U.S. DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Valley Meat Company, LLC Plaintiff, v. TOM VILSACK, Secretary U.S. Department of Agriculture Defendant, AL ALMANZA, Administrator, Food Safety and Inspection Service U.S. Department of Agriculture Defendant.	)	12-CV-1083-JCG-CG

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE ON BEHALF OF INTERNATIONAL EQUINE BUSINESS ASSOCIATION, NEW MEXICO CATTLE GROWERS' ASSOCIATION, SOUTH DAKOTA STOCKGROWERS ASSOCIATION, RANCHERS-CATTLEMEN ACTION LEGAL FUND UNITED STOCK GROWERS OF AMERICA, MARCY BRITTON, BILL AND JAN WOOD, LEROY AND SHIRLEY WETZ, AND DOUG AND JUDY JOHNSON

COME NOW, the Proposed Plaintiff-Intervenors International Equine Business Association, New Mexico Cattle Growers' Association, South Dakota Stockgrowers Association, Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America, Marcy Britton, Bill and Jan Wood, LeRoy and Shirley Wetz, and Doug and Judy Johnson by and through their undersigned attorneys Karen Budd-Falen (*pro hac vice* pending) and Kathryn Brack Morrow, of

the Budd-Falen Law Offices, LLC, and hereby request the Court's leave to intervene as of right under Fed.R.Civ.P. 24(a) or, in the alternative, by the Court's permission under Fed.R.Civ.P. 24(b). The Proposed Plaintiff-Intervenors will be significantly impacted by the outcome of this matter, because continued delay and inaction by the U.S. Department of Agriculture Food ("USDA") Safety and Inspection Service ("FSIS") will potentially prohibit Plaintiff-Intervenors from proceeding with plans to open horse processing facilities and will disrupt Plaintiff-Intervenors' representative businesses from conducting business with the Valley Meat facility. Additionally, the Proposed Plaintiff-Intervenors will be significantly impacted by the disposition of these issues, since individuals and organizational members suffer the emotional, environmental and economic burdens that accompany the absence of humane methods of horse disposal. Finally, the efforts of the Proposed Defendant-Intervenors (Front Range Equine Rescue and Humane Society of the United States, collectively "HSUS") seeking a resolution to this litigation that would impose an environmental assessment and/or an environmental impact statement for each decision to grant inspection pursuant to the National Environmental Policy Act, 42 U.S.C. § 4332(C), would result in devastating impacts to the entire meat industry.

INTRODUCTION

Humane and regulated horse processing has occurred in the United States for many years. See Tadlock Cowan, Cong. Res. Serv. RS21842, Horse Slaughter Prevention Bills and Issues 1 (2012) (noting that nearly 105,000 horses were processed for food in the United States in 2006, which was well below the average of the 1980s when 300,000 horses were processed annually in 16 plants). Ensuring that equine processing is conducted in a safe and humane method requires a

rigorous regulatory effort and an adequate inspection service. In accordance with the Federal Meat Inspection Act, 21 U.S.C. § 601 et. seq., and "for the purpose of preventing the use in commerce of meat and meat products which are adulterated" the "Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all amendable species before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment." 21 U.S.C. § 603(a). "Amendable species" is defined as "those species subject to the provisions of this chapter on the day before November 10, 2005," 21 U.S.C. 601(w), which included "cattle, sheep, swine, goats, horses, mules, and other equines." 21 U.S.C. 603. Additional statutory and regulatory guidelines call for post-mortem inspections as well. Despite the long tradition and the statutory grant of approval, equine processing was temporarily halted from 2007-2012, with provisions included in the annual Agricultural Appropriations bill that withheld funding for the inspection of equine processing facilities. See Tadlock Cowan, supra, at 2–3 (citing Division A of the Consolidated Appropriation Act, 2008, Pub. L. No. 110-161).

Recently, however, members of Congress responded to public and industry support by approving an Amendment to the FY2012 Appropriations Act that lifted the ban on the USDA spending funds for the inspection of equine animal processing facilities. See Compl. ¶ 8 (citing FY 2012 Appropriations Act, Pub. Law 112-55, 125 Stat. 562 (Nov. 18, 2011). The Act not only appropriated funds for inspection, but specifically stated that "no fewer than 148 full-time equivalent positions shall be employed during fiscal year 2012 for purposes dedicated to inspection and enforcement related to the Humane Methods of Slaughter Act." Id.

In response to the change in the law, Valley Meat, LLC arranged to modernize and upgrade their existing cattle processing facility into an equine processing facility. Compl. at ¶ 9–10. Accordingly, it applied to the FSIS for a grant of inspection so that it could proceed with the transition. Compl. ¶¶ 9–14. Relying on multiple statements by the USDA officials affirming that completion of the appropriate application and fulfillment of the regulatory requirements would result in the necessary grant of inspections, Valley Meat finalized all the requirements, including an approved HAACP, SSOP and drug residue testing program. Comp. ¶¶ 9–13; see also Food Safety and Inspection Service, USDA 9 C.F.R. § 304.3. However, USDA-FSIS continues to delay issuing the Grant of Inspection. This position is imposing significant impairment to Valley Meat and the Proposed Plaintiff-Intervenors.

