

Landowner Handbook for Greater Sage-Grouse Umbrella CCAA for Wyoming Ranch Management



Photo by: Bill Schiess

Prepared for the Wyoming Stock Growers Association
David J. Willms
Attorney and Consultant
Dray, Dyekman, Reed and Healey, P.C.
204 E. 22nd Street
Cheyenne, WY 82001
David.Willms@Draylaw.com

DISCLAIMER

These materials and any associated presentations made on behalf of Wyoming Stock Growers Association are for informational purposes only. They do not constitute an endorsement of any individual Landowner CCAA or CCA. The information contained in these materials is not legal advice. For questions regarding the applicability of this Landowner CCAA to your specific situation, you should seek appropriate legal or other professional assistance.

Photo: Oregon Department of Fish and Wildlife



TABLE OF CONTENTS

Chapter	Page
CHAPTER I - Introduction	4
CHAPTER II - Key Terms and Phrases	5
CHAPTER III - Frequently Asked Questions.....	6
CHAPTER IV - Candidate Conservation Agreement With Assurances	10
CHAPTER V - Enhancement of Survival Permit	12
CHAPTER VI - Greater Sage Grouse Umbrella CCAA for Ranch Management	14
CHAPTER VII - Enhancement of Survival Permit for Sage Grouse	23
CHAPTER VIII - Should I Enroll Under Umbrella.....	25
CHAPTER IX - Additional Resources	26
Web-Resources	27

CHAPTER I

Introduction

On July 2, 2002, the US Fish and Wildlife Service (“FWS”) received its first petition to list the greater sage-grouse as endangered across its entire range. Additional petitions were submitted on March 24, 2003, and December 29, 2003. After considering these petitions, the FWS issued a “not warranted” finding on January 12, 2005, thus declining to list the sage grouse as threatened or endangered under the Endangered Species Act (“ESA”). Following a legal challenge where the court held the 2005 finding arbitrary and capricious, the FWS conducted a new twelve month finding on whether the greater sage grouse warranted listing. On March 5, 2010, the US Fish and Wildlife Service published its finding in the *Federal Register*, where it determined that listing the greater sage grouse was warranted, but precluded for listing by higher priority listings.

Since the 2010 finding, the FWS agreed to make a decision on whether or not to list the bird as threatened or endangered under the ESA by September 30, 2015. In anticipation of this decision, the Wyoming Governor’s Office approached the FWS about developing a sage grouse strategy for ranch management activities that would offer certain protections to landowners in the event the FWS lists the bird. The Wyoming Governor’s Office then worked closely with the FWS, Bureau of Land Management, Natural Resources Conservation Service, U.S. Forest Service, Wyoming Department of Agriculture, Wyoming Game and Fish Department, and the Wyoming Association of Conservation Districts to develop an umbrella Candidate Conservation Agreement with Assurances (“CCAA”) for the greater sage grouse.

On November 8, 2013, after many months and thousands of hours of collaboration, the United States Fish and Wildlife Service (“FWS”) issued the *Greater Sage Grouse-Umbrella CCAA for Wyoming Ranch Management*. The CCAA is a voluntary agreement under which landowners agree to remove or reduce threats to the greater sage grouse on their property. In return, the FWS provides landowners assurances that it will not impose additional regulatory requirements on landowners should the FWS ever list the greater sage grouse as either threatened or endangered under the ESA. Additionally, the FWS will issue participating landowners an Enhancement of Survival Permit pursuant to Section 10(a)(1)(A) of the ESA, so long as landowners develop site-specific sage grouse conservation plans that are consistent with the CCAA. These permits will authorize incidental take of sage grouse if the landowner operates within the provisions of the CCAA and the Enhancement of Survival Permit.

The Wyoming Stock Growers Association created this handbook as a resource to assist landowners in making decisions about whether or not to enter into an individual Candidate Conservation Agreement with Assurances as provided by the Umbrella CCAA. The handbook provides general information about CCAAs, particular information about the sage grouse CCAA, and outlines the process a landowner must undertake to receive an individual CCAA. It provides answers to a number of frequently asked questions about CCAAs generally, and the sage grouse CCAA specifically. Finally, the handbook includes references to additional resources that answer questions this handbook may not cover.



CHAPTER II

Key Terms and Phrases

Candidate Conservation Agreement with Assurances (CCAA): A voluntary conservation agreement between a non-Federal landowner and the FWS. The CCAA utilizes conservation measures to benefit the designated wildlife species and the landowner. 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.

Conservation Measures: Specific management action that directly benefit a species or its habitat.

Conservation Plan: A written record of overall management decisions and conservation practices landowners plan to use (Wyoming NRCS). A Grazing Management Plan (with more specific details on grazing practices that can enhance sage-grouse habitat) may be included as part of a Conservation Plan.

Enhancement of Survival (EOS) Permit: Used in the context of the CCAA, the permit issued under a CCAA that authorizes incidental and intentional take associated with the land uses and conservation measures covered by the CCAA. The permit becomes effective upon listing of the covered species. The permitting authority is ESA section 10(a)(1)(A).

Incidental Take: The take of a species listed under the ESA that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. An EOS permit issued under a CCAA can authorize incidental take from routine landowner activities covered by the CCAA or take associated with conservation activities for the covered species.

