UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Safari Club International Plaintiff, v. Ken Salazar, in his official capacity as Secretary of the U.S. Department of the Interior, et al. Defendants.	Civil Action No. 11-cv-01564 (BAH) Hon. Beryl A. Howell
Terry Owen, et al. Plaintiffs, v. United States Department of the Interior, et al. of the Interior, et al. Defendants.	Civil Action No. 12-cv-00194 (BAH) Hon. Beryl A. Howell (Consolidated Cases
The Exotic Wildlife Association, et al. Plaintiffs, v. The U.S. Department of the Interior, et al. Defendants.	Civil Action No. 12-cv-00340-BAH Hon. Beryl A. Howell (Consolidated Cases)

MOTION TO FILE AMICUS CURIAE BRIEF OF THE TEXAS DEPARTMENT OF AGRICULTURE IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The Texas Department of Agriculture (hereinafter "TDA") submits this Motion for Leave to File an *Amicus Curiae* Brief, and Brief in Support, in the above-captioned matter, and would respectfully show as follows:

There is no statute, rule, or controlling case that defines a federal district court's power to grant leave to file an amicus brief, and allowance of such briefing is solely within the court's discretion. *See Waste Management of Pennsylvania v. City of York*, 162 F.R.D. 34, 36-37 (M.D. Pa. 1995); *see also Citizens Against Casino Gambling in Erie County v. Kempthorne*, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007). However, an *amicus curiae* brief should be allowed when it will "offer insights not available from the parties" or provide a "perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Kempthorne*, 471 F. Supp.2d. at 311 (internal quotations and citations omitted). Moreover, *amici* may be allowed to file briefs in trial court proceedings when "they provide helpful analysis of the law [or] they have a special interest in the subject matter of the suit." *Bryant v. Better Business Bureau*, 923 F. Supp. 720, 728 (D. Md. 1996).

In the instant matter, the Texas Department of Agriculture seeks leave of this Court to file the attached *amicus curiae* brief in response to Safari Club International's Motion for Preliminary Injunction filed on March 8, 2012. Texas Department of Agriculture seeks to file an *amicus curiae* brief in this matter to make clear that failure to preliminarily enjoin the enforcement of the "Removal of the Regulation that Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions," 77 Fed. Reg. 431 (Jan. 5, 2012) will result in irreparable harm to the State

of Texas and the species themselves. As the agency charged with developing and promoting agriculture, horticulture, and other industries that grow, process, or produce products in Texas, and as administrator of the "Go Texan Wildlife Program," the Texas Department of Agriculture is uniquely situated to provide this court with the State's perspective.

RELIEF REQUESTED

For the foregoing reasons, the Texas Department of Agriculture respectfully requests that the Court GRANT the instant Motion and ORDER the Clerk of this Court to accept for filing the Brief of the Texas Department of Agriculture, as *Amicus Curiae*, a copy of which is attached hereto as Exhibit 1.

Respectfully submitted,

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MOTION TO FILE AMICUS CURIAE BRIEF OF THE TEXAS DEPARTMENT OF AGRICULTURE IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT 1

AMICUS CURIAE BRIEF OF THE TEXAS DEPARTMENT OF AGRICULTURE IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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AMICUS CURIAE BRIEF OF THE TEXAS DEPARTMENT OF AGRICULTURE IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The Texas Department of Agriculture (hereinafter "TDA") files this amicus curiae brief in support of the Motion for Preliminary Injunction filed by Plaintiffs The Exotic Wildlife Association, et al., in this case.

I. Statement of Interest.

Pursuant to section 12.002 of the Texas Agriculture Code, TDA is charged with encouraging the proper development and promotion of agriculture, horticulture, and other industries that grow, process, or produce products in Texas. Further, TDA is charged with promoting economic growth in rural areas of Texas. Tex. Agr. Code § 12.027. Pursuant to its statutory authority, TDA has established the Go Texan Wildlife Program, which promotes businesses and organizations that are based around Texas' diverse and extensive wildlife resources. Also, the Texas legislature has recognized that Texas agricultural policy must consider and participate in the formulation of federal programs and policies, by actively addressing the development of federal policy that affects Texas. Tex. Agr. Code § 2.003(14). Texas agricultural policy must also consider protection of property rights. Tex. Agr.Code § 2.003(11).

