

IN THE SUPREME COURT FOR THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO. 85926

U.S. District Court Case No.:
3:16-cv-00237-RCJ-CLB

APPELLANT'S APPENDIX VOLUME 2 OF 5

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5/4/2022	Exhibits 18 through 38 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, ECF Nos. 307-18 through ECF 307-38	5	556-724
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18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF NEVADA**

20 ABEL CANTARO CASTILLO on behalf of himself
and those similarly situated,

21 Plaintiff,

22 vs.

23 WESTERN RANGE ASSOCIATION
24 Defendant.

CASE NO. 3:16-cv-00237-RCJ-CLB

25 **INDEX OF EXHIBITS**

26 Ex. No.	Document
27 1	Declaration of Pamela Macker, Oct. 28, 2021
28 2	Forms 790, WRA008338-8343, P000649-657

- 1 3 Public Hearing, CA Dept. of Industrial Relations, Testimony of James S. Holt, Ph.D. (“Holt Testimony”), Oct. 3, 2000, P000030-39
- 2
- 3 4 ETA Form 9142 with Member List (2009-2010), WRA008306-8319
- 4 5 Excerpts from the Deposition of Monica Youree, Aug. 11, 2020
- 5 6 I-129, Petition for Nonimmigrant Worker, WRA000019-033
- 6 7 Advisory: Training & Employment Guidance Letter No. 32-10, June 14, 2011, WRA000801-815
- 7 8 ETA Forms 9142 & 9142A, WRA008323-8337, WRA009973-9986
- 8 9 I-129, Petition for a Nonimmigrant Worker, WRA010890-10906
- 9 10 Declaration of Melchor Gragirena, Dec. 28, 2020
- 10 11 Dr. Jeffrey Peterson, Survey Expert Report for Class Certification (“Petersen Report”), June 25, 2021
- 11 12 ETA Form 9142, WRA000034-042
- 12 13 Excerpts from the Deposition of Abel Cántaro Castillo, June 24-25, 2020
- 13 14 James S. Holt, Ph.D., The Open Range Sheep Industry (“Holt Report”), Oct. 3, 2000, WRA001030-1054, Confidential (filed under seal)
- 14 15 Excerpts from the Deposition of Dennis Richins, Nov. 6-7, 2012, *Ruiz v. Fernandez*, No. CV-11-3088 (E.D.Wash.)
- 15 16 MPAS/WRA Comments re: Notice of Proposed Rulemaking, June 1, 2015, WRA000881-920
- 16 17
- 17 18 Excerpts from the Deposition of Tom Filbin, Aug. 24, 2021
- 18 19 Excerpts from the Deposition of John Espil, July 16, 2021
- 19 20 Excerpts from the Deposition of Sierra Knudsen, Feb. 1, 2021
- 20 21 Excerpts from the Deposition of Ted Borda, Aug. 20, 2021
- 21 22 Excerpts from the Deposition of Hank Dufurrena, Aug. 6, 2021
- 22 23 Excerpts from the Deposition of Pauline Inchauspe, June 14, 2021
- 23 24 Excerpts from the Deposition of Ira Wines, June 2, 2021
- 24 25 Excerpts from the Deposition of Gary Snow, Aug. 9, 2021
- 25 26 Declaration of Bonnie Little, April 13, 2021
- 26 27 Declaration of Connie Olagaray, April 2, 2021
- 27 28 Excerpts from the Deposition of Kerri Wright, April 30, 2021

- 1 28 Excerpts from the Deposition of Nicholas Etcheverry, July 12, 2021
- 2 29 Excerpts from the Deposition of Kristofor Leinassar, Aug. 26, 2021
- 3 30 Excerpts from the Deposition of Henry Vogler IV, June 1, 2021
- 4 31 Declaration of Leonardo Lapa Pomahuali, ETS000079
- 5 32 Declaration of Cesario Yauri Garcia, ETS000062
- 6 33 Excerpts from the Deposition of Bonnie Little, July 8, 2021
- 7 34 Declaration of William Archi Lozano, ETS000089
- 8 35 Declaration of Elmer Alcides Cantaro Oteo, ETS000073
- 9 36 Declaration of Elias Maximo Ascanoa Alania, ETS000068
- 10 37 Declaration of Gilmar Jhonny Melo Castillo, ETS000084
- 11 38 El Tejon Housing Inspections, WRA004467, WRA004425

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Dated: May 4, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2022, a true and correct copy of the foregoing was served via the United States District Court CM/ECF system or email on all parties or persons requiring notice.

By: /s/ Christine E. Webber
Christine E. Webber

EXHIBIT 1

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25 **DECLARATION OF PAMELA MACKER**

26 1. My name is Pamela Macker. I am a paralegal with the firm of Cohen Milstein
27 Sellers & Toll PLLC. I am over 18 years of age. I have personal knowledge of the facts set forth
28 below, and could and would testify to them in a court of law if called upon to do so. I make this

1 declaration in support of Plaintiff’s Motion for Class Certification, and pursuant to Federal Rule of
2 Evidence 1006. The documents summarized in this declaration and its attachments total over 2,300
3 pages.

4 2. Defendant WRA produced 31 supplemental (and amended supplemental) responses
5 to Plaintiff’s Second Interrogatory, which collectively set forth names, dates of employment, ranch
6 of employment, and contact information for H-2A herders who had worked in Nevada between
7 approximately 2010 and 2018. I entered this information into a spreadsheet, a copy of which has
8 been produced to Defendant.

9 3. Based upon the data included, I was able to identify each WRA member ranch that
10 employed an H-2A herder in Nevada between 2010 and 2018. There are 25 of them, listed on the
11 chart attached hereto as Ex. A. I was also able to determine the number of individual herders who
12 were identified as having worked for each ranch, and that number is also included on the chart
13 attached as Ex. A. Because some herders worked for more than one ranch, the total number of
14 unique herders disclosed by WRA in its interrogatory response is 479, somewhat less than the total
15 of each ranch’s headcount of 488.

16 4. Several of the WRA member ranches have provided declarations in this matter.
17 Where a ranch has provided a declaration, I have listed the name of the declarant in Ex. A. Several
18 of the WRA member ranches have provided deposition testimony in this matter. Where a ranch has
19 provided a deposition, I have listed the name of the deponent in Ex. A.

20 5. I have reviewed a total of 99 documents entitled “Information for Master Job Order,
21 Member Survey.” Each survey response (1) has a date as part of the document title; (2) indicates
22 which member ranch responded to the survey; (3) includes a question and answer regarding whether
23 the member ranch uses open range in more than one state, and if so in what states, and for how many
24 months; and (4) includes a question and answer regarding the salaries the member ranch is paying to
25 current shepherders. Sample survey forms from one of the member ranches are attached as Ex. 51
26 to Plaintiff’s Motion for Class Certification. I reviewed documents bates numbered: WRA003655-
27 WRA003656, WRA003664-WRA003666, WRA003880-WRA003881, WRA003899-WRA003901,
28 WRA004189-WRA004190, WRA004215-WRA004217, WRA004945-WRA004947, WRA005021-

1 WRA005022, WRA005608-WRA005610, WRA005638-WRA005639, WRA006022-WRA006024,
2 WRA006600-WRA006602, WRA006870-WRA006871, WRA006883-WRA006884, WRA007075-
3 WRA007077, WRA007490-WRA007491, WRA007666-WRA007668, WRA007835-WRA007837,
4 WRA007849-WRA007850, WRA008043-WRA008045, WRA008098-WRA008099, WRA008205-
5 WRA008207. WRA008347-WRA008348, WRA008349-WRA008350, WRA008351-WRA008352,
6 WRA008353-WRA008354, WRA008355-WRA008356, WRA008357-WRA008358, WRA008359-
7 WRA008360, WRA008361-WRA008362, WRA008363-WRA008364, WRA008365-WRA008366,
8 WRA008367-WRA008368, WRA008369-WRA008370, WRA008371-WRA008372, WRA008373-
9 WRA008374, WRA008375-WRA008376, WRA008377-WRA008378, WRA008379-WRA008380,
10 WRA008396-WRA008397, WRA008398-WRA008399, WRA008400-WRA008401, WRA008402-
11 WRA008403, WRA008404-WRA008405, WRA008406-WRA008407, WRA008408-WRA008408,
12 WRA008409-WRA008410, WRA008411-WRA008412, WRA008413-WRA008414, WRA008415-
13 WRA008416, WRA008417-WRA008418, WRA008419-WRA008420, WRA008421-WRA008422,
14 WRA008423-WRA008424, WRA008425-WRA008426, WRA008427-WRA008428, WRA008429-
15 WRA008430, WRA008453-WRA008454, WRA008455-WRA008456, WRA008457-WRA008458,
16 WRA008459-WRA008460, WRA008461-WRA008462, WRA008463-WRA008464, WRA008465-
17 WRA008466, WRA008467-WRA008468, WRA008469-WRA008470, WRA008471-WRA008472,
18 WRA008473-WRA008474, WRA008476-WRA008477, WRA008478-WRA008479, WRA008480-
19 WRA008481, WRA008494-WRA008495, WRA008496-WRA008497, WRA008498-WRA008499,
20 WRA008500-WRA008501, WRA008502-WRA008503, WRA008504-WRA008505, WRA008506-
21 WRA008507, WRA008508-WRA008509, WRA008510-WRA008511, WRA008512-WRA008515,
22 WRA008516-WRA008517, WRA008518-WRA008519, WRA008520-WRA008521, WRA008522-
23 WRA008523, WRA008524-WRA008525, WRA008526-WRA008527, WRA008541-WRA008542,
24 WRA008543-WRA008544, WRA008545-WRA008546, WRA008547-WRA008548, WRA008549-
25 WRA008550, WRA008551-WRA008552, WRA008553-WRA008554, WRA008555-WRA008556,
26 WRA008557-WRA008558, WRA008559-WRA008560, WRA008561-WRA008562, WRA008563-
27 WRA008564. Based on that review, I identified, for each member ranch, the years for which survey
28 responses have been provided, and list that information in the chart attached as Ex. A.

1 6. I have reviewed documents produced by WRA and Plaintiff in this litigation, and
2 identified 190 of Form 790, Agricultural and Food Processing Clearance Orders (also known as “job
3 orders”). For 2009 through 2016, Western Range filed job orders on behalf of its membership by
4 filing one form, generally with a list of the member ranches on whose behalf it was filed attached.
5 Those forms are listed in the chart attached hereto as Ex. B, including the bates numbers of the
6 documents, the time period covered, and that they were filed on behalf of WRA members generally.
7 Thereafter, Western Range filed job orders on behalf of individual member ranches, often multiple
8 times per year. I sought to identify job order forms that encompassed the longest time periods, to
9 minimize any gaps in coverage, with the goal of identifying a form 790 covering each WRA member
10 ranch operating in Nevada for each year during which individual form 790s were filed. The forms
11 identified are also listed on Ex. B, with information indicating the time period and ranch covered, as
12 well as the bates number. Western Range did not produce form 790s for every year.

13 7. For each Form 790 listed in Ex. B, I reviewed the forms and confirmed that, starting
14 in 2013 each contained an “Assurances” page stating that “all working conditions comply with
15 applicable Federal and State minimum wage . . . and other employment-related laws,” and signed by
16 an officer of Western Range, as indicated by checkmarks in Ex. B. The Assurances page was
17 included for all Form 790 starting in 2013, but not for earlier years.

18 8. Each form 790 listed in Ex. B also included a job description which was virtually
19 identical across the documents reviewed, stating:

20 Attends sheep and/or goat flock grazing on the range or pasture. Herds flock and
21 rounds up strays using trained dogs. Beds down flock near evening campsite. Guards
22 flock from predatory animals and from eating poisonous plants. May examine
23 animals for signs of illness and administer vaccines, medications and insecticides
 according to instructions. May perform other farm or ranch chores related to the
 production and husbandry of sheep and/or goats on an incidental basis.

24 9. Each form 790 listed in Ex. B also included a statement that the herders were “on call
25 for up to 24 hours 7 days a week,” as noted by checkmarks on Ex. B.

26 10. Each form 790 in Ex. B also included a monthly salary that was being offered, as
27 noted on the Ex. B.

28 11. Sample forms 790 are attached to Plaintiff’s Motion for Class Certification as Ex 63.

1 12. I similarly reviewed documents produced by WRA in this litigation, and identified
2 150 of Form 9142 or 9142A, H-2A Application for Temporary Employment Certification (also
3 known as “employment certs”). Similar to the forms 790, I found that Western Range filed forms
4 9142 on behalf of its membership by filing one form, with a list of the member ranches on whose
5 behalf it was filed attached, through July 2014. Those forms are listed in the chart attached hereto as
6 Ex. C, along with their Bates numbers, dates of coverage, and that they were filed on behalf of WRA
7 members generally. Starting in 2016, Western Range filed 9142s on behalf of individual member
8 ranches, often multiple times per year. I sought to identify forms 9142 that encompassed the longest
9 time periods, to minimize any gaps in coverage, with the goal of identifying a form 9142 covering
10 each WRA member ranch operating in Nevada for each year during which individual form 9142s
11 were filed. The forms identified are also listed on Ex. C, with information indicating the time period
12 and ranch covered, along with Bates number.

13 13. For each Form 9142 listed in Ex. C, I reviewed the forms and confirmed that each
14 contained an “Employer Declaration” section stating that “The employer understands that it must
15 offer, recruit at, and pay a wage that is at least the highest of the adverse effect wage rate in effect at
16 the time the job order is placed, the prevailing hourly or piece rate, the agreed-upon collective
17 bargaining rate (CBA), or the Federal or State minimum wage,” and signed by an officer of Western
18 Range. This is indicated on Ex. C.

19 14. Each form 9142 listed in Ex. C also included a job description which was virtually
20 identical across the documents reviewed, stating:

21 Attends sheep and/or goat flock grazing on the range or pasture. Herds flock and
22 rounds up strays using trained dogs. Beds down flock near evening campsite. Guards
23 flock from predatory animals and from eating poisonous plants. Drenches sheep
24 and/or goats. May examine animals for signs of illness and administer vaccines,
25 medications and insecticides according to instructions. May assist in lambing,
docking, and shearing. The work activities involve the herding or production of
livestock (which includes work that is closely and directly related to herding and/or
the production of livestock).

26 The forms covering 2009-10 and 2010-11 do not mention the job duties “Drenches sheep and/or
27 goats” or “May assist in lambing, docking, and shearing.” Forms filed in 2011 and later include
28 those items.

1 15. Each form 9142 listed in Ex. C also included a statement that the herders were “on
2 call for up to 24 hours 7 days a week,” as noted on Ex. C.

3 16. Each form 9142 listed in Ex. C also included a statement of the monthly salary that
4 was being offered, as noted on Ex. C.

5 17. Sample forms 9142 are attached to Plaintiff’s Motion for Class Certification as Ex.
6 40.

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9 I declare under penalty of perjury that the foregoing is true and correct to the best of my
10 knowledge.

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12 October 29, 2021



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Pamela Macker

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Ranch Data Review				
ranch	number of herders who worked ranch	declarant	deponent	years of survey responses
Borda	13	Ted Borda	Ted Borda	2010-2015, 2018
Brough	2			2012
David & Bonnie Little	60	Bonnie Little	Bonnie Little	2010-2012, 2015, 2018
Dufurrena Sheep Co.	16	Hank Dufurrena	Hank Dufurrena	2011, 2013
El Tejon	33	Melchor Gragirena		
Ellison Ranching Co.	48	Aulene Ratliff	Ira Wines	2011-2015
Empire Ranching Co.	3			2011, 2012
Estill Ranches LLC	24	John Estill	(delayed)	2010-2015
Eureka Livestock	27	Nicholas Etcheverry	Nicholas Etcheverry	2011, 2014, 2018
F.I.M. Corp.	23	Kristofor Leinassar	Kristofor Leinassar	2010-2015, 2018
Gary Snow	15	Gary Snow	Gary Snow	2010-2015
Grass Valley/ Jerry Lancaster	6			2011-2014
Green Goat	16		(delayed)	2015
Jersey Valley	7			2012
John Espil Sheep Co.	43		John Espil	2010-2014
John M. Olagaray (Five-0)	10	Connie Olagaray		2010-2015, 2018
John Uhalde & Co.	2			2013, 2014
K & N Livestock	13		Sierra Knudsen	2010-2015
Need More Sheep Co.	46	Hank Vogler	Henry Vogler	2011-2014
Rafter 7 Sheep Co./Rafter Merinos Sheep Co.	33	Rick Powers	Tom Filbin	2010-2012, 2014-2016, 2018
Robert A. Stayer	1			
Silver Creek Ranch Inc.	21	Pauline Inchauspe	Pauline Inchauspe	2010, 2012, 2014, 2015, 2018
Southern NV Water Authority	21		Kerri Wright	2010-2015
Thomas Knudsen	4			2010, 2011
Truckee River Ranch LLC	1			2013, 2014
Total	488			

Ex. A to Macker Decl.

Forms 790 Review						
year	ranch	Bates Nos. (date range)	job description matches	24/7 language included	monthly salary listed	assurances included
2009-10	Global WRA Nevada	WRA008318-WRA008319 (8/1/2009-7/31/2010)	✓	✓	✓	
2010-11	Global WRA Nevada	no form produced by WRA	✓	✓	✓	
2011-12	Global WRA Nevada	WRA008338-WRA008346 (8/1/2011-7/31/2012)	✓	✓	✓	
2012-13	Global WRA Nevada	WRA008393-WRA008395 (8/1/2012-7/31/2013)	✓	✓	✓	
2013-14	Global WRA Nevada	WRA008443-WRA008452 (8/1/2013-7/31/2014)	✓	✓	✓	
2014-15	Global WRA Nevada	WRA008483-WRA008493 (8/1/2014-7/31/2015)	✓	✓	✓	✓
2015-16	Global WRA Nevada	WRA008531-WRA008540 (8/1/2015-7/31/2016)	✓	✓	✓	✓
2018-19	Borda	P000357-P000365 (01/08/2018-01/06/2019)	✓	✓	✓	✓
2019-20	Borda	P000384-P000392 (01/08/2019-01/06/2020)	✓	✓	✓	✓
2020-21	Borda	P000410-P000419 (02/08/2020-02/05/2021)	✓	✓	✓	✓
2018-19	David & Bonnie Little	P000441-P000448 (02/08/2018-02/06/2019)	✓	✓	✓	✓
2019-20	David & Bonnie Little	P000466-P000473 (01/08/2019-01/06/2020)	✓	✓	✓	✓
2020-21	David & Bonnie Little	P000500-P000510 (02/08/2020-02/05/2021), P000552-P000562 (06/08/2020-06/06/2021)	✓	✓	✓	✓
2018-19	Dufurrena Sheep Co.	P000563-P000571 (01/08/2018-01/06/2019)	✓	✓	✓	✓
2019-20	Dufurrena Sheep Co.	P000588-P000596 (01/08/2019-01/06/2020)	✓	✓	✓	✓
2020-21	Dufurrena Sheep Co.	P000639-P000648 (03/08/2019-03/05/2020)	✓	✓	✓	✓
2018-19	Ellison Ranching Co.	P000649-P000657 (02/08/2018-02/06/2019)	✓	✓	✓	✓
2019-20	Ellison Ranching Co.	P000709-P000719 (03/08/2019-03/05/2020)	✓	✓	✓	✓
2020-21	Ellison Ranching Co.	P000823-P000833 (03/08/2020-03/06/2021), P000891-P000901 (06/08/2020-06/06/2021)	✓	✓	✓	✓
2019-20	Estill Ranches LLC	P000902-P000911 (01/08/2019-01/06/2020)	✓	✓	✓	✓
2020-21	Estill Ranches LLC	P000945-P000954 (01/08/2020-01/05/2021), P000981-P000991 (04/08/2020-04/06/2021)	✓	✓	✓	✓
2018-19	Eureka Livestock	P000992-P001000 (07/08/2018-07/06/2019)	✓	✓	✓	✓
2019-20	Eureka Livestock	P001086-P001095 (05/08/2019-05/05/2020)	✓	✓	✓	✓
2020-21	Eureka Livestock	P001142-P001152 (06/08/2020-06/06/2021)	✓	✓	✓	✓
2018-19	F.I.M. Corp.	P001153-P001161 (07/08/2018-07/06/2019)	✓	✓	✓	✓
2019-20	F.I.M. Corp.	P001216-P001224 (08/08/2019-08/05/2020), P001268-P001278 (08/06/2020-11/30/2020)	✓	✓	✓	✓

Forms 790 Review						
year	ranch	Bates Nos. (date range)	job description matches	24/7 language included	monthly salary listed	assurances included
2018-19	Grass Valley/ Jerry Lancaster	P001279-P001286 (01/08/2018-01/06/2019), P001287-P001295 (11/08/2018-11/06/2019)	✓	✓	✓	✓
2020-21	Grass Valley/ Jerry Lancaster	P001296-P001306 (02/08/2020-02/05/2021), P001318-P001328 (04/08/2020-04/06/2021)	✓	✓	✓	✓
2018-19	Green Goat	P001329-P001336 (02/08/2018-02/06/2019)	✓	✓	✓	✓
2019-20	Green Goat	P001345-P001353 (02/08/2019-02/06/2020)	✓	✓	✓	✓
2020-21	Green Goat	P001363-P001372 (02/08/2020-02/05/2021), P001394-P001403 (04/08/2020-04/06/2021)	✓	✓	✓	✓
2018-19	John Espil Sheep Co.	P001416-P001423 (02/08/2018-02/06/2019)	✓	✓	✓	✓
2019-20	John Espil Sheep Co.	P001514-P001523 (02/08/2019-02/06/2020), P001540-P001547 (11/08/2019-11/05/2020)	✓	✓	✓	✓
2020-21	John Espil Sheep Co.	P001559-P001589 (07/12/2020-02/05/2021)	✓	✓	✓	✓
2018-19	John M. Olagaray (Five-0)	P001582-P001590 (01/08/2018-01/06/2019)	✓	✓	✓	✓
2019-20	John M. Olagaray (Five-0)	P001607-P001616 (02/08/2019-02/06/2020)	✓	✓	✓	✓
2020-21	John M. Olagaray (Five-0)	P001627-P001637 (02/08/2020-02/05/2021)	✓	✓	✓	✓
2018-19	Need More Sheep Co.	P001638-P001646 (01/08/2018-01/06/2019)	✓	✓	✓	✓
2019-20	Need More Sheep Co.	P001672-P001680 (03/08/2019-03/06/2020), P001802-P001809 (09/08/2019-09/05/2020)	✓	✓	✓	✓
2020-21	Need More Sheep Co.	P001810-P001819 (03/08/2020-03/06/2021)	✓	✓	✓	✓
2018-19	Rafter 7 Sheep Co./Rafter Merinos Sheep Co.	P001832-P001840 (01/08/2018-01/06/2019)	✓	✓	✓	✓
2019-20	Rafter 7 Sheep Co./Rafter Merinos Sheep Co.	P001841-P001850 (01/08/2019-01/06/2020), P001859-P001868 (09/08/2019-09/05/2020)	✓	✓	✓	✓

Exhibit B to Macker Decl.

Forms 790 Review						
year	ranch	Bates Nos. (date range)	job description matches	24/7 language included	monthly salary listed	assurances included
2020-21	Rafter 7 Sheep Co./Rafter Merinos Sheep Co.	P001883-P001894 (10/06/2020-03/31/2021)	v ¹	v	v	v
2018-19	Silver Creek Ranch Inc.	P001906-P001914 (03/08/2018-03/06/2019)	v	v	v	v
2019-20	Silver Creek Ranch Inc.	P001935-P001945 (05/08/2019-05/05/2020)	v	v	v	v
2020-21	Silver Creek Ranch Inc.	P001946-P001955 (05/08/2020-05/06/2021)	v	v	v	v

¹ For Rafter 7 Sheep Co., the 2020-21 form 790 job description differs in that it provides greater detail for the winter range sheepherder.