Participating Agency: Agency that contributes to the development of an individual CCAA. These agencies include: the Bureau of Land Management, Natural Resource Conservation Service, US Fish and Wildlife Service, US Forest Service, Wyoming Department of Agriculture, Wyoming Association of Conservation Districts, Wyoming Game and Fish Department, and Wyoming Governor's Office

Take: Take is defined in the ESA as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any threatened or endangered species.

CHAPTER III

Frequently Asked Questions

Q: HOW LONG WILL THE PROCESS OF ACQUIRING A CCAA AND ENHANCEMENT OF SURVIVAL PERMIT TAKE?

A: Once you submit an application, the FWS can take several months to approve the CCAA and Enhancement of Survival Permit. The FWS indicates that it will attempt to approve CCAAs in quarterly batches, however, if landowners express a lot of interest, applications will be prioritized, which could delay the approval of certain applications. If you are interested in enrolling under the CCAA, you should begin the process as soon as practical.

Q: HOW DO I FUND CONSERVATION MEASURES ON MY PROPERTY?

A: The landowner will be responsible for funding Conservation Measures. However, both federal and state agencies will aid the landowner in finding alternate funding. The US Fish and Wildlife Service indicate that, to the extent funding is available, it will provide funding to support implementation of this CCAA and site-specific plans. Both the Wyoming Department of Agriculture and the Wyoming Game and Fish Department will seek funding to implement this CCAA, and the NRCS may also be a potential funding source.

Q: WILL MY INFORMATION BE KEPT CONFIDENTIAL?

A: You should not count on your information remaining confidential. First, the FWS is required to publish a notice in the *Federal Register* of each application for an enhancement of survival permit. Additionally, per FWS policy it makes every CCAA available for public review and comment as part of the evaluation process. Though FWS indicates that it will not publish the names of landowners in the *Federal Register*, the property owner's name, the location of the enrolled property, or other related information may be released directly to persons who request the information. However, there are mechanisms available to landowners to attempt to maintain the confidentiality of some of this information. For example, the landowner can make a written request to FWS requesting that information be withheld. The FWS would then have to make a written determination whether the privacy needs of the landowner outweigh the information needs of the public before agreeing not to release the information under the Freedom of Information Act. Regardless, the FWS will not release confidential, proprietary, or individual privacy information which is protected under the Freedom of Information Act or the Privacy Act such as date of birth, social security number, and other personal information.

Q: HOW MANY CONSERVATION MEASURES WILL I NEED TO IMPLEMENT ON MY PROPERTY?

A: There is no minimum number of Conservation Measures required to qualify for a CCAA, as long as the specific threats to the sage-grouse are addressed. For example, the chosen Conservation Measures can include practices that the landowner is already successfully implementing. In addition, the FWS recognizes that not every potential Conservation Measure listed in the Umbrella CCAA for a particular threat is appropriate for a given property. Selecting site-specific Conservation Measures will be based on their likely effectiveness and implementation ability. Consequently, the Conservation Measures selected for the enrolled property should be the most beneficial for that particular property.



Q: CAN FWS REQUIRE ADDITIONAL CONSERVATION MEASURES AFTER A SPECIES IS LISTED?

A: Generally, no. However, if a circumstance occurs eliminating a substantial amount of sage-grouse habitat on properties covered by this CCAA, Participating Agencies will meet and evaluate Conservation Measures and identify potential actions to address the changed circumstances. (Adaptive management portion of CCAA whose factors include drought, fire, disease, development).

Q: CAN I STILL ENTER INTO A CCAA IF THE FWS DECIDES TO LIST THE SAGE-GROUSE AS A THREATENED OR ENDANGERED SPECIES?

A: Currently, the answer is no. The current FWS CCAA policy does not expressly prohibit post-listing enrollment; however, the FWS currently takes the position that it will not recognize or permit post-listing enrollment. If FWS amends its policy in the future to provide for post-listing enrollment, landowners will have an opportunity to propose an amendment to the Umbrella CCAA and individual CCAAs to permit post-listing enrollment.

Q: DO CCAAs PROVIDE ASSURANCES IF THE SAGE-GROUSE IS LISTED AS EITHER THREATENED OR ENDANGERED, OR ONLY THREATENED?

A: CCAAs provide assurances whether the species is listed as threatened or endangered.

Q: CAN A LANDOWNER ENROLL THEIR FEDERAL LEASES UNDER THIS UMBRELLA CCAA?

A: No, a CCAA is only applicable to non-Federal lands. However, the BLM is currently working on a Candidate Conservation Agreement (“CCA”), which is intended to dovetail with the landowner CCAA. There may be an opportunity to have leased lands covered under that CCA; however, CCA’s do not provide assurances like CCAAs. If you are interested in enrolling under a CCA, contact the BLM or another Participating Agency.

Q: CAN THE CCAA COVER STATE LEASES?

A: Yes, the CCAA can cover all non-Federal property. However, to enroll state leases, landowners should work with the Wyoming Office of State Lands and Investments.

Q: WILL THIS CCAA KEEP THE FWS FROM LISTING THE SAGE-GROUSE?

A: FWS cannot guarantee that entering into a CCAA will prevent a listing of the sage-grouse as either threatened or endangered.

