

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DEFENDERS OF WILDLIFE, §  
1130 17th Street, NW §  
Washington, DC 20036, §

CENTER FOR BIOLOGICAL §  
DIVERSITY, §  
378 N. Main Avenue §  
Tucson, AZ 85701, §

WILDEARTH GUARDIANS, §  
516 Alto Street §  
Santa Fe, NM 87501, §

*Plaintiffs,* §

v. §

Case No. 1:14-cv-1025-BAH

SALLY JEWELL §  
Secretary, U.S. Department of Interior §  
1849 C Street NW §  
Washington, DC 20240, §

DANIEL M. ASHE §  
Director, U.S. Fish and Wildlife Service §  
1849 C Street NW §  
Washington, DC 20240, §

U.S. FISH AND WILDLIFE SERVICE §  
1849 C Street NW §  
Washington, DC 20240, §

*Defendants.* §

**MOTION TO INTERVENE AS DEFENDANTS OF  
KANSAS FARM BUREAU, TEXAS FARM BUREAU, COLORADO FARM  
BUREAU, NEW MEXICO FARM AND LIVESTOCK BUREAU,  
AND AMERICAN FARM BUREAU FEDERATION**

Kansas Farm Bureau (“KFB”), Texas Farm Bureau (“TFB”), Colorado Farm Bureau (“CFB”), New Mexico Farm and Livestock Bureau (“NMFLB”), and the American Farm Bureau Federation (“AFBF”) (collectively, the “Farm Bureaus”) respectfully request intervention as defendants in this cause, as of right under Federal Rule of Civil Procedure (“FRCP” or “Rule”) 24(a)(2) or, in the alternative, permissively under FRCP 24(b)(1)(B) to protect the rights of their members with an interest in the outcome of this action, and in support of this request would show:

As established in their Memorandum in Support of Intervention, the Farm Bureaus should be permitted to intervene as of right as Defendants under Rule 24(a)(2) because: (a) their request for intervention is timely; (b) their members have direct and significant interests in the issues raised in this lawsuit; (c) disposition of Plaintiffs’ claims may as a practical matter impair or impede the Farm Bureaus’ ability to protect their interests; and (d) none of the other parties, including the National Rural Electric Cooperative Association (“NRECA”), the Western Association of Fish and Wildlife Agencies (“WAFWA”), or the energy industry intervenors,<sup>1</sup> adequately represent the Farm Bureaus’ members’ interests.

Alternatively, if the court denies leave to intervene as of right, the Farm Bureaus request that they be granted permissive intervention under FRCP 24(b)(1)(B), because the Farm Bureaus, representing their members’ interests, have a defense that shares common questions of law and fact with the main action and would respond directly to the Plaintiffs’ claims. Also, the Farm Bureaus’ Motion to Intervene is timely and will not unduly delay or prejudice the adjudication of the original parties’ rights.

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<sup>1</sup> These include the Oklahoma Independent Petroleum Association, Oklahoma Oil and Gas Association, International Association of Geophysical Contractors, Independent Petroleum Association of America, American Petroleum Institute, and Western Energy Alliance.

The Farm Bureaus will file their Answer to Plaintiffs' Complaint along with this Motion to Intervene and their Memorandum in support thereof, or as otherwise directed. The Farm Bureaus will work with the existing parties to avoid duplicative pleadings and so as not to delay any proceeding already scheduled.

Pursuant to Local Rule 7(m), counsel for the Farm Bureaus has conferred with counsel for Plaintiffs, the Federal Defendants, and the intervenor-defendants in this action. Federal Defendants' counsel takes no position on this Motion. Counsel for Plaintiffs indicated that Plaintiffs take no position on this Motion, but reserve the right to file a response at the appropriate time. Counsel for WAFWA, NRECA, and the energy industry intervenors each indicated that their parties do not oppose the intervention of the Farm Bureaus.

For the foregoing reasons, the Farm Bureaus respectfully request that the Court grant their Motion to Intervene and permit their proposed Answer to be filed

simultaneously with this Motion to be filed.

Dated: October 31, 2014

Respectfully submitted,

/s/ Bruce V. Spiva

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**ATTORNEYS FOR INTERVENOR-DEFENDANTS  
KANSAS FARM BUREAU, TEXAS FARM BUREAU,  
COLORADO FARM BUREAU, NEW MEXICO  
FARM AND LIVESTOCK BUREAU, AND  
AMERICAN FARM BUREAU FEDERATION**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Motion to Intervene as Defendants of Kansas Farm Bureau, Texas Farm Bureau, Colorado Farm Bureau, New Mexico Farm and Livestock Bureau, and American Farm Bureau Federation was served on October 31, 2014, by electronic filing via the Court's ECF system upon all of the parties and their counsel of record as listed on the docket in this case.

