

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

CASE NO.: D-101-CV-2013-03197

STATE OF NEW MEXICO *ex rel.*  
GARY K. KING, ATTORNEY GENERAL,  
Plaintiff,

v.

VALLEY MEAT COMPANY, LLC,  
DAIRYLAND PACKING, INC., MOUNTAIN  
VIEW PACKING, LLC and RICARDO DE  
LOS SANTOS,  
Defendants.

Filed In Open Court on 1/17/14  
at 4:55 pm

by:   
Judge Matthew J. Wilson

**ORDER GRANTING A PRELIMINARY INJUNCTION**

THIS MATTER came before the court on January 13, 2014 on the Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction. Having heard evidence and argument, the court FINDS and ORDERS:

**Procedural History:**

1. The State filed its Complaint and Motion for a Temporary Restraining Order and Preliminary Injunction on December 19, 2013. The State seeks injunctive relief under Rule 1-066, NMRA, and the State's Complaint asserts claims under the New Mexico Water Quality Act ("WQA") §§ 74-6-1 *et seq.*, NMSA 1978; the New Mexico Food Act ("Food Act"), §§ 25-2-1 *et seq.*, NMSA 1978; the New Mexico Unfair Practices Act ("UPA"), §§ 57-12-1 *et seq.*, NMSA 1978; and common law nuisance.

2. Under his own proprietorship and through Defendant's companies, Ricardo De Los Santos, in the past, has operated a cattle slaughterhouse located at 3845 Cedarvale Road, Roswell, New Mexico. Mr. De Los Santos now plans to use the same facility to slaughter horses

for human food. The State has sought or seeks a temporary restraining order, preliminary injunction, and permanent injunction barring Defendants (“Valley Meat”) from manufacturing, selling or distributing meat products for human consumption.

3. The court entered a temporary restraining order (“TRO”) on December 30, 2013 with a hearing date of January 3, 2014. On January 3, 2014, the court extended the TRO until January 13, 2014. The court held an evidentiary hearing on the State’s Motion for a Preliminary Injunction on January 13, 2014. At the conclusion of the Hearing, the court extended the TRO through January 17, 2014 and instructed the parties to submit proposed Findings of Fact and Conclusions of Law by January 15, 2014.

**Standing, Jurisdiction and Venue:**

4. The Attorney General has standing to pursue its Complaint under §§ 8-5-2(B) and (J), NMSA 1978.

5. As a court of general jurisdiction, this court has jurisdiction over this matter and the parties.

6. Venue is proper in this District and County pursuant to § 38-3-1(A), NMSA 1978, because the Attorney General resides in this District and County.

**Standard for Issuance of a Preliminary Injunction:**

7. “In determining whether to grant injunctive relief, a trial court must consider a number of factors and ‘balance the equities and hardships.’” Insure New Mexico, LLC v. McGonigle, 2000-NMCA-018, ¶ 6, 128 N.M. 611, 995 P.2d 1053 (quoting Key v. Chrysler Motors Corp., 119 N.M. 267, 274, 889 P.2d 875, 882 (Ct. App. 1995)). “To obtain a preliminary injunction, a plaintiff must show that (1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause

the defendant; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits.” LaBalbo v. Hymes, 1993-NMCA-010, ¶ 11, 115 N.M. 314, 850 P.2d 1017.

**Irreparable Injury (Violation of the WQA):**

8. At this time, Valley Meat may not operate its horse slaughter facility without a discharge permit from the New Mexico Environment Department (“NMED”), a temporary authorization from the NMED to operate, or a determination by the NMED that a discharge permit is not required to operate.

9. Through its planned horse slaughter operations, Valley Meat intends to discharge 8,000 gallons per day of wastewater that will contain water contaminants.

10. Under the WQA, a person who will cause a water contaminant to discharge so that it may move directly or indirectly into ground water is required to obtain a discharge permit from the NMED prior to discharging.

