

DEPARTMENT OF INTERIOR  
U.S. FISH AND WILDLIFE SERVICE  
2105 OSUNA ROAD, NE  
ALBUQUERQUE, NEW MEXICO 87113-1001

**FINDING OF NO SIGNIFICANT IMPACT**

ISSUANCE OF A SECTION 10(a)(1)(A) ENHANCEMENT OF SURVIVAL PERMIT AND IMPLEMENTATION OF A CANDIDATE CONSERVATION AGREEMENT (CCA) AND CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES (CCAA) FOR THE CONSERVATION OF THE LESSER PRAIRIE CHICKEN AND SAND DUNE LIZARD IN SOUTHEASTERN NEW MEXICO

We prepared an Environmental Assessment (EA – attached) for the issuance of a section 10(a)(1)(A) enhancement of survival permit and implementation of a CCA and CCAA that will result in the conservation of the lesser prairie-chicken (*Tympanuchus pallidicinctus*) (LPC) and sand dune lizard (*Sceloporus arenicolus*) (SDL) in southeastern New Mexico. Specifically, the covered area includes all or portions of the counties of Lea, Eddy, De Baca, Curry, Roosevelt, Quay, and Chaves. The CCA and the CCAA are separate agreements; one will apply to participants on Federal lands (CCA), and one will apply to participants on State and/or private lands (CCAA).

Preferred Alternative

The preferred alternative will involve the approval and implementation of conservation agreements (CCA and CCAA) between the U.S. Fish and Wildlife Service (FWS), the Bureau of Land Management (BLM), the Center of Excellence for Hazardous Materials Management (CEHMM), and Participating Cooperators (CCA) or Participating Landowners (CCAA) to address the conservation needs of the LPC and SDL in southeastern New Mexico. CEHMM will be responsible for enrolling participants through the Certificate of Participation (CP) or Certificate of Inclusion (CI). A CP/CI is the mechanism for participants to voluntarily become part of a conservation agreement while the LPC and SDL are still in candidate status. The procedure will entail each participants signing a CP/CI for a particular parcel of land (enrolled property), and agreeing to either implement conservation measures or provide funding for implementation of conservation measures for the species their actions may affect. Even though the landowner, leasee, operator, or permittee may change over time, the CP/CI will remain tied

to the enrolled property described in the certificate if the new landowner, leasee, operator, or permittee is interested in maintaining the agreement.

Since the FWS and BLM will work cooperatively to determine which conservation measures are the highest priority, it is important to note that funds or in-kind work associated with a CP/CI will not need to be used on the enrolled property as described under its corresponding certificate since that area may not encompass the highest priority area identified for conservation actions by BLM and FWS.

Participants will benefit from voluntarily enrolling in the conservation agreement in several ways. Under a CCA, in the event the LPC and/or SDL become listed under the ESA, the Participating cooperator will receive a high degree of certainty that the biological opinion will be unlikely to change from the conference opinion. As a result, it will be unlikely that more stringent restrictions or additional conservation measures will be required on Federal lands. Under a CCAA, the Participating Landowner will receive assurances that no additional restrictions will be required on non-Federal land. Therefore, Participating Cooperator/ Participating Landowner will be able to continue existing land uses under the terms of the CP/CI without need for a section 7 consultation for Federal actions, or the development of a habitat conservation plan in support of a section 10(a)(1)(A) incidental take permit for non-Federal actions.

Participating Cooperators/Participating Landowners will agree to protect and enhance existing populations and habitats, restore degraded habitat, create new habitat, augment existing populations of LPC, restore historic populations, or undertake other activities to improve the status of the LPC and SDL. The management activities included in the CCA and CCAA will reduce and/or eliminate threats to the species. Each CP/CI will be negotiated on a case-by-case basis so that participating cooperators will either; 1) contribute funds to accomplish conservation measures, or 2) implement agreed upon conservation measures. While it will not be necessary to conduct all conservation measures on every property enrolled under the CCA and CCAA, approved conservation measures will be undertaken as necessary to reduce and/or eliminate a particular threat. CEHMM will have the ability to use contributed funds on any lands where the landowners agree to allow the implementation of conservation measures and provide written permission to do so. The goal will be to implement the highest priority conservation measures needed (regardless of land ownership), which will be determined by the FWS and BLM with input by CEHMM to reduce and/or eliminate threats to both species. As new information or empirical data becomes available, these conservation measures will be modified through adaptive management in order to achieve greater species conservation.

