pallidicinctus*) and dunes sagebrush lizard (*Sceloporus arenicolus*), (together referred to as the Covered Species) formerly known as the sand dune lizard, in southeastern New Mexico. The Covered Area includes all or portions of Lea, Eddy, De Baca, Curry, Roosevelt, Quay, and Chaves counties. The Conservation Agreements are separate agreements; the former applies to Participants on Federal lands, while the latter applies to Participants on state and/or private lands.

Alternatives Considered

Preferred Alternative

The preferred alternative would be the approval of the amendments to the Conservation Agreements. These amendments will remove barriers to increased participation in the Conservation Agreements and will result in a greater conservation benefit to both species. These amendments include:

1. Adding an enrollment option that will cover all activities for Participants in the Covered Area.

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 Certificate of Participation or Certificate of Inclusion following a listing decision. The All Activities option is an amendment to the Certificates of Participation and Inclusion. 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 Certificate of Participation/Certificate of Inclusion) 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 as being within the historic lesser prairie-chicken 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 Conservation Agreements because a Covered Area is defined. When exercising the

All Activities option, Participants 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. With the All Activities enrollment option, all the lands (e.g., oil and gas leasehold, rights-of-way, and rights-of-entry) held by the Participant within the Covered Area are considered enrolled. Use 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 Conservation Agreements are still applicable, except for those amended as described below.

Participants that enroll via the All Activities option may add all lands to (and remove all Enrolled Lands from) the Certificate of Participation or Inclusion at any time, including after any decision to list a Covered Species. A Participant enrolled in the All Activities option 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-classifying habitat categories based on lesser prairie-chicken habitat and lek locations.

Allowing habitat categories to change upon discovery of new lek locations outside of current occupied habitat will provide for greater protection of the lesser prairie-chicken. Upon the discovery of new leks, Participants will be notified of the change of habitat category and conservation fees can be adjusted appropriately. In the event that a Federal agency's (e.g., Bureau of Land Management) management plan calls for more stringent conservation action than the Agreements, the conservation measures may be revised in the Candidate Conservation Agreement, and may be amended in the Candidate Conservation Agreement with Assurances through Adaptive Management. Existing Certificates of Participation or Inclusion will only be amended if agreed to by the Participant.

Appendix B of the Candidate Conservation Agreement and Exhibit B of the Certificate of Participation and Inclusion are amended by adding a Characterization of Habitat Categories and a map of the Habitat Categories. The habitat categories, as defined in the next paragraph, were determined by location of active lesser prairie-chicken leks, connectivity between active leks, suitability of habitat, potential for restoration or reclamation, the estimated occupied range of the lesser prairie-chicken, and the historic range of the lesser prairie-chicken.

Core Management Areas and Primary Population Areas are defined as areas where lesser prairie-chicken populations are well distributed, intact, and provide connectivity to smaller, occupied patches of habitat. Habitat Evaluation Areas and Habitat Areas are defined as areas within the Isolated Population Area where habitat characteristics for lesser prairie-chicken are present and with reclamation and/or restoration could provide connectivity to isolated patches of habitat. Sparse and Scattered Population Areas are areas where leks are sporadically distributed, and local extirpation of lesser prairie-chicken may occur. Isolated Population Areas are areas in the historic range of the lesser prairie-chicken where it is nearly extirpated. The Estimated Occupied Range Plus 10 are the areas that are in the estimated occupied range of the lesser prairie-chicken, and buffered by 10 miles, but outside of the zones described above. Finally, the Historic LPC Range are areas outside of the zones listed above that were historically occupied by lesser prairie-chicken.

3. Adding Certificates of Participation and/or Inclusion for companies that develop linear infrastructure (e.g. midstream, distribution, and utility).

