UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NORTHERN NEW MEXICO STOCKMAN'S ASSOCIATION, et al.,	)	
Petitioners and Plaintiffs,	)	
v.	)	Case No: 1:18-cv-01138-SCY-JFR
U.S. FISH AND WILDLIFE SERVICE, et al.,	)	
Respondents and Defendants,	)	
and	)	
CENTER FOR BIOLOGICAL DIVERSITY and WILDEARTH GUARDIANS,	)	
Proposed Respondents and Defendant-Intervenors.	)	

MOTION TO INTERVENE

The Center for Biological Diversity ("Center") and WildEarth Guardians ("Guardians") (collectively, "Conservation Groups"), move to intervene as Respondents and Defendant-Intervenors in this matter under Fed. R. Civ. P. 24. The Conservation Groups request intervention because Petitioners Northern New Mexico Stockman's Association and Otero County Cattlemen's Association (collectively, "Stockman's Associations") seek relief that would harm the Conservation Groups' interest in the New Mexico meadow jumping mouse ("mouse"), *Zapus hudsonius luteus*, and its critical habitat; a species which the Conservation Groups have worked for more than ten years to protect. The Conservation Groups seek intervention as of right

under Fed. R. Civ. P. 24(a)(2), or alternatively, permissive intervention under Fed. R. Civ. P. 24(b).

Pursuant to D.N.M.LR-Civ. 7.1(a) and 10.5, counsel for the Conservation Groups has conferred with counsel for the Federal Defendants and the Stockman's Associations about this motion. Counsel for Federal Defendants take no position on the motion.[1] Counsel for the Stockman's Associations do not object to the motion as long as the parties can agree to a reasonable modification of the already-issued scheduling order to account for the Stockman's Associations' need to respond to Conservation Groups' brief.

LEGAL BACKGROUND

I. Protection under the Endangered Species Act

This case concerns the protection of the mouse under the Endangered Species Act ("ESA"), a law enacted by Congress to conserve endangered and threatened species and the ecosystems upon which they depend. 16 U.S.C. § 1531(b). "The plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184 (1978).

The ESA requires the Secretary of Interior, through the U.S. Fish and Wildlife Service ("Service"), to determine whether any species is "endangered" or "threatened." 16 U.S.C. § 1533(a)(1). Once a species is listed under the ESA, an array of statutory protections applies. For example, section 7 requires all federal agencies to "insure" that their actions neither "jeopardize the continued existence" of any listed species nor "result in the destruction or adverse

[1] The Service has indicated that no Answer is required in this Administrative Procedure Act (APA) case. Federal Defendants' Response to Complaint at 2–3 (Sept. 26, 2016), ECF 7. But, to ensure no questions arise about whether this motion complies with Fed. R. Civ. P. 24(c), the Conservation Groups have attached a proposed Answer in Intervention. *See* Ex. 2.

modification" of its "critical habitat." *Id.* § 1536(a)(2), (4). In addition, the harming or "take" of listed species is generally prohibited. *Id.* §§ 1532(19), 1538(a)(1)(B), (C); 50 C.F.R. §§ 17.21(c), 17.31(a). Section 4(f) requires the Service to develop recovery plans for listed species, which identify actions necessary to save endangered species from extinction and ensure recovery. 16 U.S.C. § 1533(f).

II. Designation of Critical Habitat Under the ESA

The ESA requires the Service, "to the maximum extent prudent and determinable," to designate critical habitat for listed species. *Id.* §§ 1533(a)(3)(A)(i), (b)(6)(C); 50 C.F.R. § 424.12. Critical habitat is defined as those "specific areas within the geographical area occupied by the species, at the time it is listed . . . on which are found those physical or biological features [that are] (I) essential to the conservation of the species and (II) which may require special management considerations or protection." 16 U.S.C. § 1532(5)(A)(i). The Service may also designate "specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species." *Id.* § 1532(5)(A)(ii).

When considering the designation of critical habitat, the Service focuses on the principal biological or physical elements within the defined area that are essential to the conservation of the species. 50 C.F.R. § 424.12(b) (2015). Under the regulation operative at the time of the mouse's critical habitat designation, primary constituent elements may include, but are not limited to, the following: breeding sites, feeding sites, seasonal wetland or dryland, water quality or quantity, vegetation type, and specific soil types. *Id.* In making the critical habitat designation the Service may also consider the following: (1) space; (2) "food, water, air, light, minerals, or

other nutritional or physiological requirements"; (3) "cover or shelter"; (4) breeding sites; and (5) "habitats . . . protected from disturbance or are representative of . . . historical, geographic, and ecological distribution of [the] species." *Id*.; *see also* Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse, 81 Fed. Reg. 14,264, 14,292 (Mar. 16, 2016).

When promulgating a final rule designating critical habitat for a listed species, the Service must rely on the best scientific data available and take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. 16 U.S.C. § 1533(b)(2). When a critical habitat decision is not made contemporaneously with the listing decision, the Service has 12 months from the date of listing to designate critical habitat. *Id.* § 1533(b)(6)(C)(ii); 50 C.F.R. § 424.17(b)(2).

FACTUAL BACKGROUND

The mouse is unique in that it hibernates for up to nine months a year, leaving it only a narrow time frame each summer to mate, reproduce, and gain enough weight to survive its long hibernation. Determination of Endangered Status for the New Mexico Meadow Jumping Mouse Throughout Its Range, 79 Fed. Reg. 33,119, 33,120 (June 10, 2014). The mouse's short lifespan, coupled with its relatively low reproductive rate, limits its ability to replenish its population. *Id.* As a result, even a single bad year can be dire for a local population. *Id.*

Given its unique needs, the mouse has "exceptionally specialized habitat requirements." *Id.* at 33,120–21. Specifically, the mouse requires tall, dense vegetation and forbs found only in wetlands along perennial flowing water. *Id.* at 33,121. This vegetation not only provides the mouse with sufficient nutrients to survive the winter, but also with material to construct its nest in upland areas adjacent to the wetland. *Id.*

Historically found in riparian wetlands alongside streams in parts of southern Colorado, central New Mexico, and eastern Arizona, the mouse requires sufficient habitat to support healthy populations. *Id.* at 33,120–21. This habitat needs to be connected to other areas of habitat in order to allow for daily and seasonal movements. *Id.* at 33,121. Without dispersed populations, the mouse is threatened by stochastic events that may cause the extirpation of local populations. *Id.*

Due to its specific needs, short lifespan, and low reproductive rate, the mouse is "highly vulnerable to extirpations when habitat is lost and fragmented." *Id.* Unfortunately, the mouse's habitat has been devastated. *Id.* at 33,122. The main threats to the mouse and its habitat are from: grazing, which eliminates or degrades the vegetation on which the mouse relies; water management and use; drought; and wildfires. *Id.* The latter two are exacerbated by the effects of climate change. *Id.* at 33,134.

As a result of these threats, the "distribution and abundance of the [mouse] has declined significantly rangewide." *Id.* at 33,121. In 2005, only 29 isolated populations remained, and it is likely that many of those populations have since been extirpated. *Id.* As such, the species is highly endangered. *Id.* at 33,121. Because the current populations of the mouse are so isolated, it is hard for the species to recolonize an area once it has been extirpated from it. *Id.* at 33,122

Because of the ESA's requirements, and the historic and cumulative destruction of the mouse's essential habitat, the Service designated critical habitat for the mouse on March 16, 2016. 81 Fed. Reg. at 14,264. In doing so, the Service sought to protect sufficient essential habitat along streams, ditches, and canals in Colorado, New Mexico, and Arizona to ensure both the survival and eventual recovery of the mouse. *Id.* at 14,264, 14,297. Due to the mouse's

imperiled state, and its need to recolonize lost habitat, the Service designated areas both occupied and unoccupied by the mouse, as well as partially occupied areas. *Id.* at 14,297–14,299. Ultimately, the Service designated approximately 14,000 acres of habitat alongside approximately 170 miles of flowing streams, ditches, and canals in Colorado, New Mexico, and Arizona as "essential to the conservation of the jumping mouse." *Id.* at 14,264, 14,266.

