

LESSER PRAIRIE CHICKEN RECOVERY PLAN

Prepared By

Bob Davies

SE Region Terrestrial Biologist

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2126 North Weber

Colorado Springs, CO 80907

APPROVED:

Ronald P. Desilet
Ronald P. Desilet, Southeast Regional Manager

Date:

3/3/92

APPROVED:

Perry Olson
Perry Olson, Director Colorado Division of Wildlife

Date:

3/10/92

LESSER PRAIRIE CHICKEN RECOVERY PLAN

EXECUTIVE SUMMARY

1. Point or condition when the species will be considered for down listing:

To ensure the survival of the lesser prairie chicken as a resident breeding species, downlist from threatened to species of special concern by 2005 using the following criteria:

- a. Downlist to species of special concern when the population reaches 2500 birds and remains stable (fluctuating no more than $\pm 10\%$ per year) or increasing for a period of 5 (five) years.

2. Current threats to the species:

Habitat quality, composition and structure of rangeland vegetation.

3. What must be done to reach recovery:

Steps to reach recovery include protecting and maintaining presently occupied habitat, identifying potentially suitable habitats, conducting transplants, identifying and conducting research needed to improve habitat management practices, monitoring populations, and increasing public education and awareness.

4. Management needed to maintain the species after recovery:

Secure cooperative management to maintain and enhance lesser prairie chickens in their native habitat to allow successful completion of all life processes. This will require the combined efforts of private, State and Federal entities.

PREFACE

The Lesser Prairie Chicken Recovery Plan was developed by personnel within the Colorado Division of Wildlife. The recovery plan was distributed to select persons statewide for internal and external review and revised prior to submission to the Southeast Regional Manager and the Director for approval.

The recovery plan is based upon the belief that State and Federal Conservation agencies and knowledgeable, interested individuals and organizations should endeavor to preserve the lesser prairie chicken and its habitat, and to restore the species to a more viable condition. The objective of the plan is to make this belief a reality.

The best information available concerning lesser prairie chickens and the collective knowledge and experience of researchers and field personnel was utilized in producing this recovery plan. It is hoped the plan will be used by all agencies, institutions and individuals concerned with lesser prairie chickens to coordinate management and recovery activities. Periodically, and as the plan is implemented, revisions will be necessary. Revisions and implementation will be the responsibility of the Colorado Division of Wildlife.

This completed Lesser Prairie Chicken Recovery Plan has been approved by the Colorado Division of Wildlife. The plan does not necessarily represent official positions or approvals of cooperating agencies and does not necessarily represent the views of all personnel of the Colorado Division of Wildlife. This plan is subject to modification resulting from new findings and changes in species status and completion of tasks assigned in the plan. Goals and objectives will be attained and funds expended contingent upon appropriations, priorities and other budgetary constraints.

Literature Citation should read:

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INTRODUCTION

Little is known about the early distribution and population size of lesser prairie chickens (Tympanuchus pallidicinctus) although it was reported as a breeding species in 5 states; Texas, New Mexico, Oklahoma, Kansas, and Colorado (Bent 1932, Baker 1953, Bailey and Niedrach 1965, Oberholser 1974). The lesser prairie chicken was originally considered a migratory species that wintered in Texas (A.O.U. 1957).

During the past century, the occupied range of the lesser prairie chicken has decreased by 92% (Taylor and Guthery 1980) while population size was decreased by 97% (Crawford 1980). Lesser prairie chickens still occur in all 5 states they originally inhabited, although their distribution has become fragmented. Populations are currently estimated at approximately 50,000 birds (Crawford 1980, Taylor and Guthery 1980). Surveys in Colorado during 1986-90 indicate a minimum breeding population of 1,200-1,800 birds (K.M. Giesen, unpubl. data).

Several factors are responsible for the decline in lesser prairie chicken populations in the last century. Settlement and homesteading in the late 1800's increased grazing pressure and resulted in overgrazing of rangelands, and large expanses of native grasslands were converted to cultivated cropland. This loss of habitat was exacerbated by periodic droughts, especially during the 1930's. Loss of habitat combined with drought reduced numbers of lesser prairie chickens throughout their range.

In 1973 the Colorado General Assembly passed the "Nongame, and Endangered, or Threatened Species Conservation Act" intended to preserve and enhance nongame wildlife within the state. A goal of the Division of Wildlife is to ensure that populations and habitats of all threatened and endangered species become secure so these species may be delisted.

This recovery plan outlines objectives necessary for delisting the lesser prairie chicken from threatened status in Colorado, and provides specific research and management strategies to meet this goal.

SPECIES DESCRIPTION

Bailey and Niedrach (1965: 268) provided the following description of lesser prairie chickens. "Length 40-45 cm (16-18 inches) smaller than the greater prairie chicken (*T. cupido*), plumage similar but paler, and the barring comprised of 2 narrow dark bars enclosing a brown bar, neck pouch of male reddish instead of orange as in the greater prairie chicken". Peterson (1961: 85) described the call as "not as rolling or loud as booming of the greater prairie chicken, various clucking, cackling, or gobbling notes." Weights of males in spring average 0.75 kg (1.6 lb) with females averaging 25 gms less (K.M. Giesen, unpubl. data); these weights are nearly 20% less than those of greater prairie chickens. In addition to physical differences between greater and lesser prairie chickens, it is possible to distinguish between the 2 species on the basis of distribution because they are not sympatric in Colorado nor elsewhere.

DISTRIBUTION

Crawford (1980) and Taylor and Guthery (1980) provided historical and recent distributional information for lesser prairie chickens in North America. Their known current distribution in Colorado is considerably less than their presumed historical distribution (Fig. 1). The largest population occurs in Baca County, primarily east of Campo on the Comanche National Grasslands and on private lands south of the Cimarron River. Smaller populations occur southeast and southwest of Campo and southeast of Springfield in Baca County, south of the Arkansas River between Granada and Holly in Prowers County, and along Big Sandy Creek northeast of Eads in Kiowa County.

