

Defenders of Wildlife *et al.*
v.
Sally Jewell *et al.*,
US District Court (DC District)
1:14-CV-1025

*(Challenging Listing of Lesser Prairie Chicken as
“Threatened” and
Issuance of a Special 4(d) Rule)*



Background

- In 2011, US Fish and Wildlife Service (the Service) entered into two settlement agreements committing to submit a proposed listing for the LPC by September 30, 2012.
- On April 10, 2014, the Service:
 - Listed the LPC as “threatened”;
 - Issued a Special 4(d) rule under the Endangered Species Act (the Act), to provide for the conservation of the LPC.
- On June 17, 2014, Plaintiffs – Defenders of Wildlife (DoW), Center for Biological Diversity (CBD), and WildEarth Guardians (WEG) - filed this suit, challenging the Service’ listing the LPC as “threatened” and also challenging the Service issuance of the Special 4(d) Rule.



The Current Suit

- Plaintiffs contend that evidence and science shows the LPC should have been listed as “Endangered”.
- Plaintiffs contend that the Service ignored the ESA, APA, and NEPA in making its listing decision
- Plaintiffs contend that the Special 4(d) Rule that the Service issued does not adequately protect the LPC.
- Plaintiffs contend the Act’s protections applicable to “endangered” species should instead apply to the LPC.



The Current Suit-Cont'd

- Plaintiffs argue that the Service violated NEPA by failing to prepare an Environmental Impact Statement (EIS) for the Special 4(d) Rule issued in concert with the “Threatened” listing of the LPC;
- Plaintiffs attack the 5-states Range Wide Plan as invalid and inappropriate in meeting the Act’s objectives because the Service cannot:
 - Measure the effectiveness of the Range Wide Plan, nor;
 - Guarantee its success because of the Range Wide Plan’s voluntary nature.



Potential Impacts of the Current Suit

- Foreseeable Impacts if Plaintiffs prevail:
 - The Current Special 4(d) Rule is voided;
 - The Act's Take Prohibitions apply;
 - The Act's Consultation Provisions apply;
 - The Candidate Conservation Agreement, with Assurances (CCAA) for Oil and Gas would likely be invalidated;
 - Any incentive to develop plans for other species in the West would be lost;
 - Any interest from industry, agriculture or the states to develop other 4(d) Rules is nullified.
 - The voluntary Range Wide Plan is nullified.



Department's Recommended Course of Action

- The Department recommends that the Commission take action today and approve:
 - Department support for WAFWA's intervention in this lawsuit for its member states; and
 - Department providing both financial and in-kind support to WAFWA to pursue this intervention.



Questions?