When the Service designated the mouse's critical habitat, it analyzed the economic impacts that resulted from the designation. *Id.* at 14,264. The Service made this economic impact analysis available to the public and provided an opportunity for comment. *Id.* After thoroughly reviewing the public's comments, *id.* at 12,484–90, the Service found that its economic analysis found no "disproportionate economic impacts resulting from the designation." *Id.* at 14,283.

ARGUMENT

I. The Conservation Groups are Entitled to Intervene as of Right

Under Fed. R. Civ. P. 24(a), a movant is entitled to intervene as of right if: (1) the motion to intervene is timely; (2) the "movant claims an interest" in the property or transaction that is the subject of the action; (3) the movant's interest may "as a practical matter" be impaired or impeded by the litigation; and (4) the movant's interest is not adequately represented by existing parties. *See, e.g., WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1196–98 (10th Cir. 2010).

The Tenth Circuit "has historically taken a 'liberal' approach to intervention and thus favors the granting of motions to intervene." *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017) (citing *Coal. of Ariz./N.M. Ctys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 841 (10th Cir. 1996)). In the Tenth Circuit, Rule 24's factors are "not rigid, technical

requirements." *San Juan Cty. v. United States*, 503 F.3d 1163, 1195 (10th Cir. 2007) (en banc). Rather, Rule 24(a) "expand[s] the circumstances" in which intervention as of right is allowed and the principal focus is on "the practical effect of litigation on a prospective intervenor rather than legal technicalities." *Id.* at 1188. Finally, "the requirements for intervention may be relaxed in cases raising significant public interests[,]" such as those concerning the potential environmental degradation of public land. *Kane Cty. v. United States*, No. 18-4122, 2019 U.S. App. LEXIS 18875, at *18 (10th Cir. June 25, 2019) (quoting *San Juan Cty.*, 503 F.3d at 1201; *Cascade Nat. Gas Corp. v. El Paso Nat. Gas Co.*, 386 U.S. 129, 136 (1967)).

The Conservation Groups satisfy each of the Rule 24(a) requirements and are entitled to intervene as of right in this action.

A. THE Motion to Intervene is Timely

A motion to intervene under Rule 24(a) must be timely. Fed. R. Civ. P. 24(a). Timeliness is determined in light of all the circumstances, principally "the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances." *See Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001) (quoting *Sanguine, Ltd. v. U.S. Dep't of Interior*, 736 F.2d 1416, 1418 (10th Cir. 1984)). "The requirement of timeliness is not a tool of retribution to punish the tardy would-be intervenor, but rather a guard against prejudicing the original parties by the failure to apply sooner. Federal courts should allow intervention "'where no one would be hurt and greater justice could be attained.'" *Id.* (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)).

The Conservation Groups' motion to intervene in this matter is timely because this case is still in its infancy; this Court has yet to issue any dispositive motions; and intervention will not

unduly prejudice the existing parties, but will ensure that the Conservation Groups' interests in the mouse and its critical habitat are protected. Here, the Stockman's Associations filed their Complaint on December 6, 2018. ECF 1. Pursuant to this Court's Scheduling Order, the Service served a copy of the administrative record on the Stockman's Associations on June 7, 2019, and the Stockman's Associations had until June 21, 2019 to notify the Federal Defendants if the Stockman's Associations believed any changes to the administrative record were necessary. ECF 12. A joint status report was filed by the parties on June 28, 2019 stating that all disputes regarding the administrative record had been resolved and that it was complete. ECF 14. The administrative record is to be filed with the Court on July 8, 2019 and merits briefing will begin on August 8, 2019. ECF 12.

