

Appendix 1. Additional Information Supporting the PECE Analysis of the New Mexico CCA/CAA.

A. Habitat Conservation Fund

The Habitat Conservation Fund was established by design in the New Mexico CCA and CCAA (agreements) to remove or minimize threats to the dunes sagebrush lizard (lizard) and/or lesser prairie-chicken (chicken) directly through the reclamation/restoration of degraded habitats or indirectly by funding activities towards adaptive management of the habitats. By enrolling properties under a certificate of participation (CI) or inclusion (CI), the Participant voluntarily committed to provide habitat conservation fees according to a standardized schedule found in each CI or CP (See CI/CP in Section F of this Appendix). The fee schedule includes applies to those activities planned to occur, at least in part, on an enrolled property and would result in surface disturbance (*i.e.*, fragmentation) of habitat for the species. Participants that have enrolled mineral interests (oil and gas companies) are subject to the fee schedule and other conservation measures in their certificates. Because surface-interest only Participants (Ranchers) are limited to controlling activities within the boundaries of their surface ownership/lease, they do not have a fee schedule but instead are held to minimum habitat requirements and remain bound to conservation measures found in their certificates.

Funds contributed by Participants are held and utilized by the Center of Excellence for Hazardous Materials Management (CEHMM, a 501(c)(3) non-profit organization) to accomplish prioritized conservation actions. Under the agreements, no funds will be exchanged between the Parties (FWS, BLM, and CEHMM) and only CEHMM handles the funds. Quarterly, CEHMM publishes and widely distributes a Request for Proposals (RFP) for agencies, universities, conservation organizations, private companies, and others to submit species specific conservation-based projects for funding consideration. A Habitat Conservation Fund Team (Funds Team) consisting of biologists from the Service, BLM, CEHMM, New Mexico Department of Game and Fish, and the New Mexico State Land Office meets regularly to guide project and conservation measure prioritization. Final prioritization of conservation projects is the responsibility of the Federal agencies (Service and BLM). The criteria for determining priority conservation areas include occupancy by the lizard and/or chicken, the potential for occupancy by the lizard and/or chicken (*e.g.*, habitat connectivity, absence of major threats to the species) on a given site, as well as quality and quantity of suitable habitat for both species. The Funds Team coordinates actions with other, ongoing conservation activities (*e.g.*, BLM Restore New Mexico, NRCS Environmental Quality Incentives Program) including in-kind services, to provide the greatest benefit to both species. To date, the habitat conservation fees process has accumulated over \$3 million to accomplish conservation actions for the species. In April 2012 alone, the Funds team reviewed 16 projects and approved funding for 10, committing \$854,000 towards habitat reclamation, restoration, and research towards removing threats to the species.

A comprehensive list of all properties to be enrolled by the company Participant is submitted to and reviewed by BLM (CP) or CEHMM (CI) to ensure the description of the acreage is accurate compared to existing lease data on file. This list is required for enrollment under each certificate and is included in the enrollment package as Exhibit A. At enrollment, the Participant is required to deposit \$2 per acre into a Participant-specific debit account established by CEHMM. The minimum to establish an account for a Participant is \$20,000. Based on the Participant's anticipated level of surface disturbing activity, the Participant has the flexibility to submit more than the minimum requirement. At enrollment, these

funds are due and are immediately available for distribution by the Funds Team. As surface disturbing activities are permitted by BLM or a non-Federal agency (*e.g.*, New Mexico Oil Conservation Division) credit, as described in the fee schedule of the CI/CP, is deducted from the Participant's account. To date, 15 of the 29 enrolled company Participants have accounted for 281 deductions for new well locations for a combined \$2,439,250. (Note: These figures include actions on all enrolled lands, including those outside the lizard range.) If an account becomes depleted, CEHMM alerts the Participant of the status. CEHMM invoices the Participant if further fees have accrued and payment is immediately due. Dates for notifying the company on its status and a process for addressing cases of non-compliance are included in each CI/CP. Any acreage added to the enrollment after its initial execution requires additional funding at \$2/acre and is due at the addition. On the first and second anniversary of the enrollment, acreage enrolled by the Participant is recalculated and the Participant submits the \$2/acre fee (or \$20,000 minimum). After three years of enrollment, the Participant has the flexibility to continue front-loading the debit account or pay fees as surface disturbing activities are permitted. Any credit not debited from a Participant's account remains there for future use and no refunds are allowed.

B. Monitoring

Pre-planning surface disturbing activities is the primary and preferred way to implement compliance. Staff from BLM is responsible for implementing conservation measures described in the CPs and CEHMM is responsible for the CIs. CEHMM is responsible for reporting activities on both types of enrolled lands to the Service. The BLM is responsible for permitting surface disturbing activities on public lands and has the ability to include the agreed to conservation measures in their permitting process while complying with any applicable Federal requirements. BLM staff works with Participants, including in the field, to locate projects out of habitat and route infrastructures to minimize fragmentation. After a project is permitted, BLM reports the location and other details to CEHMM and CEHMM uses the information to calculate a disturbance fee according to the schedule of fees found in the Participant's CP. After the project is implemented, BLM then monitors the project to ensure the development was constructed in compliance with their permit. Any violations are reported to CEHMM for inclusion in their monthly and annual reports. On non-Federal lands, the Participant works with CEHMM similar to how they work with BLM. In fact, CEHMM has trained with BLM in the field on well site staking and right-of-way planning processes. CEHMM has also held meetings with Participants to encourage pre-development planning with CEHMM on non-Federal lands and has placed an emphasis on communicating with Participants so that they have current guidance on how to properly comply with the conservation measures. Through CEHMM's diligence, it has become common for a Participant to contact CEHMM during the planning phase of a project to ask for a review to determine compliance. CEHMM has established permit submission protocols with the Participants so that they can calculate habitat conservation fees. BLM and CEHMM work with Participants to track surface disturbing activities and properly include those in CEHMM's reports to the Service.

The second method of implementing compliance includes utilizing the New Mexico Oil Conservation Division (OCD) website to identify permitted surface disturbing activities. A permit for any new oil or gas well is required from the OCD. This applies to wells proposed on Federal and non-Federal lands. After OCD permits a new well, it posts the location of the approved action on its website. CEHMM accesses the OCD website weekly and performs a query for any actions occurring on enrolled lands. Each site is verified for compliance with the conservation measures by either utilizing their robust Geographic Information System (GIS) or visiting the location in the field. If a site is determined to not be compliant, CEHMM immediately contacts the Participant and works towards resolving the issue prior to surface disturbance. Situations of non-compliance are included in monthly and annual reports. To date, no actions have been deemed non-compliant. Only one permit to drill has been identified as a possible case of non-compliance. The site was investigated in the field by CEHMM and was determined to be in compliance because it was approved to be located outside suitable habitat for the lizard. This action was reported by CEHMM in a monthly report to the Service. Another possible non-compliance case was reported to CEHMM when a BLM inspector reported a rig operating within the restricted time period for the chicken. Upon investigation, the site was located outside where the restriction applied. This instance was also reported to the Service in a CEHMM report.

C. Projects Funded by the Habitat Conservation Fund

The following is a list of projects prioritized and funded by the Habitat Conservation Fund Team in 2010 and 2011 to reduce or eliminate threats to the lizard and/or chicken. Projects funded in 2012 will be included in a future report. The projects are separated into three types: restoration, reclamation, and research.

Restoration

- *Mesquite spray on Weaver ranch* - Three hundred twenty acres were identified to be hand sprayed using herbicide. This project was completed in October 2010 at a cost of \$50,000.
- *Mesquite spray on Milnesand Prairie Preserve-North (TNC)* - Six hundred acres of mesquite have been identified to be sprayed aerially in the spring of 2011. The project cost is estimated at \$20,000.
- *Mesquite spray on Berry ranch* - Twelve thousand acres have been identified to be aerially sprayed using herbicide in spring of 2011. Estimated project is \$100,000.
- *Mesquite spray on Sims ranch* - Two thousand five hundred and sixty acres have been identified to be sprayed aerially using herbicide in spring of 2011. The estimated project cost is \$35,000.
- *BLM pipeline mesquite* - Twelve thousand four hundred and fifty acres have been identified to be sprayed aerially using herbicide in spring 2011. The estimated project cost is \$100,000.
- *Mesquite spray on Pearce ranch* – Mr. Pearce has agreed to hand spray 18,108 acres of mesquite in DSL and LPC on his ranch. The CCA/CCAA fund will provide the cost for chemical and Mr. Pearce has agreed to provide all the labor at his cost. This project will cost of \$8,000.
- *Mesquite spray on BLM ACEC* – BLM has identified 1,390 acres of mesquite, in the Area of Critical Environmental Concern (ACEC), that needs to be hand treated to keep the invasive mesquite from encroaching into suitable DSL habitat. The project cost is estimated at \$83,400. The CCA/CCAA fund will provide \$64,833 and an additional \$10,000 will come from The Nature Conservancy (TNC) who was awarded this grant from the National Fish and Wildlife Foundation (NFWF).
- *Yucca spray on Milnesand Prairie Preserve South (MPP-S)* - Three test plots of 40 acres each will be sprayed aerially to determine effectiveness of chemical treatment to control Plains Yucca. This will be completed to improve habitat for LPC in 2011. The estimated project cost is \$7,500
- *Yucca spray on Milnesand Prairie Preserve South (MPP-S)* – Three test plots of 40 acres each been sprayed aerially to determine effectiveness of chemical treatment to control Plains Yucca. This treatment was also mixed with an ultraviolet dye to determine the effectiveness of traditional spray versus electrostatic application. The other two plots will be completed to improve habitat for LPC in 2012. The estimated project cost is \$7,500.
- *Lehman's Lovegrass control* - Research on the control of Lehman's Lovegrass using chemical application to eradicate or reduce non-native Lehman's Lovegrass. The removal of Lehman's

Lovegrass will improve habitat by reestablishing more beneficial native flora. Chemical application will occur in the spring of 2011. The estimated cost of the project is \$10,000.

Reclamation

- *Windmill removal on Bresenham ranch* - This was phase one of five on the Bresenham ranch where forty acres were fenced off using an electric fence to exclude cattle from grazing on the sprayed area for two years. A windmill tower that is no longer in use was taken down. The company who removed the windmill is waiting on moisture in the area prior to cutting up the mill and removing it. Total project cost is estimated at \$25,000.
- *BLM caliche removal* - Twenty acres of caliche pads and roads have been identified in LPC and SDL habitat to be removed in 2011. The estimated project cost is \$60,000.
- *Slash ML caliche removal* - Thirty-three acres of caliche pads and roads have been identified in LPC and SDL habitat to be removed in 2011. The estimated project cost is \$60,000.
- *Oil spill on Milnesand Prairie Preserve-South (TNC)* - This will be assessed to determine the cost to clean the entire spill. The project cost is estimated at \$1,100.
- *BLM caliche removal* – Twenty acres of caliche pads and roads have been identified in LPC and DSL habitat. This project was funded in August 2011 and is scheduled to be completed at the end of 2011. The estimated project cost is \$60,000.
- *Slash ML (B) caliche removal* – Fourteen acres of caliche pads and roads have been identified in LPC and DSL habitat. This project was funded in August 2011 and is scheduled to be completed at the end of 2011. The estimated project cost is \$49,000.

Research

- Duke University will conduct a two-year study on landscape and conservation genetics of the DSL. The goal of the study is to identify the impacts of natural habitat heterogeneity and human-induced alterations to the landscape on the health and connectivity of populations of the DSL. The cost of the two-year study is estimated at \$157,627.
- Texas A&M University will hold a three day workshop to review ongoing and past biological research on DSL. The goal of this workshop is to synthesize findings from research on DSL and produce a white paper that documents research accomplishments, clarifies how various research projects are complementary, identifies gaps in knowledge, and makes recommendations for important future research to inform policy relevant to conservation of the DSL. Cost of the workshop is \$12,000.
- *SDL and LPC monitoring* - Mike Hill's services will be retained to assist CEHMM in monitoring projects for the SDL and LPC species. Activities will occur between March 2011 and October 2011. The estimated project cost is \$40,000.
- *DSL and LPC monitoring* – The services of a recognized, qualified herpetologist who specializes in DSL ecology will be retained to assist CEHMM in monitoring projects for the DSL and LPC species. Activities will occur between March 2011 and October 2012. The estimated project cost is \$40,000.

- *Feral hog removal in LPC habitat* - Feral hogs are suspect in LPC nest predations. Moreover, feral hogs have notorious reputations for habitat destruction by way of their feeding practices (e.g., “rooting”) and inclination to create wallows. Moreover, these animals are well documented reservoirs for contagious pathogens such as brucellosis and pseudorabies. Phase one of a three phase proposal is the removal of feral hogs from LPC habitat to mitigate further habitat destruction and imminent population expansion. Phase one of the feral hog removal will occur from February 2011 to May 2011. The estimated cost of the project is \$50,000.
- *Feral hog removal in LPC habitat* – Feral hogs are suspected in LPC nest predations. Moreover, feral hogs have notorious reputations for habitat destruction by way of their feeding practices (e.g., “rooting”) and inclination to create wallows. Moreover, these animals are well documented reservoirs for contagious pathogens such as brucellosis and pseudorabies. Phase one of a three phase proposal is the removal of feral hogs from LPC habitat to mitigate further habitat destruction and imminent population expansion. Phase one of the feral hog removal will occur from February 2012 to May 2012. The estimated cost of the project is \$50,000.

D. Enrollments with Acreages in Lizard Habitat

Mineral Enrollments			
CP Number	DSL Acres	CI Number	DSL Acres
CP-OGOP-002	28,703	CI-OGOP-001	1,601
CP-OGOP-003	2,122	CI-OGOP-002	2,729
CP-OGOP-005	21,656	CI-OGOP-003	312
CP-OGOP-006	6,045	CI-OGOP-004	1,115
CP-OGOP-007	355	CI-OGOP-005	297
CP-OGOP-008	2,802	CI-OGOP-007	1,558
CP-OGOP-009	18,236	CI-OGOP-008	174
CP-OGOP-010	1,603	CI-OGOP-009	11,981
CP-OGOP-011	8,021	CI-OGOP-010	5,415
CP-OGOP-012	4,107	CI-OGOP-011	779
CP-OGOP-013	6,151	CI-OGOP-012	341
CP-OGOP-014	1,363	CI-OGOP-013	148
CP-OGOP-015	13,857	CI-OGOP-014	763
CP-OGOP-016	12,712	CI-OGOP-015	5,386
CP-OGOP-017	514	CI-OGOP-016	1,970
CP-OGOP-018	722	CI-OGOP-017	320
CP-OGOP-019	22,839	CI-OGOP-018	3,138
CP-OGOP-020	13,704	CI-OGOP-019	1,793
CP-OGOP-022	35,377	CI-OGOP-020	2,125
CP-OGOP-023	973	CI-OGOP-021	6,422
CP-OGOP-024	24,488	CI-OGOP-022	4,920
CP-OGOP-025	1,279		
CP-OGOP-026	16,158		
CP-OGOP-027	1,176		
CP-OGOP-029	18,001		

NM CCA and CCAA Enrollments in DSL Habitat

Surface Enrollments

CP Number	DSL Acres	CI Number	DSL Acres
CP-GRAZ-001	56882	CI-GRAZ-007	2706
CP-GRAZ-004	6727	CI-GRAZ-013	872
CP-GRAZ-007	40	CI-GRAZ-015	6985
CP-GRAZ-010	30117	CI-GRAZ-016	1339
CP-GRAZ-011	9655	CI-GRAZ-020	12579
CP-GRAZ-012	5820	CI-GRAZ-021	1376
CP-GRAZ-013	4316	CI-GRAZ-022	14356
CP-GRAZ-014	16982	CI-GRAZ-023	2252
CP-GRAZ-015	2282	CI-GRAZ-024	2063
CP-GRAZ-016	6445	CI-GRAZ-025	4752
CP-GRAZ-017	43476	CI-GRAZ-026	1941
CP-GRAZ-018	849	CI-GRAZ-027	7885
CP-GRAZ-019	3865	CI-GRAZ-028	2258
CP-GRAZ-020	26	CI-GRAZ-029	9750
CP-GRAZ-021	5366	CI-GRAZ-030	5179
CP-GRAZ-022	21208	CI-GRAZ-031	4158
CP-GRAZ-023	9253	CI-GRAZ-032	267
CP-GRAZ-024	17260	CI-GRAZ-033	23259
CP-GRAZ-025	511	CI-GRAZ-034	6568
CP-GRAZ-026	1395	CI-GRAZ-035	380
CP-GRAZ-027	9	CI-GRAZ-036	5589
CP-GRAZ-028	2030	CI-GRAZ-037	1071
		CI-GRAZ-038	9676
		CI-GRAZ-039	319
		CI-GRAZ-040	1276

E. Example of Monthly and Annual Reports from CEHMM

**Center of Excellence for Hazardous Materials Management (CEHMM)
CCA Monthly Report
April 2012**

CEHMM received 16 project proposals for LPC and DSL research and/or habitat restoration. Ten of the proposed projects were approved for funding, totaling \$854, 017.83.

Total Weed Control began work on the eradication of 1,400 acres of mesquite for the ACEC project that was funded at the August 2011 ranking meeting.

CEHMM conducted one LPC survey on the Luman Ranch in April and detected two leks, possibly a third. We also conducted one LPC survey on the McCasland Ranch where no leks were detected. LPC surveys will continue in May.

CEHMM conducted onsite at four Concho wells in DSL habitat on state trust lands. Concho will be moving three of these wells out of the dunes (exact footages yet to be determined by Concho) and will not be drilling the fourth.

CEHMM marked ½ mile of fences on the Luman Ranch.

CEHMM met with representatives from both Apache and EOG to discuss the CCA and the conservation measures each company needs to implement to be in compliance with the agreements.

CEHMM also attended an EOG plan of development meeting at BLM to discuss EOG's future work.

CEHMM developed an outline for a monitoring RFP and sent this to the CCA/A group to determine which aspects of the outline should take priority for a future RFP.

Ranches Enrolled: 0 Ranches Pending Enrollment: 1

Acres Enrolled for April Acres Pending in April

CCA	0	CCA	5,833
CCAA	0	CCAA	53,215
Both	0	Both	59,048

Total Acres Enrolled in 2012 Total Acres Enrolled for Entire Project

CCA	33,988	CCA	816,246
CCAA	2,431	CCAA	715,716
Both	36,419	Both	1,531,962

Industry Companies Enrolled: CCA-0/CCAA-0 Industry Companies Pending: CCA-0/ CCAA-0

Acres Enrolled for April **Acres Pending in April**

CCA	0	CCA	0
CCAA	0	CCAA	0
Both	0	Both	0

Total Acres Enrolled in 2012 **Total Acres Enrolled for Entire Project**

CCA	0	CCA	549,997
CCAA	248,000	CCAA	495,445
Both	248,000	Both	1,045,442

Reclamation

Acres Treated in April

Acres in Progress

Caliche Removal and Reseeding	0	Caliche Removal and Reseeding	0
Mesquite	0	Mesquite	1,400
Yucca	0	Yucca	0

Acres Funded

Total Acres in 2012

Caliche Removal and Reseeding	0	Caliche Removal and Reseeding	35
Mesquite	4,400	Mesquite	0
Yucca	80	Yucca	0
		Lehmann's Lovegrass	0

Total Acres for Entire Project

Mesquite	29,335
Lehmann's Lovegrass	12
Yucca	80
Caliche Removal and Reseeding	88

Research

Duke University is investigating the effects of landscape structure and fragmentation on population connectivity of DSL.

Well Deductions

Deductions for April

Total	\$284,000
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Total Deductions for 2012

Apache	\$270,000
BOPCO	\$59,000
Burnett	\$75,000
Cimarex	\$55,000
COG	\$271,000
Conoco	\$210,000
Devon	\$87,500
Fasken	\$15,000
Mewbourne	\$39,000
OXY	\$10,000
SandRidge	\$35,000
Three Rivers	\$20,000
Yates	\$19,000
HEYCO	\$20,000
Total	\$1,185,500

Total Deductions for Entire Project

Apache	\$270,000
BOPCO	\$129,000
Burnett	\$142,500
Cimarex	\$55,000
COG	\$1,289,750
Conoco	\$290,000
Devon	\$87,500
Fasken	\$30,000
HEYCO	\$20,000
Marbob	\$12,500
Mewbourne	\$39,000
OXY	\$10,000
SandRidge	\$35,000
Three Rivers	\$20,000
Yates	\$19,000
Total	\$2,449,250

CEHMM Candidate Conservation Agreements for the Lesser Prairie-Chicken and Dunes Sagebrush Lizard

2011 Annual Report



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Candidate Conservation Agreements for the Lesser Prairie-Chicken and Dunes Sagebrush Lizard 2011 Annual Report

INTRODUCTION

The lesser prairie-chicken (*Tympanuchus pallidicinctus*) (LPC) is a prairie grouse species native to the southern Great Plains, including parts of Colorado, Kansas, New Mexico, Oklahoma, and Texas. The dunes sagebrush lizard (*Sceloporus arenicolus*) (DSL), also called sand dune lizard, is a lizard species native to a small area of southeastern New Mexico and west Texas. As candidate species, both have been ruled warranted for listing as threatened or endangered by the U.S. Fish and Wildlife Service (FWS) but precluded from listing due to other priority species.



Figure 1. Lesser Prairie Chickens

In the event that either species is listed as threatened or endangered under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. § 1531, et seq.), the listing triggers both a regulatory and a conservation responsibility for federal, state, and private landowners. These responsibilities stem from Section 9 of the ESA that prohibits “take” (i.e., harass, harm, pursue, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct) of listed species. In addition to the Section 9 prohibitions, federal agencies must ensure that their actions will not jeopardize the continued existence of the listed species.

On December 14, 2010, the FWS posted the proposed listing of the DSL in the national register ([75 FR 77801](http://www.fws.gov/75FR77801)) starting the twelve month time frame in which they would make a decision to either list the species as threatened or endangered, to not list the species, or to file a six month extension to allow for more information to be collected. On December 5, 2011, the FWS posted in the federal register a six month extension on the listing decision for the DSL. FWS now has until June 5, 2012, to make the decision whether to list the DSL as threatened or endangered or not list the DSL. The public comment period was reopened and any new data that has become available may be sent to the FWS to help in the decision making process. The public comment period closes on January 19, 2012.



