



Technical Memo

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Date: March 21, 2023

To: Western Association of Fish and Wildlife Agencies

From: Cedar Creek Associates, Inc.

Subject: 2022 Program Review for the Candidate Conservation Agreement with Assurances for the Lesser Prairie Chicken

Cedar Creek Associates, Inc (Cedar Creek) was retained by Western Association of Fish and Wildlife Agencies (WAFWA) to conduct a program review for the Candidate Conservation Agreement with Assurances (CCAA) for the Lesser Prairie Chicken (*Tympanuchus pallidicinctus*) in 2022. The CCAA for the Lesser Prairie-Chicken 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 Lesser Prairie-Chicken 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 lesser prairie-chicken. The CCAA includes an obligation for WAFWA to provide an annual 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 review was conducted by Mr. Jesse Dillon of Cedar Creek. He is a Principal Ecologist with nearly 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 Review

The review comprised of evaluating the revised 21 compliance points of the CCAA, as well as review of the CCAA's annual report to assess if it fairly reflects the expenditures and achievements of the program. To implement the review, Mr. Dillon relied upon the following information:

- 2022 CCAA Annual Report
- 2021 Business Plan for WAFWA's Lesser Prairie Chicken CCAA
- WAFWA's Western Conservation Toolkit (WCT).

Results of Review

Overall, the review revealed passing compliance in 21 of the 21 compliance points of the CCAA. Details of each compliance point can be found below. The auditor also found that the 2022 Annual Report fairly reflects the expenditures and achievements of the program.

CCAA Section XI - Obligations of WAFWA:

1	Hold the Permit (# TE27289B-0) issued by the Service pursuant to this CCAA.	Pass
	<ul style="list-style-type: none"> • Permit # TE27289B-0 is on file, Exhibit 1.0. 	
	- Condition O for reporting met with the submission of the 2022 Annual Report to the USFWS.	<input checked="" type="checkbox"/>
	- Impacted acres are well below the 10-year threshold for incidental take. The CCAA is in its ninth year (2014-2022) from the effective date of the permit. As of December 31, 2022, the acres impacted through the CCAA total 17,862 acres. This represents 2.87% of the impacted acreage allowed by the CCAA permit in the first 10 years of the program (622,272 ac.).	<input checked="" type="checkbox"/>
	- There has been no mortalities or injuries observed or reported to the FWS since the start of the program in 2014 as reported in the 2022 Annual Report (WAFWA 2023).	<input checked="" type="checkbox"/>
2	Implement and administer this CCAA.	Pass
	<ul style="list-style-type: none"> • WAFWA/SRF effectively maintain the implementation and administration of the CCAA following the CCAA Business Plan (WAFWA 2021). 	<input checked="" type="checkbox"/>
3	Enroll Participants in accordance with this CCAA via CIs.	Pass
	<ul style="list-style-type: none"> • Industry: As of December 31, 2022, there were 126 companies actively participating in the CCAA. There was a net increase of 15 companies enrolled from the prior year, resulting from 1] transfers of enrollment to new companies, 2] mergers of companies, and 3] transfers of enrollment from the WCA mitigation program to the CCAA. No companies were suspended or terminated in 2022. The program has not been open to new participation since March of 2019, by Executive Board decision. Refer to the Participant Enrollment section of the 2022 Annual Report for more information. (WAFWA 2023) 	<input checked="" type="checkbox"/>
	<ul style="list-style-type: none"> • Conservation: As of December 31, 2022, there were 12 enrolled conservation properties. This is a reduction of 10 properties from 2021; resulting from the implementation of the 2022 Updated CCAA Business Plan and 2021 strategic plan for rightsizing the investment of conservation properties. The reduction was carried-out under voluntary termination per the terms of the CI with prorated payment and credit generation made in 2022. No new enrollments were taken in 2022. One property (3 contracts) were terminated by mutual agreement on 12/31/2022 for unresolved compliance issues. Refer to the Participant Enrollment, Compliance and Financial Summary sections of the 2022 Annual Report for more information. (WAFWA 2023). 	<input checked="" type="checkbox"/>
	<ul style="list-style-type: none"> • Certificate of Inclusions (CI's), excluding Exhibit 1 removed, are on file in WAFWA's data portal with the Service, as required in Section XX (B)(a) of the CCAA. 	<input checked="" type="checkbox"/>

