

Fighting for the U.S. Cattle Producer!



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August 28, 2012

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

Sent via facsimile and U.S. Mail: 202-720-6314

Re: R-CALF USA's Demand for the Immediate and Permanent Suspension of all Contracts Between the Beef Checkoff and the National Cattlemen's Beef Association

Dear Secretary Vilsack:

R-CALF USA hereby demands that you fulfill your statutory and regulatory duty to enforce the Beef Promotion and Research Act of 1985 (Act) and the Beef Promotion and Research Order (Order), which together govern the Beef Checkoff Program (Beef Checkoff), against the ongoing, unlawful expenditure of producers' Beef Checkoff funds by immediately ordering the permanent suspension of any and all contracts between the National Cattlemen's Beef Association (NCBA) and the Beef Checkoff.

For longer than two years: beginning May 24, 2010, and subsequently on Aug. 4, 2010; Dec. 14, 2010 (to Deputy Secretary Merrigan); Jan. 17, 2011; Jan. 20, 2011; Feb. 3, 2011; Feb. 28, 2011; and Aug. 22, 2011, R-CALF USA sent formal letters, replete with researched evidence of NCBA's unlawful use of Beef Checkoff funds, that urged you to fulfill your statutory and regulatory responsibility by immediately suspending all contracts between the NCBA and the Beef Checkoff.

During that longer than two-year span, you abrogated your statutory and regulatory duty to preserve the integrity of the Beef Checkoff for U.S. cattle producers, despite your receipt of evidence from us that demonstrate the Beef Checkoff is being unlawfully abused under your watch. Instead, you and your Department have played the role of NCBA's patsy. You have continued to allow the Beef Checkoff to unlawfully award tens of millions of dollars to NCBA, which enabled that organization to continue its unlawful use of Beef Checkoff funds to successfully undermine your Administration's stated goals concerning country-of-origin labeling (COOL) and the competition rule proposed by the Grain Inspection, Packers and Stockyards Administration (GIPSA), just to name two.

Because you shirked your responsibilities under the Act and Order and to U.S. cattle producers, a lawsuit was necessarily filed against you by an R-CALF USA member, Mike Callicrate. That lawsuit, *Michael Callicrate v. USDA et al.*, makes nearly all the allegations we made to you during the past two years; references nearly all the evidence we provided you during the past two years; and, it seeks the same remedy we urged you to grant our industry during the past two years.

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R-CALF USA is outraged by your inaction - particularly following your receipt of our evidence that showed NCBA had misappropriated hundreds of thousands of cattle producers' Beef Checkoff funds – and fully supports the merits of the *Michael Callicrate v. USDA et al.* lawsuit. The lawsuit was filed against you because you failed to stop the NCBA from unlawfully using Beef Checkoff funds to continually undermine the policy goals of independent U.S. cattle producers, which has effectively reduced their economic opportunities. A summary of the lawsuit that highlights the meritorious arguments R-CALF USA fully supports is attached.

We demand that you, by your own fruition, immediately put a stop to the NCBA's ongoing abuse of the Beef Checkoff by fully implementing the entire remedy sought in the lawsuit, which is the remedy we have unsuccessfully sought from you for longer than two years. We are calling on you to act, and to act appropriately, without the lawsuit having to proceed any further.

Individual cattle producers should not have to file a lawsuit to ask a federal court to order you to enforce statutes and regulations that you know are being violated. And, you should not be assigning your responsibilities to individuals and federal courts in hopes that they will do what you lacked the courage to do.

As part of our demand we call your attention to an allegation that R-CALF USA did not previously articulate, but which is contained in the lawsuit. That allegation is that the "prohibition on the use of checkoff funds applies equally to any trade/producer organizations funded wholly or in part by a particular board or contractors to the board." We believe this language expresses the clear intent of both the Act and Order as it unequivocally bars any trade association that may receive Beef Checkoff funds from also engaging in activities to influence governmental action or policy. In other words, no policy-oriented trade association can continue its lobbying activities if it is a recipient of Beef Checkoff funds. Your Department must initiate a rulemaking to make it crystal clear that organizations that contract with the Beef Checkoff are barred from engaging in lobbying activities.

Your Department's August 24 announcement indicating that you are now expanding the contracting authority for the Beef Checkoff is void of any mention that recipients of Beef Checkoff funds cannot engage in lobbying activities. Essentially, your Department's announcement suggests that you intend to perpetuate the ongoing, unlawful use of Beef Checkoff funds by authorizing groups in addition to NCBA to compete directly with policy groups like NCBA for available Beef Checkoff funds. This is unconscionable.

We trust that you will carefully consider our demand and choose to comply in full. Doing so will negate the need for R-CALF USA to formally join in a complaint against you.

Sincerely,

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

Bill Bullard, CEO

Attachment

Summary of Beef Checkoff Lawsuit *Mike Callicrate v. USDA et al.*

Prepared by R-CALF USA
Revised August 23, 2012

THE PARTIES:

Mike Callicrate is the only Plaintiff in the complaint.