By introducing a mechanism for companies that develop linear infrastructure (e.g., pipelines, utilities, and electrical distribution lines) to enroll in the Conservation Agreements, the inability to enroll and implement conservation measures on parcels that have not yet been contractually secured (e.g., easements) will be resolved. Companies that primarily develop linear infrastructure, including but not limited to, midstream, electrical distribution, and utility, may enroll in the All Activities option with no enrollment fee. These Participants will add acreage as rights-of-way and rights-of-entry and pay Habitat Conservation Fees for new surface development.

4. Reducing initial enrollment fees for new parcel-by-parcel enrollments.

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. Habitat Conservation Fees will remain the same based on actual disturbance and development on the ground.

Upon the execution of a Certificate of Participation or Certificate of Inclusion, an oil and gas Participant will create a Habitat Conservation Fund. The initial payment will be made on the date the Certificate of Participation and/or Certificate of Inclusion is executed, with subsequent payments on the first and second anniversary of the execution date of the Certificate of Participation and/or Certificate of Inclusion. 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 the All Activities enrollment option will be credited for prepayments and will not pay additional fees unless the resulting enrolled acreage is at a higher tier differential from the previously enrolled parcels. After the initial three-year period, any enrolled lands added by addendum to an All Activities Certificate of Participation and/or Certificate of Inclusion 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 through the All Activities enrollment.

Linear infrastructure Participants (e.g., midstream, electrical distribution, utility) are not required to prepay but will pay Habitat 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.

The total acreage enrolled in an All Activities Certificate of Participation and/or Certificate of Inclusion, 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.

5. Adding an annual inflation/deflation adjustment for all Habitat Conservation Fees.

A final focus of this amendment addresses inflation. The amendment allows for an annual readjustment of Habitat Conservation Fees due to inflation or 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.

No Action Alternative

Under the No Action Alternative, the amendments to the Conservation Agreements would not be approved, and the amended Permit would not be issued.

Implementation of the existing Conservation Agreements would continue without the amendment. Instead of allowing Participants to enroll under All Activities, they would continue enrolling parcel by parcel before any listing decisions on the Covered Species. Electrical companies, pipeline companies, and other linear infrastructure developers 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 Conservation Agreements prior to a listing decision could result in the inability of small companies to obtain authorized take through the existing permit. In the event of a decision to list either species, if activities would result in take that could not be avoided, and a federal nexus existed, a non-Federal party could receive take coverage through consultation and a biological opinion for lesser prairie-chicken and/or dunes sagebrush lizard. If no Federal nexus exists, non-Federal parties could develop a Habitat Conservation Plan for lesser prairie-chicken and/or dunes sagebrush lizard and apply for incidental take authorization from the U.S. Fish and Wildlife Service (Service) on a project-by-project basis. Each application would require independent evaluation under the National Environmental Policy Act.

Under the No Action Alternative, Habitat Conservation Fees would continue to be based entirely on the 2008 Bureau of Land Management Resource Management Plan Amendment lesser prairie-chicken and dunes sagebrush lizard habitat zones. Important lesser prairie-chicken habitat outside of the habitat zones originally designated in the Resource Management Plan Amendment would not be prioritized and could be developed at the same costs as other less important habitat.

Under the No Action Alternative, inflation would not be accounted for in the Habitat Conservation Fees. The amount of money that industry puts into the program to mitigate for development would remain at one rate over time. 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.

II. Public Participation

A Notice of Availability of the draft Environmental Assessment and amendments was published in the Federal Register on February 9, 2022, and comments were accepted through March 11, 2022. Due to technical issues, the public comment period was extended through March 18, 2022. The draft Environmental Assessment, and amendments were published to the Service's New Mexico Ecological Services website (<https://www.fws.gov/library/collections/new-mexico-cca-and-ccaa-documentation>). The Conservation Agreements, along with the original conference

opinion, Environmental Assessment, Finding of No Significant Impact, and Findings document are published at https://ecos.fws.gov/ecp/report/conservation-plan?plan_id=4213.

