

**FINDINGS AND RECOMMENDATIONS
REGARDING
ISSUANCE OF ENDANGERED SPECIES ACT SECTION 10(a)(1)(A)
ENHANCEMENT OF SURVIVAL PERMITS
TO BAKER VALLEY, CROOK, GRANT, LAKEVIEW, AND MALHEUR COUNTY
SOIL AND WATER CONSERVATION DISTRICTS
IN ASSOCIATION WITH FIVE GREATER SAGE-GROUSE
PROGRAMMATIC CANDIDATE CONSERVATION AGREEMENTS WITH
ASSURANCES FOR PRIVATE RANGELANDS IN OREGON**

I. INTRODUCTION

Ranching and livestock production is a primary use of Oregon's rangelands. These land uses and the associated rural communities of eastern Oregon could be impacted by listing of the Greater sage-grouse (*Centrocercus urophasianus*) as threatened or endangered under the Endangered Species Act (ESA). In anticipation of a listing decision, several soil and water conservation districts requested assistance from the Fish and Wildlife Service (Service) in developing candidate conservation agreements that could offer landowners assurances that their ranching and rangeland management practices could continue in the event that the sage-grouse was listed under the ESA. A steering committee comprised of representatives including local private landowners, seven soil and water conservation districts, the Service, Natural Resources Conservation Service (NRCS), Oregon Department of Fish and Wildlife, Bureau of Land Management (BLM), Oregon State University Extension (OSU Extension), The Nature Conservancy (TNC), Department of State Lands (DSL), and Eastern Oregon Agricultural Research Center (EOARC) developed five Greater Sage-Grouse Programmatic Candidate Conservation Agreements with Assurances for seven counties in Oregon.

Documents used in the preparation of this statement of Findings and Recommendations include five Greater Sage-Grouse Programmatic Candidate Conservation Agreements with Assurances for Private Rangelands in seven counties in Oregon (CCAAs, Service 2015a-e), an associated environmental assessment (EA, Service 2015f) and finding of no significant impact (FONSI, Service 2015h), and the Service's Conference Opinion on the permit application (Service 2015g). All of the documents are incorporated by reference as described in 40 CFR § 1508.13.

II. DESCRIPTION OF THE PROPOSED ACTION

The Service proposes to enter into five CCAAs and to issue enhancement of survival permits (EOS permits) for incidental take of Greater sage-grouse to Baker Valley, Crook, Grant, Lakeview, and Malheur County Soil and Water Conservation Districts (SWCDs) pursuant to Section 10(a)(1)(A) of the Endangered Species Act (ESA) as amended, and the Services Final Policy for Candidate Conservation Agreements with Assurances (64 FR 32726, June 17, 1999). The term of the CCAAs and EOS permits is 30 years.

Types of Covered Activities

Activities proposed to be covered under the CCAAs and Permits are the otherwise lawful activities which are described in detail in Section 10 of the CCAAs. The covered activities are rangeland practices in these five categories: Rangeland treatments, livestock management, recreation, farm operations, and development. In addition to these covered activities, the following items would be covered under the permit: Conservation measures (Appendix A of CCAAs) and changed circumstances conservation measures (Section 15 of CCAAs), limited use of specific herbicides as described in Appendix E of the CCAAs, and the inventory and monitoring activities identified in the CCAAs as well as Appendix D of the CCAAs).

Conservation Strategy

The basic conservation approach described in the CCAAs is an ecologically-based approach to maintain current sage-grouse habitat and to improve deficient habitat. This approach relies on habitat models (Appendix C of the CCAAs) that describe factors that impact plant community composition and structure over time. These models indicate specific threats that can be influenced by management to improve habitat quality for sage-grouse; these threats are, in turn, the basis for habitat-related CMs (Appendix A of the CCAAs). Also identified are species-specific threats and associated CMs for non-habitat factors that directly (e.g. West Nile virus) and indirectly (e.g. insecticide use) impact sage-grouse populations (Appendix A of the CCAAs).

These programmatic CCAAs are designed to meet three goals:

- Provide participating landowners assurances that current ranch and land management practices covered by these CCAAs will continue in the event sage-grouse is listed under the ESA, provided that the 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.
- Provide an ecological approach to maintain current sage-grouse habitat and to improve habitat that is not meeting conservation objectives, as identified in the Permittees site specific plans.