Forms 9142 & 9142A Review						
year	ranch	Bates Nos. (date range)	job description matches	24/7 language included	monthly salary listed	assurances included
2009-10	Global WRA Nevada	WRA008306-WRA008317 (08/01/2009-07/31/2010)	✓	✓	✓	✓
2010-11	Global WRA Nevada	WRA000512-WRA000520 (09/10/2010-09/09/2011)	✓	✓	✓	✓
2011-12	Global WRA Nevada	WRA008320-WRA008337 (08/01/2011-07/31/2012)	✓	✓	✓	✓
2012-13	Global WRA Nevada	WRA008381-WRA008392 (08/01/2012-07/31/2013)	✓	✓	✓ ¹	✓ ²
2013-14	Global WRA Nevada	WRA008431-WRA008442 (08/01/2013-07/31/2014)	✓	✓	✓	✓
2016-17	Borda	WRA008567-WRA008578 (12/10/2016-12/08/2017)	✓	✓	✓	✓
2017-18	Borda	WRA008609-WRA008620 (11/08/2017-11/06/2018)	✓	✓	✓	✓
2018-19	Borda	WRA008638-WRA008650 (02/08/2018-02/06/2019)	✓	✓	✓	✓
2016-17	David & Bonnie Little	WRA008669-WRA008680 (07/10/2016-7/08/2017)	✓	✓	✓	✓
2017-18	David & Bonnie Little	WRA008739-WRA008750 (07/08/2017-07/06/2018)	✓	✓	✓	✓
2018-19	David & Bonnie Little	WRA008814-WRA008825 (07/08/2018-07/06/2019), WRA008653-WRA008664 (12/08/2018-12/06/2019)	✓	✓	✓	✓
2017-18	Dufurrena Sheep Co.	WRA008828-WRA008839 (01/10/2017-01/08/2018)	✓	✓	✓	✓
2018-19	Dufurrena Sheep Co.	WRA008843-WRA008854 (01/08/2018-01/06/2019), WRA008874-WRA008888 (01/08/2018-03/06/2019)	✓	✓	✓	✓
2016-17	El Tejon	WRA008932-WRA008943 (10/10/2016-10/08/2017)	✓	✓	✓	✓
2017-18	El Tejon	WRA008975-WRA008986 (10/08/2017-10/06/2018)	✓	✓	✓	✓
2018-19	El Tejon	WRA009004-WRA009015 (10/08/2018-10/06/2019)	✓	✓	✓	✓
2018-19	Ellison Ranching Co.	WRA009072-WRA009085 (12/08/2018-12/06/2019)	✓	✓	✓	✓
2017-18	Estill Ranches LLC	WRA009086-WRA009099 (10/08/2017-10/06/2018)	✓	✓	✓	✓
2018-19	Estill Ranches LLC	WRA009100-WRA009113 (03/08/2018-03/06/2019)	✓	✓	✓	✓
2018-19	Eureka Livestock	WRA009114-WRA009127 (05/08/2018-05/06/2019), WRA009242-WRA009255 (11/08/2018-11/06/2019)	✓	✓	✓	✓
2016-17	F.I.M. Corp.	WRA009256-WRA009268 (07/10/2016-07/08/2017)	✓	✓	✓	✓
2017-18	F.I.M. Corp.	WRA009325-WRA009338 (07/08/2017-07/06/2018)	✓	✓	✓	✓
2018-19	F.I.M. Corp.	WRA009411-WRA009424 (07/08/2018-07/06/2019)	✓	✓	✓	✓
2016-17	Gary Snow	WRA009468-WRA009479 (06/10/2016-06/08/2017)	✓	✓	✓	✓

Forms 9142 & 9142A Review							
year	ranch	Bates Nos. (date range)	job description matches	24/7 language included	monthly salary listed	assurances included	
2017-18	Gary Snow	WRA009494-WRA009507 (01/10/2017-01/10/2018)	✓	✓	✓	✓	
2016-17	Grass Valley/ Jerry Lancaster	WRA009508-WRA009521 (11/10/2016-11/08/2017)	✓	✓	✓	✓	
2017-18	Grass Valley/ Jerry Lancaster	WRA009536-WRA009549 (11/08/2017-11/06/2018)	✓	✓	✓	✓	
2018-19	Grass Valley/ Jerry Lancaster	WRA009565-WRA009578 (11/08/2018-11/06/2019)	✓	✓	✓	✓	
2016-17	Green Goat	WRA009579-WRA009598 (07/10/2016-07/08/2017)	✓	✓	✓	✓	
2017-18	Green Goat	WRA009657-WRA009671 (07/08/2017-07/06/2018)	✓	✓	✓	✓	
2018-19	Green Goat	WRA009745-WRA009758 (06/08/2018-06/06/2019)	✓	✓	✓	✓	
2016-17	John Espil Sheep Co.	WRA009787-WRA009800 (10/10/2016-10/08/2017)	✓	✓	✓	✓	
2017-18	John Espil Sheep Co.	WRA009885-WRA009898 (10/08/2017-10/06/2018)	✓	✓	✓	✓	
2018-19	John Espil Sheep Co.	WRA009973-WRA009986 (11/08/2018-11/06/2019)	✓	✓	✓	✓	
2016-17	John M. Olagaray (Five-0)	WRA010001-WRA010015 (09/10/2016-09/08/2017)	✓	✓	✓	✓	
2017-18	John M. Olagaray (Five-0)	WRA010046-WRA010060 (12/08/2017-12/06/2018)	✓	✓	✓	✓	
2018-19	John M. Olagaray (Five-0)	WRA010092-WRA010106 (12/08/2018-12/06/2019)	✓	✓	✓	✓	
2016-17	Need More Sheep Co.	WRA010107-WRA010120 (09/10/2016-09/08/2017)	✓	✓	✓	✓	
2017-18	Need More Sheep Co.	WRA010149-WRA010162 (09/08/2017-09/06/2018)	✓	✓	✓	✓	
2018-19	Need More Sheep Co.	WRA010237-WRA010250 (09/08/2018-09/06/2019)	✓	✓	✓	✓	
2016-17	Rafter 7 Sheep Co./Rafter Merinos Sheep Co.	WRA010309-WRA010323 (12/10/2016-12/08/2017)	✓	✓	✓	✓	
2017-18	Rafter 7 Sheep Co./Rafter Merinos Sheep Co.	WRA010352-WRA010366 (11/08/2017-11/06/2018)	✓	✓	✓	✓	

Exhibit C to Macker Decl.

Forms 9142 & 9142A Review						
year	ranch	Bates Nos. (date range)	job description matches	24/7 language included	monthly salary listed	assurances included
2018-19	Rafter 7 Sheep Co./Rafter Merinos Sheep Co.	WRA010395-WRA010408 (11/08/2018-11/06/2019)	✓	✓	✓	✓
2016-17	Silver Creek Ranch Inc.	WRA010409-WRA010422 (09/10/2016-09/08/2017)	✓	✓	✓	✓
2017-18	Silver Creek Ranch Inc.	WRA010465-WRA010478 (05/08/2017-05/06/2018)	✓	✓	✓	✓
2018-19	Silver Creek Ranch Inc.	WRA010509-WRA010522 (05/08/2018-05/09/2019)	✓	✓	✓	✓
2016-17	Southern NV Water Authority	WRA010524-WRA010534 (06/10/2016-06/08/2017)	✓	✓	✓	✓

¹For 2012-13 (WRA008381-WRA008392), the form does not list the salary amount, but does state it was monthly.

²For 2012-13 (WRA008381-WRA008392), the language committing to assurances as set forth in Appendix A2 was included, but the appendix itself, which would have been the same as WRA008335, was not produced by WRA.

EXHIBIT 2

Agricultural and Food Processing Clearance Order
Pedido de Empleados para Agricultura y Procesamiento de Alimentos

U.S. Department of Labor
Employment and Training Administration
 O.M.B. Approval No. 1205-0134, Expires 11/30/2012

<p>1. Employer's Name and Address (Number, Street, City, State, Zip Code, and telephone number) / Nombre y Dirección del Empleador (Número, calle, ciudad, código postal y teléfono)</p> <p>MASTER JOB ORDER FOR NEVADA EMPLOYERS NAME AND ADDRESSES PER ATTACHED</p>	Numbers 4, 5, 6, 7 and 8 for State use only.
<p>2. Location and Direction to Work Site / Dirección del lugar de trabajo (see attachment)</p> <p>WRA members will comply with 20 CFR 655.102. (If additional space is needed, use separate sheet of paper)</p>	4. Industry Code / Código de Industria
	5. Job Order # / No. Orden de Empleo
<p>3. Location and Description of Housing / Dirección y Descripción de la Vivienda</p> <p>Each employer will provide sufficient housing that meets the applicable standards at no cost to the worker including those that will not be able to return to their residence within the same day. Housing will be open range, may be fixed/trailers/sheep camps and/or pack tents depending on terrain.</p> <p style="font-size: x-small;">If additional space is needed, use separate sheet of paper) / Si necesita más espacio, utilice documento adicional.)</p>	6. Occupational Title and Code / Título Ocupacional y Código
	7. Clearance Order Issue Date / Fecha de Tramite:
	8. Job Order Expiration Date / Fecha de expiración:
<p>13. Board Arrangements / Arreglo de Alojamiento</p> <p>Employer will supply free room and Board. Employer will also provide 3 meals a day or will furnish free and convenient cooking and kitchen facilities to workers to prepare their own meals.</p>	9. Anticipated Period of Employment / Periodo Anticipado de Empleo From/ Desde: 08/01/2011 To / Hasta: 07/31/2012
	10. No. of Worker's Requested / No. de Trabajadores Pedidos <p style="text-align: center;">142</p>
	11. Anticipated Hours of Work per Week / Horas Anticipadas de Trabajo por Semena Total: ***On Call up 24 hours per day, 7 days a week Sunday / Domingo _____ Monday / Lunes _____ Tuesday / Martes _____ Wednesday / Miercoles _____ Thursday / Jueves _____ Friday / Viernes _____ Saturday / Sabado _____
	12. Collect Calls Accepted/Se Aceptan Llamadas a Cobrar: de: Employer / El Empleador Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Local Office / La Oficina Local Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	14. Referral Instructions / Instrucciones para el Referimiento de Candidatos <p>Open Job Order, please contact Local State Employment office. The employment office will refer each applicant to Western Range Association. Western Range Association will conduct a full phone interview with the applicant. Western Range Association will be open on weekdays from 8:00 a.m. to 4:30 p.m., Mountain time 801- 486-2004 ext. 105.</p>
<p>15. Job Specifications / Descripción del Trabajo</p> <p>"Attends sheep and/or goat flock grazing on range or pasture; Herds flock and rounds up strays using trained dogs. Beds down flock near evening campsite. Guards flock from predatory animals and from eating poisonous plants. Drenches sheep and/or goats. May examine animals from signs of illness and administer vaccines, medications and insecticides according to instructions. May assist in lambing, docking, and shearing. May perform other farm or ranch chores related to the production of husbandry of sheep and/or goat on an incidental basis." Must have 6 months experience with 800 – 1000 head flocks. One reference may be required. ***Hours worked footnote: On call 24 hours 7 days a week***</p> <p>Cuidar rebaños de ovejas o cabros en campo abierto o cerrado. Cuidar rebaños con la ayuda de perros entrenados para dicho trabajo. Ayudar a mantener las manadas juntas para cuando llega la noche. Proteger a los rebaños de animales de rapiña. También cuidar que los rebaños no coman plantas venenosas. Examinar los rebaños en caso que haya señales de enfermedad. Administrar vacunas, medicinas e insecticidas de acuerdo con las instrucciones recibidas. Asistir durante la época de parición, esquila y trasquila. Dar de comer a los rebaños incluyendo comidas especiales o suplementarias. También, asistir con otros trabajos relacionados a la producción durante tiempos de emergencia. Se necesita tener 6 meses de experiencia con manadas entre 800 – 1000 cabezas. Se requerirá por lo menos una referencia. ***Nota: Horas de trabajo: 24 horas al día y 7 días de la semana***</p>	

WRA008338

16. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)							
Crop Activities / Cultivos	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions /	YES SI	NO	Pay Period Período de Pago
	Salario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, ect.)	Deducciones			
N/A	\$ 750.00 Monthly	\$ N/A	N/A	Social	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Weekly / Sem <input type="checkbox"/>
N/A	\$	\$ N/A	N/A	Federal Tax Impuestos Federales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
N/A	\$	\$ N/A	N/A	State Tax Impuestos Estatales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bi-weekly / cada 2 semanas <input checked="" type="checkbox"/>
N/A	\$	\$ N/A	N/A	Meals (comidas)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
N/A	\$	\$ N/A	N/A	Other (specify)/Otro	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other / Otro <input type="checkbox"/>

More Details About the Pay/Más Detalles Sobre el Pago

“Employer must keep the earning records for 5 instead of 3 years. Employers must pay wages at least twice a month (semi-monthly). Employers may set pay frequency according to the prevailing practice in the area of intended employment. Employers must pay wages when due”. 20 CFR 655.122 (j)-(m).

17. Transportation Arrangements / Arreglos de Transportación (Please explain)

Transportation from workers native country will be provided by employer. Employer may deduct from wages until 50% of contract completed. EOC Comp. RT PD. Outbound transportation will be provided by employer when worker completes the contract period or if terminated without cause. There will be no subsequent H-2A employment available.

18. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, or pay workers for this (these) crop activity(ies)? Es la costumbre en el area de usar Contratistas Agícolas para reclutar, supervisar, transportar, dar vivienda, ó pagarle a los trabajadores en este/estos tipo(s) de cosecha(s)/sembrado(s)? Yes/Si No

If you have checked yes, what is the FLC wage for each activity?/Si contesto "Si," cual es el salario que le paga al Contratista Agrícola para cada actividad?

- 19. Unemployment Insurance provided / Seguro por Desempleo: Yes No
- 20. Workers' compensation insurance provided / Indemnización por accidente de trabajo: Yes No
- 21. Are tools provided at no charge to the workers? / ¿Se le proveen las herramientas de trabajo a los trabajadores sin cargo alguno? Yes No

22. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None") / Indique todo acuerdo o convenio con los propietarios del establecimiento o sus representantes con respecto al pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno")

NONE NINGUNO

23. List any strike, work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed. (If there are no such incidents, enter "None") / Enumere toda huelga, paro o interrupción de las operaciones por parte de los empleados en el lugar de empleo. (Si no hay, indique "Ninguno")

NONE NINGUNO

24. Address of Order Holding Office (include Telephone number)/Dirección de la Oficina donde se Radico la Oferta (incluya numero de teléfono)

DEPARTMENT OF EMPLOYMENT & TRAINING
2800 EAST ST. LOUIS
LAS VEGAS, NV 89104

25. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (Incluya numero de teléfono)

RON HILKE
702-486-6635

26. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job.
Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones de trabajo, y contiene todos los materiales, términos, y condiciones ofrecidos.

Employer's Signature & Title/ Firma y Título del Empleador



DENNIS RICHINS, EXECUTIVE DIRECTOR WESTERN RANGE ASSOCIATION 801-486-2004 07/22/2011

READ CAREFULLY, In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the One-Stop Career Center constitute a contractual job offer to which the One-Stop Career Center, ETA or a State agency is in any way a party.

Public Burden Statement

Public reporting burden for the ETA Form 790 is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. Respondents' obligation to reply to these requirements is obligatory by 20 CFR 653.500 and 44 U.S.C. 3501. Persons are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this collection is estimated to average 8 minutes per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Migrant and Seasonal Farmworker Program, Room S4209, 200 Constitution Avenue, NW, Washington, DC 20210.

ETA-790 Attachment 08/01/2011-07/31/2012

Item #17 Transportation Arrangements

When a longer term contract is negotiated with a U.S. worker, the employer is not relieved of the responsibility for reimbursement to the worker for travel and subsistence expenses incurred in getting to the job site which were advanced by the employer and subsequently withheld from the worker's pay until 50% of the original contract period elapsed. These payments will be made to the U.S. worker at the 50% completion point of the original period of employment (about 6 months). The employer is responsible for "return" transportation and subsistence expenses if the U.S. worker successfully fulfills his/her obligations under the original terms of employment for less than 1 year. However, such payment does not actually have to be made to the U.S. worker until the worker and the employer serve their employer/employee relationship, which will occur at a point in time subsequent to the end of the original period of employment when a longer term contract is negotiated. Successful completion of the "original" contract or job order entitles the worker to return transportation and subsistence regardless of performance under a "renewal" or extended contract.

Item #21 Employer-provided items

Employer must provide at no cost to workers and effective means of communication with persons capable of responding to the worker's need in case of an emergency. These means are necessary to perform the work and can include, but are not limited to, satellite phone, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems.

Transfer of Workers

Employers may transfer workers to any certified members and will guarantee that workers will be notified at least 7 working days in advance of such transfer. When a worker objects to a transfer, the association will consider the worker's concerns and preferences. However, ultimate refusal on the part of a worker to a transfer may subject the worker to dismissal based on a lawful, job-related reason. The employer shall provide written notification to the SWA with jurisdiction over the area of intended employment and the Chicago NPC no less than 7 working days prior to the transfer. Such notification shall describe the details of the transfer, including the number and names of workers and employers affected and housing information.

Termination of employment

Pursuant to regulations at 20 CFR 655.122 (o), "if before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract. Whether such an event constitutes a contract impossibility will be determined by the CO. In the event of such termination of a contract, the employer must fulfill a three-fourths guarantee for the time that has elapsed from the start of the work contract to the time of its termination, as described in paragraph (i)(1) of this section. The employer must make

efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration law, as applicable. If such transfer is not affected, the employer must: (1) Return the worker, at the employer's expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the worker's next certified H-2A employer, whichever the worker prefers; (2) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment; and (3) Pay the worker for any cost incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of this section. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved."

¾ guarantee

Employers may negotiate longer term contract (up to 3 years with foreign workers provided that any contracts of a year or longer are expressly conditioned upon renewal of certification by DOL). In the event certification renewal is not obtained, the contract will be construed as being effective for the period of the initial certification, and the employer is liable for return transportation and subsistence after the worker completes employment for the initial certification period. The ¾ guarantee for individual employers is based on the 1 year contract as is the requirement for transportation reimbursement at 50% of the contract period.

Employment Contract

Employer provides workers with a copy of the work contract, including any approved modifications, on the day work commences or as soon as practically possible.
Work contract will be provided in a language understood by the worker. 655.122(q)

First Work Week Guarantee

Employer will provide workers the number of hours of work for the week beginning with the anticipated start date of need.

Earnings Records and Statements

Employer will furnish the worker on or before each payday written hours and earnings statements meeting the regulatory requirements at 20 CFR 655.122(k).
All earnings records and statements will be available for inspection or transcription by the Secretary of a duly authorized and designed representative, and by the worker and representatives designed by the workers.

Abandonment or termination for cause

Workers who voluntarily abandon employment or are terminated for cause, the employer will provide in writing notification to the NPC and DHS no later than 2 days after abandonment occurs. Employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses and the 3/4th guarantee.



**U.S. Department of Labor
Employment and Training Administration**

OMB Control No. 1205-0134
Expiration Date: March 31, 2019

**Agricultural and Food Processing Clearance Order ETA Form 790
Orden de Empleo para Obreros/Trabajadores Agrícolas y Procesamiento de Alimentos**

(Print or type in each field block – To include additional information, go to block # 28 – Please follow Step-By-Step Instructions)
(Favor de usar letra de molde en la solicitud – Para incluir información adicional vea el punto # 28 – Favor de seguir las instrucciones paso-a-paso)

<p>1. Employer's and/or Agent's Name and Address (Number, Street, City, State and Zip Code / Nombre y Dirección del Empleador/Patrón y/o Agente (Número, Calle, Ciudad, Estado y Código Postal):</p> <p>WESTERN RANGE ASSOCIATION A JOINT EMPLOYER 161 FIFTH AVE SOUTH SUITE 100 TWIN FALLS, ID 83301</p> <p>a) Federal Employer Identification Number (FEIN) / Número federal de Identificación del Empleador: [REDACTED]</p> <p>b) Telephone Number / Número de Teléfono: 208-595-2226</p> <p>c) Fax Number / Número de Fax: 208-595-2275</p> <p>d) E-mail Address / Dirección de Correo Electrónico: legal@westernrange.net</p>	<p style="text-align: center;">Nos. 4 through 8 for STATE USE ONLY Números 4 a 8 para USO ESTATAL</p> <table border="1" style="width: 100%;"> <tr> <td data-bbox="816 415 1187 625"> <p>4. SOC (O*NET/OES) Occupational Code / Código Industrial:</p> <p>a. SOC (ONET/OES) Occupational Title / Título Ocupacional</p> </td> <td data-bbox="1187 415 1555 625"> <p>5. Job Order No. / Num. de Orden de Empleo:</p> </td> </tr> </table> <p>6. Address of Order Holding Office (include Telephone number) / Dirección de la Oficina donde se radico la oferta (incluya el número de teléfono):</p> <p>a. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (Incluya el número de teléfono de su línea directa).</p>	<p>4. SOC (O*NET/OES) Occupational Code / Código Industrial:</p> <p>a. SOC (ONET/OES) Occupational Title / Título Ocupacional</p>	<p>5. Job Order No. / Num. de Orden de Empleo:</p>
<p>4. SOC (O*NET/OES) Occupational Code / Código Industrial:</p> <p>a. SOC (ONET/OES) Occupational Title / Título Ocupacional</p>	<p>5. Job Order No. / Num. de Orden de Empleo:</p>		
<p>2. Address and Directions to Work Site / Domicilio y Direcciones al lugar de trabajo:</p> <p>ELLISON RANCHING COMPANY FEIN [REDACTED] HC 32 BOX 240.FROM ELKO GO NORTH ON HWY [REDACTED] 225. TAKE HWY 226 FOR 28 MLS TO SIGN SPANISH RANCH. TUSCARORA, NV 89834-0000</p> <p>Multiple worksites in Lander and Elko Counties, Nevada will be used. Worksite locations varies depending on season, weather and grazing rotation. Please contact the employer at the headquarters address listed above for specific directions to the current worksite.</p>	<p>7. Clearance Order Issue Date / Fecha de Emisión de la Orden de Empleo:</p> <p>8. Job Order Expiration Date / Fecha de Vencimiento o Expiración de la Orden de Empleo:</p> <p>9. Anticipated Period of Employment / Período anticipado o previsto de Empleo: From / Desde: 02-08-2018 To / Hasta: 02-06-2019</p> <p>10. Number of Workers Requested / Número de Trabajadores Solicitados: 4</p>		
<p>3. Address and Directions to Housing / Domicilio y Direcciones al lugar de vivienda:</p> <p>a) Description of Housing / Descripción de la vivienda:</p> <p>Ellison Ranching uses fixed site range and mobile range housing. Mobile range housing is eight mobile range units with a capacity of fourteen(14). One fixed site unit with the capacity of one (1). One fixed site unit with the capacity of two (2). Three fixed site units with the capacity of four (4) per unit. Total capacity is twenty-nine workers.</p> <p>Weather appropriate tents are used in areas where land use regulations do not allow the use of other types of housing.</p> <p>This housing is available and sufficient to accommodate the number of workers being requested for certification.</p> <p>Mobile range camps are located on Bureau of Land Management and USDA Forest Service leases in Lander and Elko Counties in Nevada. Housing locations vary depending upon season, weather, and grazing rotation.</p>	<p>11. Anticipated Hours of Work per Week / Horas Anticipadas/Previstas de Trabajo por Semana. Total: ***ON CALL FOR UP TO 24 HOURS PER DAY, 7 DAYS A WEEK***</p> <p>Sunday / Domingo _____ Thursday /Jueves _____ Monday / Lunes _____ Friday /Viernes _____ Tuesday / Martes _____ Saturday / Sábado _____ Wednesday / Miércoles _____</p> <p>12. Anticipated range of hours for different seasonal activities: / Rango previsto de horas par alas diferentes actividades de la temporada: N/A</p> <p>13. Collect Calls Accepted from: / Aceptan Llamadas por Cobrar de:</p> <p>Employer / Empleador: Yes / Si <input checked="" type="checkbox"/> No <input type="checkbox"/></p>		

14. Describe how the employer intends to provide either 3 meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare meals / Describa cómo el empleador tiene la intención de ofrecer, ya sea 3 comidas al día a cada trabajador, o proporcionar gratuitamente instalaciones para cocinar.

Housing contains free and convenient cooking facilities and employer will provide three prepared meals a day or adequate food, free of charge, based on the requisition by worker, for workers to prepare their own meals while in camp or on the range. Employer may at times provide prepared meals for workers consumption. Employer will provide worker a minimum of 4.5 gallons of potable water per day per worker for drinking and cooking purposes. Additional clean water will be provided to meet the workers laundry and bathing needs.

15. Referral Instructions and Hiring Information / Instrucciones sobre cómo Referir Candidatos/Solicitantes - (Explain how applicants are to be hired or referred, and the Employer's/Agent's available hour to interview workers / Explique cómo los candidatos serán contratados o referidos, y las horas disponibles del empleador/agente para entrevistar a los trabajadores). See instructions for more details / Ve a las instrucciones para más detalles.

