

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

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

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE
BY RAINS NATURAL MEATS AND CHEVALINE, LLC**

I. INTRODUCTION

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Rains Natural Meats an Chevaline, LLC (“Proposed Intervenors”) seeks to intervene in the above-captioned action. Proposed Intervenors interests, which could be impaired by the outcome of this litigation, in combination with the absence of adequate representation by the current Defendants, provide solid grounds for them to intervene as of right. Rains Natural Meats and Chevaline, LLC are Real Parties in Interest because they are companies that Plaintiffs seek to obstruct from receiving its Grant of Inspections from Defendants or from being able to conduct their lawful business.

II. PROCEDURAL AND FACTUAL BACKGROUND

In the summer of 2011, the federal government recognized the unintended, but devastating, impact the slaughter ban has had on the horse industry in a 2011 GAO Report.¹ In the fall of 2011 in response to 2011 GAO Report Congress appropriately reinstated funding for the inspection of equine species for processing for human consumption. At that time Proposed Intervenor Rains Natural Meats facility was processing natural beef and pork and the principals of Proposed Intervenor Chevaline, LLC working to address the dire circumstances facing the horse industry and advocating for the return of humane and regulated horse processing. In January of 2012 Chevaline began to establish the operations to market the products of the companies entering this international and domestic market. In the summer of 2012 Rains Natural Meats and Chevaline began discussions which culminated in a joint venture agreement, and Rains Natural Meats began consultation with USDA FSIS and interested parties to make the

¹ U.S. Government Accountability Office, *Horse Welfare: Action Needed to Address Unintended Consequences from Cessation of Domestic Slaughter* (June 2011), available at <http://www.gao.gov/new.items/d11228.pdf>.

necessary modification and applications to obtain a Grant of Inspection for equine processing. In late June 2013, Proposed Intervenor Rains Natural Meats received notification from USDA FSIS that they had satisfactorily completed the necessary modifications and permit requirements to be issued a Grant of Inspection. However, while USDA FSIS has not yet issued its Grant of Inspection to Proposed Intervenor Rains Natural Meats it has, in fact, notified that the Grant is imminent as will be issued as soon as a routine and longstanding lagoon permit is renewed by the Missouri Department of Natural Resources. Proposed Intervenor Chevaline, LLC's business operations are currently being delayed because it has agreements with both Reliable Transportation, which has been issued a Grant of Inspection, and Rains Natural Meats, awaiting its Grant, both of which are unable to begin operations. If Preliminary Relief is awarded it will cause real injury-in-fact to these Proposed Intervenor. *See Declarations of Sue Wallis, Docket #51 and Declaration of David Rains, Docket #51.*

III. LEGAL STANDARD

Federal Rule of Civil Procedure 24(a)(2) provides that intervention must be allowed if a proposed intervenor claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Thus, to intervene as a matter of right under rule 24(a)(2), "the movant must show that: (i) the motion is timely; (ii) the movant claims an interest relating to the property or transaction which is the subject of the action; (iii) the movant's interest relating to the property may be impaired or impeded; and (iv) the movant's interest is not adequately represented by existing parties." *S2 Automation LLC v. Micron Tech.,*

Inc., CIV 11-0884 JB/WDS, 2012 WL 3656462, at *11 (D.N.M. Aug. 14, 2012) (citing *Elliot Indus., Ltd. P'ship. v. Am. Prod. Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005)).

IV.

ARGUMENT

A. RAINS AND CHEVALINE SHOULD BE PERMITTED TO INTERVENE AS OF RIGHT.

1. This Motion is Timely

The traditional features of a timely motion to intervene are that it was made at an early stage of the proceedings, the parties would not have suffered prejudice from the grant of intervention at that early stage, and intervention would not cause disruption or delay in the proceedings. “The timeliness of a motion to intervene is assessed in light of all the circumstances, including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances.” *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001) (quotations omitted). This action was filed on July 2, 2013. On July 16, 2013 Proposed Intervenors had conversations with the counsel for Valley Meat Company, LLL, to assess joining in intervention, as they are similarly situated to suffer economic harm if preliminary injunctive relief was awarded at the August 2, 2013 hearing and continuing forward if that relief became permanent. In fact, Proposed Intervenors are now filing this Motion to Intervene seeking join with Intervenor Valley Meat Company, LLC in just over 2 weeks since the initial filing of the case and within one week of Valley Meat Company, LLC being granted its intervention. As such, the motion is certainly timely and there can be no prejudice due to the timing of this motion.

