



United States
Department of
Agriculture

OCT 3 2008

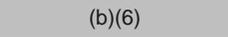
Animal and
Plant Health
Inspection
Service

1400 Independence
Avenue, SW

Washington, DC
20250



(b)(6)

Dear  (b)(6)

Congressman Chabot asked us to respond directly to your September 11, 2008, e-mail to him regarding the treatment of elephants exhibited by H V LLC, doing business as Circus Hermanos Vazquez (formerly known as Aurora Kay, Inc.), and Wilbur Davenport.

We share your interest in the welfare of animals and appreciate the opportunity to address your concerns. As you may know, our Agency of the U.S. Department of Agriculture (USDA) enforces the Animal Welfare Act (AWA), a law designed to protect certain animals from mistreatment. In enforcing the AWA, we require people who exhibit elephants and certain other animals to the public to be licensed with us and meet our established minimum standards of humane animal care and treatment. These individuals must provide their animals with, among other things, veterinary care, an appropriate diet, clean and structurally sound housing that affords sufficient space and freedom of movement, and protection from extremes of weather and temperature. If a regulated animal demonstrates tangible and/or clinical signs of a medical condition, exhibitors are required to have their attending veterinarian evaluate and address the problem. In addition, we enforce handling requirements designed to prevent the mistreatment of animals during training and performances and to ensure that there is minimal risk of harm to the animals and the public. Accordingly, there must be sufficient distance and/or barriers between the animals and the viewing public.

To ensure that exhibitors such as Circus Hermanos Vazquez maintain the AWA minimum standards, officials with our Agency's Animal Care (AC) program perform unannounced compliance inspections of the exhibitors' premises, facilities, husbandry practices, programs of veterinary care, records, and animal handling procedures. We also perform inspections in response to legitimate concerns and complaints received from the public. During these inspections, our officials make every effort to observe all regulated animals owned or held by the licensee. If an inspection reveals noncompliance with the AWA standards and regulations, we document the problems and, if warranted, conduct a formal investigation. If an investigation results in a determination that AWA violations occurred, we pursue appropriate enforcement action. For example, in cases of serious or chronic violations, we seek civil penalties, license suspensions, and license revocations.



Safeguarding American Agriculture
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Page 2

AC officials continue to inspect Circus Hermanos Vazquez for compliance with the AWA. The circus has been inspected four times this year—twice while the unit was traveling, and twice at its home facility. In addition, USDA routinely monitors Mr. Wilbur Davenport's business, Maximus "Tons of Fun" LLC, for AWA compliance, and we have closely followed the situation with regard to Tina, Queenie, and Jewel for some time. Currently, we are monitoring the weights and other health parameters of these elephants to ensure that their condition is adequate for travel.

We hope this information is helpful. We assure you that we will continue to take all action within our AWA authority to ensure the welfare of regulated animals. For more information about the AWA and our Agency's enforcement activities, we encourage you to visit our Web site at www.aphis.usda.gov/ and select "Animal Welfare" on the left side of the page.

Sincerely,



Cindy J. Smith
Administrator

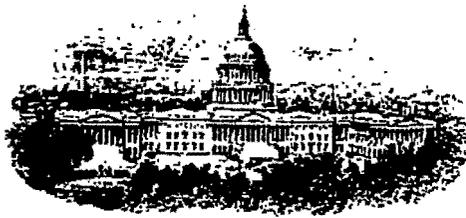
STEVE CHABOT

MEMBER OF CONGRESS
FIRST DISTRICT, OHIO

129 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
PHONE: (202) 225-2216 FAX: (202) 225-3012

CAREW TOWER
441 VINE STREET, ROOM 3003
CINCINNATI, OH 45202
PHONE: (513) 684-2723 FAX: (513) 421-8722

<http://www.house.gov/chabot>



**Congress of the United States
House of Representatives
Washington, DC 20515**

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SOUTH ASIA

September 17, 2008

Mr. Arlen Lancaster
Deputy Assistant Secretary for Congressional Relations
U.S. Department of Agriculture
213 A Whitten Building
1400 Independence Avenue, SW
Washington, DC 20250

Dear Mr. Lancaster:

Enclosed is correspondence that I have received from a constituent of mine, (b)(6) (k)(6) regarding her concern for circus elephants.