/s/ Bruce V. Spiva

Bruce V. Spiva

# **Exhibit 1**

to

Motion to Intervene as Defendants of Kansas Farm Bureau, Texas Farm Bureau, Colorado Farm Bureau, New Mexico Farm & Livestock Bureau and American Farm Bureau Federation

**Answer of the Farm Bureaus**

IN THE UNITED STATES DISTRICT COURT  
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U.S. FISH AND WILDLIFE SERVICE §  
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**ANSWER OF KANSAS FARM BUREAU, TEXAS FARM BUREAU, COLORADO  
FARM BUREAU, NEW MEXICO FARM AND LIVESTOCK BUREAU, AND  
AMERICAN FARM BUREAU FEDERATION**

Pursuant to Federal Rule of Civil Procedure 12, Kansas Farm Bureau, Texas Farm Bureau, Colorado Farm Bureau, New Mexico Farm and Livestock Bureau, and the American

Farm Bureau Federation (collectively the “Farm Bureaus”) hereby submit the following Answer to the Complaint for Declaratory and Injunctive Relief filed by Defenders of Wildlife, the Center for Biological Diversity, and WildEarth Guardians (collectively, “Plaintiffs”) on June 17, 2014 in the United States District Court for the District of Columbia (the “Complaint”). All allegations in the Complaint that are not specifically admitted or otherwise answered are denied.

### **INTRODUCTION**

1. The first and second sentences in paragraph 1 constitute Plaintiffs’ characterization of their case, to which no response is required. To the extent a response is required, the Farm Bureaus aver that the Federal Register provides the best evidence of its contents. The Farm Bureaus take no position on Plaintiffs’ assertion that they are organizations dedicated to the conservation of wildlife. In the third sentence of Paragraph 1, Farm Bureaus admit that the lesser prairie-chicken (“LPC”) is a grassland bird that was first listed as a candidate species in 1998, but deny Plaintiffs’ characterization that the LPC was “once common” in portions of the five States in the Southern Great Plains. The phrase “reduced to a few areas” is vague and ambiguous, and therefore Farm Bureaus deny the allegations in the final sentence of paragraph 1. To the extent a response is required, Farm Bureaus admit that LPC range is found in Colorado, Kansas, New Mexico, Oklahoma, and Texas.

2. The allegations in the first sentence of paragraph 2 purport to characterize Plaintiffs’ case, to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations. The allegations of the second sentence of paragraph 2 purport to characterize the results of a 2013 population survey, which speaks for itself and is the best evidence of its contents; to the extent the allegations are inconsistent with the 2013 population survey, Farm Bureaus deny them. The final sentence of Paragraph 2 represents a legal conclusion



to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations in Paragraph 2.

3. Paragraph 3 constitutes Plaintiffs' characterization of their case, to which no response is required, as well as a legal conclusion to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations in paragraph 3.

4. Paragraph 4 constitutes Plaintiffs' characterization of their case, to which no response is required, as well as a legal conclusion to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations in paragraph 4.

5. Paragraph 5 constitutes Plaintiffs' characterization of their case, to which no response is required, as well as a legal conclusion to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations in paragraph 5.

6. Paragraph 6 constitutes Plaintiffs' characterization of their case and prayer for relief, to which no response is required.

#### **JURISDICTION AND VENUE**

7. The allegations in paragraph 7 consist of legal conclusions that require no response. To the extent these allegations require a response, Farm Bureaus deny them.

8. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 8 and therefore deny them.

9. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 9 and therefore deny them.

10. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 10 and therefore deny them.

11. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 11 and therefore deny them.

12. The allegations in paragraph 12 consist of legal conclusions to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations.

### **PARTIES**

13. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 13 and therefore deny them.

14. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 14 and therefore denies them. The allegations in paragraph 14 also consist of legal conclusions to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations.

15. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 15 and therefore deny them.

16. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 16 and therefore denies them. The allegations in paragraph 16 also consist of legal conclusions to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations.

17. The Farm Bureaus lack knowledge or information necessary to respond to the allegations of paragraph 17 and therefore deny them.

18. The Farm Bureaus lack knowledge or information necessary to respond to the allegations of paragraph 18 and therefore denies them. The allegations in paragraph 18 also consist of legal conclusions to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations.

19. The Farm Bureaus lack knowledge or information necessary to respond to the allegations of paragraph 19 and therefore deny them.

