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May 17, 2011

Clerk of the Court
Ingham County Circuit Court
313 W. Kalamazoo
P.O. Box 40771
Lansing, Michigan 48901-7971

Re: *Michigan Animal Farmers Assn v Michigan Department of
Natural Resources and Environment*
Case No. 11-395-CZ

Dear Sir/Madam:

Enclosed for filing please find First Amended Complaint for Declaratory and Injunctive Relief and Certificate of Service in the above-referenced case.

Thank you for your assistance.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.



Thaddeus E. Morgan

TEM/cdb
Enclosure

cc: Thomas E. Maier, Esq. (w/enc)

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

**MICHIGAN ANIMAL FARMERS
ASSOCIATION, and DOUGLAS L. MILLER,**

Plaintiffs,

Case No.: 11-395-CZ

v

Hon. Joyce Draganchuk

**MICHIGAN DEPARTMENT OF NATURAL
RESOURCES AND ENVIRONMENT,**

Defendant

Thaddeus E. Morgan (P47394)
Fraser Trebilcock Davis & Dunlap, P.C.
124 W. Allegan, Suite 1000
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Attorneys for Plaintiffs

Thomas E. Maier (P34526)
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Telephone: (517) 373-7540
Attorney for Defendant

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

NOW COME Plaintiffs, Michigan Animal Farmers Association and Douglas L. Miller, by and through their attorneys, Fraser Trebilcock Davis & Dunlap, P.C., and for their first amended complaint for declaratory and injunctive relief, state:

Nature of Action

1. This is an action to declare unconstitutional, invalid, and unlawful Invasive Species Order, Amendment No. 1 of 2010 ("ISO") issued by the Director of the Michigan Department of Natural Resources and Environment ("DNRE") on December 9, 2010 but not intended to be final or effective until July 8, 2011. (**Exhibit 1**, ISO)

2. The ISO is unconstitutional, invalid, and unlawful on the basis that it constitutes a regulatory taking of private property without just compensation, and it was not

issued in conformance with the Invasive Species Act (MCL § 324.41301 *et seq.*) which vests exclusive authority to add or delete from the list of prohibited species with the Commission of Natural Resources and not the Director of DNRE.

3. The ISO is inconsistent and in conflict with the Animal Industry Act, MCL § 287.701 *et seq.*, which defines the animals under the control and management of Plaintiffs and subject to the ISO as "native" to the state and "domestic" as a result of being under the husbandry of humans.

4. Plaintiff also seeks to have final enactment and implementation of the ISO enjoined until such time as this Court rules on the constitutionality and validity of the ISO.

Parties, Jurisdiction and Venue

5. Plaintiff Michigan Animal Farmers Association ("MAFA") is a Michigan non-profit corporation with its registered office located in Center Line, Macomb County.

6. Plaintiff Douglas L. Miller is an individual member of MAFA who resides in Oakland County, Michigan.

7. Defendant DNRE is a department of the State of Michigan.

8. This Court has jurisdiction pursuant to MCR 2.605 on the basis that there exists an actual controversy between the parties and also pursuant to the Revised Judicature Act, MCL § 600.601.

9. Venue is proper in this Court pursuant to MCL § 600.1615.

Factual Allegations

10. MAFA is a non-profit corporation organized on a membership basis, and its members own and operate hunting farms, also known as "game ranches," where paying

clientele hunt animals, including Old world swine, razorback, eurasian boar, and Russian boar. MAFA's members also breed and raise the animals used to populate game ranches.

11. Plaintiff Miller owns and operates a game ranch in Jackson County populated with Russian and Eurasian boar that are purchased from other Michigan farms.

12. The animals are controlled and managed by MAFA's members and Plaintiff Miller and are under the husbandry of humans, i.e. they are domestic animals and not feral.

13. On or about December 9, 2010, DNRE issued an ISO (**Exhibit 1**) with a final and effective date of July 8, 2011 purporting to add as an additional prohibited species under Part 413 of the Natural Resources and Environmental Protection Act, commonly known as the "Invasive Species Act," (MCL § 324.41301 *et seq.*) ("Act"), the animals controlled and managed by MAFA's members and Plaintiff Miller, to wit: Old world swine, razorback, eurasian boar, and Russian boar.

14. If allowed to become final and effective on July 8, 2011, the ISO will make it unlawful to possess the animals currently under the husbandry of MAFA's members and Plaintiff Miller in the State of Michigan.