Enrollment Process and Assurances

Private landowners can voluntarily participate under the CCAAs by working with the appropriate SWCD to complete a site-specific plan (SSP) which will identify conservation measures to address threats to sage-grouse on lands they wish to enroll. Upon Service approval of the SSP, the SWCD will issue participating landowner a Certificate of Inclusion (CI) under the CCAA which will also confer incidental take coverage under the EOS permit for their covered activities, should sage-grouse become listed during the term of the permit. Participating landowners would implement the conservation measures identified in their SSP in order to eliminate or reduce threats to sage-grouse on enrolled properties. In return for properly implementing the CCAAs through the associated SSP's and CI's, the Service would provide the SWCDs and participating landowners assurances that for the duration of the CCAAs and Permits, it would not impose additional commitments or land, water, or resource use restrictions beyond those already agreed to in the CCAAs and SSPs.

III. 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 a Candidate Conservation Agreement with Assurances permit are met and are detailed below:

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

The Service finds that proposed take of the sage-grouse would be incidental to otherwise lawful activities. These activities would occur as a result of the implementation of the conservation measures and covered activities described in the CCAAs. The incidental take authorization provided under this permit will become effective if, and at such time, the sage-grouse becomes federally listed as either threatened or endangered under the ESA.

B. The CCAAs comply with the requirements of the Service's CCAA policy.

Pursuant to the Service's CCAA policy the Service is required to determine whether the Greater Sage-Grouse Programmatic Candidate Conservation Agreements with Assurances for Private Rangelands in Baker, Crook/Deschutes, Grant, Lake, Malheur, and southern Union Counties, Oregon, satisfy the CCAA standard for permit issuance. The standard is: *“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.”* As part of determining whether the proposed CCAAs satisfy the CCAA standard, the Service is required to determine that the conservation measures within the CCAA would be sufficient to remove and/or significantly reduce the threats to the covered species over which the Permittees would have control.

The Service has concluded that the CCAAs meet the CCAA standard as described above by providing a comprehensive list of CMs that are expected to benefit sage-grouse through maintenance, enhancement, and rehabilitation of sage-grouse habitats by reducing threats causing direct and indirect mortality. Enhanced survival of sage-grouse is the objective of this agreement and implementation of the CMs identified in the CCAAs is expected to compensate any estimated take.

The following discussion provides the reasoning behind our conclusion and is organized into the three primary elements considered for determining that the CCAA standard is met: 1) Threats Reduction, 2) Conservation Benefits, and 3) Conclusion

1. Threats Reduction

The long-term persistence of the sage-grouse will depend on maintenance of intact shrub steppe landscapes as well as associated riparian and meadow habitats. The sage-grouse is landscape-scale species and the destruction and fragmentation of its habitat have contributed to significant population declines throughout its range over the past century. If current trends persist, many local populations may disappear in the next several decades, with remaining fragmented populations vulnerable to extinction. Habitat fragmentation is the most significant threat to the long-term persistence of the sage-grouse. The CCAA requires all Permittees to adopt the following conservation measure, known as CM 1: ***Maintain contiguous habitat by avoiding further fragmentation.*** The objective for this required CM is for no net loss in 1) habitat quantity (as measured in acres) and 2) habitat quality (as determined by the ecological state). Losses in sage-grouse habitat quantity may be offset by increases in sage-grouse habitat quality and vice versa, as long as the action avoids further fragmentation.

Habitat loss and fragmentation of sage-grouse habitat are the primary causes for long-term changes in population and abundance of the sage-grouse in the Counties and throughout the range of the species. Additional threats include wildfire in low-elevation sagebrush habitats, invasive species, juniper encroachment in high-elevation sagebrush habitat, sagebrush removal, agricultural conversion, drought, rising CO₂ levels, flooding, West Nile virus, unmanaged or improper grazing, wild horses, recreation, predation, sagebrush defoliating insects (Aroga moth), energy development, and other infrastructure development (USFWS 2010).

