



Appendix C Implementation Plan

**Thunder Basin Grasslands Prairie Ecosystem Association
1/8/2013 - FINAL DRAFT**

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Add a filled out CI/CP example in this section

Cooperative Process

This Candidate Conservation Agreement with Assurances (CCAA) and Candidate Conservation Agreement (CCA) is a combined document (Agreement or CCAA/CCA) developed in partnership by the U.S. Fish & Wildlife Service (FWS), the Bureau of Land Management (BLM), the U.S. Forest Service (USFS), and the Thunder Basin Grasslands Prairie Ecosystem Association (Association).

The efforts of the Association's livestock/agricultural producers and extractive industries are inextricably linked and particularly well-suited to implement voluntary conservation measures across northeastern Wyoming. Either through direct ownership or arrangements of long-term leases, Association members control an extensive land area that facilitates management on a landscape scale. Members focused on livestock grazing and those members representing extractive industries provide a unique synergy and mix of resources for implementing cooperative conservation measures to achieve enhanced habitat conditions across all surface ownerships for the covered species. The covered species include four sagebrush obligates: greater sage-grouse (*Centrocercus urophasianus*; hereafter *sage-grouse*), sage sparrow (*Amphispiza belli*), Brewer's sparrow (*Spizella breweri*), sage thrasher (*Oreoscoptes montanus*); and four shortgrass species: black-tailed prairie dog (*Cynomys ludovicianus*), mountain plover (*Charadrius montanus*), burrowing owl (*Athene cunicularia*), and ferruginous hawk (*Buteo regalis*).

The purpose of this Agreement is to coordinate the implementation of conservation measures developed with the intent of reducing and/or eliminating known threats to the covered species across enrolled properties in the five counties of northeastern Wyoming. Based on the commingled nature of surface ownership of this area (87% private/State, 13% Federal) and extensive federal sub-surface mineral ownership, effective implementation of conservation measures will require consistent, cooperative, and compatible land management across all of the Federal, private and State land ownerships within the coverage area.

The CCAA/CCA approach offers an opportunity for all property owners, including livestock/agricultural producers, extractive industries, government and state agencies, and additional partners to voluntarily work together to identify and implement coordinated and collaborative conservation measures to conserve covered species populations and their habitats within the commingled landscape of northeastern Wyoming. CCAA coverage will provide non-federal property owners with assurances that neither additional conservation measures nor additional land, water, or resource use restrictions, beyond those voluntarily agreed to and described in the individual Certificate of Inclusion (CI), will be required during the period of the Agreement.

Using the same set of conservation measures required for CCAA participation, the CCA coverage in this Agreement will allow for coordinated conservation measures to be implemented by members on a contiguous landscape scale. Conservation measures on lands with a federal nexus will be

described in a member's Certificate of Participation (CP). In the event any covered species is listed, the section 7 conference opinion for conservation measures undertaken on federal lands would be converted to a biological opinion provided the previous analysis is still valid as explained below. This should significantly reduce the likelihood of additional land use restrictions that might otherwise apply should any of the covered species become listed.

Although not required by the ESA, prior to the approval of the CCA/CCAA, the FWS will conduct a section 7 "conference opinion" pursuant to section 7(a)(4) of the ESA to identify and resolve potential conflicts between the proposed actions and the covered species. In this case the proposed actions are the approval of this agreement between multiple federal agencies and a non-governmental entity, and the potential issuance of a section 10(a)(1)(A) permit for the CCAA, should any of the covered species be listed at some time in the future). Any federal agency has the option of conducting a 7(a)(2) conference for non-listed species to ensure that the actions they authorize, fund, permit, or carry out are not likely to jeopardize the existence of those species. The FWS supports a proactive approach to conserving candidate species, which may reduce and/or eliminate the need for future protection under the ESA.