Although this Court has already issued a Scheduling Order, this Court has issued no dispositive orders or rulings that would be disrupted by granting the Conservation Groups' intervention. Additionally, the Conservation Groups will not seek to disrupt the production of the administrative record or the current briefing schedule, except to allow the Conservation Groups to file their response brief shortly after the filing of Federal Defendants' Response Brief, ECF 12, allowing Conservation Groups sufficient time to avoid needless duplication with the Federal Defendants' arguments. The Conservation Groups will also work with the Stockman's Associations and the Federal Defendants so that any such accommodations do not unduly delay the resolution of this case, while ensuring that the Stockman's Associations' have adequate time to draft their Reply Brief. As such, intervention will not meaningfully interfere with any proceedings in this case and will not prejudice the existing parties. Considering "the relatively early stage of the litigation and the lack of prejudice to plaintiffs flowing from the length of time

between the initiation of the proceedings and the motion to intervene," *Utah Ass'n of Ctys.*, 255 F.3d at 1251, this motion is timely.

B. The Conservation Groups Have an Interest in the Subject Matter of this Litigation

The Conservation Groups have a long-standing interest in protecting the mouse and its critical habitat. Whether a proposed intervenor has a protectable interest is "a highly fact-specific determination." *Coal. of Ariz./New Mexico Ctys.*, 100 F.3d 837, 841 (10th Cir. 1996) (quoting *Sec'y Ins. v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995)). However, a "persistent record of advocacy" for the protection of an imperiled animal species, constitutes a "direct and substantial interest . . . for the purpose of intervention as of right." *W. Energy All.*, 877 F.3d at 1165 (quoting *Coal. of Ariz./New Mexico Ctys.*, 100 F.3d at 841.

Here, the Conservation Groups have worked to protect the mouse and its critical habitat for more than ten years. Guardians first petitioned the Service to list the mouse under the ESA on October 9, 2008. Declaration of Judith M. Brawer, ¶ 6. Then, after the Service failed to take timely action on Guardian's petition, Guardians filed suit over the Service's failure to protect the mouse under the ESA. This lawsuit led to a settlement agreement between Guardians, the Center, and the Service that resulted in the mouse gaining protection under the ESA as an endangered species in 2014. *Id.*; *see also* 79 Fed. Reg. at 33,133. Similarly, when the Service designated the critical habitat at issue in this case in 2016, it was in part due to a settlement agreement secured by Guardians and the Center. Brawer Decl. ¶ 6.

Guardians has continued to work to protect the mouse and its critical habitat from the extensive harm and degradation caused by livestock grazing. *Id.* ¶ 7. For instance, in July of 2018, Guardians submitted extensive comments on the U.S. Forest Service's New Mexico

Meadow Jumping Mouse Habitat Improvement Projects on the Sacramento Grazing Allotment Draft EA. *Id.* ¶ 8. The Sacramento Grazing Allotment (referred to as the "Sacramento Mountains" in 81 Fed. Reg. 14,264) is within the mouse's critical habitat and will be impacted by the outcome of this suit if the final rule designating critical habitat for the mouse is vacated. *See* 81 Fed. Reg. 14,264, 14,301–02.

Additionally, the Conservation Groups' members have aesthetic, recreational, spiritual, scientific, educational, moral, and professional interests in the mouse. Brawer Decl. ¶ 8; Declaration of Dr. Robin Silver, ¶¶ 7, 10; Declaration of Joseph N. Trudeau, ¶¶ 4–6; *see also Nat'l Park Serv.*, 604 F.3d at 1198 (noting that the 10th Circuit has "declared it indisputable that a prospective intervenor's environmental concern is a legally protectable interest") (internal quotation marks and citations omitted). For instance, Mr. Trudeau, a member of the Center and a wildlife photographer, has and continues to visit the mouse's habitat in hopes of photographing the mouse. Trudeau Decl. ¶¶ 4–6; *see also* Silver Decl. ¶¶ 10–12 (noting his interest, as a professional wildlife photographer, in visiting the mouse's range, studying it, and taking photographs of it); Brawer Decl. ¶¶ 11–12 (noting her visits to the mouse's range and her interest in seeing the mouse in its critical habitat). Thus, Conservation Groups clearly have a "persistent record of advocacy" for the mouse and a "direct and substantial interest . . . for the purpose of intervention as of right." *W. Energy All.*, 877 F.3d at 1165 (quoting *Coal. of Ariz./New Mexico Ctys.*, 100 F.3d at 841).

