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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

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RANCHERS CATTLEMEN ACTION LEGAL FUND  
UNITED STOCKGROWERS OF AMERICA,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF AGRICULTURE,  
ANIMAL AND PLANT HEALTH INSPECTION  
SERVICE, and ANN M. VENEMAN, IN HER  
CAPACITY AS THE SECRETARY OF AGRICULTURE,

Defendants.

CV-04-51-BLG-RFC

ORDER

**BACKGROUND**

Plaintiff Ranchers Cattlemen Legal Action Fund United Stockgrowers of America ("R-CALF") is a non-profit cattle association representing almost 9,000 U.S. cattle producers on issues concerning international trade and marketing. On April 22, 2004, R-CALF brought suit against the United States Department of Agriculture ("USDA") after the USDA declared it would allow the re-importation of edible bovine meat products from Canada. On April 26, 2004, the Court granted a Temporary Restraining Order enjoining the USDA "from permitting importation from Canada, all edible bovine meat products beyond those authorized by USDA's action of August 8, 2003 from cattle under 30 months of age until the conclusion of the hearing on a preliminary injunction." By stipulation of the parties, the Court converted the TRO into a preliminary injunction that will expire five days after R-CALF is notified of the final agency action on the rulemaking proposed on November 4, 2003 (68 Fed. Reg. 62,386) and reopened on

March 8, 2004 (69 Fed. Reg. 10,633).

On September 16, 2004, the National Meat Association ("NMA") filed a motion for leave to intervene as a plaintiff in this case. NMA is a non-profit trade association representing meat packers and processors, equipment makers and meat industry suppliers. Both R-CALF and the USDA oppose NMA's motion.

### DISCUSSION

Pursuant to Rule 24, F.R.Civ.P., a party may intervene in a lawsuit in one of two ways: first, as a matter of right, and second, with the permission of the Court. Each avenue for intervention is discussed below.

#### **I. INTERVENTION AS A MATTER OF RIGHT.**

For a party to intervene as a matter of right, it must satisfy four criteria: (1) timeliness; (2) an interest relating to the subject of the litigation; (3) practical impairment of an interest of the party seeking intervention if intervention is not granted; and (4) inadequate representation by the parties to the action. *Cal. Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9<sup>th</sup> Cir. 2002).

##### ***I. Timeliness.***

Courts consider three factors in determining whether a motion to intervene is timely: (1) the stage of proceeding at which an applicant seeks to intervene; (2) the prejudice to the other parties; and (3) the reason for and length of the delay. *Id.*

In this case, the timeliness factors weigh against NMA's intervention at this juncture. The Court, pursuant to the parties' stipulation, has already granted a preliminary injunction that will expire five days after R-CALF is notified of the final agency action regarding the re-importation of Canadian beef products. The only documents currently being filed in this matter are status reports to the Court. As stated by USDA, this case is in a holding pattern at this juncture. To allow the intervention of the NMA would likely prejudice both R-CALF and USDA. Finally, NMA has offered no justifiable explanation for its delay in seeking intervention

in this matter.

**2. Interest Relating to the Subject of the Litigation.**

“The requirement of a significantly protectable interest is generally satisfied when the interest is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9<sup>th</sup> Cir. 2003). “An applicant generally satisfies the ‘relationship’ requirement only if the resolution of the plaintiff’s claims actually will affect the applicant.” *Id.*

In this case, while NMA may well have some cognizable interest in this case at a future date (i.e., after USDA has made a final agency action), it is indeterminable at this stage because the case is awaiting completion of USDA’s rulemaking process and it is not possible for either the parties or this Court to discern the direction the case will take once USDA issues its final rule. NMA’s lack of any articulable interest in this case at this stage is demonstrated by the fact that it requests no legally cognizable relief, asking only that it be allowed to “participat[e] in the current and future injunctive proceedings” and receive “the same status reports and notification USDA affords to R-CALF.” In short, the course of this case will be entirely directed by USDA’s final agency decision. At this stage, NMA simply cannot articulate a significant interest in these proceedings. Whether it will be able to once USDA makes its final decision is an open question.

**3. Practical Impairment.**

The third criteria analyzes whether the disposition of the action may impair or impede the applicant’s ability to protect its interest. *See Southern Cal. Edison v. Lynch*, 307 F.3d 794, 802 (9<sup>th</sup> Cir. 2002). As stated above, NMA has failed to articulate a significant interest in these proceedings at this juncture. Thus, the third criteria too weighs in the denial of NMA’s motion.

**4. Adequate Representation of NMA’s Interests.**

The fourth factor is likewise moot absent an articulable significant interest by the NMA. Even if NMA did have an interest, however, this factor would still weigh against NMA because such an interest would be adequately represented by the current parties to this lawsuit. As USDA

notes, this is an APA case in which the United States is uniquely positioned to defend the completeness of its procedures for developing the new rule. If NMA were allowed to intervene on USDA's side, it would not be in a position to know why the agency made its decision. Furthermore, the decision by USDA will be based exclusively on the administrative record, so NMA will not be able to contribute to the factual record.

Based on the four criteria as outlined above, the Court finds that NMA has failed to establish a right to intervene in this matter.

**II. PERMISSIVE INTERVENTION.**

An applicant who seeks permissive intervention must satisfy three requirements: (1) it must share common questions of law or fact with the main action; (2) it must make a timely motion; and (3) the court must have an independent basis for jurisdiction over the applicant's claims. *Donnelly v. Glickman*, 159 F.3d 405, 411-12 (9<sup>th</sup> Cir. 1998). "Even if an applicant satisfies those threshold requirements, the district court has discretion to deny permissive intervention." *Id.* at 412. In *Donnelly*, the Ninth Circuit upheld a district court's denial of a request for permissive intervention based upon undue delay and the fact that "the interests of plaintiffs and the proposed intervenors 'are in direct opposition,' resulting in prejudice to existing parties;" and thus, "requiring plaintiffs to litigate their claims with the proposed intervenors as co-plaintiffs would harm plaintiffs."

This case is analogous to the facts in *Donnelly*. NMA is seeking to intervene as a plaintiff when its interests are in direct opposition to those of R-CALF. When this fact is coupled with the "holding pattern" which this lawsuit is currently in, it would cause undue harm to R-CALF to allow NMA to intervene at this juncture. Accordingly, the Court declines to exercise its discretion to allow NMA to intervene in this matter.

For the above-stated reasons, NMA's motion to intervene (*Docket No. 22*) is **DENIED**.

The Clerk of Court is directed to notify the parties of the making of this Order.

DATED this 16<sup>th</sup> Day of December, 2004.

CERTIFICATE OF MAILING  
DATE: 12/1/04 BY: [Signature]

I hereby certify that a copy of this order was mailed to:  
See Attached List

[Signature]  
RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE