

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NEW MEXICO CATTLE GROWERS'
ASSOCIATION
2231 Rio Grande Blvd. NW
Albuquerque, NM 87104

Plaintiff,

v.

UNITED STATES FISH AND WILDLIFE
SERVICE
1849 C Street, N.W.
Washington, DC 20240

UNITED STATES DEPARTMENT OF THE
INTERIOR
1849 C Street, N.W.
Washington, DC 20240

DEBRA HAALAND, in her official capacity as
Secretary of the Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

MARTHA WILLIAMS, in her official capacity as
Principal Deputy Director and Acting Director of
the United States Fish and Wildlife Service
1849 C Street, N.W.
Washington, DC 20240

Defendants.

Civil Action Case No. 1:21-cv-3263

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff New Mexico Cattle Growers' Association's (Cattle Growers) membership is comprised of the hard-working individuals and families who earn their livelihoods raising cattle. Cattle Growers' membership includes the McKeen family, who for generations have raised cattle on the rugged terrain of western New Mexico. Ranching families like the McKeens must contend with drought, wildfire, and the many other realities of raising cattle in the harsh conditions of the arid west. They must also contend with burdensome federal regulations such as those imposed by the Defendants (collectively the "Service"), under the Endangered Species Act (ESA).

2. ESA regulations impose significant burdens on ordinary land use. They increase the costs of federal permitting, reduce the market value of affected lands, and expose landowners to potentially ruinous civil and even criminal penalties. It is therefore crucially important that federal decisionmakers are guided by sound data-driven science and objective, publicly disclosed standards. Yet, in many instances the Service is guided by no such standards when making key decisions that impact landowners. For example, when determining whether a population constitutes a "subspecies" (making it eligible for listing under the ESA), the Service relies upon ad-hoc determinations, without resort to any definition or standard for identifying "subspecies." This leaves ranching families like the McKeens—who have had their property values and livelihoods harmed by the endangered subspecies listing of the southwestern willow flycatcher—with little choice other than to comply with arbitrary and unsupported regulations.

3. In 2015—on behalf of affected members like the McKeen family—Cattle Growers, along with other groups, petitioned the Service to remove the southwestern willow flycatcher from the federal list of threatened and endangered species. *See* Petition of the Center for Environmental Science, Accuracy, and Reliability et al. to Remove the "Southwestern" Willow Flycatcher From

the List of Endangered Species Under the Endangered Species Act Due to Significant New Data that Demonstrates Original Data Error, Fed. Doc. No. FWS-R2-ES-2016-0039-0002, at 9 (Aug. 19, 2015) (the “Petition”). The grounds for the Petition were that, among other things, the best scientific and commercial data prove the flycatcher is not a distinct subspecies and is therefore ineligible for listing under the ESA.

4. The Service denied the Petition, determining in relevant part that the southwestern willow flycatcher is a subspecies. *See* 82 Fed. Reg. 61,725 (Dec. 29, 2017) (the “Final Rule”). That denial was illegal. In denying the Petition the Service violated the fundamental administrative law principle of reasoned decision-making. It set forth no definition of “subspecies;” provided no governing criteria for determining whether any given population or group of populations qualifies as a subspecies; and ignored crucial scientific evidence bearing on the flycatcher’s subspecies designation.

5. Therefore, the Final Rule is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of the Endangered Species Act, 16 U.S.C. §§ 1531–1544, and the Administrative Procedure Act, 5 U.S.C. §§ 701–706. The Final Rule should be vacated, and the matter remanded to the Service.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); § 2201 (authorizing declaratory relief); § 2202 (authorizing injunctive relief); 16 U.S.C. § 1540(c) and (g) (actions arising under the ESA); 5 U.S.C. § 702 (providing for judicial review of agency action under the APA); 5 U.S.C. § 706 (authorizing courts to set aside unlawful agency action).

7. On April 13, 2020, more than 60 days before the filing of this complaint, Cattle Growers provided the Secretary of the Interior and the Director of the United States Fish and Wildlife Service with written notice of the violations that are the subject of this lawsuit, in accordance with 16 U.S.C. § 1540(g)(2)(C). The notice is attached as Exhibit 1 and is incorporated herein by reference. Neither the Secretary nor the Director have responded to this notice or taken any action to withdraw the Final Rule at issue here or otherwise remedy the violations of law identified therein.

8. Cattle Growers seeks relief under 28 U.S.C. § 2201 (authorizing declaratory relief) and § 2202 (authorizing injunctive relief).

9. Cattle Growers asserts that the Service's denial of the Petition constitutes unlawful, arbitrary and capricious agency action. An actual, justiciable controversy now exists between Cattle Growers and the Service.

10. The federal government has waived sovereign immunity in this action pursuant to 16 U.S.C. § 1540(g) and 5 U.S.C. § 702.

11. Cattle Growers has exhausted all available administrative remedies.

12. Cattle Growers is injured by the denial of the Petition. Invalidation of the Final Rule denying the Petition will redress those injuries.

13. Venue in the District of the District of Columbia is proper under 5 U.S.C. § 703 and 28 U.S.C. § 1391(e), because Defendants are agencies and officers of the United States, Defendants reside in the District of the District of Columbia, and a substantial part of the events or omissions giving rise to the claim occurred in the District of the District of Columbia.

DESCRIPTION OF PARTIES AND STANDING ALLEGATIONS

Plaintiff

14. *New Mexico Cattle Growers' Association* is a nonprofit organization that represents roughly 1,400 ranchers and landowners throughout 32 New Mexico counties and 19 states. Since 1914, its primary purpose has been to serve as an advocate for New Mexico ranchers and landowners and to protect ranching from a variety of threats, including overreaching environmental regulation.

15. Leadership and committee positions are open to all Cattle Growers members. Although Cattle Growers represents the interests of all New Mexico ranchers, an annual fee is required for membership.

16. Many of Cattle Growers' members have been, and continue to be, burdened by onerous environmental regulations. These include regulations imposed under the ESA, such as the flycatcher's endangered listing. Cattle Growers therefore devotes substantial resources to ensuring that ESA regulations are consistently and transparently imposed.

17. Acting on behalf of its membership, Cattle Growers—through its elected leadership and various committees—acts as an advocate on ESA issues, publishes information on related issues for members, performs research pertaining to ESA regulation, submits comments to government agencies addressing concerns about how regulations under the ESA affect members, and engages in litigation when members are threatened by illegal government action taken under the ESA. For example, Cattle Growers has been involved in prior litigation over the flycatcher's critical habitat, *see N.M. Cattle Growers Ass'n v. U.S. Fish & Wildlife Service*, 248 F.3d 1277, 1285 (10th Cir. 2001), and remains actively involved in current debates regarding the gray wolf.

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