Figure 2. Dunes Sagebrush Lizard

For several years the FWS, the Bureau of Land Management (BLM), and the Center of Excellence for Hazardous Materials Management (CEHMM) worked together to develop a candidate conservation agreement to address the needs of the LPC and the DSL as well as the impacts a listing could have on land users. Landmark legal agreements were signed by federal and state authorities on December 8, 2008. These agreements allow FWS, BLM, and CEHMM to work in cooperation and consultation with private land owners and industry in support of conservation measures.

CANDIDATE CONSERVATION AGREEMENTS

The Candidate Conservation Agreement (CCA) and its companion Candidate Conservation Agreement with Assurances (CCAA) are set up to provide a mechanism to conserve LPC and DSL habitats while the species are still in candidate status. The CCA/CCAA will accomplish:

- Development, coordination, and implementation of conservation actions which reduce and/or eliminate known threats to the LPC and DSL in New Mexico on federal, state and private surface and minerals;
- Supporting ongoing efforts to re-establish and maintain viable populations of both species in currently occupied and suitable habitats;
- Encouraging development and protection of suitable LPC and DSL habitat by giving Participating Cooperators incentives to implement specific conservation measures.

Under the CCA, federal lessees, operators, or permittees that join by voluntarily signing a Certificate of Participation (CP) receive a high degree of certainty that additional restrictions would not be placed on their otherwise legal activities if either species is listed.

The companion CCAA provides incentives for voluntary conservation of species-at-risk on private and state lands. Under the CCAA, a property owner voluntarily commits to implement specific conservation measures on non-federal lands for the species by signing a Certificate of Inclusion (CI). Under the CCAA, if either species is listed, private landowners receive assurances that additional restrictions would not be placed on their otherwise legal activities. Without regulatory assurances, landowners may be unwilling to initiate conservation measures for these species.

In both cases, signing up under the CCA is voluntary. Through enactment of a voluntary program, enrollees can elect to continue participation at their discretion. This translates into enrollees' prerogative to opt out if they so desire. Leaving participation, however, eliminates the programmatic safeguards that CCA/CCAAs provide.

As the CCA permit holder, CEHMM issues CPs and CIs to participating cooperators. CEHMM is also responsible for implementing, monitoring, and reporting on projects completed with CCA/CCAA funds. CEHMM is a 501(c)(3) not-for-profit corporation based in Carlsbad, New Mexico. CEHMM participation allows for a federally approved, independently audited financial management system to provide for fund management and administration. The ability of CEHMM to expedite contracts without cumbersome bureaucratic obstacles hastens project evolution in addition to allowing for a higher percentage of funding to be obligated directly to project development and execution.

Each certificate (CP or CI) addresses additional mitigation measures a participating cooperator agrees to implement on lands described in their certificate. The certificate also places conditions on activities (i.e., drilling permits, rights-of-way, grazing, seismic activity, etc.) that will be required on the cooperator's lands or minerals.

For oil and gas companies, their certificate requires funds to be contributed to assist in restoration or protection of habitat for the LPC and/or DSL. Based on the amount of contributed funds available, the BLM and FWS work cooperatively with other agencies to determine which habitat improvement and research projects are of the highest priority to benefit one or both of the species habitats (see current Project Proposal Form in Appendices A and C and the Project Ranking Sheet in Appendices B and D). Using available funds, the team of biologists ranks the proposals and selects the highest priority projects

that improve habitat and reduce risk to either species (regardless of land ownership). CEHMM then uses the approved list and contracts with appropriate parties to implement the projects.

Government and private entities have been vigilant in the structure and performance of the candidate conservation programs by encouraging and accommodating public input by way of public forums convened in strategic locales. These are typically in geographic regions that allow convenient attendance by participants either directly affected or with particular interest in the species of concern. Frequently asked questions (FAQs) from these forums provide an accurate indicator of public opinion and interest. The FAQs are provided in Appendix E.

The map in Figure 3 shows the seven counties covered under the CCA and CCAA. These can be divided into three general surface ownership categories: federal, state, or private. Specifically, the BLM has surface ownership of approximately 3 million acres (19%), the state of New Mexico has 2.8 million acres (19%), and private landowners have 9 million acres (59%). The BLM also has management responsibilities for an additional 10 million acres of mineral estate where the surface is either private or state owned. The U.S. Forest Service, National Park Service, and FWS combined have less than 3% of the lands within the covered area.

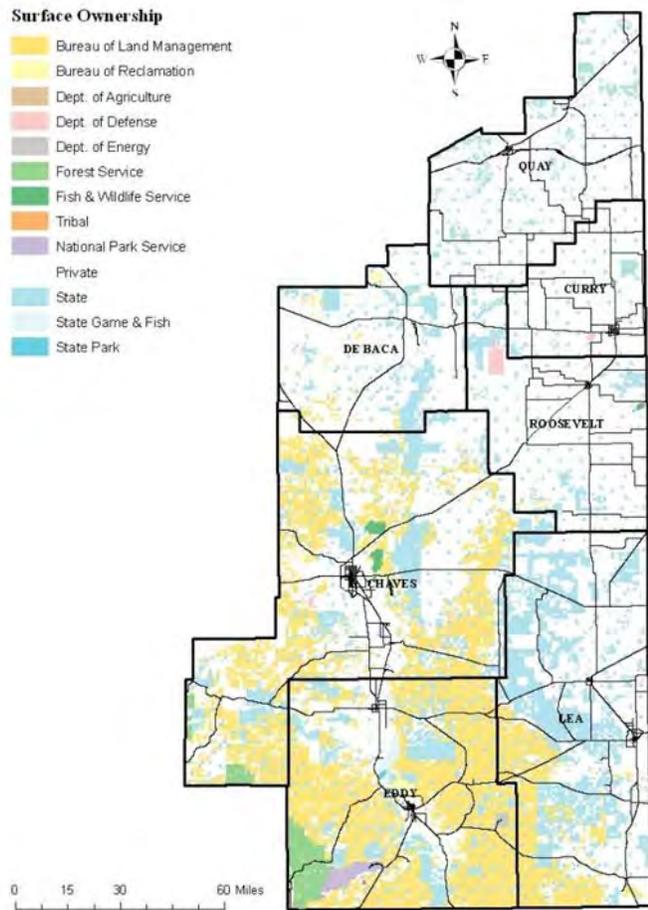


Figure 3. Map of Covered Area

PARTICIPATING COOPERATOR’S NEED FOR THE CCA/CCAA

If the LPC and/or DSL become listed as a federally endangered or threatened species, agricultural interests are concerned about restrictions that may be imposed on them. The ESA authorizes the FWS to prohibit activities on lands that may harm listed species. Activities that could be affected are duration or intensity of livestock grazing or stocking rates on rangeland, brush control to enhance livestock carrying capacity, and conversion of native rangeland.

Similarly, the oil and gas industry is concerned because they could experience increased regulatory burdens as well. For example, if a species is listed, it could add additional months to the process of approving development of a new well. Oil and gas development occurs throughout part of the range of the LPC/DSL in southeastern New Mexico.

PROCESS OF ENROLLING

To enroll under a CCA/CCAA, an interested rancher initially contacts CEHMM, or one of the cooperating agencies. Once the initial contact is made, CEHMM and the interested landowner review maps of the property and determine where the conservation lands are likely to be and what other activities are occurring on the property. Next, CEHMM and the interested landowner meet with the FWS and BLM to objectively and scientifically determine what conservation role the property may provide. A draft CI/CP is written that documents the conservation measures the interested landowner will commit to implementing. Once the landowner signs the CI/CP, CEHMM signs it and forwards it to BLM (for CPs only) and FWS for their concurrence. Once the FWS signs the certificate, the landowner becomes a participant. Conservation measures identified on the certificate go into effect once the property is enrolled. Participating landowners who enroll under the CCA/CCAA must agree to a list of conservation actions detailed in their respective CP (for federal operations) and in their CI (for state and private lands). The following conservation actions are common to all participants, as applicable, based upon species and species habitat present on the enrolled properties (CCA for LPC and DSL 2008):

1. Cooperate with CEHMM in completion of the CP. After the Participating Landowner agrees to implement all conservation measures agreed upon by the BLM and FWS and/or designee, the Participating Landowner will sign the CP. The CP becomes effective upon the last concurrence signature of BLM, FWS, or CEHMM. The CCA is valid until the end of the agreement term, or until the end of their participation in this CCA as documented in the CP, either through expiration or termination.
2. Improve or maintain conservation lands as suitable LPC and/or DSL habitat for the “Duration of Conservation” in the CP. Lands can be enrolled under the CCA and the permit whether or not the Participating Landowner receives funding from CEHMM or other sources. Technical assistance is available from the Natural Resources Conservation Service (NRCS) and FWS to develop plans to improve and maintain habitat for the LPC and/or DSL. Financial assistance for the implementation of these plans may be available through conservation programs of the U.S. Department of Agriculture’s National Food Security Act of 1985, as amended (Farm Bill) and/or the FWS’s Partners for Fish and Wildlife Program (PFW) depending on annual funding. The CP will identify, among other things, suitable LPC/DSL habitat to be maintained on the conservation lands and the duration that this habitat will be maintained.
3. Adhere to stipulations on surface activities required by the BLM Special Status Species Resource Management Plan Amendment (BLM 2008) on oil and gas lease developments on enrolled lands at a minimum.
4. Adhere to rangeland and grazing stipulations required by the BLM Special Status Species Resource Management Plan Amendment (BLM 2008) at a minimum for ranch operations.
5. Allow CEHMM, FWS, and/or NMDGF personnel, with prior notification, to survey enrolled lands for the presence of LPCs and/or DSLs and for habitat suitability for these species.
6. Allow CEHMM personnel or their designees access to the enrolled lands for purposes of monitoring LPC and/or DSL populations and habitat.

7. Allow CEHMM personnel or their designees access to the enrolled lands for purposes of compliance monitoring of conservation commitment.
8. Use herbicides for shinnery oak management only when habitat goals cannot be achieved by other means, including grazing system management.
 - a. No herbicide treatments will be applied in dune complexes (NRCS sand hills ecological sites) and corridors between dune complexes. Maintain an application buffer around dune complexes of 100 m to ensure dunal stability.
 - b. Prohibit tebuthiuron spraying within 500 m of DSL habitat. In addition, for DSL, prohibit spraying in dune complexes or within corridors, which connect dune complexes that are within 2,000 m of each other. All application of tebuthiuron will be by a licensed applicator and in accordance with the New Mexico supplemental label for wildlife habitat.
 - c. In conducting such treatments, the goal will be to temporarily reduce shinnery oak competition with grasses, allowing grass cover to increase naturally. Herbicides should be used at dosages that would set back (defoliate) shinnery oak, not kill it.
 - d. Large block and linear application of herbicides will be avoided. Application should follow the natural patterns on the landscape such that only patches needing treatment are treated.
 - e. For LPC, herbicide treatment should not be applied around large oak motts, and within 1.5 miles of active lek sites.
 - f. Post-treatment grazing management is essential to success. Grazing will be deferred through at least two consecutive growing seasons after treatment. If vegetation response to treatment has been hindered due to drought or other factors additional deferments to ensure success of the treatment may be required.
 - g. Experimental treatments outside these guidelines may occur with the approval by FWS. Experimental treatments must be part of a quantitative research design to study vegetation response, viability of shinnery oak, drift, sub-surface spread, the interaction of herbicide treatment and/or grazing management and the response of LPC and DSL to various treatments.
9. For livestock ranches, implement grazing management plans intended to move towards meeting specific habitat goals for the LPC and/or DSL as defined in the Collaborative Conservation Strategies for the Lesser Prairie-Chicken and Sand Dune Lizard in New Mexico (LPC/DSL Working Group 2005) on individual ranches. This may include adjustment of stocking rates, rest-rotation patterns, grazing intensity and duration, avoidance of nesting areas during nesting season, and contingency plans for varying prolonged weather patterns including drought.
10. No leasing of lands within the Participating Landowner's designated Conservation Lands to wind power development (including any appurtenant turbine towers, roads, fences, or power lines).
11. No leasing any lands within the Conservation Lands to oil and gas development (including roads, fences, or power lines), where the private land holder has discretion.
12. No conversion of Conservation Lands to crop production (sodbusting) or development as part of maintaining existing LPC and/or DSL habitat.
13. Avoid construction of new roads. If unavoidable, route and construct new roads, pipelines and power lines outside of occupied and suitable, unoccupied shinnery dune complexes as delineated by the FWS, BLM, NMDGF, and/or designees.

14. Provide or allow provision for escape ramps in all open water sources.
15. Install fence makers along fences that cross through occupied habitat within 2 miles of an active lek.
16. Avoid well pad construction within 1.5 miles of an active lek, (as defined in BLM 2008 and/or NM LPC/DSL Working Group 2005) unless reviewed and approved by CEHMM and FWS.
17. Initiate control of shinnery oak only after coordinating with and gaining approval from CEHMM and FWS concerning control procedures so they will not be detrimental to LPC and/or DSL.
18. Any trenches dug on enrolled property will have escape ramps placed at the ends and approximately every 500 feet to allow for LPC/DSL escape. Trenches may alternatively be covered to avoid entrapment and should be inspected three times a day.
19. Provide information on annual basis to CEHMM on implementation of conservation commitment, observations of LPC/DSL on enrolled property, and any mortality of either species observed.

In addition to the conservation actions described above, the enrollee must also agree to the following conservation measures:

Lesser Prairie-Chicken

- Install escape ramps in all open water sources.
- Remove invasive brush (non-shinnery oak).
- Maintain current grazing practices to continue to benefit LPC and livestock operation.
- Remove legacy well markers.
- Reseed or inter-seed disturbed areas.
- Allow LPC surveys.
- Install fence markers within two miles of an active lek.

Sand Dune Lizard

- Allow DSL surveys.
- No herbicide treatments will be applied in dune complexes (NRCD sand hills ecological sites) and corridors between dune complexes. Maintain an application buffer around dune complexes of 100 m to ensure dunal stability.
- Prohibit tebuthiuron spraying within 500 m of DSL habitat. In addition, for DSL, prohibit spraying in dune complexes or within corridors, which connect dune complexes that are within 2,000 m of each other. All application of tebuthiuron will be by a licensed applicator and in accordance with the New Mexico supplemental label for wildlife habitat.
- Remove unnecessary development (non-functioning power lines, fences etc.) from dunes, as funding is available.

INDUSTRY

Companies who sign up under the CCA/CCAA agree to a list of conservation measures detailed in their respective CP (for federal operations) and CI (for state and private operations). These measures include:

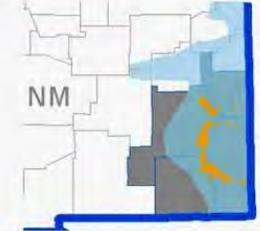
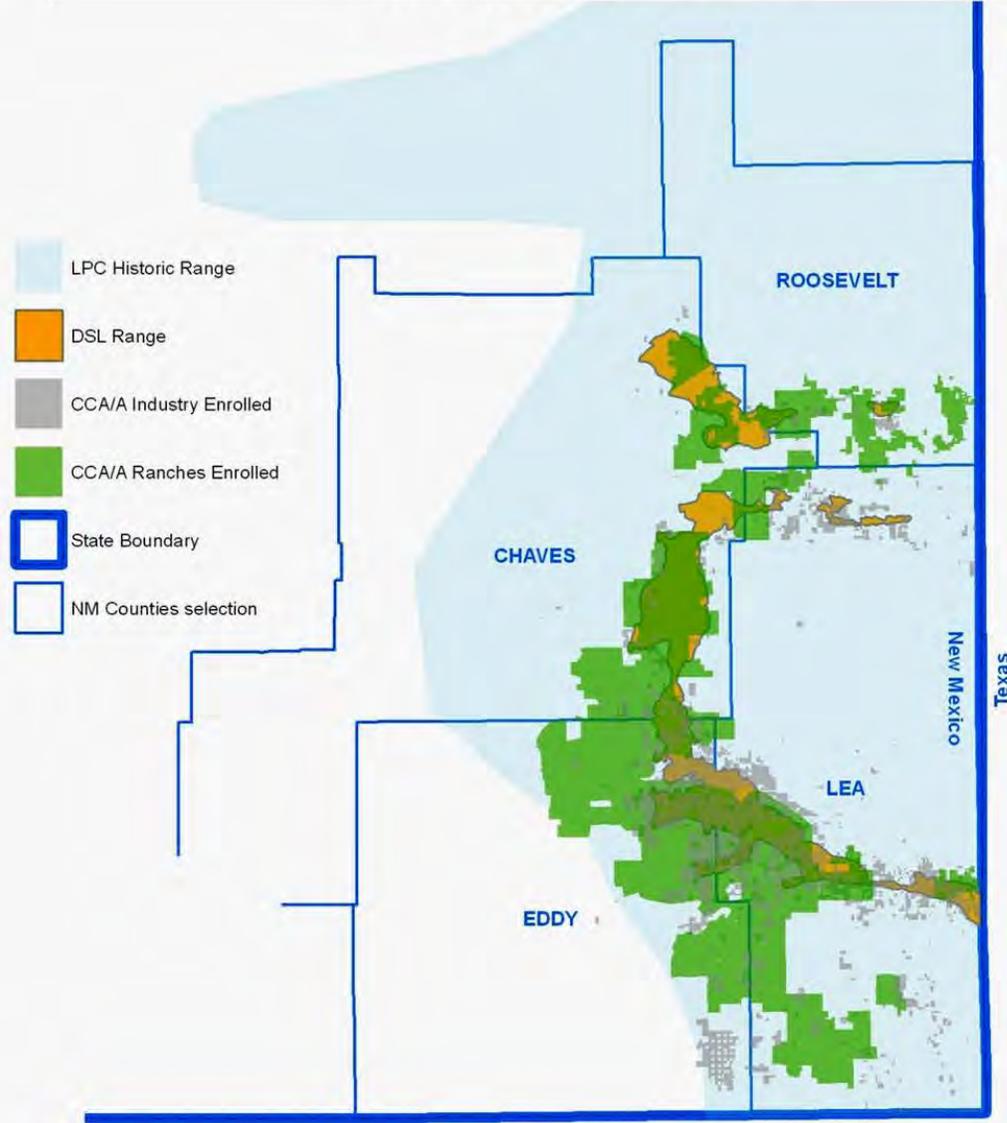
1. To the extent determined by the BLM representative at the plan of development stage, all infrastructures supporting the development of a well (including roads, power lines, and pipelines) will be constructed within the same corridor.
2. On enrolled parcels that contain inactive wells, roads and/or facilities that are not reclaimed to current standards, the Participating Cooperator shall remediate and reclaim their facilities within three years of executing the CP, unless the Cooperator can demonstrate they will put the facilities back to beneficial use for the enrolled parcel(s). If an extension is requested by the Cooperator, they shall submit a detailed plan (including dates) and receive BLM approval prior to the three year deadline. All remediation and reclamation shall be performed in accordance with BLM requirements and be approved in advance by the Authorized Officer.
3. Allow no new surface occupancy within 30 meters of areas designated as occupied or suitable, unoccupied DSL dune complexes or within delineated shinnery oak corridors. The avoidance distance is subject to change based on new information received from peer reviewed science.
4. Utilize alternative techniques to minimize new surface disturbance when required and as determined by the BLM representative at the plan of development stage.
5. Provide escape ramps in all open water sources under the Participating Cooperator's control.
6. Install fence markings along fences owned, controlled, or constructed by the Participating Cooperator that cross through occupied habitat within two miles of an active LPC lek.
7. Bury new power lines that are within two (2) miles of LPC lek sites active at least once within the past five years (measured from the lek). The avoidance distance is subject to change based on new information received from peer reviewed science.
8. Bury new power lines that are within one (1) mile of historic LPC lek sites where at least one LPC has been observed within the past three years (measured from the historic lek). The avoidance distance is subject to change based on new information received from peer reviewed science.
9. Allow no 24-hour drilling operations or 3-D geophysical exploration during the period from March 1st through June 15th, annually, on lands enrolled by the Participating Cooperator that are located within Zone 1. Other activities that produce noise or involve human activity, such as geophysical exploration (other than 3-D operations) and pipeline, road, and well pad construction will be allowed during these dates except between 3:00 am and 9:00 am. The 3:00 am to 9:00 am restriction will not apply to normal, around-the-clock operations, such as venting, flaring, or pumping, which do not require a human presence during this period. Normal vehicle use on existing roads will not be restricted. Exceptions to these requirements would be considered in emergency situations, such as mechanical failures, but would not be considered for routine planned events.
10. Noise abatement during the period from March 1st through June 15th, annually. Noise from facilities (e.g., pumpjack, compressor) under the control of the Participating Cooperator that service enrolled lands located within Zone 1 will be muffled or otherwise controlled so as not to exceed 75 db measured at 30 ft. from the source of the noise.

11. Limit seismic exploration to area outside of occupied and suitable shinnery dune complexes to protect Sand Dune Lizard habitat.
12. Submit a routine monitoring and schedule of inspection for oil, gas and produced water pipelined and facilities to ensure accidental pollution events are avoided in sensitive habitats for DSL.
13. Inside the DSL polygon as depicted in the BLM SSS-RMPA (BLM 2008), the following will apply:
 - a. Any trench left open for eight (8) hours or less is not required to have escape ramps; however, before the trench is backfilled, an agency/CEHMM approved monitor shall walk the entire length of open trench and remove all trapped wildlife and release them at least 100 yards from the trench.
 - b. For trenches left open for eight (8) hours or more, earthen escape ramps (built at no more than a 30 degree slope and spaced no more than 500 feet apart) shall be placed in the trench. The open trench shall be monitored each day by an agency/CEHMM approved monitor during the following three time periods: (1) 5:00 a.m. to 10:00 a.m., (2) 11:00 a.m. to 2:00 p.m., and (3) 3:00 p.m. to sunset. All trapped wildlife shall be released at least 100 yards from the trench.
 - c. One agency/CEHMM approved monitor shall be required for every mile of open trench. A daily report (consolidate if more than one monitor) on the wildlife found and removed from the trench shall be provided to CEHMM (email acceptable) the following morning.
 - d. This stipulation shall apply to the entire length of the project in the DSL habitat regardless of land ownership.
14. Management recommendations may be developed based on new information received from peer reviewed science to mitigate impacts from H₂S and/or the accumulation of sulfates in the soil related to production of gas containing H₂S on the DSL and LPC. Such management recommendations will be applied by the Participating Cooperator as Conservation Measures under this CI in suitable and occupied DSL/LPC habitat where peer-reviewed science has shown that H₂S levels threaten the LPC/DSL.
15. Upon the plugging and subsequent abandonment of a well within Zone 1, the well marker will be installed at ground level on a plate containing the pertinent information for the plugged well unless otherwise precluded by law or private surface owner.