The Proposed Plaintiff-Intervenor International Equine Business Association ("IEBA") is an international organization formed to serve the horse business and families of the world by protecting their economic, legislative, regulatory, judicial, environmental, custom, and cultural interests. Exhibit 1, Aff. of Sue Wallis, at ¶ 5. Each member nation operates their own internal organization, with the headquarters located in the United States. IEBA is currently registered in the State of Wyoming as a mutual benefit nonprofit organization. Id. at ¶ 6. The IEBA currently represents various companies and individuals who are, or intend to be, in the business of equine processing. Id. at ¶¶ 8 and 20. IEBA holds an interest in this litigation because of current and future adverse impacts to its members, including: the practical prohibition on IEBA member companies seeking to open horse processing facilities; the disruption of IEBA businesses throughout the equine supply chain, including horse buyers and truckers prevented from

conducting business with the Valley Meat facility; the destruction of a viable secondary market for otherwise unusable or unwanted horses; the decline of the horse industry; the prevention of providing a valuable worldwide commodity to a world market; the continued delay of economic growth though both jobs and tax revenue; and the unspeakable suffering of horses because there is no value or outlet for humane termination. Id. at ¶¶ 13–15. IEBA holds the authority to represent its members in this litigation. Id. at ¶ 7.

The New Mexico Cattle Growers' Association ("NMCGA") is a nonprofit corporation formed in 1914 for the purposes of advancing and protecting the cattle industry in the State of New Mexico. Exhibit 2, Aff. of Caren Cowan, at ¶ 4. The NMCGA has over 1,500 members representing every county in the State of New Mexico and nineteen (19) other states. Id. at ¶ 6. The NMCGA and its members have interacted in horse processing since its inception. Id. at ¶ 8. The NMCGA has an interest in this lawsuit based on the potential for adverse impacts to its members, including: predator management and biosecurity issues associated with the expansion of unwanted horses on their lands; destruction of grass ranges by overpopulation of horses; continued bio-hazards and predator management issues resulting from unwanted horses left to die on rural and rural/urban interface lands; continued depression in their rural communities caused by the disappearance of skilled jobs and the economic and tax benefits that flow from them; the mental anguish and distress caused by the knowledge that horses are being harmed and neglected on long trips to foreign processing plants where humane standards are not required by the USDA; and, the potential for stifling delay, uncertainty, litigation and appeals within the meat processing industry should NEPA analysis be imposed on the equine inspection process. Id. at ¶¶

13–18. The NMCGA maintains the authority to represent the interest of its members in this litigation. Id. at ¶ 7.

The South Dakota Stockgrowers Association ("SDSGA") operates as a 501(c)(5) corporation registered in the State of South Dakota. Exhibit 3, Aff. of Silvia Christen, at ¶ 4. SDSGA is a grassroots, non-profit organization of independent livestock producers dedicated to the continued success and viability of the domestic livestock industry. Id. Formed in 1893, SDSGA's mission remains unchanged and the organization now represents over 1,300 producer-members working to educate the public while also promoting policy that protects the viability of ranches and the broader rural community. Id. Due to longstanding tradition and basic necessity, most of SDSGA's 1,300 members own horses in some capacity. Id. at ¶ 6. Many use the horse for daily work and some even raise a few horses for the cull market. Id. These strong ties make SDSGA members dedicated advocates for the humane treatment of animals. The use of horses also necessitates the presence of a viable horse market. Id. at ¶¶ 6–7. SDSGA and its members hold a strong interest in this litigation because of the significant economic, emotional, and environmental impacts caused by the continued delay of USDA FSIS including: the continued economic hardship resulting from the depressed horse market; the increased economic burden connected to caring for old, non-working, horses; the economic loss born by lack of income from horse sales and the increased shipping cost for horses sent to international slaughter facilities; the emotional stress due to continued increases in horse abandonment and maltreatment; the emotional stress realized because many horses are slaughtered under foreign regimes that often lack the science, compassion, and regulatory oversight found in domestic equine processing

facilities; and, the continued devastation to both members' lands and public lands caused by the overgrazing of excess horses. Id. at ¶¶ 7–9, 11–13. SDSGA maintains authority to represent its members in this litigation. Id. at ¶ 5.

