

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

FRONT RANGE EQUINE RESCUE, THE  
HUMANE SOCIETY OF THE UNITED  
STATES, MARIN HUMANE SOCIETY,  
HORSES FOR LIFE FOUNDATION,  
RETURN TO FREEDOM, FOUNDATION TO  
PROTECT NEW MEXICO WILDLIFE,  
RAMONA CORDOVA, KRYSTLE SMITH,  
CASSIE GROSS, DEBORAH TRAHAN,  
BARBARA SINK, SANDY SCHAEFER,  
TANYA LITTLEWOLF, CHIEF DAVID  
BALD EAGLE, CHIEF ARVOL LOOKING  
HORSE and ROXANNE TALLTREE-  
DOUGLAS,

Plaintiffs,

v.

TOM VILSACK, Secretary U.S. Department of  
Agriculture; ELIZABETH A. HAGEN, Under  
Secretary for Food Safety, U.S. Department of  
Agriculture; and ALFRED A. ALMANZA,  
Administrator, Food Safety and Inspection  
Service, U.S. Department of Agriculture,

Defendants.

Civil No. 1:13-CV-00639-MCA-RHS

**PLAINTIFFS AND INTERVENOR STATE OF NEW MEXICO'S RESPONSE TO  
FEDERAL DEFENDANTS' AND DEFENDANT-INTERVENORS' JOINT MOTION TO  
CONSOLIDATE PRELIMINARY INJUNCTION HEARING WITH A HEARING ON  
THE MERITS, AND FOR EXPEDITED BRIEFING ON THE MERITS**

Plaintiffs and Plaintiff-Intervenor State of New Mexico (collectively "Plaintiffs") support Defendants' request that the Court expedite resolution of this case with briefing on the merits. (ECF 131.)

However, Plaintiffs request the following slight modifications to the proposed schedule, which the federal defendants were not willing to include in their motion. First, Plaintiffs are

likely to receive five responses to their merits brief. Rather than having Plaintiffs file separate replies to each of these five briefs, Plaintiffs and the State of New Mexico request that they each be separately allowed to file a reply brief of 30 pages in length.

Second, Plaintiffs request that the Court rule first on Plaintiffs' expedited motion for modification of the TRO and objection to the magistrate's bond order (ECF 112) before turning to this motion because the Court's decision on that motion may affect the briefing (and any hearing) schedule proposed, and because that motion has been expedited and is of enormous importance to all parties in the case.

Finally, Plaintiffs request that, consistent with *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1580 (10th Cir. 1994), the parties agree to limit their briefing to the federal defendants' decision making as documented in the administrative record.

Plaintiffs respectfully request that the Court include these modifications and adopt the expedited briefing schedule included in Plaintiffs' proposed Order filed simultaneously with this response.<sup>1</sup>

Respectfully submitted this 27th day of August 2013.

**For Plaintiffs:**

/s/ Bruce A. Wagman

BRUCE A. WAGMAN (Admitted *Pro Hac Vice*)

ROCKY N. UNRUH (NM Bar #3626)

SCHIFF HARDIN LLP

One Market, Spear Tower, 32<sup>nd</sup> Fl.

San Francisco, CA 94105

Telephone: (415) 901-8700

Facsimile: (415) 901-8701

[bwagman@schiffhardin.com](mailto:bwagman@schiffhardin.com)

[runruh@schiffhardin.com](mailto:runruh@schiffhardin.com)

Attorneys for Plaintiffs

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<sup>1</sup> Plaintiffs have no objection to the status conference requested by federal defendants, but note that Plaintiffs' counsel is unavailable for a status conference on August 28 and 29, due to a pre-existing and longstanding commitment.

BRIAN EGOLF  
EGOLF + FERLIC + DAY, LLC  
128 Grant Avenue  
Santa Fe, NM 87501  
Telephone: (505) 986-9641  
[brian@egolfaw.com](mailto:brian@egolfaw.com)

Attorneys for Foundation to Protect New Mexico  
Wildlife

**For Plaintiff-Intervenor**

**GARY K. KING**  
**NEW MEXICO ATTORNEY GENERAL**

*/s/ Ari Biernoff*

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Ari Biernoff  
Assistant Attorney General  
408 Galisteo Street  
Santa Fe, NM 87501  
Telephone: (505) 827-6086  
Facsimile: (505) 827-6036  
abiernoff@nmag.gov

Attorneys for Intervenor State of New Mexico

**CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 2013, I filed through the United States District Court ECF System the foregoing document to be served by CM/ECF electronic filing on all counsel of record.

*/s/ Bruce A. Wagman*

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BRUCE A. WAGMAN (Admitted *Pro Hac Vice*)  
SCHIFF HARDIN LLP