I would very much appreciate it if you would take the time to carefully review the enclosed correspondence, make it part of any public record, and provide me with a copy of your response to (b)(6)

I respectfully request that you give her every and full consideration in accordance with all applicable laws and regulations in the resolution of this matter. Please advise as to any assistance my office can provide.

If you have any questions, or if I can be of further assistance, please feel free to contact my Staff Assistant (b)(6) at (513) 684-2723. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Steve Chabot".

Steve Chabot
Member of Congress

SC:ew

enclosure

Snapshot Report: Incoming Constituent Message

Report Date: 9/12/2008

Staff:

Address To: webform

Name: (b)(6)

Address: (b)(6) USA

Email: (b)(6)

URL:

Home Phone:

Cell Phone:

Work Phone: (b)(6)

Fax:

Salutation: Dear (b)(6)

In Type: EML

Polling:

Reply Ltr:

Interest:

Organization:

Letter:

Classification:

Personal:

Title:

Workflow:

Reference #:

Group:

Message Body:

Date Received: 9/11/2008 10:35:30 AM

Topic/Subject Desc: Other

I'm writing to ask your help concerning three horribly abused elephants - Tina, Jewel, and Queenie. They are on the road with Circus Vazquez, and as my representative I'm asking that you help them. Tina, Jewel and Queenie have spent their summer being trucked around the country with Circus Vazquez. In Defense of Animals has been monitoring these elephants as they have passed from Texas, to Arizona, California, Oregon, Florida, Atlanta and North Carolina, on their way to Chicago and the Northeast. Day after day, town after town, the lives of these elephants are the same - crammed into the back of a trailer, confined to a tiny pen where they sway neurotically -- all for five minutes of performance doing demeaning tricks for dwindling circus crowds. Tina, Jewel and Queenie have endured a lifetime of ill-treatment at the hands of the circus industry, most recently by their current owners, the notorious Davenport family, whose son Will is traveling with them now. In Defense of Animals has documented numerous violations of law regarding these elephants. (See http://www.help elephants in zoos.org/feature_070905.html). I urge you to please do whatever you can to urge the USDA and the USFWS to enforce the law to protect these elephants.



United States
Department of
Agriculture

MAY 27 2008

Animal and
Plant Health
Inspection
Service

1400 Independence
Avenue, SW

Washington, DC
20250

The Honorable Steve Pearce
U.S. House of Representatives
1607 Longworth House Office Building
Washington, D.C. 20515-3102

Dear Congressman Pearce:

Thank you for your letter of April 23, 2008, on behalf of (b)(6) concerning (b)(6) proposal to provide bovine spongiform encephalopathy (BSE) sample testing services to the U.S. Department of Agriculture (USDA).

We appreciate the opportunity to respond to (b)(6). We would first like to clarify, however, that the company, (b)(3) (b)(3)—applied for a blanket purchase agreement (BPA) with USDA, rather than a contract. We received (b)(6) BPA application on August 13, 2007, and evaluated it against the criteria outlined in our call for proposals. These include the company's technical capability, past performance, and socioeconomic status, as well as the price for the service.

In the areas of technical capability and past performance, Agency officials noted that the company had failed to enter data into USDA's database in a timely manner in 2007. This resulted in various reporting problems for the New Mexico State office of our Veterinary Services program. We recognize that changes to our BSE reporting database may have resulted in technical difficulties for the company for a short period in 2007; however, the untimely data entry errors did not occur during that time. Although Ms. Patricia Harris, a contracting officer with our Agency, had erroneously explained over the phone that the denial was due to an incomplete application, she later explained that the denial was in fact the result of the 2007 data entry problems. We regret any confusion this may have caused.

While we recognize (b)(6) disappointment with the decision, we must emphasize that we evaluated all the BPA applicants using the same criteria. We assure you that our Agency is committed to reviewing all proposals fairly and objectively.

Sincerely,

Cindy J. Smith
Administrator

cc: Dr. John R. Clifford, VS, Wash., DC w/cy of inc.
Dr. Gregory L. Parham, MRPBS, Wash., DC w/cy of inc.
Ms. Felicia Stepney, LPA, Riverdale, MD w/cy of inc.

