

**Candidate Conservation Agreement with  
Assurances for the Texas Hornshell  
(*Popenaias popeii*) and other Covered Species**

**Developed cooperatively by:  
U.S. Fish and Wildlife Service – Southwest Region  
The Center of Excellence (CEHMM)**

**2017**

## List of Acronyms

|       |  |
|-------|--|
| BLM   | Bureau of Land Management                          |
| CCA   | Candidate Conservation Agreement                   |
| CCAA  | Candidate Conservation Agreement with Assurances   |
| CEHMM | Center of Excellence                               |
| CFR   | Code of Federal Regulations                        |
| CI    | Certificate of Inclusion                           |
| CID   | Carlsbad Irrigation District                       |
| CMV   | Conservation Measure Violation                     |
| CP    | Certificate of Participation                       |
| ESA   | Endangered Species Act                             |
| FERC  | Federal Energy Regulatory Commission               |
| FOIA  | Freedom of Information Act                         |
| FWS   | US Fish and Wildlife Service                       |
| ISC   | Interstate Stream Commission                       |
| MOP   | Mine Operations Plan                               |
| NMDGF | New Mexico Department of Game and Fish             |
| NMOCD | New Mexico Oil Conservation Division               |
| NEPA  | National Environmental Policy Act                  |
| NRCS  | Natural Resources Conservation Services            |
| OHV   | Off-Highway Vehicle                                |
| RAPPS | Reasonable and Prudent Practices for Stabilization |
| RMP   | Resource Management Plan                           |
| SLO   | New Mexico State Land Office                       |
| SPCC  | Spill Prevention, Control, and Countermeasure      |
| USACE | United States Army Corp of Engineers               |

## Executive Summary

In 1989, the U.S. Fish and Wildlife Service (FWS) was petitioned to list the Texas Hornshell mussel (*Popenaias popeii*) as endangered under the authority of the Endangered Species Act of 1973, as amended. In 2001, the FWS ruled that listing of the Texas Hornshell was warranted, but precluded, because of other higher priority species. In 2016, the Texas Hornshell was proposed for listing as an endangered species.

This Candidate Conservation Agreement with Assurances (CCAA) for the Texas Hornshell and other Covered Species represents a collaborative effort between the FWS and the Center of Excellence (CEHMM). The CCAA is a voluntary agreement administered by CEHMM. Certificates of Inclusion (CIs) will be used by CEHMM pursuant to this CCAA in order to facilitate voluntary cooperation of the oil and gas operators, solid minerals mining companies, water withdrawers, agriculture and ranching, Carlsbad Irrigation District, and other interested stakeholders, thereby providing conservation benefits to the Texas Hornshell and other Covered Species (Rio Grande River Cooter, Gray Redhorse, Blue Sucker, and Pecos Springsnail). When fully implemented, it will provide guidance for the conservation and management of these species and their habitat by reducing or eliminating threats to the species. Participants will implement Conservation Measures and contribute funding or provide in-kind services for conservation as part of their CIs. Funds contributed as part of this CCAA may or may not be used on the Enrolled Property since other habitat areas may be a higher priority for implementation of Conservation Measures. The Conservation Measures implemented by Participants would consist of avoidance and minimization measures, and conservation of habitat to preclude or reduce threats to the Covered Species.

This CCAA is based on Adaptive Management principles and thus is a living document. Using Adaptive Management principles, the FWS and CEHMM can add or make necessary modifications to existing Conservation Measures currently found in this CCAA. Additionally, new Conservation Measures can be implemented through future CIs if the FWS finds such measures are necessary to facilitate the continued conservation of the Texas Hornshell and other Covered Species. Any Adaptive Management modifications will apply only to CIs that take effect after the modifications. CEHMM, the FWS, and BLM have developed a Candidate Conservation Agreement (CCA) for implementation on Federal lands. The structure and implementation of this CCAA will be closely coordinated with the CCA and the New Mexico State Land Office CCAA for the same Covered Species.

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## I. INTRODUCTION

In the western United States, many species that are candidates for listing under the Endangered Species Act of 1973 (ESA) occur on both Federal and non-Federal lands. Non-Federal Property Owners whose operations may have impacts on candidate species on private lands have the opportunity to voluntarily enter into a Candidate Conservation Agreement with Assurances (CCAA) in order to implement Conservation Measures aimed at reducing or eliminating threats to candidate species and to ensure that their land operations can continue unaffected if the species is listed in the future. In New Mexico and Texas, Property Owners and the U.S. Fish and Wildlife Service (FWS) were concerned about activities on private and state lands that might affect the status of candidate species, specifically the Texas Hornshell mussel (*Popenaias popeii*).

This CCAA between the FWS and Center of Excellence (CEHMM), with the voluntary participation of non-Federal Property Owners, will address the conservation needs of five desert aquatic/riparian species in New Mexico and Texas: Texas Hornshell, Rio Grande River Cooter, Gray Redhorse, Blue Sucker, and Pecos Springsnail. Although the Texas Hornshell is the only current candidate species, the additional species listed above are being considered due to their declining statuses. A Property Owner, further referred to as "Participant" as defined by 50 CFR §17.3, is a person with a fee simple, leasehold, or property interest (including owners of water or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable state law, on non-Federal land. Participants have the authority to manage their parcels, whether through ownership or lease of a parcel.

A future decision to list one or more of the Covered Species would take into consideration actions planned or implemented pursuant to this CCAA. However, such a decision would also need to consider threats facing the Covered Species now and into the foreseeable future throughout all or a significant portion of their current range. CEHMM, the FWS, and BLM have developed a CCA for implementation on BLM-managed lands. Taken together, this CCAA and the CCA that applies on Federal properties encourage implementation of uniform Conservation Measures and funding of Conservation Actions that apply throughout the ranges of the Covered Species regardless of property ownership.

The New Mexico State Land Office (SLO) is developing a CCAA for state trust lands (SLO CCAA). The SLO CCAA will incorporate the relevant provisions of this CCAA including the same Conservation Measures and the funding of Conservation Actions. The structure and implementation of this CCAA will be closely coordinated and integrated with the CCA for BLM-managed lands and the SLO CCAA for state trust lands for the same Covered Species. Should the SLO CCAA be terminated, state trust lands acreage previously enrolled in the SLO CCAA may be transferred to this CCAA at no cost to the Participant.

CEHMM and the SLO will coordinate through a memorandum of agreement (MOA) between CEHMM and the Commissioner of Public Lands (Commissioner). The primary goals of the cooperative relationship described in the MOA are to:

- limit up-front costs and provide consistency for participants that want to enroll in this CCAA, the CCA, or the SLO CCAA;
- coordinate and collaborate on habitat protection and restoration projects for the Covered Species; and,
- foster a landscape- and watershed-based approach to habitat restoration projects that draws on local knowledge and the best available science.

The MOA may be amended from time to time as agreed upon by CEHMM and the Commissioner to improve implementation of the candidate conservation agreements.

The Participants in this CCAA include entities in the following sectors: Oil and Gas, Agriculture and Ranching, Water Withdrawers, Government Participants, Interstate Stream Commission (ISC) and Carlsbad Irrigation District (CID). Through this CCAA, CEHMM will work with Participants who voluntarily commit to implementing or funding specific Conservation Actions that will reduce or eliminate threats to the Covered Species. Established in 2004, CEHMM is a 501(c)(3) organization that is dedicated to cutting edge applied research programs, community support, education, and cooperative conservation. Flagship projects include participation in the recovery and conservation of listed and candidate species, including Lesser Prairie-Chicken conservation and recovery (including captive propagation), Dunes Sagebrush Lizard conservation and recovery, riparian conservation, and conservation education.

#### Benefits of this CCAA

The most significant benefit of this CCAA is that it will guide and provide funding for Conservation Actions (e.g., revegetation with native species along rivers, land or water acquisition, etc.) for the Covered Species in order to improve the status of these species within New Mexico and Texas. Conservation Actions are actions that preclude or reduce threats to the Covered Species, including mitigation measures, which are implemented or funded by Participants. In comparison to well-intentioned but uncoordinated conservation efforts, this CCAA, together with the companion CCA, provides a comprehensive and strategic landscape level approach to address the conservation needs of the Covered Species. Although the FWS has already proposed the Texas Hornshell mussel for listing as an endangered species and cannot guarantee that a listing will not be necessary, this CCAA will encourage implementation of Conservation Measures on non-Federal lands and will fund Conservation Activities to benefit the Covered Species. The existence and successful implementation of these conservation agreements may eliminate any need to list or designate critical habitat for one or more of the Covered Species.

Conservation Measures are avoidance and minimization measures to preclude or reduce threats to the Covered Species that Participants agree to implement via this CCAA. It is



important to note that "preclude or remove any need to list" is based upon the removal of threats and stabilization or improvement of the species. The decision to list is a regulatory process and no CCAA can predetermine the outcome. The actions and successes of this CCAA will be evaluated in accordance with FWS Policy for Evaluation of Conservation Efforts (68 Fed.Reg. 15100, 2003), which will then be factored into the species status assessments and any listing decisions related to the Covered Species.

FWS has determined that a 10(a)(1)(A) Enhancement of Survival Permit can be issued to persons or entities that enter into a CCAA with the FWS. If one or more of the Covered Species addressed in the CCAA is later listed under the ESA, the Enhancement of Survival Permit becomes effective and authorizes take of the species that is incidental to otherwise-lawful activities on Enrolled Properties as specified in the CCAA, provided the activities are performed in accordance with the CCAA's terms. A CCAA and the associated Permit also encourage non-Federal Participants to implement conservation efforts for species by providing them regulatory assurances that so long as they comply with the terms of this CCAA and their CI, additional Conservation Measures above and beyond those contained in the agreement will not be required. Furthermore, additional land, water, or resource use limitations will not be imposed upon them should the Covered Species become listed in the future. The CCAA will provide conservation benefits to all riparian species in the Covered Area through conservation of their riparian habitat, although only the Covered Species will be included in FWS' Enhancement of Survival Permit.

## II. GOVERNANCE

CEHMM has the responsibility of implementing and administering this CCAA, as well as the CCA that covers BLM-managed lands. CEHMM shall be responsible for the routine day-to-day implementation of the CCAA and CCA and the associated CIs and Certificates of Participation (CPS) in accordance with the provisions of each. The CCAA and CCA establish a governance structure to advise CEHMM in implementation and administration and to support the CCAA and CCA, promote effective communication between the Parties and Participants, resolve disputes, revise cost structures, and make Adaptive Management decisions.

The Governance structure consists of an Executive Committee, the Stakeholder Committee, the Implementation Committee, and Technical Working Groups that the committees determine may be required from time-to-time. The Executive Committee for the CCAA is separate and distinct from the Executive Committee for the CCA, but the Stakeholder Committee, Implementation Committee, and any Technical Working Group may be common for the CCA and the CCAA. The Participants or representatives may only vote on issues pertinent to the agreement in which they are enrolled.

The CCA and CCAA governance structure is designed to encourage participation, foster collaboration, promote transparency, enhance durability of the agreement, and ensure a consistent, defensible decision-making process. CCA and CCAA governance relies heavily

on communication, collaboration, and feedback between the committees and workgroups. Although the committee structure may appear extensive, it is intended to respond nimbly to issues raised by CEHMM, FWS, BLM, Participants, and other stakeholders. In addition to the governance structure described in this section, Section **X. RESPONSIBILITIES OF THE PARTIES** of the CCA and CCAA outlines the Parties' responsibilities (e.g., CEHMM is responsible for preparation of an annual report while FWS is responsible for reviewing and approving the annual report).

The two Executive Committees are made up of the signatories to the CCA (FWS, BLM and CEHMM) and CCAA (FWS and CEHMM) and receive, evaluate, and make decisions on recommendations from the Stakeholder and Implementation Committees and oversee implementation of the CCA and CCAA, respectively. While it is CEHMM's responsibility to administer the CCA and CCAA, members of the Executive Committee work collaboratively to fulfill the conservation objectives of the CCA and CCAA. The SLO CCAA will also have an Executive Committee. The three Executive Committees shall have joint meetings at least annually to discuss matters of mutual concern. The flow of information and decision making is intended to foster decisions that are consistent, defensible and documented.

CCA and CCAA Participants are afforded the opportunity to represent their respective industry segments through the Stakeholder Committee. This committee provides stakeholders access to data and information related to the implementation of the CCA and CCAA, input into the decision-making process, and a venue to raise concerns or suggest ways to improve the CCAA's implementation. This process improves transparency and collaboration, which is further enhanced by the requirement that the Executive Committee provide a delegate to report at the Stakeholder Committee on actions taken by the Executive Committee. In addition, the opportunity to have a venue to raise issues and provide input addresses concerns that stakeholders have raised with other conservation agreements that the decision-making process alienates participants and discourages participation. Reciprocally, the Executive Committee benefits from stakeholder feedback and the perspectives and interests of multiple land users.

The Implementation Committee's roster is comprised of scientists from participating state and federal agencies and CEHMM. With its scientific expertise, the Implementation Committee identifies issues and makes recommendations to the Executive Committee. Members of the Implementation Committee must be familiar with the Covered Species. The Implementation Committee will be responsible for determining Conservation Action priorities and timelines, and will conduct a five-year review of the CCAA for the purposes of determining benefits to the Covered Species. Effective implementation of the CCA and CCAA depends, in part, on the Implementation Committee recognizing when issues should be raised with the Stakeholder and Executive Committees. The Implementation Committee's reporting relationship with the Stakeholder and Executive Committees promotes collaboration (while respecting the Implementation Committee members' expertise), consistent and defensible decision making, and transparency.



Finally, the Stakeholder Committee and the Implementation Committee may from time to time, form a Technical Working Group comprised of experts to develop a solution or set of recommendations for a particular issue.

The committee composition and responsibilities are explained below.

#### Executive Committee

The Executive Committee for this CCAA will be composed of two representatives from FWS and two representatives from CEHMM that are experienced with “endangered” or “threatened” species issues. The Executive Committee shall meet at least annually and more often as needed. CEHMM or the FWS can call meetings of the Executive Committee and set agendas for such meetings. The Executive Committee may take actions to further the implementation and administration of this CCAA subject to any limitations contained within this CCAA and of any affected CI. Any action by the Executive Committee is valid only when a consensus is reached between the FWS and CEHMM. If a consensus cannot be reached and authority lies with FWS, FWS will have final say. Specific actions that the Executive Committee must take include:

- Reviewing at least annually the implementation status of the CCAA (FWS only);
- Reviewing at least annually the financial condition of the CCAA, including fees received, conservation funds expended, and administrative costs paid to CEHMM (FWS only);
- Reviewing and approving funding for projects for Restoration Activities and Conservation Actions;
- Providing a delegate to report at the Stakeholder Committee meetings on actions taken by the Executive Committee;
- Acting on recommendations from the Stakeholder Committee, Implementation Committee, and Technical Working Group;
- Approving Adaptive Management changes recommended by the Stakeholder Committee and the Implementation Committee, but only when consistent with the terms of this CCAA and any affected CIs;
- Initiating the amendment process outlined in Section **XVI. ADAPTIVE MANAGEMENT**, if amendment of the CCAA, Permit, or CI is necessary to implement an Adaptive Management change;
- Approving other changes to the CI and CCAA document. The Executive Committee will initiate the amendment process outlined in Section **XXIII. MODIFICATION OF THE CCAA AND AMENDMENT OF THE PERMIT**, if amendment of the CCAA or Permit is necessary to implement such changes;
- Reviewing and resolving appeals of deficiency notices and Conservation Measure Violations;
- Terminating some or all of CIs in accordance with Section **XIII. SUSPENSION AND TERMINATION**; and,
- Resolving disputes consistent with Section **XXV. DISPUTE RESOLUTION**.

Nothing in this CCAA or any CI shall prohibit the Executive Committee or its members from requesting or receiving direct communications from the Stakeholder Committee, the Implementation Committee, or Participants.

#### Stakeholder Committee

Enrolled Participants in the CCAA and CCA shall have the opportunity to participate on the Stakeholder Committee. The Participant or representative may only vote on issues pertinent to the agreement in which they are enrolled. The Stakeholder Committee shall meet at least annually and more often as needed. The Stakeholder Committee shall review issues that impact enrolled Participants, discuss options to make changes, and make recommendations to the Executive Committee. The Stakeholder Committee shall be composed of at least nine voting individuals, selected from the industry sectors identified in this CCAA (i.e., oil and gas, agriculture and ranching, water withdrawers, Carlsbad Irrigation District [CID], ISC), plus one non-voting representative from CEHMM and one non-voting representative from SLO, for a total of 11 members. Enrolled Participants who do not wish to participate on the Stakeholder Committee, or representatives of the Stakeholder Committee who feel their concerns are not being addressed, may at any time meet with a representative from CEHMM or from the SLO, as appropriate. In addition to providing opportunities to participate through the Stakeholder Committee, FWS, BLM, CEHMM, and SLO will engage in direct outreach with Participants to address issues and identify potential Conservation Actions.

The Stakeholder Committee shall be composed of at least nine voting representatives, as follows:

1. Three representatives from Oil and Gas;
2. Two representatives from Agriculture and Ranching;
3. Two representatives from Water Withdrawers;
4. One representative from CID;
5. One representative from the ISC, given enrollment;
6. One non-voting representative from CEHMM; and,
7. One non-voting representative from SLO.

If participation in the CCAA and CCA expands to include additional categories of enrolled Participants, e.g., inclusion of companies from the solid mineral mining sector, the Stakeholder Committee on its own initiative may increase the size of the Stakeholder Committee (keeping an odd number of voting members at all times) by selecting one or more additional representatives from the four industry sectors identified in this CCAA.

The Executive Committee shall select the Stakeholder Committee members from nominations received from industry groups in which one or more enrolled Participants are members. Members of the Stakeholder Committee shall serve two year terms and may be re-nominated. At its first meeting, the Stakeholder Committee shall select a chair and the chair shall serve as a representative for the Stakeholder Committee when the Executive Committee meets. The chair of the Stakeholder Committee cannot be a representative from

CEHMM or SLO. The CEHMM representative shall assist in meeting scheduling and coordination and preparation of meeting summary notes and recommendations to the Executive Committee, Implementation Committee, or Working Groups.

Any action by the Stakeholder Committee is valid only when a quorum participates, either together or separately and either in person or via phone. For purposes of this CCAA, a quorum is a simple majority of the representatives with voting authority appointed to a committee (e.g., 5 out of 9 voting representatives is a quorum but 6 out of 13 voting representatives is not a quorum). Approval of actions requires a simple majority of a quorum of the Stakeholder Committee. Specific actions that the Stakeholder Committee must take include:

- Reviewing and making recommendations to the Executive Committee regarding the annual report;
- Identifying any challenges to implementing the CCAA and CCA and recommending review, study, or action by the Implementation Committee;
- Reviewing the implementation and effectiveness of current Conservation Measures, and recommending review, study, or action by the Implementation Committee;
- Reviewing and making recommendations to the Executive Committee on any proposed changes to Conservation Measures that are contained within the CCAA or CI template, or the CCA or CP template, including the fee structure;
- Reviewing and making recommendations to the Executive Committee on any proposed changes to management zones;
- Reviewing and making recommendations to the Executive Committee on Adaptive Management changes;
- Providing an annual report summarizing its activities to the Executive Committee;
- Providing a representative to report at the Implementation Committee meetings on actions taken by the Stakeholder Committee; and,
- Reviewing recommendations from the Implementation Committee and providing input to the Executive Committee and the Implementation Committee.

In addition, the Stakeholder Committee may recommend the establishment of a Technical Working Group(s) to address specific issues brought to its attention.

#### Implementation Committee

The Implementation Committee shall be composed of scientists from participating state and Federal agencies familiar with the Covered Species. Each of the following entities will provide staff for the Implementation Committee as follows:

- One representative from FWS;
- One representative from BLM;
- One representative from CEHMM;

- One representative from SLO;
- If the NMDGF elects to participate on the Implementation Committee, a representative will be automatically added to the Implementation Committee;
- If the Texas Parks and Wildlife Division or the Texas Comptroller of Public Accounts elect to participate on the Implementation Committee, a representative from the participating agency will be automatically added to the Implementation Committee; and,
- Other members of the Technical Working Group, as appropriate.

The Implementation Committee shall meet at least annually and more often as needed. At its first meeting, the Implementation Committee shall select a chair and the chair shall serve as the Committee's representative before the Stakeholder Committee. The Implementation Committee must act on issues sent to it by the Executive Committee or the Stakeholder Committee and may by its own initiative act on issues it identifies. The Implementation Committee will review or study an issue sent to it by the Executive Committee or Stakeholder Committee, and report back to the referring committee with its findings. Where review and study requires funding, the Implementation Committee shall promptly identify funding needs and provide such information to CEHMM.

The Implementation Committee shall make recommendations to the Executive Committee and the Stakeholder Committee through a consensus process. In the event that consensus cannot be reached, the Implementation Committee shall provide the Executive Committee and the Stakeholder Committee with a written description and explanation of the differing viewpoints.

The Implementation Committee will be responsible for:

- Reviewing biological reports and other information pertaining to the Covered Species;
- Developing and reviewing proposals for Conservation Actions, including Restoration Activities, prioritizing projects, and seeking approval for funding for said projects;
- Meeting annually (and more often as needed) to develop a strategy to guide prioritization of Conservation Actions;
- Reviewing and making recommendations to the Executive Committee for revisions to the Annual Report;
- Reviewing and making recommendations to the Executive Committee for any proposed changes to Conservation Measures that are contained within the CCAA or CI template, or the CCA or CP template, based on best available science;
- Reviewing and making recommendations to the Executive Committee for any proposed changes to CI template;



- Consulting with CEHMM as needed on New Surface Disturbance within the Covered Area to determine how proposed Participant's activities could proceed;
- Reviewing and making recommendations to the Executive Committee for any proposed changes to management zones based on best available science;
- Reviewing and making recommendations to the Executive Committee on Adaptive Management changes based on the best available science;
- Identifying any challenges to implementing the CCAA and CCA, initiating review and study, and developing recommendations for the Executive Committee;
- Reviewing the implementation and effectiveness of current Conservation Measures, initiating review and study, and developing recommendations for the Executive Committee;
- Reviewing and recommending proposals for in-kind services not specifically identified in Appendix C;
- Developing a grazing plan in consultation with impacted ranchers for areas near designated Life History Sites or Sensitive Habitat Areas;
- Developing a staged vegetation plan for any invasive species within each Occupied Site;
- Reporting to and working in collaboration with Stakeholder Committee and Technical Working Groups;
- Reviewing and taking appropriate action on recommendations from the Executive Committee;
- Maintaining a repository of scientific information regarding available research and data;
- Annually, or more often as needed, meeting with CEHMM to facilitate CEHMM's implementation of the CCAA, by reviewing progress from the previous year, seeking potential solutions for factors that would benefit conservation of the Covered Species and their habitat, and discussing actions that would benefit the Covered Species and their habitat to be initiated in the upcoming year; and,
- Concurrently providing the Stakeholder Committee with all written recommendations to the Executive Committee at the time it is sent to the Executive Committee.

#### Technical Working Group

It is anticipated that the Stakeholder Committee and the Implementation Committee will often need to rely on a network of resources when making recommendations for species and habitat enhancement. To provide guidance on technical issues and to help assess conservation priorities and science needs into the future, a network of technical experts will be identified. These representatives can be, but are not limited to, staff from the following agencies, institutions, or organizations:

- United States Geological Survey;
- New Mexico Office of the State Engineer;

- New Mexico Interstate Stream Commission;
- United States Army Corp of Engineers;
- Bureau of Reclamation;
- National Park Service;
- New Mexico Department of Game and Fish;
- Texas Parks and Wildlife Department;
- SLO;
- Texas Comptroller of Public Accounts;
- New Mexico public or private colleges or universities;
- Texas public or private colleges or universities;
- CID technical staff;
- Scientists, either individually or within an organization, experienced with any of the Covered Species; and,
- Where an issue involves, directly or indirectly, industry sectors enrolled in this CCAA, technical professionals such as engineers, scientists, and/or consultants familiar with a particular issue.

From time to time, it may be necessary to form an ad-hoc Technical Working Group to develop a solution or set of recommendations for a particular issue. It is the intent of this CCAA that should a Technical Working Group be formed to review, study, and develop solutions to address a particular issue, the Technical Working Group shall provide a written report on its activities to the Stakeholder Committee and Implementation Committee, and that it shall dissolve shortly after a solution or set of recommendations is developed and communicated. Because it is not possible to conceive of every issue that may be encountered in the implementation of the CCAA and CCA, a representation or voting structure for a Technical Working Group is not defined by this CCAA. However, nothing in this CCAA precludes the Technical Working Group members from establishing a representation or voting structure when a Technical Working Group is formed. It is also the intent of this CCAA, that Technical Working Groups will work closely with the Implementation Committee, as deemed necessary, to ensure full consideration of the impacts of a particular solution or set of recommendations.

A Technical Working Group will be convened within the first year of implementation to determine a revised minimum flow for the Black River. The Technical Working Group will also evaluate if a minimum flow for the Delaware River is needed. The Technical Working Group addressing revised flow shall make a recommendation to the Executive Committee, Stakeholder Committee, and Implementation Committee within five years of the date of execution of this CCAA and the CCA. Minimum flow is currently defined as 9.3 cubic feet per second (cfs) measured at the USGS Black River above Malaga gage 08405500 located just upstream from the CID dam. Upon Executive Committee approval of the revised minimum flow, it will apply in lieu of 9.3 cfs. During this five-year timeframe, the Technical Working Group will also recommend the number and placement of additional gauges along both the Black and Delaware rivers through the governance process. The Technical Working Group will also examine and make recommendations through the governance process for engineering standards for boring under the rivers and make recommendations



for developing major spill plans for both rivers. Development of these plans will not obligate Participants beyond Conservation Measures contained within their CI.

#### Issue Resolution

The Stakeholder Committee and Implementation Committee shall work collaboratively to resolve any disagreements about the recommendations to be made to the Executive Committee regarding a particular issue or sets of issues. Each Committee shall work proactively to resolve any disagreements promptly so that species conservation or Participant concerns are addressed in a timely manner.

In the event the Stakeholder Committee and Implementation Committee reach different decisions with respect to a particular issue or set of issues, one or both may request a meeting with the Executive Committee for purposes of issue resolution (“Issue Resolution Meeting”). Prior to the Issue Resolution Meeting, each Committee shall prepare a brief summary of issue, including the most recent record of decision each Committee reached on each issue, and provide it to the Executive Committee at least 24-hours before the Issue Resolution Meeting. The Issue Resolution Meeting shall be promptly convened and may be held in person or via teleconference. The chairs of the Stakeholder Committee and the Implementation Committee shall participate in the Issue Resolution Meeting. Nothing in this CCAA shall preclude the Executive Committee from requesting additional information from or inviting representatives of the Stakeholder Committee, the Implementation Committee, or any relevant Technical Working Group from participating. The decision from the Issue Resolution Meeting is final but may be subject to further review as conditions necessitate.

### III. PURPOSE OF THE CCAA

The primary purpose of this CCAA is to:

- Guide and provide funding for Conservation Actions (e.g., revegetation with native species along rivers, land or water acquisition, etc.) for the Covered Species in order to improve the status of these species within New Mexico and Texas;
- Develop, coordinate, and implement Conservation Measures to reduce or eliminate potential threats to the Covered Species in New Mexico and Texas;
- Maintain viable populations of the Covered Species in Occupied Habitat;
- Support ongoing efforts to re-establish populations of the Covered Species in currently unoccupied but historic, suitable habitats (i.e., Delaware River);
- Serve as a landscape-scale umbrella document for Conservation Measures implemented by CEHMM and Participants;
- Encourage development and protection of suitable habitat for Covered Species by giving Participants incentives to implement specific Conservation Measures (as described in their CI);
- Provide Participants assurances for the duration of this CCAA that additional Conservation Measures above and beyond those contained in the agreement



- will not be required and that additional land, water, or resource use limitations will not be imposed upon them should one or more of the Covered Species become listed in the future, so long as Participants properly implement their CIs; and,
- Allow industrial and agricultural development to continue while protecting and improving habitat conditions for the Covered Species.

#### IV. AUTHORITY

Sections 2, 7, and 10 of the ESA of 1973, as amended, 16 U.S.C. §§ 1531, 1536, 1539, and the Fish and Wildlife Coordination Act, allow the FWS to enter into this CCAA. Section 2 of the ESA states that encouraging parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is a key to safeguarding the nation's heritage in fish, wildlife, and plants. Section 7 of the ESA requires the FWS to review programs that it administers and to utilize such programs in furtherance of the purposes of the ESA. Section 10(a)(1)(A) of the ESA authorizes the issuance of permits to "enhance the survival" of a listed species for acts that would otherwise be prohibited by Section 9 if such acts are expected to enhance the propagation or survival of the affected species. However, Enhancement of Survival permits issued for candidate or other non-listed species do not become effective unless and until those species are listed as "threatened" or "endangered" under the ESA.

#### V. COVERED SPECIES

Species covered by this CCAA include the Texas Hornshell (*Popenaias popeii*), Rio Grande River Cooter (*Pseudemys gorzugi*), Gray Redhorse (*Moxostoma congestum*), Blue Sucker (*Cycleptus elongatus*), and Pecos Springsnail (*Pyrgulopsis pecosensis*).

