



CANADIAN CATTLEMEN'S ASSOCIATION

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Summary of Legal Actions Currently Taking Place in the U.S. September 28, 2006

R-CALF vs. USDA

- Basis of the case is whether the United States Department of Agriculture (USDA) rule opening the border to imports of beef and live cattle from regions at minimal risk for BSE (including Canada) poses a safety risk to U.S. consumers or animal health risk to the U.S. cattle herd. More specifically, the court will review whether the administrative record compiled by USDA during the rulemaking process supports the rule or whether USDA's actions were "arbitrary and capricious."
- Amicus curiae (friend of the court) briefs to provide relevant information to the court in its consideration of R-CALF's Motion for a Preliminary Injunction were filed by the Canadian Cattlemen's Association (CCA) and Government of Canada but were rejected by the court on February 23. The National Meat Association (NMA), representing smaller packers in the U.S., requested intervenor status and was denied (*see National Meat Association Appeal of District Court Decisions* below).
- On March 2 in the U.S. District Court for Montana, Judge Richard Cebull of the Billings Division issued a preliminary injunction preventing the USDA rule from going into effect until the case is heard (*see USDA Appeal of Preliminary Injunction and National Meat Association Appeal of District Court Decisions* below).
- That same day, Judge Cebull issued a written order of preliminary injunction and instructed R-CALF and USDA to propose a schedule by March 16 for trial on the merits of a permanent injunction.
- On March 16, R-CALF and USDA filed a joint proposed schedule for hearing the case. Based on this proposal, the Court established a schedule for the parties to file their various motions.
- On March 18 the CCA and Alberta Beef Producers (ABP) jointly filed for intervenor status in the case. The request for intervenor status argues that the Canadian cattle producers have substantial interests in the outcome of this case, and no other party to the proceeding can adequately represent those interests.
- On April 4, 2005 R-CALF and USDA responded to CCA's and ABP's request for intervenor status. As expected, they both opposed the request.
- On April 12, CCA and ABP filed their rebuttal to R-CALF and USDA's oppositions.
- On April 21, four Conservative Members of Parliament filed for intervenor status.
- On May 9, R-CALF filed a motion for summary judgment that the final rule be permanently enjoined.
- On May 18, Judge Cebull denied both the CCA and ABP intervenor status (*see CCA/ABP Appeal of District Court Intervention Decision* below).



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- On May 24, USDA filed its opposition to the request by Members of Parliament for intervenor status.
- On June 10, USDA filed its cross-motion and opposition to R-CALF's motion for summary judgment. Also on that day, CCA and ABP requested leave to file amicus curiae briefs in support of USDA's position, along with the proposed briefs.
- On June 14, the court granted CCA and ABP's requests and accepted the amicus briefs for consideration by the court.
- On June 17, the court denied the motion to intervene by certain members of the Canadian parliament, but allowed them the opportunity file an amicus brief.
- On June 24, USDA and R-CALF submitted a stipulation to the court agreeing that witnesses would not be called by the parties during the then-scheduled July 27, 2005 hearing.
- R-CALF's opposition to USDA's cross-motion was filed on June 28; USDA's final reply was filed July 13.
- On July 1, certain members of the Canadian parliament filed an amicus brief in support of USDA's position.
- On July 14, 2005 the Ninth Circuit Court of Appeals stayed the district court's preliminary injunction order, effective immediately. The Ninth Circuit advised that it would "expeditiously" issue an opinion detailing its reasons for reversing the district court.
- On July 20, the district court vacated the hearing scheduled for July 27 to consider issuance of a permanent injunction on the import of cattle from Canada; a new hearing date, if deemed necessary by the court, will be set following the issuance of the Ninth Circuit's opinion regarding the preliminary injunction.
- On July 25, 2005 the Ninth Circuit issued its full opinion reversing the district court's preliminary injunction. The Ninth Circuit also issued a memorandum denying the intervention requests by CCA, ABP and NMA.
- On September 8, 2005, R-CALF filed a petition with the Ninth Circuit requesting a rehearing of the reversal of the preliminary injunction (*see USDA Appeal of Preliminary Injunction* below).
- R-CALF's request for rehearing was denied by the Ninth Circuit on October 13.
- On January 6, 2006, R-CALF filed a motion to set a date for oral argument on the currently pending cross-motions for summary judgment. R-CALF contends that despite the Ninth Circuit's reversal of the preliminary injunction, the District Court should still enter a permanent injunction against the importation of Canadian cattle.
- USDA submitted its opposition to R-CALF's motion on January 27, 2006. In addition, requests for leave to file amicus briefs responding to new issues raised by R-CALF were filed by CCA and ABP (jointly), the Government of Canada, as well as NMA and the American Meat Institute (also jointly). R-CALF objected to all the requests for amicus filings on February 7. Each of the parties seeking amicus status responded to R-CALF's objection.