Q: MUST A LANDOWNER ENROLL ALL OF THEIR LANDS UNDER A CCAA IF THEY CHOOSE TO ENROLL ANY?

A: No, a landowner can enroll either a portion of their lands, none of their lands, or all of their lands under a CCAA. However, the assurances will only apply to activities on enrolled property. Also, the FWS will not permit landowners to enroll additional lands if the sage-grouse is listed as either threatened or endangered under the Endangered Species Act. Finally, landowners can continue to enroll new lands until the sage grouse is listed.

Q: CAN A LANDOWNER AUTHORIZE THEIR TENANT TO ENTER INTO A CCAA, OR MUST THE LANDOWNER ENTER INTO THE CCAA?

A: Tenants may be eligible to enroll property under the CCAA if they provide written documentation to the FWS from the landowner specifically authorizing them to do so, or any other authorizations required by FWS.

Q: CAN I USE A CCAA TO KEEP MINERAL EXTRACTION COMPANIES FROM DEVELOPMENT ON MY PROPERTY IF I DO NOT OWN THE MINERAL RIGHTS?

A: No. However, in the event that the FWS lists the sage-grouse as either threatened or endangered under the ESA, take resulting from mineral development activities will not be authorized under individual landowner CCAAs or the Enhancement of Survival Permit. Therefore, mineral extraction companies wishing to operate in areas with sage-grouse will have to enter into their own CCAA prior to a listing decision, or utilize another program available to them through the FWS that would issue a permit exempting the company from the take prohibitions of Section 9 of the Endangered Species Act for sage grouse.

Q: WILL THE CCAA PREVENT ME FROM LEASING MY MINERAL RIGHTS TO A COMPANY FOR DEVELOPMENT?

A: No, however, as mentioned previously, the CCAA and accompanying enhancement of survival permit will not cover mineral development, which means if the sage grouse is listed, any take of sage-grouse during that process will not be covered by the Enhancement of Survival permit. Mineral extraction companies wishing to operate in areas with sage-grouse will have to enter into their own CCAA prior to a listing decision, or utilize another program available to them through the FWS that would result a permit exempting the company from the take prohibitions of Section 9 of the Endangered Species Act for sage grouse.

Q: HOW WILL THIS CCAA WORK WITH THE EXISTING SAGE-GROUSE CORE AREA EXECUTIVE ORDER 2011-5, ISSUED BY WYOMING'S GOVERNOR TO PROTECT CORE SAGE-GROUSE HABITAT?

A: This CCAA will not replace or supersede the Governor's Executive Order 2011-5 of 2013-3 related to sage-grouse, but will act complementary fashion to the executive orders.

Q: WILL THIS CCAA APPLY TO OTHER CANDIDATE SPECIES PETITIONED FOR LISTING UNDER ESA?

A: No, the CCAA will apply only to sage-grouse and only to farming or ranching activities.

Q: DO I HAVE TO LET PEOPLE ON MY PROPERTY IF I ENROLL IN A CCAA?

A: Yes. After at least two weeks-notice, FWS personnel or personnel from other participating agencies may enter the enrolled land to ascertain compliance with the CCAA or to conduct biological monitoring. In addition to the two week notice, they must also notify the landowner at least 48 hours in advance of the visit. This notification to the landowner requires a specific time, location, and the names of all personnel entering the property for monitoring purposes.



Q: WHAT HAPPENS IF THE PEOPLE ENTERING MY PROPERTY IDENTIFY A THREATENED OR ENDANGERED SPECIES LOCATED ON THE PROPERTY?

A: There are certain risks associated with allowing FWS personnel access to your property as required by the CCAA. One risk is the possibility that they may discover a species that is already listed as threatened or endangered under the Endangered Species Act. However, there are ways to reduce this risk. The easiest way to reduce risks is to visit with the Wyoming Game and Fish Department or United States Fish and Wildlife Service to identify the species currently listed in Wyoming as well as their preferred habitat types, and known distributions to better understand the relative risk of finding one of them on your property. You may also wish to visit with an attorney as you develop your individual CCAA or conservation plan to identify ways to reduce the risk relative to your specific property.

Q: CAN I CONTROL WHEN FWS AND WHERE FWS MAY ACCESS THE PROPERTY?

A: The only places FWS can access are those areas where conservation measures are specified in the specific CCAA and conservation plans, or any other specific portions of the property you grant FWS permission to access. Even with the permission granted by the CCAA and conservation plan, you control what routes to take, and which entry and exit points to use. Additionally, FWS must contact you a minimum of two weeks ahead of a visit and explain the date, time, and location of their visit. They must also contact again within 48 hours of the visit to confirm their visit. The landowner may request to accompany the FWS personnel while they are working on the property, but FWS are not required to be accompanied.

Q: HOW LONG IS THE CCAA IN EFFECT?

A: 40 years following approval and signing by the FWS, which occurred November 8, 2013. Individual CCAAs for enrolled landowners will be in effect for 20 years following approval and signing by FWS. The Enhancement of Survival Permit will also have a 20 year term. The landowner may voluntarily terminate their CCAA, but once they terminate the CCAA the landowner loses the assurances provided by the CCAA in the event the FWS lists the sage-grouse as threatened or endangered under the Endangered Species Act.

