IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

PERMIAN BASIN PETROLEUM
ASSOCIATION; CHAVES COUNTY, NEW
MEXICO; ROOSEVELT COUNTY, NEW
MEXICO; EDDY COUNTY, NEW MEXICO;
and LEA COUNTY, NEW MEXICO,
Plaintiffs,
v.
DEPARTMENT OF THE INTERIOR; U.S.
FISH & WILDLIFE SERVICE; S.M.R.
JEWELL, in her official capacity as Secretary of
the Department of the Interior; and DANIEL M.
ASHE, in his official capacity as Director of the
United States Fish and Wildlife Service,
Defendants.

Case No. 7:14-CV-00050-RAJ

DECLARATION OF
MICHELLE SHAUGHNESSY

I, Michelle Shaughnessy, Assistant Regional Director, U.S. Fish and Wildlife Service, Southwest Region, declare as follows:

1. As the Assistant Regional Director for the Ecological Services Program in the Southwest Region of the U.S. Fish and Wildlife Service (FWS or Service), I manage the staff members directly responsible for the decision to list the lesser prairie-chicken as a threatened species under the Endangered Species Act (ESA). I hold a Bachelor of Science degree in Zoology from the California Polytechnic University. I have completed all of the course work for a Master’s degree in Biology with an emphasis in Ecology at the California Polytechnic University. I have spent 21 years working on the ESA for FWS, including writing policy and guidance related to the ESA for FWS’s national headquarters. As the head of the Ecological Services program for FWS’s Southwest Region, I manage and direct the staff members who implement the majority of FWS’s actions to provide for the conservation of species, including actions under the ESA. I have served as the

1
Assistant Regional Director for 4.5 years. During this time, I have directly supervised approximately 200 FWS employees. During this time, I have also supervised the assessment of approximately 52 species under the ESA. The Southwest Region of the Service includes the states of Texas, Oklahoma, Arizona, and New Mexico. In the Southwest Region, the FWS manages over 161 listed species to ensure the conservation of the species, as defined under the ESA and other relevant laws.

2. On March 21, 2014, the Director of FWS determined that the lesser prairie-chicken should be added to the Endangered Species Act's List of Endangered and Threatened Wildlife. 79 Fed. Reg. 19,974 (published April 10, 2014). The lesser prairie-chicken is a species of prairie grouse that occupies portions of Texas, New Mexico, Oklahoma, Kansas, and Colorado. In 1998, the Service identified the species as a candidate for Federal listing due to habitat loss, modification, degradation, and fragmentation within its range. In 2008, the Service increased the listing priority for the lesser prairie-chicken from priority number 8 to priority number 2, based on an anticipated increase in development features likely to fragment the species' habitat. A listing priority number of 1 indicates the highest magnitude and immediacy of threats. A listing priority number of 1 is limited to a monotypic genus\(^1\); the highest listing priority number available to the lesser prairie-chicken, as a species, is listing priority number 2.

3. The lesser prairie-chicken is a species dependent on a large landscape of unfragmented native grasslands. The species historically occupied approximately 180,000 square miles. Approximately 95% of the species' range is located on privately owned lands.

4. At the time of the Service's 2014 listing decision, the currently occupied range of the lesser prairie-chicken was about 16% of the species' historical range. To support viable populations, the species requires large, contiguous, areas of

