

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN MEAT INSTITUTE,
1150 Connecticut Avenue NW, 12th Floor,
Washington, DC 20036;

AMERICAN ASSOCIATION OF
MEAT PROCESSORS,
One Meating Place,
Elizabethtown, PA 17022;

CANADIAN CATTLEMEN’S ASSOCIATION
6715 8th Street NE, Suite 310,
Calgary, Alberta, T2E 7H7

CANADIAN PORK COUNCIL,
900-220 Laurier Avenue W.
Ottawa, Ontario, K1P 5Z9;

CONFEDERACIÓN NACIONAL DE
ORGANIZACIONES GANADERAS,
Mariano Escobedo 714, Nueva Anzures,
11590 Miguel Hidalgo,
Federal District, Mexico;

NATIONAL CATTLEMEN’S BEEF
ASSOCIATION,
9110 E. Nichols Avenue #300,
Centennial, CO 80112;

NATIONAL PORK PRODUCERS COUNCIL,
122 C Street NW, Suite 875,
Washington, DC 20001;

NORTH AMERICAN MEAT ASSOCIATION,
1970 Broadway, Suite 825,
Oakland, CA 94612; and

(caption continued next page)

Case No. 1:13-cv-1033-KBJ

(caption continued from preceding page)

SOUTHWEST MEAT ASSOCIATION,
505 University Drive E, Suite 701,
College Station, TX 77840,

Plaintiffs,

v.

Case No. 1:13-cv-1033-KBJ

UNITED STATES DEPARTMENT
OF AGRICULTURE,
1400 Independence Avenue,
SW Washington, DC 20250;

AGRICULTURAL MARKETING SERVICE
1400 Independence Avenue,
SW Washington, DC 20250;

TOM VILSACK,
in his official capacity as Secretary of the
United States Department of Agriculture,
1400 Independence Avenue,
SW Washington, DC 20250; and

ANNE L. ALONZO,
in her official capacity as the Administrator of the
Agricultural Marketing Service,
United States Department of Agriculture
1400 Independence Avenue,
SW Washington, DC 20250,

Defendants and

UNITED STATES CATTLEMEN’S
ASSOCIATION,
2414 I St., NW ,
Washington, DC 20037;

NATIONAL FARMERS UNION,
20 F Street NW, Suite 300,
Washington, DC 20001;

caption continued next page)

(caption continued from preceding page))

AMERICAN SHEEP INDUSTRY ASSOCIATION,)
9785 S Maroon Circle, Suite 360,)
Englewood, CO 80112;)

CONSUMER FEDERATION OF AMERICA)
1620 Eye Street, NW, Suite 200,)
Washington, DC 20006;)

RANCHERS CATTLEMEN ACTION)
LEGAL FUND UNITED STOCKGROWERS)
OF AMERICA,)
P. O. Box 30715,)
Billings, MT 59107;)

FOOD & WATER WATCH, INC.)
1616 P Street, NW Suite 300,)
Washington, DC 20036;)

Case No. 1:13-cv-1033-KBJ

SOUTH DAKOTA STOCKGROWERS)
ASSOCIATION,)
426 St. Joseph Street,)
Rapid City, SD 57701; and)

WESTERN ORGANIZATION OF RESOURCE)
COUNCILS,)
220 South 27th Street,)
Billings, MT 59101;)

Defendant-Intervenors.)

**ANSWER OF DEFENDANT-INTERVENORS RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED STOCKGROWERS OF AMERICA, FOOD & WATER
WATCH, INC., SOUTH DAKOTA STOCKGROWERS ASSOCIATION, AND WESTERN
ORGANIZATION OF RESOURCE COUNCILS TO PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Defendant-Intervenors Ranchers Cattlemen Action Legal Fund United Stockgrowers of
America of America (“R-CALF USA”), Food & Water Watch, Inc., (“FWW”), the South Dakota

Stockgrowers Association (“SDSGA”), and the Western Organization of Resource Councils (“WORC”), hereby respond to Plaintiffs’ First Amended Complaint in Case No. 1:13-cv-1033-KBJ, filed July 23, 2013. The numbered paragraphs in this answer correspond to the numbered paragraphs in Plaintiffs’ Amended Complaint

PRELIMINARY STATEMENT

1. Defendant-Intervenors deny the existence of a “North American meat industry.” Defendant-Intervenors deny that any dependency has resulted from cross-border trade in livestock and meat products. Defendant-Intervenors admit that while trade in livestock and meat products occurs between Canada and Mexico and the United States, such trade between Canada and the United States has not occurred in each of the past 10 years due to a major disease problem detected in the Canadian cattle herd. Defendant-Intervenors deny that Canadian cattle have been shipped to the United States in each of the past 10 years. Defendant-Intervenors admit that while Canadian cattle and Mexican cattle are imported into the United States and that some of these imported cattle are ready for slaughter, they aver that Canadian cattle have not been allowed into the United States in each of the past 10 years. Defendant-Intervenors deny that these imported livestock are a critical supply for American processing plants. Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 1.