The FWS will issue a section 7 conference opinion analyzing the potential effects to the covered species from the proposed actions and the implementation of conservation measures as identified in this Agreement. A decision to list any of the species covered by this Agreement would be based on the five factor threats analysis required under the ESA. The overall effects of this Agreement and its components would be considered in the listing determination. Should any species covered under the conference opinion become listed, the FWS would review the conference opinion in coordination with the appropriate federal agencies. If no significant changes have been made in the Agreement or other information used in the conference opinion, the FWS would confirm the conference opinion (as is) as the biological opinion and include an incidental take statement (required for the biological opinion). It is the goal of this Agreement to ensure adequate conservation measures, sufficient adaptive management, and monitoring obligations to allow the conference opinion to be converted into a biological opinion on the effective date of any decision to list any of the covered species.

While extractive industries will implement conservation measures on lands they control, the vast majority of the area covered by the Agreement is owned by individuals engaged in livestock grazing. The conservation measures included in this Agreement are above and beyond any regulatory requirements and have been structured to provide incentives and mechanisms to facilitate cooperative efforts and ensure these measures are successful. Most of the offsite cooperative conservation measures implemented by extractive industries will provide long-term benefits in addition to those provided by habitat reclamation associated with the extractive process. This process encourages voluntary, cooperative conservation measures occurring on enrolled acres across the landscape for the benefit of the covered species. When cooperative conservation measures occur, points credited to participating CI or CI/CP holders will be proportional to the resources provided by each partner.

Federal Nexus Lands

Since the conservation measures in this document are the “gold standard” for northeastern Wyoming and meet the high bar required by the FWS to provide assurances for CCAA coverage, by signing this Agreement, the BLM and USFS have agreed they are not likely to impose additional stipulations pertaining to the covered species through any lease, license, permit, contract or other instrument upon members participating in this Agreement. However, this waiver of additional stipulations applies only to participating members who remain in good standing with the Association and continue to meet the requirements of their CPs. Unless other written arrangements have been made, good standing means paying annual dues within 60 days of receipt of invoice. A lapse of membership shall allow BLM and/or USFS to apply any additional stipulations prospectively from when membership ceased. The Association agrees to notify the BLM and/or USFS no later than 15 days after a CCA participant drops their membership. Language acknowledging this Agreement will be included in Resource Management Plans and Land and Resource Management Plans covering the five county Agreement area when they are revised or amended.

As mentioned in the previous section, the same set of conservation measures required for CCAA participation will be used for CCA participation. Individual conservation measures contain identified threats, detailed conservation actions, necessary monitoring, and expected benefits. Monitoring and administration of the CI/CPs will be conducted by the Association and reported to the FWS annually with copies to the BLM and USFS.

Who Can Participate

Property owners seeking coverage under this Agreement must:

- 1) Be a regular member of the Thunder Basin Grasslands Prairie Ecosystem Association in good standing. Unless other written arrangements have been made, good standing means paying annual dues within 60 days of receipt of invoice. For cooperative CIs or CI/CPs, dues can be paid by the partner either directly or through reduction in incentive payments;
- 2) Own or have management control of lands within the five northeastern Wyoming counties of Campbell, Converse, Crook, Niobrara, and Weston (Coverage Area);
- 3) Pay a one-time threshold fee to obtain CCAA/CCA coverage based on total enrolled acreage. Current threshold fees based on enrolled acreage by member type are given below:

Threshold Fee Schedule	10/1/2012 to 3/31/2013	4/1/2013 to 9/30/2013	10/1/2013 to 3/31/2014	4/1/2014 to 9/30/2014	10/1/2014 to 3/31/2015	4/1/2015
Coal companies	\$220,000	\$242,000	\$293,000	\$322,000	\$354,000	\$389,000
Other energy/extractive	\$8.80/acre	\$9.68/acre	\$10.65/acre	\$11.72/acre	\$12.89/acre	\$14.18/acre
Ag members	\$0.28/acre	\$0.31/acre	\$0.34/acre	\$0.37/acre	\$0.41/acre	\$0.45/acre

These threshold fees must be paid in full before the CI or CI/CP is signed. For the purpose of this section, membership by the parent company includes all wholly owned subsidiaries.

