

**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, RAMONA
CORDOVA, KRYSTLE SMITH, CASSIE
GROSS, DEBORAH TRAHAN, and
BARBARA SINK,

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,

VALLEY MEAT COMPANY, LLC,

Defendant/Intervenor.

Case No. 1:13-cv-00639-MCA-RHS

(PROPOSED) COMPLAINT IN INTERVENTION OF THE STATE OF NEW MEXICO

The State of New Mexico (“New Mexico”), by and through its undersigned counsel, states for its Complaint in Intervention as follows:

1. Plaintiff/Intervenor New Mexico is a State of the United States.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (e).

NATURE OF THE ACTION

3. This action was commenced by Plaintiffs Front Range Equine Rescue, The Humane Society of the United States, Marin Humane Society, Horses for Life Foundation, Return to Freedom, Ramona Cordova, Krystle Smith, Cassie Gross, Deborah Trahan and Barbara Sink on July 2, 2013 in the Northern District of California. *See* Dkt. No. 1.

4. In this action, Plaintiffs seek declaratory and injunctive relief against Defendants, officials of the United States Department of Agriculture (“USDA”) and its Food Safety Inspection Service (“FSIS”) (collectively, “USDA”), for violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4331 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706, in connection with USDA’s recent grant of inspection to domestic horse slaughter plants. One such plant is operated by Defendant/Intervenor Valley Meat Company, LLC (“Valley Meat”).

5. Specifically, Plaintiffs request an order declaring that USDA’s grant of inspection to Valley Meat and other horse slaughter plants without required NEPA review is arbitrary and capricious, and contrary to NEPA and the Administrative Procedure Act, Dkt. No. 1, ¶ 169(1); declaring that USDA’s establishment of a drug residue testing plan for horse slaughter without NEPA review is arbitrary and capricious, and contrary to NEPA and the Administrative Procedure Act, Dkt. No. 1, ¶ 169(2); enjoining USDA from proceeding to inspect, or granting any applications for inspection of, Valley Meat and all other horse slaughter plants, without the performance of an adequate NEPA review, Dkt. No. 1, ¶ 169(3-4); and enjoining USDA from implementing the new drug residue testing plan for Valley Meat and all other horse slaughterhouses, without the performance of an adequate NEPA review, Dkt. No. 1, ¶ 169(5).

6. Plaintiffs’ Complaint sets forth in great detail the factual and procedural history leading up to USDA’s grant of inspection to Valley Meat’s proposed horse slaughter operation. New Mexico incorporates the Complaint by reference herein, particularly paragraphs 2-10 and 85-169.

INTEREST OF THE STATE OF NEW MEXICO

7. New Mexico is responsible for enforcing numerous laws and regulations relating to environmental protection and public health. The State has a recognized interest in seeing that commercial operations within its borders are conducted in a safe and environmentally responsible manner.

8. The impacts of Valley Meat's and other companies' contemplated horse slaughter operation on the environment and public health are subject to regulation by the New Mexico Environment Department and the New Mexico Department of Health, among other agencies.

9. In the absence of adequate environmental review under NEPA, USDA's grant of inspection to Valley Meat and other horse slaughter plants poses a serious and tangible risk to environmental quality and public health in the area where Valley Meat is located, particularly in light of Valley Meat's past problems with safe and adequate waste disposal.

10. Among other consequences, USDA's authorization of horse slaughter operations by Valley Meat and other facilities will likely force New Mexico to devote significant additional resources to enforcing environmental quality and public health laws or else face exposure to serious environmental or public health risks.

11. In addition, New Mexico has certain responsibilities relating to the oversight and management of wild animals within its borders. USDA's authorization of horse slaughter operations by Valley Meat and other facilities may place at risk threatened and endangered species living in the vicinity of Valley Meat's contemplated horse slaughter operation.

12. The New Mexico Food Act provides that "a food shall be deemed to be adulterated ... if it bears or contains any poisonous or deleterious substance which may render it injurious to health...". NMSA 1978, § 25-2-10(A)(1) (1965).

13. Scientific studies and the Food and Drug Administration have concluded that chemicals commonly used to treat horses in the United States are "deleterious" and "injurious to health" within the definition of the Act. Horse meat originating from U.S. horses that have been treated with such chemicals, therefore, would be deemed "adulterated" under New Mexico law.

