



Utah Court Closes the Door on Regulation of Threatened Species on Private Lands

[Theresa Sauer](#)

A federal court in Utah recently denied the United States Fish and Wildlife Service (Service) authority to regulate an intrastate species on private land. The court held that although the Utah prairie dog is listed as a threatened species under the Endangered Species Act (ESA), the Service could not restrict “take” of the Utah prairie dog on non-federal land because the species resides only in the state of Utah and does not affect interstate commerce. *See People for the Ethical Treatment of Property Owners v. U.S. Fish and Wildlife Service*, No. 2:13-cv-00278-DB-BCW (D. Utah Nov. 5, 2014).

The court analyzed the U.S. Constitution’s Commerce and Necessary and Proper Clauses in making its decision, finding that while the Commerce Clause grants the federal government broad authority, the Utah prairie dog has no substantial effect on interstate commerce. Further, the court held that while the Commerce Clause gives Congress authority to regulate Congress, it does not grant Congress authority to regulate ecosystems. *Id.* at 12.

Additionally, the court held that the species is not an essential component to the ESA’s economic scheme, thereby rejecting the Service’s argument that the Necessary and Proper Clause provided requisite regulatory authority.

The court found that even if the Utah prairie dog went extinct because of take on private property, this would not cause the extinction of other species.

This case will not change the course of ESA litigation on a national level, especially for interstate species such as the lesser prairie-chicken or Gunnison sage-grouse. However, this decision should be closely monitored for application to those species residing only within one state’s boundaries—which the court indicated that 68% of all listed species are. It is likely that Respondent-Intervenors or the FWS will appeal the decision to the Tenth Circuit Court of Appeals.

For further information, please contact [Theresa Sauer](#). For a copy of the decision, please click [here](#).

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