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America ("R-CALF USA") is national, nonprofit trade association incorporated in the State of Montana that exclusively represents the market interests of live cattle producers within the United States beef supply chain. Exhibit 4, Aff. of Bill Bullard, at ¶ 4. R-CALF USA's members include thousands of cattle farming and ranching business owners located in 45 states. Id. R-CALF USA members regularly own, breed, and train horses. Id. at ¶ 6. These members rely on horses to conduct their cattle business operations and use their horses for recreational, sporting and event purposes. Id. Because of the close working connection with horses, the R-CALF USA voting members adopted by affirmative vote, in 2008, an official organization policy stating that "the horse slaughter ban is creating an economic hardship on horse owners and an ecological hardship on private and federal lands," and, therefore, "R-CALF USA supports abolishment of the horse slaughter ban." Id. at ¶ 8. R-CALF USA and its members have an interest in this litigation because of the potential for significant adverse impacts if USDA FSIS is allowed to continue its unyielding, unreasonable delay including: continued economic hardship created by the lack of an economic and humane means of disposing of unusable horses; the continued emotional toll caused by concerns that unusable horses may be subjected to undue stress during transit to foreign slaughter plants and suffer inhumane slaughtering methods on arrival; and the ecological hardship on private and federal lands caused by the overgrazing by excess horses. Id. at ¶ 8–11.

Marcy Britton is an animal cruelty investigator, who has been involved in horse processing facilities for approximately twenty years. Exhibit 5, Aff. of Marcy Britton, at ¶¶ 3 and 6. Ms. Britton focuses her work on preventing the starvation and suffering of unwanted animals through humane euthanasia and, has spent the last forty years of her life insuring that animals are euthanized humanely and with the proper oversight. Id. at ¶¶ 4 and 6. Ms. Britton has a strong interest in this litigation because she is a passionate advocate for the ethical and humane treatment of horses. Id. at ¶¶ 4–11. Additionally, Ms. Britton recognizes, first-hand, the emotional and environmental impact accompanying any continued delay by FSIS, including: the tremendous burden to herself and to local law enforcement in dealing with horse abandonment and starvation; the continued suffering of horses; the continued toll on the public because horse "rescues" are filled to capacity; the continued destruction of land because of excess horse numbers; and, the potential for increased bio-hazards as the carcasses of horses injected with toxic drugs and left outside or buried will potentially leach into water tables and poison wildlife. Id. at ¶¶ 9–12, 17–18.

William ("Bill") and Jan Wood, have worked in the horse industry throughout their lives and raised registered horses for many years, both for their own personal use and for sale. Exhibit 6, Aff. of William and Jan Wood, at ¶ 3. Mr. Wood works as a full-time farrier, and the couple uses horses daily in their cattle business. Id. Because of their intimate connection to the industry, Mr. and Mrs. Wood experienced the devastating impacts caused by the closing of equine processing facilities in the United States. Id. at ¶ 4. These negative consequences have reverberated throughout the horse industry as the market disappeared and people had nowhere to

sell unwanted horses and were, therefore, burdened with their care. Id. Mr. and Mrs. Wood hold a strong interest in this litigation, because they potentially face several significant impacts, including: continued economic harm in the form of lost business opportunities as individuals and businesses in the horse industry continue to struggle with the absence of a humane market for disposal; continued economic harm caused by the increasing burden of humanely caring for and maintaining horses that cannot be sold; continued economic hardships faced by the local community as potential job opportunities disappear; the emotional and economic toll on local counties, local veterinarians, and local individuals that take on the task of caring for starving and abandoned horses; the continued overcrowding of rangeland as the number of abandoned horses continues to rise; and, the continued devastation of grasses, pastures, and waterways caused by the overgrazing of excess horses. See Aff. of Bill and Jan Wood, at ¶¶ 4–16.

LeRoy and Shirley Wetz have worked in the horse industry throughout their lives and raised registered horses for over 40 years, both for their own personal use and for sale. Exhibit 7, Aff. of LeRoy and Shirley Wetz, at ¶ 3. Additionally, they operate a sheep and cattle business and use their horses to handle the work on their ranch. Id. Because of their connection to the industry, Mr. and Mrs. Wetz experienced the devastating impacts caused by the closing of equine processing facilities in the United States. Id. at ¶ 4. Mr. and Mrs. Wetz hold an interest in this litigation, because they potentially face several significant impacts, including: continued economic harm in lost business opportunities as individuals and businesses in the horse industry struggle with the absence of a humane market for disposal; continued economic harm created by the continued burden of humanely caring for and maintaining horses that cannot be sold;

continued economic hardship on the local community as potential job opportunities disappear; the emotional and economic toll on local counties, local veterinarians, and local individuals that take on the task of caring for starving and abandoned horses; the continued environmental devastation of rangeland due to the increased number of abandoned horses; and, the continued devastation of grasses, pastures, and waterways caused by the overgrazing of excess horses. Id., at ¶¶ 4–16.

