

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW MEXICO DEPARTMENT OF GAME)
AND FISH,)

Petitioner,)

v.)

UNITED STATES DEPARTMENT OF THE)
INTERIOR; SALLY JEWELL, in her official)
capacity as SECRETARY OF THE UNITED)
STATES DEPARTMENT OF THE)
INTERIOR; UNITED STATES FISH AND)
WILDLIFE SERVICE; DANIEL M. ASHE, in)
his official capacity as DIRECTOR OF THE)
UNITED STATES FISH AND WILDLIFE)
SERVICE; DR. BENJAMIN N. TUGGLE, in)
his official capacity as SOUTHWEST)
REGIONAL DIRECTOR FOR THE UNITED)
STATES FISH AND WILDLIFE SERVICE,)

Federal Respondents, and)

DEFENDERS OF WILDLIFE; CENTER FOR)
BIOLOGICAL DIVERSITY; WILDEARTH)
GUARDIANS; and NEW MEXICO)
WILDERNESS ALLIANCE,)

Proposed Defendant-Intervenors.)

Case No. 1:16-cv-00462-WJ-KBM

**DEFENDERS OF WILDLIFE ET AL.'S
MOTION TO INTERVENE ON BEHALF
OF FEDERAL DEFENDANTS**

Defenders of Wildlife, Center for Biological Diversity, WildEarth Guardians, and the New Mexico Wilderness Alliance (collectively, the “Conservation Groups”) respectfully move to intervene as of right as defendants pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure. In the alternative, the Conservation Groups move to intervene permissively, pursuant to Rule 24(b).

As explained more fully in the accompanying memorandum in support of this motion and supporting declarations, the Conservation Groups meet the Rule 24(a)(2) standard for

intervention as of right: (1) this application is timely; (2) the Conservation Groups claim an interest relating to the agency action which is the subject of this litigation; (3) the Conservation Groups' interests may, as a practical matter, be impaired by this litigation; and (4) the Conservation Groups' interests are not adequately represented by the existing parties. See WildEarth Guardians v. National Park Service, 604 F.3d 1192, 1198 (10th Cir. 2010). The Conservation Groups also meet the test for permissive intervention because they have a claim or defense that share common questions of law and fact with those raised in this case.

Specifically, Petitioner New Mexico Department of Game and Fish ("State of New Mexico") challenges the implementation of a key aspect of the U.S. Fish and Wildlife Service's ("Service") 2015 management rule – the authorization to release captive Mexican gray wolves into New Mexico. The management rule was promulgated under section 10(j) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1539(j). The State of New Mexico seeks to block the wolf releases authorized by this rule and require the Service to capture and remove wolves already released. Dkt. #1 at 12-13 ¶¶ 3, 6, 8 (Prayer for Relief). Should the State of New Mexico prevail in this litigation, the Conservation Groups' interests in ensuring the survival and recovery of the Mexican gray wolf will be harmed.

This case is related to four pending cases in the U.S. District Court of the District of Arizona in which the Conservation Groups are involved. Two of the Conservation Groups have intervened on behalf of the Service in two cases in order to defend the limited beneficial provisions of the 2015 management rule, including the geographic expansion of the release area at issue in this case. See Arizona and New Mexico Coalition of Counties for Economic Growth et al. v U.S. Fish and Wildlife Serv., No. 4:15-CV-00179-TUC-JGZ (D. Ariz.) (consolidated with Center for Biological Diversity v. Jewell, No. 4:15-cv-00019-TUC-JGZ (D. Ariz.) (lead),

Dkt. #74 (August 18, 2015)); Safari Club Int'l v. Jewell, No. 4:16-cv-00094-TUC-JGZ (D. Ariz.), Dkt. #49 (May 13, 2016). In addition, in two separate cases, all four of the Conservation Groups are challenging the illegal provisions of the 2015 management rule because these provisions threaten to overwhelm the positive aspects of the rule and preclude wolf recovery. See Center for Biological Diversity v. Jewell, No. 4:15-cv-00019-TUC-JGZ (D. Ariz.); WildEarth Guardians v. Ashe, No. 4:15-cv-00285-JGZ (D. Ariz.) (consolidated). The Conservation Groups are seeking to vacate only the challenged aspects of the rule, in order to leave the features in place that provide some modest progress toward recovery.

Counsel for the Conservation Groups have conferred with counsel for Federal Defendants and Petitioner New Mexico Department of Game and Fish in compliance with D.N.M.LR-Civ 7.1(a). Federal Defendants take no position on the Motion. The State of New Mexico opposes the motion. Concurrently with this motion, memorandum, and declarations, the Conservation Groups have filed a proposed answer to the Petitioner's complaint, as required by Federal Rule of Civil Procedure 24(c).

Respectfully submitted this 6th day of June, 2016.

s/ Judy Calman
Judy Calman (NM Bar No. 138206)
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CERTIFICATE OF SERVICE

I hereby certify that June 6, 2016, I electronically filed the foregoing document through the CM/ECF System, which will send notification of this filing to all counsel of record:

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s/ Judy Calman