

**FINDINGS AND RECOMMENDATIONS
REGARDING
AN ENHANCEMENT OF SURVIVAL PERMIT APPLICATION
SUBMITTED BY
WILLIAM AND NANCY MOORE
IN CONJUNCTION WITH
A CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES FOR THE
GREATER SAGE-GROUSE
ON PRIVATE RANGELANDS THEY OWN OR LEASE IN
BAKER AND MALHEUR COUNTIES, OREGON**

I. BACKGROUND

In response to the potential for the greater sage-grouse (*Centrocercus urophasianus*; sage-grouse) to be listed as an endangered or threatened species under the Endangered Species Act (ESA), William and Nancy Moore (Landowners) submitted an enhancement of survival permit (permit) application and the *Greater Sage-Grouse Candidate Conservation Agreement with Assurances for Private Rangelands owned and leased by Mr. and Mrs. William Moore in Baker and Malheur Counties, Oregon* (Moore CCA) to the U.S. Fish and Wildlife Service (Service). The Moore CCA was prepared cooperatively by the Service and the Landowners.

Livestock production is a primary use of Oregon's rangelands, and an ESA listing of the sage-grouse could have a significant impact on the Landowners. An approved CCA for the sage-grouse would offer the Landowners assurances that their practices could continue as covered under the Moore CCA in the event the species is listed.

Section 10(a)(1)(A) of the ESA allows the Service to issue an enhancement of survival permit (permit) to address the incidental take of listed species caused by implementation of a CCA provided certain criteria are met. This Findings and Recommendations document includes a discussion of the permit issuance criteria under section IV below. Documents used in the preparation of these Findings and Recommendations include the *Greater Sage-Grouse Candidate Conservation Agreement with Assurances for Private Rangelands owned and leased by Mr. and Mrs. William Moore in Baker and Malheur Counties, Oregon* (Moore and USFWS 2014), the associated environmental action statement (EAS) (USFWS 2014a), and the Service's Conference Opinion on the proposed action of permit issuance (USFWS 2014b). All of the above documents are herein incorporated by reference pursuant to 40 CFR § 1508.13.

II. DESCRIPTION OF THE PROPOSED ACTION

The Service proposes to issue a permit to the Landowners. The permit would authorize incidental take of sage-grouse, a candidate for listing under the ESA, should it become listed during the term of the proposed permit. Incidental take would only be authorized for otherwise lawful activities covered under the Moore CCA on approximately 7,290 acres of sage-grouse habitat in Baker and Malheur Counties, Oregon.

Covered activities under the Moore CCAA include rangeland practices in rangeland treatments, including limited use of specific herbicides; livestock management; and maintaining developments related to ranch operations. The Moore CCAA also includes sage-grouse conservation measures, conservation measures for changed circumstances, and provisions for the inventory and monitoring of Moore CCAA activities

By signing the Moore CCAA, the Landowners agree to implement the CMs contained in the Moore CCAA associated with current or future activities on the enrolled land. These CMs are designed to reduce or remove threats to the sage-grouse and restore, enhance, or preserve its habitat. The Landowners also agree to allow access to monitor the effectiveness of the implemented measures. In return, the Service provides the Landowners with assurances that no additional conservation measures or additional land, water, or resource use restrictions, beyond those voluntarily agreed to, will be required should sage-grouse become listed as a threatened or endangered species, provided that the Moore CCAA is being implemented as agreed. The only exception is when an unforeseen circumstance occurs (**Section 20: Unforeseen Circumstances**). This approach is consistent with CCAA Final Rule and the regulations implementing the rule:

The Moore CCAA would be in effect for 30 years following its approval and signing by the Service and the Landowners. The associated Permit authorizing take of the species would also have a term of 30 years from the date the Permit is issued. While the species remains unlisted, the Service may renew the Moore CCAA based upon a re-evaluation of the Moore CCAA's ability to continue to meet the CCAA standard. At any time, the Landowners may also voluntarily terminate the Moore CCAA with a 30-day written notice.

