

U.S. House of Representatives
Committee on Natural Resources

**“Defining Species Conservation Success: Tribal, State and Local Stewardship vs.
Federal Courtroom Battles and Sue-and-Settle Practices”**

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Testimony by
Tyler Powell
Deputy Secretary of Environment
Office of the Secretary of Environment
State of Oklahoma



Good morning, Mr. Chairman, Members of the Committee. My name is Tyler Powell and I serve as the Deputy Secretary of Environment for the Oklahoma Secretary of Environment's office. I want to thank you for the invitation and opportunity to testify on successes of state stewardship of species and our efforts in working to conserve the Lesser Prairie Chicken.

The Office of the Secretary of Environment serves at the pleasure of Governor Mary Fallin and advises her on environment and natural resource issues (Okla. Stat. tit. 27A, § 1-2-101). We are also responsible for coordination of the state's environmental agencies, including the Oklahoma Department of Wildlife Conservation. As the date for publication of a final listing determination for the Lesser Prairie Chicken draws nearer, we feel compelled to highlight the successes of state stewardship of Candidate species and the continuing efforts of the states, working both individually and collectively, to conserve the Lesser Prairie Chicken, which are increasingly important, and must be given appropriate consideration in the final listing determination.

Currently, Oklahoma has thirty-two petitioned species and an additional five candidate species, three of which have had proposed listing rules published (for a full list see *Appendix A*), which are subject to an endangered species listing determination by the U.S. Fish and Wildlife Service (Service) as part of a multidistrict litigation settlement that was entered into in 2011 (U.S. Fish and Wildlife Service Multi-Year ESA Listing Work Plan). A species of particular interest for Oklahoma is the Lesser Prairie Chicken, an endemic grouse found across the southern Great Plains, with a current range that includes parts of Colorado, Kansas, New Mexico and Texas, as well as a twelve county area in western Oklahoma.

The settlement the Service entered into required that they publish a proposed listing rule for the Lesser Prairie Chicken by September 30, 2012. This deadline was extended as a result of an action undertaken by the Service, and on November 30, 2012 the Service announced a proposed threatened listing (Endangered and Threatened Wildlife and Plants; Listing the Lesser Prairie Chicken as a Threatened Species, 77 Fed. Reg. 738282, 73888 (Dec. 11, 2012)). While we realize this is a positive sign and could possibly avoid some of the most burdensome regulations if they had chosen an endangered listing, it is still not an ideal outcome.

The State of Oklahoma has been working to conserve the Lesser Prairie Chicken since a petition to add the species to the Endangered Species List was submitted in 1995. Our Department of Wildlife Conservation has now spent over \$26 million on habitat conservation, research, land acquisition and development of habitat management plans. This amount spent does not include the work that has been undertaken by private landowners, energy and transmission companies. We also believe that state management of this species, working directly with stakeholders to allow for responsible land use and development and conservation, is in the best interest of the Lesser Prairie Chicken.

The Oklahoma Department of Wildlife Conservation (ODWC) has recently purchased over 17,660 acres for Lesser Prairie Chicken habitat improvement and protection, and entered into a long-term lease agreement with the Oklahoma Commissioners of the Land Office to protect another 3,270 acres of Lesser Prairie Chicken habitat adjacent to Oklahoma's Beaver River Wildlife Management Area. In addition, ODWC has entered into management agreements with private landowners to enhance and protect an additional 28,000+ acres of Lesser Prairie Chicken habitat on private land in Oklahoma.

Beginning in 2011, Governor Fallin and the state legislature asked our office to work with any and all stakeholders to develop a plan to ensure appropriate management of Lesser Prairie Chickens and thus preclude the need for a listing. We took a philosophy that a plan should be facilitated by the state, but developed in a cooperative fashion with private landowners and a coalition of our state's agriculture, oil and gas, transmission, wind energy, and transportation industries who all have a stake in a potential listing of the bird, with a common goal of developing a plan that conserves the species and allows for responsible land use and development. After over a year of work, the Oklahoma Lesser Prairie Chicken Conservation Plan (OLEPCCP) was released on October 23, 2012 (Available at http://www.wildlifedepartment.com/wildlifemgmt/lepc/cons_plan.htm). Before the ink was dry, we began to implement this plan with an unprecedented aerial survey and additional research and management on the ground. The first year of aerial surveys were hampered by poor weather and logistic difficulty, but we were able to survey areas that had never been surveyed before, and documented previously unknown Lesser Prairie Chicken leks. Additional Lesser Prairie Chicken research was contracted with researchers from both Oklahoma State University (ODWC Research Project LPC-OSU-12, Impacts of Fragmentation and Heterogeneity, Resource Selection, Survival and Recruitment of LEPC in Oklahoma) and the University of Oklahoma (ODCW Research Project LPC_OU-12, Population Ecology and Conservation of the Lesser Prairie Chicken and Its Ecosystem). We also identified 15 Core Areas (For a full list see *Appendix B*) for implementing substantial conservation efforts for the Lesser Prairie Chicken with a goal, towards which we are currently working, of each at least 70% of each Core Area consisting of high quality Lesser Prairie Chicken habitat.

