

Gerald B. Murphy
Moulton, Bellingham, Longo & Mather, P.C.
1900 Sheraton Plaza
Billings, MT 59103
(406) 248-7731
Fax: (406) 248-7889
jerrym@moultonlawfirm.com

Edward J. Farrell*
Roberta Kienast Dagher*
Blank Rome LLP
600 New Hampshire Avenue, NW
Washington, DC 20037
(202) 772-5837
Fax: (202) 572-1437
farrell@blankrome.com
dagher@blankrome.com

Counsel for the Canadian Cattlemen's Association

Gerald B. Murphy
Moulton, Bellingham, Longo & Mather, P.C.
1900 Sheraton Plaza
Billings, MT 59103
(406) 248-7731
Fax: (406) 248-7889
jerrym@moultonlawfirm.com

Simeon M. Kriesberg*
Alvin J. Lorman*
Timothy J. Lambert
Mayer, Brown, Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3214
Fax: (202) 263-5214
skriesberg@mayerbrownrowe.com

Counsel for Alberta Beef Producers

*Admitted *pro hac vice*

has presented misleading extra-record and post-record assertions of fact (even in its so-called "procedural" motions), *amicus* parties can provide significant insights if the Court chooses to evaluate the myriad of matters newly presented by R-CALF. *See, e.g., Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) (upholding district court's discretion in accepting *amicus* to investigate facts and advise the court on matters of public interest); *Neonatology Assocs v. Comm'r of Internal Revenue*, 293 F.3d 128, 132 (3rd Cir. 2002) (an *amicus* can provide assistance to the Court by collecting "background or factual references that merit judicial notice" or providing "particular expertise").

CCA/ABP's Proposed Brief focuses on misleading or inaccurate statements made by R-CALF in support of its Motion to Set Argument, and in particular R-CALF's assertion that "[d]evelopments since briefing on the cross-motions for summary judgment was concluded have only increased the support for R-CALF's positions." *See* CCA/ABP Proposed Brief at 3. CCA/ABP can assist the Court by putting into context current information about which CCA/ABP have specific knowledge and understanding, and which squarely contradicts the arguments made by R-CALF. The current status of export markets for North American beef and cattle, the consumer reaction to BSE cases, and the volume and price of North American cattle since implementation of the Final Rule all belie R-CALF's claims and are matters that CCA/ABP are in a position of expertise to clarify.

R-CALF's criticism that the CCA/ABP Proposed Brief addresses "issues of irreparable harm and balancing of the harm" that were relevant to R-CALF's request for preliminary injunction but not the present consideration of the motions for summary judgment misses the point. CCA/ABP's citations to R-CALF's past statements and predictions (not only from filings in support of R-CALF's motion for a preliminary injunction, but also from R-CALF's complaint

and its memorandum in support of summary judgment) are not offered here in the context of a specific legal standard but rather to provide information relevant to the Court's evaluation of the credibility of R-CALF's argument in support of its request for a hearing. R-CALF's failed and inaccurate predictions have ill-served this Court throughout these proceedings. Tellingly, R-CALF makes no effort whatsoever to rehabilitate its patently flawed assessment of the impact of implementing the Final Rule, and its suggestion that a hearing is necessary now for the Court to decide this matter is unsupported by any credible factual presentation on R-CALF's part.

Moreover, R-CALF's complaint about the length of the proposed *amicus* brief is disingenuous. *See* R-CALF Opposition at 2. While CCA/ABP's Proposed Brief barely exceeds 7 pages, R-CALF's memorandum in support of its "procedural" motion is 18 pages long and attaches 7 exhibits totaling more than 275 pages. R-CALF's current efforts to turn its procedural request for a hearing into a supplemental substantive filing should not be countenanced. As noted by CCA/ABP in their proposed brief (at 3), CCA/ABP submit their proposed brief only because of R-CALF's improper attempts to supplement its Motion for Summary Judgment. To the extent that the Court opts to consider the hundreds of pages of supplemental information provided by R-CALF in support of its "procedural" motion, the CCA/ABP Proposed Brief provides the Court the necessary context that to date R-CALF has been either unwilling or unable to provide.