##### Texas Hornshell

The Texas Hornshell is a freshwater mussel that historically occurred in the Pecos-Rio Grande drainage. The shell is elongate and subtrapazoidal – meaning four distinct sides with two sides that are parallel with the length greater than the width. The length-to-width ratio is 1:8. Shells are compressed and wider than tall. Beaks are low but sharp, hinge-tooth compressed, and beak cavity is very shallow. The external color varies from dark brown to olive green. The nacre is white, although some specimens show purple on the nacre. The shell length can reach 108 mm (4.25+ inches) (Howells 2001). Internal soft anatomy consists of a large visceral mass, two pairs of gills used for respiration and glochidial incubation, incurrent and excurrent siphons for water exchange, and a muscular foot for movement.

Historically, the species occurred throughout much of the Pecos and Rio Grande drainages (Carman 2007, Howells 2001). The species was once found from North Spring River, Roswell, Chaves County, NM south in the Pecos, Black, and Delaware rivers to the

confluence of the Rio Grande and Pecos rivers and further to the Gulf of Mexico. Recently, there has been the discovery of individuals in the Rio Grande upriver from the confluence of the Pecos River (Howells 1994; Karateyva et al. 2015). Texas Hornshell is currently known from numerous rivers that empty into the Rio Grande from the Mexican states of Coahuila, Nuevo Leon, and Tamaulipas (Carman 2007, The University of Texas at El Paso Museum Specimens). Much of the habitat within this range is no longer suitable for the Texas Hornshell. Populations in the lower Rio Grande and associated tributaries are disjunct and little is known about the size of these populations. Although extant populations likely exist in Mexico, sociopolitical issues have hindered investigation into the demographics of these populations.

Currently the species is known from four widely separated locations. The first location is in the Black River where the species is confined to a 14 km (8.7 mi) stretch from Black River Village downstream to the CID Dam in Eddy County, New Mexico (Carman 2007). This represents less than 12 percent of its historic range in New Mexico (Lang 2001). The second locality is from the Lower Rio Grande in Texas, approximately from the confluence of the Pecos River and Rio Grande possibly down to Brownsville, Cameron County (Lang 2001). Howells (2001) also reported a few shells upriver from the confluence of the Pecos and Rio Grande and downstream from the eastern boundary of Big Bend National Park. Texas Hornshell is also extant in the Devil's River in Texas, upstream from Amistad Reservoir (Inoue et al. 2015). Empty Texas Hornshell valves (shells) are sometimes found in locations downstream from known Occupied Habitat. Their occurrence in these downstream areas may be due to displacement from upstream populations by flooding or from river flow changes, such as water withdrawal and impoundments. Mussel shells are known to persist in the environment for long periods of time and the presence of valves should not be considered evidence of an extant population. NMDGF moved approximately 20-30 adult Texas Hornshells from the Black River to the Delaware River, New Mexico, in May of 2013 (BLM 2013) and 63 individuals in the summer of 2015. NMDGF, in conjunction with the BLM, marked the individuals with tags and have been monitoring the population (BLM 2013).

The Black River population occupies undercut riverbanks, crevices, ledges, and travertine shelves, and can be found under large boulders. Preferred substrate includes small-grained materials such as clay, silt, or sand that provides areas for the mussels to anchor. They will expose only the posterior portion of the shell in areas with a soft substrate of sand or mud, allowing the animal to siphon, with the rest of their body being covered with substrate. In rocky sites, it will be found in cracks and crevices where fine sediment deposits.

Filter-feeding mussels require clean, flowing water, making mussels good indicators of environmental change and aquatic ecosystem health. As such, both point source and non-point source pollution of surface waters can affect mussel survival. Texas Hornshell is particularly sensitive to salinity, with death occurring around 7.0ppt (Lang 2001). Salinity is stable around 0.9 ppt at the Black River sites and increases to 2.8 ppt downstream of the CID Dam. The lower Pecos River downstream of the Black River confluence ranges from 6.0 - 7.0 ppt in salinity. Mean salinity of the Delaware River from 1996-2000 was 1.8 ppt (Carman 2007). New Mexico's lower Pecos River experiences high salinity due to brine



intrusions near Malaga, New Mexico. Approximately 450,000 tons of salt is estimated to enter the lower Pecos at two sites every year (Miyamoto et al. 2008). Due to the extreme salinity changes and lack of passage, it is very unlikely that populations will establish outside of the already occupied reach in the Black River.

The life cycle of all freshwater mussels includes a larval stage, or glochidia. Each glochidium must attach to an external host which is most commonly a fish, although some species use salamanders. These glochidia attach to fish hosts for up to six weeks, transform into juvenile mussels, and then fall off the fish. Host fish aid in dispersal of genetics and allow for each individual to complete its life cycle. Restricting movement of host fish via dams and other barriers would restrict movement of the Texas Hornshell. Without sufficient populations of host fish, a mussel population will slowly decline until it eventually cannot recover.

Several fish species have been identified as important hosts for Texas Hornshell, including Gray Redhorse (*Moxostoma congestum*), River Carpsucker (*Carpionodes carpio*), Blue Sucker (*Cycleptus elongatus*), Red Shiner (*Cyprinella lutrensis*), and Longear Sunfish (*Lepomis megalotis*). Several of these species have declined in both abundance and distribution, most likely due to the same changes in habitat that have led to range-wide declines in Texas Hornshell. Conservation of host fish, specifically those mentioned above, will be critical to the success of this agreement.

#### Rio Grande River Cooter

The Rio Grande River Cooter (*Pseudemys gorzugi*), also known as the Western River Cooter in New Mexico, is a large turtle with yellow-green stripes on the head and neck, and red, yellow, and black markings on the legs. Females average 195.3 mm and males average 152.3 mm in carapace length (Degenhardt et al. 2005). This species is rather sedentary, with maximum movements of only 300 meters (Degenhardt et al. 2005). The Rio Grande River Cooter occurs in large, deep pools of rivers, and is found in the Black, Delaware, and Pecos rivers in New Mexico and Texas (Degenhardt et al. 2005).

The Rio Grande River Cooter is currently listed as “threatened” by the NMDGF, and the Center of Biological Diversity petitioned the FWS in 2012 to consider this species for protection under the ESA (NMDGF 2014). Threats to the species include recreation (such as hunting and fishing), predation, wildfires, and runoff pollution (NMDGF 2014).

#### Gray Redhorse

The Gray Redhorse (*Moxostoma congestum*) is a host fish for the Texas Hornshell glochidia (Levine et al. 2012). Historically, the Gray Redhorse ranged from central and west Texas and northwestern Mexico to the Pecos River and Rio Grande in southern New Mexico and Texas (NMDGF 2014). In New Mexico, the Gray Redhorse historically occupied the Rio Grande downstream of Socorro and the Pecos and Black rivers from Roswell south to the Texas border (NMDGF 2014). Due to Golden Algae (*Pyrmnesium parvum*) blooms in New Mexico, the Gray Redhorse currently only exists in the lower Black River from Blue Springs to the Pecos River confluence (NMDGF 2014). In conjunction with the BLM, the Gray



Redhorse has been reintroduced into the Delaware River by NMDGF. NMDGF and BLM field surveys conducted in 2016 on the Delaware River revealed initial successful reproduction by the species (BLM 2013; Tim Frey BLM *pers. com.*). Further augmentation of the Gray Redhorse may continue when deemed essential to the species persistence.

The Gray Redhorse occupies clear streams, and is associated with deep (>0.8 m) low current velocity (<0.1 ms<sup>-1</sup>) pools (Bean et al. 2009).

The Gray Redhorse was listed as “threatened” by the NMDGF in 1976 and then as “endangered” in 2008. Threats to the species include range fragmentation, contamination of surface waters, modified flow regimes, and Golden Algae blooms (NMDGF 2014). Depletion of surface waters is a major cause of decline of the Gray Redhorse (Bean et al. 2009; Hoagstrom 2001).

#### Blue Sucker

The Blue Sucker (*Cycleptus elongatus*) is a host fish for Texas Hornshell glochidia (Levine et al. 2012). Historically, the Blue Sucker occupied the Pecos River north of Carlsbad downstream to the New Mexico/Texas border and the lower Black River (NMDGF 2014). The Blue Sucker has declined throughout much of its native range. It has further declined since 2002 in the Pecos River, in part due to the effects from Golden Algae blooms, from Brantley Reservoir downstream (NMDGF 2014). It is likely extirpated from the Pecos River and the status of the population in the Black River is unknown (NMDGF 2014).

The Blue Sucker was listed as “endangered” by the NMDGF in 1976 (NMDGF 2014). Threats to the species include range fragmentation by dams, water contamination, Golden Algae blooms, and water quality changes in the Black River drainage (NMDGF 2014).

#### Pecos Springsnail

Springsnails are tiny mollusks with conical shaped shells that range in color from gray to light brown. The Pecos Springsnail (*Pyrgulopsis pecosensis*), which has been listed as a state “threatened” species by the NMDGF since 1983, historically occupied only Blue Springs and Castle Springs associated with the Black River in Eddy County, New Mexico. The species has since been extirpated from Castle Springs (NMDGF 2014).

Threats to the Pecos Springsnail include water diversion, drought, underground pumping of water, pollution from oil and gas exploration and production, and poor range management (NMDGF 1996).

## VI. THREATS

There are multiple activities in the area that may result in threats to one or all of the Covered Species. Threats to the species include water removal, disruption of flow by physical barriers, contamination, sedimentation through erosion, and removal of riparian vegetation. All Participants covered by this CCAA may not contribute to some or all of these



threats, but all will follow Conservation Measures or provide in-kind services for conservation to reduce or eliminate these threats. Below is a detailed description of impacts that these threats may have on the Covered Species.

### Loss, Destruction, Modification, or Fragmentation of Habitat

#### Water Quality and Loss of Water Resources

Degradation of water quality is a primary threat to the Covered Species and other desert riparian species. Poor water quality negatively impacts species survival and affects the function of the local ecosystem. Low water levels and contaminants (Carman 2007) exacerbate poor water quality conditions, resulting in potential damage to habitat of the Covered Species. Recent pumping of water from Black River, extreme drought events, along with other increased water withdrawals for commercial and other purposes have caused the amount of surface flow in the watershed to decline significantly (Carman 2007). Additional reduction in flow could raise the water temperature, cause pools to stagnate, and cease surface flow altogether.

Low-water crossings on both the Black and Delaware rivers are utilized frequently by both passenger vehicles and commercial trucks associated with construction activities including, but not limited to, oil and gas development. Vehicles utilizing low-water crossings could discharge pollutants (liquids or solids) (BLM 2016) in violation of the Clean Water Act or the Oil Pollution Act that could impact the Covered Species. Inadvertent transport of contaminants and contaminated soils by otherwise legal traffic usage may also occur. The topography and steep slopes of these low-water crossings could allow spilled contaminants and contaminated soils to directly enter into the surface water of the river and negatively impact the species (Boyer 1986; Green and Trett 1989; Jercinovic 1982, 1984).

Golden Algae is a warm water alga that occasionally erupts (blooms) in the Pecos River (Maning and La Claire 2010). A change to the water quality has been shown to increase chances of Golden Algae blooms (James and De La Cruz 1989). In contrast, high instream flows can terminate or suppress Golden Algae blooms (Harris 2010). These blooms originate in the Pecos River and have been found at the mouth of the Black River. By depleting the river of oxygen, blooms of Golden Algae and associated toxins would likely result in irreparable harm to the Covered Species. Water temperatures are lower in the Delaware River compared to other sites in the Pecos River, making it less susceptible to Golden Algae blooms. Maintaining adequate water flow in the Black River will help reduce the potential for Golden Algae blooms that can impact the Covered Species.

#### Runoff and Erosion

Historical land use activities, such as construction and livestock overgrazing, have decreased water absorption potential of topsoil, thus increasing erosion and runoff. Erosion and runoff are sources of fine sediment that can accumulate in a watershed, degrade or eliminate habitat for the Covered Species, and smother individual Texas Hornshells. Native grasses have decreased along the riverbanks, and the vegetative component has shifted to woody plants (Carman 2007). In many cases, these activities



have caused changes in stream morphology, changes in substrate composition, increases in drainage entrenchment and bank collapse, and increases in pulse discharge into the river, providing better habitat for exotic competitors (i.e., *Corbicula fluminea*) (NMDGF 2008).

#### Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

##### Collection

Fishermen rarely target sucker species; however, both Gray Redhorse and Blue Sucker may unintentionally be collected by fishermen targeting catfish and other sport fish. Although prohibited to collect in New Mexico, the Rio Grande River Cooter may be the target of illegal collection. Collection of Texas Hornshell, Blue Sucker, Gray Redhorse, and Rio Grande River Cooter is currently regulated by NMDGF.

#### Other Natural or Manmade Factors Affecting its Continued Existence

##### Climate Change

Climate change projects indicate that warming in the Southwest is expected to be greatest in the summer (IPCC 2013, pp.11–12), and annual mean precipitation is very likely to decrease in the Southwest (IPCC 2013, pp. 11–12; Ray *et al.* 2008, p. 1). In Texas, the number of extreme hot days (high temperatures exceeding 95° Fahrenheit) are expected to double by around 2050 (Kinniburgh *et al.* 2015, p. 83). Shortages in aquifers due to increased temperatures are nearly certain (Loaiciga *et al.* 2000, p. 193; Mace and Wade 2008, pp. 662, 664-665; Taylor *et al.* 2012, p. 3), even if precipitation and groundwater recharge remain at current levels, increased groundwater pumping and resultant aquifer shortages due to increased temperatures are nearly certain. Effects of climate change, such as air temperature increases and an increase in drought frequency and intensity, have been shown to be occurring throughout the range of Texas Hornshell (Kinniburgh *et al.* 2015, p. 88), and these effects are expected to exacerbate several of the stressors discussed above, such as water temperature and flow loss (Wuebbles *et al.* 2013, p. 16). In our analysis of the future condition of the Texas Hornshell, we considered climate change to be an exacerbating factor in the increase of fine sediments, changes in water quality, loss of flowing water, and predation. Conservation Measures to address water quality and loss of water resources would also address the threat from climate change.

##### Floods

Floods occur because of heavy rainfall over land with little plant material to slow down water. Flooding can increase siltation, displace mollusks, alter habitat, and adversely impact water quality (Hastie *et al.* 2001). Extensive flooding occurred along the Black River in September of 2013 and September of 2014, and both events were considered “100- year floods.” Recent surveys indicate that the Texas Hornshell population was not seriously affected by these floods. However, flooding can result in long-term changes to habitat, and monitoring of the Texas Hornshell population should continue.



#### Presence of Host Fish for Texas Hornshell

Host fish are required for Texas Hornshell to complete their life cycle and to allow gene flow for the maintenance of a healthy population (Levine et al. 2012). Several of these host fish species have declined in both abundance and distribution (NMDGF 2014), most likely due to the same changes in habitat that have led to range-wide declines in Texas Hornshell. Further inventories for monitoring of these species along with appropriate Conservation Actions are included elsewhere within this CCAA.

#### Competition from Exotic Species

The Asian Clam (*Corbicula fluminea*) is a well-established exotic in the Pecos, Black, and Delaware rivers. It competes with the Texas Hornshell in space and in food resources (Sickel 1986), and exotic species, such as the Asian Clam, threaten freshwater mussel populations throughout the United States (NMDGF 2014). However, competition between the two species in the Black River has not been studied. Removal of the species by hand is the only effective technique currently known, as molluscicides are not species-specific and would negatively impact Texas Hornshell populations.

#### Manmade Dispersal Barriers

On the Black River, the CID diversion dam, as currently constructed, and low-water crossings are physical barriers to the movements of aquatic species, such as Texas Hornshell and host fish species. Physical barriers limit dispersal and gene flow of species, restricting expansion of populations. Maintenance of low-water crossings and associated roads may temporarily add sediment to the river downstream. Even without the presence of man-made barriers, high salinity in the Pecos River is a barrier to dispersal for Texas Hornshell. For this reason, it is extremely unlikely that Texas Hornshell could populate the Pecos River mainstem.

## VII. COVERED AREA

Non-Federal properties within the CCAA Boundary are eligible for enrollment in this CCAA. For purposes of this CCAA, this Covered Area is defined as four management “zones” in New Mexico and Texas, as shown on the project map in Appendix A.

#### Characterization of Management Zones

Zone A – Occupied Habitat within the Black River and Delaware River. A description of currently Occupied Habitat can be found in Appendix A.

Zone B – The Black and Delaware rivers (excluding Zone A in each), Blue Springs, and their associated USGS 100-year floodplain as identified in Appendix A.

Zone C – Ephemeral drainages to the Black and Delaware rivers, including Owl Draw, as identified in Appendix A.



Zone D – The area within the CCAA Boundary, not otherwise described in management zones A, B, or C, as identified in Appendix A.

Reclassification - If a self-sustaining population of the Texas Hornshell is not established in the Delaware River within 10 years from September of 2016, the Delaware River and its associated USGS 100-year floodplain may potentially be reclassified as a different management zone through the Adaptive Management process.

## VIII. COVERED ACTIVITIES

This CCAA and the associated Enhancement of Survival Permit will cover the following activities occurring on non-Federal lands or minerals: oil and gas development; water withdrawals; ranching, farming, or other agriculture; mining and solid mineral extraction; CID operations; and conservation, monitoring, and research as described below. Any otherwise illegal activities (e.g., spills, etc.) will not be a Covered Activity through this agreement.

### Seismic Activities and Land Surveying

Seismic activities involve surface or subsurface induced seismic pulses. Seismic activities are generally performed in the exploration phase of oil and gas development or in areas of existing development for refining knowledge of the geology and improving well siting. Seismic activities are conducted for periods of short duration (i.e., typically less than 30 days) in any given area. Activities may utilize large equipment to induce seismic pulses. Additionally, activities may include limited clearing of vegetation to allow equipment access for seismic work and consist of a small crew laying/stringing temporary cables and placing receivers on foot or possibly using off-highway vehicles (OHVs). A crew removes cables and receivers when the work is complete. Land surveying is a low-impact, temporary activity and may require some truck and/or foot traffic.

### Construction

Construction is defined as the process of creating infrastructure or sites in support of one or more of the other Covered Activities. Below are some examples of covered construction activities. For ranching, this includes construction of access roads, fences, waterlines, or facilities such as barns and corrals. For farming, this could include construction of crop fields and access roads. For solid mineral sales, this could include construction of a quarry or pit. For water withdrawals, this could include construction of waterlines, pump sites, and electric lines. For oil and gas development, this includes, but is not limited to, construction of access roads, well pads or locations, reserve pits and other facilities for the disposal of waste, production-related equipment such as tanks and storage facilities, treaters, separators, dehydrators, electric and other utility lines and pipelines (e.g., gathering lines, flow lines, and distribution lines). For oil and gas activities, construction activities may involve the use of heavy equipment and trucking activities in clearing vegetation, contouring, compacting, stabilizing soils, and installing erosion control (including silt fencing, earthen berms, etc., per Clean Water Act permitting requirements).



Well-site construction may also include erecting temporary fencing and netting around a location, or portions thereof, for livestock and wildlife protection. A water well, disposal well and/or injection well may be drilled near the location and possible boring and trenching-related activities associated with installation of flow lines, pipelines, and utilities may occur. Associated infrastructure for compressor facilities and gathering/processing facilities may also be constructed on site or at adjacent sites. Where practical, equipment may be electrified (which greatly reduces noise and emissions from gas/diesel driven equipment), which involves the installation of in-field electrical distribution systems (poles, transformers and overhead wires). Activities may be conducted to plug and abandon a well, which may involve workover rig mobilization, and removal of facility equipment and associated infrastructure, access roads, abandonment in place of subsurface lines, and surface remediation/restoration pursuant to lease and regulatory requirements. Construction may also include activities associated with Emergency Operations such as mobilization of heavy equipment, building structures, and any associated remediation and restoration activities associated with the Emergency Operations.

#### Drilling, Completion, and Workovers (Re-Completion)

Drilling, completion, recompletion, and workover activities may include, but are not limited to, construction, rig mobilization, which can include heavy equipment, 24-hour continuous operations, hydraulic fracturing, and frequent traffic. Well-site fencing may be utilized after completion operations for security purposes and to limit access.

#### Routine Production Operations and Maintenance

Routine production operations and maintenance may include, but is not limited to, stimulations, wellbore repair, daily site inspections and maintenance, testing, pipeline, gathering line and flow line repairs, right-of-way and road maintenance, unloading of storage tanks, truck traffic for removal of product or waste, emergency activities, workovers, recompletions, flaring, weed control, pipeline pigging activities, and regulatory inspections.

#### Remediation Activities and Restoration Activities

Remediation activities and Restoration Activities, include, but are not limited to, removal and restoration of: access roads, fences, well pads or other improved locations, mineral pits, retired farm fields, removal of low-water crossings or diversion dams, reserve pits and other facilities for the disposal of waste, tanks and storage facilities, treaters, separators, dehydrators, electric and other utility lines and pipelines (e.g., gathering lines, flow lines, and distribution lines, waterlines), and associated infrastructure for compressor facilities and gathering/processing facilities. Remediation activities and Restoration Activities may also include any conservation projects or actions that benefit the Covered Species and their habitats listed in this document.

#### Use of Low Water Crossings

Use of low water crossings by Participants and their designated affiliates (i.e., contractors, employees, etc.) is a Covered Activity.



### Grazing

Grazing of livestock will be a Covered Activity if done in accordance with current and future BLM standards (BLM 1988), and the Conservation Measures described in the Participant's CI.

### Building and Maintaining Fences

Construction and maintenance of new and existing fences for agricultural purposes will be a Covered Activity if done in accordance with BLM standards and the Conservation Measures described in this agreement.

### Farming and Irrigation by Landowner Participants

Farming and irrigation for agricultural purposes will be a Covered Activity if done in accordance with BLM and Natural Resources Conservation Service (NRCS) standards and the Conservation Measures described in this agreement.

### Pipeline Boring

Pipeline boring for industrial purposes will be a Covered Activity if done in accordance with applicable statutory and regulatory standards (e.g., Federal Energy Regulatory Commission (FERC) guidelines) and the Conservation Measures described in this agreement.

### Solid Minerals Mining

Solid minerals mining will be a Covered Activity if done in accordance with BLM, their Mine Operations Plan (MOP), and the Conservation Measures described in this agreement.

### Water Pumping

Pumping of groundwater or surface water for agricultural, livestock, or industrial uses will be a Covered Activity if done in accordance with regulations set forth in valid, existing water right permits and the Conservation Measures described in this agreement.

### Carlsbad Irrigation District Operations

Covered Activities include operations related to the addition of Pecos River water on the north side of the Black River dam for diversion on the south side of the dam; regular operations and maintenance in and around the Black River dam, e.g., removing silt; performing maintenance and repairs on dam, including after flood events; removal of weeds from Black River channel near the dam; and yearly maintenance of diversion gate on Black River dam, to include temporarily lowering the reservoir level.

### Conservation, Research, and Monitoring

Conservation, research, and monitoring projects performed or approved by the Executive Committee will be Covered Activities. Projects may include, but are not limited to, mark/recapture studies, presence/absence surveys, captive breeding and reintroduction,

population surveys, habitat assessments, water quality monitoring, and other similar activities to study, monitor, and assess the species.

## IX. CERTIFICATES OF INCLUSION (CI)

A CI (Appendix B) is the mechanism for Participants to voluntarily participate in this CCAA for the purposes of providing conservation for the Covered Species. Participants sign a CI for a particular property interest (Enrolled Property) and agree to implement Conservation Measures on the Enrolled Property and to contribute funding via Habitat Conservation Fees (Section **XIV. FUNDING AND ENROLLMENT PROCESS**) or provide in-kind services for conservation efforts consistent with the terms of the CI. These efforts will benefit the Texas Hornshell, other Covered Species, or their habitat, either on or off of the Enrolled Property. Even though the Participant may change over time, the CI will remain tied to the Enrolled Property described in the CI.

CEHMM will administer enrollment of Participants. The Implementation Committee is responsible for developing and reviewing proposals for Restoration Activities, prioritizing Conservation Actions, and seeking approval for funding for said Conservation Actions. It is important to note that funds associated with a CI may or may not be used on Enrolled Property as described under the corresponding CI since that area may not encompass the highest priority area identified for Conservation Actions by the FWS. It is important to note that if a Participant chooses to perform in-kind services, the Participant must perform these services on the equivalent amount of acreage as if these Conservation Actions had been contracted through CEHMM or services provided must create equivalent conservation value. For an in-kind service to qualify as performed in lieu of payment of a Habitat Conservation Fee, the Participant must contact CEHMM with proposed in-kind services, and CEHMM, in conjunction with FWS, must approve those actions prior to services being performed.

Participants will benefit from voluntarily enrolling in the CCAA (via the CI) in several ways:

- In the event the Texas Hornshell or one of the other Covered Species become listed under the ESA, additional Conservation Measures above and beyond those contained in the agreement will not be required, and additional land, water, or resource use limitations will not be imposed on Enrolled Property, so long as Participants properly implement their CIs.
- In the event of listing, the Participant could continue working under the terms of the CI without disruption and without the need to seek a section 10(a)(1)(A) Permit.
- The Participant could gain public relations benefits from their contribution toward the Covered Species conservation.



## X. RESPONSIBILITIES OF THE PARTIES

CEHMM shall be responsible for:

- Implementing and administering this CCAA;
- Enrolling Participants in accordance with this CCAA via CIs;
- Calculating conservation fees or in-kind equivalent, as stated in Section **XIV. FUNDING AND ENROLLMENT PROCESS**;
- Reviewing Conservation Actions within management zones for compliance with the terms of the agreement and coordinating with the Implementation Committee as needed;
- Meeting with Participants to provide technical assistance if they plan to contribute in-kind services (rather than contributing funds) toward the conservation of the Covered Species or their habitat (see Appendix C for list of eligible in-kind services);
- Collecting site-specific flow and depth data throughout the Covered Area to establish minimum water requirements (e.g., flow, quality, and quantity);
- Notifying Participants of the status of the Black and Delaware rivers reaching the established minimum flow. The Technical Working Group, following the Governance process (Section **II. GOVERNANCE**), will work with subject matter experts to determine minimum flow within five years of implementation of this CCAA and the CCA;
- Using contributed funds to contract and inspect Conservation Actions to promote the conservation of the Covered Species or their habitat;
- Considering input and recommendations from the Stakeholder Committee;
- Annually monitoring populations of Covered Species for FWS to determine the population status and level of incidental take;
- Monitoring Conservation Actions (inventorying existing FWS and NMDGF monitoring protocols or developing new protocols as needed to determine which protocols to follow) in order to determine success and adaptations needed;
- Conducting outreach and public education efforts to promote the conservation of the Covered Species and their habitat;
- Conduct outreach to Participants of any amendments to the CCAA;
- Securing permission to complete Conservation Actions on private and state lands, where appropriate;
- Annually, or more often as needed, leading a meeting with the Implementation Committee to facilitate CEHMM's implementation of the CCAA, by reviewing progress from the previous year, seeking potential solutions for factors that would benefit conservation of the Covered Species and their habitat, and discussing actions that would benefit the Covered Species and their habitat to be initiated in the upcoming year;
- Tracking expenditure of contributed funds and preparing an annual report on implementation of this CCAA that shows how much of contributed funds were spent, how they were spent, and how much remains;

- Using no more than 10 percent of contributed funds for their indirect costs (i.e., building rental, utilities, insurance, etc.) under this CCAA. Funds will not be used for any other projects except for the administration, research, and conservation of the Covered Species, and all efforts will be made to maximize the use of funds to on-the-ground conservation for the Covered Species;
- Using the balance of contributed funds for program implementation, including, but not limited to, on-the-ground conservation for the Covered Species, direct salaries (conducting onsite, biological surveys, etc.), computers and software, equipment/vehicle repair and maintenance, supplies, travel, licenses/permits, and meetings;
- Maintaining a digital photo database to document the performance of Conservation Measures and Conservation Actions to promote the conservation of the Covered Species. This database will be one tool in the analysis of Conservation Measures and Conservation Actions for Adaptive Management of the CCAA;
- Auditing, at CEHMM's expense, by an independent party annually to account for expenditures and accomplishments;
- Developing, holding, and enforcing the CI for each Participant, with copies to the Participant and FWS, and ensuring confidentiality in accordance with Section **XXII. CONFIDENTIALITY**; and,
- Providing at least two weeks' advance written notice (the "Two Week Notice") to a Participant prior to accessing Participant's Enrolled Property for purposes of monitoring compliance with terms of the CI, unless Participant agrees to allow CEHMM in sooner than two weeks. The Two Week Notice to a Participant shall identify the access date, estimated arrival time, and names and employers of the individuals accessing the Enrolled Property. CEHMM shall allow a Participant to accompany CEHMM during any visit to the Participant's Enrolled Property. CEHMM and other individuals will comply with Participant's site visitation policies when visiting the Participant's Enrolled Property. In order to access lands that are not enrolled by the Participant, CEHMM must independently obtain landowner permission.

