

# THE KNRC WATCHMAN

Volume 2, Issue 2  
September 2015



## CAPACITY CROWD GATHERED AT KNRC CONFERENCE

— Jim Rice, KNRC Vice President

On April 9th, Commissioners, Legislators, multiple states' landowners and media filled Buffalo Bill Conference Center in Oakley for KNRC's Conservation Easement Conference. KNRC presented speakers from across the USA to inform on Conservation Easements' (CE) implications.

Wyoming Attorney Harriet Hageman explained granting Conservation Easements "relinquishes your rights to develop your land," then "down the road you may find yourself with partners you never signed a contract with," plus Conservation Easements are "intentionally designed to de-value land." She warned, "tricky phrases in Contracts severely impact future development for more than a thousand years." She - and all speakers - encouraged consulting specialized Conservation Easement attorneys prior to signing, having 25-50 year limits on the easements themselves, and not allowing any public funds to be used for their purchase - in stark contrast to the \$2.025 Billion allocated for CE purchases in 2015 Farm Bill.

WVU Professor and Attorney, Jesse Richardson presented a talk called "It Depends" urging legislators to consider regulating Conservation Easements. He said Conservation Easements should be "reserved for crown jewels like the Grand Canyon," noting they lower the tax base of encumbered counties. He suggested public hearings be held, reiterating Conservation Easements limit management practices and encumber borrowing. He also suggested states establish time limits on CEs and allow local government the flexibility of Planning & Zoning. He said, "Real farmers do not do Conservation Easements," and "Forever is a mighty long time."

Big 1st Congressman Tim Huelskamp gave the Keynote address, touching many of the issues he faces in Washington. He pointed out the Endangered Species Act is long overdue for an overhaul with only a 1.3% success rate. Huelskamp also indicated he has been engaged in preventing the

listing of the Lesser Prairie-Chicken by sponsoring a Bill that would delay the listing and allow time for local conservation plans to work.

A Meade County landowner recounted personal experience with a Conservation Easement signed by his grandfather several years ago. His testimony revealed restrictions that allow no production from the land - and a requirement to pay taxes on an inheritance that has "no value."

A discussion panel of Mike Beam-Ranchland Trust of KS, Lynn Thurlow-NRCS, Stan Rasmussen-Council to Asst. Sec. of the Army, Kimmi Lewis and Harriet Hageman fielded audience questions. Study of long term economic consequences to adjoining landowners was suggested prior to agreements with tax abatements considered by cities, counties, schools districts, etc. in consideration of current & future value. The question "Could counties require disclosure of Conservation Easements prior to approval, as it may involve tax consequences?" remained unanswered.

Colorado Rancher Kimmi Lewis shared experiences of effects Land Trusts and Military Base expansion had on her operation and the

constant resistance efforts necessary to protect not only her ranch but neighboring ranches. The efforts were able to block the expansion through their research and vigilance.

Ag Economics Consultant, Ric Frost-Nevada, spoke on "Impact Considerations," stating Land Trusts acquiring Conservation Easements should be held to the same standards as Real Estate Agents. He spoke of third party lawsuits to 'enforce' restrictions on landowners and encouraged the crowd to look up "Wildlands Project" - particularly the "red zones" - online.

All speakers agreed, Conservation Easements affect local tax bases and citizens; may restrict farming and ranching practices and could eliminate production agriculture entirely.



## TEXAS COURT VACATES LESSER PRAIRIE-CHICKEN THREATENED SPECIES RULE

On September 1, 2015 the Federal District Court in the Western District of Texas overturned a decision by the United States Fish and Wildlife Service in Listing the Lesser Prairie-Chicken as a Threatened Species under the Endangered Species Act (ESA).

The decision, effective immediately, found USFWS did not follow their own internal Policies for evaluating species and local conservation efforts.

The Kansas Natural Resources Coalition (KNRC), a coalition of Kansas counties played an instrumental role by unearthing information, raising public awareness, giving testimony and filing briefs in Federal Court.

When asked about the role and effectiveness of KNRC Counties in affecting the decision, Executive Director Jim Carlson rattled off a laundry list of technical, political and public initiatives undertaken by KNRC. "We are delighted to see justice," quips Carlson. "Now, if we only could recoup economic damage to industry, agriculture and commerce wrought by the specter of a threatened listing, we would be good-to-go."