2. Proposed Intervenors Have Significant Interests at Stake

“The threat of economic injury is sufficient to satisfy this element.” *See Forest Guardians v. U.S. Dep't of Interior*, 2004 WL 3426413, at *5 (citing *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d at 1115)(“Furthermore, the Tenth Circuit has deemed the mere threat of economic injury to be sufficient for granting intervention.”) Proposed Intervenor Rains Natural Meat’s Grant of Inspection, Chevaline, LLC’s reliance on the Grants being issued to its customers Rains Natural Meats/Reliable Transportation, and the issuance or the restraint from issuance of these Grants of Inspection is the very substantive object of this case. In fact, Proposed Intervenors lawful operation of their businesses is entirely dependent of the issuance of the Grants of Inspection. *See Declaration of Sue Wallis*, Docket #51 and *Declaration of David Rains*, Docket #52.

3. Disposition Of This Action Would Substantially Affect Proposed Intervenor’s Interests

“To satisfy [the impairment] element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is *possible* if intervention is denied. This burden is minimal.” *WildEarth Guardians v. U.S. Forest Service*, 573 F.3d 992, 995 (10th Cir. 2009) (*WildEarth 2*) (emphasis added) (“If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.”). *See also S2 Automation LLC*, 2012 WL 3656462, at *12 (“[I]ntervention may be based on an interest that is contingent upon the outcome of the litigation” (quoting *San Juan Cnty.*, 503 F.3d at 1203)). In the present case, the denial or restraint of Proposed Intervenors to have a Grant of Inspection or have clients that need a Grant of

Inspection for their business to operate withheld from having such a grant, would completely block the ability of the businesses to operate. This would effectively destroy the economic interests of Proposed Intervenors causing legitimate injury in fact. It is beyond argument that outcome of this action would certainly substantially affect the interests of Proposed Intervenors.

4. Absence of Adequate Representation

While “[t]here is also an assumption of adequacy when the government is acting on behalf of a constituency that it represents” (see Arakaki, 324 F.3d at 1086), the Courts have recognized “the government's representation of the public interest may not be ‘identical to the individual parochial interest’ of a particular group just because ‘both entities occupy the same posture in the litigation.’” WildEarth Guardians v. U.S. Forest Serv., 573 F.3d 992, 996 (10th Cir.2009) (quoting Utah Ass'n of Cntys. v. Clinton, 255 F.3d 1246, 1256 (10th Cir.2001) Much like Intervenor Valley Meat Company, LLC, Proposed Intervenors are unable to be dependent on the Federal Defendants to adequately defend their position. The Federal Defendants do not share the risk of very real and devastating harm that Proposed Intervenors share. Clearly the expectation cannot be that Proposed Intervenor’s interest will be adequately represented by a Defendant USDA FSIS² that is not a party suffering real financial harm and with whom Proposed Intervenors are adverse with in terms of pending public policy issues and as to the delay in acting that USDA has caused Proposed Intervenors to suffer.

V. CONCLUSION

² Proposed Intervenor respectfully requests that the Court also take notice of the fact Secretary Tom Vilsack, a defendant party to this litigation, has repeatedly stated a position that is adverse to Proposed Intervenors. See <http://www.foodsafetynews.com/2013/03/secretary-vilsack-says-congress-needs-an-alternative-to-horse-slaughter/#.UdWoeW0kxDI>

For the above reasons, Rains Natural Meats and Chevaline, LLC respectfully asks the Court to grant its motion to intervene in this action as a matter of right.

Dated: July 19, 2013

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

I certify that I filed the foregoing documents on July 19, 2013 using the ECF System, which will send notification to all parties of record.

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