

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

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APPENDIX VOLUME 4, PART 1

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CHRONOLOGICAL ORDER

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EXHIBIT 5

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WASHINGTON

3 -----
4 ELVIS RUIZ, FRANCISCO JAVIER)
5 CASTO and EDUARDO MARTINEZ,)
6) Case No. CV-11-3088-RMP
7 Plaintiffs,)
8)
9 vs.)
10) Deposition of:
11 MAX FERNANDEZ and ANN) DENNIS RICHINS
12 FERNANDEZ, a marital)
13 community; WESTERN RANGE)
14 ASSOCIATION, a foreign)
15 nonprofit organization,)
16)
17 Defendants.)
18 -----

19 November 06, 2012; 01:44 p.m.
20 November 07, 2012; 09:56 a.m.
21 Location: 1245 Brickyard Road
22 Salt Lake City, Utah 84106

23 Reporters: Katie Harmon, RPR, CSR &
24 Susan Sprouse, RPR, CSR
25

1 alleged that they were not performing open range
2 shepherding to this extent that would qualify Western
3 Range for the open range exemption.

4 MR. BERNASKE: I don't know what open range
5 exemption -- that is not -- I don't recall that in the
6 pleadings at all. It has to do with minimum wage --
7 standards -- Washington wage regulations is what it's
8 about. It doesn't have anything to do with the
9 Department of Labor regulations. So let's move into
10 what --

11 MR. WANG: Let's do. Let's move back to
12 Exhibit 2.

13 Q. All right. Sir, moving to the next paragraph,
14 the article says, "WRA and the employing member act as
15 joint employers and therefore are able to provide health
16 and life insurance to the H-2A employees." Is that a
17 true statement?

18 A. Yes.

19 Q. And you provided this information to the --

20 A. Yes.

21 Q. -- author?

22 A. That's the only reason we're a joint employer
23 is to provide insurance and to transfer. Otherwise we
24 wouldn't be in all these damn lawsuits.

25 Q. Okay. Now with regard to the ability to

1 provide health and life insurance, why is that dependent
2 on being a joint employer?

3 A. You'd have to ask the government that. The
4 government is the one that said we'd -- we'd have to be
5 a joint employer to transfer and to have insurance.
6 We're the only one that I know of that has insurance.

7 Q. So you're saying that you wouldn't be able to
8 provide the H-2A shepherders with insurance if you were
9 not joint employers?

10 A. Right.

11 Q. Now, one of the insurance benefits that H-2A
12 workers are guaranteed is Worker's Compensation --

13 A. Yes.

14 Q. -- coverage; is that correct?

15 A. Yes.

16 Q. But Western Range doesn't provide Worker's
17 Comp today, does it?

18 A. No, it doesn't.

19 Q. Okay. That's provided by the members in
20 compliance with --

21 A. Yes.

22 Q. -- federal rules?

23 A. Yes.

24 Q. Is it not possible for Western Range to get
25 out of the health insurance business as it's doing now?

1 the summertime and you've got twice as many herders as
2 you need in the wintertime. So when it comes to
3 wintertime, this time of year, you will have several
4 herders that are going looking -- that are going to have
5 to go somewhere else like to California because their
6 season of lambing is different than the season here.

7 Q. Well, I'm just wanting to know about the
8 guarantee for three years of employment. The individual
9 rancher you said if he didn't need a worker he doesn't
10 have to have him, so he's not guaranteeing the three
11 years; is that true?

12 A. No, but another member will, another member
13 will assume responsibility.

14 Q. And so the membership makes that guarantee?

15 A. Yes.

16 Q. And that membership is embodied in Western
17 Range?

18 A. Yes.

19 Q. So, just so I understand how it works in
20 practice, if a member had a worker and decided in
21 midterm he didn't need him anymore or went out of
22 business for whatever reason, he's not required to it
23 keep the worker on his ranch; is that true?

