

LAW OFFICE

MCLEOD, WATKINSON & MILLER

MICHAEL R. MCLEOD
WAYNE R. WATKINSON
MARC E. MILLER
RICHARD T. ROSSIER
DEVARIESTE CURRY
RICHARD PASCO
ALEX MENENDEZ
AMY B. JONES
CHRISTOPHER J. SALISBURY
LIS KIDDER
NATHANIEL GORDON-CLARK

ONE MASSACHUSETTS AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20001-1401
(202) 842-2345
TELECOPY (202) 408-7763

ROBERT RANDALL GREEN
LAURA L. PHELPS
DAVID R. GRAVES
GOVERNMENT RELATIONS

ERIC VON SALZEN
OF COUNSEL

June 8, 2011

BY ELECTRONIC AND OVERNIGHT MAIL

Mr. Bill Donald, President
National Cattlemen's Beef Association
9110 East Nichols Ave, Suite 300
Centennial, Colorado 80112

Re: **Response to National Cattlemen's Beef Association's Allegations**

Dear Mr. Donald:

This responds to the allegations the National Cattlemen's Beef Association ("NCBA") made to the Cattlemen's Beef Board Executive Committee ("CBB Executive Committee") on March 24, 2011. At that time, you presented several serious allegations of unethical behavior and wrongdoing ("NCBA Charges") to the CBB Executive Committee. The CBB Executive Committee takes any such charges seriously as do the Cattlemen's Beef Board ("CBB" or "Beef Board") members who listened to similar allegations made by one of its members at the February 2011 CBB Update Session in Denver.

As you know, you brought a binder of documentation with you to the March Executive Committee meeting. You claimed that the documents in the binder supported the NCBA Charges ("Supporting Documentation"). At the time, you refused my request to leave the Supporting Documentation with the CBB Executive Committee so it could investigate the NCBA Charges. You also later declined my written request to provide the Supporting Documentation for purposes of a CBB Executive Committee investigation. Later, however, in connection with meetings between officers of CBB and officers of NCBA, you agreed to provide the Supporting Documentation to the CBB Executive Committee with the understanding that the Supporting Documentation was not to be copied or otherwise duplicated. You later also provided a flash drive which contained electronic copies of the Supporting Documentation so that the CBB Executive Committee could project the Supporting Documentation onto a screen at the meeting where they looked into the NCBA Charges. I want to publicly thank you and the other officers of NCBA for agreeing to provide the Supporting Documentation for review by the CBB Executive Committee and its legal counsel.

On June 1-2, 2011, the CBB Executive Committee met for the purpose of reviewing the Supporting Documentation and to investigate the NCBA Charges. Following the Committee's

June 8, 2011

Page 2

review of the Supporting Documentation, it interviewed each of the individuals that you alleged were engaged in unethical conduct or other wrongdoing underlying the NCBA Charges. I participated in the review of the Supporting Documentation, the Committee's consideration of the subjects underlying the NCBA Charges, and the interviews of each individual allegedly involved in the unethical conduct or other wrongdoing underlying the NCBA Charges. In that regard I have carefully reviewed the legal analysis of the documents that you provided in the Supporting Documentation and I also reviewed my notes of the oral allegations you made to the CBB Executive Committee in March in Denver. Based on the foregoing, it is my understanding that you, on behalf of NCBA, have asserted the NCBA Charges are comprised of the following:

NCBA's First Charge of Improper Conduct – Listening In on Conference Calls

You alleged that Mr. Ramey repeatedly "eavesdropped" on NCBA and Federation telephone conference calls even though Mr. Ramey had not been invited to listen in on the calls and did not announce his presence during the calls. Emails that you provided further suggest that Mr. Ramey and Mr. Dierschke received recordings of such conference calls and may have listened to such recordings. The emails also suggest that Mr. Jones and Mr. Dierschke may have been aware of Mr. Ramey's plan to listen in on conference calls and either encouraged him to do so or failed to direct him not to do so.

NCBA's Second Charge of Improper Conduct – "Aggressive Lobbying"

You alleged that Mr. Jones, Mr. Dierschke, and Mr. Ramey used their leadership positions with the Beef Board and used checkoff funds to lobby USDA on the matter of "whether NCBA's Federation division should be required to be separate from NCBA." You also alleged that these individuals "facilitate[d] other farm organizations to lobby USDA" for the purpose of influencing government policy and action on the matter of "whether NCBA's Federation division should be required to be separate from NCBA." Your attorney's analysis memo refers to this allegation as "Aggressive Lobbying."

