

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
MIDLAND/ODESSA DIVISION**

STATE OF TEXAS

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR,  
et al.

Defendants.

Civil Action No. 7:24-cv-233-DC-RCG

**RENEWED MOTION TO INTERVENE OR SUBMIT AN *AMICUS* BRIEF IN  
OPPOSITION TO THE PARTIES' JOINT MOTION TO ENTER A STIPULATED  
SETTLEMENT AGREEMENT**

The Center for Biological Diversity (“Center”) hereby renews its motion to intervene in these proceedings to safeguard its substantial interests in the protection of the endangered dunes sagebrush lizard. In the alternative, the Center requests permission to file the attached Memorandum in Opposition to the parties’ Motion for a Stipulated Settlement (Dkt. 43) as *amicus curiae*.

In accordance with Federal Rules of Civil Procedure 24 and 54(b), the Center submits the following Memorandum in Support and relies on its prior proposed Answer (Dkt. 18-1), Memorandum in Support of Intervention (Dkt. 18) and the attached updated declarations establishing both the requisite interest and standing to intervene. Federal Defendants reserve their position on the Center’s renewed motion to intervene or, in the alternative, for leave to file an amicus opposition until Federal Defendants have had an opportunity to review the Center’s filing(s). At time of filing, the State of Texas had not responded with a position on the motion.

**MEMORANDUM IN SUPPORT OF RENEWED MOTION TO INTERVENE**

For the third time in recent months, the U.S. Fish and Wildlife Service (“FWS” or “Service”) has agreed with the State of Texas to abandon its defense of an Endangered Species Act (“ESA”) listing decision developed over years, if not decades, with peer review and public participation. Dkt. 43 (requesting remand with vacatur). First, FWS capitulated on the lesser-prairie chicken listing rule and currently seeks to do the same for the listing of a group of central Texas mussels.<sup>1</sup> Now, FWS is abandoning defense of the dunes sagebrush lizard rule. The Service’s willingness to seek remand with vacatur of listing rules without a ruling on the merits has become a disturbing trend, and the facts of this case are particularly concerning because the Service’s explanation for its reversal is baseless and belies the record before the Court.

Intervention is intended to protect parties with valid interests from inadequate representation, fraud, misconduct, and malfeasance. That is why the Center for Biological Diversity (“Center”) has repeatedly attempted to assert its rights to intervene in challenges to endangered species listings in this Court. But conservation groups like the Center are increasingly denied intervention to contest these unprecedented reversals of position. Ordinarily, one might assume that the government would faithfully apply the ESA and defend its own work in promulgating the final rule listing the dune sagebrush lizard as endangered. But instead, the government has abandoned the rule’s defense under what we believe are demonstrably false

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<sup>1</sup> See Reply in Support of Defendants’ Motion for Voluntary Remand, *Texas v. U.S. Dep’t of the Interior*, Dkt. 53, No. 24-cv-81 (N.D. Tex. May 15, 2026) (in which the federal defendants urge the court to vacate the endangered and threatened listings of a group of Central Texas mussels). That case is still pending, along with the Center’s renewed motion to intervene in light of the agency’s reversal of position. See also *Texas v. U.S. Dep’t of the Interior*, No. 23-CV-00047-DC, 2025 LX 587142 (W.D. Tex. Aug. 12, 2025) (vacating the lesser prairie-chicken listing rule on the government’s own motion over the objections of conservation groups and mitigation bankers who were denied intervention and *amicus* status in the case).

pretenses. Under such circumstances, the government cannot reasonably be said to adequately represent the interests of the Center, the petitioner and champion for the species' listing.

