

Since 2013, the Western Association of Fish and Wildlife agencies (WAFWA) has been implementing two related programs to help conserve the lesser prairie-chicken (LPC): a Range-Wide Conservation Plan (RWP) and a Range-Wide Oil and Gas Candidate Conservation Agreement with Assurances (CCAA). In 2019, WAFWA initiated a financial and organizational audit of the CCAA program by a third-party reviewer. The results of that audit were compiled into a report entitled *Audit of the Lesser Prairie Chicken Mitigation Framework* (Audit Report) that was completed in July 2019.

Based on the Audit Report's recommendations, WAFWA acted immediately to improve its short-term financial situation and overall organizational structure. WAFWA continues to implement new procedures and approaches to address the recommendations from the audit. WAFWA is providing this document in an effort to inform WAFWA members, CCAA participants, and other interested stakeholders about how, specifically, WAFWA has addressed or plans to address each of the Audit Report's findings or recommendations. Responses to every finding (Audit Statements) of the Audit Report are provided below in the order in which they appear in the Audit Report. Note that several sections related to personnel matters are excluded to maintain confidentiality. Topics used in the Audit Report are used to organize the material in this response: finances, conservation, regulatory, organizational management, governance, and stakeholder involvement. Each Audit Statement is given a numeric code that corresponds to the heading numbers used in the conclusions section of the Audit Report.

## Topic 1: Finances

### 1.1 Although accounting systems and procedures are in place, WAFWA does not properly administer the Program from a financial standpoint.

WAFWA has modified accounting procedures and made changes to staff to more efficiently and effectively administer the program, allowing for increased transparency and accountability. To ensure the CCAA's financial and ecological sustainability, WAFWA is evaluating different components of the CCAA mitigation framework and fee and funding structure that may require amendment. WAFWA has also hired a consultant to help identify the best strategies to improve the CCAA. WAFWA is also forming an Investment Committee—composed of financial experts—to provide strategic investment recommendations to the Budget and Finance Committee.

### 1.2 WAFWA's finance team does not provide the strategic overlay that is required to run the Program.

Please see response to Audit Statement 1.1.

### 1.3 WAFWA's financial reporting overvalues its assets.

WAFWA financials have been prepared in accordance to Generally Accepted Accounting Principles (GAAP). Assets and liabilities are appropriately recorded and disclosed to GAAP requirements and are consistent with the requirements of the CCAA and incidental take permit issued by the U.S. Fish and Wildlife Service in 2014.

- 1.4 The purchase of the Boise building using [WAFWA Species Restoration Foundation s (SRF s)] administrative funds and the associated loan of SRF s funds to WAFWA were not appropriate uses of funds. WAFWA took 100% ownership of the building paid using SRF funds.

WAFWA is liquidating this asset. Funds from the sale of this building will be returned to WAFWA Species Restoration Foundation fund that is the financial manager of the CCAA.

- 1.5 The Program does not track its liabilities properly and may not have enough assets to cover its future potential liabilities.

Please see response to Audit Statements 1.1 and 1.3.

- 1.6 WAFWA did not manage its administrative endowment to ensure that it remains permanent.

Please see response to Audit Statement 1.1.

- 1.7 The Program does not generate the financial resources needed to support its administrative costs and will run out of administrative funds by the end of July 2019.

Prior to the Audit Report, WAFWA recognized the lack of administrative funds and was addressing this issue through the adaptive management process specified in the CCAA.

WAFWA continues to address this issue in the short term through two approaches, cost reduction and funding expansion. First, to reduce administrative costs and improve efficiency, WAFWA is continuing to evaluate and adjust current personnel obligations and contracts. In 2019, WAFWA made significant staffing reductions. The organization is currently using state fish and wildlife agency staff and contractors—rather than full-time, in-house staff—to handle collection of field data. WAFWA has also significantly reduced the cost of several vendor contracts.

Second, WAFWA and its partners have begun expanding its funding sources to increase immediate and near-term financial support to the program, including state wildlife agencies in the five LPC states.

WAFWA, working with a consultant and in coordination with stakeholders, is now evaluating its long-term costs and funding needs. As part of this effort, WAFWA and will identify sustainable long-term funding strategies to support the CCAA program.