24 A. No, if he goes out of business he doesn't have
25 sheep. And he's got to have sheep to retain a member --

1 A. Well, he was told about shepherding but I
2 don't know that he really had ever done it.

3 Q. I guess that's my question. How did he get
4 that information? Do you know?

5 A. Through whoever was helping him set it up.

6 Q. Who might that have been?

7 A. I don't know. I'd have to go back and see who
8 it was before my time.

9 Q. All right. Let me ask you to turn to page 6
10 of the report. By the way, are you familiar with this
11 report before you actually go there?

12 A. Yes. I was at every one of these meetings.

13 Q. What meetings?

14 A. The industrial welfare meetings that brought
15 this on.

16 Q. I see. Well, the meeting that you might be
17 referring to is a hearing before the Industrial Wage
18 Commission of California?

19 A. Yes.

20 Q. In October 2000?

21 A. Yes.

22 Q. Okay. So you were in attendance then?

23 A. Yes.

24 Q. And it's my understanding that this report was
25 submitted on behalf of Western Range to the industrial

1 wage commission at that hearing. Is that correct?

2 A. Now say that again.

3 Q. It's my understanding that this report was
4 provided to the Industrial Wage Commission at the
5 hearing that you attended. Is that correct?

6 A. Yes.

7 Q. And Mr. Holt testified at the hearing. Is
8 that correct?

9 A. Yes.

10 Q. And he testified on behalf of Western Range?

11 A. Yes.

12 Q. Did you and he have any interaction in terms
13 of preparing for that testimony?

14 A. I can't remember. That's been a lot of years
15 ago. I don't know.

16 Q. Why did Western Range pick Mr. Holt to
17 testify?

18 A. He was more knowledgeable about H-2A than
19 anyone that we knew.

20 Q. And in terms of that knowledge of the H-2A
21 program, that would extend to Western Range's
22 obligations and its responsibilities --

23 A. Yes.

24 Q. -- into the program? Is that right?

25 A. Yes.

1 Q. All right. If you would turn now to page 6,
2 there's a discussion about the occupation of
3 shepherding. And Mr. Holt writes that shepherding is
4 one of man's oldest occupations and it has changed
5 little since biblical times. Is that a fair statement?

6 A. Yes.

7 Q. It goes on to say and, quote, "open range"
8 closed quote, shepherd tends a flock of sheep and
9 lambs now typically referred to as a band in open range.
10 Is that a true statement?

11 A. Yes. Yes and no. Now they are required to
12 have shepherders that they put electric fence around
13 because things have changed.

14 Q. You're referring to the open range?

15 A. Yes.

16 Q. You say "they require shepherders". Who are
17 you talking about?

18 A. The member.

19 Q. Okay. We're not talking about the Department
20 of Labor?

21 A. No. I don't think so.

22 Q. Okay. All right. Now the next sentence reads
23 -- okay, but before we get to the next sentence. So
24 other than your modification to the statement that would
25 be a fair and accurate statement?

1 doesn't.

2 Q. But in terms of the exemption under the
3 federal minimum wage laws, do you know that the
4 exemption for open range production of livestock exempts
5 the worker who does that work from the minimum wage
6 requirements under federal law?

7 A. Yes. Because he's on call 24 hours a day.

8 Q. All right. So going to the next sentence,
9 Mr. Holt says, "This is in contrast to farm flocks of
10 sheep kept in fence pastures where sheepherders are not
11 required." Was that true at the time he wrote this
12 report?

13 A. Yes. It's still true. Farm flock is a lot
14 different than the regular range operation.

15 Q. What is a farm flock?

16 A. Someone that might have 50 head of sheep, 25
17 head of sheep.

18 Q. But they are kept in fenced in pastures?

19 A. Small pastures, right.

20 Q. What if you had 500 sheep in a fenced in
21 pasture, would that be a farm flock?

22 A. No. That would be considered more of a range
23 operation.

24 Q. Even though they are fenced in?

25 A. Right.

1 A. Most of them is not outside the job. Most of
2 them have been living conditions and also food, food
3 things.

4 Q. We don't have to talk about those things. I'm
5 just asking about the work outside the job description.
6 You said it's come up on your watch. I want to know
7 what kinds of things raised that problem with you.

