

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

SAFARI CLUB INTERNATIONAL,	)	
	)	
Appellant	)	<b>No. 13-5300</b>
	)	
v.	)	
	)	
	)	
SALLY JEWELL, in her official capacity	)	
as Secretary of the U.S. Department of the	)	
Interior, <i>et al.</i> ,	)	
	)	
Appellees	)	

**SAFARI CLUB INTERNATIONAL’S MOTION FOR CONTINUED STAY  
OF BRIEFING**

**Introduction**

Appellant Safari Club International (SCI) seeks a continuation of the stay of the briefing of the appeal in this matter. On February 27, 2014, this Court granted SCI’s initial motion for a stay of the briefing and directed the parties to file motions governing future proceedings by May 28, 2014. In the intervening weeks, two things occurred that will likely have an impact on this appeal: (1) Appellees Sally Jewell *et al.* (“Federal Appellees”) promulgated regulations regarding the three antelope species at issue in this case; and (2) parties to this appeal filed a lawsuit that could impact the viability of those regulations. The outcome of that litigation will likely influence SCI’s interest in continuing this appeal. For that

reason, SCI seeks to continue the stay of briefing of this appeal pending the outcome of that litigation.

On January 17, 2014, Congress enacted the 2014 Consolidated Appropriations Act, Pub. L. No. 113-76 (“2014 Appropriations Act”), which included Section 127, a provision directing the Secretary of the Interior to issue a regulation that removed the permit requirement for the take of members of U.S. captive herds of scimitar-horned oryx, dama gazelle and addax (“three antelope species”). On March 19, 2014, the Secretary of the Interior published the required regulation in the Federal Register. “Endangered and Threatened Wildlife and Plants; Reinstatement of the Regulation That Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions” (“Three Antelope Rule”) 79 Fed. Reg. 15250 (Mar. 19, 2014).

On March 5, 2014, Friends of Animals (an intervenor-appellee in this appeal) filed a lawsuit against the Secretary of the Interior and the U.S. Fish and Wildlife Service to challenge the constitutionality of the 2014 Appropriations Act. On April 11, 2014, Friends of Animals amended their Complaint to add a challenge to the Three Antelope Rule. The outcome of these challenges to the 2014 Appropriations Act and Three Antelope Rule will likely impact SCI’s need to pursue this appeal, in particular if those plaintiffs prevail. For this reason, SCI asks

the Court to stay briefing until the litigation has been finally resolved, so that Safari Club can determine whether continuation of this appeal remains necessary.

Counsel for SCI contacted counsel for Federal Appellees and Intervenor-Appellees in order to be able to inform this Court of their positions on this motion. Federal Appellees are willing to consent only to a 30 day continuation of the stay of briefing. Intervenor Appellees the Humane Society of the United States, Defenders of Wildlife, and Born Free USA are also willing to consent to a stay of no more than 30 days, after which they recommend that SCI should either submit a briefing schedule or dismiss its appeal.<sup>1</sup> Intervenor-Appellee Friends of Animals opposes a continuation of the stay. The positions of the Appellees and the alternatives to the continuation of briefing that some of the Appellees propose will not address, let alone remedy, the problem that has prompted Safari Club to file this request for a stay of briefing. A 30 day stay (or no stay at all) will not alter the fact that, depending on the outcome of litigation currently pending in the District Court, the parties to this litigation may not need to brief and this Court may not need to review the briefing of some or all of the issues in this appeal. This

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<sup>1</sup> Intervenor-Appellees Humane Society of the United States *et al.* have requested that SCI include this footnote indicating their objections to this motion's characterizations of law, the existence and nature of SCI's purported injuries, and the representation regarding prejudice to appellees from a stay.

question cannot be resolved until the outcome of that litigation in the District Court is determined.

### **Grounds for the Motion**

SCI filed this appeal to challenge a District Court ruling that upheld a decision by the U.S. Fish and Wildlife Service (“FWS”) to list the U.S. populations of the three antelope species as endangered under authority of the Endangered Species Act (“ESA”), 16 U.S.C. §1533. Section 127 of the 2014 Appropriations Act directed the Secretary of the Interior to issue a regulation making it unnecessary for private owners to obtain permits to allow the lethal removal (“take”) of members of their herds of the three antelope species. The Secretary of the Interior complied with the 2014 Appropriations Act and SCI members can now take members of their herds without first obtaining permits from the U.S. Fish and Wildlife Service. Although the 2014 Appropriations Act and the Three Antelope Rule do not change the listing status of the three antelope species, they do change the effect that the endangered status has on SCI’s and its members’ interests.

Friends of Animals has already filed a challenge to the constitutionality of the 2014 Appropriations Act and to the legality of Three Antelope Rule. *Friends of Animals v. Sally Jewell et al.*, 14-cv-00357(BAH). If the court upholds the constitutionality of the 2014 Appropriations Act and legality of the Three Antelope Rule, it is likely that some of the harms that prompted SCI to file this litigation will

be alleviated, and it is possible that SCI may find it unnecessary to pursue this appeal. However, if Friends of Animals' challenges to the 2014 Appropriations Law or the Three Antelope Rule are successful, SCI members will be returned to the very status that required SCI to file this litigation.<sup>2</sup>

SCI's goal in requesting a stay is to prevent SCI and the other parties to this litigation from unnecessarily expending their resources to research and draft briefs and to save the Court from having to review briefs in the event that the outcome of the litigation challenging the 2014 Appropriations Law and the Three Antelope Rule makes it appropriate for SCI to discontinue this appeal.

