

CERTIFICATE OF INCLUSION
in the
Candidate Conservation Agreement with Assurances for the Lesser Prairie-Chicken
(*Tympanuchus pallidicinctus*) and Sand Dune Lizard (*Sceloporus arenicolus*)

CI Number _____

This certifies that the Participating Landowner of the property described herein is included within the scope of the above named Candidate Conservation Agreement (CCAA) for the lesser prairie-chicken (LPC) and sand dune lizard (SDL) 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. A Participating Landowner, as defined by 50 CFR §17.3, is a person with a fee simple, leasehold, or property interest (including owners of water or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable State law, on non-Federal land.

The goal of the U.S. Fish and Wildlife Service (FWS), Center of Excellence for Hazardous Materials Management (CEHMM), and the Participating Landowner is to reduce and/or eliminate threats to the LPC and/or SDL. By agreeing to conduct the conservation measures described herein, the FWS will provide Participating Landowners with regulatory certainty (assurances) concerning land use restrictions that might otherwise apply should the LPC or SDL become listed as a threatened or endangered species under the ESA.

This Certificate of Inclusion (CI) is a voluntary agreement between the FWS, CEHMM, and the Participating Landowner. Through this CI, the Participating Landowner voluntarily commits to implement or fund specific conservation actions that will reduce and/or eliminate threats to the LPC and /or SDL. Funds contributed as part of this CI will be used to implement conservation measures and associated activities. The funds will be directed to the highest priority projects to restore or reclaim habitat at the sole discretion of the CCAA Implementation and Planning Team. By signing below, the Participating Landowner acknowledges that they have read and understand the CCAA and this CI. They further acknowledge that this CCAA may not be sufficient to prevent the listing of either species.

Participating Landowners's Name: _____

Address: _____

The following Conservation Measures are to be accomplished in addition to those described in the CCAA:

1. To the extent determined by the FWS or CEHMM representative at the Plan of Development stage, all infrastructures supporting the development of a well (including roads, power lines, and pipelines) will be constructed within the same corridor.

2. On enrolled parcels that contain inactive wells, roads and/or facilities that are not reclaimed to current standards, the Participating Landowner shall remediate and reclaim their facilities within three years of executing this CI, unless the Participating Landowners can demonstrate they will put the facilities back to beneficial use for the enrolled parcel(s). If an extension is requested by the Participating Landowners, they shall submit a detailed plan (including dates) and receive FWS or CEHMM approval prior to the three year deadline. All remediation and reclamation shall be performed in accordance with FWS or CEHMM requirements and be approved in advance by staff from the FWS and/or CEHMM Authorized Officer.
3. Allow no new surface occupancy within 30 meters of areas designated as occupied or suitable, unoccupied SDL dune complexes or within delineated shinnery oak corridors. The avoidance distance is subject to change based on new information received from peer reviewed science.
4. Utilize alternative techniques to minimize new surface disturbance when required and as determined by the FWS or CEHMM representative at the Plan of Development stage.
5. Provide escape ramps in all open water sources under the Participating Cooperator's control.
6. Install fence markings along fences owned, controlled, or constructed by the Participating Cooperator that cross through occupied habitat within two miles of an active LPC lek.
7. Bury new powerlines that are within two (2) miles of LPC lek sites active at least once within the past 5 years (measured from the lek). The avoidance distance is subject to change based on new information received from peer reviewed science.
8. Bury new powerlines that are within one (1) mile of historic LPC lek sites where at least one LPC has been observed within the past three years (measured from the historic lek). The avoidance distance is subject to change based on new information received from peer reviewed science.
9. Allow no 3-D geophysical exploration or 24-hour drilling operations during the period from March 1st through June 15th, annually. Other activities that produce noise or involve human activity, such as the maintenance of oil and gas facilities, geophysical exploration other than 3-D operations, and pipeline, road, and well pad construction, will be allowed except between 3:00 am and 9:00 am. The 3:00 am to 9:00 am restriction will not apply to normal, around-the-clock operations, such as venting, flaring, or pumping, which do not require a human presence during this period. Normal vehicle use on existing roads will not be restricted.