Here, the final rule titled "Removal of the Regulation That Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions," 77 Fed. Reg. 431 (Jan. 5, 2012) (hereinafter the "Final Rule") represents bad public policy, adopted in violation of controlling law, that will irreparably harm: (1) the three species of African antelope at issue in this case; (2) a viable, beneficial, and flourishing Texas industry associated with the captive breeding and hunting of these animals; and (3) ultimately, the State of Texas, through lost economic opportunity.

II. Policy Issues Presented by this Case.

In 2007, at the behest of former Texas Congressman Henry Bonilla, the Texas A&M University Agricultural and Food Policy Center (hereinafter "A&M") published the results of a study conducted by Dr. David P. Anderson, Brian J. Frosch, and Dr. Joe L. Outlaw, titled the "Economic Impact of the Exotic Wildlife Industry."[1] In the report, A&M estimated the number of exotic wildlife[2] operations in the United States, excluding deer breeding operations, was 3,750, with the majority of those operations located in Texas.[3] As of 2007, the report noted that the exotic wildlife industry in the United States had a total economic impact of $1.3 billion annually and supported 14,383 jobs, most of them in rural America.[4] Over $822 million in direct expenditures were poured into the economy each year by exotic wildlife operations and the sportsmen participating in the industry.[5]

Additionally, the report notes the beneficial impact of the exotic wildlife industry on the recovery and rehabilitation of endangered species:

With some species, exotic wildlife operations in the U.S. serve to rehabilitate their populations. In some cases, species that are listed on the endangered species list are thriving within U.S. operations to the point where breeding herds may be reintroduced into their native land.[6]

144 million acres, or 86% of Texas land, consists of farms, ranches and privately-owned forests. The ability of private landowners to manage the three species of Antelope

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[1] http://www.afpc.tamu.edu/pubs/2/496/rr-2007-02.pdf
[2] The Texas Parks and Wildlife Department defines exotic wildlife as grass or plant eating, single or cloven-hooved mammals that are not indigenous or native to Texas. *Id.* at 7.
[3] *Id.* at 7.
[4] *Id.* at 4.
[5] *Id.* at 15.
[6] *Id.* at 7.

at issue in this case for a profit enables landowners to maintain their property in habitat that is beneficial for natural resources, the environment, and other species[7].

The Final Rule is fundamentally flawed because the United States Department of Interior, through the United States Fish and Wildlife Service (hereinafter "FWS"), refuses to recognize that management of these exotic animals, specifically, the three species of African antelope in this case, supports the beneficial activity of breeding and raising these animals, leading to an increase in their populations and preservation of their genetic diversity. Rather, FWS appears unwilling or unable to recognize the concept that what is good for the exotics industry is good for populations of the oryx, dama gazelle, and addax.

Without this court's intervention, on April 4, 2012, Texas exotic wildlife ranchers and hunting operations that utilize the oryx, dama gazelle, and addax in their businesses will be forced to come into full compliance with the Endangered Species Act and its regulations, including complex and cumbersome permitting requirements. If allowed to go into effect, the Final Rule will kill the sport of hunting these animals, which in turn will kill the industry of breeding and raising these animals, which in turn will kill, through regulation, the three species of Antelope made the subject of this suit, leading to their inevitable extinction. FWS' actions in promulgating the Final Rule are in direct violation of the Endangered Species Act's mandate that FWS must not take any action that harms or jeopardizes a species.[8]

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[7] From Neal Wilkins with Texas A&M University. Need cite.
[8] 16 U.S.C. § 1536(a)(2).

III. Request for Relief

In their Memorandum in Support of Motion for Preliminary Injunction, Plaintiffs point out the numerous procedural and substantive defects associated with the Final Rule. TDA joins in Plaintiffs' request that this court grant Plaintiffs' Motion for Preliminary Injunction and enjoin Defendants from enforcing the Final Rule until this case is resolved on the merits. By granting Plaintiffs' Motion for Preliminary Injunction, this court can take satisfaction that it is having a direct impact in protecting the oryx, dama gazelle and addax from extinction, in contrast to FWS's arbitrary, capricious and ill-considered actions in adopting the Final Rule.

Respectfully submitted,

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