### **Relief Sought**

SCI requests that this Court issue a continuation of the stay of all briefing until 65 days following the final resolution of *Friends of Animals v. Sally Jewell et al.*, 14-cv-00357(BAH).<sup>3</sup> SCI further requests that this Court order SCI to, on or

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<sup>2</sup> A dismissal of this appeal pending the outcome of the lawsuit challenging the 2014 Appropriations Act and the Three Antelope Rule will not protect SCI's interests. The statute of limitations for SCI's challenge to the FWS's September 2, 2005 decision to list the three antelope species as endangered expired on September 2, 2011. If this case is dismissed, SCI will not be able to refile its suit to challenge the listing of the U.S. captive herds of the three antelope species.

<sup>3</sup> SCI has chosen a 65 day window to accommodate the fact that, in litigation involving the Federal Government, the parties have 60 days to file a Notice of Appeal of a district court ruling. The 65 day period will enable SCI to determine whether any of the parties to *Friends of Animals v. Sally Jewell et al.*, 14-cv-00357(BAH) plan to appeal the district court's ruling and whether the ruling is

before that date, 1) move to dismiss this appeal; 2) move for a continuation of the stay of briefing; or 3) in consultation with the other parties to this litigation submit a new joint proposed briefing schedule for this appeal.

## **Argument**

### **Relevant Facts and Procedural History**

SCI filed the underlying lawsuit in this appeal to challenge a regulation issued by the FWS that listed U.S. populations of the three antelope species as endangered. 70 Fed. Reg. 52319 (Sept. 2, 2005). Once a species is listed as endangered, take of members of that species is prohibited unless exempted via special rules and/or permits issued by the FWS. 16 U.S.C. § 1538(a)(1)(A).

When it initially listed the three antelope species as endangered in 2005, the FWS also issued a companion rule that made it unnecessary for private ranchers, including SCI members, to obtain permits that authorized the take of members of their privately owned herds of the three species. 70 Fed. Reg. 52310 (“2005 Rule”). Several groups challenged the 2005 Rule and on June 22, 2009 the District Court of the District of Columbia held the rule to be in violation of the ESA.

*Friends of Animals v. Salazar*, 626 F.Supp.2d 102 (D.D.C. 2009). In 2012, the FWS withdrew the 2005 Rule – making it necessary for ranchers to obtain individual permits to cull members of their herds. 77 Fed. Reg. 431 (Jan. 5, 2012).

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final. This will enable SCI to decide whether it will need a continuation of the stay or whether it can seek one of the other two alternatives identified in this motion.

SCI brought this suit in the District Court to challenge the listing of the U.S. populations of the three antelope species and to remedy the harms caused to SCI and its members by the endangered status of these populations. On August 9, 2013, the District Court upheld the legality of the FWS's listing of the U.S. populations of the three antelope species. SCI appealed that ruling to this Court on October 8, 2013.

On January 18, 2014, the President signed into law the 2014 Appropriations Act, which included the following language applicable to the three antelope species:

Before the end of the 60-day period beginning on the date of enactment of this Act, the Secretary of the Interior shall reissue the final rule published on September 2, 2005 (70 Fed. Reg. 52310 *et seq.*) without regard to any other provision of statute or regulation that applies to issuance of such rule.

H.R. 3547, 113th Cong. § 127. On March 19, 2014, in accordance with the directive of the 2014 Appropriations Act, the FWS (on behalf of the Secretary of the Interior) promulgated the Three Antelope Rule. The Three Antelope Rule once again makes it unnecessary for private ranchers to obtain individual permits from the FWS to cull their herds and to allow others to take members of their herds.

At present, the uncertainty of the outcome of *Friends of Animals v. Sally Jewell et al.*, 14-cv-00357(BAH) makes it difficult for SCI to determine whether and how to proceed with this appeal. If granted a stay, SCI, other parties, and the

Court may be spared the time and effort required to draft and review the briefs and/or portions of the briefs in a case where briefing, and potentially the entire appeal, may become unnecessary.

### **Relevant Law**

This Court possesses the power to prevent the expenditure of time and resources in preparing and reviewing briefs that may soon become unnecessary.

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 255 (1936).

In determining whether it should issue the requested stay, the Court balances the competing interests of the parties. *Landis*, 299 U.S. at 255. In this case, Federal Appellees will suffer no harm from a continuance that would allow the parties to postpone briefing until the pending challenges to the 2014 Appropriations Law and to the Three Antelope Rule are fully litigated and that lawsuit’s impact on the issues relevant to this appeal can be determined. Similarly, Intervenor-Appellees will suffer no harm from the proposed stay. In terms of preparing briefs, all parties will benefit if SCI ultimately decides to discontinue this appeal.



## Conclusion

SCI respectfully requests that this Court issue a stay of all briefing for 65 days following the final resolution of *Friends of Animals v. Sally Jewell et al.*, 14-cv-00357(BAH) by the district court. SCI further requests that this Court order SCI to, on or before that date, 1) move to dismiss this appeal; 2) move for a continuation of the stay of briefing; or 3) in consultation with the other parties to this litigation submit a new joint proposed briefing schedule for this appeal.

Dated: May 28, 2014

Respectfully submitted,

/s/Anna M. Seidman

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