Q: IF I SELL MY PROPERTY, CAN I TRANSFER MY CCAA TO NEW OWNER?

A: Yes. The new owner of the property will have the option of receiving CCAA assurances and transfer of the Enhancement of Survival Permit by signing the original individual CCAA. Alternatively, the new owner(s) may enroll in a new individual CCAA and receive a new permit and assurances. If a landowner transfers ownership of their property they must notify FWS so that FWS may attempt to contact the new owner and seek that new owner's interest in signing an existing CCAA or a new one.

Q: IF I AM ENROLLED UNDER A CCAA, CAN I STILL BE ENROLLED UNDER THE CRP PROGRAM, OR OTHER FEDERAL OR STATE LAND CONSERVATION PROGRAMS?

A: Yes, if the conservation objectives for the other programs benefit the sage-grouse in the ways required by the CCAA.

CHAPTER IV

Candidate Conservation Agreement With Assurances (CCAA)

This chapter discusses the generalities of CCAAs, and is not specific to the sage grouse Umbrella CCAA. The discussion about the specifics of the sage grouse Umbrella CCAA can be found in Chapter VI, beginning on page 15 of this handbook.

» **WHAT IS A CCAA**

- » A voluntary conservation agreement between a non-federal landowner and the US Fish and Wildlife Service.
- » Landowners implement Conservation Measures to benefit wildlife species.
- » Landowners receive assurances that no additional Conservation Measures or restrictions will be imposed if the US Fish and Wildlife Service lists the species as threatened or endangered in the future.
- » It can apply to single species or multiple species.

» **HISTORY OF CCAA PROGRAM**

- » The US Fish and Wildlife Service recognized that non-federal interests own much of the property that is home to our nation's fish and wildlife resources. Therefore, the future of many species depends upon conservation efforts on non-federal property. One of the objectives of the CCAA program is to preclude the need to list species. There are significant advantages in implementing Conservation Measures on non-federal property. For example, initiating conservation efforts early may, in certain cases, preclude the need to list a species. Also, doing conservation work before a species is listed is likely easier and cheaper, making it possible that those conservation efforts may be more successful.
- » Developed by the US Fish and Wildlife Service under the authority of the Endangered Species Act.
- » US Fish and Wildlife Service created the CCAA program through a policy and implementing regulations that became effective on July 19, 1999.
- » Between 1999 and 2008, only 17 CCAAs were finalized, a small number given the thousands of species eligible for the program across the United States.
- » By the end of 2012, 26 CCAAs were finalized, and several more were finalized in 2013.

» **BENEFITS OF CCAAS**

- » CCAA's are completely voluntary. Under no circumstances can the FWS mandate an individual or corporation to participate in the program.
- » A landowner may terminate their CCAA at any time, with no penalty.



- » If a landowner terminates their CCAA the obligations to implement conservation measures cease as well.
 - » CCAA's provide assurances that so long as a landowner manages their land to benefit the species in accordance with the CCAA that no additional regulatory requirement will be imposed should the species ever be listed under the ESA.
 - » If a landowner enrolls under a CCAA, the FWS will issue those landowners Enhancement of Survival Permits pursuant to section 10(a)(1)(A) that will protect landowners from being prosecuted for incidental take of the species covered by the CCAA as long as they are operating consistently with their CCAA and Enhancement of Survival Permit.
 - » Decreased time needed 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 NRCS.
 - » Landowners work with the Fish and Wildlife Service to select Conservation Measures that fit their individual ranch plans instead of being told which Conservation Measures to implement.
- » **DISADVANTAGES OF CCAAs**
- » Landowners may be subject to public disclosure of farm/ranch information. For information about the type of information that may be subject to disclosure, please refer to the frequently asked questions portion of this handbook.
 - » Although some assistance may be available to help landowners implement Conservation Measures, 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 sage-grouse.

CHAPTER V

ENHANCEMENT OF SURVIVAL PERMIT

This chapter provides information about Enhancement of Survival Permits in general. For a discussion about Enhancement of Survival Permits for the sage grouse CCAA, please see Chapter VII of this handbook.

❖ **WHAT IS AN ENHANCEMENT OF SURVIVAL PERMIT?**

- » Authorized by Section 10(a)(1)(A) of the Endangered Species Act.
- » For purposes of CCAAs, the Enhancement of Survival Permit typically exempts the permittee from the take prohibitions of Section 9(a)(1)(B) of the ESA.

❖ **HOW DOES ONE RECEIVE AN ENHANCEMENT OF SURVIVAL PERMIT?**

- » Submit a signed (with blue ink) application along with \$50 fee to the FWS. For the sage grouse CCAA, submit the Enhancement of Survival Permit application at the same time you submit your CCAA application.
- » Agree to develop a conservation plan for the property covered by the permit.
- » Comply with the National Historic Preservation Act (not applicable to sage grouse CCAA)
 - The issuance of an Enhancement of Survival Permit for a CCAA is an “undertaking” subject to Section 106 of the National Historic Preservation Act.
 - Section 106 and its implementing regulations require Federal agencies to take into account the effects of their undertakings on historic properties and cultural resources and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings through consultation with the appropriate State Historic Preservation Officers.
 - Compliance with Section 106 can be achieved in many ways depending on what the Enhancement of Survival Permit authorizes, but can include the following extremes and everything in between:
 - Conducting a search of the State Historic Preservation Office’s archaeological site files to determine if known historic and/or cultural resources are located within the area of potential effects on the property; or
 - The landowner or FWS hiring someone to conduct surveys.
 - The steps taken in the National Historic Preservation Act process must be documented in the CCAA or the administrative record related to the CCAA.



