

Fighting for the U.S. Cattle Producer!



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February 12, 2014

The Honorable Tom Vilsack
United States Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

The Honorable Phyllis K. Fong
USDA Office of Inspector General
Room 117-W Jamie Whitten Bldg
1400 Independence Ave SW
Washington, DC 20250

Via Facsimile, E-mail and U.S. Mail

Re: Complaint and Request for Investigation Into Possible Misuse of Beef Checkoff Program Funds by the Montana Beef Council

Dear Secretary Vilsack and Inspector General Fong:

Attached as Exhibit 1 is a February 6, 2014 news article published in the *Billings Gazette* stating, "The Montana Beef Council has teamed up with Wendy's to promote North American beef this month. The campaign will feature the Wendy's ciabatta bacon cheeseburger." The article continues by stating that \$5,000 obtained from the "\$1-per-head beef check-off fee" will be used to pay for the "North American beef" promotional campaign.

A review of the Montana Beef Council's website confirms the Montana Beef Council's involvement in promoting "North American beef." Attached hereto as Exhibit 2 is a copy of the website that states, "Wendy's serves 100% pure North American beef . . . proudly supported by Montana Beef producers."

R-CALF USA hereby questions whether the use of government-mandated Beef Promotion and Research Program (Beef Checkoff Program) funds to promote "North American beef" in an advertising campaign for Wendy's is a lawful expenditure under the Beef Checkoff Program's Act and Order.

Our basis for raising this question is that we have long understood that the Beef Checkoff Program could not be used to promote beef that is of U.S. origin, *e.g.*, beef that is born, raised, and slaughtered in the United States. In fact, the Supreme Court referred to the Beef Checkoff

Program as “a federal program that finances *generic* advertising” (emphasis added).¹ Further, U.S. Senator Jon Tester from Montana introduced Senate Bill 3404 in the 2nd Session of the 110th Congress that would have, *inter alia*, amended Section 5 of the Beef Research and Information Act (7 U.S.C. 2904) to expressly allow the Beef Checkoff Program to fund “promotion and marketing of products derived from cattle . . . exclusively born and raised in the United States.” Clearly, Senator Tester would not have offered this amendment if the Beef Checkoff Program already allowed for the promotion of beef based on its origin.

R-CALF USA further believes that if U.S. cattle producers are prohibited from using Beef Checkoff Program funds to promote their beef that is derived from cattle exclusively born, raised, and slaughtered in the United States, then it is patently unlawful for Beef Checkoff Program funds to be used to promote their competitors’ beef – beef from cattle that were not born, raised and slaughtered in the United States.

R-CALF USA strenuously objects to the use of the term “North American beef” and views it as an affront to the hundreds of thousands of family farmers and ranchers who would prefer that restaurant establishments like Wendy’s promote their exclusively United States product and not the products of their foreign competitors in Canada and Mexico.

R-CALF USA supports an amendment to the Beef Checkoff Program that would allow U.S. farmers and ranchers to promote their beef derived from cattle exclusively born and raised in the United States. But, until such an amendment is implemented, their hard-earned, mandatory contributions to the Beef Checkoff Program must not be used to promote their competitors’ beef.

We urge you to investigate our complaint and if you find that Beef Checkoff Program funds are being unlawfully expended, we ask that you prosecute the perpetrators to the fullest extent of the law. Please let me know what action your agencies intend to take in response to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard", written in a cursive style.

Bill Bullard, CEO

Attachments: Exhibits 1-2

¹ *Johanns, et al. v. Livestock Marketing Association*, Nos. 03-1164, 03-1165, 2005 U.S. LEXIS 4343 (U.S. May 23, 2005), *rev'g sub nom.*, *Livestock Marketing Association v. United States Department of Agriculture*, 335 F.3d 711 (8th Cir. 2003).

Cc: Select Members of Congress

EXHIBIT 1

Billings Gazette

Montana Beef Council and Wendy's promote hamburgers in February

February 06, 2014 12:15 am • [Gazette Staff](#)

The Montana Beef Council has teamed up with Wendy's to promote North American beef this month. The campaign will feature the Wendy's ciabatta bacon cheeseburger.

The ciabatta bacon cheeseburger, available for a limited time, features "fresh, never frozen" ground beef from cattle raised in Canada, the United States, or Mexico."

"A lot of this (promotion) is timed with when Wendy's would have a new burger coming out," said Chaley Harney, Montana Beef Council executive director. "February would be a month for lovers, and beef lovers. We're playing it up a lot.

"Wendy's serves North American beef that is born and raised in North America and processed in North America. I believe Wendy's gets theirs from a plant down in Texas," Greg McDonald, owner of Wendy's of Montana, said the \$10,000 ad campaign will include

billboards, TV and radio spots featuring Wendy's products, as well as online ads on billingsgazette.com.

McDonald said Wendy's of Montana used 1.9 million pounds of North American hamburger last year.

Wendy's will pay for half the advertising costs of this month's promotion. Ranchers will pay the remaining \$5,000, collected through the \$1-per-head beef check-off fee.

The ad campaign includes special click-and-print discount offers on the Billings Gazette website and Facebook, as well as the website of Northern Broadcasting.

McDonald said there will a surprise meal deal offered by Wendy's in the middle of February at Wendy's restaurants in Billings.

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EXHIBIT 2



Available at <http://montanabeefcouncil.org/>