Subsidiaries that are not wholly owned are considered separate entities and will be subject to individual threshold fees; and

- 4) Voluntarily agree to implement conservation measures totaling at least 30 points per 50,000 enrolled acres for each CI or CI/CP entered into (e.g., an oil & gas company desires protection for 125,000 gross acres, they would need to provide 90 points; points can be shared proportionately if multiple working interest owners participate). Specific details of these measures and enrolled acreage will be incorporated into each participating member's CI or CI/CP.
- 5) To facilitate cooperative conservation measures, the Association may also hold a CI or CI/CP. These acres may be enrolled as indicated above with 30 points for each block. When held acreages are transferred to other participating members, the participating members will be responsible for providing 30 points per 50,000 enrolled acres.

Certificate of Inclusion and Certificate of Participation

This Agreement is designed so that the Association will issue Certificates of Inclusion with assurances to members who voluntarily meet agreed-upon conservation measures for enrolled private lands where no federal nexus exists. In addition, the Association will issue Certificates of Participation without assurances to members who voluntarily meet agreed-upon conservation measures for enrolled lands where a federal nexus exists.

Each individual CI or CI/CP will be consistent with all activities and conservation measures identified in this Agreement and will describe specific conservation measures developed in conjunction with TBGPEA staff that will be implemented by the participating member to conserve, restore or enhance habitat for the species, as well as to remove or reduce threats to the species arising from the management and use of these lands. All conservation measures implemented after January 1, 2006 that are consistent with this Agreement can be used to meet the CI or CI/CP obligations.

If conservation measures are planned to change in the future to accommodate changing member needs, the CI or CI/CP will describe what measures will occur in each period (e.g., 5 points from conservation measure A22 from 2011 to 2014 to be replaced by 5 points from conservation measure A24 from 2015 to 2021). A participating member may also include possible replacement

conservation measures in case changes for unforeseen circumstances need to be made in the future.

In addition, each CI or CI/CP will contain a legal description and a map of enrolled acres. Enrolled acres for a CI can include all non-federal land owned or under management control of the participating member. Enrolled acres for a CP can include all lands where a member holds a lease, license, permit, contract or other instrument with a federal agency. Documentation of the pertinent instrument must be provided to the Association before a CP can be issued.

CI and CP Term

The CCAA/CCA will be held by the Association and will be in effect for 30 years following its approval and signing by the participating parties. The Agreement may be extended beyond the specified terms through amendment, upon agreement of the signing parties.

With mutual agreement between the Association and the member, a CI or CI/CP can be written to match the 30 year term of the Agreement. Shorter terms can also be agreed to if desired, however the minimum term for either a CI or CI/CP is 10 years. If the term of the lease, license, permit, contract or other instrument with a federal agency is shorter than the CI/CP term, the participating member will be required to provide documentation that they have renewed the relevant instrument. This allows the CI/CP to be written for as long as desired (up to 30 years) with verification of renewal of the lease, license, permit, contract, or other instrument as necessary. Once the original term has been completed, the CI or CI/CP may be renewed through consultation and mutual agreement between the Association and the participating member and can be extended up to the term of the Agreement.

Approval Process

Association staff will work with CI or CI/CP holders to formulate a plan that identifies habitat conditions, threats, and appropriate conservation measures for their enrolled acreage and covered activities. The Association has developed a network of experts who can provide assistance on a variety of topics. This includes experts from the Natural Resource Conservation Service, Bureau of Land Management, Forest Service, Wyoming Game and Fish Department, University of Wyoming - Extension, Rocky Mountain Bird Observatory, Audubon Wyoming, and The Nature Conservancy, among others. Advice from these experts will be incorporated into each CI or CI/CP as appropriate.

Association staff and the participating member will present the final CI or CI/CP to the Board for approval. Notice of this meeting shall be given to the Board and the participating member not less than 30 days prior to the date of the meeting. Notice can be given by US mail, telephone, fax, or email.