Implementation of the CMs in the CCAAs are likely to avoid or minimize impacts from the threats described above. The overall management approach is to stratify the enrolled lands based upon the ecological requirements for sage-grouse habitat, and then identify the current state of that habitat for each plant community (determined by initial baseline inventory). Once identified, each plant community may transition (change) due to impacts on the site which may be natural, influenced by man, or a combination of both. Those actions that cause transition to improve or maintain sage-grouse habitat are considered conservation measures (CMs); the actions or impacts which degrade sage-grouse habitat are considered threats to the habitat. The ecological model, "state and transition" (*Appendix C of the CCAA*) demonstrates this process by plant community in a flow chart. An associated set of flow charts, located in Section 6 of the *CCAAs Inventory and Monitoring Protocols*, describe the step-by-step process for habitat stratifying and identifying current states of plant communities. Derived from that classification, the flow charts continue on, identifying potential threats and CMs that will maintain or improve sage-grouse habitat. Through annual monitoring of the plant communities and their trends, the direction of transition of habitat can be determined. This will be the information base used to make informed decisions on habitat management and assign appropriate conservation measures.

2. Conservation Benefits

The threats listed above are addressed within the area of sage-grouse covered under the CCAAs. For these CCAAs, the conservation actions must be likely to reduce all of the threats on a particular property to the point, where, if conservation actions as identified in CCAA were undertaken on all necessary properties, the declining trend would be reversed and there would be no need to list this species. This level of conservation benefit is more than just a net conservation benefit to recovery; it is likely to facilitate a reversal in the species declining population trend - if it could be replicated on all necessary properties.

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

- maintenance of large tracts of unfragmented and undeveloped land;
- managing fuels to help reduce the risk of catastrophic wildfires and associated fragmentation;
- potentially increasing rangeland plant diversity, including perennial grasses and forbs;
- weed and invasive species management;
- maintenance and enhancement of healthy springs and seeps (Beck and Mitchell 2000; Connelly et al. 2004; Crawford et al. 2004; Cagney et al. 2010);
- contributing to meeting the strategies and objectives of ODFW's Strategy (Hagen 2011) that are relevant to enrolled private lands; and
- ranking preference for obtaining resources from Federal, State, and local programs for sage-grouse habitat improvement (e.g. NRCS Sage Grouse Initiative, Service Partners, OWEB).

Further, the results of monitoring efforts outlined in Section 6, *Inventory and Monitoring*, in the CCAAs and individual SSPs will be considered from an adaptive management perspective. Many of the potential CMs have been successfully implemented as part of other conservation efforts. However, outcomes of a few CMs may vary based upon local site conditions. Specifically, CMs with a vegetation rehabilitation component may have varying success based upon local soil type and climatic conditions such as rainfall timing and amount. 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 management approach explicitly recognizes that multiple factors (environmental conditions, biological processes) affect sage-grouse populations. Furthermore, the consequences of prescriptive CMs cannot be predicted with certainty. Therefore, the CCAAs provide a framework for making objective decisions in the face of uncertainty. If the desired results of a CM are not achieved, the

SWCDs will work with the landowner to modify the CM or enact another CM in order to achieve the desired results. Adaptive management relies on an iterative cycle of monitoring, assessment, and decision-making to clarify the relationships among the CMs and the response of habitat and, ultimately, sage-grouse abundance.

3. Conclusion

The CCAAs provide CMs that address threats to the sage-grouse from rangeland management activities on enrolled lands. The benefits provided by the CMs as well as the adaptive management approach are likely to result in reduced threats to sage-grouse on enrolled lands. Therefore, we conclude that if these measures were also implemented across the range of the species, the benefits combined with those in the CCAAs would likely preclude the need to list the species. The Service has also determined that the CCAAs contain and adequately addresses all of the required elements of a CCAA as described in the Service's CCAA policy and regulations.

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). Therefore, the potential effects to candidate and listed species of issuance of this ESA section 10(a)(1)(A) permit were reviewed by the Service under section 7 of the ESA. In the Service's conference opinion addressing this action, the Service concluded that issuance of the Permit will not jeopardize the continued existence of the greater sage-grouse or any federally listed or candidate species.

