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522 Notre Dame Court, Cheyenne, Wyoming 82009, 307-631-4536, [www.wafwa.org](http://www.wafwa.org)

September 18, 2013

Mr. Dan Ashe, Director  
U.S. Fish and Wildlife Service  
1849 C Street NW, Room 3356  
Washington, DC 20240

Dear Director Ashe:

On behalf of the Western Association of Fish and Wildlife Agencies (WAFWA), the five states within the range of the Lesser Prairie Chicken (*Tympanuchus pallidicinctus*) (LPC) are pleased to submit for your review and endorsement, *the Lesser Prairie Chicken Range-wide Conservation Plan (RWP)*.

This RWP was developed by the Lesser Prairie Chicken Interstate Working Group (IWG) under the guidance and leadership of the undersigned directors and their teams. We believe the RWP provides a comprehensive, proactive blueprint for conservation of the species, and if implemented at a landscape scale in a timely manner can lead to a not warranted listing decision by the United States Fish and Wildlife Service (USFWS). We support the RWP in its entirety and request prompt approval/endorsement of this plan by the USFWS.

We also believe that all the elements of a CCAA are included in the RWP through a WAFWA-specific sign-on document and that USFWS approval/endorsement will allow WAFWA to enroll cooperators/landowners willing to implement the conservation elements. With cooperator enrollment, it is our belief that certainty for conservation delivery will be achieved and we will be effective at conserving LPC.

We submit further that if conservation of the LPC is to show long-term success, a strong and respectful partnership will be necessary between the States and the USFWS. The elements of that partnership are outlined in Section 6 (a-b) of the Endangered Species Act (ESA). This section clearly identifies a sense of cooperation between the USFWS and state fish and wildlife agencies, and provides the authority for the USFWS to carry that partnership forward. While Section 6 specifically refers to the conservation of endangered or threatened species, we would submit that this partnership can also be demonstrated and authorized for species found to be not warranted because actions described through a mutual planning process provide for certain success. We suggest the USFWS consider Section 6 provisions as we implement the RWP under a not warranted decision.

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*Delivering Conservation Through Information Exchange and Working Partnerships*

The five LPC states appreciate the USFWS's willingness to consider the maximum flexibility possible under the application of the ESA by contemplating the use of a 4(d) rule if the LPC is listed as a threatened species. As part of the 4(d) rule evaluation, the USFWS will be looking at the substantive provisions of the RWP to provide a net conservation benefit to the species and the administrative and financial mechanisms for implementation. If the RWP meets the net conservation standard and other criteria established in the proposed rule by the USFWS, and the USFWS determines the LPC is warranted for listing under the ESA, the 4(d) rule would exempt take incidental to implementing the RWP from the otherwise applicable take prohibitions of the ESA. The 4(d) rule would provide the regulatory relief otherwise obtainable only through permits. This approach would allow for a seamless transition from a prelisting voluntary document to a post-listing coverage environment. While WAFWA believes there is significant evidence to support a not warranted listing decision for the LPC, we recognize and respect the authority of the USFWS to analyze all relevant information in making their decision, including the RWP as a component of the 4(d) rule.

It is our understanding the USFWS will be evaluating the RWP using the criteria established under the *policy for evaluation of conservation efforts when making listing decisions* (PECE Policy). The USFWS will apply two factors when evaluating LPC conservation effort. These two criteria are:

- (1) For those efforts yet to be implemented, the certainty that the conservation effort will be implemented.
- (2) For those efforts that have not yet demonstrated effectiveness, the certainty that the conservation effort will be effective.

Furthermore, the states understand that the certainty of implementation and effectiveness of formalized conservation efforts may vary, and that the USFWS will evaluate each effort individually using various criteria under each factor. We contend that the RWP clearly meets these PECE Policy criteria as evidenced below.

*A. The certainty that the conservation effort will be implemented:*

- 1. The conservation effort, the parties to the agreement or plan that will implement the effort, and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified.** This voluntary RWP is to be administered by the state wildlife agencies within LPC range through WAFWA. Participants will be required to document their commitment by signing a WAFWA Certificate of Participation (WCP) and entering into the accompanying WAFWA Conservation Agreement (WCA) or signing onto other permitting mechanisms held by WAFWA through the RWP. This effort will encourage non-federal participants to proactively manage property in exchange for coverage under the RWP and other permitting mechanisms and regulatory authorities held by WAFWA. As required by

the ESA, the RWP describes, among other things, how the impacts caused by take under the RWP will be avoided and minimized, and if this cannot occur, mitigated to provide conservation benefit to LPC. Information on the responsible parties for implementing the plan can be found starting on page 110 and funding generation through mitigation efforts can be found starting on page 91. Further description of WAFWA's delivery approach can be found in Appendix H. Funding, management and delivery can be found in the WAFWA Business Plan (Appendix I).