The Center has worked for decades to secure federal ESA protection for the dunes sagebrush lizard, including filing the 2018 listing petition that led to the decision at the root of this case. After years of careful consideration and deadline-enforcing litigation by the Center, the Service published a final rule listing the dunes sagebrush lizard as endangered on May 20, 2024. 89 Fed. Reg. 43,748. The State of Texas subsequently filed suit seeking to overturn the listing decision. In response, the Center timely filed a motion to intervene under Federal Rule of Civil Procedure 24 in March 2025. Dkt. 18. Since July 2025, the case has been stayed to allow the parties to negotiate “in good faith . . . without further litigation.” Dkts. 25, 27, 29, 33, 38, 40 (Orders staying litigation). Despite settlement talks that threatened the Center's interests in maintaining the listing rule, this Court denied the motion to intervene in November 2025, on the grounds that the Center had not proven the government's representation inadequate. Dkt. 30.

Now, the Center's fears have come to pass. The parties have filed a request with this Court to remand and vacate the listing rule, Dkt. 43, reversing the Service's carefully considered decision and casting aside decades of work by the Center and other groups on behalf of members who are concerned about the fate of this imperiled species. As the attached memorandum in opposition to that motion demonstrates, the parties' request to remand and vacate the listing rule is factually and legally baseless. These issues deserve proper hearing and defense, which they will not receive from the existing parties to the case. This Court should avoid complicity in what appears to be collusion by the parties to eliminate a species listing for policy reasons.

A court must permit intervention when a movant (1) files a timely motion; (2) claims an

interest relating to the property or transaction at issue; (3) is so situated that disposition of the action may impair that interest; and (4) shows that existing parties may not adequately represent it. Fed. Civ. P. 24(a)(2); *see also Aransas Project v. Shaw*, 404 F. Appx. 937, 940 (5th Cir. 2010). Rule 24 must be “liberally construed” in favor of intervention. *Texas v. United States*, 805 F.3d 653, 656 (5th Cir. 2015). Each requirement is satisfied here, and this Court should grant the motion.

The Center is well aware from prior motions that this Court sets an extremely high bar for would-be intervenors to demonstrate inadequacy of representation. Nonetheless, the Center must again request to participate as a party to defend its interests and in the interests of justice, if only to properly preserve the issue for appeal. Thus, the Center again asserts that it meets all qualifications for intervention of right or, alternatively, permissive intervention. To the extent the Court’s prior denial of intervention in this case hinged on adequacy of representation, Dkt. 30 at 6, there can no longer be any doubt that the federal government does not represent the Center’s interests in the conservation of the dunes sagebrush lizard, nor does it share the Center’s longstanding positions on the proper administration of the Endangered Species Act.

Should the Court deny this renewed motion, the Center requests that its Memorandum in Opposition to the Stipulated Settlement Agreement be considered as *amicus curiae*.

## **I. The Center Has a Right to Intervene**

### **A. The Center’s Motion Is Timely**

As this Court previously noted, the Center’s original motion to intervene was timely because it was filed on March 13, 2025, at an early stage of litigation before the court issued any substantive rulings. Dkt. 30 at 8. The question of timeliness at this point in the case should credit the Center’s prior attempt to intervene. The Center is not a Johnny-come-lately to this matter.

Given that this Court requires a showing of inadequacy of representation to be more than conjectural or even likely, the Center could not properly file a renewed motion prior to a definitive announcement that FWS would not defend the listing rule. This Court denied the Center's first motion to intervene while settlement negotiations were underway, despite the very real possibility that those negotiations would compromise the Center's interests. Dkt. 30.<sup>2</sup> To the extent further proof of adversity is required, the result of those negotiations is now a joint motion seeking remand with vacatur. That goes well beyond the "mere possibility" that the interests of the current defendants "may at some future time diverge." Dkt. 30 at 7 (citing *Louisiana v. Burgum*, 132 F.4th 918, 922 (5th Cir. 2025)). They have in fact diverged.

This is the "specific conduct" proving beyond doubt that the defendants do not represent proposed intervenors' interest. *Id.* (citing *Burgum*, 132 F.4th at 923). The present motion is filed within mere days of that confirmation. Accordingly, the motion should be considered timely.