Doug and Judy Johnson have been involved with the issues and concerns surrounding horse processing facilities since such operations were closed in 2007. See Exhibit 8, Aff. of Doug Johnson, at ¶ 3; See Exhibit 9, Aff. of Judy Johnson, at ¶ 3. Additionally, both are ranchers and horse owners. Id. at ¶ 4. Both Doug and Judy Johnson maintain an interest in this litigation because any continued delay by USDA FSIS could lead to significant impacts, such as: continued economic hardship caused by depressed prices in the horse market; economic hardships in their local community created by the absence of a viable horse market; the deep emotional pain caused by the inhumane and lingering deaths of starved and malnourished horses; and, the negative environmental impacts caused by the overgrazing of abandoned horses. See Aff. of Doug Johnson, at ¶¶ 7–11; Aff. of Judy Johnson, at ¶¶ 7–11.

ARGUMENT

The Proposed Plaintiff-Intervenors request the Court's leave to intervene as of right under Fed.R.Civ.P. 24(a) or, in the alternative, by the Court's permission under Fed.R.Civ.P. 24(b).

I. THE PROPOSED PLAINTIFF-INTERVENORS SHOULD BE PERMITTED TO INTERVENE AS OF RIGHT UNDER FED.R.CIV.P. 24(a).

The Proposed Plaintiff-Intervenors, individually and representing their respective members, should be permitted to intervene as of right pursuant to Rule 24(a) of the Federal Rules of Civil Procedure in this litigation. Fed.R.Civ.P. 24(a) provides:

> On timely motion, the court must permit anyone to intervene who . . . 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.

Fed.R.Civ.P. 24(a)(2).

In discussing intervention as a matter of right, the Tenth Circuit concluded that an applicant may intervene as of right if: (1) the application is "timely;" (2) "the applicant claims an interest relating to the property or transaction which is the subject of the action;" (3) the applicant's interest "may as a practical matter" be impair[ed] or imped[ed]; and (4) "the applicant's interest is [not] adequately represented by existing parties." Coal. of Arizona/New Mexico Counties for Stable Econ. Growth v. Dep't of Interior, 100 F.3d. 837, 840 (10th Cir. 1996). The Tenth Circuit provided greater analysis on Fed.R.Civ.P. 24(a) in San Juan Cnty., Utah v. United States, 503 F.3d 1163 (10th Cir. 2007) (*en banc*), highlighting the history of Rule 24(a) and noting that the language of the current rule was "intended to refocus the rule on the practical effect of litigation on a prospective intervenor rather than legal technicalities, and thereby expand the circumstances in which intervention would be appropriate. Id. at 1188–89.

A. The Proposed Plaintiff-Intervenors' Application is Timely

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 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) (quoting Sanguine, Ltd. v. Dep't of Interior, 726 F.2d 1416, 1418 (10th Cir. 1984) (citations omitted). "The analysis is contextual; absolute measures of timeliness should be ignored." Id. (quoting Sierra Club v. Espy, 18 F.3d 1202, 1205 (5th Cir. 1994); see also Stupak–Thrall v. Glickman, 226 F.3d 467, 475 (6th Cir. 2000).

This case resides at the early stage of litigation. The Plaintiff filed its Complaint on October 19, 2012. On January 14, 2013 the Front Range Equine Rescue and Humane Society of the United States moved to intervene as Proposed Defendant-Intervenors. At this time, the deadline for the Defendant's Answer to the Plaintiff's Complaint is February 27, 2013. No other deadlines have been set by the Court. Thus, the Proposed Plaintiff-Intervenors filed this request for intervention early enough in the proceedings to avoid delaying disposition of the case. Since the Proposed Plaintiff-Intervenors' participation will not result in any undue delay, there will be no prejudice to the existing parties.

B. The Proposed Plaintiff-Intervenors' Have A Significant Protectable Interest At Stake

Pursuant to Rule 24(a)(2), an intervenor must "claim an interest relating to the property or transaction which is the subject of the action." Fed.R.Civ.P. 24(a)(2). The interest that is the

subject of this matter is the inordinate and unreasonable delay by USDA-FSIS in issuing the Grant of Inspection as commanded by statute. Additionally, the application of HSUS advanced new issues concerning the use of NEPA analysis and additional rule-making requirements in the review of each and every grant of inspection. Disposition of this matter may not only impact Valley Meat's equine processing operation, but will likely have a significant impact on other similarly situated businesses, supply chain businesses, landowners, and the broader meat processing industry.

In San Juan Cnty., Utah v. United States, the Tenth Circuit analyzed the propriety of a proposed Intervenor's participation by addressing what it called the "impaired-interest requirement." San Juan Cnty., 503 F.3d at 1189. After noting that the United States Supreme Court provided very little guidance on how to interpret this rule, the Tenth Circuit stated that it was not surprising that the various circuit court of appeals reached very different interpretations of Rule 24(a)(2). Id. at 1192. In particular, "the notion of 'interest' has proved murky." Id. (citing 6 James Wm. Moore *et al*., Moore's Federal Practice § 24.03 [2][a], at 24–30 (3d ed. 2006) ("Courts have adopted a variety of approaches and a wide range of terminology in discussing the issue of interest.").