» Publication of Application and Confidentiality of Information

- The FWS must publish notice of each application for an enhancement of survival permit in the *Federal Register*. Also, every CCAA is available for public review and comment as part of the evaluation process.
- Because of this requirement, the landowner's name, location of the property covered by the application and CCAA, and other related information may be published released directly to people who request the information.
- FWS will withhold private information to the extend provided by law, including the Freedom of Information Act

CHAPTER VI

Greater Sage Grouse Umbrella CCAA for Ranch Management

❖ WHAT IT DOES

- » Identifies threats to the greater sage grouse that may be present on non-Federally owned property across the state of Wyoming.
- » Creates a mechanism for landowners to voluntarily enter into individual CCAAs that will be covered by the provisions of the Umbrella CCAA.
- » Identifies a series of Conservation Measures that landowners can agree to implement on their property to address those threats.
- » For Landowners that wish to enter into a CCAA, it requires the creation of a conservation plan and establishes generally what should be included in the plan.
- » Allows the Landowner to receive an Enhancement of Survival Permit to continue traditional land management practices in the event the FWS lists the greater sage grouse as either threatened or endangered under the ESA.
- » In the event the FWS lists the greater sage grouse as either threatened or endangered under the ESA, this Umbrella CCAA and the accompanying individual CCAA will provide the landowner with assurances that no additional requirements or obligations will be imposed upon the landowner so long as the landowner is adhering to the terms of their respective CCAAs.

❖ DURATION OF CCAA

- » The Umbrella CCAA will be effective for 40 years following approval and signing by the FWS, which occurred November 8, 2013.
- » The Individual CCAAs will be effective for 20 years following approval and signing by the FWS.
- » The Enhancement of Survival Permit will have a term of 20 years from the effective date of the permit. The effective date will be no earlier than the first day the greater sage grouse is listed (if listed).
- » The FWS may renew individual CCAAs and Enhancement of Survival Permits based upon a reevaluation of the CCAA's ability to continue to meet the CCAA standard and agreement of the participating agencies.

❖ PROCESS FOR CREATING AN INDIVIDUAL CCAA AND RECEIVING AN EOS PERMIT UNDER THE UMBRELLA CCAA

- » Contact the FWS Field Office in Cheyenne



- » FWS will provide landowners with a pre-application screen to complete that requests the following information:
 - Landowner name;
 - Contact information;
 - Legal description of property;
 - Identification of structures, fences, and pastures;
 - Description of land use and management;
 - Any documentation related to habitat, leks on property, existing Conservation Measures, spring development, stock tank locations, salt/mineral locations;
 - Any maps of the property that will be covered by the CCAA; and
 - A copy of any current Grazing Plan approved by NRCS/CD/BLM.

- » FWS will work with appropriate Participating Agencies and landowner to gather necessary information to determine whether the FWS should further consider including the property under the Umbrella CCAA.

- » Complete an individual CCAA application and Develop CCAA
 - A representative from a Participating Agency will assist the landowner with the CCAA and CCAA application, which includes:
 - Identifying current habitat conditions;
 - Threats for all lands and land use practices;
 - Conservation Measures to be implemented; and
 - Potential Monitoring sites.
 - Landowner should conduct a risk analysis and cost/benefit evaluation of potential costs and ranch commitments resulting from the CCAA process.

- » Enhancement of Survival Permit Application
 - Application must be completed and submitted by the landowner at the same time the landowner submits their CCAA application
 - Application must include the draft individual CCAA.
 - Application must include \$50 application fee.

- » FWS Approval of Applications
 - FWS will batch the individual CCAAs and permit applications with other applications based on their time of submission.
 - FWS will announce quarterly deadlines and will process applications received during that time together.
 - If workload constraints prevent FWS from processing all applications, it will prioritize applications based on a series of factors identified in the Umbrella CCAA.

- Once FWS approves the applications, it will issue landowners Enhancement of Survival Permits that will become effective upon the listing of the greater sage grouse as either threatened or endangered under the ESA.