10. Exhaust noise from facilities on enrolled lands (*e.g.*, pumpjack, compressors) must be muffled or otherwise controlled so as not to exceed 75 db measured at 30 ft. from the source of the noise.
11. Limit seismic exploration to areas outside of occupied and suitable shinnery dune complexes to protect Sand Dune Lizard habitat.
12. Submit a routine monitoring and schedule of inspection for oil, gas and produced water pipelines and facilities to ensure accidental pollution events are avoided in sensitive habitats for Sand Dune Lizard.
13. Inside the Sand Dune Lizard polygon as depicted in the BLM SSS-RMPA, the following will apply:

Any trench left open for eight (8) hours or less is not required to have escape ramps; however, before the trench is backfilled, an agency/CEHMM approved monitor shall walk the entire length of open trench and remove all trapped wildlife and release them at least 100 yards from the trench.

For trenches left open for eight (8) hours or more, earthen escape ramps (built at no more than a 30 degree slope and spaced no more than 500 feet apart) shall be placed in the trench. The open trench shall be monitored each day by an agency/CEHMM approved monitor during the following three time periods: (1) 5:00 a.m. to 10:00 a.m., (2) 11:00 a.m. to 2:00 p.m., and (3) 3:00 p.m. to sunset. All trapped wildlife shall be released at least 100 yards from the trench.

One agency/CEHMM approved monitor shall be required for every mile of open trench. A daily report (consolidate if there is more than one monitor) on the wildlife found and removed from the trench shall be provided to CEHMM (email is acceptable) the following morning.

This stipulation shall apply to the entire length of the project in the sand dune lizard habitat regardless of land ownership.

12. Management recommendations may be developed based on new information received from peer reviewed science to mitigate impacts from H₂S and/or the accumulation of sulfates in the soil related to production of gas containing H₂S on the SDL and LPC. Such management recommendations will be applied by the Participating Cooperator as Conservation Measures under this CI/CP in suitable and occupied SDL/LPC habitat where peer-reviewed science has shown that H₂S levels threaten the LPC/SDL.

I. ENROLLED ACREAGE.

Participating Landowner will provide a list of enrolled parcels (leases or portions of leases) including lease number, detailed legal description, and acreage for each enrolled parcel in this CI (see Exhibit A). Enrollment of acreage does not guarantee approval of an application to regulatory agencies (state or federal) and approval of any permit does not guarantee adherence to the CI.

The Participating Landowner is responsible for ensuring that all provisions of this CI are implemented by its agents, sub-contractors, and other interest holders on all parcels enrolled under this CI.

II. PLANS OF DEVELOPMENT.

Due to the amount of acreage (multiple parcels) enrolled under this CI, it is not possible to prepare an accurate Plan of Development on all enrolled acreage at the time of executing this CI. However, the Participating Landowner agrees to prepare Plans of Development on a case-by-case basis as requested by the FWS and CEHMM. It is understood that FWS and CEHMM's request for Plans of Development will be associated with the Participating Landowner's anticipated development activities.

III.

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USPENSION FOR NONPAYMENT.

The Participating Landowner hereby agrees that, CEHMM, in coordination with the FWS, can suspend the CI on enrolled parcels identified in Exhibit A until the Habitat Conservation Fee associated with that CI is paid.

IV. HABITAT CONSERVATION FEES AND PAYMENTS.

The Participating Landowner will provide funds for the restoration, reclamation, and protection of suitable LPC and SDL habitat over a minimum three-year period that begins with the execution of this CI and will continue until the CP is terminated as provided herein. The funds will be generated by a Habitat Conservation Fee, which is based on the amount of area disturbed by oil and gas operations. The Participating Landowner will remit the Habitat Conservation Fee to CEHMM. CEHMM will maintain the funds in a Habitat Conservation Fund Account specific to this CI. The purpose of the Habitat Conservation Fund Account is to meet the Participating Landowner's obligations under the CCAA.

