

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-268-EWN-PAC

FOREST GURARDIANS,
BIODIVERSITY CONSERVATION ALLIANCE,
CENTER FOR NATIVE ECOSYSTEMS, and
ROCKY MOUNTAIN ANIMAL DEFENSE
Plaintiffs,

v.

DIRK KEMPTHORNE, in his official capacity as U.S. SECRETARY OF INTERIOR,
Defendant,

and

STATE OF WYOMING,
Defendant-Intervenor,

and

COLORADO CATTLEMEN'S ASSOCIATION, a Colorado non-profit corporation,
PARTNERSHIP FOR THE WEST, a Colorado non-profit corporation,
Defendants-Intervenors,

and

MOUNTAIN STATES LEGAL FOUNDATION,
Defendant-Intervenor.

DECLARATION OF MARLA REBECCA PEEK IN SUPPORT OF AMERICAN
FARM BUREAU FEDERATION'S MOTION FOR LEAVE TO INTERVENE AS
DEFENDANT

I, Marla Rebecca Peek, pursuant to 28 U.S.C. § 1746, testify in the above-captioned proceeding as follows:

1. I am the Director of Regulatory Affairs for the Oklahoma Farm Bureau, a member organization of the American Farm Bureau Federation ("Farm Bureau"). Oklahoma Farm Bureau has 166,000 member families, with an organized county Farm Bureau in each of Oklahoma's 77 counties.

2. Farm Bureau is an independent, non-governmental, voluntary organization established in 1919 to protect, promote, and represent the business, economic, social, and educational interests of American farmers and ranchers. Farm Bureau currently has member State Farm Bureau organizations in all fifty states and Puerto Rico.
3. Farm Bureau represents farmers and ranchers who depend upon private and public lands for their livelihoods in all 50 states and Puerto Rico, including States such as Oklahoma, that are within the current and historic range of the Black-tailed Prairie Dog ("Prairie Dog"). Our members' farms and ranches are their family heritage and legacy to their children. In many instances their farms and ranches are also both their homes and livelihoods. Our members have large capital investments in these lands and the equipment and facilities needed to effectively raise crops and livestock. They have also secured loans from banks and other institutions in order to raise capital for operating their farms and ranches.
4. Oklahoma Farm Bureau as an organization, and many of its individual members, worked with the Oklahoma Department of Wildlife Conservation (ODWC) to develop The Oklahoma Black-tailed Prairie Dog Management Plan, final draft August 15, 2002.
5. Hundreds of Oklahoma Farm Bureau members in the western half of the state and the panhandle are negatively affected by Prairie Dogs. From the eastern border of Oklahoma to the western border, average annual precipitation declines significantly, from 50 inches in far southeast Oklahoma to 16 inches in the northwest panhandle. The farther west you travel in Oklahoma, the more challenging farming and ranching is due to limited forage and crop production because of limited rainfall. Again, it is the western half of Oklahoma and the panhandle that is inhabited by Prairie Dogs.
6. According to The Oklahoma Black-tailed Prairie Dog Management Plan, Prairie Dog colonies exist in 33 of Oklahoma's 77 counties. In 1989, it was estimated that almost 80% of the occupied acres occur within the panhandle region, which includes three counties—Cimarron, Texas and Beaver. According to the 2002 Census of Agriculture State Profile, Oklahoma was fourth in the nation in production of cattle and calves. Cattle production is dependent upon forage production, which is nonexistent in active Prairie Dog colonies.
7. As with agricultural producers in existing or historic Prairie Dog range, I have observed along with Oklahoma Farm Bureau members the destructive impacts Prairie Dog communities of underground tunnels and mounds have on rangelands and farmland, including the destruction of native grasses, spreading of invasive weeds, and soil erosion. Through their persistent feeding and clipping, Prairie Dogs reduce present and future forage yields for livestock and crops.