❖ **POST-CCAA APPROVAL RESPONSIBILITIES OF LANDOWNER**

- » If the landowner does not have an adequate conservation plan in place:
 - The landowner must develop a site-specific conservation plan with the assistance from Participating Agencies or qualified consultants.
 - The conservation plan must be completed within 12 months of the FWS signing the individual CCAA
 - If the Landowner fails to complete the plan within 18 months of signature of the CCAA the FWS may suspend or revoke the CCAA and Enhancement of Survival Permit.
- » The landowner must allow Participating Agencies to establish field monitoring sites and record initial values on property enrolled in a CCAA.
- » Within one year of the FWS signing the individual CCAA, the landowner must implement a compliance and biological monitoring program. (work with Participating Agencies on this.)
 - Compliance Monitoring
 - Requires information on which Conservation Measures were implemented, when and where the Conservation Measures were implemented, and whether any take of sage grouse occurred.
 - Rangeland Monitoring (The CCAA refers to this as biological monitoring)
 - Type of monitoring is based on the quality and type of habitat existing on enrolled property at the time of application. Participating Agencies will determine the level of monitoring applied to each property.
 - Type One (simplest, and most landowners fall in this category).
 - Applies to properties containing suitable habitat for sage-grouse currently maintained by existing grazing or ranch management practices.
 - Requires verifying, through annual reporting to FWS, the continued implementation of agreed-upon Conservation Measures.
 - For properties with an NRCS developed grazing management plan, monitoring would consist of reporting on compliance with the plan.
 - Type Two (most rigorous, but will apply to very few landowners)
 - Applies to properties with potentially suitable sage-grouse habitat, and which there is a substantial opportunity to improve habitat through the implementation of Conservation Measures.
 - To learn more about this, landowner should consult with the CCAA and Participating Agencies. Participating Agencies will work with landowners to determine the best means of addressing the more complex monitoring requirements.



❖ **OTHER LANDOWNER REQUIREMENTS UNDER CCAA**

- » Adhere to terms and conditions of the umbrella CCAA, individual CCAA, and Enhancement of Survival Permit.
- » Adopt the Following Conservation Measure in individual CCAAs
 - 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 the maximum extent practicable.
- » Implement all agreed upon Conservation Measures in the individual CCAA within the agreed upon timeframe.
- » Provide the FWS or other agreed upon representatives access to enrolled property at mutually agreeable times to identify or monitor sage-grouse and their habitat, implement Conservation Measures, and monitor the effectiveness and compliance with individual CCAAs

❖ **SELECTING CONSERVATION MEASURES IN INDIVIDUAL CCAAS**

- » First, working with Participating Agencies, the landowner must identify the specific threats that either currently exists on the property covered by the CCAA, or that could occur on the property. The Umbrella CCAA identifies a number of potential threats, identified below:
 - Fragmentation of the Landscape
 - Infrastructure
 - Restoring Disturbed Habitats
 - Establishment of non-native monocultures
 - Management of invasives and non-native plant species
 - Surface water developments/disease
 - Sagebrush Management
 - Livestock management and rangeland health
 - Woodland Encroachment
 - Livestock management in important sage-grouse habitats
 - Design and placement of water developments (including ponds and springs)
 - Predation
 - Insecticide use
 - Drought
 - Big game populations
 - Placement of fences
- » Once the Landowner and Participating Agencies identify the threats, they must select Conservation Measures Identified to address those specific threats. The Conservation

Measures that landowners select can include practices that the landowner is already successfully implementing. The Umbrella CCAA addresses a number of Conservation Measures acceptable to dealing with the threats identified above, which are listed on the following pages.

❖ **AVAILABLE CONSERVATION MEASURES**

» Working with the FWS, and after identifying the potential threats to Sage Grouse on the property, landowners will be able to choose from the following conservation measures to address those potential threats (*threats in italics*) (***) indicates conservation measures that correspond to an associated NRCS practice):

- | | |
|---|---|
| Consolidate existing roads, buildings and other structures within .6 miles of occupied leks or within sage-grouse habitats. (<i>Infrastructure</i>)*** | Implement restoration projects (<i>Restoring Disturbed Habitats</i>)*** |
| Bury new and existing power lines when feasible (<i>Infrastructure</i>)*** | Rest newly seeded/planted rangeland from livestock use (<i>Restoring Disturbed Habitats</i>)*** |
| Avoid building new infrastructure within .6 miles of occupied leks and within sage-grouse habitats, or comply with Executive Order in core areas. (<i>Infrastructure</i>)*** | Restoration/reclamation for habitats that have experienced development and/or surface disturbing activities (<i>Restoring Disturbed Habitats</i>)*** |
| Convert electrically powered pumps or wind mills to solar (<i>Infrastructure</i>)*** | Participate in weed-control groups/processes (<i>Management of Invasives and Non-native Plant Species</i>)*** |
| Do not introduce non-natives (e.g. crested wheatgrass) that trend toward monoculture (<i>Establishment of Non-native Monocultures</i>)*** | With agency assistance, identify areas of invasives and work to control them (<i>Management of Invasives and Non-native Plant Species</i>) |
| Work to remove invasive, non-native vegetation and inter-seed with native/beneficial seed mixes. (<i>Establishment of Non-native Monocultures</i>)*** | Ensure suitable reclamation of weed treated areas for sage-grouse, and rest newly seeded/planted rangeland from livestock use. (<i>Management of Invasives and Non-native Plant Species</i>)*** |
| Maintain contiguous habitat by avoiding fragmentation (fragmentation of landscape)
Do not subdivide property
Enter into conservation Easements
Consolidate new roads, buildings, and power lines | Use state-certified weed-free seed mixes and mulches. (<i>Management of Invasives and Non-native Plant Species</i>) |



Work with specialists to address post-wildland fire issues. (*Management of Invasives and Non-native Plant Species*)***

Work with specialists to address and prevent wildland fire. (*Management of Invasives and Non-native Plant Species*)***

Treat mosquito larvae present in ponds using appropriate chemicals (*Surface Water Developments/Disease*).