**\*\* MARK YOUR CALENDAR \*\***

## KNRC TRAINING WORKSHOP

**"THE DOCTRINE OF THE LESSER MAGISTRATE"**

**ROLES, LIMITS AND RESPONSIBILITY OF LOCAL GOVERNMENT IN**

**FEDERAL RULEMAKINGS**

**DECEMBER 3, 2015**

Kansas Natural Resource Coalition's Website

COMING SOON  
**KNRC.ORG**

*"The world will not be destroyed by those who do evil, but by those who watch them without doing anything."*

— Albert Einstein

## KS AG backs Utah ruling striking down prairie dog rule

Kansas' Attorney General with 8 other states — filed an Amicus Brief asking the appeals court to uphold a ruling declaring federal regulations for the Utah prairie dog unconstitutional. Federal attorneys are appealing — arguing that most protected species live only in a single state and courts have long upheld federal management authority. The states are arguing it is the purview of the States to manage wildlife within their borders, a long-held doctrine of States Rights that precedes the Endangered Species Act.

**BACKGROUND: Judge strikes down feds' Utah prairie dog regulations** — Salt Lake City, Utah; November 6, 2014: Ruling in favor of a lawsuit by Pacific Legal Foundation (PLF), Federal Judge Dee Benson struck down the federal government's regulations for the Utah prairie dog as unconstitutional because the prairie dog does not substantially affect "interstate commerce."

PLF sued on behalf of People for the Ethical Treatment of Property Owners (PETPO) of Cedar City, Utah, whose members - property owners and the *local government* - have been restricted from using their land.

*"This ruling frees Cedar City from unconstitutional regulations making it impossible to build homes, protect the airport runway and the sanctity of loved*

*ones' final resting places" from prairie dog pot-holes" and "Now, these property owners and local government, needn't fear the heavy hand of the federal government when they use and maintain their property, and do what most of us take for granted" said PLF attorney Jonathan Wood, who argued the case. "The federal government may take whatever measures it likes on its own property, in order to protect the prairie dog," Wood continued. "But it can't violate the U.S. Constitution by taking away the property rights of private citizens or local governments."*

The Utah prairie dog is one of five prairie dog species in North America. PLF's lawsuit challenged the federal action in applying the Endangered Species Act's anti-take rules. Violators can be fined or even imprisoned, so except in limited situations, the federal anti-take decree blocked taking measures to control the burgeoning population of prairie dogs in their midst.

PLF's lawsuit contended - and Judge Benson agreed - if the federal government could do this, there was "no logical stopping point" to their power. The Utah prairie dog is a single-state species without any use or value in commerce, so it isn't covered under the federal government's Commerce Clause authority.

## USFWS 'Declines Protecting' Species After Congress Prohibited Listing

In December 2014, it was assured the Greater Sage Grouse would not be listed as a protected species. At that time, Congress passed a bill prohibiting US Fish and Wildlife Service (USFWS) from listing the grouse. The only unknown was would USFWS risk funding cuts by listing the grouse as a candidate species, or issue a 'not warranted' determination.

USFWS chose the latter, stating: "An unprecedented, landscape-scale conservation effort across the western United States has significantly reduced threats to the greater sage-grouse across 90 percent of the species' breeding habitat and enabled [USFWS] to conclude that the charismatic [sic] rangeland bird does not warrant protection under the Endangered Species Act (ESA)."

US House Committee on Natural Resources Chairman Bishop, in a statement titled **Sage Grouse Decision is De Facto Listing Aimed at Controlling the West**, responded by saying: "Do not be fooled. The announcement not to list the sage grouse is a cynical ploy. With the stroke of a pen, the Obama Administration's oppressive land management plan is the same as a listing. Now, successful conservation done at the state level will be in vain. The new command and control Federal plan will not help the bird, but it will control the West, which is the real goal of the Obama Administration. Some Western governors see this for what it is and I will work with them to ensure the rational plans created at the grassroots level that solve the problem will be the way forward to protect this bird."

The grouse plan praised by USFWS, is not unlike the WAFWA 5-State Lesser Prairie-Chicken (LPC) Range-Wide Conservation Plan (RWP). The RWP was similarly praised prior to the LPC listing, when USFWS called the plan "a landmark, collaborative planning effort" and

Director Dan Ashe said, "We applaud the states' commitment to lead conservation actions across the bird's range." The only difference was - Congress did not prohibit USFWS from listing the Lesser Prairie-Chicken - leaving litigation as the only recourse for those affected. Recently, one of five legal challenges resulted in a Texas court vacating the listing of the LPC (Page 1) saying USFWS, "failed to properly apply" their own rules to the "evaluation of the RWP."

