

Proposed Intervenors

Honorable Stephen Harper, MP for Calgary Southwest, Leader of Her Majesty's Official Opposition in the House of Commons
Belinda Stronach, MP for Newmarket-Aurora
Rick Casson, MP for Lethbridge
Diane Finley, MP for Haldimand-Norfolk
Gerry Ritz, MP for Battlefords-Lloydminster

Andrew Scheer, MP for Regina-Qu'Appelle
Art Hanger, MP for Calgary Northeast
Barry Devolin, MP for Haliburton-Kawartha Lakes-Brock
Betty Hinton, MP for Kamloops-Thompson-Cariboo
Bev Oda, MP for Durham
Bill Casey, MP for Cumberland-Colchester-Musquodoboit Valley
Bob Mills, MP for Red Deer
Brad Trost, MP for Saskatoon-Humboldt
Brian Fitzpatrick, MP for Prince Albert
Carol Skelton, MP for Saskatoon-Rosetown-Biggan
Cheryl Gallant, MP for Renfrew-Nipissing-Pembroke
Dale Johnston, MP for Wetaskiwin
Darrel Stinson, MP for Okanagan-Shuswap
Daryl Kramp, MP for Prince Edward-Hastings
Dave Batters, MP for Palliser
Dave Chatters, MP for Westlock-St. Paul
Dave MacKenzie, MP for Oxford
David L. Anderson, MP for Cypress Hills-Grasslands
David Tilson, MP for Dufferin-Caledon
Dean Allison, MP for Niagara West-Glanbrook
Deepak Obhrai, MP for Calgary East
Diane Ablonczy, MP for Calgary-Nose Hill
Ed Komarnicki, MP for Souris-Moose Mountain
Garry Breitzkreuz, MP for Yorkton-Melville
Gary Goodyear, MP for Cambridge
Gary Schellenberger, MP for Perth-Wellington
Gord Brown, MP for Leeds-Grenville
Gordon O'Connor, MP for Carleton-Mississippi Mills
Greg Thompson, MP for New Brunswick Southwest
Guy Lauzon, MP for Stormont-Dundas-South Glengarry
Helena Guergis, MP for Simcoe-Grey
Inky Mark, MP for Dauphin-Swan River-Marquette
James Bezan, MP for Selkirk-Interlake
James Rajotte, MP for Edmonton-Leduc
John Cummins, MP for Delta-Richmond East
Jeff Watson, MP for Essex
Jeremy Harrison, MP for Desnethé-Missinippi-Churchill River

Jim Prentice, MP for Calgary Centre-North
Joe Preston, MP for Elgin Middlesex London
Kevin Sorenson, MP for Crowfoot
Larry Miller, MP for Bruce-Grey-Owen Sound
Lynne Yelich, MP for Blackstrap
Leon Benoit, MP for Vegreville-Wainwrig
Mark Warawa, MP for Langley
Maurice Vellacott, MP for Saskatoon-Wanuskewin
Mervin C. Tweed, MP for Brandon-Souris
Monte Solberg, MP for Medicine Hat
Myron Thompson, MP for Wild Rose
Paul Forseth, MP for New Westminster-Coquitlam
Peter Goldring, MP for Edmonton East
Peter MacKay, MP for Central Nova
Randy Kamp, MP for Pitt Meadows-Maple Ridge-Mission
Richard M. Harris, MP for Cariboo-Prince George
Rob Merrifield, MP for Yellowhead
Rona Ambrose, MP for Edmonton-Spruce Grove
Scott Reid, MP for Lanark-Frontenac-Lennox and Addington
Stockwell Day, MP for Okanagan-Coquihalla
Ted Menzies, MP for Macleod
Tom Lukiwski, MP for Regina-Lumsden-Lake Centre

Honorable Senator Consiglio Di Nino
Honorable Senator James F. Kelleher
Honorable Senator Len Gustafson
Honorable Senator Raynell Andreychuk
Honorable Senator Ethel Cochrane
Honorable Senator David Tkachuk

