WESTERN ENERGY ALLIANCE

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Public Comments Processing
Attn: FWS-R2-ES-2025-1661
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803
Submitted via www.regulations.gov

RE: Endangered and Threatened Wildlife and Plants; Status Review for the Lesser Prairie-Chicken

Director Nesvik:

Western Energy Alliance (the Alliance) is the leader and champion for independent oil and natural gas companies in the western United States. Working with a vibrant membership base for over 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Alliance members engage in all aspects of environmentally responsible exploration and development of oil and natural gas. Our expert staff, active member committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all.

The Alliance appreciates the opportunity to comment on the U.S. Fish and Wildlife Service's (FWS or the Service) 12-month petition finding process for the lesser prairie-chicken (LPC) under the Endangered Species Act of 1973 (ESA). Separately, the Alliance is submitting joint comments with the American Petroleum Institute, and we hereby incorporate by reference the comments submitted by the Permian Basin Petroleum Association.

Alliance members support conserving at-risk species and their critical habitat. Alliance member companies are among the foremost participants in federal, state, and private efforts to protect and conserve endangered and threatened species. Our members have played a key role in voluntary conservation efforts to protect species such as the lesser prairie-chicken, dunes sagebrush lizard, greater sage-grouse, hookless cactus, American burying beetle, Dakota Skipper, and many more species. Member companies have initiated voluntary conservation plans, enrolled millions of acres in conservation plans, and committed millions of dollars to fund habitat conservation and restoration programs.

Alliance members operate across the LPC's range, and many member companies participate in the Western Association of Fish and Wildlife Agencies (WAFWA) range-wide oil and gas Candidate Conservation Agreement with Assurances (CCAA) and the Center of Excellence for

Hazardous Materials Management (CEHMM) New Mexico Candidate Conservation Agreement/Candidate Conservation Agreement with Assurances (CCA/CCAA).

ESA Section 4 requires the Service to determine whether a species warrants listing based on the five statutory factors set out in 16 U.S.C. § 1533(a)(1), and to do so "solely on the basis of the best scientific and commercial data available" after taking into account existing conservation efforts. As summarized below, the best currently available information shows that the species does not warrant listing under the ESA's statutory factors, particularly after accounting for the extensive conservation architecture now in place across its range. The Alliance urges the Service to determine that listing is not warranted and to maintain the species' current unlisted status.

Listing is not warranted under Factor A because the current record demonstrates active, formal, and measurable conservation efforts that are materially reducing, avoiding, and offsetting habitat-related threats.

The current administrative record differs materially from the record that existed in earlier listing proceedings. The Service's own lesser prairie-chicken conservation materials identify multiple current conservation efforts benefitting the species, including the WAFWA oil and gas CCAA, the CEHMM New Mexico CCA/CCAA, the USDA Farm Service Agency's Conservation Reserve Program (CRP), the Texas CCAA, the Oklahoma CCAA, the USDA Natural Resources Conservation Service (NRCS) Working Lands for Wildlife framework, and LPC Conservation LLC's oil and gas and renewable energy habitat conservation plans.[1]

These programs collectively span millions of acres of private and working lands within the species' range.[2] The existence of this broad and active conservation framework weighs heavily against a finding that present or threatened habitat destruction presently warrants listing.

A. WAFWA Oil and Gas CCAA

The WAFWA oil and gas CCAA is especially significant. WAFWA reports that, in 2024, industry

[1] U.S. Fish & Wildlife Serv., *Partners in lesser prairie-chicken conservation*, sections titled "Western Association of Fish and Wildlife Agencies (WAFWA) Candidate Conservation Agreement with Assurances (CCAA) for oil and gas," "USDA Farm Service Agency - Conservation Reserve Program," "Center of Excellence – New Mexico Candidate Conservation Agreements for the lesser prairie-chicken and dunes sagebrush lizard," "Texas Candidate Conservation Agreement with Assurances (CCAA)," "Oklahoma Candidate Conservation Agreement with Assurances (CCAA)," "USDA Natural Resources Conservation Service Working Lands for Wildlife Framework," "LPC Conservation LLC Habitat Conservation Plan (HCP) for Oil and Gas Development," and "LPC Conservation LLC Habitat Conservation Plan (HCP) for Renewable Energy Development"; U.S. Fish & Wildlife Serv., *Conserving the lesser prairie-chicken*, "Status: Under Review."