The FWS shall be responsible for:

- Upon execution of this CCAA, issuing an Enhancement of Survival Permit to CEHMM in accordance with 50 CFR 17.22(d) or 17.32(d) and the terms of this CCAA. Section 10(a)(1)(A) of the ESA authorizes the issuance of permits to "enhance the survival" of a listed species. If one or more of the Covered Species is listed under the ESA, this permit shall provide Participants who are in compliance with the terms of their CI with authorization for anticipated incidental take of the species as a result of Covered Activities on and/or associated with their Enrolled Property and with the assurances described in this CCAA;



- Evaluating the results of monitoring data to assess if Conservation Measures and Conservation Actions are providing the desired conservation benefit to the Covered Species;
- Reviewing and approving CEHMM's annual report;
- Providing at least two weeks' advance written notice (the "Two-Week Notice") to a Participant prior to accessing Participant's Enrolled Property for purposes of monitoring compliance with terms of the CI, unless Participant agrees to allow the FWS in sooner than two weeks. The Two-Week Notice to a Participant shall identify the access date, estimated arrival time, and names and employers of the individuals accessing the Enrolled Property. The FWS shall allow a Participant to accompany it during any visit to the Participant's Enrolled Property. CEHMM and other individuals will comply with Participant's site visitation policies when visiting the Participant's Enrolled Property. In order to access lands that are not enrolled by the Participant, the FWS must independently obtain landowner permission;
- Fostering a conservation commitment with state agencies for the conservation of the Covered Species;
- Reviewing and approving CIs as submitted by CEHMM; and
- Maintaining a system of record that provides the confidentiality of certain information as described in Section **XXII. CONFIDENTIALITY**.

Participants shall be responsible for:

- Enrolling in this CCAA by entering into a CI with CEHMM;
- Implementing Conservation Measures and contributing funding or in-kind services towards Conservation Actions (based on Appendix C) in accordance with the terms of their CIs;
- Allowing CEHMM, FWS, or their designated representatives to survey and monitor Enrolled Properties for compliance with the terms of the CCAA, CI, and Permit in accordance with the Two-Week Notice; and,
- Educating personnel, agents, and contractors about the requirements of the CI and this CCAA and providing direction in accordance with the Conservation Measures.

## XI. CONSERVATION MEASURES

This section describes the approaches and strategies for conserving the Covered Species and reducing, or eliminating threats thereto (Appendix D). These approaches and strategies are designed to provide conservation benefits to the Covered Species through the application of agreed to Conservation Measures. Therefore, the ultimate goal of this CCAA is to facilitate a long-term approach to protect and manage the Covered Species and their habitat in southeastern New Mexico and western Texas.



For example, Participants can agree to protect and enhance existing populations and habitats, restore degraded habitat, create new habitat, augment existing populations of Texas Hornshell or other Covered Species, restore historic populations, fund research studies, or undertake other activities on their Enrolled Property, which improve the status of the species. The Conservation Measures included in this CCAA should reduce or eliminate threats to the Covered Species. Baseline Conservation Measures for each stakeholder group are included in this CCAA and may include Habitat Conservation Fees. Additional Conservation Measures negotiated by each Participant prior to enrollment may be included in the Participant's individual CI.

CEHMM may use contributed Habitat Conservation Fees to conduct Conservation Actions within the Black and Delaware river watersheds or other high priority areas. Such funds may be used if holders of any valid existing rights (e.g., oil and gas lessees, surface owners, or allottees) agree, in writing, to allow the implementation of the specified Conservation Action on their lands or specific to their rights. The goal is to implement the highest priority Conservation Actions needed (regardless of land ownership) to reduce or eliminate threats to the Covered Species as determined by the FWS, with input by CEHMM. As new information or empirical data becomes available, Conservation Measures can be modified or added to future CIs, and existing CIs with written approval from the Participant, through Adaptive Management.

The following is a suite of Conservation Measures that may be applied to Enrolled Properties, broken down by Participant type and CCAA management zone. Participants will implement these Conservation Measures.

#### Oil and Gas and Associated Infrastructure

Pursuant to Section **XIV. FUNDING AND ENROLLMENT PROCESS** of this CCAA and as further set forth in the CI, oil and gas Participants agree to pay Habitat Conservation Fees for CEHMM to provide for:

- The conservation of the Covered Species;
- The conservation, reclamation, and restoration of the habitat suitable or beneficial to the Covered Species; and,
- The implementation and administration of this CCAA.

Rather than paying Habitat Conservation Fees, oil and gas Participants may elect to instead contribute in-kind services. For an in-kind service to qualify as performed in lieu of payment of a Habitat Conservation Fee, the Participant must contact CEHMM with the proposed in-kind services, and CEHMM, in conjunction with FWS, must approve those actions prior to services being performed.

With the exception of agricultural and livestock species, oil and gas Participants shall not release, plant or otherwise establish or introduce exotic or invasive species, including but not limited to saltcedar (*Tamarisk* spp.), giant cane (*Arundo donax*), cheatgrass (*Bromus tectorum*), Lehmann's lovegrass (*Eragrostis lehmanniana*), Zebra Mussels (*Dreissena*



*polymorpha*), Sheepshead minnow (*Cyprinodon variegatus variegatus*), feral pigs, or other species that may degrade habitat in the Covered Area. In addition to this and to payment of Habitat Conservation Fees or contribution of in-kind services, oil and gas Participants agree to implement the following Conservation Measures for New Surface Disturbance to avoid and minimize impacts to Covered Species.

**Zone A:** No New Surface Disturbance in Occupied Habitat within the Black River and Delaware River. A description of currently Occupied Habitat can be found in Appendix A.

**Zone B:** Within the Black and Delaware rivers (excluding Zone A in each), and Blue Springs and their associated USGS 100-year Floodplain, the Participant will exercise good faith efforts to avoid Zone B. Where the Participant cannot avoid Zone B, this CCAA and its associated CI authorizes New Surface Disturbance subject to the following:

1. The oil and gas Participant shall identify and submit to CEHMM a reason that Zone B cannot be avoided. Reasons may include, but are not limited to:
  - i. The mineral estate cannot otherwise be accessed;
  - ii. The Participant lacks surface or right-of-way access;
  - iii. Contractual or landowner restrictions;
  - iv. The mineral resource cannot be accessed utilizing proven technology reasonably available in the Permian Basin;
  - v. The potential to increase environmental impacts;
  - vi. Safety considerations;
  - vii. The project would become economically infeasible; or,
  - viii. Others, as approved by CEHMM, in conjunction with the FWS.
2. If Zone B cannot be avoided, the oil and gas Participant shall take the following steps to minimize the potential impacts:
  - i. Implement erosion control measures in accordance with the Reasonable and Prudent Practices for Stabilization (RAPPS)(see Appendix F);
  - ii. Comply with SPCC requirements (Appendix G) in accordance with 40 CFR Part 112;
  - iii. Comply with the United States Army Corp of Engineers (USACE) Nationwide 12 General Permit, where applicable;
  - iv. Educate personnel, agents, and contractors about the requirements of the CI and this CCAA and provide direction in accordance with the Conservation Measures. CEHMM will notify the Participant to resolve any issues with their subcontractors;
  - v. Provide CEHMM with the permit from New Mexico Oil Conservation Division (NMOCD), if applicable; and,
  - vi. Provide CEHMM plats or other electronic media describing the New Surface Disturbance and exiting surface disturbance utilized for the project.

**Zone C:** Ephemeral Drainages to the Black and Delaware rivers. The oil and gas Participant will exercise good faith efforts to avoid, if feasible, obstructing or disrupting the natural flow of ephemeral drainages. If it is not feasible to avoid these areas, the Participant shall take the following steps to minimize the potential impacts:

1. Implement erosion control measures in accordance with the Reasonable and Prudent Practices for Stabilization (RAPPS) (see Appendix F);
2. Comply with SPCC requirements (Appendix G) in accordance with 40 CFR Part 112;
3. Educate personnel, agents and contractors about the requirements of the CI and this CCAA and provide direction in accordance with the Conservation Measures. CEHMM will notify the Participant to resolve any issues with their subcontractors;
4. Comply with the USACE Nationwide 12 General Permit, where applicable;
5. Provide CEHMM with the permit from NMOCD, if applicable; and,
6. Provide CEHMM plats or other electronic media describing the New Surface Disturbance for the project.

**Zone D:** CCAA Boundary requirements. Oil and gas Participants shall comply with SPCC requirements (Appendix G) in accordance with 40 CFR Part 112. SPCC plans for Participant's New Surface Disturbance of Enrolled Properties subject to this CI will be available upon request to be used by CEHMM.

1. Provide CEHMM with the permit from NMOCD, if applicable; and,
2. Provide CEHMM plats or other electronic media describing the New Surface Disturbance for the project.

**Notice:** Oil and gas Participants will provide notice of New Surface Disturbance and seismic activities as described in Section **XV. DEVELOPMENT PROCEDURES**. Participants will notify:

1. CEHMM not less than 15 days in advance of New Surface Disturbance and Seismic Activities to determine appropriate Habitat Conservation Fees in accordance with Appendix E. CEHMM will deduct the fees from the Participant's account within 30 days of receiving notification from the Participant on surface disturbing activities. CEHMM would then provide notice, both written and by electronic transmission, to the Participant within 30 days of deducting Habitat Conservation Fees from the Participant's account;
2. CEHMM not less than 3 days prior to commencement of New Surface Disturbance;
3. CEHMM, not less than 3 days in advance, of any changes to prior notice of New Surface Disturbance; and,
4. CEHMM within 72-hours after Emergency Operations that result in New Surface Disturbance. Emergency Operations are those activities unexpectedly and urgently required to prevent or address immediate threats

to human health, safety, property, the environment, or national defense or security.

#### Solid Minerals Mining Industry

Companies engaged in solid minerals mining can participate in this CCAA, the associated CCA or both. The covered activities and appropriate conservation measures applicable to solid minerals mining will be developed and included in the CI's developed for those participants prior to their enrollment. Solid minerals mining participants shall be subject to all other provisions included in this CCAA and the associated CCA including, without limitations, the Funding and Enrollment, Participant Non-Compliance, Suspension and Termination, and Monitoring and Reporting. In addition to the Conservation Measures below, Mineral Participants, with the exception of agricultural and livestock species, shall not release, plant or otherwise establish or introduce exotic or invasive species, including but not limited to saltcedar (*Tamarisk* spp.), giant cane (*Arundo donax*), cheatgrass (*Bromus tectorum*), Lehmann's lovegrass (*Eragrostis lehmanniana*), Zebra Mussels (*Dreissena polymorpha*), Sheepshead minnow (*Cyprinodon variegatus variegatus*), feral pigs, or other species that may degrade habitat in the Covered Area.

**Zone A:** No New Surface Disturbance in Occupied Habitat within the Black River and Delaware River.

**Zone B:** The Mineral Participant shall exercise good faith efforts to avoid a New Surface Disturbance in Zone B. Where the Participant cannot avoid a project in Zone B, this CCAA and its associated CI authorizes New Surface Disturbance subject to the following conditions:

1. The Mineral Participant shall identify and submit to CEHMM a reason that Zone B cannot be avoided. CEHMM, in conjunction with the FWS, must approve the reason and the activity before the project can take place. Reasons may include, but are not limited to:
  - i. The mineral estate cannot otherwise be accessed;
  - ii. The Participant lacks surface or right-of-way access;
  - iii. Contractual or landowner restrictions;
  - iv. The mineral resource cannot be accessed utilizing proven technology reasonably available in the Permian Basin;
  - v. The potential to increase environmental impacts;
  - vi. Safety considerations;
  - vii. The project would become economically infeasible; or,
  - viii. Other reasons approved by CEHMM, in conjunction with the FWS.
2. If Zone B cannot be avoided, the Mineral Participant shall take the following steps to minimize the potential disturbance:

- i. Implement erosion control measures in accordance with the Reasonable and Prudent Practices for Stabilization (RAPPS)(see Appendix F);
- ii. Comply with Spill Prevention, Control and Countermeasures (SPCC) requirements (Appendix G) in accordance with 40 CFR Part 112;
- iii. Comply with the United States Army Corp of Engineers (USACE) Nationwide 12 General Permit, where applicable;
- iv. Educate personnel, agents, and contractors about the requirements of the CI and this CCAA and provide direction in accordance with the Conservation Measures;
- v. Provide CEHMM with a copy of the permit from New Mexico Mining and Minerals Division (MMD), if applicable;
- vi. Provide CEHMM plats, mine operation plans, or other electronic media describing the New Surface Disturbance for the project; and,
- vii. Provide CEHMM with the mine reclamation plan.

**Zone C:** The Mineral Participant shall exercise good faith efforts to avoid, if feasible, obstructing or disrupting the natural flow of ephemeral drainages in Zone C. If it is not feasible to avoid these areas, the Participant shall take the following steps to minimize the potential disturbance:

1. Implement erosion control measures in accordance with the Reasonable and Prudent Practices for Stabilization (RAPPS) (see Appendix F);
2. Comply with SPCC requirements (Appendix G) in accordance with 40 CFR Part 112;
3. Educate personnel, agents, and contractors about the requirements of the CI and this CCAA and provide direction in accordance with the Conservation Measures;
4. Comply with the USACE Nationwide 12 General Permit, where applicable;
5. Provide CEHMM with the permit from MMD, if applicable;
6. Provide CEHMM plats, mining operation plans, or other electronic media describing the New Surface Disturbance for the project; and,
7. Provide CEHMM with the mine reclamation plan.

**Zone D:** Mineral Participants shall comply with SPCC requirements (Appendix G) in accordance with 40 CFR Part 112 within Zone D. SPCC plans for Participant's New Surface Disturbance of Enrolled Properties subject to this CI will be available upon request to be used by CEHMM.

1. Provide CEHMM with the permit from NMOCD, if applicable;
2. Provide CEHMM plats, mining operation plans, or other electronic media describing the New Surface Disturbance for the project; and,
3. Provide CEHMM with the mine reclamation plan.



**Notice:** Mineral Participants shall provide notice of New Surface Disturbance and seismic activities as described in Section **XV. DEVELOPMENT PROCEDURES**. Participants will notify CEHMM:

1. Not less than 15 days in advance of New Surface Disturbance and Seismic Activities.
2. Not less than 3 days prior to commencement of New Surface Disturbance;
3. Not less than 3 days in advance, of any changes to prior notice of New Surface Disturbance; and,
4. Within 72-hours after Emergency Operations that result in New Surface Disturbance. Emergency Operations are those activities unexpectedly and urgently required to prevent or address immediate threats to human health, safety, property, the environment, or national defense or security.

#### Water Withdrawers

Water Withdrawer Participants (Water Withdrawer Participants), with the exception of agricultural and livestock species, shall not release, plant or otherwise establish or introduce exotic or invasive species, including but not limited to saltcedar (*Tamarisk* spp.), giant cane (*Arundo donax*), cheatgrass (*Bromus tectorum*), Lehmann's lovegrass (*Eragrostis lehmanniana*), Zebra Mussels (*Dreissena polymorpha*), Sheepshead minnow (*Cyprinodon variegatus variegatus*), feral pigs, or other species that may degrade habitat in the Covered Area. In addition, Water Withdrawer Participants agree to implement the following Conservation Measures:

**Zone A:** Temporarily maintain minimum streamflow and curtail pumping of surface water and groundwater that has a demonstrated direct hydrologic connection to the Black River in Zone A should the flow fall below 9.3 cfs at the USGS gauge location at the CID dam. NMDGF recommends 3 cfs (Arm et al. 2014) absolute minimum flow for the Texas Hornshell, but 9.3 cfs is based on current minimum flow as established by water withdrawers in the area. However, the Technical Working Group, following the Governance process (Section **II. GOVERNANCE**), will work with subject matter experts to determine minimum flow within five years of implementation of this CCAA and the CCA.

**Zone B:** Within the Black and Delaware rivers (excluding Zone A in each), Blue Springs, and their associated USGS 100-year floodplain:

1. Temporarily maintain minimum stream flows and cease pumping of water if minimum flow is reached. The Technical Working Group, following the Governance process (Section **II. GOVERNANCE**), will work with subject matter experts to determine minimum flow within five years of implementation of this CCAA.

**Zone C:** Ephemeral Drainages to the Black and Delaware rivers, including Owl Draw:



1. Temporarily maintain minimum stream flows and cease pumping of water if minimum flow is reached. The Technical Working Group, following the Governance process (Section II. GOVERNANCE), will work with subject matter experts to determine minimum flow within five years of implementation of this CCAA.

### Agriculture and Ranching

The Implementation Committee, with input from ranching industry Participants, will develop a grazing plan for areas near designated Life History Sites or Sensitive Habitat Areas, subject to approval by the Executive Committee. The Implementation Committee will also develop a Vegetation Plan to incrementally remove invasive species (Creosotebush, *Larrea tridentate*; Honey Mesquite, *Prosopis glandulosa*; Saltcedar, *Tamarix* spp.; Russian Olive, *Elaeagnus angustifolia*; and Tarbush, *Flourensia cernua*) and replant with native grasses, trees, or shrubs.

The Agriculture and Ranching Participants, with the exception of agricultural and livestock species, shall not release, plant or otherwise establish or introduce exotic or invasive species, including but not limited to saltcedar (*Tamarisk* spp.), giant cane (*Arundo donax*), cheatgrass (*Bromus tectorum*), Lehmann's lovegrass (*Eragrostis lehmanniana*), Zebra Mussels (*Dreissena polymorpha*), Sheepshead minnow (*Cyprinodon variegatus variegatus*), feral pigs, or other species that may degrade habitat in the Covered Area. In addition to providing CEHMM access to private lands for species monitoring and implementation of Conservation Actions, Participants shall implement the following Conservation Measures, as set forth in greater detail in each CI, to minimize adverse effects on Covered Species:

#### **Zone A:**

1. Refrain from creating any New Surface Disturbance;
2. Follow the grazing plan as agreed upon in the CI (if applicable).
3. Immediately upon receiving notice from CEHMM that flow in the Black River has dropped below minimum flow, cease pumping water from the Black River in Zone A;
4. Avoid utilizing low-water crossings when other routes are available;
5. Implement or allow the implementation of erosion control along the banks of the Black and Delaware rivers (if applicable); and,
6. Implement or allow implementation of the Vegetation Plan (if applicable).

#### **Zone B:**

1. Follow the grazing plan as agreed upon in the CI (if applicable);
2. Immediately upon receiving notice from CEHMM that flow in the Black River has dropped below minimum flow, the Participants shall limit water pumping in Zone B to the minimum amount necessary for domestic and livestock use, and to prevent crop failure;
3. Avoid utilizing low-water crossings when other routes are available;



4. Implement or allow implementation of erosion control in the 100-year floodplain;
5. Refrain from increases in current agricultural practices that could impact Zone A (e.g., increasing grazing pressure and developing new agricultural fields); and,
6. Implement or allow implementation of the Vegetation Plan (if applicable).

**Zone C:**

1. Follow the grazing plan as agreed upon in the CI (if applicable);
2. Immediately upon receiving notice from CEHMM that flow in the Black River has dropped below minimum flow, the Participants shall limit water pumping in Zone C to the minimum amount necessary for domestic and livestock use, and to prevent crop failure;
3. Avoid utilizing low-water crossings when other routes are available; and,
4. Implement or allow implementation of the Vegetation Plan (if applicable).

**Zone D:**

1. Follow the grazing plan as agreed upon in the CI (if applicable); and,
2. Implement or allow implementation of the Vegetation Plan (if applicable).

Carlsbad Irrigation District

CID owns and operates a diversion dam downstream of the Occupied Habitat in the Black River and manages irrigation canals leading to the diversion dam from the Pecos River and from the diversion dam to deliver water to CID members. In lieu of Enrollment and Habitat Conservation Fees described in this CCAA, CID's commitment will be through monitoring, communication, and cooperation, leading to greater conservation for the Covered Species.

CID agrees to implement the following Conservation Measures:

- Monitor USGS gauges within the Black River weekly;
- Report low water flows to CEHMM;
- Report fishes trapped in CID canals observed during routine inspections to CEHMM;
- With the exception of agricultural and livestock species, shall not release, plant or otherwise establish or introduce exotic or invasive species, including but not limited to saltcedar (*Tamarisk* spp.), giant cane (*Arundo donax*), cheatgrass (*Bromus tectorum*), Lehmann's lovegrass (*Eragrostis lehmanniana*), Zebra Mussels (*Dreissena polymorpha*), Sheepshead minnow (*Cyprinodon variegatus variegatus*), feral pigs, or other species that may degrade habitat in the Covered Area;
- Train CID employees on CCAA requirements and reporting any issues to CEHMM during the course of their regular job duties; and
- Assist CEHMM and FWS with getting access to CID lands with 24-48-hour notice for the purposes of monitoring, or a minimum of two weeks notice for Conservation Actions, and/or research.



## XII. PARTICIPANT NON-COMPLIANCE

This CCAA is a voluntary agreement intended to promote conservation and the implementation of conservation measures and should be administered to encourage continued participation. In the event a Participant fails to comply with a conservation measure, notifications, opportunities to take corrective actions, and opportunities to appeal in this document are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, it affords a Participant procedural protections before the Executive Committee can opt to terminate a CI, either in whole or in part.

### Response to an Immediate and Severe Threat to the Survival of the Species in the Occupied Habitat

If a Participant does not implement the required Conservation Measures, CEHMM will provide Participants notification and an opportunity to correct the deficiency. Where CEHMM determines that a deficiency represents an immediate and severe threat to the survival of the species in the Occupied Habitat, CEHMM shall notify the Participant, and require a Participant to promptly initiate corrective action to remedy the deficiency. Should a Participant fail to initiate corrective action in a reasonable time, CEHMM may issue a notice of noncompliance in the form of a Conservation Measure Violation (CMV), which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and/or the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI.

### Response to Other Deficiencies

For other cases where a deficiency does not represent an immediate and severe threat to the survival of the species in the Occupied Habitat, the appropriate response will be in accordance with the procedures described in the paragraph below. The notices, opportunities to correct, and opportunity to appeal, are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, the notices, opportunities to correct, and opportunity to appeal afford a Participant procedural protections before the Executive Committee can terminate a CI, either in whole or in part.

In the event that CEHMM determines that a Participant is failing to implement the required Conservation Measures described in the CI, the Participant will first receive courtesy notification from CEHMM and be given the opportunity to initiate corrective actions. If the Participant has not initiated corrective actions within sixty days of receipt of the informal notification, the Participant will receive a deficiency notice by mail and electronic transmission, and will also be provided an additional thirty days from receipt to correct the



deficiency. If the deficiency has not been corrected or appealed within the allotted thirty days, CEHMM may issue a notice of noncompliance in the form of a CMV, which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. The Participant will have the opportunity to appeal the CMV and deficiency notices by notifying CEHMM of their appeal by electronic transmission, formal written notification, or in person within 30 days of receipt of the notice or CMV. The Executive Committee will discuss the appeal and determine the outcome of the appeal within 60 days of receiving notification of the appeal. CEHMM will notify the Participant by mail and electronic transmission within 10 days of determination. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI. Due to the complicated nature of the Governance process of this CCAA, adequate time was given to allow issues to funnel through the Governance committees as described in Section **II. GOVERNANCE**.

### XIII. SUSPENSION AND TERMINATION

#### Suspension

Each Participant hereby agrees that CEHMM, in coordination with the FWS, can suspend any CI as it relates to some or all of the Enrolled Property identified in Exhibit A of the CI until the Habitat Conservation Fee or Enrollment Fee (if any) associated with the CI is paid. Regardless of enrollment method, the CI may be suspended with respect to a single parcel of Enrolled Property. The FWS will not authorize incidental take of Covered Species resulting from any activities occurring on Enrolled Property for which the CI is suspended.

#### Voluntary Termination

The Participant may terminate the CI in part or whole at any time but remains obligated to pay all Enrollment Fees described in Section **XIV. FUNDING AND ENROLLMENT PROCESS**. The Participant may terminate this CI by giving thirty (30) days written notice to CEHMM and FWS as to any or all of the Enrolled Property. Any funds remaining in Participant's habitat conservation fund account at the time of termination, voluntary or for cause, will be assigned to CEHMM for conservation efforts to support the Texas Hornshell and other Covered Species under this CCAA and CI, and will not be refunded. As funds can be spent on implementation of this agreement and Conservation Actions at any time, Enrollment Fees and Habitat Conservation Fees cannot be refunded.

#### Involuntary Termination

A CI may only be terminated following the process described in Section **XII. PARTICIPANT NON-COMPLIANCE**, and over a Participant's objections because of a Participant's failure to pay the Habitat Conservation Fee or for the Participant's failure to implement the Conservation Measures documented in the CI. Any funds remaining in Participant's habitat conservation fund account at the time of termination, voluntary or for cause, will be assigned to CEHMM for conservation efforts to support the Texas Hornshell and other



Covered Species under this CCAA and CI, and will not be refunded. As funds can be spent on implementation of this agreement and Conservation Actions at any time, Enrollment Fees and Habitat Conservation Fees cannot be refunded.

Voluntary or involuntary termination of the CI will relieve a Participant of any additional Habitat Conservation Fees for future New Surface Disturbance on the terminated parcels. Participants will be given notifications as described in Section **XII. PARTICIPANT NON-COMPLIANCE**.

#### XIV. FUNDING AND ENROLLMENT PROCESS

Enrollment and Habitat Conservation Fees contributed by Participants will be held and utilized by CEHMM to accomplish Conservation Actions. Under this Agreement, no funds will be exchanged between the Parties. The Implementation Committee will meet annually (and more often as needed) to develop a strategy to guide prioritization of Conservation Actions. Considerations for determining priority of Conservation Actions will include their location and the attributes of such location, such as occupancy by the Covered Species, the potential for occupancy by the Covered Species (e.g., connectivity, absence of major threats to the species) on a given site, as well as quality and quantity of suitable habitat for the Covered Species.

Only oil and gas Participants will be charged Enrollment and Habitat Conservation Fees as described below. Water Withdrawer Participants will not be assessed an Enrollment Fee, as their monetary "contribution" would come from ceasing pumping of water when minimum flow is reached. Agriculture and Ranching Participants will not be assessed an Enrollment Fee as their contribution to the agreement allows for implementation of Conservation Actions as well as providing access to private land for species monitoring.

##### Enrollment Process

Each Participant will confer with CEHMM and determine whether to enroll All Activities or on a Parcel-by-Parcel basis. The Participant will agree to the minimum Conservation Measures included in this agreement. CEHMM and the Participant may include additional Conservation Measures above and beyond the minimum contained in this agreement for inclusion in their individual CIs. The Participant will sign three original copies of the CI, which will then be signed by FWS and CEHMM. The date of the last signature will be the effective date of the CI. CEHMM will mail one original CI to the Participant, one original to FWS, and will keep the last original for its records. Electronic signatures will suffice for enrollment requirements. If electronic signatures are used, one copy of the CI will suffice, and each signatory will receive a copy of the electronic version.

##### Enrollment Fees

Except as otherwise provided in the CI for certain Participants, each Participant will be responsible for paying an Enrollment Fee for the first three years of enrollment. If the Participant opts out of the CCAA before the end of three years, the Participant is still



responsible for three years of Enrollment Fees. The Participant may choose from two enrollment options: All Activities or Parcel-by-Parcel. For the purpose of administration of the CCAA and CIs, the preferred method of enrollment is All Activities Enrollment.

If the Participant chooses the All Activities Enrollment, the Participant shall pay an Enrollment Fee of \$30,000 per year for each of the first three years of enrollment in accordance with Appendix E. This Enrollment Fee will cover enrollment of all of the Participant's property interests, including all activities and facilities, within the Covered Area. If the Participant chooses the Parcel-by-Parcel Enrollment, the Participant shall pay a base Enrollment Fee of \$3,000 per year for each of the first three years of enrollment, and any additional per acre charge in accordance with Appendix E. The Participant shall make the first payment of Enrollment Fees at the time of enrollment. The Participant shall pay the second and third Enrollment Fees on the first and second anniversaries of the CI effective date. If the Participant so chooses, the Participant may pay all three yearly Enrollment Fees at the time of enrollment. Enrollment Fees will not be required after the initial three-year period of a Participant's enrollment. CEHMM will maintain Participant's Enrollment Fees in a habitat conservation fund specific to the Participant.

If a Participant enrolls in both the CCAA and either the SLO CCAA or the CCA (or both), it need only remit a single Enrollment Fee for All Activities Enrollment or a single base Enrollment Fee, plus per-acre charges, for Parcel-by-Parcel Enrollment.

#### Habitat Conservation Fees

Unless the Participant elects to contribute in-kind services, Participants may be required to pay Habitat Conservation Fees associated with New Surface Disturbances and seismic activities in accordance with Appendix E. CEHMM will calculate Habitat Conservation Fees based on Appendix E and will maintain Habitat Conservation Fees in a habitat conservation fund specific to the Participant. CEHMM will deduct Habitat Conservation Fees from the Participant's habitat conservation fund within 30 days of receiving the 15-Day Notice. CEHMM would then provide notice, both written and by electronic transmission, to the Participant within 30 days of deducting Habitat Conservation Fees from the Participants account. This notice shall include the amount of fee deducted and the remaining balance of the habitat conservation fund. Habitat Conservation Fees would not need to be paid until Enrollment Fees and any prepaid Habitat Conservation Fees are exhausted from the habitat conservation fund. Participants may prepay more than the minimum Habitat Conservation Fees at any time at their discretion; however, prepaid funds will not satisfy the need for annual Enrollment Fees. After the initial three-year period of a Participant's enrollment, each Participant must still pay Habitat Conservation Fees for new surface disturbing activities in accordance with Appendix E.