Open Job Order, please contact Local State Employment office. The employment office will refer each applicant to Western Range Association. Western Range Association will conduct a full telephone interview with the applicant. The office hours for Western Range Association are Monday - Friday from 8:00 a.m. to 4:30 p.m., Mountain Standard time 208-595-2226 ext. 115. All employers must continue to be, open to any qualified U.S worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship. No strike requirements The worksite does not currently have workers on strike or being locked out in the course of a labor dispute.

Western Range Association and its rancher members maintain a strong commitment to providing a safe, efficient, and productive work environment. An employee's involvement with drugs could be extremely dangerous to all employees and others, and disruptive to the workplace. Use, manufacture, distribution or possession of an illegal drug, or misuse of a prescription drug is cause for termination. Any person found to be under the influence of alcohol or drugs while working will be terminated.

At the employer's expense, all applicants may be required to complete pre-employment alcohol and drug testing. Failure to consent to requested testing, will result in disqualification of the applicant

16. Job description and requirements / Descripción y requisitos del trabajo:

Attends sheep and/or goat flock grazing on range or pasture: Herds flock and rounds up strays using trained dogs. Beds down flock near evening campsite. Guards flock from predatory animals and from eating poisonous plants. Drenches sheep and/or goats. May examine animals for signs of illness and administer vaccines, medications and insecticides according to instructions. May assist in lambing, docking, and shearing. The work activities involve the herding or production of livestock (which includes work that is closely and directly related to herding and/or the production of livestock). Must have 3 months experience with 800 - 1000 head flocks. One reference required. More than 50% of work will be performed on the range. Worker must be a qualified shepherd. ***Hours worked footnote: On call for up to 24 hours 7 days a week*** Cuidar rebanos de ovejas o cabras en campo abierto o cerrado. Cuidar rebanos con la ayuda de perros entrenados para dicho trabajo. Ayudar a mantener las manadas juntas para cuando llega la noche. Proteger a los rebanos de animales de rapina. También cuidar que los rebanos no coman plantas venenosas. Examinar los rebanos en caso que haya señales de enfermedad. Administrar vacunas, medicinas e insecticidas de acuerdo con las instrucciones recibidas. Asistir durante la época de parición, esquilvar y trasquilvar. Las actividades de trabajo incluyen pastoreo o producción de ganado (el cual incluye trabajo directamente relacionado al pastoreo y/o a la producción de ganado). Dar de comer a los rebanos incluyendo comidas especiales o suplementarias. Se necesita tener 3 meses de experiencia con manadas entre 800 - 1000 cabezas. Se requerirá por lo menos una referencia. Mas del 50% del trabajo se hará en el campo. Trabajador necesita esta un pastor. ***Nota: Horas de trabajo: 24 horas al día y 7 días de la semana***

1. Is previous work experience preferred? / Se prefiere previa experiencia? Yes / Si No If yes, number of months preferred: / Si es así, numero de meses de experiencia: 3 months/3 meses

2. Check all requirements that apply:

- | | |
|---|---|
| <input type="checkbox"/> Certification/License Requirements / Certificación/Licencia Requisitos | <input type="checkbox"/> Criminal Background Check / Verificación de antecedentes penales |
| <input type="checkbox"/> Driver Requirements / Requisitos del conductor | <input checked="" type="checkbox"/> Drug Screen / Detección de Drogas |
| <input type="checkbox"/> Employer Will Train / Empleador entrenará o adiestrará | <input type="checkbox"/> Extensive Pushing and Pulling / Empujar y Jalar Extensamente |
| <input type="checkbox"/> Extensive Sitting / Estar sentado largos ratos | <input type="checkbox"/> Extensive Walking / Caminar por largos ratos |
| <input checked="" type="checkbox"/> Exposure to Extreme Temp. / Expuesto a Temperaturas Extremas | <input type="checkbox"/> Frequent Stooping / Inclinandose o agachándose con frecuencia |
| <input checked="" type="checkbox"/> Lifting requirement / Levantar o Cargar <u>50</u> lbs./libras | <input type="checkbox"/> OT/Holiday is not mandatory / Horas Extras (sobre tiempo) / Días Feriados no obligatorio |
| <input type="checkbox"/> Repetitive Movements / Movimientos repetitivos | |

17. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)								
Crop Activities Sheep Herder	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions*	Yes/Si	No	Pay Period / Periodo de Pago	
Cultivos	Salario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, etc.)	Deducciones			/ /	
	\$	\$		Social Security / Seguro Social	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Weekly / Semanal	
	\$	\$		Federal Tax / Impuestos Federales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	\$	\$		State Tax / Impuestos Estatales	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bi-weekly/ Quincenal	
	\$	\$		Meals / Comidas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	\$	\$		Other (specify) / Otro (especifica)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Monthly/Mensual \$1389.67 <input checked="" type="checkbox"/> monthly salary	
Performance based bonuses may be available							Other/Otro	<input checked="" type="checkbox"/>

18. More Details About the Pay / Mas Detalles Sobre el Pago:

Employer must keep earning records for 5 years. Employer must pay wages at least twice a month (semi-monthly). Wages must be paid when due 20 CFR 655.122(j)-(m). Employer will furnish the worker on or before each payday written hours and earnings statements meeting the regulatory requirements at 20 CFR 655.122(k). All earnings records and statements will be available for inspection or transcription by the Secretary of a duly authorized and designed representative, and by the worker and Representatives designed by the workers. Employer will pay the worker at least the monthly AEWR, as specified in 655.211, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof.

Employer shall provide housing and board in accordance with the rules and regulations of the federal government of the United States of America.

19. Transportation Arrangements / Arreglos de Transportación

Transportation from point of recruitment to worksite and from the worksite back to the point of recruitment will be arranged and provided by Employer. Employer will reimburse worker for subsistence costs during travel to worksite no later than the end of the first pay period upon presentation of receipts and from the worksite at the end of the job based on rates established in the applicable regulations. When a longer term contract is negotiated with a U.S. or H-2A worker, the employer is not relieved of the responsibility for reimbursement to the worker for travel and subsistence expenses incurred in getting to the job site which were advanced by the employer and subsequently withheld from the worker's pay until 50% of the original contract period elapsed. These payments will be made to the U.S. and H-2A workers at the 50% completion point of the original period of employment (about 6 months). The employer is responsible for return transportation and subsistence expenses if the U.S. and H-2A worker successfully fulfills his/her obligations under the original terms of employment for less than 1 year. However, such payment does not actually have to be made to the U.S. and H-2A worker until the worker and the employer sever their employer/employee relationship, which will occur at the point in time subsequent to the end of the original period of employment when a longer term contract is negotiated. Successful completion of the original contract or job order entitles the worker to return transportation and subsistence regardless of performance under renewal or extended contract.

Subsistence

All employers must offer subsistence cost to workers being recruited. Determination on subsistence matter shall be made in accordance with 20 C.F.R. 655.173. The new DOL permissible as of March 17, 2017 shall be no more than \$12.07 per day or \$51 per day with receipts provided to employer, unless the OFLC Certifying Officer approves a higher charge as authorized under 20 CFR 655.173(b) employer will pay higher rate.

20. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, and/or pay workers for this (these) crop activity (ies)? / ¿Es la práctica habitual usar Contratistas de Trabajo Agrícola para reclutar, supervisar, transportar, dar vivienda, y/o pagarle a los trabajadores para este(os) tipo(s) de cosecha(s)? Yes / Si No

If you have checked yes, what is the FLC wage for each activity? / Si contesto "Si," cuál es el salario que le paga al Contratista de Trabajo Agrícola por cada actividad?

21. Are workers covered for Unemployment Insurance? / ¿Se le proporcionan Seguro de Desempleo a los trabajadores? Yes/Si No

22. Are workers covered by workers' compensation? / ¿Se le provee seguro de compensación/indemnización al trabajador: Yes/Si No

23. Are tools, supplies, and equipment provided at no charge to the workers? / ¿Se les proveen herramientas y equipos sin costo alguno a los trabajadores?
Employer must provide at no cost to workers an effective means of communication with persons capable of responding to the worker's need in case of an emergency. These means are necessary to perform the work and can include, but are not limited to satellite phone, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems. Yes/Si No

24. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None".) / Enumere todos los acuerdos o convenios hechos con los propietarios del establecimiento o sus agentes para el pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno".)

NONE/NINGUNO

25. List any strike, work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed. (If there are no such incidents, enter "None".) / Enumere toda huelga, paro o interrupción de operaciones de trabajo por parte de los empleados en el lugar de empleo. (Si no hay incidentes de este tipo, indique "Ninguno".)

NONE/NINGUNO

26. Is this job order to be placed in connection with a future Application for Temporary Employment Certification for H-2A workers? / ¿Esta orden de empleo ha sido puesta en conexión con una futura solicitud de certificación de empleo temporal para trabajadores H-2A?

Yes/Si No

27. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. / Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones del empleo que se le ofrece, y contiene todos los términos y condiciones materiales ofrecidos.

Monica Youree, Executive Director, Western Range Association for WESTERN RANGE ASSOCIATION

Employer's Printed Name & Title / Nombre y Título en Letra de Molde/Imprenta del Empleador

Monica Youree

11-13-2017

Employer's Signature / Firma y Título del Empleador

Date / Fecha

READ CAREFULLY, In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the Employment and Training Administration (ETA) nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the American Job Center constitute a contractual job offer to which the American Job Center, ETA or a State agency is in any way a party.

LEA CON CUIDADO, En vista de la función básica del Servicio de Empleo establecida por ley, como una entidad de intercambio laboral sin comisiones, es decir, como un foro para reunir a los empleadores y los solicitantes de empleo, ni ETA ni las agencias del estado pueden garantizar la exactitud o veracidad de la información contenida en las órdenes de trabajo sometidas por los empleadores. Ni ninguna orden de trabajo aceptado o contratado en el Centro de Carreras (American Job Center) constituyen una oferta de trabajo contractuales a las que el American Job Center, ETA o un organismo estatal es de ninguna manera una de las partes.

PUBLIC BURDEN STATEMENT

The public reporting burden for responding to ETA Form 790, which is required to obtain or retain benefits (44 USC 3501), is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. The public need not respond to this collection of information unless it displays a currently valid OMB Control Number. This is public information and there is no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

DECLARACION DE CARGA PÚBLICA

La carga de información pública para responder a la Forma ETA 790, que se requiere para obtener o retener beneficios (44 USC 3501), se estima en aproximadamente 60 minutos por respuesta, incluyendo el tiempo para revisar las instrucciones, buscar fuentes de datos existentes, recopilar y revisar la colección. El público no tiene por qué responder a esta recopilación de información a menos que muestre un número de control OMB válido. Esta información es pública y no hay ninguna expectativa de confidencialidad. Envíe sus comentarios acerca de esta carga o cualquier otro aspecto de esta colección, incluyendo sugerencias para reducir esta carga, al U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

28. Use this section to provide additional supporting information (including section Box number). Include attachments, if necessary. / Utilice esta sección para proporcionar información adicional de apoyo; incluya el número de la sección e incluya archivos adjuntos, si es necesario.

3/4 guarantee: Employers may negotiate longer term contract (up to 3 years with foreign workers provided that any contracts of a year or longer are expressly conditions upon renewal of certification by DOL). In the event certification renewal is not obtained, the contract will be construed as being effective for the period of the initial certification, and the employer is liable for return transportation and subsistence after the worker completes employment for the initial certification period. The 3/4 guarantee for individual employers is based on the 1 year contract as is the requirement for transportation reimbursement at 50% of the contract period.

Employment Contract: Employer provides workers with a copy of the work contract, including any approved modifications on the day work commences or as soon as practically possible. Work contract will be provided in a language understood by the worker. 655.122(q)

First Work Week Guarantee: Employer will provide workers the number of hours of work for the week beginning with the anticipated start date of need.

Abandonment or termination for cause: Workers who voluntarily abandon employment or are terminated for cause, the employer will provide in writing notification to the NPC and DHS no later than 2 days after abandonment occurs. Employer will not be responsible for providing or paying for the subsequent transportation and subsistence expense and the 3/4th guarantee.

Transfer of Workers: Employers may transfer workers to any certified members and will guarantee that workers will be notified at the least 7 working days in advance of such transfer. When a worker objects to a transfer, the association will consider the worker's concerns and preferences. However, ultimate refusal on the part of a worker to a transfer may subject the worker to dismissal based on a lawful, job-related reason. The employer shall provide written notification to the SWA with jurisdiction over the area of intended employment and the Chicago NPC no less than 7 working days prior to the transfer. Such notification shall describe the details of the transfer, including the number and names of workers and employers affected and housing information.

Termination of employment: Pursuant to regulations at 20 CFR 655.122(o), "if before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract. Whether such an event constitutes a contract impossibility will be determined by the CO. In the event of such determination of a contract, the employer must fulfill a three-fourths guarantee for the time that has elapsed from the start of the work contract to the time of its termination, as described in paragraph (i)(1) of this section. The employer must make efforts to transfer the worker to the other comparable employment acceptable to the worker, consistent with existing immigration law, as applicable. If such transfer is not affected, the employer must: (1) Return the worker, at the employer's expense, to the place from which the worker, disregarding intervening employment, came to work for the employer, or transport the worker to the worker's next certified H-2A employer, whichever the worker prefers; (2) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment; and (3) Pay the worker for any cost incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of this section. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved.

Assurances: Employer agrees to abide by the regulations at 20 CFR 655.135.

Cell phones, along with sufficient minutes of use for communication, are provided, without charge or deposit, to workers during the entire period of employment. In the rare instance where the worker(s) is located in an area without cell phone service, the worker will be contacted, in person by either the employer or his camp tender, on a preset schedule (every 3rd or 4th day) if not more regularly. Camps are moved by the employer's or the camp tender's pickup, thus assuring personal contact with the worker(s) at least once every ten days.

Ellison Ranching Company will provide workers, without charge or deposit for the entire period of employment, the following items: two sleeping bags, canvas bed tarp, horses and tack, where necessary, sheep herding and guard dogs, shovel and axe, and canteens. In addition to these items the worker is provided other tools, supplies and equipment, as required by law, to work safely and effectively.

The employer will provide sufficient housing that meets the applicable standards, at no cost, to those that will not be able to return to their residence within the same day. For Fixed site housing, the employer will meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR sec. 1910.142, or the full set of ETA standards at sec. 654.404 through 654.417, whichever are applicable under sec. 6547.404. For range housing, the employer will meet the requirements set forth in sec. 655.235.

**20 CFR 653.501
Assurances**

INTRASTATE AND INTERSTATE CLEARANCE ORDER

The employer agrees to provide to workers referred through the clearance system the number of hours of work per week cited in Item 11 of the clearance order for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 working days prior to the original date of need by so notifying the Order-Holding Office (OHO). If the employer fails to notify the OHO at least 10 working days prior to the original date of need, the employer shall pay eligible workers referred through the intrastate/interstate clearance system the specified hourly rate or pay, or in the absence of a specified hourly rate or pay, the higher of the Federal or State minimum wage rate for the first week starting with the original anticipated date of need. The employer may require workers to perform alternative work if the guarantee is invoked and if such alternative work is stated on the job order.

The employer agrees that no extension of employment beyond the period of employment shown on the job order will relieve the employer from paying the wages already earned, or specified in the job order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

The employer assures that all working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws.

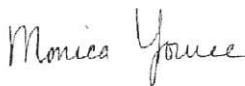
The employer agrees to expeditiously notify the OHO or State agency by telephone immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over recruitment, or other factors have changed the terms and conditions of employment.

The employer, if acting as a farm labor contractor, has a valid farm labor contractor registration certificate.

The employer assures the availability of no cost or public housing which meets applicable Federal and State standards and which is sufficient to house the specified number of workers requested through the clearance system.

The employer also assures that outreach workers shall have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107.

Employer's Name Monica Youree, Executive Director, Western Range Association for WESTERN RANGE ASSOCIATION Date: 11-13-2017

Employer's Signature 

Besides the material terms and conditions of the employment, the employer must agree to these assurances if the job order is to be placed as part of the Agricultural Recruitment System. This assurance statement must be signed by the employer, and it must accompany the ETA Form 790.



November 13, 2017

US Department of Labor
Employment and Training Administration
Chicago National Processing Center
P.O. Box A3804
Chicago, IL 60690-A3804

RE: Housing Certification Request Letter

Dear Sir or Madam:

This letter is to provide written request to allow conditional entry into the interstate clearance system regarding the contract period of 02-08-2018 - 02-06-2019.

(930) ELLISON RANCHING COMP will be renewing their housing certifications to insure that said housing will be in full compliance with the requirements of the applicable housing standards prior to 02-08-2018 according to the agreement previously made between all the employers and Western Range Association. If such agreement is not kept by any employer, the employee (s) will be removed from the employer's location. The housing is available and sufficient to accommodate the number of workers being requested for labor certification. The housing meets the standards set forth in 20 CFR 655.235

It is Western Range Association policy to insure that all employers have a current housing inspection or self-certification.

Sincerely,

A handwritten signature in cursive script that reads "Monica Youree".

Monica Youree
Executive Director, Western Range Association
WESTERN RANGE ASSOCIATION

EXHIBIT 3

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION

Public Hearing

October 3, 2000

Edmund G. "Pat" Brown Building
505 Van Ness Avenue
San Francisco, California

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P A R T I C I P A N T S

--o0o--

Industrial Welfare Commission

BILL DOMBROWSKI, Chair

BARRY BROAD

DOUG BOSCO

LESLEE COLEMAN (arrived at 10:44 a.m.)

(Applause)

MR. SOARES: Mr. Chairman and members, George Soares, on behalf of the Western Range Association. I appreciate the opportunity to have two panels appear before you today to speak to the issue. I also appreciate the fact that the board members obviously are interested in this issue. We think we have some people on the panels today who will provide you with some important information and also are prepared to respond to any and all questions you have. I'd like, at the end of the process, to offer some opinion as well.

So, with that, I will turn the mike over to Jim Holt.

MR. HOLT: Good afternoon. My name is James Holt. I am senior economist with McGinnis, Norris, and Williams in Washington, D.C. We're general counsel and also consultants, the lawyers and consultants that Mr. Schacht was referring to, to Western Range Association. I also do consulting work on the H-2A program for most of the other H-2A users around the country. I'm a former professor of farm management at Penn State University. I've been working with Western Range for about a dozen years now, and over that time have -- although I'm not a shepherd nor a sheep rancher, I've gained a good deal of familiarity with the shepherding occupation.

I have with me a report that I'd like to provide to you which addresses the issues that I think are on the minds of the commissioners on this issue. It describes the shepherding occupation, points out that there are, at least in the last California EDD survey, 206 aliens and 29 domestics in California in this occupation, though that number varies a little bit from time to time.

It describes the Western Range Association structure for the use of the H-2A shepherd program, including the particular obligations that the Western Range Association has taken on itself as a part of running the shepherd program, such as their status as joint employers, where they are essentially guarantors of the contract terms that the individual members contract for. If a member, for example, goes bankrupt, the Western Range Association steps in and pays the herders' wages and that sort of thing.

It describes the H-2A program itself and specifically the federal standards for the shepherd program. I think it was Commissioner Rose and some of the others of you have been reading out the 20 CFR 655, Subpart B, regulations for the regular H-2A program. But the shepherd program has never -- the shepherd program actually predates the existing H-2 and H-2A visa categories. It was sort of put there in the immigration law as a -- someplace to put it. But it has always operated under its own separate set of -- its own separate regulatory framework that recognizes the -- some of the unique aspects of this occupation, which are relevant here.

And therefore, for example, although meals and -- at charge or cooking facilities are required in the regular H-2A program, food and lodging are provided free in addition to the cash wage for shepherders. And that's true not only in California, that's true throughout the shepherd program in the ten western states.

The report also describes the non-wage benefits in addition to the food and housing that you've heard about, a two-week paid vacation that the workers either take as vacation or as additional pay, the fact that transportation to, from, and between ranches is paid for by the Association, medical and life insurance that the Association voluntarily provides that's not required by the H-2A program, a three-year guaranteed employment contract, and a variety of other benefits that -- that the H-2A program itself mandates.

It also describes -- and I would commend this to your attention, and I'm not going to go through it, in the interests of time -- how this program is policed, not only by the Western Range Association, but by the California EDD, by the U.S. DOL, and by the sending country governments. You've heard a lot of outrageous claims of mistreatment and non-compliance and so forth. I think they are just that, they are outrageous claims. And this -- of course, when you get a couple hundred employers, you're always going to find somebody who goes off the reservation occasionally. There is no category of employees in this state or any state that is as highly regulated as H-2A workers are, and as studiously -- studiously studied in terms of compliance with the regulations.

And finally, with respect to the specific issues before this Commission, the report argues that the IWC should retain the current sheepherder minimum wage exemption for, we believe, compelling reasons. And I hope that what we heard earlier, that your -- basically, your minds are already made up on this issue, is not quite the case and that we perhaps can persuade you to retain the exemption.

The first reason is that an hourly wage standard is not appropriate for the sheepherding occupation. And that has been recognized in federal law and, up until now, in state law, basically since there has been a minimum wage. The Fair Labor Standards Act specifically exempts workers engaged in the range production of livestock, and it does so because of the fact that the concept of hours of work in this occupation where workers are on the range with the animals seven days a week, 365 days a year, the concept of hours worked is simply inapplicable.

And the H-2A regulations with respect to this specific occupation have recognized this also for the fifty years -- fifty-plus years that the H-2A program has been in place. All other H-2A occupations are regulated by an hourly wage. The sheepherder occupation and certain other occupations in the range production of livestock are regulated by a minimum monthly salary, again, because of the fact that an hourly wage is not appropriate as a -- is not appropriate to this occupation.

The second reason that we feel the exemption must be retained is that Industrial Wage (sic) Commission coverage -- excuse me -- is not necessary to protect the wages of California sheepherders. There is a very elaborate wage protection system in federal regulations that is structured specifically for this occupation, that has existed since this occupation has been covered by alien wage programs. It is designed -- it's applicable in all ten western states. There's nothing unique to California, except for the fact that the prevailing wage itself is determined on a state-by-state basis.

And I'd be happy -- we've done lots of these prevailing wage surveys, and we would be happy to discuss with you the arcana of these surveys if you'd like. But it is -- I think the important thing is, there is a structure in place specifically designed for the unique characteristics of this occupation and that is applicable to not only the industry in California, but all of the other states in which it -- in which it exists. And I think, in that regard, it's worth bearing in mind that California, unlike many other agricultural enterprises, is only about 10 percent of the U.S. sheep industry. And probably the other 90 percent of it would wish California -- that 10 percent would go away, because that might give them a little better prices elsewhere.

The third reason that we believe the exemption should be retained is that the current wage protections that are in place for sheepherders in California are working. The earnings of California sheepherders are comparable to the earnings of IWC-protected peer workers, that is, farm workers generally. And furthermore, if you look -- Mr. Schacht made a -- alleged that all of this -- that the system has been gamed by the employers -- if you look at how the wages of sheepherders have moved over, say, the past twenty years compared with the wages of other workers, IWC-regulated workers, both farm workers and non-farm workers, you'll find that they have moved -- they have moved in tandem.

The earnings of -- if you take the \$900 prevailing wage that's now in effect for sheepherders and add to that merely the IWC-mandated allowances for lodging and food, which, as I think you recognized, are fairly conservative, you come up with a \$1,282 a month imputed monthly earnings. The -- a full-time farm worker working at the average hourly earnings of California farm workers of \$7.27 an hour, if he were employed 40 hours a week, 365 days a year -- or 40 hours a week, 52 weeks a year -- would earn \$1,260 a month. And they're not, of course, employed anywhere near twelve months a year or 40 hours a week. But if they were, at the average farm worker wage, their monthly earnings would be almost identical to the imputed monthly earnings of sheepherders. So there is not a discrepancy between shepherd earnings and the earnings of other workers.

The incomes, if -- there are no California statistics for this, but if you look at the personal earnings of farm workers nationally, California sheepherders are in the 80th percentile of earnings of farm workers nationally, counting the imputed value of their food and housing. And even if you just take the base salary without even counting the food and housing, they're in the 70th percentile of farm workers. They are not at the bottom. Their earnings are above the poverty level, not only for individuals, but two-family households and even three-family households, so that these are not poverty-level wages.

And finally, as you'll note on Page 17 of the report, in Table 1, the farm and non-farm worker wages have increased over the past twenty years almost identically. Farm worker wages in California have increased -- farm worker hourly earnings have increased 71 percent over that twenty-year period; shepherd wages, 78 percent; and manufacturing wages, 81 percent. They've moved almost identically, so that the existing wage protection standards are working. They are not -- they are not disadvantaging sheepherders relative to other occupations.

