

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
500 Gold Avenue SW
Albuquerque, New Mexico 87102

FINDING OF NO SIGNIFICANT IMPACT

Issuance of a Section 10(a)(1)(B) Permit for Incidental Take of the Northern and Southern Distinct Population Segments of the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*) to Lesser Prairie-Chicken, LLC for the *Oil and Gas Habitat Conservation Plan for the Lesser Prairie-Chicken; Colorado, Kansas, New Mexico, Oklahoma, and Texas*

We, the U.S. Fish and Wildlife Service (Service), have prepared an Environmental Assessment (EA) for approval of a Habitat Conservation Plan (HCP) and issuance of a section 10(a)(1)(B) incidental take permit (ITP) for the lesser prairie-chicken (LEPC) for the development of oil and gas projects. The ITP would authorize take of up to 500,000 acres (ac) of LEPC habitat (300,000 ac of LEPC habitat in the Northern Distinct Population Segment (DPS) and 200,000 ac of LEPC habitat in the Southern DPS) in portions of Colorado, Kansas, New Mexico, Oklahoma, and Texas should the species be listed during the life of the ITP. This action will also provide for the management or restoration of 1,000,000 ac of high quality LEPC habitat.

Preferred Alternative

The preferred alternative involves the issuance of a 10(a)(1)(B) incidental take permit to LPC Conservation LLC (Applicant) and approval of the proposed *Oil and Gas Habitat Conservation Plan for the Lesser Prairie-chicken; Colorado, Kansas, New Mexico, Oklahoma and Texas* (HCP). The ITP would cover incidental “take” of the LEPC, should the species be listed during the life of the ITP, associated with upstream and midstream oil and gas development, including ancillary (e.g., access road and power lines) ground-disturbing activities associated with these project types within the permit area that could affect potentially suitable LEPC habitat. In addition, the covered activities include other ground disturbing activities which could occur during some types of repairs required during the operations and maintenance phase, project repowering, or project decommissioning within the permit area.

The requested term of the ITP is 30 years, and the ITP would authorize incidental take of LEPC associated with impacts to up 500,000 ac of suitable LEPC habitat (300,000 ac of suitable LEPC habitat in Northern DPS and 200,000 ac of suitable LEPC habitat in the Southern DPS) in the plan area resulting from implementation of the covered activities by participants in the HCP, should the species be listed during the life of the ITP.

The Applicant has prepared an HCP as part of the application for the ITP. The HCP describes the measures the applicant has agreed to do to minimize and mitigate to the maximum extent practicable for impacts to the LEPC. A conservation plan has been developed as mitigation for

the incidental take of LEPC. This plan will mitigate for the effects of the applicant's actions to the maximum extent practicable and includes the following features:

- It is required that all mitigation be in place and meeting performance standards prior to impacts occurring to ensure there is no temporal loss for the species.
- The HCP implements a strategy that was developed in close coordination with the Service to ensure all effects that rise to the level of take are accounted for using the best available scientific information.
- Once take is quantified, using habitat as a proxy, that take must be mitigated for using the tiered mitigation system established within the HCP based upon the relative value of the habitat as defined by the Southern Great Plains Crucial Habitat Assessment Tool (CHAT). Impacts to higher priority areas will require higher mitigation ratios as compared to impacts in lower priority areas. Overall, the mitigation ratios average 2 ac of mitigation for every 1 ac of impact. Additionally, all impacts must be offset using mitigation occurring in a priority area of equivalent or higher value areas as defined by the Southern Great Plains CHAT.
- After year 5, or the first 50,000 ac of mitigation are sold, for every 1 ac of impact the HCP requires mitigation includes a minimum of 1 acre of restoration to result in no net loss of habitat. The remainder of the required mitigation can be targeted at additional restoration efforts or habitat enhancement.
- The HCP requires that all required mitigation be permanent. A minimum of 50% of the mitigation must be provided via traditional permanent mitigation which is static on the landscape and includes a conservation easement. The HCP allows the remainder of the conservation to be provided via dynamic permanent mitigation. Within the HCP the applicant states that they anticipate 95% of all mitigation acres to be provided via traditional static permanent mitigation.
- Static mitigation, including restoration and preservation of LEPC habitat, will meet all requirements set forth in the LEPC Mitigation Guidelines (Service 2014c). Dynamic mitigation, including restoration and preservation of LEPC habitat, will meet all requirements defined by the LEPC Mitigation Guidelines (Service 2014c) except for those relating to permanent conservation easement and components thereof.
- By utilizing the Service's LEPC Mitigation Guidelines (Service 2014c) while focusing on the creation of strongholds for the LEPC, the HCP will provide ecologically effective mitigation offsets for impacts and will also provide quantifiable progress toward securing additional strongholds for the LEPC.
- The HCP's measures to avoid, minimize, and mitigate the impacts of taking are designed so that the mitigation ratios increase for impacts to higher quality LEPC habitat, which compels developers to consider siting projects in areas where impacts from project footprints (physical habitat loss) and associated impact boundaries (function habitat loss) are minimized and/or occur within less suitable habitat. Mitigation ratios and credits are valued to create an incentive for minimizing impacts.

