



# Technical Memo

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**Date:** March 31, 2022

**To:** Western Association of Fish and Wildlife Agencies

**From:** Cedar Creek Associates, Inc.

**Subject:** 2021 Program Audit for the Candidate Conservation Agreement with Assurances for the Lesser Prairie Chicken

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Cedar Creek Associates, Inc (Cedar Creek) was retained by Western Association of Fish and Wildlife Agencies (WAFWA) to conduct a program audit for the Candidate Conservation Agreement with Assurances (CCAA) for the Lesser Prairie Chicken (*Tympanuchus pallidicinctus*) in 2021. The CCAA for the Lesser Prairie Chicken (LPC) is a voluntary conservation strategy that establishes a mitigation framework which is administered by the WAFWA and permitted by the U.S. Fish and Wildlife Service. Established in 2014, the CCAA is in partnership with the states of New Mexico, Colorado, Kansas, Oklahoma and Texas, the oil and gas industry and private landowners; for the purpose of providing the oil and gas industry with regulatory assurances should the LPC become listed under the Endangered Species Act. In exchange, industry participants have agreed to limit the impact of their activities on the species habitat and to mitigate any unavoidable impacts. Mitigation is provided through voluntary agreements with private landowners to manage their properties for the benefit of the LPC. The CCAA includes an obligation for WAFWA to provide an annual program and financial audit, conducted by an independent party, to assess whether WAFWA is managing the program in compliance with the terms of the CCAA.

## **Auditor Qualifications and Contact Information**

The program audit was conducted by Mr. Jesse Dillon of Cedar Creek. He is a Principal Ecologist with almost 20 years of professional experience. He has expertise in mitigation banking and has implemented habitat exchanges for greater sage grouse (*Centrocercus urophasianus*), Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*), Lahontan cutthroat trout (*Oncorhynchus clarkii*), large game and wetlands. The projects have been implemented on federal, state, and private property, often with private and government stakeholders. These projects typically comprise both impact and offset components. Cedar Creek and Mr. Dillon do not have any existing connection to WAFWA, CCAA participants, or any organization involved in Lesser Prairie Chicken conservation. Mr. Dillon holds a Bachelor degree from Colorado State University in Rangeland Ecosystem Science with a concentration in Restoration Ecology.

Mr. Dillon can be reached at: JDillon@cedarcreek.app



## Scope of Audit

The audit comprised of evaluating 27 compliance points of the CCAA, as well as review the CCAA's annual report to assess if it fairly reflects the expenditures and achievements of the program. To implement the audit, Mr. Dillon relied upon the following information:

- 2021 CCAA Annual Report
- Updated Business Plan for WAFWA's LPC CCAA
- WAFWA's Western Conservation Toolkit (WCT).
- Interview with Chanda Pettie – WAFWA's LPC Program Manager

## Results of Audit

Overall, the audit revealed passing compliance in 26 of the 27 compliance points of the CCAA, with the only exception related to implementation of the committees described in the updated business plan, which interviews indicated is a work in progress. Details of each audit compliance point can be found below. The auditor also found that the 2021 Annual Report fairly reflects the expenditures and achievements of the program.

1. Hold the Permit issued to it by FWS pursuant to the CCAA	Pass
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Ms. Pettie indicated that Permit # TE27289B-0 was active and held by WAFWA during the interview.

2. Implement and administer the CCAA	Pass
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WAFWA is implementing and administering the CCAA.

3. Enroll Participants in accordance with the CCAA via Certificates of Inclusions (Cis)	Pass
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Enrollment in the program was paused in 2019. At that time, WAFWA had fully executed CIS for all participants. Since there have not been new enrollees, all CIs are in place.

4. Use funds contributed in accordance with Section XIII (Enrollment and Mitigation Fees) and Appendix A of the CCAA and Exhibit 2 of the CI to implement conservation activities to benefit the LEPC such as habitat restoration, habitat enhancement, and removal of threats	Pass
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A full financial audit of the program was implemented as described in the Updated Business Plan for WAFWA's LPC CCAA. The 2021 CCAA Annual Report indicates that \$1,977,700 paid to private landowners for annual conservation payments to provide 95,543 offset units in 2021. No funding was allocated to habitat restoration projects in 2021.

5. Monitor conservation activities in order to determine success and adaptations needed, as defined in the monitoring section of the RWP	Pass
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WAFWA’s WCT compiles the monitoring data for conservation activities. The 2021 CCAA Annual Report does not specify 2021 monitoring activities on conservation participant lands.

6. Secure permission to complete conservation activities on private, State, and Tribal lands, where appropriate	Pass
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Permission to complete conservation activities is secured through Certificates of Participation (CPs), which WAFWA holds for all enrolled conservation participants.

7. Establish committees as described in the Business Plan in Appendix L of the RWP and in Section XI(B)(18)	In Progress
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Implementation of Updated Business Plan for WAFWA’s LPC CCAA is ongoing. Not all committees described in the business plan (LPC Initiative Council, LPC Investment Advisory Committee, LPC Technical Working Group, LPC Advisory Committee) are fully staffed and functional. Status of the committees is as follows:

- LPC Initiative Council – This committee is fully staffed, functional and meets on a regular basis.
- LPC Investment Advisory Committee – This committee was recently reformed and is reestablishing its functional status.
- LPC Technical Working Group - The Interstate Working Group is serving this function until this committee can be established.
- LPC Advisory Committee - The Range Wide Plan Advisory Committee is serving this function until this committee can be established.

WAFWA should continue to work to appropriately staff and use committees, as described in the updated business plan.

8. Schedule WAFWA Committee meetings at least once per year	Pass
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In general, committee meetings are occurring at least once per year.