Through the implementation of these conservation measures, oil and gas wells are often relocated to limit the impacts to the habitat and species. Infrastructure, such as pipelines, roads, and power lines, are also assessed for their placement to limit further habitat fragmentation. As wells are drilled, they will be monitored to ensure that the conservation measures identified as terms and conditions of the pertinent certificate are followed.

When an oil and gas company becomes a participating cooperator, their certificate requires them to establish a habitat conservation account, which is based on an amount per acre enrolled for a minimum of three (3) years. Each time the oil and gas cooperator disturbs enrolled land, their habitat conservation account is debited based on the amount of area disturbed. CEHMM is responsible for maintaining each cooperator's habitat conservation fund account and for debiting it when appropriate. Habitat conservation fees generated from activity on enrolled parcels (and for off-parcel activities needed to develop the enrolled parcels) are then used by the team that prioritizes proposals to improve habitat.

Total CCA/CAA Enrollments



The New Mexico LPC/DSL Candidate Conservation Agreement and Candidate Conservation Agreement with Assurances	
Total Mineral Enrollment:	815,890 Acres
CCA Mineral Enrollment:	570,850 Acres
CAA Mineral Enrollment:	245,040 Acres
Total Rangeland Enrollment:	1,523,573 Acres
CCA Rangeland Enrollment:	817,312 Acres
CAA Rangeland Enrollment:	706,261 Acres

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Figure 4. CCA/CAA Enrollments

CCA/CCAA RANCHERS

In 2011, twenty-five ranches enrolled 964,334 acres of diverse land ownership which include state, private, and federal allotments. The federal allotments (CCA) constitute 557,641 of these acres. The state and private lands (CCAA) comprise the remaining 406,693 acres. Thirty-nine ranches have enrolled in the CCA/CCAA to date, 811,356 acres of federal allotments (CCA) have been enrolled, and 708,499 acres of state and private lands (CCAA) have been enrolled for a total of 1,519,855 acres in DSL and LPC habitat. Refer to Table 3 for an itemization of acres among enrolled ranches.

CCA/CCAA INDUSTRY

Twenty-four oil and gas companies have enrolled 408,638 federal acres (CCA) in LPC and DSL habitat in 2011. Bringing the total enrolled federal acres to 557,218. A total of twenty-four oil and gas companies have enrolled 250,393 state and private acres (CCAA) in LPC and DSL habitat in 2011. These companies have leases that span the area of concern for both LPC and DSL habitat with operations in Lea, Eddy, Chaves, and Roosevelt Counties. The total acres enrolled by oil and gas companies in LPC and DSL habitat total 807,611 acres. Refer to Table 3 for the breakdown of acres among the enrolled companies.

PROJECTS

In January 2011 and August 2011, the CCA/CCAA project committee met to determine which projects were to be funded. Projects were separated into two groups, reclamation and research. Reclamation projects are those that improve habitat for the species, i.e., caliche removal and reseeding. Research projects are any projects that help improve the knowledge of the species and their habitats. Project proposals are submitted to the project committee, which ranks each proposal using a system developed by the committee (see Appendices A, B, C, and D). Both types of proposals have a unique ranking system. After the proposals are evaluated and scored, the committee re-convenes to assess the benefits of each proposal regarding the two species of concern. This methodology provides an objective, non-biased system of evaluation by biologists from different agencies.

MESQUITE CONTROL

Mesquite (*Prosopis spp.*) is universally accepted as an invasive and highly competitive species that readily invades and may eventually predominate landscapes that have sustained severe overgrazing or other significant disturbance. Due to its resilience and persistence, mesquite can easily outcompete more beneficial plants such as grasses, forbes, or other less invasive and more desirable brush species such as four-winged saltbush (*Atriplex canescence*). By removing mesquite, native grasses have the opportunity to become re-established. This will provide suitable habitat for nesting, forage, and cover for the LPC. CEHMM adopted two primary methods for addressing mesquite encroachment: hand spraying and aerial application. Although slightly more expensive and restrictive, some participants elect to request hand spray for the following reasons:

- Hand spraying can be performed year-round. This provides land managers the ability to respond to requests any time of year and is not constrained by seasonal leaf emergence as required with aerial applications.
- Hand spraying has no negative impacts on non-target plants within a defined area. This alleviates any inadvertent harmful effects on non-target species from direct application or spray drift. BLM has successfully used hand sprays in response to the re-emergence of salt cedars in previously treated areas along the Pecos River corridor.

- Hand sprays can be used effectively in near proximity to other sensitive areas such as occupied buildings, agricultural crops, or near resident livestock.
- Hand sprays are so precise that mesquites occupied by resident wildlife including occupied (protected) bird nests can be protected by way of avoidance. This also applies to any sensitive insects, reptiles, mammals, or protected plants in the near proximity.
- Hand sprays are effective. As illustrated in this report, initial observations indicate that hand sprays are >95% effective. This is evidenced by chlorosis (yellowing) in leaves and other visible signs of stress within only days of prescribed treatments.
- To date, hand spraying has been a method of choice for the first round of applicant (enrollee) requests.

Benefits of aerial applications include:

- Aerial applications are less expensive than hand treatments. Costs typically range from \$20-\$40/acre for electrostatic application in comparison to approximately \$80/acre for hand treatments. Contrary to the per acre cost for hand sprays to date, the costs for requisite support personnel and administrative services in support of aerial application are not included in the per acre cost.
- Aerial applications, although constrained by seasonal status of the target plant species, encompass much larger expanses of landscape in less time, with highly effective results.
- Electrostatic technology charges the spray particles as they leave the spray boom on the airplane. This charge causes the spray particles to be attracted to the plants and allows for more of the chemical to contact the target species.

CEHMM, along with its collaborators, treated 27,610 acres in 2011 in support of invasive brush removal in LPC habitat. To date there has been 27,935 acres treated with CCA/CCAA funds. Mesquite control of this nature improves habitat for LPC and mitigates mesquite encroachment into dunal areas that may be suitable for DSLs.

YUCCA SPRAY USING FLUORESCENT DYE

In October 2011, CEHMM conducted experimental aerial sprays with different rates and different applications of chemicals in an effort to control *Yucca* sp. in LPC habitat. A fluorescent dye was added to the chemical to allow photographs to be taken of the plants using a black-light at night. Two of the plots were sprayed using traditional methods, but at different rates. The first application using the traditional method was sprayed at five gallons per acre rate, which is the accepted rate for this type of application. The second application was sprayed at a one gallon per acre rate, this rate was done to compare one gallon to one gallon application. The third application was sprayed using electrostatic technology at a one gallon per acre rate, this technology charges the spray particles as they leave the plane. This charge causes the chemical to be attracted to plants, which allows more of the chemical to reach target species as opposed to falling directly to the ground. After all three applications were completed and nightfall came, photos were taken of the three plots to allow for comparisons to be made between traditional and electrostatic spray methods. Photos show that the particles that are sprayed using the traditional methods only cover one side of the plant. The particles sprayed using the electrostatic method cover all sides of plants, even the underside of leaves. By spraying chemical using the electrostatic method the rate of application can be lowered which means less chemical in the environment and cheaper spray costs to the consumer.



Figure 5. Five Gallon Per Acre Yucca Spray - Front View

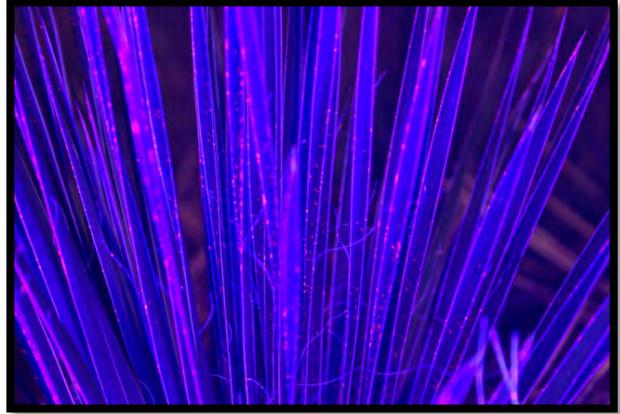


Figure 6. Five Gallon Per Acre Yucca Spray - Back View



Figure 7. One Gallon Per Acre Electrostatic Yucca Spray

ESCAPE RAMPS

In 2007, the National Wildlife Federation (Di Sylvestro 2007) published concerns regarding the serious threat of livestock watering tanks, on indigenous wildlife, throughout the arid southwest. Additionally, the National Audubon Society, North American Grouse Partnership, and the U.S. Fish and Wildlife Service have expressed similar concerns regarding wildlife mortalities associated with livestock tanks. This threat is not exclusive to birds, but also to insects and small mammals such as bats. Once an animal falls into a livestock tank while attempting to access water, they inherently struggle to the sides of the tank in an attempt to escape. Once a ramp is installed, it provides an available mechanism to facilitate the entrapped animals' escape. CEHMM escape ramps are modeled after proven BLM standard ramp design. In order to increase traction for an entrapped animal, and extend the ramp longevity, they are coated with a stable, non-toxic polymer textured material (similar to that sprayed on truck beds as liners) prior to installation. To date, 148 escape ramps have been installed in water troughs on ranches that have signed CIs (CCAA) and CPs (CCA). CEHMM will continue to install them on the ranches with LPC and DSL habitat.

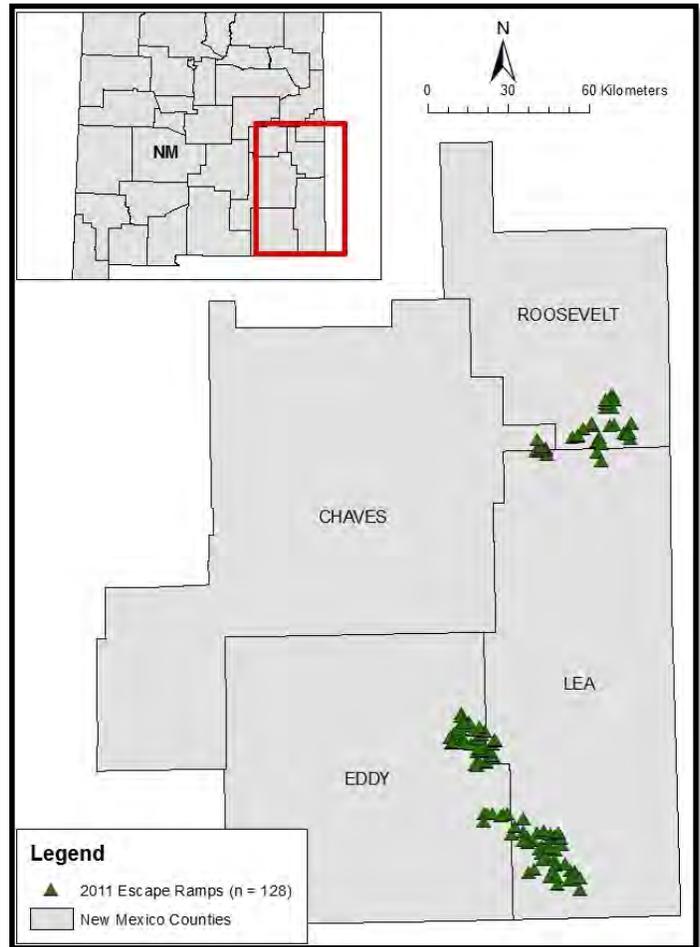


Figure 8. Location of Escape Ramps Installed in 2011



Figure 9. Escape Ramps

SHINNERY OAK RESTORATION

In 2010, Dr. Robert Cox with Texas Tech University submitted a proposal to the ranking committee to develop possible techniques to restore shinnery oak in dunes that have been disturbed by oil and gas operations, as well as pastures that have been sprayed by Tebuthiuron. Dr. Cox has travelled to several sites in southeastern New Mexico to better understand the habitat physiology and what can be done to re-establish, sustain, and possibly improve the shinnery oak dune ecology. Dr. Cox's work is ongoing with a report to be submitted to the CCA/CCAA team in 2012.

CALICHE REMOVAL AND RESEEDING

Oil and gas well pads and roads are constructed of caliche that is excavated from caliche pits in near proximity to the area where the pad and roads are to be built. These pads and roads fragment LPC and DSL habitat. By removing the caliche pads and roads the fragmentation in LPC and DSL habitat is removed and the habitat will have a chance to return to the continuous landscape that it was prior to the disturbance. Reseeding in the area where the caliche has been removed helps speed up the process of rehabilitating the disturbed areas. To date CEHMM has removed and reseeded fifty-three acres of caliche.

MITIGATION OF IMPACTS TO HABITAT

In accordance with the CCA and the BLM RMPA (BLM 2008), the BLM relocated 183 well pads, and 3 tank battery locations, re-routed 39 caliche roads, 21 pipelines, and 12 overhead power lines in 2011. Biologists perform on-site inspections in areas where surface disturbances have been proposed to determine the best location for these disturbances. Through these relocations and re-routes the impacts that oil and gas activities have on DSL and LPC have been minimized.

FUNDING

CEHMM received \$1,846,990.90 in 2011 for funding through industry's participation in the CCA/CCAA program. Each time a surface disturbance occurs, the account of the responsible company is debited accordingly. A surface disturbance can include construction of a well pad, installation of power lines and pipelines and geophysical operations.

FUNDED PROJECTS

Funded projects are as follows:

- *DSL Research* – Duke University will conduct a two-year study on landscape and conservation genetics of the DSL. The goal of the study is to identify the impacts of natural habitat heterogeneity and human-induced alterations to the landscape on the health and connectivity of populations of the DSL. The cost of the two-year study is estimated at \$157,627.
- *DSL Research* – Texas A&M University will hold a three day workshop to review ongoing and past biological research on DSL. The goal of this workshop is to synthesize findings from research on DSL and produce a white paper that documents research accomplishments, clarifies how various research projects are complementary, identifies gaps in knowledge, and makes recommendations

for important future research to inform policy relevant to conservation of the DSL. Cost of the workshop is \$12,000.

- *Mesquite spray on Pearce ranch* – Mr. Pearce has agreed to hand spray 18,108 acres of mesquite in DSL and LPC on his ranch. The CCA/CCAA fund will provide the cost for chemical and Mr. Pearce has agreed to provide all the labor at his cost. This project will cost of \$8,000.
- *Mesquite spray on BLM ACEC* – BLM has identified 1,390 acres of mesquite, in the Area of Critical Environmental Concern (ACEC), that needs to be hand treated to keep the invasive mesquite from encroaching into suitable DSL habitat. The project cost is estimated at \$83,400. The CCA/CCAA fund will provide \$64,833 and an additional \$10,000 will come from The Nature Conservancy (TNC) who was awarded this grant from the National Fish and Wildlife Foundation (NFWF).
- *Feral hog removal in LPC habitat* – Feral hogs are suspected in LPC nest predations. Moreover, feral hogs have notorious reputations for habitat destruction by way of their feeding practices (e.g., “rooting”) and inclination to create wallows. Moreover, these animals are well documented reservoirs for contagious pathogens such as brucellosis and pseudorabies. Phase one of a three phase proposal is the removal of feral hogs from LPC habitat to mitigate further habitat destruction and imminent population expansion. Phase one of the feral hog removal will occur from February 2012 to May 2012. The estimated cost of the project is \$50,000.
- *Yucca spray on Milnesand Prairie Preserve South (MPP-S)* – Three test plots of 40 acres each been sprayed aerially to determine effectiveness of chemical treatment to control Plains Yucca. This treatment was also mixed with an ultraviolet dye to determine the effectiveness of traditional spray versus electrostatic application. The other two plots will be completed to improve habitat for LPC in 2012. The estimated project cost is \$7,500.
- *BLM caliche removal* – Twenty acres of caliche pads and roads have been identified in LPC and DSL habitat. This project was funded in August 2011 and is scheduled to be completed at the end of 2011. The estimated project cost is \$60,000.
- *Slash ML (B) caliche removal* – Fourteen acres of caliche pads and roads have been identified in LPC and DSL habitat. This project was funded in August 2011 and is scheduled to be completed at the end of 2011. The estimated project cost is \$49,000.
- *DSL and LPC monitoring* – The services of a recognized, qualified herpetologist who specializes in DSL ecology will be retained to assist CEHMM in monitoring projects for the DSL and LPC species. Activities will occur between March 2011 and October 2012. The estimated project cost is \$40,000.

Table 1. Funded Projects for 2011

<i>Project</i>	<i>Date Funded</i>	<i>Amount Funded</i>	<i>Acres</i>	<i>Completion Date</i>
DSL Research Duke University	08/16/2011	\$157,627	N/A	August 2013
DSL Research Texas A&M University	08/16/2011	\$12,000	N/A	February 2012
Pearce Mesquite	08/16/2011	\$8,000	18,108	Spring 2012
BLM ACEC Mesquite	08/16/2011	\$64,833	1,390	Spring 2012
Feral Hog Removal	01/24/2011	\$50,000	N/A	May 2012
BLM Caliche Removal	08/16/2011	\$60,000	20	December 2011
Slash ML (B) Caliche Removal	08/16/2011	\$49,000	14	December 2011
DSL and LPC Monitoring	01/24/2011	\$40,000	N/A	Fall 2012
MPP-S Yucca	01/24/2011	\$7,500	120	Spring 2012
Totals		\$448,960	19,652	

COMPLETED PROJECTS

- *Mesquite spray and windmill removal on Bresenham ranch* – This was phase one of five on the Bresenham ranch where forty acres were fenced off using an electric fence to exclude cattle from grazing on the sprayed area for two years. A windmill tower that is no longer in use was taken down. The removal of the windmill tower eliminates a perching platform for birds of prey in LPC habitat. Total project cost was \$22,584.94.
- *Mesquite spray on Milnesand Prairie Preserve-South (TNC)* – In June, CEHMM chemically treated six hundred acres of mesquite aerially using Remedy/Reclaim with electrostatic technology. This project is in desirable LPC habitat that is being encroached upon by mesquite. By removing the mesquite it will eliminate the competition to the native grasses and allow the habitat to remain suitable for occupancy by LPC. The project cost was \$13,968.60, which came from the CCA/CCAA fund.
- *Mesquite spray on Berry ranch* – CEHMM chemically treated twelve thousand acres of mesquite aerially using Remedy/Reclaim with electrostatic technology. This project is in desirable LPC habitat that is being encroached upon by mesquite. Removing the mesquite will eliminate the competition to the native grasses and allow the habitat to remain suitable for LPC. Funding for this project came from the Natural Resources Conservation Service (NRCS), the BLM, and the CCA/CCAA fund. The project cost was \$100,000.
- *Lehman’s lovegrass control* – Research on the control of Lehman’s lovegrass using chemical application to eradicate or reduce non-native Lehman’s lovegrass. The removal of Lehman’s lovegrass will improve habitat by reestablishing more beneficial native flora. Chemical application occurred in the spring of 2011. Due to the drought conditions in the area, monitoring of the spray will continue into 2012. The cost of the project was \$19,905.63.
- *Mesquite spray on Sims ranch* – CEHMM chemically treated two thousand five hundred and sixty acres of mesquite aerially using Remedy/Reclaim with electrostatic technology. This project was chosen to remove the mesquite from an area on Sims ranch that has been overtaken by mesquite. In return for this treatment Mr. Sims has agreed to defer grazing in an area occupied by DSL to allow

this habitat to remain as is. This project was completed in June 2011. Funding for this project came from FWS Partners Program and the CCA/CCAA fund. The project cost was \$22,172.03.

- *BLM pipeline mesquite* – CEHMM chemically treated twelve thousand four hundred and fifty acres of mesquite aerially using Remedy/Reclaim with electrostatic technology. This project is in desirable LPC habitat that is being encroached upon by mesquite. Removing the mesquite will eliminate the competition to the native grasses and allow the habitat to remain suitable for LPC. Funding for this project came from the Natural Resources Conservation Service (NRCS), the BLM, and the CCA/CCAA fund. The project cost was \$100,000.
- *BLM caliche removal* – Twenty acres of caliche pads and roads were identified in LPC and DSL habitat and removed in October of 2011. The project cost was \$60,000.
- *Slash ML caliche removal* – Thirty-three acres of caliche pads and roads were identified in LPC and DSL habitat and removed in October of 2011. The project cost was \$60,000.

Table 2. Completed Projects

<i>Project</i>	<i>Date Funded</i>	<i>Project Cost</i>	<i>Acres</i>	<i>Completion Date</i>
Bresenham Mesquite and Windmill Removal	08/31/2010	\$22,584.94	40	Spring 2011
MPP-S Mesquite	08/31/2010	\$13,968.60	600	June 2011
Berry Mesquite	01/24/2011	\$100,000	12,000	June 2011
Brininstool Lehman's	01/24/2011	\$19,905.63	12	Spring 2011
Sims Mesquite	01/24/2011	\$22,172.03	2,560	June 2011
BLM Pipeline Mesquite	01/24/2011	\$100,000	12,450	June 2011
BLM Caliche	01/24/2011	\$60,000	20	October 2011
Slash ML Caliche	01/24/2011	\$60,000	33	October 2011
Totals		\$398,631.20	27,715	

MONITORING

In 2011, CEHMM conducted 110 days of DSL pitfall trap surveys at 20 sites, 18 of which were outside the current DSL polygon (Figure 10). A total of two DSLs were detected at two of these sites. Seventy-two lizards of three other species were captured in the pitfall traps: 37 *Uta stansburiana*, 33 *Aspidoscelis*, and 2 *Holbrookia maculata*. In addition, ten days of foot surveys for DSL were conducted on CCA/CCAA ranches in 2011. Two DSLs were captured during the survey. Also observed were 127 *Uta stansburiana*, 14 *Aspidoscelis*, two *Holbrookia maculata*, and two *Sceloporus consibrinus*.

