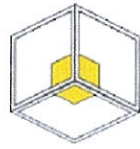


Appendix C



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 (SDL, 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 SDL. 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 SDL 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 SDL 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 SDL.

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 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/SDL 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/SDL, 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 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 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.

Appendix D

SUMMARY OF CCA FOR INDUSTRY

- CCA is for Federal mineral activity regardless of surface ownership.
- Participation is voluntary.
- Species involved are lesser prairie-chicken (LPC) and sand dune lizard (SDL).
- Funds will be used to implement conservation measures (CM) for both species.
- Participating Cooperators (PC) sign a Certificate of Participation (CP) and receive “a high degree of certainty that additional measures would not be required...”
- Participating Cooperators can enroll as many leases/parcels as they want.
- Participating Cooperators are responsible for ensuring the CP is followed by subcontractors, agents, and other interest holders on enrolled parcels.

Habitat Conservation Fees and Accounts

- Fees will be assessed and debited for permitted surface disturbing activities (on or off enrolled parcels) based on schedules in Exhibit B.
- Includes work by 3rd parties to produce the enrolled parcels. Must also adhere to CMs.
- The fee is based on area disturbed (not habitat) and will be debited at permit approval.
- Fees will not be charged for activities that do not require an agency permit or approval.
- CEHMM will maintain funds in accounts established and tracked for each PC.
- PCs deposit \$2/gross acre for all enrolled leases for 3 consecutive years from date of enrollment. Deposits for subsequent two years will occur on the anniversary date.
- The minimum deposit will be \$20,000 even if <10,000 acres enrolled.
- CEHMM contacts PC if account is insufficient to debit fees; PC has 60 days to correct.

Transferring or Adding New Leases

- Parcels can be transferred before or after listing but not into habitat for a listed species
- Parcels can be added by addendum to CP, but cannot include habitat for a listed species
- The CP is tied to the land. Once an authorized activity results in ground disturbance, the enrolled parcel in the CP is no longer eligible for transfer to another location. The parcel remains eligible for transfer to another company.
- Transfers between companies can occur if the receiving company (1) Signs/has a CP, (2) accepts the parcel's CMs, and (3) assumes remaining portion of the 3 year payments.

Termination

- BLM/FWS will only terminate if (1) Fees are not paid, or (2) CMs are not followed.
- CEHMM notifies PC they have 60 days to pay or show due diligence in correcting issue.
- If PC fails to correct a payment or CM deficiency in 60 days, the affected lease will be removed from the CP.
- If PC has 3 uncorrected deficiencies within 365 days, the entire CP is terminated.
- PC can terminate the CP after the 3rd payment period with 30 days notice.