C. The Conservation Groups' Interests May be Impaired as a Result of this Litigation

The Conservation Groups' interest in protecting the mouse's critical habitat designation will clearly be impaired if the Stockman's Associations prevail in this matter. Whether the

Conservation Groups' interests may be impaired "presents a minimal burden," *Nat'l Park Serv.*, 604 F.3d at 1199, and all that must be shown is that it is "possible" that the Conservation Groups' interests will be impaired. *Id.*; *see also Utah Ass'n of Ctys.*, 255 F.3d at 1253. Notably, "[t]his factor is met in environmental cases where the district court's decision would require the federal agency to engage in an additional round of administrative planning and decision-making that itself might harm the movants' interests, even if they could participate in the subsequent decision-making." *W. Energy All.*, 877 F.3d at 1167 (quoting *Nat'l Park Serv.*, 604 F.3d at 1199).

Here, there is no question that the disposition of the Stockman's Associations' claims has the potential to impair the Conservation Groups' interests since the Stockman's Associations seek the vacatur of the mouse's critical habitat rule, ECF 1, Prayer for Relief; a rule that was secured, in part, due to a settlement agreement obtained by the Conservation Groups. Brawer Decl. ¶ 6. If the Stockman's Associations were to succeed, the Service would have to reconsider the mouse's critical habitat designation, resulting in "an additional round of administrative planning and decision making" that could result in the loss of essential habitat protections for the mouse. *W. Energy All.*, 877 F.3d at 1167. Such a loss would harm the Conservation Groups' members, as noted above, especially given the fragile nature of the mouse's critical habitat and the potential for it to be harmed if it were to lose the protections provided by the ESA, even if only momentarily.

D. The Conservation Groups' Interests May Not Be Adequately Represented by the Federal Defendants

The Conservation Groups easily meet their "minimal burden" to show that the Federal Defendants may not adequately represent their interests. *W. Energy All.*, 877 F.3d at 1167, 1168

(holding that "[t]he possibility of divergence of interest need not be great in order to satisfy the burden of the applicants") (internal quotation marks and citations omitted); *see also Kane Cty.*, 2019 LEXIS 18875, at *21 (noting that "it is enough to show that the representation 'may be' inadequate").

Indeed, the Tenth Circuit repeatedly has held that it is generally "impossible for a government agency to protect both the public's interests and the would-be intervenor's private interests." *N.M. Off-Highway Vehicle All. v. U.S. Forest Serv.*, 540 F. App'x 877, 880 (10th Cir. 2013) (unpublished opinion); *see also Nat'l Park Serv.*, 604 F.3d at 1200*; WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009); *Utah Ass'n of Ctys.*, 255 F.3d at 1255. Even where both entities take the same position at the outset of the litigation, "in litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor." *N.M. Off-Highway Vehicle All.*, 540 F. App'x at 880-81 (quoting *Utah Ass'n of Ctys.*, 255 F.3d at 1255–56). As such, the inadequacy of representation requirement is satisfied "[w]here a government agency may be placed in the position of defending both public and private interests." *Nat'l Park Serv.*, 604 F.3d at 1200. In such a case, the Tenth Circuit has repeatedly noted that "the government's prospective task of protecting 'not only the interest of the public but also the private interest of the petitioners in intervention' is 'on its face impossible' and creates the kind of conflict that 'satisfies the minimal burden of showing inadequacy of representation.'" *Kane Cty.*, 2019 LEXIS 18875, at *27 (quoting *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002); *Nat'l Farm Lines v. Interstate Commerce Comm'n*, 564 F.2d 381, 384 (10th Cir. 1977)).