20. The Farm Bureaus admit the allegations in the first sentence of Paragraph 20. The remainder of Paragraph 20 constitutes Plaintiffs' characterization of their case, to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations in the remainder of Paragraph 20.

21. The Farm Bureaus admit the allegations in the first two sentences of Paragraph 21. The remainder of Paragraph 21 constitutes Plaintiffs' characterization of their case, to which no response is required. To the extent a response is required, Farm Bureaus deny the allegations in the remainder of Paragraph 20.

22. The Farm Bureaus admit that USFWS is an agency of the United States. The farm bureau lacks knowledge or information necessary to respond to the remaining allegations of paragraph 22 and deny them on that basis.

## **STATUTORY AND REGULATORY BACKGROUND**

### **A. Endangered Species Act**

23. The allegations in paragraph 23 purport to describe the ESA, which speaks for itself and is the best evidence of its contents. To the extent the allegations contained within paragraph 23 are inconsistent with the ESA, those allegations are denied.

24. The allegations in paragraph 24 purport to describe the ESA, which speaks for itself and is the best evidence of its contents. To the extent the allegations contained within paragraph 24 are inconsistent with the ESA, those allegations are denied.

25. The allegations in paragraph 25 purport to describe the ESA, which speaks for itself and is the best evidence of its contents. To the extent the allegations contained within paragraph 25 are inconsistent with the ESA, those allegations are denied.

26. The allegations in paragraph 26 purport to describe the ESA, which speaks for itself and is the best evidence of its contents. To the extent the allegations contained within paragraph 26 are inconsistent with the ESA, those allegations are denied.

27. The allegations in paragraph 27 purport to describe the ESA and ESA regulations, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 27 are inconsistent with the ESA and ESA regulations, those allegations are denied.

28. The allegations in paragraph 28 purport to describe the ESA, which speaks for itself and is the best evidence of its contents. To the extent the allegations contained within paragraph 28 are inconsistent with the ESA, those allegations are denied.

29. The allegations in paragraph 29 purport to describe the ESA, which speaks for itself and is the best evidence of its contents. To the extent the allegations contained within paragraph 29 are inconsistent with the ESA, those allegations are denied.

30. The allegations in paragraph 30 purport to describe the ESA and ESA regulations, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 30 are inconsistent with the ESA and ESA regulations, those allegations are denied.

31. The allegations in paragraph 31 purport to describe the ESA and ESA regulations, which speak for themselves and are the best evidence of their contents. To the extent the

allegations contained within paragraph 31 are inconsistent with the ESA and ESA regulations, those allegations are denied.

32. The allegations in paragraph 32 purport to describe the ESA, which speaks for itself and is the best evidence of its contents. To the extent the allegations contained within paragraph 32 are inconsistent with the ESA, those allegations are denied.

33. The allegations in paragraph 33 purport to describe ESA regulations, which speaks for itself and is the best evidence of its contents. To the extent the allegations contained within paragraph 33 are inconsistent with ESA regulations, those allegations are denied.

34. The allegations in paragraph 34 purport to describe ESA regulations, which speaks for itself and is the best evidence of its contents. To the extent the allegations contained within paragraph 34 are inconsistent with ESA regulations, those allegations are denied.

#### **B. National Environmental Policy Act**

35. The allegations in paragraph 35 purport to describe the National Environmental Policy Act (“NEPA”) and the regulations implementing NEPA, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 35 are inconsistent with NEPA or the NEPA regulations, those allegations are denied.

36. The allegations in paragraph 36 purport to describe NEPA and the NEPA regulations, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 36 are inconsistent with NEPA or the NEPA regulations, those allegations are denied.

37. The allegations in paragraph 37 purport to describe NEPA and the NEPA regulations, which speak for themselves and are the best evidence of their contents. To the

extent the allegations contained within paragraph 37 are inconsistent with NEPA or the NEPA regulations, those allegations are denied.

38. The allegations in paragraph 38 purport to describe NEPA and the NEPA regulations, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 38 are inconsistent with NEPA or the NEPA regulations, those allegations are denied.

39. The allegations in paragraph 39 purport to describe NEPA and the NEPA regulations, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 39 are inconsistent with NEPA or the NEPA regulations, those allegations are denied.

40. The allegations in paragraph 40 purport to describe NEPA and the NEPA regulations, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 40 are inconsistent with NEPA or the NEPA regulations, those allegations are denied.

41. The allegations in paragraph 41 purport to describe NEPA regulations, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 41 are inconsistent with NEPA regulations, those allegations are denied.

42. The allegations in paragraph 42 purport to describe NEPA regulations, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 42 are inconsistent with NEPA regulations, those allegations are denied.

