ATTACHMENT 2:

The attached Candidate Conservation Agreement with Assurances (CCAA) resulted from a three-year collaboration among the Texas Comptroller of Public Accounts (CPA), participants in the Texas Conservation Plan (TCP), and other members of the oil and gas industry. The CCAA enjoys the support of participants in the TCP as well as other oil and gas companies, at least two of which have indicated that they are considering joining the CCAA if it is approved.

In spring 2015, CPA began evaluating the TCP implementation to ensure that the plan was in compliance. Problems were identified and, working with the Fish and Wildlife Service (FWS), changes were made in the program. Further investigation revealed problems that were systemic and not amenable to piecemeal fixes. As part of this investigation, the involvement of Texas A&M (responsible for overseeing and administering the TCP) was terminated by mutual consent and the Texas Habitat Conservation Foundation (charged with on-the-ground implementation of the program) was terminated. CPA continued to work with FWS through the remainder of 2016 to address the problems.

In 2017, plans to develop frac-sand mining operations in the Permian Basin began, including those in and near DSL Habitat. The first on-the-ground disturbances by these operators began in summer 2017. Barriers to entry into these operations are low in Texas, and the state imposes little or no regulation on the industry. Because sand mining has the potential to contribute significantly to a region's economy, CPA and the oil and gas industry attempted to find ways to accommodate the sand mining industry without compromising the DSL. Working together, they were able to persuade eight sand mining companies to confine their mining activities to areas outside of DSL Habitat. These companies, in exchange for that commitment, were enrolled in the TCP. Companies that wanted to excavate in DSL Habitat presented a problem because their activities were not included in the TCP and the required threat analysis of the potential threat to the DSL had not been conducted. Thus, no decision could be made regarding bringing them into the program.

To clear the way for possibly including these sand mining companies in the TCP and to accommodate needed changes to the definition of DSL Habitat, CPA determined that the TCP needed to be revised. Since a revision was needed, it made sense to address the systemic and implementation problems with the TCP at the same time. In September 2017, CPA initiated what became frequent meetings with FWS, the oil and gas participants, and others to obtain their input in developing a new CCAA. CPA also met with the sand mining companies regarding their participation in the CCAA. A chronology of the meetings leading up to the new CCAA is attached.

Also attached is a table that shows how the CCAA addresses the substantive issues associated with the TCP. For example, the CCAA does away with the problematic crediting system in the TCP. It replaces the crediting system with a centralized conservation strategy implemented by CPA, with priorities for Conservation Actions set by the Adaptive Management Committee through a transparent process. This process will allow conservation activities to be based on sound science and focused on areas of highest need.

Moreover, the new CCAA makes clear in the Conservation Measures the requirements for avoidance and minimization. Avoidance will be required for all sectors, except agriculture and ranching, in High and Intermediate Suitability areas of DSL Habitat. Exceptions are provided to the avoidance requirement where, for example, the oil and gas participants can demonstrate that they cannot access their mineral estates. Similarly, in areas of High and Intermediate Suitability, avoidance is required where the well density is equal to or greater than four well pads per square mile, but the requirement does not apply when the participant can demonstrate that avoidance is not feasible.

Further, incentives are provided to encourage development in areas of High and Intermediate Suitability where habitat degradation has already occurred due to high well densities and associated road densities – an issue that was not addressed by the TCP.

In addition, the new CCAA eliminates the use of conflicting definitions of DSL Habitat and replaces it with a single definition based on a habitat suitability model and landscape features that integrate DSL occurrence data and detailed habitat imagery. A map developed by Texas State University supports this definition of DSL Habitat. The CCAA also includes protocols for participants or potential participants that seek to verify a habitat suitability classification assigned to a particular site.

Finally, the CCAA addresses the need to increase the enrollment of habitat to ensure adequate protection for the DSL and its habitat. An important issue related to habitat enrollment, stratification, was ignored in the TCP. Stratification refers to the fact that multiple distinguishable geologic strata containing oil and gas reservoirs often have independent surface access rights across the same surface acreage. Thus, when a participant enrolls a property, that does not necessarily prevent a nonparticipant entity that is not bound by the conservation measures of the TCP from developing or disturbing the property. This is a significant issue; over the first six and one-half years of the TCP, nonparticpants with stratified mineral interests disturbed 1,476 acres of enrolled DSL Habitat.

The CCAA recognizes the existence of stratification and provides an approach to minimize its impacts. This approach includes:

- Property analysis to identify non-participant lessees
- Outreach to nonparticipant lessees
- Negotiation with participant and non-participant lessees to mitigate habitat impacts, and to seek alternative compensation where impacts from stratified leasing override benefits of enrollment of the property
- Incentive to divide enrollment fees among participant and non-participant lessees
- Incentive for cost sharing of the annual implementation fee among all participants enrolled in TCP
- Enhanced conservation measures on High and Intermediate Suitability habitat areas to account for stratification
- Monitoring of non-participant impacts on enrolled and non-enrolled properties with DSL habitat

The new CCAA provides protection to the DSL and its habitat while balancing the need for economic development in an area important to the nation's energy supply. The improvements in the new CCAA provide an effective, manageable and durable plan to achieve that goal.