\(^1\) A "monotypic genus" is a genus that contains only one species.
suitable habitat (estimated as a minimum size of 25,000 acres) which are connected to other large areas of suitable habitat. At the time of the Service’s 2014 listing decision, the remaining suitable habitat of the species was highly fragmented; only 20 patches of potentially suitable vegetation greater than 21,000 acres remained across the five-state range of the species. This fragmentation was the result of direct conversion of habitat from native conditions or habitat alteration which indirectly leaves the habitat in such a condition that the remaining habitat no longer functionally provides for the life history requirements of the species. The fragmentation of suitable habitat for the lesser prairie-chicken is compounded by the unique life history and ecology of the species. These unique requirements include: the species’ lek breeding system, which requires males and females to be able to hear and see each other over relatively wide distances; the species’ need for large patches of habitat that have several types of microhabitats; and the species’ behavioral avoidance of vertical structures and anthropogenic activities. At the time of the listing decision, the Service projected that the range of the species would continue to contract and that fragmentation of suitable habitat would increase due to increased human development, including an increase in oil and gas development and wind energy development across the range of the species. With the increase in habitat loss and fragmentation, the species is less resilient to other population stressors, including drought. Habitat loss and fragmentation prevents the population from substantially increasing in abundance. This makes the lesser prairie-chicken exceptionally vulnerable to small changes on the landscape, especially at its currently reduced numbers.

5. Annual population estimates for the species can be misleading because the annual population in any given year is highly dependent on localized precipitation during that year. It is not uncommon to see population numbers respond positively or negatively to local weather conditions. Even after accounting for these localized population cycles, the long-term trend has been that population estimates of the
lesser prairie-chicken have been significantly reduced from their historical levels. FWS’s estimates at the time of the listing decision were of a continued downward trend.

6. The ten-year average of the population estimates of the species from 2003 to 2012 was 60,702 individuals. In contrast, the 2012 annual population estimate was 37,107. The 2013 annual population estimate was 19,643. The 2014 annual population estimate was 23,363. The 2015 annual population estimate was 29,162. The ten-year average of the population estimates of the species from 2006 to 2015 was 43,647. At the time of the court’s decision, FWS had not yet developed a recovery plan with measurable recovery objectives for this species. The population goal of the Western Association of Fish and Wildlife Agencies (WAFWA) Range-wide Conservation Plan (RWP) is a ten-year average of 67,000 birds.

7. At the time of FWS’s listing decision, there were multiple conservation efforts in place within the historical range of the lesser prairie-chicken. These efforts reduced the impact of some of the threats to the species. However, other than the RWP and the Candidate Conservation Agreement / Candidate Conservation Agreement with Assurances covering the portion of the range in New Mexico, these conservation efforts did not address two of the more significant threats to the species at the time of the listing decision and projected to continue into the future, namely the habitat loss and fragmentation created by oil and gas development and by wind energy development. One of the primary advantages of the RWP over the other previous conservation efforts is that, when fully implemented, the RWP would assemble large blocks of suitable habitat, along with connectivity corridors, to alter the trend of habitat fragmentation. Regardless,

\[\text{The population estimate for 2006 was 76,469. This is an outlier among the other nine years in the current ten-year average. As such, unless the 2016 population estimate exceeds 76,000 individuals, the ten-year average for the period from 2007 to 2016 will likely decline next year.}\]
none of the conservation efforts, including the RWP, could reverse the immediate
impacts of drought. The conservation efforts would all be hampered in replacing
the fragmented habitat of the species while drought conditions continued.

8. The WAFWA RWP was intended to address, in part, the habitat loss and
fragmentation created by oil and gas development and by wind energy
development. The RWP was endorsed by the Service in October 2013 as a
comprehensive conservation design and strategy that, when implemented, will
provide a net conservation benefit to the species. The RWP contains provisions
for entities that want to conduct development activities in lesser prairie-chicken
habitat, including the payment of funds to offset the impacts of the development.
The RWP uses these funds to enroll landowners, who agree to provide certain
conservation actions for the species on their lands.