With new pond construction, use innovative design geared toward reducing sage-grouse mortality and/or disease transmission. (*Surface Water Developments/Disease*).***

Report to WGFD or FWS within 24 hours of any dead or sick sage-grouse. (*Surface Water Developments/Disease*).

Avoid eradicating sagebrush. (*Sagebrush Management*)***

Work with agency specialists to plan sagebrush treatments. (*Sagebrush Management*).***

Work with agency specialists to inventory vegetation and compare with the Ecological Site Description. (*Livestock Management and Rangeland Health*).***

Develop and implement a written conservation management plan (*Livestock Management and Rangeland Health*).

Develop and implement a written grazing management plan to maintain or enhance the existing plant community as suitable sage-grouse habitat. (*Livestock Management and Rangeland Health*).***

Avoid (or rotationally utilize) known nesting and brood-rearing habitat for activities that concentrate livestock (*Livestock Management and Rangeland Health*). ***

Place salt or mineral supplements in sites minimizing impacts to sage-grouse habitat (*Livestock Management and Rangeland Health*).***

Avoid placing salt or supplement within .25-mile of riparian habitats. (*Livestock Management and Rangeland Health*) ***

Fence riparian habitat with markers (*Livestock Management and Rangeland Health*).***

Treat/remove undesirable woodland species encroaching into sage-grouse habitats. (*Woodland Encroachment*).***

Avoid new surface disturbing activities within .6 miles of the perimeter of occupied leks from March 1 through May 15 (*Livestock Management in Important Sage-grouse Habitats*).***

Avoid disruptive activities between 6 p.m. and 8 a.m. within .6 miles of the perimeter of occupied leks from March 1 through May 15 (*Livestock Management in Important Sage-grouse Habitats*).***

Avoid concentrating livestock in nesting habitat from March 15 through June 30. (*Livestock Management in Important Sage-grouse Habitats*)***

Avoid off-trail vehicular travel in nesting habitat from March 15 through June 30 unless essential for routine ranch management. (*Livestock Management in Important Sage-grouse Habitats*).***

Fit existing new water troughs with escape ramps. (*Design and Placement of Water Developments*).***

Allow springs to be free-flowing in order to maintain or enhance a wet riparian area. If necessary, fence riparian habitat with markers to protect habitat from trampling. (*Design and Placement of Water Developments*).***

Avoid locating new garbage and dead piles closer than .6 miles from occupied leks, or within nesting or brood-rearing habitat. (*Predation*).***

Relocate existing garbage and dead piles within .6 miles of occupied leks, nesting, or brood-rearing habitat. (*Predation*)***

Limit access to leks, nesting, or brood-rearing habitat by domestic pets. (*Predation*).***

Install raptor perch deterrents on existing structures. (*Predation*).***

Implement the Reduced Area & Application (RAAT) Approach. (*Insecticide Use*).***



Avoid carbaryl/malathion. (*Insecticide Use*).***

Work with agency specialists to plan and design control efforts that avoid harming non-target species (*Insecticide Use*).***

Incorporate a drought management component into a grazing plan. (*Drought*).***

Adjust livestock use to reduce impact on perennial herbaceous cover, plant species diversity, and plant vigor (*Drought*).***

Utilize public hunting access opportunities to manage big game numbers and associated habitat conditions (*Big Game Populations*).

Enroll properties in hunter management areas or walk-in area programs through WGFD's Private Lands Public Wildlife programs. (*Big Game Populations*).

Cooperatively work with WGFD setting the big game season and/or objective (*Big Game Populations*).

Cooperatively work with WGFD to implement habitat treatments to distribute big game. (*Big Game Populations*).

Avoid construction of new fences within .6 mile of occupied leks or riparian areas where broods are known to concentrate. If fencing is needed for livestock management, mark fence. (*Placement of Fences*).***

Consult with agency specialist to relocate, redesign, or mark existing fences that occur within .6 mile of a lek. (*Placement of Fences*).***

❖ POST-CCAA ISSUANCE REQUIREMENTS

- » Compliance Monitoring
 - Once a landowner enters into a CCAA, they are responsible for annual compliance monitoring and annual reporting related to their individual CCAA.
 - Compliance monitoring requires:
 - information on which Conservation Measures were implemented;
 - When and where the Conservation Measures were implemented; and
 - Whether any take occurred.
- » Notification of Take Requirement
 - Landowners must provide the FWS an opportunity to rescue individual sage grouse before anticipated and authorized take occurs. For example, if a landowner intends to mow hay with the potential to take a nesting hen and her brood, then the landowner should notify the FWS.
 - Notification should provide FWS with 30 days' notice prior to the action; however, the notification must occur no fewer than 14 days prior to the action.
 - If unpredicted take occurs, then the landowner must provide notice within five days of the take occurring.



CHAPTER VII

Enhancement of Survival Permit for Sage Grouse

This page provides information on how to receive an Enhancement of Survival Permit and how much incidental take the Permit will authorize in the event that the FWS lists the sage grouse as either threatened or endangered under the ESA.

