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DATE: March 11, 2005 TIME: \_\_\_\_\_

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March 11, 2005

Ms. Cathy Catterson  
Clerk, United States Court of Appeals  
for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526  
**BY FACSIMILE AND FEDERAL EXPRESS**

**Re: Ranchers Cattlemen Action Legal Fund v. United States Department of  
Agriculture v. National Meat Association, No. 05-35214**

Dear Ms. Catterson:

Attached by facsimile please find a copy of Defendants' Response to the Emergency Motion of the National Meat Association for an Expedited Briefing and Hearing. We will also file an original and four copies of the same by Federal Express.

Thank you for your attention in this matter.

Respectfully,

Joshua Waldman  
Counsel for Defendants  
U.S. Department of Agriculture, et al.

cc: John Walker Ross, Scott G. Gratton  
A. Clifford Edwards, Taylor S. Cook  
Russell S. Frye  
William L. Miller  
Phillip C. Olsson, Patricia E. Pahl

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

_____ )	
RANCHERS CATTLEMEN ACTION LEGAL )	
FUND, UNITED STOCKGROWERS OF )	
AMERICA, )	
Plaintiff-Appellee, )	
)	
v. )	No. 05-35214
)	
UNITED STATES DEPARTMENT OF )	
AGRICULTURE, ANIMAL AND PLANT )	
HEALTH INSPECTION SERVICE, and )	
MIKE JOHANNNS, in his capacity as )	
Secretary of Agriculture, )	
)	
Defendants-Appellees, )	
)	
NATIONAL MEAT ASSOCIATION, )	
)	
Appellant. )	
_____ )	

**DEFENDANTS' RESPONSE TO EMERGENCY MOTION  
OF THE NATIONAL MEAT ASSOCIATION  
FOR EXPEDITED BRIEFING AND HEARING**

Defendants, the United States Department of Agriculture, Animal and Plant Health Inspection Service, and Secretary of Agriculture Mike Johanns respectfully respond to the motion of the National Meat Association ("NMA") to expedite its appeal. For the reasons set out below, the government has no objection to the proposed expedition of NMA's appeal from the February 24, 2005 order denying its motion to intervene. In accordance with a notice filed with the Court by NMA, we are postponing until March 25, 2005, our response to NMA's request for expedited review of the district court's March 2, 2005 order granting a preliminary injunction.

1. Plaintiff, the Ranchers Cattlemen Action Legal Fund United Stockgrowers of America, brought suit against the Department of Agriculture to enjoin enforcement of the regulation, promulgated after notice and extensive comment, that allows the importation of Canadian cattle under 30 months of age and beef from such cattle. 70 Fed. Reg. 460 (2005). On March 2, 2005, the district court issued a preliminary injunction prohibiting implementation of that rule and required the parties to respond within ten days as to the appropriate further procedures in the district court litigation.

2. The National Meat Association is not, at the present time, a party to this case. The NMA sought leave to intervene in district court, and its motion was denied on February 24, 2005.

On March 9, 2005, the NMA filed an Emergency Motion in this Court seeking highly expedited appellate review of two distinct orders. First, its motion asked the Court to review the district court's denial of its motion to intervene. Second, its motion asked the Court to review the order granting the preliminary injunction. The motion requested that the "Appellant's Brief" be due on March 21, 2005, and that the "Appellees' Briefs" be due on March 28, 2005.

3. The government has no objection to NMA's proposed expedition of its appeal from the order denying its motion to intervene. The NMA unquestionably has the right to appeal from

the denial of intervention. It will be the only appellant on that appeal and, as its proposed scheduling order provides, there would be only one appellant's brief. With respect to that issue, both the defendants and the plaintiff are by definition appellees.

4. After filing its motion, NMA filed a notice with the Court requesting that the plaintiff and the government be afforded an additional two weeks, to and including March 25, 2005, within which to respond to the NMA's request for expedited review of the preliminary injunction. Accordingly, unless the Court directs otherwise, the government will file its response to that aspect of the motion by March 25.

#### CONCLUSION

For the foregoing reasons, the government has no objection to NMA's requested expedition of its appeal from the district court's denial of its motion to intervene. Unless this Court orders otherwise, we will file a response to NMA's request for expedited review of the March 2, 2005 order granting a preliminary injunction no later than March 25, 2005.

Respectfully submitted,


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## CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 2005,  
I caused a copy of the foregoing Response of Defendants-Appellees  
to Emergency Motion for Expedited Briefing and Hearing to be  
served on the following counsel by facsimile and Federal Express:


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