

**Range-Wide Oil and Gas Candidate Conservation Agreement with Assurances
for the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*)
In Colorado, Kansas, New Mexico, Oklahoma and Texas**

CERTIFICATE OF INCLUSION

CI Tracking Number DOI-FWS-2-2013-XXXX-YYYY

This Certificate of Inclusion (CI) certifies that _____ (Participant), as the owner of the property(s) identified in Exhibit 1 (Enrolled Property) to this CI, is included within the scope of the attached Enhancement of Survival Permit, **Permit No. TE27289B-0** issued on **February 28, 2014** by the U.S. Fish and Wildlife Service (FWS) to the Western Association of Fish and Wildlife Agencies/Foundation for Western Fish and Wildlife (WAFWA) under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531-1544 (Exhibit 4). This Permit was issued through the above-named Candidate Conservation Agreement with Assurances (CCAA) for the lesser prairie-chicken (LEPC) between FWS and WAFWA (attached as Exhibit 5), the purpose of which is to support WAFWA's ongoing and future efforts to manage, conserve and recover LEPC. The definitions and acronyms set forth in the CCAA that is attached hereto as Exhibit 5 shall apply to this CI, unless otherwise specified.

This CI documents the Participant's voluntary agreement to enroll specified property in the CCAA. Through this CI, the Participant voluntarily commits to implement or fund specific conservation actions that will reduce and/or eliminate threats to the LEPC as provided in this CI, the CCAA and the Permit. Pursuant to this CI and the Permit, the Participant is authorized for incidental take of LEPC as a result of the Covered Activities identified in Section IX of the CCAA on or associated with Enrolled Property, in the event the LEPC is listed as endangered or threatened. The Permit further provides the Participant with assurances regarding the imposition of additional conservation measures and land use restrictions on Enrolled Property, as specified in the Permit and the CCAA, in the event the LEPC is listed. The incidental take authorization and assurances provided by the Permit are conditioned on the Participant's compliance with the terms and conditions of this CI, the CCAA and the Permit.

This CI is effective upon execution of this CI by the Participant and WAFWA. Unless terminated as provided in Section I below, this CI shall continue from its effective date through the duration of the CCAA and Permit as defined in Section X of the CCAA. In the event of a conflict between the terms and conditions of this CI and the CCAA or Permit, the terms and conditions of the CCAA or Permit in effect at the time of enrollment shall govern.

By signing below, the Participant acknowledges that it has read and understands this CI and the CCAA in effect on the date of the Participant's signature. The Participant further commits to comply with the terms and conditions of the CCAA and the Permit attached as Exhibits 4 and 5 to this CI. Finally, the Participant acknowledges that this CI and the CCAA may not be sufficient to prevent the listing of the LEPC.

I. ENROLLED PROPERTY.

A. Participant Affirmation.

By executing this CI, the Participant affirms that it is a Property Owner of the Enrolled Property as defined by 50 CFR §17.3, which provides that a Property Owner for these purposes is a person or entity with a fee simple, leasehold, or property interest (including owners of water or other natural resources), sufficient to carry out the Conservation Measures and any other management activities contemplated by this CI, the CCAA and the Permit, subject to applicable State law, on enrolled, non-Federal land.

B. Additions to Enrolled Property.

The Participant may seek to enroll additional Eligible Properties in this CI during the Enrollment Period as set out in Section VIII (Enrolled Property) of the CCAA attached as Exhibit 5.

C. Transfer of Enrolled Property.

If the Participant transfers its property interest in an Enrolled Property, it shall notify WAFWA as described in Section XXV (Succession and Transfer) of the CCAA. Coverage under the Permit for such property will be transferred to the new Property Owner as described in Section XXV (Succession and Transfer) of the CCAA attached as Exhibit 5.

D. Termination of Enrolled Property or this CI.

A Participant may terminate enrollment of a property in this CI, or terminate this CI in its entirety, in accordance with Section VIII(F) (Enrolled Property) of the CCAA attached as Exhibit 5. WAFWA may also terminate enrollment of a property or this CI as provided in Section XXX (Termination of a CI) of the CCAA. The process and effect of termination of this CI is described in Sections VIII and XXX of the CCAA.

E. Revisions to Exhibit 1.

Exhibit 1 may be revised in accordance with the procedures outlined in Section VIII(G) of the CCAA (Enrolled Property).

F. Potential for Future Enrollment of Additional Property.

If the FWS in the future develops a policy allowing enrollment of properties in a CCAA after listing, it will consider whether to propose an amendment to this CCAA that would allow a CI to be amended to enroll New Property after listing, consistent with any potential criteria that may be developed if the FWS allows post-listing enrollments in the future.

II. PARTICIPANT AGREEMENT TO IMPLEMENT CONSERVATION MEASURES.

The Participant agrees to comply with the requirements of this CI, the CCAA attached as Exhibit 5, and the Permit. This agreement includes the Participant's commitment to implement Conservation Measures on Enrolled Property as provided in Sections XII (Conservation Measures) and XIII (Mitigation Fees) of the CCAA attached as Exhibit 5, which are duplicated below for ease of reference.

The Participant shall also notify and educate all personnel, agents, and contractors about the requirements of this CI and the CCAA, and take steps necessary to ensure that such personnel, agents, and contractors comply with these requirements in their activities on the Enrolled Property.

A. Habitat Loss and Fragmentation. Habitat loss and fragmentation are primary threats to the LEPC. Construction of oil and gas pads, compressor stations, private roads (e.g., lease roads), distribution lines, and industrial buildings (“Impact Activities”) may contribute to habitat loss and fragmentation. The following Conservation Measures apply to any action that could further negatively impact LEPC habitat or connectivity between blocks of LEPC habitat to receive coverage under the CCAA.

1) Avoidance

- a) Use available options to avoid focal areas, connectivity zones, or within 1.25 mi of known leks that have been active at least once within the previous five years, as well as sites dominated by tracts of native grass and shrublands (see the 2013 Crucial Habitat Assessment Tool (CHAT), state fish and wildlife agency staff, and Section XIV of the CCAA (Development Procedures) for more information). (Discretionary)
- b) Focus development on lands already altered or cultivated (such as row-crop agriculture or developed oilfields), and away from areas of undeveloped native grass or shrublands. Select fragmented or degraded habitats over relatively intact areas, and select sites with lower LEPC habitat potential over sites with greater habitat potential. The Natural Resources Conservation Service (NRCS) Ecological Site Descriptions, where available, are a good indicator to use (see Appendix C of the Range-wide Plan (RWP)). (Discretionary)