9. The developing entity enrolls in the RWP and pays an enrollment fee. The
developing entity also commits to identified avoidance and minimization
measures for prospective development activities. These avoidance and
minimization measures are a commitment to seek to minimize additional losses of
suitable habitat. However, the unique component of the RWP that attempts to
address the concerns of habitat fragmentation are the mitigation commitments of
the developing entity. When a specific parcel of land will be developed, such that
a loss of otherwise suitable habitat will occur, the developing entity commits a
defined financial contribution to WAFWA, who uses those funds to secure an
appropriate interest in other lands to mitigate for the development. In this fashion,
WAFWA will offset the impacts of the development activity. In some instances,
WAFWA will secure a permanent interest in mitigation lands and in other
instances WAFWA will secure a five- or ten-year interest in the mitigation lands.
Through FWS’s species-specific 4(d) rule for the lesser prairie-chicken, activities
by participants enrolled in, and operating in compliance with, the RWP are not a
violation of the Act if take of a lesser prairie-chicken occurs.
10. WAFWA began accepting enrollment into the RWP for industry seeking to develop in the range of the lesser prairie-chicken in early 2014. On March 11, 2014 (20 days before the court-ordered listing decision deadline), approximately 2.3 million acres of potentially affected lands had been enrolled in the RWP for potential development.

11. On March 24, 2014, after the FWS Director had signed the listing rule, but before it was published in the Federal Register, WAFWA notified FWS that 3.65 million acres of impact lands had been enrolled for potential development. WAFWA notified FWS that approximately $20 million in enrollment fees had been received.

12. At the time of FWS’s listing decision for the lesser prairie-chicken, no mitigation lands had been secured by WAFWA and no lands had been mitigated or restored by WAFWA. As of March 11, 2014, WAFWA reported that landowners had offered approximately 330,000 acres of land for offsets. WAFWA was beginning to evaluate these sites for potential habitat value.

13. On March 24, 2014, WAFWA did not have any mitigation lands under contract and no lands had been converted to suitable habitat. WAFWA had identified eight sites, totaling about 41,000 acres, which had been selected for potential landowner enrollment.

14. A provision of the RWP allowed for WAFWA to wait one-year before securing mitigation lands to offset impacts from the development of oil and gas within the range of the lesser prairie-chicken.

15. In addition, any mitigation efforts for this species cannot immediately replace lost habitat value. As noted above, the species requires native grasslands. The process to convert previously unsuitable habitat to suitable habitat is highly dependent on several factors, such as weather conditions, landscape configuration, and existing species distribution. In most instances, the creation of grassland habitat suitable for lesser prairie-chicken populations requires between five and 12 years.
16. Removing the lesser prairie-chicken from the List of Endangered and Threatened Wildlife will have immediate, significant, and irreparable impacts to the species and the native ecosystems on which it depends. Without the protections of the ESA, the large landscape of habitat that exists among the five States will likely continue to be further fragmented and lost by removal of occupied and suitable habitat, in some instances beyond a point of restoration. This will cause irreparable harm to the species now and into the future due, in part, to the time needed to restore lands to suitable lesser prairie-chicken habitat. For example, one estimate is that the conversion of native grassland to cropland can take 30 to 50 years to fully recover from the effects of cultivation. Likewise, the establishment of new vertical features on the landscape, such as wind farms or transmission lines, will further fragment existing patches of suitable habitat and severely hamper future efforts to restore population connectivity and the necessary transfer of genetic information between populations.

17. Vacatur of the listing decision makes it increasingly likely that essential habitat for the species will be converted to unsuitable habitat, increasing the habitat fragmentation of the species, and making it more likely that the species will become extinct, thereby increasing the need to list the species. Removing the lesser prairie-chicken from the List of Endangered and Threatened Wildlife eliminates the federal prohibition against certain actions that would be in place through the 4(d) rule, 50 C.F.R. § 17.41(d), if the species remained listed as threatened.

18. This is not to imply that all development in a five-state area was prohibited by the listing decision.

---

3 This 4(d) rule extended the prohibited activities enumerated in 50 C.F.R. § 17.31. In turn, 50 C.F.R. § 17.31 makes it unlawful to commit any of the prohibited acts of section 9 of the ESA. Therefore, before the court’s decision, it would have been unlawful to develop lesser prairie-chicken habitat, if that habitat development resulted in the actual death or injury to a lesser prairie-chicken.
a. First, only activity that will result in actual harm to a lesser prairie-chicken is prohibited.

b. Second, one provision of the 4(d) rule provides that certain development activity is not prohibited under the ESA. For example, these prohibitions do not extend to activities by participants enrolled in, and operating in compliance with, the RWP.

c. Third, section 10 of the ESA allows for FWS to issue permits for activities that would otherwise cause incidental take of the species.