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- On March 15, 2006, R-CALF filed a notice of supplemental authority with the Court specifically bringing to the Court's attention USDA's March 14, 2006 technical amendments to the final rule.
- By an order dated April 5, 2006, the U.S. District Court granted USDA's Motion for Summary Judgment and denied R-CALF's request for a permanent injunction. All other pending motions were denied by the Court as moot.

What Happens Next?

- See *R-CALF Appeal of District Court Denial of Permanent Injunction* below.

R-CALF Appeal of District Court Denial of Permanent Injunction Request

- On June 2, 2006 R-CALF submitted to the U.S. Court of Appeals for the Ninth Circuit a Notice of Appeal of the District Court's April 5, 2006 Order granting USDA's Motion for Summary Judgment and denying R-CALF's request for a permanent injunction of the Final Rule.
- On August 14, 2006, USDA filed a Motion for Summary Affirmance requesting that the Ninth Circuit expedite a decision to uphold the District Court's ruling.

What Happens Next?

- Although fully briefed by the parties, the Ninth Circuit has not yet ruled on USDA's Motion. All other proceedings in the appeal have been postponed until after the Ninth Circuit's decision regarding USDA's Motion.

USDA Appeal of Preliminary Injunction

- On March 17 the U.S. Department of Justice, on behalf of USDA, filed an appeal with the U.S. Court of Appeals for the Ninth Circuit asking that the court overturn the preliminary injunction issued by the U.S. District Court in Montana.
- On April 15 the USDA filed its brief in the appeal.
- On April 15 the Government of Canada filed an amicus curiae "friend of the court" brief in support of the USDA appeal.
- On April 21 the American Farm Bureau, National Cattlemen's Beef Association, 18 state farm bureaus, 29 state cattle organizations, National Pork Producers Council and individual U.S. cattle producers filed an amicus curiae brief in support of the USDA rule, stating "the court rejected the agency's explanation for its decision, disregarded the scientific evidence and expert opinion on which that decision was based and repeatedly substituted its judgment for that of the agency. The District Court's order granting the preliminary injunction (to block the USDA rule) should be vacated."
- On April 21, Tyson Foods filed an amicus curiae brief supporting USDA's appeal of the preliminary injunction, stating Tyson has been running its U.S. beef plants at reduced levels of production due in part to the continued U.S. ban on Canadian cattle.
- Also on April 21, ABP filed an amicus curiae brief supporting USDA's appeal on the grounds that the preliminary injunction was not supported by the record,



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would not have the negative effect on the U.S. as claimed by R-CALF and adopted by the court, and would do harm to the public interest.

- On April 22 the CCA and affiliated organizations filed an amicus curiae brief stating, “the CCA can provide support for USDA/APHIS’s position by assisting in the presentation and explanation of issues in which the CCA has specific knowledge and interest such as the global evolution of BSE, the status of international cattle and beef markets, the volume of Canadian cattle for export, and the impact of BSE on the Canadian consumer market. With respect to all these issues, the district court overlooked or misinterpreted record evidence that the CCA is in a position of expertise to clarify.”
- R-CALF’s response to the brief filed by USDA was due May 12. R-CALF obtained a two week extension and filed its response on May 26.
- On June 6, the Ninth Circuit granted leave for the filing of the proposed amicus briefs, making them a part of the court’s record.
- The USDA, NMA and CCA/ABP appeals were heard by the Ninth Circuit Court of Appeals on July 13 in Seattle, Washington.
- On July 14, 2005 the Ninth Circuit Court of Appeals stayed the district court’s preliminary injunction order, effective immediately. The Ninth Circuit advised that it would “expeditiously” issue an opinion detailing its reasons for reversing the district court.
- On July 25, 2005 the Ninth Circuit issued its full opinion reversing the district court’s preliminary injunction. The Ninth Circuit also issued a memorandum denying the intervention requests by CCA, ABP and NMA.
- On September 8, R-CALF filed a petition for rehearing and a request for rehearing *en banc* (that is, a rehearing by a larger number of appellate judges).
- Briefs amicus curiae were filed by various organizations in support of R-CALF's position, including the states of Montana, Connecticut, South Dakota, North Dakota, New Mexico and West Virginia (September 15); the Organization for Competitive Markets and 22 other organizations and entities (September 16); and the Center for Food Safety, Community Nutrition Institute, Consumer Federation of America, Institute for Agriculture and Trade Policy and Public Citizen (September 29).
- On October 13, 2005, the Ninth Circuit three-judge panel that issued the opinion reversing the preliminary injunction filed an order denying R-CALF's petition for rehearing by the panel. The panel also denied R-CALF's petition for rehearing *en banc*, since no active judge of the Ninth Circuit requested a vote on R-CALF's *en banc* rehearing request.
- R-CALF decided not to seek review by the U.S. Supreme Court of the reversal of the preliminary injunction.