<p>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.</p>	Pass
<ul style="list-style-type: none"> • A financial audit was implemented as described in the CCAA Business Plan (WAFWA 2021). New in 2022, is the addition of an operating budget. The financial audit is provided online at https://wafwa.org/about-us/financial-statements/ 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • A financial summary of conservation expenses is provided in the Annual Report. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • DEFENSIBILITY = MET (1 acre of impact = 1 acre of restoration & 1 acre of enhancement) 1 acre of impact = 1 acre restored & 6 acres enhanced Restoration Completed: 17,602 acres Enhancement Completed: <u>132,701 acres</u> TOTAL = 150,303 acres 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • Net Conservation Benefit annual summaries are on file in WAFWA's data portal with the Service as required in Section XX (B)(a) of the CCAA. Starting in 2022, this data is now available in the Annual Report. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • In 2022, there were no new restoration acres completed (WAFWA 2022). 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • The CCAA Business Plan directed the sell the Sunview Ranch and all proceeds will be returned to the CCAA conservation endowment for LPC conservation. The Ranch had a offer in 2022 that fell through, the property is still listed for sale. 	<input checked="" type="checkbox"/>
<p>5 Monitor conservation activities in order to determine success and adaptations needed, as defined in the monitoring section of the RWP (pgs. 122–25).</p>	Pass
<ul style="list-style-type: none"> • Population Monitoring. In 2022, range-wide aerial surveys were conducted for the tenth year (2012-2018 and 2020-2022) to estimate the annual range-wide population size of LPC and evaluate trends in time of the range-wide population size. WEST determined an estimated total population decrease of 6,913 LPC was observed from 2021 to 2022 (20.6% decrease); however, this decrease was not statistically significant at the 90% confidence level (90% CI: -22,205, 6,328). (Nasman 2021). This fullfills the RWP obligation to conduct surveys for a 10 year period. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • Conservation Monitoring. Conservation properties were monitored from April 1 to July 15 of 2022 by WAFWA's certified Technical Service Providers (TSPs), using standardized HEG habitat monitoring protocol, to assess habitat quality and to ensure compliance with the terms and conditions of the participant's certificate of inclusion. In 2022, the enrolled conservation properties had an average HEG score of 0.70, this was consistent from 2020. This HEG score represents a very high level of habitat quality (a score of 1.0 represents the highest quality). One compliance item was determined in 2022 resulting in a mutual termination, details are provided in the Annual Report (WAFWA 2023). A summary of results are provided in the 2022 Annual Report, and the field data for each enrollment is available to the Service in WAFWA's WCT (wafwawct.org) data portal. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • Industry Monitoring. In 2022, the random compliance sample resulted in 16 projects to be reviewed. Of the projects reviewed, two (2) were not constructed and were deferred to the 2023 compliance season. Of the resulting 14 projects reviewed, all were found to be in-compliance. A summary of results are provided in the 2022 Annual Report, and the and the results of each review is available to the Service in WAFWA's WCT (wafwawct.org) data portal. 	<input checked="" type="checkbox"/>
<p>6 Secure permission to complete conservation activities on private, State, and Tribal lands, where appropriate.</p>	Pass
<ul style="list-style-type: none"> • Permissions are secured by Certificates of Inclusion (CIs) for all enrolled conservation participants, with the following terminology: "<i>Participant agrees to allow access to WAFWA employees, agents, or WAFWA-approved technical service providers to monitor compliance, verify completion of Conservation Practice, and monitor vegetation composition and structure.</i>" 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • WAFWA stated there were no issues with accessing properties to complete conservation activities in 2022 as evidenced by the completion of conservation monitoring on all properties. 	<input checked="" type="checkbox"/>