In most cases, through preliminary discussions, the participating member and staff will have reached a consensus on conservation measures. If the participating member requests changes in the conservation measures or assigned point values, both the member and staff viewpoints will be presented to the Board. The Board will seek recommendations from staff and may seek recommendations from the network of experts, but final approval will rest with the Board as CCAA/CCA permit holder.

Decisions of the Board will generally be made on the basis of consensus among a quorum of the Board members attending a given meeting. However, if consensus can't be reached, an affirmative vote of a simple majority of the Board members participating and voting shall be necessary for the passage of any motion. In cases of unresolved disagreement concerning conservation measures, point values or other CI or CI/CP issues between a participating member and the Board, the participating member can request that the issue be heard by the full Board. In disputed cases, an affirmative vote of a two-thirds majority of the full Board shall be necessary for the passage of any motion. In all cases, the Board decision is final.

In cases where potential Board actions directly affect a Board member, the affected Board member will participate in the discussion process. However, the affected Board member will be excused from the room prior to final deliberations and voting.

Point System

Each participating member must select conservation measures totaling at least 30 points per 50,000 enrolled acres for each CI or CI/CP. Each member should select five or more conservation measures from three categories addressing identified threats (habitat fragmentation and destruction, habitat curtailment and other threats, and lack of education). These conservation measures are more fully detailed in Appendices E and F. The 30 point per 50,000 enrolled acre threshold was developed based on what experts, including the FWS, consider to be sufficient to meet the CCAA standard. That is, if the conservation measures in the Agreement were implemented on all other necessary properties within the species' range, there would be no need to list the covered species.

- Habitat Fragmentation and Destruction
In order to decrease fragmentation across the coverage area, all CI or CI/CP holders must implement a minimum of 20 points per 50,000 enrolled acres (12 for small acreage owners) from the conservation measures identified as addressing habitat fragmentation and destruction during the term of the CI or CI/CP. These measures can be implemented on the CI or CI/CP holder's property or on the property of another participating member through cooperative conservation measures. Along with decreasing fragmentation and destruction, the conservation measures will help maintain resiliency and increase habitat heterogeneity.
- Habitat Curtailment and Other Threats
In addition to the measures identified above, each CI or CI/CP may contain other on-the-ground conservation measures agreed to by the individual participating member and the Association.

- Lack of Education

While the majority of conservation measures will directly benefit the species, the Association recognizes that there are other important measures that facilitate beneficial results. With this in mind, the participating member can choose up to 3 points per 50,000 enrolled acres (18 for small acreage owners) from supporting conservation measures dealing with lack of education under Factor E.

The point value of conservation measures will be adjusted based on acreage involved and distance from occupied habitat. Conservation measures in close proximity to occupied habitat will receive the highest value while measures occurring farther away will receive proportionately reduced values. Points should be viewed as guidelines for typical situations. Species density, lack of species use, proximity to known habitat use areas, and/or suitability of existing habitat may be considered in assigning the final point value. In most cases, full combined points will not be given for similar conservation measures affecting both assemblages. Exceptions will be evaluated on a site specific basis. Unless otherwise noted, all conservation measures apply to the entire enrolled acreage of the CI or CI/CP holder and apply throughout the full term of the CI or CI/CP. For conservation measures that involve future commitments or avoidance (e.g. not siting facilities within 0.6 miles of lek), the participating member must document that the threat is likely to occur during the CI or CI/CP term.

A point value or range of values was assigned to each conservation measure by consensus. Input on the conservation measures was obtained from various state and federal agencies, environmental NGOs, local experts, and the Association board. The participants were asked to rank the value of each conservation measure to the applicable species on a 1 to 10 scale (10 being of highest value to the species) and the likelihood that participating members would choose that conservation measure on a 1 to 5 scale (5 being the highest likelihood of occurrence, this was reversed for the point value calculation so that 5 became the lowest likelihood of occurrence). The value to the species factor was weighted more heavily by squaring that factor before multiplying it by the likelihood of occurrence factor. These combined factors were multiplied by the number of species benefiting from the specific conservation measure, a 1.25 multiplier for conservation measures that required contiguous acreages, and another areal extent weighting factor ranging from 1 to 10 with 10 representing conservation measures that covered the entire CI or CI/CP area. The resulting total points were then force fit to a 1 to 10 scale. As mentioned above, these point values should be viewed as guideline for typical situations within occupied habitat.

