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BIG GREEN | When Conservation and Business Fail to Mix

How a Bid to Save a Species Came to Grief

By Joe Stephens and David B. Ottaway

Washington Post Staff Writers

Monday, May 5, 2003; Page A01

Second of three articles

TEXAS CITY, Tex. --Eight years ago, Mobil Oil gave the Nature Conservancy what was one of the group's largest corporate donations, a patch of prairie that encompassed the last native breeding ground of a highly endangered bird.

Mobil officials said that the donation offered "the last best hope" of saving the Attwater's prairie chicken, a speckled grouse whose high-stepping mating dance attracts avid bird watchers to the Texas plains each spring.

Then an unusual role reversal took place.

The Conservancy, whose core mission is preserving land to protect species such as the prairie chicken, started acting like an oil company. The Conservancy sank a well under the bird's nesting ground.

Drilling in sensitive areas is opposed as destructive by most environmentalists. But the Conservancy subscribes to an aggressive form of "compatible development," a pragmatic approach that seeks to accommodate the needs of business as well as environmentalism. The Conservancy wanted the Texas City Prairie Preserve to be a national model to show that drilling can be accomplished without harming the environment. It would use the drilling profits to buy more habitat for the birds.

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That's not the way things worked out.

Today, there are fewer prairie chickens on the preserve than there were when drilling began. The number of endangered grouse nesting there has fallen from a peak of 36 in 1998 to a current estimate of 16. A previously unreported analysis by the Conservancy's Texas science director stated that the project had subjected the grouse to a "higher probability of death."

The drilling also led to legal and financial problems: Another national charity accused the Conservancy of stealing its mineral rights, forcing the Conservancy and its partners last year to pay a \$10 million settlement.

After The Washington Post began looking into Texas City, Conservancy President Steven J. McCormick wrote an internal memo stating that the organization made an "incorrect" assumption about the mineral rights that resulted in "a mistake." But he insisted, "Our local staff always put the interests of the Attwater's prairie chicken first. . . . We did not compromise our commitment to our mission."

A Conservancy vice president told a reporter visiting the preserve 20 months ago: "We have not been able to detect any negative impact on the birds."

Records and interviews tell a more complex tale.

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How a Bid to Save a Species Came to Grief

'Stealing Our Oil'

A century ago, the Gulf Coast was home to a million or more Attwater's prairie chickens, known for a courtship ritual marked by cocked tail feathers and inflated orange necks. Their numbers shrank as development gobbled up coastal grasslands.

Today, each member of the last wild, breeding population of Attwater's can be found on just 2,300 acres, a pancake-flat patch of tallgrass prairie an hour southeast of Houston.

Mobil drilled on the property until 1995, when it gave the land to the Conservancy. At the time, an executive called the donation "the last, best hope of saving one of the world's most endangered species." Mobil, a Conservancy official explained, wanted "to place the land with an entity that would act in the best interest of this endangered bird."

In 1999, the Conservancy announced its own intention to drill. It said it had consulted with the U.S. Fish and Wildlife Service, developed a management plan for the birds and would sink its wells far from the birds' primary habitat.

In late summer that year, Conservancy biologists planned to introduce captive-bred grouse into the natural flock, allowing the birds to acclimate before falcons and other predators returned. The Conservancy stressed that oil work would halt by Sept. 1 to make way for the releases.

Drilling began mid-summer that year.

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The story might have ended there if not for the patchwork of oil rights underlying the preserve.

A year later, in July 2000, Houston oilman J. L. "Jack" Schneider Jr. wrote a letter to the 96-year-old nonprofit Russell Sage Foundation of New York. He said he had made "a cursory examination" of Texas records and noticed that for decades the foundation had owned partial oil rights for a 1,000-acre plot.

Schneider described his interest as "speculative," based largely on the discovery of gas beneath land 14 miles away. "We have no data indicating your area is, or will be," profitable, Schneider wrote.

