



**NATIONAL CATTLEMEN'S BEEF ASSOCIATION**  
**CENTER FOR PUBLIC POLICY**

January 17, 2023

The Honorable Deb Haaland  
Secretary  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Martha Williams  
Director  
U.S. Fish and Wildlife Service  
1849 C Street NW  
Washington, DC 20240

Amy Lueders  
Southwest Regional Director  
U.S. Fish and Wildlife Service  
500 Gold Avenue SW  
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Secretary Haaland, Director Williams, and Regional Director Lueders:

We write today to request that the effective date of the overreaching final rule<sup>1</sup> to list the lesser prairie chicken (LPC) under the Endangered Species Act (ESA) be postponed until April 1, 2023. This rule has created major regulatory uncertainty for many of the same private landowners who are currently doing the bulk of the work to conserve habitat and support the species. The current effective date threatens to interrupt farmers and ranchers' critical work not only to conserve the species, but to feed people at home and around the world. A delay until April 1 would provide agricultural producers with more time to adjust their operations and finalize voluntary efforts to support LPC populations.

The National Cattlemen's Beef Association (NCBA) is the American cattle industry's oldest and largest trade association, with nearly 26,000 direct members and 178,000 producers represented through our state affiliates. Our members play a critical role in the nation's food supply chain and undergird the local economies of countless rural communities. They also responsibly steward millions of acres of private and public land, conserving natural resources and continually improving efficiency.

For decades, cattle producers in Kansas, Texas, Oklahoma, New Mexico, and Colorado have made significant voluntary investments to conserve prime habitat for the LPC. It is not a stretch to say that these voluntary conservation projects are responsible for the species' continued survival on the Plains today. Studies have confirmed that, "Most LPCs occur on rangeland typically grazed by cattle or other herbivores. Research has demonstrated that light to moderate stocking rates provide the best long-term economic return and reduced economic risk in times of economic uncertainty or drought. A grazing management plan that maintains the prairie in the

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<sup>1</sup> "Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment.", [87 FR 72674](#).

middle to late stages of plant succession (native tall grasses, forbs and legumes) interspersed with early stages of plant succession (native annual forbs) is optimal for the LPC.”<sup>2</sup> Listing the bird is a slap in the face to cattle producers and their partners in state government, conservation organizations, and other partners in industry who have spent years working on the ground to support the species. The listing will discourage the public-private partnerships that have proven to be the most successful at bolstering bird numbers. ESA listings are no guarantee of success for a species — but prohibiting private landowners from taking voluntary steps to support conservation goals is certainly a guarantee for worse outcomes.

There are many concerning aspects of this listing but the 4(d) rule, in particular, is a gross federal overreach into the way that private landowners run their businesses. Revoking and reconsidering this rule would be the most practical step forward for all stakeholders involved, but short of that, a delay in implementation is necessary. Candidate Conservation Agreements with Assurances (CCAAs) are the current Service-approved vehicle for voluntary conservation work, but producers are required to have begun the process to enroll privately owned acres before the effective date of the listing. A delay until April 1 will give cattle producers more time to enroll in a CCAA before that opportunity is closed to them. Since the vast majority of LPC habitat falls on private land, this is a crucial step to strengthening and expanding habitat conservation ahead of the primary nesting season of the LPC.

This additional window of time is particularly vital for all those producers in the Northern Distinct Population Segment (DPS) who must now comply with the 4(d) rule.

Put plainly, this 4(d) is a disaster. The Service is authorizing yet-to-be-named third parties to exercise control over grazing operations on private land. This constitutes an invitation to activist groups to be deputized as grazing plan reviewers – not out of their desire to protect the LPC but out of their longstanding goal to remove cattle producers from the land and end animal agriculture. We are deeply concerned by the obvious potential for abuse of power.

As long as the Service intends to proceed with this burdensome 4(d) rule, adequate time must be given to producers in the Northern DPS to enroll in CCAAs to satisfy the requirement for an approved grazing plan. If they are unable to do so by the current effective date, they will be left exposed to civil and criminal penalties without protection for incidental take during routine grazing activities.

The final rule was not published until November 25, 2022. For much of the winter, cattle producers across the country have been battling extreme cold, blizzards, and anomalous weather that threatens their livestock and livelihoods. The effective date of January 24 is simply not sufficient to allow producers enough time to enroll in a CCAA, or alternatively to develop grazing plans or submit the ones they already have to the Service for approval. Given that the agency has yet to nail down a list of approved third parties for this review process, it is unlikely that they will be able to review and approve hundreds of site-specific grazing plans in the next

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<sup>2</sup> “Habitat Evaluation Guide for the Lesser Prairie Chicken.” Oklahoma Cooperative Extension Service, Division of Agricultural Sciences and Natural Resources, Oklahoma State University; George Miksch Sutton Avian Research Center. August 2018.

two weeks. A delay is the only way to ensure that both agricultural producers and the Service's own staff are in compliance with the 4(d) rule.

The pitfalls of the 4(d) rule are a clear threat to cattle producers in one of the most agriculturally productive regions of the country. The listing itself betrays decades of voluntary conservation work and threatens to shut down the activities that are actually keeping the bird alive across much of its range. NCBA opposes this listing, and in light of the myriad concerns we share with our members, crop producers, energy stakeholders, and state wildlife managers, we urge you to delay the effective date to April 1, 2023. We hope that this additional time will also give the Service the opportunity to respond to the many inquiries that have been submitted by cattle producers and other stakeholders; a constructive dialogue and continuance of public-private partnerships is the best hope for the LPC to survive and thrive.

Sincerely,

National Cattlemen's Beef Association  
Colorado Cattlemen's Association  
Colorado Livestock Association  
Kansas Livestock Association  
New Mexico Cattle Growers' Association  
Oklahoma Cattlemen's Association  
Texas Cattle Feeders Association  
Texas & Southwestern Cattle Raisers Association