The Tenth Circuit observed that the method of defining "interest" that had "achieved considerable currency" and been frequently used in the Tenth Circuit, was that the interest must be "direct, substantial, and legally protectable." San Juan Cnty., 503 F.3d at 1192 (citing Utah Ass'n of Counties v. Clinton, 255 F.3d 1246, 1251 (10th Cir. 2001) (citations omitted). The Court referred to this method as the "DSL test." Id. The Court held:

> [t]his is not to say that it is error for a court addressing an application for intervention to consider whether the prospective intervenor's interest is direct, substantial, and legally protectable. As we previously stated, an interest that clearly satisfies all these conditions would likely justify intervention. But other interest may also suffice. The interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.

Id. at 1194–95 (internal citations omitted). The Court then cited the Advisory Committee Notes to the 1966 Amendment to Rule 24(a), which states that "[i]f 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." Id. at 1195 (citing Fed.R.Civ.P. 24, Advisory Committee Notes (1966 Amendment)).

In San Juan Cnty., the Tenth Circuit stated that the factors in Rule 24(a)(2) are "intended to capture the circumstances in which the practical effect on the prospective intervenor justifies its participation in the litigation. Those factors are not rigid, technical requirements." Id. The three criteria often considered by the Tenth—and other—Circuits, that the interest be direct, substantial, and legally protectable, "should be considered together rather than discreetly." Id. (citing 6 Moore et. al., supra § 24.03[1][B] at 24–25). The "applicant must have an interest that could be adversely affected by the litigation. But practical judgment must be applied in determining whether the strength of the interest and the potential risk of injury to that interest justify intervention." Id. at 1199.

More precisely, "[t]he interest of the intervenor is not measured by the particular issue before the court but is instead measured by whether the interest the intervenor claims is related to the property that is the subject of the action." Utah Ass'n of Counties v. Clinton, 255 F.3d at

1252 (emphasis in the original). Further, "the court may consider any significant legal effect in the applicant's interest and it is not restricted to a rigid *res judicata* test." Natural Res. Defense Council, Inc. v. United States Nuclear Regulatory Comm'n, 578 F.2d 1341, 1345 (10th Cir. 1978). A simple *stare decisis* effect may be "sufficient to satisfy the requirement." Id.; see also Coal. of Arizona/New Mexico Counties for Stable Econ. Growth v. Dep't of the Interior, 100 F.3d 837, 844 (10th Cir. 1996).

The courts reviewing applications to intervene tend to follow a somewhat liberal line in allowing intervention. See Nat'l Farm Lines v. Interstate Commerce Comm'n, 564 F.2d 381, 384 (10th Cir. 1977). Here, the Proposed-Plaintiff Intervenors meet that test because they possess substantial interests in the potential grant of inspection, as sought by Valley Meat. The IEBA represents member companies and supporters seeking to open facilities in at least thirteen (13) states with facilities ready, or nearly ready to open in not only New Mexico, but also Missouri and Iowa. Additional sites are being considered in Wyoming and Oregon. Exhibit 1, Aff. of Sue Wallis, at ¶ 20. Their economic and development plans sit on hold, however, while they wait to see *if* a facility will actually be granted the inspection and opened. Id. Moreover, the unreasonable delay, and potential for sustained delay, continues to impede the interest of IEBA represented equine supply chain companies, such as horse buyers and truckers in New Mexico who are directly prevented from conducting business with the Valley Meat facility. Id. at ¶ 13. Such a direct financial impact on the IEBA member companies is a sufficient interest to support the IEBA's motion to intervene.