- 1.8 The Program does have appropriate resources to support its permanent conservation. However, the Tate Ranch endowment needs to be fully funded immediately.

WAFWA implemented a strategy to fully fund the Tate Ranch endowment within the timeframe allowed by the CCAA and USFWS and expects the endowment to be fully funded this year. Please also see response to Audit Statement 1.1.

- 1.9 The Program spending on temporary mitigation is unsustainable.

Because current commitments for temporary mitigation appear to be unsustainable over the long term, WAFWA is evaluating investment strategies and program needs to meet these obligations in a more financially sustainable way. Results from this evaluation will inform temporary mitigation commitments. WAFWA is also forming an Investment Committee; for details, please see response to Audit Statement 1.1.

1.10 Adaptive management cannot effectively solve the financial issues outlined in this audit.

Industry participation through enrollment fees and mitigation fees ultimately determine funding levels for the Program. Although adaptive management is critical for maintaining and improving industry participation, the CCAA's adaptive management plan does limit options. WAFWA has hired a consultant, working in consultation with stakeholders, to recommend improvements to the CCAA. These improvements may include adaptive management changes that could also improve program finances.

1.11 WAFWA improperly transferred money from the conservation endowment to fund the administrative costs of the Program, including salaries of WAFWA staff.

WAFWA transferred funds from the conservation endowment to cover necessary administrative costs that could not be addressed through adaptive management changes. WAFWA has contracted with a consultant to advise WAFWA on how the CCAA can be adjusted to ensure that administrative and conservation funds are sufficient and sustainable.

## Topic 2: Conservation

2.1 The Program is supported by dedicated staff with deep subject matter expertise. However, the staffing structure of the conservation team may not be the most efficient.

WAFWA has implemented significant changes to its staffing structure and will continue to do so in order to better align staffing with workload. Please see responses to Audit Statements 1.7 and 4.1.

2.2 The goals of the Program do not match the criteria that USFWS is using to judge the effectiveness of LPC conservation.

The Audit Report states that USFWS measures effectiveness of LPC conservation based on the presence of large tracts of permanently conserved habitat. However, the CCAA approved by USFWS affords a broader approach, not one that is solely focused on large tracts of permanently conserved habitat. The mitigation framework approved by USFWS provides for conserving species habitat using a combination of permanent conservation easements (25% of total) and term contracts that may shift on the landscape (75% of total). To help determine effectiveness, the CCAA utilizes several approaches, including contributing to an annual population survey to generate range-wide population estimates.

The Audit Report states that population surveys by SRF may be unreliable on a short timeframe and that trends greater than 20 years should be used to assess conservation activities. The mitigation framework approved by USFWS recognizes the limitations of annual or short-term surveys and uses a 5-year running average of range-wide population to determine trends. WAFWA believes that the aerial surveys represent the best field sampling and statistical methodologies currently available to wildlife managers. WAFWA continues to reassess the methodology and improve them to incorporate the best available survey methods.

2.3 WAFWA does not have a well-articulated conservation strategy and does not properly track its progress against the needs and payments of participants.

From the beginning of the Program in 2014, WAFWA produced one annual report each year that summarized compliance and effectiveness of the RWP and the CCAA together. Information on the progress of the CCAA was often difficult to identify or extract from the reporting on the RWP as a whole.

Starting in 2020, WAFWA will produce a stand-alone annual report only for the CCAA Program. The 2019 CCAA Annual Report is expected to improve clarity regarding the progress of the CCAA in meeting its compliance requirements and conservation goals.

WAFWA makes available to CCAA participants all data related to impacts, payments, and conservation credits of each company. These data will be summarized for the entire CCAA program in the new 2019 annual report. WAFWA is also examining ways in which the conservation targets of the CCAA can be clarified as they relate to the larger goals of the RWP.

2.4 WAFWA has developed a sophisticated database to manage the Program. However, the database is expensive and was not included in the original budget.

The Audit Report notes that the cost for developing the database, interface, and modules was “in excess of \$1 million without counting WAFWA’s and KU’s staff costs.” However, this amount includes staffing costs by KU for processing mitigation projects, conservation contract management, database management, and reporting over a 5-year period. The actual cost to develop the database was roughly \$440,000. It is fairly typical in any conservation program that some implementation costs are over-estimated or under-estimated in original program budgets. WAFWA management developed the database in order to meet a critical need of program administration. The database and on-line reporting tool has become an essential part of the effective management of the Program. In addition, WAFWA recently took over the database management task, resulting in substantial cost savings for the program.