2. Defendant-Intervenors deny the allegations in Paragraph 2. Defendant-Intervenors aver that the regulation speaks for itself.

3. The allegations in Paragraph 3 attempt to characterize a regulation. The regulation speaks for itself. Therefore, Defendant-Intervenors deny these allegations.

4. The allegations in Paragraph 4 attempt to characterize a regulation. The regulation

speaks for itself. Therefore, Defendant-Intervenors deny the allegations contained in Paragraph 4.

5. Defendant-Intervenors deny that there is no health or safety reason to distinguish among meat from animals born or raised in Canada, or the United States, or Mexico. Defendant-Intervenors admit that COOL labeling requirements under the COOL statute contain certain exceptions, but deny the other allegations contained in Paragraph 5.

6. Defendant-Intervenors deny the allegations in Paragraph 6.

7. Defendant-Intervenors deny that the new COOL requirements will impose greater costs on cow-calf producers, backgrounders, stockers and feeders. Defendant-Intervenors admit that the new COOL requirements may impose some additional costs on processors and retailers; however, they aver that these costs will be insignificant when determining the price per pound of the products sold at the retail level. Defendant-Intervenors deny the other allegations in Paragraph 7.

8. Defendant-Intervenors deny the allegations in paragraph 8.

9. Defendant-Intervenors admit that Plaintiffs filed a motion for preliminary injunction on July 25, 2013. Defendant-Intervenors deny all other allegations contained in paragraph 9.

PARTIES

Plaintiffs

10. Defendant-Intervenors deny that the meatpackers represented by Plaintiffs are exclusively American, *i.e.*, United States, meatpackers. Defendant-Intervenors deny that the foreign-trade-association Plaintiffs are suppliers to more than a very small fraction of U.S.

cattlemen. Defendant-Intervenors lack knowledge or information regarding the nationality or nation-of-ownership of the feedlots, cattlemen, and pork producers represented by Plaintiffs; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 10.

11. Defendant-Intervenors admit that American Meat Institute (“AMI”) is a trade association and that it has members involved in packing and processing, but lack knowledge or information sufficient to form a belief as to the truth of the details of AMI’s membership or activity. The claims of participation in prior court litigation are admitted to the extent confirmed by the case citations provided. To the extent that Paragraph 11 contains any other allegations, Defendant-Intervenors deny such.

12. Defendant-Intervenors admit that American Association of Meat Processors (“AAMP”) is a trade organization, but lack knowledge or information sufficient to form a belief as to the truth of the details of AAMP on membership or activities. The claims of participation in prior court litigation are admitted to the extent confirmed by the case citations provided. To the extent that Paragraph 12 contains any other allegations, Defendant-Intervenors deny such.

13. Defendant-Intervenors admit that the Canadian Cattlemen’s Association (“CCA”) is an entity representing various cattle and/or beef producers in Canada, but lack knowledge or information sufficient to form a belief as to the truth of the details of CCA membership. The claims of participation in prior court litigation are admitted to the extent confirmed by the case citations provided. To the extent that Paragraph 13 contains any other allegations, Defendant-Intervenors deny such.

14. Defendant-Intervenors admit that the Canadian Pork Council (“CPC”) is an entity representing various hog and/or pork producers in Canada, but lack knowledge or information sufficient to form a belief as to the truth of the details of CPC’s membership or activities. To the

extent that Paragraph 14 contains any other allegations, Defendant-Intervenors deny such.

15. Defendant-Intervenors admit that Confederación Nacional de Organizaciones Ganaderas (“CNOG”) is an entity that represents various Mexican cattle producers but lack knowledge or information sufficient to form a belief as to the truth of the details of CNOG activities or membership. To the extent that Paragraph 15 contains any other allegations, Defendant-Intervenors deny such.

