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

RANCHERS CATTLEMEN ACTION LEGAL FUND)
UNITED STOCKGROWERS OF AMERICA,)

Plaintiff,)

vs.)

UNITED STATES DEPARTMENT OF AGRICULTURE,)
ANIMAL AND PLANT HEALTH INSPECTION)
SERVICE, et al.,)

Defendants.)

Cause No.CV-05-06-BLG-RFC

**R-CALF USA's
OPPOSITION TO
MOTIONS FOR LEAVE
TO FILE AMICUS
CURIAE BRIEFS**

The Government of Canada and two groups of associations representing segments of the U.S. and Canadian beef industry have filed motions for leave to file *amicus curiae* briefs in support of defendants the U. S. Department of Agriculture, et al.'s ("USDA's") opposition to plaintiff Ranchers Cattlemen Action Legal Fund United Stockgrowers of America's ("R-CALF USA's") motion to have this case set for argument on the pending cross-motions for summary judgment. R-CALF USA opposes all of those motions for the following reasons.

Proposed *amici* have filed dozens of pages of motions and proposed *amicus* briefs in connection with what is a non-dispositive, procedural motion asking the Court to set the pending cross-motions for summary judgment for hearing (argument) and decision. None of them has cited any authority that even purports to authorize *amicus* briefs in such a context. Rather, these motions and proposed briefs expand upon an unfortunate pattern in this case of large numbers of third parties wanting to throw their "two cents' worth" in at any and all stages of the proceedings. This Court and the parties to this case should not be burdened by these unprecedented *amicus* briefs on what is largely a procedural motion. (CCA/ABP already were allowed to file an *amicus* brief opposing R-CALF USA's Motion for Summary Judgment.)

None of the parties has met the criteria for *amicus* briefs under the Federal Rules of Procedure, and all of them have filed excessive and burdensome motions and proposed briefs.

The Canadian Government purports to be responding to a *single paragraph* in R-CALF USA's Memorandum in Support of its motion to set the summary judgment motions for argument, *see* Canada motion for leave at 2 and 3 n.2, and yet it has filed a *12-page* proposed brief. National Meat Association *et al.* ("NMA") offer eight-plus pages that largely restate, in less detail, the arguments in USDA's Opposition, in addition to offering entirely irrelevant observations about the price of cattle (along with unjustified inferences that the only factor

affecting cattle prices must be BSE, since they conclude that relatively high cattle prices means that BSE concerns have not affected demand or prices).¹ The Canadian Cattlemen’s Association/Alberta Beef Producers (CCA/ABP) brief also consists largely of restating USDA’s arguments and attempting to introduce all kinds of information which was not considered in or even relevant to the USDA decisionmaking at issue in this case (and which again implicitly asks the Court to assume that concerns about Canadian BSE infection is the only factor affecting prices and demand).

The CCA/ABP proposed brief, as well as a significant portion of the National Meat Association, *et al.* proposed brief, address issues of irreparable harm and balancing of the harm that were relevant for the Court’s consideration of whether to issue a preliminary injunction last March, but which have no relevance to the issues before the Court on the cross-motions for summary judgment, i.e. whether USDA acted consistent with the Administrative Procedure Act when it issued the BSE “Minimal Risk Region” rule.

In short, the proposed *amici* briefs are truly “much ado about nothing.” They do not reflect special expertise not available to USDA, they do not provide information or arguments of general public interest, and in fact they largely contain arguments and extra-record citations that are not even relevant to the issues now before the Court. Accordingly, leave to file the *amicus curiae* briefs should be denied. *See, e.g., Community Association for Restoration of the Environment (CARE) v. DeRuyter Brothers Dairy*, 54 F.2d 974, 975 (E.D. Wash. 1999), *citing*

¹ NMA’s motion for leave to file also claims that its *amicus* brief will show how “the reopening of the Canadian Border has...reassured other countries that the protections instituted by the United States have been and are successful and effective in preventing the spread of Bovine Spongiform Encephalopathy (BSE).” *Id.* at 3-4. Of course, opening the border to Canadian imports does nothing to show that protections instituted by the United States have been effective in preventing the spread of BSE, so not surprisingly the NMA proposed brief itself apparently does not even attempt to make such a showing.

Miller-Wohl Co. v. Comm’r of Labor & Indus., 694 F.2d 203, 204 (9th Cir. 1982) and *Northern Sec. Co. v. United States*, 191 U.S. 555, 556 (1903).

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CERTIFICATE OF SERVICE

I certify that on February 7, 2006, I served true and correct copies of the foregoing R-CALF USA's Opposition to Motions for Leave To File Amicus Curiae Briefs, by first-class mail, postage prepaid on the following:

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