2.5 The design of the Program is overly complicated leading to a lack of understanding of the relationship between impacts and mitigation.

WAFWA has improved its implementation of the CCAA since the Audit Report. WAFWA is exploring ways in which the CCAA may be simplified while still meeting the regulatory standards of the enhancement of survival permit issued to WAFWA by USFWS (also see response to Audit Statement 1.1).

2.6 The mitigation fee collected by SRF does not reflect the actual cost of conservation activities being implemented.

Mitigation fees are intended to fund conservation endowments that support conservation action and habitat management in perpetuity. Management actions vary from property to property, so assumptions must be made to calculate mitigation fees. As a basis of those assumptions, SRF used the following:

- The relative use of LPC management practices and the relative cost of each practice from the USDA Natural Resources Conservation Service
- Public information about average agricultural land values for each ecoregion
- A target of 25% permanent easements and 75% iterative term contracts, as agreed upon by USFWS
- An assumed long-term rate of a return of 4% on the conservation endowments.

The CCAA called for a working group to periodically assess these costs and adjust mitigation fees through adaptive management as necessary to adequately cover changing costs. As recognized earlier, WAFWA is working with stakeholders through the assistance of a consultant to make further adjustments where adaptive management may fall short.

- 2.7 Although the Program provided valuable mitigation in excess of its initial target, it is unclear if the effort was effective at reducing the threats to the LPC.

The CCAA has provided more conservation than currently required based on impacts and mitigation needs. This conservation is addressing and reducing threats to LPC through improved habitat quality (e.g., reduced grazing intensity), habitat restoration (woody plant removal, abandoned infrastructure removal), acquisition and conservation of large tracts of suitable habitat, and on-going monitoring. Please also see response to Audit Statements 2.2, 2.3, and 2.8 and the 2019 CCAA annual report issued in April 2020. The Program has also reduced threats by providing strong incentives for the oil and gas industry to co-locate facilities and reduce project footprints in the highest quality habitat for LPC.

- 2.8 WAFWA should have triggered the adaptive management plan because of the lack of progress on the conservation objectives.

WAFWA has triggered adaptive management responses several times in an effort to improve the program and respond to changing conditions. These adaptive management responses have included changes in conservation unit values, administrative funding, addition of new impact types, redefining existing impact types, and improving survey strategies. WAFWA is currently working closely with its partners, including USFWS, to assess the need for additional program changes to improve performance. Please also see response to Audit Statement 2.3.

- 2.9 The Program as currently structured and operated does not provide a net gain in conservation objectives.

WAFWA continues to implement the CCAA consistent with the enhancement of survival permit issued by USFWS that presumes the program will result in a "net conservation benefit" to the lesser prairie-chicken. WAFWA is working closely with USFWS to ensure that the program clearly provides this net conservation benefit, and that this benefit can be documented through the effectiveness monitoring program of the RWP and CCAA (e.g., amount of conservation of high-quality habitat, habitat restoration, habitat enhancement, and range-wide population survey estimates).

### Topic 3: Regulatory

- 3.1 The Program does not offer any regulatory benefit to electric utility companies or any other industry beyond oil and gas, thereby limiting their potential participation in the Program.

This is correct. There are currently 111 oil and gas companies participating in the CCAA, providing substantial benefit to this large industry operating in the range of the LPC. WAFWA is considering all options available to improve the effectiveness and support of the CCAA, including possibly expanding it to include other industries interested in participating if doing so will benefit the CCAA and those industries already participating in it.

- 3.3 The Program is out of compliance with the CCAA.

While the Program may have been out of compliance with respect to financial management, the same is not true with regard to compliance with the conservation goals of the CCAA. WAFWA is working to address CCAA issues identified in the Audit Report through a working group that includes stakeholders and USFWS staff.

- 3.4 The Program may not be providing enough certainty of the effectiveness of the conservation effort to guarantee that the associated enhancement-of-survival permit will not be successfully challenged by environmental groups.