<p>7 Establish committees (“WAFWA Committees”) as described in the CCAA Business Plan. 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.</p>	Pass
<ul style="list-style-type: none"> • SRF’s Board. The board is established and fully functional as the WAFWA board. WAFWA stated that the WAFWA board has been actively meeting and discussing CCAA as items are needed. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • LPC Initiative Council (LPCIC). The Council was re-organized in 2021 under the CCAA Business Plan and is fully functional with a charter approved. The LPCIC is actively participated by LPC state directors, a non-LPC state director, and industry representation. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • LPC Investment Advisory Committee. Was reformed in 2021 is reestablishing its functional status. This group meets as needed by the LPCIC. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • LPC Technical Working Group. The RWP Interstate Working Group had served this function in the interim until the group was formally established in 2022. In 2022, the charter was approved by LPCIC. Members include state & fed agencies, landowner and industry reps, and conservation partners. 	<input checked="" type="checkbox"/>
<p>8 Schedule WAFWA Committee meetings at least once per year. WAFWA may also hold meetings more often than annually at the request FWS and of others, if WAFWA deems it necessary. WAFWA shall coordinate the locations, dates and times of the WAFWA Committee meetings, as provided in the CCAA Business Plan.</p>	Pass
<ul style="list-style-type: none"> • SRF’s Board. The Board makes decisions at regularly scheduled meetings based on recommendations of the Council, per the Updated CCAA Business Plan. At a minimum, an annual update is provided at the WAFWA Winter Meeting. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • LPC Initiative Council (LPCIC). The Council will hold meetings on an ad-hoc basis, but will meet at least once every other month, per the Council's Charter. In 2022, the LPCIC generally met monthly. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • LPC Investment Advisory Committee. The Committee meets at least twice a year or as circumstances require, per the CCAA Business Plan. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • LPC Technical Working Group. The group meets at least once every other month. 	<input checked="" type="checkbox"/>
<p>9 Track expenditure of funds and prepare and submit to FWS an annual report on implementation of this CCAA as required by Section XX (Monitoring and Reporting).</p>	Pass
<ul style="list-style-type: none"> • The SRF financial audit of each fiscal year’s accounting and spending (July through June) is posted on-line and available to the public on WAFWA's website (https://wafwa.org/about-us/srf/). The 2022 financial audit was submitted to the FWS at the time of completion. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • Additionally, the 2022 Annual Report provided an annual summary of the funds used for habitat conservation on private/state lands, per the reporting requirements CCAA (WAFWA 2023) 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • In 2022, WAFWA migration to a new financial tracking system to allow greater tracking of expenditures and allow better reporting outputs. In order to expand upon this new system, the LPC Program Director stated that the tracking of industry pre-paid balances is being moved into this system in 2023. 	<input checked="" type="checkbox"/>
<p>10 Maintain a digital photo database to document activities (i.e., conservation measure) performance.</p>	Pass
<ul style="list-style-type: none"> • During the annual Conservation Compliance and Vegetation Monitoring, photos are taken at each vegetation transect. The photo database is maintained for each enrollment, and is available to the Service in WAFWA's WCT (wafwawct.org) data portal. 	<input checked="" type="checkbox"/>