2) Minimization

- a) Use common rights of way for multiple types of infrastructure in locating new roads, fences, power lines, well pads, flow lines, compressors, and other associated oil and gas infrastructure. (Discretionary)
- b) Site Impact Activities to minimize new habitat disturbance by increasing the amount of overlap between existing fragmentation and associated Impact Buffers. (Discretionary)
- c) Reduce impacts through the use of directional drilling and clustering where feasible or in locating facilities to reduce habitat loss and fragmentation of habitat. (Discretionary)
- d) Minimize use of herbicide treatments and limit this use to the footprint or right of way. Where practical and applicable, utilize an herbicide that is targeted for specific use and spot treatments as opposed to a broadband herbicide and broadcast treatments. Apply in conditions that minimize drift. (Required)

3) Mitigation – Any impacts not offset by the avoidance or minimization measures above will be mitigated as follows:

Participants will provide for mitigation of habitat loss associated with new Impact Activities through the payment of Mitigation Fees as described in Section XIII(B) (Enrollment and

Mitigation Fees) and Appendix A of the CCAA and Exhibit 2 of this CI. WAFWA will apply Mitigation Fees to generate offset units using the process described in Appendix I of the RWP. (Required)

B. Collision and Other Direct and Indirect Sources of Mortality. LEPC have been shown to collide with fences, power lines, and cars. Power lines also serve as potential perch sites for raptors that may prey on LEPCs. It is also possible for LEPC to get caught and drown in human-made water sources (e.g., tanks).

1) Avoidance

- a) Locate new roads, fences, power lines, well pads, flow lines, compressors, and other associated oil and gas infrastructure and their Impact Buffers outside focal areas, connectivity zones, or in other areas identified as high probability lek and nest habitat by 2013 CHAT categories 1-3. (Discretionary)
- b) Bury new distribution lines within 1.25 mi of leks active within the previous 5 years. If new distribution lines cannot be buried, justification must be provided to and approval obtained from WAFWA prior to construction of such new distribution lines. (Required)

2) Minimization

- a) Use common rights of way for multiple types of infrastructure. (Discretionary)
- b) To minimize transmission line footprint, utilize mono-pole construction for new electrical transmission lines within 2013 CHAT categories 1-3. (Required)
- c) Utilize horizontal drilling, pad drilling (multiple wells per pad), and common tank batteries where feasible with regulatory approval to minimize new surface disturbance within 2013 CHAT categories 1-3. (Discretionary)
- d) Install appropriate fence markings along new fences that are under the control of the enrolled Participant within one quarter (1/4) mile of a lek that has been recorded as active within the previous 5 years. (Required)
- e) During the LEPC breeding season (March 1-July 15), minimize traffic volume, control vehicle speed, control access where feasible, and avoid off-road travel within focal areas and areas identified as high probability lek and nest habitat by the 2013 CHAT. (Required)
- f) Within 1.25 mi of leks, it is recommended to install raptor deterrents on new electrical distribution and transmission poles as indicated by Avian Power Line Interaction Committee (APLIC) Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 2006, as amended. If further studies are completed that demonstrate significant benefits to the LEPC, this Conservation Measure may be amended for newly Enrolled Property and new enrollments by existing Participants. (Discretionary. Mitigation is not required.)
- g) Provide escape ramps, rafts or ladders, depending on configuration, in exposed, human-

made water containment sources on Enrolled Property under the control of the enrolled Participant. (Required)

- 3) Mitigation – Any impacts not offset by the avoidance or minimization measures above will be mitigated as follows:

Participants will provide for mitigation of habitat loss associated with new Impact Activities through the payment of Mitigation Fees as described in Section XIII(B) (Enrollment and Mitigation Fees) and Appendix A of the CCAA and Exhibit 2 of this CI. WAFWA will apply Mitigation Fees to generate offset units using the process described in Appendix I of the RWP. (Required)

- C. Disturbance of Breeding, Nesting, and Brooding Activity. Disruption of courtship displays and nesting hens through construction and maintenance activities or equipment and infrastructure that emit loud noises may have direct impact on LEPC reproductive output.

1) Avoidance

- a) Avoid non-emergency operations, construction and maintenance activities, where humans are present, during lekking, nesting, and brooding season (March 1–July 15) within 1.25 mi of leks recorded active within the previous 5 years. (Required)

Emergency operations that are meant to address direct human or environmental safety concerns or emergency operations that relate directly to operational continuity are allowed. Such emergency operations may include, but are not limited to, spill response and cleanup, response to well control incidents (i.e., incidents related to down hole pressures during drilling, completion, recompletion, or production operations), equipment repairs, flow line/pipeline repairs, unloading of one or more tanks to prevent the tank(s) from overflowing, security-related activities (e.g., activities to prevent theft and vandalism), well problems requiring a workover to make a well productive again), regulatory requirements, and unplanned construction and maintenance activities. Participants must also record the dates, duration and purpose of any emergency operations, construction and maintenance activities that occurred between March 1 and July 15 within 1.25 miles of leks recorded as active within the previous 5 years and must provide that documentation with their annual reporting. (Required)

- b) Seismic surveys and similar activities that require extensive off road travel shall not be conducted in rangeland or planted grass cover during the lekking nesting and brooding season (March 1–July 15) within 1.25 mi of leks recorded active within the previous five years and lek surveys shall be required in CHAT categories 1-3 prior to any breeding season Seismic surveys. (Required subject to exception in Section II(C)(2)(c).)

2) Minimization

- a) For non-emergency operations, construction and maintenance activities, where humans are present, that cannot be avoided and must occur during March 1-July 15, restrict activities between the hours of 3:00 am and 9:00 am in areas within 1.25 mi of leks that have been recorded as active within the previous 5 years. (Discretionary, see Section II(C)(2)(a))

- b) Institute noise abatement year-round for new facility operations (post-construction, post-drilling, post-completion, and post-recompletion) located within 1.25 mi of a lek recorded as active within the previous 5 years. Noise from these new facilities shall not exceed 75 dB when measured at Participant’s property line or any point greater than 30 feet from the Facility Boundary. This minimization measure is required unless other regulations require lower noise levels. If new scientific information becomes available supporting lower or higher decibel limits through the adaptive management process, this Conservation Measure may be amended for both new and existing Participants as provided in Section XXII of the CCAA (Modification of the CCAA and Amendment of the Permit). In the event of changes in noise limits for existing Participants, WAFWA and the Participants will agree upon a timeline for implementing those changes. (Required)
- c) If a complete lek survey is conducted for the proposed seismic activity area, WAFWA shall consider, on a case by case basis, the application of seismic methodologies that minimize LEPC disturbance off road travel during the lekking, nesting and brooding season (March 1-July 15) within 1.25 miles of leks recorded as active within the previous 5 years. Daily timing restrictions for lek disturbance (3:00 am-9:00 am) must be observed within 1.25 miles of leks recorded as active within the previous five years. (Required)

III. NATIONAL HISTORIC PRESERVATION ACT.

The Participant must comply with the National Historic Preservation Act as described in Section XXVIII of the CCAA.

