



*Fighting for the U.S. Cattle Producer!*

**R-CALF United Stockgrowers of America**  
P.O. Box 30715  
Billings, MT 59107  
Fax: 406-252-3176  
Phone: 406-252-2516  
Website: [www.r-calfusa.com](http://www.r-calfusa.com)  
E-mail: [r-calfusa@r-calfusa.com](mailto:r-calfusa@r-calfusa.com)

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February 3, 2011

Honorable Tom Vilsack  
United States Secretary of Agriculture  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, D.C. 20250

The Honorable Eric Holder  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable Phyllis K. Fong  
USDA Office of Inspector General  
Room 117-W Jamie Whitten Bldg  
1400 Independence Ave SW  
Washington, DC 20250

Tom Ramey, CEO  
Cattlemen's Beef Board  
9000 E. Nichols Ave., Suite 215  
Centennial, CO 80112

**Via Facsimile and E-mail**

**Re: Request for Investigation Into Specific NCBA Activities to Determine Extent to Which NCBA Misused the Beef Checkoff to Promote Its Policy Agenda**

Dear Secretary Vilsack, Attorney General Holder, Inspector General Fong, and Mr. Ramey:

R-CALF USA previously provided letters to you dated August 4, 2010, January 17, 2011, and January 20, 2011 (Mr. Ramey was not a recipient of the latter two letters) that contain evidence substantiating our concern that the National Cattlemen's Beef Association (NCBA) has been using the Beef Checkoff Program (Checkoff) to subsidize non-Checkoff activities that include activities to influence governmental actions and policies.

Based on the available evidence R-CALF USA previously cited in its letters that demonstrate NCBA has a long history of violations, we believe NCBA has knowingly violated the purpose, intent, and spirit of the Beef Promotion and Research Act of 1985 (the Act), the Beef Promotion and Research Order (the Order), and the contract between NCBA and the Beef Promotion Operating Committee (BPOC). For this offense, we continue to request the immediate suspension of NCBA's contract with the CBB. In addition, we continue to call for a thorough and probing investigation into NCBA's historical use of the Checkoff going back at least ten years and including all Checkoff dollar transaction beginning at the time a producer pays his or her Checkoff payment upon the sale of his or her cattle.

To aid investigators in their investigation, we are providing Attachment 1, which is a list of historical dates and locations for which R-CALF USA has first-hand knowledge, information, and/or belief regarding NCBA's activities that focused exclusively on influencing governmental action and policy. We encourage investigators to review NCBA's records pertaining to these

dates and locations to determine if *any* Checkoff dollars were used to subsidize, augment, or otherwise facilitate NCBA's advancement of its policy initiatives by participating in the listed activities. We request that investigators determine if any NCBA staff, officers, directors, or reimbursed members charged the Checkoff, either directly or indirectly, for any of their expenses, including but not limited to travel, lodging, meals, supplies, materials, or time related to any of the policy-related events listed in Attachment 1.

We are particularly concerned with NCBA's long-term practice, which was clearly revealed in the settlement proposal involving over \$216,000 in unlawful expenditures, of charging the Checkoff for an unbelievable one-half of NCBA's officer travel. This is preposterous as NCBA officers are the spokespeople for NCBA and they have led NCBA's vehement opposition to some of the most critical and pivotal policy initiatives ever to face U.S. cattle producers – initiatives that we believe were supported by the preponderance of Checkoff paying cattle producers. For example, NCBA officers led NCBA's opposition against country-of-origin labeling, U.S. cattlemen's efforts to redress captive supplies in the Pickett v. Tyson case, U.S. cattlemen's efforts to postpone the resumption of imports from disease-affected countries, U.S. cattlemen's efforts to prevent the establishment of a National Animal Identification System, U.S. cattlemen's efforts to include a livestock title in the 2008 Farm Bill, and U.S. cattlemen's efforts to restore competition in the proposed Grain Inspection, Packers and Stockyards Administration (GIPSA) rule to clarify, implement and enforce the Packers and Stockyards Act.