MOTION TO INTERVENE

Pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, Hon. Stephen Harper, MP for Calgary Southwest Belinda Stronach, MP for Newmarket-Aurora, Rick Casson, MP for Lethbridge, Diane Finley, MP for Haldimand-Norfolk, and Gerry Ritz, MP for Battlefords-Lloydminster, Peter MacKay, MP for Central Nova Myron Thompson, MP for Wild Rose, Larry Miller, MP for Bruce-Grey-Owen Sound, James Bezan, MP for Selkirk-Interlake, Gordon O'Connor, MP for Carleton-Mississippi Mills, Bev Oda, MP for Durham, Gord Brown, MP for Leeds-Grenville, Barry Devolin, MP for Haliburton-Kawartha Lakes-Brock, Leon Benoit, MP for Vegreville-Wainwright, Dale Johnston, MP for Wetaskiwin, Kevin Sorenson, MP for Crowfoot, Carol Skelton, MP for Saskatoon-Rosetown-Biggan, Paul Forseth, MP for New Westminster-Coquitlam, Joe Preston, MP for Elgin Middlesex London, David Tilson, MP for Dufferin-Caledon, Deepak Obhrai, MP for Calgary East, Betty Hinton, MP for Kamloops-Thompson-Cariboo, Dave Chatters, MP for Westlock-St. Paul, Rob Merrifield, MP for Yellowhead, Brad Trost, MP for Saskatoon-Humboldt, Honorable Senator Len Gustafson, Garry Breitkreuz, MP for Yorkton-Melville, Jeremy Harrison, MP for Desnethé-Missinippi-Churchill River, Dave Batters, MP for Palliser, Lynne Yelich, MP for Blackstrap, Greg Thompson, MP for New Brunswick Southwest, Rona Ambrose, MP for Edmonton-Spruce Grove, Dean Allison, MP for Niagara West-Glanbrook, Jim Prentice, MP for Calgary Centre-North, Daryl Kramp, MP for Prince Edward-Hastings, Bill Casey, MP for Cumberland-Colchester-Musquodoboit Valley, Inky Mark, MP for Dauphin-Swan River-Marquette, Guy Lauzon, MP for Stormont-Dundas-South Glengarry, Maurice Vellacott, MP for Saskatoon-Wanuskewin, Monte Solberg, MP for Medicine Hat, Honorable Senator Raynell Andreychuk, Ted Menzies, MP for Macleod, Stockwell Day, MP for Okanagan-Coquihalla, Ed Komarnicki, MP for Souris-Moose Mountain, Helena Guergis, MP for Simcoe-Grey, Jeff Watson, MP for Essex, Tom Lukiwski, MP for Regina-Lumsden-Lake Centre, Gary Schellenberger, MP for Perth-Wellington, Peter Goldring, MP for Edmonton East, Cheryl Gallant, MP for Renfrew-Nipissing-Pembroke, Honorable Senator James F. Kelleher, Brian Fitzpatrick, MP for Prince Albert, Honorable Senator David Tkachuk, Mervin C. Tweed, MP for Brandon-Souris, Dave MacKenzie, MP for

Oxford, Gary Goodyear, MP for Cambridge, David L. Anderson, MP for Cypress Hills-Grasslands, John Cummins, MP for Delta-Richmond East, James Rajotte, MP for Edmonton-Leduc, Richard M. Harris, MP for Cariboo-Prince George, Scott Reid, MP for Lanark-Frontenac-Lennox and Addington, Andrew Scheer, MP for Regina-Qu'Appelle, Darrel Stinson, MP for Okanagan-Shuswap, Bob Mills, MP for Red Deer, Diane Ablonczy, MP for Calgary-Nose Hill, Randy Kamp, MP for Pitt Meadows-Maple Ridge-Mission, Art Hanger, MP for Calgary Northeast, Honorable Senator Ethel Cochrane, Honorable Senator Consiglio Di Nino, and Mark Warawa, MP for Langley, hereby move for an order from this Court granting leave to intervene as parties in support of the defendants in these proceedings.

Counsel for the applicant intervenors have contacted counsel for the parties to this action. The Plaintiff, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America, opposes this motion. The USDA and the Canadian Cattlemen's Association have not indicated their consent or opposition to this motion. The Alberta Beef Producers consent to this motion.

In support of this motion, the applicants state the following:

- a) The applicant Members of the Parliament of Canada and the constituents they represent have a substantial public interest in the outcome of this case,
- b) The outcome of these proceedings will impact large and varied interests that exceed those of the current parties,
- c) No current party to these proceedings adequately represents the interests of the applicants,
- d) The applicants will offer the Court substantial information not available from the current parties,

- e) Intervention by Members of the Parliament of Canada will allow for an orderly resolution of case and will not unduly delay or prejudice the adjudication of rights of the current parties.