19. Since the court’s vacatur of the listing decision, FWS has been made aware of several potential development projects that have a potential to harm the species in the absence of the protections of the ESA. These examples are based only on information provided to FWS, and it is likely that additional projects are ongoing without FWS’s knowledge. Due to the vacatur of the listing decision, FWS has ceased treating the lesser prairie-chicken as a threatened species.

a. FWS is aware of a parcel of land in Prowers County, Colorado, that contains approximately 320 acres of occupied lesser prairie-chicken habitat, including at least one lek site. The landowner would like to develop his land into a dairy farm. FWS has previously advised the landowner that a permit would be required to develop the land in this fashion. On September 8, 2015, FWS received a call from a consultant to the landowner advising FWS that the landowner was aware of the court’s decision and “thinks that he can go ahead with this project.” Subsequently, FWS has been advised that the landowner was advised by his lawyer to move ahead with the development. Without the protections of the ESA, it

---

4 A “lek” is the area where males of the species gather to perform competitive courtship displays and where breeding occurs. The lesser prairie-chicken has a high degree of site fidelity to lek sites, meaning that females often return to the same lek sites annually to breed. As a result, the loss of a lek site may result in the loss of an entire population of the species.
is likely that this project will result in lost lesser prairie-chicken habitat and the loss of a breeding site.

b. FWS is aware of a parcel of land in Baca County, Colorado, that contains approximately 640 acres of suitable lesser prairie-chicken habitat. The owner of this property would like to convert 640 acres of native habitat in order to install an irrigation system for crop production. Without the protections of the ESA, it is likely that this project will result in lost lesser prairie-chicken habitat.

c. FWS is aware of another parcel of land in Prowers County, Colorado, that contains approximately 68 acres of suitable lesser prairie-chicken habitat. FWS received a phone call from the landowner on September 1, 2015, saying that he would like to get a permit to remove the habitat on his land. Without the protections of the ESA, it is likely that this project will result in lost lesser prairie-chicken habitat.

d. FWS is aware of another parcel of land near Laverne, Oklahoma, that contains approximately 160 acres of suitable lesser prairie-chicken habitat. The landowner had previously contacted FWS seeking information on having the Department of Agriculture’s Natural Resource Conservation Service assistance in converting this land to irrigated cropland. Without the protections of the ESA, it is likely that this project will result in lost lesser prairie-chicken habitat.

e. FWS is aware of the pending Roosevelt Wind Farm project by EDF Renewable Energy in Roosevelt County, New Mexico, on approximately 62,000 acres of occupied lesser prairie-chicken habitat. FWS had previously suggested to EDF Renewable Energy that enrollment in the RWP would avoid any issues related to take of the species with the development of the wind farm. FWS believes that the project may soon have turbines installed on the existing pad sites; a September 14, 2014, site
visit to a nearby proposed conservation bank indicated that the
construction of turbines had begun and multiple towers were in place.
Without the protections of the ESA, it is likely that this project will result
in lost lesser prairie-chicken habitat.

20. Prior to the court’s decision, the legal protections created by threatened status of
the lesser prairie-chicken would not have prohibited any of these development
activities. These projects could have enrolled in the RWP or sought an incidental
take permit under section 10 of the ESA and 50 C.F.R. § 17.32 in order to comply
with the ESA. This would have allowed development to occur, albeit while
ensuring appropriate mitigation for the lost lesser prairie-chicken habitat. Instead,
with *vacatur* of the rule, such losses will be unmitigated losses of suitable habitat.