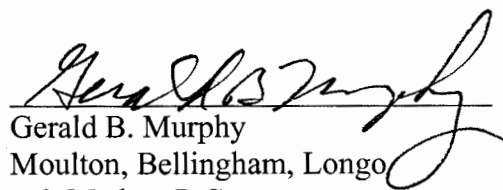
Finally, the CCA/ABP Proposed Brief intentionally avoids issues that CCA/ABP understood would be raised by the U.S. Department of Agriculture ("USDA") or by other *amicus* parties. Thus, while the Government of Canada's proposed *amicus* brief corrects R-CALF's misleading assessments of human and animal health safeguards and regulatory issues, CCA/ABP focuses on trade and commercial issues. *See* CCA/ABP Proposed Brief at 3, n.1. Likewise,

CCA/ABP leave legal arguments to the USDA, and, instead, highlight for the Court only those matters in which they have specific knowledge and experience to offer. Contrary to R-CALF's allegation (R-CALF's Opposition at 3), there is very little overlap between the CCA/ABP Proposed Brief and USDA's Opposition to Plaintiff's Motion to Set Motions for Summary Judgment for Argument.

For all of the reasons noted above as well as in CCA/ABP's Motion for Leave to File Brief *Amici Curiae*, the Court should grant CCA/ABP's motion and accept their Proposed Brief. Furthermore, the Court should deny R-CALF's improper efforts to supplement the administrative record in this case and should decide the pending motions for summary judgment in conformity with the guidance provided by the Ninth Circuit Court of Appeals in its July 25, 2005 opinion addressing the matters in this proceeding. *See Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. USDA*, 415 F.3d 1078 (9th Cir. 2005).

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Respectfully submitted,


Gerald B. Murphy
Moulton, Bellingham, Longo
& Mather, P.C.
1900 Sheraton Plaza
Billings, MT 59103

Edward J. Farrell*
Roberta Kienast Dagher*
Blank Rome LLP
600 New Hampshire Avenue, NW
Washington, DC 20037

*Counsel for the Canadian Cattlemen's
Association*

Gerald B. Murphy
Moulton, Bellingham, Longo
& Mather, P.C.
1900 Sheraton Plaza
Billings, MT 59103

Simeon M. Kriesberg*
Alvin J. Lorman*
Timothy J. Lambert
Mayer, Brown, Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006

Counsel for Alberta Beef Producers

*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused a true and accurate copy of the foregoing Reply of Canadian Cattlemen's Association's and Alberta Beef Producers in Support of Motion for Leave to File Brief Amici Curiae to be served by first-class mail, postage prepaid, on:

A. Clifford Edwards
Taylor S. Cook
Edwards, Frickle, Anner-Hughes, Cook & Culver
1601 Lewis Avenue, Suite 206
P.O. Box 20039
Billings, MT 59104

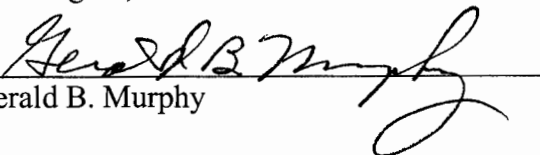
Russell S. Frye
Frye Law PLLC
3050 K Street, N.W., Suite 400
Washington, D.C. 20007-5108

William L. Miller
The William Miller Group, PLLC
3050 K Street, N.W., Fourth Floor
Washington, D.C. 20007

Mark Steger Smith
Office of the U.S. Attorney
P.O. Box 1478
2929 Third Avenue North, Suite 400
Billings, MT 59101

Donna Fitzgerald
Trial Attorney
General Litigation Section
Environment & National Resources Division
U.S. Department of Justice
P.O. Box 663
Washington, DC 20044-0663

Lisa A. Olson
Marcia Tiersky
U.S. Department of Justice
20 Massachusetts Avenue., N.W., Room 6118
Washington, D.C. 20530


Gerald B. Murphy

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