8 A. The one I can think of is working with cows.

9 Q. Okay. And what, what -- why would working
10 with cows be outside the job description?

11 A. It doesn't qualify as a sheepherder. It's
12 open range cow herder.

13 Q. So even if the cows were on the open range,
14 it's outside the job description?

15 A. That's right.

16 Q. All right. Could you turn to page 8 of
17 Mr. Holt's report? There's a description of the Western
18 Range Association. Is this something that Mr. Holt
19 would have received input from Western Range before he
20 would have submitted this report on behalf of Western
21 Range to the California commission?

22 A. I'm sure it probably was.

23 Q. Do you recall having read this before he did
24 so?

25 A. I've read it but it's been years ago.

1 Q. But you -- I'm just asking whether you would
2 have read this at the time that it was submitted?

3 A. I don't know that I did because he prepared
4 it, then gave it to the meetings in the Industrial
5 Welfare Commission.

6 Q. Now, you were on the board at the time. Did
7 the board make some decision to have him submit this
8 report to the board -- or to the commission?

9 A. Yes.

10 Q. So he couldn't -- he wouldn't have done that
11 on his own or he would have gotten --

12 A. Yes.

13 Q. -- would have got the board's approval. Is
14 that right?

15 A. Yes.

16 Q. Now and the board would not have allowed an
17 inaccurate report about its own activities to be
18 submitted to the California Commission?

19 A. Yes.

20 Q. Is that true? Yes?

21 A. Yes.

22 Q. On page 8 at the bottom of the page it
23 describes Western Range as follows: "The Western Range
24 Association has voluntarily organized itself as a joint
25 employer organization within the meaning of the H-2A

1 regulations." That's true?

2 A. Yes.

3 Q. This means -- back to the quote -- "This means
4 the association assumes joint liability with its members
5 for compliance with the H-2A program requirements and
6 all employment related laws and regulations." Is that
7 true?

8 A. Yeah.

9 Q. Okay. And then it goes on to say, "For
10 example, if a member files for bankruptcy and fails to
11 pay the herders, the WRA would assure that the herders
12 wages are paid." Is that also true?

13 A. Yes.

14 Q. Then it says, "The association suspends and
15 terminates the membership of members who fail to comply
16 with association rules or legal requirements." And I
17 gather that's true as well?

18 A. Yes.

19 Q. He goes on to say, "Since the H-2A program is
20 very difficult for an individual rancher to use, the
21 threat of suspension of termination by the Western Range
22 Association is an effective means of securing
23 compliance."

24 A. Yes.

25 Q. Okay. So that, that's a true statement?

1 Q. If, if the -- if you would also note that when
2 the, when the rancher signs the contract -- when the
3 rancher signs the contract, this one is not signed, but
4 he signs it as member of Western Range Association. Do
5 you have any idea why that language is inserted into
6 your contracts?

7 A. No, I don't.

8 Q. Just to possibly raise a recollection or
9 suggest some, some understanding on your part, might it
10 be that Western Range wants the members to be bound as
11 either representative capacity of Western Range
12 Association as opposed to on their own?

13 MR. BERNASEK: Objection. Leading the
14 witness.

15 Q. If you don't know the answer --

16 A. I don't know.

17 Q. -- you can say you don't know.

18 A. I don't know.

19 Q. Has Western Range ever taken upon itself to
20 enforce one of these contracts?

21 A. Yes.

22 Q. Okay. And can you describe the circumstances
23 when that happened?

24 A. We had one member that wasn't paying the
25 herders. We got a call from the herders saying they

1 weren't being paid. I went to Idaho, took some checks
2 up, paid the herders and brought the herders back and we
3 terminated the member.

4 Q. This was -- this was an Idaho rancher?

5 A. Yes.

6 Q. How long ago was this?

7 A. I imagine it's 10 years ago.

8 Q. And when you did that, did you satisfy
9 yourself that the members, that the member did not, in
10 fact, pay the herders?