14. The New Mexico Food Act further provides that “[t]he following acts and the causing thereof within the state of New Mexico are hereby prohibited: the manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded.” NMSA 1978, § 25-2-39(A) (1951). The New Mexico Food Act applies by its terms to the “manufacture” of food in New Mexico regardless of where the food is ultimately sold or consumed. Therefore, commercial horse slaughter operations in New Mexico that manufacture horse meat for consumption as “food” by humans or animals are likely unlawful.

15. The New Mexico Food Act does not allow the State to stand idly by while a person or company manufactures adulterated food. Rather, the Act mandates that “[i]t shall be the duty of the attorney general or the various district attorneys ... to cause appropriate proceedings to be instituted in the proper courts without delay” upon becoming aware of violations of the Act. NMSA 1978, §25-2-7 (1951).

16. New Mexico, therefore, has a unique interest in ensuring that no commercial horse slaughter operations take place within its borders that violate state law.

17. The prospect that absent judicial intervention USDA will imminently authorize Valley Meat’s horse slaughter operations in New Mexico will expose New Mexico to a variety of injuries, including, for example, expected additional regulatory costs of ensuring that Valley Meat’s operations do not endanger the local water supply or the health of area residents.

18. In addition, if Valley Meat becomes the first or one of the first plants in the United States in many years that is authorized by USDA to kill horses for food manufacture, it is also likely that at least some consumers will avoid other meat products from New Mexico. The prospect of USDA permitting the manufacture of adulterated foods within New Mexico’s borders thus threatens the market for New Mexico’s existing businesses, particularly the beef industry.

CLAIMS FOR RELIEF

Claim One: Violation of the National Environmental Policy Act, 42 U.S.C. § 4332(C).

19. New Mexico hereby restates and incorporates by reference the allegations contained in Plaintiffs' initial Complaint as well as this proposed Complaint in Intervention.

20. By granting inspection to a horse slaughter facility without first conducting an environmental review and producing an EIS according to NEPA, 42 U.S.C. § 4332(C), USDA has violated NEPA and CEQ's implementing regulations, and has acted arbitrarily and capriciously, and without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2) *et seq.*

21. Defendants' conduct is the legal and factual cause of Plaintiffs' and New Mexico's injuries alleged in Plaintiffs' initial Complaint as well as this proposed Complaint in Intervention.

Claim Two: Violation of the National Environmental Policy Act, 42 U.S.C. § 4332(C).

22. New Mexico hereby restates and incorporates by reference the allegations contained in Plaintiffs' initial Complaint as well as this proposed Complaint in Intervention.

23. By establishing, issuing and authorizing a drug residue testing plan for horse slaughter to be used at horse slaughter facilities without first conducting an environmental review and producing an EIS according to NEPA, 42 U.S.C. § 4332(C), USDA has violated NEPA and CEQ's implementing regulations, and has acted arbitrarily and capriciously, and without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2) *et seq.*

24. Defendants' conduct is the legal and factual cause of Plaintiffs' and New Mexico's injuries alleged in Plaintiffs' initial Complaint as well as this proposed Complaint in Intervention.

Claim Three: Violation of The Administrative Procedure Act, 5 U.S.C. § 706

25. New Mexico hereby restate and incorporate by reference the allegations contained in Plaintiffs' initial Complaint as well as this proposed Complaint in Intervention.

26. By providing a grant of inspection to domestic horse slaughter plants, USDA has abused its discretion and acted arbitrarily and capriciously and not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A), (C), and (D).

27. Defendants' conduct is the legal and factual cause of Plaintiffs' and New Mexico's injuries alleged in Plaintiffs' initial Complaint as well as this proposed Complaint in Intervention.

WHEREFORE, New Mexico requests that the Court issue an Order:

1. Declaring 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;

2. Declaring that USDA's establishment of a drug residue testing plan for horse slaughter without 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;

3. Setting aside any grants of inspection given to horse slaughter plants throughout the United States;

4. Preliminarily 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;

5. Preliminarily and permanently enjoining USDA or FSIS from implementing the new drug residue testing plan for horse slaughterhouses nationwide, without the performance of adequate NEPA review;

6. Awarding New Mexico costs and reasonable attorneys' fees'; and
7. Awarding New Mexico any other relief that the Court may deem just and proper.

Dated: July 19, 2013

GARY K. KING
NEW MEXICO ATTORNEY GENERAL

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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.

Ari Biernoff
Ari Biernoff