9. Track expenditure of funds and prepare and submit to FWS an annual report on implementation of the CCAA as required by Section XX	Pass
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The 2021 CCAA Annual Report reports the program expenditures related to conservation activities. It indicates that \$1,977,700 paid to private landowners for annual conservation

payments to provide 95,543 offset units in 2021. No funding was allocated to habitat restoration projects in 2021.

10. Maintain a digital photo database to document activities performance	Pass
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WAFWA's WCT compiles digital photos to document conservation and monitoring activities.

11. Provide for an audit by an independent party annually to account for expenditures and accomplishments under the CCAA	Pass
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Cedar Creek is auditing the expenditures and accomplishments of the program. A full financial audit of the program was implemented as described in the Updated Business Plan for WAFWA's LPC CCAA.

12. Maintain the confidentiality of certain information as described in Section XXI	Pass
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Confidentiality clauses are included within the CIs for industry participants and CPs for conservation participants.

13. Hold the CI for each Enrolled Property	Pass
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WAFWA holds CIs for enrolled industry participants and CPs for enrolled conservation participants.

14. Administer the CIs for Participants in accordance with their terms	Pass
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Through review of the 2021 CCAA Annual Report, Updated Business Plan for WAFWA's Lesser Prairie Chicken CCAA, WAFWA Western Conservation Toolkit (WCT), and Interview with Chanda Pettie – WAFWA's LPC Program Manager, WAFWA is administering the program in accordance with the terms with industry and conservation participants.

15. Provide at least two weeks' advance written notice to Participants prior to accessing Participants' Enrolled Property for purposes of surveying for the presence of LEPCs and habitat suitability or monitoring compliance with terms of the CI	Pass
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WAFWA is corresponding with participants to implement required surveys and monitoring.

16. Allow FWS to accompany WAFWA when WAFWA accesses Participants' Enrolled Property for purposes of monitoring	Pass
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compliance with terms of the CI, as described in Section XI(B)(15)	
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The US Fish and Wildlife Service (FWS) is able to accompany WAFWA during monitoring activities but did not elect to in 2021.

17. Employ or hire qualified personnel or utilize state wildlife agency staff to facilitate enrollment of property and distribution of funds for conservation efforts through coordination with other state and federal agency staff and outreach to property owners.	Pass
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WAFWA is implementing the required surveys with the Program Manager, a contract biologist, and state agency staff, which are all trained and certified technical service providers.

18. The WAFWA Committees may include representatives from the following entities within the LEPC five-state range: state wildlife agencies, FWS, Natural Resources Conservation Service, Farm Service Agency, BLM, universities with departments or faculty actively engaged in academic research related to the LEPC, state oil and gas regulatory agencies, oil and gas trade associations, wind energy associations, public utility commissions or association, state school and/or trust land administrators, Participants, and others as appropriate	Pass
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The operational committees are comprised of the representatives described above.

19. Hold Participants' Habitat Conservation Fund Accounts as described in Section XIII(D)	Pass
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The Species Restoration Foundation (SRF) serves as the fiscal agent in charge of managing the endowment for the benefit of the LPC.

20. Monitor and enforce Participant compliance with the requirements of their CIs, this CCAA and the associated Enhancement of Survival Permit, and confer with FWS to resolve Participant compliance issues as provided in Section XXIX	Pass
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WAFWA conducts monitoring to ensure compliance with the requirements of the CIs, the data is compiled within the WCT. The 2021 CCAA Annual Report indicates that annual field review of randomly sampled mitigated projects resulted in a finding of no compliance issues. However, efforts to provide resolution for non-compliance identified in 2020 were unsuccessful and those companies were terminated from the CCAA.

21. Use Mitigation Fees to ensure the availability of necessary offset units before Impact Activities can occur except as provided in Section XIII(B)	Pass
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The 2021 CCAA annual report indicates that there is currently a surplus of offset units for all 4 ecoregions (Mixedgrass Prairie, Sand Sagebrush Prairie, Shinnery Oak Prairie, and Shortgrass Prairie).

22. WAFWA will perform monitoring	Pass
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WAFWA performs monitoring on both industry construction activities and conservation activities. The WCT compiles monitoring results and the 2021 CCAA annual report presents compliance findings in Appendix B.

23. WAFWA shall provide FWS with an annual report regarding implementation of this CCAA by March 31	Pass
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The annual report is completed and ready for submittal.

24. For the first three years of implementation of the CCAA, WAFWA will provide the FWS with a mid-term report following the breeding season-monitoring that provides information regarding enrollment and implementation of conservation practices	Pass
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This compliance point is no longer applicable because the program beyond the first three years of implementation.

25. Within 30 days of an emergency operation, the Participant shall provide a report to WAFWA of any emergency operations within 1.25 miles of leks active within the previous 5 years that occurred between March 1 and July 15, between the hours of 3 a.m. and 9 a.m.	Pass
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The 2021 CCAA Annual Report indicates that there were no emergency operations in 2021.

26. By February 15 of each year of enrollment, Participants will provide WAFWA with the dates, duration and purpose of non-emergency construction and maintenance activities that occurred on undisturbed areas in rangeland or planted grass cover (e.g., off of a well pad, road, or facility) between March 1 and July 15 of the previous calendar year that are within 1.25 miles of leks active within the previous 5 years.	Pass
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WAFWA corresponds with industry participants via email to evaluate projects activities in each year.

27. In the annual report, WAFWA shall provide the number of enrolled acres as well as the number of Impact Units and Offset Units for each ecoregion.	Pass
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The 2021 CCAA Annual Report report the enrolled acres within each ecoregion, along with the number of Impact and Offset Units. These values correspond to the values presented in the WCT.