Allowing NCBA officers, with a fiduciary duty to advance the policy interests of their members, to subsidize their expenses through the Checkoff fundamentally violates conflict of interest principles that the government is obligated to prevent. To make matters worse, anecdotal evidence indicates that upwards of 60 to 70 percent of NCBA's overhead is paid with Checkoff dollars.

Evidence abounds regarding NCBA's and its affiliated state organization's strategic and unlawful use of their control over the Checkoff to exclusively advance policy positions. For example, Attachment 2 is a copy of the July 2, 2010 edition of AG Journal in which the Colorado Cattlemen's Association, a state affiliate of NCBA, uses the Checkoff logo to legitimize the organization's fierce opposition to the GIPSA rule. The conflicts of interest and other unlawful practices exemplified by Attachment 2 is so pervasive as to render the Checkoff as little more than a government-funded means of advancing NCBA's policy positions and helping to sustain NCBA and its affiliate organizations.

An example of the incestuous conflicts of interest and flagrant disregard for the law pervasive within the Checkoff is Attachment 3, which is an official CBB publication available on the CBB Web site: <http://www.beefboard.org/library/cbb-publications.asp>. This document titled Beef Industry Long Range Plan is touted by the CBB as the document that "guides program spending decisions." Yet, contrary to the Checkoff's clear and unambiguous prohibition against using *any* Checkoff funds in any manner for the purpose of influencing governmental action or policy, with the single exception of recommending amendments to the Order, the CBB's Beef Industry Long Range Plan is replete with policy initiatives such 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. . .;” and “[p]reserve individuals’ freedom to choose business models and marketing methods by limiting government involvement in business decisions. . .;” and, to support a national animal identification system. Regardless of the positions of cattle producers on eliminating estate taxes, supporting a national animal identification system, or engaging in critical policy areas such as trade and cattle marketing, these initiatives developed by and distributed by the CBB are prohibited under the Checkoff. It is no comfort to Checkoff-paying cattle producers that these initiatives were developed by representatives from McDonalds, Cargill Meat Solutions, Outback Steakhouse and Five Rivers Cattle Feeding. Indeed, these initiatives have provided NCBA the foundational arguments to aggressively oppose the GIPSA rule (e.g., by calling for limiting government involvement in business decisions) and the CBB is directly and inexplicably supporting this unlawful activity.

We implore you, again, to take decisive action to stop the ongoing Checkoff charade by immediately suspending the NCBA’s contract with the CBB pending the completion of a thorough and probing investigation into all aspects of the Checkoff.

Sincerely,

Bill Bullard, CEO

Attachments 1-3

## ATTACHMENT 1

<b>Date</b>	<b>Location</b>	<b>Description</b>	<b>Purpose</b>
08-Dec-10	Washington, D.C	NCBA participated in the final competition workshop sponsored by the U.S. Department of Agriculture (USDA) and the U.S. Department of Justice (Justice Department).	The purpose of the day-long workshop was to influence governmental action and policy.
10-Nov-10	Kansas City, Missouri	NCBA participated in a press conference to encourage opposition to proposed livestock competition reforms.	The purpose of the event was to influence governmental action and policy.
03-Nov-10	Spokane, Washington (via teleconference)	NCBA participated in a forum wherein NCBA provided a power-point presentation in opposition to proposed livestock competition reforms.	The event was exclusively related to public policy
27-Aug-10	Fort Collins, Colorado	NCBA participated in the livestock competition workshop sponsored by USDA and Justice Department.	The purpose of the day-long workshop was to influence governmental action and policy.
26-Aug-10	Fort Collins, Colorado	NCBA participated in a rally/meeting to generate opposition to proposed livestock competition reforms.	The purpose of the event was to influence governmental action and policy
23-Jul-10	Washington, D.C	NCBA participated in a congressional staff briefing session in opposition to proposed livestock competition reforms.	The purpose of the briefing was to influence governmental action and policy.
12-Mar-10	Ankeny, Iowa	NCBA participated in the first competition workshop sponsored by USDA and the Justice Department.	The purpose of the day-long workshop was to influence governmental action and policy.
04-Nov-09	Kansas City, Missouri	NCBA participated in the Cattle Industry Animal Identification Roundtable Discussion sponsored by the Livestock Marketing Association	This purpose of the meeting was to influence governmental action and policy.
26-Aug-08	Kansas City, Missouri	Livestock Industry Country of Origin Labeling Implementation Meeting sponsored by the Livestock Marketing Association to discuss how to move country of origin information along the livestock chain of ownership	The purpose of this meeting attended by livestock producer groups, packers and USDA was to influence governmental action and policy.
26-Jan-06	Lewistown, MT	Debate over cattle policies between R-CALF USA and NCBA's President Elect Mike John at Montana Winter Fair.	The debate was exclusively related to public policy
05-Nov-05	Lancaser, WI	Debate over cattle policies between R-CALF USA and NCBA's Jim McAdams at Wisconsin Livestock Industry Forum	The debate was exclusively related to public policy

26-Oct-05	Goliad, Texas	Goliad County Farm Bureau sponsored a debate between NCBA President Jim McAdams and R-CALF USA regarding cattle issues	The purpose of the debate was exclusively related to public policy
07-Oct-05	Seneca Falls, NY	Debate over cattle policies between R-CALF USA and NCBA's Jim McAdams during the Empire Farm Show	The debate was exclusively related to public policy
14-Sep-05	Spencer, Iowa	Debate over cattle policies between R-CALF USA and NCBA's Chief Economist Gregg Doud at the Clay Country Fair Beef Industry Forum	The debate was exclusively related to public policy
21-Apr-05	Ninth Circuit Court of Appeals	NCBA Hires Gregory G. Garre and Lorane F. Hebert of Hogan & Hartson L.L.P. to file an amicus curiae brief on behalf of NCBA and 29 of NCBA's state affiliates in the lawsuit between R-CALF USA and USDA regarding the USDA's administrative rule on BSE (or mad cow disease).	The purpose of NCBA's amicus curiae brief was to influence governmental action and policy.
28-Apr-04	Denver, Colorado	NCBA Hires the Holland & Hart law firm that threatened to sue R-CALF USA for distributing a video of the February 28, 2004, La Junta, CO, debate between R-CALF USA and NCBA	The purpose of hiring the Holland & Hart law firm was exclusively related to public policy
26-Feb-04	La Junta, Colorado	Debate over cattle policies between R-CALF USA and NCBA's CEO Terry Stokes	The debate was exclusively related to public policy
18-Nov-03	Denver, Colorado	NCBA's Jay Truit participates in a COOL summit hosted by R-CALF USA.	The purpose of the COOL summit was to influence governmental action and policy on country of origin labeling (COOL) and was exclusively related to public policy
16-Jul-02	Washington, D.C	NCBA President Eric Davis and R-CALF USA testify before the U.S. Senate Agriculture Committee regarding packer ownership of livestock and enforcement of the Packers and Stockyards Act	The purpose of the congressional testimony was to influence governmental action and policy.
18-Mar-02	McLean, Virginia	NCBA commissions Sparks Company, Inc., to report on U.S. Senate Bill 1731, which was introduced by Senator Tim Johnson to ban packer ownership of livestock. The report was titled Potential Impacts of the Proposed Ban on Packer Ownership and Feeding of Livestock.	The purpose of the Sparks Company, Inc. report was to influence governmental action and policy.

## CCA

# Energy, health care, auto makers and now - beef producers

Colorado beef producers have resoundingly stated time and time again that increased government involvement in their daily business dealings is unacceptable. When rehashing the Farm Bill, lawmakers attempted to dictate the types of programs that producers should have access to when marketing their cattle. It should be noted that the grassroots opposition changed Congress's direction away from limiting any marketing opportunities.

The Colorado Cattlemen's Association supports strict enforcement of the Packers & Stockyards Act as it is written by the U.S. Department of Agriculture in relation to activities within the U.S. Beef packing industry. However, the U.S. Department of Agriculture Grain Inspection, Packers and Stockyards Administration's (GIPSA) plans for a proposed rule regarding livestock and poultry marketing practices raises significant concerns.

As required by the 2008 Farm Bill, GIPSA is proposing to add several new sections to the regulations under the Packers and Stockyards Act, 1921 (P&S Act). GIPSA claims the regulations they are proposing would describe and clarify conduct that violates the P&S Act and allow for more effective and efficient enforcement by GIPSA. CCA will address this point with the proposed rule asking for further clarification on why the regulatory agency, GIPSA, requires more clarification of their rule in order to enforce it. This fact alone concerns producers when the agency is

seeking additional regulatory control.

CCA's policy states that national agriculture policy should be oriented to a



free, private enterprise competitive market system. Our members firmly believe that private enterprise alternatives in marketing and risk management should be developed and encouraged as the preferred alternative to government programming.

In their proposed ruling, GIPSA will require that all marketing contracts be posted for public review and GIPSA review of "fairness." This takes away the basic American business tenet of a willing buyer and willing seller engaging in a private business transaction. The beef industry has worked hard to put in place marketing alliances and alternative marketing arrangements (AMAs) to better serve the demands of our consumers, while getting paid for the value being put on our cattle. This would severely hinder, if not destroy, those programs.

GIPSA considers marketing arrangements based on volume or premiums for quality as potentially showing "undue preference." This is another hit to producers' ability to enter into an AMA. In other words, producers who spend considerable time and energy improving their herd's genetics and production efficiencies

will be punished, while marginal cattle will be rewarded in order to establish a "fairness factor".

Even in GIPSA's own study, they found that a majority of cattle are marketed through traditional cash market

means. The study showed that AMAs such as forward contracts, production contracts, packer ownership, or custom feeding have provided benefits to some producers without harming the competitiveness of the marketplace.

The study also showed that producers are able to market their livestock in different ways and can see the economic benefits, all while maintaining a strong viable cash market. CCA understands that proposals to ban packer ownership and limit cattle marketing options may sound appealing on the surface; however, the study shows these restrictions will hurt the very people they are intended to protect.

Another concern of CCA is that producers wanting to file a lawsuit under the Pack-

ers and Stockyards Act would no longer have to show competitive injury. This would open the door to massive numbers of frivolous lawsuits being filed. This is also contrary to recent rulings by two different courts. Not only are some of these provisions contrary to court decisions, but several actually put in place provisions that were defeated during revisions of the last Farm Bill.

The bottom line is that in today's marketplace, producers need the freedom and flexibility to market their cattle in ways that provide the best return on their investment. CCA will continue to protect beef producers' rights to market cattle the way they see fit and will fight government attempts to restrict or direct producers' choices.

The Colorado Cattlemen's Association is the state's only nonprofit trade organization exclusively representing Colorado's cattle producers. Founded in 1867, CCA is the nation's oldest state cattlemen's association. For more information, visit [www.coloradocattle.org](http://www.coloradocattle.org).

## VISION

CCA's vision is to promote the interests of Colorado's beef industry and protect Colorado's land, water and forage resources

# 1

## vision

A beef industry that is profitable, growing and sustainable for future generations

### MISSION

**MOBILIZE all U.S. cattle and beef industry participants to prosper amid growing competition by solidifying U.S. beef's position as the world's most preferred protein**

### 4 PRIORITIES

creating value  
THROUGH BEEF PRODUCTION

creating growth  
THROUGH CONSUMER MARKETS

creating sustainability  
THROUGH A FAVORABLE BUSINESS CLIMATE

creating opportunity  
THROUGH GLOBAL COMPETITIVENESS

### FOR THESE RESULTS BY 2010

#### **Succeed against domestic competition**

- Increase beef demand 10% by 2010
- Establish a consumer satisfaction index by the end of 2006 and set target for 2010

#### **Succeed against international competition**

- Increase U.S. beef exports from 1 billion pounds in 2005 to 3 billion pounds by 2010
- Improve the balance of trade by becoming a net exporter in terms of value by 2010

# 4

## beef production priorities

## consumer markets

### creating value through beef production

#### DESIRED OUTCOME

A productive beef industry that creates profit opportunities for every segment and produces beef products that meet consumers' needs for flavor, safety, healthfulness, consistency, convenience and value