He offered to buy the foundation's rights for \$26,176.

The foundation sent a consultant to evaluate, which led to startling conclusions: that Schneider was fronting for the Conservancy; that the preserve's mineral rights were worth millions; and that the Conservancy already had begun draining the foundation's natural gas.

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The result was a bitter legal battle between two nationally respected nonprofits. The Sage Foundation ultimately accused the Conservancy of orchestrating a "conspiracy" to satisfy its "greed."

"As far as I am concerned, it was criminal," said James Roane, a former Conservancy member who co-owned a portion of the mineral rights. "They were stealing our oil."

A Hidden Buyer

Mineral rights on the Texas City Prairie Preserve had been divided in two. In the north, the Conservancy shared the rights with the Russell Sage Foundation and 39 other investors. In the south, the Conservancy held exclusive rights. The grouse's habitat straddled both tracts. So did a large pocket of natural gas.

By the time of Schneider's offer, Conservancy contractors already had drilled for gas on the south tract. Instead of drilling straight down, they turned and bored northward, traveling to within 600 hundred feet of the north tract. The Conservancy later argued that lateral drilling avoided disturbing the grouse's habitat. Unknown to the north tract owners, the Conservancy's well had tapped into the natural gas deep beneath both tracts. Soon the Conservancy was selling gas owned by all the rights holders on the south and north tracts.

The Conservancy's plan to acquire the north tract mineral rights was born on a turkey hunt. Schneider testified that that's when he recalls exploring the idea with Tom Rollins, an honorary trustee in the Texas chapter of the Conservancy and the chapter's former board chairman. He and other Conservancy officials

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agreed to send Schneider to acquire the north-tract rights without disclosing the true buyer.

"It sounded like it was a good idea," Ray Johnson, then the Conservancy's manager for eastern Texas, recalled in a deposition. Rollins later defended the hidden-buyer strategy as "industry practice" and a way to cheaply acquire the rights.

Sage Foundation lawyers described it this way: "Schneider and Rollins fabricated a story to hide the truth."

Schneider, who did not return telephone calls, denied in a deposition that he had done anything misleading. Under questioning, however, Rollins acknowledged that Conservancy officials had "ratified" Schneider's tactics and his "misleading" story.

The Conservancy's plan for acquiring the charity's natural gas rights, Rollins agreed under oath, relied on a "lie."

In a hearing, a Sage Foundation lawyer said: "What they did was basically try to steal our interest. . . . They lied. They lied. They lied some more."

Dead Birds

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The wrangling in a tiny Texas courthouse dealt only with money. But paperwork generated by the litigation shows some Conservancy officials feared the drilling had harmed the endangered grouse.

Allowing newly released, captive-bred birds to acclimate to their wild surroundings was "critical," a Conservancy biologist said, placing the preferred release window in late July and early August. After that, predators would return and the birds' chances for survival would plummet.

When the Conservancy drilled in 1999, it needed a pipeline to transport the natural gas to an interstate line. Due to construction delays, the pipeline work continued into late summer and then into the fall.

Although the Conservancy's agreements with contractors required that they complete work by the end of July for the sake of the birds, the charity did not halt construction. It allowed work to continue until November, according to depositions and an April 2000 draft report prepared by James Bergan, the organization's Texas science director, and Matt Williams, then manager of the preserve. The Conservancy released the birds three months late.

The report says Williams believed the delay "may have compromised" the operation, noting that all the captive-bred birds "died shortly after their delayed release in November." The report said Williams's opinion was not "conclusive evidence" but "should not be taken lightly."

Although the report did not give a specific number, federal figures show that 17 captive-bred birds were

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released on the preserve that year.

Bergan wrote in an analysis prepared in June 2002 that "well completion delays forced a delay in releasing [prairie chickens] and subjected them to higher probability of death from raptor predation."

