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MEMORANDUM

TO: **IEBA AND RELATED CLIENTS**

FROM: **KAREN BUDD-FALEN**
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DATE: **JULY 9, 2013**

RE: **NEW HSUS LITIGATION ALLEGING NEED FOR NEPA AND ESA SECTION 7 COMPLIANCE FOR HORSE PROCESSING**

This Memorandum is to update you regarding the current status of the litigation surrounding the Federal Safety Inspection Service ("FSIS") grants of inspection for the Valley Meat and other horse processing plants. I would also request your agreement and support for the next phase of the litigation by opposing the recent Humane Society of the U.S. ("HSUS") federal court litigation, filed in the Northern District of California, arguing that prior to a Grant of Inspection for a processing plant, the U.S. Department of Agriculture ("USDA") must complete an environmental assessment or an environmental impact statement pursuant to the National Environmental Policy Act ("NEPA"). Additionally, the HSUS argues that a grant of inspection must be accompanied by an Endangered Species Act ("ESA") Section 7 consultation.

In some paragraphs of the California complaint, the HSUS demands that the NEPA and ESA Section 7 compliance should apply to horse processing, yet in other places, the HSUS complaint discusses that NEPA and ESA Section 7 compliance should proceed ALL processing plants grants of inspection. The HSUS actively and vocally "promot[es] eating with conscience and embracing the Three Rs—reducing the consumption of meat and other animal-based foods; refining the diet by avoiding products from the worst production systems (e.g., switching to cage-free eggs); and replacing meat and other animal-based foods in the diet with plant-based foods." Thus, if the HSUS is successful in forcing NEPA and ESA Section 7 consultation on ministerial grants of inspection for all animal processing, production of all animal agriculture will be threatened.

I. NEW MEXICO LITIGATION

As you know, 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" include "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.

Recently, however, Congress approved 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 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 in New Mexico as well as other processing plants on Tribal lands and on private lands in Iowa, Missouri and other states either worked to convert or construct safe and humane equine processing facilities. These plants then applied to the FSIS for a "grant of inspection." Because of the significant delay in completing and issuing grants of inspection, Valley Meat filed litigation in the Federal District Court in New Mexico to force the USDA to complete its mandatory inspection requirements. The HSUS and other radical groups intervened on behalf of the USDA, then claimed that the USDA was required to comply with NEPA prior to the grant of inspection. The International Equine Business Association ("IEBA") and other agricultural and animal welfare advocates intervened on behalf of Valley Meat to counter the allegations of the HSUS and to support Valley Meat in their attempt to force the USDA to complete its statutorily mandated duties. That case is still pending in the New Mexico Federal District Court. On June 28, 2013, the FSIS finally issued its grant of inspection to Valley Meat (although there still has been no physical inspection of the plant). The FSIS also promised to issue grants of inspection to the other processing facilities in compliance with the Federal Meat Inspection Act.

II. NORTHERN DISTRICT OF CALIFORNIA LITIGATION

Because the FSIS finally complied with its statutes and issued the grant of inspection to Valley Meat, on July 2, 2013, the HSUS filed new litigation in the Federal District Court for the Northern District of California alleging that the USDA had to comply with NEPA and ESA Section 7 prior to issuing the grants. The litigation also requested a temporary restraining order ("TRO") and preliminary injunction to stop the FSIS from issuing future grants of inspection.

Frankly, the HSUS complaint is riddled with complete sensationalism and inaccuracy. For example, the complaint states that horse processing in the U.S. is extremely cruel–when, in fact, all authorized facilities in the U.S. will have to comply with strict standards of care—unlike the horse processing facilities in Canada and Mexico, where U.S. horses are legally transported now. Like most HSUS claims, this is a case of extreme exaggeration and outright fabrication. There are many more examples of this sensationalism throughout the complaint, affidavits of standing and in the motion for TRO.

Additionally, the complaint is interesting in how it makes its argument by requesting NEPA and ESA Section 7 compliance for horse processing in some paragraphs, but requesting NEPA and ESA Section 7 compliance for all processing facilities in other sections of the complaint. I do not believe that this language was used simply by accident. Given HSUS's opposition to animal production agriculture, I believe that if HSUS is successful, this precedent will be used by HSUS to require NEPA and ESA Section 7 compliance for all animal processing facilities.

III. NEXT STEPS - REQUEST FOR ADVICE

It is my recommendation that because of the blatant forum shopping by HSUS (i.e., Northern District of California and the Ninth Circuit), the IBEA and other impacted individuals and organizations intervene and request the case be moved and consolidated with the existing litigation in New Mexico (a court within the Tenth Circuit). I have been authorized by Sue Wallis of the IEBA to file this motion on their behalf, although there is a question of adequate funding. My question to the other parties in intervention in the current Valley Meat case in New Mexico is whether you also want to join in this intervention and also seek to have the case transferred to New Mexico for consolidation with the existing case. We should be able to use the same declarations as have already been prepared and signed in the New Mexico case, so it would be a matter of filing the motion for intervention and motion for venue transfer. Please let me know if you or your organization would like to continue with this matter.

Additionally because of the significant risk of adverse precedent to all processing facilities if the HSUS is successful in its claims, I would also request that other groups also consider intervening in the New Mexico case, either separately or with the current parties. By filing this wholly separate case in California, HSUS has shown that it is not

just the Valley Meat plant to which it objects, but it is seeking to disrupt all processing facilities by delaying inspections for NEPA or ESA Section 7 consultation requirements. Because HSUS knows that it would not be successful in an outright scientific challenge to processing under the current American standards, HSUS (and other radical groups) rely on the fact that the federal government has a difficult time timely and procedurally complying with statutes such as NEPA or ESA Section 7 consultation. Thus, for these groups, endless delay of a permit by procedural litigation is as much of a "win" as the denial of a permit (and they can be "reimbursed" for their attorneys fees). Thus, this case has a significant threat of adverse precedent. Even if you or your group seeks protection from the abusive tactics of the HSUS and other groups by anonymous support, any support you can give to this effort would be greatly appreciated.

Please let me know if you or your group would like to continue with this effort. Should you have any questions, please do not hesitate to contact Sue Wallis at sue.wallis52@gmail.com or 307/680-8515 or 307/682-4808 or me.

Enclosure(s)