

Court documents show beef checkoff sends millions to cattle lobby

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Newly released documents in a lawsuit between a group of independent Montana cattle ranchers and the USDA show that millions of dollars from an industry marketing fund are being diverted to the top cattle lobby, which some ranchers have long claimed misappropriates those funds for political use. The case, which went before a magistrate judge in Montana on Oct. 2, could reshape how the beef checkoff, as the marketing program is called, is administered.

By law, the money ranchers pay into the checkoff fund is to be used to advertise beef both nationally and internationally. The court documents reveal that the state councils that collect the beef checkoff funds from ranchers pass on huge sums to the National Cattlemen's Beef Association (NCBA), the beef industry's trade and lobby group, and its affiliates. It is illegal for the NCBA to use that money for political purposes, including lobbying.

David Muraskin, a senior attorney with Public Justice who is lead counsel for the plaintiff in the Montana case, the Ranchers-Cattlemen Action Legal Fund (R-CALF), says that the redirection of funds from state councils to the NCBA further consolidates power in the hands of the big beef lobby.

"What we're seeing is that the corporate entities have once again co-opted a system that's meant to help small independent farmers," he says.

Typically, half of each dollar ranchers pay into the checkoff fund goes to the federal checkoff administrator, the Cattlemen's Beef Board. The other half goes to a state checkoff administrator, called a beef council, which can opt to send some of its portion of the checkoff funds to the NCBA for national promotion projects. The Federation of State Beef Councils is a division of the NCBA that claims to provide a "framework for a unified voice" for the state councils.

According to court documents, that portion has amounted to millions of dollars in recent years. In Montana, Pennsylvania, Nebraska, and Texas, state checkoff programs allocated more than \$19 million to the NCBA and its affiliates between October 2012 and September 2019.

The NCBA insists that checkoff money is not used for political activities or lobbying. The group says that investments made by state beef councils in its Federation Division are used for "national and international demand-building programs" and administrative services.

Yet ranchers point to cases in which checkoff funds have been misused or the firewall between promotional and political activities has appeared porous. For instance, a 2010 audit concluded that the NCBA had misallocated checkoff funds, and required the lobby to pay back \$200,000. And a 2018 investigation found that in Ohio, the state chapter of the NCBA and the state beef council had the same employees with the same titles and emails, which critics said blurred the boundary between political and promotional activities.

A 2014 report from the USDA's own Office of the Inspector General found that the Agricultural Marketing Service, the division of the USDA that oversees checkoff programs, "needs to strengthen its procedures for providing oversight" of the beef checkoff program. The report also said that the weaker procedures had resulted in "reduced assurance that beef checkoff funds were collected, distributed, and expended" according to the law.

Muraskin argues that the redirection of money from state checkoffs to the NCBA amounts to the government "rubber-stamp[ing]" the funding of "agenda-driven" organizations.

"This would be as if the President said, 'I want to have a tax that supports the Constitution, and I'm going to delegate the Federalist Society to say who supports the Constitution,' " he says, referring to the society of conservative legal and government activists. "And then everyone would have to turn one dollar over to the Federalist Society, which would turn 33 cents over to the Chamber of Commerce, and 33 cents over to the American Legislative Exchange Council, and 33 cents over to the Cato Institute."

In other words, a politically partisan process masquerading as a neutral use of tax dollars.

Checkoff funds exist for about two dozen agricultural commodities and are responsible for such famous marketing slogans as "Beef. It's What's for Dinner" and "Got Milk?" Under the beef checkoff, ranchers pay a dollar per head of cattle sold for ads that theoretically promote ranchers' interests: getting consumers to eat more beef.

But for the past several years, some ranchers have been speaking out against this arrangement. In its lawsuit, R-CALF has argued that checkoff-funded ads "communicate all beef is equal" and don't appropriately distinguish between different production or business practices. Therefore, the ranchers say, the promotions favor conventional, industrial beef producers and disadvantage smaller and independent operations.

And, similarly, they say the NCBA's priorities are often aligned with the largest beef farmers and companies rather than smaller operations.

Part of the obstacle to decoding how checkoff money is spent is that the checkoff administration system is byzantine. The Cattlemen's Beef Board, a group of 100 members who are appointed by the Secretary of Agriculture, oversees the beef checkoff program. The board certifies state beef councils, which collect the checkoff assessment as well as an equivalent assessment on imported cattle and beef products.

Ranchers involved in the Montana case say that under this system, state beef councils such as Montana's are functionally private entities that are not sufficiently overseen by the government. They're asking the court to rule the current version of the state's beef checkoff unconstitutional because it violates their First Amendment rights, effectively forcing them to fund promotions run by a private entity, the Montana Beef Council.

Their lawsuit now extends to 14 states beyond Montana — Hawaii, Indiana, Kansas, Maryland, Nebraska, Nevada, New York, North Carolina, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, and Wisconsin — whose state beef councils are, according to the ranchers, also private entities.

The ranchers say that a better system for funding checkoff promotions would let them opt in to having half of their checkoff dollars allocated to state checkoff councils rather than having it automatically redirected.

In 2017, R-CALF won a temporary injunction that halted the automatic allocation of half of each checkoff dollar collected in Montana to the state's beef checkoff program, and instead allowed producers to choose whether or not to opt in. That year, the Montana Beef Council collected just \$150,000 instead of its typical \$800,000.

The beef checkoff has been mandatory since 1988, when producers approved it in a national referendum vote.