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Meadow Jumping Mouse/Endangered Species Act: Federal Appellate Court Addresses Challenge to Critical Habitat Designation

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The United States Court of Appeals for the 10th Circuit (“10th Circuit”) addressed in an April 15th Opinion a challenge to the United States Fish and Wildlife Service’s (“Service”) designation of Endangered Species Act (“ESA”) critical habitat for the endangered New Mexico Meadow Jumping Mouse (“Mouse”). See *Northern Mexico Stockman’s Association, et al. v. U.S. Fish and Wildlife Service*, D.C. No. 1:18-CV-01138-JB-JFR.

The Service had exercised its ESA authority to designate nearly 14,000 acres of riparian land in New Mexico, Colorado, and Arizona as critical habitat for the Mouse.

The Mouse is described as a tiny brown mammal with a long tail that accounts for over half its length. It is further indicated to be a highly skilled jumper and can move vertically as high as three feet. Populations are found primarily in New Mexico. However, Arizona and Colorado are also stated to contain several populations.

The Mouse is stated to have an atypical hibernation cycle. It is only active in the summer months and spends the remainder of the year in hibernation. Therefore, to survive it must have the ability to quickly gather enough nutrients and next materials from surrounding habitat. Such habitat is stated to generally be comprised of dense vegetation along flowing water. Consequently, they are highly vulnerable to habitat degradation.

The Mouse was listed as endangered in 2014. See 79 Fed. Reg. 33119.

The Service in 2016 designated pursuant to a final rule about 14,000 acres in New Mexico, Arizona, and Colorado as critical habitat for the Mouse. The designated habitat is described as consisting of riparian areas with thick vegetation and flowing water that are either currently occupied by the Mouse or unoccupied but essential to its conservation.

The Service divided the critical habitat into eight units. The units contain a mix of land owned by the federal government, state government, or private citizens.

Designation of critical habitat requires that the Service consider the economic impacts of such action. Estimated cost associated with the Mouse’s critical habitat designation was \$23 million. It was determined that most costs would be derived from efforts to reduce the impact of livestock grazing on the Mouse’s habitat.

The Northern New Mexico Stockman 's Association and Otero County Cattleman's Association (collectively "Ranchers") filed a Petition for Review and Complaint for Declaratory and Injunctive Relief against the Service in December 2019. They were concerned that the critical habitat designation would threaten their livelihoods through increased costs, changes affecting the health of their cattle, and lower property values. The District Court was asked to vacate the critical habitat designation because it was alleged:

1. The Service's economic analysis failed to comply with the ESA
2. The Service did not consider the impact of the designation on the Ranchers' water rights
3. The Service abused its discretion by not excluding certain units (Units 3 or 4) from the Mouse's critical habitat designation

The District Court rejected the claims and denied the Petition for Review.

The 10th Circuit affirms the District Court's denial of the Ranchers' claims. It concludes that:

1. The Service's economic impact methodology satisfies the ESA and does not violate 10th Circuit precedent (Rejecting the argument that the ESA requires the Service to consider the cost of listing when examining the economic impact of critical habitat designation)
2. The Service adequately assessed the impact of critical habitat designation on the Ranchers' water rights (The Service's broad discretion to consider economic cost/Ranchers' lack of evidence in the record showing the designation constitutes a taking of their property rights leads to conclusion that economic impacts on water rights were adequately considered)
3. The Service did not abuse its discretion when it declined to exclude Units 3 and 4 from the critical habitat (Findings demonstrate the Service determined that the conservation benefits of including the referenced units were substantial while the benefits of exclusion were minimal)

As a result, the 10th Circuit affirmed the District Court's dismissal of the Ranchers' Petition for Review.

A copy of the Opinion can be downloaded [here](#).