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DATED this 7th day of August, 2001.

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2001, a true and correct copy of the within and foregoing was served by mail upon all the parties or opposing attorneys of record at their address or addresses as follows:

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By: *Sharon J. Grubbs*

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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**BILLINGS DIVISION**

JEANNE CHARTER and STEVE CHARTER, )  
 )  
 ) Petitioners, )  
 )  
 ) vs. )  
 )  
 ) UNITED STATES DEPARTMENT OF )  
 ) AGRICULTURE, )  
 )  
 ) Respondent. )

Cause No. CV 00-198-BLG-JDS

**AMENDED PETITION**  
**FOR JUDICIAL REVIEW**  
**AND REQUEST FOR**  
**DECLARATORY JUDGMENT**  
**AND INJUNCTIVE RELIEF**

COME NOW Jeanne and Steve Charter, through counsel, and respectfully represent:

1. On August 5, 1998, the Administrator of the Agricultural Marketing Service, United States Department of Agriculture, filed a complaint against Petitioners alleging they had violated the Beef Promotion and Research Act of 1985 (Beef Act), 7 U.S.C. §§ 2901-2911, and the Beef

1 Promotion and Research Order (Beef Order), 7 CFR §§ 1260.101-217. Respondent alleged that  
2 Petitioners had willfully violated the Beef Promotion Order and regulations by failing to pay the  
3 \$1.00 assessment for each of 247 cattle sold on October 9, 1997, and for 3 head of cattle sold on  
4 approximately April 4, 1998.

5         2. Petitioners filed their answer to that complaint admitting the assessments had not been  
6 paid but raised five affirmative defenses. On August 4, 1999, Administrative Law Judge  
7 Dorothea A. Baker presided over a hearing held in Billings, Montana. On April 26, 2000,  
8 Administrative Law Judge Baker filed a Decision and Order concluding Petitioners violated the  
9 Beef Order and regulations by failing to pay the assessments for 250 head of cattle which had  
10 been sold, that Petitioners had willfully failed to pay late charges for such assessments, ordered  
11 Petitioners to cease and desist from violating the Beef Act and Order and regulations, assessed  
12 a \$12,000 penalty against Petitioners, and ordered Petitioners to pay past due assessments and  
13 late charges of \$417.79.

14         3. On June 1, 2000, Petitioners filed an Appeal Petition and motion to reopen the  
15 hearing. Respondent opposed Petitioners' motion to reopen the hearing, and on September 1,  
16 2000, filed its opposition to the Appeal Petition. On September 22, 2000, Judicial Officer  
17 William G. Jensen issued a Decision and Order on Petitioners' Appeal and their petition to  
18 reopen. Judicial Officer Jensen denied both the appeal and motion and affirmed the decision  
19 of Administrative Law Judge Baker.

20         4. Jurisdiction in this Court is provided under 28 U.S.C. § 1331 as this action arises  
21 under the Constitution, and laws of the United States. Jurisdiction is also provided by 28 U.S.C.  
22 §§ 2201 & 2202 regarding declaratory judgments and the granting of further relief thereon.

23         5. Venue is proper pursuant to 28 U.S.C. § 1391 because Petitioners are residents of the  
24 District of Montana and a substantial part, if not all, of the events or omissions giving rise to the  
25

1 claim occurred within this District.

2  
3 6. Respondent erroneously and without substantial evidence affirmed the decision of  
4 Administrative Law Judge Baker and erroneously and without substantial evidence denied the  
5 motion to reopen the hearing.

6 7. The Findings and Conclusions of the judicial officer for the Respondent affirming the  
7 decision of Administrative Law Judge Baker are without support in the evidence and are contrary  
8 to the evidence.

9 8. The Beef Act and Beef Order are unconstitutional under, among other things, the First  
10 Amendment, as confirmed by the recent United States Supreme Court decision in *United States*  
11 *v. United Foods*, -- U.S. --, 121 S. Ct. 2334 (2001), striking down the virtually identical  
12 Mushroom Promotion, Research, and Consumer Information Act. Furthermore, their application  
13 to Petitioners was arbitrary, capricious, unreasonable and contrary to law.

14 9. As a result of the Beef Act's unconstitutionality, the Charters are entitled to a refund  
15 from Respondent of all sums paid under the Beef Act and Beef Order from their inception.

16 10. The Charters are also entitled to an injunction barring the USDA and its agents or  
17 contractors from spending any existing assets collected under the unconstitutional authority of  
18 the Beef Act and Beef Order.

