UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

VALLEY MEAT COMPANY, LLC, Plaintiff, v. TOM VILSACK, Secretary of Agriculture, *et al.*, Federal Defendants.	Civ. No. 2:12-cv-01083-JCH-CG
FRONT RANGE EQUINE RESCUE, *et al.*, Plaintiffs, v. TOM VILSACK, Secretary of the U.S. Department of Agriculture, *et al.*, Federal Defendants.	Civ. No. 1:13-cv-00639-MCA-RHS

NOTICE OF RELATED CASES AND MOTION TO TRANSFER

Federal Defendants hereby notify the Court that the two above-captioned cases pending in the District of New Mexico, *Valley Meat Company, LLC, v. Tom Vilsack, Secretary, U.S. Department of Agriculture, et al.*, Civil No. 2:12-cv-01083-JCH-CG ("*Valley Meat*"), and *Front Range Equine Rescue, et al. v. Tom Vilsack, Secretary, U.S. Department of Agriculture, et al.*, Civil No. 1:13-cv-00639-MCA-RHS ("*Front Range*"), challenge the same federal agency action and are thus related and should be heard before the same federal judge. Because these two cases are closely related and seek incompatible relief and injunctions against the same Federal

Defendants, the cases could result in inconsistent and conflicting decisions and court orders. Federal Defendants therefore respectfully request that the newly-filed *Front Range* case be transferred to the judge in the first-filed *Valley Meat* case.[1] As grounds for this request, Federal Defendants state as follows:

These cases involve a federal "grant of inspection" for Valley Meat Company, LLC ("Valley Meat") to receive inspection services for the commercial slaughter of horses, mules, and other equines at its facility in Roswell, New Mexico.[2] The grant of inspections was issued on June 27, 2013, by the Food Safety and Inspection Service ("FSIS") of the U.S. Department of Agriculture ("USDA") pursuant to the Federal Meat Inspection Act ("FMIA"), Act of Mar. 4, 1907, ch. 2907, 34 Stat. 1260.

As amended and codified, 21 U.S.C. § 601 *et seq.*, "FMIA regulates a broad range of activities at slaughterhouses to ensure both the safety of meat and the humane handling of animals." *Nat'l Meat Ass'n v. Harris*, 132 S. Ct. 965, 968 (2012). In its current version, FMIA applies to certain "amenable species," including "cattle, sheep, swine, goats, horses, mules, and

[1] Federal Defendants are filing this notion in both cases because Federal Defendants are uncertain in which case the motion should be decided. Federal Defendants defer to the Court on that issue. As discussed below, however, an accepted practice (including in the District in which *Front Range* was first filed) is for motions to transfer related cases to a single judge to be decided by the judge in the first-filed case and, if transfer is found to be warranted, to transfer the later-filed case to the judge in the first-filed case.

[2] The allegations in the *Front Range* Plaintiffs' Complaint plainly focus on Federal Defendants' grant of inspection for the Valley Meat facility in New Mexico and the alleged environmental impacts in the surrounding Roswell community. *See, e.g.*, *Front Range*, ECF No. 1 ¶¶ 14, 52-78, 113, 126, 139-41, 156-59. While the *Front Range* Plaintiffs also make more generic allegations about facilities and alleged environmental injuries in Iowa and Missouri, *see, e.g.*, *id.* ¶¶ 7, 20, 27, 45-51, Federal Defendants have not made a grant of inspection for the Missouri facility (and so there is no "final agency action" to challenge as required by the Administrative Procedure Act ("APA"), 5 U.S.C. § 704, *see* ECF No. 1), and the *Front Range* Plaintiffs' counsel advised that he was not aware of the July 1, 2013 grant of inspection for the Iowa facility when he filed the *Front Range* Complaint on July 2, 2013, so that the now final agency action in Iowa could not have been challenged in that Complaint.

other equines." 21 U.S.C. § 601(w) (incorporating Wholesome Meat Act, Pub. L. No. 90-201, § 12(a), 81 Stat. 592 (1967)). FMIA requires any animal within an "amenable species" to be inspected prior to its "be[ing] allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which [it is] to be slaughtered and the meat and meat food products thereof are to be used in commerce. . . ." *Id.* § 603(a). FMIA also requires the remains of any animal within an "amenable species" to be inspected if the remains are to be "prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in [the United States] as articles of commerce which are capable of use as human food. . . ." *Id.* § 604. FMIA prohibits the sale or transport "in commerce" of any article involving "any cattle, sheep, swine, goats, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals" if the article has not been "inspected and passed" in accordance with FMIA. *Id.* § 610(c).