And I think the last reason why I would argue that the -- it is necessary to retain the shepherd exemption is that imposing on California shepherders an hourly minimum wage or a minimum wage, a monthly wage or whatever, higher than that under the current federal regulatory scheme, would simply hasten the extinction of an industry that's already in severe economic distress.

Now, you hear these kinds of arguments, I think, from probably every employer group that sits in front of you, but let me give you some really shocking statistics.

Wool prices in 1999 are 60 percent below the farm price of wool in 1980, twenty years ago, 60 percent below what they were twenty years ago. Lamb prices, which is the other product of this industry, are 18 percent above what they were in 1980, twenty years ago. Production costs, farm production costs in the aggregate, are up 53 percent over that twenty-year period. It doesn't take an account to know that if you've got -- one of your products has declined 60 percent and the other has only increased 18 percent, and your costs have gone up 53 percent, and shepherd wages have gone up 78 percent in that twenty-year period, you're in a world of hurt. And the shepherding industry is in a world of hurt.

And the statistics on the farms and farms with sheep show that. Farms with sheep and the number of sheep in California are both down 35 percent over the past twenty years. More importantly, the commercial side of the industry, as opposed to farm flocks that people have because they look pretty walking around in the pastures, those farms with 1,000 head or more are down 55 percent in California between the -- in the fifteen-year period between the census of agriculture of 1982 and the census of agriculture of 1997. And by -- I'm sorry -- 1997. By 1997, the census of agriculture reported 110 ranches left in California with 1,000 or more head of sheep. The Western Range Association counts fewer than 80 of them by the year 2000.

This is an industry which is rapidly facing -- moving toward extinction. The ranchers in the industry are basically living off their assets and their depreciation, each one of them trying to hang on, I think, a little longer than the neighbor does, to -- when the industry becomes profitable again.

Raising their employer costs, no matter how it's done, is not going to be a matter of sharing their wealth with their herders. It's going to be a matter of driving them further into debt and further into economic oblivion.

Thank you.

COMMISSIONER DOMBROWSKI: Where is the industry going?

MR. HOLT: Well, if you project the current trends, it's -- the industry may very well be disappearing.

COMMISSIONER DOMBROWSKI: No, no. I mean, if the industry is -- I mean, accepting your statistics, is it going to another country?

MR. HOLT: Oh --

COMMISSIONER DOMBROWSKI: What's happening?

MR. HOLT: It's going abroad. The decline in wool prices and the very modest rise in lamb prices is due to increased imports from that period of time.

COMMISSIONER DOMBROWSKI: And where does it go primarily? Who are the major --

MR. HOLT: Australia and New Zealand are the principal places, but not -- there are others.

COMMISSIONER BOSCO: The coyotes are still here, though, right?

MR. HOLT: You mean the two-legged ones or the four-legged ones? Both, actually.

COMMISSIONER DOMBROWSKI: Harold.

COMMISSIONER ROSE: A question. You say I'm referring to the wrong piece of paper --

MR. HOLT: Well, I'm not sure what that piece of paper is, sir, but --

COMMISSIONER ROSE: This is what you referred to. It's the H-2A program, but you say it really doesn't pertain to shepherders.

MR. HOLT: Oh, I --

COMMISSIONER ROSE: Do you have one that does? Show me what you're talking about, please.

MR. HOLT: I'd be happy -- it's referenced in the report, and I'd be happy to provide you with a copy of the special shepherd guidelines that the Department --

COMMISSIONER ROSE: Could you do that by Thursday?

MR. HOLT: I'd be happy to, yes.

COMMISSIONER ROSE: I'd appreciate it.

MR. HOLT: In fact, I think I --

COMMISSIONER ROSE: Because I know that your -- your booklet here strictly just talks about the H-2A program, so I wondered what --

MR. HOLT: Well, no, it references the -- it points out that the shepherd program operates under a separate set of guidelines, and it references them, but --

COMMISSIONER ROSE: I'd like to see what these guidelines are.

MR. HOLT: I would be happy to provide you with a copy.

COMMISSIONER ROSE: Thank you.

MR. HOLT: Um-hmm.

COMMISSIONER DOMBROWSKI: Good ahead.

COMMISSIONER BOSCO: Could I -- before you start

-- I beg your pardon, but could I ask Mr. Holt one other question about these prevailing wages and, you said, the arcane way that they're -- I think that's what you said. But the testimony that we had before kind of, I think, presented a situation where prevailing wages are determined in an atmosphere where there isn't anybody really making -- doing that job or making any wages other than the ones that are within the program, so it's kind of an inbred thing. Do you agree with that?

MR. HOLT: Well, the notion -- a prevailing wage, as it's used in the H-2A program, whether we're talking about shepherding or any other activity, is occupation-specific. There's a prevailing wage for picking strawberries, and a prevailing wage for shepherding, and a prevailing wage for irrigating, and so forth.

I would not agree that it's sort of inbred and artificial. And I think the best evidence of that is the fact that it, in fact, produces -- that it's been moving over a twenty-year period the same as other wages, including IWC-regulated wages, and that it generates earnings that are comparable to earnings of other farm workers.

COMMISSIONER BOSCO: But since there doesn't appear to be a whole lot of people out there wanting to be shepherders and very few domestic people wanting to be shepherders, it seems like there is just sort of a small pool, that if I was going to determine, "Well, what's the prevailing wage for shepherders?," you know, it's sort of the people that are in this program.

MR. HOLT: Well, statistically, the pool is small. You're right. And, in fact, in some states -- there are enough in California to produce statistically reliable prevailing wage data based solely on California employment. There are a few states in which they have to take the data from several states and combine it in order to produce statistically reliable data.

COMMISSIONER BOSCO: But there's nothing to determine a prevailing wage from, other than what the prevailing wage is as set in the past by this program. Is that true?

MR. HOLT: Well, that's -- that's in the nature of a definition of a prevailing wage, and all -- I mean, a prevailing wage in any occupation is set based on the earnings of workers in that occupation.

COMMISSIONER BOSCO: But usually, that presumes there are workers out there that want to be in that occupation, that there's some movement in an occupation.

MR. HOLT: Well, I agree with you. First of all, there are very few workers in this occupation at all. And secondly, there are a relatively small number of domestic workers in the occupation. But it has not --

COMMISSIONER BOSCO: How many -- excuse me. I'm sorry.

MR. HOLT: But it has not -- part of your statement, or what you said, that I'm sort of disagreeing with, respectfully, is the inbred -- the suggestion that somehow or other, this wage doesn't change because you're always surveying the same population. I mean, the data clearly shows, the record clearly shows, that it does change and has changed.

COMMISSIONER BOSCO: Well, then, could you -- did you say how many of these sheepherders there are in California right now?

MR. HOLT: Well, the number varies, depending on when you do the survey. When EDD did their -- their most recent prevailing wage survey, there were two hundred and -- what were the numbers here? I can't find my notes now -- 206 aliens and 29 domestics. But that number -- but both of those numbers fluctuate a bit from one time to another.

COMMISSIONER BOSCO: Well, I don't think any group of people, at least, has gotten the attention of the Commission proportionately more than this one has.

MR. HOLT: We would agree. And I think --

COMMISSIONER BOSCO: We got the minimum wage that affects, you know, a few million workers, and we're spending, I think, as much time on this.

MR. HOLT: Yeah. Well, unfortunately, there's an industry at stake here. That's the -- and it may be a small industry, and it may not survive anyway. But we want you -- we hope that you will not hasten its demise in California.

COMMISSIONER BOSCO: Thank you.

COMMISSIONER COLEMAN: I have a question -- and forgive me if I was out if you addressed this -- what percent of your total cost is labor?

MR. HOLT: Total production costs?

COMMISSIONER COLEMAN: Um-hmm.

MR. HOLT: That's going to vary a great deal from one operation to another. I think one of our witnesses coming up is going to testify on that very point with regard to his own operation.

But I might say that contrary to the notion that was expressed, I think, at the San Diego hearing that I was present at, in the audience, this is not -- it's not an insignificant part of the production costs. While we don't think of livestock as being labor-intensive, sheepherding is labor-intensive in the sense that, because they do require -- at least, open range sheepherding -- requires herders. And, by the way, there is another way of raising sheep, and that's in fenced pastures where you don't require sheepherders. But open range sheepherding, where the open range is used for

pasture, is a labor-intensive undertaking because of the fact that it does require these herders to be with the sheep constantly.

COMMISSIONER COLEMAN: So, somehow is going to speak to the relative percent, because --

MR. HOLT: Yes.

COMMISSIONER COLEMAN: -- what I'm trying to understand is what is the fluctuation in costs if we did do something going to do in terms of affecting the outcome to the industry.

MR. HOLT: Well, I guess, you know, without stealing the other witnesses' thunder, I think there's a rancher here that's going to present some testimony that his labor costs are about 40 percent of total production costs. And that's, I would judge -- I've not ever done a survey of this, but I would judge, just from my background as an economist, that that's probably about typical in this particular occupation.

And interestingly enough, the fruits and vegetables that we generally regard as labor-intensive average about the same percentage of total production costs, labor -- is labor. So this is an industry that's almost as labor-intensive as fruits and vegetables, on the average.

COMMISSIONER COLEMAN: Thank you.

MR. CALLE: Good afternoon. My name is Jose Calle. I am representing -- I'm the coordinator of the Western Range Association in Peru. I've been working for Western Range Association for about eight years directly and about ten years or more indirectly. I mean that because my father was in charge of the program for almost thirty years, all together. I've been raised and born on a sheep ranch, and that's the Western Range Association gave me that responsibility about taking care of the program in Lima, Peru.

And in those thirty years, for my knowledge, we haven't faced any type of serious -- or at least problems that worry us. Among my responsibilities working in Peru include the evaluation of the shepherd program, which is checking the knowledge of these people in the shepherd business, and also to review and explain about their duties and responsibilities and their rights. And I do this verbally, and I spend at least one hour with each one of these men. And I also make them sign a document, a pre-contract in easy Spanish to make them know really exactly what they are getting into. But most of these people are professional herders and they know how it is to herd in the field.

At the same time, I also check and review all the medical exams of these people. They go through a very thorough examination to make sure they don't have or get into any type of problems or disease while in the United States, or take any disease to this country.

Also now, among my responsibilities include to make sure they register on Peruvian officials in my country. The Foreign Affairs Department of my country has put an office, which is the Office of Peruvian Protection Abroad -- this is an office that sees all Peruvians abroad, which not only include the United States -- they are well concerned about the shepherd

MR. TALBOTT: I would like to mention one other thing, since the gentleman mentioned wool. In 1950, fifty years ago, the wool from 200 sheep would buy a pickup. Today it takes the wool from 9,000 sheep to buy a pickup.

COMMISSIONER ROSE: How much a pound?

MR. TALBOTT: 30 cents a pound today. 1950, a dollar-plus a pound. 200 sheep in 1950, 9,000 sheep today, to buy a lousy pickup.

Any more questions?

COMMISSIONER DOMBROWSKI: Thank you.

MR. BARON: Excuse me. I just had a question for Mr. Holt.

Just from a comparison, you compared earlier to the IWC orders relative to ag, and you talked about \$7.27 per hour and what it would earn, \$1,260 a month, and compared that to the -- if you added in the meals and lodging.

MR. HOLT: Um-hmm.

MR. BARON: Wasn't that based on the farm worker who's working 40 hours a week?

MR. HOLT: Yes.

MR. BARON: Are we saying -- are you saying that the shepherders are working 40 hours a week?

MR. HOLT: No. They're on call 24 hours a day, seven days a week. I don't think you -- I don't think you can characterize how much they're working.

MR. BARON: No, but I'm just saying you were making a comparison between the farm worker wage and the shepherd wage, but the farm worker wage is only based on a 40-hour week.

MR. HOLT: Well, what I was -- what I was trying to do is make a comparison of earnings, what the -- what the average farm worker would earn if they worked full-time, which, of course, they don't.

MR. BARON: Right.

MR. HOLT: The fact of the matter is, the shepherd earnings are actually better than farm worker earnings. But if the farm worker worked full-time, and I just base that on 40 hours a week, 52 weeks a year --

MR. BARON: Okay.

MR. HOLT: -- at the average hourly earnings of \$7.27 an hour, that's what you come up with, \$1,260 a month.

MR. BARON: Thank you.

MR. SOARES: Mr. Chairman and members, we have one last panel. We have several of us here. I think our testimony, from most, will be brief.

EXHIBIT 4

WRA: MEMBER & HERDER PROCESSING SYSTEM
MEMBER.R4

8/10/09
Page 1

Murphy

MEMBER NAME & ADDRESS		Zip Code	Physical Address	PHONE NUMBERS	# of opening
00461	BORDA LAND & SHEEP CO. 1432 EZELL ST. GARDNERVILLE OWNER: BORDA FAMILY LTD PTNSHIP	NV 89410-0000	1432 EZELL ST. GARDNERVILLE NV 89410-0000	Residence: 775 782-2416 Office: 775 882-4766 Ranch: 775 721-2689 Other: 775 790-0740 Fax : 775-882-5680	2
00788	DUFURRENA SHEEP CO. 397 HWY 140 WINNEMUCCA OWNER: BUSTER DUFURRENA	NV 89445	HIGHWAY 95, TURN LEFT, HI RANCH WINNEMUCCA NV 89445-0000	Residence: 775 941-0357 Office: 775 941-0357 Ranch: 775 941-0357 Other: 775 427-6291 Fax : 775 941-0358	6
00820	EUREKA LIVESTOCK-NV 16249 WINFIELD AVE BAKERSFIELD OWNER: JIM ETCHEVERRY	CA 93314-0000	HC 62 BOX 62540 20 MILES OF HWY 50 ON 3 B EUREKA NV 89316-0000	Residence: 661 332-5256 Office: 661 588-7425 Ranch: 661 332-5256 Other: 661 549-0523 Fax : 661 588-7425	6
00930	ELLISON RANCHING COMPANY HC32 BOX 240 TUSCARORA OWNER:	NV 89834	HWY 225 APX 27 MIL.LFT ON 27 MLS(NORTH OF ELKO NEVA TUSCARORA NV 89834-0000	Residence: 775 753-6139 Office: 775 756-6542 Ranch: 775 756-6543 Other: 775 934-8758 Fax : 775 756-6570	19
00941	EL TEJON SHEEP CO.-NV P. O. BOX 80715 14463 PANAMA LANE, BAKERS. 93313 BAKERSFIELD OWNER: MELCHOR GRAGIRENA	CA 93380-0000	36 MIL SE OF ELY ON N SPR 1ST RANCH ON EAST SIDE OF (TAKE HWY 6 & 50 E)NEVADA NV 89301-9423	Residence: 661 393-5161 Office: 661 393-5161 Ranch: Other: 661 331-5148 Fax : 661-393-5161	9
01072	JOHN ESPIL SHEEP CO.,INC. 2889 GRANVILLE DRIVE SPARKS OWNER: JOHN ESPIL	NV 89436-0000	ESPIL RANCH HIGHWAY 445 WASHOE COUNTY GERLACH, NEVADA NV 89412	Residence: 775 626-7554 Office: 775 422-6110 Ranch: 775 741-2052 Other: 775 422-6110 Fax : 775 626-7554	13
01076	ESTILL RANCHES LLC -NV JOHN B ESTILL P.O. BOX 655 EAGLEVILLE OWNER: JOHN & LANI ESTILL	CA 96110-0000	SOLDIER MEADOWS RANCH 50 GERLACH ON HWY 447 GERLACH, NEVADA NV	Residence: 530 279-4819 Office: 530 279-6211 Ranch: 530 279-6211 Other: 775 530-4819 Fax : 530 279-2024	12

WRA: MEMBER & HERDER PROCESSING SYSTEM
MEMBER.R4

M E M B E R N A M E & A D D R E S S

Member	Member Name and Billing Address	Zip Code	Physical Address	PHONE NUMBERS	
01210	F. I. M. CORP. 25 SARONI ROAD P.O. BOX 12 SMITH OWNER: FRED FULSTONE, JR.	NV 89430	25 SARONI RD.- 2 MILES SO FROM POINT OF CATHOLIC CH SMITH NV 89430-0000	Residence: 775 465-2381 Office: 775 465-2381 Ranch: 775 771-7191 Other: 775 771-1295	13
		WORK STATE-NV	Description Other: fimcorporation@gmail.com	Fax : 775 465-1200	
		CONTACT:MARIANNE LEINASSAR -RANCH			
01633	K & N LIVESTOCK HC60 BOX 570 RUBY VALLEY OWNER: LANCE KNUDSEN/SIERRA	NV 89833-0000	STEVE NEFF RANCH HC 60 BOX 632 RUBY VALLEY NV 89833-0000	Residence: 775 779-2249 Office: Ranch: Other: 775 397-8397	2
		WORK STATE-NV	Description Other: LANCE CELL	Fax : 775-779-2249	
		CONTACT:LANCE KNUDSEN/SIERRA			
01644	THOMAS K. KNUDSEN 163 OSINO UNIT 4 ELKO OWNER: THOMAS K. KNUDSEN	NV 89801-0000	5331 BULLWACKER DRIVE ELKO NV 89801-0000	Residence: 775 738-4856 Office: 775 738-4856 Ranch: 775 738-4856 Other: 775 397-7018	5
		WORK STATE-NV	Description Other: CELL SHERYL'S: 775-934-3701	Fax : 775-738-2405	
		CONTACT:TOM OR SHERYL KNUDSEN			
01690	JERRY LANCASTER HC 65 BOX 500 AUSTIN OWNER: JERRY LANCASTER	NV 89310	HIGHWAY 305, 7 MILES NORT RACETRACK RANCH AUSTIN NV 00000-0000	Residence: 775 964-2626 Office: 775 964-2626 Ranch: 775 964-2626 Other: 775 761-0217	4
		WORK STATE-NV	Description Other: CELL//PAUL 775 964-2542	Fax : 775 964-2626	
		CONTACT:JANET LANCASTER			
01766	DAVID & BONNIE LITTLE HC 30 BOX 360 SPRING CREEK OWNER: DAVID & BONNIE LITTLE	NV 89815-0000	SOUTH ON STATE ROUTE 228 MILE MARKER 16 SPRING CREEK NV 89815-0000	Residence: 775 934-8862 Office: 775 934-8860 Ranch: Other: 775 934-8860	7
		WORK STATE-NV	Description Other: CELL/littlelivestock@gmail.com	Fax :	
		CONTACT:DAVID & BONNIE LITTLE			
02112	NEED MORE SHEEP COMPANY HCR 33 P.O. BOX 33920/NO FEEXP OR ELY OWNER: H. C. VOGLER IV	NV 89301	HIGHWAY 93A SOUTH OF WELL 40 MLS NORTH & 11 MLS EAS NORTH SPRING VALLEY NV 00000-0000	Residence: 775 591-0404 Office: 775 591-0404 Ranch: 775 591-0404 Other: 775 296-1556	8
		WORK STATE-NV	Description Other: CELL/needmoreshsheepco@yahoo.com	Fax : 775 591-0404	
		CONTACT:HANK VOGLER 775-591-0404			
02170	JOHN M. OLAGARAY - NV 11888 N. DAVIS ROAD LODI OWNER: JOHN M. OLAGARAY	CA 95242-0000	10900 HWY 400,EAST FROM H TO MILL CITY R. TO UNIONV IMLAYS, NEVADA NV 89418-0000	Residence: 209 369-1685 Office: 209 369-1685 Ranch: 209 369-1685 Other: 209 663-7322	4
		WORK STATE-NV	Description Other: CELL//HANK 208 334-2293	Fax : 209 369-1687	
		CONTACT:JOHN M. OLAGARAY			

WRA: MEMBER & HERDER PROCESSING SYSTEM
MEMBER.R4

M E M B E R N A M E & A D D R E S S

Member Member

Member Name and Billing Address	Zip Code	Physical Address	PHONE NUMBERS
02265 PARIS LIVESTOCK HC30 BOX 320 SPRING CREEK OWNER: PETE PARIS JR.	NV 89815-0000	28 MLS SOUTH OF ELKO ON J 1 1/2 MLS ON SECOND LEE R WOODS LANE, LEE NV 00000-0000	Residence: 775 744-4388 Office: 775 744-4388 Ranch: 775 744-4388 Other: 775 934-1602 Description Other: pr_paris@yahoo.com CONTACT:PETE PARIS JR. Fax : CELL-MSG@HOME
02328 RAFTER 7 SHEEP COMPANY 165 W. LIBERTY STREET SUITE 200 RENO OWNER: ELW RANCHES, INC.	NV 89501-0000	92 EAST WALKER ROAD YERINGTON NV 89447	Residence: 775 463-2371 Office: 775 333-0314 Ranch: 775 221-3206 Other: 775 221-3206 Description Other: TOM FILBIN - NEW MGR. CONTACT:TOM 775-221-3206 CELL Fax : 775 463-2359
02640 GARY SNOW LIVESTOCK AND G P. O. Box 5520 FALLON OWNER: GARY SNOW	NV 89407-5520	3500 CUSHMAN ROAD FALLON NV 89406-0000	Residence: 775 423-6190 Office: 775 423-7521 Ranch: Other: 775 426-9099 Description Other: Gary Snow's CELL CONTACT:ELLIE PLUMBRIDGE Fax : 775 423-6023
02650 SILVER CREEK RANCH, INC. HC 61 BOX 61230 AUSTIN OWNER: PAUL INCHAUSPE	NV 89310-0000	HC 61 BOX 61230 AUSTIN NV 89310-0000	Residence: 775 964-2542 Office: 775 761-2766 Ranch: Other: 775 217-0686 Description Other: CALL HOME BEFORE FAX CONTACT:PAULINEJ PADILLA Fax :
02670 SOUTHERN NEVADA WATER AUT C/O KERRI WRIGHT P. O. BOX 150083 ELY OWNER: SOUTHERN NEVADA WATER AUT	NV 89315-0000	HC 10 BOX 10848-WAHOO RAN HWY. 894 ELY NV 89301-0000	Residence: 775 289-4490 Office: 775 591-0316 Ranch: 775 591-0316 Other: Description Other: CONTACT:PATRICIA MULROY (MNG) Fax : 775 289-4490
02678 ROBERT A. STAYER. P.O. BOX 8044 RED BLUFF OWNER: PAT FITZGERALD/BOB STAYER	CA 96080-8044	CO. ROAD, 12 MILES N. RAF VYA, NEVADA NV	Residence: 209 482-5402 Office: 530 279-1401 Ranch: 530 279-1401 Other: 530 279-1401 Description Other: CONTACT:BOB STAYER 530-279-1401 Fax : 530-528-1563
02840 JOHN UHALDE AND COMPANY P.O.BOX 151088 ELY OWNER: GRACIAN N. UHALDE	NV 89315-0000	130 ELY AVENUE ELY NV 89315-0000	Residence: 775 289-4802 Office: 775 962-1563 Ranch: 775 962-1563 Other: 775 289-0599 Description Other: CONTACT:MIKE UHALDE 775-289-0800 Fax : 775 289-3082

TOTAL NUMBER OF MEMBERS: 21

=141

Application for Temporary Employment Certification
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Please read and review the filing instructions carefully before completing the ETA Form 9142. A copy of the instructions can be found at <http://www.foreignlaborcert.doleta.gov/>. In accordance with Federal Regulations, incomplete or obviously inaccurate applications will not be certified by the Department of Labor. If submitting this form non-electronically, ALL required fields/items containing an asterisk (*) must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.

A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (Write classification symbol): *	H-2A
--	------

B. Temporary Need Information

1. Job Title * SHEEPHERDER					
2. SOC (ONET/OES) code * 45.2093	3. SOC (ONET/OES) occupation title * FARMWORKER, FARM AND RANCH ANIMALS				
4. Is this a full-time position? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<table border="1"> <tr> <th colspan="2">Period of Intended Employment</th> </tr> <tr> <td>5. Begin Date * (mm/dd/yyyy) 08/01/2009</td> <td>6. End Date * (mm/dd/yyyy) 07/31/2010</td> </tr> </table>	Period of Intended Employment		5. Begin Date * (mm/dd/yyyy) 08/01/2009	6. End Date * (mm/dd/yyyy) 07/31/2010
Period of Intended Employment					
5. Begin Date * (mm/dd/yyyy) 08/01/2009	6. End Date * (mm/dd/yyyy) 07/31/2010				
7. Worker positions needed/basis for the visa classification supported by this application					
<input type="text" value="141"/> Total Worker Positions Being Requested for Certification *					
Basis for the visa classification supported by this application (indicate the total workers in each applicable category based on the total workers identified above)					
<input type="text"/> a. New employment *	<input type="text"/> d. New concurrent employment *				
<input type="text"/> b. Continuation of previously approved employment * without change with the same employer	<input type="text"/> e. Change in employer *				
<input type="text"/> c. Change in previously approved employment *	<input type="text"/> f. Amended petition *				
8. Nature of Temporary Need: (Choose only one of the standards) *					
<input checked="" type="checkbox"/> Seasonal <input type="checkbox"/> Peakload <input type="checkbox"/> One-Time Occurrence <input checked="" type="checkbox"/> Intermittent or Other Temporary Need					
9. Statement of Temporary Need *					
<p>Other: Western Range Association employers are need on a year round basis</p>					

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C. Employer Information

Important Note: Enter the full name of the individual employer, partnership, or corporation and all other required information in this section. For joint employer or master applications filed on behalf of more than one employer under the H-2A program, identify the main or primary employer in the section below and then submit a separate attachment that identifies each employer, by name, mailing address, and total worker positions needed, under the application.