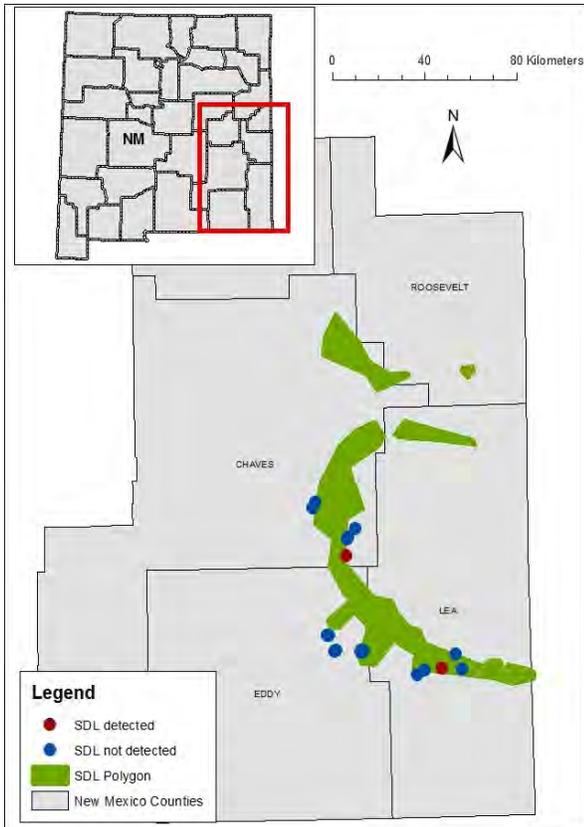


Figure 10. DSL Surveys in 2011

SUMMARY

A total of 964,334 acres of ranchland have been enrolled in the CCA/CCAA in 2011. Over 800,000 acres of leased land in LPC and DSL habitat have been enrolled by oil and gas companies for the CCA/CCAA. In 2011, over 27,000 acres of mesquite were treated using collaborator and CCA/CCAA conservation funds. In addition, 53 acres of caliche roads and well pads have been removed and reseeded with native flora. In 2012, two research projects have been funded for DSL, along with the removal of thirty-four acres of caliche, and the hand treatment of 20,000 acres of mesquite in areas where the mesquite is encroaching on DSL habitat.

CEHMM, BLM, and USFWS, in cooperation with industry and landowners, endeavor to improve and restore favorable DSL and LPC habitat throughout their respective range(s) in New Mexico. These agreements are providing demonstrable results in

CEHMM conducted road surveys on ten CCA/CCAA ranches for LPC in April and May of 2011. Road surveys are also known as listening surveys. The surveyor shuts off the vehicle and stands outside of the vehicle listening for ten minutes at each stop. The surveyor collects the following data at each stop: survey area (ranch name), presence of LPC, direction LPC are located, time, temperature, wind speed, cloud cover, noise sources, noise levels, and other wildlife observed. At the end of ten minutes the surveyor returns to the vehicle and drives one mile down the road and repeats the above protocol. Surveys are conducted from thirty minutes prior to sunrise and conclude at 9 a.m. If the wind exceeds fifteen miles per hour the survey will be cut short. Winds at those speeds inhibit the surveyor from hearing the LPC and thus may produce false negatives for the area. The survey will be concluded on the following day. There were sixty-four stops made on ten ranches; at eleven of those stops, sixty-one LPCs were heard and observed.

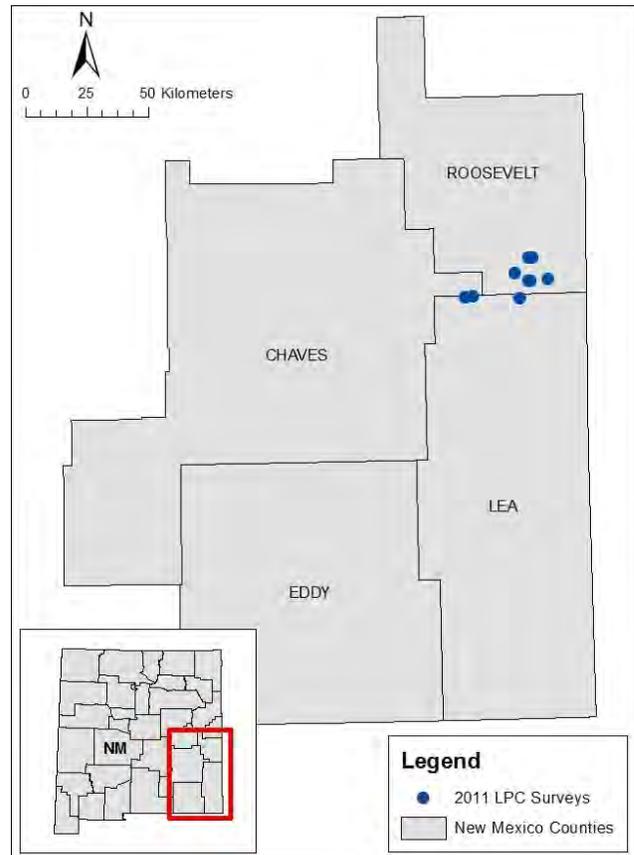


Figure 11. LPC Surveys in 2011

support of this undertaking. Programmatic participation and collaboration represent this unique opportunity as a benchmark for future multi-organizational conservation efforts. Industry's participation in these agreements is the primary source of funding that CEHMM receives for project implementation. Without this source of funding and the proactive approach of industry, the goal of habitat improvement could not be met. Ranch owner participation as enrollees in this program further facilitate CEHMM, BLM, and USFWS to administer proactive habitat improvements and restoration for immediate and future benefits of the LPC and DSL.

Table 3. Industry and Ranch Acres Enrolled and In Progress

<i>Type</i>	<i>Name</i>	<i>Acreage</i>	<i>Agreement Number</i>	<i>Date Effective</i>
CCA				
Industry				
	Marbob Energy	360.00	CP-OGOP-001	12/08/2008
	Concho Resources	60,345.02	CP-OGOP-002	11/14/2011
	BOPCO	55,897.40	CP-OGOP-003	09/24/2010
	Conoco-Phillips	31,978.05	CP-OGOP-005	10/21/2010
	Burnett Oil Co., Inc.	7,520.00	CP-OGOP-006	07/12/2011
	EnerVest Operating LLC.	8,758.00	CP-OGOP-007	07/12/2011
	SandRidge	2,899.07	CP-OGOP-008	09/07/2011
	Devon Energy	43,769.67	CP-OGOP-009	09/19/2011
	ARMSTRONG ENERGY	4,595.49	CP-OGOP-010	10/25/2011
	LINN ENERGY	12,240.00	CP-OGOP-011	10/25/2011
	Three Rivers Operating Company, LLC	18,563.26	CP-OGOP-012	11/10/2011
	Chevron	8,920.00	CP-OGOP-013	11/10/2011
	SM Energy	1,364.12	CP-OGOP-014	11/10/2011
	Yates	36,210.09	CP-OGOP-015	11/10/2011
	Mewbourne	20,106.00	CP-OGOP-016	11/14/2011
	BTA	880.00	CP-OGOP-017	11/21/2011
	Ridgeway Arizona	2,590.01	CP-OGOP-018	11/21/2011
	Cimarex	32,818.62	CP-OGOP-019	11/21/2011
	OXY	31,143.93	CP-OGOP-020	11/21/2011
	Strata	320.00	CP-OGOP-021	11/21/2011
	Apache	65,781.80	CP-OGOP-022	11/21/2011
	Fasken	4,284.49	CP-OGOP-023	11/21/2011
	EOG	34,275.60	CP-OGOP-024	11/21/2011
	RKI	3,830.27	CP-OGOP-025	11/21/2011
	HEYCO	29,807.96	CP-OGOP-026	11/21/2011
	XTO	2,480.08	CP-OGOP-027	11/21/2011
	OGX Resources	7,530.83	CP-OGOP-028	11/30/2011
	Chesapeake	27,388.31	CP-OGOP-029	11/30/2011
	OGX Production	560.00	CP-OGOP-031	12/23/2011
	Totals	557,218.07		

<i>Type</i>	<i>Name</i>	<i>Acreege</i>	<i>Agreement Number</i>	<i>Date Effective</i>
Ranch				
	Bogle	231,090.00	CP-GRAZ-001	11/10/2010
	Madera	3,282.00	CP-GRAZ-002	09/27/2010
	Brininstool	19,343.00	CP-GRAZ-003	12/02/2010
	Creamer	54,571.00	CP-GRAZ-004	04/11/2011
	McCloy	24,590.00	CP-GRAZ-005	06/10/2011
	Meyers	11,021.00	CP-GRAZ-006	04/11/2011
	Mills	66,484.00	CP-GRAZ-007	05/31/2011
	Sims	40.00	CP-GRAZ-008	07/27/2011
	Berry	26,071.00	CP-GRAZ-009	04/06/2011
	Pearce	36,156.00	CP-GRAZ-010	03/07/2011
	Marley	10,702.00	CP-GRAZ-011	04/11/2011
	Bissett	6,084.00	CP-GRAZ-012	06/10/2011
	Mathis	7,899.00	CP-GRAZ-013	08/03/2011
	Richardson	83,870.00	CP-GRAZ-014	08/31/2011
	Robert McCasland	2,449.00	CP-GRAZ-015	11/28/2011
	Billy Williams	14,275.00	CP-GRAZ-016	11/18/2011
	Kenneth Smith	128,368.00	CP-GRAZ-017	11/18/2011
	Johnson Cattle	2,147.00	CP-GRAZ-018	12/08/2011
	Bud Billberry	3,949.00	CP-GRAZ-019	12/08/2011
	Steve Haines	4,470.00	CP-GRAZ-020	11/18/2011
	Shannon Kizer	7,526.00	CP-GRAZ-021	11/18/2011
	Ross Caviness	27,921.00	CP-GRAZ-022	12/23/2011
	Jim Ross Caviness	5,237.00	CP-GRAZ-023	12/13/2011
	Lee Ann Williams	19,160.00	CP-GRAZ-024	12/08/2011
	Weinheimer	5,642.00	CP-GRAZ-025	12/08/2011
	James P. Southard	1,526.00	CP-GRAZ-026	12/08/2011
	Clemmons and Erdmann	7,483.00	CP-GRAZ-027	12/08/2011
	Totals	811,356.00		

CCA

Industry				
	Conoco-Phillips	18,935.46	CI-OGOP-001	09/28/2011
	Devon Energy	16,246.26	CI-OGOP-002	09/19/2011
	BOPCO	13,141.46	CI-OGOP-003	09/28/2011
	ARMSTRONG ENERGY	5,397.64	CI-OGOP-004	10/20/2011
	EnerVest Operating LLC.	8,756.19	CI-OGOP-005	10/20/2011
	LINN ENERGY	1,440.00	CI-OGOP-006	10/20/2011
	Three Rivers Operating Company, LLC	4,443.03	CI-OGOP-007	11/10/2011
	Chevron	2,160.00	CI-OGOP-008	11/10/2011
	Yates	39,792.80	CI-OGOP-009	11/10/2011
	Concho Resources	16,925.01	CI-OGOP-010	11/14/2011

<i>Type</i>	<i>Name</i>	<i>Acres</i>	<i>Agreement Number</i>	<i>Date Effective</i>
	Mewbourne	11,200.30	CI-OGOP-011	11/18/2011
	SandRidge	341.56	CI-OGOP-012	11/18/2011
	BTA	1,920.00	CI-OGOP-013	11/18/2011
	Ridgeway	2,840.00	CI-OGOP-014	11/18/2011
	Cimarex	9,800.17	CI-OGOP-015	11/18/2011
	OXY	21,046.50	CI-OGOP-016	11/18/2011
	Strata	320.00	CI-OGOP-017	11/18/2011
	HEYCO	6,324.46	CI-OGOP-018	11/18/2011
	Fasken	5,920.01	CI-OGOP-019	11/18/2011
	EOG	7,257.60	CI-OGOP-020	11/18/2011
	Apache	26,675.00	CI-OGOP-021	11/18/2011
	Chesapeake	19,766.91	CI-OGOP-022	11/28/2011
	OGX Production	4,428.38	CI-OGOP-023	11/30/2011
	OGX Resources	5,314.03	CI-OGOP-024	11/30/2011
	Totals	250,392.77		

Ranch				
	Brininstool	11,687.00	CI-GRAZ-001	12/08/2008
	Luman	2,161.00	CI-GRAZ-002	11/06/2009
	Mohon	2,513.00	CI-GRAZ-003	11/06/2009
	Weaver	24,630.00	CI-GRAZ-004	11/06/2009
	Grasslans Charitable	1,595.00	CI-GRAZ-005	11/06/2009
	Ainsworth	32.00	CI-GRAZ-006	11/06/2009
	Williamson	7,845.00	CI-GRAZ-007	12/02/2009
	Medlin	16,319.00	CI-GRAZ-008	12/02/2009
	Thomas	4,634.00	CI-GRAZ-009	12/15/2009
	Bickley	1,123.00	CI-GRAZ-010	01/07/2010
	Bresenham	4,758.00	CI-GRAZ-011	01/13/2010
	TNC/MPP-S	7,041.00	CI-GRAZ-012	03/12/2010
	TNC/MPP-N	18,500.00	CI-GRAZ-013	03/12/2010
	Madera	30,982.00	CI-GRAZ-014	09/27/2010
	Bogle	167,986.00	CI-GRAZ-015	09/23/2010
	Creamer	7,346.00	CI-GRAZ-016	04/11/2011
	McCloy	35,301.00	CI-GRAZ-017	06/07/2011
	Meyers	12,123.00	CI-GRAZ-018	04/11/2011
	Mills	10,779.00	CI-GRAZ-019	05/23/2011
	Sims	33,774.00	CI-GRAZ-020	08/03/2011
	Berry	15,198.00	CI-GRAZ-021	03/31/2011
	Pearce	28,129.00	CI-GRAZ-022	03/07/2011
	Marley	3,170.00	CI-GRAZ-023	04/11/2011
	Bissett	2,784.00	CI-GRAZ-024	06/10/2011
	Mathis	11,915.00	CI-GRAZ-025	08/03/2011

<i>Type</i>	<i>Name</i>	<i>Acreage</i>	<i>Agreement Number</i>	<i>Date Effective</i>
	Richardson	16,924.00	CI-GRAZ-026	08/30/2011
	Robert McCasland	15,780.00	CI-GRAZ-027	11/28/2011
	Billy Williams	3,763.00	CI-GRAZ-028	11/21/2011
	Kenneth Smith	45,914.00	CI-GRAZ-029	11/21/2011
	Johnson Cattle	25,588.00	CI-GRAZ-030	12/08/2011
	Bud Bilberry	1,639.00	CI-GRAZ-031	12/08/2011
	Steve Haines	3,861.00	CI-GRAZ-032	11/21/2011
	Shannon Kizer	63,348.00	CI-GRAZ-033	11/21/2011
	Ross Caviness	7,439.00	CI-GRAZ-034	12/23/2011
	Jim Ross Caviness	2,163.00	CI-GRAZ-035	12/08/2011
	Lee Ann Williams	8,860.00	CI-GRAZ-036	12/08/2011
	Weinheimer	16,040.00	CI-GRAZ-037	12/08/2011
	James P. Southard	11,524.00	CI-GRAZ-038	12/08/2011
	Clemmons and Erdmann	23,331.00	CI-GRAZ-039	12/08/2011
	Totals	708,499.00		

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Di Sylvestro, R. 2007. Drinking on the Fly. National Wildlife Magazine 6-01-2007.

NM LPC and DSL Working Group. 2005. Collaborative Conservation Strategies for the Lesser-Prairie Chicken and Sand Dune Lizard in New Mexico. Findings and Recommendations of the New Mexico LPC and DSL Working Group. August 2005.

U.S. Fish and Wildlife Service. 2008. Candidate Conservation Agreement for the Lesser Prairie Chicken (*Tympanuchus pallidicinctus*) and Sand Dune Lizard (*Sceloporus arenicolus*) in New Mexico.

APPENDIX A
Candidate Conservation Agreement Habitat Restoration Program
Project Proposal Form

Participant's Name: _____

Address: _____

Phone: _____

Number of acres included in project area: _____

Is participant enrolled in the CCA/CCAA (20 point bonus)? Project must be completely on enrolled lands to receive the entire bonus: _____

Estimated cost of project (Provide detailed budget): _____

Project Overview:

Project Duration:

Species that will benefit from project :

Dunes Sagebrush Lizard: YES _____ NO _____ How?

Lesser Prairie Chicken: YES _____ NO _____ How?

How will the project restore missing habitat components for feeding, breeding or shelter for the species?

Explain how/if the project is a component of an overall restoration plan or objective?

Does the proposal include surveying the project area for lizards or chickens, or are surveys already being conducted for each species in the project area? Explain.

Is project within three miles of an unoccupied historic lek?

Is project within three miles of an active lek?

Will project remove infrastructure from suitable or occupied dune complexes? Explain.

Will project restore or create shinnery oak dunes? Explain.

Explain how project will remove invasive weeds or brush to increase beneficial plant species?

Will grazing be deferred for at least two consecutive growing seasons as part of a grazing management system for the property? Explain.

Will there be a Private, Federal or State cost share match (i.e., an NRCS grant)? Explain.

How many years will the project be maintained? How will maintenance occur?

Is the project within five miles of another restoration project for either species?

If applicable, explain how the project will provide connectivity between two habitat patches for either species.

Will the project remove power lines, poles, or other vertical structures (> 15ft. tall) within three miles of an active lek?

Will the project remove fences, roads and pads and reduce habitat fragmentation?

Does the project include re-introducing the species to the project area? If so, please include the following:

- Game and Fish permit for trapping and releasing

Approved plan for relocating the species onto the property

APPENDIX B
Candidate Conservation Agreement Habitat Restoration Program
Ranking Criteria

Participant Name:	Enrolled in CCAA/CCA? (YES) (NO)	
Address:	Number of acres to be treated?	
Phone Number:		
Criteria	Max. Points	Score
1. Does project benefit Dunes Sagebrush Lizard?*	20	
2. Does project benefit Lesser Prairie Chicken?*	10	
3. Will the project restore missing habitat components for feeding, breeding or shelter for the species?*	10	
4. Is project a component of an overall restoration plan or objective?*	10	
5. Are lizard surveys included in the project plans?	5	
6. Are prairie chicken surveys included in the project plan/ area?	5	
7. Is project within three miles of an unoccupied historic lek?	5	
8. Is project within three miles of an active lek?	10	
9. Will project remove infrastructure from suitable or occupied dune complexes?	10	
10. Will project restore or create shinnery oak dunes	10	
11. Will project remove invasive weeds or brush to increase beneficial plant species?	5	
12. Will grazing be deferred for at least one year (12 consecutive months) as part of a grazing management system for the property? <ul style="list-style-type: none"> • > 640 acres deferred in one year • 160 – 640 acres deferred in one year 	(10 point max) 10 5	
13. 20 Point CCA/CCAA Enrollment Bonus	20	
14. There is a Private, Federal or State cost share or will be used to match an NRCS grant?	5	
15. Number of years project will be maintained (1 point/year)	10 points max	
16. Is the project within five miles of another restoration project for either species?*	5	
17. Will the project provide connectivity between two habitat patches?	10	
18. Will the project remove power lines, poles, or other vertical structures (> 15ft. tall) within three miles of an active lek?	5	
19. Will the project remove fences, roads and pads and reduce habitat fragmentation?*	5	
20. Does the project include re-introducing the species to the project area?	5	
Total	175	

*Additional clarification for the following criteria:

1. In order to have a benefit for Dunes Sagebrush Lizards, there must be suitable or occupied lizard habitat in the project area. The project must provide a direct benefit to the species, such as the removal of a fence, power line, or road in a dune; removing fragmentation around dunes, rebuilding a shinnery oak dune, or directly removing one or more threats to the species.
2. In order to have a benefit for the Lesser Prairie Chicken, suitable or occupied (or historically suitable or occupied) habitat must be present in the project area. Project must provide a direct benefit to the

species by increasing or creating suitable habitat, removing fragmentation, or directly removing one or more threats to the species.

3. There must be an explanation of the habitat components that will be restored. For example:
 - Native seed (sand bluestem, giant drop-seed, little blue stem etc.) will be inter-seeded or re-seeded to provide cover and feeding areas for LPC chicks.
 - Project will turn unsuitable (bald) dunes into suitable shinnery oak dunes for lizards.
4. The project proposal should describe the overall restoration objective/goal for the project, and how this project will help to accomplish this goal.
16. Project must create a corridor between two habitat patches that have been disconnected by infrastructure or unsuitable habitat.
19. Must be part of a NMDGF permitted/approved reintroduction project for either species.

APPENDIX C
Candidate Conservation Agreement Program
Research/Monitoring - Project Proposal Form

Fully describe the project, benefits and location (include a project map with lizard and chicken habitat, known leks, and lizard localities). Be specific.

Participants Name: _____

Address: _____

Phone: _____

Estimated cost of project: _____

Estimated cost of monitoring and surveys: _____

Complete Project Description (include a clear description of the proposed outcome or product):

Project Schedule:

Explain how research will provide information that will have a conservation benefit for either/both species:

Dunes Sagebrush Lizard: YES _____ NO _____ How?

Lesser Prairie Chicken: YES _____ NO _____ How?

Explain how/if the project is a component of an overall research plan or objective.

Does the proposal include surveying for lizards or chickens, or are surveys already being conducted for each species in the project area? Explain.

Will there be a Private, Federal or State cost share match? Explain.

Explain how this project will coordinate with State/Federal agencies and other partners to accomplish common research goals.