IV. PARTICIPANT COMPLIANCE.

A. Unpaid Enrollment Fees

If the Participant fails to remit an Enrollment Fee in accordance with Section XIII of the CCAA (Enrollment and Mitigation Fees), WAFWA may suspend this CI as to the Enrolled Property for which the Enrollment Fee is due until such Enrollment Fee is paid. WAFWA will Issue a Notice of Non-Payment to the Participant 10 business days after the due date of the Enrollment Fee. If the Enrollment Fee is not paid within 10 business days of receipt of the Notice of Non-Payment, WAFWA will issue a Notice of Suspension to the Participant. Upon receipt of the Enrollment Fee, WAFWA will issue a Notice of Reinstatement to the Participant.

B. Compliance

1. Compliance Notice

In response to an alleged failure to implement a mandatory avoidance or minimization Conservation Measure or to pay Mitigation Fees, WAFWA may either directly contact or provide written notice to the Participant (“Compliance Notice”). A Compliance Notice shall meet the requirements of Section IV(B)(5) and shall require the Participant to submit, within 20 business days of the date of the Compliance Notice or other specified time, a written explanation or statement in response that includes: (a) corrective steps taken by the Participant and results achieved; (b) a schedule and description of corrective steps that will be taken and results expected; or (c) a statement denying that the alleged failure has occurred and additional information supporting the statement.

WAFWA shall notify the relevant FWS Ecological Services field office of the potential compliance issue at the time they send a written Compliance Notice to the Participant, using established procedures for protecting confidential information (Section XII of this CI). WAFWA will confer with FWS to determine if further FWS coordination is required for resolution.

WAFWA shall respond in writing to the Participant's response and either: (a) accept the Participant's response and state that the notice is resolved ("Notice of Resolution"); or (b) not accept the Participant's response.

2. Deficiency Notice

If the Participant fails to respond to a Compliance Notice or WAFWA disagrees with the Participant's response, WAFWA may issue a written Deficiency Notice. A Deficiency Notice shall meet the requirements of Section IV(B)(5), below and shall require the Participant to submit, within 20 business days of the date of the Deficiency Notice or other specified time, a written explanation or statement in response that includes: (a) corrective steps taken by the Participant and results achieved; (b) a schedule and description of corrective steps that will be taken and results expected; or (c) a statement denying that the alleged failure has occurred, additional information supporting the statement and a request for resolution discussions.

After coordination with FWS, WAFWA shall respond in writing to a Participant's response and either: (a) accept the Participant's response and provide a Notice of Resolution; or (b) not accept the Participant's response.

3. Notice of Noncompliance

If the Participant fails to respond to Deficiency Notice or if WAFWA and the Participant cannot resolve the issue through resolution discussions, WAFWA shall issue a Notice of Noncompliance. Notices of Noncompliance shall meet the requirements of Section IV(B)(5), below and shall require the Participant to submit, within 20 business days of receipt of the Notice of Noncompliance or other specified time, a written explanation or statement in response that includes: (a) corrective steps taken by the Participant and results achieved; (b) a schedule and description of corrective steps that will be taken and results expected; or (c) a statement denying that the alleged failure has occurred, additional information supporting the statement and a request for resolution discussions.

The Advisory Committee, which includes FWS representation, will make a recommendation to the LPC Initiative Council regarding whether to accept or not accept the Participant's response. LPC Initiative Council will make a determination on whether to accept or not accept the Participant's response. The LPC Initiative Council shall respond in writing to the Participant's response and either: (a) accept the Participant's response and state that the notice is resolved ("Notice of Resolution"); or (b) not accept the Participant's response. If the LPC Initiative Council does not accept the Participant's response, the Notice of Noncompliance will be considered "unresolved."

4. Advisory Committee and LPC Initiative Council Review

At any time before a response is due to WAFWA, the Participant may seek review of any Compliance Notice, Deficiency Notice, Notice of Noncompliance or proposed termination by submitting a written request to the Advisory Committee. WAFWA and the Participant each may

prepare a statement of position for review by the Advisory Committee or request a face-to-face review. The Advisory Committee shall review statements, information provided in a face-to-face and other information available to it and issue a recommendation to the LEPC Initiative Council, including any recommended corrective action.

The LPC Initiative Council shall review the recommendation of the Advisory Committee, confer with the relevant Regional Director(s) of the FWS, or its designee, and issue its finding and any required corrective action in writing (“Findings”).

The Participant and WAFWA shall comply with the Findings, and the LPC Initiative Council will issue a written Notice of Resolution once the Participant complies with its Findings. If the Participant fails to implement the required corrective action within 20-business days of its receipt of the Findings, the LPC Initiative Council shall notify the Participant in writing that the Notice of Noncompliance has not been addressed and, at the same time, upload a copy the notification to the password protected database described in Section XII of this CI for FWS’s review. WAFWA shall notify the relevant Regional Director(s) of the FWS, or its designee of the notification by electronic mail.

5. Content and Service of Notices, and Management of Notices and Responses

All Compliance Notices, Deficiency Notices, and Notices of Noncompliance shall be sent by U.S. mail, return receipt, to the company representative identified in Section XIII.

All Compliance Notices, Deficiency Notices, and Notices of Noncompliance shall concisely identify the Conservation Measure for the relevant CI that WAFWA believes the Participant has not implemented.

At the time WAFWA issues any notice described in this Section, WAFWA will upload a copy to the password protected database described in Section XII of this CI for FWS’s review. WAFWA shall also timely upload copies of all Participants’ written explanations or response statements to the password protected database described in Section XII of this CI for FWS’s review. WAFWA shall notify the relevant FWS Ecological Services field office of issuance of notices and the receipt of responses by electronic mail.

6. Incidental Take

If the LEPC is listed, any incidental take of the LEPC that results from the Participant’s failure to implement a mandatory avoidance or minimization Conservation Measures will remain authorized by the Permit so long as a Notice of Resolution relating to the Conservation Measure at issue is resolved in accordance with the procedures above.

V. TERMINATION.

Lands enrolled under this CI may include tens or hundreds of thousands of acres. WAFWA and FWS expect that when one Notice of Noncompliance on lands enrolled under this CI is not resolved, an appropriate action may be to terminate this CI as it relates to the lease(s) or parcel(s) of land on which the noncompliance occurred. Depending on the scale or scope of the violations, the failure to resolve three Notices of Noncompliance within a three-year period for lands enrolled in this CI

within an ecoregion can result in termination of some or all this CI. WAFWA and FWS, however, recognize that termination of this entire CI is a severe and dramatic action limited to unusual circumstances after all efforts to address noncompliance have been exhausted.

The Participant shall be notified in writing by the LPC Initiative Council of the proposed termination by certified or registered mail addressed to the contact name in Section IV(B)(5). This notice shall identify the lands for which this CI will be terminated, the reason(s) for the termination, and inform the Participant of the right to object to the proposed termination. Upon receipt of a notice of proposed termination, the Participant may file with the Advisory Committee a written objection to the proposed action within 45 calendar days of the date the Participant received the notice of proposed termination. The objection must state the reasons why the Participant objects to the proposed termination and may include supporting documentation. The Advisory Committee will review the written objection and all documentation, and will issue a recommendation to the LPC Initiative Council on the proposed termination.