#### GIVEN

- Age/process/source verification : Continue creating opportunities for beef producers to receive value from their ability to verify product or production methods

#### NEW FRONTIERS

- Accessible Information: Promote information accessibility so that every segment of beef production can make knowledge-driven decisions to respond to market signals
  - ◆ Rebuild producer education and production research infrastructure
- Opportunity for All : Create opportunity for all industry segments to grow and for participants to pass their ranch, farm or business on to the next generation
  - ◆ Develop multiple production models that add value at each stage in the production chain and provide profit opportunity for all beef producers
  - ◆ Motivate, inform and create tools to help industry participants create value for cattle, beef and byproducts
  - ◆ Create opportunities for successful generational transfer, including the permanent elimination of estate taxes
- Critical Links in the Chain
  - ◆ Reinforce the role of the cow-calf producer as the foundation of the beef value chain
  - ◆ Increase beef's presence at point of sale (retail grocery and food-service) by creating and communicating the business case for beef; reinforce beef as a retail destination and a menu highlight for consumers

### creating growth through consumer markets

#### DESIRED OUTCOME

A growth industry that capitalizes on U.S. and international opportunities and achieves increasing beef demand, consumer satisfaction and enhanced carcass value

#### GIVENS

- Demand Growth : Continue addressing the beef demand drivers (food safety, nutrition, convenience, flavor, positive eating experience and value)
- Public Opinion: Promote and defend the image of beef and beef production in the court of public opinion by showcasing the wholesomeness of the product, animal stewardship practices and the advantages of cattle production to the environment
- Point of Consumer Contact: Engage retailers and foodservice operators as partners in creating consumer preference for beef

#### NEW FRONTIERS

- Beef's Uniqueness: In the face of growing competition, identify new opportunities to create differentiation and relevance for the U.S. beef supply with domestic and international consumers, capitalizing on beef's unique standing with consumers
  - ◆ Strong beef demand
  - ◆ Consumer passion for beef
  - ◆ Beef's unique nutrient profile, especially important to certain populations such as youth
  - ◆ Beef as the premier protein in foodservice (menu prominence) and retail (a grocery destination point)
  - ◆ Global uniqueness of U.S. grain-fed beef and variety meat
- Market-By-Market Product Strategy: Enhance carcass value by matching each beef product and byproduct with the right U.S. or international market opportunity
- Consumer Trends: Capitalize on domestic and international consumer trends
  - ◆ Changing consumer demographics and preferences
  - ◆ Emerging middle class around the world with more disposable income and a desire for high quality protein



business  
climate

global  
competitiveness

## creating **sustainability** through a favorable U.S. business climate

### DESIRED OUTCOME

A beef industry that operates in a favorable U.S. business climate that continues to support beef production and consumption

### GIVENS

- Proactive Government Policy: Actively pursue critical policy areas such as environmental regulations, taxes, trade, food safety, nutrition, product labeling, technology use, cattle marketing, land use and property rights to ensure our competitiveness in the global marketplace
- Free Enterprise: Preserve individuals' freedom to choose business models and marketing methods by limiting government involvement in business decisions and enhancing government's knowledge, understanding and trust of the industry

### NEW FRONTIERS

- Political Clout: Use knowledge and networking to increase the industry's impact on government policy decisions
- Industry Advocacy: Foster industry understanding around key policy issues and involve the industry in effectively executing policy positions
- Telling the Production Story: Relate what the industry does to produce beef in a way that preserves the environment, respects cattle welfare and ensures beef's safety in order to counter activists' misinformed attacks on beef production
- Crisis Preparedness and Management: Create an industry and government partnership to prevent and respond to industry crises