As set out more fully in the proposed intervenors' Memorandum in Support, the applicants are entitled to intervene in this action as permissive intervenors under Rule 24(b) of the Federal Rules of Civil Procedure. In the alternative, the applicants respectfully request that this Court allow them to participate as *Amicus Curiae*, and to provide a brief to the Court of not more than ten pages.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

I. FACTUAL BACKGROUND

On January 10, 2005, the plaintiffs, the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (“R-CALF USA”) brought a suit against the defendants, the United States Department of Agriculture (“USDA”), the Secretary of Agriculture and the Animal and Plant Health Inspection Service. The suit sought declaratory and injunctive relief from the USDA’s decision to issue a Final Rule effectively reopening the United States border for the importation of Canadian live cattle, beef products, and other byproducts.¹

On May 20, 2003, the World Reference Laboratory confirmed that a Canadian cow had Bovine Spongiform Encephalopathy (“BSE”), commonly known as Mad Cow Disease. The United States imposed a temporary import ban on Canadian beef. In August 2003, the United States reopened its borders to some Canadian beef, but the border remained closed to live cattle.

On December 29, 2004, the USDA announced that it recognized Canada as a “minimal-risk region” for BSE. Imports of Canadian cattle would resume on March 7, 2005.²

One day after the USDA announcement, another suspected case of BSE was discovered in Canada. A few days after the second case of BSE, a third case was confirmed in the province of Alberta, Canada.

The United States maintained its commitment to open its borders on March 7, 2005.

¹ Verified Complaint for Declaratory and Injunctive Relief dated January 10, 2005.

² This new classification meant that the United States would not close its borders to Canadian beef unless there were two or more cases of BSE per one million cattle older than 24 years of age in each of four consecutive years.

On March 2, 2005, U.S. District Judge Richard F. Cebull granted the plaintiffs a temporary injunction to prevent the reopening the border to Canadian cattle.

II. INTERVENORS

The applicant intervenors are Members of the Parliament of Canada. Pursuant to section 92 of the Constitution Act of Canada, they have been entrusted to safeguard and protect the interests of their constituents in matters including but not limited to the regulation of trade and commerce. The subject matter of these proceedings substantially and significantly touches upon issues that are of primary concern to members of the Parliament of Canada and their constituents.

The interests of the applicant intervenors are relevant to any review of the reasonableness of the USDA's Final Rule. They are the very interests affected by a decision in this respect. The proposed intervenors have separate interests from either of the parties, and are the only party that can represent the interests of free trade and the interests of Canada. In the absence of an application by the Government of Canada, the proposed intervenors are the only party that can provide context and comparative analysis to this Court's review of the USDA's Final Rule.

III. ARGUMENT

The Requirements of Rule 24(b) of the Federal Rules of Civil Procedure

Rule 24(b) of the Federal Rules of Civil Procedure ("Rule 24(b)") sets out the requirements for "Permissive Interventions". Permissive interventions are proper "when an applicant's claim or defense and the main action have a question of law or fact in common." Generally, an applicant must show that it shares a common question of law or fact with the main action, that its motion is timely, and that the Court has an independent basis for jurisdiction over the applicant's claims. Donnelly v. Glickman, 159 F.3d 405, 409

(9th Cir. 1998); San Jose Mercury News, Inc. v. U.S. District Court, 187 F.3d 1096, 1100 (9th Cir. 1999).

Courts have liberally construed these requirements, particularly the requirement of commonality of fact or law. The United States Supreme Court has stated that "it plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation". SEC v. U.S. Realty Improvement Co., 310 U.S. 434, 459 (1940). In Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094 (9th Cir. 2002), the Ninth Circuit Court of Appeals dispensed with the requirement that the intervenors have an independent protectable interest on the grounds that the requirement did not control the application of Rule 24(b):

There remains for consideration the possibility, which was not addressed in Wetlands, that permissive intervention under Rule 24(b), which also was relied upon by the district Court, sustains the ability of intervenors to proceed before the district Court and in this appeal to give "defense" of the government's rulemaking. Unlike Rule 24(a), a "significant protectable interest" is not required by Rule 24(b) for intervention; all that is necessary for permissive intervention is that intervenor's "claim or defense and the main action have a question of law or fact in common." Fed. R. Civ. P. 24(b). Rule 24(b) "plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." Id. at 1108.