The LPC Initiative Council will confer with the relevant FWS Regional Director. FWS shall have 20 calendar days from its receipt of notification that the proposed Notice was uploaded to the password protected database in accordance with Section XII of this CI to complete its review or such other time period as agreed to by the LPC Initiative Council and FWS. The LPC Initiative Council will make a decision on the proposed termination within 45 calendar days after the end of the objection period and notify the Participant in writing of its decision and the reasons thereto. The Participant reserves the right to any and all legal remedies, whether at law or in equity, arising from a decision to terminate some or all of this CI.

VI. PROPERTY ACCESS.

The Participant agrees to provide access to Enrolled Property as provided in the CCAA attached as Exhibit 5.

VII. NO WAIVER.

The Participant, by entering into this CI, does not concede its agreement with, or endorsement of, any or all of the underlying studies and conclusions in the CCAA and/or RWP. Further, the Participant does not waive any legal rights or remedies that may exist outside of this CI. The Participant is also not responsible for work being accomplished by the FWS, WAFWA or any third parties using the Participants' contributed funds.

VIII. RELEASE.

If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, the Participant shall be excused from its performance and shall release the signatories of the CCAA and CI from any legal claims related to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, WAFWA agrees to release the Participant from any legal claims related to this CI and CCAA. Participants' obligation to make payments of Enrollment Fees as described in Section XIII of the CCAA (Enrollment and Mitigation Fees) shall be suspended if any administrative or judicial challenge prevents the implementation of this CCAA or its CIs. All funds remaining in the Habitat Conservation Fund Account will be retained by WAFWA and be used for conservation of the LEPC.

IX. AMENDMENT.

As described in Section XV of the CCAA (Adaptive Management), the effectiveness of the Conservation Measures in the CCAA will be reviewed by WAFWA, FWS, and Participants periodically over the life of the CCAA. However, changes to the CCAA in effect at the time the Participant executes this CI may only be applied to the Participant upon its written consent.

This CI, except for Exhibit 1 (Enrolled Property) and Exhibit 5 (CCAA), may be amended with the written consent of each of the Parties hereto. Exhibit 1 may be revised in accordance with the procedures outlined in Section VIII(G) of the CCAA (Enrolled Property). The Parties agree to process requests for amendments in a timely manner. This CI will only be amended upon written agreement of both WAFWA and the Participant. This CI may also be amended to accommodate changes to applicable legal requirements, including but not limited to the Endangered Species Act, the National Environmental Policy Act, and the FWS's permit regulations at 50 CFR 13 and 50 CFR 17. The proposer of the amendment shall provide a statement describing the proposed amendment and the reasons for it.

X. MULTIPLE ORIGINALS.

This CI may be executed in any number of multiple originals. A complete original of this CI shall be maintained in the records of each of the Parties hereto.

XI. REPORTING REQUIREMENTS.

The Participant will comply with the reporting requirements outlined in Section XX of the CCAA (Monitoring and Reporting).

XII. CONFIDENTIALITY.

The Parties recognize that fee leasehold and mineral ownership information is confidential and sensitive business information held and not routinely disclosed and may be exempt from disclosure under the Freedom of Information Act (FOIA). Such confidential and sensitive business information includes but is not limited to the following:

- 1) any maps depicting lands enrolled by an individual Participant that specifically identify the Participant;
- 2) identifying information about an individual Participant's acreage position; or
- 3) the location of any individual Participant's Enrolled Property that references the Participant individually.

Accordingly, WAFWA shall allow access to the foregoing information to only the relevant State fish and wildlife agency, the FWS, employees or agents of WAFWA, and the Participant that provided the information; provided, however, unless otherwise authorized in writing by the Participant, WAFWA shall only allow such access to the information via a password protected database maintained by WAFWA and solely for the purpose of allowing the relevant State fish and wildlife agency, the FWS, employees or agents of WAFWA, or the Participant to view the particular information for monitoring and reporting, as described herein. WAFWA will not authorize anyone to download, possess, or distribute the information unless otherwise authorized in writing by the

Participant. FWS and WAFWA shall take all reasonable steps to maintain the confidentiality of such information under the relevant public information laws, including instructing the State fish and wildlife agency and WAFWA's employees and/or agents accordingly, but shall not be responsible to the extent any information is ultimately subject to disclosure under the relevant public record laws.

If FWS receives a request under the FOIA for information identified as potentially confidential in this section, and has responsive documents in its possession containing such information, it will consult with the Participant that submitted the information and provide it with an opportunity to object to the information's disclosure before determining whether the information must be disclosed or is exempt from disclosure pursuant to FOIA, including, but not limited to Exemption 4. Additional information regarding the FWS' process for responding to FOIA requests for possibly confidential information is set out at 43 CFR 2.26-2.36 (2013).

XIII. CONTACTS

Any notice permitted or required by this CI, the CCAA or the Permit shall be transmitted within any time limits described in this CI, the CCAA or the Permit to the persons set forth below. Notice may be provided electronically or in writing unless the form of notice is otherwise identified in this CI, the CCAA or the Permit. Any notice provided by electronic mail is deemed given upon the sender's receipt of an electronic mail from the intended recipient confirming delivery. Notice in writing shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as WAFWA or the Participant may from time to time specify to the other in writing:

Participant:

Contact Name: _____
Title: _____
Address: _____
Telephone: _____
Email: _____

WAFWA/Permit Holder Representative:

Contact Name: Zachary Lowe, Ph.D.
Title: Executive Director
Address: P.O. Box 190150, Boise, ID 83719
Telephone: (208) 331-9431
Email: wafwa.admin@wafwa.org

XIV. SIGNATURES

IN WITNESS WHEREOF THE PARTIES HERETO have executed this Certificate of Inclusion to be in effect on the date of the last signature below.

Participant and Title (Print Name)

Participant Signature

Date

WAFWA/Permit Holder Representative Signature

Date

EXHIBIT 1 Property Description for Enrolled Property

Provide a description of the land to be enrolled, by providing a legal description and/or a list of spatial data files being submitted to WAFWA. Spatial data files can be shapefiles (.shp), GoogleEarth (.kmz) or CAD files. Other file types may be submitted, please contact the LPC Program Manager with questions.

If enrollment is for infrastructure line features (i.e., pipeline, utility lines) acreage is not necessary, WAFWA will calculate this based on the RWP impact buffers (page 95-97). Please identify the infrastructure type:

(buried pipeline, above ground pipeline, transmission lines, distribution lines, secondary roads, primary roads, private roads, etc.)

Submit spatial data files to Chanda Pettie, LPC Program Manager at chanda.pettie@wafwa.org.