Inspections under FMIA must be conducted by "inspectors appointed for that purpose." 21 U.S.C. § 603(a), 604. The Administrator of FSIS, as the delegate of the Secretary of Agriculture, is responsible for "caus[ing]" those inspections to take place. *Id.* §§ 601(a), 603(a), 604; 7 C.F.R. § 2.53(a)(2)(ii). "[E]ach person conducting operations at an establishment subject to [FMIA]" must "make application" to the Administrator before "inspection is granted." 9 C.F.R. § 304.1(a). "The Administrator is authorized to grant inspection upon his determination that the applicant and the establishment are eligible therefor and to refuse to grant inspection at any establishment if he determines that it does not meet the requirements. . . ." *Id.* § 304.2(b). A successful applicant receives a conditional grant of inspection for a period not to exceed 90 days, during which period the establishment must validate a plan for managing food safety. *Id.*

For Fiscal Year 2006 and for certain subsequent fiscal years, Congress prohibited the

U.S. Department of Agriculture ("USDA") from using appropriated funds to pay the "salaries or expenses of personnel" to conduct inspections of horses under FMIA prior to their slaughter. *See* Pub. L. No. 109-97, § 794, 119 Stat. 2164 (2005); Pub. L. No. 110-161, div. A, § 741(1), 121 Stat. 1881 (2007); Pub. L. No. 111-8, div. A, § 739(1), 123 Stat. 559 (2009); Pub. L. No. 111-80, tit. VII, § 744(1), 123 Stat. 2129 (2009). This prohibition was not enacted for Fiscal Years 2012 or 2013. *See* Pub. L. No. 112-55, div. A., tit. VII, 125 Stat. 580 (2011); Pub. L. No. 113-6, 127 Stat. 198 (2013). A bill to restore the prohibition for Fiscal Year 2014 has been introduced in the House of Representatives by the chairman of the subcommittee on appropriations having jurisdiction over USDA. H.R. 2410, 113th Cong. § 749(1) (2013).

On October 19, 2012, Valley Meat filed a lawsuit alleging that USDA had failed to timely act on Valley Meat's application for a grant of inspection, in alleged violation of the Administrative Procedure Act, 5 U.S.C. § 706. *Valley Meat*, ECF No. 1 ¶¶ 1, 6, 19. For relief, Plaintiff Valley Meat seeks an order from this Court "[d]eclaring that the USDA's failure to issue Grants of Inspection of equine animals for human consumption is arbitrary and capricious, and not in accordance with the Administrative Procedure Act, FY2012 Appropriations Act, and the Federal Meat Inspection Act," and "[c]ommand[ing] USDA to immediately issue the appropriate Grant of Inspection to Plaintiff." *Id.* at page 7 ¶¶ 1, 2.

Because USDA issued the grant of inspection on June 27, 2013, Federal Defendants have moved to dismiss Valley Meat's claims as moot. *Valley Meat*, ECF No. 27. Valley Meat and others filed an opposition to that motion on July 11, 2013. *Valley Meat*, ECF Nos. 28, 29. Federal Defendants will be filing a reply brief.

Lead *Front Range* Plaintiffs Front Range Equine Rescue and the Humane Society of the United States have moved to intervene in the *Valley Meat* case. *Valley Meat*, ECF No. 11. In

their motion to intervene, these *Front Range* Plaintiffs argue that the Court should not grant Valley Meat's requested relief because such an order without Federal Defendants having undertaken "careful review under NEPA [National Environmental Policy Act]" would violate federal law and be inconsistent with the court's decision in *Humane Soc. of US v. Johanns*, 520 F. Supp. 2d 8, 36 (D.D.C. 2007). *Valley Meat*, ECF No. 11, ECF No. 11-1 at 8.

In the *Front Range* case, Plaintiffs Front Range Equine Rescue and the Humane Society of the United States (joined by other entities and individuals) allege, as they do in *Valley Meat*, that Federal Defendants violated NEPA (and, hence, the APA), in issuing the grant of inspection for Valley Meat. *Front Range*, ECF No. 1 ¶¶ 1-3, 161-69. As they do in *Valley Meat*, the *Front Range* Plaintiffs assert that the alleged lack of adequate NEPA analysis is inconsistent with the *Johanns* decision. *Id.* ¶ 6. For relief, the *Front Range* Plaintiffs request, *inter alia*, an order from this Court "[d]eclaring that USDA's grant of inspection to a horse slaughter facility without the required NEPA review is arbitrary and capricious, and without observance of procedure required by law, and not in accordance with the Administrative Procedure Act or the National Environmental Policy Act," and "[s]etting aside any grants of inspection given to horse slaughter plants throughout the United States." *Id.* at pages 35-36 ¶¶ 1, 3. Plaintiffs also seek an order "[p]reliminarily and permanently enjoining USDA or FSIS from granting or conditionally granting any applications for inspection of horse slaughter facilities, and from otherwise carrying out any inspections of horse slaughter facilities, without the performance of adequate NEPA review." *Id.* at page 36 ¶ 4. Valley Meat has moved to intervene in the *Front Range* case. *Front Range*, ECF No. 24.