What Happens Next?

- Nothing further is pending regarding the preliminary injunction, however, *see R-CALF Appeal of District Court Denial of Permanent Injunction* above.



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National Meat Association Appeal of District Court Decisions

- On March 9 the NMA appealed Judge Cebull's denial of intervenor status to the U.S. Court of Appeals, Ninth Circuit, in San Francisco. At the same time NMA also appealed the preliminary injunction. NMA requested that these appeals be heard on an emergency basis.
- NMA also requested that R-CALF be required to post a bond to cover the economic impairment suffered by NMA members for the time that the preliminary injunction is in effect, should the Courts ultimately deny R-CALF's petition.
- On March 11 the U.S. Court of Appeals, Ninth Circuit, agreed to hear the NMA's appeal on an expedited briefing schedule.
- NMA filed its opening brief on March 21, garnering the support of five separate amicus filers – the American Meat Institute, North American Meat Processors, Southwest Meat Association, Easterday Ranches, and Pioneer, Inc. Both the district court's denial of NMA's motion to intervene and NMA's appeal of the district court's preliminary injunction were scheduled to be heard in conjunction with USDA's preliminary injunction appeal.
- USDA opposed NMA's petition to become an intervenor arguing, consistent with its previous position, that the USDA was in the best position to defend its rule.
- R-CALF's response brief, due March 28, was submitted March 30.
- NMA's rebuttal was submitted April 4.
- The USDA, NMA and CCA/ABP appeals were heard by the Ninth Circuit Court of Appeals on July 13 in Seattle, Washington.
- On July 14, 2005 the Ninth Circuit Court of Appeals stayed the district court's preliminary injunction order, effective immediately. The Ninth Circuit advised that it would "expeditiously" issue an opinion detailing its reasons for reversing the district court.
- On July 25, 2005 the Ninth Circuit issued its full opinion reversing the district court's preliminary injunction. The Ninth Circuit also issued a memorandum denying the intervention requests by CCA, ABP and NMA.
- On September 8, 2005, R-CALF filed a petition with the Ninth Circuit requesting a rehearing of the reversal of the preliminary injunction (*see USDA Appeal of Preliminary Injunction* above).
- R-CALF's request for rehearing was denied by the Ninth Circuit on October 13.

What Happens Next?

- Nothing further is pending regarding NMA's appeal of the preliminary injunction, however, *see R-CALF Appeal of District Court Denial of Permanent Injunction* above.

CCA/ABP Appeal of District Court Intervention Decision



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- On June 2, 2005, CCA and ABP jointly appealed Judge Cebull's denial of their request for intervenor status to the U.S. Court of Appeals, Ninth Circuit.
- On June 14, the Ninth Circuit granted a request by CCA and ABP for an expedited briefing schedule and scheduled CCA and ABP's appeal for oral argument on July 13, along with the USDA and NMA appeals.
- On June 17, CCA and ABP filed their joint appellate brief, identifying the legal errors in the District Court's decision.
- USDA filed its response brief on June 30; R-CALF filed its response on July 1. Both opposed CCA/ABP's appeal.
- The final reply brief by CCA and ABP was filed on July 7.
- The USDA, NMA and CCA/ABP appeals were heard by the Ninth Circuit Court of Appeals on July 13 in Seattle, Washington.
- On July 14, 2005 the Ninth Circuit Court of Appeals stayed the district court's preliminary injunction order, effective immediately. The Ninth Circuit advised that it would "expeditiously" issue an opinion detailing its reasons for reversing the district court.
- On July 25, 2005 the Ninth Circuit issued its full opinion reversing the district court's preliminary injunction. The Ninth Circuit also issued a memorandum denying the intervention requests by CCA, ABP and NMA.
- On September 8, 2005, R-CALF filed a petition with the Ninth Circuit requesting a rehearing of the reversal of the preliminary injunction (*see USDA Appeal of Preliminary Injunction* above).
- R-CALF's request for rehearing was denied by the Ninth Circuit on October 13.

What Happens Next?

- Nothing further is pending with regard to the CCA/ABP appeal of the District Court's intervention decision, however, *see R-CALF Appeal of District Court Denial of Permanent Injunction* above.