Acreage (if known): _____

Property Description:

EXHIBIT 2

Mitigation Fees

The Mitigation Fees for Impact Activities associated with oil and gas development activities will be calculated using the following fee structure. These Mitigation Fees will apply to Impact Activities conducted on the Enrolled Property, as well as those Impact Activities conducted off Enrolled Property that are associated with activities on the Enrolled Property (such as construction of power lines and roads not located on the Participant's Enrolled Property but across properties serving Participant's activities on the Enrolled Property). The structure shall also apply to third parties doing work for the Participant, regardless of who constructs or operates the associated facilities. The Participant must comply with the procedures outlined in Section XIV of the CCAA (Development Procedures) before it or its third-party subcontractors conduct any Impact Activities.

The Mitigation Fees reflect the conservation strategy for the LEPC set forth in the Range-wide Conservation Plan for the LEPC ("RWP"). The RWP identifies numerous "focal areas" for the LEPC, which the RWP defines as the areas of greatest importance to the LEPC and where habitat enhancement, maintenance, and protection should be focused. The RWP also calls for the establishment of "connectivity zones" to allow linkage among focal areas.

A. COMPONENTS OF MITIGATION FEES

Mitigation Fees are a function of four factors:

1. The cost of implementation of various U.S. Department of Agriculture (USDA) restoration and improvement practices in each ecoregion.
2. The crucial habitat index (CHI) for the LEPC as defined by the WAFWA Southern Great Plains Crucial Habitat Assessment Tool (SGP-CHAT).
3. The site condition score as defined by the Habitat Evaluation Guide (HEG).
4. The Impact Buffers associated with the Impact Activities, which reflect that area surrounding Impact Activities that affect or were believed to potentially affect LEPC habitat suitability.

1. U.S. Department of Agriculture Practice Costs

The USDA defines the costs of LEPC habitat maintenance and restoration practices identified in the NRCS LEPC Conference Report, NRCS Fair Market Value Estimates for property values for the Grassland Reserve Program, Conservation Reserve Program Soil Rental Rates, and the Conservation Reserve Program Mid-contract Management Practices. An explanation of these costs is provided on pages 259–260 of the RWP. Please visit the WAFWA website (www.wafwa.org) for more information.

2. Southern Great Plains Crucial Habitat Assessment Tool

The Crucial Habitat Assessment Tool (CHAT) is a spatial model put together to designate and prioritize areas for LEPC conservation activities and industry development. As such, it plays a dual role in that it is used to encourage development activities to occur outside of high priority areas as well as monitor activities that occur in each of the categories. Another purpose of this dataset is to create an online tool usable by conservation managers, industry, and the public that identifies priority habitat, including connecting corridors that can be used in the early stages of development or

conservation planning. Providing a consistent layer, used by all, helps target both conservation and development in areas that provide the greatest overall benefits to LEPC.

- a) CHAT 1- This category is comprised of the focal areas for LEPC conservation. The focal areas were designated by teams in each state that prioritized and identified intact LEPC habitat. This category was defined using GIS layers such as landscape integrity models, aerial photos, soil maps, anthropogenic disturbances, land cover and expert opinion.
- b) CHAT 2- This category is comprised of the corridors/connectivity zones for LEPC conservation. The corridors/connectivity zones were designated by teams in each state that prioritized and identified intact LEPC habitat. This category was defined using GIS layers such as landscape integrity models, aerial photos, soil maps, anthropogenic disturbances, land cover, and expert opinion.
- c) CHAT 3- This category is comprised of predicted high-quality habitat from the lek Maxent models. Maxent is an abbreviation for maximum entropy classifier and is an ecological niche model used for describing available and potential habitat. The model uses base layers (e.g., leks, nests, CRP, land cover, abiotic site condition) to characterize that habitat on the landscape.
- d) CHAT 4- This category is comprised of all additional lands in the estimated occupied range (EOR) for the LEPC plus 10 miles which are not contained in CHAT 1, CHAT 2, or CHAT 3. The EOR is an expert derived delineation that has had 10 miles added to it for range expansion and planning.

For further information on the CHAT and further definitions of the four different CHI visit the WAFWA Southern Great Plains CHAT online at <https://www.sgpchat.org/>.

3. Habitat Evaluation Guide

The HEG is a rapid assessment method to assess site condition or LEPC habitat quality (0 to 1) based on four variables:

- a) Vegetation Cover - Non-overlapping canopy cover of herbaceous plants and woody shrubs within evaluation unit.
- b) Vegetative composition - Relative vegetative cover of preferred grasses and shrubs including little bluestem, sideoats grama, big bluestem, Indian grass, sand bluestem, switchgrass, sand sagebrush, and sand shinnery oak.
- c) Presence of Tall Woody Plants - Greater than 3 feet in height.
- d) Availability of potential habitat – Proportion of area within a 1 mile radius in grass cover with <1% canopy cover of trees >3 ft. in height.

The site conditions within a one (1) mile radius of the Impact Activities are assessed using these variables and a score is associated for this area (“HEG Score”).

4. Impact Buffers

The Impact Buffers for Impact Activities are defined as:

Impact Activity	Buffer feet (meters)
Oil and gas pads	656 (200)
Distribution lines <69 kV	33 (10)
Private roads (well field roads, etc.)	33 (10)
Small compressor stations	656 (200)
Other compressor stations	2188 (667)
Industrial buildings	2188 (667)

- a) Oil and gas pads – Represents the site where vegetation is removed for oil and gas operations for well pads, in-field tank batteries, or small compressor stations with a pad foot print of ≤ 5 acres and a noise limitation of 75dB or less at the property line or at a point greater than 30 feet from the Facility Boundary. For pads ≤ 5 acres in size after completion, consider the well site or centroid to establish the Impact Buffer. For pads > 5 acres in size, apply the oil and gas pad buffer out from the Facility Boundary.
- b) Distribution lines <69 kV – Use the centerline of the right-of-way as a basis for the Impact Buffer. If the line is sited along a private road, no farther than the outer edge of road ditch, utilize a single Impact Buffer for both the road and line.
- c) Small compressor stations – Represents pipeline compressor stations 5 acres in size and a maximum noise level of 75dB or less at the property line or a point greater than 30 feet from the Facility Boundary. If the noise restrictions are met, but the compressor station is > 5 acres in size, apply the oil and gas pad buffer out from the Facility Boundary.
- d) Other compressor stations – Represents all pipeline compressor stations with a noise level that exceeds 75 dB at the property line or a point greater than 30 feet from the Facility Boundary. If the compressor station is ≤ 5 acres in size, apply the buffer to the centroid of the Facility Boundary. If > 5 acres, apply the oil and gas pad buffer out from the Facility Boundary.
- e) Private roads – Non-public, privately-maintained roads, including farm and ranch roads, well-field roads, etc. Utilize the centerline as a basis for the Impact Buffer.
- a) Industrial buildings - Includes infrastructure such as office buildings, commercial garages, distribution centers, and electrical substations. For sites ≤ 10 acres in size utilize the centroid as a basis for the Impact Buffer. Use the perimeter of the building as the basis for the buffer if the site is > 10 acres in size.