Conducting New Surface Disturbance is at the discretion of the Participant. The Participant may elect not to conduct surface disturbing activities after the Habitat Conservation Fees have been deducted. The Participant shall provide notice to CEHMM if the proposed disturbance has been cancelled, as described above. Any New Surface Disturbance or seismic activities would reinstate the need for a 15-Day Notice to CEHMM. Within 10 days



of receiving notification of cancelled New Surface Disturbance or seismic activities from the Participant, CEHMM will refund the associated Habitat Conservation Fee to the Participant's habitat conservation fund account.

The Implementation Committee (Section II. **GOVERNANCE**) is responsible for developing and reviewing proposals for Restoration Activities, prioritizing Conservation Actions, and seeking approval for funding for the Conservation Actions that would be funded through Habitat Conservation Fees.

## XV. DEVELOPMENT PROCEDURES

No less than 15 days prior to commencing a New Surface Disturbance or seismic activities, the Participant shall consult with CEHMM to assess the potential impacts to the Covered Species and their habitat, per the descriptions in the Characterization of Management Zones, Section VII. **COVERED AREA** above. Upon request from the Participant, CEHMM will make recommendations to reduce potential impacts to the Covered Species and their habitat and to reduce potential fees for New Surface Disturbance activities proposed within the Covered Area.

The Participant will provide CEHMM with a description of the proposed New Surface Disturbance that includes:

- Survey plats, GIS shapefiles, Google Earth KML, or other appropriate documentation of proposed surface disturbing activities within the Covered Area; and
- Anticipated expected timeframe that surface disturbing activities would occur.

The Participant will also provide CEHMM with notices as follows:

- Provide notice to CEHMM not less than 15 days in advance of New Surface Disturbance and Seismic Activities to determine appropriate Habitat Conservation Fees in accordance with Appendix E;
- Provide notice to CEHMM not less than three days prior to commencement of New Surface Disturbance; and,
- Provide notice to CEHMM, not less than three days in advance, of any changes to prior notice of New Surface Disturbance.

CEHMM, in cooperation with the Participant, will complete the following:

- Review the description of the New Surface Disturbance submittal by Participants to determine it is complete;
- Conduct onsite inspections of the projects if necessary;



- Consult with the Implementation Committee and the Executive Committee as needed on New Surface Disturbance within the Covered Area to determine how proposed Participant's activities could proceed; and,
- Calculate Habitat Conservation Fees for proposed New Surface Disturbances.
- Deduct Habitat Conservation Fees from the Participant's account within 30 days of receiving notification from the Participant on surface disturbing activities; and,
- Provide notice, both written and by electronic transmission, to the Participant within 30 days of deducting Habitat Conservation Fees from the Participant's account.

## XVI. ADAPTIVE MANAGEMENT

This CCAA is based on the principles of Adaptive Management. The signatories to this CCAA agree and recognize that implementation of the Conservation Measures may change as new science emerges. The effectiveness of the Conservation Measures, monitoring methods, fee structure, and new technologies will be reviewed by the Executive Committee on an annual basis, with input from the Stakeholder Committee and the Implementation Committee. The Executive Committee will work with the Stakeholder Committee and Implementation Committee to establish a process, timeline, and roles and responsibilities for Adaptive Management. As a result, appropriate modifications to the Conservation Measures and fee structure, in accordance with Appendix E, will be incorporated to further enhance the goals of this CCAA. Such modifications may be incorporated into new CIs that take effect after the modifications have been made and to existing CIs with written agreement from the Participants. Additionally, research projects that are designed to determine the effectiveness of management practices will be encouraged and utilized to determine what Adaptive Management is necessary. Changes resulting from Adaptive Management will flow through the Governance structure and committees as described in Section II. **GOVERNANCE** of this CCAA.

## XVII. ASSURANCES PROVIDED

The FWS provides regulatory assurances to Participants through this CCAA and the associated section 10(a)(1)(A) Enhancement of Survival Permit. Consistent with 50 CFR 17.22(d)(5) and 17.32(d)(5) and the FWS' Candidate Conservation Agreement with Assurances Final Policy (64FR 32,726 (June 17, 1999)), the FWS will not require additional Conservation Measures nor impose additional land, water, or resource-use restrictions, beyond those voluntarily agreed to and described in Section **XI. CONSERVATION MEASURES** and this Section, as long as the CCAA and CIs are properly implemented. These assurances will be authorized through issuance of the Enhancement of Survival Permit, which will become effective if one or more of the Covered Species is listed in the future. As described in more detail below, these assurances also apply in the event of unforeseen circumstances. The FWS may request additional Conservation Measures but because it is voluntary on the part of CEHMM and Participants, consent of CEHMM and the affected



Participants must be in writing. The Permit, when it becomes effective, will also authorize the incidental take of the species by Participants as long as the take is consistent with the terms of this CCAA and relevant CI.

#### Assurances Provided to Participants in Case of Changed or Unforeseen Circumstances

The assurances listed below apply to Participants where the CCAA is being properly implemented.

“Changed circumstances” are those alterations in circumstances that can reasonably be anticipated and planned for in the CCAA. “Unforeseen circumstances” are changes in circumstances that could not reasonably have been anticipated by CEHMM and FWS at the time of the CCAA’s negotiation and development, and result in a substantial and adverse change in the status of the species.

*Changed circumstances provided for in the CCAA.* If additional Conservation Measures are necessary to respond to changed circumstances and the measures were set forth in this CCAA, Participants will implement the measures specified herein. Any changed circumstances would go through the Governance process as described in Section II. **GOVERNANCE** of this CCAA.

*Changed circumstances not provided for in the CCAA.* If additional Conservation Measures not provided for in the CCAA and associated CIs are necessary to respond to changed circumstances, neither FWS nor CEHMM will require any Conservation Measures for the Covered Species on Enrolled Property in addition to those provided for in the CCAA or the associated CI without the consent of the Participants, provided Participants are properly implementing the CI.

*Unforeseen circumstances.* If additional Conservation Measures are necessary to respond to unforeseen circumstances, FWS may require additional measures of the Participants, but only if such measures are limited to modifications within the CCAA’s conservation strategy for the affected species, and only if those measures maintain the original terms of the CCAA and CIs to the maximum extent possible. These additional Conservation Measures will not involve the commitment of additional land, water, financial compensation, or additional restrictions on the use of land, water, or other natural resources available for development or use under the original terms of the CCAA and associated CI without the consent of the Participant.

The FWS will demonstrate if unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the Covered Species. The FWS will consider, but are not limited to, the following factors:

- Size of the current range of the species;
- Percentage of range adversely affected by the CCAA;
- Percentage of range conserved by the CCAA;



- Ecological significance of that portion of the range affected by the CCAA;
- Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the CCAA; and,
- Whether failure to adopt additional Conservation Measures would appreciably reduce the likelihood of survival and recovery of the Covered Species in the wild.

## XVIII. DURATION OF THE CCAA AND ENHANCEMENT OF SURVIVAL PERMIT

This CCAA will have a duration of 30 years from the date of the last signature by CEHMM and FWS. It may be renewed upon application by CEHMM, provided the FWS determines that the CCAA continues to comply with the requirements of the applicable CCAA policy at the time the CCAA is approved. The CCAA will cover a Participant's Enrolled Property from the effective date of the CI until the CCAA or CI terminates, whichever occurs first.

Should the Covered Species be listed as "threatened" or "endangered," the Enhancement of Survival Permit will become effective. The Permit shall remain in effect until the CCAA's expiration date, unless it is suspended or revoked by FWS, as provided in its permitting regulations.

So long as Participants remain in compliance with the terms of their CI and this CCAA, all Participants and their Covered Activities on or associated with Enrolled Property will be covered by this Permit from its effective date until the CCAA's expiration date or the date on which a Participant terminates the CI for an Enrolled Property, whichever comes first. If a Participant terminates a CI before the second anniversary of the CI, the Participant will be required to pay the remaining Enrollment Fees as required by Section **XIV. FUNDING AND ENROLLMENT PROCESS**. Participation is also renewable with the original conservation commitment, as identified by CEHMM in the CI.

Coverage under the Enhancement of Survival Permit will only apply to Covered Activities on or associated with the Enrolled Properties in the CCAA through a CI. The Permit provides the assurances described in this CCAA and coverage for anticipated incidental take associated with the Participant's Covered Activities on or associated with Enrolled Property as long as the Participant is in compliance with the relevant CI. Incidental take authorization is also provided for third parties engaging in Covered Activities on behalf of the Participant, either on or off of the Participant's Enrolled Property, regardless of who constructs or operates the associated facilities.

## XIX. LEVEL OF INCIDENTAL TAKE

At this time the level of Take is undeterminable. As part of the CCAA, monitoring of populations will be required to determine the population status and level of incidental



Take on an annual basis. Should the Covered Species be listed under the ESA, authorization for incidental Take under the Section 10 Enhancement of Survival permit is limited to the Covered Activities by or on behalf of Participants on or associated with Enrolled Properties. The actual level of Take of Texas Hornshell or any other Covered Species is largely unquantifiable. Incidental Take could occur as a result of many activities under both agricultural use of the land and oil and gas development. The implementation of the CCAA is intended to avoid and minimize the sources of incidental Take from these activities and reduce the threats to these species.

Incidental Take could occur as a result of bank destabilization or fluctuation in river flows that modify suitable habitat to an extent that impairs or eliminates successful reproductive and recruitment activities by Texas Hornshell or other Covered Species. Some direct impacts or Take could occur from agricultural operations (e.g., grazing along the riparian areas), traffic across low water crossings, a reduction of river flows, and fish getting trapped at the CID dam. Most of these impacts are expected to be limited and sporadic in nature. Conservation benefits for Texas Hornshell and the Covered Species under the CCAA will likely accrue well beyond the duration of the conservation period, especially from habitat enhancement and protection measures. This should result in reduced impacts and incidental Take of the Covered Species. Overall, although impacts and incidental Take are expected to occur, impacts are not expected to be great enough to compromise the establishment and viability of Texas Hornshell or other Covered Species populations within the Black and Delaware rivers.

## XX. NOTIFICATION OF INCIDENTAL TAKE

The purpose of the CCAA is to provide Conservation Measures that place restrictions on activities in Occupied Habitat of the Texas Hornshell and other Covered Species. With the exception of Emergency Operations, the FWS expects that incidental Take in the form of mortality resulting from impacts from construction activities would be minimized. In the event that Take occurs as the result of Emergency Operations, the Participant implementing those operations shall inform the FWS of those circumstances and the resultant Take as soon as the Participant becomes aware of such an event.

## XXI. MONITORING AND REPORTING

CEHMM will be responsible for annual monitoring and reporting related to the CCAA. Information in annual reports will include, but not be limited to, statements concerning:

- Participants enrolled under the CCAA over the past year, including copies of the completed CI;
- Activities conducted by the Participants and how impacts to the Covered Species were minimized. Participants will not be required to submit any additional information for this report;



- Habitat management and habitat conditions in the Covered Area and on all Enrolled Properties over the past year with any identifying confidential information related to the Participant removed (see Section **XXII. CONFIDENTIALITY**), including the status of lands where the duration of conservation has expired;
- Effectiveness of habitat management activities implemented in previous years at meeting the intended conservation benefits;
- Results of monitoring, including population surveys and studies, over the past year;
- Any mortality or injury that are observed of the Covered Species over the year;
- Funds used for habitat conservation on private and state lands, including how they were used and how much are remaining; and,
- Captive-reared or translocated Texas Hornshells or other Covered Species that were released on Enrolled Properties.

Reports will be due March 1<sup>st</sup> of each year to the FWS and will be made available to Participants via email and to the public via CEHMM's website. Participants will not be required to report any additional information to CEHMM for inclusion into the report.

## XXII. CONFIDENTIALITY

The Parties to this agreement recognize that fee leasehold and mineral ownership information can be confidential and sensitive business information held and not routinely disclosed and may be exempt from disclosure under the Freedom of Information Act (FOIA), state counter-part regulation, or pursuant to a court order. Such confidential and sensitive business information includes, but is not limited to, the following:

- Maps depicting lands enrolled by an individual Participant that specifically identify the Participant;
- Information about an individual Participant's acreage position; or,
- The location of any individual Participant's Enrolled Property that references the Participant individually.

Accordingly, CEHMM shall allow access to a Participant's confidential and sensitive business information to only the FWS, employees or agents of CEHMM, and the Participant that provided the information – unless otherwise authorized in writing by the Participant. CEHMM will not authorize anyone to download, possess, or distribute the information unless otherwise authorized in writing by the Participant. The FWS and CEHMM shall take all reasonable steps to maintain the confidentiality of such information under the relevant public information laws, including instructing the FWS' and CEHMM's employees and/or agents accordingly, but shall not be responsible to the extent any information is ultimately subject to disclosure under the relevant public record laws.



If any Party to this CCAA receives a request under the Freedom of Information Act (FOIA), New Mexico Inspection of Public Records Act (IPRA), or pursuant to a court order, and has responsive documents in its possession containing confidential and sensitive business information, it will consult with the Participant that submitted the information and provide it with an opportunity to object to the information's disclosure before determining whether the information must be disclosed or is exempt from disclosure pursuant to FOIA, IPRA, or pursuant to a court order, including, but not limited to, Exemption 4 or corresponding state provisions. The FWS will redact any proprietary information within the enrollment according to FWS' FOIA guidelines. Additional information regarding the FWS' process for responding to FOIA requests for possibly confidential information is set out at 43 CFR 2.26-2.36 (2013).

### XXIII. MODIFICATION OF THE CCAA AND AMENDMENT OF THE PERMIT

Any Party to this CCAA may propose modifications or amendments to this CCAA by providing written notice to the other Party. If CEHMM is the recipient of this notice, it will forward copies to the Participants within 10 days of receipt of the notice. If CEHMM provided written notice to the other Party, it will provide such written notice to the Participants at the same time notice is provided to the other Party. Such notice shall include a description of the proposed amendment, the justification for it, and its expected results. Upon issuance of the notice, the Party proposing the amendment will coordinate a meeting or conference call between the other Party to discuss and explain the proposal. Participants will be invited to participate in this meeting or call. The Parties will respond in writing or electronic mail to proposed amendments within 60 days of receipt of such notice. After any National Environmental Policy Act (NEPA) requirements have been met, proposed amendments will become effective upon the parties' written concurrence. Approved amendments shall be dated and attached to the original CCAA.

A major amendment of the CCAA will be subject to the procedural requirements of Federal laws and regulations, such as NEPA, and to require additional analysis by the FWS, public notification in the Federal Register, and a formal CCAA amendment process. A major amendment of the CCAA is one that would result in (1) a different level or type of Take than was analyzed in association with the original CCAA or (2) a change to the cumulative conservation benefits to the Covered Species such that the CCAA standard might not be met.

In addition to amending the CCAA itself, and subject to the notice requirements of this section, the FWS may amend the Enhancement of Survival Permit associated with this CCAA in accordance with all applicable legal requirements including, but not limited to, the ESA, NEPA, and the FWS' general permitting regulations at 50 CFR parts 13 and 17, and formal FWS policy.



Amendments to the CCAA in effect at the time the Participant executes a CI may only be applied to the Participant upon its written consent; however, a CI may be amended to accommodate changes to applicable legal requirements, including but not limited to the ESA, the NEPA, and the FWS' permit regulations at 50 CFR 13 and 50 CFR 17.

## XXIV. REMEDIES

Each Party to this CCAA shall have all remedies otherwise available to enforce the terms of this CCAA and the Permit, except that no Party shall be liable in monetary damages for any breach of this CCAA, any performance or failure to perform an obligation under this CCAA, or any other cause of action arising from this CCAA.

## XXV. DISPUTE RESOLUTION

The FWS and CEHMM agree to work together and with Participants in good faith to resolve any disputes using dispute-resolution procedures agreed upon by the Parties, and when appropriate, the Participants. If there is a global issue among multiple Participants, the Stakeholder Committee and Implementation Committee will meet with the Executive Committee to discuss and resolve the issue. The Executive Committee will be responsible for determining the outcome of disputes. The Executive Committee will resolve disputes within 60 days of notification of the dispute.

## XXVI. AVAILABILITY OF FUNDS

The FWS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this CCAA will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the FWS will not be required under this CCAA to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures in writing.

## XXVII. NO THIRD-PARTY BENEFICIARIES

This CCAA does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a Party to this CCAA to maintain a suit for personal injuries or damages pursuant to the provisions of this CCAA. The duties, obligations, and responsibilities of the Parties to this CCAA, with respect to third parties, shall remain as imposed under existing law.

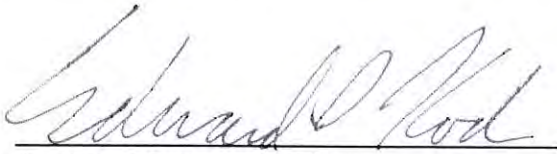
## XXVIII. RELATIONSHIP TO AUTHORITIES

The terms of this CCAA shall be governed by and construed in accordance with applicable Federal law. Nothing in this CCAA is intended to limit the authority of the FWS to fulfill its responsibilities under Federal laws. All activities undertaken pursuant to this CCAA or its associated Permit must be in compliance with all applicable local, state, and Federal laws and regulations.



XXX. SIGNATURES

IN WITNESS, WHEREOF, THE PARTIES HERETO have, as of the last signature below, executed this CCAA to be in effect as of the date of the last signature. The CCAA may be executed in one or more counterparts, all of which shall be considered an original.



Assistant Regional Director  
U.S. Fish and Wildlife Service, Southwest Region

10/13/17  
Date

  
\_\_\_\_\_  
Director  
Center of Excellence

04 Oct. 2017  
Date



## XXXI. LITERATURE CITED

- Arm, J., T. Carlin, N. Kahal, Hm Riseley-White, and E. Ross. 2014. A Water Budget Analysis to Support Sustainable Water Management in the Black River Basin, New Mexico. Bren School of Environmental Science and Management, University of California, Santa Barbara. Special Report.
- Bean, P. T., M. G. Bean, and T. H. Bonner. 2009. Threatened fishes of the world: *Moxostoma congestum* (Baird and Girard, 1854) (Catostomidae). *Environmental Biology of Fishes* 85: 173-174.
- Boyer, D. G. 1986. Differences in produced water contaminants from oil and gas operations in New Mexico-implications for regulatory action. Pp. 291-316, *In Proceedings of the Conference on Southwestern Ground Water Issues* (National Water Well Association, Publisher).
- Bureau of Land Management (BLM). 1988. Carlsbad Resource Management Plan. DOI-BLM-NM-PT-89-001-4410.
- Bureau of Land Management (BLM). 2013. Delaware River Native Aquatic Species Reestablishment Program. DOI-BLM-NM-P020-2013-324-EA.
- Bureau of Land Management (BLM). 2016. Summary Report: Incidents of Illegal Industrial Dumping in the Black River Region.
- Carman, S. M. 2007. Texas Hornshell *Popenaias popeii* Recovery Plan. New Mexico Department of Game and Fish, Conservation Services Division. Santa Fe, New Mexico.
- Degenhardt, W. G., C. W. Painter, A. H. Price. *Amphibians and Reptiles of New Mexico*. Albuquerque: University of New Mexico Press, 2005.
- Green, J. and M. W. Trett. 1989. *The fate and effects of oil in freshwater*. Elsevier Science Publishing Co., Inc. New York.
- Harris, B.L. 2010. Lake Granbury and Lake Whitney Assessment Initiative: Final Report. Texas A&M University. 113 pp.
- Hastie, L. C., P. J. Boon, M. R. Yound, and S. Way. 2001. The effects of a major flood on an endangered freshwater mussel population. *Biological Conservation* 98: 107-115.
- Hoagstrom, C. W. 2001. Historical and recent fish fauna of the lower Pecos River. In: Garrett G. P., and N. L. Allan (eds). *Aquatic fauna of the northern Chihuahua Desert*. Museum of Texas Tech University, Special Publications 46: 91-109.
- Howells, R. G. 1994. Preliminary distributional surveys of freshwater bivalves in Texas: progress report for 1992. Texas Parks and Wildlife Department, Management Data Series. 105, Austin, 16 pp.
- Howells, R. G. 2001. Status of Freshwater Mussels of the Rio Grande, with Comments on Other Bivalves. Texas Parks and Wildlife Department. Austin, Texas. 81 pp.
- Inoue, K., B. K. Land, and D. J. Berg. 2015. Past climate change drives current genetic structure of an endangered freshwater mussel species. *Molecular Ecology* 8: 1910-1926.
- Intergovernmental Panel on Climate Change (IPCC). 2013. Summary for Policymakers. In:

- Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.). Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.
- James, T. L. and A. De La Cruz. 1989. *Prymnesium parvum* Carter (Chrysophyceae) as a suspect of mass mortalities of fish and shellfish communities in western Texas. *The Texas Journal of Science* 41: 429-430.
- Jercinovic, D. E. 1982. Assessment of refined petroleum product contamination problems, in surface and ground waters of New Mexico. Water Pollution Control Bureau, New Mexico Environmental Improvement Division, EID/WPC-82/5.).
- Jercinovic, D. E. 1984. Petroleum-product contamination of soil and water in New Mexico. New Mexico Environmental Improvement Division, EID/GWH82/2.
- Karatayev, A., L.E. Burlakova, T. D. Miller, and M. F. Perrilli. 2015. Reconstructing historical range and population size of an endangered mollusc: long-term decline of *Popenaias popeii* in the Rio Grande, Texas. *Hydrobiologia*: DOI 10.1007/s10750-015-2551-3.
- Kinniburgh, F., M.G. Simonton, C. Allouch. 2015. Come heat and high water: climate risk in the southeastern U.S. and Texas. 114 pp.
- Lang, B. K. 2001. Status of the Texas Hornshell and native freshwater mussels (Unionoidea) in The Rio Grande and Pecos River of New Mexico and Texas. New Mexico Department of Game and Fish, Completion Report, E-51, submitted to the Division of Federal Aid, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.
- Levine, T. D., B. K. Lang, and David J. Berg. 2012. Physiological and ecological hosts of *Popenaias popeii* (Bivalvia: Unionidae): laboratory studies identify more host than field studies. *Freshwater Biology* 57:1854-1864.
- Loaiciga, H.A., D.A. Maignant, and J.B. Valdes. 2000. Climate-change impacts in a regional karst aquifer, Texas, U.S.A. *Journal of Hydrology* 227:173-194.
- Mace, R. E. and S. C. Wade. 2008. In hot water? How climate change may (or may not) affect Groundwater resources of Texas. *Gulf Coast Association of Geological Societies Transaction* 58:655-668.
- Manning, S. R. and J. W. LaClaire. 2010. Prymnesins: toxic metabolites of the golden alga, *Prymnesium parvum* Carter (Haptophyta). *Marine Drugs* 8: 678-704.
- Miyamoto, S., S. Anand, and W. Hatler. 2008. Hydrology, Salinity, and Salinity Control Possibilities of the Middle Pecos River: A Reconnaissance Report. Texas Water Resources Institute Technical Report TR-315.
- New Mexico Department of Game and Fish. 1996. *Wildlife Notes: Springsnails of New Mexico*. 2 pp.
- New Mexico Department of Game and Fish. 2008. *New Mexico aquatic invasive species management plan*. 107 pp.
- New Mexico Department of Game and Fish. 2014. *Threatened and Endangered Species of New Mexico. 2014 Biennial Review*. New Mexico Department of Game and Fish. Santa Fe, New Mexico.
- Ray, A.J., J.J. Barsugli, and K.B. Averyt. 2008. *Climate change in Colorado: a synthesis to*



- support water resources management and adaptation. Colorado Water Conservation Board. 58 pp.
- Sickel, J. B. 1986. *Corbicula* population mortalities: factors influencing population control. American Malacological Bulletin, Species Edition 2: 89-94.
- Taylor, R.G., B. Scanlon, P. Döll, M. Rodell, R. van Beek, Y. Wada, L. Longuevergne, M. Leblanc, J.S. Famiglietti, M. Edmunds, L. Konikow, T.R. Green, J. Chen, M. Taniguchi, M.F. P. Bierkens, A. MacDonald, Y. Fan, R.M. Maxwell, Y. Yechieli, J.J. Gurdak, D.M. Allen, M. Shamsudduha, K. Hiscock, P.J-F. Yeh, I. Holman, and H. Treidel. 2012. Ground water and climate change. Nature Climate Change 3:322-329.
- Wuebbles, D., G. Meehl, K. Hayhoe, T.R. Karl, K. Kunkel, B. Santer, M. Wehner, B. Colle, E.M. Fischer, R. Fu, A. Goodman, E. Janssen, V. Kharin, H. Lee, W. Li, L.N. Long, S.C. Olsen, Z. Pan, A. Seth, J. Sheffield, and L. Sun. 2013. CMIP5 climate 1 model analyses: climate extremes in the United States. Bulletin of the American Meteorological Society 95:571-583.

**APPENDIX A**  
**MAP OF COVERED AREA**



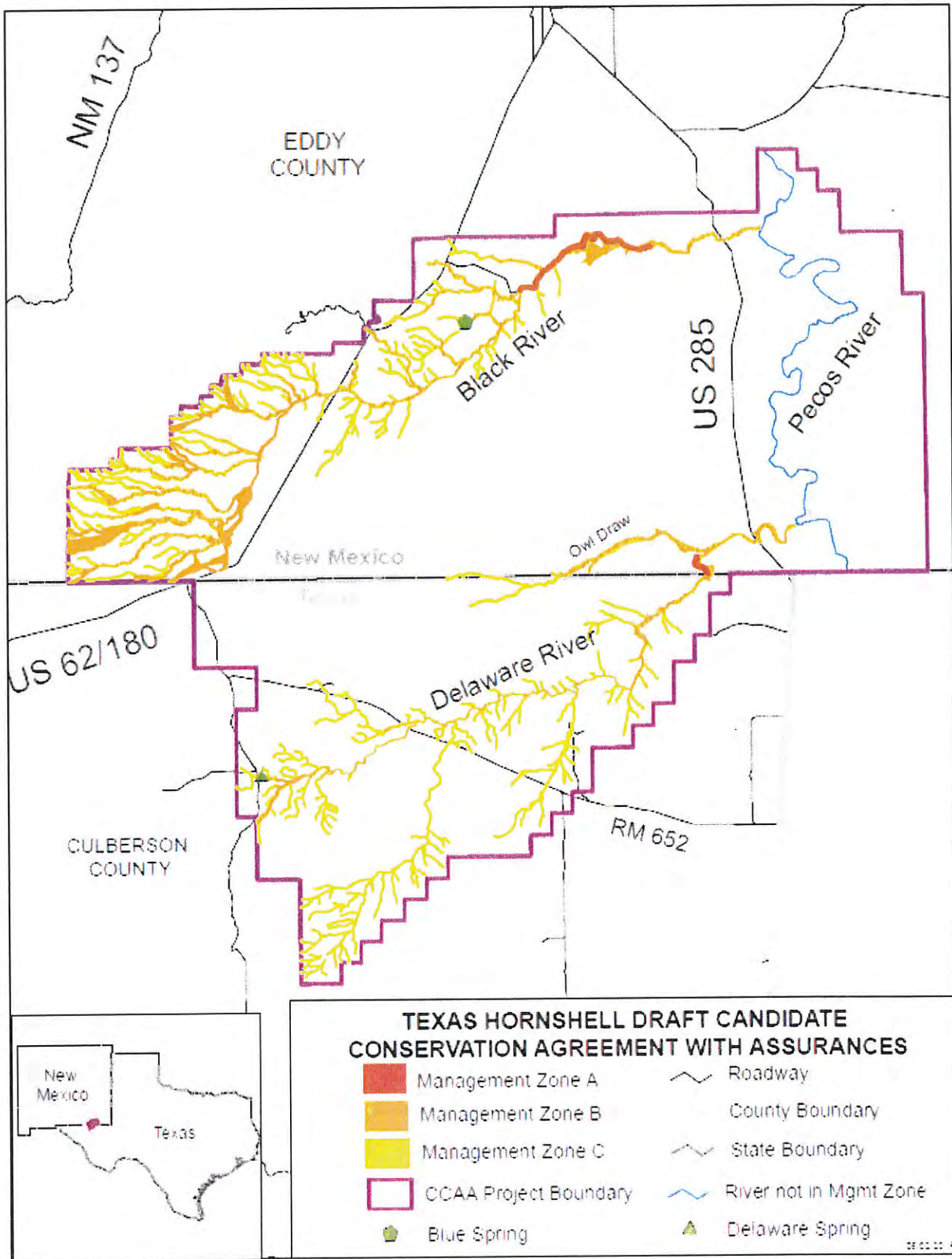
**Appendix A**  
**Map of Covered Area**

Zone A – Occupied Habitat within the Black River and Delaware River.