LIFE HISTORY

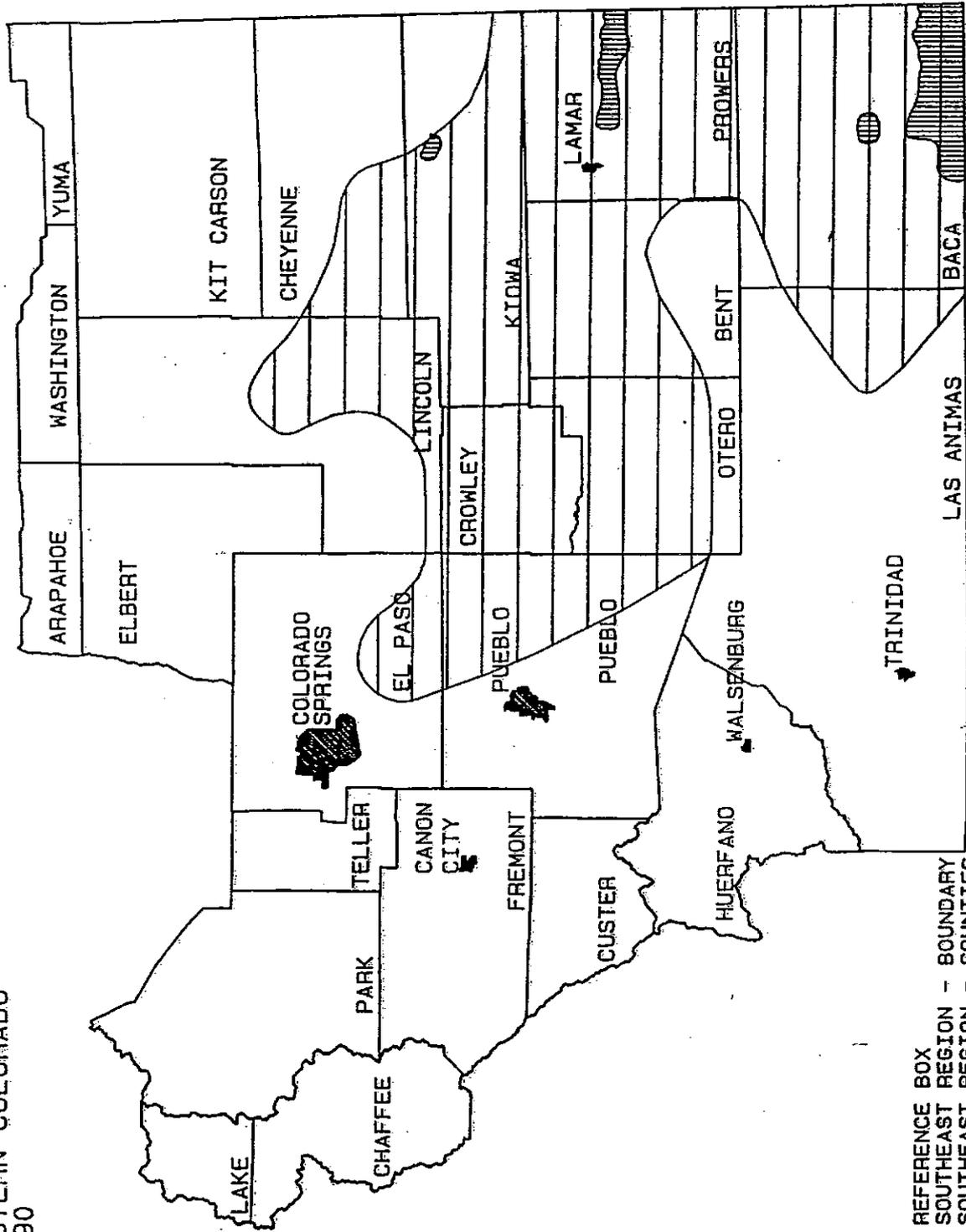
Population Characteristics

Many population attributes of lesser prairie chickens are unknown or based on questionable sampling methodology. Sex ratios have been ascertained from lek counts and from hunter-harvested birds. The data available suggest males slightly outnumber females 1.0:0.8, (Taylor and Guthery 1980) although there was wide variation in individual estimates; and the effect of increasing or declining populations on sex ratios was not ascertained. Until additional evidence suggests otherwise, it is reasonable to assume that sex ratios are equal in large stable populations.

Age ratios reported in the literature (Taylor and Guthery 1980) have also varied widely, especially those from hunter harvest samples. Percent juveniles in harvest samples is related to nest success, behavior, and hunter patterns which may vary annually. Campbell (1972) reported an annual mortality rate of 66.1% based on reobservation of marked males captured on leks.

Figure 1

LESSER PRAIRIE CHICKEN DISTRIBUTION
SOUTHEASTERN COLORADO
JULY 1990



REFERENCE BOX
SOUTHEAST REGION - BOUNDARY
SOUTHEAST REGION - COUNTIES
SOUTHEAST REGION - CITIES
LESSER PRAIRIE CHICKEN - HISTORIC RANGE
LESSER PRAIRIE CHICKEN - OVERALL DISTRIBUTION

The reproductive potential of lesser prairie chickens is high. Average clutch sizes range from 10 to 14 eggs (Bent 1932, Copelin 1963, Taylor and Guthery 1980) with occasional re-nesting by hens unsuccessful in their first nest attempt. Eggs are laid at daily intervals and incubation lasts 25-26 days (Johnsgard 1973). Most estimates of nest success have been biased by observer influence which likely increases predation and nest abandonment. Nest success may also be affected by age of hen, weather, and habitat quality.

Densities of lesser prairie chickens have been estimated from counts of males on leks. In Oklahoma, Davidson (1940) reported densities of 6.4 - 10.8 males/Km² (16.6-27.9 males/mi²) while Copelin (1963) and Jones (1963b) reported densities of 0.6 - 7.1 males/Km² (1.5-18.3 males/mi²) and 5.2 - 6.3 males/Km² (13.5-16.2 males/mi²), respectively. Brekke (1977) reported densities of 2.8 males/Km² (7.2 males/mi²) in the best Colorado habitats while recent surveys (K.M. Giesen, unpubl. data) indicate a density of 1.6 - 1.8 males/Km² (4.1-4.7 males/mi²) in the same area. The highest densities reported in Oklahoma were in Harvard oak (Quercus harvardi) habitats; sandsage (Artemisia filifolia) habitats in Oklahoma supported densities of 0.9 - 1.2 males/Km² (2.3-3.0 males/mi²). Absolute density may be ultimately regulated by intrinsic factors although, at lower densities, habitat quality is important.

Breeding Behavior

Lesser prairie chickens have a polygamous mating system in which males gather at communal display sites arenas, leks or gobbling grounds for breeding. The courtship display of males include ritualized movements, vocalization, and visual displays including dancing or foot stamping, gobbling and cackling, booming, and flutter jumping (Grange 1940, Copelin 1963, Hjorth 1970). Males typically begin attending leks in February or March depending upon weather, with regular attendance beginning in late March

and continuing through May. Males arrive on leks 30-60 minutes prior to sunrise and display on individual territories for 2-3 hrs each morning.

During the mating season, males also attend leks at sunset but display is much reduced. Lek size (the number of males attending a given lek) ranges to 40+ but typically averages 10-15. Females begin attending leks for mating in late March or early April, usually arriving near sunrise and remaining for as much as 1 hour or until copulation. Usually only a few hens arrive on a lek for mating on any given morning and hens may attend leks for 2-3 days before copulation occurs. After breeding, females disperse to nesting territories 1-3 Km (0.6-1.8) miles from leks to establish nests (Riley 1978; Sell 1979; K.M. Giesen, unpubl. data).

Habitat Requirements

Lesser prairie chickens occupy 2 distinct habitat types within their range. The sandsage-bluestem (Andropogon Sp.) type is most commonly used in Colorado, Kansas, Oklahoma, and portions of New Mexico, while the Harvard oak-bluestem type is most used in New Mexico, Texas, and portions of Oklahoma (Taylor and Guthery 1980). A comparison of the 2 habitat types indicate different vegetative species composition but similar structural characteristics.

Lek sites are typically in areas of short-grass prairie or on heavily grazed sites, generally on hilltops or ridges (Copelin 1963, Jones 1963b). In some areas, leks are established on sites where human activities have removed vegetation or compacted the soil (Taylor 1980), or in burned areas (Cannon and Knopf 1979). Although it may be possible to manage for or create additional lek sites, it has not been demonstrated that lek sites limit populations of prairie grouse.