The ultimate goal of the conservation agreement will be to facilitate conservation of the LPC and SDL in southeastern New Mexico. Conservation measures to benefit the LPC will include, but not be limited to, improving habitat and increasing populations by coordinating vegetation treatments with ongoing activities, decreasing habitat fragmentation, propagating and releasing

and/or translocating individuals, and conducting research conducive to adaptive management of the LPC. Measures to benefit the SDL will include, but not be limited to, maintaining existing habitat, preventing further habitat fragmentation, and conducting research conducive to adaptive management of the SDL.

## Alternatives Considered

### No Action Alternative

Under the No Action Alternative, the FWS, BLM, and CEHMM would not enter into a conservation agreement (CCA or CCAA) with willing participants. These participating cooperators (i.e., state and private property owners (CCAA); Federal leases, permittees, and operators (CCA)) would have little economic or legal incentive to voluntarily initiate conservation or management activities to benefit the LPC and SDL. In addition, conservation measures above and beyond those directed by existing Federal, State, and local laws, policies, or regulations would not be implemented. The conservation and management of SDL and LPC populations on BLM lands would continue to be guided by those prescriptions identified in the Special Status Species Resource Management Plan Amendment (RMPA).

The LPC is not a state-listed species in New Mexico and would continue to be afforded little protection on State lands. The SDL is listed as threatened under the New Mexico Wildlife Conservation Act; however, the New Mexico State Lands Office (NMSLO) does not provide any protective measures for this species on leased lands they administer. On private lands, where the state or Federal government has no authority to protect or direct the management of listed species' habitat, conservation activities would continue to be implemented entirely at the discretion of the landowner.

### Development of a CCA Only

This alternative would involve the development of a CCA between the FWS, BLM, CEHMM, and Participating Cooperators to address the conservation needs of the LPC and SDL on Federal lands in southeastern New Mexico (approximately 22% of the covered area). This alternative would be the same as the preferred alternative, excluding the development of the companion CCAA. As a result, there would not be an agreement in place to address the conservation needs of the LPC and SDL on private and State lands where there would be no Federal nexus. Private landowners would not be given the opportunity to implement proactive conservation measures in return for assurances from the FWS that additional restrictions would not be required of them should either species' become listed in the future.

### Development of a CCAA Only

This alternative would involve the development of a CCAA between the FWS, CEHMM, and Participating Landowners to address the conservation needs of the LPC and SDL only on private

and State lands in southeastern New Mexico (approximately 78% of the covered area). This alternative would be the same as the preferred alternative, excluding the development of the CCA. As a result, there would not be an agreement in place to address the conservation needs of the LPC and SDL on Federal lands. Federal leasees, operators, and permittees, who currently conduct activities within a large portion of the area occupied by the LPC and SDL, would likely be less inclined to implement proactive conservation measures on Federal lands in order to increase the likelihood that additional restrictions would not be required of them should either species' become listed in the future. As a result, for any future actions they propose on Federal lands containing the LPC or SDL, if these species were listed they would be required to go through the standard section 7 consultation process with the Service or wait until a programmatic section 7 consultation was completed. This may result in delays to their proposed activities.

### Public Comment

The Draft Environmental Assessment and Conservation Agreements (CCA and CCAA) were published in the *Federal Register* on October 21, 2008 and comments were accepted through November 20, 2008. Additionally, a news release was submitted to over 90 media outlets on October 22, 2008. Input was requested for the development of the CCA during two meetings held on August 11, 2008 in Artesia, New Mexico and on August 12, 2008 in Roswell, New Mexico. The Draft Environmental Assessment, CCA, CCAA, and Federal Register notice were published to the Service's New Mexico Ecological Services website ([www.fws.gov/southwest/es/NewMexico/](http://www.fws.gov/southwest/es/NewMexico/)).

We received 13 comment letters from individuals, state and Federal agencies, and Non-governmental organizations. The issues related to the draft EA, draft CCA, and draft CCAA are addressed in our Findings and Recommendations Memorandum for the approval of the CCA/CCAA and issuance of the associated section 10(a)(1)(A) enhancement of survival permit. These letters are on file in the CCA/CCAA for LPC and SDL project file in the New Mexico Ecological Services Field Office, Albuquerque, New Mexico.

### Determination

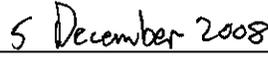
Based upon information contained within the final EA and supporting data in our files, we have determined that this action is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act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

It is my decision to issue the section 10(a)(1)(A) enhancement of survival permit and begin implementation of the CCA and CCAA for the conservation of the lesser prairie-chicken

(*Tympanuchus pallidicinctus*) and the sand dune lizard (*Sceloporus arenicolus*) in southeastern New Mexico.

A handwritten signature in black ink, appearing to read "B. D. Mills", written over a horizontal line.

Deputy Regional Director

A handwritten date "5 December 2008" written in black ink over a horizontal line.

Date