Zone B – The Black and Delaware rivers (excluding Zone A in each), Blue Springs, and their associated USGS 100-year floodplain.

Zone C – Ephemeral drainages to the Black and Delaware rivers, including Owl Draw.

Zone D – The area within the CCAA Boundary, not otherwise described in management zones A, B, or C.





**APPENDIX B**  
**CERTIFICATES OF INCLUSION**

**Appendix B  
Certificates of Inclusion**

**CERTIFICATE OF INCLUSION FOR OIL AND GAS OPERATORS  
in the  
Candidate Conservation Agreement with Assurances for the Texas Hornshell Mussel  
(*Popenaias popeii*) and other Covered Species**

**CI Number:** \_\_\_\_\_

This certifies that the Participant described herein is included within the scope of the attached Candidate Conservation Agreement with Assurances (CCAA) for the Texas Hornshell and other Covered Species under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531-1544. A Participant must be a Property Owner. A Property Owner, as defined by 50 CFR §17.3, is a person with a fee simple, leasehold, or property interest (including owners of water or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable state law, on non-Federal land.

The goal of the U.S. Fish and Wildlife Service (FWS), Center of Excellence (CEHMM), and the Participant is to reduce or eliminate threats to the Texas Hornshell and other Covered Species. By agreeing to conduct the Conservation Measures described herein, the FWS will provide the Participant with regulatory certainty (assurances) concerning land-use restrictions that might otherwise apply should the Texas Hornshell or other Covered Species become listed as a "threatened" or "endangered" species under the ESA.

This Certificate of Inclusion (CI) is a voluntary agreement between the FWS, CEHMM, and the Participant. Through this CI, the Participant voluntarily commits to implement or fund specific Conservation Actions that will reduce or eliminate threats to the Texas Hornshell and other Covered Species. Funds contributed as part of this CI will be used by CEHMM to manage the program and implement conservation efforts and associated activities. The funds will be directed by CEHMM to the highest priority Conservation Actions to restore or reclaim habitat as suggested by the Implementation Committee in accordance with the governance structure and process. By signing below, the Participant acknowledges that they have read and understand the CCAA and this CI. They further acknowledge that the CCAA may not be sufficient to prevent the listing of the species.

Participant's Name: \_\_\_\_\_

Address: \_\_\_\_\_



## **I. ENROLLED PROPERTY.**

By executing this CI, the Participant affirms that to the best of its knowledge it is a Property Owner of the Enrolled Property as defined by 50 CFR §17.3, which provides that a Property Owner for these purposes is a person or entity with a fee simple, leasehold, or property interest (including owners of water or other natural resources), sufficient to carry out the Conservation Measures and any other management activities contemplated by this CI, the CCAA and the Permit, subject to applicable state law, on enrolled, non-Federal land. This CI cannot be amended without the written agreement of all signatories.

### **A. Enrollment.**

Enrollment may occur by either of two options through the procedures described in section **XIV. FUNDING AND ENROLLMENT PROCESS** of the CCAA. Enrollment of property in this CI does not guarantee approval of an application to cause New Surface Disturbance by regulatory agencies (state or Federal) and subsequent approval of any permit does not guarantee adherence to the CI.

#### **1. Enrollment of All Activities within the Covered Area.**

The Participant may opt to enroll by All Activities within the Covered Area. GIS shapefiles of all Enrolled Properties on which the Participant operates must be supplied to CEHMM prior to the CI being effective. For tracking purposes, the Participant will provide an update to CEHMM of its Enrolled Properties on an annual basis, no later than October 1. Outside of this annual update, GIS shapefiles of all Enrolled Properties on which the Participant operates may be requested by CEHMM or FWS on limited occasions by special request.

#### **2. Parcel-by-Parcel Enrollment.**

If the Participant enrolls Parcel-by-Parcel, the Participant will provide a list of Enrolled Properties (leases or portions of leases) to CEHMM that includes lease number, detailed legal description, and acreage for each enrolled parcel in this CI (see Exhibit A). A GIS shapefile depicting the information is also required at enrollment.

### **B. Transfers of Enrolled Property by Participants to Third Parties.**

Participants may transfer ownership of Enrolled Property to a third party before or after a listing decision. If a Participant chooses to transfer ownership of Enrolled Property to a third party, participation in the CCAA will only continue if the transferee is a Participant or elects to become a Participant through execution of a new CI.

If the transferee is not a Participant and the Covered Species are not listed, the transferee may enroll in the CCAA as described in the Enrollment section; however, CEHMM will credit to the transferee any Enrollment Fees related to the transferred property paid by the transferor. If the transferee is not a Participant and one or more of the Covered Species are listed, the transferee may sign a new CI within 30 days of acquiring the Enrolled Property. All terms and conditions of the CCAA and CI, including any applicable Habitat Conservation

Fee schedule associated with the Enrolled Property, will be assumed by the new Participant.

New Participants may enroll either through All Activities or Parcel-by-Parcel methods of enrollment. If the new Participant enrolls via the Parcel-by-Parcel method after a listing occurs, the new Participant may not enroll additional properties that were not Enrolled Properties at the time of the listing. If the new Participant enrolls via the All Activities method, the new Participant may enroll all of its activities within the Covered Area. In each case, the new Participant must provide CEHMM with the information described in the Enrollment section (Section 1.A).

Transferors and transferees that are Participants are responsible for revising GIS shapefiles and lists of Enrolled Property to reflect transfers of Enrolled Property in annual updates provided to CEHMM in accordance with section 1.A, Enrollment.

If a Participant that enrolled via the Parcel-by-Parcel method of enrollment transfers ownership of Enrolled Property before three years of Enrollment Fees are paid and the transferee does not continue participation in the CCAA, the Participant remains responsible for payment of three years of Enrollment Fees associated with the transferred parcels.

### **C. Addition and Removal of Enrolled Properties.**

This section addresses Participants' ability to add Enrolled Properties to this CI when the Participants did not acquire parcels from an existing Participant. When one Participant seeks to add Enrolled Properties received via transfer from another Participant, the Participant must follow the procedures outlined in section B, above. This section also addresses Participants' ability to remove Enrolled Properties from this CI.

#### **1. Addition and Removal of Enrolled Properties by All Activities Participants.**

Participants that enrolled via the All Activities method may add any properties to (and remove properties from) this CI at any time, including after any decision to list a Covered Species. Participants will provide an updated GIS shapefile reflecting additions or removals as part of the next annual update to CEHMM as described in section I.A, Enrollment.

#### **2. Additions to Enrolled Properties by Parcel-by-Parcel Participants.**

Participants that enrolled via the Parcel-by-Parcel method may add parcels to their lists of Enrolled Property prior to any decision to list a Covered Species. After any decision to list a Covered Species, Participants that enrolled via the Parcel-by-Parcel method cannot add parcels to their lists of Enrolled Property. Additionally, Participants that enrolled via the Parcel-by-Parcel method cannot remove parcels from their list of Enrolled Property until three years of Enrollment Fees are paid for the parcel.

If the FWS in the future develops a policy allowing enrollment of new parcels in a CCAA after listing, it will consider whether to propose an amendment to this CCAA that would



allow this CI to be amended to enroll additional property after listing, consistent with any potential criteria that may be developed if the FWS allows post-listing additions in the future. For example, if one of the Covered Species is considered listed as “threatened” or “endangered” by FWS due to publication of the listing decision in the Federal Register, but due to unforeseen circumstances the species has no legal protection, enrollment of properties may be allowed until the FWS publishes a status clarification in the Federal Register.

### **3. Replacement of Enrolled Properties by Parcel-by-Parcel Participants.**

The limitations on the addition or removal of parcels to or from lists of Enrolled Property by Participants that enrolled via the Parcel-by-Parcel method described above, do not apply when a Participant replaces a parcel of Enrolled Property with an unenrolled parcel. Participants that enrolled via the Parcel-by-Parcel method may amend this CI to replace a parcel of Enrolled Property with an unenrolled parcel of equal or less acreage before or after a listing decision (“Replacement of Enrolled Properties”). Replacement of Enrolled Properties cannot increase the total number of acres of Enrolled Property described in this CI. Once a Covered Activity results in New Surface Disturbance on an Enrolled Property, the entire Enrolled Property (i.e., the entire parcel) cannot be replaced with an unenrolled parcel.

All Replacements of Enrolled Properties must be approved by FWS and CEHMM. Notification of the intent to replace any Enrolled Properties will be transmitted to CEHMM not less than 30 days prior to the replacement. The notification will include a GIS shapefile and a spreadsheet with the lease number(s), detailed legal description(s), and acreage of the parcel(s) involved.

## **II. PARTICIPANT AGREEMENT TO IMPLEMENT CONSERVATION MEASURES.**

Pursuant to Section **XIV. FUNDING AND ENROLLMENT PROCESS** of the CCAA and as further set forth in this CI, the oil and gas Participant agrees to pay Habitat Conservation Fees for CEHMM to provide for:

- The conservation of the Covered Species;
- The conservation, reclamation, and restoration of the habitat suitable or beneficial to the Covered Species; and,
- The implementation and administration of this CCAA.

Rather than paying Habitat Conservation Fees, the oil and gas Participant may elect to instead contribute in-kind services. For an in-kind service to qualify as performed in lieu of payment of a Habitat Conservation Fee, the Participant must contact CEHMM with proposed in-kind services, and CEHMM, in conjunction with FWS, must approve those actions prior to services being performed.

With the exception of agricultural and livestock species, oil and gas Participants shall not release, plant or otherwise establish or introduce exotic or invasive species, including but not limited to saltcedar (*Tamarisk* spp.), giant cane (*Arundo donax*), cheatgrass (*Bromus tectorum*), Lehmann's lovegrass (*Eragrostis lehmanniana*), Zebra Mussels (*Dreissena polymorpha*), Sheepshead minnow (*Cyprinodon variegatus variegatus*), feral pigs, or other species that may degrade habitat in the Covered Area. In addition to this and to payment of Habitat Conservation Fees or contribution of in-kind services, oil and gas Participants agree to implement the following Conservation Measures for New Surface Disturbance to avoid and minimize impacts to Covered Species.

**Zone A:** No New Surface Disturbance in Occupied Habitat within the Black River and Delaware River. A description of currently Occupied Habitat can be found in Appendix A.

**Zone B:** Within the Black and Delaware rivers (excluding Zone A in each), and Blue Springs and their associated USGS 100-year Floodplain, the Participant will exercise good faith efforts to avoid Zone B. Where the Participant cannot avoid Zone B, this CI authorizes New Surface Disturbance subject to the following:

1. The oil and gas Participant shall identify and submit to CEHMM a reason that Zone B cannot be avoided. Reasons may include, but are not limited to:
  - i. The mineral estate cannot otherwise be accessed;
  - ii. The Participant lacks surface or right-of-way access;
  - iii. Contractual or landowner restrictions;
  - iv. The mineral resource cannot be accessed utilizing proven technology reasonably available in the Permian Basin;
  - v. The potential to increase environmental impacts;
  - vi. Safety considerations;
  - vii. The project would become economically infeasible; or,
  - viii. Others, as approved by CEHMM, in conjunction with the FWS.
  
2. If Zone B cannot be avoided, the oil and gas Participant shall take the following steps to minimize the potential impacts:
  - i. Implement erosion control measures in accordance with the Reasonable and Prudent Practices for Stabilization (RAPPS)(see Appendix F);
  - ii. Comply with SPCC requirements (Appendix G) in accordance with 40 CFR Part 112;
  - iii. Comply with the United States Army Corp of Engineers (USACE) Nationwide 12 General Permit, where applicable;
  - iv. Educate personnel, agents, and contractors about the requirements of the CI and this CCAA and provide direction in accordance with the Conservation Measures. CEHMM will notify the Participant to resolve any issues with their subcontractors;
  - v. Provide CEHMM with the permit from New Mexico Oil Conservation Division (NMOCD), if applicable; and,



- vi. Provide CEHMM plats or other electronic media describing the New Surface Disturbance and exiting surface disturbance utilized for the project.

**Zone C:** Ephemeral Drainages to the Black and Delaware rivers. The oil and gas Participant will exercise good faith efforts to avoid, if feasible, obstructing or disrupting the natural flow of ephemeral drainages. If it is not feasible to avoid these areas, the Participant shall take the following steps to minimize the potential impacts:

1. Implement erosion control measures in accordance with the Reasonable and Prudent Practices for Stabilization (RAPPS) (see Appendix F);
2. Comply with SPCC requirements (Appendix G) in accordance with 40 CFR Part 112;
3. Educate personnel, agents and contractors about the requirements of the CI and this CCAA and provide direction in accordance with the Conservation Measures. CEHMM will notify the Participant to resolve any issues with their subcontractors;
4. Comply with the USACE Nationwide 12 General Permit, where applicable;
5. Provide CEHMM with the permit from NMOCD, if applicable; and,
6. Provide CEHMM plats or other electronic media describing the New Surface Disturbance for the project.

**Zone D:** CCAA Boundary requirements. Oil and gas Participants shall comply with SPCC requirements (Appendix G) in accordance with 40 CFR Part 112. SPCC plans for Participant's New Surface Disturbance of Enrolled Properties subject to this CI will be available upon request to be used by CEHMM.

1. Provide CEHMM with the permit from NMOCD, if applicable; and,
2. Provide CEHMM plats or other electronic media describing the New Surface Disturbance for the project.

**Notice:** Oil and gas Participants will provide notice of New Surface Disturbance and seismic activities as described in Section **XV. DEVELOPMENT PROCEDURES**. Participants will notify:

1. CEHMM not less than 15 days in advance of New Surface Disturbance and Seismic Activities to determine appropriate Habitat Conservation Fees in accordance with Appendix E. CEHMM will deduct the fees from the Participant's account within 30 days of receiving notification from the Participant on surface disturbing activities. CEHMM would then provide notice, both written and by electronic transmission, to the Participant within 30 days of deducting Habitat Conservation Fees from the Participant's account;
2. CEHMM not less than 3 days prior to commencement of New Surface Disturbance;

3. CEHMM, not less than 3 days in advance, of any changes to prior notice of New Surface Disturbance; and,
4. CEHMM within 72-hours after Emergency Operations that result in New Surface Disturbance. Emergency Operations are those activities unexpectedly and urgently required to prevent or address immediate threats to human health, safety, property, the environment, or national defense or security.

In the event of any inconsistencies between the Conservation Measures described above and those described in the CCAA, the terms of the CCAA controls.

### **III. ENROLLMENT FEES AND HABITAT CONSERVATION FEES.**

The Participant is responsible for paying an Enrollment Fee for the first three years this CI is in effect. If the Participant opts out of the CI before the end of three years, the Participant is still responsible for three years of Enrollment Fees. The Participant may choose from two enrollment options: All Activities or Parcel-by-Parcel. For the purpose of administration of the CCAA and CIs, the preferred method of enrollment is All Activities Enrollment.

If the Participant chooses the All Activities enrollment, the Participant shall pay the \$30,000/year Enrollment Fee for the first three years in accordance with Appendix E of the CCAA for enrollment of the Participant's land, including all activities and facilities, within the Covered Area. If the Participant chooses the Parcel-by-Parcel method of enrollment, the Participant shall pay an associated minimum Enrollment Fee of \$3,000 and any additional per acre charge in accordance with Appendix E. Participant shall make the first payment of Enrollment Fees at the time of enrollment. Participant shall pay the second and third Enrollment Fees on the first and second anniversaries of the CI effective date. If the Participant so chooses, Participant may pay all three Enrollment Fees at the time of enrollment. Participant may prepay more than the minimum Habitat Conservation Fees at any time at their discretion; however, prepaid funds will not satisfy the need for annual Enrollment Fees. Enrollment Fees will not be required after the initial three-year period of a Participant's enrollment.

After the initial three-year period of a Participant's enrollment, each Participant must still pay Habitat Conservation Fees for new surface disturbing activities in accordance with Appendix E of the CCAA. CEHMM will maintain Participants Enrollment Fees in a habitat conservation fund specific to the Participant.

Unless the Participant elects to contribute in-kind services, the Participant will pay Habitat Conservation Fees associated with New Surface Disturbances and seismic activities in accordance with Appendix E of the CCAA.

Participants will provide CEHMM with notice related to New Surface Disturbances and seismic activities as follows:



1. Not less than 15 days prior to commencement of New Surface Disturbance and seismic activities ("15-Day Notice") to calculate appropriate Habitat Conservation Fees in accordance with Appendix E;
2. Not less than 3 days prior to commencement of New Surface Disturbance and seismic activities;
3. Not less than 3 days in advance, of any modifications to prior notice of New Surface Disturbance or seismic activities;
4. Within 72-hours after Emergency Operations that result in New Surface Disturbance. CEHMM will notify the FWS of any incidental take resulting from Emergency Operations; and,
5. At Participant's convenience, cancellation of the proposed New Surface Disturbances and seismic activities.

CEHMM will calculate Habitat Conservation Fees based on Appendix E and will maintain Habitat Conservation Fees in a habitat conservation fund specific to the Participant. CEHMM will deduct Habitat Conservation Fees from the Participant's habitat conservation fund within 30 days of receiving the 15-Day Notice. CEHMM would then provide notice, both written and by electronic transmission, to the Participant within 30 days of deducting Habitat Conservation Fees from the Participants account. This notice shall include the amount of fee deducted and the remaining balance of the habitat conservation fund. Habitat Conservation Fees would not need to be paid until Enrollment Fees and any prepaid Habitat Conservation Fees are exhausted from the habitat conservation fund.

Conducting New Surface Disturbance is at the discretion of the Participant. The Participant may elect not to conduct surface disturbing activities after the Habitat Conservation Fees have been deducted. The Participant shall provide notice to CEHMM if the proposed disturbance has changed or has been cancelled, as described above. Any New Surface Disturbance or seismic activities would reinstate the need for a 15-Day Notice to CEHMM. Within 10 days of receiving notification of cancelled New Surface Disturbance or seismic activities from the Participant, CEHMM will refund the associated Habitat Conservation Fee to the Participant's habitat conservation fund account.

#### **IV. HABITAT CONSERVATION ACCOUNT FUNDS.**

Habitat Conservation Fees generated from New Surface Disturbance on Enrolled Property, and for off-Enrolled Property activities needed to develop the Enrolled Property, will be debited from funds paid into the habitat conservation fund account under this CI within 30 working days after receiving notification of New Surface Disturbance from the Participant.

#### **V. PARTICIPANT NON-COMPLIANCE.**

The CCAA is a voluntary agreement intended to promote conservation, and the implementation of Conservation Measures and should be administered to encourage continued participation. In the event a Participant fails to comply with a Conservation Measure, notifications, opportunities to take corrective actions, and opportunities to appeal in this document are intended to encourage continued participation in the CCAA and

compliance with its terms. Additionally, it affords a Participant procedural protections before the Executive Committee can opt to terminate a CI, either in whole or in part.

#### Response to an Immediate and Severe Threat to the Survival of the Species in the Occupied Habitat

If a Participant does not implement the required Conservation Measures, CEHMM will provide Participants notification and an opportunity to correct the deficiency. Where CEHMM determines that a deficiency represents an immediate and severe threat to the survival of the species in the Occupied Habitat, CEHMM shall notify the Participant, and require a Participant to promptly initiate corrective action to remedy the deficiency. Should a Participant fail to initiate corrective action in a reasonable time, CEHMM may issue a notice of noncompliance in the form of a Conservation Measure Violation (CMV), which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and/or the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI.

#### Response to Other Deficiencies

For other cases where a deficiency does not represent an immediate and severe threat to the survival of the species in the Occupied Habitat, the appropriate response will be in accordance with the procedures described in the paragraph below. The notices, opportunities to correct, and opportunity to appeal, are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, the notices, opportunities to correct, and opportunity to appeal afford a Participant procedural protections before the Executive Committee can terminate a CI, either in whole or in part.

In the event that CEHMM determines that a Participant is failing to implement the required Conservation Measures described in the CI, the Participant will first receive courtesy notification from CEHMM and be given the opportunity to initiate corrective actions. If the Participant has not initiated corrective actions within sixty days of receipt of the informal notification, the Participant will receive a deficiency notice by mail and electronic transmission, and will also be provided an additional thirty days from receipt to correct the deficiency. If the deficiency has not been corrected or appealed within the allotted thirty days, CEHMM may issue a notice of noncompliance in the form of a CMV, which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. The Participant will have the opportunity to appeal the CMV and deficiency notices by notifying CEHMM of their appeal by electronic transmission, formal written notification, or in person within 30 days of



receipt of the notice or CMV. The Executive Committee will discuss the appeal and determine the outcome of the appeal within 60 days of receiving notification of the appeal. CEHMM will notify the Participant by mail and electronic transmission within 10 days of determination. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI. Due to the complicated nature of the Governance process of this CCAA, adequate time was given to allow issues to funnel through the Governance committees as described in Section **II. GOVERNANCE**.

## **VI. SUSPENSION AND TERMINATION.**

### Suspension

Each Participant hereby agrees that CEHMM, in coordination with the FWS, can suspend any CI as it relates to some or all of the Enrolled Property identified in Exhibit A of the CI until the Habitat Conservation Fee or Enrollment Fee (if any) associated with the CI is paid. Regardless of enrollment method, the CI may be suspended with respect to a single parcel of Enrolled Property. The FWS will not authorize incidental take of Covered Species resulting from any activities occurring on Enrolled Property for which the CI is suspended.

### Voluntary Termination

The Participant may terminate the CI in part or whole at any time but remains obligated to pay all Enrollment Fees described in Section **XIV. FUNDING AND ENROLLMENT PROCESS** of the CCAA. The Participant may terminate this CI by giving thirty (30) days written notice to CEHMM and FWS as to any or all of the Enrolled Property. Any funds remaining in Participant's habitat conservation fund account at the time of termination, voluntary or for cause, will be assigned to CEHMM for conservation efforts to support the Texas Hornshell and other Covered Species under this CCAA and CI, and will not be refunded. As funds can be spent on implementation of this agreement and Conservation Actions at any time, Enrollment Fees and Habitat Conservation Fees cannot be refunded.

### Involuntary Termination

A CI may only be terminated following the process described in Section **XII. PARTICIPANT NON-COMPLIANCE** of the CCAA, and over a Participant's objections because of a Participant's failure to pay the Habitat Conservation Fee or for the Participant's failure to implement the Conservation Measures documented in the CI. Any funds remaining in Participant's habitat conservation fund account at the time of termination, voluntary or for cause, will be assigned to CEHMM for conservation efforts to support the Texas Hornshell and other Covered Species under this CCAA and CI, and will not be refunded. As funds can be spent on implementation of this agreement and Conservation Actions at any time, Enrollment Fees and Habitat Conservation Fees cannot be refunded.

Voluntary or involuntary termination of the CI will relieve a Participant of any additional Habitat Conservation Fees for future New Surface Disturbance on the terminated parcels. Participants will be given notifications as described in Section **XII. PARTICIPANT NON-COMPLIANCE** of the CCAA.

#### **VII. PROPERTY ACCESS.**

The Participant agrees to provide access to Enrolled Property to CEHMM and the FWS, and CEHMM and the FWS agree to provide prior notice and abide by the Participant's site visitation policies as provided in Exhibit E, under Section **X. RESPONSIBILITIES OF THE PARTIES** of the CCAA.

#### **VIII. NO WAIVER.**

The Participant, by entering into this CI, does not concede its agreement with, or endorsement of, any underlying studies and conclusions in the CCAA. Further, the Participant does not waive any legal rights or remedies that may exist outside of this CI. The Participant is also not responsible for work being accomplished by the FWS, CEHMM, or any third parties using the Participants' contributed funds.

#### **IX. RELEASE.**

If at any time any administrative or legal challenge prevents the implementation of this CI, the Participant agrees to release the United States Department of the Interior, FWS, and CEHMM from any legal claims related to and against all other Parties to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, the Participant shall be excused from its performance and shall release the signatories of the CCAA and CI from any legal claims related to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, CEHMM agrees to release the Participant from any legal claims related to this CI and CCAA. Participants' obligation to make payments of Enrollment and Habitat Conservation Fees as described in Section **XIV. FUNDING AND ENROLLMENT PROCESS** of the CCAA shall be suspended pending a final ruling if any administrative or judicial challenge prevents the implementation of the CCAA or its CIs. All funds remaining in the habitat conservation fund account will be retained by CEHMM and be used for conservation of the Covered Species.

#### **X. AMENDMENT.**

Any changes to the CCAA in effect at the time the Participant executes this CI may only be applied to the Participant upon its written consent. This CI may be amended with the written consent of each of the Parties hereto. The Parties agree to process requests for amendments in a timely manner. This CI may also be amended to accommodate changes to applicable legal requirements, including but not limited to the ESA, the NEPA, and the FWS' permit regulations at 50 CFR 13 and 50 CFR 17.



## **XI. MULTIPLE ORIGINALS.**

The Participant will sign three original copies of the CI, which will then be signed by FWS and CEHMM. The date of the last signature will be the effective date of the CI. CEHMM will mail one original CI to the Participant, one original to FWS, and will keep the last original for their records. Electronic signatures will suffice for enrollment requirements. If electronic signatures are used, one copy of the CI will suffice, and each signatory will receive a copy of the electronic version.

## **XII. CONFIDENTIALITY.**

The Parties to this agreement recognize that fee leasehold and mineral ownership information is confidential and sensitive business information held and not routinely disclosed and may be exempt from disclosure under the Freedom of Information Act (FOIA), state counter-part regulation, or pursuant to a court order. Such confidential and sensitive business information includes, but is not limited to, the following:

- Maps depicting lands enrolled by an individual Participant that specifically identify the Participant;
- Information about an individual Participant's acreage position; or,
- The location of any individual Participant's Enrolled Property that references the Participant individually.

Accordingly, CEHMM shall allow access to a Participant's confidential and sensitive business information to only the FWS, employees or agents of CEHMM, and the Participant that provided the information – unless otherwise authorized in writing by the Participant. CEHMM will not authorize anyone to download, possess, or distribute the information unless otherwise authorized in writing by the Participant. The FWS and CEHMM shall take all reasonable steps to maintain the confidentiality of such information under the relevant public information laws, including instructing the FWS' and CEHMM's employees and/or agents accordingly, but shall not be responsible to the extent any information is ultimately subject to disclosure under the relevant public record laws.

If any Party to this CI receives a request under the Freedom of Information Act (FOIA), New Mexico Inspection of Public Records Act (IPRA), or pursuant to a court order, and has responsive documents in its possession containing confidential and sensitive business information, it will consult with the Participant that submitted the information and provide it with an opportunity to object to the information's disclosure before determining whether the information must be disclosed or is exempt from disclosure pursuant to FOIA, IPRA, or pursuant to a court order, including, but not limited to, Exemption 4 or corresponding state provisions. The FWS will redact any proprietary information within the enrollment according to FWS' FOIA guidelines. Additional information regarding the FWS' process for responding to FOIA requests for possibly confidential information is set out at 43 CFR 2.26-2.36 (2013).

### **XIII. DISPUTE RESOLUTION.**

The FWS and CEHMM agree to work together and with Participants in good faith to resolve any disputes using dispute-resolution procedures agreed upon by the Parties, and when appropriate, the Participants. If there is a global issue among multiple Participants, the Stakeholder Committee and Technical Working Group will meet with the Executive Committee to discuss and resolve the issue. The Executive Committee will be responsible for determining the outcome of disputes. The Executive Committee will resolve disputes within 60 days of notification of the dispute.

### **XIV. NOTICE.**

Any notice permitted or required by this CI including, but not limited to, the notices described in Section **XV. DEVELOPMENT PROCEDURES** of the CCAA, shall be transmitted within any time limits described in this CI to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing.



Participant: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**USFWS**

Texas Hornshell CCAA  
USFWS-NMESFO  
2105 Osuna Road NE  
Albuquerque, New Mexico 87113  
505-346-2525 (t)  
505-346-2542 (f)

**CEHMM**

Texas Hornshell CCAA  
CEHMM  
505 N. Main Street  
Carlsbad, NM 88220  
575-885-3700 (t)  
575-885-6422 (f)

**XV. SIGNATURES.**

IN WITNESS, WHEREOF THE PARTIES HERETO have executed this Certificate of Inclusion to be in effect on the date of the last signature below. The CI may be executed in one of more counterparts, all of which shall be considered an original.

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Participant and Affiliation

Date \_\_\_\_\_



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Center of Excellence  
Douglas C. Lynn, Executive Director

Date\_\_\_\_\_

---

FWS Authorized Officer

Susan M. Millsap, New Mexico Ecological Services Field Office Supervisor

Date \_\_\_\_\_

**EXHIBIT A**  
**Property Description for Enrolled Property**

**EXHIBIT B**  
**HABITAT CONSERVATION FEES**

**EXHIBIT C**  
**IN-KIND SERVICES**

**EXHIBIT D**  
**PERMIT**

**EXHIBIT E**  
**CCAA**

**Appendix B  
Certificates of Inclusion**

**CERTIFICATE OF INCLUSION FOR SOLID MINERALS MINING INDUSTRY  
in the  
Candidate Conservation Agreement with Assurances for the Texas Hornshell Mussel  
(*Popenaias popeii*) and other Covered Species**

**CI Number: \_\_\_\_\_**

This certifies that the Participant described herein is included within the scope of the attached Candidate Conservation Agreement with Assurances (CCAA) for the Texas Hornshell and other Covered Species under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531-1544. A Participant must be a Property Owner. A Property Owner, as defined by 50 CFR §17.3, is a person with a fee simple, leasehold, or property interest (including owners of water or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable state law, on non-Federal land.