43. The allegations in paragraph 43 purport to describe NEPA regulations, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 43 are inconsistent with NEPA regulations, those allegations are denied.

44. The allegations in paragraph 44 purport to describe NEPA and the ESA, which speak for themselves and are the best evidence of their contents. To the extent the allegations contained within paragraph 44 are inconsistent with NEPA and the ESA, those allegations are denied.

45. The allegations in paragraph 45 purport to describe the ESA, which speaks for itself and is the best evidence of its contents. Any allegations contained within paragraph 45 that are inconsistent with the ESA are denied. The allegations in paragraph 45 also consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

## **FACTUAL ALLEGATIONS**

### **A. Lesser Prairie-Chicken**

46. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 46 and therefore deny them.

47. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 47 and therefore deny them.

48. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 48 and therefore deny them.

49. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 49 and therefore deny them, and also finds that Plaintiffs'

characterization of the LPC as a “bellwether” is vague and ambiguous and, on that basis, deny the same.

50. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 50 and therefore deny them.

51. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 51 and therefore deny them.

52. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 52 and therefore deny them.

53. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 53 and therefore deny them.

54. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 54 and therefore deny them.

55. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 55 and therefore deny them.

56. The Farm Bureaus lacks knowledge or information necessary to respond to the allegations in paragraph 56 and therefore deny them.

57. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 57 and therefore deny them.

58. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 58 and therefore deny them.

59. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 59 and therefore deny them.



60. The Farm Bureaus admit that the LPC's range includes portions of Colorado, Kansas, New Mexico, Oklahoma, and Texas. The Farm Bureaus lack knowledge or information necessary to respond to the rest of the allegations in paragraph 60 and therefore deny them.

61. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 61 and therefore deny them.

62. The farm bureau lacks knowledge or information necessary to respond to the allegations in paragraph 62 and therefore denies them.

63. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 63 and therefore deny them.

64. The Farm Bureaus deny lack knowledge or information necessary to respond to the allegations in paragraph 64 and therefore deny them.

65. The allegations of paragraph 65 purport to characterize the contents of a population survey, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 65 that is inconsistent with the population survey is denied.

66. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 66 and therefore deny them.

67. The Farm Bureaus deny the allegations in the first sentence of paragraph 67. The farm bureau lacks knowledge or information necessary to respond to the allegations in sentence two of paragraph 67 and deny them on that basis.

68. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 68 and therefore deny them.

69. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 69 and therefore deny them.

70. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 70 and therefore deny them.

71. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 71 and therefore deny them.

72. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 72 and therefore deny them.

73. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 73 and therefore deny them.

74. The allegations of paragraph 74 purport to characterize the contents of a 2013 population survey, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 74 that is inconsistent with the population survey is denied.

75. The allegations of paragraph 75 purport to characterize the contents of a 2013 population survey, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 75 that is inconsistent with the population survey is denied.

76. The allegations of paragraph 76 purport to characterize the contents of a 2013 population survey, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 76 that is inconsistent with the population survey is denied.

77. The allegations of paragraph 77 purport to characterize the contents of a 2013 population survey, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 77 that is inconsistent with the population survey is denied.

78. The allegations of paragraph 78 purport to characterize the contents of a 2013 population survey, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 78 that is inconsistent with the population survey is denied.

79. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 79 and therefore deny them.

80. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 80 and therefore deny them.

81. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 81 and therefore deny them.

**B. Efforts to Protect the LPC Under the ESA and Other Plans and Agreements for the Species**

82. The Farm Bureaus admit that on June 9, 1998, the Service announced that the LPC warranted listing under the ESA. That decision was published in the Federal Register at 63 Fed. Reg. 31,400 and speaks for itself and is the best evidence of its contents. The remaining allegations of paragraph 82 are denied.

83. The Farm Bureau admit the allegations of paragraph 83.

84. The Farm Bureaus admit that, until the proposed listing rule in December 2012, the Secretary continued to consider the listing of the lesser prairie-chicken “warranted but precluded.”

85. The Farm Bureaus aver that the 2008 Candidate Notice of Review (73 Fed. Reg. 75,176 (Dec. 10, 2008)) speaks for itself and is the best evidence of its contents, and therefore deny Plaintiffs’ characterization of the same.

86. The Farm Bureaus admit that an LPN of 2 is considered to be a higher priority than an LPC of 8, but that such an LPN still reflects that Defendant USFWS considered the species to still be precluded by higher priority species. The Farm Bureaus deny the second and third sentences of Paragraph 86.