The Participating Landowner will make the first payment into the Habitat Conservation Fund Account at the date of execution of this CI. The second and third payments will be made on the first and second anniversary of the execution date of this CI. For each of the three years, the annual prepayment will be calculated at \$2 per gross acre for all parcels enrolled in this CI, with a minimum of \$20,000 deposited each year.

The Participating Landowner may, at their sole option, pay more than the required amount into their Habitat Conservation Fund Account during any prepayment period but never less than the required amount as described herein.

Prepayment of any new parcels added by addendum to this CI will be calculated at \$2 per gross acre and be due at the time the parcels are added to the CI. The total acreage enrolled in this CI, and the resulting annual prepayment, will be recalculated on the remaining anniversary dates of the 3 year cycle. No annual prepayment will be required after the initial 3 year period, but the Habitat Conservation Fee will remain in effect.

After this CI is executed, CEHMM will calculate the applicable Habitat Conservation Fee associated with any new surface disturbance using the methodology shown on Exhibit B.

Within 10 working days, the Participating Landowner will provide CHEMM with copies of surface disturbance activity approval papers from the New Mexico Energy Minerals and Natural Resources Oil Conservation Division (OCD) and New Mexico State Land Office (NMSLO). CEHMM will deduct the resulting Habitat Conservation Fee from the Participating Landowner's Habitat Conservation Fund Account balance within 10 working days after receiving the OCD and NMSLO approval papers from the Participating Landowner. If the Participating Landowner's remaining Habitat Conservation Fund Account balance is less than the resulting Habitat Conservation Fee, the Participating Landowner will pay the remainder of the Habitat Conservation Fee. When CEHMM deducts fees from the Participating Landowner's account, they will notify the Participating Landowner within 60 days detailing the:

- Amount of the Habitat Conservation Fee associated with the application,
- Remaining Habitat Conservation Fund Account balance, and
- Payment due, if any.

The Participating Landowner's obligation to make payments as described above shall be suspended if any administrative or judicial challenge prevents the implementation of this CI.

V. HABITAT CONSERVATION ACCOUNT FUNDS.

Habitat Conservation Fees generated from any activity on any enrolled parcels, and for off-parcel activities needed to develop the enrolled parcels, will be debited from funds paid into the Habitat Conservation Fund Account under this CI within 10 working days after receiving the OCD and NMSLO approval papers from the Participating Landowner. See Exhibit B.

VI. PARCEL TRANSFERS AND ADDITIONS.

Transfers

Transfers may occur within this CI or between this CI and the CI of another Participating Landowner. Enrolled parcels can be transferred either before or after a listing decision occurs. Parcels may be transferred within habitat for a listed species, but parcels may not be transferred from areas outside habitat of a listed species into habitat of a listed species. If both species are listed, parcels outside habitat for sand dune lizard may not be transferred into sand dune lizard

habitat. All transfers must be approved by USFWS and CEHMM. Notification of intent to transfer any parcels will be transmitted to CEHMM for approval 30 days prior to transfer. Notification of any parcels transferred will be transmitted to CEHMM 30 days prior to the transfer. The description will include the lease number(s), detailed legal description(s), and acreage of the parcel(s) involved.

Transfers within this CI

The Participating Landowner may amend this CI to remove a parcel and replace it with an unenrolled parcel of same or less acreage. Transferring of parcels within this CI will not result in an increase of total enrolled acres described in this CI. Once an activity (APD, ROW, etc) authorized under this CI results in ground disturbance, the entire lease is no longer eligible for transfer to another geographic location. However, the parcel (and associated lease acreage, if any) in its current location (legal land description) is still eligible for transfer to another Participating Cooperator.