11 Provide for an audit by an independent party annually to account for expenditures and accomplishments under this CCAA.	Pass
<ul style="list-style-type: none"> • In 2022, WAFWA submitted to the Service a request for a Technical Correction to clarify this measure. The Service responded with approval for this item to be addressed by two separate reviews; an independent third-party annual "program review" and an independent third-party annual "financial audit". 	
<ul style="list-style-type: none"> • The SRF independent third-party financial audit of each fiscal year's accounting and spending (July through June) is posted on-line and available to the public on WAFWA's website (https://wafwa.org/about-us/srf/) and is on file in WAFWA's data portal with the Service, as required in Section XX (B)(a) of the CCAA. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • The independent third-party program review to evaluate accomplishments including operations and compliance (January through December) is posted on-line and available to the public on WAFWA's website (https://wafwa.org/initiative-programs/lesser-prairie-chicken/) and is on file in WAFWA's data portal with the Service, as required in Section XX (B)(a) of the CCAA. 	<input checked="" type="checkbox"/>
12 Maintain the confidentiality of certain information as described in Section XXI of the CCAA.	Pass
<ul style="list-style-type: none"> • Confidentiality is maintained by having any or acreage positions or maps/location reference, depicting lands enrolled by an individual Participant that specifically identify the Participant, being password protected in the WCT. Any other data is housed on the WAFWA server for internal use where access is limited to those managing the program. The CI's and CP's provided to the USFWS have Exhibit 1 redacted, as required in the CCAA. 	
<ul style="list-style-type: none"> • Confidentiality clauses are provided in the Certificate of Inclusions (CIs) and Certificate of Participations (CPs). 	<input checked="" type="checkbox"/>
13 Hold the CI for each Enrolled Property.	Pass
<ul style="list-style-type: none"> • A 2022 review confirmed that all CIs and CPs are in-place for enrolled participants. 	
<ul style="list-style-type: none"> • Certificate of Inclusions (CI's), excluding Exhibit 1 removed, are on file in WAFWA's data portal with the Service, as required in Section XX (B)(a) of the CCAA. 	<input checked="" type="checkbox"/>
14 Administer the CIs for Participants in accordance with their terms.	Pass
<ul style="list-style-type: none"> • The administration of the CIs, including but not limited to, industry requested transfers, enrollment changes, compliance reviews, sending annual notices, tracking credits/debits and financials, are demonstrated in the Annual Report and as otherwise provided in this document. 	
15 Provide at least two weeks' advance written notice (the "Two Week 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. The Two Week Notice to Participant shall identify the access date, estimated arrival time, and names and employers of the individuals accessing the Enrolled Property. WAFWA shall allow a Participant to accompany WAFWA during any visit to the Participant's Enrolled Property. In order to access lands that are not enrolled by the Participant, WAFWA must independently obtain landowner permission.	Pass
<ul style="list-style-type: none"> • Participants were mailed a notice from WAFWA, at least 2 weeks in advance, of the 2022 conservation monitoring effort. The TSP then contacts the participants directly to arrange for specific days and to get any other site access information. WAFWA stated that no issues with notices or access in 2022 as reflected in the completion of all monitoring activities. Notice letters are on file in the customer's folder. 	
<ul style="list-style-type: none"> • The only property with leks surveyed through WAFWA/SRF was on the Sunview Ranch which is owned by WAFWA. Additionally, the ranch had a terrestrial survey completed in November of 2022. Email notices were provided to the ranch manager. 	<input checked="" type="checkbox"/>