11. Through its planned operations, Valley Meat will discharge water contaminants that risk moving directly or indirectly into ground water, and the NMED has determined that those operations require a discharge permit prior to operating.

12. The discharge from Valley Meat will drain from a below-ground drain system to two underground concrete tanks, and then flow to two synthetically lined lagoons. The concrete tanks are approximately 30 years old and may have cracks and leaks. The ground water at the Valley Meat facility is particularly vulnerable to contamination because it is so shallow.

13. Valley Meat applied to the NMED for a discharge permit. The Attorney General and other parties opposed the permit, primarily because Valley Meat and its owner, Ricardo De Los Santos, have a history of willful disregard of environmental laws within the last 10 years.

14. If a discharge permit applicant has a history of willful disregard of environmental laws within the 10 years preceding a permit application, the NMED is required to deny the permit application.

15. On January 7, 2014, a NMED Hearing Officer concluded that Valley Meat had a history of willfully disregarding environmental laws and recommended denial of Valley Meat's permit application to the NMED Secretary. At this time, the Hearing Officer's decision is not a final decision of the NMED.

16. The history of Valley Meat and De Los Santos' violations of environmental laws is set forth in the Hearing Officer's Report and states that Valley Meat has more than 5,000 violations.

17. Water quality violations include Valley Meat operating without a discharge permit for three years; operating an unauthorized rendering facility; unauthorized wastewater spills; years of repeated failure to submit required monitoring information; and failure to implement pollution prevention measures required by its permit.

18. Field inspections by NMED identified improperly buried cows and slaughter byproducts, effluent in an old lagoon that should have been closed, effluent overflow to a drainage area "which probably drains to the Pecos River close by," piles and pits with dead animals near a wetland, "trash piles mixed with the numerous manure/dead animal pile/pits," and ponding of blood and water. A federal inspector observed "massive piles with hooves, legs, etc. sticking out" that were "rotting."

19. Enforcement actions against Valley Meat for water quality violations include issuance of a Notice of Non-Compliance, a Letter of Non-Compliance, and a Notice of Violation in 2010. In addition, the NMED notified Valley Meat of violations through repeated field

inspections, correspondence and telephone calls.

20. The solid waste violations consisted of failure to register a composting facility and failure to properly dispose of several thousand cubic yards of hides, bones and heads of cattle mixed in manure. The NMED issued a Compliance Order to Valley Meat for these violations and assessed a financial penalty. The federal violations include inadequate E. coli sampling and inhumane handling of animals. The Food Safety and Inspection Service (“FSIS”) suspended Valley Meat’s operation three times.

21. Since Valley Meat has planned to begin horse slaughter operations, it twice made written requests to NMED seeking temporary authorization to discharge. NMED denied both of Valley Meat’s requests.

22. It appears as a means of arbitrarily defining their own actions so as to avoid regulatory schemes, Valley Meat has declared publicly that it will begin horse slaughter without a discharge permit by “pumping and hauling” wastewater. To pump and haul, it would discharge its waste to the underground drain system, to the two underground concrete tanks, to be pumped to a truck for hauling for disposal.

23. Valley Meat declared in federal court that it can operate without a discharge permit and that it “is not barred from operating and absent the injunction of this court would be operating today.”

24. However, the NMED determined that Valley Meat was not authorized under the water quality laws to pump and haul and informed the company that it would violate water quality laws if it began operations pending the permit application process.

25. On December 18, 2013, Valley Meat publicly declared it would open January 1, 2014, knowing it would not have a discharge permit by that date or a determination by the

NMED that a discharge permit is not required to operate.

26. Valley Meat is likely to operate without proper authorization because it has declared repeatedly that it can and will open without a discharge permit, despite being told by the NMED that it may not operate without a discharge permit, temporary authorization to operate or a determination by the NMED that it does not need a permit for a pump and haul system.