Transfers to another Participating Landowner

Parcels enrolled under this CI can be transferred to another Participating Landowner with a CI before or after a listing decision occurs. Parcels may only be transferred from the CI of one Participating Landowner to the CI of another Participating Landowner. After a listing decision, an interested party may become a Participating Landowner if they acquire an enrolled parcel and wish to continue enrollment of the parcel. The new holder of the parcel must sign an amended CI within 30 days of acquiring the enrolled parcel and prior to any operation, maintenance, or disturbance occurs on the transferred enrolled parcel. Conservation measures, all terms and conditions of the CCAA and CI, and the payment schedule will be assumed by the receiving Participating Landowner.

Additions

The Participating Landowner may amend this CI to add parcels at any time before the LPC is listed. If the SDL is listed under the ESA, the Participating Landowner may only amend this CI to add parcels outside SDL habitat. Because SDL habitat is wholly within the range of LPC, no additional parcels may be added to this CI if the LPC is listed under the ESA. This right to add newly acquired parcels to this CI exists without regard to the method of acquiring the parcels (whether by merger, purchase, etc.). Fees for acreage added within the prepayment period will be assessed according to schedule described in Section IV.

VII. TERMINATION.

The Participating Landowner agrees that it (or any successor or transferee) shall not terminate this CI until after the third prepayment period ends. Any time after the third prepayment period ends, the Participating Landowner may terminate this CI by giving thirty (30) days written notice to CEHMM and FWS as to any or all of the enrolled parcels. Any applications for permission to perform operations on the terminated parcels for which the Participating Landowner has not paid the Habitat Conservation Fee at the time of termination will be processed as if the CI did not exist. Any funds remaining in Participating Landowner's Habitat Conservation Fund Account at the time of termination, voluntary or for cause, will be donated to CEHMM for conservation efforts to support the LPC and the SDL, and will not be refunded.

FWS may only terminate the CI for a Participating Landowner's failure to pay the Habitat Conservation Fee (including failing to prepay amounts into the Habitat Conservation Fund Account during the first three years) or for the Participating Landowner's failure to implement the conservation measures documented in this CI. However, CEHMM or FWS will first provide notice of any deficiency to the Participating Landowner and give them the opportunity to cure. If the deficiency is not corrected, or due diligence is not being shown to correct the deficiency within sixty (60) days of the receipt of the letter, the parcel(s) involved will be terminated from this CI. If Participating Landowner has three (3) deficiencies within 365 consecutive days (excluding deficiencies cured as stated above), the entire CI will be terminated.

Termination of this CI will relieve a Participating Landowner of any additional Habitat Conservation Fees for new surface developments on the terminated parcels.

VIII. NO WAIVER.

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

IX. RELEASE.

If at any time any administrative or legal challenge prevents the implementation of this Certificate of Participation, the Participating Cooperator agrees to release the United States, Department of the Interior, USFWS, BLM, and CEHMM from any legal claims related to, and, against all other Parties to, this CP and CCA. All funds remaining in the Habitat Conservation Fund Account will be retained by CEHMM and be used for conservation of the covered species.

X. AMENDMENT.

This CI may be amended with the written consent of each of the parties hereto. The parties agree to process requests for amendments in a timely manner. This CI will only be amended upon agreement of all parties.

XI. 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.

XII. REPORTING REQUIREMENTS.

The Participating Landowner will provide CEHMM with an end of year report that summarizes activities that have occurred on their enrolled parcels (leases or portions of leases) (Exhibit A) for every year the CI is in effect. The reports should detail the activities undertaken on the enrolled parcels for that year. The report provided by the Participating Landowner will aid

CEHMM in meeting their annual reporting requirements under the CCAA and its accompanying permit. For purposes of compliance monitoring of conservation commitment, CEHMM may access the enrolled parcels (leases or portions of leases) with prior notification to the Participating Landowner (see December 8, 2008 CCAA, Section V.1.g).