The goal of the U.S. Fish and Wildlife Service (FWS), Center of Excellence (CEHMM), and the Participant is to reduce or eliminate threats to the Texas Hornshell and other Covered Species. By agreeing to conduct the Conservation Measures described herein, the FWS will provide the Participant with regulatory certainty (assurances) concerning land-use restrictions that might otherwise apply should the Texas Hornshell or other Covered Species become listed as a “threatened” or “endangered” species under the ESA.

This Certificate of Inclusion (CI) is a voluntary agreement among the FWS, CEHMM, and the Participant. Through this CI, the Participant voluntarily commits to implement or fund specific Conservation Actions that will reduce or eliminate threats to the Texas Hornshell and other Covered Species. By signing below, the Participant acknowledges that they have read and understand the CCAA and this CI. They further acknowledge that the CCAA may not be sufficient to prevent the listing of the species.

Participant’s Name: \_\_\_\_\_

Address: \_\_\_\_\_



## **I. ENROLLED PROPERTY.**

By executing this CI, the Participant affirms that to the best of its knowledge it is a Property Owner of the Enrolled Property as defined by 50 CFR §17.3, which provides that a Property Owner for these purposes is a person or entity with a fee simple, leasehold, or property interest (including owners of water or other natural resources), sufficient to carry out the Conservation Measures and any other management activities contemplated by this CI, the CCAA and the Permit, subject to applicable state law, on enrolled, non-Federal land. This CI cannot be amended without the written agreement of all signatories.

### **A. Enrollment.**

The Participant may opt to enroll by All Activities within the Covered Area. GIS shapefiles of all Enrolled Properties on which the Participant operates must be supplied to CEHMM prior to the CI being effective. The Participant will provide an update to CEHMM of its Enrolled Properties on an annual basis, no later than October 1. Outside of this annual update, GIS shapefiles of all Enrolled Properties on which the Participant operates may be requested by CEHMM or FWS on limited occasions by special request.

### **B. Transfers of Enrolled Property by Participants to Third Parties.**

Participants may transfer ownership of Enrolled Property to a third party before or after a listing decision. If a Participant chooses to transfer ownership of Enrolled Property to a third party, participation in the CCAA will only continue if the transferee is a Participant or elects to become a Participant through execution of a new CI.

If the transferee is not a Participant and the Covered Species are not listed, the transferee may enroll in the CCAA as described in the Enrollment section. If the transferee is not a Participant and one or more of the Covered Species are listed, the transferee may sign a new CI within 30 days of acquiring the Enrolled Property. All terms and conditions of the CCAA and CI will be assumed by the new Participant.

The new Participant must provide CEHMM with the information described in the Enrollment section (Section 1.A).

Transferors, and transferees that are Participants, are responsible for revising GIS shapefiles and lists of Enrolled Property to reflect transfers of Enrolled Property in annual updates provided to CEHMM in accordance with Section 1.A, Enrollment.

### **C. Addition and Removal of Enrolled Properties.**

This section addresses Participants' ability to add Enrolled Properties to this CI when the Participants did not acquire parcels from an existing Participant. When one Participant seeks to add Enrolled Properties received via transfer from another Participant, the Participant must follow the procedures outlined in section B, above. This section also addresses Participants' ability to remove Enrolled Properties from this CI.

## **1. Addition and Removal of Enrolled Properties by All Activities Participants.**

Participants may add any properties to (and remove Enrolled Properties from) this CI at any time, including after any decision to list a Covered Species. Participants will provide an updated GIS shapefile of Enrolled Properties reflecting additions or removals as part of the next annual update to CEHMM as described in Section 1.A, Enrollment.

## **II. PARTICIPANT AGREEMENT TO IMPLEMENT CONSERVATION MEASURES.**

Solid Minerals Mining Industry (Mineral) Participants agree to implement the following Conservation Measures for New Surface Disturbance to avoid and minimize impacts to Covered Species. In addition to the Conservation Measures below, Mineral Participants, with the exception of agricultural and livestock species, shall not release, plant or otherwise establish or introduce exotic or invasive species, including but not limited to saltcedar (*Tamarisk* spp.), giant cane (*Arundo donax*), cheatgrass (*Bromus tectorum*), Lehmann's lovegrass (*Eragrostis lehmanniana*), Zebra Mussels (*Dreissena polymorpha*), Sheepshead minnow (*Cyprinodon variegatus variegatus*), feral pigs, or other species that may degrade habitat in the Covered Area.

**Zone A:** No New Surface Disturbance in Occupied Habitat within the Black River and Delaware River.

**Zone B:** The Mineral Participant shall exercise good faith efforts to avoid a New Surface Disturbance in Zone B. Where the Participant cannot avoid a project in Zone B, this CI authorizes New Surface Disturbance subject to the following conditions:

1. The Mineral Participant shall identify and submit to CEHMM a reason that Zone B cannot be avoided. CEHMM, in conjunction with the FWS, must approve the reason and the activity before the project can take place. Reasons may include, but are not limited to:
  - i. The mineral estate cannot otherwise be accessed;
  - ii. The Participant lacks surface or right-of-way access;
  - iii. Contractual or landowner restrictions;
  - iv. The mineral resource cannot be accessed utilizing proven technology reasonably available in the Permian Basin;
  - v. The potential to increase environmental impacts;
  - vi. Safety considerations;
  - vii. The project would become economically infeasible; or,
  - viii. Other reasons approved by CEHMM, in conjunction with the FWS.
  
2. The Mineral Participant shall take the following steps to minimize the potential disturbance:
  - i. Where feasible, take advantage of existing and available infrastructure and improvements;

- ii. Implement erosion control measures in accordance with the Reasonable and Prudent Practices for Stabilization (RAPPS)(see Appendix F);
- iii. Comply with Spill Prevention, Control and Countermeasures (SPCC) requirements (Appendix G) in accordance with 40 CFR Part 112;
- iv. Comply with the United States Army Corp of Engineers (USACE) Nationwide 12 General Permit, where applicable;
- v. Utilize technologies that minimize the surface disturbance (like underground borings for pipelines), where feasible;
- vi. Educate personnel, agents, and contractors about the requirements of the CI and CCAA and provide direction in accordance with the Conservation Measures;
- vii. Provide CEHMM with a copy of the permit from New Mexico Mining and Minerals Division (MMD), if applicable;
- viii. Provide CEHMM plats, mine operation plans, or other electronic media describing the New Surface Disturbance for the project; and,
- ix. Provide CEHMM with the mine reclamation plan.

**Zone C:** The Mineral Participant shall exercise good faith efforts to avoid, if feasible, obstructing or disrupting the natural flow of ephemeral drainages in Zone C. If it is not feasible to avoid these areas, the Participant shall take the following steps to minimize the potential disturbance:

- 1. Implement erosion control measures in accordance with the Reasonable and Prudent Practices for Stabilization (RAPPS) (see Appendix F);
- 2. Comply with SPCC requirements (Appendix G) in accordance with 40 CFR Part 112;
- 3. Educate personnel, agents, and contractors about the requirements of the CI and CCAA and provide direction in accordance with the Conservation Measures;
- 4. Comply with the USACE Nationwide 12 General Permit, where applicable;
- 5. Provide CEHMM with the permit from MMD, if applicable;
- 6. Provide CEHMM plats, mining operation plans, or other electronic media describing the New Surface Disturbance for the project; and,
- 7. Provide CEHMM with the mine reclamation plan.

**Zone D:** Mineral Participants shall comply with SPCC requirements (Appendix G) in accordance with 40 CFR Part 112 within Zone D. SPCC plans for Participant’s New Surface Disturbance of Enrolled Properties subject to this CI will be available upon request to be used by CEHMM.

- 1. Provide CEHMM with the permit from NMOCD, if applicable;



2. Provide CEHMM plats, mining operation plans, or other electronic media describing the New Surface Disturbance for the project; and,
3. Provide CEHMM with the mine reclamation plan.

**Notice:** Mineral Participants shall provide notice of New Surface Disturbance and seismic activities as described in Section **XV. DEVELOPMENT PROCEDURES**. Participants will notify CEHMM:

1. not less than 15 days in advance of New Surface Disturbance and Seismic Activities.
2. not less than 3 days prior to commencement of New Surface Disturbance;
3. not less than 3 days in advance, of any changes to prior notice of New Surface Disturbance; and,
4. within 72-hours after Emergency Operations that result in New Surface Disturbance. Emergency Operations are those activities unexpectedly and urgently required to prevent or address immediate threats to human health, safety, property, the environment, or national defense or security.

In the event of any inconsistencies between the Conservation Measures described above and those described in the CCAA, the terms of the CCAA controls.

### **III. Mine Operation Plans and Reclamation Plans.**

The Participant agrees to provide CEHMM with a Mine Operation Plan (MOP) and Reclamation Plan for New Surface Disturbances greater than 1 acre or if the mine is to be located in Zone B or Zone C.

### **IV. PARTICIPANT NON-COMPLIANCE.**

The CCAA is a voluntary agreement intended to promote conservation and the implementation of Conservation Measures and should be administered to encourage continued participation. In the event a Participant fails to comply with a Conservation Measure, notifications, opportunities to take corrective actions, and opportunities to appeal in this document are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, it affords a Participant procedural protections before the Executive Committee can opt to terminate a CI, either in whole or in part.

#### **Response to an Immediate and Severe Threat to the Survival of the Species in the Occupied Habitat**

If a Participant does not implement the required Conservation Measures, CEHMM will provide Participants notification and an opportunity to correct the deficiency. Where CEHMM determines that a deficiency represents an immediate and severe threat to the survival of the species in the Occupied Habitat, CEHMM shall notify the Participant, and require a Participant to promptly initiate corrective action to remedy the deficiency. Should a Participant fail to initiate corrective action in a reasonable time, CEHMM may

issue a notice of noncompliance in the form of a Conservation Measure Violation (CMV), which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and/or the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI.

#### Response to Other Deficiencies

For other cases where a deficiency does not represent an immediate and severe threat to the survival of the species in the Occupied Habitat, the appropriate response will be in accordance with the procedures described in the paragraph below. The notices, opportunities to correct, and opportunity to appeal, are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, the notices, opportunities to correct, and opportunity to appeal afford a Participant procedural protections before the Executive Committee can terminate a CI, either in whole or in part.

In the event that CEHMM determines that a Participant is failing to implement the required Conservation Measures described in the CI, the Participant will first receive courtesy notification from CEHMM and be given the opportunity to initiate corrective actions. If the Participant has not initiated corrective actions within sixty days of receipt of the informal notification, the Participant will receive a deficiency notice by mail and electronic transmission, and will also be provided an additional thirty days from receipt to correct the deficiency. If the deficiency has not been corrected or appealed within the allotted thirty days, CEHMM may issue a notice of noncompliance in the form of a CMV, which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. The Participant will have the opportunity to appeal the CMV and deficiency notices by notifying CEHMM of their appeal by electronic transmission, formal written notification, or in person within 30 days of receipt of the notice or CMV. The Executive Committee will discuss the appeal and determine the outcome of the appeal within 60 days of receiving notification of the appeal. CEHMM will notify the Participant by mail and electronic transmission within 10 days of determination. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI. Due to the complicated nature of the Governance process of this CCAA, adequate time was given to allow issues to funnel through the Governance committees as described in Section **II. GOVERNANCE**.

## **V. TERMINATION.**

### Voluntary Termination

Participant may terminate this CI by giving thirty (30) days written notice to CEHMM and FWS as to any or all of the Enrolled Property.

#### Involuntary Termination

A CI may only be involuntarily terminated following the process described in Section **XII. PARTICIPANT NON-COMPLIANCE** of the CCAA, and over a Participant's objections because of a Participant's failure implement the Conservation Measures documented in the CI.

#### **VI. PROPERTY ACCESS.**

The Participant agrees to provide access to Enrolled Property to CEHMM and the FWS, and CEHMM and the FWS agree to provide prior notice and abide by the Participant's site visitation policies as provided in Exhibit E, under Section **X. RESPONSIBILITIES OF THE PARTIES** of the CCAA.

#### **VII. NO WAIVER.**

The Participant, by entering into this CI, does not concede its agreement with, or endorsement of, any underlying studies and conclusions in the CCAA. Further, the Participant does not waive any legal rights or remedies that may exist outside of this CI. The Participant is also not responsible for work being accomplished by the FWS, CEHMM, or any third parties using the Participants' contributed funds.

#### **VIII. RELEASE.**

If at any time any administrative or legal challenge prevents the implementation of this CI, the Participant agrees to release the United States Department of the Interior, FWS, and CEHMM from any legal claims related to and against all other Parties to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, the Participant shall be excused from its performance and shall release the signatories of the CCAA and CI from any legal claims related to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, CEHMM agrees to release the Participant from any legal claims related to this CI and CCAA.

#### **IX. AMENDMENT.**

Any changes to the CCAA in effect at the time the Participant executes this CI may only be applied to the Participant upon its written consent. This CI may be amended with the written consent of each of the Parties hereto. The Parties agree to process requests for amendments in a timely manner. This CI may also be amended to accommodate changes to applicable legal requirements, including but not limited to the ESA, the NEPA, and the FWS' permit regulations at 50 CFR 13 and 50 CFR 17.



## **X. MULTIPLE ORIGINALS.**

The Participant will sign three original copies of the CI, which will then be signed by FWS and CEHMM. The date of the last signature will be the effective date of the CI. CEHMM will mail one original CI to the Participant, one original to FWS, and will keep the last original for their records. Electronic signatures will suffice for enrollment requirements. If electronic signatures are used, one copy of the CI will suffice, and each signatory will receive a copy of the electronic version.

## **XI. CONFIDENTIALITY.**

The Parties to this agreement recognize that fee leasehold and mineral ownership information is confidential and sensitive business information held and not routinely disclosed and may be exempt from disclosure under the Freedom of Information Act (FOIA), state counter-part regulation, or pursuant to a court order. Such confidential and sensitive business information includes, but is not limited to, the following:

- Maps depicting lands enrolled by an individual Participant that specifically identify the Participant;
- Information about an individual Participant's acreage position; or,
- The location of any individual Participant's Enrolled Property that references the Participant individually.

Accordingly, CEHMM shall allow access to a Participant's confidential and sensitive business information to only the FWS, employees or agents of CEHMM, and the Participant that provided the information - unless otherwise authorized in writing by the Participant. CEHMM will not authorize anyone to download, possess, or distribute the information unless otherwise authorized in writing by the Participant. The FWS and CEHMM shall take all reasonable steps to maintain the confidentiality of such information under the relevant public information laws, including instructing the FWS' and CEHMM's employees and/or agents accordingly, but shall not be responsible to the extent any information is ultimately subject to disclosure under the relevant public record laws.

If any Party to this CI receives a request under the Freedom of Information Act (FOIA), New Mexico Inspection of Public Records Act (IPRA), or pursuant to a court order, and has responsive documents in its possession containing confidential and sensitive business information, it will consult with the Participant that submitted the information and provide it with an opportunity to object to the information's disclosure before determining whether the information must be disclosed or is exempt from disclosure pursuant to FOIA, IPRA, or pursuant to a court order, including, but not limited to, Exemption 4 or corresponding state provisions. The FWS will redact any proprietary information within the enrollment according to FWS' FOIA guidelines. Additional information regarding the FWS' process for responding to FOIA requests for possibly confidential information is set out at 43 CFR 2.26-2.36 (2013).

## **XII. DISPUTE RESOLUTION.**

The FWS and CEHMM agree to work together and with Participants in good faith to resolve any disputes using dispute-resolution procedures agreed upon by the Parties, and when appropriate, the Participants. If there is a global issue among multiple Participants, the Stakeholder Committee and Technical Working Group will meet with the Executive Committee to discuss and resolve the issue. The Executive Committee will be responsible for determining the outcome of disputes. The Executive Committee will resolve disputes within 60 days of notification of the dispute.

## **XIII. NOTICE.**

Any notice permitted or required by this CI including, but not limited to, the notices described in Section **XV. DEVELOPMENT PROCEDURES** of the CCAA, shall be transmitted within any time limits described in this CI to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing.

Participant: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**USFWS** Texas Hornshell CCAA  
USFWS-NMESFO  
2105 Osuna Road NE  
Albuquerque, New Mexico 87113  
505-346-2525 (t)  
505-346-2542 (f)

**CEHMM** Texas Hornshell CCAA  
CEHMM  
505 N. Main Street  
Carlsbad, NM 88220  
575-885-3700 (t)  
575-885-6422 (f)





**XIV. SIGNATURES.**

IN WITNESS, WHEREOF THE PARTIES HERETO have executed this Certificate of Inclusion to be in effect on the date of the last signature below. The CI may be executed in on or more counterparts, all of which shall be considered an original.

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Participant and Affiliation

Date\_\_\_\_\_

---

Center of Excellence  
Douglas C. Lynn, Executive Director

Date \_\_\_\_\_



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FWS Authorized Officer  
Susan M. Millsap, New Mexico Ecological Services Field Office Supervisor

Date \_\_\_\_\_

**EXHIBIT A**  
**Property Description for Enrolled Property**

**EXHIBIT B**  
**PERMIT (if applicable)**

**EXHIBIT C**  
**Mine Operation Plan**

**EXHIBIT D**  
**Reclamation Plan**

**EXHIBIT E**  
**CCA**

**Appendix B  
Certificates of Inclusion**

**CERTIFICATE OF INCLUSION FOR WATER WITHDRAWERS  
in the  
Candidate Conservation Agreement with Assurances for the Texas Hornshell Mussel  
(*Popenaias popeii*) and other Covered Species**

**CI Number: \_\_\_\_\_**

This certifies that the Participant described herein is included within the scope of the attached Candidate Conservation Agreement with Assurances (CCAA) for the Texas Hornshell and other Covered Species under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531-1544. A Participant must be a Property Owner. A Property Owner, as defined by 50 CFR §17.3, is a person with a fee simple, leasehold, or property interest (including owners of water or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable state law, on non-Federal land.

The goal of the U.S. Fish and Wildlife Service (FWS), Center of Excellence (CEHMM), and the Participant is to reduce or eliminate threats to the Texas Hornshell and other Covered Species. By agreeing to conduct the Conservation Measures described herein, the FWS will provide the Participant with regulatory certainty (assurances) concerning land-use restrictions that might otherwise apply should the Texas Hornshell or other Covered Species become listed as a “threatened” or “endangered” species under the ESA.

This Certificate of Inclusion (CI) is a voluntary agreement between the FWS, CEHMM, and the Participant. Through this CI, the Participant voluntarily commits to implement or fund specific Conservation Actions that will reduce or eliminate threats to the Texas Hornshell and other Covered Species. By signing below, the Participant acknowledges that they have read and understand the CCAA and this CI. They further acknowledge that the CCAA may not be sufficient to prevent the listing of the species.

Participant’s Name: \_\_\_\_\_

Address: \_\_\_\_\_

## **I. ENROLLED PROPERTY.**

By executing this CI, the Participant affirms that it is a Property Owner of the Enrolled Property as defined by 50 CFR §17.3, which provides that a Property Owner for these purposes is a person or entity with a fee simple, leasehold, or property interest (including owners of water or other natural resources), sufficient to carry out the Conservation Measures and any other management activities contemplated by this CI, the CCAA and the Permit, subject to applicable state law, on enrolled, non-Federal land. This CI cannot be amended without the written agreement of all signatories.

### **A. Enrollment.**

The Participant may opt to enroll by All Activities within the Covered Area. GIS shapefiles of all Enrolled Properties on which the Participant operates must be supplied to CEHMM prior to the CI being effective. The Participant will provide an update to CEHMM of its Enrolled Properties on an annual basis, no later than October 1. Outside of this annual update, GIS shapefiles of all Enrolled Properties on which the Participant operates may be requested by CEHMM or FWS on limited occasions by special request.

### **B. Transfers of Enrolled Property by Participants to Third Parties.**

Participants may transfer ownership of Enrolled Property to a third party before or after a listing decision. If a Participant chooses to transfer ownership of Enrolled Property to a third party, participation in the CCAA will only continue if the transferee is a Participant or elects to become a Participant through execution of a new CI.

If the transferee is not a Participant and the Covered Species are not listed, the transferee may enroll in the CCAA as described in the Enrollment section. If the transferee is not a Participant and one or more of the Covered Species are listed, the transferee may sign a new CI within 30 days of acquiring the Enrolled Property. All terms and conditions of the CCAA and CI will be assumed by the new Participant.

The new Participant must provide CEHMM with the information described in the Enrollment section (Section 1.A).

Transferors, and transferees that are Participants, are responsible for revising GIS shapefiles and lists of Enrolled Property to reflect transfers of Enrolled Property in annual updates provided to CEHMM in accordance with section 1.A, Enrollment.

### **C. Addition and Removal of Enrolled Properties.**

This section addresses Participants' ability to add Enrolled Properties to this CI when the Participants did not acquire parcels from an existing Participant. When one Participant seeks to add Enrolled Properties received via transfer from another Participant, the Participant must follow the procedures outlined in section B, above. This section also addresses Participants' ability to remove Enrolled Properties from this CI.



## 1. Addition and Removal of Enrolled Properties by All Activities Participants.

Participants may add any properties to (and remove Enrolled Properties from) this CI at any time, including after any decision to list a Covered Species. Participants will provide an updated GIS shapefile of Enrolled Properties reflecting additions or removals as part of the next annual update to CEHMM as described in section I.A, Enrollment.

## **II. PARTICIPANT AGREEMENT TO IMPLEMENT CONSERVATION MEASURES.**

Water Withdrawer Participants (Water Withdrawer Participants), with the exception of agricultural and livestock species, shall not release, plant or otherwise establish or introduce exotic or invasive species, including but not limited to saltcedar (*Tamarisk* spp.), giant cane (*Arundo donax*), cheatgrass (*Bromus tectorum*), Lehmann's lovegrass (*Eragrostis lehmanniana*), Zebra Mussels (*Dreissena polymorpha*), Sheepshead minnow (*Cyprinodon variegatus variegatus*), feral pigs, or other species that may degrade habitat in the Covered Area. In addition, Water Withdrawer Participants agree to implement the following Conservation Measures:

**Zone A:** Temporarily maintain minimum streamflow and curtail pumping of surface water and groundwater that has a demonstrated direct hydrologic connection to the Black River in Zone A should the flow fall below 9.3 cfs at the USGS gauge location at the CID dam. NMDGF recommends 3 cfs (Arm et al. 2014) absolute minimum flow for the Texas Hornshell, but 9.3 cfs is based on current minimum flow as established by water withdrawers in the area. However, the Technical Working Group, following the Governance process (Section **II. GOVERNANCE** of the CCAA), will work with subject matter experts to determine minimum flow within five years of implementation of the CCAA.

**Zone B:** Within the Black and Delaware rivers (excluding Zone A in each), Blue Springs, and their associated USGS 100-year floodplain:

1. Temporarily maintain minimum stream flows and cease pumping of water if minimum flow is reached. The Technical Working Group, following the Governance process (Section **II. GOVERNANCE** of the CCAA), will work with subject matter experts to determine minimum flow within five years of implementation of the CCAA.

**Zone C:** Ephemeral Drainages to the Black and Delaware rivers, including Owl Draw:

1. Temporarily maintain minimum stream flows and cease pumping of water if minimum flow is reached. The Technical Working Group, following the Governance process (Section **II. GOVERNANCE** of the CCAA), will work with subject matter experts to determine minimum flow within five years of implementation of the CCAA.

In the event of any inconsistencies between the Conservation Measures described above and those described in the CCAA, the terms of the CCAA controls.

### **III. PARTICIPANT NON-COMPLIANCE.**

The CCAA is a voluntary agreement intended to promote conservation and the implementation of conservation measures and should be administered to encourage continued participation. In the event a Participant fails to comply with a conservation measure, notifications, opportunities to take corrective actions, and opportunities to appeal in this document are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, it affords a Participant procedural protections before the Executive Committee can opt to terminate a CI, either in whole or in part.

#### **Response to an Immediate and Severe Threat to the Survival of the Species in the Occupied Habitat**

If a Participant does not implement the required Conservation Measures, CEHMM will provide Participants notification and an opportunity to correct the deficiency. Where CEHMM determines that a deficiency represents an immediate and severe threat to the survival of the species in the Occupied Habitat, CEHMM shall notify the Participant, and require a Participant to promptly initiate corrective action to remedy the deficiency. Should a Participant fail to initiate corrective action in a reasonable time, CEHMM may issue a notice of noncompliance in the form of a Conservation Measure Violation (CMV), which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and/or the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI.

#### **Response to Other Deficiencies**

For other cases where a deficiency does not represent an immediate and severe threat to the survival of the species in the Occupied Habitat, the appropriate response will be in accordance with the procedures described in the paragraph below. The notices, opportunities to correct, and opportunity to appeal, are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, the notices, opportunities to correct, and opportunity to appeal afford a Participant procedural protections before the Executive Committee can terminate a CI, either in whole or in part.

In the event that CEHMM determines that a Participant is failing to implement the required Conservation Measures described in the CI, the Participant will first receive courtesy notification from CEHMM and be given the opportunity to initiate corrective actions. If the Participant has not initiated corrective actions within sixty days of receipt of the informal notification, the Participant will receive a deficiency notice by mail and electronic transmission, and will also be provided an additional thirty days from receipt to correct the

deficiency. If the deficiency has not been corrected or appealed within the allotted thirty days, CEHMM may issue a notice of noncompliance in the form of a CMV, which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. The Participant will have the opportunity to appeal the CMV and deficiency notices by notifying CEHMM of their appeal by electronic transmission, formal written notification, or in person within 30 days of receipt of the notice or CMV. The Executive Committee will discuss the appeal and determine the outcome of the appeal within 60 days of receiving notification of the appeal. CEHMM will notify the Participant by mail and electronic transmission within 10 days of determination. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI. Due to the complicated nature of the Governance process of this CCAA, adequate time was given to allow issues to funnel through the Governance committees as described in Section **II. GOVERNANCE**.

#### **IV. TERMINATION.**

##### **Voluntary Termination**

Participant may terminate this CI by giving thirty (30) days written notice to CEHMM and FWS as to any or all of the Enrolled Property.

##### **Involuntary Termination**

A CI may only be involuntarily terminated following the process described in Section **XII. PARTICIPANT NON-COMPLIANCE** of the CCAA, and over a Participant's objections because of a Participant's failure implement the Conservation Measures documented in the CI.

#### **V. PROPERTY ACCESS.**

The Participant agrees to provide access to Enrolled Property to CEHMM and the FWS, and CEHMM and the FWS agree to provide prior notice and abide by the Participant's site visitation policies as provided in Exhibit E, under Section **X. RESPONSIBILITIES OF THE PARTIES** of the CCAA.

#### **VI. NO WAIVER.**

The Participant, by entering into this CI, does not concede its agreement with, or endorsement of, any underlying studies and conclusions in the CCAA. Further, the Participant does not waive any legal rights or remedies that may exist outside of this CI. The Participant is also not responsible for work being accomplished by the FWS, CEHMM, or any third parties using the Participants' contributed funds.



## **VII. RELEASE.**

If at any time any administrative or legal challenge prevents the implementation of this CI, the Participant agrees to release the United States Department of the Interior, FWS, and CEHMM from any legal claims related to and against all other Parties to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, the Participant shall be excused from its performance and shall release the signatories of the CCAA and CI from any legal claims related to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, CEHMM agrees to release the Participant from any legal claims related to this CI and CCAA.

## **VIII. AMENDMENT.**

Any changes to the CCAA in effect at the time the Participant executes this CI may only be applied to the Participant upon its written consent. This CI may be amended with the written consent of each of the Parties hereto. The Parties agree to process requests for amendments in a timely manner. This CI may also be amended to accommodate changes to applicable legal requirements, including but not limited to the ESA, the NEPA, and the FWS' permit regulations at 50 CFR 13 and 50 CFR 17.

## **IX. MULTIPLE ORIGINALS.**

The Participant will sign three original copies of the CI, which will then be signed by FWS and CEHMM. The date of the last signature will be the effective date of the CI. CEHMM will mail one original CI to the Participant, one original to FWS, and will keep the last original for their records. Electronic signatures will suffice for enrollment requirements. If electronic signatures are used, one copy of the CI will suffice, and each signatory will receive a copy of the electronic version.

## **X. CONFIDENTIALITY.**

The Parties to this agreement recognize that fee leasehold and mineral ownership information is confidential and sensitive business information held and not routinely disclosed and may be exempt from disclosure under the Freedom of Information Act (FOIA), state counter-part regulation, or pursuant to a court order. Such confidential and sensitive business information includes, but is not limited to, the following:

- Maps depicting lands enrolled by an individual Participant that specifically identify the Participant;
- Information about an individual Participant's acreage position; or,
- The location of any individual Participant's Enrolled Property that references the Participant individually.