11 A. Oh, yes, I know they didn't.

12 Q. How did you make that finding?

13 A. The herder told us. The member admitted it.

14 Q. Do you recall how much you ended up having to
15 pay them?

16 A. I don't recall. It was --

17 MR. BERNASEK: Objection. Relevance.

18 A. I don't know.

19 Q. Did you sue the member to get the money back?

20 A. Yes.

21 MR. BERNASEK: Objection. Relevance.

22 Q. Did this lawsuit, did it succeed?

23 A. Yes.

24 Q. So you got your money back?

25 A. Yes.

EXHIBIT 6

All pages in this document are designated by Western Range Association as Confidential pursuant to the Stipulation of the parties and pending Court Order

THE OPEN RANGE SHEEP INDUSTRY IN CALIFORNIA AND THE
QUESTION OF IMPOSING A STATE MINIMUM WAGE ON
SHEEPHERDERS

James S. Holt, Ph.D.

Prepared for the
California Industrial Wage Commission (IWC)
October 3, 2000

RA 00601
WRA001030

EXECUTIVE SUMMARY

Most sheepherders in California, like most sheepherders in the United States, are aliens legally admitted to the United States for the express purpose of working as sheepherders. In 1999 the California Economic Development Department estimated there were 206 legally admitted aliens and 29 domestic workers employed as open range sheepherders in California.

Shepherding is a unique occupation, which is regulated under a specific set of federal guidelines applicable to the shepherding occupation in all 10 Western states where open range sheepherders are employed. Shepherding is an exempt occupation under IWC wages orders, and should remain so for the following reasons:

1. An hourly wage standard is not appropriate for the shepherding occupation.
2. IWC coverage is not necessary to protect the wages of California sheepherders. Their wages are protected by a wage special wage scheme for sheepherders in all 10 western states promulgated and revised annually by the U.S. Department of Labor.
3. The current wage protections in place for sheepherders in California are working. Earnings of California sheepherders are comparable to the earnings of IWC-protected peer workers.
4. Imposing on California sheepherders an hourly minimum wage, or a minimum wage rate higher than that under the current federal regulatory scheme, would hasten the extinction of an industry already in severe economic distress.

California sheepherders' earnings, including imputed amounts for housing and food, exceed the earnings of a full-time farmworker working at the average California farmworker hourly wage. California sheepherder's annual earnings are in the 80th percentile of U.S. farmworker annual earnings, including imputed values for food and housing, and in the 70th percentile even ignoring the value of the free food and housing provided to California sheepherders. California sheepherder wages have kept pace with the wages of IWC-regulated farm and non-farm workers in California.

The California sheep industry is in severe economic distress. Wool prices at the farm level are down 60 percent from 1980 prices, while lamb prices have increased only 18 percent from 1980 prices. The prices of farm inputs have increased 53 percent, and the wages of sheepherders 78 percent, during these two decades. As a result, many California sheep ranchers are operating at returns below cost, and are rapidly disappearing. The number of commercial sheep ranches in California has declined by more than 50 percent in the past 15 years, and there are now fewer than 100 such operations left. To impose a minimum wage scheme on shepherding that would further increase the wages of California sheepherders would be unnecessary and unfair, and further hasten the disappearance of this industry from the state.

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THE OPEN RANGE SHEEP INDUSTRY IN CALIFORNIA AND THE QUESTION OF IMPOSING A STATE MINIMUM WAGE ON SHEEPHERDERS

James S. Holt, Ph.D.¹

Prepared for the
California Industrial Wage Commission (IWC)
October 3, 2000

Introduction

Most sheepherders in California, like most sheepherders in the United States, are aliens *legally admitted to the United States for the express purpose of working as sheepherders*. In 1999 the California Economic Development Department (EDD) estimated there were 206 legally admitted aliens and 29 domestic workers employed as open range sheepherders in California. Alien sheepherders are admitted and employed under the so-called "H-2A" provisions of the federal Immigration and Nationality Act (INA) enacted in 1952. (8 U.S.C. 1101 *et seq.*) The alien sheepherder program has existed in more or less its present form since before the INA was enacted. It was brought under the "H-2" visa category of the INA in 1952, and under the "H-2A" visa category in amendments to the INA in 1986. Legally admitted aliens have been the principal source of open range sheepherders in California and the United States for well over half a century.