XII. NOTICE.

Any notice permitted or required by this CI shall be transmitted within any time limits described in this CI to the persons set forth below or 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 any Party may from time to time specify to the other Parties in writing:

Participating Landowner: _____

Contact: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

USFWS
 LPC/SDL CCAA
 USFWS-NMESFO
 2105 Osuna Road NE
 Albuquerque, New Mexico 87113
 505/346-2525 (t)
 505/346-2542 (f)

CEHMM
 LPC/SDL CCAA
 CEHMM
 505 N. Main Street
 Carlsbad, NM 88220
 575/885-3700 (t)
 575/885-6422 (f)

XIII. 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.

Participating Landowner and Affiliation

Date _____

Center of Excellence for Hazardous Materials Management

Date _____

FWS Authorized Officer

Date _____

EXHIBIT A
Property Description for Enrolled Parcels

EXHIBIT B

The Habitat Conservation Fee for new surface disturbance associated with oil and gas development activities will be calculated using the following scales. The scales also apply to third parties doing work for the Participating Landowner either on or off the Participating Landowner's enrolled parcels, regardless of who constructs or operates the associated facilities. The Participating Landowner must notify CEHMM prior to conducting any surface disturbing activities associated with this CI on or off the enrolled leases either by the Cooperator or third-party subcontractors. The Habitat Class of the new surface disturbance is determined by the location of the activity being developed, not actual habitat found on site.

1) New Well Location Fees¹

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area	\$20,000/location
Core Management Area	\$20,000/location
Habitat Evaluation Area	\$15,000/location
Scarce & Scattered Population Area	\$12,500/location
Isolated Population Area	\$10,000/location
Other areas ²	\$ 3,000/location

¹. Includes well pad and associated access road

². Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

2) New Surface Development Fees

For other new surface disturbances associated with enrolled parcels, but not directly attributable to a new well pad³ and associated road, the Habitat Conservation Fee will be based on the following scale:

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area	\$5,000/acre
Core Management Area	\$5,000/acre
Habitat Evaluation Area	\$3,750/acre
Scarce & Scattered Population Area	\$3,125/acre
Isolated Population Area	\$2,500/acre
Other areas ⁴	\$1,000/acre

³. Co-located wells that require an increase in the size of the existing pad will be assessed by new acres disturbed.

⁴. Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

Note: All acreage calculation will be rounded up to the next whole acre.

New operations on previously disturbed land (e.g., co-located new well on an existing pad or new pipeline in an existing corridor, etc.) will incur no additional Habitat Conservation Fee, unless the area to be redisturbed has been reseeded and/or reclaimed as part of reclamation. Fees will also be assessed for any new acreage disturbed.

The disturbed area will be calculated based on information received and/or on-the-ground observation. Habitat Conservation Fees are based on the total acres disturbed in each appropriate habitat class. Should the Participating Landowner disagree with the estimate of the area disturbed, they have the right to challenge the estimate and provide supporting data. FWS and CEHMM will have the responsibility for the final determination of the area disturbed.

All above ground powerlines will have a fee calculated using the above scale for New Surface Development. The acreage will be based on information found in the OCD and NMSLO surface disturbance activities approval document provided by the Participating Landowner to CEHMM.

Habitat Conservation Fees will not be charged for buried powerlines or surface pipelines in accordance with the BLM 2008 Special Status Species Resource Management Plan Amendment (RMPA).

3) Fees associated with new seismic data acquisition

<u>Habitat Class</u>	<u>3D Survey Conservation Fee</u>	<u>2D Survey Conservation Fee</u>
Primary Population Area	\$10.00/acre	\$200.00/linear mile*
Core Management Area	\$10.00/acre	\$200.00/linear mile*
Habitat Evaluation Area	\$ 7.50/acre	\$150.00/linear mile*
Scarce & Scattered Population Area	\$ 6.25/acre	\$125.00/linear mile*
Isolated Population Area	\$ 5.00/acre	\$100.00/linear mile*
Other areas ⁵	\$ 1.50/acre	\$ 25.00/linear mile*

*or any fraction thereof

⁵. Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

The acquisition of seismic data on enrolled parcels may also disturb the surface of other land not enrolled in this CI. The Habitat Conservation Fee calculated for seismic activity includes disturbances occurring on both enrolled and non-enrolled land.