#### **B. The Center Has a Direct, Legally Protectable Interest in the Listing Rule**

This Court previously "assume[d], without deciding," that the Center had a "sufficient interest in the litigation that might be impaired by the disposition of the action." Dkt. 30 at 4. Indeed, the Center has worked for years to secure federal protection for the dunes sagebrush lizard, including filing the listing petitions and lawsuits that compelled the Service to issue a final rule. The Center's decades-long advocacy for the lizard establishes a "direct, substantial, and legally protectable" interest in the proceeding. *Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994) (reversing the district court's denial of intervention) (citation omitted). This lawsuit directly targets that rule and seeks relief that would vacate or undermine the species' ESA

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<sup>2</sup> The Center has appealed that decision to the Fifth Circuit. *Texas v. U.S. Dep't of Interior*, No. MO:23-CV-00047-DC, 2025 LX 587142 (W.D. Tex. Aug. 12, 2025), *appeal docketed sub nom.*, *Texas v. Ctr. for Biological Diversity*, No. 25-51058 (5th Cir. Jan 15, 2026).

protections. Because the action challenges the very outcome the Center advocated for and helped bring about, the Center has a concrete, legally protectable interest in defending the final rule.

*Doe #1 v. Glickman*, 256 F.3d 256 F.3d 371, 379 (5th Cir. 2001).

In general, a defendant-intervenor need not establish standing. *See Franciscan All., Inc. v. Azar*, 414 F. Supp. 3d 928, 947 n.3 (N.D. Tex. 2019) (explaining why standing is not required for intervenor-defendants when no additional relief is sought). But to the extent that a demonstration of standing is required to assert relief when defendants have abandoned their defense of the rule, the Center submits declarations demonstrating its members recreational, aesthetic, scientific, conservation, and economic interests in the preservation of the dunes sagebrush lizard. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562-63 (1992) (recognizing that “the desire to use or observe an animal species, even for purely [a]esthetic purposes, is undeniably a cognizable interest for purpose of standing”).

Center member Scott Trageser is a conservation biologist and professional wildlife photographer. Trageser Decl. ¶ 5. Trageser has traveled to dunes sagebrush lizard habitat in New Mexico and Texas on multiple occasions to photograph the lizard and has plans to visit again. *Id.* at ¶ 11. Center member Noah Greenwald has also visited the dunes sagebrush lizard habitat in New Mexico and viewed the species in its habitat; he has tracked and monitored the species for the past 25 years due to his interests in the conservation and recovery of the lizard. Greenwald Decl. ¶¶ 6, 10. Center member Rebecca Brunner is a conservation biologist and a resident of New Mexico that searches for the dunes sagebrush lizard whenever she visits the habitat area. Brunner Decl. ¶¶ 1, 9-10. She last searched for the lizard in December 2025 and plans to visit the lizard’s habitat again when temperatures cool. *Id.* ¶ 10.

For Article III standing, there must be “a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” *Lujan*, 504 U.S. at 560 (cleaned up). Here, plaintiffs seek relief that would harm the Center’s members and their interests. Center members like Greenwald and Trageser were injured by the delayed listing of the dunes sagebrush lizard because ESA protections are crucial to the species’ survival and recovery, and would be again if protections are revoked. *See* Greenwald, and Trageser Decls. Fewer lizards make it more difficult for members to observe and enjoy the species, thus harming their recreational, scientific, and aesthetic interests. Trageser Decl. ¶ 12; Brunner Decl. ¶¶ 2, 18. The potential extirpation or extinction of the lizard would profoundly injure the Center’s members. Brunner Decl. ¶¶ 16-18; Greenwald Decl. ¶¶ 11-13; Trageser Decl. ¶¶ 21-22.