87. The allegations of paragraph 87 purport to characterize the contents of a notice published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 87 that is inconsistent with the Federal Register notice is denied.

88. The allegations of paragraph 88 purport to characterize two settlement agreements in *In re Endangered Species Act Section 4 Deadline Litigation*, No. 10-377, MDL Docket No. 2165 (D.D.C. May 10, 2011), which speak for themselves and are the best evidence of their contents. Any allegation in paragraph 88 that is inconsistent with the settlement agreements is denied.

89. The allegations of paragraph 89 purport to characterize the contents of a proposed rule published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 89 that is inconsistent with the proposed rule is denied.

90. The allegations of paragraph 90 purport to characterize the contents of a notice published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 90 that is inconsistent with the notice is denied.

91. The allegations of paragraph 91 purport to characterize the contents of a proposed rule published in the Federal Register and a Service memorandum, which speak for themselves and are the best evidence of their contents. Any allegation in paragraph 91 that is inconsistent with the proposed rule or Service memorandum is denied.

92. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 92 and therefore deny them.

93. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 93 and therefore deny them.

94. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 94 and therefore deny them.

95. The allegations of paragraph 95 purport to characterize the contents of a notice published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 95 that is inconsistent with the notice is denied.

96. The allegations of paragraph 96 purport to characterize the contents of a notice published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 96 that is inconsistent with the notice is denied.

97. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 97 and therefore deny them.

98. The Farm Bureaus lack knowledge or information necessary to respond to the allegations in paragraph 98 and therefore deny them.

99. The allegations of paragraph 99 purport to characterize the contents of a notice published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 99 that is inconsistent with the notice is denied.

100. The Farm Bureaus lack sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 100 and, on that basis, deny the same. Further, the phrase “many conservation groups” is vague and ambiguous and, therefore, farm bureau denies the allegations in Paragraph 100.

101. The allegations in paragraph 101 purport to characterize comments submitted to the Service, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the comments are denied.

102. The allegations of paragraph 102 purport to characterize the contents of a press release, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 102 that is inconsistent with the press release is denied.

103. The allegations of paragraph 103 purport to characterize the contents of the *Lesser Prairie-Chicken Range-Wide Conservation Plan* (“Range-wide plan”), which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 103 that is inconsistent with the Range-wide plan is denied.

104. The allegations of paragraph 104 purport to characterize the contents of the Range-wide plan, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 104 that is inconsistent with the Range-wide plan is denied.

105. The allegations of paragraph 105 purport to characterize the contents of the Range-wide plan, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 105 that is inconsistent with the Range-wide plan is denied.

106. The allegations of paragraph 106 purport to characterize the contents of the Range-wide plan, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 106 that is inconsistent with the Range-wide plan is denied.

107. The allegations of paragraph 107 purport to characterize the contents of the Range-wide plan, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 107 that is inconsistent with the Range-wide plan is denied.

108. The allegations of paragraph 108 purport to characterize the contents of a Conference Opinion of the Service and U.S. Department of Agriculture (“Conference Opinion”), which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 108 that is inconsistent with the Conference Opinion is denied.

109. The allegations of paragraph 109 purport to characterize a notice published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 109 that is inconsistent with the notice is denied.

110. The allegations of paragraph 110 purport to characterize the contents of the Conference Opinion, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 110 that is inconsistent with the Conference Opinion is denied.

111. The allegations of paragraph 111 purport to characterize the contents of the Conference Opinion, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 111 that is inconsistent with the Conference Opinion is denied.

112. The allegations of paragraph 112 purport to characterize the contents of a proposed rule published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 112 that is inconsistent with the proposed rule is denied.

113. The allegations of paragraph 113 purport to characterize the contents of a proposed rule published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 113 that is inconsistent with the proposed rule is denied.

114. The farm bureau admits that Plaintiffs submitted comments on the 4(d) Rule. The remaining allegations in paragraph 114 purport to characterize Plaintiffs' comment letters, which speak for themselves and are the best evidence of their content. Any allegations in paragraph 114 that are inconsistent with the comment letters are denied.

115. The allegations of paragraph 115 purport to characterize the contents of Plaintiffs' comments on the 4(d) Rule, which speak for themselves and are the best evidence of their contents. Any allegations in paragraph 115 that are inconsistent with the comments are denied.

116. The Farm Bureaus admit the allegations of paragraph 116.

117. The allegations of paragraph 117 purport to characterize the contents of a decision published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 117 that is inconsistent with the decision is denied.

118. The allegations in paragraph 118 purport to characterize peer review comments submitted to the Service, which speak for themselves and are the best evidence of their contents. Any allegation in paragraph 118 that is inconsistent with the peer review comments is denied.

