

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  
FOR THE PROTECTION OF 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' EMERGENCY MOTION TO MODIFY  
THE AMENDED TEMPORARY RESTRAINING ORDER**<sup>1</sup>

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<sup>1</sup> Pursuant to Local Rule 7.1(a), Plaintiffs have conferred with counsel to obtain their position on this Motion. The federal defendants did not clearly indicate whether they oppose the Motion but state that “[w]hile Federal Defendants do not agree with many of the characterizations in Plaintiffs’ motion, Federal Defendants’ position regarding modifying the temporary restraining order is as set out in the September 13, 2013 Notice filed with the Court (ECF No. 154).” Defendant-intervenors Rains Natural Meats, Valley Meat, Responsible Transportation, Chevaline, and International Equine Business Association oppose this Motion. The State of New Mexico supports this Motion. The other parties have not noted a position.

## REQUEST FOR EXPEDITED REVIEW

Remarkably, defendant-intervenor Rains Natural Meats (“RNM”) intends to commence horse slaughter operations as early as September 23, 2013, despite the existence of this Court’s temporary restraining order (“TRO”), *without informing the Court of its actions*. See Letter from Dan Erdel, to Paul Kiecker (Sept. 17, 2013) (attached as Exhibit 1);<sup>2</sup> Email from Alison Garner to Bruce Wagman (Sept. 18, 2013, 08:33 EST) (attached as Exhibit 2).<sup>3</sup> Even more remarkable, the federal defendants have stated that they are prepared to comply with RNM’s demands and provide inspection services to the horse slaughter facility on or before September 23, 2013, thus allowing RNM horse slaughter operations to commence. See Federal Defs.’ Notice, Sept. 13, 2013, ECF No. 154 at 2-3 (“Notice”); see also Exhibit 2 (“As we stated in our Notice . . . ‘Because FSIS is required, as a matter of law, to provide inspectors for these operations . . . FSIS must do so, in the absence of an amendment to the Court’s temporary restraining order. . . .’”). Accordingly, Plaintiffs hereby move the Court for an Order modifying its existing TRO, pursuant to Federal Rule of Civil Procedure 65, to enjoin the federal defendants from providing horse slaughter inspection to RNM.<sup>4</sup> Such an Order would be consistent with the language proposed in the federal defendants’ Notice. See Notice at 2-3.

There is no question that the federal defendants’ provision of inspection services to RNM at this time violates the spirit, if not the letter, of this Court’s Temporary Restraining Order. This Court issued its Order based on the federal defendants’ failure to conduct the required NEPA analysis prior to issuing grants of inspection to Valley Meat (“VM”) and Responsible Transportation (“RT”), and prior to issuing FSIS Directive 6130.1 (“Directive”). See Amended TRO Order, ECF No. 125 (“TRO Order”) at 2-5. The federal defendants have issued a

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<sup>2</sup> The letter states that “[d]emand is hereby made upon you as a representative of the USDA and the FSIS to issue a grant of inspection today so business operations can commence tomorrow morning or as quickly as inspectors can be assigned by FSIS.” *Id.*

<sup>3</sup> The email states that “[w]e understand from our conversation with Blair [Dunn] that: 1) Rains intends to move forward with [horse slaughter] operations on 9/23; and 2) Rains does not intend to file anything with the Court about this or in response to the Notice FSIS filed last Friday.” *Id.*

<sup>4</sup> Plaintiffs respectfully request that this Court expedite briefing and decision on this Motion.

categorical exclusion decision memo for a grant of inspection to RNM (“RNM Memo”) that is substantially similar to the categorical exclusion memos issued for VM (“VM Memo”) and RT (“RT Memo”), *compare* RNM Memo, Sept. 13, 2013, ECF No. 154-1 *with* VM Memo, AR2471 *and* RT Memo, AR3285, and will utilize Directive 6130.1 in conducting horse slaughter inspections at RNM, just as they plan to do in conducting inspections at VM and RT. *See* TRO Order at 3-4 (“[F]uture agency action will be and indeed was based on the Directive. . . . [F]uture drug residue testing of equines at Valley Meat and Responsible Transportation will be based on the standards set forth in the policy.”); Directive, AR1866. Indeed, the federal defendants have explicitly stated in their Notice that “there is no substantial basis to distinguish the grant of inspection for [RNM] from the grants for the other two facilities with regard to the Court’s assessment of the factors for emergency injunctive relief.” Notice at 2.

Because the federal defendants have based their decision to commence horse slaughter inspections at RNM on the same grounds that this Court held in its TRO Order are likely inadequate to fulfill the agency’s NEPA obligations, *see* TRO Order at 2-5, the Court should modify its Order to make clear that the TRO is equally applicable to inspections at RNM, and that the federal defendants are enjoined from engaging in any such inspections pending this Court’s resolution of the case on the merits. Indeed, a plaintiff and a declarant in this case live near the RNM site and will be directly harmed if these operations commence.<sup>5</sup>

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<sup>5</sup> *See* Declaration of Barbara Ann Sink, Wagman Decl., Ex. 24, ECF No. 13 at ¶¶ 5-10 (If horse slaughter operations commence at RNM, “I will see it as a blight to my community and will want to seek out another place to live,” “I will be extremely upset and will be disturbed by the knowledge that this brutal activity is taking place so close to my home,” “I would be concerned that the water in the area was contaminated from the runoff from the slaughter facility,” and it “will seriously detrimentally impact my ability to enjoy my life and my community.”); Declaration of Lawrence Steven Seper, Wagman Decl., Ex. 25, ECF No. 13 at ¶¶ 8-10 (If horse slaughter operations commence at RNM, it “will seriously, detrimentally impact my ability to enjoy my life and my community,” “I will be extremely upset and will be disturbed by the knowledge that this brutal activity is taking place so close to my home,” and “I will suffer distress, and my appreciation of my community and the proud nature of being a Gallatin citizen will be immediately and permanently altered.”).

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court modify its Order enjoining the federal defendants from conducting horse meat inspections at RNM. Such an order will align with the notice provided by the federal defendants, *see* Notice at 2-3, and avoid the risk of commencing horse slaughter operations without the requisite NEPA analysis.

Respectfully submitted this 19th day of September 2013.

*/s/ Bruce A. Wagman*

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

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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on September 19th, 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*

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

SCHIFF HARDIN LLP

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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RETURN TO FREEDOM, FOUNDATION TO  
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Defendants.

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**[PROPOSED] ORDER**

On September 19, 2013, Plaintiffs filed a motion to modify this Court's temporary restraining order. Based on the arguments presented in the papers, on the entire record herein, and on Federal Rule of Civil Procedure 65,

**IT IS HEREBY ORDERED** that the Federal Defendants are enjoined from dispatching inspectors to the horse slaughterhouse facilities operated by Intervenor-Defendants Valley Meat, Responsible Transportation, and Rains Natural Meats until further order of the Court.

**IT IS FURTHER ORDERED** that the Federal Defendants are ordered to suspend or withhold the provision of horse meat inspection services to Valley Meat, Responsible Transportation, and Rains Natural Meats until further order of the Court.

**SO ORDERED** this \_\_\_\_ day of September, 2013, in Albuquerque, New Mexico.

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M. Christina Armijo  
UNITED STATES DISTRICT JUDGE