The system of conservation measures included in this Agreement has been structured to provide incentives and mechanisms to facilitate cooperative efforts. Conservation measures are voluntary and points address relative resource and labor requirements for each measure. Participating in cooperative projects where the Association has arranged for the funding will proportionately reduce the point value. When cooperative conservation measures occur, points credited to participating members will be proportional to the resources provided by each partner, agreed to by the Association and all participating members, and will be documented in the respective CI or CI/CP

agreements. However full credit will be given if the member has developed funding independently of the Association.

Example 1: Member performs a conservation measure funded 40% by member and 60% by EQIP funding they have arranged - 100% of stated point value.

Example 2: Member performs a conservation measure funded 40% by member and 60% by funding arranged by the Association - 40% of stated point value.

Example 3: Member performs a conservation measure funded 25% by member, 25% by a cooperating member, and 50% by funding arranged by the Association- 25% of stated point value to member, 25% of stated point value to the cooperating member.

Balance Between Assemblages

Where possible, the Association will encourage each participating member to provide for a balance between the two assemblages: sagebrush obligate species and shortgrass species. A preliminary analysis of anticipated conservation measures indicates that balance (no more than a 33:67 split) between conservation measure points from the two assemblages will occur naturally. However, the Board will monitor individual CIs and CPs as they are developed in order to ensure that no more than 67 percent of the total point value of all conservation measures under the Agreement comes from a single assemblage. If it appears that one assemblage is accumulating too many points, the Board will add a premium to conservation measures from the other assemblage in order to encourage selection of these measures by new CI or CI/CP holders. Any premiums will apply to all CI or CI/CP holders who have selected that conservation measure, including CI or CI/CP holders who have previously signed their agreements. For purposes of this provision, the premium will not be considered in the balancing calculations.

Adaptive Management

The Association is convinced that adaptive management is critical to the long-term success of the conservation measures identified in the Agreement and realizes that conservation measures may need to be updated based on research results. Such an adaptive approach explicitly recognizes that multiple factors (e.g., environmental conditions, biological processes, etc.) affect covered species populations. Furthermore, the consequences of prescriptive conservation measures cannot be predicted with certainty, and therefore the Agreement provides a framework for making objective decisions in the face of that uncertainty. To that end, TBGPEA has implemented both a regional and a site-specific adaptive management process that provides a strong foundation for incorporating ecological objectives. It combines a variety of research tools with conservation measures and integrates design, management, and vegetation/wildlife monitoring to test assumptions in a systematic way, resulting in learning and further adaptations. The Association is currently engaged in this iterative process: assumptions have been developed, the Association has identified which questions to address, and has determined the most desirable conservation measures to use (e.g. herbicide application, grazing management, or others.) Monitoring parameters are designed to help

understand the results of these measures, and successes or failures will be used to adjust continued management as necessary.

Development of New Conservation Measures

As additional research is conducted and information becomes available, the Association recognizes that it may be appropriate to develop new conservation measures to address issues such as developing threats or changing habitat needs. New conservation measures can be proposed by the Association or a participating member. Any such measure must be supported by appropriate research and reviewed by the Association and FWS in a manner similar to that used for the existing conservation measures. The Association has developed a network of experts who can provide assistance with developing new conservation measures. This network includes experts from the Natural Resource Conservation Service, Bureau of Land Management, Forest Service, Wyoming Game and Fish Department, University of Wyoming - Extension, Rocky Mountain Bird Observatory, Audubon Wyoming, and The Nature Conservancy, among others.