Finally, Article III requires that the injury can be “redressed by a favorable judicial decision.” *Ctr. for Biological Diversity v. U.S. Env’t. Prot. Agency*, 937 F.3d 533, 536 (5th Cir. 2019). The Center’s members’ injuries are redressable because an order of this Court upholding the listing decision would vindicate their interest in seeing the dunes sagebrush lizard recover and continue to receive ESA protection. Accordingly, the Center has the requisite interest and standing to participate in this case.

### **C. Disposition of This Case Threatens to Impair the Center’s Interests**

If plaintiffs succeed—whether through settlement or a merits disposition—the final listing rule may be vacated, remanded, or otherwise weakened. That outcome would directly impair the Center’s longstanding efforts to secure ESA protection and recovery for the species. The impairment prong does not require certainty of harm, but only that the movant’s interest

“may” be impaired as a practical matter. *Glickman*, 256 F.3d at 375(citations omitted). Here, the risk is self-evident: this case seeks to undo the very protections the Center fought to obtain.

Given the parties’ motion to remand and vacate the listing, Dkt. 43, that risk is not speculative. The parties propose to eliminate the very federal protections for which the Center petitioned and worked over decades to secure. Absent intervention to contest the motion, the federal government’s decision to abandon its defense of the dunes sagebrush lizard listing leaves the Center without legal recourse. The lizard will lose critical protections against extinction. And the Center will necessarily have to participate in another indefinite and uncertain rulemaking process. The Center’s interests and those of its members are irreparably impaired by the government’s inadequate defense. Rule 24 exists to prevent precisely that outcome.

#### **D. The Federal Defendants Do Not Represent the Center’s Interests**

The government’s decision to settle this case, the lesser prairie-chicken case, and proposed settlement in the Texas mussels case in the Northern District all point to an unsettling trend in which agency decisions made by a prior administration on the basis of the “best scientific and commercial evidence available” after peer review and notice and comment rulemaking can simply be wiped from the books without any review. The opportunity for political mischief in such circumstances is significant. Intervention by parties with a vested interest in the proceedings is an important safeguard against possible collusion or manipulation.

*Louisiana v. Burgum* is not to the contrary. 132 F.4th 918 (5th Cir. 2025). In *Burgum*, the Fifth Circuit explained that a presumption against intervention applies when the movant “has the same ultimate objective as a party to the lawsuit.” *Id.* at 922 (quoting *Texas*, 805 F.3d at 661). But a movant can overcome this presumption by showing “adversity of interest, collusion, or nonfeasance on the part of the existing party.” *La Union del Pueblo Entero v. Abbott*, 29 F.4th

299, 308 (5th Cir. 2022) (quoting *Texas*, 805 F.3d at 661-62 n.2). The second presumption, when the existing party “is a governmental body or officer charged by law with representing the interests” of the movant, can be overcome by showing that the intervenor’s “interest is in fact different from that of the governmental party and that the interest will not be represented by the existing governmental party.” *Id.* (cleaned up) (quoting *Texas*, 805 F.3d at 661-62).

The Center meets both requirements here. Unlike the intervenor in *Burgum*, the Center and the government clearly do not share the same ultimate objective of defending the listing decision. The Center’s first motion to intervene in this case “pointed to specific conduct” by the defendants that went beyond a “mere possibility” that the interests of the proposed-intervenors and the government “may at some future time” diverge to rebut the presumption of adequate representation. That included the Trump administration’s executive orders promoting energy development and calling for a review of species listings, its abandonment of the lesser prairie-chicken listing, and its willingness to engage in settlement discussions in this case. Dkt. 18. The Center now points to the government’s *actual decision* not to defend the listing.

Although the *Burgum* court denied the American Petroleum Institute’s (API) motion to intervene, this case is readily distinguishable. Unlike API, the Center has “pointed to specific conduct showing that the party at issue inadequately represented its interests, notwithstanding that it shared an ultimate objective.” *Burgum*, 132 F.4th at 923. Here, the Center and existing parties do *not* share “an ultimate objective.” Not only are the Trump administration’s policy priorities directly adverse to the Center’s but in here the government refuses to defend the listing decision for which the Center petitioned.