19 WHEREFORE, Petitioners pray for the following relief:

20 1. That this Court assume jurisdiction of this proceeding and the questions determined  
21 therein.

22 2. That this Court review the Findings, Conclusions and Order of the judicial officer  
23 of the USDA.

24 3. That this Court issue a decree setting aside the order and decision of the USDA  
25 against Petitioners.

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4. That this Court declare the Beef Act and the Beef Order unconstitutional.


5. That this Court enjoin the USDA and its agents or contractors from spending any existing funds collected through assessments under the unconstitutional Beef Act and Beef Order and enjoin the USDA and its agents or contractors from collecting any further such assessments.

6. That this Court order a refund of all past assessments collected under the Beef Act and Order.

7. And that this Court grant Petitioners such further relief as may seem just and proper under the circumstances.

DATED this 7th day of August, 2001.

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By: Sharon J. Cribbles



1 Review asking this Court to review the Findings, Conclusions and Order of the judicial officer  
2 of the USDA. The Charters alleged the Findings and Conclusions of the judicial officer for the  
3 USDA were without support in the evidence and are contrary to the evidence. In addition, the  
4 Charters allege the Beef Promotion Research Act and Order and applicable regulations are  
5 unconstitutional and their application to the Charters was arbitrary, capricious, unreasonable and  
6 contrary to law. *See*, original Petition for Judicial Review at 2-3. Since filing of the Petition,  
7 the administrative record and answer were filed by the United States Department of Agriculture.  
8 *See*, Answer at 2-3. The proceedings in this Court were held in abeyance due to the expected  
9 ruling by the United States Supreme Court in *United States v. United Foods, Inc.*, -- U.S. --,  
10 121 S. Ct. 2334 (2001). On June 25, 2001, the Supreme Court issued its opinion affirming the  
11 Sixth Circuit in holding the Mushroom Promotion Research and Consumer Information Act was  
12 unconstitutional because it impermissibly infringed upon rights of free speech.

13 In light of *United Foods*, the Charters propose an Amended Petition for Judicial Review  
14 and request for Declaratory Judgment and Injunctive Relief that contains new allegations  
15 reflecting the recent Supreme Court decision, and further requests for relief as follows:

- 16 a) That this Court declare the Beef Act and the Beef Order unconstitutional;  
17 b) That this Court enjoin the USDA and its agents or contractors from spending any  
18 existing funds collected through assessments under the unconstitutional Beef Act and Beef  
19 Order and enjoin the USDA and its agents or contractors from collecting any further such  
20 assessments; and  
21 c) That this Court order a refund of all past assessments collected under the Beef Act  
22 and Order.

23 Rule 15, F.R.Civ.P., permits a party to amend its complaint upon leave of court and when  
24 justice requires, such amendments are to be freely given.  
25

1 Justice requires that the Charters be allowed to amend their Petition for Judicial Review  
2 in light of the decision in *United Foods*. The opinion of the United States Supreme Court in  
3 *United Foods* significantly alters the legal landscape by curtailing the previously argued scope  
4 of *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457 (1997), and by adopting a new  
5 legal benchmark that was previously binding only in the Sixth Circuit. That new benchmark  
6 confirms that the collection action against the Charters was unlawful, and establishes the  
7 propriety and need to restrain USDA from the further expenditure and collection of payments  
8 from any cattle sales, and for the refund to the Charters of all sums paid under the Beef Act and  
9 Order. The Charters have reviewed their position and consulted with numerous other entities  
10 since the issuance of the decision in *United Foods*. The Court has not scheduled this matter on  
11 any calendar or for other proceedings. Consequently, there is no prejudice to the United States  
12 from allowing amendment of the Petition. The policy of the Federal Rules is to provide a just  
13 adjudication of the parties' respective claims. The Amended Petition for Judicial Review and  
14 Request for Declaratory Judgment and Injunctive Relief allows exactly that and avoids the  
15 possible splitting of claims or the need to file additional actions should the Charters prevail in  
16 the case as initially pleaded.

17 The circumstances and facts warrant leave from the Court to file the Amended Petition.  
18 The policy of Rule 15, F.R.Civ.P., is furthered by granting Charters' motion.

19 DATED this 7<sup>th</sup> day of August, 2001.

21 HENDRICKSON, EVERSON, NOENNIG  
22 & WOODWARD, P.C.  
23 208 North Broadway, Suite 324  
24 Billings, MT 59101-1984  
25 Attorneys for Petitioners

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