UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FRONT RANGE EQUINE RESCUE, *et al.*,	)	
Plaintiffs,	)	
v.	)	**Civ. No. 1:13-cv-00639-MCA-RHS**
TOM VILSACK, Secretary, U.S. Department of Agriculture, *et al.*,	)	
Federal Defendants.	)	

DEFENDANT-INTERVENORS' REPLY TO PLAINTIFFS' RESPONSE TO *EXPEDITED* MOTION FOR BOND

COMES NOW Defendant Intervenors, Rains National Meats, Chevaline LLC and Valley Meats (collectively "Defendant-Intervenors") and hereby respectfully reply to the response of Plaintiffs' to the *Expedited* Motion for Bond:

INTRODUCTION

Plaintiffs verbose Response may be easily summed up in 4 points:

1. Because the Missouri Department of Natural Resources sent an email the City of Gallatin that the accepting of waste water from Rains Natural Meats *might* put them in violation of their permit and because Valley Meat Company does not have a discharge permit for when **it is not discharging**[1] that Rains and Valley are

[1] Plaintiffs make the bald assertion that because they think Valley needs a discharge permit in order to haul away wastewater to a site with an approved discharge permit that their opinion is a controlling authority or

somehow barred from operating and is therefore not deserving of the protection of an injunction bond.

2. Next, Plaintiffs' resort to the tired argument which the Court has already decided against, which is that because they are self-proclaimed public interest group[2] that all Plaintiffs and Plaintiff-Intervenor should be excused from the explicit requirements of F. R. Civ. P. Rule 65 to post a bond for the TRO that Court has ordered shall continue until October 31, 2013.
3. Third, when the argument that they should not have to pay a bond just because they are a self-proclaimed public interest group is weighed and found to be lacking they ask the Court in the alternative to continue to give them the benefit of the TRO they sought, but ask the Court to excuse them from the requirement of the Rule as they attempt to cloak their hundreds of millions, if not billions in the case of the State of New Mexico, of dollars of funds behind two of the plaintiffs (only from New Mexico not Missouri) that are less fortunate than most of well-heeled co-plaintiffs.
4. And finally, in the most peculiar argument of them all they are argue that Rains in not actually enjoined by the Court even though they are clearly prohibited from operating without the Grant of Inspection that the Court has enjoined Federal Defendants from supplying.

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has the force of law and Valley is prohibited from operating without a discharge permit. As has been previously stated Defendant-Intervenors respect Plaintiffs' right to have an opinion that does not entitle them to their own facts or their own law.

[2] Again it is worth noting that HSUS and FRER are self-proclaimed public interest groups with net assets and funds in the hundreds of millions of dollars that use less than one percent of their annual budgets in the actual care of animals.

Because much of this is now before Court in multiple pleadings *ad nauseum* Defendant-Intervenors will restrict their reply to 4, succinct as possible, statements addressing these 4 points.

ARGUMENT

1. The statement by Plaintiffs' that Rains was barred from operating is plainly erroneous. Plaintiffs rely on an email sent by one government official to another to claim that Rains is not eligible for the Grant of Inspection and therefore the requirement of the bond when they are enjoined is of no consequence. But as the Court may note, in reality, Rains has had a contractual agreement with the City of Gallatin dating back to 1998 that allowed for the accepting of Rains waste water discharge by the City of Gallatin and this agreement was reaffirmed on August 13, 2013. Attached as Exhibit A to this Reply is a Letter dated October 11, 2013 from the City of Gallatin confirming that this has been the legal reality of the situation throughout the entire duration of this court proceeding. Again, while it may be the opinion of Plaintiffs that their legal interpretation controls they have no authority to reach that conclusion. There is no relevant authority that Plaintiffs can cite to that proves that their opinion represents a binding legal opinion, regulatory decision, or order of a Court. This applies to both Rains Natural Meats and Valley Meat Company.

2. With regard to the argument that the Court should at this juncture reverse itself and determine that because the plaintiffs claim to be operating in the public's interest that it is mandatory that this Court impose no bond or a minimal bond, Plaintiffs still have it backwards, there is a public interest <u>exception</u> that some Courts have found on the basis that <u>some</u> plaintiffs acting in the public interest are unable to pay and therefore should be

excepted from the plain language requirement of Rule 65 or have to pay only a nominal bond. As Judge Scott has already found that exception does not apply to the extremely well-heeled plaintiffs that have sought the TRO in this instance.

3. The alternative request that Plaintiffs have offered that if they are not excepted from the requirement of the bond simply by being a public interest group that simply by adding plaintiff that that is not as well-heeled should shield their financial capacities in the hundreds of millions and billions of dollars is offensive. Very clearly if the Court were to agree with Plaintiffs the plain requirement of Rule 65 would be rendered useless as Plaintiffs would simply go shopping for a less fortunate client to add to their efforts in order to allow them enjoin defendants from their lawful businesses with no concern that harm they caused might later be found to have been improvidently granted such that they should pay for the injunction they improperly benefitted from. This Court must abide by and assume that Rule 65 (C) exists and is a requirement for a good reason.

Further, even if the Court were to entertain this preposterous notion it would have to consider the fact that the two Plaintiffs that have been alleged to be less fortunate and unable to pay for the TRO they have sought, are only situated in New Mexico, and have claimed no harm from the plants in Missouri or Iowa. Allowing 2 citizens from New Mexico to, without the protection of an injunction bond, stop 2 plants in faraway states from going about their lawful business for which they claim no direct harm is simply not supported in any law, regulation or case.

4. Finally by way of this Courts September 25, 2013 Order, *see* ECF Doc. 168, by temporarily restraining Federal Defendants, that Rains Natural Meats was also enjoined from operations identically to Valley Meat Company and Responsible Transportation.

This Court went so far as to make note of the fact that a bond may be similarly appropriate and assigned that matter to Judge Scott. An argument that the TRO against Federal Defendants directly enjoining them from allowing Rains go about its lawful business is not actually enjoining Rains must be absolutely rejected by this Court as meritless.

WHEREFORE, Defendant-Intervenors respectfully request that this Court order the injunction bonds for all of the Defendant-Intervenor processing plants be entered into the Court registry for the appropriate amounts and for such other relief as the Court deems just and proper.

Dated: October 14, 2013

By: *- Electronically Signed by –A. Blair Dunn*
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CERTIFICATE OF SERVICE

I certify that I filed the foregoing documents on October 14, 2013 using the ECF System, which will send notification to all parties of record.

-Electronically Signed by – A. Blair Dunn
A. Blair Dunn, Esq.