- ❖ In order to receive an Enhancement of Survival Permit for Sage Grouse, the Landowner must do the following:
 - » Submit a permit Application to the FWS at the same time you submit your CCAA application (signed in blue ink) with a \$50 fee.
 - » FWS has confirmed that landowners will not have to take any actions under the National Historic Preservation Act because the Conservation Measures contemplated to not have the potential to impact any historic buildings or structures.
 - » Agree to create a conservation plan for the land covered by the CCAA with 12 months.
 - » Permit becomes effective if FWS lists the sage grouse under the ESA.
- ❖ What the Enhancement of Survival Permit will authorize:
 - » The permit will provide participants with a prescribed amount of annual take of sage grouse (not limitless) if the FWS lists the greater sage grouse as either threatened or endangered under the ESA. For the Sage Grouse Landowner CCAA, incidental take is based upon the following formula:

$$(Number\ of\ acres\ enrolled\ by\ landowner) \times (birds\ per\ acre\ of\ sagebrush) \times (.05\ (5\%)\ allowable\ take) = annual\ allowable\ incidental\ take$$

- » To determine the birds per acre of sagebrush, the CCAA uses the following formula with an assumption of 208,000 sage grouse in Wyoming and 43,000,000 acres of sagebrush habitat in Wyoming:

$$(Estimated\ Sage\ Grouse\ in\ Wyoming) \div (Total\ sagebrush\ habitat\ in\ Wyoming) = birds\ per\ acre\ of\ sagebrush$$

- » So:

$$(208,000\ birds) \div (43,000,000\ acres) = .005\ birds\ per\ acre\ of\ sagebrush$$

- » Based upon the above, a landowner enrolling 2,000 acres in a CCAA would receive an Enhancement of Survival Permit authorizing the take of up to .10 birds per year over the 20 year life of the permit, or a total of 10 birds over the 20 year lifespan of the permit. Illustrated another way, if someone enrolled 2000 acres in a CCAA:
 - $2000 \times .005 \times .05 = .10 \text{ birds per year}$
 - This equates to 10 birds over the 20 year life of the permit.

- » Although this formula is articulated in the CCAA, it also provides that the average number of birds per acre can fluctuate from the statewide average if adequate data exists supporting a different number.



CHAPTER VIII

Should I Enroll Under Umbrella CCAA

The decision to enroll is unique to each landowner, and should be done based on a landowner's individual circumstances. There are a number of factors that go into deciding whether or not to enroll under the Umbrella CCAA. Landowners should think about the following questions, among others, to decide whether enrolling in a CCAA is the right decision for them:

- 1) Do I have sage grouse on my property, or do I have habitat suitable for sage grouse on my property?
- 2) What are my objectives for enrolling in a CCAA?
 - To protect my operation
 - To protect sage grouse
 - To prevent listing of sage grouse
- 3) Do I want to allow personnel of the FWS or other Participating Agencies access to my property for compliance monitoring and CCAA development?
- 4) What will it cost me to implement Conservation Measures?
- 5) Will the cost of implementing Conservation Measures outweigh the benefits of the assurances provided by the CCAA?
- 6) Can I afford to implement Conservation Measures without additional funding sources?
- 7) Am I comfortable with information about me, my property, or other information being available for public review?

CHAPTER IX

Additional Resources

Checklist for Developing Individual CCAAs

- COMPLETE THE INFORMATION SCREEN (APPENDIX B TO CCAA)
- ALLOW PARTICIPATING AGENCY TO COLLECT INFORMATION FOR CHARACTERIZING THE QUALITY AND QUANTITY OF SAGE-GROUSE HABITAT AND OPPORTUNITIES FOR CONSERVATION.
- WORK WITH PARTICIPATING AGENCY TO SELECT APPROPRIATE CONSERVATION MEASURES FROM THE LIST PROVIDED IN THE UMBRELLA CCAA.
- CONDUCT A RISK ANALYSIS AND COST/BENEFIT EVALUATION OF POTENTIAL COSTS AND RANCH COMMITMENTS RESULTING FROM CCAA PROCESS.
- COMPLETE INDIVIDUAL CCAA AND ENHANCEMENT OF SURVIVAL PERMIT APPLICATION, AND SUBMIT TO FWS FOR REVIEW.
- FWS REVIEWS INDIVIDUAL CCAA AND EOS PERMIT APPLICATION.
- FWS APPROVES INDIVIDUAL CCAAs AND ISSUES ESA SECTION 10 (A)(1)(A) ENHANCEMENT OF SURVIVAL PERMIT.
- LANDOWNER DEVELOPS A SITE-SPECIFIC CONSERVATION PLAN WITHIN 12 MONTHS.
- PA'S ESTABLISH FIELD MONITORING SITES AND RECORD INITIAL VALUES.
- LANDOWNERS IMPLEMENT COMPLIANCE AND BIOLOGICAL MONITORING PROGRAM WITHIN ONE YEAR OF ENROLLMENT.



Web-Resources

- ❖ 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
- ❖ Information about the Freedom of Information Act, available at www.foia.gov
- ❖ Enhancement of Survival Permits associated with Candidate Conservation Agreements with Assurances, available at www.fws.gov/forms/3-200-54.pdf
- ❖ CCAA Process Flowchart with Timeline, available at www.fws.gov/wyoming/PDFs/LandownerTools/CCAA/ProcessFlowchart.pdf