¹ Dr. James S. Holt is Senior Economist with the law firm of McGuiness, Norris and Williams in Washington, D.C. McGuiness, Norris & Williams is General Counsel to the Western Range Association, on whose behalf this report was produced. Dr. Holt is an agricultural labor economist and a nationally recognized expert on the H-2A temporary alien worker program and on agricultural labor policy. Dr. Holt has served as a technical consultant on the H-2A program to the Western Range Association for more than 10 years. He is also a nationally recognized expert on agricultural employment and wage statistics.

At the turn of the last century and through the early 1900's most sheepherders in the United States came from the Basque regions of France and Spain. Many present day U.S. sheep ranchers are former Basque sheepherders or the sons or daughters of these herders. For the last several decades the principal source of sheepherders for U.S. sheep ranches has been Peru and Chile, with smaller numbers from Mexico, Spain, Mongolia and China. Most H-2A sheepherders grew up in their home countries in sheepherding families and learned the occupation from their earliest days. All alien H-2A sheepherders must be experienced sheepherders in their home country.

Sheepherding is now, and always has been, exempt from the California Industrial Wage Commission's (IWC) minimum wage orders. This report addresses the question of whether the IWC should retain the exemption from the minimum wage for sheepherders in California, or whether this occupation should be subjected to the California hourly minimum wage or some other IWC minimum wage order. The report argues that the IWC should retain the current sheepherder exemption for the following reasons:

1. An hourly wage standard is not appropriate for the sheepherding occupation.
2. IWC coverage is not necessary to protect the wages of California sheepherders. Their wages are protected by a wage special wage scheme for sheepherders in all 10 western states promulgated and revised annually by the U.S. Department of Labor.
3. The current wage protections in place for sheepherders in California are working. Earnings of California sheepherders are comparable to the earnings of IWC-protected peer workers. Furthermore, over the past two decades the wages of California sheepherders have kept pace with the earnings of their peer workers and with other IWC-protected workers.

4. Imposing on California sheepherders an hourly minimum wage, or a minimum wage rate higher than that under the current federal regulatory scheme, would hasten the extinction of an industry already in severe economic distress.

The Occupation of Sheepherding

Sheepherding is one of man's oldest occupations, and it has changed little since biblical times. An "open range" sheepherder tends a flock of sheep and lambs (now typically referred to as a "band") in open range. This is in contrast to farm flocks of sheep kept in fenced pastures, where sheepherders are not required.

A band of sheep typically numbers approximately 1,000 ewes, together with their lambs. When the lambs are present, the band of ewes and lambs will number from 2,000 to 2,500 head. The open range sheepherder lives and travels with this band of sheep day and night, protecting the sheep from predators and from eating poisonous plants, moving the band to new grazing land each day and bedding them down at night. Typically, during a portion of the year the sheep range is in the mountains or desert, often in exceedingly remote areas. The sheep typically graze on the lower elevations in the spring, gradually moving to higher elevations in the summer and back to lower elevations in the fall. At other times, and especially during the shearing and lambing seasons, the sheep are grazed on pasture on the valley floor and on the aftermath of hay and other crops.

While the herders are living with the flocks on the open range they live in mobile housing called "sheep camps" or "sheep wagons" that move daily with the band of sheep. Sheep camps are typically travel trailers mounted on motorized vehicles or specially outfitted horse-drawn wagons. In wilderness areas where such camps are not permitted, the sheepherders live in tents. All sheepherder housing must meet *specific*

federal standards for sheepherder housing, and is inspected and certified annually or biannually by the California Economic Development Department (EDD), depending on the jurisdiction and accessibility.

Herders typically work individually with one band, or in pairs with two bands that graze together. The herders travel in motorized vehicles or on horseback. They are usually accompanied by several herding dogs, whose job it is to assist the herder to move the flock, and several guard dogs who protect the sheep and lambs from predators. While on the range, the herders are supplied with food, water and other living necessities by a "camp tender" who re-supplies the camp from once a week to once or twice a month, depending on the remoteness of the locations.

Typically during several months in the winter and early spring during lambing season the bands are on the valley floor. When the herders are on the valley floor they live in their sheep camps or in bunk houses. Bunk houses must also be inspected and licensed by the EDD.