Changes in Conservation Measures

As a result of the adaptive management process, it may be advisable to modify conservation measures incorporated in an existing CI or CI/CP as long as the general spirit of the measure is retained. The Association and participating member will work together to ensure that conservation measures utilize the most recent information available. Adaptive management approaches will be applied in order to develop adjustments that will maximize the likelihood of success. Any modification of conservation measures will occur through consultation and mutual agreement between the Association and the participating member. This does not obligate the Association to commit additional land, water, or financial compensation or place additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement.

Changes in Conservation Measures Involving Multiple CI or CI/CP Holders

In a like manner, it may be advisable to modify cooperative conservation measures as long as the general spirit of the measure is retained. The Association and all cooperating CI or CI/CP holders will work together to ensure that conservation measures utilize the most recent information available. Adaptive management approaches will be applied in order to develop adjustments that will maximize the likelihood of success. Any modification of cooperative conservation measures will occur through consultation and mutual agreement among the Association and all cooperating CI or CI/CP holders.

Energy Development

Energy development has occurred, or has the potential to occur, in almost all locations throughout northeastern Wyoming. If selected, conservation measures identified in the Agreement will be applied to enrolled acres where the landowner owns and controls the mineral and surface rights. In split estate situations where the landowner controls only surface rights and is required to open their lands to energy development after the CI or CI/CP is signed, all efforts will be made to apply

applicable conservation measures (e.g., inclusion of specific conservation in surface use agreements, etc.) Energy developers will be actively recruited to become regular Association members. Impact of energy development on individual CIs or CI/CPs will be determined by the Association as part of the monitoring process. Enrolled lands will retain their assurances under the CCAA unless the new energy development would result in changes in conservation measures that cause them to permanently drop below the requirement of 30 points per 50,000 enrolled acres. At that time, changes to conservation measures may be adopted for the individual CI or CI/CP, in concert with the participating member, based on the adaptive management approach and the circumstances on each CI or CI/CP.

Compliance Monitoring

Each participating member will submit required annual reports to TBGPEA by December 31 of each year or as specified in the CI or CI/CP. The participating member and TBGPEA will conduct compliance monitoring as indicated for each conservation measure. Compliance monitoring will occur at least once every three years and may occur more frequently if warranted by site-specific conditions (e.g., if scheduled monitoring shows that the participating member is having difficulty maintaining high cover, then monitoring should occur more frequently.)

Conservation measures should begin within one year of signing the CI or CI/CP document. Implementation of all conservation measures should be underway within 5 years of signing. Specific timelines and exceptions will be agreed upon and documented in each CI or CI/CP. For grazing management and other long-term conservation measures, compliance monitoring will document that successful implementation is occurring. If improvement is not occurring, adaptive management discussions will be initiated with the participating member.

CI and CI/CP Termination

Unless the CI or CI/CP contains cooperative conservation measures, the participating member can terminate the certificate of inclusion or combination certificate of inclusion and certificate of participation by giving 60 days written notice to the Association. The CI holder must give the U.S. Fish and Wildlife Service an opportunity to relocate affected covered species within 30 days of the notice. The Association Board will review each terminated CI or CI/CP containing cooperative conservation measures involving funding from the Association or other members. The Association may require the holder of the terminated CI or CI/CP to arrange for another member to provide for the cooperative conservation measures or reimburse the Association or other members for conservation measures on a prorated basis. Reimbursement will be based on the time the conservation measures have been in place and the total amount for conservation measures contributed by the Association or other members.

Sale of Enrolled Acres

The participating member agrees to give 30 days written notice to the Association of their intent to sell all or part of the enrolled property. The Association will offer the new owner the option of receiving CCAA/CCA coverage by agreeing to perform appropriate conservation measures and signing a new CI or CI/CP. If the new buyer rejects the terms and protections of the CI or CI/CP, the selling participating member will reimburse the Association or contributing member a prorated amount of the cost for conservation measures which involve funding from the Association or other members. Reimbursement will be based on the time the conservation measures have been in place and the total amount contributed by the Association or other members for the conservation measures.