119. The allegations of paragraph 119 purport to characterize the contents of a decision published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 119 that is inconsistent with the decision as published is denied.

120. The allegations of paragraph 120 purport to characterize the contents of a notice published in the Federal Register, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 120 that is inconsistent with the notice is denied.

121. The allegations of the first sentence of paragraph 121 purport to characterize the contents of the 4(d) Rule, which speaks for itself and is the best evidence of its contents. Any allegation in the first sentence of paragraph 121 that is inconsistent with the 4(d) Rule is denied. The Farm Bureaus deny the remaining allegations of paragraph 121.

122. The allegations of paragraph 122 purport to characterize the contents of the 4(d) Rule, which speaks for itself and is the best evidence of its contents. Any allegation in paragraph 122 that is inconsistent with the 4(d) Rule is denied.



123. The Farm Bureaus deny the allegations of paragraph 123.

124. The allegations of paragraph 124 purport to characterize the contents of the 4(d) Rule, which speaks for itself and is the best evidence of its contents. Any allegation of paragraph 124 that is inconsistent with the 4(d) Rule is denied.

125. The allegations of paragraph 125 purport to characterize the contents of the 4(d) Rule, which speaks for itself and is the best evidence of its contents. Any allegation of paragraph 125 that is inconsistent with the 4(d) Rule is denied.

126. The allegations of paragraph 126 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

127. The Farm Bureaus are without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 127 and, on that basis, deny the same.

128. The allegations of paragraph 128 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

129. The Farm Bureaus are without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 129 and, on that basis, deny the same.

130. The allegations in Paragraph 130 represent a legal conclusion to which no response is required. To the extent these allegations require a response, the Farm Bureaus deny them.

131. The Farm Bureaus deny the allegations in Paragraph 131.

#### **CLAIMS FOR RELIEF**

132. For each of the paragraphs of this Answer that correspond to Plaintiffs' Claims for Relief, the Farm Bureaus incorporate by reference each paragraph in which they respond to a factual allegation set forth in the Complaint as if set out in full below.

**Violations of the Endangered Species Act and Administrative Procedure Act in the decision to list the lesser prairie-chicken as threatened instead of endangered. 16 U.S.C. §§ 1533(a)(1), 1533(b), 5 U.S.C. § 706**

133. The allegations of paragraph 133 purport to characterize the contents of the ESA, which speaks for itself and is the best evidence of its contents. Any allegation of paragraph 133 that is inconsistent with the ESA is denied.

134. The allegations of paragraph 134 purport to characterize the contents of the ESA, which speaks for itself and is the best evidence of its contents. Any allegation of paragraph 134 that is inconsistent with the ESA is denied.

135. The allegations of paragraph 135 purport to characterize the contents of the ESA, which speaks for itself and is the best evidence of its contents. Any allegation of paragraph 135 that is inconsistent with the ESA is denied.

136. The allegations of paragraph 136 purport to characterize the contents of USFWS' Policy for Evaluation of Conservation Efforts When Making Listing Decisions and the Solicitor General Memo on Foreseeable Future, which speak for themselves and are the best evidence of their contents. Any allegation of paragraph 136 that is inconsistent with the documents is denied.

137. The allegations of paragraph 137 consist of legal conclusions that require no response. To the extent these allegations require a response, the farm bureau denies them.

138. The allegations of paragraph 138 consist of legal conclusions that require no response. To the extent these allegations require a response, the farm bureau denies them.

**SECOND CLAIM**

**The Service's reliance on the polar bear memorandum's interpretation of the statutory term "in danger of extinction" in making its threatened determination for the lesser prairie-chicken violated the APA and ESA.**

139 The allegations of paragraph 139 purport to characterize the contents of the Administrative Procedure Act (“APA”) and the ESA, which speak for themselves and are the best evidence of their contents. Any allegation of paragraph 139 that is inconsistent with the APA or ESA is denied.

140 The allegations of paragraph 140 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

141 The allegations of paragraph 141 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

142 The allegations of paragraph 142 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

143 The allegations of paragraph 143 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

### **THIRD CLAIM**

**The Service’s decision to issue a Section 4(d) rule for the lesser prairie-chicken violates the ESA, 16 U.S.C. §§ 1533(d), 1532, 1536(a)(4); NEPA, 42 U.S.C. §§ 4321-4347; CEQ’s Implementing Regulations, 40 C.F.R. §§ 1500.1-1508.28, and is contrary to the APA, 5 U.S.C. § 706.**

144. The allegations of paragraph 144 purport to characterize the contents of the ESA, which speaks for itself and is the best evidence of its contents. Any allegation of paragraph 144 that is inconsistent with the ESA is denied.