Williams declined to comment. Bergan said recently that, despite his report's wording, only Williams believed that delays led to the birds' death. Today, Bergan said, he considers the pipeline work to have been one possible factor. "We'll never know if the survival of those birds were or were not tied to the pipeline," he said.

In his deposition, Johnson said that if the endangered birds were the sole concern, "it would have been better if we didn't have any activity on our preserve."

There were other problems: A Conservancy vice president testified that the organization's drilling contractors were difficult to manage, saying, "They were always pushing, pushing, pushing, pushing. And we had to be like a brick wall to protect those birds."

Documents also reveal that a gas explosion and an unspecified number of oil spills took place at the preserve. Then, in 2001, five captive-bred birds that the Conservancy hoped to introduce into the flock died in a deluge while confined to a pen awaiting release, according to a Fish and Wildlife Service e-mail.

Biologist Stanley A. Temple, who toured the site in October at the Conservancy's request, wrote in a report: "I was shocked to find, for example, that one of the release pens is subject to flooding in heavy rains, and that birds have drowned in the pen."

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Temple was also surprised at the radio tracking devices on the captive-bred birds.

"All released prairie chickens are radioed with permanent 'poncho-style' harnesses," he wrote. "These will remain on the bird long after the transmitter has died (in a few months) and continue to compromise the bird throughout its life. There is no way that I can justify this practice."

Managing Risk

By January 2002, the Conservancy's natural gas operation had generated about \$8 million in revenue. Officials planned to spend half purchasing additional habitat along the Gulf Coast, but failed to do so. Now, much of the profit has gone toward the lawsuit settlement.

After contributions from its insurance company and partners, the Conservancy said it paid \$5.6 million toward the \$10 million settlement.

The Conservancy still expects to make a net profit on the well and says it will spend the money on the endangered birds. After The Post began examining the Texas City project, Conservancy President McCormick issued a memo to staffers and state trustees describing "tactics" used at the preserve as "not consistent with our values." McCormick informed the the trustees about the newspaper's inquiry and stressed that he saw nothing to be gained by "keeping bad news quiet."

That startled parties to the suit, who said that in return for the \$10 million settlement, the Conservancy had demanded that they sign gag orders. Many declined.

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McCormick later explained in an interview: "We just didn't want people to talk about how . . . stupid we were."

Last October, the Conservancy dispatched Temple, a trustee of its Wisconsin chapter, to Texas City. Temple later said in a report, "The steps taken to minimize the possible disturbances associated with the current oil and gas production seem adequate to protect the birds . . . although minor incidents have occurred from time to time, none of them has apparently posed any threat to the birds."

Today, the Conservancy continues to pump gas from Texas City.

"The takeaway lesson from our experience at Texas City," McCormick wrote, "is that we need to learn how to manage the risk, not how to avoid it altogether."

In a written defense of the Texas City project, Conservancy officials said:

"Our staff and independent scientists, including one of the world's leading ornithologists, have confirmed that our decisions and actions regarding oil and gas activity have not compromised the protection of the prairie chicken. . . ."

"It is also important to note that there are no other projects in which the Conservancy has initiated oil and gas drilling. It would be inaccurate to suggest this is a common practice at the Conservancy."

There is another environmental group that has experience with drilling on one of its preserves. The Audubon Society received land in 1924 along Louisiana's coast where the donor retained the drilling rights. The drilling started two decades later, and Audubon received a portion of the proceeds. There were no endangered species on the land, but Audubon eventually decided the drilling was too destructive. Audubon and the donors agreed to stop it in the fall of 1999.

Just as the Audubon Society was getting out of the drilling business, the Conservancy was getting in.

"We have learned from experience that opening fragile nature areas to drilling causes long-term damage to the environment," John Bianchi, Audubon's spokesman, said in January 2001. He added in a recent interview: "This is our cautionary tale for the Nature Conservancy to think about."

Staff researchers Alice Crites and Lucy Shackelford contributed to this report.

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