Additionally, the continued obfuscation by USDA-FSIS on the issue of granting inspection to the equine processing facility creates a multitude of emotional, environmental, and financial burdens on those working in the meat industry. As stated by NMCGA, horses have been a part of the cattle industry since both species came to North America. Exhibit 2, Aff. of Caren Cowan, at ¶ 8. They are a tool that is used daily for work, sport, and companionship. Id.; see also Exhibit 3, Aff. of Silvia Christen, at ¶ 6; Exhibit 4, Aff. of Bill Bullard, at ¶ 6; Exhibit 6, Aff. of William and Jan Wood, at ¶ 3; Exhibit 7, Aff. of LeRoy and Shirley Wetz, at ¶ 3; Exhibit 8, Aff. of Doug Johnson, at ¶ 4; Exhibit 9, Aff. of Judy Johnson, at ¶ 4. Because of this strong bond, it is the moral and ethical responsibility of horse owners to care for the animals, including a humane and dignified exit from life. Exhibit 2, Aff. of Caren Cowan, at ¶ 9; see also Exhibit 3, Aff. of Silvia Christen, at ¶ 6. Horse slaughter provided a method to that end for decades and the loss of that method weighs heavily on the emotions of ranchers throughout the agriculture industry. see Exhibit 2 Aff. of Caren Cowan, at ¶ 9; Exhibit 3, Aff. of Silvia Christen, at ¶¶ 6–7; Exhibit 4, Aff. of Bill Bullard, at ¶ 10; Exhibit 5, Aff. of Marcy Britton, at ¶ 10–11; Exhibit 8, Aff. of Doug Johnson, at ¶¶ 9–10; Exhibit 9, Aff. of Judy Johnson, at ¶¶ 9–10. In the absence of a humane method of disposal, many horses are either turned loose or have their carcasses abandoned on private and public lands. See Exhibit 2, Aff. of Caren Cowan, at ¶ 9; Exhibit 1, Aff. of Sue Wallis, at ¶ 25; Exhibit 3, Aff. of Silvia Christen, at ¶ 7; Exhibit 5, Aff. of Marcy Britton, at ¶¶ 9–11. Moreover, IEBA stresses that horses that are actually sent to slaughter are transported to foreign countries where they are handled and processed outside the umbrella of the highest standards—the U.S. Humane Method of Slaughter laws—thus continuing the emotional toll on

those who work with or just care for the well being of horses. Exhibit 1, Aff. of Sue Wallis, at ¶ 16; see also Exhibit 4, Aff. of Bill Bullard, at ¶¶ 9–11.

The emotional burden of ensuring the humane treatment of horses is similar to an environmental protection concern, which the Tenth Circuit declared, indisputably, was a "legally protectable interest" of a prospective intervenor. See Wildearth Guardians v. National Park Service, 604 F.3d 1192, 1198 (10th Cir. 2010); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 562–63 (1992) (holding that "the desire to use or observe an animal species, even if for purely [a]esthetic purposes, is undeniably a cognizable interest for the purpose of standing.")

While equine processing facilities provide a humane method of removal for horses, they also provide an environmentally sustainable alternative to turning the horses loose or letting the horses waste away. The unreasonable and unsupportable decision to delay the issuance of a grant of inspection is effectively eliminating an environmentally effective method for horse disposal. In its absence, horses are turned loose on grass ranges where the over-population is destroying the rangeland. See Exhibit 2, Aff. of Caren Cowan, at ¶ 13; Exhibit 6, Aff. of William and Jan Wood, at ¶ 16; Exhibit 7, Aff. of LeRoy and Shirley Wetz, at ¶ 15. The overcrowding by overpopulated feral herds results in significant damage to public and tribal lands. See Exhibit 1, Aff. of Sue Wallis, at ¶ 11; Exhibit 2, Aff. of Caren Cowan, at ¶ 13; Exhibit 6, Aff. of William and Jan Wood, at ¶ 16; Exhibit 7, Aff. of Leroy and Shirley Wetz, at ¶ 15 . Similarly, unwanted horses that are left to die on rural and rural/urban interfaces create a variety of bio-hazards and predator management issues. See Exhibit 1, Aff. of Sue Wallis, at ¶ 11; Exhibit 3, Aff. of Silva Christen, at ¶ 21; Exhibit 5, Aff. of Marcy Britton, at ¶ 9. The overpopulation threatens private

land, public land, and tribal lands, and it threatens the human health and safety of Proposed Plaintiff Intervenors. Such profound impacts on the environment are sufficient interest to support the Plaintiff-Intervenors' motion to intervene. See Wildearth Guardians v. National Park Service, 604 F.3d 1192, 1198 (10th Cir. 2010); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 562–63 (1992) (holding that "the desire to use or observe an animal species, even if for purely [a]esthetic purposes, is undeniably a cognizable interest for the purpose of standing.")

C. The Disposition Of This Action Will, As A Practical Matter, Impair Or Impede The Proposed Plaintiff-Intervenors' Ability To Protect Its Interest

In addition to the existence of an interest relating to the property which is the subject of the action, Fed.R.Civ.P. 24(a)(2) also requires that the applicant be so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest. In applying this element of the intervention test, the "court is not limited to consequences of a strictly legal nature." Utah Ass'n of Counties v. Clinton, 255 F.3d at 1253 (quoting Natural Res. Def. Council, Inc. v. United States Nuclear Regulatory Comm'n, 578 F.2d 1341, 1345 (10th Cir. 1978). Therefore, a "would-be intervenor must show only that impairment of its substantial interest is possible if intervention is denied. This burden is minimal." Id. (quoting Grutter v. Bollinger, 188 F.3d 394, 399 (6th Cir. 1999)).