## creating **opportunity** through global competitiveness

### DESIRED OUTCOME

A globally competitive industry that has greater access to international markets

### GIVENS

- Managed Trade: Ensure government places high priority on trade matters and aggressively pursues both access to global markets and accountability with trade partners, including effective mechanisms to police trade agreements and re-open markets
- Animal ID: In light of trade disruptions and concerns about animal health, launch an industry-led national animal identification system in 2006 and work aggressively to achieve 100% adoption among industry participants by 2007, providing beef producers with information and tools to successfully meet this timeframe
- Herd Health: Continue to address existing animal diseases and protect the U.S. cattle population from the risk of imported animal diseases; ensure government has the necessary funding and tools in place to prevent or address health challenges
- Regain Lost Ground: Re-open export markets and surpass previous export levels
- Government Involvement: Ensure government regulations don't unnecessarily create a competitive disadvantage for the U.S. beef industry in the global marketplace

### NEW FRONTIERS

- Comprehensive Trade Strategy: Establish a global trade strategy for the U.S. beef industry that prioritizes markets and product opportunities based on:
  - ◆ The U.S. beef industry's competitive advantage: high quality grain-fed beef and the ability to sell selected cuts, such as variety meat, in large volumes
  - ◆ Global market opportunities: For enhancing product and carcass value
  - ◆ The competition: Identify the global beef competitors and their strengths and weaknesses
- Trade Information: Communicate to beef producers that global trade increases the value of U.S. beef and cattle

# Industry long range planning group guiding principles

The U.S. beef industry is uniquely independent and interdependent

## WE BELIEVE

the goal of beef production is to increase value for industry participants

## WE BELIEVE

cow-calf producers are the foundation of the beef production chain

## WE BELIEVE

in the freedom to choose your own business models, marketing techniques, partnerships or organizations

## WE BELIEVE

it is only by working together toward a shared vision that we will produce the world's most preferred protein, resulting in increased profit opportunities and growing beef demand

## These challenges and opportunities create the need for the plan's 4 priorities

### TODAY, THE U.S. BEEF INDUSTRY FACES:

#### Intensified Competition

- Chicken and other proteins challenging beef on multiple fronts, including price, volume and preference
- Increased global protein production and competition, coupled with regaining lost export markets
- Continued challenges from groups that are anti-beef and anti-beef production

#### Changing Consumers

- Aging baby boomers
- Increased ethnic diversity
- Continued emphasis on convenience and health
- A generation of youth who are being raised on poultry and meatless options
- A global consumer with more disposable income and a desire for high quality protein

#### Critical Issues

- Animal disease, agri-terrorism and pathogen prevention/management
- Government's ability to respond to crises
- Environmental regulations
- Land use
- Taxes
- Global trade
- Government-created dietary guidelines
- Animal ID
- Lack of industry unity
- Finding markets for increasing beef supplies

### WORKING TOGETHER, THE U.S. BEEF INDUSTRY CAN:

#### Grow the Industry

- Build consumer demand
- Increase consumer expenditures
- Expand product offerings to meet consumer needs
- Brand products to increase value
- Sell U.S.-produced beef to more of the world

#### Enhance Productivity and Efficiency

- Minimize unnecessary government regulation
- Manage financial risk
- Adopt new technology
- Enhance efficiency from farm to fork

#### Create Business Opportunities

- Develop opportunities for future generations of beef producers
- Increase access to and attract capital investment
- Differentiate through a variety of cattle production, processing and marketing practices
- Increase value through age, genetic, process and source verification programs

### HOW WE MEET THESE CHALLENGES & OPPORTUNITIES WILL INFLUENCE:

Your profitability, your sustainability and your ability to grow for the next generation of your family

Dee Lacey ,  
Group Chair  
Long Range Plan 2010  
Lacey Livestock

"Donald" Donnell Brown,  
R. A. Brown Ranch

Brad Graham,  
Harris Teeter

John Hayes,  
McDonald's

Jack Hunt ,  
King Ranch

Steve Hunt ,  
U.S. Premium Beef

Troy Marshall I,  
Marshall Cattle Co.

Jackie Moore,  
Joplin Regional Stockyards

Bill O'Brien,  
Texas Beef Producers

Steve Paterson ,  
Outback Steakhouse

Rob Rebholtz ,  
Agri Beef Co.

Bill Rupp ,  
Cargill Meat Solutions  
Beef Division

Mike Thoren ,  
Five Rivers Cattle Feeding

Roger West,  
University of Florida  
Animal Science Professor  
Emeritus, Florida producer