21. In addition, removing the lesser prairie-chicken from the List of Endangered and
Threatened Wildlife eliminates the mechanism by which Federal agencies are
required to ensure that the actions they take, including those they fund or
authorize, do not jeopardize the existence of a listed species. Consultation with
FWS under ESA Section 7 is required when the proposed action may affect listed
species. Any conservation measures identified as necessary to avoid jeopardizing
a listed species are normally incorporated as legally enforceable measures in the
agency approval of the action. The court’s decision removes the requirement that
Federal agencies consult with FWS on actions that may affect the lesser prairie-
chicken, thereby limiting FWS’s ability to protect the species and its habitat from
negative effects. Several examples follow:

a. Prior to the court’s decision, FWS was consulting with the U.S.
Department of Energy and Southwestern Power Administration on a high
voltage direct current transmission line. The proposed transmission line
would bisect portions of the lesser prairie-chicken’s range from Texas
County, Oklahoma, to Shelby County, Tennessee. The U.S. Department of
Energy and Southwestern Power Administration determined that the
proposed transmission line will likely adversely affect the lesser prairie-chicken and five other federally listed species. The pending consultation considers impacts related to several wind energy generation farms. The wind energy generation farms occur in nesting habitat for the species. Without the protections of the ESA, it is unlikely that FWS will be able to ensure that these proposed wind energy generation farms take measures to mitigate for the impacts to the lesser prairie-chicken and ensure that the proposed transmission line will not jeopardize the continued existence of the species.

b. Prior to the court’s decision, FWS was consulting with the Bureau of Land Management in New Mexico regarding oil and gas development on Federal lands. This oil and gas development on Federal lands could result in additional habitat loss and fragmentation for the species in the southernmost portion of the species range. This portion of the species’ range has low population estimates, is fragmented from the other portions of the species’ range, and is likely to be more susceptible to the effects of climate change. The southern portion of the species’ range remains important to preserving genetic diversity. Without the protection of the ESA, it will be more difficult for FWS to ensure that this oil and gas development on federal lands in New Mexico will not jeopardize the continued existence of the lesser prairie-chicken.

c. Prior to the court’s decision, FWS was consulting with the Federal Aviation Administration, the Federal Highways Administration, and the U.S. Army Corps of Engineers regarding projects that will potentially affect the lesser prairie-chicken. Without the protection of the ESA, it is unlikely that FWS will be able to ensure that these projects will not jeopardize the continued existence of the lesser prairie-chicken.
22. Furthermore, removing the lesser prairie-chicken from the List of Endangered and Threatened Wildlife eliminates the immediate incentive for third-parties to develop Habitat Conservation Plans. A Habitat Conservation Plan is a planning document required as part of an application for an Incidental Take Permit under section 10 of the ESA. A Habitat Conservation Plan describes the anticipated effects of the proposed taking, how those impacts will be minimized or mitigated, and how the Habitat Conservation Plan will be funded. While Habitat Conservation Plans can include both listed and unlisted species, there must be a listed species included for the Service to be able to issue an incidental take permit. The Service is currently considering one potential Habitat Conservation Plan whose sole listed species was the lesser-prairie chicken. Without the protection of the ESA, FWS would not be able to issue a permit for this Habitat Conservation Plan. Without the protection of the ESA, it is less likely that other Habitat Conservation Plans will be developed and less likely that individuals will seek to participate in Habitat Conservation Plans.

23. Finally, removing the lesser prairie-chicken from the List of Endangered and Threatened Wildlife may reduce participation in existing voluntary conservation efforts.

a. Candidate Conservation Agreements (CCAs) are voluntary conservation agreements between the Service and one or more public or private parties. Prior to listing a species, FWS works with its partners to identify threats to candidate species, plan the measures needed to address the threats and conserve these species, identify willing landowners, develop agreements, design and implement conservation measures, and monitor their effectiveness.