- 2. The legal authority of the parties to the agreement or plan to implement the formalized conservation effort, and the commitment to proceed with the conservation effort are described.** A variety of state regulatory measures and authorities are in place to ensure the RWP implementation. Each of the five state wildlife agencies will ensure that other regulatory state agencies are aware of the conservation measures identified in the RWP. In some cases, existing measures may be more restrictive than those described in the RWP. A description of state authorities is found on pages 6-13.
- 3. The legal procedural requirements (e.g., environmental review) necessary to implement the effort are described, and information is provided indicating that fulfillment of these requirements does not preclude commitment to the effort.** A variety of state regulatory measures and authorities are in place to ensure the RWP implementation. State wildlife agencies within each state will ensure other regulatory state agencies are aware of the conservation measures identified in the RWP. In some cases, existing measures may be more restrictive than those described in the RWP. A description of state authorities are found on pages 6-13.
- 4. Authorizations (e.g., permits, landowner permission) necessary to implement the conservation effort are identified, and a high level of certainty is provided that the parties to the agreement or plan that will implement the effort will obtain these authorizations.** Participants will be required to document their commitment to implementing the RWP by signing a WAFWA Certificate of Participation (WCP) and entering into the accompanying WAFWA Conservation Agreement (WCA) or signing onto other permitting mechanisms held by WAFWA through the RWP. This effort will encourage non-federal participants to proactively manage property in exchange for coverage under the RWP and other permitting mechanisms and regulatory authorities held by WAFWA. As required by the ESA, the RWP describes, among other things, how the impacts caused by take under the RWP will be avoided and minimized, and if this cannot occur, mitigated to provide conservation benefit to LPC. Information on the WCA and WCP can be found in Appendix F.

- 5. The type and level of voluntary participation (e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved) necessary to implement the conservation effort is identified, and a high level of certainty is provided that the parties to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation (e.g., an explanation of how incentives to be provided will result in the necessary level of voluntary participation).** Currently, a variety of conservation measures are being implemented by three of the five states (TX, NM, OK) within the LPC range. A tremendous amount of voluntary conservation has been documented by these states. There are three ranching CCAAs in place with 2.2 million acres enrolled in LPC conservation. In addition, there is an oil and gas CCAA in New Mexico with 800,000 acres enrolled in it. It is the belief of WAFWA, that with the implementation of the RWP, similar enrollment levels will be reached throughout the LPC range. Information on existing conservation efforts can be found beginning on page 38. A description on how WAFWA incentivizes conservation efforts can be found starting on page 91 through page 109, and in Appendix H.
- 6. Regulatory mechanisms (e.g., laws, regulations, ordinances) necessary to implement the conservation effort are in place.** A variety of state regulatory measures and authorities are in place to ensure the RWP implementation. State wildlife agencies within each state will ensure other regulatory state agencies are aware of the conservation measures identified in the RWP. In some cases, existing measures may be more restrictive than those described in the RWP. A description of state authorities is found on pages 6-13.
- 7. A high level of certainty is provided that the parties to the agreement or plan that will implement the conservation effort will obtain the necessary funding.** The WAFWA metrics and mitigation section starting on page 91 through 109 describes how participants will implement conservation measures from funding obtained through mitigation. Appendix H describes payment levels to landowners. Funding for implementation of the RWP is detailed in the WAFWA business plan (Appendix I).
- 8. An implementation schedule (including incremental completion dates) for the conservation effort is provided.** The purpose of the RWP is to develop a conservation strategy for the species that identifies, coordinates, and commits to the implementation of an effort that ensures the improvement and long-term persistence into the foreseeable future (30 years) for the LPC throughout its current or expanded range. More specifically, this RWP:

  - Identifies range-wide and sub-population goals for LPC, with a 10-year average goal of 67,000 birds range-wide.

- Identifies desired habitat amounts and conditions to achieve the population goal within the first 10-year timeframe.
- Uses a decision support tool (CHAT) identifying focal areas and connectivity zones where LPC conservation actions will be emphasized to produce the habitat conditions required to expand and sustain the species. Updates will occur every 3-5 years.
- Enhances programs and cooperative efforts to encourage and expand voluntary landowner incentives and practices to produce the desired habitat conditions.
- Promotes agreements designed to avoid and minimize impacts to LPC from various development activities and where avoidance is not possible, mitigate impacts.
- Establishes a mitigation framework to be used by any entity and administered by WAFWA that will establish development agreements and when unavoidable impacts occur, to compensate for these impacts through off-site mitigation actions.
- Identifies research needs and implements monitoring.
- Develops an adaptive management framework that will incorporate monitoring and new information into future adjustments to maximize conservation benefits to LPC.
- Addresses input and suggestions from agencies, organizations, landowners, industries, other stakeholders, and the general public on the conservation plan for LPC.