The ODWC, in meeting another objective of the OLEPCCP, developed an approved Candidate Conservation Agreement with Assurances (CCAA) for Lesser Prairie Chickens on Agricultural Lands in Oklahoma (up to 200,000 acres) (Final Candidate Conservation Agreement With Assurances, Final Environmental Assessment, and Finding of No Significant Impact; Lesser Prairie Chicken, Oklahoma, 78 Fed. Reg. 14111, 14114 (March 4, 2013)). We immediately began preparing Lesser Prairie Chicken Wildlife Habitat Management Plans (WHMP) and issuing Certificates of Inclusion to interested landowners. Landowners who have an approved WHMP are provided assurance, that, as long as they continue to implement the management practices prescribed in their WHMP, they will face no additional regulatory action or requirements and are also provided incidental take

coverage if the Lesser Prairie Chicken becomes listed. To date, we have received applications from over forty landowners representing nearly 170,000 acres. We have also asked the Service for an additional 200,000 acres to be allowed in the enrollment, which would bring the total acreage eligible for CCAA in Oklahoma to 400,000 acres.

The other four states within the Lesser Prairie Chicken's range began to take notice of what Oklahoma was undertaking. Working as a group, wildlife biologists employed by the five state wildlife agencies (Lesser Prairie Chicken Interstate Working Group), the Western Governor's Association, and the Western Association of Fish and Wildlife Agencies, the state wildlife agency directors from Colorado, Kansas, New Mexico, Texas and Oklahoma are currently working with industry, federal agencies, and other stakeholders to take the Oklahoma framework to a range wide plan. Our goal for the range-wide plan is to convince the Service that the five states have management of the species under control and that federal protection is not warranted. This plan includes prioritization of habitat conservation, a metrics system that can be used to assess conservation practices and to provide a voluntary mitigation framework for developed or otherwise impacted areas. The plan allows for responsible industry development and allows for our state's two biggest industries of agriculture and energy to continue, in a way that minimizes impacts to the Lesser Prairie Chicken. We feel that this effort can affect a greater and much more positive outcome than any possible outcome provided through the Endangered Species Act due to the unique role that the five states play, and the Lesser Prairie Chicken management knowledge and experience that they bring to the table.

While this range wide plan is still under development, the Service has taken notice of the effort. The five states submitted the draft plan to the Service on April 1st. On May 6th the Service announced that they would reopen the comment period for the proposed listing rule and began taking comments on the five state plan, while also taking comments on a draft 4(d) rule (Endangered and Threatened Wildlife and Plants; Listing the Lesser Prairie-Chicken as a Threatened Species With a Special Rule, 78 Fed. Reg. 26302, 26308 (May 6, 2013)). While we see this as a positive sign, we have concerns with the Service putting forward a 4(d) rule. While it is helpful to see what a possible threatened listing would look like and that a listing appears to allow any practices delineated under the range wide plan to continue, it seems premature and assumes the Service may have already made their decision on a final listing rule. A six-month extension for scientific disagreement with statements made in the Service's proposed listing rule is needed to address issues within the listing document as well as to allow research currently underway to be used in a final listing determination. Oklahoma Secretary of Environment, Gary Sherrer, made this request on December 17, 2012 (Regulations.gov Document ID: FWS-R2-ES-2012-0071). This request to Director Dan Ashe of the US Fish and Wildlife Service has still not been accepted or denied.

As it stands today the Endangered Species Act does not adequately assess the work that states are undertaking and provides little or no role for the states after listing of a species. State wildlife agencies have built trust with landowners and a stakeholder that continues to benefit the Lesser Prairie Chicken and other species. We believe, and have seen in past listings, that this trust is lost when the Service takes over all management of a species. As also seen in other areas, states are best equipped to manage resources within their boundaries. Our goal remains to have Oklahoma's work on the Lesser Prairie Chicken be an example of how species of greatest conservation need should be managed.

Thank you for the opportunity to be before you today, Mr. Chairman and Members of the Committee. I look forward to answering any questions you may have.