Does the project include captive rearing or re-introduction of the species? If so, please include the following:

- Game and Fish permit
- Approved plan for rearing or relocating the species

Attach a detailed budget

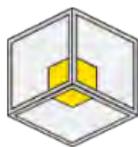
APPENDIX D
Candidate Conservation Agreement Program
Ranking Criteria for Research/Monitoring Projects

Participant Name:		
Address:		
Phone Number:	Total Score:	
<i>Criteria</i>	<i>Max. Points</i>	<i>Score</i>
1. Does project benefit Dunes Sagebrush Lizard?*	15	
2. Does project benefit Lesser Prairie Chicken?*	10	
3. Will the project provide necessary information for conservation of either species?*	10	
4. Is project a component of an overall research plan or objective?	10	
5. Are lizard surveys/monitoring included in the project plan?	10	
6. Are prairie chicken surveys /monitoring included in the project plan?	10	
7. Does the proposal define a clear outcome or product?	10	
8. Does the proposal include a timeline in which work will be completed?	10	
9. Will it provide information that is necessary to make conservation decisions?	10	
10. Is the proposal included in the CCAA Research Priority List?	10	
11. Is there a cost share provided?	10	
12. Does the proposal include partnership and coordination with agencies and NGO's?	15	
13. Is there a detailed budget included?	10	
Total	140	

*Additional clarification for the following criteria:

1. In order to have a benefit for Dunes Sagebrush Lizards, there must be suitable or occupied lizard habitat in the project area. The project must provide a direct benefit to the species, such as the removal of a fence, power line, or road in a dune; removing fragmentation around dunes, rebuilding a shinnery oak dune, or directly removing one or more threats to the species.
2. In order to have a benefit for the Lesser Prairie Chicken, suitable or occupied (or historically suitable or occupied) habitat must be present in the project area. Project must provide a direct benefit to the species by increasing or creating suitable habitat, removing fragmentation, or directly removing one or more threats to the species.
3. The project proposal should describe the overall objective/goal for the project, and how this project will help to accomplish this goal.

APPENDIX E



CEHMM

Center of Excellence for Hazardous Materials Management



Frequently Asked Questions from the Oil and Gas Industry Lesser Prairie-Chicken & Sand Dune Lizard Candidate Conservation Agreement (CCA) & Candidate Conservation Agreement with Assurances (CCAA)

Why are we doing this?

One of the primary reasons the U.S. Fish and Wildlife Service (USFWS) and Bureau of Land Management (BLM) developed the Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (CCAA) is to address concerns by land owners and Federal lease holders about the potential regulatory implications of having a species listed under the Endangered Species Act (ESA) on their land or mineral lease.

If enough conservation measures are being implemented prior to a listing decision, increased regulation for protecting the species might be unnecessary. These agreements allow for voluntary participation by those whose operations would likely be impacted if the lesser prairie-chicken (LPC) or sand dune lizard (DSL, dunes sagebrush lizard) were to be listed under the ESA. Although the USFWS cannot guarantee that listing will not occur, the CCA/CCAA seeks to implement conservation measures which could preclude the need to list the LPC and DSL. The decision to list is a regulatory process and conservation agreements cannot predetermine the outcome. The actions and successes of this tool will be evaluated in accordance with USFWS Policy for Evaluation of Conservation Efforts (2003) during the listing process. This will then be factored into the five-factor analysis of the listing decision.

What is the CCA and why do I need it?

The CCA is an agreement between the USFWS, BLM, and Center of Excellence (CEHMM) for actions (such as oil and gas development and livestock grazing) occurring on lands or minerals administered by BLM. The Participating Cooperator (rancher or oil and gas producer) can volunteer to join the Agreement through a Certificate of Participation (CP). Participation in the CCA provides a high level of certainty that if the Cooperator implements conservation activities in their CP, they will not likely be subject to additional restrictions if LPC and/or DSL become listed under the ESA.

What is the CCAA and why do I need it?

The Candidate Conservation Agreement with Assurances (CCAA) is an agreement like the CCA, but it applies to non-federal lands and minerals. The land user (land owner or lessee) can volunteer to join the Agreement through a Certificate of Inclusion (CI). Participants agree to help reduce threats to candidate species, and in return, they receive assurances that they will not be subject to additional restrictions if LPC and/or DSL become listed under the ESA.

What is the difference between a CCA and CCAA?

In practice, there are few differences between the two Agreements. However, legally, the main difference is that participants in the CCAA receive “Assurances” that their operations will not be affected by a listing decision and participants in the CCA receive a “high degree of certainty” that operations will not be affected. The goal of the program is to implement conservation measures across the landscape in a consistent manner that improves the status for both LPC and DSL.

How will I know if I have lesser prairie-chicken or sand dune lizard habitat on my property/lease?

Lesser prairie-chickens can be found in shinnery oak, sand sage and bluestem prairies. Sand dune lizards can be found in shinnery oak sand dunes. When agency staffs are working with an interested party, they will utilize available location data to determine if the lease in question contains suitable habitat for either species.

Do I need to participate if I do not have lesser prairie-chicken or sand dune lizard habitat?

No.

If the species gets listed, will it only affect activities on federal lands or minerals?

No! If a species gets listed, it is listed and protected on all land ownerships (federal, state, private).

Can I sign up state or private land that I am leasing?

Yes. A “Participating Landowner” is defined in 50 CFR § 17.3 as a person with a fee simple, leasehold, or property interest, or any other entity that may have a property interest sufficient to carry out the proposed management activities.

What if I want to discontinue participation?

The CCA and CCAA are voluntary agreements, so participants can choose to cancel enrollment at any time. If a participant chooses to cancel their agreement, the enrolled lands would no longer be covered if either species is listed under the Endangered Species Act.

What are the practices I would have to implement?

A standard set of conservation measures were established in the BLM’s 2008 Special Status Species Resource Management Plan. Operators of Federal leases are already familiar with these stipulations/conditions of approval. Other conservation measures can be found at the end of this document under “Sample Conservation Measures.” These measures will apply to enrollees in the CCA and CCAA.

Where will my contributed funds go?

Funds are sent to CEHMM, whose role is defined at the end of these FAQs. Projects and priorities are set by a team of biologist from the USFWS, NM Game & Fish Department, NM State Land Office and BLM. CEHMM is responsible for implementing (contracting), monitoring and reporting on projects.

What are the advantages of a participant?

If listing were to occur, Participating Cooperators would only be delayed about 1-2 months while the USFWS consultation on the Agreement (CCA/CCAA) is adopted as their final “opinion.” At that period, the companies could continue their operations. For those who have not participated, a long-term delay is anticipated on their permits since they will require analysis for impacts to the species. There could even be a situation where a permit would not be approved. Our best estimate is that it will take the agencies 1-3 years to complete a programmatic interagency consultation/Habitat Conservation Plan. An additional advantage to participating is that once the USFWS issues a final “opinion” of the Agreement, a provision for incidental take will be included. Without a Certificate, an operator, whether on federal or non-federal lands, would not have protection from take.

What is “take?”

The ESA prohibits the take of endangered and threatened species without special exemption. “Take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the FWS as an act which actually kills or injures wildlife and may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the FWS as intentional or negligent actions or omissions which create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.

I have an approved APD for Federal minerals, but have not drilled it yet. If the species gets listed before I drill the well, do I have to wait until Endangered Species Act Consultation is completed?

You will not have to delay new development if the APD is located on a lease enrolled in a Certificate. If the federal lease has not been enrolled, the action would have to go through formal consultation under the Endangered Species Act prior to new activities beginning.

How long do I contribute Funds?

The Participating Cooperator will provide funds over a three-year period that begins with the execution of their Certificate.

The Participating Cooperator will make the first payment into the Habitat Conservation Fund Account at the date of execution of their Certificate. The second and third payments will be made on the first and second anniversary of the execution date of the Certificate. For each of the three years, the annual prepayment will be calculated at \$2 per gross acre for all parcels enrolled in the Certificate, with a minimum of \$20,000 deposited each year.

The Participating Cooperator may, at their sole option, pay more than the required amount into their Habitat Conservation Fund Account during any prepayment period but never less than the required amount of \$20,000 per year for the 3 year period.

Prepayment of any new federal parcels added by addendum to a Certificate will be calculated at \$2 per gross acre and be due at the time the parcels are added to the Certificate. The total acreage enrolled in

a Certificate, and the resulting annual prepayment, will be recalculated on the remaining anniversary dates of the 3 year cycle.

Where do I send the contributed funds?

The Participating Cooperator will remit the Habitat Conservation Fee to CEHMM. CEHMM will maintain the funds in a Habitat Conservation Fund Account specific to each Certificate. The purpose of the Habitat Conservation Fund Account is to meet the Participating Cooperator's obligations under the CCA.

Will activities not covered by a certificate be allowed to continue during the Section 7 consultation?

No. Section 7 consultation only occurs after a species is listed for new activities that require a federal permit and would result in take. Those activities cannot begin until the consultation process is complete. However, a benefit of having a Certificate is that analyses will have already been performed, meaning an opinion has already been issued and Section 7 consultation would be unnecessary. Only projects addressed in the Certificate would be able to begin without consultation.

Properties without a Certificate in effect will require some level of consultation with the USFWS before the project begins. For any new actions on federal lands, Section 7 interagency consultation is the process. For any new actions on non-federal lands, the owner/lessee would be need to contact the USFWS to address potential take issues from the operation through the Section 10 process before the project begins.

Cite the exact wording in the regulations for "Assurance" under a CCAA.

Federal Register / Vol. 64, No. 116 / Thursday, June 17, 1999 / Notices/ Announcement of Final Policy for CCAA: On June 12, 1997, the Services issued a draft policy (62 FR 32183), and the FWS issued proposed regulations to implement the policy (62 FR 32189). Under the policy, non-Federal property owners, who enter into a Candidate Conservation Agreement with assurances that commit them to implement voluntary conservation measures for proposed or candidate species, or species likely to become candidates or proposed in the near future, will receive assurances from the Services that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future. These assurances will be provided in the property owner's Agreement and in an associated enhancement of survival permit issued under section 10(a)(1)(A) of the Act. This policy was effective July 19, 1999.

If we get "Assurances" under a CCAA, what do we receive under a CCA?

Participants in the CCA receive a high degree of certainty that additional measures would not be required of Participating Cooperators. Should listing occur, the Conference Opinion for the agreement and associated incidental take statement would be adopted as a Biological Opinion if no significant new information is developed that would alter the content or determinations of the Conference Opinion. Having a robust CCA is the key to having a high degree of certainty that changes in activities or circumstances on federal lands would only be necessary if unanticipated and unusual circumstances develop that are not adequately addressed by the CCA.

What other requirements are included in my certificate?

Besides contributed funding, terms of individual Certificates will be tailored to the specific parcels being enrolled. For projects involving federal minerals, many of the conservation measures are already applied as lease stipulations or conditions-of-approval for the permitted activity. Examples include planning locations to avoid sensitive habitats (e.g., staying out of dune complexes of sand dune lizards), routing infrastructure in corridors, and avoiding construction/drilling activities during the breeding season of the lesser prairie chicken. Other conservation measures are designed to further enhance or protect habitat as necessary on a case-by-case basis.

If I contribute funds, are the funds used for habitat improvement on my lease?

Not necessarily. The funds will be used to complete the highest priority projects that benefit the species. Projects are identified and prioritized by the interagency team. CEHMM is responsible for keeping the list of prioritized projects for implementation.

What types of projects will be completed with the contributed funds?

Specifically for LPC, projects would include invasive brush control, removal of abandoned structures, marking fences in order to minimize collisions, installing wildlife escape ramps in water troughs, removing caliche from abandoned roads and well pads (where there is no responsible party).

Could an enrolled lease increase its value if I choose to sell the lease?

While this is not the intent of the CCA/CCAA, it is possible because the new lessee/operator will retain the benefits of the agreement if the species is listed under the Endangered Species Act. Without a Certificate, new actions that would impact the species would require consultation with USFWS.

If we wait until right before the species is listed, can I come in at the last minute and sign up?

Probably. However, the goal is to accomplish enough conservation to prevent the listing of the species. Waiting will only reduce the amount of time to implement conservation measures and will offer little to preclude the need to list. Furthermore, if you wait to come in at the last minute, you may not be able to get your leases signed up since Certificates will be processed on a first-come-first-served basis and priority will be placed on proposed enrollments that best benefit the two species.

If I have leases I want to consider signing up, but I'm not sure it is in candidate species habitat, how do I know?

Agency specialists will meet with you and look at your specific lease(s) to determine if they are in candidate species habitat. If you are not, they will tell you that a certificate is not necessary.

Is the cost the same for a Certificate of Inclusion (CI) on State or private lands as it is on Federal lands?

Yes. The goal is to approach conservation for LPC/DSL across all ownerships in the same manner since the primary goal of the agreements is to guide conservation measures and efforts that will make listing unnecessary.

Can I cancel my Certificate at any time I want?

Yes. However, by cancelling the Certificate, the enrolled lands would no longer receive the benefits described in the agreement.

What is the risk of not participating?

Permits for actions proposed on federal lands or minerals (actions that require a federal permit) that were approved prior to a listing decision become void where the proposed action would have an effect on the newly listed species. If there will be no impacts to the species or its habitat, the permit would not be affected. However, if impacts are anticipated, Section 7 interagency consultation between BLM and USFWS is required. Due to limited staffs and an anticipated abundance of applications that require consultations, this process may cause a significant delay in processing new permits. The benefit of participating is that a pre-listing consultation occurs as part of the enrollment process, resulting in the issuance of a Biological Opinion as a part of the Certificate. If a listing decision occurs, the Conference Opinion is then converted into a Biological Opinion, which is expected to take only 30-60 days. The risks of not participating include not knowing how long the consultation process will delay future development of the lease, and the risk of increased regulation, which may not allow the proposed action at all. Enrollment in the appropriate Agreement can highly reduce or eliminate these risks based on the agreement.

If I participate, can I locate wells on my lease where I want to?

If a proposed surface disturbing activity conflicts with the conservation goals for the lease, the proposed activity will have to be modified to avoid impacts to the species.

Who is CEHMM?

The Center of Excellence for Hazardous Materials Management (CEHMM) was established in May of 2004 as a 501(c)(3) organization dedicated to the research, development, and implementation of environmentally sound programs. Since its inception, CEHMM has identified and pursued applied research projects that have nation-wide impact and are innovative, meaningful, and practical. CEHMM has created a wide range of cutting edge applied research programs including developing technology for using algae for biofuels, biomonitoring for the H5N1 (avian influenza) and West Nile viruses, and cooperative conservation of species listed as “warranted but precluded” on the federal endangered species list. CEHMM has had swift advances in these projects due to the varied talents of the CEHMM staff and directors, and the organization’s success in developing strong partnerships with universities, national laboratories, and private industry.

What is CEHMM’s role?

CEHMM’s roles is to:

- implement and administer the Agreements;
- enroll participants in the program;
- provide technical assistance to participants;
- conduct compliance reviews of projects being implemented by participants;
- utilize contributed funds to contract and inspect projects;

- monitor projects using existing agency protocols in order to determine success and adaptations needed;
- conduct outreach and public education efforts to promote the conservation of both species;
- secure permission to complete projects on private and State lands;
- lead annual meetings with the USFWS, BLM, NMDGF, and interested participants to review progress from the previous year;
- seek potential solutions for factors that hamper conservation of LPC/DSL, and future projects;
- track expenditure of funds and prepare an annual report on implementation of projects;
- use no more than 10 percent of contributed funds for administrative responsibilities under the agreements;
- maintain a digital photo database to document project performance; and
- conduct audits annually, at CEHMM's expense.

The following Conservation Measures are to be accomplished in addition to those described in the CCA:

1. To the extent determined by the BLM representative at the Plan of Development stage, all infrastructures supporting the development of a well (including roads, power lines, and pipelines) will be constructed within the same corridor.
2. On enrolled parcels that contain inactive wells, roads and/or facilities that are not reclaimed to current standards, the Participating Cooperator shall remediate and reclaim their facilities within three years of executing this CP, unless the Cooperator can demonstrate they will put the facilities back to beneficial use for the enrolled parcel(s). If an extension is requested by the Cooperator, they shall submit a detailed plan (including dates) and receive BLM approval prior to the three year deadline. All remediation and reclamation shall be performed in accordance with BLM requirements and be approved in advance by the Authorized Officer.
3. Allow no new surface occupancy within 30 meters of areas designated as occupied or suitable, unoccupied DSL dune complexes or within delineated shinnery oak corridors. The avoidance distance is subject to change based on new information received from peer reviewed science.
4. Utilize alternative techniques to minimize new surface disturbance when required and as determined by the BLM representative at the Plan of Development stage.
5. Provide escape ramps in all open water sources under the Participating Cooperator's control.
6. Install fence markings along fences owned, controlled, or constructed by the Participating Cooperator that cross through occupied habitat within two miles of an active LPC lek.
7. Bury new power lines that are within two (2) miles of LPC lek sites active at least once within the past 5 years (measured from the lek). The avoidance distance is subject to change based on new information received from peer reviewed science.
8. Bury new power lines that are within one (1) mile of historic LPC lek sites where at least one LPC has been observed within the past three years (measured from the historic lek). The avoidance distance is subject to change based on new information received from peer reviewed science.
9. Limit seismic exploration to areas outside of occupied and suitable shinnery dune complexes to protect Sand Dune Lizard habitat.
10. Submit a routine monitoring and schedule of inspection for oil, gas and produced water pipelines and facilities to ensure accidental pollution events are avoided in sensitive habitats for Sand Dune Lizard.

Contributed Funds

The Habitat Conservation Fee for new surface disturbance associated with oil and gas development activities will be calculated using the following scales. The scales also apply to third parties doing work for the Participating Cooperator either on or off the Participating Cooperator's enrolled parcels, regardless of who constructs or operates the associated facilities. The Participating Cooperator must notify BLM prior to conducting any surface disturbing activities associated with this CP on or off the enrolled leases either by the Cooperator or third-party subcontractors. The Habitat Class of the new surface disturbance is determined by the location of the activity being developed, not actual habitat found on site.

1) New Well Location Fees¹

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area	\$20,000/location
Core Management Area	\$20,000/location
Habitat Evaluation Area	\$15,000/location
Scarce & Scattered Population Area	\$12,500/location
Isolated Population Area	\$10,000/location
Other areas ²	\$ 3,000/location

¹ Includes well pad and associated access road

² Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

2) New Surface Development Fees

For other new surface disturbances associated with enrolled parcels, but not directly attributable to a new well pad³ and associated road, the Habitat Conservation Fee will be based on the following scale:

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area	\$5,000/acre
Core Management Area	\$5,000/acre
Habitat Evaluation Area	\$3,750/acre
Scarce & Scattered Population Area	\$3,125/acre
Isolated Population Area	\$2,500/acre
Other areas ⁴	\$1,000/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 but within historic range of LPC in New Mexico.

Note: All acreage calculation will be rounded up to the next whole acre.

New operations on previously disturbed land (*e.g.*, co-located new well on an existing pad or new pipeline in an existing corridor, etc.) will incur no additional conservation fee, unless the area to be redisturbed has been reseeded and/or reclaimed as part of reclamation. Fees will also be assessed for any new acreage disturbed.

The disturbed area will be calculated based on information received and/or on-the-ground observation. Habitat Conservation Fees are based on the total acres disturbed in each appropriate habitat class. Should the Participating Cooperator disagree with the estimate of the area disturbed, they have the right to challenge the estimate and provide supporting data. BLM will have the responsibility for the final determination of the area disturbed.

All above ground power lines will have a fee calculated using the above scale for New Surface Development. The acreage will be based on information provided in the permit application. Habitat Conservation Fees will not be charged for buried power lines or surface pipelines in accordance with the BLM 2008 Special Status Species Resource Management Plan Amendment (RMPA).

3) Fees associated with new seismic data acquisition

<u>Habitat Class</u>	<u>3D Survey Conservation Fee</u>	<u>2D Survey Conservation Fee</u>
Primary Population Area	\$ <u>10.00</u> /acre	\$ <u>200.00</u> /linear mile*
Core Management Area	\$ <u>10.00</u> /acre	\$ <u>200.00</u> /linear mile*
Habitat Evaluation Area	\$ <u>7.50</u> /acre	\$ <u>150.00</u> /linear mile*
Scarce & Scattered Population Area	\$ <u>6.25</u> /acre	\$ <u>125.00</u> /linear mile*
Isolated Population Area	\$ <u>5.00</u> /acre	\$ <u>100.00</u> /linear mile*
Other areas ⁵	\$ <u>1.50</u> /acre	\$ <u>25.00</u> /linear mile*

* or any fraction thereof

⁵ Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

The acquisition of seismic data on enrolled parcels may also disturb the surface of other land not enrolled in this CP. The Habitat Conservation Fee calculated for seismic activity includes disturbances occurring on both enrolled and non-enrolled land.

Routine production operations

Routine production operations are not considered new surface development and will not create the obligations to pay a Habitat Conservation Fee. Routine production operations are those which do not require an agency permit or approval, and those operations that require an agency approval but do not disturb the surface.

**F. Example Template Certificates of Participation and Inclusion for Oil and Gas Participants
(Exhibits not included)**

CERTIFICATE OF PARTICIPATION
in the
Candidate Conservation Agreement for the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*) and Sand Dune Lizard (*Sceloporus arenicolus*)

CP Number _____

This certifies that the Participating Cooperator of the property described herein is included within the scope of the above named Candidate Conservation Agreement (CCA) for the lesser prairie-chicken (LPC) and sand dune lizard (SDL) under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531-1544.

The goal of the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), Center of Excellence for Hazardous Materials Management (CEHMM) and the Participating Cooperator is to reduce and/or eliminate threats to the LPC and/ or SDL. By agreeing to conduct the conservation measures described herein, and contribute funding or providing in-kind services for conservation, the FWS and BLM agree that should the LPC or SDL become listed as a threatened or endangered species under the ESA, there is a high degree of certainty that additional measures would not be required for Participating Cooperators.