Moreover, unlike API, the Center cites in this motion and in the attached Opposition to remand and vacatur the “distinct evidence it wished to introduce, remedies it sought, and legal

arguments it intended to make.” *Id.* The Center seeks to contest the government’s basis for remand as a factual matter, the magnitude of that basis as a legal matter, and the proper remedy should the Court find remand is warranted. At each of these stages, the Center’s position is adverse to the government.

In *Burgum*, API was denied intervention because it admitted it “presently cannot know . . . what litigation position or defenses [the government agency] will pursue.” 132 F.4th at 923. Here, the Service’s position is clear. Having spent the last ten months considering a change in position, they have now done so. This goes well beyond a “mere possibility” that the interests of the proposed-intervenors and the government “may at some future time” diverge and is more than enough to rebut the presumption of adequate representation. *Id.*

As to the second presumption, which *Burgum* did not address, the Fifth Circuit has recognized that “private interests are different in kind from the public interests of the State or its officials.” *Pueblo Entero*, 29 F.4th at 309; *see also Espy*, 18 F.3d at 1208 (“The government must represent the broad public interest, not just the economic concerns of the timber industry.”); *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996–997 (10th Cir. 2009) (“intervenor’s showing is easily made when party must rely on government, whose obligation is to represent not only the interest of intervenor but the public interest generally, and who may not view that interest as coextensive with the intervenor’s particular interest”) (cleaned up) (quoting *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1254 (10th Cir. 2001)); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003) (noting, in an ESA case, that “we have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors”). Given the government’s conduct in this and similar listing cases, the Center meets its burden here as well.

The Center has decades of experience litigating endangered species cases across multiple administrations and is committed to the stability of the law. It has urged the government for nearly three decades to recognize the urgent need to protect the dunes sagebrush lizard and its habitat. The Center's focus, and that of its members, is conservation, while the government must balance political agendas against the interests of multiple constituencies and priorities. That divergence of interests has now led the government to take a position diametrically opposed to the Center's interests. Rule 24 requires only that the government's differing interests "might" result in inadequate representation. *Pueblo Entero*, 29 F.4th at 309 (quoting *Brumfield v. Dodd*, 749 F.3d 339, 346 (5th Cir. 2014) (finding intervenors "satisfied the minimal burden of showing inadequacy")). Given the government's change in position, that burden has also been met here.

The Fifth Circuit surely did not intend the presumption of adequate representation when the government is a party to be irrebuttable. If lack of certainty at the outset of the case is not sufficient, the fact of actual adversity later in the case must suffice. Would-be intervenors should not be required but unable to demonstrate at any point in the litigation the theoretically "minimal burden" that existing representation "may be" inadequate." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). Because the Center satisfied Rule 24(a)(2)'s requirements, it should be permitted to intervene as of right.

## **II. Permissive Intervention Is Warranted**

Should the Court again deny the Center's right to intervene, the Court should grant permissive intervention. The Center is not merely proposing to reiterate issues of law already raised by the primary parties; the government has chosen not to raise those issues at all. Since the Center's interests are not adequately represented and the government is proffering a basis for

remand that belies the record itself, the Center's participation will assist the Court in reviewing the record evidence and would be in the interest of justice.

**CONCLUSION**

For the reasons set forth above, the Center respectfully requests that this Court grant its motion to intervene as of right or, in the alternative, for permissive intervention.

DATED: June 5, 2026

Respectfully submitted,

CENTER FOR BIOLOGICAL DIVERSITY

by: /s/ Jason C. Rylander

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2026, I electronically filed the foregoing Renewed Motion to Intervene or Submit an Amicus with the Clerk of the Court for the United States District Court for the Western District of Texas by using the CM/ECF system, which will serve a copy of the same on the counsel of record.

/s/ Jason C. Rylander

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