

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION**

KENNETH ADERHOLT; PATRICK CANAN, §  
KEVIN HUNTER, RONALD JACKSON; §  
WILLIAM LALK; KENNETH PATTON; §  
BARBARA PATTON; JIMMY SMITH; §  
KENNETH LEMONS, JR., in his official §  
Capacity as Clay County Sheriff; WICHITA §  
COUNTY, TEXAS; CLAY COUNTY, §  
TEXAS; WILBARGER COUNTY, TEXAS §

*Plaintiffs,*

v.

BUREAU OF LAND MANAGEMENT, NEIL §  
KORNZE, in his official capacity as Director, §  
Bureau of Land Management; UNITED §  
STATES DEPARTMENT OF THE §  
INTERIOR; SALLY JEWELL, in her official §  
Capacity as Secretary of the Interior; and §  
UNITED STATES OF AMERICA, §

*Defendants.*

CIVIL ACTION NO. 7:15-cv-00162-O

**AMICUS CURIAE BRIEF OF THE TEXAS DEPARTMENT OF  
AGRICULTURE IN SUPPORT OF PLAINTIFFS' COMPLAINT**

The Texas Department of Agriculture (TDA) files this amicus curiae brief in support of the Complaint filed by Plaintiffs Kenneth Aderholt, et al., in this case.

This brief is submitted for the Court's consideration only in connection with the trial on the merits, currently scheduled to begin on March 20, 2017. TDA does not file this brief in connection with any current or pending motions before this Court. Rather, TDA files this brief for the Court's consideration on the merits.

## I. Statement of Interest

The Texas Legislature finds that agriculture is a critical element in the economic, cultural, and historical development of Texas. TEX. AGR. CODE § 2.002(1). The State of Texas has established policies that promote agriculture production and among other priorities recognizes that the state must consider and address the:

preservation of farmland, rangeland, timberland, and other land devoted to agricultural purposes, by encouraging the development and improvement of the land for the production of food and other agricultural products consistent with the philosophy of a private property rights state. TEX. AGR. CODE § 2.003(a)(12).

The Texas Department of Agriculture has an interest in sustaining agricultural interests affected by the Court's ruling. When farmers and ranchers profit, so do the economies of rural, commodity-based communities. Agriculture is the economic backbone of many small towns and cities across the state, and without agriculture and the income it generates, many of Texas' rural areas would lose people, businesses, and economic opportunity, and would not survive. In addition, as a state agency, TDA is charged with taking a statewide view of the Court's ruling as it could affect the production of livestock and other agricultural industries.

The Texas Department of Agriculture is charged by statute with encouraging the "proper development and promotion of agriculture, horticulture, and other industries that grow, process, or produce products in this state" and "protection of property rights and the right to farm." TEX. AGR. CODE § 12.002.

Key to the preservation and promotion of agriculture production is certainty in land titles and property ownership. This certainty ensures the right of Texas farmers and ranchers to own, control, and manage their land in a manner that is most conducive to supplying a safe and affordable food and fiber supply.

Here, the Bureau of Land Management's (BLM) actions of arbitrarily claiming title to thousands of acres of private property belonging to Texas landowners along the Red River represent bad public policy because: (1) the Supreme Court previously determined that the area where the property is located fell within Texas' borders and was not federal land and thus, the BLM's actions are in contravention of prior case law; (2) based on the BLM's actions of resurveying some of the areas of property in 2003, affixing new markers, and then publishing an updated survey into the Federal Register, the BLM is seeking to declare private Texas property as federally owned without affording the landowners with due process of law; and (3) due to the BLM's conduct, the Texas landowners, who use their property for ranching and farming purposes, are unable to claim good title to their property with assuredness and are therefore likely to experience lost economic opportunities with respect to their property.

## **II. Policy Issues Presented By This Case**

Certainty of title and ownership of Texas land is threatened by the BLM, who has declared portions of Texas land to be federal land despite the case law to the contrary.

Long-standing case law has established that the boundary between Texas and Oklahoma begins at the southern bank of the Red River and that the BLM's property ownership is limited to the bottom-half of the sandy riverbed outside of Texas. This was the holding in the case of *State of Oklahoma v. State of Texas*, 260 U.S. 606 (1923), in which the Supreme Court settled a dispute between Oklahoma and Texas, with the United States intervening, regarding the location of the boundary of the Red River between the two states. The plaintiff landowners and their families have farmed and developed the land in dispute for many years. For the BLM to now arbitrarily claim this land as the property of the federal government is grossly unjust.

The BLM, by affixing new survey markers onto the property of the plaintiff landowners, laying claim to portions of the land and publishing an updated survey into the Federal Register despite the fact that the land has not been properly delineated, has effectively deprived the plaintiff landowners of the full use of their property without regard for due process.

The purpose of constitutional due process requirements is to protect a person's use and possession of property from arbitrary encroachment and to minimize substantively unfair or mistaken deprivations of property. *Fuentes v. Shevin*, 407 U.S. 67, 81. The BLM's actions violate the plaintiff landowners' constitutionally protected due process rights by claiming portions of land as federally owned without that land being properly delineated with a reasonable degree of specificity.

The BLM's actions have cast a cloud upon the certainty of the plaintiff landowners' good title to the land. The landowners, who use their land to support themselves and their local communities cannot freely farm, develop, lease, or sell the land that they own as long as the BLM claims some unknown stake in that land. Such uncertainty also means that the plaintiff landowners cannot make any improvements or modifications to their land to benefit their ranching and farming operations without the possibility that the federal government will reap the benefits of those improvements and modifications instead of the landowners and any future title holders. Such uncertainty of title has a distinct chilling effect on the ability of affected landowners to obtain land secured loans necessary for operating funds, to participate in state and federal grant programs, and to participate in government sponsored conservation activities.

Property rights are essential to farmers and ranchers whose livelihoods revolve around their land. A lack of certainty regarding who holds good title to land hinders the profitability of Texas agriculture production and threatens landowners' rights and the right to farm. By its

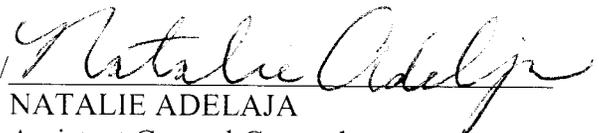
actions, the BLM has placed Texas landowners in a position where their livelihoods are unable to flourish and thrive as they should, and Texas agriculture will suffer as a result. By ruling in favor of the plaintiffs, this court can ensure that property rights in Texas will remain protected from government overreach.

### III. Prayer

For the foregoing reasons and in consideration of the issues discussed in this brief, the Texas Department of Agriculture asks this court to grant the relief requested by the plaintiffs in this case.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I, Natalie Adelaja, hereby certify that on this 10th day of May, 2016, a true and correct copy of the foregoing document was transmitted via electronic service as indicated below:

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