A herder's "work day" typically consists of moving the sheep to new pasture in the morning, observing the sheep during the day as they graze to assure that there are no problems, bedding the band down at night, and being alert during the night for possible indications of predators. The presence of predators is usually signaled by the actions of the guard dogs or signs of restiveness among the sheep that experienced herders have learned to recognize. In some circumstances the herder strings temporary fencing during the day to keep the sheep in or out of specific areas, such as areas where poisonous plants have been detected. Also, in some circumstances where water is not naturally available, the herder may secure water for the sheep using a water truck.

For periods of a few weeks during the shearing and lambing seasons the work day is very different. During lambing the herders and the rancher must observe and

assist ewes who are having difficulty in lambing or care for weak lambs and assure that lambs are nursing. This is an extremely intense period, and, of course, lambing occurs around the clock. Shearing is typically done by contract shearing crews, but the rancher and herder assist by moving sheep to and from the shearers.

The Western Range Association

The H-2A shepherd program is administered by the U.S. Department of Labor (USDOL) and the Immigration and Naturalization Service (INS). Virtually all employers of the H-2A shepherd program in California are members of the Western Range Association (WRA), headquartered in Citrus Heights, CA, which assists its rancher members to use the program. The WRA assists its rancher members by completing and filing the necessary applications with the USDOL and the INS, conducting required recruitment for domestic shepherders, recruiting alien shepherders, arranging and paying for transportation to and from the herders' home country and within the United States, securing visa extensions for herders, transferring herders among members, and generally assisting both herders and rancher members in using the program.

The Western Range Association has voluntarily organized itself as a "joint-employer association" within the meaning of the H-2A regulations. This means the Association assumes joint liability with its members for compliance with H-2A program requirements and all employment-related laws and regulations. For example, if a member files for bankruptcy and fails to pay the herders, the WRA will assure that the herders' wages are paid. The Association suspends and terminates the membership of members who fail to comply with Association rules or legal requirements. Since the H-2A program is very difficult for an individual rancher to use, the threat of suspension or termination by the WRA is an effective means of securing compliance.

As a joint employer with its members the WRA is also a joint guarantor with its members of the written employment contract entered into with every sheepherder. Among other things, the contract guarantees the herder full time employment for three years. If a rancher no longer needs a herder, or a herder is dissatisfied with his employer, the WRA will transfer the herder to another rancher member. Individual rancher members cannot terminate a herder's employment with the WRA, they can only refer the herder to the association for reassignment. Involuntary termination of herders by the WRA are very rare. Herders who are terminated, whether voluntarily or involuntarily, are offered prepaid return transportation to their home country by the WRA.

The H-2A Sheepherder Program

Before an alien sheepherder can be admitted to the United States to work for a U.S. employer, an application for a temporary alien labor certification must be filed with the USDOL and the California EDD. The regulations of the USDOL governing H-2A temporary alien labor certifications and the obligations of employers of H-2A workers are published at 20 C.F.R. §655, Subpart B. However these regulations give the Secretary of Labor authority to promulgate special rules for H-2A workers who are to be employed in special circumstances. The Secretary of Labor has recognized the unique circumstances of the sheepherder occupation by issuing special "Sheepherder Guidelines" [ETA Field Memorandum 74-89, "Special Procedures: Labor Certification for Sheepherders Under the H-2A Program"].

The WRA conducts year 'round recruitment for domestic sheepherders. All qualified U.S. applicants are required to be offered jobs. Typically the WRA receives fewer than a dozen domestic applicants a year. To be considered qualified, a U.S. applicant need only have 90 days of prior experience as a sheepherder. The WRA files applications for temporary labor certification on behalf of their employer members. If a

qualified domestic herder is not available, the job is "certified" for the employment of an H-2A alien shepherd. The WRA then files a petition for the admission of an alien herder with the INS, or a petition to transfer an available herder already in the United States, to the certified rancher. The recruitment of alien herders is done by the Association's "co-ordinators" in the sending countries, principally Peru and Chile. Herders are subject to the same admission and eligibility requirements as are all other aliens.

The H-2A alien shepherders admitted under petitions from members of the WRA are permitted to work for any H-2A certified member of the WRA, and the Association may assign and transfer herders as needed. The aliens are not permitted to work for any other employers. This same restriction applies to all H-2A workers in all occupations.