<p>16 Allow FWS to accompany WAFWA when WAFWA accesses Participants' Enrolled Property for purposes of monitoring compliance with terms of the CI, as described in Section XI(B)(15), so long as FWS has first (a) provided to WAFWA the names of FWS personnel who are requesting authorization to accompany WAFWA; (b) submitted to WAFWA its request to accompany WAFWA with adequate time to enable WAFWA to inform Participant in the Two Week Notice of the names of any FWS personnel who will accompany WAFWA; and (c) agreed to comply with the confidentiality provisions in Section XXI (Confidentiality).</p>	Pass
<ul style="list-style-type: none"> • The Service was provided an email notice of the 2022 annual monitoring efforts with a request to provide notificaiton if there are any sites where they would like to accompany WAFWA on site reviews. No sites were requested to be visited in 2022. 	<input checked="" type="checkbox"/>
<p>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. WAFWA will employ or hire qualified personnel or utilize state wildlife agency staff to complete a habitat evaluation using the Habitat Evaluation Guide (as described in Section XIV (Development Procedures)) prior to development unless the Participant elects to contract for a TSP to complete the habitat evaluation. FFWW will use state wildlife agency personnel and/or employ personnel for accounting, administrative, and GIS support for the agreement. This structure is fully described in the CCAA Business Plan.</p>	Pass
<ul style="list-style-type: none"> • In 2022, WAFWA utilized a contracted, trained and certified technical service providers (TSP) to implement conservation habitat monitoring and compliance reviews. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • In 2022, WAFWA contract a LPC Program Manager to cover all program operations and utilized WAFWA financial and administrative staff to assist in those capacities. In 2023, this position was solidified as WAFWA staff as a LPC Program Director. 	<input checked="" type="checkbox"/>
<p>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. The WAFWA Committees may facilitate communication among Participants and offer feedback and recommendations to WAFWA and FWS regarding various aspects of the implementation and administration of the CCAA, including, but not limited to, new scientific information through the Adaptive Management process, proposed amendments to the CCAA and CI, dispute resolution, prioritization and implementation of Conservation Measures, research activities, and other similar issues. The committee structure is fully described in the CCAA Business Plan.</p>	Pass
<ul style="list-style-type: none"> • See item #7. 	<input checked="" type="checkbox"/>
<p>19 Hold Participants' Habitat Conservation Fund Accounts as described in Section XIII(D) (Enrollment and Mitigation Fees).</p>	Pass
<ul style="list-style-type: none"> • In 2020, WAFWA split the WCA and CCAA financial accounting to allow for tracking of conservation funds by program. This was completed in 2021. 	
<ul style="list-style-type: none"> • The Business Plan directed earmarking \$10 million for the administrative endowment, SRF now has a \$500,000 annual budget to cover administrative expenses based on an annual return of 5%. Based on current assumptions, this should be more than sufficient to manage the CCAA in perpetuity. 	
<ul style="list-style-type: none"> • Participants' Habitat Conservation Fund Accounts are maintained and tracked by enrolled company and by their enrollment (WCA or CCAA). 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • In 2022, the Service was provided a copy of the updated operating budget. No substancial changes are expected to the budget in 2023. 	<input checked="" type="checkbox"/>

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 (Participant Compliance).	Pass
<ul style="list-style-type: none"> • In 2022, there were no industry compliance issues with outstanding payments (WAFWA 2023). 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • In 2022, there were no industry compliance issues with following mandatory conservation measures or other terms of the CI (WAFWA 2023). 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • In 2022, the random compliance sample resulted in 16 projects to be reviewed. Of the projects sampled, two were not constructed and were deferred to the 2023 monitoring season. Of the resulting 14 projects reviewed, all were found to be in-compliance. (WAFWA 2023) 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • In 2022, there were no instances of emergency or non-emergency operations reported by participating companies. Since the start of the program, there have been six (6) reports of emergency operations and 26 non-emergency operations occurring. All occurrences occurred within the first 5 years of the program. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • Compliance monitoring of conservation properties occurs during annual field monitoring by WAFWA's certified Technical Service Providers (TSPs) and through subsequent post-grazing season review of their grazing systems. Refer to Section Habitat Monitoring and Condition. A potential compliance issue identified during the grazing plan reviews to prepare for the 2023 season. The owner/rancher wanted to change their livestock operation in a manner that would no longer meet the grazing requirements. Upon mutual agreement, the CP was terminated as of 12/31/2022. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • A full reporting of results is provided in the 2022 Annual Report, and the field data for each compliance review is available to the Service in WAFWA's WCT (wafwawct.org) data portal. 	<input checked="" type="checkbox"/>
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
<ul style="list-style-type: none"> • An annual summary of the debit/credit ledger is provide in the 2022 Annual Report. It demonstrates that at the end of 2022, there was a surplus of credits and that the forecast for the expected balance in 2023 will be a surplus. 	<input checked="" type="checkbox"/>