The Court found the fact that the intervenors' asserted defenses were directly responsive to the claim for an injunction sufficient to meet the requirements of Rule 24(b):

The intervenors asserted defenses of the Roadless Rule directly responsive to the claim for injunction. Moreover, though intervenors do not have a direct interest in the government rulemaking, they have asserted an interest in the use and enjoyment of roadless lands, and in the conservation of roadless lands, in the national forest lands subject to the Roadless Rule, and they assert "defenses" of the government rulemaking that squarely respond to the challenges made by plaintiffs in the main action. Id. at 1110-1111.

The Interpretation of Rule 24(b) of the Federal Rules of Civil Procedure

Courts have generally interpreted Rule 24 to favor intervention. Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir. 1998). Courts also have ample discretion to decide when a

permissive intervention is appropriate and if it will unduly delay or prejudice the adjudication of the rights of the original parties. In Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094 (9th Cir. 2002), the Ninth Circuit exercised that discretion finding the presence of certain intervenors would “assist the Court in its orderly procedures leading to the resolution of this case, which impacted large and varied interests.” Id. at 1111.

The Nature of the Proposed Intervenors

The proposed intervenors are Canadian Members of Parliament. They are not U.S. Members of Congress. They should not be considered congressional movants as that term has been jurisprudentially interpreted. Rather, the proposed intervenors are representatives of a foreign government whose regulatory testing procedures are directly implicated in the case at bar. They claim a direct interest in protecting the interests of the citizens whom they represent by providing context and comparative analysis about Canada’s regulatory framework to this Court.

However, should this Court consider the proposed intervenors akin to Members of Congress, it should nonetheless grant the Members of Parliament intervenor status for the within action. Courts have granted congressional movants intervenor status where it has been demonstrated that the movants fulfill the requirements of Rule 24. Nothing precludes Members of Congress from adding their views in litigation as intervenors or amici curiae. Trinity Board of Fla., Inc. v. FCC, 211 F.3d 618 (D.C. Cir. 2000); Johnson v. Mortham, 915 F. Supp. 1529 (N.D. Fla. 1995).

The applicants in this motion would assist the Court in the resolution of these proceedings for the following reasons:

- A. The applicant Members of the Parliament of Canada and the constituents they represent have a substantial public interest in the outcome of this case.

Members of the Parliament of Canada and their constituents have significant and substantial interests in the outcome of these proceedings. Live cattle, beef products and related byproducts represent a considerable portion of bilateral trade between the United States and Canada. As of 2003, the date of the USDA's determination to prohibit such importations, trade between the two countries amounted to US\$441.5 billion, making this trading relationship the largest in the world.³

The said Members of Parliament also share Canada's national interest in reopening the United States border and assuring citizens that safeguards for Canadian beef, beef products, and live cattle surpass minimum testing standards.

Members of the class, notably, Rob Merrifield, MP for Yellowhead, Carol Skelton, MP for Saskatoon-Rosetown-Biggar, and Larry Miller, MP for Bruce-Grey-Owen Sound, are directly involved in raising animals that are affected by the matter before this Court. Rob Merrifield has a substantial cow/calf operation in Alberta, Larry Miller has a substantial cow/calf operation in Ontario, and Carol Skelton raises ruminant animals in Saskatchewan.

These interests and views are relevant to any review of the reasonableness of the USDA's Final Rule. They are the very interests affected by a decision in this respect. Moreover,

³ Canadian Embassy, Washington, DC, *United States-Canada: The World's Largest Trading Relationship*, available at <<http://www.canadianembassy.org/trade/wltr%202004.pdf>> (last visited May 9, 2005).

these interests provide context to the USDA's Final Rule. This context enables a clear conclusion that the testing procedures for Canada and the United States are sufficiently similar that the lawfulness of one system necessarily entails the lawfulness of the other.

B. The outcome of these proceedings will impact large and varied interests that exceed those of the current parties.

The closure of the United States border to Canadian imports has had a dramatic impact on Canadian producers and on the Canadian economy as a whole. Since the closure of the United States border to Canadian imports, experts calculate that the Canadian beef industry has lost approximately CDN\$6 billion, and 75,000 jobs in Canada.⁴

The closure has caused tremendous harm to Canadian beef producers. The interests of the Canadian producers, the national interests of Canada, and the interests of the United States economy are not currently represented in these proceedings.