FINAL:APHIS:LPA:GregRosenthal:kc:cy:5/13/08:734-7776:56-5387768:CC1230

Clearances:

EC _____
LPA _____
VS _____
MRPBS _____
OA _____

SOURCES: ANauble, PScigliabaglio (Albuquerque, NM), JHonstead (ER) VS; PHarris,
MRPBS

~~08856~~

VS104

STEVAN PEARCE

2ND DISTRICT, NEW MEXICO

ASSISTANT REPUBLICAN WHIP

1007 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-7366
(202) 225-8689 FAX

www.house.gov/pearce



Congress of the United States
House of Representatives
Washington, DC 20515-3102

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April 23, 2008

Ms. Mary Waters
U. S. Department of Agriculture
1400 Independence Avenue, S.W.
213A Whitten Building
Washington, DC 20250

Via Telefax Transmission: 202-720-8077

Dear Ms. Waters:

My office recently received the enclosed correspondence from my constituent, (b)(3) concerning a denial of their bid for a 2008 contract for sample collection for BSE in New Mexico.

I would appreciate it if you would review (b)(6) correspondence and provide me with any information that might be helpful to him. I am herewith enclosing (b)(6) Privacy Release which authorizes me to inquire and receive reports in this case as required by the Privacy Act.

Thank you for your prompt assistance in this matter. I look forward to hearing from you.

Sincerely,

STEVAN PEARCE
Member of Congress

SP/cw

Enclosures

(b)(3)

February 13, 2008

The Honorable Steven Pearce
Representative, New Mexico's 2nd Congressional District
1717 West 2nd Street, Suite 100
Roswell, New Mexico 88201

Dear Mr. Pearce:

We are contacting you for help to resolve an issue our company has with the federal agency, the United States Department of Agriculture, Animal and Plant Health Inspection Services (USDA, APHIS). We are concerned that we were wrongfully denied federally funded contract for sample collection for BSE, also known as "mad cow disease", in the amount of approximately \$125,000.

(b)(3)

contract expired in September 2007. We contacted the USDA, APHIS state office in Albuquerque, NM and we were advised to solicit a new BSE contract from USDA for 2008. We completed required documentation and we submitted our proposal to USDA, APHIS in October 2007.

Approximately two months later, in December 2007, we contacted USDA, APHIS office headquarters in Minneapolis, Minnesota to ask about the status of our proposal. Ms. Patricia Harris, an employee responsible for processing BSE proposals, told us that we had not been awarded a contract at all, because our proposal was incomplete. A few days later, we received a denial letter from USDA, APHIS (see attached).

In the letter, we were also told that USDA, APHIS received three BSE proposals from the State of New Mexico, and awarded two BSE contracts in our state. Those two contracts went to Texas based large corporations, taking advantage of the BSE testing availability in our state. One company, County Services received a contract for one thousand BSE samples, and a second company for five hundred BSE samples. [REDACTED] (b)(3) business, received no contract.

We found this fact very disturbing, especially when both companies are charging the federal government a significantly larger amount of money for their services than we offered in our proposal. We asked for [REDACTED] (b)(4) per sample, and both companies are charging the government \$160 for the same services.

After we received the above mentioned letter from USDA, Ms. [REDACTED] (b)(6) contacted Ms. Harris from USDA to question the denial. [REDACTED] (b)(6) told Ms. Harris that our company used the same format for the BSE proposal as our company used in the previous year, [REDACTED] (b)(3)

When [REDACTED] (b)(6) proved that explanation of denial based on "incomplete proposal" was illogical, Ms. Harris changed her original response. She stated that our company was denied BSE contract because "The New Mexico USDA, APHIS office reported negatively on our data submission."

Based on Ms. Harris statement, on January 7, 2008 we contacted Dr. Paul Scigliabaglio, the USDA, APHIS, Veterinarian in [REDACTED]

[REDACTED] (b)(3)

responded that we experienced some difficulties in 2007 with BSE data submissions to his USDA office also, but that those problems were not because of our insufficient services, but because his office was using a new USDA computer programs that resulted in temporary problems with data transmission.

We told him that it was not our fault that the USDA office had temporary problems with their software, and that using USDA computer problems as a reason to deny our company BSE contract was absolutely wrong.