27. Considering Valley Meat's history, immediate and irreparable harm may result if the court does not issue a preliminary injunction in this case because Valley Meat has declared that they will begin commercial horse slaughter in violation of the WQA which will result in the discharge of significant amounts of wastewater every day creating a real risk of groundwater contamination.

**Irreparable Injury (Dangerous Food):**

28. Historically, horses in the United States have not been bred for human consumption.

29. Dangerous drugs are commonly administered to horses that are uniformly forbidden from use in other food animals because they are dangerous to humans.

30. The drugs are regularly prescribed to horses because horses are not raised as food animals in the United States.

31. No evidence, scientific or otherwise, was presented as to whether humans can safely ingest meat that contains these drugs or whether adverse risks to humans can be ameliorated.

32. At the hearing, there were no established withdrawal times (post-administration periods that guarantee no danger) in horses for any of the more than 150 commonly prescribed

equine drugs. The absence of withdrawal times in horses for these drugs creates the concern that there is no way to safely administer these drugs to food animals.

33. Veterinarians maintain medical records for their equine patients. Many horses, however, are administered non-prescribed drugs prohibited for use in food animals. Horses, including “wild” horses that people have abandoned, therefore lack complete medical records or have no medical records.

34. The New Mexico Food Act, §§ 25-2-1 *et seq.*, NMSA 1978, prohibits “the manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded,” “the adulteration or misbranding of any food,” and “the receipt in commerce of any food that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise.” § 25-2-3. A food shall be deemed adulterated “if it bears or contains any poisonous or deleterious substance which may render it injurious to health,” “if it consists in whole or in part of a diseased, contaminated, filthy, impure or infested ingredient, putrid or decomposed substance, or if it is otherwise unfit for food,” or “if it has been produced, prepared, packed or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health.” § 25-2-10.

35. Pursuant to Valley Meat’s planned operations, the horse meat it would present for human consumption would constitute an adulterated food product.

36. Immediate and irreparable injury may result if the court does not issue a preliminary injunction in this case because Valley Meat has declared that they will begin commercial horse slaughter which is likely to lead to unsafe food entering the human food supply in violation of the Food Act.

37. By offering for sale, selling, or distributing horse meat, Valley Meat will make an affirmative representation that the food in question is not dangerous, not adulterated, and fit for human consumption.

38. The Unfair Practices Act (“UPA”) “prohibits ‘unfair or deceptive trade practices and unconscionable trade practices,’” and, given its remedial nature, courts “must ‘interpret the provisions of this Act liberally to facilitate and accomplish its purposes and intent.’” *See Salmeron v. Highland Ford Sales, Inc.*, 271 F. Supp. 2d 1314, 1317 (D. N.M. 2003) (internal citations omitted). “The non-exhaustive list of unfair or deceptive trade practices includes: using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive.” *Id.* (internal quotations and citations omitted); *see also* § 57-12-8 (“Whenever the attorney general has a reasonable belief that any person is using, has used or is about to use any method, act or practice which is declared by the Unfair Practices Act to be unlawful, and proceedings would be in the public interest, he [or she] may bring an action in the name of the state alleging violations of the Unfair Practices Act. . . . In any action filed pursuant to the Unfair Practices Act, . . . the attorney general may petition the district court for temporary or permanent injunctive relief and restitution.”).

39. Valley Meat’s distribution of horse meat for human consumption carries with it Valley Meat’s innuendo that it is safe for human consumption, without any information to support that innuendo or any warning of adverse risks consumption carries. At the very least, Valley Meat’s distribution of horse meat for human consumption presents serious ambiguity precluding those who would consume it from making an informed choice. Unless enjoined, Valley Meat will imminently manufacture, distribute and sell horse meat products in a manner that will likely cause confusion or misunderstanding as to the origin, safety, and fitness for



consumption of Valley Meat's products, in violation of the UPA. §§ 57-12-2(D)(2), (5), (7), & (14); 57-12-3; NMSA 1978.