We received six comment letters from individuals and non-governmental organizations. The comments received on the draft Environmental Assessment and amendments can be found in Appendix 1 of the final Environmental Assessment. These letters are on file in the project file in the New Mexico Ecological Services Field Office, Albuquerque, New Mexico.

III. Determination

Significance, as used in the National Environmental Policy Act, 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. The Covered Area (i.e., area subjected to effects resulting from the proposed action) is limited to the southeastern counties of the State of New Mexico; therefore, the context of the impacts (both negative and beneficial) is considered negligible for the State and the remainder of the Nation.

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 overall the effect will be beneficial.

The Environmental Assessment has indicated that no adverse long-term impacts to vegetation; wildlife; listed, proposed, and candidate species; or wetlands are expected to result from the proposed action. However, long-term beneficial impacts to vegetation; wildlife; proposed and other species; and riparian habitat on enrolled properties throughout the Covered Area are anticipated.

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

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

No 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.

No adverse or beneficial short- or 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 Conservation Agreements are highly uncertain because we can reasonably anticipate the beneficial effects of the proposed conservation measures on the human environment. None of the effects of implementation of the amended Conservation Agreements involve unique or unknown risks. Many of the proposed conservation measures in the Conservation Agreements are focused on avoiding and minimizing impacts to lesser prairie-chicken and dunes sagebrush lizard habitat, along with habitat preservation. 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 Conservation Agreements 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 proposed amended Conservation Agreements are 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 Environmental Assessment 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; or, significant scientific, cultural, or historical resources are 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 Environmental Assessment has indicated that no adverse long-term impacts to listed, proposed, and candidate species are expected to result from the proposed action.

10. Whether the action threatens a violation of Federal, state, or local law or requirements imposed for the protection of the environment.

The purpose of the Conservation Agreements is to promote conservation of the lesser prairie-chicken and dunes sagebrush lizard and the habitat upon which they depend for breeding, feeding, sheltering, and dispersal. Depending on the level of enrollment, consistency of implementing the proposed avoidance and minimization measures, and level of long-term habitat protection realized through implementation of the Conservation Agreements, these agreements would protect the environment, and as such would not violate applicable Federal, state, or local law or requirements imposed for the protection of the environment.

Based upon information contained within the final Environmental Assessment and supporting data in our files, we have determined that this action is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Specifically, although effects to soils; vegetation; wildlife; listed, proposed, or candidate species; and land use and ownership are identified in the Environmental Assessment; all are beneficial. This action is not an action that would typically require the development of an Environmental Impact Statement. Accordingly, preparation of an Environmental Impact Statement on the proposed action is not warranted.

It is my decision to issue the section 10(a)(1)(A) Enhancement of Survival Permit and begin implementation of the amended Candidate Conservation Agreement and Candidate Conservation Agreement with Assurances for the conservation of the lesser prairie-chicken and the dunes sagebrush lizard in southeastern New Mexico.

Deputy Regional Director
Southwest Region

Date

ENVIRONMENTAL ACTION STATEMENT (EAS)

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), as well as other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record. In addition, I have determined that the action of issuance of a section 10(a)(1)(A) Enhancement of Survival permit for the lesser prairie-chicken and dunes sagebrush lizard for the *Amended Candidate Conservation Agreement and Candidate Conservation Agreement with Assurances for the Conservation of the Lesser Prairie-Chicken and Dunes Sagebrush Lizard in Southeastern New Mexico*.

_____ is a categorical exclusion as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1 and no further NEPA documentation is necessary.

XX is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.

_____ is found to have significant effects, and therefore further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare an EIS.

_____ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policies, regulations, or procedures.

_____ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents:

XX Environmental Assessment

XX Conference Opinion

XX Findings Document

Branch Supervisor, Environmental Review Date

Program Lead, Environmental Review Date

Assistant Regional Director,
Ecological Services Date

Deputy Regional Director,
Southwest Region Date