Regulation of Wages Under the H-2A Shepherd Program

The fact that shepherd's wages are exempt from the California state minimum wage *does not mean that the wages of H-2A shepherders in California are unprotected*. In fact, they are protected by federal wage standards specific to the shepherding occupation and applicable to all 10 western states where H-2A alien shepherders are employed. This special minimum wage structure for H-2A shepherd wages recognizes the unique characteristics of the shepherding occupation. It differs from the wage structure applicable to H-2A workers in occupations other than shepherding.

In non-shepherding occupations the USDOL annually sets minimum *hourly* wages, called Adverse Effect Wage Rates (AEWRs), applicable to all persons, both domestic and alien, employed in occupations for which employers are approved to employ H-2A aliens. An H-2A employer must pay the greater of the adverse effect

wage rate, the prevailing wage for the occupation in the area of employment, or the federal, state or local statutory minimum wage.

Sheepherders are not subject to the hourly AEWRs imposed on all other H-2A occupations, because the USDOL recognizes that a minimum *hourly* wage standard is not appropriate to this occupation. Instead, the USDOL sets a minimum *monthly* wage based on the prevailing wages paid to domestic (i.e. non H-2A) sheepherders in California. This prevailing wage is determined annually in a survey of domestic sheepherder wages conducted by the California EDD, and is reviewed and certified by the USDOL. A similar scheme is used in the other states in which open range sheepherders are employed. The current (2000) H-2A minimum wage for sheepherders in California is \$900 per month plus free room and food. California's minimum sheepherder wage is the second highest among the 10 western open range sheep producing states. Since virtually all open range sheepherders, both alien and domestic, are employed by ranchers who are in the H-2A program, *the California H-2A sheepherder minimum wage is effectively the minimum wage for all sheepherders in California.*

The H-2A sheepherder wage standard is not the only place where the unique characteristics of this occupation and the inappropriateness of an hourly minimum wage is recognized in minimum wage statutes and regulations. The federal Fair Labor Standards Act (FLSA) exempts *all* workers engaged in the range production of livestock from the hourly minimum wage and overtime provisions of the Act. This exemption has been in the Act since it was written in 1938. The rationale for the exemption is that hours of work is not a meaningful concept for workers who live on the range and are responsible for livestock on a 24-hour a day, 7-day-a-week basis. The FLSA recognizes that in such circumstances the concept of hours of work and a minimum hourly wage is inappropriate.

Non-Wage Benefits of Shepherders

In addition to their cash wages, California shepherders receive substantial non-wage benefits. It has already been mentioned that shepherders are provided with housing and food at no cost to the worker. Housing must meet applicable federal standards. Mobile sheep camps are inspected annually or biannually depending on the jurisdiction according to special shepherd mobile housing standards promulgated by the USDOL. Permanent housing (bunk houses) are inspected and approved annually according to federal Occupational Safety and Health Administration (OSHA) farm labor camp standards. Herders are covered by Workers Compensation Insurance. In addition, they are covered for non-occupational accidents and illness by a Western Range Association group insurance policy to which the shepherd is required to contribute only \$13 per month. Herders are entitled to two weeks paid vacation, which they can take either as actual vacation or as extra compensation.

All Western Range Association shepherders are covered by a written employment contract which guarantees the herder employment for 3 years. As a joint employer, and to fulfill this contract guarantee, the WRA may transfer the herders from one ranch to another as needed during the 3-year period. The Western Range Association pays the cost of herders' inbound transportation to the United States, as well as the cost of transportation from one employer to another if the herder is transferred. In accordance with provisions of the USDOL H-2A regulations and H-2A shepherd guidelines, part of the cost of the inbound transportation to the United States is deducted in increments from herders' initial monthly paychecks, but is fully reimbursed to the herder when the herder completes the first half of the 3-year employment contract.. The WRA provides return transportation to the home country to all herders, although USDOL regulations do not require paying return transportation to herders who do not complete their contracts.