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

The Service is not aware of any law or regulation that would prevent the implementation of the CCAAs and the accompanying Permits. The CCAAs do not preclude the need for the SWCDs and Participants to comply with any Federal, State, or Tribal laws, but solely serve as an instrument to comply with certain provisions of the ESA under which the Permit is being sought. The Permits will include a specific condition that requires the Permit Holder to be in compliance with any applicable State, Federal, or tribal law or regulation. Failure to comply with this term and condition can result in suspension or revocation of the Permit.

E. Implementation of the Agreement will not be in conflict with any ongoing conservation programs for species covered by the Permit.

Some of these programs include:

- **NRCS** - The Sage Grouse Initiative (SGI) is a NRCS program to work with landowners that began in March, 2010, to conserve sage-grouse and sustain working ranches throughout the range of the species.

- **ODFW's Local Implementation Teams** –There is one team for each BLM District in the range of the sage-grouse and an additional team for the Baker Resource Area of the Vale District, with the primary directive to ensure that the decisions regarding sage-grouse and sagebrush habitat conservation occur at the local level.
- **The Service's Partners for Fish and Wildlife Program** – Program staff provide technical assistance and funding to private landowners for habitat conservation on working lands, including those occupied by the sage-grouse and its habitats.
- **BLM Candidate Conservation Agreement** - In Oregon, a Greater Sage-Grouse Programmatic CCA for Rangeland Management Practices on BLM Lands in Oregon was signed on May 30, 2013. This agreement allows grazing permit holders to enter into a voluntary agreement with BLM to provide additional protections for sage-grouse on their BLM grazing allotments.
- **Harney County SWCD Candidate Conservation Agreement with Assurances** - This CCAA has been in effect since May of 2014, with dozens of private landowners voluntarily enrolled and nearly 320,000 acres with SSPs in development. All of the provisions of the CCAAs considered herein are the same as in the Harney County CCAA – including the CMs, inventory and monitoring protocols, responsibilities of the parties, and reporting requirements.
- **BLM** will continue to incorporate habitat CMs for the sage-grouse into Resource Management Plans developed for lands it manages throughout the current range of the species.
- **U.S. Forest Service** also manages sage-grouse habitat on its lands across the species' range. The agency has designated the sage-grouse as a sensitive species on USFS lands rangewide. Sensitive species require special consideration during land use planning and activity implementation
- **SageCon** – The Governor of Oregon has created a task force known as 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, FS), Non-Governmental Organizations (Audubon, Oregon Natural Desert Association, Defenders of Wildlife, others). SageCon will work to pull together an “all lands, all threats” approach to sage-grouse conservation to both address Service's sage-grouse listing decision and support community sustainability in central and eastern Oregon into the future.

See the Final Environment Assessment prepared by the Service for detailed information on current sage-grouse conservation programs. Many of these programs provide technical and financial assistance to property owners for habitat management for the sage-grouse.

The Service finds that the CCAAs for Private Rangelands in Baker, Crook/Deschutes, Grant, Lake, Malheur, and southern Union Counties in Oregon would not be in conflict in 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 SWCDs have secured funding to begin implementation of the CCAAs and will continue to look for funding sources. They have hired personnel to conduct baseline inventory and develop site specific plans. The SWCDs throughout the development process has funded time staff to develop the agreements and have already secured funding for outreach to private landowners, development of SSP's and additional funds have been secured to implement conservation measures. In addition, the SWCDs in partnership with the Service and the Oregon Association of Conservation Districts (OACD) recently secured an NRCS Regional Conservation Partnership Program (RCPP) grant, which will provide nearly \$9 million over the course of the next 5 years in direct support of the CCAAs, both for staff time as well as project implementation funds. The local NRCS office has also agreed to prioritize funds from the sage-grouse initiative to help implement conservation measures for landowners enrolled in the CCAAs.