1. Legal business name *		
WESTERN RANGE ASSOCIATION		
2. Trade name/Doing Business As (DBA), if applicable		
3. Address 1 *		
1245 E BRICKYARD ROAD		
4. Address 2		
SUITE #190		
5. City *	6. State *	7. Postal code *
SALT LAKE CITY	Utah	84106
8. Country *	9. Province	
USA		
10. Telephone number *	11. Extension	
801 486-2004		
12. Federal Employer Identification Number (FEIN from IRS) *		13. NAICS code (must be at least 4-digits) *
[REDACTED]		
14. Type of employer application (choose only one box below) *		
<input type="checkbox"/> Individual Employer <input type="checkbox"/> Association - Sole Employer (H-2A only)		
<input type="checkbox"/> H-2A Labor Contractor or Job Contractor <input checked="" type="checkbox"/> Association - Joint Employer (H-2A only)		
<input type="checkbox"/> Association - Filing as Agent (H-2A only)		

D. Employer Point of Contact Information

Important Note: The information contained in this Section must be that of an employee of the employer who is authorized to act on behalf of the employer in labor certification matters. The information in this Section must be different from the agent or attorney information listed in Section E, unless the attorney is an employee of the employer. For joint employer or master applications filed on behalf of more than one employer under the H-2A program, enter only the contact information for the main or primary employer (e.g., contact for an association filing as joint employer) under the application.

1. Contact's last (family) name *	2. First (given) name *	3. Middle name(s) *
NAYLOR	LINDA	
4. Contact's job title *		
NEW REQUEST DOCUMENTATION		
5. Address 1 *		
1245 E BRICKYARD ROAD		
6. Address 2		
SUITE #190		
7. City *	8. State *	9. Postal code *
SALT LAKE CITY	UT	84106
10. Country *	11. Province	
United States		
12. Telephone number *	13. Extension	14. E-Mail address
801 486-2004		ASSISTANT@WESTERNRANGE.NET

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E. Attorney or Agent Information (If applicable)

1. Is/are the employer(s) represented by an attorney or agent in the filing of this application (including associations acting as agent under the H-2A program)? If "Yes", complete Section E. *		<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Attorney or Agent's last (family) name §	3. First (given) name §	4. Middle name(s) §	
5. Address 1 §			
6. Address 2 §			
7. City §	8. State § Alabama	9. Postal code §	
10. Country §	11. Province		
12. Telephone number §	13. Extension	14. E-Mail address	
15. Law firm/Business name §		16. Law firm/Business FEIN §	
17. State Bar number (only if attorney) §	18. State of highest court where attorney is in good standing (only if attorney) §		
19. Name of the highest court where attorney is in good standing (only if attorney) §			

F. Job Offer Information

a. Job Description

1. Job Title * SHEPHERDER	
2. Number of hours of work per week Basic #: _____ Overtime: _____	3. Hourly Work Schedule * ON CALL 24/7 A.M. (h:mm): _____ P.M. (h:mm): _____
4. Does this position supervise the work of other employees? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	4a. If yes, number of employees worker will supervise (if applicable) § _____
5. Job duties - A description of the duties to be performed MUST begin in this space. If necessary, add attachment to <u>continue and complete</u> description. *	
<p>"Attend sheep and/or goat flock grazing on range pasture: Herds flock and rounds up strays using trained dogs. Beds down sheep near evening campsite. Guards flock from predatory animals and from eating poisonous plants. May examine animals from signs of illness and administer vaccines, medications and insecticides according to instructions. May preform other farm or ranch chores related to the production of husbandry of sheep and/or goat on an incidental basis."</p> <p>Must have experience with 800 - 1000 head flocks. One reference may be required.</p>	

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F. Job Offer Information (continued)

b. Minimum Job Requirements

1. Education: minimum U.S. diploma/degree required *	
<input checked="" type="checkbox"/> None <input type="checkbox"/> High School/GED <input type="checkbox"/> Associate's <input type="checkbox"/> Bachelor's <input type="checkbox"/> Master's <input type="checkbox"/> Doctorate (PhD) <input type="checkbox"/> Other degree (JD, MD, etc.)	
1a. If "Other degree" in question 1, specify the diploma/degree required §	1b. Indicate the major(s) and/or field(s) of study required § (May list more than one related major and more than one field)
2. Does the employer require a second U.S. diploma/degree? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
2a. If "Yes" in question 2, indicate the second U.S. diploma/degree and the major(s) and/or field(s) of study required §	
3. Is training for the job opportunity required? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
3a. If "Yes" in question 3, specify the number of months of training required § <u>Up to 3 months</u>	3b. Indicate the field(s)/name(s) of training required § (May list more than one related field and more than one type) <u>SHEEPHERDER</u>
4. Is employment experience required? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
4a. If "Yes" in question 4, specify the number of months of experience required § <u>6 months</u>	4b. Indicate the occupation required § <u>SHEEPHERDER</u>
5. Special Requirements - List specific skills, licenses/certifications, and requirements of the job opportunity. *	
<u>MUST BE QUALIFIED SHEEPHERDER AND MUST BE IN GOOD HEALTH</u>	

c. Place of Employment Information

1. Worksite address 1 * <u>MASTER JOB ORDER FOR NEVADA</u>	
2. Address 2 <u>EMPLOYERS NAME AND ADDRESSES PER ATTACHED</u>	
3. City *	4. County *
5. State/District/Territory * <u>Alabama</u>	6. Postal code *
7. Will work be performed in multiple worksites within an area of intended employment or a location(s) other than the address listed above? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
7a. If Yes in question 7, identify the geographic place(s) of employment with as much specificity as possible. If necessary, submit an attachment to continue and complete a listing of all anticipated worksites. §	
<u>Sheepherding is a very migratory job, the herders have to move every season to different work sites.</u>	

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G. Rate of Pay

1. Basic Rate of Pay Offered * From: \$ 800 . _____ To (Optional): \$ _____ . _____	1a. Overtime Rate of Pay (if applicable) \$ From: \$ _____ . _____ To (Optional): \$ _____ . _____
2. Per: (Choose only one) * <input type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input checked="" type="checkbox"/> Month <input type="checkbox"/> Year <input type="checkbox"/> Piece Rate	
2a. If Piece Rate is indicated in question 2, specify the wage offer requirements: \$	
3. Additional Wage Information (e.g., multiple worksite applications, itinerant work, or other special procedures). If necessary, add attachment to <u>continue</u> and <u>complete</u> description. §	
PLUS FREE ROOM AND BOARD AND TWO WEEKS [AID VACATION PER YEAR	
4. For H-2A applications where the rate of pay is based upon <u>multiple crop or agricultural activities</u> , please confirm that Appendix A.1 is complete and being submitted with the filing of this application. §	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	

H. Recruitment Information

1. Name of State Workforce Agency (SWA) serving the area of intended employment * REFER TO ITEM #6		
2. SWA job order identification number *	2a. Start date of SWA job order *	2b. End date of SWA job order *
3. Is there a Sunday edition of a newspaper (of general circulation) in the area of intended employment? *		<input type="checkbox"/> Yes <input type="checkbox"/> No
Name of Newspaper/Publication (in area of intended employment) *		Dates of Print Advertisement *
4.	From:	To:
5.	From:	To:
6. Additional Recruitment Activities. Use the space below to identify the type(s) or source(s) of recruitment, geographic location(s) of recruitment, and the date(s) on which recruitment was conducted. If necessary, add attachment to <u>continue</u> and <u>complete</u> description. *		
Open Job order and continuous efforts for domestic herders in applicable regions through local, state and federal employment services by the employer and Western Range Association. See field Memorandum 24-01 08/21/2001 Workers Compensation Information on file at regional office.		

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I. Declaration of Employer and Attorney/Agent

In accordance with Federal regulations, the employer must attest that it will abide by certain terms, assurances and obligations as a condition for receiving a temporary labor certification from the U.S. Department of Labor. Applications that fail to attach Appendix A.2 or Appendix B.1 will be considered incomplete and not accepted for processing by the ETA application processing center.

1. For H-2A Applications ONLY, please confirm that you have read and agree to all the applicable terms, assurances and obligations contained in Appendix A.2. §	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2. For H-2B Applications ONLY, please confirm that you have read and agree to all the applicable terms, assurances and obligations contained in Appendix B.1. §	Yes No N/A

J. Preparer

Complete this section if the preparer of this application is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application.

1. Last (family) name §	2. First (given) name §	3. Middle initial §
4. Job Title §		
5. Firm/Business name §		
6. E-Mail address §		

K. U.S. Government Agency Use (ONLY)

Pursuant to the provisions of Section 101 (a)(15)(h)(ii) of the Immigration and Nationality Act, as amended, I hereby certify that there are not sufficient U.S. workers available and the employment of the above will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. By virtue of the signature below, the Department of Labor hereby acknowledges the following:

This certification is valid from _____ to _____.

Department of Labor, Office of Foreign Labor Certification _____ Determination Date (date signed)

Case number C _____ Case Status

L. OMB Paperwork Reduction Act (1205-0466)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's reply to these reporting requirements is mandatory to obtain the benefits of temporary employment certification (Immigration and Nationality Act, Section 101 (a)(15)(H)(ii)). Public reporting burden for this collection of information is estimated to average 2 hours 10 minutes per response for H-2A and 2 hours 45 minutes for H-2B, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Foreign Labor Certification * U.S. Department of Labor * Room C4312 * 200 Constitution Ave., NW * Washington, DC * 20210. Do NOT send the completed application to this address.

Application for Temporary Employment Certification

ETA Form 9142 – APPENDIX A.2
 U.S. Department of Labor



For Use in Filing Applications Under the H2A Agricultural Program ONLY

A. Attorney or Agent Declaration

I hereby certify that I am an employee of, or hired by, the employer listed in Section C of the ETA Form 9142, and that I have been designated by that employer to act on its behalf in connection with this application. I also certify that to the best of my knowledge the information contained herein is true and correct. I understand that to knowingly furnish false information in the preparation of this form and any supplement hereto or to aid, abet, or counsel another to do so is a felony punishable by a \$250,000 fine or 5 years in a Federal penitentiary or both (18 U.S.C. 1001).

1. Attorney or Agent's last (family) name	2. First (given) name	3. Middle initial
<input type="text"/>	<input type="text"/>	<input type="text"/>
4. Firm/Business name		
<input type="text"/>		
5. E-Mail address		
<input type="text"/>		
6. Signature	7. Date signed	
<input type="text"/>	<input type="text"/>	

B. Employer Declaration

By virtue of my signature below, I **HEREBY CERTIFY** the following conditions of employment:

1. The job opportunity is a full-time temporary position, the qualifications for which do not substantially deviate from the normal and accepted qualifications required by non-H-2A employers in the same or comparable occupations and crops.
2. The specific job opportunity for which the employer is requesting H-2A certification is not vacant because the former occupant(s) is (are) on strike or locked out in the course of a labor dispute involving a work stoppage.
3. The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship, and the employer has conducted and will continue to conduct the required recruitment, in accordance with regulations, and has been unsuccessful in locating sufficient numbers of qualified U.S. applicants for the job opportunity for which certification is sought. Any U.S. workers who applied or apply for the job were or will be rejected only for lawful, job-related reasons, and the employer will retain records of all rejections as required by 20 CFR 655.119.
4. The job opportunity offers U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers and complies with the requirements at 20 CFR 655, Subpart B.
5. The offered wage rate is the highest of the adverse effect wage rate in effect at the time the recruitment is initiated, the prevailing hourly or piece rate, or the Federal or State minimum wage, and the employer will pay the offered wage during the entire period of the approved labor certification.
6. The offered wage is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the adverse effect wage rate, prevailing wage rate, which may be a prevailing wage piece rate, or the legal Federal or State minimum wage, whichever is greatest.
7. There are no U.S. workers available in the area(s) capable of performing the temporary services or labor in the job opportunity, and the employer will continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply (or on whose behalf an application is made) for the job opportunity until the date that is 30 days after the first date the employer requires the services of the H-2A worker.
8. All fees associated with processing the temporary labor certification will be paid in a timely manner.



Application for Temporary Employment Certification

ETA Form 9142 – APPENDIX A.2
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9. During the period of employment that is the subject of the labor certification application, the employer will:
 - (i) Comply with applicable Federal, State and local employment-related laws and regulations, including employment-related health and safety laws;
 - (ii) Provide for or secure housing for workers who are not reasonably able to return to their permanent residence at the end of the work day that complies with the applicable local, State, or Federal standards and guidelines for housing without charge to the worker;
 - (iii) Where required, has timely requested a preoccupancy inspection of the housing and, if one has been conducted, received certification;
 - (iv) Provide insurance, without charge to the worker, under a State workers' compensation law or otherwise, that meets the requirements of 20 CFR 655.104(e).
 - (v) Provide transportation in compliance with all applicable Federal, State or local laws and regulations between the worker's living quarters (i.e., housing provided by the employer under 20 CFR 655.104(d)) and the employer's worksite without cost to the worker.
10. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the Application for Temporary Employment Certification in the area of intended employment except for lawful, job related reasons within 60 days of the date of need, or if the employer has laid off such workers, it has offered the job opportunity that is the subject of the application to those laid-off U.S. worker(s) and the U.S. worker(s) either refused the job opportunity or was rejected for the job opportunity for lawful, job-related reasons.
11. The employer and its agents have not sought or received payment of any kind from the employee for any activity related to obtaining labor certification, including payment of the employer's attorneys' fees, application fees, or recruitment costs. For purposes of this paragraph, payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor.
12. The employer has and will contractually forbid any foreign labor contractor or recruiter whom the employer engages in international recruitment of H-2A workers to seek or receive payments from prospective employees, except as provided for in DHS regulations.
13. The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has with just cause:
 - (i) Filed a complaint under or related to Sec. 218 of the INA (8 U.S.C. 1188), or this subpart or any other Department regulation promulgated under Sec. 218 of the INA;
 - (ii) Instituted or caused to be instituted any proceeding under or related to Sec. 218 of the INA, or this subpart or any other Department regulation promulgated under Sec. 218 of the INA;
 - (iii) Testified or is about to testify in any proceeding under or related to Sec. 218 of the INA or this subpart or any other Department regulation promulgated under Sec. 218 of the INA;
 - (iv) Consulted with an employee of a legal assistance program or an attorney on matters related to Sec. 218 of the INA or this subpart or any other Department regulation promulgated under Sec. 218 of the INA; or
 - (v) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by Sec. 218 of the INA, or this subpart or any other Department regulation promulgated under Sec. 218 of the INA.
14. The employer has not and will not discharge any person because of that person's taking any action listed in paragraph 13(i) through (v) listed above.
15. The employer will inform H-2A workers of the requirement that they leave the U.S. at the end of the period certified by the Department or separation from the employer, whichever is earlier, as required under 20 CFR 655.111, unless the H-2A worker is being sponsored by another subsequent employer.
16. Upon the separation from employment of any H-2A worker(s) employed under the labor certification application, if such separation occurs prior to the end date of the employment specified in the application, the employer will notify the Department and DHS in writing or any other method specified of the separation from employment not later than two work days after such separation is effective under 20 CFR 655.104(n).



Application for Temporary Employment Certification

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17. If the application is being filed as an H-2A Labor Contractor the following additional attestations and obligations apply under 20 CFR 655.106:
- (i) The H-2A Labor Contractor will provide upon request the MSPA Farm Labor Contractor (FLC) certificate of registration number and expiration date if required under MSPA, 1801 U.S.C. et seq., to have such a certificate;
 - (ii) The H-2A Labor Contractor will identify upon request the farm labor contracting activities it is authorized to perform as an FLC under MSPA as shown on the FLC certificate of registration, if required under MSPA, 1801 U.S.C. et seq., to have such a certificate of registration;
 - (iii) The H-2A Labor Contractor has or will provide with this application a list of the names and locations of each fixed-site agricultural business to which the H-2A Labor Contractor expects to provide H-2A workers, the expected beginning and ending dates when the H-2A Labor Contractor will be providing the workers to each fixed site, and a description of the crops and activities the workers are expected to perform at such fixed site;
 - (iv) The H-2A Labor Contractor is able to provide proof of its ability to discharge financial obligations under the H-2A program by attesting that it has obtained and to present, upon request, a surety bond as required by 29 CFR 501.8, stating on the application the name, address, phone number, and contact person for the surety, and providing the amount of the bond (as calculated pursuant to 29 CFR 501.8) and any identifying designation utilized by the surety for the bond;
 - (v) The H-2A Labor Contractor has engaged in, or will engage in within the timeframes required by 20 CFR 655.102 as modified by 20 CFR 655.106(a), recruitment efforts in each area of intended employment in which it has listed a fixed-site agricultural business; and
 - (vi) The H-2A Labor Contractor has obtained from each fixed-site agricultural business that will provide housing or transportation to the workers a written statement stating that:
 - a. All housing used by workers and owned, operated or secured by the fixed-site agricultural business complies with the applicable housing standards in 20 CFR 655.104(d); and
 - b. All transportation between the worksite and the workers' living quarters that is provided by the fixed-site agricultural business complies with all applicable Federal, State, or local laws and regulations and will provide, at a minimum, the same vehicle safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR part 500, except where workers' compensation is used to cover such transportation as described in § 655.104(h)(3).

I hereby designate the agent or attorney identified in section E (if any) of the ETA Form 9142 and section A above to represent me for the purpose of labor certification and, by virtue of my signature in Block 5 below, I take full responsibility for the accuracy of any representations made by my agent or attorney.

I declare under penalty of perjury that I have read and reviewed this application and that to the best of my knowledge the information contained therein is true and accurate. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by a \$250,000 fine or 5 years in the Federal penitentiary or both (18 U.S.C. 1001).

1. Last (family) name	2. First (given) name	3. Middle initial
RICHINS	DENNIS	
4. Title		
EXECUTIVE DIRECTOR		
5. Signature	6. Date signed	
	8/11/09	

OMB Paperwork Reduction Act

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's reply to these reporting requirements is mandatory to obtain the benefits of temporary employment certification (Immigration and Nationality Act, Section 101(a)(15)(H)(ii)). Public reporting burden for this collection of information is estimated to average 2 hours 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Foreign Labor Certification * U.S. Department of Labor * Room C4312 * 200 Constitution Ave., NW * Washington, DC * 20210. Do NOT send the completed application to this address.

Agricultural and Food Processing Clearance Order
 Pedido de Empleados para Agricultura y Procesamiento de Alimentos

U.S. Department of Labor
 Employment and Training Administration



O.M.B. Approval No. 1205-0134, Expires 08/31/2009

1. Employer's Name and Address (Number, Street, City, State, Zip Code, and telephone number) Nombre y Dirección del Empleador (Número, calle, ciudad, código postal y teléfono)	Industry Code / Código de Industria	Job Order # / No. Orden de Empleo																								
MASTER JOB ORDER FOR NEVADA EMPLOYERS AND ADDRESSES PER ATTACHED		FARMWORKER, FARM AND RANCH ANIMALS 45.2093																								
2. Location and Direction to Work Site / Dirección del lugar de trabajo WRA/mbrs will comply assr. 20CFR Part 655 SP B, 20 CRF 655.103 (see attachment / para más detalles vea _____)	Clearance Order Issue Date / Fecha de Tramite: Job Order Expiration Date / Fecha de expiración: 6. Anticipated Period of Employment / Periodo Anticipado de Empleo From/ Desde: 08/01/2009 To / Hasta 07/31/2010																									
3. Location and Description of Housing / Dirección y Descripción de la Vivienda Open Range housing may be fixed/trailers/sheep camps and/or pack tents depending on terrain. (see attachment / para más detalles vea _____)	7. No. of Worker's Requested / No. de Trabajadores Pedidos 141 8. Anticipated Hours of Work per Week / Horas Anticipadas de Trabajo por Semena <table border="0"> <tr> <td></td> <td>Total:</td> <td>On Call**</td> </tr> <tr> <td>Sunday / Domingo</td> <td>_____</td> <td>24 hours</td> </tr> <tr> <td>Monday / Lunes</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Tuesday / Martes</td> <td>_____</td> <td>_____</td> </tr> <tr> <td></td> <td>Wednesday / Miercoles</td> <td>_____</td> </tr> <tr> <td></td> <td>Thursday / Jueves</td> <td>_____</td> </tr> <tr> <td></td> <td>Friday / Viernes</td> <td>_____</td> </tr> <tr> <td></td> <td>Saturday / Sabado</td> <td>_____</td> </tr> </table> 9. Collect Calls Accepted/Se Aceptan Llamadas a Cobrar: Employer / El Empleador Yes <input checked="" type="checkbox"/> No Local Office/Oficina Local Yes No <input checked="" type="checkbox"/>			Total:	On Call**	Sunday / Domingo	_____	24 hours	Monday / Lunes	_____	_____	Tuesday / Martes	_____	_____		Wednesday / Miercoles	_____		Thursday / Jueves	_____		Friday / Viernes	_____		Saturday / Sabado	_____
	Total:	On Call**																								
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	Wednesday / Miercoles	_____																								
	Thursday / Jueves	_____																								
	Friday / Viernes	_____																								
	Saturday / Sabado	_____																								
4. Board Arrangements / Arreglo de Alojamiento Free Room/Board Supplied by Employer (see attachment / para más detalles vea _____)																										
5. Referral Instructions / Instrucciones para el Referimiento de Candidatos Open Job Order, contact local State Employment Office (see attachment / para más detalles vea _____)																										
10. Job Specifications / Descripción del Trabajo [Summary of Material Job Specifications in ENGLISH must be included inside this box] tend sheep and/or goat flock grazing on range or pasture: Herders flock and rounds up stray using trained dogs. Bed downsheep near evening campsite. Guards flock from predatory animals and from eating poisonous plants. May examine animals for signs of illness and administer vaccines, medications and insecticides according to instructions. May perform other farm or ranch chores related to the production of husbandry of sheep and/or goats on an incidental basis." Must have experience with 800 – 1000 head flocks. One reference may be required. ***Hours worked footnote: On call 24 hours 7 days a week*** (see attachment / para más detalles vea _____)																										
10 a. Descripción del Trabajo / Job Specifications [Summary of Material Job Specifications in SPANISH must be included inside this box] Cuidar rebaños de ovejas o cabros en campo abierto o cerrado. Cuidar rebaños con la ayuda de perros entrenados para dicho trabajo. Ayudar a mantener las manadas juntas para cuando llega la noche. Proteger a los rebaños de animales de rapiña. También cuidar que los rebaños no coman plantas venenosas. Examinar los rebaños en caso que haya señales de enfermedad. Administrar vacunas, medicinas e insecticidas de acuerdo con las instrucciones recibidas. Asistir durante la época de parición, esquila y trasquila. Dar de comer a los rebaños incluyendo comidas especiales o suplementarias. También, asistir con otros trabajos relacionados a la producción durante tiempos de emergencia. Se necesita tener experiencia con manadas entre 800 – 1000 cabezas. requerirá por lo menos una referencia. Nota: Horas de trabajo: 24 horas al día y 7 días de la semana***																										
11. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)																										

Crop Activities / Cultivos	Hourly Wage / Salario por Hora	Unit Price / Pago por Pieza / Unidad(es)	Special Payments (Bonus, etc.) / Pagos Especiales (Bono, ect.)	Deductions / Deducciones	Period of Payment / Periodo de Pago
SHEEPHERDER	\$800.00	\$ Monthly	NA	Social	Weekly / Semanal
NA	\$ NA	\$ NA	NA	Federal Tax Impuestos Federales	
NA	\$ NA	\$ NA	NA	State Tax Impuestos Estatales	Bi-weekly / cada 2 sem.
Board Provided	\$	\$		Meals (comidas) / Otro	Other / Otro

More Details About the Pay/Más Detalles Sobre el Pago:
Employer will withhold from domestic workers all legal and authorized deductions. Federal Tax deductions will not be withheld from the wage of foreign workers.
 (see attachment / para más detalles vea _____)

12. Transportation Arrangements / Arreglos de Transportación (Please explain)
Transportation/sub paid by employer- may deduct from wages until 50% contract completed. EOC Comp. RT PD
 (see attachment / para más detalles vea _____)

13. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, or pay workers for this (these) crop activity(ies)? Es la costumbre en el area de usar Contratistas Agricolas para reclutar, supervisar, transportar, dar vivienda, ó pagarle a los trabajadores en este/estos tipo(s) de cosecha(s)/sembrado(s)? Yes/Si No If you have checked yes, what is the FLC wage for each activity?/Si contesto "Si," cual es el salario que le paga al Contratista Agrícola para cada actividad?