Lack of adequate nesting and brood rearing cover appears to be a major limiting factor for prairie grouse throughout their range (Kirsch 1974). Descriptions of lesser prairie chicken nest sites indicate females select areas having high concealment cover in the form of shrubs or tall bunchgrasses (Bent 1932, Copelin 1963, Jones 1963b, Riley 1978, Sell 1979), usually within 3 Km (1.8 miles) of lek of breeding (Suminski 1977, Riley 1978). The importance of good nesting cover is supported by data which indicate successful nests are surrounded by taller and denser cover than unsuccessful nests (Suminski 1977, Riley 1978, Sell 1979,). Brood-use sites are typically within habitats that are in lower seral stages, usually having a high proportion of annual forbs and bare ground (Jones 1963b).

Studies of lesser prairie chicken foods indicate use of a higher proportion of animal matter than other prairie grouse. The diet of juveniles is 85-99% insects (Jones 1963a, Davis et al. 1979). The diet of adults is also comprised largely of insects with differing amounts of seeds and foliage eaten (Jones 1963a, Crawford and Bolen 1976, Davis et al. 1979). Agricultural crops may be used in winter, especially in poor habitats when native foods are scarce (Jones 1963b, Donaldson 1969, Crawford 1974).

FACTORS LEADING TO THREATENED STATUS

The major factor responsible for reducing populations and distribution of lesser prairie chickens in Colorado is habitat loss. Most of the rangeland currently occupied by lesser prairie chickens in southeast Colorado has been grazed by domestic livestock since at least the late 1800's. By the early 1900's most public domain lands were homesteaded and the grassland converted to cropland and a shortgrass rangeland disclimax maintained by livestock grazing. The vegetation and soils in this area were not suited for such intensive use and drought conditions of the 1930's were devastating to prairie chickens and their habitat. After the 1930's, the federal government established programs to stabilize the fragile soils, revegetate the grasslands, and ultimately purchase extensive areas of devastated rangeland from farmers unable to survive on their homesteads. Carefull farming and grazing practices has allowed these lands to recover in part, although large expanses of buffalo grass (Buchloe dactyloides) and blue grama (Bouteloua gracilis) rather than taller blue stems provide poor habitat for prairie chickens even though they stabilize the soil. Factors currently limiting distribution and populations of prairie chickens appear to be habitat quality, composition and structure of rangeland vegetation. Subsequently, the lesser prairie chicken was listed as threatened in 1973.

CURRENT STATUS

Breeding Surveys

Little is known about lesser prairie chicken populations or breeding densities in Colorado at time of settlement although Bailey and Neidrach (1965) reported they were relatively common east of Campo in Baca County in 1923. Lek surveys were initiated by the Colorado Division of Wildlife in 1959 and are now conducted annually in Baca, Prowers, and Kiowa counties to document status (active/inactive) of known leks, and to obtain counts of males and females. Surveys for new leks are conducted in habitats currently occupied and in seemingly suitable habitats within the presumed historic range of lesser prairie chickens in Colorado.

Early surveys documented 13 active leks in 1962 (Hoffman 1963). Currently (1990) there are 47 known active leks in southeast Colorado with most in Baca County ($n = 33$) with Prowers and Kiowa counties having 11 and 3, respectively. There is a trend for more leks to be located and more total birds to be counted each year (Table 1). However, we can not totally attribute numbers of leks and birds counted to population increases as survey efforts have increased substantially since surveys were initiated in 1959.

The relationship between total population size and lek count data is unknown. Cannon and Knopf (1981) reported a positive

Table 1. Numbers of lesser prairie chickens and leks, Colorado, 1959-90.

	County											
	Baca			Prowers			Kiowa			Totals ^a		
	N	Leks	N Birds	N	Leks	N Birds	N	Leks	N Birds	N	Leks	N Birds
1959	2		12	1		6			ND		3	18
1960	6		39	1		9			ND		7	48
1961	11		84	2		16			ND		13	100
1962	11		116	2		14			ND		13	130
1963	10		125		ND				ND		10	125
1964		ND			ND				ND		ND	
1965		ND			ND				ND		ND	
1966		ND			ND				ND		ND	
1967	1		6		ND				ND		1	6
1968		ND			ND				ND		ND	
1969		ND			ND				ND		ND	
1970	3		42		ND				ND		3	42
1971	3		37		ND				ND		3	37
1972	7		82	2		?			ND		9	82
1973	9		101	1		28			ND		10	129
1974	11		107		ND				ND		11	107
1975	13		151		ND				ND		13	151
1976	15		158	2		9			ND		17	167
1977	17		178		ND				ND		17	178
1978	16		156		ND				ND		16	156
1979	15		130	4		45			ND		19	175
1980	17		184		ND				ND		17	184
1981	22		261	2		39	1			3	25	303
1982	20		223	2		31	1			3	23	257
1983	22		226	4		81	1			3	27	310
1984	22		220	6		121	1			8	29	349
1985	26		243	6		89	4			23	36	355
1986	29		236	6		70	2			23	37	329
1987	30		281	11		97	2			15	43	393
1988	27		293	8		110	3			32	38	435
1989	25		312	8		114	2			22	35	448
1990	33		171	11		53	3			24	47	271

^aIncludes males, females, and birds not classified to sex. ND = No data

correlation between number of leks counted and numbers of males attending leks. However, they obtained surveys of all leks on their study areas. This is not done in Colorado. The number of leks counted increased by 48% (29 vs. 43) between 1984 and 1987 as a result of more intensive effort. Still, not all suitable habitats were surveyed for leks. If the sex ratio is equal, the 1989 lek surveys represent a minimum of nearly 900 birds. Because not all occupied habitats are surveyed, a realistic spring population estimate is 1200-1800+ birds.

TRANSPLANTS

Colorado has a long history of lesser prairie chicken transplants (Table 2). Unfortunately, there were few pre-release habitat surveys conducted to ascertain suitability or possible limiting factors and few follow-up studies were conducted to evaluate the transplants. Based on available data, it is likely that lesser prairie chickens were already present in half the transplant sites. The rationale of augmenting existing populations without understanding limiting factors of that population is unknown.

Translocation of wildlife species can be a useful tool if used properly. Some success has been reported for other prairie grouse (Hoffman 1985; Toepfer et al. 1990; R. Rogers, pers. commun). However, guidelines should be established to maximize success of transplants. Transplants should be undertaken only when part of a management plan for the species.

Specific guidelines for transplants of lesser prairie chickens include: 1) minimum habitat block of 16 Km² (20 mi²) 2) 65-100% of habitat in native rangeland in good condition 3) transplant site within historic range of the species, and 4) a minimum of 40 breeding age birds, with a 50:50 sex ratio. Other factors to be considered include habitat stability, public access or land ownership, and current range use.

Table 2. Lesser prairie chicken transplants into Colorado.