16. Defendant-Intervenors deny that National Cattlemen’s Beef Association (“NCBA”) is “the” national trade association representing U.S. cattle producers, to the extent that the term “the” excludes all other national trade associations that represent U.S. cattle producers. In fact, Defendant-Intervenors aver that NCBA represents many or all of the same meatpackers represented by AMI, AAMP, North American Meat Association (“NAMA,”) and Southwest Meat Association (“SMA”). Defendant-Intervenors admit that NCBA is a trade association with members in the cattle and packing industries, but lack knowledge or information sufficient to form a belief as to the truth of the details of NCBA’s membership or activities, including how many members counted by NCBA are not involved at all in the U.S. cattle industry or how many of those counted do not support NCBA’s position on the subject matter of Plaintiff’s complaint. The claims of participation in prior court litigation are admitted to the extent confirmed by the case citations provided. To the extent that Paragraph 16 contains any other allegations, Defendant-Intervenors deny such.

17. Defendant-Intervenors admit that National Pork Producers Council (“NPPC”) is a trade organization representing pork producers that include some of the very meatpackers also represented by AMI, AAMP, NAMA, and SMA, but lack knowledge or information sufficient to form a belief as to the truth of the details of NPPC’s membership or activities. The claims of

participation in prior court litigation are admitted to the extent confirmed by the case citations provided. To the extent that Paragraph 17 contains any other allegations, Defendant-Intervenors deny such.

18. Defendant-Intervenors admit that NAMA is a trade association with members involved in the meatpacking industry, but lack knowledge or information sufficient to form a belief as to the truth of the details of NAMA's membership or activities. The claims of participation in prior court litigation are admitted to the extent confirmed by the case citations provided. To the extent that Paragraph 18 contains any other allegations, Defendant-Intervenors deny such.

19. Defendant-Intervenors admit that SMA is a trade association with members in the meatpacking industry, but lack knowledge or information sufficient to form a belief as to the truth of the details of SMA's membership or activity.

Defendants

20. Defendant-Intervenors admit the allegations contained in Paragraph 20.

21. Defendant-Intervenors admit that Tom Vilsack is Secretary of the United States Department of Agriculture ("USDA"), and that the USDA Secretary has been charged with implementing the COOL regulations. The remainder of Paragraph 21 is a characterization of Plaintiffs' action, to which no response is required.

22. Defendant-Intervenors admit the allegations in Paragraph 22.

23. Defendant-Intervenors admit that Anne Alonzo is the Administrator of Agricultural Marketing Service ("AMS"). The remainder of Paragraph 23 is a characterization of Plaintiffs' action, to which no response is required.

JURISDICTION AND VENUE

24. Defendant-Intervenors admit that Plaintiffs make allegations that there are violations of the Constitution and identified statutes. Defendant-Intervenors deny that the Constitution or laws identified are violated by the regulation being challenged.

25. Defendant-Intervenors admit that District Courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

26. Defendant-Intervenors admit that District Courts have jurisdiction over actions in the nature of a mandamus to compel an officer or employee of a U.S. agency to perform a duty owed.

27. Defendant-Intervenors admit that the Court may issue proper declaratory judgments under 28 U.S.C. § 2202.

28. Defendant-Intervenors admit that venue is proper before this Court.

BACKGROUND

Livestock Trade Flows

29. Defendant-Intervenors deny that the market for livestock and meat in the United States, Canada, and Mexico is “highly integrated” and aver that Canadian cattle were prohibited from entering the United States for a period of longer than two years during the past ten years due to a major disease problem (Bovine Spongiform Encephalopathy or BSE, also know as “mad cow disease”) in the Canadian cattle herd.

30. Defendant-Intervenors admit that the United States imports cattle from both Canada and Mexico but aver that such imports have not occurred in each of the past 10 years. Defendant-Intervenors admit the other allegations contained in Paragraph 30.

31. Defendant-Intervenors deny the allegations contained in Paragraph 31.

32. Defendant-Intervenors deny the allegations contained in Paragraph 32.

33. Defendant-Intervenors deny the allegations contained in Paragraph 33.

34. Defendant-Intervenors admit that imported livestock and meat are subject to inspection upon their arrival at a federally-inspected slaughtering establishment and can be voluntarily graded under the AMS grading system. Defendant-Intervenors deny the other allegations contained in Paragraph 34.

35. Defendant-Intervenors admit that imports are subject to requirements administered by the Food Safety and Inspection Service, but deny the remaining allegations contained in Paragraph 35.

COOL Legislation

36. The allegations of Paragraph 36 attempt to characterize a statute. The statute speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 36.

37. The Defendant-Intervenors deny the allegations contained in Paragraph 37.

38. The allegations of Paragraph 38 attempt to characterize a statute and espouse legal conclusions. The statute speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 38.

39. The allegations of Paragraph 39 attempt to characterize a statute and espouse legal conclusions. The statute speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 39.

40. The allegations of Paragraph 40 attempt to characterize a statute and espouse legal conclusions. The statute speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 40.