14. Unemployment insurance provided / Seguro por Desempleo: Yes No
 15. Workers' compensation insurance provided / Indemnización por accidente de trabajo: Yes No
 16. Are tools provided at no charge to the workers? / ¿Se le proveen las herramientas de trabajo a los trabajadores sin cargo alguno? Yes No


17. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None")/Indique todo acuerdo o convenio con los propietarios del establecimiento o sus representantes con respecto al pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno")
NONE

18. List any strike, work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed. (If there are no such incidents, enter "None")/ Enumere todo huelga, paro o interrupción de las operaciones por parte de los empleados en el lugar de empleo. (Si no hay, indique "Ninguno")
NONE

19. Address of Order Holding Office (include Telephone number)/Dirección de la Oficina donde se Radicó la Oferta (incluya número de teléfono) DEPARTMENT OF EMPLOYMENT & TRAINING 2800 EAST ST. LOUIS LAS VEGAS, NV 89104 (775) 684-0320	20. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (Incluya numero de telefono) AUDREY HARRIS (775) 684-0320
---	--

21. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones de trabajo y contiene todos los materiales, terminus, y condiciones ofrecidos.
 Employer's Signature & Title/ Firma y Título del Empleador

08/11/2009



Dennis Richins Executive Director Western Range Association 801-4862004

READ CAREFULLY: In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truth-fullness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the One-Stop Career Center constitute a contractual job offer to which the One-Stop Career Center, ETA or a State agency is in any way a party.
 LEASE CUIDADOSAMENTE: En vista de su función básica establecida estatutariamente el Servicio de Empleo es un intercambio gratis de trabajo para juntar a los empleadores y trabajadores que buscan empleo, ni ETA ni las agencias del estado pueden garantizar la verdad y certeza de la información contenida en la Orden de Trabajo sometida por el Empleador. Tampoco, ninguna orden de trabajo aceptada o reclutada por el Servicio de Empleos constituye una oferta contractual de la cual ETA ni la agencia del Estado son parte

Public reporting burden for the ETA Form 790 is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. Respondents obligation to reply to these requirements are mandatory by 20 CFR 653.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing the burden can be sent to the U.S. Department of Labor, Office of Workforce Investment, Room S-4321, Washington, D.C. 20210 (Paperwork Reduction Project 1205-0134).

EXHIBIT 5

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

_____ :

ABEL CANTARO CASTILLO on :
 behalf of himself and :
 those similarly situated, :
 :
 Plaintiff, : Case No.
 : 3:16-cv-00237-MMD-VPC

vs. :

WESTERN RANGE ASSOCIATION: :
 :
 Defendant. :
 _____ :

Tuesday, August 11, 2020

30 (b) (6) deposition of MONICA YOUREE,
 taken virtually via Zoom, with the witness
 participating from the Law Offices of Woodburn &
 Wedge, 6100 Neil Road, Suite 500, Reno, Nevada,
 beginning at 11:02 a.m., before Ryan K. Black,
 a Registered professional Reporter, Certified
 Livenote Reporter and Notary Public in and for
 the Commonwealth of Pennsylvania.

1 after year and continued to be used by Western
2 Range until the changes you described happening
3 in 2020?

4 A. They may change, and I haven't
5 compared them from year to year to see what
6 changes were made, if any. They could be. I
7 mean, any 790 application can be different from
8 another.

9 Q. Are you aware of anything that Western
10 Range typically does change from 790 to 790?

11 MS. WINOGRAD: Object to the form of
12 the question. It's vague as to time.

13 THE WITNESS: I'm not aware of any.
14 You know, currently if a member, you know,
15 brings something up, then we change it. Or if a
16 member -- if something is made aware by our
17 office that needs to be changed, we change it.

18 BY MS. WEBBER:

19 Q. Okay. On the first page of Exhibit 8,
20 the first substantive page, I should say, after
21 the exhibit cover sheet, do you see Box 11 on
22 the first page of the Form 790?

23 A. Yes.

24 Q. That's anticipated hours of work per
25 week, right?

1 Melcher Gragirena in this particular case; is
2 that right?

3 A. That's correct.

4 Q. And has there been any significant
5 change in the way Western Range has filed form
6 I-129s to obtain H-2A visas between 2010 and the
7 present?

8 A. Besides the form has changed some or
9 looks different, but this is how we --
10 generally, this is how we continue to complete
11 this application.

12 Q. Okay. Now, for the three countries
13 you mentioned Western Range has a coordinator
14 in, Chile, Peru and Mexico, correct, --

15 A. Correct.

16 Q. -- Western Range chose the
17 coordinator, correct?

18 A. I believe so. Let me look.

19 MS. WINOGRAD: Objection to the form
20 of the question. Ms. Youree testified that
21 Western Range Association has coordinators in
22 Peru, Mexico and Chile, not that it was a
23 coordinator there.

24 MS. WEBBER: I didn't say otherwise.
25 I asked if it was correct that Western Range

1 court reporter. Let me just click that button.

2 And do you recognize what's been
3 marked as Exhibit 16 as the Training and
4 Employment Guidance Letter that governed sheep
5 herders brought in on the H-2A program from at
6 least 2011 through the end of 2015?

7 A. Yes.

8 Q. And turning to Page 4 of Exhibit 16, I
9 want to direct your attention to the numbered
10 Paragraph 7 at the bottom.

11 Is it correct that under the TEGL,
12 sheep herders were deemed to be operating in
13 unique circumstances, on call 24/7 in remote
14 locations, that, therefore, prevented the
15 monitoring and recording of hours actually
16 worked each day, as well as the time of day the
17 worker begins and ends each workday?

18 A. That looks to be what this document
19 says.

20 Q. And do you agree that Western -- the
21 herders that Western Range brought in through
22 the H-2A program for its members were, indeed,
23 working in circumstances where the rancher could
24 not monitor and record the hours actually worked
25 each day?

1 A. Yes.

2 Q. So the ranches would not have any
3 basis to state the number of hours that a herder
4 was actually working for them when out on the
5 range, correct?

6 A. What time frame?

7 Q. From 2010 through 2019, the ranch was
8 unable to monitor the hours actually worked by
9 the herders, and that was the justification
10 given for exempting the ranch from recording
11 those hours and tracking them the way other H-2A
12 employers have to track them, correct?

13 A. Correct.

14 Q. And you would say that was an accurate
15 description of the ranch's ability, or I should
16 say, inability to monitor the exact hours being
17 worked by the herders?

18 A. Can you say that one -- I'm sorry.
19 Can you ask that question one more time?

20 Q. Sure.

21 Would you agree it's accurate to say
22 that the ranches lacked the ability to monitor
23 the hours actually worked by the herders who
24 were out on the range?

25 A. I believe I said that it was hard

1 for them to track the hours that -- or it was
2 difficult to track hours, if not impossible, to
3 track hours while they were out on the range,
4 yes.

5 Q. You've referred a few times to herders
6 being on call 24/7, correct?

7 A. Correct.

8 Q. When you say on call, what do you mean
9 by on call?

10 A. That they're able to attend to the
11 need of the animals when -- when they're needed,
12 I suppose. And it doesn't matter what part of
13 the day that they're on call for, but that
14 they're able to go and attend and to do their
15 duties when those duties need to be done.

16 Q. And those duties involve being in
17 constant attendance on the herd, correct?

18 A. Correct. Yes.

19 Q. Sometimes, you know, people refer to,
20 you know, a doctor being on call, for example.
21 They may just be going about -- you know, they
22 may be at home watching TV, they may be out at a
23 restaurant, in our pre-COVID times. And they
24 just have to be available -- if a phone call
25 comes in, they may have to leave off what

1 Q. Okay. So if the herder's responsible
2 for making sure that predators don't prey on the
3 sheep, the herder really has to be attentive and
4 not go wandering off to, you know, find somebody
5 to play cards with?

6 A. Not necessarily. You know, some of
7 these herders have TV in their campers. Some of
8 them, you know, are close enough to another camp
9 that they go to that camp and visit. They,
10 typically, are alerted to issues from dogs
11 barking and making noise. And so it's not
12 -- it's not that, like I said, they have to be
13 right next to the herd all the time. And
14 they're also in remote locations, too. I mean,
15 if you're a doctor on call, you probably can't
16 go, you know, within so far of a distance from a
17 hospital, right? You can't go on a two-day trip
18 somewhere and wait for a phone call.

19 This would be similar to that.

20 Q. How quickly would a herder be expected
21 to respond to barking dogs, for example?

22 A. Well, if they're in earshot of the
23 barking dogs, then they should be able to
24 respond fairly quickly.

25 Q. In earshot of barking dogs means,

EXHIBIT 6

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
	CORRESPONDENCE SYMBOL OFLC
	DATE June 14, 2011

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 32-10

TO: CHICAGO NATIONAL PROCESSING CENTER PROGRAM DIRECTOR
STATE WORKFORCE AGENCY ADMINISTRATORS

FROM: JANE OATES *Jane Oates*
Assistant Secretary

SUBJECT: Special Procedures: Labor Certification Process for Employers Engaged in Shepherding and Goatherding Occupations under the H-2A Program

- 1. Purpose.** To transmit special procedures, as updated to reflect regulatory and administrative changes in the H-2A Program, for employers who apply to the Department of Labor (Department) to obtain labor certifications to hire temporary agricultural foreign workers to perform shepherding and/or goatherding activities.
- 2. References.** 20 CFR Part 655, Subpart B; 20 CFR Part 653, Subparts B and F; and 20 CFR Part 654, Subpart E; and Field Memorandum (FM) 24-01, Special Procedures: Labor Certification for Shepherders and Goatherders under the H-2A Program; FM 74-89, Special Procedures: Labor Certification for Shepherders under the H-2A Program; and ETA Handbook No. 385.
- 3. Background.** Historically, employers in several western states have utilized the provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1101, et seq., to import nonimmigrant foreign workers to work as shepherders and goatherders in conjunction with their ranching activities.

The unique occupational characteristics of shepherding (spending extended periods of time with grazing herds of sheep in isolated mountainous terrain; being on call to protect flocks from predators 24 hours a day, 7 days a week) have been recognized by the Department, the United States Citizenship and Immigration Service (USCIS), and Congress as significant factors in limiting the number of U.S. workers who might be available for and capable of performing these jobs.

During the early 1950's, Congress enacted three special laws authorizing the admission of a certain number of "foreign workers skilled in shepherding" for many of these jobs. Special privileges were granted with respect to the issuance of visas which enabled the foreign

RESCISSIONS FM 24-01	EXPIRATION DATE Continuing
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workers to gain entry into the U.S. on an expedited basis, provided that they were otherwise admissible into the U.S. for permanent residence.

During 1955 and 1956, the House Judiciary Committee (Committee), in response to requests from sheep ranchers, undertook an investigation to examine allegations that a number of foreign sheepherders and goatherders admitted under the special laws were leaving sheepherding shortly after arriving in the U.S., and were instead employed in other industries and occupations.

The Committee's investigation substantiated many of these allegations. In a report issued on February 14, 1957, the Committee stated that American employers and the sheep raising industry had not fully benefitted from the services of foreign sheepherders, as was intended by the special legislation. The Committee recommended that no additional special legislation be enacted to admit foreign sheepherders and also that the future importation of foreign sheepherders be governed by the H-2 temporary worker provisions of the INA and administered by the Immigration and Naturalization Service (INS) (now, USCIS) and the Department. H.R. Rep. No. 67, 85th Cong., 1st Session (1957).

Following the issuance of the Committee's report, Congress permitted the special legislation to expire. No additional legislation for sheepherders has been enacted to date. The labor certification program for temporary foreign sheepherders and goatherders was implemented consistent with the H-2 program administered by INS (now, USCIS) and the Department.

In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the INA and established the H-2A Program. In 1987, the Department issued an Interim Final Rule, promulgating the first H-2A regulations (the 1987 regulations) in accordance with IRCA. 54 FR 20496 (Jun. 1, 1987). The 1987 regulations provided for the administration of the H-2A Program by the Employment and Training Administration (ETA) Regional Administrators, and instituted procedures to offset the adverse effects of immigration on U.S. workers, procedures which did not exist until that time. Although neither the IRCA amendments nor the INA specifically address the employment of nonimmigrant foreign sheepherders and goatherders in the U.S., the Department's 1987 regulations established special procedures for certain occupations, as long as they did not deviate from the Secretary's statutory responsibility to determine U.S. worker availability and to make a determination as to the adverse effect of foreign workers on the wages and working conditions of U.S. workers.

After the promulgation of the 1987 regulations, the Department clarified precisely how and when certain new H-2A requirements and procedures would be applied to the sheepherder program. Subsequently, in 1989, the Department established special procedures for sheepherders and goatherders through FM 74-89. Due to the evolution of the H-2A Program, these special procedures were rescinded and new special procedures established by FM 24-01, which has been in use since August 1, 2001.

The 1987 regulations remained in effect, largely unchanged, until the Department promulgated new H-2A regulations on December 18, 2008. 73 FR 77110 (Dec. 18, 2008) (the 2008 Final Rule). The 2008 Final Rule implemented an attestation-based application

process and made several substantive changes to the program, but retained the special procedures concept. After the Department determined that the 2008 Final Rule did not meet H-2A Program policy objectives, the Department commenced another rulemaking process culminating in the publication of new H-2A regulations on February 12, 2010. 75 FR 6884 (Feb. 12, 2010) (the 2010 Final Rule). The 2010 Final Rule implements changes that affect special procedures for the occupations involved in sheep and goat herding. Section 20 CFR 655.102 (as amended by the 2010 Final Rule) provides the Office of Foreign Labor Certification (OFLC) Administrator with the authority to establish, continue, revise or revoke special procedures for processing H-2A applications, including those for sheepherders and goatherders, so long as those procedures do not deviate from statutory requirements under the INA.

This Training and Employment Guidance Letter (TEGL) updates the special procedures previously established for applications for occupations involved in sheepherding and goatherding to reflect organizational changes, in addition to new regulatory and policy objectives. It rescinds and replaces previous guidance disseminated under FM 24-01, Special Procedures: Labor Certification for Sheepherders and Goatherders Under the H-2A Program.

4. **Special Procedures.** Attachment A outlines special procedures for labor certification applications submitted by employers for occupations in sheepherding and goatherding under the H-2A Program. Attachment B outlines standards for mobile housing applicable to occupations in sheepherding and goatherding under the H-2A Program. Unless otherwise specified in Attachments A and B, applications submitted for these occupations must comply with the requirements for processing H-2A applications contained at 20 CFR Part 655, Subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR Parts 655, Subpart B, 653 Subparts B and F, and 654.
5. **Action Requested.** The Chicago National Processing Center (Chicago NPC) Program Director and the State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved with processing H-2A labor certification applications for sheepherders and/or goatherders. The revised special procedures will apply to all employer applications with a start date of need on or after October 1, 2011.
6. **Inquiries.** Questions from SWA staff should be directed to the Chicago NPC. Questions from the Chicago NPC staff should be directed to the Office of Foreign Labor Certification (OFLC) National Office.
7. **Attachments.**

Attachment A - Special Procedures: Labor Certification Process for Applications for Sheepherding and Goatherding Occupations under the H-2A Program

Attachment B - Standards for Mobile Housing Applicable to Sheepherders and Goatherders

ATTACHMENT A
Special Procedures: Labor Certification Process for Applications for Sheepherding and Goatherding Occupations under the H-2A Program

This document outlines special procedures for applications submitted by employers for sheepherding and/or goatherding occupations under the H-2A Program. Unless otherwise specified in this attachment, applications submitted for these occupations must comply with the requirements for processing H-2A applications outlined in 20 CFR Part 655, Subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR Part 655, Subpart B, 20 CFR Part 653, Subparts B and F, and 20 CFR Part 654.

I. PREFILING PROCEDURES

- A. Offered Wage Rate (20 CFR 655.120(a)). The Department is continuing a special variance to the offered wage rate requirements contained at 20 CFR 655.120(a). Because occupations involving sheepherding and/or goatherding are characterized by other than a reasonably regular workday or workweek, an employer must agree to offer, advertise in the course of its recruitment, and pay the monthly, weekly, or semi-monthly prevailing wage established by the OFLC Administrator for each state listed in an approved itinerary. As a condition of receiving an H-2A labor certification, an employer must comply with all applicable Federal, state and local employment-related laws and regulations, including the mandatory state minimum wage rates for the occupation.

In establishing the prevailing wage rate for sheepherding and/or goatherding, the Department uses findings from prevailing wage surveys conducted by SWAs in accordance with the procedures in the ETA Handbook No. 385, and consistent with the wage setting procedures historically applied to shepherd occupations in the Western states. SWAs are required to transmit wage rate findings covering sheepherding and/or goatherding to the OFLC between May 1st and June 1st of each calendar year. Following a review of the SWA wage rate findings, the OFLC will publish the new agricultural prevailing wage rates in a Federal Register notice with an immediate effective date.

In circumstances where a SWA is unable to produce a wage rate finding for an occupation, due to an inadequate sample size or another valid reason, the wage setting procedures allow the OFLC to issue a prevailing wage rate for that state based on the wage rate findings submitted by an adjoining or proximate SWA for the same or similar agricultural activities to ensure that the wages of similarly employed workers are not adversely affected.

If the OFLC cannot establish a wage rate by using comparable survey data from an adjoining or proximate SWA, the OFLC will give consideration to aggregating survey data for sheepherding and/or goatherding activities across states to create regional prevailing wage rates. When regional prevailing wages are considered, the OFLC may use the U.S. Department of Agriculture's (USDA) production or farm resource regions or other groupings of states used to conduct its Farm Labor Survey.

B. Job Orders and SWA Review (20 CFR 655.121).

1. Basic Process. An employer engaged in shepherding and/or goatherding activities is allowed to submit a single Agricultural and Food Processing Clearance Order, ETA Form 790 (job order), Office of Management and Budget (OMB) control number 1205-0134, and all appropriate attachments covering a planned itinerary of work in multiple states. If the job opportunity is located in more than one state, either within the same area of intended employment or multiple areas of intended employment, the employer must submit the job order and all attachments (including a detailed itinerary) to the SWA having jurisdiction over the anticipated worksite(s) where the work is expected to begin. The employer must submit the job order no more than 75 calendar days and no less than 60 calendar days before the employer's first date of need.

Unless otherwise specified in these special procedures, the job order submitted to the SWA must satisfy the requirements for agricultural clearance orders outlined in 20 CFR Part 653, subpart F and the requirements set forth in 20 CFR 655.122. The SWA will review the job order for regulatory compliance and will work with the employer to address any noted deficiencies. Upon clearance of the job order, the SWA must promptly place the job order in intrastate clearance and commence recruitment of U.S. workers.

The job order shall remain active until 50 percent of the work contract period has elapsed for all SWAs in possession of the employer's job order (including those receiving it in interstate clearance under 20 CFR 655.150), unless otherwise advised by the Chicago NPC.

2. Master Job Orders Filed by Associations. The Department is granting a waiver of the required time period and location(s) of filing job orders prepared by associations acting as a joint employer with its members. Where the job order is being prepared in connection with a future master application, the joint employer association will submit a single "master" job order directly to the Chicago NPC once each calendar year in accordance with a schedule approved by the Chicago NPC. Because of the unique nature of shepherding and/or goatherding work, and the historic shortage of domestic workers, an association is permitted to file a master job order on behalf of a number of its employer-members in more than two contiguous states as long as (a) the job order remains active on a year-round basis, (b) the job order contains the names, addresses, telephone numbers, and number of openings of each employer and identifying, with as much geographic specificity as possible and for each employer, all of the physical locations, directions, and estimated start and end dates of need where work will be performed, and (c) the association agrees to place with any of its employer-members any qualified U.S worker who applies for employment.

The Chicago NPC will review the job order for compliance with all regulatory requirements and work with the association to address any deficiencies in a manner that is consistent with 20 CFR 655.140 and 141. Once the job order is determined to meet all regulatory requirements, the Chicago NPC will issue a Notice of Acceptance consistent with 20 CFR 655.143, place a copy of the master job order on the

Department's national electronic job registry, and notify the association and all appropriate SWAs with jurisdiction over the anticipated worksites.

- C. Contents of Job Offers (20 CFR 655.122). Unless otherwise specified in this section, the content of job orders submitted to the SWAs and the Chicago NPC for shepherding and/or goatherding occupations must comply with all of the requirements of 20 CFR Part 655, Subpart B, 653 Subparts B and F, and 20 CFR Part 654.

1. Job duties, qualifications, and requirements.

Job Duties. Based on current industry practice, the SWA may rely on the following standard description of the duties to be performed by shepherders and/or goatherders:

Attends sheep and/or goat flock grazing on the range or pasture. Herds flock and rounds up strays using trained dogs. Beds down flock near evening campsite. Guards flock from predatory animals and from eating poisonous plants. Drenches sheep and/or goats. May examine animals for signs of illness and administer vaccines, medications and insecticides according to instructions. May assist in lambing, docking, and shearing. May perform other farm or ranch chores related to the production and husbandry of sheep and/or goats on an incidental basis.

Any additional job duties must be normal and accepted for the occupation, and the SWA and Chicago NPC have the authority to request supporting documentation substantiating the appropriateness of the duties prior to accepting the job order. Additionally, the SWA or Chicago NPC may request modifications to the job duties if additional information, such as climatic conditions and/or the size of flocks (e.g., open range bands of sheep are often 1,000 heads or more), necessitates the use of pack and saddle horses to reach the range in order to fully apprise U.S. workers of the nature of the work to be performed.

Experience. Due to the unique nature of the work to be performed, the job offer may specify that applicants possess up to 6 months of experience in shepherding or similar occupations involving the range tending or production of livestock covering multiple seasons and may require reference(s) to verify experience in performing these activities. Applicants must provide the name, address, and telephone number of any previous employer being used as a reference. The appropriateness of any other experience requirements must be substantiated by the employer and approved by the Chicago NPC.

Hours. The description of anticipated hours of work must show "on call for up to 24 hours per day, 7 days per week" in the job order. If an application filed for a shepherd or goatherder does not include the requirements of being on call 24 hours per day, 7 days per week, the Chicago NPC may not process the employer's application under the special procedures enumerated in this TEGL, and must instead require compliance with all the requirements of the H-2A regulations outlined in 20 CFR 655, Subpart B.

2. Housing. The employer must state in its job order that sufficient housing will be provided at no cost to H-2A workers and any workers in corresponding employment who are not reasonably able to return to their residence within the same day. Except for long-established standards for mobile housing as set out in Attachment B, all employer-provided housing must comply with requirements set out in 20 CFR 655.122(d) for the entire period of occupancy. An employer whose itinerary requires mobile housing may provide mobile housing to its workers.
3. Workers' compensation. The employer must provide workers' compensation insurance coverage as described in 20 CFR 655.122(e) in all states where sheepherding and/or goatherding work will be performed. Prior to the issuance of the Temporary Labor Certification, the employer must provide the Certifying Officer (CO) with proof of workers' compensation coverage, including the name of the insurance carrier, the insurance policy number, and proof of insurance for the dates of need, or if appropriate, proof of state law coverage for each state where the sheepherding and/or goatherding work will be performed. In the event that the current coverage will expire before the end of the certified work contract period or the insurance statement does not include all of the information required under the regulations at 20 CFR 655.122(e), the employer will be required to supplement its proof of workers' compensation for that state before a final determination is due. Where the employer's coverage will expire before the end of the certified work contract period, the employer may submit as proof of renewed coverage a signed and dated statement or letter showing proof of intent to renew and maintain coverage for the dates of need. The employer must maintain evidence that its workers' compensation was renewed, in the event the Department requests it.
4. Employer-provided items. Due to the remote and unique nature of the work to be performed, the employer must also specify in the job order and provide at no cost to workers an effective means of communicating with persons capable of responding to the worker's needs in case of an emergency. These means are necessary to perform the work and can include, but are not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems.
5. Meals. Based on long standing practice in the industry, the employer must provide its U.S. and H-2A workers free of charge either three prepared meals a day, when workers are in camp, or free and convenient cooking facilities and provision of food for the workers to prepare their own meals while in camp or on the range.
6. Transportation; daily subsistence. Based on long standing practice in the industry, the employer must advance inbound transportation and subsistence costs to both U.S. and H-2A workers being recruited and extend the same benefit to workers in corresponding employment, consistent with 20 CFR 655.122(h).
7. Earnings records and statements. The employer must keep accurate and adequate records with respect to the workers' earnings and furnish to the worker on or before each payday a statement of earnings. Because the unique circumstances of employing sheepherders and/or goatherders (i.e., on call 24/7 in remote locations) prevent the monitoring and recording of hours actually worked each day as well as the time the worker begins and ends each workday, the employer is exempt from

reporting on these two specific requirements at 20 CFR 655.122(j) and (k). However, all other regulatory requirements related to earnings records and statements apply.