Date	Source	Location	Release site	N birds
1870	Kansas		Las Animas, Bent Co	96
1961	Colorado		Campo, Southwest, Baca Co	8
26 Mar 68	Kansas		Hugo, South 7 mi, Lincoln Co	21
2 Apr 68	Kansas		Hugo, South 7 mi, Lincoln Co	6
9 Jan 72	Kansas		Sand Arroyo, Pasture 13E, Baca Co	21
20 Jan 72	Kansas		Sand Arroyo, Pasture 13E, Baca Co	22
29 Jan 72	Kansas		Pasture 1AE, Baca Co	6
23 Feb 72	Kansas		Sand Arroyo, Pasture 13E, Baca Co	5
23 Jan 75	Kansas		Pasture 1AE, Baca Co	8
23 Jan 75	Kansas		Pasture 13B, Baca Co	10
1 Feb 75	Kansas		Pasture 6M, Baca Co	10
1 Feb 75	Kansas		Pasture 1B, Baca Co	10
1 Feb 75	Kansas		Pasture 1AE, Baca Co	3
1 Feb 75	Kansas		Sand Arroyo, Pasture 13E, Baca Co	8
Apr 88	CO/KS		Dep. Trans. Test Track, Pueblo, Co	23
Apr 89	Colorado		Dep. Trans. Test Track, Pueblo, Co	6

RECOVERY PLAN

Objective: To ensure the continued existence of lesser prairie chickens in Colorado as a resident breeding species and to remove them from Colorado's state endangered and threatened list using the following criteria:

1. Downlist to species of special concern by 2005 if, The number of lesser prairie chickens reaches 2500 birds and remains stable (fluctuating no more than $\pm 10\%$ per year) or increasing for a period of 5 years.

The primary threat to lesser prairie chickens is habitat alteration and loss. Development of oil and gas resources, overgrazing, and conversion of grasslands to croplands are major threats. Poor growing conditions and improper livestock stocking rates resulting in inadequate nesting and winter cover are of concern. Landowners will be encouraged to manage their property for the benefit of lesser prairie chickens. Additional habitat will be identified and evaluated for suitability for transplants. Habitat conditions must be monitored and additional effort expended to search for existing leks. Effort must be taken to inform the public of the status of this species, efforts to preserve and expand the population, and to enhance the aesthetic and economic value of this prairie grouse.

1. Management and Acquisition of Habitat

- 1.1 Lesser prairie chicken habitat management includes maintenance of existing suitable habitat and improving habitats in less than suitable condition. Management must be flexible to respond to changing biological, social, and technological conditions.

- 1.11 Develop grazing recommendations that will benefit lesser prairie chickens. Research is needed to better define grazing prescriptions on public and private lands to benefit lesser prairie chickens.
- 1.12 Develop incentives within the Cooperative Habitat Improvement Program (CHIP) so landowners will manage their properties to benefit lesser prairie chickens. Develop a brochure for private landowners with management recommendations for lesser prairie chickens and how the chip program can improve habitat.
- 1.13 Cooperate with land management agencies to develop management plans, provide protection, and monitor existing management plans for lesser prairie chickens.
 - 1.131 Continue to work with the U. S. Forest Service (USFS) to incorporate grazing recommendations on the Comanche National Grasslands.
 - 1.132 Work with the Colorado Cattlemen's Association (CCA) to develop consent on grazing plans that complement lesser prairie chicken recovery efforts.
 - 1.133 Work with the Soil Conservation Service (SCS) to incorporate grazing recommendations on private lands which benefit lesser prairie chickens.
 - 1.134 Work with SCS and Agricultural Stabilization and Conservation Service (ASCS) to monitor sagebrush spraying projects within occupied range and potential release sites. Establish recommendations for spraying which will not cause deterioration of lesser prairie chicken habitat.
 - 1.135 Work with Colorado State University Range Science Department to develop management strategies.

- 1.136 Continue to work with the USFS and Bureau of Land Management (BLM) regarding mineral, gas, and oil exploration and extraction to minimize impacts on lesser prairie chickens.
- 1.137 Work with appropriate County Commissioners regarding land use within occupied and potential transplant ranges of lesser prairie chickens. Develop Wildlife Resource Information System (WRIS) mapping in counties with suitable range for lesser prairie chickens and those areas of low, medium, or high impact on lesser prairie chickens if land use is changed.
- 1.138 Work with ASCS, Animal and Plant Health Inspection Service (APHIS), and appropriate counties to update county Environmental Assessments regarding control of Russian wheat aphid, grasshopper and/or Mormon Cricket, and other insects. Assist APHIS in monitoring use of pesticides within lesser prairie chicken range.
- 1.2 Habitat acquisition for lesser prairie chickens will include leasing, conservation easements, and fee title.
- 1.21 Gain control of sandsage range lands within existing range or transplant sites through conservation easements, leasing, and fee title purchase by the CDOW or land exchanges through efforts of the Nature Conservancy, Trust for Public Lands, and other conservation groups.

- 1.211 Work with the USFS to acquire more lesser prairie chicken habitat in the Comanche Grasslands by purchase of lands or trading of USFS lands for private lands.
 - 1.22 Evaluate all Farmers Home Administration (FMHA) Inventory lands within historic range and proposed transplant sites for establishing conservation easements and/or deed restrictions to benefit lesser prairie chickens.
2. Population monitoring.
 - 2.1 The annual census for lesser prairie chickens will be continued.
 - 2.11 Continue lek counts following procedures now in use by K.M.Giesen and Area 12 personnel in Kiowa, Prowers, and Baca counties. Additional effort to locate new leks is needed each year, especially in historic range in Cheyenne County.
 - 2.111 Formulate census methods for lesser prairie chickens into an Standard Operating Procedure (SOP) so efforts will be comparable between areas and years.
 - 2.12 Intensive census efforts will be conducted for transplant populations.
 - 2.121 Intensive efforts will be made to locate new leks. Once leks are located they should be mapped, photographed, and a census route established.
 3. Transplants
 - 3.1 Encourage lesser prairie chicken transplants. These transplants will be only into historically occupies ranges which can support a self-sustaining population.

3.2 Obtain transplant stock from existing populations in Colorado or other states with viable populations. Current recommendations are a minimum of 40 birds per year for 2-3 years with equal sex ratios. All birds originating outside of Colorado will be checked for diseases and must be Mycoplasma negative.

3.21 Evaluate potential transplant sites using a team comprised of the Regional Senior Nongame Biologist, Area Terrestrial Biologist, Upland Bird Program personnel, Area Wildlife Manager (AWM), and District Wildlife Manager (DWM). A prioritized list of transplant sites will be kept and updated by the Senior Nongame Biologist.

3.211 Obtain long term agreements and/or conservation easements to provide protection for the birds and their habitat. Access by CDOW personnel to monitor the release will be required.

4. Research needs.

4.1 The basic biology and ecology of lesser prairie chickens in Colorado needs to be fully understood.

4.11 Additional research is needed concerning grazing and lesser prairie chicken habitat including amount of forage that may be removed without adversely affecting lesser prairie chickens, time of grazing, etc.

4.12 Conduct research on Holistic Resource Management (HRM) and its benefits for lesser prairie chickens. The establishment of an HRM pasture is planned by the U.S.F.S. to test vegetative response and evaluate the benefits for lesser prairie chickens.

