

# Press Release

## Court Decision on Lesser Prairie-Chicken

**Lea County Courthouse, Lovington, NM:** On September 1, 2015, the United States District Court Western District of Texas Midland-Odessa Division granted a summary judgement in favor of the plaintiffs' claim that the Department of the Interior, U.S. Fish and Wildlife Service (FWS) did not follow their own rule for evaluating conservation efforts when FWS published a final rule on April 10, 2014 listing the lesser prairie-chicken (LPC) as a threatened species.

Plaintiffs in the case include a cooperative effort with the Permian Basin Petroleum Association, Lea County, Eddy County, Chaves County and Roosevelt County, New Mexico. Lea County Chairman Gregg Fulfer states "we felt it necessary to coordinate efforts to file the motion to stop the listing of the lesser prairie-chicken as a threatened species. This listing would be extremely detrimental to Lea County resulting in the loss of a critical number of jobs."

In 2003, the FWS and NMFS announced their Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE). The criteria of PECE sets a rigorous standard for analysis and assures a high level of certainty associated with formalized conservation efforts that have not been implemented. FWS is required to take "into account those conservation efforts, if any, being made by the State" before making a listing decision. At issue in this case is whether FWS evaluated the RWP properly under the PECE.

The RWP is a conservation effort aimed at addressing threats to the lesser prairie-chicken's range and habitat. At the time that the PECE analysis was conducted, 17 industry participants were enrolled and 169,534 qualified acres, but no landowners had enrolled. Although the process was ongoing with landowners reported before the FWS's assessment, FWS failure to consider this new information was a material error in application of the PECE, rendering the FWS's conclusions as invalid.

The Court granted a summary judgement in favor of the plaintiffs as to this first overarching claim. FWS failed to properly apply PECE to its evaluation of the RWP resulting in material error. This caused FWS to arbitrarily and capriciously list the LPC as a threatened species. Lea County Manager Mike Gallagher says "We are very pleased with the Court's vacating the FWS final rule. FWS's failure to properly follow its own rule when conducting the PECE analysis was the judge's basis for his decision to vacate the FWS's final rule."