WAFWA will work with all stakeholders, including USFWS, through the CCAA realignment process mentioned above, to ensure that the conservation effort delivered through the CCAA continues to be grounded in science, and is durable and defensible to the long-term benefit of LPC.

#### Topic 4: Organizational Management

- 4.1 WAFWA's management does not have the resources to properly oversee and manage the Program which create a lack of accountability across the entire organization.

WAFWA has modified its structure to create an Executive Director position. This director will provide leadership, oversight, and accountability to the Program. To ensure greater accountability, the director has clarified the roles and responsibilities of all WAFWA staff.

- 4.2 WAFWA does not have a business plan in place to manage the Program.

WAFWA created a business plan as part of the RWP, which included the CCAA. The business plan's cost estimates were based on information available to authors at that time. **WAFWA will develop a business plan specifically for the CCAA using actual costs to date and revised expected costs into the future.** These revised expected costs will be informed by the results of the CCAA evaluation underway now.

- 4.3 WAFWA has an organizational culture that prevents an effective management of the Program. Please see response to Audit Statement 4.1.

- 4.4 WAFWA use of staff and contractors is inefficient and creates undue costs on the Program.

WAFWA has implemented an interim staffing plan to operate within current funding constraints while also addressing critical compliance needs. Future staffing needs and corresponding funding will be determined as a part of the CCAA realignment process. Please also see response to Audit Statement 1.7.

#### Topic 5: Governance

- 5.1 WAFWA strategic priorities are not clear and may not be supportive of the Program.

**In 2019, WAFWA completed a strategic planning effort,** which includes goals and priorities that are supportive of the CCAA Program.

- 5.2 The Program's current committee structure, and WAFWA's decision making process and culture are inadequate to provide proper governance to the Program.

Program committee structure will be reviewed and amended as appropriate as a part of the CCAA realignment process. Please see response to Audit Statement 4.1 relative to WAFWA's decision-making process

## Topic 6: Stakeholder Involvement

- 6.1 WAFWA failed to fully disclose transparent information on the conservation and financial performance of the Program to stakeholders, including to USFWS.

WAFWA reported its conservation performance multiple times per year to stakeholders and USFWS, although limited information was provided on financial performance. Moving forward, an Executive Director will oversee all disclosures to ensure appropriate transparency. Starting in 2020, WAFWA will also be producing a CCAA Annual Report focused on the requirements of the CCAA Program (in the past CCAA reporting was combined with RWP reporting). The 2019 CCAA Annual Report is expected to improve transparency (please also see response to Audit Statement 4.1).

- 6.2 USFWS did not ensure that the CCAA was written in a way that ensured the success of the conservation goals.

The conservation goals of the CCAA are tied to the conservation goals of the RWP. The RWP has broad conservation goals directed at the recovery of the species through all conservation delivery tools. The CCAA is just one of those tools and is directed at offsetting the new developments of oil and gas industry participants, using the goals of the RWP to guide conservation targeting.

- 6.3 USFWS is supportive of the Program but failed to properly supervise it.

Please see response to Audit Statement 6.2. Also please note that bi-weekly conference calls and quarterly face-to-face meetings have been held with USFWS to discuss program progress. WAFWA will continue to work closely with USFWS staff to provide the information they need to evaluate the compliance and effectiveness of CCAA implementation.

- 6.4 Participants are supportive of the Program but failed to properly supervise it.

The mechanism provided for participants to “supervise” the Program was the Lesser Prairie-Chicken Advisory Committee (Advisory Committee). Numerous modifications to the CCAA were proposed through the CCAA adaptive management process and approved by the Advisory Committee. Some of these modifications required WAFWA to make management or financial changes. WAFWA continues to work with CCAA participants to ensure that they have access to the information they need to verify their level of participation and determine their own compliance in the program. WAFWA is open to ideas for enhancing engagement and oversight by participants and the potential for developing new options as a part of the CCAA realignment process.

- 6.5 Environmental Non-governmental Organizations range from openly adverse to engaging in a constructive dialogue.

Comment noted.

### **Topic 7: Future Market for LPC Mitigation**

7.1 Although participants are expecting that exploration and production will remain strong, the Program created a strong incentive for avoiding and minimizing impact leading to a much lower need for mitigation than anticipated.

WAFWA concurs. [See the 2019 annual report for details.](#)