Accordingly, CEHMM shall allow access to a Participant's confidential and sensitive business information to only the FWS, employees or agents of CEHMM, and the Participant

that provided the information – unless otherwise authorized in writing by the Participant. CEHMM will not authorize anyone to download, possess, or distribute the information unless otherwise authorized in writing by the Participant. The FWS and CEHMM shall take all reasonable steps to maintain the confidentiality of such information under the relevant public information laws, including instructing the FWS' and CEHMM's employees and/or agents accordingly, but shall not be responsible to the extent any information is ultimately subject to disclosure under the relevant public record laws.

If any Party to this CI receives a request under the Freedom of Information Act (FOIA), New Mexico Inspection of Public Records Act (IPRA), or pursuant to a court order, and has responsive documents in its possession containing confidential and sensitive business information, it will consult with the Participant that submitted the information and provide it with an opportunity to object to the information's disclosure before determining whether the information must be disclosed or is exempt from disclosure pursuant to FOIA, IPRA, or pursuant to a court order, including, but not limited to, Exemption 4 or corresponding state provisions. The FWS will redact any proprietary information within the enrollment according to FWS' FOIA guidelines. Additional information regarding the FWS' process for responding to FOIA requests for possibly confidential information is set out at 43 CFR 2.26-2.36 (2013).

#### **XI. DISPUTE RESOLUTION.**

The FWS and CEHMM agree to work together and with Participants in good faith to resolve any disputes using dispute-resolution procedures agreed upon by the Parties, and when appropriate, the Participants. If there is a global issue among multiple Participants, the Stakeholder Committee and Technical Working Group will meet with the Executive Committee to discuss and resolve the issue. The Executive Committee will be responsible for determining the outcome of disputes. The Executive Committee will resolve disputes within 60 days of notification of the dispute.

#### **XII. NOTICE.**

Any notice permitted or required by this CI including, but not limited to, the notices described in Section **XV. DEVELOPMENT PROCEDURES** of the CCAA, shall be transmitted within any time limits described in this CI to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing.

Participant:

\_\_\_\_\_

Contact:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone:

\_\_\_\_\_

Fax:

\_\_\_\_\_

E-Mail:

\_\_\_\_\_

**USFWS**

Texas Hornshell CCAA  
USFWS-NMESFO  
2105 Osuna Road NE  
Albuquerque, New Mexico 87113  
505-346-2525 (t)  
505-346-2542 (f)

**CEHMM**

Texas Hornshell CCAA  
CEHMM  
505 N. Main Street  
Carlsbad, NM 88220  
575-885-3700 (t)  
575-885-6422 (f)



**XIII. SIGNATURES.**

IN WITNESS, WHEREOF THE PARTIES HERETO have executed this Certificate of Inclusion to be in effect on the date of the last signature below. The CI may be executed in on or more counterparts, all of which shall be considered an original.

\_\_\_\_\_  
Participant and Affiliation

Date \_\_\_\_\_

---

Center of Excellence  
Douglas C. Lynn, Executive Director

Date \_\_\_\_\_

---

FWS Authorized Officer  
Susan M. Millsap, New Mexico Ecological Services Field Office Supervisor

Date\_\_\_\_\_

**EXHIBIT A**  
**Property Description for Enrolled Property**

**EXHIBIT B**  
**PERMIT**

**EXHIBIT C**  
**CCAA**



**Appendix B  
Certificates of Inclusion**

**CERTIFICATE OF INCLUSION FOR AGRICULTURE AND RANCHERS  
in the  
Candidate Conservation Agreement with Assurances for the Texas Hornshell Mussel  
(*Popenaias popeii*) and other Covered Species**

**CI Number:** \_\_\_\_\_

This certifies that the Participant described herein is included within the scope of the attached Candidate Conservation Agreement (CCAA) for the Texas Hornshell and other Covered Species under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531-1544. A Participant must be a Property Owner. A Property Owner, as defined by 50 CFR §17.3, is a person with a fee simple, leasehold, or property interest (including owners of water or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable state law, on non-Federal land.

The goal of the U.S. Fish and Wildlife Service (FWS), Center of Excellence (CEHMM), and the Participant is to reduce or eliminate threats to the Texas Hornshell and other Covered Species. By agreeing to conduct the Conservation Measures described herein, the FWS will provide the Participant with regulatory certainty (assurances) concerning land-use restrictions that might otherwise apply should the Texas Hornshell or other Covered Species become listed as a "threatened" or "endangered" species under the ESA.

This Certificate of Inclusion (CI) is a voluntary agreement between the FWS, CEHMM, and the Participant. Through this CI, the Participant voluntarily commits to implement or fund specific Conservation Actions that will reduce or eliminate threats to the Texas Hornshell and other Covered Species. By signing below, the Participant acknowledges that they have read and understand the CCAA and this CI. They further acknowledge that the CCAA may not be sufficient to prevent the listing of the species.

Participant's Name: \_\_\_\_\_

Address: \_\_\_\_\_

## **I. ENROLLED PROPERTY.**

By executing this CI, the Participant affirms that to the best of its knowledge it is a Property Owner of the Enrolled Property as defined by 50 CFR §17.3, which provides that a Property Owner for these purposes is a person or entity with a fee simple, leasehold, or property interest (including owners of water or other natural resources), sufficient to carry out the Conservation Measures and any other management activities contemplated by this CI, the CCAA and the Permit, subject to applicable state law, on enrolled, non-Federal land. This CI cannot be amended without the written agreement of all signatories.

### **A. Enrollment.**

The Participant may opt to enroll All Activities within the Covered Area. GIS shapefiles of all Enrolled Properties on which the Participant operates must be supplied to CEHMM prior to the CI being effective. The Participant will provide an update to CEHMM of its Enrolled Properties on an annual basis, no later than October 1. Outside of this annual update, GIS shapefiles of all Enrolled Properties on which the Participant operates may be requested by CEHMM or FWS on limited occasions by special request.

### **B. Transfers of Enrolled Property by Participants to Third Parties.**

Participants may transfer ownership of Enrolled Property to a third party before or after a listing decision. If a Participant chooses to transfer ownership of Enrolled Property to a third party, participation in the CCAA will only continue if the transferee is a Participant or elects to become a Participant through execution of a new CI.

If the transferee is not a Participant and the Covered Species are not listed, the transferee may enroll in the CCAA as described in the Enrollment section. If the transferee is not a Participant and one or more of the Covered Species are listed, the transferee may sign a new CI within 30 days of acquiring the Enrolled Property. All terms and conditions of the CCAA and CI will be assumed by the new Participant.

The new Participant must provide CEHMM with the information described in the Enrollment section (Section 1.A).

Transferors, and transferees that are Participants, are responsible for revising GIS shapefiles and lists of Enrolled Property to reflect transfers of Enrolled Property in annual updates provided to CEHMM in accordance with section 1.A, Enrollment.

### **C. Addition and Removal of Enrolled Properties.**

This section addresses Participants' ability to add Enrolled Properties to this CI when the Participants did not acquire parcels from an existing Participant. When one Participant seeks to add Enrolled Properties received via transfer from another Participant, the Participant must follow the procedures outlined in section B, above. This section also addresses Participants' ability to remove Enrolled Properties from this CI.

## **1. Addition and Removal of Enrolled Properties by Participants.**

Participants may add any properties to (and remove Enrolled Properties from) this CI at any time, including after any decision to list a Covered Species. Participants will provide an updated GIS shapefile of Enrolled Properties reflecting additions or removals as part of the next annual update to CEHMM as described in section I.A, Enrollment.

## **II. PARTICIPANT AGREEMENT TO IMPLEMENT CONSERVATION MEASURES.**

The Agriculture and Ranching Participants (Agriculture and Ranching Participants), with the exception of agricultural and livestock species, shall not release, plant or otherwise establish or introduce exotic or invasive species, including but not limited to saltcedar (*Tamarisk* spp.), giant cane (*Arundo donax*), cheatgrass (*Bromus tectorum*), Lehmann's lovegrass (*Eragrostis lehmanniana*), Zebra Mussels (*Dreissena polymorpha*), Sheepshead minnow (*Cyprinodon variegatus variegatus*), feral pigs, or other species that may degrade habitat in the Covered Area. In addition to providing CEHMM access to private lands for species monitoring and implementation of Conservation Actions, Participants shall implement the following Conservation Measures to minimize adverse effects on Covered Species:

### **Zone A:**

1. Refrain from creating any New Surface Disturbance;
2. Follow the grazing plan as agreed upon in the CI (if applicable);
3. Immediately upon receiving notice from CEHMM that flow in the Black River has dropped below minimum flow, cease pumping water from the Black River in Zone A;
4. Avoid utilizing low-water crossings when other routes are available;
5. Implement or allow the implementation of erosion control along the banks of the Black and Delaware rivers (if applicable); and,
6. Implement or allow implementation of the Vegetation Plan (if applicable).

### **Zone B:**

1. Follow the grazing plan as agreed upon in the CI (if applicable);
2. Immediately upon receiving notice from CEHMM that flow in the Black River has dropped below minimum flow, the Participants shall limit water pumping in Zone B to the minimum amount necessary for domestic and livestock use, and to prevent crop failure;
3. Avoid utilizing low-water crossings when other routes are available;
4. Implement or allow implementation of erosion control in the 100-year floodplain;
5. Refrain from increases in current agricultural practices that could impact Zone A (e.g., increasing grazing pressure and developing new agricultural fields); and,
6. Implement or allow implementation of the Vegetation Plan (if applicable).

### **Zone C:**



1. Follow the grazing plan as agreed upon in the CI (if applicable);
2. Immediately upon receiving notice from CEHMM that flow in the Black River has dropped below minimum flow, the Participants shall limit water pumping in Zone C to the minimum amount necessary for domestic and livestock use, and to prevent crop failure;
3. Avoid utilizing low-water crossings when other routes are available; and,
4. Implement or allow implementation of the Vegetation Plan (if applicable).

**Zone D:**

1. Follow the grazing plan as agreed upon in the CI (if applicable); and,
2. Implement or allow implementation of the Vegetation Plan (if applicable).

In the event of any inconsistencies between the Conservation Measures described above and those described in the CCAA, the terms of the CCAA controls.

**III. PARTICIPANT NON-COMPLIANCE.**

The CCAA is a voluntary agreement intended to promote conservation and the implementation of conservation measures and should be administered to encourage continued participation. In the event a Participant fails to comply with a conservation measure, notifications, opportunities to take corrective actions, and opportunities to appeal in this document are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, it affords a Participant procedural protections before the Executive Committee can opt to terminate a CI, either in whole or in part.

**Response to an Immediate and Severe Threat to the Survival of the Species in the Occupied Habitat**

If a Participant does not implement the required Conservation Measures, CEHMM will provide Participants notification and an opportunity to correct the deficiency. Where CEHMM determines that a deficiency represents an immediate and severe threat to the survival of the species in the Occupied Habitat, CEHMM shall notify the Participant, and require a Participant to promptly initiate corrective action to remedy the deficiency. Should a Participant fail to initiate corrective action in a reasonable time, CEHMM may issue a notice of noncompliance in the form of a Conservation Measure Violation (CMV), which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and/or the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI.

**Response to Other Deficiencies**

For other cases where a deficiency does not represent an immediate and severe threat to the survival of the species in the Occupied Habitat, the appropriate response will be in

accordance with the procedures described in the paragraph below. The notices, opportunities to correct, and opportunity to appeal, are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, the notices, opportunities to correct, and opportunity to appeal afford a Participant procedural protections before the Executive Committee can terminate a CI, either in whole or in part.

In the event that CEHMM determines that a Participant is failing to implement the required Conservation Measures described in the CI, the Participant will first receive courtesy notification from CEHMM and be given the opportunity to initiate corrective actions. If the Participant has not initiated corrective actions within sixty days of receipt of the informal notification, the Participant will receive a deficiency notice by mail and electronic transmission, and will also be provided an additional thirty days from receipt to correct the deficiency. If the deficiency has not been corrected or appealed within the allotted thirty days, CEHMM may issue a notice of noncompliance in the form of a CMV, which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. The Participant will have the opportunity to appeal the CMV and deficiency notices by notifying CEHMM of their appeal by electronic transmission, formal written notification, or in person within 30 days of receipt of the notice or CMV. The Executive Committee will discuss the appeal and determine the outcome of the appeal within 60 days of receiving notification of the appeal. CEHMM will notify the Participant by mail and electronic transmission within 10 days of determination. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI. Due to the complicated nature of the Governance process of this CCAA, adequate time was given to allow issues to funnel through the Governance committees as described in Section **II. GOVERNANCE**.

#### **IV. TERMINATION.**

##### Voluntary Termination

Participant may terminate this CI by giving thirty (30) days written notice to CEHMM and FWS as to any or all of the Enrolled Property.

##### Involuntary Termination

A CI may only be involuntarily terminated following the process described in Section **XII. PARTICIPANT NON-COMPLIANCE** of the CCAA, and over a Participant's objections because of a Participant's failure implement the Conservation Measures documented in the CI.

#### **V. PROPERTY ACCESS.**

The Participant agrees to provide access to Enrolled Property to CEHMM and the FWS, and CEHMM and the FWS agree to provide prior notice and abide by the Participant's site visitation policies as provided in Exhibit E, under Section **X. RESPONSIBILITIES OF THE PARTIES** of the CCAA.

#### **VI. NO WAIVER.**

The Participant, by entering into this CI, does not concede its agreement with, or endorsement of, any underlying studies and conclusions in the CCAA. Further, the Participant does not waive any legal rights or remedies that may exist outside of this CI. The Participant is also not responsible for work being accomplished by the FWS, CEHMM, or any third parties using the Participants' contributed funds.

#### **VII. RELEASE.**

If at any time any administrative or legal challenge prevents the implementation of this CI, the Participant agrees to release the United States Department of the Interior, FWS, and CEHMM from any legal claims related to and against all other Parties to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, the Participant shall be excused from its performance and shall release the signatories of the CCAA and CI from any legal claims related to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, CEHMM agrees to release the Participant from any legal claims related to this CI and CCAA.

#### **VIII. AMENDMENT.**

Any changes to the CCAA in effect at the time the Participant executes this CI may only be applied to the Participant upon its written consent. This CI may be amended with the written consent of each of the Parties hereto. The Parties agree to process requests for amendments in a timely manner. This CI may also be amended to accommodate changes to applicable legal requirements, including but not limited to the ESA, the NEPA, and the FWS' permit regulations at 50 CFR 13 and 50 CFR 17.

#### **IX. MULTIPLE ORIGINALS.**

The Participant will sign three original copies of the CI, which will then be signed by FWS and CEHMM. The date of the last signature will be the effective date of the CI. CEHMM will mail one original CI to the Participant, one original to FWS, and will keep the last original for their records. Electronic signatures will suffice for enrollment requirements. If electronic signatures are used, one copy of the CI will suffice, and each signatory will receive a copy of the electronic version.

#### **X. CONFIDENTIALITY.**



The Parties to this agreement recognize that fee leasehold and mineral ownership information is confidential and sensitive business information held and not routinely disclosed and may be exempt from disclosure under the Freedom of Information Act (FOIA), state counter-part regulation, or pursuant to a court order. Such confidential and sensitive business information includes, but is not limited to, the following:

- Maps depicting lands enrolled by an individual Participant that specifically identify the Participant;
- Information about an individual Participant's acreage position; or,
- The location of any individual Participant's Enrolled Property that references the Participant individually.

Accordingly, CEHMM shall allow access to a Participant's confidential and sensitive business information to only the FWS, employees or agents of CEHMM, and the Participant that provided the information – unless otherwise authorized in writing by the Participant. CEHMM will not authorize anyone to download, possess, or distribute the information unless otherwise authorized in writing by the Participant. The FWS and CEHMM shall take all reasonable steps to maintain the confidentiality of such information under the relevant public information laws, including instructing the FWS' and CEHMM's employees and/or agents accordingly, but shall not be responsible to the extent any information is ultimately subject to disclosure under the relevant public record laws.

If any Party to this CI receives a request under the Freedom of Information Act (FOIA), New Mexico Inspection of Public Records Act (IPRA), or pursuant to a court order, and has responsive documents in its possession containing confidential and sensitive business information, it will consult with the Participant that submitted the information and provide it with an opportunity to object to the information's disclosure before determining whether the information must be disclosed or is exempt from disclosure pursuant to FOIA, IPRA, or pursuant to a court order, including, but not limited to, Exemption 4 or corresponding state provisions. The FWS will redact any proprietary information within the enrollment according to FWS' FOIA guidelines. Additional information regarding the FWS' process for responding to FOIA requests for possibly confidential information is set out at 43 CFR 2.26-2.36 (2013).

## **XI. DISPUTE RESOLUTION.**

The FWS and CEHMM agree to work together and with Participants in good faith to resolve any disputes using dispute-resolution procedures agreed upon by the Parties, and when appropriate, the Participants. If there is a global issue among multiple Participants, the Stakeholder Committee and Technical Working Group will meet with the Executive Committee to discuss and resolve the issue. The Executive Committee will be responsible for determining the outcome of disputes. The Executive Committee will resolve disputes within 60 days of notification of the dispute.

## **XII. NOTICE.**

Any notice permitted or required by this CI including, but not limited to, the notices described in Section **XV. DEVELOPMENT PROCEDURES** of the CCAA, shall be transmitted within any time limits described in this CI to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing.

Participant:

\_\_\_\_\_

Contact:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone:

\_\_\_\_\_

Fax:

\_\_\_\_\_

E-Mail:

\_\_\_\_\_

**USFWS**

Texas Hornshell CCAA  
USFWS-NMESFO  
2105 Osuna Road NE  
Albuquerque, New Mexico 87113  
505-346-2525 (t)  
505-346-2542 (f)

**CEHMM**

Texas Hornshell CCAA  
CEHMM  
505 N. Main Street  
Carlsbad, NM 88220  
575-885-3700 (t)  
575-885-6422 (f)



**XIII. SIGNATURES.**

IN WITNESS, WHEREOF THE PARTIES HERETO have executed this Certificate of Inclusion to be in effect on the date of the last signature below. The CI may be executed in on or more counterparts, all of which shall be considered an original.

\_\_\_\_\_  
Participant and Affiliation

Date \_\_\_\_\_

---

Center of Excellence  
Douglas C. Lynn, Executive Director

Date \_\_\_\_\_

---

FWS Authorized Officer  
Susan M. Millsap, New Mexico Ecological Services Field Office Supervisor

Date \_\_\_\_\_

**EXHIBIT A**  
**Property Description for Enrolled Property**

**EXHIBIT C**  
**PERMIT**

**EXHIBIT D**  
**CCAA**



**Appendix B  
Certificate of Inclusion**

**CERTIFICATE OF INCLUSION FOR CARLSBAD IRRIGATION DISTRICT  
in the  
Candidate Conservation Agreement with Assurances for the Texas Hornshell Mussel  
(*Popenaias popeii*) and other Covered Species**

**CI Number:** \_\_\_\_\_

This certifies that the Participant described herein is included within the scope of the attached Candidate Conservation Agreement with Assurances (CCAA) for the Texas Hornshell and other Covered Species under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531-1544. A Participant must be a Property Owner. A Property Owner, as defined by 50 CFR §17.3, is a person with a fee simple, leasehold, or property interest (including owners of water or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable state law, on non-Federal land.

The goal of the U.S. Fish and Wildlife Service (FWS), Center of Excellence (CEHMM), and the Participant is to reduce or eliminate threats to the Texas Hornshell and other Covered Species. By agreeing to conduct the Conservation Measures described herein, the FWS will provide Participants with regulatory certainty (assurances) concerning land-use restrictions that might otherwise apply should the Texas Hornshell or other Covered Species become listed as a "threatened" or "endangered" species under the ESA.

This Certificate of Inclusion (CI) is a voluntary agreement between the FWS, CEHMM, and the Participant. Through this CI, the Participant voluntarily commits to implement or fund specific conservation actions that will reduce or eliminate threats to the Texas Hornshell and other Covered Species. By signing below, the Participant acknowledges that they have read and understand the CCAA and this CI. They further acknowledge that the CCAA may not be sufficient to prevent the listing of the species.

Participant's Name: \_\_\_\_\_

Address: \_\_\_\_\_

## **I. ENROLLED PROPERTY.**

By executing this CI, the Participant affirms that it is a Property Owner of the Enrolled Property as defined by 50 CFR §17.3, which provides that a Property Owner for these purposes is a person or entity with a fee simple, leasehold, or property interest (including owners of water or other natural resources), sufficient to carry out the Conservation Measures and any other management activities contemplated by this CI, the CCAA and the Permit, subject to applicable state law, on enrolled, non-Federal land. This CI cannot be amended without the written agreement of all signatories.

### **A. Enrollment.**

The Participant may opt to enroll All Activities within the Covered Area. GIS shapefiles of all Enrolled Properties on which the Participant operates must be supplied to CEHMM prior to the CI being effective. Participants will provide an update to CEHMM of its Enrolled Properties on an annual basis, no later than October 1. Outside of this annual update, GIS shapefiles of all Enrolled Properties on which the Participant operates may be requested by CEHMM or FWS on limited occasions by special request.

### **B. Transfers of Enrolled Property by Participants to Third Parties.**

Participants may transfer ownership of Enrolled Property to a third party before or after a listing decision. If a Participant chooses to transfer ownership of Enrolled Property to a third party, participation in the CCAA will only continue if the transferee is a Participant or elects to become a Participant through execution of a new CI.

If the transferee is not a Participant and the Covered Species are not listed, the transferee may enroll in the CCAA as described in the Enrollment section. If the transferee is not a Participant and one or more of the Covered Species are listed, the transferee may sign a new CI within 30 days of acquiring the Enrolled Property. All terms and conditions of the CCAA and CI will be assumed by the new Participant.

The new Participant must provide CEHMM with the information described in the Enrollment section (Section 1.A).

Transferors, and transferees that are Participants, are responsible for revising GIS shapefiles and lists of Enrolled Property to reflect transfers of Enrolled Property in annual updates provided to CEHMM in accordance with section 1.A, Enrollment.

### **C. Addition and Removal of Enrolled Properties.**

This section addresses Participants' ability to add Enrolled Properties to this CI when the Participants did not acquire parcels from an existing Participant. When one Participant seeks to add Enrolled Properties received via transfer from another Participant, the Participant must follow the procedures outlined in section B, above. This section also addresses Participants' ability to remove Enrolled Properties from this CI.

## **1. Addition and Removal of Enrolled Properties by Participants.**

Participants may add Enrolled Properties to (and remove Enrolled Properties from) this CI at any time, including after any decision to list a Covered Species. Participants will provide an updated GIS shapefile of Enrolled Properties reflecting additions or removals as part of the next annual update to CEHMM as described in section I.A, Enrollment.

## **II. PARTICIPANT AGREEMENT TO IMPLEMENT CONSERVATION MEASURES.**

Participants agree to implement the Conservation Measures described below and in Section **XI. CONSERVATION MEASURES** of the CCAA.

- Monitor USGS gauges within the Black River weekly;
- Report low water flows to CEHMM;
- Report fishes trapped in CID canals observed during routine inspections to CEHMM;
- With the exception of agricultural and livestock species, shall not release, plant or otherwise establish or introduce exotic or invasive species, including but not limited to saltcedar (*Tamarisk* spp.), giant cane (*Arundo donax*), cheatgrass (*Bromus tectorum*), Lehmann's lovegrass (*Eragrostis lehmanniana*), Zebra Mussels (*Dreissena polymorpha*), Sheepshead minnow (*Cyprinodon variegatus variegatus*), feral pigs, or other species that may degrade habitat in the Covered Area;
- Train CID employees on CCAA requirements and reporting any issues to CEHMM during the course of their regular job duties; and
- Assist CEHMM and FWS with getting access to CID lands with 24-48-hour notice for the purposes of monitoring, or a minimum of two weeks notice for Conservation Actions, and/or research.

In the event of any inconsistencies between the Conservation Measures described above and those described in the CCAA, the terms of the CCAA controls.

## **III. PARTICIPANT NON-COMPLIANCE.**

The CCAA is a voluntary agreement intended to promote conservation and the implementation of conservation measures and should be administered to encourage continued participation. In the event a Participant fails to comply with a conservation measure, notifications, opportunities to take corrective actions, and opportunities to appeal in this document are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, it affords a Participant procedural protections before the Executive Committee can opt to terminate a CI, either in whole or in part.

Response to an Immediate and Severe Threat to the Survival of the Species in the Occupied Habitat



If a Participant does not implement the required Conservation Measures, CEHMM will provide Participants notification and an opportunity to correct the deficiency. Where CEHMM determines that a deficiency represents an immediate and severe threat to the survival of the species in the Occupied Habitat, CEHMM shall notify the Participant, and require a Participant to promptly initiate corrective action to remedy the deficiency. Should a Participant fail to initiate corrective action in a reasonable time, CEHMM may issue a notice of noncompliance in the form of a Conservation Measure Violation (CMV), which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and/or the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI.

#### Response to Other Deficiencies

For other cases where a deficiency does not represent an immediate and severe threat to the survival of the species in the Occupied Habitat, the appropriate response will be in accordance with the procedures described in the paragraph below. The notices, opportunities to correct, and opportunity to appeal, are intended to encourage continued participation in the CCAA and compliance with its terms. Additionally, the notices, opportunities to correct, and opportunity to appeal afford a Participant procedural protections before the Executive Committee can terminate a CI, either in whole or in part.

In the event that CEHMM determines that a Participant is failing to implement the required Conservation Measures described in the CI, the Participant will first receive courtesy notification from CEHMM and be given the opportunity to initiate corrective actions. If the Participant has not initiated corrective actions within sixty days of receipt of the informal notification, the Participant will receive a deficiency notice by mail and electronic transmission, and will also be provided an additional thirty days from receipt to correct the deficiency. If the deficiency has not been corrected or appealed within the allotted thirty days, CEHMM may issue a notice of noncompliance in the form of a CMV, which will be sent to the Participant by mail and electronic transmission (Appendix H). If unresolved, a deficiency may give rise to a single CMV across any or all three agreements, i.e., multiple unresolved CMVs may not be based on a single deficiency. The Participant will have the opportunity to appeal the CMV and deficiency notices by notifying CEHMM of their appeal by electronic transmission, formal written notification, or in person within 30 days of receipt of the notice or CMV. The Executive Committee will discuss the appeal and determine the outcome of the appeal within 60 days of receiving notification of the appeal. CEHMM will notify the Participant by mail and electronic transmission within 10 days of determination. If a Participant acquires three unresolved CMVs for this CCAA, the CCA, and the SLO CCAA, the Executive Committee may take actions, up to and including termination of some or all of the CI. Due to the complicated nature of the Governance process of this CCAA, adequate time was given to allow issues to funnel through the Governance committees as described in Section **II. GOVERNANCE**.

#### **IV. TERMINATION.**

##### **Voluntary Termination**

Participant may terminate this CI by giving thirty (30) days written notice to CEHMM and FWS as to any or all of the Enrolled Property.

##### **Involuntary Termination**

A CI may only be involuntarily terminated following the process described in Section **XII. PARTICIPANT NON-COMPLIANCE** of the CCAA, and over a Participant's objections because of a Participant's failure implement the Conservation Measures documented in the CI.

#### **V. PROPERTY ACCESS.**

The Participant agrees to provide access to Enrolled Property to CEHMM and the FWS for monitoring, Conservation Actions, or research with 24-48 hours' notice for monitoring, or a minimum of two weeks' notice for Conservation Actions or research.

#### **VI. NO WAIVER.**

The Participant, by entering into this CI, does not concede its agreement with, or endorsement of, all underlying studies and conclusions in the CCAA. Further, the Participant does not waive any legal rights or remedies that may exist outside of this CI. The Participant is also not responsible for work being accomplished by the FWS, CEHMM, or any third parties using other Participants' contributed funds.

#### **VII. RELEASE.**

If at any time any administrative or legal challenge prevents the implementation of this CI, the Participant agrees to release the United States, Department of the Interior, USFWS, and CEHMM from any legal claims related to and against all other Parties to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, the Participant shall be excused from its performance and shall release the signatories of the CCAA and CI from any legal claims related to this CI and CCAA. If at any time any administrative or legal challenge to the CCAA prevents the implementation of this CI, CEHMM agrees to release the Participant from any legal claims related to this CI and CCAA.

#### **VIII. AMENDMENT.**

Any changes to the CCAA in effect at the time the Participant executes this CI may only be applied to the Participant upon its written consent. This CI may be amended with the written consent of each of the Parties hereto. The Parties agree to process requests for

amendments in a timely manner. This CI may also be amended to accommodate changes to applicable legal requirements, including but not limited to the ESA, the NEPA, and the FWS' permit regulations at 50 CFR 13 and 50 CFR 17.

#### **IX. MULTIPLE ORIGINALS.**

The Participant will sign three original copies of the CI, which will then be signed by FWS and CEHMM. The date of the last signature will be the effective date of the CI. CEHMM will mail one original CI to the Participant, one original to FWS, and will keep the last original for their records. Electronic signatures will suffice for enrollment requirements. If electronic signatures are used, one copy of the CI will suffice, and each signatory will receive a copy of the electronic version.