Dr. Scigliabaglio responded that as far as he knew we were not the only (b)(3) that did not get awarded a BSE contract. We replied that it was not true because according to a letter from USDA, our company was the only one that was denied BSE contract in (b)(3). At the end of our conversation, Dr. Scigliabaglio told us that there was nothing that could be done to resolve this issue, and that USDA decision to deny our company a BSE contract was final.

Needless to say, we were shocked and dismayed. We believe that we were wrongfully denied a federally funded BSE contract. He as a government official was trying to discourage us to pursuing this issue further, stating that there was nothing that could be done.

(b)(3)

We are respectfully asking for your direct involvement in this unfortunate issue. We would like to meet with you or your representative for 15 minutes and discuss possibilities how to resolve this case.

Respectfully,

(b)(6)

Owner/Operator



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

JUL 22 2008

The Honorable Steve Pearce
U.S. House of Representatives
1607 Longworth House Office Building
Washington, D.C. 20515-3102

Dear Congressman Pearce:

Thank you for your letter of May 21, 2008, regarding the Department of Agriculture's (USDA) plan to amend existing bovine tuberculosis (TB) regulations with regard to New Mexico's bovine TB status following a recent detection of the disease in that State.

I understand that you have concerns about this situation, and I am pleased that Dr. John Clifford, Deputy Administrator for the Animal and Plant Health Inspection Service's Veterinary Services program, was able to meet with you and the rest of the New Mexico delegation to discuss this issue. As Dr. Clifford explained, USDA's decision to amend New Mexico's TB status to modified accredited advanced is in accordance with existing regulations. You are correct that under the bovine TB regulations in title 9, *Code of Federal Regulations* (CFR) part 77.2, feedlots are exempt from the definition of a herd. 9 CFR 77.2 defines a feedlot as a facility used for congregating finished fed cattle prior to their being shipped to slaughter. Because animals contained at feedlots are intended for slaughter and do not generally co-mingle with back-to-farm animals, USDA does not consider them likely to transmit disease.

However, F&F Pens—the affected animal's herd of residence—is not a feed-for-slaughter-only premise. It is a multi-purpose operation, with a number of animals on its premises being back-to-farm cattle. This type of operation creates a greater risk of disease transmission through shared feeding and watering troughs and shared spaces. Because of this increased risk and because the infected cow was held at the facility for more than four months under common supervision, USDA considers the livestock at F&F Pens to constitute a herd. This means that New Mexico has exceeded the allowable prevalence to retain its accredited free status, and its TB status must be amended.

As you know, New Mexico and USDA animal health officials are currently conducting an epidemiological investigation to trace the infected animal's movements and ascertain whether other herds may also be affected. Although the source of infection has not yet been determined, we must emphasize that regardless of where transmission occurred, the significant period of time

The Honorable Steve Pearce

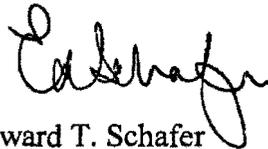
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during which the affected animal was housed at F&F Pens provided ample opportunity for transmission to other back-to-farm animals through shared feeding and watering troughs and shared spaces.

We are currently preparing an interim rule for publication in the *Federal Register* that will amend New Mexico's TB status. I assure you that we understand the potential economic impact of this outbreak on producers and that we will continue to work closely with our State partners to address the disease situation in New Mexico. We are confident that, by collaborating with our State counterparts, we will be able to eradicate bovine TB in New Mexico and throughout the United States. We are sending a similar response to your colleagues.

Thank you again for your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Schafer", written in a cursive style.

Edward T. Schafer
Secretary

Congress of the United States
Washington, DC 20510

May 21, 2008

The Honorable Edward T. Schafer
Secretary
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretary Schafer:

We are writing respectfully to request your immediate review of a pending decision by the Animal and Plant Health Inspection Service (APHIS) regarding New Mexico's status for bovine tuberculosis (TB). As we understand it, APHIS is considering amending the bovine TB regulations to add New Mexico to the list of modified accredited advanced states. This change would have dramatic consequences on the livestock industry in our state. Because we believe this change is not in accord with the USDA's existing regulations, we are requesting your prompt review of the decision.