Additionally, the Tenth Circuit "does not assume that the government agency's position will stay 'static or unaffected by unanticipated policy shifts.'" *W. Energy All.*, 877 F.3d at 1168 (citing *Utah Ass'n of Ctys.*, 255 F.3d at 1256; *WildEarth Guardians*, 573 F.3d at 997). "If the agency and the intervenors would only be aligned if the district court ruled in a particular way, then a possibility of inadequate representation exists." *Id.* (quoting *N.M. Off-Highway Vehicle All.*, 540 F. App'x at 881–82).

Here, it is clear that the Conservation Groups and the Service's positions may differ as the Conservation Groups' interest in the mouse and its critical habitat are not identical to those of the United States. For instance, the extent to which the Federal Defendants may vigorously defend the mouse's critical habitat designation is open to doubt, given that the Conservation Groups have already been forced to intercede on the mouse's behalf in order to spur action on the part of Federal Defendants; first in order to ensure that the mouse was listed under the ESA, and then in order to ensure that it received necessary critical habitat protections. Brawer Decl. ¶¶ 6–7. Furthermore, if the Stockman's Associations were to prevail, resulting in a remand to the Service to reconsider the mouse's critical habitat designation, the Service would have to consider not only "the best scientific data available," but also whether to exclude any area "after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat." 16 U.S.C.S. § 1533(b)(2). In such a situation, where "the government has multiple objectives and could well decide to embrace some of the [opposing party's] goals," the Tenth Circuit has found that the government may not adequately represent an intervenor's interest; in this case, the Conservation Groups' interest in

protecting the maximum amount of habitat for the mouse. *Kane Cty.*, 2019 LEXIS 18875, at *23.

Additionally, if the Stockman's Associations were to succeed, the Conservation Groups would seek to have the mouse's critical habitat designation remain in place pending the production of a new economic impact analysis, and the Federal Defendants may not seek to maintain the mouse's critical habitat designation on remand while the Service reconsiders its economic impacts analysis. In such circumstances, where intervenors may differ from the government regarding relief, the Tenth Circuit has found that their interests may not be adequately represented. *See N.M. Off-Highway Vehicle All.*, 540 F. App'x at 881–82 (stating that the court did not know if the government's and the environmental groups' interests were "aligned when it comes to remedy[,] . . . even if [the court had] some information suggesting alignment on the merits"). Thus, Conservation Groups have satisfied their "minimal burden" of showing that their interests and the Services' may possibly diverge. *W. Energy All.*, 877 F.3d at 1167 (quoting *Nat'l Park Serv.*, 604 F.3d at 1199).

II. The Conservation Groups Should be Granted Permissive Intervention

Should this Court find that the Conservation Groups are not entitled to intervene as of right under Rule 24(a), the Conservation Groups ask that this Court grant permission to intervene pursuant to Federal Rule of Civil Procedure 24(b). Rule 24(b) provides that:

> On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact . . . In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Fed. R. Civ. P. 24(b)(1)(B), (3). Courts also consider whether the intervenor will "significantly contribute to the underlying factual and legal issues." *Utah v. Kennecott Corp.*, 801 F. Supp. 553, 572 (D. Utah 1992).

The Conservation Groups meet these requirements. The Conservation Groups' defenses are in common with the Stockman's Assocations' claims both in law and fact, as they address the exact matters raised by the Stockman's Associations regarding the mouse's critical habitat under the ESA. As discussed above in the context of intervention as of right, the intervention application is timely and existing parties will not be prejudiced because of intervention in this early phase of the proceeding. Additionally, given their long history of advocacy regarding the mouse, the Conservation Groups will significantly contribute to the development of the underlying factual and legal issues.