This Certificate of Participation (CP) is voluntary between CEHMM, BLM, FWS and the Participating Cooperator. Through this CP, the Participating Cooperator voluntarily commits to implement or fund specific conservation actions that will reduce and/or eliminate threats to the SDL and /or the LPC. Funds contributed as part of this CP will be used to implement conservation measures and associated activities. The funds will be directed to the highest priority projects to restore or reclaim habitat at the sole discretion of BLM and FWS. By signing below, the Participating Cooperator acknowledges that they have read and understand the CCA and this CP. They further acknowledge that this CCA may not be sufficient to prevent the listing of either species and that BLM, FWS, and CEHMM make no guarantee as to the effect of the listing of either species.

Participating Cooperator's Name: _____
Address: _____

The following Conservation Measures are to be accomplished in addition to those described in the CCA:

1. To the extent determined by the BLM representative at the Plan of Development stage, all infrastructures supporting the development of a well (including roads, power lines, and pipelines) will be constructed within the same corridor.
2. On enrolled parcels that contain inactive wells, roads and/or facilities that are not reclaimed to current standards, the Participating Cooperator shall

remediate and reclaim their facilities within three years of executing this CP, unless the Cooperator can demonstrate they will put the facilities back to beneficial use for the enrolled parcel(s). If an extension is requested by the Cooperator, they shall submit a detailed plan (including dates) and receive BLM approval prior to the three year deadline. All remediation and reclamation shall be performed in accordance with BLM requirements and be approved in advance by the Authorized Officer.

3. Allow no new surface occupancy within 30 meters of areas designated as occupied or suitable, unoccupied SDL dune complexes or within delineated shinnery oak corridors. The avoidance distance is subject to change based on new information received from peer reviewed science.
4. Utilize alternative techniques to minimize new surface disturbance when required and as determined by the BLM representative at the Plan of Development stage.
5. Provide escape ramps in all open water sources under the Participating Cooperator's control.
6. Install fence markings along fences owned, controlled, or constructed by the Participating Cooperator that cross through occupied habitat within two miles of an active LPC lek.
7. Bury new powerlines that are within two (2) miles of LPC lek sites active at least once within the past 5 years (measured from the lek). The avoidance distance is subject to change based on new information received from peer reviewed science.
8. Bury new powerlines that are within one (1) mile of historic LPC lek sites where at least one LPC has been observed within the past three years (measured from the historic lek). The avoidance distance is subject to change based on new information received from peer reviewed science.
9. Limit seismic exploration to areas outside of occupied and suitable shinnery dune complexes to protect Sand Dune Lizard habitat.
10. Submit a routine monitoring and schedule of inspection for oil, gas and produced water pipelines and facilities to ensure accidental pollution events are avoided in sensitive habitats for Sand Dune Lizard.
11. Inside the BLM RMPA Sand Dune Lizard polygon, the following will apply:

Any trench left open for eight (8) hours or less is not required to have escape ramps; however, before the trench is backfilled, an agency approved monitor shall walk the entire length of open trench and remove all trapped

wildlife and release them at least 100 yards from the trench.

For trenches left open for eight (8) hours or more, earthen escape ramps (built at no more than a 30 degree slope and spaced no more than 500 feet apart) shall be placed in the trench. The open trench shall be monitored each day by an agency approved monitor during the following three time periods: (1) 5:00 am to 10:00 am, (2) 11:00 am to 2:00 pm, and (3) 3:00 pm to sunset. All trapped wildlife shall be released at least 100 yards from the trench.

One agency approved monitor shall be required for every mile of open trench. A daily report (consolidate if there is more than one monitor) on the wildlife found and removed from the trench shall be provided to the BLM (email is acceptable) the following morning.

This stipulation shall apply to the entire length of the project in the sand dune lizard habitat regardless of land ownership.

12. Management recommendations may be developed based on new information received from peer reviewed science to mitigate impacts from H₂S and/or the accumulation of sulfates in the soil related to production of gas containing H₂S on the SDL and LPC. Such management recommendations will be applied by the Participating Cooperator as Conservation Measures under this CI/CP in suitable and occupied SDL/LPC habitat where peer-reviewed science has shown that H₂S levels threaten the LPC/SDL.

I. ENROLLED ACREAGE

Participating Cooperator will provide a list of enrolled parcels (leases or portions of leases) including lease number, detailed legal description, and acreage for each enrolled parcel in this CP (see Exhibit A). Enrollment of acreage does not guarantee approval of any application on an enrolled parcel, and still requires Agency approval.

The Participating Cooperator is responsible for ensuring that all provisions of this CP are implemented by its agents, sub-contractors, and other interest holders on all parcels enrolled under this CP.

II. PLANS OF DEVELOPMENT

Due to the amount of acreage (multiple parcels) enrolled under this CP, it is not possible to prepare an accurate Plan of Development on all enrolled acreage at the time of executing this CP. However, the Participating Cooperator agrees to prepare Plans of Development on a case-by-case basis as requested by the BLM. It is understood that BLM's request for Plans of Development will be associated with the Participating Cooperator's anticipated development activities.

III. SUSPENSION FOR NONPAYMENT.

The Participating Cooperator hereby agrees that, as long as this CP is in effect, the BLM can suspend the approval of any permit on enrolled parcels identified in Exhibit A of this CP until the Habitat Conservation Fee associated with that permit is paid.

IV. HABITAT CONSERVATION FEES AND PAYMENTS

The Participating Cooperator will provide funds for the restoration, reclamation and protection of suitable LPC and SDL habitat over a minimum three-year period that begins with the execution of this CP and which will continue until the CP is terminated as provided herein. The funds will be generated by a Habitat Conservation Fee, which is based on the amount of area disturbed by oil and gas operations. The Participating Cooperator will remit the Habitat Conservation Fee to CEHMM. CEHMM will maintain the funds in a Habitat Conservation Fund Account specific to this CP. The purpose of the Habitat Conservation Fund Account is to meet the Participating Cooperator's obligations under the CCA.

The Participating Cooperator will make the first payment into the Habitat Conservation Fund Account at the date of execution of this CP. The second and third payments will be made on the first and second anniversary of the execution date of this CP. For each of the three years, the annual prepayment will be calculated at \$2 per gross acre for all parcels enrolled in this CP, with a minimum of \$20,000 deposited each year.

The Participating Cooperator may, at their sole option, pay more than the required amount into their Habitat Conservation Fund Account during any prepayment period but never less than the required amount as described herein.

Prepayment of any new Federal parcels added by addendum to this CP will be calculated at \$2 per gross acre and be due at the time the parcels are added to the CP. The total acreage enrolled in this CP, and the resulting annual prepayment, will be recalculated on the remaining anniversary dates of the 3 year cycle. No annual prepayment will be required after the initial 3 year period, but the Habitat Conservation fee will remain in effect.

After this CP is executed, the BLM will calculate the applicable Habitat Conservation Fee associated with any new permit approval for new surface disturbance using the methodology shown on Exhibit B. Habitat Conservation Fees assessed and contributed according to Exhibit B of this CP shall also satisfy the funds contribution requirements of the CCA.

CEHMM will deduct the resulting Habitat Conservation Fee from the Participating Cooperator's Habitat Conservation Fund Account balance at the time of Agency permit approval. If the Participating Cooperator's remaining Habitat Conservation Fund Account balance is less than the resulting Habitat Conservation Fee, the Participating Cooperator will pay the remainder of the Habitat Conservation Fee. When CEHMM

deducts fees from the Participating Cooperator's account, they will notify the Participating Cooperator within 60 days detailing the:

- Amount of the Habitat Conservation Fee associated with the application,
- Remaining Habitat Conservation Fund Account balance, and
- Payment due, if any.

The Participating Cooperator's obligation to make payments as described above shall be suspended if any administrative or judicial challenge prevents the implementation of this CP.

V. HABITAT CONSERVATION ACCOUNT FUNDS

Habitat Conservation Fees generated from any activity on any enrolled parcels, and for off-parcel activities needed to develop the enrolled parcels, will be debited from funds paid into the Habitat Conservation Fund Account under this CP at the time of permit approval. See Exhibit B.

VI. PARCEL TRANSFERS AND ADDITIONS

Transfers

Transfers may occur within this CP or between this CP and the CP of another Participating Cooperator. Enrolled parcels can be transferred either before or after a listing decision occurs. Parcels may be transferred within habitat for a listed species, but parcels may not be transferred from areas outside habitat of a listed species into habitat of a listed species. If both species are listed, parcels outside habitat for sand dune lizard may not be transferred into sand dune lizard habitat. All transfers require Agency approval. Notification of any parcels transferred will be transmitted to CEHMM 30 days prior to the transfer. The description will include the lease number(s), detailed legal description(s), and acreage of the parcel(s) involved.

Transfers within this CP

The Participating Cooperator may amend this CP to remove a parcel and replace it with an unenrolled parcel of same or less acreage. Transferring of parcels within this CP will not result in an increase of total enrolled acres described in this CP. Once an activity (APD, ROW, etc) authorized under this CP results in ground disturbance, the entire lease is no longer eligible for transfer to another geographic location. However, the parcel (and associated lease acreage, if any) in its current location (legal land description) is still eligible for transfer to another Participating Cooperator.

Transfers to another Participating Cooperator

Parcels enrolled under this CP can be transferred to another Participating Cooperator with a CP before or after a listing decision occurs. Parcels may only be transferred from the CP of one Participating Cooperator to the CP of another Participating Cooperator. After a listing decision, an interested party may become a Participating Cooperator if they acquire an enrolled parcel and wish to continue enrollment of the parcel. The new holder

of the parcel must sign an amended CP within 30 days of acquiring the enrolled parcel and prior to any operation, maintenance, or disturbance occurs on the transferred enrolled parcel. Conservation measures, all terms and conditions of the Candidate Conservation Agreement and CP, and the payment schedule will be assumed by the receiving Participating Cooperator.

Additions

The Participating Cooperator may amend this CP to add parcels at any time before the LPC is listed. If the SDL is listed under the ESA, the Participating Cooperator may only amend this CP to add parcels outside SDL habitat. Because SDL habitat is wholly within the range of LPC, no additional parcels may be added to this CP if the LPC is listed under the ESA. This right to add newly acquired parcels to this CP exists without regard to the method of acquiring the parcels (whether by merger, purchase, etc.). Fees for acreage added within the prepayment period will be assessed according to schedule described in Section IV.

VII. TERMINATION.

The Participating Cooperator agrees that it (or any successor or transferee) shall not terminate this CP until after the third prepayment period ends. Any time after the third prepayment period ends, the Participating Cooperator may terminate this CP by giving thirty (30) days written notice to CEHMM and the BLM as to any or all of the enrolled parcels. Any applications for permission to perform operations on the terminated parcels for which the Participating Cooperator has not paid the Habitat Conservation Fee at the time of termination will be processed as if the CP did not exist. Any funds remaining in Participating Cooperator's Habitat Conservation Fund Account at the time of termination, voluntary or for cause, will be donated to the CEHMM for conservation efforts to support the LPC and the SDL and will not be refunded.

BLM or FWS may only terminate the CP for the Participating Cooperator's failure to pay the Habitat Conservation Fee (including failing to prepay amounts into the Habitat Conservation Fund Account during the first three years) or for the Participating Cooperator's failure to implement the conservation measures documented in this CP. However, the BLM or FWS will first provide notice of any deficiency to the Participating Cooperator and give them the opportunity to cure. If the deficiency is not corrected, or due diligence is not being shown to correct the deficiency within sixty (60) days of the receipt of the letter, the parcel(s) involved will be terminated from this CP. If Participating Cooperator has three (3) deficiencies within 365 consecutive days (excluding deficiencies cured as stated above), the entire CP will be terminated.

Termination of this CP will relieve Participating Cooperator of any additional Habitat Conservation Fees for new surface developments on the terminated parcels.

VIII. NO WAIVER.

The Participating Cooperator, by entering into this CP, does not concede its agreement with, or endorsement of, all underlying studies and conclusions in the CCA. Further, the Participating Cooperator does not waive any legal rights or remedies that may exist outside of this CP. The Participating Cooperator is also not responsible for work being accomplished by the agencies or CEHMM using contributed funds.

IX. RELEASE

If at any time any administrative or legal challenge prevents the implementation of this Certificate of Participation, the Participating Cooperator agrees to release the United States, Department of the Interior, USFWS, BLM, and CEHMM from any legal claims related to, and, against all other Parties to, this CP and CCA. All funds remaining in the Habitat Conservation Fund Account will be retained by CEHMM and be used for conservation of the covered species.

X. AMENDMENT

This CP may be amended with the written consent of each of the parties hereto. The parties agree to process requests for amendments in a timely manner. This CP will only be amended upon agreement of all parties.

XI. MULTIPLE ORIGINALS

This Certificate of Participation may be executed in any number of multiple originals. A complete original of this Certificate of Participation shall be maintained in the records of each of the Parties hereto.

XII. NOTICE

Any notice permitted or required by this Certificate of Participation shall be transmitted within any time limits described in this CP to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

Participating Cooperator:

Contact: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

BLM (Appropriate office)	CCA Biologist BLM Carlsbad Field Office 620 E. Greene Street Carlsbad, NM 88220-6292 575/234-5972 (t) 575/885-9264 (f)	CCA Biologist BLM Roswell Field Office 2909 W. Second Street Roswell, NM 88201-2019 575/627-0272 (t) 575/627-0276 (f)
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USFWS
LPC/SDL CCA
USFWS-NMESFO
2105 Osuna Road NE
Albuquerque, New Mexico 87113
505/346-2525 (t)
505/346-2542 (f)

CEHMM
LPC/SDL CCA
CEHMM
505 N. Main Street
Carlsbad, NM 88220
575/885-3700 (t)
575/885-6422 (f)

XIII. SIGNATURES

IN WITNESS WHEREOF THE PARTIES HERETO have executed this Certificate of Participation to be in effect on the date of the last signature below.

Participating Cooperator and Affiliation

Date _____

Center of Excellence for Hazardous Materials Management
Douglas C. Lynn, Executive Director

Date _____

FWS Authorized Officer
Wally “J” Murphy, New Mexico Ecological Services Field Office Supervisor

Date _____

BLM Authorized Officer
Douglas J. Burger, Pecos District Manager

Date _____

EXHIBIT A
Property Description for Enrolled Parcels

(See attached Exhibit A)

EXHIBIT B

The Habitat Conservation Fee for new surface disturbance associated with oil and gas development activities will be calculated using the following scales. The scales also apply to third parties doing work for the Participating Cooperator either on or off the Participating Cooperator's enrolled parcels, regardless of who constructs or operates the associated facilities. The Participating Cooperator must notify BLM prior to conducting any surface disturbing activities associated with this CP on or off the enrolled leases either by the Cooperator or third-party subcontractors. The Habitat Class of the new surface disturbance is determined by the location of the activity being developed, not actual habitat found on site.

1) New Well Location Fees¹

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area	\$20,000/location
Core Management Area	\$20,000/location
Habitat Evaluation Area	\$15,000/location
Scarce & Scattered Population Area	\$12,500/location
Isolated Population Area	\$10,000/location
Other areas ²	\$ 3,000/location

¹ Includes well pad and associated access road

² Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

2) New Surface Development Fees

For other new surface disturbances associated with enrolled parcels, but not directly attributable to a new well pad³ and associated road, the Habitat Conservation Fee will be based on the following scale:

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area	\$5,000/acre
Core Management Area	\$5,000/acre
Habitat Evaluation Area	\$3,750/acre
Scarce & Scattered Population Area	\$3,125/acre
Isolated Population Area	\$2,500/acre
Other areas ⁴	\$1,000/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 but within historic range of LPC in New Mexico.

Note: All acreage calculation will be rounded up to the next whole acre.

New operations on previously disturbed land (e.g., co-located new well on an existing pad or new pipeline in an existing corridor, etc.) will incur no additional conservation fee, unless the area to be redisturbed has been reseeded and/or reclaimed as part of reclamation. Fees will also be assessed for any new acreage disturbed.

The disturbed area will be calculated based on information received and/or on-the-ground observation. Habitat Conservation Fees are based on the total acres disturbed in each appropriate habitat class. Should the Participating Cooperator disagree with the estimate of the area disturbed, they have the right to challenge the estimate and provide supporting data. BLM will have the responsibility for the final determination of the area disturbed.

All above ground powerlines will have a fee calculated using the above scale for New Surface Development. The acreage will be based on information provided in the permit application.

Habitat Conservation Fees will not be charged for buried powerlines or surface pipelines in accordance with the BLM 2008 Special Status Species Resource Management Plan Amendment (RMPA).

3) Fees associated with new seismic data acquisition

<u>Habitat Class</u>	<u>3D Survey Conservation Fee</u>	<u>2D Survey Conservation Fee</u>
Primary Population Area	\$ <u>10.00</u> /acre	\$ <u>200.00</u> /linear mile*
Core Management Area	\$ <u>10.00</u> /acre	\$ <u>200.00</u> /linear mile*
Habitat Evaluation Area	\$ <u>7.50</u> /acre	\$ <u>150.00</u> /linear mile*
Scarce & Scattered Population Area	\$ <u>6.25</u> /acre	\$ <u>125.00</u> /linear mile*
Isolated Population Area	\$ <u>5.00</u> /acre	\$ <u>100.00</u> /linear mile*
Other areas ⁵	\$ <u>1.50</u> /acre	\$ <u>25.00</u> /linear mile*

*or any fraction thereof

⁵. Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

The acquisition of seismic data on enrolled parcels may also disturb the surface of other land not enrolled in this CP. The Habitat Conservation Fee calculated for seismic activity includes disturbances occurring on both enrolled and non-enrolled land.

Routine production operations

Routine production operations are not considered new surface development and will not create the obligations to pay a Habitat Conservation Fee. Routine production operations are those which do not require an agency permit or approval, and those operations that require an agency approval but do not disturb the surface.

EXHIBIT C H₂S Conservation Measure

Data will be gathered from oil and gas operations throughout SDL/ LPC habitat to better understand the possible effects of hydrogen sulfide (H₂S) and the accumulation of sulfates in the soil released during oil and gas operations on the LPC and SDL. Specifically, data will be gathered at or near sour locations where operators are required to file Hydrogen Sulfide Contingency Plans, i.e., zones in which H₂S is known or reasonably expected to be present in concentrations of 100 parts per million (ppm) or more in the gas stream, and will focus on locations with water present (such as locations with water disposal, storage, etc.). Several types of data will be collected at multiple but consistent distances from well pads, including pH levels in soils, ambient concentrations of H₂S, surveys of SDL and LPC, and similar information. This data will be analyzed and relied upon to identify any impacts from H₂S on the SDL and LPC.

Oil and gas operators must file Hydrogen Sulfide Contingency Plans for operations on state and private lands, and must file Public Protection Plans for operations on federal lands, when operations are being conducted in zones in which hydrogen sulfide is known or reasonably expected to be present in concentrations of 100 ppm or more in the gas stream. These plans generally provide an organized plan of action for alerting and protecting the public within an area of exposure prior to an intentional release, or following the accidental release, of a potentially hazardous volume of hydrogen sulfide. These plans are required for operations on private, state, and federal lands by the Bureau of Land Management's Onshore Order No. 6 and State of New Mexico regulations (N.M. Admin. Code tit 19, § 19.15.11).

Hydrogen Sulfide Contingency Plans/Public Protection Plans are activated when a release of hydrogen sulfide results in concentrations of hydrogen sulfide greater than 100 ppm in any public area or greater than 500 ppm at any public road, or when the 100 ppm radius of exposure exceeds 3,000 feet. They must contain emergency procedures in the event of a release, including public notification and evacuation procedures, telephone numbers of local officials and authorities, and names and telephone numbers of residents within the area of exposure. They must also include maps and drawings detailing the area of exposure, provisions for training and drills, and provisions for coordination with state emergency plans. The Hydrogen Sulfide Contingency Plans/Public Protection Plans must provide for training and drills for personnel that simulate a release.

In addition to requiring Hydrogen Sulfide Contingency Plans/Public Protection Plans, the Bureau of Land Management's Onshore Order No. 6 and a State of New Mexico regulation (N.M. Admin. Code tit 19, § 19.15.11) also impose safety measures on operators when operations are being conducted in zones in which hydrogen sulfide is known or reasonably expected to be present in concentrations of 100 ppm or more in the gas stream:

Drill and completion sites must have hydrogen sulfide detection and monitoring systems that activate visible and audible alarm when the ambient air concentration of

Exhibit C, page 2 of 2

hydrogen sulfide reaches 10 and 15 ppm on federal lands and 20 ppm on private and state lands.

Fixed monitors must be placed at the shale shaker, rig floor, bell nipple, and cellar floor for drilling sites.

Hydrogen sulfide detection and monitoring equipment must be provided and made operational during drilling when drilling is within 500 feet of a zone anticipated to contain hydrogen sulfide and continuously thereafter.

Wind direction indicators must be placed on or near well sites.

Safety devices such as automatic shut-down devices must be installed and maintained to prevent the escape of hydrogen sulfide.

Flare systems must be installed to flare and burn hydrogen sulfide bearing gas. Additionally, Onshore Order No. 6 and the State of New Mexico regulation impose certain reporting requirements. In the event of a release of hydrogen sulfide requiring activation of a Hydrogen Sulfide Contingency Plan/Public Protection Plans, the operator or facility must notify the New Mexico Oil Conservation Division or the Bureau of Land Management, as appropriate. Additionally, for a release on state or private lands, the operator or facility must submit a full report of the incident within 15 days following the release.

CERTIFICATE OF INCLUSION
in the
Candidate Conservation Agreement with Assurances for the Lesser Prairie-Chicken
(*Tympanuchus pallidicinctus*) and Sand Dune Lizard (*Sceloporus arenicolus*)

CI Number _____

This certifies that the Participating Landowner of the property described herein is included within the scope of the above named Candidate Conservation Agreement (CCAA) for the lesser prairie-chicken (LPC) and sand dune lizard (SDL) under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531-1544. A Participating Landowner, as defined by 50 CFR §17.3, is a person with a fee simple, leasehold, or property interest (including owners of water or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable State law, on non-Federal land.