41. The allegations of Paragraph 41 attempt to characterize a statute and espouse legal conclusions. The statute speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 41.

42. The allegations of Paragraph 42 attempt to characterize a statute and espouse legal conclusions. The statute speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 42.

43. The allegations of Paragraph 43 attempt to espouse legal conclusions; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 43.

The 2009 COOL Regulations

44. Defendant-Intervenors admit the allegations contained in Paragraph 44.

45. The allegations of Paragraph 45 attempt to characterize a regulation and espouse legal conclusions. The regulation speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 45.

46. The allegations of Paragraph 46 attempt to characterize a regulation and espouse legal conclusions. The regulation speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 46.

47. The allegations of Paragraph 47 attempt to characterize a regulation and espouse legal conclusions. The regulation speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 47.

48. Defendant-Intervenors deny the allegations of Paragraph 48.

The 2012 World Trade Organization Ruling

49. Defendant-Intervenors deny that Canada and Mexico waited until after the publication of the 2009 Regulations to initiate their COOL complaint at the WTO, therefore

Defendant-Intervenors deny the allegations in Paragraph 49.

50. The allegations of Paragraph 50 attempts to characterize the WTO panel report and Appellate Body decision and espouse legal conclusions. The report and decision speak for themselves; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 50.

51. The allegations of Paragraph 51 attempts to characterize the WTO Appellate Body decision and espouse legal conclusions. The decision speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 51.

52. The allegations of Paragraph 52 attempts to characterize the WTO Appellate Body decision and espouse legal conclusions. The decision speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 52.

53. Defendant-Intervenors admit that the WTO gave the United States until May 23, 2013 to comply with its ruling but deny that it was the Dispute Settlement Body that established such deadline.

The Revised Regulations and Final Rule

54. Defendant-Intervenors admit the allegations in Paragraph 54.

55. The allegations of Paragraph 55 attempt to characterize the regulation and explanation included therein as well as espouse legal conclusions. The regulation speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 55.

56. The allegations of Paragraph 56 attempts to characterize the regulation and espouse legal conclusions. The regulation speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 56.

57. Defendant-Intervenors admit that the revised regulations no longer allow commingling of meat with different born-and-raised heritages under the same origin label.

Defendant-Intervenors deny the other allegations in Paragraph 57.

58. The allegations of Paragraph 58 attempt to characterize various Plaintiffs' comments on a proposed regulation and the explanation included therein as well as espouse legal conclusions. The comments speak for themselves; therefore, Defendant-Intervenors deny the allegations in Paragraph 58.

59. The allegations of Paragraph 59 attempt to characterize various Plaintiffs' comments on a proposed regulation and the explanation included therein as well as espouse legal conclusions. The comments speak for themselves; therefore, Defendant-Intervenors deny the allegations in Paragraph 59.

60. The allegations of Paragraph 60 attempt to characterize various Plaintiffs' comments on a proposed regulation and the explanation included therein as well as espouse legal conclusions. The comments speak for themselves; therefore, Defendant-Intervenors deny the allegations in Paragraph 60.

61. The allegations of Paragraph 61 attempt to characterize various Plaintiffs' comments on a proposed regulation and the explanation included therein as well as espouse legal conclusions. The comments speak for themselves; therefore, Defendant-Intervenors deny the allegations in Paragraph 61.

62. The allegations of Paragraph 62 attempt to characterize various Plaintiffs' comments on a proposed regulation and the explanation included therein as well as espouse legal conclusions. The comments speak for themselves; therefore, Defendant-Intervenors deny the allegations in Paragraph 62.

63. The allegations of Paragraph 63 attempt to characterize various Plaintiffs' comments on a proposed regulation and the explanation included therein as well as espouse legal

conclusions. The comments speak for themselves; therefore, Defendant-Intervenors deny the allegations in Paragraph 63.

64. The allegations of Paragraph 64 attempt to characterize various Plaintiffs' comments on a proposed regulation and the explanation included therein as well as espouse legal conclusions. The comments speak for themselves; therefore, Defendant-Intervenors deny the allegations in Paragraph 64.

65. The allegations of Paragraph 65 attempt to characterize various Plaintiffs' comments on a proposed regulation and the explanation included therein as well as espouse legal conclusions. The comments speak for themselves; therefore, Defendant-Intervenors deny the allegations in Paragraph 65.

66. The allegations of Paragraph 66 attempt to characterize various Plaintiffs' comments on a proposed regulation and the explanation included therein as well as espouse legal conclusions. The comments speak for themselves; therefore, Defendant-Intervenors deny the allegations in Paragraph 66.