III. The Conservation Groups Have Standing

As demonstrated by the declarations attached herewith, the Conservation Groups have Article III standing.[2] "Article III standing requires a litigant to show: (1) an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged conduct; and (3) the injury can likely be redressed by a favorable decision." *Kane Cty.*, 2019 LEXIS 18875, at *13; (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)); *see also S.W. Ctr. for*

[2] "[A]n intervenor as of right must 'meet the requirements of Article III if the intervenor wishes to pursue relief not requested' by an existing party." *Kane Cty.*, 2019 LEXIS 18875, at *10 (quoting *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1648 (2017)). Thus, if the Federal Defendants defend this suit, the Conservation Groups do not need standing to defend it as well. However, as noted above, the Conservation Groups may seek different relief than the Federal Defendants and, therefore, out of an abundance of caution, demonstrate that they have standing independent from the Federal Defendants.

Biological Diversity v. Clark, 90 F. Supp. 2d 1300, 1307 (D.N.M. 1999) (discussing standing in the context of an ESA citizen suit). It is "indisputable that [the Conservation Groups'] environmental concern is a legally protectable interest," and that the Conservation Groups' members' long-standing interests in protecting the mouse and their frequent visits to observe and study the species in its critical habitat are sufficiently concrete and particularized. *Kane Cty.*, 2019 LEXIS 18875, at *12 (quoting *San Juan Cty.*, 503 F.3d at 1199); *see also id.* (noting that "[a]n injury may be imminent even though contingent upon an unfavorable outcome in litigation"). Additionally, the Conservation Groups' interest may be harmed if the Stockman's Associations were to succeed in this matter, and this Court may redress this injury by upholding the mouse's current critical habitat designation. *See, e.g.*, *S.W. Ctr. for Biological Diversity*, 90 F. Supp. 2d at 1309–10 (finding causation and redressability in the context of an ESA citizen suit seeking to compel the designation of critical habitat). As such, the Conservation Groups have standing to intervene in this matter.

CONCLUSION

For the reasons set forth above, the Conservation Groups respectfully request that this Court grant their motion to intervene as of right or, in the alternative, permissive intervention. If granted intervention, the Conservation Groups will submit consolidated briefing according to the schedule imposed by the Court or the local rules.

Dated: July 3, 2019

Respectfully submitted,

/s/ Samantha Ruscavage-Barz
Samantha Ruscavage-Barz
WildEarth Guardians
301 N. Guadalupe St., Ste. 201

Santa Fe, NM 87501
(505) 401-4180
sruscavagebarz@wildearthguardians.org

/s/ John Buse
John Buse (CA Bar No. 163156)
(appearing by association with Federal Bar member pursuant to L.R. 83.3(a))
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Phone: (510) 844-7125
Email: jbuse@biologicaldiversity.org

Ryan Adair Shannon (Or. Bar No. 155537)
(appearing by association with Federal Bar member pursuant to L.R. 83.3(a))
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
Phone: (503) 283-5474 ext. 407
Email: rshannon@biologicaldiversity.org

CERTIFICATE OF SERVICE

I hereby certify that today I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Devon Lea Flanagan Email: devon.flanagan@usdoj.gov	Attorney for Respondents/Defendants UNITED STATES FISH AND WILDLIFE SERVICE and MARGARET EVERSON
A. Blair Dunn Email: abdunn@ablairdunn-esq.com Jeffery W. McCoy Email: jmccoy@pacificlegal.org Anthony L. Francois Email: tfrancois@pacificlegal.org Damien M. Schiff Email: dschiff@pacificlegal.org	Attorneys for Petitioners/Plaintiffs NORTHERN NEW MEXICO STOCKMAN'S ASSOCIATION and OTERO COUNTY CATTLEMAN'S ASSOCIATION

Dated: July 3, 2019

/s/ Samantha Ruscavage-Barz