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U.S. Department of Interior
ATTN: Docket ID No. FWS-R2-ES-2021-N195
Draft Habitat Conservation Plan/Draft Environmental Assessment Covering Potential
Impacts to the Lesser Prairie Chicken from Oil & Gas Development in the Great Plains
March 18, 2022

Greetings! On behalf of the nearly 3,000 members of the Kansas Independent Oil & Gas Association (KIOGA), I submit these comments to the United States Department of Interior (DOI) to address concerns related to the draft habitat conservation plan (HCP) and draft environmental assessment covering potential impacts to the Lesser Prairie Chicken (LPC) from oil and gas development in the Great Plains.

The oil and natural gas industry in Kansas supports over 100,000 jobs in Kansas, over \$3 billion in family income, and over \$1.4 billion in state and local tax revenue. The average Kansas oil well produces 2 barrels of per day and the average natural gas well produces 29 Mcf of natural gas per day. The small businesses that produce Kansas wells account for 92% of the oil and natural gas produced in Kansas.

I am providing general comments about the regulatory environment in which the Kansas oil and gas industry operate and how that environment impacts small oil and gas exploration and production (E&P) businesses in Kansas. The comments highlight several concerns with the LPC HCP proposal that we believe should be reviewed and corrected. These areas have an impact on large companies in the oil and gas industry, but have a much greater impact on the small businesses within the same industry. I submit these comments to address opportunities for the oil and gas business segment in Kansas to work with regulators. Protecting the environment and species is in the best interest of our industry. Taking care of the environment is part of our goal as good corporate citizens. The owners and employees of Kansas oil and gas producing companies live in the same communities that they drill and operate oil and gas wells. They have a vested interest in not adversely impacting the environment in which they and their families live.

Discussion

Enacted in 1973, the Endangered Species Act (ESA) was devised to protect species believed to be on the brink of extinction. Since then, the consequences of the law have reached beyond original intent. The U.S. Fish & Wildlife Service (USFWS) administers the act. When a species is listed as “endangered” or “threatened”, the USFWS moves to protect it by prohibiting a “taking” – any action on public or private land that would harass, harm, wound, kill, or modify its habitat – or making special provisions for incidental “taking”.

In Kansas, the listing of the lesser prairie chicken as “threatened” could have serious consequences for many oil and gas operators, farmers, and others. The USFWS decided to list the lesser prairie chicken as “threatened” in March 2014, but not because the animal was close to extinction or because of human actions. The listing decision was made because the USFWS was fixated more on meeting the mega-settlement deadlines set with environmental special-interest groups than the agency was in allowing adequate time for consideration of existing state conservation efforts. What’s most disconcerting is the decision, which could have had dire consequences for economic development and private property rights, provided no additional protection for the lesser prairie chicken.

For oil and gas operators, big or small, the ESA is becoming a huge problem. Operating or just living within the area of an endangered or threatened species’ habitat becomes hazardous because your operations may impact a protected animal that could result in enforcement actions that include criminal liability. You might conduct oil field or farming operations that create sounds that disturb lesser prairie chickens or engage in field operations too early in the morning. Nearly any activity that could disturb the animal and its habitat becomes a jurisdictional hurdle.

The ESA was enacted in 1973 to protect animal and plant species at risk of extinction due to habitat changes or loss. While minor updates have been made, the law itself has largely remained unchanged for nearly five decades. Unfortunately, the ESA has evolved into a litigation tool used by some environmental organizations to advance an agenda that impedes American oil and natural gas production – destroying economic growth and job creation while diverting hundreds of millions of taxpayer dollars away from species recovery.

Despite the significant amount of taxpayer dollars spent in the name of the ESA, the law has failed at its underlining mission of recovering and delisting species. Less than 2% of all listed species have been removed from ESA protection since 1973. Perhaps even more troubling, the data and science used to justify endangered species regulatory actions, such as critical habitat designations, is not publicly available for analysis.

Independent oil and natural gas producers are good stewards of our land and are committed to protecting the environment. Energy production and species conservation can go hand and hand.

Stakeholders in Kansas have seen significant progress made in improving LPC population and securing its future. The LPC population has increased significantly since the peak of the drought in 2013 without ESA regulations in place due to increased rainfall and on-the-ground conservation measures. A heavy-handed approach to list the LPC as Threatened/Endangered in spite of the unprecedented level of voluntary conservation efforts only reduce the incentive for stakeholders to pursue future initiatives to preserve the species and send a strong signal to those working to preserve species nationwide that no amount of private investment or voluntary conservation could satisfy the federal government. If the listing of a species is viewed as inevitable, stakeholders lose the incentive to invest in private, voluntary conservation efforts.