Also, starting on page 116 is the adaptive management process. It describes a timeline for reviewing different elements of the RWP.

- 9. The conservation agreement or plan that includes the conservation effort is approved by all parties to the agreement or plan.** The Range-wide Plan is attached to this letter.

*B. The certainty that the conservation effort will be effective:*

- 1. The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort reduces the threats is described.** The RWP describes the extent of the threats for the LPC on pages 30-37. While there are existing LPC conservation programs in place and described on pages 38-66, the RWP goes further, describing additional efforts through a cooperative conservation strategy on pages 66-99 and a mitigation program on pages 91-109. On page 104, the RWP summarizes this information in a table.
- 2. Explicit incremental objectives for the conservation effort and dates for achieving them are stated.** The objectives for the conservation efforts are described on pages 68-76.

- 3. The steps necessary to implement the conservation effort are identified in detail.** The steps for implementing the conservation effort are described in appendices F, H, and I.
- 4. Quantifiable, scientifically-valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured; are identified.** The objectives for the conservation efforts are described on pages 68-90.
- 5. Provisions for monitoring and reporting progress on implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided.** This RWP calls for three different types of regular and consistent monitoring that will guide adaptive management decisions. First, range-wide population monitoring will occur annually using the aerial survey methodology described in the population status section. Second, detailed vegetation monitoring and habitat assessments will occur on all sites enrolled under a WAFWA management plan. The amount of suitable habitat will be tabulated at the scale of focal areas and connectivity zones. These data will include the acreage being managed under approved management agreements, acreage in each land cover category (grassland, cropland, urban, etc.), and number of impacted acres due to development. Finally, there will be a subset of agreements selected for compliance monitoring generating either impact or offset units. The monitoring information can be found on pages 121-123 and the reporting information can be found on pages 124-125.
- 6. Principles of adaptive management are incorporated.** Principles of adaptive management have been incorporated into the RWP and can be found on pages 116-120.

Overall, we believe that the RWP will allow for economic development to continue through these efforts to voluntarily conserve the LPC or comply with the ESA, if the final determination is to list the species. Without the RWP, there could be significant regulatory delays in obtaining take coverage, disruption to economic activity in an area vital to state and national interests, and little incentive to conserve LPC habitat to potentially preclude listing of the LPC. The RWP encourages participants to immediately enact proactive and voluntary conservation activities in response to the proposed listing of the LPC. Progress will be tracked through a formalized committee structure using adaptive management. Goals and objectives associated with population levels, habitat conservation objectives using short- and long-term agreements, and funding streams will be reviewed, and adjusted accordingly, by the adaptive management process.

We would like underscore the fact that more than 95 percent of LPC habitat is on private land and that the LPC is a game bird. Any successful strategy to manage this species must have a strong central role for the state fish and wildlife agencies across the five states in which the species occurs. We strongly believe the RWP is the foundation for such a strategy, whether the

Mr. Dan Ashe, Director  
September 18, 2013  
Page 7

species is determined to be warranted for listing or not. If you have any questions or comments, please do not hesitate to contact any of the undersigned or Mr. Bill Van Pelt, WAFWA Grassland Initiative Coordinator at [bvanpelt@azgfd.gov](mailto:bvanpelt@azgfd.gov) or phone 623-236-7573. Thank you in advance for your prompt consideration of our request for approval/endorsement of this plan.

Sincerely,



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Richard Hatcher, Director  
Oklahoma Department of Wildlife  
Conservation



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Jim Lane, Director  
New Mexico Department of Game  
and Fish



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Keith Sexson, Assistant Secretary for  
Wildlife, Fisheries and Boating  
Kansas Wildlife, Parks and Tourism



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Carter Smith, Executive Director  
Texas Parks and Wildlife Department



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Steve Yamashita, Acting Director  
Colorado Parks and Wildlife

BVP:ch

cc: Dr. Benjamin Tuggle, Director Region 2 USFWS  
Ms. Noreen Walsh, Director Region 6, USFWS  
Mr. Gary Frazer, Assistant Director for Endangered Species, USFWS  
Mr. Bill Van Pelt, WAFWA Grassland Initiative Coordinator