b. Candidate Conservation Agreements with Assurances (CCAAAs) expand on the success of traditional CCAs by providing non-federal landowners, prior to the listing of a species, with additional incentives for engaging in
voluntary proactive conservation through assurances that limit future conservation obligations. The CCAA program specifically targets non-
federal landowners and provides them with the assurance that if they implement various conservation activities, they will not be subject to additional restrictions if the species becomes listed under the ESA. FWS entered into multiple CCAAs regarding the lesser prairie-chicken prior to the decision to list the species. These CCAAs are agreements with private landowners to engage in voluntary proactive conservation measures that aid in the conservation of the species.

c. Following the court’s decision, an enrollee in one of the CCAAs inquired via email how he would recover the money that he had previously paid in the CCAA. While this is the only direct inquiry to FWS regarding reversing a landowner’s commitment to the CCAA, FWS is not the administrator of the CCAAs. FWS believes that, while for other species landowners have maintained their CCAA enrollment even without a listing, this inquiry is indicative that in this circumstance there may be a larger body of enrollees who are considering terminating their participation in CCAAs. This loss of enrollment would not only mean that additional negative impacts would occur to the lesser prairie-chicken but also that there would be less mitigation funds available for conservation efforts.

24. FWS’s experience with voluntary conservation efforts supports the conclusion that development-based industries will be far less likely to commit substantial resources for voluntary conservation efforts, such as the RWP or CCAAs, if a species is not on the List of Endangered and Threatened Wildlife or there is not an impending listing decision. The decreased incentive for parties to actively participate in conservation efforts absent an actual or prospective listing is particularly damaging here given the highly fragmented state of the lesser prairie-
chicken's habitat. In order for the lesser prairie-chicken to no longer be likely to be in danger of extinction in the foreseeable future, significant investment in returning private lands into suitable habitat, in the large interconnected tracts the species requires, will be required.

25. Under the ESA, FWS must determine whether species are endangered species or threatened species using only the best scientific and commercial data available to the Secretary. This determination of listing status is dictated by five factors and a consideration of efforts being made to protect the species. In any reconsideration of whether the lesser prairie-chicken qualifies as endangered or threatened, FWS would have to re-assess the best scientific and commercial data available and seek the comment of the affected states and member of the public before conclusively determining the lesser prairie-chicken were an endangered or threatened species.

26. One factor FWS would examine is whether the fragmentation of habitat across the range of the species has diminished. FWS's preliminary estimate is that the net amount of fragmentation has increased over the approximately 18 months since the original listing decision. This is due in part to the nature of the RWP, where development must be matched with an appropriate amount of credits for mitigation.

a. The RWP offers two types of mitigation credits: preservation credits, which are based on an agreement to preserve and enhance existing suitable habitat; and restoration credits, which are based on returning non-habitat to conditions suitable for the species. While preservation credits are available at the time the land is secured by the RWP administrator, mitigation credits do not become available until the ecosystem returns to native grassland and becomes suitable habitat.

b. According to the RWP 2015 Annual Report, at least 26,288 acres of suitable habitat have been developed within the range of the species since the 2014 listing decision.
c. While all of these impacts have secured appropriate mitigation credits, the majority of these credits are preservation credits. The RWP has had limited, if any, use of restoration credits that would reduce fragmentation across the range of the species.

27. Another factor FWS would assess is whether the threats to the species identified in the 2014 listing decision have abated or would no longer be projected to increase. According to a recent press release by WAFWA, “the population is still low compared to historical numbers and the threats to the lesser prairie-chicken and its habitat still exist.”

28. Another factor FWS would assess is the scientific assessment of the species’ avoidance of vertical structures and the disturbance to breeding activity caused by development. FWS is not aware of any new evidence that the species does not avoid vertical structures on the landscape. Likewise, FWS is not aware of any new evidence that the noise associated with development activities does not affect the species.

29. FWS would also assess any new impacts from drought and new projections related to climate change. The range of the species is not currently experiencing the severe drought conditions that took place immediately before the listing decision. However, the climate change projections for this region continue to predict more frequent, more intense, and more persistent drought conditions over the long term. FWS is not aware of any new evidence that the fragmented habitat conditions and increased frequency and severity of drought conditions will not continue to suppress population numbers of the species.