- 4.13 Evaluate transplants to provide a better indication of how large an area is needed for transplant projects.
 - 4.14 Develop transplant techniques to ensure safety to the birds and the best chance of success.
 - 4.15 Develop methods to enhance lesser prairie chicken habitat.
5. Public information and Watchable Wildlife
- 5.1 Inform the public about lesser prairie chickens and their habitat.
 - 5.11 Inform landowners and public land managers about the need to preserve and enhance habitat for lesser prairie chickens. Information regarding the historic range, habitat requirements, and need for transplants must be made available.
 - 5.12 Develop the Comanche National Grasslands as a showcase for what can be done for lesser prairie chickens.
 - 5.121 Create areas with habitat manipulation projects and make them available to the public so they may see what can be done.
 - 5.122 Prepare a brochure explaining habitat manipulations to benefit lesser prairie chickens.
 - 5.2 Public demand to observe lesser prairie chickens species is high. Provide opportunities for the public to view these birds.
 - 5.21 Continue organized spring tours while birds are on leks. Volunteers could be used as guides.

- 5.22 A brochure describing lesser prairie chicken life history and viewing etiquette has been developed. These should be made available to those on organized tours or viewing on their own. Permission must be obtained to view these birds on private property.
- 5.23 Work with local Chambers of Commerce and emphasize the value of lesser prairie chickens as a tourism attraction.

RECOVERY PLAN SCHEDULE AND COSTS^a

PLANNING YEAR

Activity	FY 91-92	FY 92-93	FY 93-94	FY 94-95	FY 95-96	Year 6-15
1.11 Develop grazing recommendations for private and public lands.	On going-----					
1.12 Incorporate CHIP program	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	10,000
1.131 Develop grazing recommendations on Comanche Grasslands	On going-----					
1.132 Develop grazing recommendations with SCS	On going-----					
1.133 CCA grazing plans	On going-----					
1.134 Monitor sagebrush spraying	On going-----					
1.135 Minimize mineral exploration impacts	On going-----					
1.136 Work with County Commissioners on land use	On going-----					
1.137 Monitor insect control projects	On going-----					
1.21 Gain surface control of habitat	On going - funds to be determined for each parcel					
1.22 Evaluate FMHA properties	On going-----					
2.11 Continue lek counts	\$5,000	\$5,500	\$6,000	\$6,500	\$6,500	\$60,000
2.12 Census efforts at transplant sites	\$1,000	\$1,000	\$1250	\$1250	\$1500	\$15,000
3.2 Obtain birds for transplants	\$6,000	\$6,000	\$6,000	\$6,000		
3.21 Transplant site Evaluation	\$1,000	\$1,000	\$1,000			

^aDoes not include PFTE's and salaries or ongoing activities.

<u>Activity</u>	<u>FY 91-92</u>	<u>FY 92-93</u>	<u>FY 93-94</u>	<u>FY 94-95</u>	<u>FY 95-96</u>	<u>Year 6-15</u>
4.1 Current Research Project						
4.11 Relationship of Grazing		\$75,000	\$75,000	\$75,000	\$75,000	
4.12 Effects of HRM on lesser prairie chicken habitat						
4.13 Determine minimum area required for transplant site		\$10,000	\$10,000			
4.14 Develop better trapping/transplant techniques						
4.15 Develop management techniques to enhance habitat				\$50,000	\$50,000	\$50,000
5.11 Public information						
5.12 Develop Comanche National Grasslands as habitat showcase						
5.122 Printing of brochure		\$500		\$500		\$1000
5.21 Increase opportunity for tours						
5.22 Develop brochure on viewing						
5.23 Emphasize economic importance						

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APPENDIX A

List of Draft Reviewers
Letter requesting comments
and
Comments from Reviewers

List of Reviewers

Aiken Audubon Society
P.O. Box 7617
Colorado Springs, CO 80933

The Arkansas Valley Audubon Society
P.O. Box 11187
Pueblo, CO 81001

ASCS
3501 South Main
Lamar, CO 81502

ASCS
760 S. Bent Avenue
Las Animas, CO 81054

ASCS
200 E. 10th Avenue
Springfield, CO 81073

Bent/Prowers Cattle and
Horse Growers Association
Wildlife Committee
c/o Corwin Brown
557 Tipton
Springfield, CO 81073

Bureau of Land Management
Eric Brekke
P.O. Box 2200
Canon City, CO 81215-2200

Campo Grazing Association
c/o USFS
P.O. Box 127
Springfield, CO 81073

Colorado Bird Observatory
Mike Carter
13401 Piccadilly
Brighton, CO 80601

Colorado Farm Bureau
Dean Kittel Admin. Officer
2211 W 27th Ave
P.O. Box 5647 TA
Denver, CO 80217

Colorado Field Ornithologists
c/o Bill Prather
13810 Weld Co Rd #1
Longmont, CO 80501

SE Colorado Game & Fish Club
Jack Gentz
41452 Co. Road 8
Lamar, CO 81052

Colorado Wildlife Federation
7475 Dakin, Suite 137
Denver, CO 80221

Fin & Feather Club
Robert Fajt
2149 Iris Road
Pueblo, CO 81006

The Nature Conservancy
Alan Carpenter
1244 Pine Street
Boulder, CO 80302

Pueblo West Sportsmans Assoc.
P.O. Box 7238
Pueblo West, CO 81007

Soil Conservation Service
910 Wanstead Street
Eads, CO 81036

Soil Conservation Service
3501 South Main
Lamar, CO 81502

Soil Conservation Service
760 South Bent Avenue
Las Animas, CO 81054

Soil Conservation Service
204 East 10th Avenue
Springfield, CO 81073

United Sportsmans Council
Larry Baker
4991 East Asbury Avenue
Denver, CO 80222

U.S. Forest Service
1920 Valley Drive
Pueblo, CO 81008

U.S. Forest Service
Charles Richmond
P.O. Box 127
Springfield, CO 81073

USDA - APHIS
Otha Barham
143 Union Blvd #420
Lakewood, CO 80228

List of Reviewers
(CDOW)

Clait Braum
CDOW
317 W. Prospect
Ft. Collins, CO 80523

Ruth Carlson
2126 North Weber
Colorado Springs, CO 80907

Len Carpenter
CDOW
6060 Broadway
Denver, CO 80216

Dave Clarkson
201 Cedar
Springfield, CO 81073

Dave Clippinger
2126 North Weber
Colorado Springs, CO 80907

Mel DePra
CDOW
1204 East Olive
Lamar, CO 81052

Mark Elkins
2126 North Weber
Colorado Springs, CO 80907

Ken Giesen
CDOW
317 West Prospect
Ft. Collins, CO 80523

Walt Graul
6060 Broadway
Denver, CO 80216

Chuck Loeffler
2126 North Weber
Colorado Springs, CO 80907

Judy Sheppard
6060 Broadway
Denver, CO 80216

Jenny Slater
1610 South 8th Street
Lamar, CO 81052

John Tonko
4043 Peakview Drive
Pueblo, CO 81008

Ron Velarde
CDOW
600 Reservoir Road
Pueblo, CO 81005

Bryant Will
P.O. Box 785
Lamar, CO 81502

Tammy Willette
P.O. Box 316
Kit Carson, CO 80825

STATE OF COLORADO
Roy Romer, Governor
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE

AN EQUAL OPPORTUNITY EMPLOYER

Perry D. Olson, Director
6060 Broadway
Denver, Colorado 80216
Telephone: (303) 297-1192

REFER TO



*For Wildlife—
For People*

Southeast Regional Office
2126 North Weber Street
Colorado Springs, CO 80907
Telephone: (719) 473-2945

March 11, 1991

Dear

Enclosed is a draft copy of the recovery plan for the lesser prairie-chicken. The lesser prairie-chicken is currently classified as a threatened species by the State of Colorado. Would either you or your appropriate staff review this draft and furnish me with any pertinent comments or suggestions you wish to make. It is our desire to make this plan a document capable of guiding present and future actions toward the recovery and de-listing of the lesser prairie-chicken.