Additionally, the CCAAs will prioritize enrollment based on the following factors:

Prioritization of Enrollment by Category of Habitat/Location:

1. Private lands within Preliminary Priority Habitat (PPH – see definition below)
2. Private lands within Preliminary General Habitat (PGH – see definition below) and adjacent to PPH
3. Private lands within PGH and not adjacent to PPH
4. Private lands adjacent to PPH not within PGH
5. Private lands adjacent to PGH not within PPH
6. Private lands that will maintain or provide new connectivity between PGH and PPH

PPH & PGH defined:

PPH: areas that have been identified as having the highest conservation value to maintaining sustainable sage-grouse populations. These areas correspond to Core Area Habitat in the ODFW Sage-grouse Conservation Assessment and Strategy for Oregon which includes known breeding, late brood-rearing, and known winter concentration areas. These areas also correspond to Priority Areas for Conservation (PACs) as identified in the Service 2013 Conservation Objectives Team Report which include the most important areas for maintaining sage-grouse populations across the landscape.

PGH: areas of occupied seasonal or year-round habitat outside of PPH. These areas include Low Density Habitat as described in ODFW Sage-grouse Conservation Assessment and Strategy for Oregon, as well as additional areas of suitable sagebrush habitat.

This will enable the SWCDs to enroll the highest priority lands first if funding is limited. Furthermore, at this writing the SWCDs have already received preliminary commitments from dozens of landowners in the covered area accounting for hundreds of thousands of acres of private rangelands in the Counties.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS

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

V. PUBLIC COMMENTS

The CCAAs were developed with considerable input from, and collaboration with, local private landowners, Federal, State and local government and other non-governmental organizations. On December 2, 2014, we issued a Notice of Availability in the *Federal Register* (79 FR 71444) for the draft Programmatic CCAAs and draft EA for public review. A 30-day public review and comment period was open until January 2nd, 2015. The draft EA and draft CCAAs were available at the Service's Oregon Fish and Wildlife Office website, and were available for review at Oregon Fish and Wildlife office in Portland, OR.

We received seven comment letters from the following entities: two County SWCDs, two non-governmental organizations, and three members of the general public. The majority of comments were in support of the draft CCAAs, two comments resulted in minor changes to the CCAAs and EA, and two comments were non-substantive. None of these comments identified any significant new environmental impacts that had not already been addressed in the draft EA. Our responses comments are in Appendix A of our Finding of No Significant Impact, pursuant to NEPA.

VI. RECOMMENDATIONS ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend issuance of ESA section 10(a)(1)(A) Enhancement of Survival Permits to Baker Valley SWCD, Crook County SWCD, Grant SWCD, Lakeview SWCD, and Malheur County SWCD to authorize the incidental take of the greater sage-grouse in accordance with the Candidate Conservation Agreements with Assurances.



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MAR 13 2015

Date

Supporting References

- U.S. Fish and Wildlife Service (Service). 2015a. Greater Sage-Grouse Programmatic Candidate Conservation Agreement with Assurances for Private Rangelands in Crook and Deschutes Counties, Oregon
- Service. 2015b. Greater Sage-Grouse Programmatic Candidate Conservation Agreement with Assurances for Private Rangelands in Lake County, Oregon
- Service. 2015c. Greater Sage-grouse Programmatic Candidate Conservation Agreement with Assurances for Private Rangelands in Baker and Union Counties, Oregon
- Service. 2015d. Greater Sage-grouse Programmatic Candidate Conservation Agreement with Assurances for Private Rangelands in Grant County, Oregon
- Service. 2015e. Greater Sage-grouse Programmatic Candidate Conservation Agreement with Assurances for Private Rangelands in Malheur County, Oregon
- Service. 2015f. Final Environmental Assessment for the Greater Sage-Grouse Programmatic Candidate Conservation Agreement with Assurances for Private Rangelands in Baker, Crook, Deschutes, Grant, Lake, Malheur and Union Counties, Oregon
- Service. 2015g. Conference Opinion Regarding the Effects of the Proposed Programmatic Candidate Conservation Agreements with Assurances for Private Rangelands on the Greater Sage-Grouse in Baker, Crook, Deschutes, Grant, Lake, Malheur, and southern Union Counties, Oregon
- Service. 2015h. Finding of No Significant Impact For Issuance Of an Incidental Take Permit for the Greater Sage-Grouse Programmatic Candidate Conservation Agreements with Assurances for Private Rangelands in Baker, Crook, Deschutes, Grant, Lake, Malheur, and Union Counties, Oregon