15. No provision is made in the ISO to compensate or indemnify MAFA's members or Plaintiff Miller for their financial losses in the event the ISO becomes final and effective on July 8, 2011.

COUNT I
REQUEST FOR DECLARATORY RELIEF

16. Plaintiffs incorporate their allegations in paragraphs 1-15 as though fully stated herein.

17. If the ISO is allowed to be final and effective on July 8, 2011, MAFA's members and Plaintiff Miller will suffer harm in an individualized and particularized manner different from the citizenry at large.

18. If the ISO is allowed to be final and effective on July 8, 2011, MAFA's members and Plaintiff Miller will be completely deprived of all economically beneficial use of their property and investment backed expectations in the form of stocks of animals and hunting facilities.

19. If the ISO is allowed to be final and effective on July 8, 2011, it will deny MAFA's members and Plaintiff Miller the lawful use of their property as a consequence of officially adopted actions of DNRE under color of law, contrary to the express rights secured by Article 10, Section 2 of the Michigan Constitution.

WHEREFORE, Plaintiffs Michigan Animal Farmers Association and Douglas L. Miller request that this Honorable Court enter a judgment in Plaintiffs' favor declaring that the Invasive Species Order, Amendment No. 1 of 2010, deemed to be final and effective as of July 8, 2011, is in violation of Const 1963, Art X, § 2.

COUNT II
REQUEST FOR DECLARATORY RELIEF

20. Plaintiffs incorporate their allegations in Paragraphs 1-19 as though fully stated herein.

21. Pursuant to the Act, authority to add or delete from the list of prohibited species is vested with the Commission of Natural Resources ("CNR"). The Act states in pertinent part:

Sec. 41302(1) The commission of natural resources may by order add to or delete from the list of prohibited species or restricted species under section 41301 any species other than an insect or plant species. Before issuing an

order under this subsection, the commission of natural resources shall consult with the department of agriculture. (MCL § 324.41302(1)) (emphasis added).

22. The ISO (**Exhibit 1**) was issued by the Director of DNRE and not the CNR.

23. DNRE's issuance of the ISO which is deemed to be final and effective as of July 8, 2011 is not authorized by and violates the Act.

WHEREFORE Plaintiffs Michigan Animal Farmers Association and Douglas L. Miller request that this Honorable Court enter a judgment in Plaintiffs' favor declaring that the Invasive Species Order, Amendment No. 1 of 2010, deemed to be final and effective as of July 8, 2011, is unlawful and Defendant Michigan Department of Natural Resources and Environment is without statutory authority to issue any such order.

COUNT III
REQUEST FOR DECLARATORY RELIEF

24. Plaintiffs incorporates their allegations in Paragraphs 1-23 as though fully stated herein.

25. Pursuant to the Act, in order for a species to be prohibited, it must be "not native" to the state. MCL § 324.41302(3)(a)(i).

26. "Not native" is not defined in the Act. However, the Animal Industry Act, MCL § 287.701 *et seq.*, defines "native" as "born and raised in this state, or legally imported into the state and having complied with the entry requirements prescribed by the director [of Department of Agriculture], and having been maintained in the state for at least 45 days." MCL § 287.705(5).

27. The ISO designates "sus scrofa linnaeus" as prohibited species. "Sus scrofa" is any breed of swine running at large, i.e. "feral," which is consistent with the definition of "feral swine" under the Animal Industry Act: "'Feral swine' means swine which have lived

their life or any part of their life as free roaming or not under the husbandry of humans." MCL § 287.703(27).

28. The ISO excepts from its application "sus domestica," also known as the species that are raised in conjunction with the domestic hog and pig industry.

29. "Domestic" is defined in the Animal Industry Act as "those species of animals that live under the husbandry of humans." MCL § 287.703(19).

30. Rules of statutory interpretation provide that the Legislature is presumed to be aware of existing statutes when enacting new legislation, and new legislation must be read in conjunction with other relevant statutes. A more specific enactment is controlling to the extent of any conflict with a more general enactment.

31. The non-wild, non-feral, and not running at large animals under the control and management of MAFA's members and Plaintiff Miller sought to be prohibited by implementation of the ISO, i.e. Old world swine, razorback, eurasian boar, and Russian boar, are all native to this state, live under the husbandry of humans, and are not feral.