30. FWS would also assess the long-term projections for development activities in the region, including oil and gas development and wind power and transmission development. One new study has demonstrated that wind energy development can have landscape-scale negative effects to a species that is closely related to and has similar ecosystem requirements as the lesser prairie-chicken.
31. FWS would assess whether the conservation efforts, including the RWP, have reversed, or would reverse in the future, the trend of fragmentation of habitat across the range of the species. The majority of the existing conservation efforts for the lesser prairie-chicken focus primarily on protecting existing suitable habitat.

32. However, alleviating the threats to the continued existence of the species will require restoration efforts across the range of the species to convert what is currently not suitable habitat to suitable habitat. While this type of restoration effort is part of the “focal area” strategy of the RWP, significant restoration of previously suitable habitat has not yet occurred.

a. The RWP has recently announced that 11 million acres of lands have been enrolled by industry. These enrollments include the creation of an endowment of $47.5 million that may be used for acquisition of land to conserve the species.

b. Enrollment by industry in the RWP and other conservation efforts does not, in and of itself, restore previously fragmented habitat. Enrollment by industry in the RWP, standing alone, will have similar impacts to other existing conservation efforts in that it reduces impacts to existing suitable habitat.

c. The RWP is currently working to produce conservation value on approximately 96,000 acres of potential habitat. To the best of FWS’s knowledge, the RWP has approximately 14,523 acres of land under contract for the development of restoration credits. Given the amount of time required for ecosystem restoration, it is unlikely that any of these lands have yet become suitable habitat. There may be additional lag time before the lesser prairie-chicken recolonizes these lands, if at all.

---

5 Fee revenues for the RWP are split 87.5% to a conservation trust for conservation offsets and 12.5% for administrative expenses of the plan.
33. The RWP’s conservation strategy is built on a “focal area” concept, in which about 6.2 million acres of relatively large, intact areas of higher quality habitat, along with sufficient “connectivity corridors” to link these areas, is protected. The RWP relies on this focal/connectivity habitat strategy to increase the population numbers of the species to what the Plan identifies as a viable level for the long term (a 10-year average of about 67,000 birds). But as of September 2015, the RWP has not been able to secure substantial enrollment in the majority of these focal and connectivity areas. See http://www.wafwa.org/Documents%20and%20Settings/37/Site%20Documents/Initiatives/Lesser%20Prairie%20Chicken/LPC%20Plan%20report%20to%20AFW%20A%202015.pdf (Slides 9 and 11). Further, this large shortfall in the RWP’s enrollment – which exists after almost two years of the Plan’s implementation – is not addressed by the other conservation plans. Other than the Candidate Conservation Agreement with Assurances for New Mexico (which comprises only about 10 percent of the species’ range), none of the other conservation efforts comprehensively address the threats to the species, including the newer and increasing threats from oil and gas and wind energy development.

34. There are no other new significant conservation efforts since FWS’s listing decision.

35. The Service acknowledges that the Court has ruled that in reconsidering on remand whether to add the lesser prairie-chicken to the List of Endangered and Threatened Wildlife, the Service would need to perform a new PECE analysis and reconsider the expected benefits of the RWP and other conservation efforts for the species. The Service cannot pre-judge the outcome of any such remand process. But for the reasons stated above and based on the information currently available regarding the threats to the species and the progress of the conservation efforts, the Service believes there is more than a serious possibility that it would return...
the lesser prairie-chicken to the List of Endangered and Threatened Wildlife on remand.

36. In addition, based on the threats to the species, the state of the conservation efforts, and the most recent information from the field regarding the impact of the Court’s remedy, the Service believes that vacatur will result in further habitat loss and irreparable harm to the species and only prolong and set back efforts to recover the species.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on September 29, 2015.

[Signature]
Michelle Shaughnessy
Assistant Regional Director
U.S. Fish and Wildlife Service
Southwest Region