Routine production operations

Routine production operations are not considered new surface development and will not create the obligations to pay a Habitat Conservation Fee. Routine production operations are those which do not require an agency permit or approval, and those operations that require an agency approval but do not disturb the surface.

EXHIBIT C

H₂S Conservation Measure

Data will be gathered from oil and gas operations throughout SDL/ LPC habitat to better understand the possible effects of hydrogen sulfide (H₂S) and the accumulation of sulfates in the soil released during oil and gas operations on the LPC and SDL. Specifically, data will be gathered at or near sour locations where operators are required to file Hydrogen Sulfide Contingency Plans, i.e., zones in which H₂S is known or reasonably expected to be present in concentrations of 100 parts per million (ppm) or more in the gas stream, and will focus on locations with water present (such as locations with water disposal, storage, etc.). Several types of data will be collected at multiple but consistent distances from well pads, including pH levels in soils, ambient concentrations of H₂S, surveys of SDL and LPC, and similar information. This data will be analyzed and relied upon to identify any impacts from H₂S on the SDL and LPC.

Oil and gas operators must file Hydrogen Sulfide Contingency Plans for operations on state and private lands, and must file Public Protection Plans for operations on federal lands, when operations are being conducted in zones in which hydrogen sulfide is known or reasonably expected to be present in concentrations of 100 ppm or more in the gas stream. These plans generally provide an organized plan of action for alerting and protecting the public within an area of exposure prior to an intentional release, or following the accidental release, of a potentially hazardous volume of hydrogen sulfide. These plans are required for operations on private, state, and federal lands by the Bureau of Land Management's Onshore Order No. 6 and State of New Mexico regulations (N.M. Admin. Code tit 19, § 19.15.11).

Hydrogen Sulfide Contingency Plans/Public Protection Plans are activated when a release of hydrogen sulfide results in concentrations of hydrogen sulfide greater than 100 ppm in any public area or greater than 500 ppm at any public road, or when the 100 ppm radius of exposure exceeds 3,000 feet. They must contain emergency procedures in the event of a release, including public notification and evacuation procedures, telephone numbers of local officials and authorities, and names and telephone numbers of residents within the area of exposure. They must also include maps and drawings detailing the area of exposure, provisions for training and drills, and provisions for coordination with state emergency plans. The Hydrogen Sulfide Contingency Plans/Public Protection Plans must provide for training and drills for personnel that simulate a release.

In addition to requiring Hydrogen Sulfide Contingency Plans/Public Protection Plans, the Bureau of Land Management's Onshore Order No. 6 and a State of New Mexico regulation (N.M. Admin. Code tit 19, § 19.15.11) also impose safety measures on operators when operations are being conducted in zones in which hydrogen sulfide is known or reasonably expected to be present in concentrations of 100 ppm or more in the gas stream:

Drill and completion sites must have hydrogen sulfide detection and monitoring systems that activate visible and audible alarm when the ambient air concentration of

Exhibit C, page 2 of 2

hydrogen sulfide reaches 10 and 15 ppm on federal lands and 20 ppm on private and state lands.

Fixed monitors must be placed at the shale shaker, rig floor, bell nipple, and cellar floor for drilling sites.

Hydrogen sulfide detection and monitoring equipment must be provided and made operational during drilling when drilling is within 500 feet of a zone anticipated to contain hydrogen sulfide and continuously thereafter.

Wind direction indicators must be placed on or near well sites.

Safety devices such as automatic shut-down devices must be installed and maintained to prevent the escape of hydrogen sulfide.

Flare systems must be installed to flare and burn hydrogen sulfide bearing gas. Additionally, Onshore Order No. 6 and the State of New Mexico regulation impose certain reporting requirements. In the event of a release of hydrogen sulfide requiring activation of a Hydrogen Sulfide Contingency Plan/Public Protection Plans, the operator or facility must notify the New Mexico Oil Conservation Division or the Bureau of Land Management, as appropriate. Additionally, for a release on state or private lands, the operator or facility must submit a full report of the incident within 15 days following the release.