All comments will be evaluated and if necessary changes made in the existing draft. The plan will then be finalized for approval and implementation. Please provide any comments to: Bob Davies, 2126 North Weber Street, Colorado Springs, CO 80907, no later than March 27, 1991. Comments by phone will not be accepted. Thank you for your interest.

Sincerely,

Bob Davies
Wildlife Biologist

BD/jc



United States
Department of
Agriculture

Forest
Service

Comanche National Grassland
P.O. Box 127, 27162 Hwy 287
Springfield, Colorado 81073

Reply to: 2600

Date: 25 March 1991

Southeast Regional Office
Bob Davies
2126 North Weber St
Colorado Springs, CO 80907

Dear Mr. Davies:

This letter is in response to the Draft Lesser Prairie-Chicken Recovery Plan. The Comanche National Grassland should play an active role in recovery of this important wildlife species in Colorado. I agree with your statement that habitat loss and alteration is the primary threat to prairie-chickens. Our Forest Plan dictates that areas of the Comanche National Grassland will be managed primarily for prairie-chickens. Management of these areas can be altered over time to respond to new information on habitat needs.

We are fully willing to cooperate with research proposals on grazing effects on prairie-chicken habitat. Research on grazing must be coordinated with range specialists on my staff and with the individual ranchers affected. We do have some reservations over the use of Holistic Resource Management (HRM) to benefit prairie-chicken habitat. Careful study of HRM over many years in a sand/sage type would be necessary before I would recommend using this type of management in prairie-chicken habitat. In addition, full rancher support and involvement is necessary to make HRM successful. This support does not presently exist.

We agree with your goal to acquire more privately owned lands for prairie-chicken habitat. Habitat on the Grassland is limited, and generally in acceptable condition due to current management. Restricting livestock use to 35% of the total annual forage production has created sufficient hiding and nesting cover. In the long-term, acquiring additional habitat may be the only real way to increase the population.

As you are aware, an Environmental Impact Statement for Oil and Gas leasing on the Comanche is currently being prepared. It is essential that the Division of Wildlife participate in development of the stipulations that will be attached to leases in prairie-chicken habitat.

We should insure that research and recreational viewing does not negatively impact the population. Public disturbance of birds on their leks is becoming an increasing problem as more people become aware of these splendid birds. The Forest Service and DOW should increase efforts to keep visitors at the public viewing area and away from the other leks. Education and information should be improved.





Developing a showcase for prairie-chicken management on the Comanche National Grassland should be our goal. This effort will require close communication between the Division of Wildlife, Forest Service, and private landowners. We must all work together to be successful. If there is anything else that we can do to be of assistance please contact myself or my staff.

Sincerely,

Charles S. Richmond

Charles S. Richmond
District Ranger



CAMPO GRAZING ASSOCIATION
BOX 692
VILAS, CO 81087

March 25, 1991

Mr. Bob Davies
Division of Wildlife
2126 North Weber Street
Colorado Springs, CO 80907

Dear Mr. Davies:

This is in response to your letter of 3/11/91 requesting comments concerning the draft copy of the recovery plan for the lesser prairie chicken.

Prairie chickens first returned to the extreme southeast corner of Baca County in 1947, after the severe drought of the 1930's. Their appearance at the Dayton Taylor homestead in the spring of 1947, was cause for considerable discussion and excitement and is well remembered by several current local residents. Cecil "Fish" Brite started a feeding and habitat improvement program for these chickens and was assisted by the whole neighborhood including the Taylor, Dye, Glover, Streeter, Schnaufer, Caldwell, and West Ranches and now includes all of these plus the Tevebaugh, Alley, Witcher, CK and VJ Ranches. The prairie chicken population studied by K. M. Giesen in extreme southeast Colorado is the result of the efforts of all these people. Numerous hours of work and considerable dollars have been expended by these private citizens to establish the prairie chicken as a part of their local environment.

The Colorado Division of Wildlife (DOW) was never interested in the prairie chicken in Baca County until 1970 (Table 1). They did a little limited, sporadic survey study from 1959-1969, but never developed an ongoing, continuing study until 1970. Despite the fact that much of the local populous was very knowledgeable of the prairie chicken and had spend considerable effort and dollars in establishing the prairie chicken, they were not asked to help or participate in the DOW program. The elitist, superior attitude of the local DOW officers is indicative of their inability to understand the requirements for the prairie chicken habitat. The local citizens who have been providing for the prairie chicken for the past 45 years were treated as ignorant, uneducated country hicks by DOW officers, especially K. M. Giesen.

The draft of the recovery plan you provided by mail (3/11/91) proposes to acquire more habitat for a decreasing population of prairie chickens without explanation. From 1970 until the present, the local prairie chicken population has decreased from 14.0 to only 5.2 birds per lek (Table 2). The recovery plan states that the major factor responsible for reducing prairie chicken populations in the area is habitat loss. This is simply not so. From 1970-1990, no habitat was lost in southeast Colorado - rather suitable habitat was greatly increased. The prairie chicken abandoned their habitat because of the aggressive, self-promotion practices of the DOW encouraging the study and observation of the birds by tourists and others.

The federal farm program, Conservation Reserve Program (CRP) has more than 245,000 acres in Baca County. The prairie chicken has been seen in these areas therefore more habitat for the chickens and the population will increase as the young are hatched.

The recovery plan also cites Bailey and Neidrach (1965) as stating that prairie chickens were relatively common east of Campo in 1923. This is consistent with observations of others. In 1923, there were significantly less suitable habitat for the prairie chicken than now. We feel that the reason they were relatively common with far less acceptable habitat than now is that they were not being subjected to studies and trappings by the DOW and constant observation of their booming grounds by the DOW, tourists and bird watchers.

The large populations of prairie chickens that were developed, supported and nurtured by local citizens, then studied by K.M. Giesen and observed by tourists and bird watchers did not die and did not migrate because of loss of habitat. They simply left because their habitat was invaded and violated by the DOW and others encouraged by the DOW. They are, for the most part, all located south of the Cimarron River in Oklahoma and in the "cut-off". Their arrival in these areas appears to correlate well with their disappearance from their former habitat. As most of these are now on private land the conclusions presented therein can be easily confirmed.

It is ludicrous for the DOW to demand that they be allowed to develop grazing recommendations to benefit prairie chickens. The Forest Service has developed suitable grazing recommendations which are considered satisfactory by them and their customers. The statement that buffalo grass and blue grama provide poor habitat for prairie chickens and then implying that these are not climax species and should be replaced with others indicated a serious lack of comprehension by the DOW. These are the major climax species in the short-grass prairie of Southeast Colorado.