NCBA's Third Charge of Improper Conduct – Insubordination/Breach of Duty

You alleged that Mr. Jones, Mr. Dierschke, and Mr. Ramey breached their fiduciary duties to the Beef Board and acted insubordinately by "disregarding and actively undermining the direction of the full CBB board of directors on the matter of separation." This charge apparently is based on the action of the Beef Board during the Summer Conference whereby the Board withheld its approval of a prior Executive Committee action on the subject and subsequently adopted a shorter resolution on the matter at that same Summer Conference.

June 8, 2011

Page 3

NCBA's Fourth Charge of Improper Conduct – Leak of Confidential Documents; Talking to New York Times

You alleged that Mr. Jones, Mr. Dierschke, and Mr. Ramey engaged in various actions that suggest a pattern of “unethical conduct, severe compromise of the integrity of the beef checkoff, and the betrayal of the trust of beef producers and the general public.” Specifically, you alleged that such activities included actions that were taken in connection with a *New York Times* article that you claim “reflected poorly on the checkoff”, as well as leaks of confidential AUP audit documents to the Executive Director of the South Dakota Beef Industry Council.

CBB Executive Committee's Resolution of NCBA Charges

1. First Charge – Unannounced Listening to Conference Calls

In this allegation, NCBA asserted that Mr. Ramey repeatedly listened to NCBA-organized conference calls with state beef council executives. The emails that were provided do indicate a number of occasions when Mr. Ramey listened unannounced to such conference calls. Mr. Ramey admitted that he did so on several occasions and apologized to the Beef Board and to the CBB Executive Committee. Mr. Ramey also admitted that he received a recording of one of the conference calls and listened to the recording. Based on the forgoing, the CBB Executive Committee determined that this allegation has been substantiated and as a result has sanctioned Mr. Ramey for his improper conduct. Those sanctions include the requirement of a public written apology specifying the errors in judgment determined by the CBB Executive Committee, a private letter of reprimand, and an employment probation period of six months. Mr. Ramey has assured the CBB Executive Committee that he recognizes that his actions were improper and a breach of ethical standards and has promised to never do so again.

In this regard it is important to recognize that some of these same allegations had previously been made to the Beef Board at its winter meeting in Denver in February 2011 (albeit with a much smaller selection of South Dakota Beef Industry Council emails) and were handled in an executive session of the Beef Board meeting at that time due to the fact that personnel issues were involved. While what transpired in the executive session must necessarily remain confidential, the Beef Board did report out of the executive session the following resolution of the matter that had been presented: “Motion made by Al Pedigo, seconded by Ross Garwood, to reaffirm the status of CBB CEO Tom Ramey and CBB officers with total support and that CBB should now move forward. . . .” The motion passed on a voice vote. Similar to the full Beef Board's action in January, the CBB Executive Committee has reaffirmed its support of Mr. Ramey as CEO of the Beef Board and suggests that now is the time for the Beef Board and the rest of the industry to move forward.

In connection with this charge, the CBB Executive Committee's review of the emails supplied by NCBA suggested that Chair Jones and Immediate Past Chair Dierschke were aware of at least some occasions upon which Mr. Ramey planned to listen unannounced to conference

June 8, 2011

Page 4

calls and failed to direct him not to do so. During their interviews, both Mr. Jones and Mr. Dierschke admitted that they had been aware of some of Mr. Ramey's plans to listen unannounced and acknowledged that they erred in failing to direct him not to do so. At the request of the CBB Executive Committee, both agreed to make public written apologies for their failure to prevent this conduct. The CBB Executive Committee determined that these public written apologies were an appropriate way to resolve this matter with respect to Mr. Jones and Mr. Dierschke.

The CBB Executive Committee also found no evidence to support the allegation that Mr. Dierschke listened to a recording of one of these conference calls and accepts Mr. Dierschke's unambiguous response that he never did so. It appeared to the CBB Executive Committee that an email suggesting that Mr. Dierschke had listened to an audio clip was not a reference to a recording of a conference call but rather made reference to a different audio clip that was not an NCBA conference call.

