

U.S. House of Representatives  
Committee on Natural Resources

***“ESA Decisions by Closed-Door Settlement: Short-Changing Science, Transparency, Private Property, and State & Local Economies”***

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Testimony by  
Greg A. Foley  
Executive Director,  
Division of Conservation  
Kansas Department of Agriculture  
State of Kansas



Good morning, Mr. Chairman, members of the Committee. My name is Greg Foley and I am the Executive Director of the Division of Conservation, Kansas Department of Agriculture. I want to thank you for the invitation to appear before the Committee to express thoughts, concerns and impacts associated with an Endangered Species Act (ESA) listing of the Lesser Prairie Chicken (LPC).

I work closely with the recently appointed Kansas Secretary of Agriculture, Jackie McClaskey, and am appearing today to convey concerns that impact Kansas Agriculture. Agriculture is the largest economic driver in Kansas, valued at more than \$33 billion annually. In Kansas, there are 52,320,102 acres of land that provides jobs for more than 427,000 people. Agriculture in Kansas is not just about growing crops and raising animals, but also includes robust sectors of renewable energy production, food processing, research and education, agribusiness and more. Kansas farmers and ranchers are feeding the world. In 2011, Kansas exported nearly \$5.3 billion in agricultural products. Kansas has very few public lands and has a private ownership rate of approximately 98%.

How is Kansas being proactive to protect the LPC? There are five states that have areas that are currently occupied by the LPC. There are numerous plans for voluntary conservation actions that have been developed by stakeholders in the region. The Kansas Wildlife, Parks and Tourism has played an integral role in the development of a multi-state Range-Wide Conservation Plan coordinated through the Western Association of Fish and Wildlife agencies. These conservation programs being implemented that have resulted in positive effect on LPC populations or are expected to create those benefits. Additional Kansas stakeholder groups have also developed strategies as well. We are open to multiple voluntary strategies and plans for species recovery and believe that the Service should expedite consideration of all plans to ensure that the oil and gas industry and agricultural producers have the best options available to them to prevent a listing or, in the event of a listing to facilitate mitigation and conservation activities. I have **attached** a slide presentation outlining some of those efforts and accomplishments in Kansas. The presentation includes federal program tools, maps of conservation priority areas, CRP status in the LPC range, acres enrolled, etc.

Mr. Chairman, Kansas Department of Agriculture and the Division of Conservation have a network of 525 locally elected voluntary supervisors within the 105 organized Conservation Districts. This grassroots governance of voluntary incentive based programs provides us with input from every county throughout the state. These volunteers, side by side with thousands of other farmers and ranchers, are natural resource conservationists working to protect soil, water, air, plants, and **animals**. Kansans have worked with state and federal programs implementing conservation practices, many of which have significant benefits to wildlife. Of the 27 million acres enrolled in the USDA Conservation Reserve Program (CRP), Kansas currently holds approximately 2.34 million of the enrolled acres. These local leaders have voiced fears of the impacts in the event of a listing. Common questions arise: Will I be able to take my CRP out of the program if the LPC is listed? Will I be able to build new fences, outbuildings, grain bins,

etc.? Why would the federal government extend my current CRP contract if a different federal agency prevents them from putting the land back to its prior use as row crop production? If returning CRP back to cropland is prohibited and the land is not re-enrolled in the program will I be prohibited from haying or grazing during “primary nesting seasons?” Will I be able to hay or graze existing pasture and rangeland? The list goes on and on.

These landowner questions communicate a significant potential for loss of currently enrolled CRP acres. This cause and effect relationship from a regulatory action may reduce the ability of USDA to maintain and re-enroll existing habitat, enroll new habitat acres, and to utilize other voluntary programs to assist the recovery of the LPC. We believe current Kansas conservation efforts are an indication as to why Kansas has the largest number of acres and numbers of birds within the occupied range. The Kansas Department of Agriculture’s formal comments to the USFWS requested that they work with the Natural Resources Conservation Service and the Farm Service Agency to utilize existing programs such as CRP, Conservation Reserve Enhancement Program (CREP), and the Lesser Prairie-Chicken Initiative to prioritize these conservation practices and applicable programs to open sign-up status, increase the rental rates, and potentially add practices or plant mixtures to benefit the species.

Kansas has experienced three consecutive years of drought. Federal drought declarations verify this drought of record and this has had a significant impact on crops, plants, animals and everything in this region of the state. In my review of the LPC, it appears there are three basic requirements that will ensure the existence of the species which are food, nesting and brood rearing habitat and water. Outside the box thinking to add “wildlife water supply” to existing federal programs is necessary, and may be essential, if recovery and repopulation of the LPC is the mission. I would volunteer to assist NRCS to modify an existing livestock water supply specification and to work with wildlife specialists to design a system that works. This should be the American way, assess the problem and define solutions, not resort to litigation or regulatory sprawl. Even drought can be planned for and managed with voluntary incentive based programs if the will is there that is supported by Congress, the Administration and respective federal agencies.

In closing, I would like to highlight some of the most significant concerns of the Kansas Department of Agriculture. Potential impacts and issues for Kansas agriculture and the Lesser Prairie Chicken if a federal listing occurs:

- The ability to continue food and fiber production in the affected area
- The potential of expanding the footprint or buffer zone of current occupied range arbitrarily adding tens of thousands of acres under the control of USFWS
- A reduction in personal property rights such as the inability to add an outbuilding at the farm, or pursue oil exploration, or utilize steady class 4 or class 5 winds for clean energy, to install or move an irrigation center pivot, to till expired CRP, etc.

- Weather cycles are not controlled by a federal agency. Establishing and or maintaining habitat are subject to adequate precipitation for growth, which has potential implication with program compliance rules.
- Agriculture is the economic driver in Kansas; negative impact to that engine means schools will close, population will decline, jobs will be lost, etc. This is a narrow margin industry that is a price taker in the market place. When costs increase, the agriculture producer does not have the luxury of raising the price of the commodity.
- Assurances, Predictability (NRCS NB 300-14-7-LTP), State “Certainty” programs and many other bureaucratic terms of “protection” are feared due to loop-holes, complex rules, hidden agendas that could lead to regulation of non-point source pollution
- A listing will likely result in decreased participation by private landowners in voluntary conservation programs designed to benefit the LPC. Because the vast majority of LPC range is under private ownership, a federal listing will likely hinder our ability to conserve the species rather than increase populations as intended.

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify before you and to plea for help to find working voluntary solutions in lieu of regulatory control. Senator Roberts used a quote of President Dwight D. Eisenhower last week that I believe holds the key to a solution: “There is nothing wrong with America that the faith, love of freedom, intelligence and energy of her citizens cannot cure.”

If it be the pleasure of the Chairman, I will stand for questions at the appropriate time.