



Technical Memo

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Date: March 27, 2023

To: Western Association of Fish and Wildlife Agencies

From: Cedar Creek Associates, Inc.

Subject: 2023 Program Audit 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 audit for the Candidate Conservation Agreement with Assurances (CCAA) for the Lesser Prairie Chicken (*Tympanuchus pallidicinctus*) in 2023. 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 audit 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 Audit

The audit comprised of evaluating the revised 21 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:

- 2023 CCAA Annual Report
- Updated Business Plan for WAFWA’s Lesser Prairie Chicken CCAA
- WAFWA’s Western Conservation Toolkit (WCT).

Results of Audit

Overall, the audit revealed passing compliance in 21 of the 21 compliance points of the CCAA. Details of each audit compliance point can be found below. The auditor also found that the 2023 Annual Report fairly reflects the expenditures and achievements of the program.

CCAA Section XI - Obligations of WAFWA:

<p>1 Hold the Permit (# TE27289B-0) issued by the Service pursuant to this CCAA.</p> <ul style="list-style-type: none"> • Permit # TE27289B-0 is on file, Exhibit 1.0. <ul style="list-style-type: none"> - Condition O for reporting will be met with the submission of the 2023 Annual Report to the USFWS, that is due by 03/31/2023. All prior years have been submitted prior to the due date. Annual reports are posted at https://wafwa.org/initiative-programs/lesser-prairie-chicken/ - Impacted acres are well below the 10-year threshold for incidental take. The CCAA is in its tenth year from the effective date of the permit. As of December 31, 2023, the acres impacted through the CCAA total 18,569 acres. This represents 3% of the acreage allowed by the CCAA permit in the first 10 years of the program (622,272 ac.), as reported in the 2023 Annual Report. - 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 2023 Annual Report. 	Pass
<p>2 Implement and administer this CCAA.</p> <ul style="list-style-type: none"> • WAFWA/SRF effectively maintain the implementation and administration of the CCAA following the CCAA Business Plan (WAFWA 2021), as demonstrated by the 2023 Annual Report. 	Pass
<p>3 Enroll Participants in accordance with this CCAA via CIs.</p> <ul style="list-style-type: none"> • Industry: As of December 31, 2023, there were 127 companies actively participating in the CCAA, all performing within their Certificates of Inclusion. • Conservation: As of December 31, 2023, there were 12 enrolled conservation properties, all performing within their Certificates of Participation. • 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. In 2023, the location was changed from the Nextcloud to a Sharepoint. 	Pass

<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> <ul style="list-style-type: none"> • A financial audit was implemented per the CCAA Business Plan (WAFWA 2021). The financial audit will be provided upon completion at https://wafwa.org/about-us/financial-statements/ • A financial summary of conservation expenses is provided in the 2023 Annual Report. • DEFENSIBILITY = MET (1 acre of impact = 1 acre of restoration & 1 acre of enhancement) 1 acre of impact = 1.25 acre restored & 17 acres enhanced Restoration Completed: 9,530 acres Enhancement Completed: <u>132,701 acres</u> TOTAL = 159,833 acres • 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. They are also provided in the 2023 Annual Report. • In 2023, there were no new restoration acres completed, per the 2023 Annual Report. • The CCAA Business Plan directed the sell the Sunview Ranch and all proceeds will be returned to the CCAA conservation endowment for LPC conservation. WAFWA states the Ranch has an offer. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>
<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> <ul style="list-style-type: none"> • Population Monitoring. In 2022, WAFWA fulfilled their 10-year obligation under the LPC Range-Wide Conservation Plan to conduct surveys, as stated in the 2023 Annual Report. In 2023, WAFWA voluntarily ground surveyed the conservation sites, as reported in the 2023 Annual Report. • Conservation Monitoring. Conservation properties were monitored from April 1 to July 15 of 2023 by WAFWA's certified Technical Service Providers (TSPs). In 2023, the enrolled conservation properties had an average HEG score of 0.68 representing high habitat quality. A summary of results are provided in the 2023 Annual Report, and the field data for each enrollment is available to the Service in WAFWA's WCT (wafwawct.org) data portal. • Industry Monitoring. In 2023, the random compliance sample resulted in 34 projects to be reviewed. Of the projects reviewed, 17 were not constructed and were deferred to the 2024 compliance season. Of the resulting 17 projects reviewed, all were found to be in-compliance. A summary of results are provided in the 2023 Annual Report, and the and the results of each review is available to the Service in WAFWA's WCT (wafwawct.org) data portal. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>
<p>6 Secure permission to complete conservation activities on private, State, and Tribal lands, where appropriate.</p> <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>" • WAFWA stated there were no issues with accessing properties to complete conservation activities in 2023 as evidenced by the completion of conservation monitoring on all properties. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>