It should be noted in Table 2 in 1975 there was a considerable increase in birds as well as birds per lek. This increase may be attributed solely to the fact that 60 acres of Balboa rye (Secale cereale) was planted on private property in Section 1-35-44 which was adjacent to the major booming ground then in existence and located in Section 2-35-44. During most of the winter there were 100-200 prairie chickens per day visiting the field. The DOW made no effort to improve feeding habitat with alternative plant species. Also, they have made no effort to improve nesting habitat which would be quite easy to do. All such efforts have been done by local citizens.

The DOW has presented a very aggressive program which they call a Recovery Plan for Lesser-Prairie-Chickens in Colorado. In it they cite a very selected literature review and imply that the prairie chicken is near extinction and they they have all the answers to prevent such extinction. We feel the prairie chicken population has declined because of DOW policies and the so-called recovery plan by the DOW is just an attempt to enlarge their sphere of authority and acquire more power among government agencies. The entire plan is nothing more than self-aggrandizement and an attempt to exaggerate the importance of the DOW. They propose to usurp the authority of the U.S. Forest

Service, to condemn and then acquire private land with revenue that must be raised with new taxes, require participants in the ASCS and SCS programs to meet special requirements with the DOW will establish, and to control and direct County Commissioners as to land use and environmental assessments. The DOW also wants to develop show-case areas for tourists and bird watchers to view the prairie chicken and produce publications and brochures to promote the DOW. All of this is counter-productive, extremely expensive, redundant and ridiculous.

We believe the DOW has acted and is acting in a very irresponsible manner and has destroyed much of the advancements made by the private efforts put forth by local citizen to enhance and promote the prairie chicken in Southeastern Colorado. Furthermore; we feel the DOW is presenting this recovery plan solely for the purpose of self-aggrandizement. DOW officer, K. M. Giesen, has displayed a complete unwillingness to cooperate with local landowners and ranchers, a gross ignorance of the short-grass prairie environment as well as a total lack of comprehension of those factors affecting the stability of the prairie chicken population in Baca County, Colorado.

One direct question we would like an answer to. If the prairie chicken is near extinction how and why is there open hunting season just across the state line in Kansas?

We are opposed to the condemnation and acquisition of private land for prairie chicken habitat by we are open and receptive to alternative plans which will involve local citizens and landowners and allow them to participate in the local management of prairie chicken populations for the benefit of all concerned. We as local people do care about the prairie chickens and the preservation but feel the tactics suggested are not acceptable.

Campo, Colorado, Grazing Association Board of Directors

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Mike Schnauffer, Member

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Paul Brite, Member

cc: Roy Romer
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Table 1. Lesser prairie-chicken lek survey data, Colorado, 1959-89.

	County							
	Baca		Prowers		Kiowa		Totals ^a	
	N Leks	N Birds	N Leks	N Birds	N Leks	N Birds	N Leks	N Birds
1959	2	12	1	6				
1960	6	39	1	9	ND	2	3	1
1961	11	84	2	16	ND		7	4
1962	11	116	2	14	ND		13	10
1963	10	125			ND		13	13
1964		ND		ND	ND		10	12
1965		ND		ND	ND			ND
1966		ND		ND	ND			ND
1967	1	6		ND	ND			ND
1968		ND		ND	ND		1	
1969		ND		ND	ND			ND
1970	3	42		ND	ND			ND
1971	3	37		ND	ND		3	4
1972	7	82	2	?	ND		3	3
1973	9	101	1	28	ND		9	8
1974	11	107		ND	ND		10	12
1975	13	151		ND	ND		11	10
1976	15	158	2	9	ND		13	15
1977	17	178		ND	ND		17	16
1978	16	156		ND	ND		17	17
1979	15	130	4	45	ND		16	15
1980	17	184		ND	ND		19	17
1981	22	261	2	39	1	3	17	18
1982	20	223	2	31	1	3	25	30
1983	22	226	4	81	1	3	23	25
1984	22	220	6	121	1	8	27	31
1985	26	243	6	89	4	23	29	34
1986	29	236	6	70	2	23	36	35
1987	30	281	11	97	2	15	37	32
1988	27	293	8	110	3	32	43	39
1989	25	312	8	114	2	22	38	43
1990	33	171	11	53	3	24	35	44
							47	27

^aIncludes males, females, and birds not classified to sex. ND=No data

Table 2. Lesser prairie chickens per lek in Baca County Colorado from 1970-1990.

<u>Year</u>	<u>Birds/Lek</u>
1970	14.0
1971	12.3
1972	11.7
1973	11.2
1974	9.7
1975	11.6
1976	10.5
1977	10.4
1978	9.8
1979	8.7
1980	10.8
1981	11.8
1982	11.1
1983	10.3
1984	10.0
1985	9.3
1986	8.1
1987	9.4
1988	10.8
1989	12.5
1990	5.2

Jack N. Gentz, President
41452 Rd. 8
Lamar, CO 81052
719-336-2128



Joe Randle, Vice President
501 Willow Valley
Lamar, CO 81052
719-336-5473

March 15, 1991

Bob Davies, Wildlife Biologists
Southeast Regional Office
2126 Weber Street
Colorado Springs, CO 80907

Dear Bob:

Reviewed your draft of the recovery plan for the lesser prairie-chicken and find it interesting. I think your approach on creating the correct habitat is very important to the success of your program.

I am a charter member of Pheasants Forever Chapter in Lamar and the habitat chairman. We see some of the same problems in our pheasant population that you noted with the lesser prairie-chicken. The nesting site for the hens, is one of the key factors in having a good stable population of birds.

I enjoyed reviewing your draft of the lesser prairie-chicken. We have a large membership and we certainly can try to help you if you need some help in our area. It would be possible for you to give our group an evening program at one of our monthly meetings.

Please call me if this type of meeting would be beneficial to your program.

Sincerely,

Joe Randle, Vice President



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ROYAL GORGE RESOURCE AREA
P.O. BOX 2200
CANON CITY, COLORADO 81215-2200



6000
(CO-057)

March 14, 1991

Bob Davies
Colorado Division of Wildlife
Southeast Regional Office
2126 N. Weber St.
Colorado Springs, Colorado 80907

Dear Mr. Davies:

Thank you for the opportunity to review and comment on your draft Lesser prairie-chicken recovery plan. As you know, the Bureau has a relatively small part to play in the recovery plan itself. Our involvement is restricted to the leasing of federal mineral estate for oil and gas exploration and extraction. There is a fair amount of federal mineral estate underlying prairie chicken habitat in Southeast Colorado. As the Bureau reviews lease applications and APD's (Application for Permit to Drill) we review our data on prairie chicken habitats and apply lease restrictions if appropriate. In order to make this process effective we continually need to update our information as it becomes available. We request that the Division annually provide the Bureau its census data including lek locations so that we have the most up-to-date information. Thank you for the opportunity to review this plan.