67. The allegations of Paragraph 67 attempts to characterize the regulation and espouse legal conclusions. The regulation speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 67.

68. The allegations of Paragraph 68 attempts to characterize the Final Rule and AMS explanation and espouse legal conclusions. The Final Rule and explanation speak for themselves; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 68.

69. The allegations of Paragraph 69 attempts to characterize the Final Rule and AMS explanation and espouse legal conclusions. The Final Rule and explanation speak for themselves; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 69.

70. The allegations of Paragraph 70 attempts to characterize the Final Rule and AMS explanation and espouse legal conclusions. The Final Rule and explanation speak for themselves; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 70.

71. The allegations of Paragraph 71 attempts to characterize the Final Rule and AMS explanation and espouse legal conclusions. The Final Rule and explanation speak for themselves; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 71.

Count One

72. Defendant-Intervenors incorporate by reference the above paragraphs in answer.

73. Paragraph 73 quotes from a court decision, which speaks for itself. No response is required.

74. Paragraph 74 quotes from a court decision, which speaks for itself. No response is required.

75. Defendant-Intervenors deny the allegations in Paragraph 75.

76. Defendant-Intervenors deny the allegations in Paragraph 76.

77. Defendant-Intervenors deny the allegations in Paragraph 77.

78. Defendant-Intervenors deny the allegations in Paragraph 78.

79. Defendant-Intervenors deny the allegations in Paragraph 79.

80. Defendant-Intervenors deny the allegations in Paragraph 80.

Count Two

81. Defendant-Intervenors incorporate by reference the above paragraphs in answer.

82. Defendant-Intervenors deny the allegations in Paragraph 82.

83. Defendant-Intervenors deny the allegations in Paragraph 83.

84. Defendant-Intervenors deny the allegations in Paragraph 84.

85. Defendant-Intervenors deny the allegations in Paragraph 85.

Count Three

86. Defendant-Intervenors incorporate by reference the above paragraphs in answer.

87. The allegations of Paragraph 87 attempts to characterize the statute and espouse legal conclusions. The statute speaks for itself; therefore, Defendant-Intervenors deny the allegations contained in Paragraph 87.

88. Defendant-Intervenors deny the allegations in Paragraph 88.

89. Defendant-Intervenors deny the allegations in Paragraph 89.

90. Defendant-Intervenors deny the allegations in Paragraph 90.

91. Defendant-Intervenors deny the allegations in Paragraph 91.

GENERAL DENIAL

Defendant-Intervenors hereby deny with specificity each and every allegation in Plaintiffs' First Amended Complaint not specifically admitted or otherwise responded to in this Answer.

AFFIRMATIVE DEFENSES

Plaintiffs fail to state any claim upon which relief can be granted.

The Plaintiffs' claims are barred by the doctrines of laches, consent, waiver and estoppel.

Plaintiffs' claims against Defendants are barred, in whole or in part, by the doctrine of unclean hands.

Plaintiffs' claims against Defendants are barred, in whole or in part, to the extent that they lack standing to pursue those alleged claims against Defendants.

Plaintiffs have named improper parties and failed to join necessary and indispensable parties.

Plaintiffs' claims are too speculative and remote.

Plaintiffs' claims are untimely.

Plaintiffs are not entitled to attorney fees.

Defendants reserve the right to assert such additional defenses and to amend and/or supplement their Answer based on further development in the course of this litigation.

Prayer for Relief

The remaining allegations in the First Amended Complaint are the Plaintiffs' prayer for relief, to which no response is required. To the extent a response is required, Defendant-Intervenors deny that Plaintiffs are entitled to any of the requested relief or are entitled to attorneys' fees and costs.

WHEREFORE, the Defendant-Intervenors respectfully request that the Court enter judgment in favor of the Defendants and Defendant-Intervenors and against the Plaintiffs and grant Defendant-Intervenors such other and further relief as the Court deems proper.

DATED: August 23, 2013

Respectfully submitted,

/s/

Zachary B. Corrigan
D.C. Bar No. 497557
1616 P Street, Suite 300
Washington, D.C. 20036
202-683-2451
zcorrigan@fwwatch.org
Attorney for Defendant-Intervenors

Dudley Butler,
Motion for Admission Pro Hac Vice Submitted Aug. 23, 2013
MS Bar # 7626
Butler Farm and Ranch Law Group PLLC
499A Breakwater Drive
Benton, MS 39039
Telephone: (662) 673-0091
Email: jdb@farmandranchlaw.com
Attorney for Defendant-Intervenors