Attachment 1:

NEW CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES (CCAA) FOR THE DUNES SAGEBRUSH LIZARD (AUG. 3, 2018) ADDRESSES THE PROBLEMS WITH THE TEXAS CONSERVATION PLAN (TCP)		
TCP Issues	Comments	How Issues are Addressed in the new CCAA
The Recovery Award System was used improperly to offset surface disturbances.	The TCP allows the accrual of Recovery Awards under the CCAA but the not the sale and use of those awards unless the species is listed. only can be used to compensate for surface disturbances when on-the-ground mitigation is not an option. The Comptroller's office (CPA) did not comply with either of these requirements.	Eliminated Recovery Award System. Replaced with centralized conservation strategy, with priorities for Conservation Actions set by the Adaptive Management Committee through a transparent process. This approach will allow conservation activities to be based on sound science and to focus on areas of highest need on a landscape basis, which looks not at a single project but at the overall relevant range of the dunes sagebrush lizard (DSL). The approach will remove the burden of implementing the activities from the participants. The new CCAA makes it a priority to evaluate the efficiency of using conservation banking as part of the adaptive management process Conservation banking protects some land from development while allowing the owners of that land to sell credits for development elsewhere.
Mesquite removal was improperly used to generate Recovery Awards.	The TCP allows 50 percent of the awards to be sold and used before it is known whether the action generating the Recovery Award is effective. CPA used such awards to mitigate 426 acres of surface disturbance. TAMU has found that the mesquite removal generating those awards had not benefitted the recovery action habitat after many years and is unlikely to have such a benefit in the future. There was no scientific basis in the record in 2012 to support ranking mesquite removal as the highest-value recovery action and as the sole activity to offset habitat disturbances to benefit the DSL.	Eliminated the Recovery Awards System. Removed mesquite removal from list of conservation options. Replaced the Recovery Awards System with a centralized conservation strategy. Priorities for Conservation Actions will be set by the Adaptive Management Committee based on sound science.

The Standard Certificates of Inclusion (CIs) do not require avoidance, minimization and enhancement or the payment of fees for habitat disturbances.	CPA, with the assistance of participants and FWS, revised the Standard CI to partially address the problem. However, the revised CI still does not require the payment of fees to implement conservation activities. After more than nine months, only two of the four oil and gas participants have executed the revised CI.	The new CCAA and CIs clearly define expectations regarding avoidance, minimization and enhancement; fees to support Conservation Actions to offset disturbances; and incentives to focus development activities in degraded or non-habitat areas.
The required documentation does not exist regarding use of the Appendix H exemption.	Appendix H sets out the justifications for unavoidable habitat loss. CPA did not require written documentation or approval of the Appendix H analysis.	The New CCAA requires avoidance in High and Intermediate Suitability areas of DSL Habitat but allows an exception if it can be demonstrated that the minerals cannot be accessed. CCAA incentivizes focusing development in degraded or non-habitat areas.
The TCP has not demonstrated that its "restoration actions" have resulted in a "Positive Biological Response."	Because the TCP has not made the requisite demonstration, the current cap for surface disturbances under the TCP is 2,173 acres.	Demonstration of a "Positive Biological Response" is not required by the new CCAA. Effectiveness of the CCAA is monitored through the Conservation Strategy and Adaptive Management process.
The required demonstration of "Net Benefit" has not been made. In fact, the baseline analysis has not been completed.	CPA was supposed to develop a Baseline evaluation and meet regularly with FWS to evaluate whether the conservation measures implemented under the TCP are resulting in a net benefit to the DSL. CPA did not conduct the necessary research or initiate the analysis to fulfill this requirement.	Specific measureable criteria are used to define a net benefit in the New CCAA.
Enrollment	On May 18, 2012, CPA told FWS the enrollment of DSL Habitat in the TCP would be 71 percent. FWS relied on this information in its decision to withdraw its listing determination. The actual enrollment was approximately 57 percent. Enrollment has remained in the mid to low 50 percent range.	The new CCAA includes specific measures to incentivize enrollment.
Stratification	The enrollment calculation does not take into account that numerous mineral leases in the DSL Habitat are severed from the surface estate. Thus, enrollment of property by a participant doesn't preclude surface disturbance by a non-participant to reach its mineral interests. Over the first six and one-half years of the TCP, non-participants' stratified mineral interests disturbed 1476 acres of enrolled DSL Habitat.	The new CCAA recognizes the existence of stratification in DSL Habitat and provides an approach to minimize the impacts of stratification.

CPA did not follow the pre-enrollment process in Appendix F to determine the mitigation needs for Covered Activities	In finalizing the CI's, CPA failed to (1) document that the participant's proposed habitat enhancement or protection measures will provide a Net Conservation Benefit to the DSL; (2) justify why any avoidance is not feasible; (3) document the expected acreage of habitat loss per habitat type; and (4) provide a property-specific management plan.	The Conservation Action strategy in the New CCAA substitutes for Appendix F. Each participant is required to provide an annual estimate of expected development to assist the Adaptive Management Committee in establishing priorities.
The TCP's incidental take analysis is flawed and lacks an analysis of the impact resulting from the take.	The TCP's take analysis for oil and gas activities, was based on a worst-case scenario of the maximum number of well pads that could fit within DSL Habitat and be distributed evenly across the landscape. It did not include the additional necessary steps required for incidental take analysis or biological review to consider the magnitude of the impacts to the viability of the DSL.	The incidental take analysis in the new CCAA is based on historical development data and the CCAA's conservation strategy to provide a reasonable estimate of the expected take.
The TCP did not address the threats posed by well density.	The scientific literature predicts a 25 percent reduction in the abundance of DSL at well densities of 13.64 wells per square mile. It predicts a 50 percent reduction at a density of 29.82 wells per square mile. Painter *et al* recommended that well densities in New Mexico be limited to 13 well pads per square mile. Johnson *et al*. found that DSL occurrences decline sharply at eight well pads per square mile. Leavitt and Fitzgerald found that high well and road density at the landscape scale resulted in degraded dune structures. Walkup *et al*. found that the DSL had a high susceptibility to local extinction at densities greater than 13 well pads per square mile.	Approximately 30.6 percent of DSL Habitat has a well density greater than 8 wells per square mile. Approximately 20.8 percent of DSL Habitat has densities greater than 13 wells per square mile. The new CCAA encourages development in degraded habitat and avoidance, where feasible, in low-well-density areas of High and Intermediate areas of Habitat.
The TCP allows the use of two conflicting definitions of DSL Habitat	The TCP requires the implementation of two conflicting plans that contain different definitions of DSL Habitat, fee structures and conservation measure requirements.	The CCAA and CIs use the same definition of DSL Habitat and establishes uniform requirements for each industry.