145. The allegations of paragraph 145 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

146. The allegations of paragraph 146 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

147. The allegations of paragraph 147 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

148. The allegations of paragraph 148 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

149. The allegations of paragraph 149 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

150. The allegations of paragraph 150 consist of legal conclusions that require no response. To the extent these allegations require a response, the Farm Bureaus deny them.

#### **PRAYER FOR RELIEF**

151. The Farm Bureaus deny that Plaintiffs are entitled to any of the relief requested in their “Prayer for Relief.”

#### **GENERAL DENIAL**

The Farm Bureaus deny each and every allegation of the Complaint not specifically admitted, qualified, or denied herein.

#### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Complaint should be dismissed in whole or in part because the Plaintiffs lack standing.
3. The Court lacks subject matter jurisdiction over Plaintiffs’ claims.
4. The Farm Bureaus hereby give notice that they intends to rely upon any other defenses that may become available or appear during the proceedings of this case and hereby reserve the right to assert such defenses.

**WHEREFORE**, the Farm Bureaus respectfully ask that this Court enter judgment dismissing the Complaint with prejudice and costs and such other and further relief as is deemed just and proper.

Date: October 31, 2014

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**ATTORNEYS FOR INTERVENOR-DEFENDANTS  
KANSAS FARM BUREAU, TEXAS FARM BUREAU,  
COLORADO FARM BUREAU, NEW MEXICO FARM AND  
LIVESTOCK BUREAU, and AMERICAN FARM BUREAU  
FEDERATION**

# **Exhibit 2**

to

Motion to Intervene as Defendants of Kansas Farm Bureau, Texas Farm Bureau, Colorado Farm Bureau, New Mexico Farm & Livestock Bureau and American Farm Bureau Federation

**Certificate Under LCvR 7.1 of the American Farm Bureau Federation**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DEFENDERS OF WILDLIFE, §  
1130 17th Street, NW §  
Washington, DC 20036, §

CENTER FOR BIOLOGICAL §  
DIVERSITY, §  
378 N. Main Avenue §  
Tucson, AZ 85701, §

WILDEARTH GUARDIANS, §  
516 Alto Street §  
Santa Fe, NM 87501, §

*Plaintiffs,* §

v. §

Case No. 1:14-cv-1025-BAH

SALLY JEWELL §  
Secretary, U.S. Department of Interior §  
1849 C Street NW §  
Washington, DC 20240, §

DANIEL M. ASHE §  
Director, U.S. Fish and Wildlife Service §  
1849 C Street NW §  
Washington, DC 20240, §

U.S. FISH AND WILDLIFE SERVICE §  
1849 C Street NW §  
Washington, DC 20240, §

*Defendants.* §

**CERTIFICATE UNDER LCvR 7.1 OF THE AMERICAN FARM BUREAU  
FEDERATION**

I, the undersigned, counsel of record for the American Farm Bureau Federation, certify that to the best of my knowledge and belief, the American Farm Bureau Federation is a 501(c)(5)

non-profit corporation that has no parent companies, subsidiaries or affiliates which have any outstanding securities in the hands of the public. These representations are made in order that judges of this court may determine the need for recusal.

Dated: October 31, 2014

Respectfully submitted,

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and Livestock Bureau, and American Farm Bureau Federation*



# **Exhibit 3**

to

Motion to Intervene as Defendants of Kansas Farm Bureau, Texas Farm Bureau, Colorado Farm Bureau, New Mexico Farm & Livestock Bureau and American Farm Bureau Federation

**Certificate Under LCvR 7.1 of the Colorado Farm Bureau**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DEFENDERS OF WILDLIFE, §  
1130 17th Street, NW §  
Washington, DC 20036, §

CENTER FOR BIOLOGICAL §  
DIVERSITY, §  
378 N. Main Avenue §  
Tucson, AZ 85701, §

WILDEARTH GUARDIANS, §  
516 Alto Street §  
Santa Fe, NM 87501, §

*Plaintiffs,* §

v. §

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Secretary, U.S. Department of Interior §  
1849 C Street NW §  
Washington, DC 20240, §

DANIEL M. ASHE §  
Director, U.S. Fish and Wildlife Service §  
1849 C Street NW §  
Washington, DC 20240, §

U.S. FISH AND WILDLIFE SERVICE §  
1849 C Street NW §  
Washington, DC 20240, §

*Defendants.* §

**CERTIFICATE UNDER LCvR 7.1 OF THE COLORADO FARM BUREAU**

I, the undersigned, counsel of record for the Colorado Farm Bureau, certify that to the best of my knowledge and belief, the Colorado Farm Bureau is a 501(c)(5) non-profit

corporation that has no parent companies, subsidiaries or affiliates which have any outstanding securities in the hands of the public. These representations are made in order that judges of this court may determine the need for recusal.

