

Mitigating the Effects of a Potential Sage Grouse Listing on Landowners Using a Candidate Conservation Agreement with Assurances “CCAA”

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The information contained in these materials is not legal advice.

Candidate Conservation Agreements With Assurances

- ▣ What is a Candidate Conservation Agreement with Assurances (CCAA):
 - A voluntary conservation agreement between a non-Federal landowner and the FWS.
 - Landowners implement Conservation Measures to benefit wildlife species.
 - Non-federal landowners will receive assurances from the FWS that additional conservation measures will not be required and additional restrictions will not be imposed should the species become listed in the future.
 - It can apply to a single species or multiple species (candidate only)

Candidate Conservation Agreements with Assurances

- ▣ History of the CCAA Program
 - Developed by FWS under authority of Endangered Species Act
 - CCAA program created through a policy and implementing regulations that became effective on July 19, 1999.
 - Between 1999 and 2008, only 17 CCAAs were finalized
 - By the end of 2012, 26 CCAAs were finalized

Candidate Conservation Agreements with Assurances

- ▣ Benefits of CCAA
 - Completely voluntary
 - A landowner may terminate their CCAA at any time, with no penalty.
 - If landowner terminates CCAA, obligations to implement conservation measures cease as well.
 - CCAA's provide assurances so long as landowner manages their land to benefit species in accordance with CCAA no additional regulatory requirements will be imposed if species is ever listed.
 - Landowners work with FWS to select Conservation Measures that fit their individual ranch plans instead of being told what to implement
 - Decreased need for project reviews of any Federal programs and activities that may be related to the CCAA, which streamlines requirements with the other Federal Agencies such as the Natural Resources Conservation Service

Candidate Conservation Agreements with Assurances

- ▣ Disadvantages of CCAAs
 - Landowners may be subject to public disclosure of farm/ranch information.
 - Landowners will generally bear the financial burden of implementing the Conservation Measures described in their individual CCAA.
 - The FWS may choose not to list the sage-grouse with or without the CCAA, in which case landowner may not receive the anticipated benefit of the CCAA.
 - Development of a CCAA and implementation of the Conservation Measures does not guarantee that the FWS will not list the covered species.

Enhancement of Survival Permit

- ▣ What is an Enhancement of Survival Permit
 - Authorized by Section 10 (a)(1)(A) of the Endangered Species Act
 - For purposes of CCAA's, permit typically exempts the permittee from the take prohibitions of Section 9 (a)(1)(B) of ESA
- ▣ How does one receive the permit?
 - Submit a signed (with blue ink) application with \$50 fee to FWS.
 - Agree to develop a conservation plan for the property covered by the permit
 - Comply with the National Historic Preservation Act
 - Publication of Application in Federal Register and Confidentiality of Information

Sage Grouse History

- ▣ July 2, 2002 FWS receives first petition to list Sage Grouse
- ▣ Additional petitions filed on March 24, 2003
- ▣ FWS issued “not warranted” finding on Jan. 12, 2005.
- ▣ Legal challenge resulted in court finding 2005 “not warranted” decision arbitrary and capricious.
- ▣ Consequently, FWS conducted new 12-month finding and on March 5, 2010, saying sage grouse were “warranted, but precluded”

Sage Grouse History

- ▣ In response to litigation with WildEarth Guardians and others, FWS agreed to make a decision on whether or not to list sage grouse by September 30, 2015.
- ▣ In anticipation of this decision, a host of groups, including the Wyoming Governor's Office, FWS, Bureau of Land Management, Natural Resources Conservation Service, US Forest Service, Wyoming Department of Agriculture, Wyoming Game and Fish Dept., and Wyoming Association of Conservation Districts worked to develop an umbrella CCAA for the greater sage grouse

Sage Grouse CCAA

- ▣ FWS issued the *Greater Sage Grouse-Umbrella CCAA for Wyoming Ranch Management* on November 8, 2013.
- ▣ Voluntary agreement where landowners agree to remove or reduce threats to the greater sage grouse on their property.
- ▣ In return, FWS provides landowners assurances that it will not impose additional regulatory requirements on landowners should the FWS ever list greater sage grouse.
- ▣ Also, each participating landowner will be issued an Enhancement of Survival Permit.

Sage Grouse CCAA

- ▣ What it does
 - Identifies threats to sage grouse on non-federally owned lands
 - Creates a mechanism for landowners to voluntarily enter into CCAA
 - Identifies a series of conservation measures that landowners can use to address threats
 - Allows landowner to receive enhancement of survival permit to continue traditional land management practices if sage grouse is listed
 - In event of listing, CCAA will provide assurances that no additional requirements will be imposed upon landowner if landowner adheres to the terms of CCAA

SAGE GROUSE CCAA

▣ Duration of CCAA

- 40 years following approval and signing by FWS, which occurred Nov. 8, 2013
- Individual CCAAs effective for 20 years following FWS approval and signing
- Enhancement of Survival Permit term of 20 years from effective date of permit--effective date no earlier than first day sage grouse is listed.
- FWS may renew CCAA and enhancement of survival permits based upon evaluation of the CCAA's ability to continue to meet the CCAA standard and agreement of the participating agencies

Sage Grouse CCAA

- ▣ Process for creating individual CCAA
 - Contact FWS in Cheyenne
 - FWS will provide landowners pre-application screen to complete that requests certain information
 - FWS will work with participating agencies and landowner to gather info to determine if FWS should consider including land under CCAA
 - Complete individual CCAA application and develop CCAA
 - Enhancement of survival application issued upon FWS approval of application which is effective upon listing