Sincerely yours,

Area Manager

ACTING



COLORADO CATTLEMEN'S ASSOCIATION

SUITE 220 LIVESTOCK EXCHANGE BUILDING / DENVER, COLORADO 80216

TELEPHONE (303) 296-1112 / FAX (303) 296-1115

March 27, 1991

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Bob Davies, Wildlife Biologist
2126 North Weber Street
Colorado Springs, CO 80907

Dear Mr. Davies:

The Colorado Cattlemen's Association appreciates this opportunity to comment on the draft recovery plan for the lesser-prairie chicken. We hope that our comments will be of value to you in preparing the final recovery plan.

- 1) Under the section 'Factors Leading to Threatened Status', you state that that "By the late 1800's... a shortgrass rangeland disclimax (was) maintained by livestock grazing." Later on, you say that "management has allowed these lands to recover in part, although large expanses of buffalo grass and blue grama provide poor habitat for prairie-chickens even though they stabilize the soil."

The Range Science Department at CSU will attest that historic "climax" vegetation for much of the eastern plains does in fact include buffalo grass and blue grama. To suggest that these species on the eastern plains are generally indicative of historic overgrazing is totally erroneous.

- 2) Again, in the first paragraph of the 'Recovery Plan' section, you state that "overgrazing is a major threat" and that "improper livestock stocking rates resulting in inadequate nesting and winter cover are of concern". We're not sure where you've collected this information from, but it appears to be extraordinarily and unjustifiably slanted against the domestic range cow.

As you are well aware, the vast majority of the lands on Colorado's eastern slope are held in private ownership. As such, the livestock grazing on these lands, for the most part, is managed very carefully in order to protect the productivity of the range resource. It is counterproductive for a rancher to misuse this land since he makes his living from taking care of it. And, unlike those with a purely recreational interest in the land, the landowner has a long-term vested interest to protect this resource for future generations.

-- CONTINUED --

As far as public lands are concerned, range scientists and federal land management agencies agree that the condition of the public rangelands is on an upward trend and has been for many years. This improving trend is largely due to the ever-improving science of range management.

- 3) In Section 1.13, we appreciate the fact that you've included the Colorado Cattlemen's Association (Sec. 1.132) as a resource to draw input from as part of this recovery effort. However, we would strongly encourage you to include the range science department of the state's land grant university (CSU) on this list of cooperating entities. The CSU Range Science Department could certainly be a valuable asset to draw upon when evaluating range conditions, range trends, and various management strategies.

- 4) In Section 1.2, we would urge you to include language that land acquisitions will be used only in last resort cases essential to the survival of the species. Further, these acquisitions should be a secondary consideration to using existing public lands and establishing cooperative arrangements with private landowners. Efforts to transfer additional land out of the private sector and into public ownership are setting a dangerous stage for many of our rural communities. These fragile economies depend on the private land base to generate the necessary tax revenues to fund public services.
Taking land out of private ownership eliminates their historic productivity and removes these revenue dollars from the economy. This negative effect is only compounded when one considers that these dollars have a multiplier factor in excess of 5.
Although the Colorado Division of Wildlife is responsible for PILT (Payment in Lieu of Taxes) payments, this does not extend to the funding of special districts and does nothing to make up for the resulting loss of productivity to the local economy.
Finally, in regards to land acquisition, we would request that you include language that is consistent with Governor Romer's Executive Order dated 11/28/89 and former President Ronald Reagan's Executive Order #12630. These EO's direct state and federal agencies to seek to avoid any taking of private property and not to unduly infringe on private property rights. In addition, agencies are directed to conduct takings assessments when appropriate with full and just compensation to the affected landowner. (For your information, we've included a copy of each of these Executive Orders.)

- 5) Section 3.21: Here again, we would suggest that you include a professional range scientist from CSU as part of the transplant site evaluation team.

Davies, 3/27/91 (page 3)

Thank you again for this opportunity to comment on the draft recovery plan. We appreciate your consideration of CCA's input and we look forward to seeing how these comments might be incorporated into the final plan.

Please don't hesitate to contact our office if you should have any questions about these comments or CCA's position on any other portion of the lesser-prairie chicken recovery effort.

Sincerely,


Terry Carlstrom
President

cc: Perry Olson, Colorado Division of Wildlife
Dr. Harold Goetz, CSU Range Science Department

STATE OF COLORADO

EXECUTIVE CHAMBERS
136 State Capitol
Denver, Colorado 80203-1792
Phone (303) 866-2471



Roy Romer
Governor

EXECUTIVE ORDER

REGARDING THE PROTECTION OF PRIVATE PROPERTY RIGHTS

WHEREAS, the ability of Americans to own private property, and to be secure in that ownership, is one of our most basic rights; and

WHEREAS, private property is central to our economic success and an underpinning of our democratic freedoms; and

WHEREAS, state government must have the highest respect for private property, and government agencies and officials are obligated to ensure that respect for private property is reflected in their decisions and actions; and

WHEREAS, both the U.S and Colorado constitutions guarantee due process and just compensation when government takes actions affecting private property which a court determines is a taking of property; and

WHEREAS, the Colorado General Assembly passed House Joint Resolution 1011 calling for an executive order reaffirming the importance of protection of private property rights.

NOW, THEREFORE, I Roy Romer, Governor of Colorado, by virtue of the authority vested in me under the laws of Colorado, DO HEREBY ORDER THAT:

1. It is the declared policy of state government that government actions shall not unduly infringe private property rights.
2. Each executive agency of state government, before condemning private property for a public purpose, shall undertake appropriate review to ensure that the condemnation is essential to advance the particular public purpose involved.
3. Each executive agency shall undertake to eliminate undue or inadvertent burdens on the exercise of private property rights resulting from government actions taken for the purpose of protecting public health and safety.

(MORE)

4. Nothing in this executive order is intended to abrogate or conflict with judicial decisions defining what constitutes a taking for purposes of the constitutional just compensation requirement.



Given under my hand and the Executive Seal of the State of Colorado this *27th* day of November, 1989.

A handwritten signature in cursive script that reads "Roy Romer".

Roy Romer
Governor

Federal Register

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Presidential Documents

Title 3—

The President

Executive Order 12630 of March 15, 1988

Governmental Actions and Interference With Constitutionally Protected Property Rights

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

Section 1. Purpose. (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

Sec. 2. Definitions. For the purpose of this Order: (a) "Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. "Policies that have takings implications" does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(c) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

Sec. 3. General Principles. In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of

property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use is interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

Sec. 4. Department and Agency Action. In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:

(1) Serve the same purpose that would have been served by a prohibition of the use or action; and

(2) Substantially advance that purpose.

(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

(1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;

(2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and

(4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

Sec. 5. Executive Department and Agency Implementation. (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of that department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress, stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.

(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

Sec. 6. Judicial Review. This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan

THE WHITE HOUSE,
March 15, 1988.



May 1, 1991

Mr. Bob Davies
SE Region Terrestrial Biologist
2126 North Weber
Colorado Springs, CO 80907

Dear Bob,

Thank you for the opportunity to comment on your survey entitled "Lesser Prairie Chicken Recovery Plan". I hope that the comments I made will be helpful to you. If you should have any questions regarding my comments feel free to contact me at 444-2950.

Once again thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Alan Carpenter".

Alan T. Carpenter
Colorado Land Steward