[2] U.S. Fish & Wildlife Serv., *Partners in lesser prairie-chicken conservation*, sections for CRP (approximately 1.8 million acres range-wide), Texas CCAA (approximately 657,038 acres on 91 properties in 15 counties), Oklahoma CCAA (399,225 acres, including 357,654 conservation acres), NRCS Working Lands for Wildlife (883 producers and 1.6 million acres), and LPC Conservation LLC HCPs (no current enrollment as of November 2022).

participation remained high with 123 oil and gas companies committed to implementing the CCAA on 5.7 million acres of enrolled lands.[3] WAFWA further reports that its 2024 independent programmatic review found passing compliance on all 21 compliance points and concluded that the 2024 annual report fairly reflected the program's expenditures and achievements.

WAFWA's 10-year review likewise found that the results did not support corrective action under the CCAA's changed-circumstances provisions, and WAFWA established a Maximum Allowable Use Cap to protect the long-term sustainability of the permit and conservation investments. These are the hallmarks of a mature, administered, and adaptive conservation mechanism.

The WAFWA program is also producing measurable on-the-ground conservation results. WAFWA reports a 53% collocation rate in 2024, avoiding impacts to 992 habitat acres that year, and a 58% cumulative collocation rate since program inception, avoiding impacts on 27,142 habitat acres. WAFWA further reports that 88% of 2024 projects occurred outside high-quality habitat, that 49,925 habitat acres were conserved in 2024, that 42,575 offset units were generated in 2024, that credits exceeded debits by 30,075 credits, or 71%, and that more than 35% of 2024 offset units were generated from permanent conservation easements. The same report explains that the mitigation framework employs a biologically based 2:1 mitigation ratio that accounts for habitat quality as well as acreage. On this record, the Service cannot reasonably dismiss the WAFWA program as speculative or insubstantial.

WAFWA's required conservation measures also directly address lesser prairie-chicken sensitivities. Those measures include breeding-season timing restrictions near active leks, year-round noise limits for new facilities, restrictions on seismic activity and extensive off-road travel, burial of certain new distribution lines near active leks, fence marking, travel controls, herbicide-use limits, monopole construction for new transmission lines in CHAT 1-3 habitat, and escape ramps in exposed human-made water sources.[4]

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[3] Western Association of Fish and Wildlife Agencies, *The 2024 Annual Report for the Range-wide Oil and Gas Candidate Conservation Agreement with Assurances for the Lesser Prairie-Chicken* at PDF pp. 4-8, 11-15, 18-20 (Mar. 31, 2025) (10-year review; Maximum Allowable Use Cap; 123 participating companies; 5.7 million enrolled acres; 53% 2024 collocation; 58% cumulative collocation; 27,142 acres avoided; 88% of 2024 projects outside high-quality habitat; 49,925 habitat acres conserved; 42,575 offset units generated; credits exceeding debits by 30,075 credits or 71%; and >35% of 2024 offset units generated from permanent easements); Cedar Creek Associates, Inc., *Technical Memo: 2024 Programatic Review for the Candidate Conservation Agreement with Assurances for the Lesser Prairie Chicken* at PDF p. 2 (Mar. 14, 2025) (passing compliance on all 21 compliance points and annual report fairly reflecting expenditures and achievements).

[4] Western Association of Fish and Wildlife Agencies, *Required Conservation Measures for Industry Participation* at PDF p. 1 (current WAFWA CCAA industry measures); WAFWA, *2024 Annual Report*, supra note 4, at PDF pp. 18-20 (17 reviewed projects implementing required measures; no observed or reported mortalities or injuries since 2014).