8. Frequency of pay. The employer must state in the job offer the frequency with which the worker will be paid, which must be at least twice monthly or according to the prevailing practice in the area of intended employment, whichever is more frequent. Due to the unique circumstances of employing sheepherders and/or goatherders, the employer is authorized to pay the worker based on a monthly payment arrangement as long as the worker mutually agrees and the arrangement is reflected in the work contract. Employers must pay wages when due.

9. Period of Employment and Work Contract. The total period of employment (Item No. 9 on ETA Form 790) contained in a job offer must be for no more than one year.

Employers whose original certified period of employment is less than the maximum permissible duration, may negotiate a longer-term contract with an H-2A or a U.S. worker after workers arrive at the job site consistent with 20 CFR 655.170. An extension of the work contract period that is negotiated between the H-2A employer and a worker which would extend the work contract period beyond the 12 months permitted by the Department's H-2A regulations, requires that the employer obtain a new labor certification from the Department.

Short term extensions which do not exceed two weeks may be submitted directly to the Department of Homeland Security for approval. However, the employer must first submit for approval any change in the period of employment to the Chicago NPC, consistent with 20 CFR 655.170, if the change would result in an extension of the work contract period in excess of two weeks.

When a longer term contract is negotiated with a worker, the employer is not relieved of the responsibility for reimbursement to the worker for travel and subsistence expenses incurred in getting to the job site which were advanced by the employer and subsequently withheld from the worker's pay until 50 percent of the original contract period elapsed. These payments must be made at the 50 percent completion point of the original certified period of employment. The employer is also responsible for transportation and subsistence expenses from the place of employment if the worker successfully fulfills his/her obligations under the original certified terms of employment or is terminated without cause and has no subsequent H-2A employment. The employer must provide or pay for the worker's return transportation and subsistence whenever the employment relationship is severed after the completion of the original certified work contract period or where the worker is terminated without cause. Similarly, an employer is not relieved of its obligation to pay for return transportation and subsistence if an H-2A worker is displaced as a result of the employer's compliance with the 50 percent rule. Successful completion of the original certified work contract period or job order entitles the worker to return transportation and subsistence regardless of performance under any short or long-term extension of the contract.

II. APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION FILING PROCEDURES

A. Application Filing Requirements (20 CFR 655.130). An individual employer that desires to apply for temporary employment certification for one or more nonimmigrant foreign workers must file the following documentation with the Chicago NPC no less than 45 calendar days before the employer's date of need:

- ETA Form 9142 (OMB control number 1205-0466), Application for Temporary Employment Certification, and Appendix A.2;
- Copy of the ETA Form 790 and all attachments previously submitted to the SWA;
- A planned itinerary listing the names and contact information of all farmers/ranchers and identifying, with as much geographic specificity as possible and for each farmer/rancher, all of the physical locations and estimated start and end dates of need where work will be performed; and
- All other required documentation supporting the application.

B. Master Applications Filed by Associations. An association filing as a joint employer may submit a master application on behalf of a number of its employer-members in more than two contiguous States covering multiple start dates of employment as long as the application identifies the names, addresses, telephone numbers, directions to all work locations/itinerary, estimated dates of need, and the number of openings for each employer-member that will employ workers. The association may prepare, sign, and submit the Appendix A.2 on behalf of its members.

An association with a master job order on file with the Chicago NPC is not required to re-submit the ETA Form 790 and all attachments unless the association is requesting modifications. The Chicago NPC will verify that the master job order associated with a master application is available on the national electronic job registry and covers all the employer-members duly named on the ETA Form 9142. Any changes to the master job order and/or application must be reviewed and approved by the Chicago NPC. Any approved modifications to the master job order will be placed on the Department's national electronic job registry and notification provided to the association and all appropriate SWAs with jurisdiction over the anticipated worksites.

For both individual employer applications and master applications, the filing procedures at 20 CFR 655.130 – 655.135 apply to "initial" applications (i.e., where the employer is requesting a labor certification to hire a nonimmigrant foreign worker to fill a vacant position) as well as to "renewal" applications (i.e., where the employer is requesting certification for a position which is already held by a nonimmigrant foreign worker completing the first or second year of a planned 3-year work period with the employer).

III. POST-ACCEPTANCE REQUIREMENTS

A. Interstate clearance of job order. The Chicago NPC Certifying Officer will place a copy of the master job order on the Department's national electronic job registry, and notify the association and all appropriate SWAs with jurisdiction over the anticipated worksites to make available a copy of the master job order on their active files and initiate

recruitment of U.S. workers. This procedure applies to applications filed by an individual employer as well as an association and satisfies the agricultural clearance order requirements at 20 CFR 653, Subpart F.

- B. Newspaper advertisements. Because of the unique nature of shepherding and/or goatherding work, and the consistent lack of qualified applicants responding to newspaper advertisements, all applications filed by an individual employer and/or an association are exempt from the regulatory requirements at 20 CFR 655.151 to place advertisements in a newspaper of general circulation.
- C. Referrals of U.S. workers. In accordance with 20 CFR 655.155, SWAs may only refer for employment individuals who have been apprised of all the material terms and conditions of employment and have indicated, by accepting referral to the job opportunity, that he or she is qualified, able, willing, and available for employment. For master job orders, the association may accept referrals of U.S. workers, conduct interviews, and make hiring commitments on behalf of its employer-members. In such circumstances, the master job order must clearly explain how applicants will be considered for hire through the association, including the method(s) for contact (e.g., telephone, in person), hours and/or location(s) for conducting interviews, an indication that collect calls will be accepted, and whether referred applicants should report to the nearest local office of the SWA when they arrive in the area of intended employment. Employers who wish to conduct interviews must do so at little or no cost to the worker, in accordance with 20 CFR 655.152(j).

Because of the unique nature of master job orders, the association will need to determine if there is a job opening in the geographic area of the applicant's choice. The association will make every effort to place a qualified applicant with an employer-member in the geographic area of the applicant's choice within 3 working days of the telephone interview. If the applicant is determined to be qualified and the geographic assignment choice can be accommodated, the association, after receiving authorization or confirmation from the specific employer, will make a hiring commitment on behalf of the employer-member who has the job opening to which the applicant will be placed.

The association may also make available to applicants information on job openings with non-association employers, particularly in situations where the association is not able to readily accommodate the applicant's geographic choice of employment. However, receiving such a referral will not preclude the applicant from choosing a different geographic area covering an employer-member or from deferring a decision to accept a job offer until a job opening in the geographic area of choice becomes available with an employer-member. After the matter of geographic location/assignment is resolved, the association will provide notification to the SWA when the applicant has been hired and facilitate the arrangements necessary to ensure that transportation and subsistence are provided in advance to the worker by the association. The association will retain all documentation related to referrals of U.S. workers, interviews and the results of such actions for a period of 3 years and will make all materials related to the recruitment and consideration of U.S. applicants available to the Chicago NPC pursuant to a request for audit as required by 20 CFR 655.180(b).

IV. POST-CERTIFICATION: TRANSFER OF WORKERS

A. Authority

Pursuant to 8 U.S.C. 1188(d)(2), the Department's certification granted to the association may be used for the certified job opportunities of any of its members and such workers may be transferred among its members to perform the services for which the certification was granted. Although a worker may be transferred from one member to another member, the association may not transfer workers to any non-member employer or employer-members not disclosed on the master job order.

The employer must disclose in the job offer that workers may be transferred to any of its certified members and guarantee that workers will be notified at least 7 working days in advance of such transfer. When a worker objects to a transfer, the association will consider the worker's concerns and preferences. However, ultimate refusal on the part of a worker to a transfer may subject the worker to dismissal based on a lawful, job-related reason.

B. Notification to the DOL and SWA

To ensure the employer to whom a worker is being transferred has sufficient housing meeting the applicable standards, the association shall provide written notification to the SWA with jurisdiction over the area of intended employment and the Chicago NPC no less than 7 working days prior to the transfer. Such notification shall describe the details of the transfer, including the number and names of workers and employers affected and housing information. This notification will provide the SWA with time to make a determination regarding the suitability of the housing and, where such a transfer affects the available job openings of the association's employer member(s), allow the SWA and Chicago NPC to make appropriate modifications to the active master job order to reflect any changes in the employer's situation.

If the SWA determines that suitable housing is not available, the SWA shall provide written notification to the association and the Chicago NPC that the planned transfer shall be put in abeyance until the housing is determined by the SWA to be sufficient and meets the applicable standards, or the association agrees to transfer the worker to another employer where the SWA has issued a determination that housing is suitable.

C. Contractual Obligations

The employer who employs the newly transferred worker assumes the existing obligations of the work contract entered into with the previous employer including any multi-year contract negotiated with the worker. The association is responsible for maintaining and making available for inspection a copy of all work contracts for its employer-members. Where the worker is moved to another state with a different offered wage rate, the employer will be required to pay the worker the established prevailing wage for that state.

ATTACHMENT B
Standards for Mobile Housing Applicable to Shepherders and Goatherders

I. PROCEDURES

Occupations involving shepherding/goatherding generally require workers to live in remote housing of a mobile nature, rather than “a fixed-site farm, ranch or similar establishment.” This type of housing is typically referred to as mobile housing. For purposes of these special procedures, mobile housing is any housing that is capable of being moved from one area on the open range to another. The employer must provide housing at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.

Where housing for work performed on the range is provided, the regulations at 20 CFR 655.122(d)(2) require that such housing meet standards of the DOL Occupational Safety and Health Administration (OSHA). In the absence of such standards, range housing must meet guidelines issued by OFLC. Due to the fact that OSHA standards currently do not cover mobile housing, Section II of this attachment establishes the standards for determining the adequacy of employer-provided mobile housing for use on the range.

Both mobile housing and fixed-site farm or ranch housing may be self-certified by an employer. Employers must submit a signed statement to the SWA and the Chicago NPC with the application for labor certification assuring that the housing is available, sufficient to accommodate the number of workers being requested, and meets all applicable standards. However, any other type of housing used by an employer to house the workers engaged in shepherding/goatherding activity must meet the standards applicable to such housing under 20 CFR 655.122(d).

SWAs must develop and implement a schedule which ensures that each employer’s self-certified housing is inspected no less frequently than at least once every 3 years. These inspections may be performed either before or after a request is submitted for nonimmigrant workers on the open range. Before referring a worker who is entitled to such housing, the SWA office must ensure that the housing is available and has been inspected in accordance with the inspection schedule. If the SWA determines that an employer’s housing cannot be inspected in accordance with the inspection schedule or, when it is inspected, does not meet all the applicable standards, the Chicago NPC may deny the H-2A application in full or in part or require additional inspections in order to satisfy the regulatory requirement.

II. MOBILE HOUSING STANDARDS

An employer may use a mobile unit, camper, or other similar mobile vehicle for housing workers that meets the following standards:

A. Housing Site

Mobile housing sites shall be well drained and free from depressions in which water may stagnate.

B. Water Supply

1. An adequate and convenient supply of water that meets standards of the state health authority shall be provided. The amount of water provided must be enough for normal drinking, cooking, and bathing needs of each worker; and
2. Individual drinking cups shall be provided.

C. Excreta and Liquid Waste Disposal

1. Facilities shall be provided and maintained for effective disposal of excreta and liquid waste in accordance with requirements of the state health authority or involved Federal agency; and
2. If pits are used for disposal by burying of excreta and liquid waste, they shall be kept fly-tight when not filled in completely after each use. The maintenance of disposal pits must be in accordance with state and local health and sanitation requirements.

D. Housing Structure

1. Housing shall be structurally sound, in good repair, in sanitary condition and shall provide protection to occupants against the elements;
2. Housing, other than tents, shall have flooring constructed of rigid materials easy to clean and so located as to prevent ground and surface water from entering;
3. Each housing unit shall have at least one window which can be opened or skylight opening directly to the outdoors; and
4. Tents may be used where terrain and/or land regulations do not permit use of other more substantial mobile housing which provides facilities and protection closer in conformance with the Department's intent.

E. Heating

1. Where the climate in which the housing will be used is such that the safety and health of a worker requires heated living quarters, all such quarters shall have properly installed operable heating equipment which supplies adequate heat. In considering whether the heating equipment is acceptable, the Chicago NPC shall first determine if the housing will be located in a National Forest Wilderness Section as specified in the Wilderness Act (16 U.S.C. §§ 1131-1136). Such a location has a bearing on the type of equipment practicable, and whether any heavy equipment can be used. For example, the Wilderness Act (16 U.S.C. § 1133(c)) restricts certain motorized or mechanical transport on certain roads in wilderness areas. The U.S. Forest Service has regulations for this at 36 CFR Part 293. Aside from the above, other factors to consider in evaluating heating equipment are the severity of the weather and the types of protective clothing and bedding made available to the worker. If the climate in which the housing will be used is mild and not reasonably expected to drop below 50 degrees Fahrenheit continuously for 24 hours, no separate heating equipment is required if proper protective clothing and bedding are made available;

2. Any stoves or other sources of heat using combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. Portable electrical heaters may be used, and if approved by Underwriters' Laboratory, kerosene heaters may be used according to manufacturer's instructions. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove;
3. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe shall be made of fireproof material. A vented metal collar shall be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof; and
4. When a heating system has automatic controls, the controls shall be of the type which cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded.

F. Lighting

1. In areas where it is not feasible to provide electrical service to mobile housing, including tents, lanterns shall be provided (kerosene wick lights meet the definition of lantern); and
2. Lanterns, where used, shall be provided in a minimum ratio of one per occupant of each unit, including tents.

G. Bathing, Laundry and Hand Washing

Movable bathing, laundry and hand washing facilities shall be provided when it is not feasible to provide hot and cold water under pressure.

H. Food Storage

When mechanical refrigeration of food is not feasible, the worker must be provided with another means of keeping food fresh and preventing spoilage, such as a butane or propane gas refrigerator. Other proven methods of safeguarding fresh foods, such as salting, are acceptable.

I. Cooking and Eating Facilities

1. When workers or their families are permitted or required to cook in their individual unit, a space shall be provided with adequate lighting and ventilation; and
2. Wall surfaces next to all food preparation and cooking areas shall be of nonabsorbent, easy to clean material. Wall surfaces next to cooking areas shall be of fire-resistant material.

J. Garbage and Other Refuse

1. Durable, fly-tight, clean containers shall be provided to each housing unit, including tents, for storing garbage and other refuse; and
2. Provision shall be made for collecting or burying refuse, which includes garbage, at least twice a week or more often if necessary. Refuse disposal shall conform to Federal, state, or local law, whichever applies.

K. Insect and Rodent Control

Appropriate materials, including sprays, must be provided to aid housing occupants in combating insects, rodents and other vermin.

L. Sleeping Facilities

A separate sleeping unit shall be provided for each person, except in a family arrangement. Such a unit shall include a comfortable bed, cot, or bunk with a clean mattress. When filing an application for certification and only where it is demonstrated to the Certifying Officer that is impractical to set up a second sleeping unit, the employer may request a variance from the separate sleeping unit requirement to allow for a second worker to temporarily join the sheepherding/goatherding operation. The second worker may be temporarily housed in the same sleeping unit for no more than three consecutive days and the employer must supply a sleeping bag or bed roll free of charge.

M. Fire, Safety and First Aid

1. All units in which people sleep or eat shall be constructed and maintained according to applicable state or local fire and safety law;
2. No flammable or volatile liquid or materials shall be stored in or next to rooms used for living purposes, except for those needed for current household use;
3. Mobile housing units for range use must have a second means of escape. One of the two required means of escape must be a window which can be easily opened, a hatch, or other provision. It must be demonstrated that the custom combine worker would be able to crawl through the second exit without difficulty;
4. Tents are not required to have a second means of escape, except when large tents with walls of rigid material are used. A heater may be used in a tent if the heater is approved by a testing service, such as Underwriters' Laboratory, and if the tent is fireproof; and
5. Adequate fire extinguishers in good working condition and first aid kits shall be provided in the mobile housing.

EXHIBIT 7

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
	CORRESPONDENCE SYMBOL OFLC
	DATE June 14, 2011

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 32-10

TO: CHICAGO NATIONAL PROCESSING CENTER PROGRAM DIRECTOR
 STATE WORKFORCE AGENCY ADMINISTRATORS

FROM: JANE OATES *Jane Oates*
 Assistant Secretary

SUBJECT: Special Procedures: Labor Certification Process for Employers Engaged in
 Shepherding and Goatherding Occupations under the H-2A Program

- 1. Purpose.** To transmit special procedures, as updated to reflect regulatory and administrative changes in the H-2A Program, for employers who apply to the Department of Labor (Department) to obtain labor certifications to hire temporary agricultural foreign workers to perform shepherding and/or goatherding activities.
- 2. References.** 20 CFR Part 655, Subpart B; 20 CFR Part 653, Subparts B and F; and 20 CFR Part 654, Subpart E; and Field Memorandum (FM) 24-01, Special Procedures: Labor Certification for Shepherders and Goatherders under the H-2A Program; FM 74-89, Special Procedures: Labor Certification for Shepherders under the H-2A Program; and ETA Handbook No. 385.
- 3. Background.** Historically, employers in several western states have utilized the provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1101, et seq., to import nonimmigrant foreign workers to work as shepherders and goatherders in conjunction with their ranching activities.

The unique occupational characteristics of shepherding (spending extended periods of time with grazing herds of sheep in isolated mountainous terrain; being on call to protect flocks from predators 24 hours a day, 7 days a week) have been recognized by the Department, the United States Citizenship and Immigration Service (USCIS), and Congress as significant factors in limiting the number of U.S. workers who might be available for and capable of performing these jobs.

During the early 1950's, Congress enacted three special laws authorizing the admission of a certain number of "foreign workers skilled in shepherding" for many of these jobs. Special privileges were granted with respect to the issuance of visas which enabled the foreign

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workers to gain entry into the U.S. on an expedited basis, provided that they were otherwise admissible into the U.S. for permanent residence.

During 1955 and 1956, the House Judiciary Committee (Committee), in response to requests from sheep ranchers, undertook an investigation to examine allegations that a number of foreign sheepherders and goatherders admitted under the special laws were leaving sheepherding shortly after arriving in the U.S., and were instead employed in other industries and occupations.

The Committee's investigation substantiated many of these allegations. In a report issued on February 14, 1957, the Committee stated that American employers and the sheep raising industry had not fully benefitted from the services of foreign sheepherders, as was intended by the special legislation. The Committee recommended that no additional special legislation be enacted to admit foreign sheepherders and also that the future importation of foreign sheepherders be governed by the H-2 temporary worker provisions of the INA and administered by the Immigration and Naturalization Service (INS) (now, USCIS) and the Department. H.R. Rep. No. 67, 85th Cong., 1st Session (1957).

Following the issuance of the Committee's report, Congress permitted the special legislation to expire. No additional legislation for sheepherders has been enacted to date. The labor certification program for temporary foreign sheepherders and goatherders was implemented consistent with the H-2 program administered by INS (now, USCIS) and the Department.

In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the INA and established the H-2A Program. In 1987, the Department issued an Interim Final Rule, promulgating the first H-2A regulations (the 1987 regulations) in accordance with IRCA. 54 FR 20496 (Jun. 1, 1987). The 1987 regulations provided for the administration of the H-2A Program by the Employment and Training Administration (ETA) Regional Administrators, and instituted procedures to offset the adverse effects of immigration on U.S. workers, procedures which did not exist until that time. Although neither the IRCA amendments nor the INA specifically address the employment of nonimmigrant foreign sheepherders and goatherders in the U.S., the Department's 1987 regulations established special procedures for certain occupations, as long as they did not deviate from the Secretary's statutory responsibility to determine U.S. worker availability and to make a determination as to the adverse effect of foreign workers on the wages and working conditions of U.S. workers.

After the promulgation of the 1987 regulations, the Department clarified precisely how and when certain new H-2A requirements and procedures would be applied to the sheepherder program. Subsequently, in 1989, the Department established special procedures for sheepherders and goatherders through FM 74-89. Due to the evolution of the H-2A Program, these special procedures were rescinded and new special procedures established by FM 24-01, which has been in use since August 1, 2001.

The 1987 regulations remained in effect, largely unchanged, until the Department promulgated new H-2A regulations on December 18, 2008. 73 FR 77110 (Dec. 18, 2008) (the 2008 Final Rule). The 2008 Final Rule implemented an attestation-based application

process and made several substantive changes to the program, but retained the special procedures concept. After the Department determined that the 2008 Final Rule did not meet H-2A Program policy objectives, the Department commenced another rulemaking process culminating in the publication of new H-2A regulations on February 12, 2010. 75 FR 6884 (Feb. 12, 2010) (the 2010 Final Rule). The 2010 Final Rule implements changes that affect special procedures for the occupations involved in sheep and goat herding. Section 20 CFR 655.102 (as amended by the 2010 Final Rule) provides the Office of Foreign Labor Certification (OFLC) Administrator with the authority to establish, continue, revise or revoke special procedures for processing H-2A applications, including those for sheepherders and goatherders, so long as those procedures do not deviate from statutory requirements under the INA.

This Training and Employment Guidance Letter (TEGL) updates the special procedures previously established for applications for occupations involved in sheepherding and goatherding to reflect organizational changes, in addition to new regulatory and policy objectives. It rescinds and replaces previous guidance disseminated under FM 24-01, Special Procedures: Labor Certification for Sheepherders and Goatherders Under the H-2A Program.

4. **Special Procedures.** Attachment A outlines special procedures for labor certification applications submitted by employers for occupations in sheepherding and goatherding under the H-2A Program. Attachment B outlines standards for mobile housing applicable to occupations in sheepherding and goatherding under the H-2A Program. Unless otherwise specified in Attachments A and B, applications submitted for these occupations must comply with the requirements for processing H-2A applications contained at 20 CFR Part 655, Subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR Parts 655, Subpart B, 653 Subparts B and F, and 654.
5. **Action Requested.** The Chicago National Processing Center (Chicago NPC) Program Director and the State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved with processing H-2A labor certification applications for sheepherders and/or goatherders. The revised special procedures will apply to all employer applications with a start date of need on or after October 1, 2011.
6. **Inquiries.** Questions from SWA staff should be directed to the Chicago NPC. Questions from the Chicago NPC staff should be directed to the Office of Foreign Labor Certification (OFLC) National Office.
7. **Attachments.**

Attachment A - Special Procedures: Labor Certification Process for Applications for Sheepherding and Goatherding Occupations under the H-2A Program

Attachment B - Standards for Mobile Housing Applicable to Sheepherders and Goatherders

ATTACHMENT A
Special Procedures: Labor Certification Process for Applications for Sheepherding and Goatherding Occupations under the H-2A Program

This document outlines special procedures for applications submitted by employers for sheepherding and/or goatherding occupations under the H-2A Program. Unless otherwise specified in this attachment, applications submitted for these occupations must comply with the requirements for processing H-2A applications outlined in 20 CFR Part 655, Subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR Part 655, Subpart B, 20 CFR Part 653, Subparts B and F, and 20 CFR Part 654.

I. PREFILING PROCEDURES

- A. Offered Wage Rate (20 CFR 655.120(a)). The Department is continuing a special variance to the offered wage rate requirements contained at 20 CFR 655.120(a). Because occupations involving sheepherding and/or goatherding are characterized by other than a reasonably regular workday or workweek, an employer must agree to offer, advertise in the course of its recruitment, and pay the monthly, weekly, or semi-monthly prevailing wage established by the OFLC Administrator for each state listed in an approved itinerary. As a condition of receiving an H-2A labor certification, an employer must comply with all applicable Federal, state and local employment-related laws and regulations, including the mandatory state minimum wage rates for the occupation.