DOI and USFWS has a methodology that permits discretion to prioritize critically impaired species, while giving lower priority to those species for which conservation efforts are in place. There are already extensive LPC proactive conservation efforts, by states, landowners, and stakeholders underway or being developed that benefit the LPC. Therefore, the LPC should be a low priority species for the USFWS.

The DOI has an opportunity to chart a different course to reduce regulatory burdens and encourages stakeholder involvement in the conservation of our nation's wildlife species. KIOGA encourages DOI to collaborate with stakeholders on positive solutions that protect the species without causing unnecessary harm to the livelihoods of the people of our states. We encourage DOI to consider changes to the way they list threatened/endangered species to address habitat determination, species listing priorities, and the listing species recovery process. We suggest DOI:

1. Allow the consideration of economics in making listing determinations;
2. Revise the habitat determination by requiring that habitat actually be inhabited by the species to be considered as such;
3. Modifying the requirements for the de-listing process to be more in line with those for listing a species as threatened or endangered.

Many of those represented in this document reside on and/or conduct business operations on property held in our families for *generations*. For Kansans, we are concerned for the Lesser Prairie Chicken because it is part of our heritage and neighborhoods.

KIOGA has long advocated that the best scientific and commercial information available demonstrates that the LPC does not meet the ESA's definitions of either a threatened or endangered species. The LPC has rebounded from historic lows, and through a combination of public and private efforts, the LPC is now better protected than at any previous time. A listing as threatened or endangered will not provide any additional conservation benefits above what already exists.

Objective review of the Public Record and simple, down-home knowledge of this bird indicate LPC population declines are a result of drought, loss of habitat from native prairie conversions, and stressors from aggression/parasitism by Ring-necked Pheasants. LPCs display a general avoidance of buildings, pump jacks and power-line corridors – and this fact neither makes these fixtures a barrier nor imparts culpability for their presence.

Concern is expressed about the apparent unbalanced – perhaps even biased – focus away from natural LPC stressors and fragmentation toward future, perceived impacts. Because habitat fragmentation is complete and empirical data from specific anthropogenic sources is conflicting and often anecdotal, a Threatened Listing of the LPC would be premature, - or perhaps even elongate recovery of the LPC.

Concluding Remarks

If the USFWS decides to list the LPC as a threatened or endangered species, it could have serious consequences for oil and gas operators with operations and acreage in the LPC habitat areas. The draft HCP provides regulatory assurances to continue operations and development in the LPC habitat areas. However, the HCP imposes restrictions on oil and gas operations and requires payment of significant fees for any new drilling or construction projects.

KIOGA does not believe the draft HCP covering potential impacts to the LPC from oil and gas development in the Great Plains takes into account the impacts to the small businesses that make up the Kansas oil and gas industry. The cost of the HCP is huge and not well thought out. We encourage USFWS to chart a different course to reduce regulatory burdens and encourage stakeholder involvement in the development of a free market approach to the conservation of the LPC. We believe a risk-based free market approach with an HCP administered by local governments would work much better for protecting the LPC and small businesses.

The Russian invasion of Ukraine highlights the importance of energy security. European countries are starting to realize their fears about energy access and affordability with the breakout of conflict in Ukraine. Broadly similar to green new deal style policies, the European Union has been cutting off their own fossil fuel production and usage without a viable alternative to meet that baseline demand.

U.S. energy policies that restrict domestic production force our country to seek relief from foreign suppliers of energy, undermining our energy independence. The problem is that when certain foreign governments control your energy, they have the power to use it for their own purposes, not yours. America should not be in a position of asking for foreign energy supplies, especially when we have abundant resources produced to standards that are among the highest in the world, right here at home. Nothing is more essential to economic growth than reliable, affordable and abundant energy. To lose that advantage is not in anybody's interest.

We believe the USFWS should work with local governments to encourage the development of a cost-effective risk based free market conservation plan. The USFWS and all state and federal policymakers and agencies should prioritize advancing American energy leadership with policies that encourage development of responsibly produced energy here at home. These policies should recognize the volatile world we live in and the long-term impacts of returning to the days of foreign energy dependency.

Contact Information

For further information or any questions, please contact Edward Cross, President, Kansas Independent Oil & Gas Association, 800 SW Jackson Street, Suite 1400, Topeka, Kansas 66612 (785-232-7772; email ed@kioga.org).

Sincerely,

A handwritten signature in black ink that reads "Edward P. Cross". The signature is written in a cursive, slightly slanted style.

Edward P. Cross, President
Kansas Independent Oil & Gas Association