WAFWA's 2024 annual report states that all 17 reviewed projects were implementing required conservation measures, and that there have been no lesser prairie-chicken mortalities or injuries observed or reported since the program began in 2014. Those facts are directly relevant to the Service's analysis under Factors A, D, and E.

B. CEHMM Oil and Gas CCAA

The CEHMM program provides equally important evidence from eastern New Mexico. CEHMM reports that, in 2024, the program included 3,518,573.48 acres enrolled by industry participants and 2,373,067.21 acres enrolled by ranching participants.[5] CEHMM also reports that no conservation-measure violations were issued in 2024; that oil-and-gas-generated program revenue funded $1,087,289.71 in conservation projects in 2024; that approximately 11,055 acres of mesquite were treated in 2024; that approximately 2,546 acres of dead standing mesquite were removed in 2024; and that CEHMM has cumulatively removed 24,942 acres of dead standing mesquite since that management began. CEHMM explains that previous studies show lesser prairie-chickens avoid vertical structures, including mesquite, so these habitat treatments directly address a documented stressor.[6]

CEHMM's industry measures and project screening likewise demonstrate active avoidance and minimization in practice, not merely in theory. CEHMM identifies industry measures such as burying new powerlines near lek sites, prohibiting 24-hour drilling in Timing Zone 1 during the breeding season, and no-new-surface-occupancy restrictions in designated sensitive areas.

CEHMM further reports that staff completed approximately 198 infrastructure reviews in 2024, including 81 field-based analyses, and that approximately 83 proposed infrastructure projects were relocated, altered, or adjusted to protect habitat. Although 2,306 wells and 280 rights-of-way were permitted and/or drilled or constructed on enrolled acreage in 2024, only six wells and zero rights-of-way were permitted or constructed within the designated Core Management Area or Primary Population Area. That is powerful evidence that present-day oil and gas

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[5] Center of Excellence for Hazardous Materials Management, *Annual Report 2024: Candidate Conservation Agreements for the Lesser Prairie-Chicken and the Dunes Sagebrush Lizard in New Mexico* at PDF pp. 2, 6-8, 15, 18-22, 24, 37 (no conservation-measure violations in 2024; regulatory assurances; enrollment totals; industry conservation measures; 2024 conservation-project funding; mesquite treatment and dead-standing-mesquite removal; approximately 198 infrastructure reviews, 81 field reviews, approximately 83 projects relocated, altered, or adjusted; 2,306 wells and 280 rights-of-way on enrolled acreage; only six wells and zero rights-of-way within the designated Core Management Area or Primary Population Area).

[6] Joseph M. Lautenbach, Reid T. Plumb, Samantha G. Robinson, Christian A. Hagen, David A. Haukos & James C. Pitman, *Lesser prairie-chicken avoidance of trees in a grassland landscape*, 70 Rangeland Ecology & Management 78-86 (2017), doi:10.1016/j.rama.2016.07.008; Jonathan D. Lautenbach, David A. Haukos, Joseph M. Lautenbach & Christian A. Hagen, *Ecological disturbance through patch-burn grazing influences lesser prairie-chicken space use*, 85 Journal of Wildlife Management 1699-1710 (2021), doi:10.1002/jwmg.22118.

activity within the covered area is being screened, modified, and directed away from the most sensitive habitat.

CEHMM recently issued its report for 2025, and the numbers show consistent performance and management of the LPC habitat.[7] Notably, CEHMM reports an additional 840 acres of habitat gain on high priority, non-federal lands and CEHMM staff observed 25 LPC on 2 new leks. Total enrollment from industry participants also increased to a total of 3,534,366.44 acres.