2. Second Charge – Aggressive Lobbying

In this Charge, NCBA alleged that Mr. Jones, Mr. Dierschke, and Mr. Ramey lobbied the USDA repeatedly and extensively with respect to seeking to have the Federation of State Beef Councils be independent, self-governed, and separate from NCBA. For a period of time covered by the emails, that position was the express policy of the CBB Executive Committee, before that position was modified by the full Beef Board at Summer Conference in July 2010. Significantly, the Beef Board adopted a motion to rescind the CBB Executive Committee's policy regarding the Federation that it had adopted in June, 2010. In that policy, the Executive Committee asserted, "The Federation should be a strong, independent, checkoff entity. The Federation should be separate from any policy organization, since all funds for the checkoff come from mandatory assessments of producers and importers" Following the approval of the motion to rescind the CBB Executive Committee's policy, Ted Greidanus moved and Ross Garwood seconded a motion "to support the Federation's efforts for further independence and self-governance." That motion was successfully amended to add the words "to retain its affiliation with NCBA." The motion as amended was adopted by the full Beef Board. Thus, coming out of the Beef Board meeting the policy of the Board remained in support of independence and self-governance of the Federation but no longer supported separation from NCBA, but rather supported Federation affiliation with NCBA.

In this regard, it is important to note while lobbying the federal government is prohibited by the Act and Order, there are express exceptions in law to that general prohibition. Thus the question of whether the three individuals engaged in lobbying contrary to the Act and Order depends on the nature of the activity in which they were engaged. The Act and the Order prohibit the Beef Board from using checkoff funds for the purpose of "influencing governmental policy or action." Specifically, the Act provides, "The Order shall prohibit any funds collected by the Board under the Order from being used in any manner for the purpose of influencing governmental action or policy, with the exception of recommending amendments to the Order."

June 8, 2011

Page 5

7 U.S.C. § 2904 (10). In accordance with this requirement, the Order provides, “No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this part.” 7 C.F.R. § 1260.169(e).

AMS defines “influencing governmental policy or action” as “any action the principal purpose of which is to bring about a change in existing policy or regulation or affect the outcome of proposed policy or regulation, *except those actions which are specifically provided for in the Act, Order and/or rules and regulations.*” AMS Guidelines § VII (emphasis added). Of course, the Act and Order provide a specific exception for the Beef Board for a specific area of advocacy and that is any action related to “recommending amendments to the Order.” 7 U.S.C. § 2904 (10) (“with the exception of recommending amendments to the Order”); 7 CFR § 1260.169 (d) (“except to recommend to the Secretary amendments to this part”). Moreover, as you know, the Beef Board works side-by-side with USDA officials in the regular conduct of its business. A USDA representative attends all Beef Board and Operating Committee meetings and most meetings of the Executive Committee. The Act, the Order, and the recently revised *USDA Guidelines for AMS Oversight of Commodity Promotion Programs* require USDA review and approval of budgets, contracts, promotion materials, advertising materials, and the like. *See generally USDA Guidelines for AMS Oversight* (Nov. 4, 2010).

The Act, Order, and AMS Guidelines expressly contemplate extensive discussion and consultation between the Beef Board and the Agricultural Marketing Service (AMS) of USDA. This is especially so when the USDA seeks the input of the Beef Board or from Beef Board leadership on certain matters. Indeed, the structure of the Federation was just such a matter upon which the USDA had sought input from the Beef Board. NCBA Binder Tab 81 (attached to a Tom Ramey email to Barry Jennings dated July 15, 2010), is a Confidential Draft FAQ document drafted by CBB staff that stated: “Q7: Who should tell the Federation how it should be structured? A7: USDA asked CBB to develop a proposed structure and share that proposal with USDA and other industry organizations.” Thus, the Beef Board is permitted to provide input to USDA on matters covered by the Order without violating the prohibition on lobbying set forth in the Act and Order. The Beef Board is permitted to express its opinion and seek to influence USDA policy on matters “specifically provided for in the Act, Order and/or rules and regulations,” *USDA Guidelines for AMS Oversight* (Nov. 4, 2010) at 11. This is particularly the case when the USDA solicits the Beef Board’s input on the matter.

This interpretation of the AMS definition is consistent with USDA’s past practices. For example, USDA recently accepted recommendations from the checkoff boards on changes to the revised *USDA Guidelines for AMS Oversight*. Thus, in reviewing these allegations the CBB Executive Committee determined that it did not agree with how NCBA characterized the actions of Mr. Jones, Mr. Dierschke, and Mr. Ramey as advocacy (lobbying) that violates the Act and Order. Instead the Executive Committee determined that such actions with respect to Federation independence, self-governance, and separation from NCBA were permitted by the Act and Order

June 8, 2011

Page 6

and by past interpretations of the Act and Order by the Agricultural Marketing Service, particularly since AMS had sought input from the Beef Board on that matter.