#### **X. CONFIDENTIALITY.**

If any party to this CI receives a request under the Freedom of Information Act (FOIA), New Mexico Inspection of Public Records Act (IPRA), or pursuant to a court order, and has responsive documents in its possession containing such information, it will consult with the Participant that submitted the information and provide it with an opportunity to object to the information's disclosure before determining whether the information must be disclosed or is exempt from disclosure pursuant to FOIA, IPRA, or pursuant to a court order, including, but not limited to Exemption 4, or corresponding state provisions. Additional information regarding the FWS' process for responding to FOIA requests for possibly confidential information is set out at 43 CFR 2.26-2.36 (2013).

#### **XI. DISPUTE RESOLUTION.**

The FWS and CEHMM agree to work together and with Participants in good faith to resolve any disputes using dispute-resolution procedures agreed upon by the Parties, and when appropriate, the Participants. If there is a global issue among multiple Participants, the Stakeholder Committee and Technical Committee will meet with the Executive Committee to discuss and resolve the issue. The Executive Committee will be responsible for determining the outcome of disputes. The Executive Committee will resolve disputes within 60 days of notification of the dispute.

#### **XII. NOTICE.**

Any notice permitted or required by this CI including, but not limited to, the notices described in Exhibit E, Section **XV. DEVELOPMENT PROCEDURES** of the CCAA, shall be transmitted within any time limits described in this CI to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing.



Participant: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**USFWS**

Texas Hornshell CCAA  
USFWS-NMESFO  
2105 Osuna Road NE  
Albuquerque, New Mexico 87113  
505-346-2525 (t)  
505-346-2542 (f)

**CEHMM**

Texas Hornshell CCAA  
CEHMM  
505 N. Main Street  
Carlsbad, NM 88220  
575-885-3700 (t)  
575-885-6422 (f)

**XIII. SIGNATURES.**

IN WITNESS, WHEREOF THE PARTIES HERETO have executed this Certificate of Inclusion to be in effect on the date of the last signature below. The CI may be executed in on or more counterparts, all of which shall be considered an original.

---

Carlsbad Irrigation District  
Dale Ballard, Manager

Date \_\_\_\_\_

---

Center of Excellence  
Douglas C. Lynn, Executive Director

Date \_\_\_\_\_



---

FWS Authorized Officer  
Susan M. Millsap, New Mexico Ecological Services Field Office Supervisor

Date\_\_\_\_\_

**EXHIBIT A**  
**Property Description for Enrolled Property**

**EXHIBIT B**  
**PERMIT**

**EXHIBIT C**  
**CCAA**

**APPENDIX C**  
**LIST OF APPROVED IN-KIND SERVICES**

## **Appendix C**

### **List of Approved In-Kind Services**

The Participant must contact CEHMM with proposed in-kind services, and CEHMM and the FWS must approve those actions prior to services being performed.

- Revegetation along rivers with native vegetation
- Bank stabilization along rivers, i.e., plant willows, fence off river, etc. with native vegetation
- Land acquisition
- Water quality monitoring
- Installing fences along river corridors
- Water right acquisition or use of water right to benefit the Covered Species
- Abandon or move points of diversion outside the zone of influence of the river
- Contract partners for research design and activities
- Erosion control measures
- Brush control
- Woody, invasive control
- Native seed bank
- Controlled burns
- Sponsor translocation of Covered Species
- Removal and/or remediation of oil and gas facilities including, but not limited to, roads, pads, pits, pipelines, right-of-ways, and other related facilities or development
- Improve road crossings
- Data collection



**APPENDIX D**

**TABLE SHOWING THREATS AND ASSOCIATED CONSERVATION  
BENEFITS TO THE COVERED SPECIES**

**Appendix D**  
**Table Showing Threats, Associated Conservation Measures, and Benefits to the Covered Species**

| <b>Threat</b>                             | <b>Conservation Measure</b>   | <b>Stakeholder Groups</b> | <b>Anticipated Result</b>                              |
|---|---|---------------------------|--|
| Water Quality and Loss of Water Resources | SPPC requirements   | Oil and gas               | Prevent contamination                                  |
|   | Notify CEHMM within 72 hours after Emergency Operations that result in New Surface Disturbance  |                           |  |
|   | Maintain minimal stream flows and curtail/cease pumping if flows reach 9.3 cfs at the gauge located at the CID dam  | Water withdrawers         | Prevent loss of water resources                        |
|   | No New Surface Disturbance in Occupied Habitat within the Black and Delaware rivers   | All Participants          | Prevent loss of water resources                        |
| Runoff and Erosion                        | Install speed bump or lower speed limit at low water crossings  | County                    | Prevent contamination by reducing chances of accidents |
|   | RAPPS requirements  | Oil and gas               | Reduce erosion and sedimentation                       |
|   | Within the Black and Delaware rivers (excluding Zone A) and Blue Springs and their associated USGS 100-year floodplain, exercise good faith efforts to avoid Zone B |                           |  |
|   | Implement or allow implementation of the Vegetation Plan (if applicable).   | Agriculture and ranchers  |  |
|   | Follow the grazing plan as agreed upon in the CI (if applicable).   |                           |  |
|   | Refrain from creating any New Surface Disturbance in Zone A.  | All Participants          |  |
| Collection                                | None  |                           |  |
| Floods                                    | CEHMM will use funds for bank stabilization and erosion control   |                           | Prevent loss of water resources                        |
| Diminished Presence of Host               | CEHMM will use funds for the reintroduction or stocking of host species   |                           | Increase host fish                                     |

|                                 |  |                  |  |
|---------------------------------|--|------------------|--|
| Fish                            | Notify CEHMM within 72 hours after Emergency Operations that result in New Surface Disturbance | Oil and gas      | Prevent contamination, prevent loss of water resources                       |
|                                 | No New Surface Disturbance in Occupied Habitat within the Black and Delaware rivers            | All Participants | Prevent loss of water resources  |
| Competition from Exotic Species | None   |                  |  |
| Manmade Barriers                | Removal or improvement/replacement of low water crossings when funding becomes available       | County           | Allow fish passage   |
| General                         | Allow access to Enrolled Property upon appropriate notice to the Participant                   | All Participants | Allows for Conservation Actions, monitoring, and research of Covered Species |



**APPENDIX E**  
**FEE STRUCTURE**

## **Appendix E Fee Structure**

The Participant may be responsible for paying an Enrollment Fee for the first three years this CCAA and CI are in effect. If the Participant opts out of the CCAA, the Participant is still responsible for these fees. The Participant shall pay the \$30,000 Enrollment Fee for enrollment of facilities existing within the Covered Area if enrolling by the All Activities method of enrollment. The Participant may choose to enroll via the Parcel-by-Parcel method. In this case, the Participant shall pay a minimum Enrollment Fee of \$3,000 for up to 1,000 acres. For all acreage above 1,000 acres, the Participant shall pay \$3/acre. For either method of enrollment, the Participant shall make the first payment of Enrollment Fees at the time of enrollment. The Participant shall pay the second and third on the first and second anniversaries of the CCAA effective date. If the Participant so chooses, the Participant may pay all three Enrollment Fees at the time of enrollment. Enrollment Fees will not be required after the initial three-year period.

The Habitat Conservation Fee for New Surface Disturbance associated with oil and gas development activities will be calculated using the following scales. The scales also apply to third parties doing work for the Participant either on or off the Participant's Enrolled Property, regardless of who constructs or operates the associated facilities. The Participant may prepay Habitat Conservation Fees at any time at their discretion. The Participant must notify CEHMM prior to conducting any surface disturbing activities associated with this CI on or off the Enrolled Property either by the Participant or third-party subcontractors. Management zone of the New Surface Disturbance is determined by the location of the activity being developed, not actual habitat found on site.

All Habitat Conservation Fees will be adjusted once yearly by CEHMM to account for inflation or deflation. The term "Base Habitat Conservation Fee" shall refer to the values of the Habitat Conservation Fees set forth in this Exhibit. For purposes of this section, the term "CPI-U" shall refer to the Consumer Price Index for All Urban Consumers, U.S. City Average, all items less food and energy (base 1982-84=100), not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics. The Maximum Annual Inflation Increase shall be based on the percent increase between the annual average CPI-U for the calendar year that precedes the date of the adjustment ("Current CPI-U") and the annual average CPI-U for calendar year 2016 ("Base CPI-U"). The Maximum Annual Inflation Increase shall be calculated as follows:

$$\text{Maximum Annual Inflation Increase} = \text{Base Habitat Conservation Fee} \times \left( \frac{\text{Current CPI-U} - \text{Base CPI-U}}{\text{Base CPI-U}} \right)$$

Increases, if any, shall occur on the January release date of the CPI-U. The Maximum Annual Inflation Increase will reflect the most recent revision to the annual average Current CPI-U, if any. CEHMM will send Participants a notification, both electronically and by mail, each year at the time the fees are adjusted.

If the annual average CPI-U is unavailable for a calendar year, no increases will be made. If the CPI-U is discontinued entirely or unavailable for a period longer than two calendar years, CEHMM will consult with the Participant to select an appropriate alternative index.

**1) New Well Location Fees<sup>1</sup>**

| <b><u>Management Zone</u></b> | <b><u>Conservation Fee</u></b> |
|-------------------------------|--------------------------------|
| Zone A                        | Not applicable                 |
| Zone B                        | \$20,000/location              |
| Zone C                        | \$10,000/location              |
| Zone D                        | \$ 2,500/location              |

1. Includes a single well pad no larger than 3 acres, multi-well pad no larger than 5 acres, and associated access road not to exceed 1 acre. Anything larger will be considered New Surface Development Fees described below. If any portion of the project falls into a higher management zone, the charge incurred will be that of the higher management zone.

**2) New Surface Development Fees**

For other New Surface Disturbances associated with Enrolled Property, but not directly attributable to a new well pad<sup>2</sup> and associated road, including but not limited to pipelines, frac ponds, electric lines, pits, etc. the Habitat Conservation Fee will be based on the following scale:

| <b><u>Management Zone</u></b> | <b><u>Conservation Fee<sup>3</sup></u></b> |
|-------------------------------|--|
| Zone A                        | Not applicable                             |
| Zone B                        | \$7,500/acre                               |
| Zone C                        | \$2,500/acre                               |
| Zone D                        | \$1,000/acre                               |

2. Co-located wells that require an increase in the size of the existing pad will be assessed by new acres disturbed.

3. These Conservation Fees are based on the following figures. No additional amounts are owed beyond the amount of the Conservation Fees:

Lease of Water Rights.....10 acre feet = \$5,000-\$10,000

Purchase of Water Rights.....1 acre foot = \$5,500-\$10,000

Habitat Restoration (i.e., salt cedar treatment).....4 acres = \$10,000

Caliche Removal.....2-3 acres = \$10,000

Reseeding.....1 acre = \$1,000

Rebuilding Water Crossings.....Undeterminable at this time

Note: All acreage calculations will be rounded up to the next whole acre, if over 0.5 acres.

New operations on previously disturbed land (e.g., co-located new well on an existing pad or new pipeline in an existing corridor, etc.) will incur no additional Habitat Conservation

Fee, unless the area to be redisturbed has been reseeded and/or reclaimed as part of reclamation. Fees will also be assessed for any new acreage disturbed.

CEHMM will calculate area of New Surface Disturbances based on information received and/or on-the-ground observation. Should the Participant disagree with CEHMM's calculation of the area of New Surface Disturbance, the Participant has the right to challenge the estimate, provide supporting data, and meet with CEHMM and/or the FWS, if necessary. CEHMM and FWS, if participating, will have the responsibility for the final determination of the area of New Surface Disturbance.

The Habitat Conservation Fee for above-ground powerlines will be calculated using the above scale for New Surface Development. The acreage of New Surface Disturbance will be based on information found in the OCD and SLO New Surface Disturbance activities approval document provided by the Participant to CEHMM.

If New Surface Disturbance falls within two or more management zones, the amount of the Habitat Conservation Fee will reflect the amount of the New Surface Disturbance within each management zone.

**3) Fees associated with new seismic data acquisition**

| <u>Management Zone</u> | <u>3D Survey<br/>Conservation Fee</u> | <u>2D Survey<br/>Conservation Fee</u> |
|------------------------|---------------------------------------|---------------------------------------|
| Zone A                 | \$ <u>10.00</u> /acre                 | \$ <u>200.00</u> /linear mile*        |
| Zone B                 | \$ <u>7.50</u> /acre                  | \$ <u>150.00</u> /linear mile*        |
| Zone C                 | \$ <u>5.00</u> /acre                  | \$ <u>100.00</u> /linear mile*        |
| Zone D                 | \$ <u>1.50</u> /acre                  | \$ <u>25.00</u> /linear mile*         |

\*or any fraction thereof

The acquisition of seismic data on enrolled parcels may also disturb the surface of other land not enrolled in this CI. The Habitat Conservation Fee calculated for seismic activity includes disturbances occurring on both enrolled and non-enrolled land.

**Routine production operations**

Routine production operations are not considered New Surface Disturbance and will not create the obligations to pay a Habitat Conservation Fee. Routine production operations are those which do not require an agency permit or approval, and those operations that require an agency approval but do not disturb the surface.



**APPENDIX F**  
**RAPPS DOCUMENT**

**Appendix F**  
**RAPPS Document**

Participants will implement erosion control measures in accordance with the Reasonable and Prudent Practices for Stabilization (RAPPS) document. A copy of this document can be found on CEHMM's website at: <http://cehmm.org/files/1714/5951/8073/2004-04-RAPPS.pdf>.

**APPENDIX G**  
**SPCC DOCUMENT**

**Appendix G**  
**SPCC Document**

Oil and gas Participants will comply with Spill Prevention, Control and Countermeasure (SPCC) requirements in accordance with 40 CFR Part 112. A copy of this document can be found on CEHMM's website at:

<http://cehmm.org/files/6814/5951/8021/SPCCBrochure.pdf>.



**APPENDIX H**  
**CONSERVATION MEASURE VIOLATION**

## Appendix H Conservation Measure Violation

### Center of Excellence for Hazardous Materials Management (CEHMM)

#### Notice of Conservation Measure Violation

|   |                             |
|---|-----------------------------|
| Authorized Organization<br><b>CEHMM</b>             | Operator/Landowner<br>_____ |
| Address<br>505 N. Main Street<br>Carlsbad, NM 88220 | City/CP Number<br>_____     |
| Telephone<br>575-885-3700                           | Attention<br>_____          |

| Well/Site Name | API Number | Unit/Lot | Section | Township | Range | County | State |
|----------------|------------|----------|---------|----------|-------|--------|-------|
|                |            |          |         |          |       |        |       |
|                |            |          |         |          |       |        |       |
|                |            |          |         |          |       |        |       |

The following condition(s) were found by CEHMM on the date and at the site(s) listed above

| Date | Time<br>(24-hour msk) | Inspector | Corrective Action to be Completed by | Date Corrected |
|------|-----------------------|-----------|--------------------------------------|----------------|
|      |                       |           |                                      |                |

Description of Conservation Measure violation with Corrective Action

When the Written Order is complied with, sign this notice and return to the above address.

|                              |             |
|------------------------------|-------------|
| Company Representative _____ | Title _____ |
| Address _____                | Phone _____ |
| Signature _____              | Date _____  |
| Company Comments _____       |             |

#### Warning

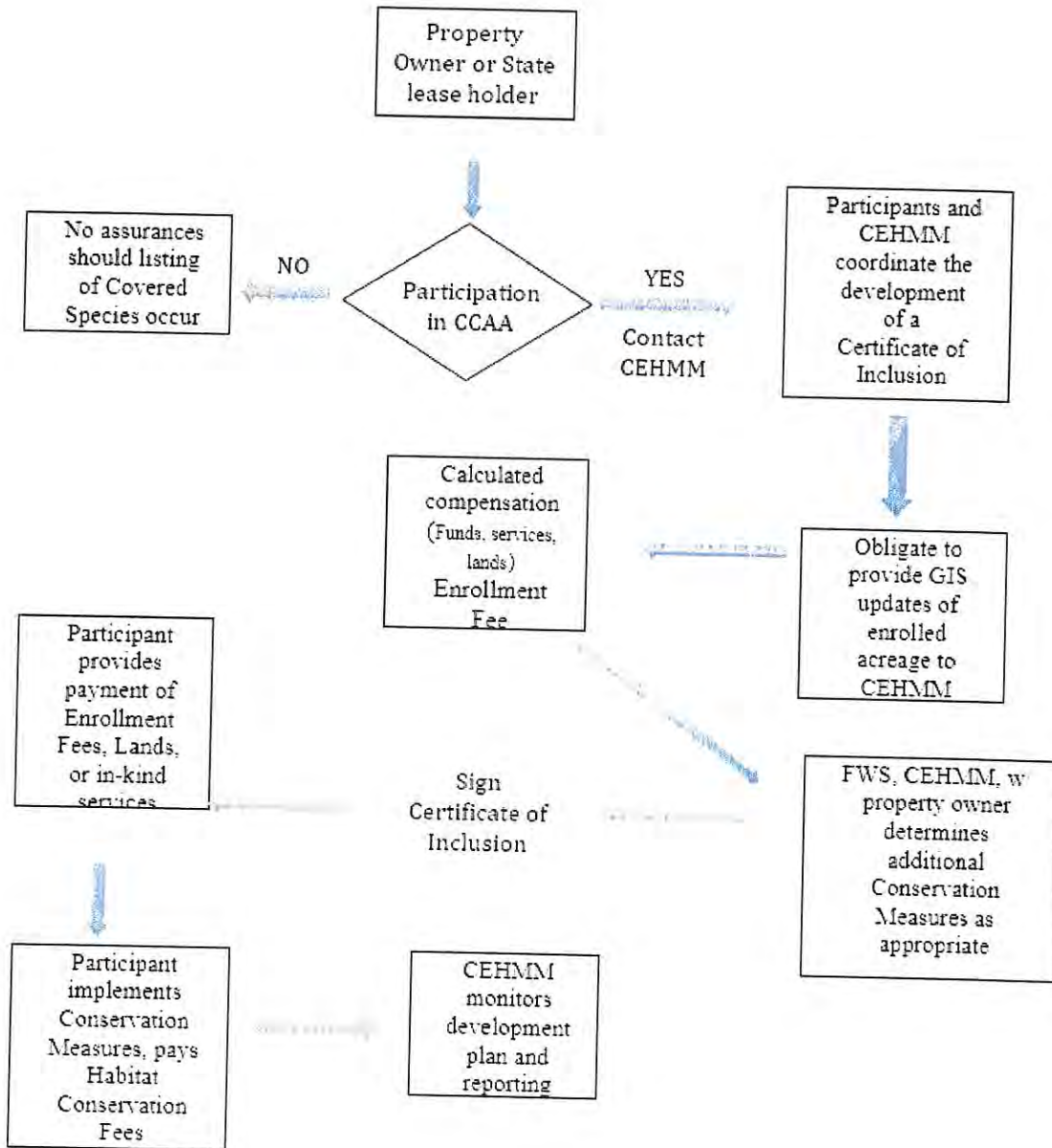
The Center of Excellence is providing notice of deficiency to the Participating Operator/Landowner and is giving them the opportunity to cure the deficiency. If the deficiency is not corrected, or cured, a notice is being drawn to correct the deficiency within sixty (60) days of the receipt of the letter. The party is involved will be terminated from the C/CP. A Participating Operator/Landowner has three (3) deficiencies within 365 consecutive days including deficiencies cured as stated above. The next C/CP will be terminated.

Signature of CEHMM Authorized Officer \_\_\_\_\_ Date \_\_\_\_\_

**APPENDIX I**

**FLOW CHART TO EXPLAIN PARTICIPATION IN THE TEXAS  
HORNSHELL CCAA**

**Appendix I**  
**Flow Chart to Explain Participation in the Texas Hornshell CCAA**





## **APPENDIX J**

### **GLOSSARY**

## Appendix J Glossary

15-Day Notice – Notice provided to CEHMM by Participants no less than 15 days prior to commencement of New Surface Disturbance or seismic activities so that CEHMM can calculate the appropriate Habitat Conservation Fees in accordance with Appendix E.

Adaptive Management – A method for examining alternative strategies for meeting measurable biological goals and objectives and then, if necessary, adjusting future conservation and land management actions according to what is learned.

All Activities Enrollment – Enrollment of all of a Participant’s activities and facilities on non-Federal lands and minerals within the Covered Area.

Blue Sucker (*Cycleptus elongatus*) – Host fish for the Texas Hornshell that historically occupied the Pecos River north of Carlsbad downstream to Big Bend, Texas and the lower Black River. It is likely extirpated from the Pecos River and current status in the Black River is unknown. The Blue Sucker was listed as “endangered” by the New Mexico Department of Game and Fish in 1976.

Candidate Conservation Agreement (CCA) – Voluntary agreement on BLM-managed lands and minerals administered by CEHMM and BLM in which Participants implement Conservation Measures aimed at reducing or eliminating threats to the Covered Species under the CCA and CP to allow their operations to continue unaffected if the Covered Species is listed in the future. The Federal property lessees and permittees receive a high degree of certainty from FWS and BLM that additional Conservation Measures above and beyond those contained in the agreement will not be required and that additional land, water, or resource-use limitations will not be imposed upon them should the Covered Species become listed in the future.

Candidate Conservation Agreement with Assurances (CCAA) – Voluntary agreement on non-Federal lands administered by CEHMM in which Participants implement Conservation Measures aimed at reducing or eliminating threats to the Covered Species under the CCAA and CI to allow their land operations to continue unaffected if the Covered Species is listed in the future. The non-Federal property owners receive assurances from the FWS that additional Conservation Measures above and beyond those contained in the agreement will not be required and that additional land, water, or resource-use limitations will not be imposed upon them should the Covered Species become listed in the future.

Candidate Species – Plants and animals for which the U.S. Fish and Wildlife Service (FWS) has sufficient information on their biological status and threats to propose them as “endangered” or “threatened” under the Endangered Species Act (ESA), but for which development of a proposed listing regulation is precluded by other higher priority listing activities.

CCAA Boundary – The limits of the area covered by the CCAA.

Center of Excellence (CEHMM) – A 501(c)(3) non-profit corporation that has created a wide range of cutting edge programs that work toward practical solutions to issues that affect both human health and the environment. The permit holder for the CCAA.

Certificate of Inclusion (CI) – An agreement between Permit Holder and Participant in which the Participant voluntarily commits to implement or fund Conservation Actions on non-Federal lands and to otherwise comply with the terms and conditions of the CI, CCAA, and Permit.

Certificate of Participation (CP) – An agreement between CEHMM and Participant in which the Participant voluntarily commits to implement or fund Conservation Actions on Federal lands and to otherwise comply with the terms and conditions of the CP and CCA.

Conservation Actions – Actions that preclude or reduce threats to the Covered Species, including daily implementation of the agreements (e.g., species monitoring and onsite) performed by CEHMM, and mitigation measures that are implemented or funded by Participants via this CCAA. Conservation Actions may include in-kind services as well as proposals that are funded by the Implementation and Executive Committees.

Conservation Measures – Avoidance and minimization measures to preclude or reduce threats to the Covered Species that Participants agree to implement via this CCA.

Conservation Measure Violation (CMV) – Notice of noncompliance with the terms of a CI, the CCAA, or the Permit.

Covered Activities – Activities occurring on non-Federal lands or minerals associated with oil and gas development; water withdrawals; ranching, farming, or other agriculture; mining and solid mineral extraction; and conservation, monitoring, and research that are covered by this CCAA and the associated Enhancement of Survival Permit.

Covered Area – The four riparian management “zones” in New Mexico and Texas, as well as the area outside these zones that falls within the CCAA Boundary.

Covered Species – Species for which the Permit authorizes take.

Emergency Operations – Those activities unexpectedly and urgently required to prevent or address immediate threats to human health, safety, property, the environment, or national defense or security.

Enhancement of Survival Permit – Permits that are issued by the U.S. Fish and Wildlife Service pursuant to Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*). The Permit, which goes into effect if the Covered Species becomes listed, authorizes “take” of Covered Species on enrolled non-Federal property. If any of the Covered Species is listed, the Permit will provide incidental take authority for Covered Activities of Participants on Enrolled Property under the CCAA and CI.

Enrolled Property – Non-Federal lands or minerals enrolled in the CCAA through a CI through either Parcel-by-Parcel Enrollment or All Activities Enrollment.

Enrollment Fee – Annual fee a Participant commits to pay for first three years of enrollment of activities or parcels in the CCAA.

Endangered Species Act (ESA) – A key legislation for both domestic and international conservation. The act aims to provide a framework to conserve and protect “endangered” and “threatened” species and their habitats.

Executive Committee – Committee consisting of representatives from the signatories (FWS, BLM [CCA only], and CEHMM) that will review the annual report, review biological reports, and make changes to the CI/CP and CCA/CCAA documents through the Adaptive Management process.

Gray Redhorse (*Moxostoma congestum*) – A host fish for the Texas Hornshell that currently exists in the Delaware River and in the lower Black River from Blue Springs to the Pecos River confluence. The Gray Redhorse was listed as “threatened” by the New Mexico Department of Game and Fish in 1976 and then as “endangered” in 2008.

Habitat Conservation Fee – Fee a Participant commits to pay when its activities result in New Surface Disturbances.

Harass – Actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.

Harm – To include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering.

Implementation Committee – Science Committee consisting of representatives from FWS, BLM, CEHMM, various state wildlife agencies, and other supporting state agencies that will develop and review proposals for Restoration Activities, prioritize funding for proposals, and seek approval for funding for said projects, among other responsibilities.

Issue Resolution Meeting – Meeting requested by the Stakeholder Committee or Implementation Committee, or both, to address different decisions by the Committees with respect to a particular issue or set of issues.

Life History Sites – Texas Hornshell occupied sites in the Black and Delaware rivers.

New Mexico Department of Game and Fish (NMDGF) – New Mexico’s state government entity that conserves, regulates, propagates and protects the wildlife and fish within the state of New Mexico.



New Surface Disturbance - The use of earth-moving equipment by a Participant to alter unimproved lands covered by this CCAA and associated CI, but does not include lands previously altered by a Participant in compliance with this CCAA and associated CI or prior to enrollment in this CCAA.

Occupied Habitat – The geomorphologically stable river channels that have a hydrologic flow regime necessary to maintain benthic habitats where the Texas Hornshell mussel is found or has been reintroduced.

Off-Highway Vehicles (OHV) – A type of vehicle that was designed specifically for use off road. It may be used as part of geophysical exploration.

Parcel – A unit of described acreage (e.g., leases or portions of leases), in which a Participant has a sufficient property interest to carry out proposed management actions, that may be enrolled within the Covered Area.

Parcel-by-Parcel Enrollment – Enrollment of parcels of lands, including leases or portions of leases, within the Covered Area.

Participant – A Property Owner with a fee simple, leasehold, or property interest (including owners of water or other natural resources), or any other entity that may have a property interest, who voluntarily agree to the terms or conditions of approval described in the CI under the CCAA sufficient to carry out the proposed management activities, subject to applicable State law, on non-Federal land.

Parties – All signatory members of the CCAA.

Pecos Springsnail (*Pyrgulopsis pecosensis*) – Mollusk listed as “threatened” by the New Mexico Department of Game and Fish in 1983. Historically the species occupied only Blue Springs and Castle Springs, but has since been extirpated from Castle Springs.

Permit Holder – The Center of Excellence (CEHMM), the entity to which FWS issues the Enhancement of Survival Permit.

Property Owner – A person with a fee simple, leasehold, or property interest (including owners of water or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable State law, on non-Federal land. Defined as a Participant throughout the CCAA.

Replacement of Enrolled Properties – Amendment of a CI to remove a parcel enrolled through Parcel-by-Parcel Enrollment and replace it with an unenrolled parcel of equal or less acreage.

Restoration Activities – Activities that return lands or habitat to a former condition.

Rio Grande River Cooter (*Pseudemys gorzugi*) – Turtle that occupies large, deep pools of rivers in the Black, Delaware, and Pecos rivers. The Rio Grande River Cooter is listed as “threatened” by the New Mexico Department of Game and Fish.

Sensitive Habitat Areas – Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Stakeholder Committee – Committee consisting of Participants and CEHMM which will meet annually (more often if needed) to review issues that impact enrolled Participants, discuss options to make changes, and make recommendations to CEHMM.

Take – To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or attempt to engage in any such conduct.

Technical Working Group – Ad hoc committee consisting of representatives from agencies including, but not limited to, USGS, NMISC, USACE, BOR, NPS, and NMDGF that will provide guidance on technical issues to help assess conservation priorities and science needs.

Texas Hornshell Mussel (*Popenaias popeii*) – A freshwater mussel native to the Pecos River and Rio Grande drainages in New Mexico, Texas, and Mexico. In 2016, it was listed as a candidate species by the U.S. Fish and Wildlife Service.

Transfer – Assignment of a CI, including the associated incidental take authorizations and assurances, from a Participant to a third party.

Two Week Notice – Written notice from CEHMM and/or the FWS to the Participant providing two weeks advance notice of when it plans to access the Participant’s Enrolled Property, unless the Participant agrees to allow CEHMM and/or the FWS in sooner than two weeks.

U.S. Fish and Wildlife Service (FWS) – An agency of Federal government within the U.S. Department of the Interior, which is dedicated to the management of fish, wildlife, and natural habitats.