C. USDA CRP Program, Texas and Oklahoma CCAAs, and NRCS Program

The Service should also credit the additional conservation programs it has identified on its own partner page. The Service reports approximately 1.8 million acres enrolled in U.S. Department of Agriculture Conservation Reserve Program (CRP) across the species' range; a Texas CCAA with approximately 657,038 acres enrolled on 91 properties in 15 counties; an Oklahoma CCAA with 399,225 acres enrolled, including 357,654 conservation acres; and the USDA Natural Resources Conservation Service's (NRCS) Working Lands for Wildlife conservation on 1.6 million acres implemented with 883 private agricultural producers since 2010.[8]

These conservation programs confirm that the lesser prairie-chicken is supported by a layered conservation architecture that spans federal, state, and private programs rather than a single isolated mechanism. This broader framework matters because approximately 95% of lesser prairie-chicken habitat is privately owned.[9]

NRCS's 2023 progress report states that its lesser prairie-chicken initiative has invested $47,747,051, entered 962 contracts, and contracted 1,912,087 acres, while targeting degraded rangeland health, invasive conifers, invasive mesquite, cultivation of grazing lands, and lack of fire in grassland habitats. NRCS also states that participating landowners receive ESA-related regulatory predictability for up to 30 years if they continue prescribed conservation practices. The Service should give substantial weight to these working-lands conservation programs because the species' long-term status necessarily turns on conditions across private rangelands, not on isolated public parcels.

Current science confirms that these programs are addressing the right threats. USGS reports

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[7] Center of Excellence for Hazardous Materials Management, 2025 *Annual Report: Candidate Conservation Agreements: Lesser Prairie-Chicken and Dunes Sagebrush Lizard*

[8] U.S. Fish & Wildlife Serv., *Partners in lesser prairie-chicken conservation*, sections for CRP (approximately 1.8 million acres range-wide), Texas CCAA (approximately 657,038 acres on 91 properties in 15 counties), Oklahoma CCAA (399,225 acres, including 357,654 conservation acres), NRCS Working Lands for Wildlife (883 producers and 1.6 million acres), and LPC Conservation LLC HCPs (no current enrollment as of November 2022).

[9] U.S. Dep't of Agric., Natural Resources Conservation Service, *Lesser Prairie-Chicken: 2023 Progress Report* at PDF pp. 1-2 (about 95% of habitat privately owned; regulatory predictability for up to 30 years; $47,747,051 invested; 962 contracts; 1,912,087 contracted acres; focus on degraded rangeland health, invasive conifers, invasive mesquite, cultivation of grazing lands, and lack of fire).

that female lesser prairie-chickens were 40 times more likely to use habitats with 0 trees per hectare than habitats with 5 trees per hectare, and 19 times more likely to use habitat 1,000 meters from the nearest tree than habitat at the tree edge; USGS concluded that preventing further tree expansion and restoring grasslands through tree removal can contribute to the species' continued persistence.[10] USGS has also reported that patch-burn grazing may be a viable management tool to restore and maintain lesser prairie-chicken habitat because the species selected different time-since-fire patches across its life history. These peer-reviewed findings reinforce, rather than undermine, the present conservation strategy.

The Service should evaluate present-day oil and gas development using contemporary operating practices, not outdated assumptions about dispersed surface disturbance.

The Service should not assess modern oil and gas operations in LPC habitat through a legacy one-well/one-pad development model as it did in its 2021 SSA. Horizontal drilling from multiple-well pads is a standard industry practice now and provides substantial reductions in surface disturbance and overall impacts and reduces cumulative impacts within oil and gas fields. Advances in pad-site design, extended-reach drilling, and multi-lateral technology have reduced the industry's environmental footprint; that a horizontal well can drain roughly four times the area of a vertical well while having about one-third of the environmental footprint; and that multi-well pads reduce the disturbed acreage, simplify midstream infrastructure, and reduce the amount of additional surface disturbance needed to produce hydrocarbons.

Horizontal and directional drilling allows for long-reach lateral wellbores with less surface impacts. Horizontal drilling in New Mexico has evolved to 3+ mile laterals in some areas, i.e., the horizontal portion of the well, with some wells extending to 3 miles. These long-reach laterals result in a significant decrease in surface disturbance and habitat fragmentation. These wells reduce surface well density because a single horizontal well can replace 8 to 16 vertical wells. In addition, up to 32 directional wells may be clustered together on a single well pad. Similarly, horizontal wells do not require as many roads or maintenance.

