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Public Comments Processing
Attn: FWS-R2-ES-2021-0015-0285
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, Virginia 22041-3803

Re: FWS-R2-ES-2021-0015-0285 – Proposed Listing of the Northern Distinct Population Segment of the Lesser Prairie-Chicken as a Threatened Species under Section 4(d) of the Endangered Species Act of 1973, as Amended

To Whom It May Concern:

This comment is made in connection with the above-referenced proceeding, in which the United States Fish and Wildlife Service (“USFWS” or “agency”) requests comment on the proposed listing of the Northern Distinct Population Segment (“NDPS”) of the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*) (“LPC”) as a threatened species under Section 4(d) of the Endangered Species Act of 1973, as Amended. 86 Fed. Reg. 29,432 (June 1, 2021). The Attorney General of Kansas, on behalf of the citizens of Kansas, has a keen interest in a thriving Kansas economy and agriculture industry that protects our bio-diverse natural resources. As such, the Attorney General urges the USFWS to consider and determine that the LPC population is sufficiently being managed and protected by the State’s voluntary efforts and that the listing of the LPC as threatened under the Endangered Species Act of 1973, as amended, 16 U.S.C.1531, et seq., is not warranted.

Since the mid-1990s when the species was first petitioned, the occupied range of the Lesser Prairie-Chicken has increased dramatically. In fact, the occupied range in Kansas alone has nearly tripled since that time. The increase in occupied range has occurred because of the addition of nearly 2 million acres of grassland in western Kansas resulting from landowner participation in the voluntary Conservation Reserve Program (“CRP”). Because of Kansas landowners’ involvement in the CRP, Kansas has been able to grow the range of the Lesser Prairie-Chicken. The success of this program was once featured

on the website for the United States Department of Agriculture (“USDA”).¹ Nonetheless, it must be recognized that the larger the range, the greater is the geographic area within which any USFWS listing decision places constraints on Kansas’ interests as a sovereign. There are four unique habitat eco-regions occupied by the species across its range – the Sand Sagebrush Prairie, Mixed Grass Prairie, Short Grass Conservation Reserve Program Prairie, and Shinnery Oak Prairie. Since 2013, the overall LPC population has increased in the three eco-regions that cover land in Kansas.² Notably, beginning in 2014, Kansas emerged from a multi-year drought. As was predicted by both public and private interests in Kansas, the welcome rainfall quickly re-established the ecoregion occupied by the LPC and the species count immediately began to grow. Indeed, the current estimated population of the LPC has more than doubled in the years since its 2013 low. It should be recognized that the LPC populations are likely much higher than what was observed by aerial survey.

The LPC population decline that spurred the most recent listing petition is not a good indication of the stability of the Lesser Prairie-Chicken population in Kansas. Short-term population fluctuations of upland game populations are common in both directions and should not carry undue weight when determining the sustainability of the species. The long-term trend should carry the most weight in that determination because it is more reflective of habitat availability.

Practical considerations weigh in favor of the agency not listing the Lesser Prairie-Chicken as a threatened species in the Northern Distinct Population Segment at this time. The vast majority of land within the known LPC range in Kansas is privately owned. Kansans have demonstrated that they care about the preservation of the Lesser Prairie-Chicken within the broader context of respect for private property rights, generational stewardship of the environment, and the State’s interest as a sovereign to fairly balance environmental and economic interests within its own borders.

In Kansas, under the Nongame and Endangered Species Conservation Act, K.S.A. 32-957, et seq. the Secretary of Wildlife and Parks is charged with determining whether any species of wildlife indigenous to the state is a threatened species or an endangered species in this state because of any of the following factors: (a) the present or threatened destruction, modification or curtailment of its habitat or range; (b) the overutilization of such species for commercial, sporting, scientific, educational or other purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; or (e) the presence of other natural or man-made factors affecting its continued existence within the state. In carrying out the programs under the Act, the Secretary is authorized to enter into agreements with federal agencies, other states, other state agencies, political subdivisions of the state or private persons for the administration and management of any area established for conservation of nongame species, species in need of conservation or threatened or endangered species. Such conservation agreements may include prelisting

¹ See http://www.fsa.usda.gov/FSA/newsReleases?mystate=ks&area=home&subject=copr&topic=crp-20&newstype=crpsuccessstories&type=detail&item=ss_ks_artid_620.html. The page has subsequently been removed.

² The Sand Sagebrush Prairie, Mixed Grass Prairie, and Short Grass Conservation Reserve Program Prairie.

conservation agreements, safe harbor agreements, and no take agreements. By the same provision of the law all state agencies are required to cooperate with the Secretary of Wildlife and Parks in furtherance of the conservation of nongame, threatened and endangered species.

The Kansas Department of Wildlife and Parks is a member of the Western Association of Fish and Wildlife Agencies (WAFWA). The WAFWA LPC Range-wide Conservation Plan was written by the LPC Interstate Working Group to address species needs, establish population goals, and provide a mechanism for industry to continue to operate. Thus, mechanisms already exist for coordination of conservation efforts at the state and range-wide levels. Through KDWP, Kansas has funded and directed extensive research with experts across the LPC's range, enhancing knowledge of species ecology and conservation needs.

In sum, listing the Lesser Prairie-Chicken as threatened in the Northern Distinct Population Segment is unwarranted due to (1) stable population trends in Kansas, which contains approximately 75 percent of the range-wide population; (2) existing efforts are advancing the conservation of the LPC; (3) listing the LPC will reduce trust and increase uncertainty among landowners, industry, and conservation partners; and (4) the Species Status Assessment used by the USFWS to characterize the current LPC population and habitat status and potential future scenarios for the species is seriously flawed and misrepresents both historical and current conditions.

None of the five factors utilized by the USFWS under the Endangered Species Act to determine if a species is endangered or threatened are present in the case of the Lesser Prairie-Chicken in the Northern Distinct Population Segment. In Kansas, the LPC has a stable and growing habitat and range. There is no overutilization that places the species at risk. There is no disease or predation beyond the typical norm. There are adequate existing regulatory mechanisms in place that have already produced demonstrable successes. And there are no other natural or manmade factors that affect the continued viability of the species. In short, there is no basis for action under the Act and its implementing regulations.

The Kansas Attorney General urges the USFWS to determine that the renewed effort to list the LPC as threatened is not warranted under the facts or the law. Please carefully consider a broader perspective and long-term approach when handling this issue. We appreciate the opportunity to provide comment on this important matter.

Sincerely,



Derek Schmidt
Attorney General of Kansas