Beyond direct lobbying of USDA, NCBA claims that Beef Board officers Mr. Jones and Mr. Dierschke and Beef Board CEO Mr. Ramey improperly consulted with and discussed Federation separation with other advocacy organizations such as Farm Bureau, Farmers Union, U.S. Cattlemen, and the like. The CBB Executive Committee determined that there was indeed such discussion and consultation but that there was nothing improper about this activity. As noted above, in Tab 81 a draft document from CBB stated that USDA sought the Beef Board's input on this issue and that USDA also suggested that the Beef Board "share that proposal with other industry organizations." That is just what it appears that CBB leadership did. In this regard it is appropriate to take note of the role all beef checkoff entities are required by the Order to play in terms of beef industry coordination. For example, the Beef Board is required to "encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry's position in the marketplace" 7 C.F.R. § 1260.150(p). Obviously, to coordinate with other industry participants CBB leadership needs to communicate with them actively and regularly. They cannot do so by only communicating with NCBA, the Federation, and state beef councils. Similarly, the Operating Committee has essentially the same legal obligation under the Order, that is, "encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry's position in the marketplace" 7 C.F.R. § 1260.168(j). Because the Operating Committee is made up of both Beef Board members and Federation members, the Order requires that both organizations reach out to other industry organization to achieve a coordinated program for the beef industry as a whole.

In addition, it is important to place this allegation in context of what was happening on this issue in the first part of 2010. At that time, the NCBA already had been getting significant input from the USDA about NCBA's decision to eliminate a clear division in its organization between checkoff and policy aspects and instead restructure itself in a manner that appeared to create some overlaps and perhaps blur the lines between what was policy and what was checkoff. In response to NCBA's announced reorganization to, among other things, end an NCBA Board structure with a clear dividing line between checkoff and policy, six advocacy organizations wrote to Secretary Vilsack to express strong concerns about what was happening as a part of that reorganization to the Federation of State Beef Councils. A copy of that letter, dated March 18, 2010, is attached. NCBA responded to that letter with a letter of its own seeking to defend its reorganization. A copy of that letter, dated March 22, 2010, is attached. In response to NCBA's letter, on May 17, 2010, Secretary Vilsack issued a letter to NCBA in which he set forth USDA's position on the matter of the independence and self-governance of the Federation of State Beef Councils. A copy of Secretary Vilsack's May 17 letter is attached. NCBA responded to the Secretary's letter by letter dated June 8, 2010. A copy of that letter is also attached.

These four letters are important because they frame the debate that was to follow with respect to the Federation of State Beef Councils. Of the four letters, only one comes from the

June 8, 2011

Page 7

Secretary of Agriculture and thus only one comes from the leader of the entity that provides oversight and direction to the Beef Board itself. Thus, as of May 17, 2010, and unless and until modified, this letter represents Department policy on the issue of the Federation of State Beef Councils. In his letter, Secretary Vilsack stated that he had “serious concerns” with NCBA’s approach. Secretary Vilsack also noted the importance of having a strong firewall between policy and checkoff funded activities. He said, “This separation is critical.” He also noted that the reorganization would instead “weaken the firewall” Secretary Vilsack even noted that his concerns about the structure also were of a constitutional dimension. In short, the Beef Board leadership must be responsive to the direction set by USDA and in this matter, was bound to follow the policy established by the Secretary’s May 17 letter.

For these reasons, the CBB Executive Committee has determined that the NCBA’s “Aggressive Lobbying” allegations were not substantiated.

3. Third Charge - Insubordination/Breach of Fiduciary Duty

In this allegation, NCBA claims that Mr. Jones, Mr. Dierschke, and Mr. Ramey breached their fiduciary duties to the Beef Board and acted insubordinately by “disregarding and actively undermining the direction of the full Beef Board of directors on the matter of separation.” Both before and after Summer Conference, the Beef Board position was in favor of independence and self-governance of the Federation. What changed was that at the Summer Conference the Beef Board adopted a position that favored the Federation remaining housed inside the NCBA umbrella rather than favoring locating the Federation outside of the NCBA umbrella. Yet, as noted above, the Secretary in May, 2010, established Department policy on a clear and absolute separation of checkoff and policy funds and in favor of a strong firewall between policy-funded activities and checkoff-funded activities. Thus, while separation of the Federation from NCBA is not favored by current Beef Board policy, absolute separation of funding and activities between policy and checkoff clearly is required. The CBB Executive Committee carefully reviewed the documents provided and based on that review and its interviews of the three individuals charged by NCBA with insubordination and breach of duty, the Executive Committee did not find evidence of either insubordination or breach of fiduciary duty. The key evidence here is what activities took place following the Beef Board motion in late July, 2010. The CBB Executive Committee also accepted the unambiguous and consistent testimony of Mr. Jones, Mr. Dierschke and Mr. Ramey that they have not taken further action on the Federation issue following the Federation’s approval of the Federation Charter on February 5, 2011. There are no documents that have been provided by NCBA that suggest otherwise. Accordingly, the CBB Executive Committee finds that this allegation has not been substantiated.