A grassroots plan - The Stakeholders Conservation Strategy for LPC developed by Kansas Farm Bureau, industry and ag associations - is reportedly near the end of the USFWS review process. For more than 2 years, the group has shepherded it through the development and comment process - describing it as a voluntary, market based program, which will allow business to continue while conserving the LPC.

Then, there is KNRC's Lesser Prairie-Chicken Conservation, Management and Study plan, which carefully took into account, USFWS's evaluation rules, during development and finalization. USFWS also failed to evaluate Conservation Efforts included as part of KNRC's Conservation Plans, even following repeated requests.

### KNRC Mission

*The Kansas Natural Resource Coalition (KNRC) is an association of counties who maintain collective and participatory involvement in administrative government on behalf of our citizenry. The coalition serves as a conduit between local, state and federal governments to promote balanced, necessary and effective administrative policy making. Our mission is to monitor, analyze, understand, communicate, and participate in those initiatives that materially affect the natural or human systems governed by individual member counties.*

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## Kansas Joins Multi-State Motion for Nationwide Stay of WOTUS

Kansas has joined 17 other states in filing a motion for a nationwide stay of EPA and Army Corp of Engineers' "Waters of the United States" (WOTUS) rule.

Two weeks ago, a federal judge in North Dakota blocked the rule only as it applies to the 13 states involved in that lawsuit. Kansas is part of a different lawsuit filed by 11 states in federal court in Georgia. In the Kansas case, the district judge concluded she lacked jurisdiction, deferring instead to a federal appeals court. The 18-state coalition - encompassing four separate legal challenges - on September 9, 2015 filed the motion to stay before the U.S. Sixth Circuit Court of Appeals in Cincinnati, Ohio to either block the rule or to send the case back to the trial courts to make clear that initial jurisdiction to decide the challenges lies in the district courts and not the court of appeals. Kansas has also directly appealed from the district judge's jurisdictional ruling to a separate appeals court in Atlanta. The States underscored that EPA's blatant violation of states' rights demands a nationwide halt while the rule is challenged in federal court.

"The only thing more complicated than the legal challenges to the WOTUS rule is the rule itself," Kansas Attorney General Derrick Schmidt said. "But the bottom line is we're going to persist until we get our case in front of a judge who can decide the merits of our objection to this federal power grab."

## KNRC Conference NEWS

To read more about the KNRC Conservation Easement Conference, visit:

- ◆ **High Plains Journal** [http://www.hpj.com/ag\\_news/attorney-calls-easements-a-government-land-grab/article\\_b15df958-82ca-5808-b4c9-6b1d558e667e.html](http://www.hpj.com/ag_news/attorney-calls-easements-a-government-land-grab/article_b15df958-82ca-5808-b4c9-6b1d558e667e.html)
- ◆ **Ag Journal online** <http://www.agjournalonline.com/article/20150419/NEWS/150419880>

## Sheila's Statistics



### Land Trust Expansion:

- ⇒1950 - 53 Land Trusts
- ⇒2000 - 1,263 Land Trusts
- ⇒2010 - 1,700 Land Trusts (controls 47 Million acres)

### Annual Federal Funds to Land Trusts:

- ⇒American Farmland Trust - \$1 Million per year
- ⇒The Conservation Fund - \$3 Million per year
- ⇒Nature Conservancy - exceeds \$100 Million per year

### Federal Conservation Easement Program Expenditures:

#### USDA Forest Legacy Program:

- ⇒1997 \$2.6 Million
- ⇒2007 exceeds \$80 Million

#### USDA Farm and Ranch Lands Protection Program:

- ⇒1996-2001 -- \$62 Million
- ⇒2002-2007 -- \$597 Million

*Will Rogers: "It's a good thing we are not getting all the Government we are paying for"*

**SAVE-THE-DATE**  
**2016 KNRC**  
**Land, Environment**  
**&**  
**Public Policy**  
**CONFERENCE**  
**APRIL 13TH & 14TH**

**Kansas Natural Resource Coalition**

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<https://www.facebook.com/Kansas-Natural-Resource-Coalition-383683905169787/timeline/>