The livestock industry is New Mexico's single most important agricultural commodity with total annual sales of milk and beef cattle of almost \$2 billion. There are over 1.5 million cattle and calves in New Mexico, including 340,000 dairy cows. Bovine TB was first discovered in 2003, and New Mexico's request for split-state status was approved by the administrator of APHIS in July 2005. At that time, a small area in Curry and Roosevelt Counties was listed as a modified accredited advanced zone and the rest of the state was listed as an accredited-free zone.

Earlier this year, a single animal from a feedlot in New Mexico was found to be infected with bovine TB. Follow-up testing so far found no infection at the cow's assumed dairy of origin or in any other animal at the feedlot. Moreover, as we understand it, the point of exposure to TB has yet to be determined. There is no conclusion yet as to where the cow was located during the 5-month period after she left the dairy. The epidemiological investigation has not been completed and the results of the DNA testing to confirm the parentage are not available.

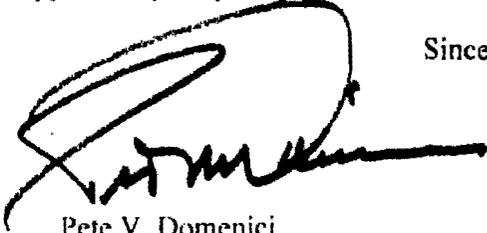
This particular feedlot is a set of corrals used to hold cattle temporarily. Experts in our state point out the USDA has never interpreted this kind of operation to be a "herd." To downgrade New Mexico's status based on this particular situation at a single feedlot would set a new precedent for all similar cases.

We believe New Mexico continues to have in place the capability and resources to manage properly its existing split-state status, including regulations on the movement of cattle, monitoring of animals in the restricted zone and full enforcement of a tuberculosis eradication program. A downgrade of New Mexico's status could cost our producers more than \$4 million

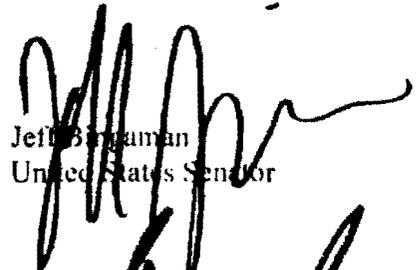
per year and could actually impede efforts to eliminate bovine TB as resources are shifted over to operations that pose little or no risk. We urge you to adhere to the existing regulations and maintain New Mexico's current TB status.

We appreciate your prompt attention to our request.

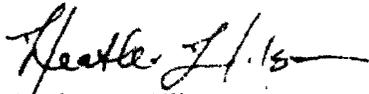
Sincerely,



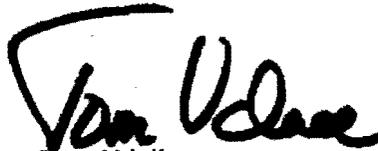
Pete V. Domenici
United States Senator



Jeff Bingaman
United States Senator



Heather A. Wilson
Member of Congress



Tom Udall
Member of Congress



Steve Pearce
Member of Congress



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

OCT 23 2008

The Honorable Steve Pearce
U.S. House of Representatives
1607 Longworth House Office Building
Washington, D.C. 20515-3102

Dear Congressman Pearce:

Thank you for your letter of September 15, 2008, to Secretary Edward T. Schafer requesting that the Department of Agriculture (USDA) expedite its review of the New Mexico Livestock Board's (NMLB) application for split-State status under the State-Federal bovine tuberculosis (TB) eradication program.

We appreciate the opportunity to respond to your concerns. We value our cooperative relationship with the NMLB and share its strong commitment to eradicating bovine TB. USDA certainly understands the financial hardship that this disease poses for producers who want to export their livestock from States or zones that are not classified as TB-free. However, as you know, the May 2008 confirmation of bovine TB was the second in New Mexico's TB-free zone since May 2007. Our September 11, 2008, action to reclassify New Mexico as modified accredited advanced (MAA) for bovine TB was in accordance with the *Code of Federal Regulations*' (CFR) 9 CFR 77.7(c) addressing the detection of two or more bovine TB-affected herds in an accredited-free State or zone within 48 months.