No Action Alternative

The Service analyzed a No Action alternative in addition to the proposed alternative.

Under a No Action Alternative, the Service would not issue an ITP, and therefore this programmatic permitting structure would not be available for willing participants. While the LEPC remains unlisted, potentially participating entities (i.e., oil and gas companies) would have little economic or legal incentive to voluntarily initiate the conservation or management activities that are proposed in the HCP to benefit the LEPC. Therefore, unless potentially participating entities voluntarily participate in another programmatic permitting option, should one be available, or voluntarily develop their own stand alone permitting option, conservation measures above and beyond those directed by existing Federal, State, and local laws, policies, or regulations likely would not be implemented, and the development actions would continue and the LEPC would not gain additional protections and conservation benefits over what currently exists. On private lands, where the State or Federal government has no authority to protect or direct the management of LEPC habitat, LEPC conservation programs would be implemented entirely at the discretion of the landowners and private developers.

Other Alternatives Considered

The Service also considered one additional alternative. Instead of approving the HCP and issuing an ITP, the Service would issue an enhancement of survival permit (ESP) pursuant to section 10(a)(1)(A) of the ESA, supported by a candidate conservation agreement with assurances (CCAA), to the applicant for incidental take associated with the covered activities in the CCAA. The proposed covered activities in the CCAA would be the same as those proposed in the HCP. The permit term for the ESP would be 30 years. Under this alternative, it is assumed the applicant (in the role of CCAA administrator) would require enrolled projects to implement all the avoidance, minimization, mitigation, monitoring, adaptive management, and reporting processes described in the HCP as part of the CCAA. It is anticipated that a similar level of oil and gas development within the permit area would occur under an HCP or a CCAA for each project. However, the enrollment of projects under the CCAA would end upon the future date of a possible listing of the covered species; whereas, the HCP enrollment would continue for the duration of the permit. We anticipate that this alternative would result in the same level of potential impacts to LEPC and the same level of LEPC conservation as what is proposed in the HCP for those enrolled prior to listing, but projects after a potential listing would need to develop their own HCPs or find an alternative coverage for incidental take. This action would be consistent with existing Service guidance for conservation actions of unlisted species.

Public Participation

A Notice of Availability of the draft EA, HCP, and ITP application published in the Federal Register on February 11, 2022 (87 FR 8031). We accepted public comments through March 21, 2022, and received 17 comment letters. The comments did not identify any significant new environmental impacts not addressed in the draft EA however, the letters provided information that improved the final EA and details of implementing the proposed action.

The comments we received were regarding the ability of the Service to approve an HCP for an unlisted species, coordination with the State Wildlife Agencies, metrics used to quantify take, monitoring and reporting requirements, and mitigation requirements. Comments received were

from conservation organizations, the State Wildlife Agencies, industry interests, and the general public.

In addition, we sought input from potentially affected tribal governments within and surrounding the Plan Area during the public comment period on the HCP and EA. We did not receive any comments from tribal governments.