The Proposed Plaintiff-Intervenors' interest in opening and operating equine processing facilities will clearly be impaired if the Defendant's and Proposed Defendant-Intervenors succeed in this litigation. The Plaintiff's complaint requested that this court issue declaratory and injunctive relief forcing USDA-FSIS to stop delaying and immediately issue the grant of

inspection as required by law. See Compl. at Plaintiff's Claims for Relief ¶¶ 1–2. If the Court denies the relief requested by the Plaintiff, the Proposed Plaintiff Intervenors' business plans will be severely impaired and/or permanently impeded. See Exhibit 1, Aff. of Sue Wallis, at ¶¶ 8–20.

Equally significant, the Proposed Plaintiff Intervenors' will not only lose a humane method for horse euthanasia, but also, continue to suffer the emotional, environmental and economic grief discussed above. See Exhibit 1, Aff. of Sue Wallis, at ¶¶ 8–26; Exhibit 2, Aff. of Caren Cowan, at ¶¶ 9–14 and 18–23; Exhibit 3, Aff. of Silvia Christen, at ¶¶ 7, 11–13 and 16–21; Exhibit 4, Aff. of Bill Bullard, at ¶¶ 8–11; Exhibit 5, Aff. of Marcy Britton, at ¶¶ 9–11 and 17–20; Exhibit 6, Aff. of William and Jan Wood, at ¶¶ 9–16; Exhibit 7, Aff. of LeRoy and Shirley Wetz, at ¶¶ 8–15; Exhibit 8, Aff. of Doug Johnson, at ¶¶ 7–11; Exhibit 9, Aff. of Judy Johnson, at ¶¶ 7–11. Finally, HSUS is successful in their effort to impose additional rule-making and a NEPA analysis in every application for an equine processing plant grant of inspection then the Proposed Plaintiff-Intervenors' land and livelihoods would suffer devastating impacts. See Exhibit 2, Aff. of Caren Cowan, at ¶¶ 15–17; Exhibit 1, Aff. of Sue Wallis, at ¶ 15; Exhibit 3, Aff. of Silvia Christen, at ¶¶ 14–15; Exhibit 6, Aff. of William and Jan Wood, at ¶¶ 9–11; Exhibit 7, Aff. of LeRoy and Shirley Wetz, at ¶ 9–10 .

As noted, "the *stare decisis* effect of the district court's judgment is sufficient impairment for intervention under Rule 24(a)(2)." See Utah Ass'n of Counties v. Clinton, 255 F.3d at 1254 (citing Coal. of Arizona/New Mexico Counties for Stable Econ. Growth v. Dep't of the Interior, 100 F.3d 837, 844 (10th Cir. 1966)); see also Natural Resources Def. Council, Inc. v. United States Nuclear Regulatory Comm'n, 578 F.2d 1341, 1345 (10 Cir. 1978). The impact of this

Court's judgment in this litigation could, as a practical matter, impair or impede the applicants' ability to protect their several interests.

D. The Proposed Plaintiff-Intervenors' Interest Are Not Adequately Represented By The Existing Parties

In San Juan Cnty., the Tenth Circuit held that an applicant seeking intervention as of right, once it has demonstrated an impaired interest, must also demonstrate that its interest is not adequately represented by existing parties to the litigation. San Juan Cnty., 503 F.3d at 1203 (citing Fed.R.Civ.P. 24(a)(2)). The Court has stressed, however, that the "burden to satisfy this condition is 'minimal,' and that '[t]he possibility of divergence of interest need not be great in order to satisfy the burden of the applicants." Wildearth Guardians v. United States Forest Serv., 573 F.3d 992, 996 (10th Cir. 2009) (quoting Coal. of Arizona/New Mexico Counties for Stable Econ. Growth v. Dep't of the Interior, 110 F.3d at 844–45). When filing an application to intervene as of right "[a]n intervenor need only show the *possibility* of inadequate representation. Wildearth Guardians, 573 F.3d at 996 (quoting Utah Ass'n of Counties v. Clinton, 255 F.3d at 1254 (emphasis added by court in Wildearth)).

The Tenth Circuit stated that, "[w]hile the interest of two applicants may appear similar there is no way to say that there is no possibility that they will not be different" and "[i]f [an applicant's] interest is similar to, but not identical with, that of one of the parties, a discriminating judgment is required on the circumstances of the particular case, but he ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee." Natural Res. Defense Council v. United States Nuclear

Regulatory Comm'n, 578 F.2d at 1346 (quoting 7A C. Wright & A. Miller, Federal Practice & Procedure § 1909, at 524 (1972)).

