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April 5, 2013

The Honorable Tom Vilsack
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

Sent via e-mail and U.S. Mail

Re: Complaint Regarding Absurd OIG Beef Checkoff Program Report

Dear Secretary Vilsack and Inspector General Fong:

After taking longer than two years to complete, R-CALF USA could not be more disappointed in the absurd, incomplete, and trivial report titled *Oversight of the Beef Research and Promotion Board's Activities* dated March 2013, but issued by the U.S. Department of Agriculture's (USDA's) Office of Inspector General (OIG) on April 2, 2013 (hereafter "OIG report").

The OIG report exemplifies the despicable cronyism that pervades the relationship between the USDA and the meatpacker lobby, which latter group is represented in the OIG report by the National Cattlemen's Beef Association (NCBA). The findings and conclusions contained in the scant, 17-page OIG report are incongruent and render both USDA and the OIG untrustworthy and without credibility. The OIG report is a colossal whitewash of monumental proportions.

The incongruent findings and conclusions in the OIG report are blatantly obvious. For example, on the one hand the OIG report finds that the NCBA admitted to miscoding and submitting improper expenses to the beef checkoff fund *during the same period covered by the OIG audit* and NCBA was subsequently required to reimburse the beef checkoff program a whopping \$216,944 for those miscoded and improperly submitted expenses. *See* OIG report, p. 3. But on the other hand, the OIG report disaggregated those findings from its review of only three additional allegations (*see e.g., id.*, p. 4) to incredulously conclude in its summations that "we [OIG] determined that assessed funds were collected, distributed, and expended in accordance with legislation" (OIG report cover page), and, "[w]e [OIG] found no evidence to support that the board's activities in those areas did not comply with legislation, and AMS guidelines and policies." *Ibid.* Presumably the phrase "those areas" refers only to the three additional allegations of fraud and/or wrongdoing the OIG chose to include in its report. *See id.*, pp. 4, 12, 13.

Only within an agency fraught with corruption and cronyism can a conclusive finding that the NCBA had improperly charged the beef checkoff fund hundreds of thousands of dollars nevertheless result in a conclusion by USDA that NCBA is guilty of no wrong doing. The agency's pronouncement that such is the case defies any semblance of logic, impartiality and credibility.

As another example of incongruent findings and conclusions, the OIG report emphatically states on the one hand that the "AMS [Agricultural Marketing Service] is not involved in making executive decisions: the executive leaders of a board are responsible for overseeing the financial management of checkoff funds." OIG report, p. 3. But on the other hand, the OIG report validates the propriety of the *executive decision* made and approved by the AMS to refrain from taking any punitive action against NCBA for improperly charging the checkoff fund hundreds of thousands of dollars and, instead, to merely require the NCBA to repay the amount it had misappropriated. *See id.*, p. 3. The OIG report states:

Board and AMS officials met with NCBA officials to review the engagement findings and develop corrective actions. The final corrective action, reviewed and approved by AMS in September 2010, resulted in NCBA reimbursing \$216,944 to the beef checkoff program. *Ibid.*

It is both nonsensical and deceptive for USDA to defend the inactions of USDA's AMS on the basis that it is not involved in executive decisions concerning the beef checkoff program while simultaneously defending the NCBA from any punitive actions for misusing the checkoff program on the basis that AMS was intimately involved both in making and approving the executive decision to take no punitive action. There can be no clearer example of a complete lack of accountability by USDA officials who have and continue to allow the NCBA to misuse beef checkoff funds with absolute impunity.

And yet another example of incongruent findings and conclusions is that the OIG report found that the Federation of State Beef Councils (federation) merged with the NCBA many years *after* the implementation of the Beef Research and Information Act of 1985 (Act) and the Beef Research and Promotion Order (Order). *See, e.g.*, OIG report, pp. 1-2. It further found that the Act and Order required the beef board to contract with organizations in existence in 1988 and required that "half of the beef promotion operating committee's (BPOC's) members be individuals from an organization that has become a component of the board's primary contractor, NCBA." *Id.*, pp. 1, 6. Despite the fact that the merger between the NCBA and the federation occurred well after the Act and Order (*see id.*, p. 2), the OIG report nevertheless concludes, without any foundation or legal analysis, that the NCBA/federation merger that combined two separate and distinct organizations into a single organization was both envisioned and sanctioned by the Act and Order. *See id.*, p. 6. The OIG report states:

The Order provides that producers from the successor organization of the Beef Industry Council, i.e., the federation division within NCBA, will serve on the BPOC. §1260.112 section 5 (4)(A). OIG report, p. 6, fn. 13,

In direct contradiction to the OIG report's conclusion, the Order makes clear that a full and complete separation between the federation and any contracting organization was envisioned:

The prospective Federation representatives shall file with the Secretary a written agreement to serve on the Committee and to disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board or the Committee. (Emphasis added.) 7 CFR § 1260.161 (c)

Contrary to the OIG report's baseless assertion, neither the Act nor Order sanctions the inherent conflict of interest that now exists due to the fact that the NCBA, through its ownership of the federation, now controls half the seats on the BPOC that the Act and Order had reserved for a separate and distinct organization that was *not* also the primary contractor of the beef checkoff program.

As if the foregoing examples of incongruent findings and conclusions were not already enough to marginalize USDA by relegating the entire OIG report to the lowly stature of political subterfuge, the OIG report also is woefully incomplete as it fails to address the many allegations of NCBA wrongdoings that were timely brought to the OIG's attention. (This is, as shown below, true despite the OIG's blatantly false claim that only three allegations were brought to its attention. *See* OIG report, p. 12.)

For example, the OIG report fails completely to even address the timely allegation made by former Cattlemen's Beef Board (CBB) Chairman Tom Jones, whose allegation continues today to be maintained on the CBB's own website. Mr. Jones alleged that in addition to the \$216,944 in misappropriated funds mentioned above, the CBB staff "as of May 15, 2011, have identified an additional \$39,000 improperly billed to CBB during FY 2008, FY 2009, and FY 2010" (<http://www.beefboard.org/news/files/WesternAgReporterPart4.pdf>), which means the total amount of checkoff funds that NCBA improperly billed to the beef checkoff program, *during the same period covered by the OIG report*, is in excess of \$305,000.

The OIG report's failure to even mention this widely known allegation that NCBA had misappropriated an additional tens of thousands of checkoff dollars is classic evidence of agency capture and agency cronyism.

Also, the OIG report fails completely to address the relevant and timely complaints filed by R-CALF USA on February 3, 2011 that included but was not limited to: 1) evidence showing that it was NCBA's long-term practice to subsidize its officer travel, regardless of whether the travel was for the purpose of influencing policy, by improperly charging one-half of such officer travel to the checkoff program; and, 2) evidence that contrary to the prohibition against using checkoff funds to influence policy, the CBB's Beef Industry Long Range Plan developed with checkoff funds includes such policy initiatives as "the permanent elimination of estate taxes;" the recommendation to "[a]ctively pursue critical policy areas such as environmental regulations, taxes, trade, food safety, nutrition, product labeling, technology use, cattle marketing, land use and property rights. . .;" "[p]reserve individuals' freedom to choose business models and marketing methods by limiting

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government involvement in business decisions. . .;” and, to support a national animal identification system. <http://www.r-calfusa.com/Checkoff/110203-LetterPossibleDatesNCBAMisuseFunds.pdf>.

If it were not for the serious, irreversible damage this outrageously absurd report has inflicted on hard working independent U.S. cattlemen, it would be laughable. So outrageous is this report that R-CALF USA is compelled to put into the record that there is a fast growing sentiment among independent U.S. cattle producers that the meatpacker lobby, particularly the NCBA, has the best U.S. Department of Agriculture that money can buy. This report adds considerable credence to that sentiment.

Based on the foregoing information, R-CALF USA urges both of you to officially denounce the OIG report as a colossal political sham and whitewash. We further urge USDA to: 1) take immediate action to permanently suspend the NCBA’s eligibility to contract with the beef checkoff program due to the NCBA’s documented abuse of producer checkoff dollars; 2) revise the Order to clarify that the federation must be a stand-alone organization not subservient to or under the affiliation of any other organization; 3) revise the Order to clarify that no lobbying group is eligible to contract for beef checkoff funds; and, 4) revise the Order so the CBB can contract directly to carry out programs consistent with the Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard". The signature is stylized and cursive.

Bill Bullard, CEO

Cc: The Honorable Edward Avalos
Select members of Congress