C. No current party to these proceedings adequately represents the interests of the applicants.

As currently organized, these proceedings only represent the interests of the United States government, as represented by the USDA and other defendants, and the interests of United States producers who are in direct competition with their Canadian counterparts, as represented by R-CALF USA. Neither the plaintiffs nor the defendants hold the authority to represent or to advocate for the interests of free trade or the interests of Canada.

Canada and the United States are each other's largest trading partners and customers for food and agriculture products. In addition, their farm economies and markets are highly integrated. The closure of the U.S. border for live cattle and certain beef products from

⁴ Statistics Canada, *Canada's Beef Cattle Sector and the Impact of BSE on Farm Family Income 2000-2003* (2004).

Canada has seriously disrupted the highly integrated North American beef industry. The applicant intervenors can represent these interests.

Canada's interests are directly affected by this suit. Canada has significant national interests at stake in this case. The information available to the current parties does not constitute the official position of Canada. Again, the applicant intervenors can represent these interests.

D. The applicants will offer the Court substantial information not available from the current parties.

The applicants can provide the Court with information about the nature and adequacy of the Canadian regulatory framework for BSE that is ultimately at issue in this case. The Government of Canada has an expansive control and prevention system. The safeguards in place to stop the spread of BSE include the removal of specified risk material ("SRM"), import controls on cattle, beef, and beef products, surveillance of cattle, preemptive feed bans, strict slaughter practices, and a cattle identification program.

These safeguards are preemptive and comprehensive. For example, the SRM program requires the removal of certain cattle tissues from all animals slaughtered for human consumption. SRM are tissues that, in BSE-infected cattle, contain the agent that may transmit the disease. Since 1997, Canada has banned the feeding of rendered protein from ruminant animals (including cattle, sheep, or deer) to other ruminants. The Canadian Government controls the importation of products that are assessed to have a high risk of introducing BSE into Canada, only allowing importation from countries that Canada considers to be free of BSE. The cattle identification program allows the Canadian government to trace individual animal movements from the herd of origin to slaughter.

The applicants can also provide information about the context of Canada's control and prevention system. This context includes details about how Canada conducted its testing

at the relevant time. Such context is essential to properly understanding the basis for the USDA's Final Rule. The USDA made its decision on the basis of the record before it, but had been in constant negotiations with its Canadian counterparts about exactly this context. Moreover, such information does not add facts to the record, but merely clarifies the facts already on the record that formed the basis for the USDA's decision.

Such context is important in order to compare the Canadian regulatory framework to the United States regulatory framework. Canada and the United States have the same BSE risk status, and have similar safeguard measures in place to protect human and animal health. Both countries conduct approximately equivalent levels of testing to detect BSE, and continue to work together to further harmonize BSE control policies. Although Canada and the United States have identical BSE risk levels, Canada currently allows the importation of all U.S. beef, beef products, and live cattle for slaughter. An understanding of how Canada conducts its testing is essential to any meaningful comparison of testing methods between countries. The information provided by the applicants will demonstrate that there are no meaningful differences between testing methods, that the current situation is unjustifiable on the basis of science, and that the USDA Final Rule is sound and should be upheld.

The applicants can also provide the Court with information about the United States' free trade obligations. The resolution of these proceedings must take into account the obligations incumbent on the United States pursuant to the North American Free Trade Agreement ("NAFTA"). The NAFTA was signed by both Canada and the United States and was ratified by the United States Congress. The NAFTA includes national treatment provisions, which require the United States to treat Canadian beef producers at least as well as it treats domestic beef producers. Its provisions are in force and are internally binding.

At most, the current parties can provide the Court with partial and limited information that serves their own interests. This limited information provides no context or insight into the Canadian regulatory regime for BSE. Nor does the information available to the

current parties provide the basis for any comparison to the United States regulatory framework.

The applicant intervenors emphasize that even if it is determined that such information is not required for the Court to make its decision, such a determination does not warrant a dismissal of this motion to intervene. Notwithstanding the essential nature of this information to any review of the USDA's Final Rule, the applicants meet the other requirements for intervenor status as well, and should be entitled to such status on that basis.