**Irreparable Injury (Nuisance):**

40. "A public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is ... injurious to public health, safety, morals or welfare...." § 30-8-1 NMSA 1978.

41. Given the nature of Valley Meat's declared actions and its history replete with instances of conducting its operations in ways that are injurious to public health, safety, and welfare, it is highly probable that its declared operations would necessarily constitute a nuisance. *See Gonzales v. Whitaker*, 1982-NMCA-050, 97 N.M. 710, 643 P.2d 274.

42. Actions such as piling putrefying carcasses and body parts of animals and attracting pestilence, emanating the odor of rot, and creating other associated adverse conditions are well within the ambit of nuisance. *See generally id.; compare State v. Arizona Pub. Svc. Co.*, 510 P.2d 98 (1973).

43. Valley Meat's actions, unless enjoined, will be injurious to public health and safety and therefore constitute an anticipatory nuisance.

**The Threatened Injury Outweighs any Damage the Injunction Might Cause the**

**Defendants:**

44. Valley Meat did not introduce any evidence to support their claim that they will suffer economic damages as a result of a preliminary injunction. Under the WQA, Valley Meat did not present any evidence that they can begin business operations by any date certain.

45. Any economic risk to Valley Meat is attributable to its own refusal to comply with applicable state statutory and regulatory requirements and not to the appropriate application of statutory and regulatory provisions.

46. As a factor weighing in favor of granting a preliminary injunction, public interest is better served by requiring compliance with the State's laws in preventing the possibility of damage to the State's water supply and the possibility of unsafe food from entering the human food supply.

**Issuance of the Injunction Will Not be Adverse to the Public's Interest:**

47. Although granting the injunction may have a negative impact on the local economy in Chaves County, granting the State's motion for preliminary injunction is not adverse to the public's interest and, to the contrary, enforcing and requiring compliance with the WQA, the Food Act, and the UPA, as well as preventing an anticipatory nuisance, are in the public's interest.

**Likelihood of Success:**

48. There is a substantial likelihood that the State will prevail on the merits of their Complaint.

**Bond or Security**

49. No bond is required as a condition of issuance of a preliminary injunction because an injunction is in the public's interest, and the UPA in particular expressly provides that no bond may be required when the Attorney General seeks an injunction under that act. § 57-12-8(A), NMSA 1978. In addition, it is evident that in the event damages are due as a result of the injunction, the State has the financial resources to pay any such damages, and therefore the usual purpose of requiring a bond is absent here.

**The Court's Ruling:**

50. Plaintiff has shown that, unless the injunction is granted, the State and its residents will suffer irreparable injury as a result of Valley Meat's imminent, self-declared violations of the WQA, the Food Act, and the UPA, as well as Valley Meat's creation of an anticipatory nuisance; the threatened injury outweighs any damage the injunction might cause Valley Meat; issuance of the injunction will not be adverse to the public's interest and, in fact, will be in the public's interest; and there is a substantial likelihood Plaintiff will prevail on the merits. *See LeBalbo*, 1993-NMCA-010, at ¶ 11.

51. The court hereby GRANTS the State's motion for preliminary injunction.

52. Unless this order is dissolved by the court, Defendants Valley Meat Company, LLC, Dairyland Packing, Inc., Mountain View Packing, LLC and Ricardo De Los Santos are enjoined and restrained from slaughtering horses for human consumption, and from manufacturing, selling or distributing horse meat products for human consumption; and are further enjoined and restrained from discharging wastewater in any manner and under any theory, including but not limited to the manners in which Valley Meat has set forth within this action.

53. The issue of whether or not the court will issue a permanent injunction is held in abeyance pending an appropriate motion.

SO ORDERED:



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Matthew J. Wilson  
District Court Judge, Division VI

**CERTIFICATE OF MAILING**

I, the undersigned, hereby certify that I e-mailed and/or e-served a true and correct copy of the foregoing Order on the date of filing to:

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