B. CALCULATION OF MITIGATION FEES

Mitigation Fees are the result of the Base Impact Unit Cost multiplied by the number of Impact Units, the Impact Multiplier, and the Endowment Multiplier:

$$\text{Mitigation Fees} = \text{Base Impact Unit Cost} \times \text{Impact Units} \times \text{Impact Multiplier} \times \text{Endowment Multiplier}$$

1. Base Impact Unit Costs

Base Impact Unit Costs are the product of a Habitat Management Cost and an administration cost:

$$\text{Base Impact Unit Cost} = (\text{Habitat Management Cost} \times \text{Administration Cost}) + \text{Habitat Management Cost}$$

Administration Cost: In January of 2022, the administration cost is 17.2% of the Habitat Management Cost. Refer to the WAFWA website (www.wafwa.org) for current rates.

Habitat Management Cost: vary by ecoregion. In January of 2022, these costs are:

Ecoregion	Habitat Management Cost in 2022
Mixedgrass Prairie	\$50.83
Sand Sagebrush Prairie	\$20.72
Shinnery Oak Prairie	\$33.63
Shortgrass Prairie	\$31.02

2. Impact Units

Impact Units are the product of the number of New Impacted Acres and the HEG Score:

$$\text{Impact Units} = \text{HEG Score} \times \text{New Impacted Acres}$$

New Impact Acres are the difference between the number of acres within the area of impact associated with the New Impact Activity (“New Impact Area”) and the number of acres within Impact Buffers associated with pre-existing infrastructure that overlap with the New Impact Area (“Area of Overlap”):

$$\text{New Impact Acres} = \text{New Impact Area} - \text{Area of Overlap}$$

The New Impact Area is calculated as:

$$\text{New Impact Area} = (\text{Impact Buffer}^2 \times \pi) / 43,560$$

Costs will be assessed based on only New Impact Acres, not the New Impact Area. The Impact Buffer distances for pre-existing infrastructure are identified in Table 7 on page 95 of the RWP. If the New Impact Area can be located entirely within a buffer associated with pre-existing infrastructure (*i.e.*, the New Impact Acres are zero), no cost will be assessed for the new Impact Activities. Impact Buffers are defined in feet, which must be converted to acres.

3. Impact Multiplier

Impact multipliers vary by CHAT category. Together with the offset multipliers identified in Table 8, page 100, of the RWP, they produce a 2:1 mitigation ratio within each CHAT category. The impact multipliers are:

CHAT 1	2.5
CHAT 2	2.1
CHAT 3	1.8
CHAT 4	1.6

4. Endowment Multiplier

The Endowment Multiplier is 25, which provides sufficient resources to fund an endowment managed by WAFWA that will provide for in-perpetuity conservation, as described on pages 99, 260, and 261 of the RWP.

5. Inflation and Adaptive Management

The variables outlined in this Section B of this Exhibit may be adjusted due to changes in inflation or adaptive management consistent with the terms of Section D of this Exhibit (Adjustment of Fees).

6. Miscellaneous

Construction of roads and other linear features on the Enrolled Property may also disturb the surface of other property not enrolled in the CI. The Mitigation Fee calculated for new road construction or new linear features includes disturbances occurring on both Enrolled and non- Enrolled Property.

Mitigation Fees will not be charged for any buried infrastructure.

C. ADJUSTMENT OF FEES

The Mitigation Fees described in this Exhibit may be adjusted annually to reflect inflation based on USDA practice costs and adaptive management changes, as described in Sections XV (Adaptive Management) and XVI (Assurances Provided) of the CCAA. Refer to the WAFWA website (www.wafwa.org) for current rates.

1. Changes in Mitigation Fees Due to Inflation

Changes in inflation may affect USDA practice costs, which will require changes to Habitat Management Costs. However, annual increases attributable to changes to Habitat Management Costs will not result in increases or decreases to the Mitigation Fees of more than 3% in any given year from the Mitigation Fees as they existed on December 31 of the previous year.

2. Changes in Mitigation Fees Due to Adaptive Management

In the event the RWP or elements of its conservation strategy are adjusted through adaptive management, the Mitigation Fees assessed on the Participant will not increase or decrease more than 4% in any given year from the Mitigation Fees for the prior calendar year.

The 3% limit on inflation adjustments and 4% limit on adaptive management adjustments apply to all Mitigation Fees. Thus, annual increases to Mitigation Fees associated with development in a particular ecoregion, within a particular CHAT category, focal or connectivity area, and in an area with a particular site condition score, will not exceed 3% due to inflation and 4% due to adaptive management of the Mitigation Fees for development in areas with the same variables. Put otherwise, inflation adjustments will not cause the Mitigation Fee to develop a specific parcel of land in Year N+1 (e.g., year 2) to increase more than 3% beyond the Mitigation Fee to develop that same parcel of land in Year N (e.g., year 1) (assuming habitat quality on the parcel remains the same from year to year). Similarly, adaptive management adjustments will not cause the Mitigation Fee to develop a specific parcel of land in Year N+1 (e.g., year 2) to increase more than 4% of the Mitigation Fee to develop that same parcel of land in Year N (e.g., year 1) (assuming habitat quality on the parcel remains the same from year to year).

The following formula mathematically reflects the maximum annual increase to Mitigation Fees:

$$\text{Maximum Mitigation Fee for } Y_{n+1} = (\text{Mitigation for } Y_n \times 0.04) + (\text{Mitigation for } Y_n \times 0.03) + \text{Mitigation Fee for } Y_n$$

The Mitigation Fees for Year “Y1” are those reflected on the version of the HEG in effect when the Participant executes the CI. Prior to October 1, 2014, the HEG in effect is available at www.wafwa.org; the range of Mitigation Fees associated with this HEG is identified in Section C of this Exhibit. Mitigation Fees for subsequent years are those in effect on December 31.

The RWP contemplates that some evaluations and adjustments will occur less frequently than annually (i.e., on a five- or ten-year basis). The 4% annual maximum adjustment resulting from adaptive management applies to all adjustments under the adaptive management provisions of the RWP, regardless of frequency. In other words, an adjustment that only occurs every five years cannot cause Mitigation Fees in any given year to increase more than 4% of the prior year’s Mitigation Fees.