<p>7 Establish committees (“WAFWA Committees”) as described in the CCAA Business Plan.</p> <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. • 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. • LPC Investment Advisory Committee. Was reformed in 2021 is reestablishing its functional status. This group meets as needed by the LPCIC. • LPC Technical Working Group. The charter was approved by LPCIC. Members include state & fed agencies, landowner and industry reps, and conservation partners. This group meets as needed by the LPCIC. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>
<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> <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. In 2023, the board met at the winter meeting. • 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 2023, the LPCIC generally met monthly. • LPC Investment Advisory Committee. The Committee meets at least twice a year or as circumstances require, per the CCAA Business Plan. • LPC Technical Working Group. The group meets at least once a year or as circumstances require, per the CCAA Business Plan. The group met at the 2023 summer meeting. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>
<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> <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 2023 financial audit should be made available from the auditors in March of 2024. • Additionally, the 2023 Annual Report provided an annual summary of the funds used for habitat conservation on private/state lands, per the reporting requirements CCAA. 	<p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>
<p>10 Maintain a digital photo database to document activities (i.e., conservation measure) performance.</p> <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. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p>
<p>11 Provide for an audit by an independent party annually to account for expenditures and accomplishments under this CCAA.</p> <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 2023 financial audit should be made available from the auditors in March of 2024. • 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/), as required in Section XX (B)(a) of the CCAA. To be posted upon completion of this review. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>

<p>12 Maintain the confidentiality of certain information as described in Section XXI of the CCAA.</p> <ul style="list-style-type: none"> Confidentiality is maintained by having any acreage positions or maps/location reference, depicting lands enrolled by an individual Participant that specifically identify the Participant, being password protected in the WCT.org. Any other data housed on WAFWA's server is 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. Confidentiality clauses are provided in the Certificate of Inclusions (CIs) and Certificate of Participations (CPs). 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>
<p>13 Hold the CI for each Enrolled Property.</p> <ul style="list-style-type: none"> A 2023 review confirmed that all CIs and CPs are in-place for enrolled participants. 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. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>
<p>14 Administer the CIs for Participants in accordance with their terms.</p> <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. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p>
<p>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.</p> <ul style="list-style-type: none"> Participants were mailed a notice from WAFWA, at least 2 weeks in advance, of the 2023 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 2023 as reflected in the completion of all monitoring activities. Notice letters are on file in the customer's folder. In 2023, all enrolled properties, with the exception of one in NM, had leks surveys completed through WAFWA or by partner state wildlife agencies. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>
<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> <ul style="list-style-type: none"> The Service was provided an email notice of the 2023 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 2023. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p>

<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> <ul style="list-style-type: none"> • See item #7. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p>
<p>19 Hold Participants' Habitat Conservation Fund Accounts as described in Section XIII(D) (Enrollment and Mitigation Fees).</p> <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 and carries to 2023. • 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. • Participants' Habitat Conservation Fund Accounts are maintained and tracked by enrolled company and by their enrollment (WCA or CCAA). 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>
<p>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).</p> <p><i>Independent Program Review Response: 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. (Dillon 2022)</i></p> <ul style="list-style-type: none"> • There were no industry compliance issues with outstanding payments, as documented in the 2023 Annual Report. • There were no industry compliance issues with following mandatory conservation measures or other terms of the CI, as documented in the 2023 Annual Report. • In 2023, the random compliance sample resulted in 17 projects to be reviewed. All were found to be in-compliance, as documented in the 2023 Annual Report. • In 2023, 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. • 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. All were found to be in-compliance, as documented in the 2023 Annual Report. • A full reporting of results is provided in the 2023 Annual Report, and the field data for each compliance review is available to the Service in WAFWA's WCT (wafwawct.org) data portal. 	<p>Pass</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>

21 Use Mitigation Fees to ensure the availability of necessary offset units before Impact Activities can occur except as provided in Section XIII(B). <ul style="list-style-type: none">• An annual summary of the debit/credit ledger is provide in the 2023 Annual Report. It demonstrates that at the end of 2023, there was a surplus of credits and that the forecast for the expected balance in 2024 will be a surplus.	Pass <input checked="" type="checkbox"/>
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Citations

WAFWA, 2024. The 2023 Annual Report for the Range-wide Oil and Gas Candidate Conservation Agreement with Assurances for the Lesser Prairie-Chicken. Western Association of Fish and Wildlife Agencies. Boise, Idaho.

WAFWA, 2021. Updated Business Plan for WAFWA's LPC CCAA. Western Association of Fish and Wildlife Agencies. Boise, Idaho. 20 pp. Online at <https://wafwa.org/initiative-programs/lesser-prairie-chicken/>