In short, Plaintiffs in *Front Range* seek to undo something that Plaintiff in *Valley Meat* sought to have this Court ordered done – the federal grant of inspection for equine slaughter at

the Valley Meat facility in Roswell. In both *Front Range* and *Valley Meat*, the *Front Range* Plaintiffs allege that Federal Defendants violated (or would violate) NEPA and offend *Johanns* in issuing that grant of inspection for Valley Meat's facility. The main parties in both cases are the same. Although Federal Defendants believe that the *Valley Meat* case is moot, briefing on that motion is not yet complete and it is being opposed by Valley Meat. There thus remains the possibility that the Court in *Valley Meat* may grant Valley Meat's requested relief "commanding" Federal Defendants to issue a grant of inspection, whereas the Plaintiffs in *Front Range* are seeking to set aside and enjoin any such grants of inspection for Valley Meat.

The possibility of inconsistent court orders, requiring Federal Defendants to simultaneously issue and not issue a grant of inspection to Valley Meat is real and serious. On this basis alone, the later-filed *Front Range* case should be transferred to the judge in the first-filed *Valley Meat* case, to ensure that the diametrically-opposed requests for relief in the two cases are addressed by a single judge. Transfer to a single judge will ensure that Federal Defendants are not faced with inconsistent injunctions. Such a transfer will also increase judicial efficiency by allowing one judge to consider and address the overlapping factual and legal claims in the two cases challenging the same federal action.

While the District of New Mexico local rules do not include a related cases rule, other jurisdictions do and suggest how this situation should be handled here. For instance, in the Northern District of California, where the *Front Range* Plaintiffs filed their lawsuit:

> An action is related to another when: (1) The actions concern *substantially the same parties, property, transaction or event*; and (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or *conflicting results* if the cases are conducted before different Judges.

N.D. Cal. Local Rule 3-12(a) (emphasis added) (attached hereto as Exhibit A). In the Northern District of California, "the Judge in this District who is assigned to the earliest-filed case will

decide if the cases are or are not related," and, if the determination is that the cases are related, "the Clerk shall reassign all related later-filed cases to that Judge and shall notify the parties and the affected Judges accordingly." N.D. Cal. Local Rule 3-12(f).

The *Valley Meat* and *Front Range* cases are plainly related. Therefore, the *Front Range* case, as the later-filed case, should be reassigned to the judge assigned to the first-filed *Valley Meat* case to eliminate the possibility of conflicting results, including conflicting injunctions ordering Federal Defendants to grant and not to grant inspections at the Valley Meat facility.

FOR THE FOREGOING REASONS, Federal Defendants respectfully request that the Court transfer the later-filed *Front Range* case, Civ. No. 1:13-cv-00639-MCA-RHS, to the judge assigned to the first-filed *Valley Meat* case, Civ. No. 2:12-cv-01083-JCH-CG. Plaintiffs in both cases, through counsel of record, have been consulted in a good faith effort to obtain Plaintiffs' concurrences. Plaintiff in *Valley Meat* does not oppose this motion. Plaintiffs in *Front Range* oppose this motion.

Respectfully submitted this 12th day of July, 2013.

STUART F. DELERY
Acting Assistant Attorney General
Civil Division
United States Department of Justice
JOHN R. GRIFFITHS
Ass't Branch Dir., Dep't of Justice, Civil Division

s/ *David M. Glass*
DAVID M. GLASS (DC Bar 544549)
Sr. Trial Counsel, Dep't of Justice, Civil Division
20 Mass. Ave., N.W., Room 7200
Washington, D.C. 20530-0001
Tel: (202) 514-4469/Fax: (202) 616-8470
E-mail: david.glass@usdoj.gov

Attorneys for Federal Defendants in *Valley Meat*

ROBERT G. DREHER
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

/s/ Andrew A. Smith

ANDREW A. SMITH (NM Bar 8341)
Senior Trial Attorney
c/o United States Attorneys Office
201 Third Street, N.W., Suite 900
P.O. Box 607
Albuquerque, New Mexico 87103
Telephone: (505) 224-1468
Facsimile: (505) 346-7205
Andrew.Smith@usdoj.gov

ALISON D. GARNER (DC Bar 983858)
Trial Attorney
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-2855
Facsimile: (202) 305-0506
Alison.Garner@usdoj.gov

Attorneys for Federal Defendants in *Front Range*

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 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/ Andrew A. Smith
ANDREW A. SMITH
U.S. Department of Justice