Named Defendants in the complaint include:

U.S. Department of Agriculture
Agriculture Secretary Tom Vilsack
Cattlemen's Beef Promotion and Research Board
Beef Promotion Operating Committee
Agricultural Marketing Service, USDA

A Third Party named in the complaint is the National Cattlemen's Beef Association

THE COMPLAINT:

Mike Callicrate's complaint alleges that Defendants violated the Beef Research and Information Act of 1985 (the "Act"), which prohibits any Beef Checkoff funds from being used in any manner for the purpose of influencing governmental action or policy. Specifically, the complaint alleges that Defendants' gave the National Cattlemen's Beef Association (NCBA) hundreds of millions of dollars in Beef Checkoff funds even though NCBA is a policy and lobbying organization and uses Beef Checkoff funds to influence governmental action and policy in ways that serve the NCBA and are often against the interests of the very cattle producers who pay the Beef Checkoff.

THE ARGUMENTS:

1. The NCBA unlawfully controls who receives Beef Checkoff Contracts.

- a. The NCBA effectively controls the Beef Promotion Operating Committee (BPOC) that awards Beef Checkoff contracts because the NCBA appoints 10 of the 20 members of the BPOC and a majority of the remaining 10 members on the committee are also NCBA members.

2. The Beef Checkoff Program is unlawfully funding NCBA operations:

- a. Approximately 65 percent of NCBA's reported income is derived from Beef Checkoff funds.

- b. In 2011, Beef Checkoff funds paid 71 percent of the NCBA CEO's administrative time.
 - c. The contractor for Beef Checkoff funds was suppose to be a non-policy organization, as was the Beef Industry Council of the National Livestock and Meat Board prior to its 1996 merger with NCBA. USDA-AMS Checkoff Guidelines drafted in 2010 state that the "prohibition on the use of checkoff funds applies equally to any trade/producer organizations funded wholly or in part by a particular board or contractors to the board." Therefore, no contractor of Beef Promotion Operating Committee (BPOC) may use the Beef Checkoff funds for the purpose of influencing governmental action or policy, and NCBA is doing so unlawfully.
- 3. The NCBA has used Beef Checkoff funds to unlawfully influence governmental action and policy.**
- a. A 2010 compliance audit that reviewed less than one percent of NCBA's Beef Checkoff funds revealed that NCBA used Beef Checkoff funds to influence governmental action and policy. Improper use of Beef Checkoff funds include NCBA's payment of expenses for:
 - i. participating in a Country of Origin Labeling meeting;
 - ii. a senior NCBA staff member who charged all his or her time to the Beef Checkoff since 2009;
 - iii. consulting fees that benefited NCBA;
 - iv. NCBA employee participation in a membership revenue development meeting;
 - v. travel expenses for NCBA's Spring Legislative Conference;
 - vi. travel expenses for an NCBA Governance Task Force meeting; and
 - vii. travel expenses for an NCBA employee's spouse to travel to New Zealand.
 - b. NCBA returned over \$216,000 to the Beef Checkoff fund to settle claims of unlawful expenditures.
 - i. However, if the ratio of misappropriated or misused funds hold true for the rest of the Beef Checkoff funds in NCBA's control that were not subject to the very narrow compliance review, the amount misappropriated or misused by NCBA would be in the tens of millions, if not more.
 - c. A follow-up audit by the Cattlemen's Beef Promotion and Research Board (CBB) identified an additional \$39,000 in misappropriated Beef Checkoff funds, bringing the total known amount of Beef Checkoff funds that were misappropriated or misused by NCBA to at least \$305,365.
 - d. The USDA Office of Inspector General (OIG) conducted an audit and found that Defendants failed to properly oversee Beef Checkoff contracts as required by law,

including their failure to confirm that none of the Beef Checkoff funds were used for lobbying.

- e. NCBA continues to receive tens of millions of dollars annually from the Beef Checkoff, and the funds continue to be used to fund or otherwise benefit NCBA's efforts to influence governmental action and policy.
4. **The NCBA failed to keep financial transaction records as required by the Act.**
 - a. The 2010 compliance audit identified numerous instances where NCBA failed to maintain adequate records of its financial transactions involving Beef Checkoff funds.
 5. **USDA and other Defendants failed their responsibility to suspend NCBA as a Beef Checkoff contractor following NCBA's known violations of the Act.**
 - a. NCBA continues to receive tens of millions of dollars annually from the Beef Checkoff, and the funds continue to be used to fund or otherwise benefit NCBA's efforts to influence governmental action and policy.
 6. **The U.S. cattle industry has suffered due to NCBA's abuse of the Beef Checkoff.**
 - a. Despite U.S. cattle producers' mandatory contributions of more than \$1.6 billion to the beef checkoff during the past 25 years, U.S. cattle producers have:
 - i. lost market share;
 - ii. downsized the U.S. cattle herd;
 - iii. suffered from a drastically reduced producer's share of the retail beef dollar; and
 - iv. Nearly 500,000 beef cattle operations have gone out of business, including 35,000 cattle feeders, since 1996.

RELIEF REQUESTED:

Mike Callicrate is not seeking monetary damages in his complaint. He is requesting the Court to enter an Order to:

1. Immediately and permanently suspend any contracts between NCBA and Defendants.
2. Permanently enjoin Defendants from contracting with the NCBA under the Act or otherwise giving the NCBA any additional Beef Checkoff funds, together with awarding Plaintiff costs, attorney fees, and such other relief as the Court deems just and equitable.