We understand the potential economic impact of this outbreak on producers, and we assure you we will continue to work closely with NMLB to address the disease situation in New Mexico. As you note, officials with USDA's Animal and Plant Health Inspection Service have received New Mexico's split-State status application and have initiated a risk assessment, including a site visit. Our regulations also require us to develop, with State animal health officials, a memorandum of understanding that includes, among other things, a disease management plan. The final step in this process would be the publication of an interim rule implementing the split-State status. We assure you that we will work with State animal health officials to complete the process.

Thank you again for writing. We are confident that, by collaborating with our State counterparts, we will be able to eradicate bovine TB in New Mexico and throughout the United States. We are providing a similar response to the other Members of Congress who also signed the letter.

Sincerely,

Bruce I. Knight
Under Secretary
Marketing and Regulatory Programs

Congress of the United States

Washington, DC 20510

September 15, 2008

The Honorable Edward T. Schafer
Secretary
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretary Schafer:

We are writing respectfully to request your assistance in expediting the Animal and Plant Health Inspection Service's (APHIS) review and approval of New Mexico's application for split-state status for bovine tuberculosis (TB). On September 11 APHIS amended the bovine TB regulations to downgrade New Mexico's status to modified accredited advanced, canceling the existing split-state status that had been in place since 2005. This downgrade in status imposes new state-wide testing and movement requirements that will have dramatic economic consequences on the livestock industry in our state. We understand that the New Mexico Livestock Board has already submitted an application to APHIS to restore split-state status, which would limit movement requirements to only Curry and Roosevelt Counties. We urge USDA to approve the state's application for split-state status as quickly as possible.

The livestock industry is New Mexico's single most important agricultural commodity with total annual sales of milk and beef cattle of almost \$2 billion. There are over 1.5 million cattle and calves in New Mexico, including 340,000 dairy cows. Earlier this year, one animal from a feedlot in New Mexico was found to be infected with bovine TB. Though only a single animal was found to be infected and the entire feedlot was depopulated, APHIS nevertheless decided that the feedlot constituted a "herd" and downgraded the entire state's status.

Because New Mexico was previously approved for split-state status in 2005, the state is familiar with the process and well prepared to implement all the requirements of split-state status. In particular, the state's application describes the legal and financial resources available to implement and enforce a TB eradication program and the infrastructure, laws, and regulations that require and ensure that state and federal animal health authorities are notified of TB cases in domestic animals or outbreaks in wildlife. The plan also describes the clinical and epidemiological surveillance of animal species at risk of TB in the intended zone at a rate that allows TB detection in the overall population of livestock at a 2 percent prevalence level with 95 percent confidence. Finally, the state is prepared to enter into a new Memorandum of Understanding with APHIS agreeing to specific conditions appropriate to the new expanded zone.

We understand that APHIS has already started the required formal risk assessment, which will include a site visit or review to cover information contained in the split-state status request package. Because APHIS staff is already well acquainted with the situation in New Mexico we expect these steps can be completed quickly. It is our strong desire that APHIS proceed with an interim rule reestablishing split-state status with the new zone within 60 days.

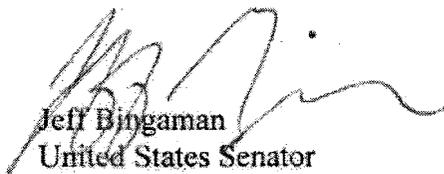
The downgrade of New Mexico's status is estimated to cost our producers more than \$4 million per year and could actually impede efforts to eliminate bovine TB as resources are shifted over to operations that pose little or no risk. We urge your office to work closely with APHIS to complete the approval of split-state status as quickly as possible.

We appreciate your prompt attention to our request.

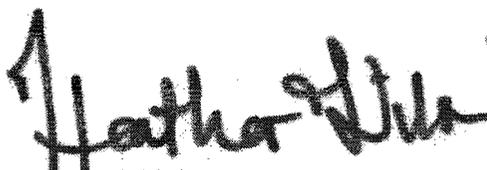
Sincerely,



Pete V. Domenici
United States Senator



Jeff Bingaman
United States Senator



Heather A. Wilson
Member of Congress



Tom Udall
Member of Congress



Steve Pearce
Member of Congress