The Moore CCAA has the following goals:

- Provide the Landowners assurances that current ranch and land management practices covered by the Moore CCAA will continue in the event sage-grouse is listed under the ESA, provided that the Moore CCAA is being implemented as agreed upon.
- Promote CMs that reduce or remove threats to sage-grouse through proactive ranch and land management, providing comprehensive conservation to meet the CCAA standard.
- Maintain current sage-grouse habitat and to improve habitat that is not meeting conservation objectives.

III. PUBLIC COMMENTS

On August 15, 2014, we issued a Notice of Availability in the Federal Register (79 FR 48243) for the draft CCAA and draft Environmental Action Statement (EAS) for public review. A 30-day public review and comment period was open until September 15, 2014. The draft EAS and draft Moore CCAA were available via the Service's Oregon Fish and Wildlife Office website, and in hard copy at the La Grande Field Office in La Grande, Oregon.

We received comments from one individual who was supportive of issuing a permit for the Moore CCAA as long as hunting of sage-grouse was not allowed on the enrolled lands at any time. The Landowners do not allow sage-grouse hunting on their property and post “no trespassing” signs to discourage public from using their private land. In addition, incidental take of sage-grouse from the implementation of the Moore CCAA will only be for the covered activities described in **Section 15. Covered Activities** in the Moore CCAA. Additionally, we believe this comment did not identify any new environmental impacts that had not already been addressed in the draft EAS.

IV. ENHANCEMENT OF SURVIVAL PERMIT ISSUANCE CRITERIA – ANALYSIS AND FINDINGS

As set forth in 50 CFR 17.32 (d)(2), the Service finds that the section 10(a)(1)(A) issuance criteria for the permit associated with the above CCAA are met, as detailed below:

A. The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the CCAA.

The Service finds that take of the sage-grouse caused by covered activities under the Moore CCAA would be incidental to otherwise lawful activities. These otherwise lawful activities would occur as a result of implementing the covered activities and associated CMs as described in the Moore CCAA, including rangeland treatments, livestock management, and ranch-related developments. Hunting of sage-grouse is not a covered activity. The take authorization provided by the permit will become effective if, and at such time that, the sage-grouse becomes federally listed as either threatened or endangered under the ESA.

B. The CCAA complies with the requirements of the Service’s CCAA policy.

The Service has determined that the *Greater Sage-Grouse Candidate Conservation Agreement with Assurances for Private Rangelands owned and leased by Mr. and Mrs. William Moore in Baker and Malheur Counties, Oregon* contains and adequately addresses all the required elements of a CCAA as described in the Service’s CCAA policy and regulations. This includes satisfying the following CCAA standard:

“When evaluating a potential CCAA, the Service must determine that the benefits of conservation measures to be implemented by a property owner under a CCAA, when combined with those benefits that would be achieved if the conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species.”

The following discussion provides the reasoning behind our above conclusion and is organized into the three primary elements considered for determining that the CCAA standard is met: (1) threat reduction; (2) conservation benefits; and (3) adaptive management.

1. Threat Reduction

Habitat loss and fragmentation is the most significant threat to the long-term persistence of the sage-grouse. Wildfires in low elevation sagebrush, and juniper encroachment in high elevation sagebrush, are the two largest factors contributing to that habitat loss and fragmentation. Additional threats to the sage-grouse include agricultural conversion of sagebrush, drought and other climate change-related phenomena associated with rising CO₂ levels, flooding, West Nile virus, unmanaged or improper grazing, wild horses, recreation, predation, sagebrush defoliating insects (Aroga moth), and energy development and other infrastructure (USFWS 2010).