This reduction in footprint is directly relevant here. WAFWA's documented collocation rates, habitat-avoidance results, and credit-surplus mitigation ledger, together with CEHMM's project-relocation and redesign record, show that participating operators are increasingly relying on consolidation, collocation, shared infrastructure, and project redesign to reduce new disturbance. In practical terms, modern horizontal drilling and facility consolidation have substantially—and, compared with legacy dispersed development, dramatically—reduced the amount of new surface disturbance required to develop oil and gas resources in LPC habitat.

[10] Joseph M. Lautenbach, Reid T. Plumb, Samantha G. Robinson, Christian A. Hagen, David A. Haukos & James C. Pitman, *Lesser prairie-chicken avoidance of trees in a grassland landscape*, 70 Rangeland Ecology & Management 78-86 (2017), doi:10.1016/j.rama.2016.07.008; Jonathan D. Lautenbach, David A. Haukos, Joseph M. Lautenbach & Christian A. Hagen, *Ecological disturbance through patch-burn grazing influences lesser prairie-chicken space use*, 85 Journal of Wildlife Management 1699-1710 (2021), doi:10.1002/jwmg.22118.

The Service should evaluate Factor A and Factor E on that contemporary record, not on assumptions derived from older development patterns that no longer reflect or describe current industry development practices and operations.

Listing is not warranted under Factor D because existing regulatory and conservation mechanisms are not inadequate on the current record.

Factor D likewise does not support listing. The current record includes Service-recognized, formal, and administered conservation programs with annual reporting, independent review, compliance monitoring, habitat accounting, long-term conservation delivery, and regulatory assurances that sustain participation on predominantly private lands.

WAFWA is operating under a Service-permitted 30-year CCAA with an independent audit and a biologically based mitigation ledger. CEHMM administers a federally approved CCA/CCAA structure with project review, conservation-measure implementation, and habitat restoration funded in material part by enrolled oil and gas operators. NRCS, CRP, Texas, and Oklahoma programs provide additional conservation coverage across the range. On this record, a determination that existing mechanisms are "inadequate" would not be supported by the best available data.

The regulatory assurances built into these programs strengthen, rather than weaken, the conservation record. CEHMM expressly states that regulatory assurances are a necessary component of the CCAA because, without them, conservation measures may not be implemented by private landowners. The Service's partner page similarly explains that enrolled participants who continue implementing their conservation actions will not be required to adopt additional measures if the species is listed in the future. In a landscape that is overwhelmingly privately owned, those assurances are a rational and important tool for securing durable participation and conservation performance.

Factors B, C, and E do not justify listing on the present record.

Nothing in the current record submitted here supports listing under Factor B or Factor C. Nor does Factor E independently justify listing. To the contrary, the current record shows that oil and gas operations within the lesser prairie-chicken's range are being conducted under a framework of timing restrictions, noise controls, lek-proximity measures, buried lines in sensitive areas, infrastructure review, project relocation, collocation, and compensatory conservation. At minimum, the best available data do not demonstrate that these factors—either singly or in combination with the current habitat record—presently warrant listing.

Conclusion

The lesser prairie-chicken remains a species deserving continued conservation attention. But the ESA does not authorize listing based on historical decline alone, nor does it permit the Service to disregard the substantial conservation measures now operating across the species' range. The best currently available scientific and commercial information shows that the species is benefitting from active, formal, and measurable conservation efforts on the lands where its future will be determined.

For the reasons set forth above, and under the applicable ESA factors, the Service should conclude that listing the lesser prairie-chicken is not warranted at this time.

Thank you for your time and consideration of these comments. Please do not hesitate to contact me if you have any questions or would like additional information.

Sincerely,

Melissa Simpson
President, Western Energy Alliance