Exhibit 3

Process for Generating Units from Remediation

The Participant may remediate impacts and generate remediation units (“Remediation Units”) for the remediated impacts. Remediation Units can be generated by performing remediation activities throughout the Covered Area of the CCAA (EOR + 10); remediation activities need not be performed on lands enrolled either in a CI or in the RWP, as long as the Participant can provide WAFWA or a WAFWA-approved Service Provider the access necessary to perform site evaluations. Remediation Units will be credited to the Participant’s Habitat Conservation Fund Account; however, Remediation Units may only be applied in the ecoregion in which the remediation occurred. Remediation Units will be reserved for the Participant that performed the remediation; however, the Participant may elect to transfer the Remediation Units. The process for quantifying units is described in this Exhibit.

The Participant may generate Remediation Units for the remediation of impacts from Impact Activities for which Mitigation Fees have been paid. The Participant may also generate Remediation Units for the remediation of impacts for which Mitigation Fees have not been paid (i.e., existing impacts). Different processes will be used for quantifying offset units depending on whether the impacts to be remediated result from Impact Activities for which Mitigation Fees have been paid.

In order to demonstrate that impacts will be remediated, the Participant must provide WAFWA with documentation demonstrating that the remediation activities have occurred and that the remediated area has been seeded with native vegetation, at least to the minimum standard defined by the Natural Resources Conservation Service’s Conservation Practice Code 550 (Range Planting).

A. THE REMEDIATED IMPACTS RESULT FROM IMPACT ACTIVITIES FOR WHICH MITIGATION FEES WERE PAID

The number of Remediation Units generated is the product of the HEG Score multiplied by the Remediation Acres, the Impact Multiplier, and the Endowment Multiplier:

$$\text{Remediation Units} = \text{HEG Score} \times \text{Remediation Acres} \times \text{Impact Multiplier} \times \text{Endowment Multiplier}$$

WAFWA or Technical Service Provider (TSP) will conduct a site assessment after the remediation activities have been completed and determine the HEG Score using the process outlined in Appendix I of the RWP.

Remediation Acres are the difference between the number of acres within the remediated area (“Remediated Area”) and the number of acres within Impact Buffers associated with pre-existing infrastructure that overlap with the Remediated Area (“Area of Overlap”):

$$\text{Remediation Acres} = \text{Remediated Area} - \text{Area of Overlap}$$

The Remediated Area is calculated as:

$$\text{Remediated Area} = (\text{Impact Buffer}^2 \times \pi) / 43,560$$

To account for adaptive management changes and changes in surrounding infrastructure over time, the Impact Buffer, Impact Multiplier, and Endowment Multiplier as defined when the remediation

activities occur will be used to calculate the Remediation Acres. Impact Buffers are defined in feet, which must be converted to acres.

B. REMEDIATION OF IMPACTS FOR WHICH MITIGATION FEES WERE NOT PAID (PREVIOUSLY EXISTING IMPACTS)

The difference between the calculation of Remediation Units for impacts for which Mitigation Fees were paid and those impacts for which Mitigation Fees were not paid (i.e., existing impacts) is that an offset multiplier will be used to calculate Remediation Units for which Mitigation Fees were not paid (rather than an impact multiplier). The offset multiplier is based on the CHAT category where the treatment is occurring and is provided on page 100 of the RWP. An administration cost of 6.25% will be assessed on the value of Remediation Units associated with the previously existing impacts. In order to calculate Remediation Units for which Mitigation Fees were not paid, the Participant may be required to supply WAFWA with maps of existing impacts where the remediation activities will occur.

1. Quantifying the Number of Remediation Units

The number of Remediation Units generated is the product of the HEG Score multiplied by the Remediation Acres, the Offset Multiplier, and the Endowment Multiplier:

$$\text{Remediation Units} = \text{HEG Score} \times \text{Remediation Acres} \times \text{Offset Multiplier} \times \text{Endowment Multiplier}$$

WAFWA or a TSP will conduct a site assessment after the remediation activities have been completed and determine the HEG Score using the process outlined in Appendix I of the RWP.

Offset Multipliers vary by CHAT category. Together with the impact multipliers identified in Appendix B, they produce an average 2:1 mitigation ratio within each CHAT category.

Remediation Acres are the difference between the number of acres within the remediated area (“Remediated Area”) and the number of acres within Impact Buffers associated with pre-existing infrastructure that overlap with the Remediated Area (“Area of Overlap”):

$$\text{Remediation Acres} = \text{Remediated Area} - \text{Area of Overlap}$$

The Remediated Area is calculated as:

$$\text{Remediated Area} = (\text{Impact Buffer}^2 \times \pi) / 43,560$$

The Impact Buffer, Offset Multiplier, and Endowment Multiplier to be used to calculate the Remediation Acres will be the Impact Buffer, Offset Multiplier and Endowment Multiplier as

defined when the remediation activities occur. Impact Buffers are defined in feet, which must be converted to acres.

2. Calculating the Administration Cost for Remediation Units

The current administration cost will be assessed on the value of Remediation Units associated with impacts for which no Mitigation Fees were paid. The value of Remediation Units is the product of the number of Remediation Units generated, the Habitat Management Cost, and an administration cost of 6.25%.

$$\textit{Administration Cost} = \textit{Remediation Units} \times \textit{Habitat Management Cost} \times \textit{Current Administrative Rate}$$

Remediation Units are valued using the Habitat Management Cost that is current at the time the Participants seeks credit of the value of the remediation performed.

Exhibit 4

Federal Fish and Wildlife Permit, No. TE27289B-0

 <p style="text-align: center;">DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE</p> <h3 style="text-align: center;">FEDERAL FISH AND WILDLIFE PERMIT</h3>		<p>2. AUTHORITY-STATUTES 16 USC 1539(a) 16 USC 1533(d)</p> <p>REGULATIONS 50 CFR 17.22 50 CFR 17.32</p> <p>50 CFR 13</p>				
<p>1. PERMITTEE</p> <p>WESTERN ASSOCIATION OF FISH AND WILDLIFE AGENCIES dba WAFWA 522 NOTRE DAME COURT CHEYENNE, WY 92009 U.S.A.</p>		<p>3. NUMBER TE27289B-0</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"> <p>4. RENEWABLE</p> <p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> </td> <td style="width: 50%;"> <p>5. MAY COPY</p> <p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> </td> </tr> <tr> <td> <p>6. EFFECTIVE</p> <p>02/28/2014</p> </td> <td> <p>7. EXPIRES</p> <p>02/28/2044</p> </td> </tr> </table>	<p>4. RENEWABLE</p> <p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>5. MAY COPY</p> <p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>6. EFFECTIVE</p> <p>02/28/2014</p>	<p>7. EXPIRES</p> <p>02/28/2044</p>
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<p>6. EFFECTIVE</p> <p>02/28/2014</p>	<p>7. EXPIRES</p> <p>02/28/2044</p>					
<p>8. NAME AND TITLE OF PRINCIPAL OFFICER <i>(If not a business)</i> CARTER SMITH PRESIDENT</p>	<p>9. TYPE OF PERMIT NATIVE ENDANGERED & THREATENED SP. CANDIDATE CONSERVATION - E & T WILDLIFE</p>					
<p>10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED</p>						
<p>11. CONDITIONS AND AUTHORIZATIONS:</p> <p>A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.</p> <p>B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.</p> <p>C. VALID FOR USE BY PERMITTEE NAMED ABOVE.</p> <p><input checked="" type="checkbox"/> ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY</p>						
<p>12. REPORTING REQUIREMENTS ANNUAL REPORT DUE: 03/31</p>						
<p>ISSUED BY</p> 	<p>TITLE DEPUTY REGIONAL DIRECTOR, REGION 6</p>	<p>DATE 02/28/2014</p>				