The Service is required to determine if the conservation measures to be implemented under a CCAA would be sufficient to remove or substantially reduce the threats to the covered species. The Moore CCAA under consideration herein includes 51 CMs that address direct and indirect threats to the sage-grouse and its habitat including: habitat fragmentation; juniper expansion; unmanaged and/or improper grazing practices; exotic, invasive vegetation; drought; and proactive measures to minimize the potential for West Nile virus. The Moore CCAA also includes conservation measures to address changed circumstances. Changed circumstances are changes affecting sage-grouse or the geographic area covered by the Moore CCAA that can reasonably be anticipated and can be planned. The CMs for changed circumstances address impacts to the sage-grouse and its habitat resulting from wildfire; drought; West Nile virus; land developments outside the control of the Landowners; predation; and exotic, invasive vegetation. These CMs also address new information that may become available regarding unanticipated, significant impacts caused by herbicide use on covered lands. In addition, the CCAA allows for the development of new CMs, provided the Landowners and the Service mutually agree, and the modification is in accordance with all applicable legal requirements.

2. Conservation Benefits

The Moore CCAA addresses a subset of the threats listed above relative to occupied sage-grouse habitat in Baker and Malheur Counties, Oregon. In order for the Moore CCAA to meet the CCAA standard described above, the conservation actions under the plan must reduce all of the threats to the sage-grouse on the enrolled lands, to the point where, if these actions were undertaken on all necessary properties, the declining population trend of the sage-grouse would be reversed to the extent that there would be no need to list the sage-grouse under the ESA. This level of conservation benefit is more than just a net conservation benefit to recovery. This level of conservation benefit is a reversal in the species trend based on the principle that if all similarly situated landowners within the range of the sage-grouse applied these measures, it is reasonably certain that the threats to the sage-grouse would be addressed to an extent where its listing under the ESA would not be necessary.

Some specific benefits to sage-grouse habitat provided by rangeland management activities implemented in accordance with this CCAA include:

- Maintenance of large tracts of un-fragmented and undeveloped land;
- Management of fuels to help reduce the risk of catastrophic wildfires and associated fragmentation;
- Maintenance of rangeland native plant diversity, including perennial grasses and forbs;
- Management of weed and other invasive plant species;
- Contribution to meeting the objectives of the Oregon Department of Fish and Wildlife's (ODFW) Strategy (Hagen 2011) for the sage-grouse that are relevant to enrolled private lands; and
- Increased ranking preference for enrolled lands for obtaining resources from Federal, State, and local programs for sage-grouse habitat improvement (e.g., the Natural Resource Conservation Service (NRCS) Sage Grouse Initiative, Service's Partners Program, and the Oregon Watershed Enhancement Board (OWEB).

3. Adaptive Management

Under the Moore CCAA, an inventory and monitoring program will be implemented to inform adjustments in the implementation of conservation measures. Although many of the CMs in the Moore CCAA have been successfully implemented as part of other conservation efforts, the outcomes of a few of the CMs may vary based on local site conditions. Specifically, CMs with a vegetation rehabilitation component may have varying success based on the local soil type, climatic conditions such as rainfall timing and amount, and the level of historic disturbance. For these CMs, careful monitoring both before and after implementation, along with the flexibility provided through adaptive management, will maximize the likelihood of success through possible changes to seed mixtures, rescheduling of rehabilitation efforts, timing of treatments, and other adjustments.

Such an adaptive approach explicitly recognizes that multiple factors (environmental conditions, biological processes) may affect sage-grouse populations. Furthermore, the consequences of prescriptive CMs cannot be predicted with certainty. Therefore, the CCAA provides a framework for making objective adjustments in the face of uncertainty. If the desired results of a CM are not achieved, the Landowners will modify the CM or enact another CM in order to achieve the desired results. The adaptive management program under the Moore CCAA relies on an iterative cycle of monitoring, assessment, and decision-making to clarify the relationships among the CMs, the habitat response, and sage-grouse abundance in the covered area.

C. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species.