4. Fourth Charge - Leak of Confidential Documents/Talking to the Media about NCBA

In this allegation, NCBA claims that Mr. Jones, Mr. Dierschke, and Mr. Ramey engaged in various actions that suggest a pattern of “unethical conduct, severe compromise of the integrity of the beef checkoff, and the betrayal of the trust of beef producers and the general

June 8, 2011

Page 8

public.” Specifically, you allege that such activities include actions that were taken in connection with a *New York Times* article you claim “reflected poorly on the checkoff” and leaks of confidential AUP audit documents to the Executive Director of the South Dakota Beef Industry Council.

In reviewing the documents and interviewing Mr. Ramey on this allegation, he stated that he never talked to the *New York Times* reporter with respect to the NCBA AUP story. It appears that this allegation with respect to Mr. Ramey was based in large part on the misinterpretation of a single email. In response to an email from Barry Jennings attaching the *New York Times* article, Mr. Ramey wrote back to Mr. Jennings, “All that work and that’s all he wrote?” In his interview Mr. Ramey confirmed that he sent the email but rejected the idea that the “[a]ll that work” refers to work he or anyone else had done in talking to the *New York Times*, rather, he said, the “[a]ll that work” referred to the work CBB did on the AUP review of NCBA itself. Thus, Mr. Ramey was saying that CBB did “all that work” on the AUP review which disclosed some substantial problems and issues with how NCBA was handling checkoff dollars, and all the reporter focused on were the things he wrote about in the piece. The CBB Executive Committee determined that Mr. Ramey’s explanation is both plausible and appears to be a reasonable and commonsense reaction by someone in Mr. Ramey’s position to the article published in the *New York Times*.

The other characterization of Mr. Ramey’s words is offered by those who are simply not in a position to know what Mr. Ramey actually meant by that phrase because they are not Mr. Ramey. In addition, to the extent the story reflected adversely on the checkoff itself, the CBB Executive Committee is of the opinion that the responsibility for that lies solely on those who failed to properly handle the checkoff funds in the first place and certainly not on those who uncovered the wrongdoing. Moreover, it is not unethical to speak to reporters. It appears that leaders from the Beef Board and NCBA talked to the *New York Times* reporter who wrote the story in question and no one is accusing NCBA leaders of being unethical simply because they talked to the reporter. The CBB Executive Committee has determined that this allegation is unsubstantiated.

Finally, there is the matter of the allegation that Mr. Ramey sent the confidential document on the resolution of the NCBA AUP review to Barry Jennings before that resolution was made public 12 days later. At the meeting in which Mr. Ramey was initially accused of this action, he admitted to the CBB Executive Committee that he had shared a confidential document with Mr. Jennings for the sole purpose of sharing information which demonstrated the progress made on this significant issue. The email documents do suggest that Mr. Ramey did this and when interviewed Mr. Ramey once again admitted that he did so and acknowledged that he was wrong to do that. Thus, the CBB Executive Committee has determined that this allegation has been substantiated and that Mr. Ramey was wrong to release this document prior to USDA’s approval and the public release of same. The CBB Executive Committee took into account Mr. Ramey’s error in judgment in failing to maintain the confidentiality of that document when it

June 8, 2011

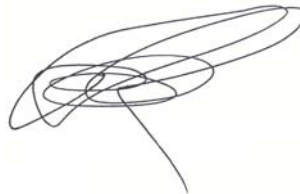
Page 9

decided the penalty for Mr. Ramey's conduct described above (that includes requiring a specific, written public apology, a private letter of reprimand, and a six-month probation).

CONCLUSION

In closing, while I don't expect that you will necessarily agree with how the CBB Executive Committee resolved the NCBA Charges, I hope you will agree that the NCBA Charges were taken seriously and that the CBB Executive Committee has sought to investigate those charges and sanction any conduct that was found to violate accepted standards of ethics and accountability. I also hope that both the Beef Board and the NCBA will be able to finally put behind them what has happened in the past and work together in the future to increase demand for beef, a core goal of both fine organizations.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard T. Rossier". The signature is written in a cursive style with several loops and a long tail extending downwards.

Richard T. Rossier

Enclosures

cc: Members of the Cattlemen's Beef Board
Members of Federation of State Beef Councils
Members of the CBB Executive Committee
Staff of the Cattlemen's Beef Board
Agricultural Marketing Service, USDA