Determination

Significance, as used in National Environmental Policy Act of 1969 (NEPA), requires considerations of both context and intensity. Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. The HCP area (i.e., area subjected to effects resulting from the proposed action) is limited to portions of Colorado, Kansas, Oklahoma, Texas, and New Mexico. The action area of the HCP covers approximately 22 percent (92,224,490 ac) of Colorado, Kansas, Oklahoma, Texas and New Mexico (415 million acres total). The ITP would authorize take of approximately 12.5 percent (500,000 ac of 4,000,000 ac available) of potentially suitable LEPC habitat within the species range [10 percent of the Northern DPS (300,000 ac of 3,000,000 ac available) and 20 percent of the Southern DPS (200,000 ac of 1,000,000 ac available)]. Therefore, the context of the impacts (both negative and beneficial) is not considered significant.

Intensity refers to the severity of the impacts. We have considered the following regulatory factors in evaluating intensity.

- (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

The EA has indicated that overall, there would be moderate impacts to LEPC but those impacts would be fully offset by the implementation of the mitigation program; temporary and minor impacts to soils; and, minor short- and long-term impacts to vegetation, wildlife, State-listed species and land use are expected to result from the proposed action. The proposed HCP is expected to have minor short- and long-term benefits to the above-listed resources through implementation of proposed minimization and offsetting measures. The extent of these benefits will depend on the level of enrollment in the HCP.

No significant adverse or beneficial impacts to cultural resources, socioeconomic environment, or water resources are expected to result from the proposed action.

- (2) The degree to which the proposed action affects public health or safety.

No effects to public health or safety are expected to result from the proposed action.

- (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or

ecologically critical areas.

No adverse long-term impacts to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas are expected to result from the proposed action.

- (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

We have no evidence to suggest that the effects on the quality of the human environment are likely to be highly controversial.

- (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

None of the effects of the HCP are highly uncertain because we know the effects of the authorized activities on the human environment. None of the effects of the HCP involve unique or unknown risks. Many of the proposed conservation measures in the HCP are focused on avoiding and minimizing impacts to suitable LEPC habitat, along with activities to mitigate impacts which cannot be avoided. None of the conservation measures are utilizing practices that are not already common.

- (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

Future actions would be reviewed on their own merits. Thus, the proposed HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

The proposed HCP is not directly related to any other action.

- (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

The EA has indicated that no adverse impacts to districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places; or, significant scientific, cultural, or historical resources are expected to result from the proposed action.

- (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

Projects seeking to enroll in the HCP would be required to provide documentation of ESA compliance for species not covered under the programmatic permit. Similarly, enrolled projects would be required to adhere to state regulations relating to state-listed endangered and threatened species. Therefore, no adverse impacts to federally listed or proposed species (other than LEPC) are expected to result from the proposed action.

- (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

As written in the HCP, the purpose of the proposed action is to meet the statutory requirements of a Section 10(a)(1)(B) ESA permit should the LEPC become federally listed as a threatened or endangered species, and to provide regulatory assurances and streamline the permitting process for oil and gas companies seeking to construct projects within the HCP Permit Area. Implementation of this HCP would not violate applicable Federal, State, or local law or requirements imposed for the protection of the environment.

Based upon information contained in the EA and HCP and supporting data in Service files, we have determined that issuance of this ITP is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the NEPA. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted. Therefore, the Service has made a finding of no significant impact as allowed by NEPA regulation and supported by Council on Environmental Quality guidance.

It is my decision to issue the section 10(a)(1)(B) permit covering impacts to the lesser prairie-chicken from the development of oil and gas across portions of Colorado, Kansas, Oklahoma, Texas and New Mexico.

Deputy Regional Director
Southwest Region

Date

ENVIRONMENTAL ACTION STATEMENT (EAS)

Within the spirit and intent of the Council on Environmental Quality’s regulations for implementing the National Environmental Policy Act (NEPA), as well as other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record. In addition, I have determined that the action of issuance of a section 10(a)(1)(B) incidental take permit for the lesser prairie-chicken for the development of oil and gas across portions of Colorado, Kansas, Oklahoma, Texas, and New Mexico:

_____ is a categorical exclusion as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1 and no further NEPA documentation is necessary.

XX is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.

_____ is found to have significant effects, and therefore further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare an EIS.

_____ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policies, regulations, or procedures.

_____ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents:

XX Environmental Assessment

XX Conference Opinion

XX Findings Document

Branch Supervisor, Environmental Review _____
Date

Program Lead, Environmental Review _____
Date

Assistant Regional Director,
Ecological Services _____
Date

Deputy Regional Director,
Southwest Region _____
Date