The goal of the U.S. Fish and Wildlife Service (FWS), Center of Excellence for Hazardous Materials Management (CEHMM), and the Participating Landowner (further referred to as Participating Cooperator) is to reduce and/or eliminate threats to the LPC and/or SDL. By agreeing to conduct the conservation measures described herein, the FWS will provide Participating Cooperators with regulatory certainty (assurances) concerning land use restrictions that might otherwise apply should the LPC or SDL become listed as a threatened or endangered species under the ESA.

This Certificate of Inclusion (CI) is a voluntary agreement between the FWS, CEHMM, and the Participating Cooperator. Through this CI, the Participating Cooperator voluntarily commits to implement or fund specific conservation actions that will reduce and/or eliminate threats to the LPC and /or SDL. Funds contributed as part of this CI will be used to implement conservation measures and associated activities. The funds will be directed to the highest priority projects to restore or reclaim habitat at the sole discretion of the CCAA Implementation and Planning Team. By signing below, the Participating Cooperator acknowledges that they have read and understand the CCAA and this CI. They further acknowledge that this CCAA may not be sufficient to prevent the listing of either species.

Participating Cooperators's Name: _____

Address: _____

The following Conservation Measures are to be accomplished in addition to those described in the CCAA:

1. To the extent determined by the FWS or CEHMM representative at the Plan of Development stage, all infrastructures supporting the development of a well (including roads, power lines, and pipelines) will be constructed within the same corridor.

2. On enrolled parcels that contain inactive wells, roads and/or facilities that are not reclaimed to current standards, the Participating Cooperator shall remediate and reclaim their facilities within three years of executing this CI, unless the Participating Cooperators can demonstrate they will put the facilities back to beneficial use for the enrolled parcel(s). If an extension is requested by the Participating Cooperators, they shall submit a detailed plan (including dates) and receive FWS or CEHMM approval prior to the three year deadline. All remediation and reclamation shall be performed in accordance with FWS or CEHMM requirements and be approved in advance by staff from the FWS and/or CEHMM Authorized Officer.
3. Allow no new surface occupancy within 30 meters of areas designated as occupied or suitable, unoccupied SDL dune complexes or within delineated shinnery oak corridors. The avoidance distance is subject to change based on new information received from peer reviewed science.
4. Utilize alternative techniques to minimize new surface disturbance when required and as determined by the FWS or CEHMM representative at the Plan of Development stage.
5. Provide escape ramps in all open water sources under the Participating Cooperator's control.
6. Install fence markings along fences owned, controlled, or constructed by the Participating Cooperator that cross through occupied habitat within two miles of an active LPC lek.
7. Bury new powerlines that are within two (2) miles of LPC lek sites (measured from the lek) that have been active at least once within the past 5 years immediately prior to construction of the line. The avoidance distance is subject to change based on new information received from peer reviewed science.
8. Bury new powerlines that are within one (1) mile of historic LPC lek sites (measured from the lek) where at least one LPC has been observed within the past three years prior to construction of the line. The avoidance distance is subject to change based on new information received from peer reviewed science.
9. Allow no 24-hour drilling operations or 3-D geophysical exploration during the period from March 1st through June 15th, annually, on lands enrolled by the Participating Cooperator that are located within Zone 1 (see Exhibit D). Other activities that produce noise or involve human activity, such as geophysical exploration (other than 3-D operations) and pipeline, road, and well pad construction will be allowed during these dates except between 3:00 am and 9:00 am. The 3:00 am to 9:00 am restriction will not apply to normal, around-the-clock operations, such as venting, flaring, or pumping, which do not require a human presence during this period. Normal vehicle use on existing roads will not be restricted. Exceptions to

these requirements would be considered in emergency situations, such as mechanical failures, but would not be considered for routine planned events.

10. Noise abatement during the period from March 1st through June 15th, annually. Noise from facilities (*e.g.*, pumpjack, compressor) under the control of the Participating Cooperator that service enrolled lands located within Zone 1 (see Exhibit D) will be muffled or otherwise controlled so as not to exceed 75 db measured at 30 ft. from the source of the noise.
11. Limit seismic exploration to areas outside of occupied and suitable shinnery dune complexes to protect Sand Dune Lizard habitat.
12. Submit a routine monitoring and schedule of inspection for oil, gas and produced water pipelines and facilities to ensure accidental pollution events are avoided in sensitive habitats for Sand Dune Lizard.
13. Inside the Sand Dune Lizard polygon as depicted in the BLM SSS-RMPA, the following will apply:

Any trench left open for eight (8) hours or less is not required to have escape ramps; however, before the trench is backfilled, an agency/CEHMM approved monitor shall walk the entire length of open trench and remove all trapped wildlife and release them at least 100 yards from the trench.

For trenches left open for eight (8) hours or more, earthen escape ramps (built at no more than a 30 degree slope and spaced no more than 500 feet apart) shall be placed in the trench. The open trench shall be monitored each day by an agency/CEHMM approved monitor during the following three time periods: (1) 5:00 a.m. to 10:00 a.m., (2) 11:00 a.m. to 2:00 p.m., and (3) 3:00 p.m. to sunset. All trapped wildlife shall be released at least 100 yards from the trench.

One agency/CEHMM approved monitor shall be required for every mile of open trench. A daily report (consolidate if there is more than one monitor) on the wildlife found and removed from the trench shall be provided to CEHMM (email is acceptable) the following morning.

This stipulation shall apply to the entire length of the project in the sand dune lizard habitat regardless of land ownership.

14. Management recommendations may be developed based on new information received from peer reviewed science to mitigate impacts from H₂S and/or the accumulation of sulfates in the soil related to production of gas containing H₂S on the SDL and LPC (See Exhibit C). Such management recommendations will be applied by the Participating Cooperator as Conservation Measures under this CI in suitable and occupied SDL/LPC habitat where peer-reviewed science has shown that H₂S levels threaten the LPC/SDL.

15. Upon the plugging and subsequent abandonment of a well within Zone 1 (see Exhibit D), the well marker will be installed at ground level on a plate containing the pertinent information for the plugged well unless otherwise precluded by law or private surface owner. See Exhibit E for more information.

I. ENROLLED ACREAGE.

Participating Cooperator will provide a list of enrolled parcels (leases or portions of leases) including lease number, detailed legal description, and acreage for each enrolled parcel in this CI (see Exhibit A). Enrollment of acreage does not guarantee approval of an application to regulatory agencies (state or federal) and approval of any permit does not guarantee adherence to the CI.

The Participating Cooperator is responsible for ensuring that all provisions of this CI are implemented by its agents, sub-contractors, and other interest holders on all parcels enrolled under this CI.

II. PLANS OF DEVELOPMENT.

Due to the amount of acreage (multiple parcels) enrolled under this CI, it is not possible to prepare an accurate Plan of Development on all enrolled acreage at the time of executing this CI. However, the Participating Cooperator agrees to prepare Plans of Development on a case-by-case basis as requested by the FWS and CEHMM. It is understood that FWS and CEHMM's request for Plans of Development will be associated with the Participating Cooperator's anticipated development activities.

III. SUSPENSION FOR NONPAYMENT.

The Participating Cooperator hereby agrees that, CEHMM, in coordination with the FWS, can suspend the CI on enrolled parcels identified in Exhibit A until the Habitat Conservation Fee associated with that CI is paid.

IV. HABITAT CONSERVATION FEES AND PAYMENTS.

The Participating Cooperator will provide funds for the restoration, reclamation, and protection of suitable LPC and SDL habitat over a minimum three-year period that begins with the execution of this CI and will continue until the CI is terminated as provided herein. The funds will be generated by a Habitat Conservation Fee, which is based on the amount of area disturbed by oil and gas operations. The Participating Cooperator will remit the Habitat Conservation Fee to CEHMM. CEHMM will maintain the funds in a Habitat Conservation Fund Account specific to this CI. The purpose of the Habitat Conservation Fund Account is to meet the Participating Cooperator's obligations under the CCAA.

The Participating Cooperator will make the first payment into the Habitat Conservation Fund Account at the date of execution of this CI. The second and third payments will be made on the first and second anniversary of the execution date of this CI. For each of the three years, the

annual prepayment will be calculated at \$2 per gross acre for all parcels enrolled in this CI, with a minimum of \$20,000 deposited each year.

The Participating Cooperator may, at their sole option, pay more than the required amount into their Habitat Conservation Fund Account during any prepayment period but never less than the required amount as described herein.

Prepayment of any new parcels added by addendum to this CI will be calculated at \$2 per gross acre and be due at the time the parcels are added to the CI. The total acreage enrolled in this CI, and the resulting annual prepayment, will be recalculated on the remaining anniversary dates of the 3 year cycle. No annual prepayment will be required after the initial 3 year period, but the Habitat Conservation Fee will remain in effect.

After this CI is executed, CEHMM will calculate the applicable Habitat Conservation Fee associated with any new surface disturbance using the methodology shown on Exhibit B. Habitat conservation fees assessed and contributed according to Exhibit B of this CI shall also satisfy the funds contribution requirements of the CCAA.

Within 30 working days of receiving approval documents for surface disturbing activity from the New Mexico Energy Minerals and Natural Resources Oil Conservation Division (OCD) and New Mexico State Land Office (NMSLO), the Participating Cooperator will provide CHEMM with copies of such documents. CEHMM will deduct the resulting Habitat Conservation Fee from the Participating Cooperator's Habitat Conservation Fund Account balance within 10 working days after receiving the OCD and NMSLO approval papers from the Participating Cooperator. If the Participating Cooperator's remaining Habitat Conservation Fund Account balance is less than the resulting Habitat Conservation Fee, the Participating Cooperator will pay the remainder of the Habitat Conservation Fee. When CEHMM deducts fees from the Participating Cooperator's account, they will notify the Participating Cooperator within 30 days detailing the:

- Amount of the Habitat Conservation Fee associated with the application,
- Remaining Habitat Conservation Fund Account balance, and
- Payment due, if any.

The Participating Cooperator's obligation to make payments as described above shall be suspended if any administrative or judicial challenge prevents the implementation of this CI.

V. HABITAT CONSERVATION ACCOUNT FUNDS.

Habitat Conservation Fees generated from any activity on any enrolled parcels, and for off-parcel activities needed to develop the enrolled parcels, will be debited from funds paid into the Habitat Conservation Fund Account under this CI within 10 working days after receiving the OCD and NMSLO approval papers from the Participating Cooperator. See Exhibit B.

VI. PARCEL TRANSFERS AND ADDITIONS.

Transfers

Transfers may occur within this CI or between this CI and the CI of another Participating Cooperator. Enrolled parcels can be transferred either before or after a listing decision occurs. Parcels may be transferred within habitat for a listed species, but parcels may not be transferred from areas outside habitat of a listed species into habitat of a listed species. If both species are listed, parcels outside habitat for sand dune lizard may not be transferred into sand dune lizard habitat. All transfers must be approved by USFWS and CEHMM. Notification of intent to transfer any parcels will be transmitted to CEHMM for approval 30 days prior to transfer. Notification of any parcels transferred will be transmitted to CEHMM 30 days prior to the transfer. The description will include the lease number(s), detailed legal description(s), and acreage of the parcel(s) involved.

Transfers within this CI

The Participating Cooperator may amend this CI to remove a parcel and replace it with an unenrolled parcel of same or less acreage. Transferring of parcels within this CI will not result in an increase of total enrolled acres described in this CI. Once an activity (APD, ROW, etc) authorized under this CI results in ground disturbance, the entire lease is no longer eligible for transfer to another geographic location. However, the parcel (and associated lease acreage, if any) in its current location (legal land description) is still eligible for transfer to another Participating Cooperator.

Transfers to another Participating Cooperator

Parcels enrolled under this CI can be transferred to another Participating Cooperator with a CI before or after a listing decision occurs. Parcels may only be transferred from the CI of one Participating Cooperator to the CI of another Participating Cooperator. After a listing decision, an interested party may become a Participating Cooperator if they acquire an enrolled parcel and wish to continue enrollment of the parcel. The new holder of the parcel must sign an amended CI within 30 days of acquiring the enrolled parcel and prior to any operation, maintenance, or disturbance occurs on the transferred enrolled parcel. Conservation measures, all terms and conditions of the CCAA and CI, and the payment schedule will be assumed by the receiving Participating Cooperator.

Additions

The Participating Cooperator may amend this CI to add parcels at any time before the LPC is listed. If the SDL is listed under the ESA, the Participating Cooperator may only amend this CI to add parcels outside SDL habitat. Because SDL habitat is wholly within the range of LPC, no additional parcels may be added to this CI if the LPC is listed under the ESA. This right to add newly acquired parcels to this CI exists without regard to the method of acquiring the parcels (whether by merger, purchase, etc.). Fees for acreage added within the prepayment period will be assessed according to schedule described in Section IV.

VII. TERMINATION.

The Participating Cooperator agrees that it (or any successor or transferee) shall not terminate this CI until after the third prepayment period ends. Any time after the third prepayment period ends, the Participating Cooperator may terminate this CI by giving thirty (30) days written notice to CEHMM and FWS as to any or all of the enrolled parcels. Any applications for permission to perform operations on the terminated parcels for which the Participating Cooperator has not paid the Habitat Conservation Fee at the time of termination will be processed as if the CI did not exist. Any funds remaining in Participating Cooperator's Habitat Conservation Fund Account at the time of termination, voluntary or for cause, will be donated to CEHMM for conservation efforts to support the LPC and the SDL, and will not be refunded.

FWS may only terminate the CI for a Participating Cooperator's failure to pay the Habitat Conservation Fee (including failing to prepay amounts into the Habitat Conservation Fund Account during the first three years) or for the Participating Cooperator's failure to implement the conservation measures documented in this CI. However, CEHMM or FWS will first provide notice of any deficiency to the Participating Cooperator and give them the opportunity to cure. If the deficiency is not corrected, or due diligence is not being shown to correct the deficiency within sixty (60) days of the receipt of the letter, the parcel(s) involved will be terminated from this CI. If Participating Cooperator has three (3) deficiencies within 365 consecutive days (excluding deficiencies cured as stated above), the entire CI will be terminated.

Termination of this CI will relieve a Participating Cooperator of any additional Habitat Conservation Fees for new surface developments on the terminated parcels.

VIII. NO WAIVER.

The Participating Cooperator, by entering into this CI, does not concede its agreement with, or endorsement of, all underlying studies and conclusions in the CCAA. Further, the Participating Cooperator does not waive any legal rights or remedies that may exist outside of this CI. The Participating Cooperator is also not responsible for work being accomplished by the FWS or CEHMM using contributed funds.

IX. RELEASE.

If at any time any administrative or legal challenge prevents the implementation of this Certificate of Inclusion, the Participating Cooperator agrees to release the United States, Department of the Interior, USFWS, BLM, and CEHMM from any legal claims related to, and, against all other Parties to, this CI and CCAA. All funds remaining in the Habitat Conservation Fund Account will be retained by CEHMM and be used for conservation of the covered species.

X. AMENDMENT.

This CI may be amended with the written consent of each of the parties hereto. The parties agree to process requests for amendments in a timely manner. This CI will only be amended upon agreement of all parties.

XI. MULTIPLE ORIGINALS.

This CI may be executed in any number of multiple originals. A complete original of this CI shall be maintained in the records of each of the Parties hereto.

XII. REPORTING REQUIREMENTS.

The Participating Cooperator will provide CEHMM with an end of year report that summarizes activities that have occurred on their enrolled parcels (leases or portions of leases) (Exhibit A) for every year the CI is in effect. The reports should detail the activities undertaken on the enrolled parcels for that year. The report provided by the Participating Cooperator will aid CEHMM in meeting their annual reporting requirements under the CCAA and its accompanying permit. For purposes of compliance monitoring of conservation commitment, CEHMM may access the enrolled parcels (leases or portions of leases) with prior notification to the Participating Cooperator (see December 8, 2008 CCAA, Section V.1.g).

XII. NOTICE.

Any notice permitted or required by this CI shall be transmitted within any time limits described in this CI to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

Participating Cooperator: _____

Contact: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

USFWS LPC/SDL CCAA
USFWS-NMESFO
2105 Osuna Road NE
Albuquerque, New Mexico 87113
505/346-2525 (t)
505/346-2542 (f)

CEHMM LPC/SDL CCAA
CEHMM
505 N. Main Street
Carlsbad, NM 88220
575/885-3700 (t)
575/885-6422 (f)

XIII. SIGNATURES

IN WITNESS WHEREOF THE PARTIES HERETO have executed this Certificate of Inclusion to be in effect on the date of the last signature below.

Participating Cooperator and Affiliation

Date _____

Center of Excellence for Hazardous Materials Management
Douglas C. Lynn, Executive Director

Date _____

FWS Authorized Officer
Wally "J" Murphy, New Mexico Ecological Services Field Office Supervisor

Date _____

EXHIBIT A
Property Description for Enrolled Parcels

(See attachment)

EXHIBIT B

The Habitat Conservation Fee for new surface disturbance associated with oil and gas development activities will be calculated using the following scales. The scales also apply to third parties doing work for the Participating Cooperator either on or off the Participating Cooperator’s enrolled parcels, regardless of who constructs or operates the associated facilities. The Participating Cooperator must notify CEHMM prior to conducting any surface disturbing activities associated with this CI on or off the enrolled leases either by the Cooperator or third-party subcontractors. The Habitat Class of the new surface disturbance is determined by the location of the activity being developed, not actual habitat found on site.

1) New Well Location Fees¹

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area	\$20,000/location
Core Management Area	\$20,000/location
Habitat Evaluation Area	\$15,000/location
Scarce & Scattered Population Area	\$12,500/location
Isolated Population Area	\$10,000/location
Other areas ²	\$ 3,000/location

- 1. Includes well pad and associated access road
- 2. Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

2) New Surface Development Fees

For other new surface disturbances associated with enrolled parcels, but not directly attributable to a new well pad³ and associated road, the Habitat Conservation Fee will be based on the following scale:

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area	\$5,000/acre
Core Management Area	\$5,000/acre
Habitat Evaluation Area	\$3,750/acre
Scarce & Scattered Population Area	\$3,125/acre
Isolated Population Area	\$2,500/acre
Other areas ⁴	\$1,000/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 but within historic range of LPC in New Mexico.

Note: All acreage calculation will be rounded up to the next whole acre.

New operations on previously disturbed land (*e.g.*, co-located new well on an existing pad or new pipeline in an existing corridor, etc.) will incur no additional Habitat Conservation Fee, unless the area to be redisturbed has been reseeded and/or reclaimed as part of reclamation. Fees will also be assessed for any new acreage disturbed.

The disturbed area will be calculated based on information received and/or on-the-ground observation. Habitat Conservation Fees are based on the total acres disturbed in each appropriate habitat class. Should the Participating Cooperator disagree with the estimate of the area disturbed, they have the right to challenge the estimate and provide supporting data. FWS and CEHMM will have the responsibility for the final determination of the area disturbed.

All above ground powerlines will have a fee calculated using the above scale for New Surface Development. The acreage will be based on information found in the OCD and NMSLO surface disturbance activities approval document provided by the Participating Cooperator to CEHMM.

Habitat Conservation Fees will not be charged for buried powerlines or surface pipelines in accordance with the BLM 2008 Special Status Species Resource Management Plan Amendment (RMPA).

3) Fees associated with new seismic data acquisition

<u>Habitat Class</u>	<u>3D Survey Conservation Fee</u>	<u>2D Survey Conservation Fee</u>
Primary Population Area	\$ <u>10.00</u> /acre	\$ <u>200.00</u> /linear mile*
Core Management Area	\$ <u>10.00</u> /acre	\$ <u>200.00</u> /linear mile*
Habitat Evaluation Area	\$ <u>7.50</u> /acre	\$ <u>150.00</u> /linear mile*
Scarce & Scattered Population Area	\$ <u>6.25</u> /acre	\$ <u>125.00</u> /linear mile*
Isolated Population Area	\$ <u>5.00</u> /acre	\$ <u>100.00</u> /linear mile*
Other areas ⁵	\$ <u>1.50</u> /acre	\$ <u>25.00</u> /linear mile*

*or any fraction thereof

⁵. Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

The acquisition of seismic data on enrolled parcels may also disturb the surface of other land not enrolled in this CI. The Habitat Conservation Fee calculated for seismic activity includes disturbances occurring on both enrolled and non-enrolled land.

Routine production operations

Routine production operations are not considered new surface development and will not create the obligations to pay a Habitat Conservation Fee. Routine production operations are those which do not require an agency permit or approval, and those operations that require an agency approval but do not disturb the surface.

EXHIBIT C
H₂S Conservation Measure

Data will be gathered from oil and gas operations throughout SDL/ LPC habitat to better understand the possible effects of hydrogen sulfide (H₂S) and the accumulation of sulfates in the soil released during oil and gas operations on the LPC and SDL. Specifically, data will be gathered at or near sour locations where operators are required to file Hydrogen Sulfide Contingency Plans, i.e., zones in which H₂S is known or reasonably expected to be present in concentrations of 100 parts per million (ppm) or more in the gas stream, and will focus on locations with water present (such as locations with water disposal, storage, etc.). Several types of data will be collected at multiple but consistent distances from well pads, including pH levels in soils, ambient concentrations of H₂S, surveys of SDL and LPC, and similar information. This data will be analyzed and relied upon to identify any impacts from H₂S on the SDL and LPC.

Oil and gas operators must file Hydrogen Sulfide Contingency Plans for operations on state and private lands, and must file Public Protection Plans for operations on federal lands, when operations are being conducted in zones in which hydrogen sulfide is known or reasonably expected to be present in concentrations of 100 ppm or more in the gas stream. These plans generally provide an organized plan of action for alerting and protecting the public within an area of exposure prior to an intentional release, or following the accidental release, of a potentially hazardous volume of hydrogen sulfide. These plans are required for operations on private, state, and federal lands by the Bureau of Land Management's Onshore Order No. 6 and State of New Mexico regulations (N.M. Admin. Code tit 19, § 19.15.11).