Sage Grouse CCAA

- ▣ FWS Approval timeline
 - FWS will batch applications with other applications based on time of submission
 - FWS will announce quarterly deadlines and will process applications received during that time together
 - Workload constraints will cause prioritization based on factors identified in CCAA
 - Once FWS approves applications, it will issue Enhancement of Survival permits that become effective upon listing

CCAA Responsibilities

- ▣ Post approval responsibilities of landowner
 - Develop a site-specific conservation plan with assistance of Participating Agencies or qualified consultants.
 - Conservation must be completed within 12 months of FWS signing individual CCAA
 - If landowner fails to complete plan within 18 months, FWS may suspend or revoke CCAA and enhancement of survival permit.
 - Allow Participating Agencies to establish field monitoring sites and record initial values on property enrolled in CCAA

CCAA Responsibilities

- ▣ Post-CCAA Approval Responsibilities of Landowner Cont.
 - Within 1 year of signing individual CCAA, landowner must implement a compliance and biological monitoring program.
 - ▣ Requires information on which Conservation Measures were implemented, and whether any take of Sage Grouse occurred.
 - Rangeland (CCAA calls biological) Monitoring
 - ▣ Type 1 is the simplest and applies to most landowners
 - ▣ Type 2 is most rigorous, but will apply to very few landowners

CCAA Responsibilities

- ▣ Other Landowner Requirements under CCAA
 - Adhere to terms and conditions of Umbrella CCAA, individual CCAA, and Enhancement of Survival Permit
 - Adopt the following Conservation Measure
 - ▣ Maintain contiguous habitat by avoiding fragmentation, which may include, but not be limited to things such as avoiding subdivision, or entering into conservation easements.
 - Avoid impacts to populations and individual sage-grouse present on enrolled property to max. extent possible.
 - Implement all agreed upon Conservation Measures
 - Provide FWS or other agreed representatives access to property and mutually agreeable times to identify or monitor sage grouse and their habitat, implement Conservation Measures, and monitor the effectiveness and compliance with individual CCAAs
 - Notify FWS before take (if known) or after take.

Enhancement of Survival Permit

Requirements to receive a permit:

1. Submit a permit application to FWS at the same time you submit CCAA application (signed in blue ink) with a \$50 fee.
2. Landowners will not have to take any actions under the National Historic Preservation Act because the Conservation Measures contemplated do not have the potential to impact any historic buildings or structures.
3. Agree to create a conservation plan within 12 months
4. Permit becomes effective *if* FWS lists the sage grouse under the ESA.

Enhancement of Survival Permit

- ▣ What the permit authorizes.
 - A prescribed amount of annual take of sage grouse (not limitless) if FWS lists sage grouse as either Threatened or Endangered.
 - Based on the following formula:
 - ▣ (number of acres enrolled by landowner) x (birds per acre of sagebrush) x (.05 (5%) allowable take) = annual allowable incidental take.
 - Birds per acre of sagebrush uses the following formula with an assumption of 208,000 sage grouse in Wyoming and 43 million acres of sagebrush habitat in Wyoming:
 - ▣ (Estimated Sage Grouse in Wyoming) / (total sagebrush habitat in Wyoming) = birds per acre of sagebrush
 - ▣ (208,000 birds) / (43,000,000 acres) = .005 birds per acre.
 - ▣ Based on this formula, a landowner enrolling 2,000 acres would receive a permit authorizing take of 10 birds over 20 years

Fact Sheet

- ▣ Current CCAAs
 - 28 CCAAs
 - ▣ 372,632 acres
 - 7 CCAs
 - ▣ 77,461 acres

Should a Landowner Enroll?

- ▣ Decision unique to each landowner
- ▣ Things to consider:
 - Are there sage grouse on the property, or is there suitable habitat for sage grouse
 - What are the landowner's objectives?
 - ▣ Protection of operation
 - ▣ Protect Sage Grouse
 - ▣ Prevent listing
 - Does the landowner want to permit FWS or other personnel to access property for compliance monitoring.
 - Cost to implement Conservation Measures
 - Comfortable with information about individual or property being available for public review

CCAA Checklist

- ❑ Complete Information Screen
- ❑ Allow Participating Agency to collect information
- ❑ Select appropriate Conservation Measures from list provided in Umbrella CCAA
- ❑ Risk analysis, cost/benefit analysis of CCAA
- ❑ Complete CCAA and Enhancement of Survival Permit application and submit to FWS
- ❑ FWS Reviews applications
- ❑ FWS approves CCAA and issues permit
- ❑ Landowner develops site-specific conservation plan within 12 months
- ❑ Participating Agencies establish field monitoring sites and record initial values
- ❑ Landowners implement compliance and biological monitoring program within 1 year of enrollment.

Additional Resources

- ▣ Wyoming Stock Growers Association Educational Program
 - www.wysga.org/sagegrouse_ccaacca_educationalprogram.aspx
- ▣ FWS Final Policy for Candidate Conservation Agreements with Assurances, July 19, 1999, available at www.fws.gov/endangered/esa-library/pdf/ccaa.pdf
- ▣ Candidate Conservation Agreements with Assurances Handbook, June 2003, available at www.fws.gov/endangered/esa-library/pdf/handbooktest.pdf
- ▣ Enhancement of Survival Permits associated with Candidate Conservation Agreements with Assurances, available at www.fws.gov/forms/3-200-54.pdf