- E. Intervention by Members of the Parliament of Canada will allow an orderly resolution of case and will not unduly delay or prejudice the adjudication of rights of the current parties.

The applicants can provide information and representation that will help the Court to resolve this case. The applicants can supply context for Canada's testing systems, which form the basis of the USDA's Final Rule. This context will demonstrate that Canadian beef, beef products, and live cattle do not pose a meaningful risk to public health, which is at issue in this case.

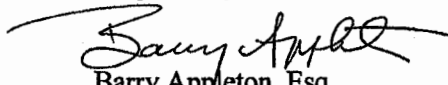
An orderly resolution of this case requires the Court to consider all of the relevant factors. Such factors include not only the reasonableness of the USDA Final Rule but also the details and context of Canada's testing systems and the obligations of the United States under various trade provisions, including those in the NAFTA.

IV. PETITION

In light of the foregoing reasons, the applicants respectfully ask the Court in its discretion to allow them to intervene in these proceedings as party defendants.

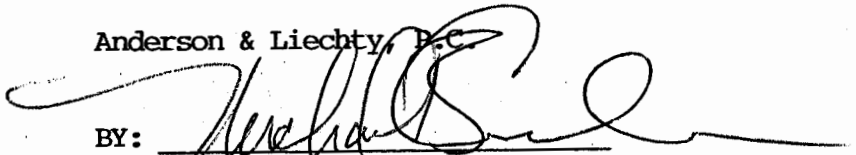
In the alternative, the applicants respectfully ask the Court in its discretion to allow them to participate in these proceedings as *Amicus Curiae*, in support of the defendants, the United States Department of Agriculture and the Animal and Plant Health Inspection Service, and to provide a brief to the Court of not more than ten pages.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **MOTION OF HONORABLE STEPHEN HARPER, MP, BGELINDA STRONACH, MP, RICK CASSON, MP, DIANE FINLEY, MP & GERRY RITZ, MP *et. al.* & BRIEF IN SUPPORT THEREOF** was served upon the person(s) named below at the address(es) shown by first class mail on the date of this

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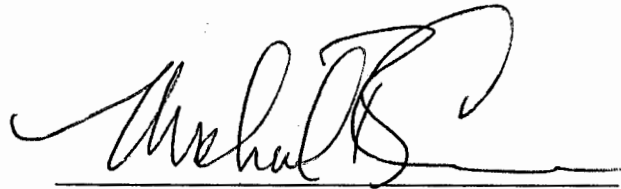
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Dated this 9th day of May, 2005.



MICHAEL B. ANDERSON

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2 **LODGED**

3 **MAY - 9 2005**

4 **PATRICK E. DUFFY CLERK**
5 BY Deputy Clerk
6

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF MONTANA**
9 **BILLINGS DIVISION**

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11
12
13 RANCHERS CATTLEMEN ACTION LEGAL) Case No. CV-05-06-BLG-RFC
14 FUND UNITED STOCKGROWERS OF)
15 AMERICA,) **[PROPOSED]**

16) Plaintiff,) **ORDER GRANTING**
17) **MOTION OF HONORABLE**

18) **STEPHEN HARPER, MP,**
19) **BELINDA STRONACH, MP,**
20) **RICK CASSON, MP, DIANE**
21) **FINLEY MP, & GERRY RITZ,**
22) **MP et al. FOR LEAVE TO**
23) **INTERVENE**

24) Defendants.)

25 The applicant intervenors, Members of Parliament of Canada, have filed a
26 motion for leave to intervene. They have moved the Court pursuant to Rule 24(b),
27 F.R.Civ. P. for permissive intervention permitting them to intervene as party
28 defendants in this action.

The applicant intervenors have demonstrated to the satisfaction of the Court that

1 their defenses share common questions of law or fact with the main action, that their
2 motion is timely, and the Court has an independent basis for jurisdiction over their
3 claims.
4

5
6 The Court further finds that the subject matter of these proceedings substantially
7 and significantly touch upon issues of primary concern to the applicant intervenors and
8 their constituents which cannot be adequately represented without intervention.
9

10
11 Therefore, the motion of the Members of Parliament of Canada for leave to
12 intervene is GRANTED.
13

14
15 DATED this ____ day of May, 2005.
16

17
18 _____
19 U.S. DISTRICT COURT JUDGE
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27 cc: Counsel of Record
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