The ESA's legislative history establishes the intent of Congress that this issuance criterion be identical to a regulatory finding of no jeopardy under section 7(a)(2) (see 50 CFR 402.03). Pursuant to that intent, the potential effects to candidate and listed species likely to be caused by the issuance of this section 10(a)(1)(A) permit were reviewed by the Service under section 7 of the ESA. In the Service's conference opinion on this permit action, the Service concluded that issuance of the permit will not jeopardize the continued existence of the sage-grouse or any affected federally-listed or candidate species. This conclusion was reached based on the following reasons:

1. The conservation measures implemented under this CCAA will facilitate avoidance, minimization, and mitigation of threats to the sage-grouse on approximately 7,290 acres of occupied habitat in Baker and Harney Counties, to an extent that is likely to cause an increase in the sage-grouse population on and near the enrolled lands. On that basis, the Moore CCAA is expected to provide a long-term benefit to the sage-grouse.
2. The total amount of annual incidental take of the sage-grouse likely to be caused by covered activities under the CCAA is 0.00013 percent of the estimated 24,515 individuals of the sage-grouse comprising the Statewide population. To place this number into context, this estimate is orders of magnitude lower than known harvest rates across the range of sage-grouse that have been considered to have no measurable population impact. On that basis and taking into account the conservation benefit likely to be caused by implementing the Moore CCAA, it seems reasonable to conclude that the adverse effects of the proposed permit action on the enrolled lands are unlikely to result in an appreciable reduction in the likelihood of survival and recovery of the sage-grouse rangewide.

D. Implementation of the terms of the CCAA is consistent with applicable Federal, State, and Tribal laws and regulations.

The Service is not aware of any law or regulation that would prevent implementation of the Moore CCAA. The Moore CCAA does not preempt the need for the Landowners to comply with other applicable Federal, State, Tribal, or local laws, but solely serves as an instrument to comply with certain provisions of the ESA. The permit includes a specific condition that requires the permittee to be compliant with all applicable State, Federal, Tribal, and local laws or regulation. Failure to comply with this term and condition can result in suspension or revocation of the permit.

E. Implementation of the terms of the CCAA will not be in conflict with any ongoing conservation programs for species covered by the permit.

Existing programs for conservation of the sage-grouse include:

- **NRCS:** In March 2010, NRCS started the Sage Grouse Initiative program to work with landowners to conserve the sage-grouse and sustain working ranches throughout the range of the species.
- **ODFW's Local Implementation Teams for the ODFW Sage-grouse Strategy:** To facilitate implementation of the ODFW Sage-grouse Strategy at the local level, an interagency team has been established for each BLM District in the range of the sage-grouse in Oregon, and an additional team has been established for the Baker Resource Area of BLM's Vale District.
- **The Service's Partners for Fish and Wildlife Program:** Program staff are providing technical assistance and funding to private landowners for habitat conservation, including for the sage-grouse, on "working" lands.
- **Bureau of Land Management (BLM) Candidate Conservation Agreement (CCA):** In Oregon, a Greater Sage-Grouse Programmatic CCA for Rangeland Management Practices on BLM Lands was signed on May 30, 2013. This agreement provides for Federal grazing permit holders to enter into a voluntary agreement with BLM to provide additional protections for the sage-grouse on their BLM grazing allotments.
- **BLM:** Incorporates best management practices for the sage-grouse into Resource Management Plans developed for lands it manages throughout the current range of the species.
- **U.S. Forest Service (USFS):** Manages sage-grouse habitat on its lands across the species' range. The USFS has designated the sage-grouse as a sensitive species on USFS-administered lands rangewide. Sensitive species require special consideration during land use planning and implementation.
- **Oregon Watershed Enhancement Board (OWEB):** The OWEB provides capacity funding to watershed councils and Soil and Water Conservation Districts (SWCDs). The OWEB also funds grants for watershed restoration, monitoring, watershed assessment and action planning, watershed outreach, land and water acquisition, and small grants many of which benefit the sage-grouse.
- **SageCon:** The Governor of Oregon has created a task force known as The Sage Grouse Conservation Partnership (SageCon) which is composed of a diverse group of stakeholders including: County and local officials, State agency personnel (ODFW, Oregon Department of Forestry, Oregon Department of State Lands, Oregon Department of Geology and Mineral Industries, and

others), Federal agencies (BLM, Service, NRCS, USFS), and non-governmental organizations (Audubon, Oregon Natural Desert Association, Defenders of Wildlife, among others). The intent of SageCon is to pull together an “all lands, all threats” approach to sage-grouse conservation to address the Service’s sage-grouse listing decision anticipated in 2015 and support community sustainability in central and eastern Oregon into the future:

- **SWCD Candidate Conservation Agreement with Assurances (CCAAs):** The Harney SWCD and the Service have signed a sage-grouse CCAA for private rangelands in Harney County. The remaining eastern Oregon SWCDs with sage-grouse habitat within their jurisdiction (Lake, Crook, Deschutes, Baker, Grant, and Malheur County SWCDs) are working with the Service on sage-grouse CCAAs that will nearly be identical to the completed Harney County sage-grouse CCAA. This CCAA provides a unique opportunity for landscape-scale conservation of sage-grouse habitat in Oregon.

For the reasons discussed above under Findings A through E, the Service finds that the proposed Moore CCAA would not be in conflict with any ongoing conservation programs for the sage-grouse, and, in fact, would complement these other conservation efforts.

F. The applicant has shown the capability for and commitment to implementing all the terms of the CCAA.

The Landowners have demonstrated capability and commitment to implement the Moore CCAA. Throughout the development process, the Landowners have met with the Service to develop the agreement and have secured funding to begin implementation of CMs in the Moore CCAA (juniper removal and fence marking). The Landowners have also pursued the option of securing a conservation easement for the enrolled lands and will continue to look for other available funding sources. As of this writing, the Landowners have already started removing juniper on the enrolled lands in Baker County on 625 acres and have secured funding from NRCS to remove juniper on the enrolled lands in Malheur County (2,260 acres to be completed by 2016).

V. GENERAL CRITERIA AND DISQUALIFYING FACTORS

The Service has no evidence that the permit should be denied based on the criteria and conditions set forth in 50 CFR 13.21 (b-e). The Landowners have met the criteria for the issuance of the permit and does not have any disqualifying factors that would prevent the permit from being issued under current regulations.

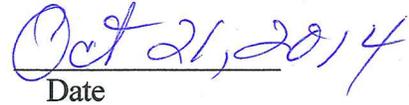
VI. RECOMMENDATIONS ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed permit action, I recommend issuance of permit number TE44243B-O to William and Nancy Moore to authorize the incidental taking of the sage-grouse in conjunction with the implementation of the *Greater Sage-Grouse Candidate Conservation Agreement with Assurances for Private*

Rangelands owned and leased by Mr. and Mrs. William Moore in Baker and Malheur Counties, Oregon.



Paul Henson, Ph.D.
State Supervisor
Oregon Fish and Wildlife Office
U.S. Fish and Wildlife Service



Date

Supporting References

- Hagen, C. A. 2011. Greater sage-grouse conservation assessment and strategy for Oregon: a plan to maintain and enhance populations and habitat. Oregon Department of Fish and Wildlife, Salem, USA.
- U.S. Fish and Wildlife Service (USFWS). 2010. 50 CFR Part 17 Endangered and threatened wildlife and plants; 12-month findings for petitions to list the greater sage-grouse (*Centrocercus urophasianus*) as threatened or endangered. Proposed Rule.
- Moore, B. and USFWS. 2014. Greater Sage-Grouse Candidate Conservation Agreement with Assurances for Private Rangelands owned and leased by Mr. and Mrs. William Moore in Baker and Malheur Counties, Oregon. August 15, 2014.
- USFWS. 2014a. Environmental Action Statement for the Greater Sage-Grouse Candidate Conservation Agreement with Assurances for Private Rangelands owned and leased by Mr. and Mrs. William Moore in Baker and Malheur Counties, Oregon. October 2014.
- USFWS. 2014b. Conference Opinion Greater Sage Candidate Conservation Agreement with Assurances for Private Rangelands owned and leased by Mr. and Mrs. William Moore in Baker and Malheur Counties, Oregon. October 2014.