In establishing the prevailing wage rate for sheepherding and/or goatherding, the Department uses findings from prevailing wage surveys conducted by SWAs in accordance with the procedures in the ETA Handbook No. 385, and consistent with the wage setting procedures historically applied to shepherd occupations in the Western states. SWAs are required to transmit wage rate findings covering sheepherding and/or goatherding to the OFLC between May 1st and June 1st of each calendar year. Following a review of the SWA wage rate findings, the OFLC will publish the new agricultural prevailing wage rates in a Federal Register notice with an immediate effective date.

In circumstances where a SWA is unable to produce a wage rate finding for an occupation, due to an inadequate sample size or another valid reason, the wage setting procedures allow the OFLC to issue a prevailing wage rate for that state based on the wage rate findings submitted by an adjoining or proximate SWA for the same or similar agricultural activities to ensure that the wages of similarly employed workers are not adversely affected.

If the OFLC cannot establish a wage rate by using comparable survey data from an adjoining or proximate SWA, the OFLC will give consideration to aggregating survey data for sheepherding and/or goatherding activities across states to create regional prevailing wage rates. When regional prevailing wages are considered, the OFLC may use the U.S. Department of Agriculture's (USDA) production or farm resource regions or other groupings of states used to conduct its Farm Labor Survey.

B. Job Orders and SWA Review (20 CFR 655.121).

1. Basic Process. An employer engaged in shepherding and/or goatherding activities is allowed to submit a single Agricultural and Food Processing Clearance Order, ETA Form 790 (job order), Office of Management and Budget (OMB) control number 1205-0134, and all appropriate attachments covering a planned itinerary of work in multiple states. If the job opportunity is located in more than one state, either within the same area of intended employment or multiple areas of intended employment, the employer must submit the job order and all attachments (including a detailed itinerary) to the SWA having jurisdiction over the anticipated worksite(s) where the work is expected to begin. The employer must submit the job order no more than 75 calendar days and no less than 60 calendar days before the employer's first date of need.

Unless otherwise specified in these special procedures, the job order submitted to the SWA must satisfy the requirements for agricultural clearance orders outlined in 20 CFR Part 653, subpart F and the requirements set forth in 20 CFR 655.122. The SWA will review the job order for regulatory compliance and will work with the employer to address any noted deficiencies. Upon clearance of the job order, the SWA must promptly place the job order in intrastate clearance and commence recruitment of U.S. workers.

The job order shall remain active until 50 percent of the work contract period has elapsed for all SWAs in possession of the employer's job order (including those receiving it in interstate clearance under 20 CFR 655.150), unless otherwise advised by the Chicago NPC.

2. Master Job Orders Filed by Associations. The Department is granting a waiver of the required time period and location(s) of filing job orders prepared by associations acting as a joint employer with its members. Where the job order is being prepared in connection with a future master application, the joint employer association will submit a single "master" job order directly to the Chicago NPC once each calendar year in accordance with a schedule approved by the Chicago NPC. Because of the unique nature of shepherding and/or goatherding work, and the historic shortage of domestic workers, an association is permitted to file a master job order on behalf of a number of its employer-members in more than two contiguous states as long as (a) the job order remains active on a year-round basis, (b) the job order contains the names, addresses, telephone numbers, and number of openings of each employer and identifying, with as much geographic specificity as possible and for each employer, all of the physical locations, directions, and estimated start and end dates of need where work will be performed, and (c) the association agrees to place with any of its employer-members any qualified U.S worker who applies for employment.

The Chicago NPC will review the job order for compliance with all regulatory requirements and work with the association to address any deficiencies in a manner that is consistent with 20 CFR 655.140 and 141. Once the job order is determined to meet all regulatory requirements, the Chicago NPC will issue a Notice of Acceptance consistent with 20 CFR 655.143, place a copy of the master job order on the

Department's national electronic job registry, and notify the association and all appropriate SWAs with jurisdiction over the anticipated worksites.

- C. Contents of Job Offers (20 CFR 655.122). Unless otherwise specified in this section, the content of job orders submitted to the SWAs and the Chicago NPC for shepherding and/or goatherding occupations must comply with all of the requirements of 20 CFR Part 655, Subpart B, 653 Subparts B and F, and 20 CFR Part 654.

1. Job duties, qualifications, and requirements.

Job Duties. Based on current industry practice, the SWA may rely on the following standard description of the duties to be performed by shepherders and/or goatherders:

Attends sheep and/or goat flock grazing on the range or pasture. Herds flock and rounds up strays using trained dogs. Beds down flock near evening campsite. Guards flock from predatory animals and from eating poisonous plants. Drenches sheep and/or goats. May examine animals for signs of illness and administer vaccines, medications and insecticides according to instructions. May assist in lambing, docking, and shearing. May perform other farm or ranch chores related to the production and husbandry of sheep and/or goats on an incidental basis.

Any additional job duties must be normal and accepted for the occupation, and the SWA and Chicago NPC have the authority to request supporting documentation substantiating the appropriateness of the duties prior to accepting the job order. Additionally, the SWA or Chicago NPC may request modifications to the job duties if additional information, such as climatic conditions and/or the size of flocks (e.g., open range bands of sheep are often 1,000 heads or more), necessitates the use of pack and saddle horses to reach the range in order to fully apprise U.S. workers of the nature of the work to be performed.

Experience. Due to the unique nature of the work to be performed, the job offer may specify that applicants possess up to 6 months of experience in shepherding or similar occupations involving the range tending or production of livestock covering multiple seasons and may require reference(s) to verify experience in performing these activities. Applicants must provide the name, address, and telephone number of any previous employer being used as a reference. The appropriateness of any other experience requirements must be substantiated by the employer and approved by the Chicago NPC.

Hours. The description of anticipated hours of work must show "on call for up to 24 hours per day, 7 days per week" in the job order. If an application filed for a shepherd or goatherder does not include the requirements of being on call 24 hours per day, 7 days per week, the Chicago NPC may not process the employer's application under the special procedures enumerated in this TEGL, and must instead require compliance with all the requirements of the H-2A regulations outlined in 20 CFR 655, Subpart B.

2. Housing. The employer must state in its job order that sufficient housing will be provided at no cost to H-2A workers and any workers in corresponding employment who are not reasonably able to return to their residence within the same day. Except for long-established standards for mobile housing as set out in Attachment B, all employer-provided housing must comply with requirements set out in 20 CFR 655.122(d) for the entire period of occupancy. An employer whose itinerary requires mobile housing may provide mobile housing to its workers.
3. Workers' compensation. The employer must provide workers' compensation insurance coverage as described in 20 CFR 655.122(e) in all states where sheepherding and/or goatherding work will be performed. Prior to the issuance of the Temporary Labor Certification, the employer must provide the Certifying Officer (CO) with proof of workers' compensation coverage, including the name of the insurance carrier, the insurance policy number, and proof of insurance for the dates of need, or if appropriate, proof of state law coverage for each state where the sheepherding and/or goatherding work will be performed. In the event that the current coverage will expire before the end of the certified work contract period or the insurance statement does not include all of the information required under the regulations at 20 CFR 655.122(e), the employer will be required to supplement its proof of workers' compensation for that state before a final determination is due. Where the employer's coverage will expire before the end of the certified work contract period, the employer may submit as proof of renewed coverage a signed and dated statement or letter showing proof of intent to renew and maintain coverage for the dates of need. The employer must maintain evidence that its workers' compensation was renewed, in the event the Department requests it.
4. Employer-provided items. Due to the remote and unique nature of the work to be performed, the employer must also specify in the job order and provide at no cost to workers an effective means of communicating with persons capable of responding to the worker's needs in case of an emergency. These means are necessary to perform the work and can include, but are not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems.
5. Meals. Based on long standing practice in the industry, the employer must provide its U.S. and H-2A workers free of charge either three prepared meals a day, when workers are in camp, or free and convenient cooking facilities and provision of food for the workers to prepare their own meals while in camp or on the range.
6. Transportation; daily subsistence. Based on long standing practice in the industry, the employer must advance inbound transportation and subsistence costs to both U.S. and H-2A workers being recruited and extend the same benefit to workers in corresponding employment, consistent with 20 CFR 655.122(h).
7. Earnings records and statements. The employer must keep accurate and adequate records with respect to the workers' earnings and furnish to the worker on or before each payday a statement of earnings. Because the unique circumstances of employing sheepherders and/or goatherders (i.e., on call 24/7 in remote locations) prevent the monitoring and recording of hours actually worked each day as well as the time the worker begins and ends each workday, the employer is exempt from

reporting on these two specific requirements at 20 CFR 655.122(j) and (k). However, all other regulatory requirements related to earnings records and statements apply.

8. Frequency of pay. The employer must state in the job offer the frequency with which the worker will be paid, which must be at least twice monthly or according to the prevailing practice in the area of intended employment, whichever is more frequent. Due to the unique circumstances of employing sheepherders and/or goatherders, the employer is authorized to pay the worker based on a monthly payment arrangement as long as the worker mutually agrees and the arrangement is reflected in the work contract. Employers must pay wages when due.
9. Period of Employment and Work Contract. The total period of employment (Item No. 9 on ETA Form 790) contained in a job offer must be for no more than one year.

Employers whose original certified period of employment is less than the maximum permissible duration, may negotiate a longer-term contract with an H-2A or a U.S. worker after workers arrive at the job site consistent with 20 CFR 655.170. An extension of the work contract period that is negotiated between the H-2A employer and a worker which would extend the work contract period beyond the 12 months permitted by the Department's H-2A regulations, requires that the employer obtain a new labor certification from the Department.

Short term extensions which do not exceed two weeks may be submitted directly to the Department of Homeland Security for approval. However, the employer must first submit for approval any change in the period of employment to the Chicago NPC, consistent with 20 CFR 655.170, if the change would result in an extension of the work contract period in excess of two weeks.

When a longer term contract is negotiated with a worker, the employer is not relieved of the responsibility for reimbursement to the worker for travel and subsistence expenses incurred in getting to the job site which were advanced by the employer and subsequently withheld from the worker's pay until 50 percent of the original contract period elapsed. These payments must be made at the 50 percent completion point of the original certified period of employment. The employer is also responsible for transportation and subsistence expenses from the place of employment if the worker successfully fulfills his/her obligations under the original certified terms of employment or is terminated without cause and has no subsequent H-2A employment. The employer must provide or pay for the worker's return transportation and subsistence whenever the employment relationship is severed after the completion of the original certified work contract period or where the worker is terminated without cause. Similarly, an employer is not relieved of its obligation to pay for return transportation and subsistence if an H-2A worker is displaced as a result of the employer's compliance with the 50 percent rule. Successful completion of the original certified work contract period or job order entitles the worker to return transportation and subsistence regardless of performance under any short or long-term extension of the contract.

II. APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION FILING PROCEDURES

A. Application Filing Requirements (20 CFR 655.130). An individual employer that desires to apply for temporary employment certification for one or more nonimmigrant foreign workers must file the following documentation with the Chicago NPC no less than 45 calendar days before the employer's date of need:

- ETA Form 9142 (OMB control number 1205-0466), Application for Temporary Employment Certification, and Appendix A.2;
- Copy of the ETA Form 790 and all attachments previously submitted to the SWA;
- A planned itinerary listing the names and contact information of all farmers/ranchers and identifying, with as much geographic specificity as possible and for each farmer/rancher, all of the physical locations and estimated start and end dates of need where work will be performed; and
- All other required documentation supporting the application.

B. Master Applications Filed by Associations. An association filing as a joint employer may submit a master application on behalf of a number of its employer-members in more than two contiguous States covering multiple start dates of employment as long as the application identifies the names, addresses, telephone numbers, directions to all work locations/itinerary, estimated dates of need, and the number of openings for each employer-member that will employ workers. The association may prepare, sign, and submit the Appendix A.2 on behalf of its members.

An association with a master job order on file with the Chicago NPC is not required to re-submit the ETA Form 790 and all attachments unless the association is requesting modifications. The Chicago NPC will verify that the master job order associated with a master application is available on the national electronic job registry and covers all the employer-members duly named on the ETA Form 9142. Any changes to the master job order and/or application must be reviewed and approved by the Chicago NPC. Any approved modifications to the master job order will be placed on the Department's national electronic job registry and notification provided to the association and all appropriate SWAs with jurisdiction over the anticipated worksites.

For both individual employer applications and master applications, the filing procedures at 20 CFR 655.130 – 655.135 apply to "initial" applications (i.e., where the employer is requesting a labor certification to hire a nonimmigrant foreign worker to fill a vacant position) as well as to "renewal" applications (i.e., where the employer is requesting certification for a position which is already held by a nonimmigrant foreign worker completing the first or second year of a planned 3-year work period with the employer).

III. POST-ACCEPTANCE REQUIREMENTS

A. Interstate clearance of job order. The Chicago NPC Certifying Officer will place a copy of the master job order on the Department's national electronic job registry, and notify the association and all appropriate SWAs with jurisdiction over the anticipated worksites to make available a copy of the master job order on their active files and initiate

recruitment of U.S. workers. This procedure applies to applications filed by an individual employer as well as an association and satisfies the agricultural clearance order requirements at 20 CFR 653, Subpart F.

- B. Newspaper advertisements. Because of the unique nature of shepherding and/or goatherding work, and the consistent lack of qualified applicants responding to newspaper advertisements, all applications filed by an individual employer and/or an association are exempt from the regulatory requirements at 20 CFR 655.151 to place advertisements in a newspaper of general circulation.
- C. Referrals of U.S. workers. In accordance with 20 CFR 655.155, SWAs may only refer for employment individuals who have been apprised of all the material terms and conditions of employment and have indicated, by accepting referral to the job opportunity, that he or she is qualified, able, willing, and available for employment. For master job orders, the association may accept referrals of U.S. workers, conduct interviews, and make hiring commitments on behalf of its employer-members. In such circumstances, the master job order must clearly explain how applicants will be considered for hire through the association, including the method(s) for contact (e.g., telephone, in person), hours and/or location(s) for conducting interviews, an indication that collect calls will be accepted, and whether referred applicants should report to the nearest local office of the SWA when they arrive in the area of intended employment. Employers who wish to conduct interviews must do so at little or no cost to the worker, in accordance with 20 CFR 655.152(j).

Because of the unique nature of master job orders, the association will need to determine if there is a job opening in the geographic area of the applicant's choice. The association will make every effort to place a qualified applicant with an employer-member in the geographic area of the applicant's choice within 3 working days of the telephone interview. If the applicant is determined to be qualified and the geographic assignment choice can be accommodated, the association, after receiving authorization or confirmation from the specific employer, will make a hiring commitment on behalf of the employer-member who has the job opening to which the applicant will be placed.

The association may also make available to applicants information on job openings with non-association employers, particularly in situations where the association is not able to readily accommodate the applicant's geographic choice of employment. However, receiving such a referral will not preclude the applicant from choosing a different geographic area covering an employer-member or from deferring a decision to accept a job offer until a job opening in the geographic area of choice becomes available with an employer-member. After the matter of geographic location/assignment is resolved, the association will provide notification to the SWA when the applicant has been hired and facilitate the arrangements necessary to ensure that transportation and subsistence are provided in advance to the worker by the association. The association will retain all documentation related to referrals of U.S. workers, interviews and the results of such actions for a period of 3 years and will make all materials related to the recruitment and consideration of U.S. applicants available to the Chicago NPC pursuant to a request for audit as required by 20 CFR 655.180(b).

IV. POST-CERTIFICATION: TRANSFER OF WORKERS

A. Authority

Pursuant to 8 U.S.C. 1188(d)(2), the Department's certification granted to the association may be used for the certified job opportunities of any of its members and such workers may be transferred among its members to perform the services for which the certification was granted. Although a worker may be transferred from one member to another member, the association may not transfer workers to any non-member employer or employer-members not disclosed on the master job order.

The employer must disclose in the job offer that workers may be transferred to any of its certified members and guarantee that workers will be notified at least 7 working days in advance of such transfer. When a worker objects to a transfer, the association will consider the worker's concerns and preferences. However, ultimate refusal on the part of a worker to a transfer may subject the worker to dismissal based on a lawful, job-related reason.

B. Notification to the DOL and SWA

To ensure the employer to whom a worker is being transferred has sufficient housing meeting the applicable standards, the association shall provide written notification to the SWA with jurisdiction over the area of intended employment and the Chicago NPC no less than 7 working days prior to the transfer. Such notification shall describe the details of the transfer, including the number and names of workers and employers affected and housing information. This notification will provide the SWA with time to make a determination regarding the suitability of the housing and, where such a transfer affects the available job openings of the association's employer member(s), allow the SWA and Chicago NPC to make appropriate modifications to the active master job order to reflect any changes in the employer's situation.

If the SWA determines that suitable housing is not available, the SWA shall provide written notification to the association and the Chicago NPC that the planned transfer shall be put in abeyance until the housing is determined by the SWA to be sufficient and meets the applicable standards, or the association agrees to transfer the worker to another employer where the SWA has issued a determination that housing is suitable.

C. Contractual Obligations

The employer who employs the newly transferred worker assumes the existing obligations of the work contract entered into with the previous employer including any multi-year contract negotiated with the worker. The association is responsible for maintaining and making available for inspection a copy of all work contracts for its employer-members. Where the worker is moved to another state with a different offered wage rate, the employer will be required to pay the worker the established prevailing wage for that state.

ATTACHMENT B
Standards for Mobile Housing Applicable to Shepherders and Goatherders

I. PROCEDURES

Occupations involving shepherding/goatherding generally require workers to live in remote housing of a mobile nature, rather than “a fixed-site farm, ranch or similar establishment.” This type of housing is typically referred to as mobile housing. For purposes of these special procedures, mobile housing is any housing that is capable of being moved from one area on the open range to another. The employer must provide housing at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.

Where housing for work performed on the range is provided, the regulations at 20 CFR 655.122(d)(2) require that such housing meet standards of the DOL Occupational Safety and Health Administration (OSHA). In the absence of such standards, range housing must meet guidelines issued by OFLC. Due to the fact that OSHA standards currently do not cover mobile housing, Section II of this attachment establishes the standards for determining the adequacy of employer-provided mobile housing for use on the range.

Both mobile housing and fixed-site farm or ranch housing may be self-certified by an employer. Employers must submit a signed statement to the SWA and the Chicago NPC with the application for labor certification assuring that the housing is available, sufficient to accommodate the number of workers being requested, and meets all applicable standards. However, any other type of housing used by an employer to house the workers engaged in shepherding/goatherding activity must meet the standards applicable to such housing under 20 CFR 655.122(d).

SWAs must develop and implement a schedule which ensures that each employer’s self-certified housing is inspected no less frequently than at least once every 3 years. These inspections may be performed either before or after a request is submitted for nonimmigrant workers on the open range. Before referring a worker who is entitled to such housing, the SWA office must ensure that the housing is available and has been inspected in accordance with the inspection schedule. If the SWA determines that an employer’s housing cannot be inspected in accordance with the inspection schedule or, when it is inspected, does not meet all the applicable standards, the Chicago NPC may deny the H-2A application in full or in part or require additional inspections in order to satisfy the regulatory requirement.

II. MOBILE HOUSING STANDARDS

An employer may use a mobile unit, camper, or other similar mobile vehicle for housing workers that meets the following standards:

A. Housing Site

Mobile housing sites shall be well drained and free from depressions in which water may stagnate.

B. Water Supply

1. An adequate and convenient supply of water that meets standards of the state health authority shall be provided. The amount of water provided must be enough for normal drinking, cooking, and bathing needs of each worker; and
2. Individual drinking cups shall be provided.

C. Excreta and Liquid Waste Disposal

1. Facilities shall be provided and maintained for effective disposal of excreta and liquid waste in accordance with requirements of the state health authority or involved Federal agency; and
2. If pits are used for disposal by burying of excreta and liquid waste, they shall be kept fly-tight when not filled in completely after each use. The maintenance of disposal pits must be in accordance with state and local health and sanitation requirements.

D. Housing Structure

1. Housing shall be structurally sound, in good repair, in sanitary condition and shall provide protection to occupants against the elements;
2. Housing, other than tents, shall have flooring constructed of rigid materials easy to clean and so located as to prevent ground and surface water from entering;
3. Each housing unit shall have at least one window which can be opened or skylight opening directly to the outdoors; and
4. Tents may be used where terrain and/or land regulations do not permit use of other more substantial mobile housing which provides facilities and protection closer in conformance with the Department's intent.

E. Heating

1. Where the climate in which the housing will be used is such that the safety and health of a worker requires heated living quarters, all such quarters shall have properly installed operable heating equipment which supplies adequate heat. In considering whether the heating equipment is acceptable, the Chicago NPC shall first determine if the housing will be located in a National Forest Wilderness Section as specified in the Wilderness Act (16 U.S.C. §§ 1131-1136). Such a location has a bearing on the type of equipment practicable, and whether any heavy equipment can be used. For example, the Wilderness Act (16 U.S.C. § 1133(c)) restricts certain motorized or mechanical transport on certain roads in wilderness areas. The U.S. Forest Service has regulations for this at 36 CFR Part 293. Aside from the above, other factors to consider in evaluating heating equipment are the severity of the weather and the types of protective clothing and bedding made available to the worker. If the climate in which the housing will be used is mild and not reasonably expected to drop below 50 degrees Fahrenheit continuously for 24 hours, no separate heating equipment is required if proper protective clothing and bedding are made available;

2. Any stoves or other sources of heat using combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. Portable electrical heaters may be used, and if approved by Underwriters' Laboratory, kerosene heaters may be used according to manufacturer's instructions. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove;
3. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe shall be made of fireproof material. A vented metal collar shall be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof; and
4. When a heating system has automatic controls, the controls shall be of the type which cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded.

F. Lighting

1. In areas where it is not feasible to provide electrical service to mobile housing, including tents, lanterns shall be provided (kerosene wick lights meet the definition of lantern); and
2. Lanterns, where used, shall be provided in a minimum ratio of one per occupant of each unit, including tents.

G. Bathing, Laundry and Hand Washing

Movable bathing, laundry and hand washing facilities shall be provided when it is not feasible to provide hot and cold water under pressure.

H. Food Storage

When mechanical refrigeration of food is not feasible, the worker must be provided with another means of keeping food fresh and preventing spoilage, such as a butane or propane gas refrigerator. Other proven methods of safeguarding fresh foods, such as salting, are acceptable.

I. Cooking and Eating Facilities

1. When workers or their families are permitted or required to cook in their individual unit, a space shall be provided with adequate lighting and ventilation; and
2. Wall surfaces next to all food preparation and cooking areas shall be of nonabsorbent, easy to clean material. Wall surfaces next to cooking areas shall be of fire-resistant material.

J. Garbage and Other Refuse

1. Durable, fly-tight, clean containers shall be provided to each housing unit, including tents, for storing garbage and other refuse; and
2. Provision shall be made for collecting or burying refuse, which includes garbage, at least twice a week or more often if necessary. Refuse disposal shall conform to Federal, state, or local law, whichever applies.

K. Insect and Rodent Control

Appropriate materials, including sprays, must be provided to aid housing occupants in combating insects, rodents and other vermin.

L. Sleeping Facilities

A separate sleeping unit shall be provided for each person, except in a family arrangement. Such a unit shall include a comfortable bed, cot, or bunk with a clean mattress. When filing an application for certification and only where it is demonstrated to the Certifying Officer that is impractical to set up a second sleeping unit, the employer may request a variance from the separate sleeping unit requirement to allow for a second worker to temporarily join the sheepherding/goatherding operation. The second worker may be temporarily housed in the same sleeping unit for no more than three consecutive days and the employer must supply a sleeping bag or bed roll free of charge.

M. Fire, Safety and First Aid

1. All units in which people sleep or eat shall be constructed and maintained according to applicable state or local fire and safety law;
2. No flammable or volatile liquid or materials shall be stored in or next to rooms used for living purposes, except for those needed for current household use;
3. Mobile housing units for range use must have a second means of escape. One of the two required means of escape must be a window which can be easily opened, a hatch, or other provision. It must be demonstrated that the custom combine worker would be able to crawl through the second exit without difficulty;
4. Tents are not required to have a second means of escape, except when large tents with walls of rigid material are used. A heater may be used in a tent if the heater is approved by a testing service, such as Underwriters' Laboratory, and if the tent is fireproof; and
5. Adequate fire extinguishers in good working condition and first aid kits shall be provided in the mobile housing.