Here, the Proposed Plaintiff-Intervenors' interests stretch well beyond the scope of the Plaintiff, Valley Meat. Some specific members no doubt share the common interest in possible commercial gain to be made from opening an equine processing facility or an interest in avoiding the arbitrary and capricious delay of government obfuscation, yet the interests of the Proposed Plaintiff-Intervenors are much more, including: members' emotional concerns over the humane and dignified treatment of horses as they near the end of their life; concerns over the continued environmental degradation on members' private lands, on public lands, and on tribal lands due to horses being turned loose in great numbers; concerns over the economic injury perpetrated by agency inaction; and, concern with the significant impacts accompanying the possible use of NEPA analysis in every USDA-FSIS grant of inspection decision making process. See Exhibit 1, Aff. of Sue Wallis, at ¶¶ 13–25; Exhibit 2, Aff. of Caren Cowan, at ¶¶ 9–23; Exhibit 3, Aff. of Silvia Christen, at ¶¶ 7–21; Exhibit 4, Aff. of Bill Bullard, at ¶¶ 6–11; Exhibit 5, Aff. of Marcy Britton, at ¶¶ 3–21; Exhibit 6, Aff. of William and Jan Wood, at ¶¶ 4–16; Exhibit 7, Aff. of LeRoy and Shirley Wetz, at ¶¶ 4–15; Exhibit 8, Aff. of Doug Johnson, at ¶¶ 7–11; Exhibit 9, Aff. of Judy Johnson, at ¶¶ 7–11. Neither party in this litigation is in the position to adequately represent the variety of interests and concerns raised by the Proposed Plaintiff-Intervenors.

II. IN THE ALTERNATIVE, THE COURT SHOULD GRANT THE PROPOSED PLAINTIFF-INTERVENORS' REQUEST FOR PERMISSIVE INTERVENTION UNDER FED.R.CIV.P. 24(b)

Rule 24(b)(1)(B) of the Federal Rules of Civil Procedure allows a person to permissively intervene in an ongoing federal action. Rule 24(b)(1)(B) specifically states:

> On timely motion, the court may permit anyone to intervene who: . . . has a claim or defense that shares with the main action a common question of law or fact.

Fed.R.Civ.P. 24(b)(1)(B). As set forth above, the Proposed Plaintiff-Intervenors' application is timely filed and intervention will not delay this case. The Proposed Plaintiff-Intervenors' claims and defenses share substantial questions of law and fact with the main action and the Proposed Plaintiff-Intervenors will be adversely affected if the Defendants prevail.

Since, the Proposed Plaintiff-Intervenors have a significant stake in the outcome of these proceedings as well as detailed knowledge of the industry, the application process, and inspection regulations; they will contribute significantly to the development of this litigation. Furthermore, if the Proposed Plaintiff-Intervenors are not permitted to intervene in this litigation, and a settlement of judgment is reached adverse to Proposed Plaintiff-Intervenors' interest, the result may be a multiplicity of lawsuits, waste of judicial resources, and possibly, inconsistent judicial determinations. Additionally, the United States Supreme Court determined that an Intervenor's participation in litigation critical to their welfare should not be discouraged. Arizona v. California, 460 U.S. 605, 615 (1983). In light of their knowledge and concern, allowing the Proposed Plaintiff-Intervenors to intervene in this action would greatly contribute to the Court's understanding of the case and its legal implications.

Finally, Rule 24(b)(3) directs the courts, in exercising their discretion, to "consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." See Fed.R.Civ.P. 24(b)(3). The Proposed Plaintiff-Intervenors' presence in this case will not unfairly prejudice the rights of existing parties in any manner. Currently, little has occurred in this matter except for the filing of the complaint and the Defendant-Intervenors' application to intervene and move to dismiss. The Proposed Plaintiff-Intervenors are adding no new issues and their addition will not complicate the litigation. Rather, the addition of the Proposed Plaintiff-Intervenors is likely to make the litigation process more efficient by focusing and clarifying the pertinent issues. Accordingly, if the Court denies the Proposed-Plaintiff Intervenors' application for intervention as of right, it should grant permissive intervention.

III. CONCLUSION

For the reasons set forth herein, the Proposed Plaintiff-Intervenors International Equine Business Association, New Mexico Cattle Growers Association, South Dakota Stockgrowers Association, Ranchers-Cattlemen Legal Action Fund United Stockgrowers of America, Bill and Jan Wood, LeRoy and Shirley Wetz, and Doug and Judy Johnson request the court grant its Motion to Intervene as of right pursuant to Fed.R.Civ.P. 24(a) or, in the alternative, for permissive intervention pursuant to Fed.R.Civ.P. 24(b).

//

//

//

//

RESPECTFULLY SUBMITTED this 20th day of February, 2013.

/s/Kathryn Brack Morrow
Kathryn Brack Morrow
Karen Budd-Falen (*pro hac vice* pending)
BUDD-FALEN LAW OFFICES, LLC
300 East 18th Street
Post Office Box 346
Cheyenne, WY 82003-0346
(307) 632-5105 Telephone
(307) 637-3891 Telefax
kathryn@buddfalen.com
karen@buddfalen.com

CERTIFICATE OF SERVICE

I certify that I filed the foregoing document on February 20, 2013 using the ECF System, which will send notification to all parties of record.

/s/Kathryn Brack Morrow
Kathryn Brack Morrow