

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' OPPOSITION TO DEFENDANT-INTERVENORS' EXPEDITED
MOTION TO RECONSIDER AND FOR CLARIFICATION**

Plaintiffs submit this response to Defendant-Intervenors' October 21, 2013 Expedited Motion to Reconsider and for Clarification (the "Motion"), ECF No. 200. Because Defendant-Intervenors do not cite any authority in support of their Motion, fail to apply the correct legal standard, and cannot meet their burden if they applied the correct standard, the Court should deny the Motion.

Background

On September 20, 2013, the Court enjoined federal defendants from dispatching inspectors to or providing inspection services at Rains Natural Meats. ECF No. 168. Unlike the order enjoining federal defendants from dispatching inspectors to or providing inspection services at Valley Meat and Responsible Transportation, Aug. 2, 2013, ECF No. 94, this September 20, 2013 Order did not enjoin the applicant, Rains Natural Meats, from slaughtering horses. ECF No. 168. On September 26, 2013, the Court extended the September 20, 2013 Order until October 31, 2013. ECF No. 179.

Subsequently, the Defendant-Intervenors requested an injunction bond pursuant to Federal Rule of Civil Procedure 65(c). Expedited Motion for Order Requiring Bond, Sept. 26, 2013, ECF No. 180; Reply to Response to Expedited Motion for Order Requiring Bond, Oct. 14, 2013, ECF No. 193. Plaintiffs opposed this request. Opposition to Expedited Motion for Order Requiring Bond (“Opposition”), Oct. 7, 2013, ECF No. 187.

Magistrate Judge Scott has denied Defendant-Intervenors’ request for an injunction bond. Order Denying Defendant-Intervenors’ Expedited Motion for Order Requiring Bond (“Order”), Oct. 18, 2013, ECF No. 199. Judge Scott’s Order explained that the Court had “already decided that Rains Natural Meats does not have standing to seek an injunction bond because Rains Natural Meats has not been enjoined.” *Id.* The Order further noted that “Rains Natural Meats has not pointed to any order enjoining it from operation and therefore is not entitled to an injunction bond.” *Id.*

Argument

Defendant-Intervenors have filed a “motion for reconsideration or clarification,” but, because they cannot meet any of the requirements for such a motion, they have completely failed

to cite *any* authority for their Motion.¹ Defendant-Intervenors do not even mention or attempt to apply the proper standard of review on the limited bases allowed for reconsideration of a court order. *See Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (“Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law. It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.”). And there is no basis for a motion for “reconsideration” or “clarification” when Defendant-Intervenors simply argue that Judge Scott’s ruling was in error because he did not rule the way Defendant-Intervenors desired.

It is possible that Defendant-Intervenors think they are asking the Court to review Magistrate Judge Scott’s ruling pursuant to Federal Rule of Civil Procedure 72(a), but they state this nowhere in their Motion, and thus this Court should not even consider that Rule in ruling on this motion. A Rule 72(a) motion would in any event fail. Under that Rule, the Court must “modify or set aside any part of [a magistrate judge] order that is contrary to law or clearly erroneous.” *Rains Natural Meats* does not and cannot satisfy this burden. *See Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1461-62 (10th Cir. 1988). “[T]o be found clearly erroneous, a magistrate’s decision ‘. . . must strike us as more than just maybe or probably wrong; it must . . . strike us with the force of a five-week old, unrefrigerated dead fish.’” *Ctr. for Biological*

¹ This alone is grounds for denial of the Motion, because this Court’s Local Rules require Defendant-Intervenors to “cite authority in support of the legal positions advanced,” rather than simply asserting disagreement with a prior ruling. *See* D.N.M.LR-Civ. 72.1, 7.3(a).

Diversity v. Norton, 336 F. Supp. 2d 1155, 1158 (D.N.M. 2004) (quoting *Parts & Elec. Motors, Inc. v. Sterling Elec. Inc.*, 866 F.2d 228, 233 (7th Cir. 1988)).

Defendant-Intervenors' Motion simply regurgitates the arguments made in their prior briefing on this issue, ECF Nos. 180, 193, and oddly suggests that Magistrate Scott must have made a mistake in relying on the plain language of the Court's September 20, 2013 Order. Motion at 3 ("Surely, it is an inadvertence that Judge Scott would construe the Court's Orders to not be enjoining Rain's Natural Meats when they are so very clearly enjoined by virtue of the fact cannot operate without the Grant of Inspection and the inspectors provided by USDA."). Although Rains Natural Meats apparently wishes it had been enjoined, as explained by Plaintiffs in their Opposition and by Magistrate Judge Scott in his Order, the Court's September 20, 2013 Order enjoins only the federal defendants, not Rains Natural Meats. That Rains Natural Meats may be affected by this injunction does not entitle it to an injunction bond. *See* Fed. R. Civ. P. 65(c) (providing security for parties in the event they are later found to have been "wrongfully enjoined or restrained", not merely affected).²

As a result of these deficiencies and for the reasons stated in Plaintiffs' Opposition to Defendant-Intervenors' prior briefing on this issue,³ Plaintiffs respectfully request that the Court deny Defendant-Intervenors' Motion.

² Nor, in any event, would an injunction against Rains Natural Meats require Plaintiffs to post a bond, as Plaintiffs have argued. *See* Opposition at 4-11.

³ Plaintiffs expressly incorporate herein their Opposition to Expedited Motion for Order Requiring Bond, Oct. 7, 2013, ECF No. 187.

Respectfully submitted this 29th day of October 2013.

/s/ Bruce A. Wagman

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

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CERTIFICATE OF SERVICE

I certify that on October 29th, 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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