Hydrogen Sulfide Contingency Plans/Public Protection Plans are activated when a release of hydrogen sulfide results in concentrations of hydrogen sulfide greater than 100 ppm in any public area or greater than 500 ppm at any public road, or when the 100 ppm radius of exposure exceeds 3,000 feet. They must contain emergency procedures in the event of a release, including public notification and evacuation procedures, telephone numbers of local officials and authorities, and names and telephone numbers of residents within the area of exposure. They must also include maps and drawings detailing the area of exposure, provisions for training and drills, and provisions for coordination with state emergency plans. The Hydrogen Sulfide Contingency Plans/Public Protection Plans must provide for training and drills for personnel that simulate a release.

In addition to requiring Hydrogen Sulfide Contingency Plans/Public Protection Plans, the Bureau of Land Management's Onshore Order No. 6 and a State of New Mexico regulation (N.M. Admin. Code tit 19, § 19.15.11) also impose safety measures on operators when operations are being conducted in zones in which hydrogen sulfide is known or reasonably expected to be present in concentrations of 100 ppm or more in the gas stream:

Drill and completion sites must have hydrogen sulfide detection and monitoring systems that activate visible and audible alarm when the ambient air concentration of

Exhibit C, page 2 of 2

hydrogen sulfide reaches 10 and 15 ppm on federal lands and 20 ppm on private and state lands.

Fixed monitors must be placed at the shale shaker, rig floor, bell nipple, and cellar floor for drilling sites.

Hydrogen sulfide detection and monitoring equipment must be provided and made operational during drilling when drilling is within 500 feet of a zone anticipated to contain hydrogen sulfide and continuously thereafter.

Wind direction indicators must be placed on or near well sites.

Safety devices such as automatic shut-down devices must be installed and maintained to prevent the escape of hydrogen sulfide.

Flare systems must be installed to flare and burn hydrogen sulfide bearing gas

Additionally, Onshore Order No. 6 and the State of New Mexico regulation impose certain reporting requirements. In the event of a release of hydrogen sulfide requiring activation of a Hydrogen Sulfide Contingency Plan/Public Protection Plans, the operator or facility must notify the New Mexico Oil Conservation Division or the Bureau of Land Management, as appropriate. Additionally, for a release on state or private lands, the operator or facility must submit a full report of the incident within 15 days following the release.

Exhibit D, Page 1
Zone 1 and 2 Special LPC Areas

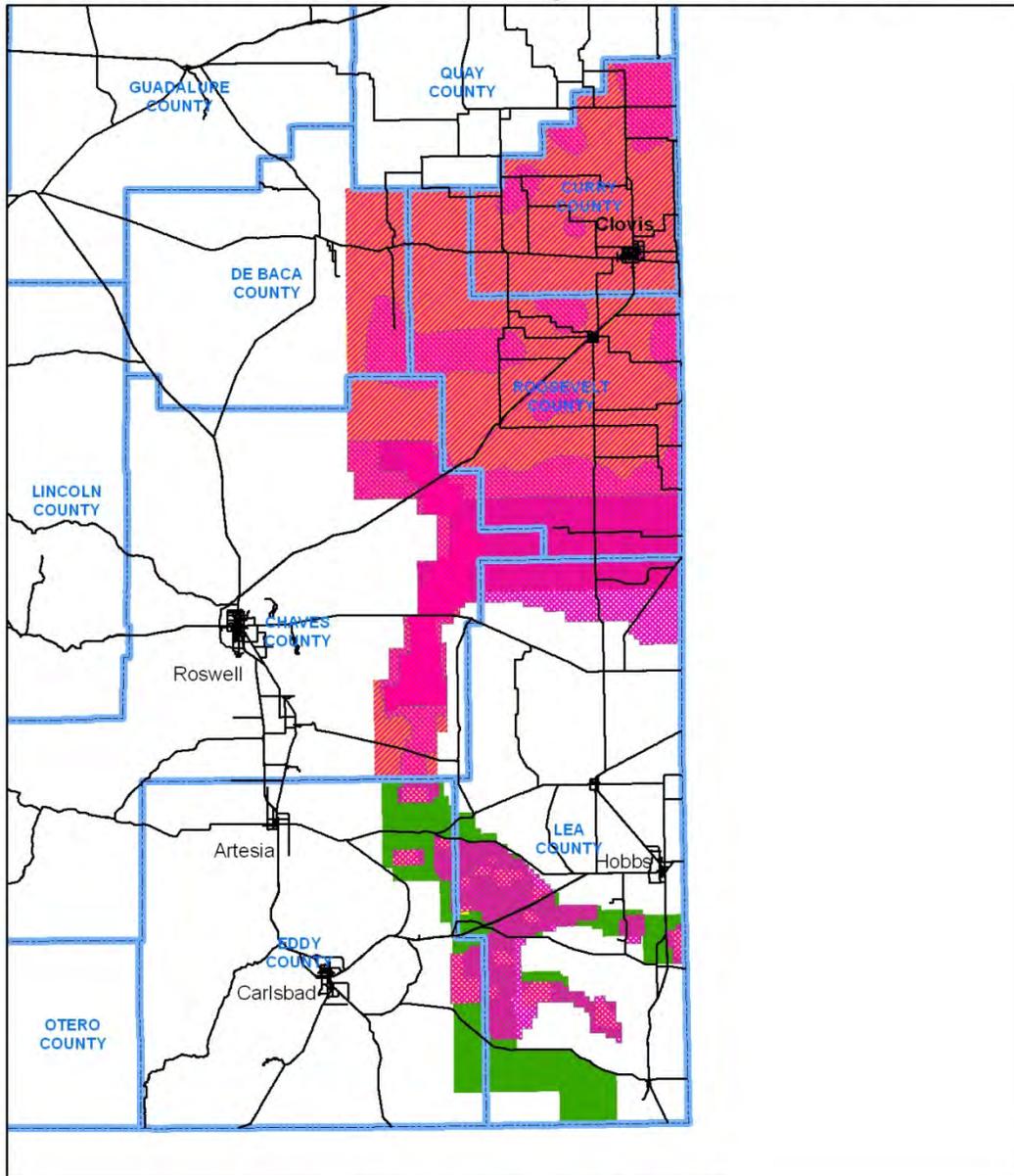
Lesser prairie-chicken (LPC) management zones have been established in this Certificate of Inclusion to further implement and consistently apply conservation measures included in the CCAA by a reference to the BLM Special Status Species Resource Management Plan Amendment (RMPA). Basing the conservation measure solely on the RMPA potentially limited its conservation to the RMPA planning area and may not have included all areas known to be occupied with LPC in New Mexico. For example, the RMPA planning area did not include occupied habitat north of its Primary Population Area due to an absence of lands under BLM management. For implementation of this CI, the areas north of the PPA will be considered the “Sparse and Scattered” habitat type (See map D.1 and Exhibit B).

Zone 1 is considered the extent of habitat currently occupied by LPC according to the Lesser Prairie-Chicken Interstate Working Group (IWG), a collaborative group of biologists that monitor LPC across the five states where it occurs. Zone 1 includes occupied and historic lek locations, observances of LPC not associated with a lek site, and adjacent habitat that is expected to be occupied based on the professional knowledge of the local biologists reporting to the IWG. The portions of Zone 1 extending into Eddy and Lea Counties were designed to complement the current timing restrictions in the BLM Carlsbad Field Office. The LPC occupancy in New Mexico is supported by data held at Natural Heritage New Mexico (NHNM), the designated data clearinghouse for LPC in New Mexico, and are utilized by FWS, BLM, and NMDGF. Any future changes on the occupancy map will be based on data available from the IWG and/or NHNM and made available to the affected Participants prior to implementation.

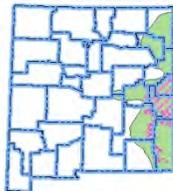
In Zone 1, 3-D seismic and 24-hour human-controlled operations, such as drilling, are prohibited during the period of March 1st through June 15th; activities such as construction are subject to timing restrictions—no activity between 3 a.m. and 9 a.m. between March 1st and June 15th; industrial noise, such as that caused by compressors and diesel engines, will be muffled or otherwise reduced to a level below 75 db at 30 feet from the source of the noise; and ground level abandoned well markers will be installed instead of the standard four-foot tall pipe, unless prohibited by law (see Exhibit E) or surface landowner. These prescriptions apply to projects or abandonments that occur after the execution of the Certificate. For facilities existing prior to the execution date, FWS/CEHMM will document locations that exceed the noise level or include traditional markers and will bring them to the attention of the Participant for voluntary remediation. Some locations may become high priorities for removing threats to LPC and thus qualify for using the habitat conservation funds collected through the CCAA towards removal.

Zone 2 includes the hatched areas of Chaves, Curry, DeBaca, and Roosevelt Counties that were not identified as Zone 1, but are considered important to the continued existence and distribution of LPC in this part of New Mexico. For a proposed action that would result in a habitat conservation fund deduction (see Exhibit B), the results of a survey for LPC performed between March 1st through May 1st (the height of booming season) will be required to the extent determined by the FWS or CEHMM representative, typically including the area within 2 miles of the proposed project. Developments in this area may necessitate early coordination with CEHMM to accommodate for these surveys. Any identified occupied lek will be added to the NHNM database and a 2 mile buffer will be placed around the lek. Proposed projects within the buffered area would be subject to the management prescriptions for Zone 1. In cases where LPC occupancy surveys are not performed prior to surface disturbance, management prescriptions for Zone 1 will apply.

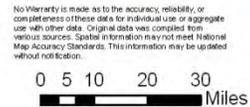
NM-CCAA LPC Timing, Noise, Markers



*Refer to Conservation Measures 9, 10, and 15 of the Participant's Certificate of Inclusion



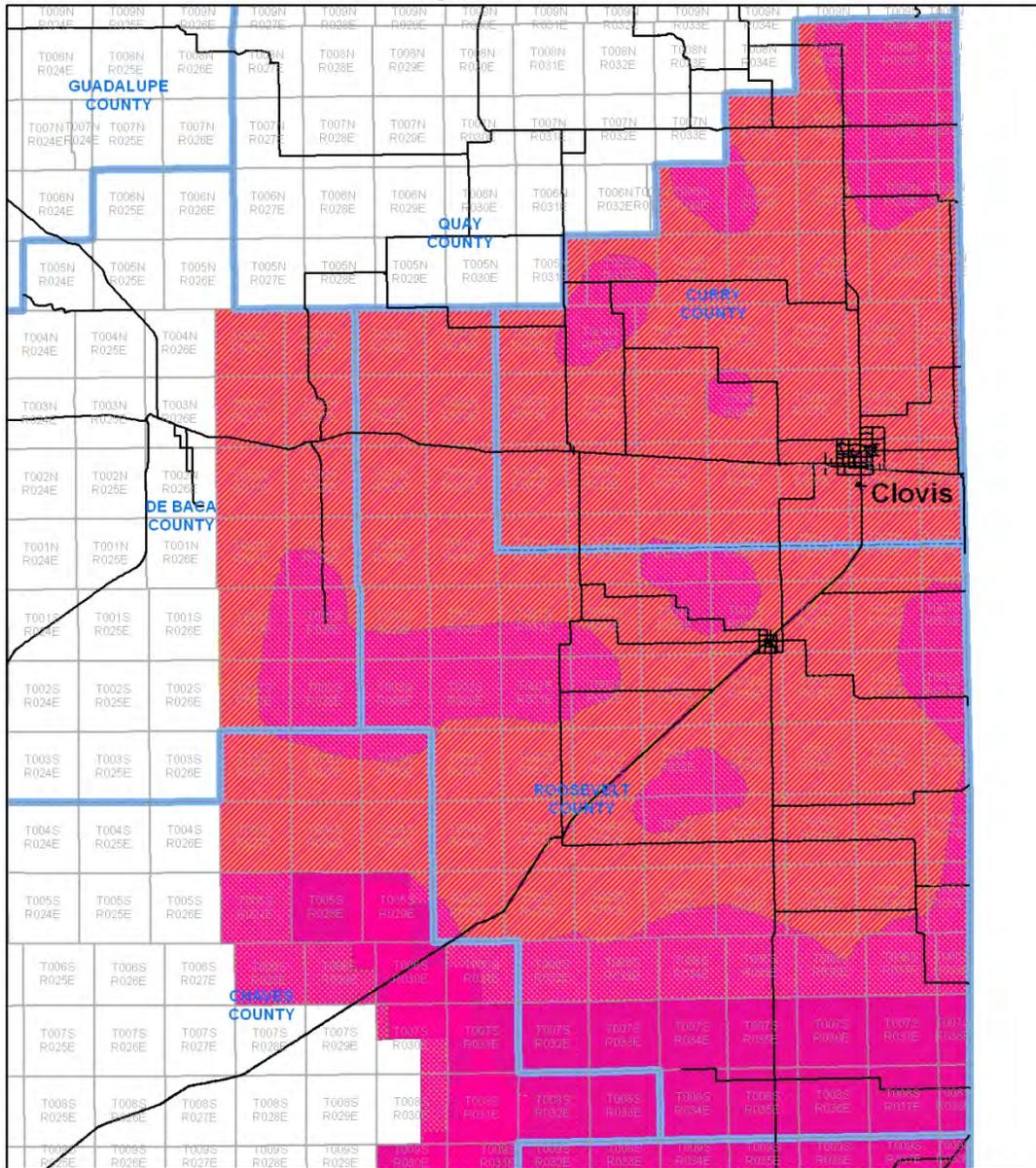
- | | |
|-----------------------------|------------------------------------|
| NM Counties | Core Management Area |
| NM Townships | Primary Population Area |
| Zone 1 Timing/Noise/Markers | Habitat Evaluation Areas |
| Zone 2 LPC Surveys Req'd | Sparse & Scattered Population Area |
| LPC Historic Range | Isolated Population Area |
| NM Major Roads | |



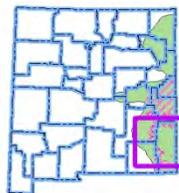
No Warranty is made as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data was compiled from various sources. Spatial information may not meet National Map Accuracy Standards. This information may be updated without notification.

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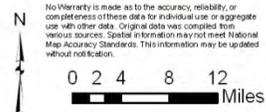
NM-CCAA LPC Timing, Noise, Markers--North Detail



*Refer to Conservation Measures 9, 10, and 15 of the Participant's Certificate of Inclusion



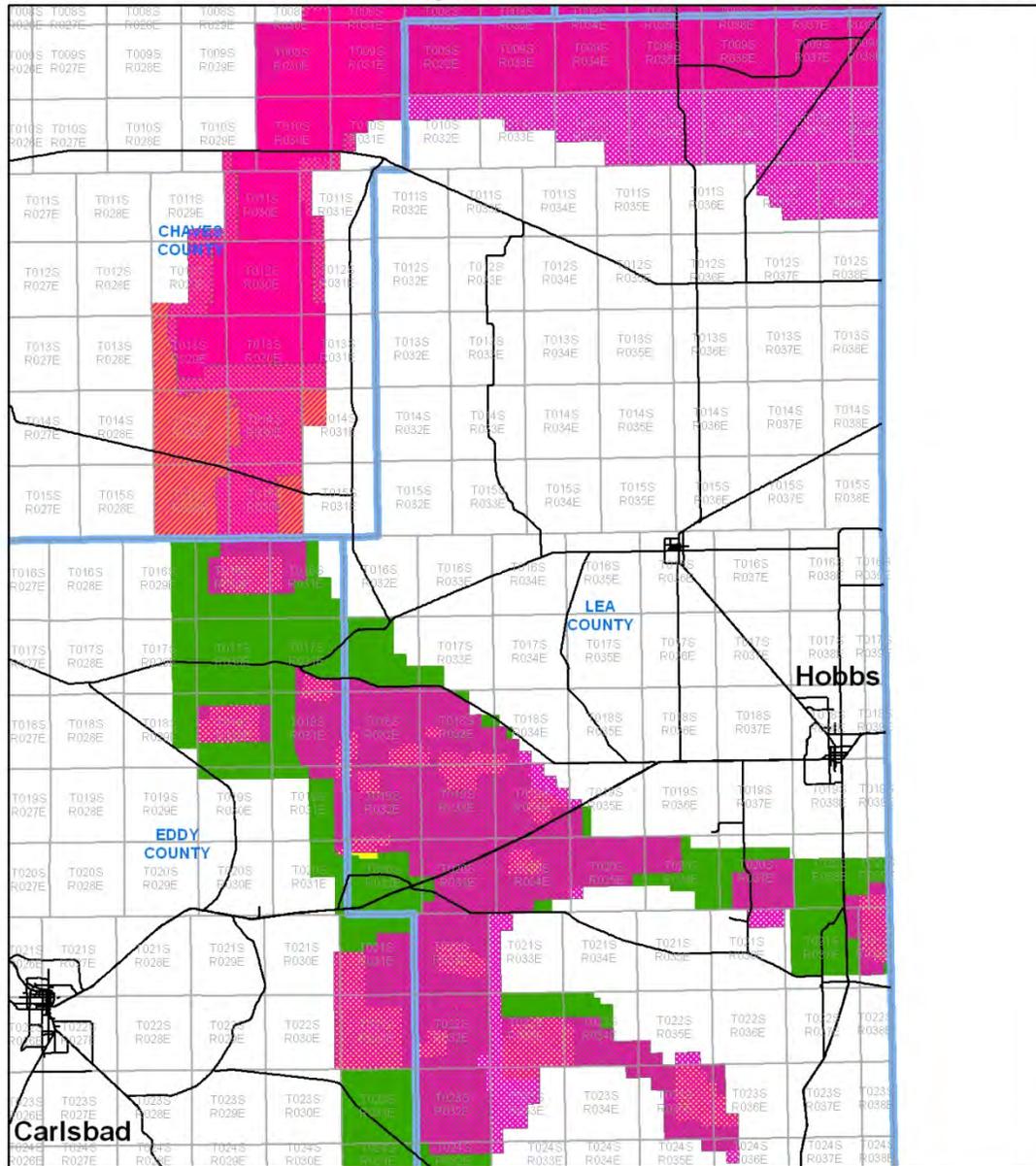
- NM Counties
- NM Townships
- Zone 1 Timing/Noise/Markers
- Zone 2 LPC Surveys Req'd
- LPC Historic Range
- NM Major Roads
- LPC Habitat Zone (Exhibit B) Core Management Area
- Primary Population Area
- Habitat Evaluation Areas
- Sparse & Scattered Population Area
- Isolated Population Area



No Warranty is made as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data was compiled from various sources. Spatial information may not meet National Map Accuracy Standards. This information may be updated without notification.

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NM-CCAA LPC Timing, Noise, Markers--South Detail



*Refer to Conservation Measures 9, 10, and 15 of the Participant's Certificate of Inclusion



082211

Exhibit E

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

CASE NO. 14151
Order No. R-12965

**IN THE MATTER OF THE REQUEST SUBMITTED BY THE BUREAU OF
LAND MANAGEMENT REGARDING THE PLUGGED AND ABANDONED
WELL MARKERS IN THE LESSER PRARIE CHICKEN AND SAND DUNE
LIZARD HABITAT**

BY THE OIL CONSERVATION DIVISION (DIVISION):

This request came to the attention of NMOCD oil and gas inspectors on May 27, 2008, through a letter dated May 23, 2008 (BLM REFERENCE NUMBER 1310 (NM51O)).

After review of that letter, those inspectors, having considered the matter, conclude the following:

1. The United States Bureau of Land Management (Bureau of Land Management or BLM) has observed that Raptors perch on steel markers placed pursuant to NMAC 19.15.4.202(B)(2) in portions of Eddy, Lea, Chaves, and Roosevelt Counties (hereinafter "Special Status Species Resource Management Plan Area" or "SSSRMPA") and prey on the Lesser Prairie Chickens and Sand Dune Lizards.
2. The lesser Prairie Chicken and the Sand Dune Lizard are Special Status Species warranted for listing pursuant to the Endangered Species Act, and considerable effort has been expended by the BLM and Oil and Gas Operators in the SSSRMPA to stabilize the population of these species within the area.
3. The SSSRMPA is that area designated in the Special Species Resources Management Plan (as amended), which is attached hereto as map no. 1.
4. The BLM has requested that operators or other parties be allowed to replace or install well markers at a level in the SSSRMPA that does not extend significantly above ground to prevent predators' use of plugged and abandoned well markers as perches.
5. Lowering these markers to ground level will significantly improve the chances of maintaining a stable population of Lesser Prairie Chickens and Sand Dunc Lizards.

6. Stable populations of the two species will minimize operating costs within the SSSRMPA.

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Page 2

7. Division Rule 202 B (2) states that "The operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four inches (4") in diameter set in cement and extending at least four feet (4') above mean ground level. The operator name, lease name, and well number and location, including unit letter, Section, Township, and Range, shall be welded, stamped, or otherwise permanently engraved into the metal of the marker.....**No plugged and abandoned marker shall be removed without the written permission of OCD**".

8. Division Rule 1303 states in part "**Only oil and gas inspectors and their deputies shall have the discretion to allow minor deviations from requirements of the rules as to field practices, where, by so doing, waste will be prevented, or burdensome delay or expense on the part of the operator will be avoided.**"

9. Changing the required height of the steel markers is a minor deviation from the requirement of the rules.

10. The Division accordingly concludes that BLM's request should be granted.

IT IS THEREFORE ORDERED THAT:

1. The request of the Bureau of Land Management is hereby granted. The plugged and abandoned well markers within BLM's Special Status Species Resources Management Plan, (Amendment 2008) in portions of Eddy, Lea, Chaves, and Roosevelt Counties of New Mexico, may be installed or cut off at approximately 2 inches above ground level, and the party installing or replacing such marker shall weld a rounded metal plate to it with the information required by Rule 202 (B)(2).

2. The granting of this request is subject to approval by the Bureau of Land Management.

3. Upon replacement of existing plugged and abandoned well markers, or installation of a new well marker, the operator or party replacing such marker shall submit a letter to the applicable OCD district office. This letter shall contain the affected well name, the GPS location of the well and the well API number. This letter will become part of the OCD well file.

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Order No. R-12965
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DONE at District I Hobbs, and District II Artesia, New Mexico, on the day and year hereinbelow designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION
HOBBS DISTRICT OFFICE

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION
ARTESIA DISTRICT OFFICE

Mary S. Brown
Oil and Gas Inspector

M. H. Brown
Oil and Gas Inspector

Date: 6/25/2008

Date: 6/25/2008