Dated: October 31, 2014

Respectfully submitted,

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Texas Farm Bureau, Colorado Farm Bureau, New Mexico Farm  
and Livestock Bureau, and American Farm Bureau Federation*

# **Exhibit 4**

to

Motion to Intervene as Defendants of Kansas Farm Bureau, Texas Farm Bureau, Colorado Farm Bureau, New Mexico Farm & Livestock Bureau and American Farm Bureau Federation

**Certificate Under LCvR 7.1 of the Kansas Farm Bureau**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DEFENDERS OF WILDLIFE, §  
1130 17th Street, NW §  
Washington, DC 20036, §

CENTER FOR BIOLOGICAL §  
DIVERSITY, §  
378 N. Main Avenue §  
Tucson, AZ 85701, §

WILDEARTH GUARDIANS, §  
516 Alto Street §  
Santa Fe, NM 87501, §

*Plaintiffs,* §

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Secretary, U.S. Department of Interior §  
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Washington, DC 20240, §

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1849 C Street NW §  
Washington, DC 20240, §

U.S. FISH AND WILDLIFE SERVICE §  
1849 C Street NW §  
Washington, DC 20240, §

*Defendants.* §

**CERTIFICATE UNDER LCvR 7.1 OF THE KANSAS FARM BUREAU**

I, the undersigned, counsel of record for the Kansas Farm Bureau, certify that to the best of my knowledge and belief, the Kansas Farm Bureau is a 501(c)(5) non-profit corporation that

has no parent companies, subsidiaries or affiliates which have any outstanding securities in the hands of the public. These representations are made in order that judges of this court may determine the need for recusal.

Dated: October 31, 2014

Respectfully submitted,

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and Livestock Bureau, and American Farm Bureau Federation*

# **Exhibit 5**

to

Motion to Intervene as Defendants of Kansas Farm Bureau, Texas Farm Bureau, Colorado Farm Bureau, New Mexico Farm & Livestock Bureau and American Farm Bureau Federation

**Certificate Under LCvR 7.1 of the New Mexico Farm and Livestock Bureau**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DEFENDERS OF WILDLIFE, §  
1130 17th Street, NW §  
Washington, DC 20036, §

CENTER FOR BIOLOGICAL §  
DIVERSITY, §  
378 N. Main Avenue §  
Tucson, AZ 85701, §

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516 Alto Street §  
Santa Fe, NM 87501, §

*Plaintiffs,* §

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1849 C Street NW §  
Washington, DC 20240, §

U.S. FISH AND WILDLIFE SERVICE §  
1849 C Street NW §  
Washington, DC 20240, §

*Defendants.* §

**CERTIFICATE UNDER LCvR 7.1 OF THE NEW MEXICO FARM AND LIVESTOCK  
BUREAU**

I, the undersigned, counsel of record for the New Mexico Farm and Livestock Bureau,  
certify that to the best of my knowledge and belief, the New Mexico Farm and Livestock Bureau



is a 501(c)(5) non-profit corporation that has no parent companies, subsidiaries or affiliates which have any outstanding securities in the hands of the public. These representations are made in order that judges of this court may determine the need for recusal.

Dated: October 31, 2014

Respectfully submitted,

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# **Exhibit 6**

to

Motion to Intervene as Defendants of Kansas Farm Bureau, Texas Farm Bureau, Colorado Farm Bureau, New Mexico Farm & Livestock Bureau and American Farm Bureau Federation

**Certificate Under LCvR 7.1 of the Texas Farm Bureau**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DEFENDERS OF WILDLIFE, §  
1130 17th Street, NW §  
Washington, DC 20036, §

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U.S. FISH AND WILDLIFE SERVICE §  
1849 C Street NW §  
Washington, DC 20240, §

*Defendants.* §

**CERTIFICATE UNDER LCvR 7.1 OF THE TEXAS FARM BUREAU**

I, the undersigned, counsel of record for the Texas Farm Bureau, certify that to the best of my knowledge and belief, the Texas Farm Bureau is a 501(c)(5) non-profit corporation that has

no parent companies, subsidiaries or affiliates which have any outstanding securities in the hands of the public. These representations are made in order that judges of this court may determine the need for recusal.

Dated: October 31, 2014

Respectfully submitted,

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