SPECIAL TERMS AND CONDITIONS FOR
Western Association of Fish and Wildlife Agencies
Range-wide Oil and Gas Candidate Conservation Agreement with Assurances
for the Lesser Prairie Chicken
TE27289B-0

Species: **Lesser Prairie Chicken** (*Tympanuchus pallidicinctus*)

This permit authorizes the following activities in **Colorado, Kansas, New Mexico, Oklahoma, and Texas** through **02/28/2044** under the following conditions:

D. The person named in box 8 on the face of this permit is responsible to ensure that the activities of all individuals are in compliance with the terms and conditions of this permit. Only individuals on the attached List of Authorized Individuals are approved to conduct activities pursuant to this permit.

- E. Acceptance of the permit serves as evidence that the Western Association of Fish and Wildlife Agencies (WAFWA) understands and agrees to abide by the terms and conditions of the permit and all applicable Sections of Title 50 Code of Federal Regulations (CFR) Parts 13 and 17 pertinent to issuance of this permit.
- F. WAFWA shall be responsible for fully implementing and administering the Range-wide Oil and Gas Candidate Conservation Agreement with Assurances for the Lesser Prairie Chicken (CCAA).
- G. Terms and conditions of the permit shall be binding on, and for the benefit of, WAFWA and its successors and assigns, as well as Participants that hold valid Certificates of Inclusion (CI).
- H. The authorization granted by the permit is subject to full and complete compliance with and implementation of the CCAA and all specific terms and conditions contained in this permit. These permit terms and conditions supersede and take precedence over any inconsistent provisions in the CCAA or other documents associated this permit.
- I. The authorization granted by the permit is subject to full and complete compliance with any applicable local, State, or Federal law, regulation, or restriction governing the covered area and activities and those conservation measures (as described within the CCAA) pertaining to, but not limited to, wildlife, land use, water quality, air quality, local economy, and cultural resources.
- J. WAFWA may enroll non-Federal participants under the CCAA and this permit through the issuance of CIs. The following conditions apply:
- a. Participants shall fully implement required conservation measures for the species, as described in the CCAA.
 - b. WAFWA is responsible for ensuring that activities of all Participants enrolled through CIs are in compliance with the terms and conditions of this permit. Only WAFWA, individuals under its direction, and Participants enrolled in a CI are authorized for incidental take as described herein.
- K. Incidental take authorization specified in this permit will become effective, if and at such a time that the LEPC becomes listed as either threatened or endangered under the Endangered Species Act.
- L. Incidental Take Authorization: Incidental take of lesser prairie chicken is authorized for 8,530 birds, in the form of harm, harass, and mortality, through the expiration date of this permit. Due to the difficulty in detecting take of birds, the authorized take shall be exceeded if:
- a. at 10 years from the effective date of this permit, more than 622,272 acres are developed by oil and gas activities within the Covered Area,
 - b. at 20 years from the effective date of this permit, more than 1,244,545 acres are developed by oil and gas activities within the Covered Area,
 - c. at 30 years from the effective date of this permit, more than 1,866,855 acres are developed by oil and gas activities within the Covered Area.
- M. The following conditions apply to this incidental take authorization provided through this permit:

- a. WAFWA shall submit to the U.S. Fish and Wildlife Service (Service) by July 1, 2014, the 2014 LEPC population survey results and a report of the current number of Habitat Units and Offset Units (as defined on pp. 257-258 of Van Pelt, W.E., S. Kyle, J. Pitman, D. Klute, G. Beauprez, D. Schoeling, A. Janus, and J.B. Hauffer. October 2013. The Lesser Prairie-Chicken Range-wide Conservation Plan. Western Association of Fish and Wildlife Agencies. Cheyenne, Wyoming.) (Range-wide Plan). If the survey results indicate a 20 percent decline in the species from the 2013 population estimate (14,092 birds or less), the following terms and conditions apply to the level of authorized take until March 30, 2015.
 - i. No more than 5,109 Habitat Units of unmitigated take are authorized in CHAT 1, (as defined in Figure 4 of the Range-wide Plan) from the effective date of this permit through March 30, 2015. During that period, if any take of Habitat Units is documented to be fully offset, further take of Habitat Units is authorized as long as the unmitigated limit of 5,109 Habitat Units is not exceeded.
 - ii. No more than 7,664 Habitat Units of unmitigated take are authorized in CHAT 2 from the effective date of this permit through March 30, 2015. During that period, if any take of Habitat Units is documented to be fully offset, further take is authorized as long as the unmitigated limit of 7,664 Habitat Units is not exceeded.
 - iii. No more than 11,495 Habitat Units of unmitigated take are authorized in CHAT 3, from the effective date of this permit through March 30, 2015. During that period, if any take of Habitat Units is documented to be fully offset, further take is authorized as long as the unmitigated limit of 11,495 Habitat Units is not exceeded.
 - iv. WAFWA shall provide reports to the Service every four months after July 1, 2014, and through March 30, 2105, with documentation of the level impacted Habitat Units and credited Offset Units in each of CHATs 1-3.

- N. If, during the tenure of this permit, the project design and/or the extent of the habitat impact described in the CCAA is altered, such that there may be an increase in the anticipated take of the LEPC identified in this permit, WAFWA is required to contact the Service and initiate a request for an amendment of the permit before commencing any activities that might result in incidental take or habitat loss beyond that described in the this permit, Environmental Assessment (EA), and/or Conference Opinion.
- O. Reporting: Annual reports, as described in Section XX of the CCAA, shall be provided each year the CCAA is in effect by **March 31st** to the appropriate Ecological Services and Law Enforcement offices of the U.S. Fish and Wildlife Service (Service) (see List of Contacts below).
- P. Upon locating any dead, injured, or LEPC, WAFWA and/or Participants shall, within 3 working days, notify the appropriate Service office (see List of Contacts below). Instructions for proper handling and disposition of such specimens shall be given by the appropriate Service office. Care must be taken in handling sick or injured birds to promote effective treatment, and in handling dead specimens to preserve biological material in the best possible state.
- Q. Assurances: The assurances provided for in the CCAA through this permit are those in 50 CFR 17.22(d)(5) or 17.32(d)(5), as applicable. These assurances apply to WAFWA and all participants that are fully implementing their commitments under the CCAA and CIs, respectively.