8. For example, I have worked with rancher members in Texas County who face many of the same problems with Prairie Dogs that other farmers and ranchers deal with on private land. Wherever Prairie Dogs are, no forage is produced and there is nothing for cattle to graze. The Prairie Dogs keep the forage eaten to the roots, making it useless for cattle pasture.
9. There are other hazards associated with Prairie Dogs. There are more rattlesnakes in Prairie Dog towns than in other areas, creating a human and livestock hazard. Cattle step in Prairie Dog holes and break their legs, causing an economic loss to ranchers. Driving trucks, tractors, and other farm equipment across Prairie Dog towns causes damage to equipment.
10. I have observed that Prairie Dogs incite fear in those who must work around them. In 1991, there was a human plague case which was associated with exposure to Prairie Dogs in the Oklahoma panhandle (Oklahoma State Department of Health Public Health Fact Sheet 10/05).
11. In Texas County, there are Prairie Dogs residing on irrigated land and county roads. Three Oklahoma panhandle counties overlie the Ogallala Aquifer, making the area some of the most productive irrigated farm land in the state. Irrigating on land where Prairie Dog colonies reside is not efficient, as the water runs down the Prairie Dog holes rather than saturating the ground along the crop rows.
12. Prairie Dog control can be costly and difficult. If a member is unable to regularly control Prairie Dogs, then the species will return. I observed one member who after five years of unsuccessfully seeking a person to control Prairie Dogs, had the species rebound on his property in less than five years. Subsequently, the member paid for Prairie Dog control at a cost of \$15 per acre, but the results were disappointing. Depending on the location, a member can lose at least \$10 per acre annually due to loss of grazing forage. Additionally, Prairie Dog infestation reduces a property's value, whether for resale or for agricultural lease use.
13. I am aware of Farm Bureau members who farm and ranch in Beaver County who will not ride a horse across a pasture that has Prairie Dogs, because of past horse leg injuries. Similar injuries have occurred from cows stepping in such holes and breaking legs.
14. I am aware of a Beaver County farmer who has had crop losses in wheat fields due to Prairie Dogs. As the Prairie Dogs mow down everything around their holes, they can destroy acres of wheat.
15. If Plaintiffs prevail in their desire to list the Prairie Dog, then the species will enjoy the protections of the Endangered Species Act ("ESA") and will continue to damage Oklahoma Farm Bureau members' private property.

16. Oklahoma Farm Bureau members have a direct economic interest in their, and the state of Oklahoma's ability to engage in responsible, but lethal, management of the Prairie Dog population. The ODWC regulates the means by which Prairie Dogs may be controlled at 800:25-17-2. Prairie Dogs may not be killed by any means except rifle, shotguns, handguns, and bows and arrows, and by the use of poison as subject to the provisions of 800:25-17-3, which requires all landowners and operators in Oklahoma to obtain a permit from the ODWC prior to controlling Prairie Dogs with poisons, including solids, chemicals, and gases. These permits can be issued for periods up to 90 days. Currently, control is not permitted on public lands; however, the ODWC is proposing emergency rules to allow control on public lands.
17. While many Oklahoma Farm Bureau members tolerate some Prairie Dogs, they need to keep the numbers under control. Oklahoma Farm Bureau members believe that lethal management is critical to their continued livelihood because if left unchecked, the Prairie Dog has proven its ability to rapidly occupy and transform the ground into a condition unsuitable to agriculture. Oklahoma Farm Bureau members have engaged in lethal Prairie Dog control in order to protect their property from damage and have observed the difficulties in Prairie Dog management due to the species' resiliency. If this Court grants Plaintiffs request to require FWS to issue a 12-month finding listing the Prairie Dog as threatened or endangered, Oklahoma Farm Bureau members will be unable to use lethal methods to control Prairie Dogs without seeking permission under the ESA.
18. Moreover, while the Prairie Dog remains on the candidate list, FWS will have the ability under ESA §4(b) (C) (iii) to halt lethal Prairie Dog management by Oklahoma Farm Bureau members and the state of Oklahoma. The decision issued by this Court, and subsequent actions by FWS under the ESA, could reasonably be expected to eliminate Prairie Dog management options, threatening to irreversibly damage the productivity of private lands.

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 11, 2007

Signed: 
Marla R. Peek