32. The animals under the control and management of MAFA's members and Plaintiff Miller cannot be deemed invasive species and subject to the ISO because they are native to the state and specifically excepted from application of the ISO because they are domestic animals that live under the husbandry of humans.

WHEREFORE Plaintiffs Michigan Animal Farmers Association and Douglas L. Miller request that this Honorable Court enter a judgment in Plaintiffs' favor declaring that the Invasive Species Order, Amendment No. 1 of 2010, deemed to be final and effective as of July 8, 2011, is unlawful and in conflict with the specific provisions of the Animal Industry

Act, and Defendant Michigan Department of Natural Resources and Environment is without statutory authority to issue any such order.

COUNT III
REQUEST FOR INJUNCTIVE RELIEF

33. Plaintiffs incorporate their allegations in Paragraphs 1-32 as though fully stated herein.

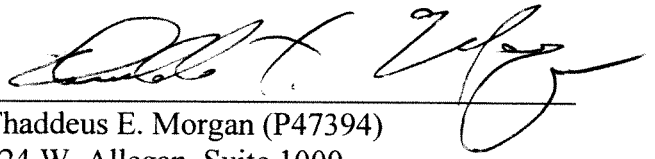
34. As alleged above, the ISO is in violation of the Michigan Constitution, DNRE is without statutory authority to issue the order, and it conflicts with the specific provisions of the Animal Industry Act under which the animals controlled and managed by MAFA's members and Plaintiff Miller cannot be deemed not native or invasive.

35. Enactment and implementation of the ISO will cause irreparable harm to MAFA's members and Plaintiff Miller by, *inter alia*, causing the loss of prospective clientele, loss of goodwill, and uncompensated financial losses for animal stocks and hunting facilities.

36. Plaintiffs do not have an adequate remedy at law.

WHEREFORE Plaintiffs Michigan Animal Farmers Association and Douglas L. Miller request that this Honorable Court enter an order enjoining the Michigan Department of Natural Resources and Environment from enacting, implementing, or otherwise making Invasive Species Order, Amendment No. 1 of 2010 a final order.

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
Attorneys for Plaintiffs Michigan Animal
Farmers Association and Douglas L. Miller

By: 
Thaddeus E. Morgan (P47394)
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Dated: May 17, 2011

FRASER
TREBILCOCK
DAVIS &
DUNLAP,
P.C.
LAWYERS
LANSING,
MICHIGAN
48933

Invasive Species Order

Amendment No. 1 of 2010

By authority conferred on the Department of Natural Resources and Environment by section 41302 of 1994 PA 451, as amended, MCL 324.41302, and Executive Order 45 of 2009, it is ordered that effective July 8, 2011, the Invasive Species Order shall be amended as follows:

40.4 Additional prohibited species.

(1) Possession of the following live species, including a hybrid or genetic variant of the species, an egg or offspring of the species or of a hybrid or genetically engineered variant, is prohibited:

(a) New Zealand mud snail (*potamopyrgus antipodarum*).

(b) Wild boar, wild hog, wild swine, feral pig, feral hog, feral swine, Old world swine, razorback, eurasian wild boar, Russian wild boar (*Sus scrofa Linnaeus*). This subsection does not and is not intended to affect *sus domestica* involved in domestic hog production.

(c) The department shall consult with staff from the Michigan department of agriculture on the development of a phased compliance protocol for the implementation of this section.

Issued on this 9th day of December, 2010.

Rebecca A. Humphries
Director

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Plaintiffs,

Case No.: 11-395-CZ

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Hon. Joyce Draganchuk

**MICHIGAN DEPARTMENT OF NATURAL
RESOURCES AND ENVIRONMENT,**

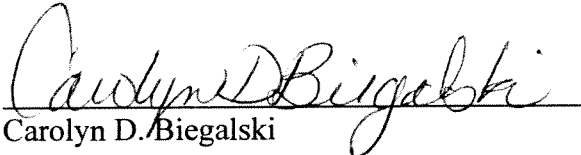
Defendant

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Lansing Michigan 48909
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Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 17, 2011, copies of First Amended Complaint for Declaratory and Injunctive Relief and this Certificate of Service were served upon: Thomas E. Maier, attorney for Defendant, 6th Floor, Williams Building, 525 West Ottawa Street, P.O. Box 30755, Lansing, Michigan 48909 by enclosing said documents in an envelope properly addressed with first class postage thereon and depositing same in the United States Mail.


Carolyn D. Biegalski

Date: May 17, 2011