As a practical matter, most herder's out-of-pocket expenses are limited to the \$13 monthly insurance charge and their expenses for personal items such as cigarettes , clothing, and the like. Most herders save a very substantial portion of their cash wages. It is not unusual for herders to save or send home \$7,000 or more annually. This is substantially more than the annual savings of the average middle income U.S. worker.

The WRA provides all of its sheepherders with a "welcome package" in addition to their employment contract, which explains the terms and conditions of employment, the medical insurance program, and other information that herders may need. It includes a telephone number to the WRA which is staffed by Spanish speaking staff and which herders may call collect for any reason. Herders are also provided with the telephone numbers of their consulates in Los Angeles, San Francisco, and other areas. The WRA takes complaints of non-compliance and mistreatment very seriously, and responds as promptly as possible to all requests for assistance from herders. If a herder requests reassignment to another ranch because of alleged mistreatment or for other reasons, the WRA will accommodate such requests provided the herder is adequately performing his duties. Very few herders are involuntarily terminated by the WRA, and if they are, their return transportation is provided. Well over half of all herders return for additional contracts when their previous contract is completed. Of those who do not, many have accumulated enough money that they have been able to set themselves up in ranching or other businesses in their home countries and no longer need to work in the United States.

In addition to housing inspections by the California EDD, the USDOL's Wage and Hour Division conducts audits of employers' compliance with the H-2A regulations and other applicable labor laws both on a complaint-driven and random basis. The Peruvian consulates also visit their sheepherders periodically. As explained above, the WRA has voluntarily entered into a joint-employment arrangement with its members, and therefore the Association as well as its members is obligated for

compliance with applicable regulations. The Association guarantees the pay of herders if, for any reason, the rancher is unable to pay them.

The Performance of Shepherd Wages in California

The H-2A regulatory structure described above that governs the wage rates of California shepherders has performed well in protecting shepherd's wages as measured by a variety of standards. First, the imputed value of California shepherd earnings exceeds the earnings of California farmworkers generally. Second, the rate of growth in shepherd wages over the past two decades is comparable to the rate of growth in hourly earnings of California farmworkers generally and the rate of growth in hourly earnings of non-farm workers in California and the United States.

Comparison of Shepherd Earnings With California Farmworkers Earnings

California's shepherd earnings compare favorably with the earnings of their peers in the California hired farm work force. We compare the imputed monthly earnings of a California shepherd with the imputed monthly earnings of a California farmworker employed full time, year 'round, at the average hourly earnings of California farmworkers.

The average hourly earnings of non-supervisory field and livestock workers in California in 1999 were \$7.27 per hour, as reported by the National Agricultural Statistics Service, U.S. Department of Agriculture. A farmworker who worked 40 hours per week for 52 weeks a year at the average hourly wage of \$7.27 per hour would earn \$15,120 annually or \$1260 per month. Of course, these figures substantially exceed the actual average earnings of California farmworkers, because they do not average 40 hours of work per week, and, on average, work far less than 52 weeks a year. However,

we know of no current data on actual monthly or annual earnings of California farmworkers.

If the value of housing and food provided to sheepherders is imputed, even at the conservative allowances permitted by the Industrial Wage Commission (\$27.05 per week for housing and \$8.70 per day for food), and added to the current \$900 monthly prevailing wage for California sheepherders, the imputed monthly earnings of California sheepherder are \$1282 per month. This is more than the imputed earnings of a full-time farmworker – who is currently protected by the IWC wage order – even if the average farmworker were able to work for 52 weeks a year. Furthermore, this comparison ignores the fact that the sheepherders also receive 2 weeks paid vacation, or the equivalent in extra pay, and fully paid transportation to and from the place of employment, non-occupational medical insurance for which the herders are required to contribute only \$13 per month, and a variety of contractual and employment guarantees.

We are not aware of current yearly earnings data for farmworkers in California with which to compare the earnings of sheepherders. However, the U.S. Department of Labor's National Agricultural Worker Survey (NAWS) reports data on the distribution of personal incomes of farmworkers *nationally*.² Comparing the annual earnings of California sheepherders, including the imputed value of housing and food, to personal incomes of farmworkers nationally, California sheepherders are in the 80th percentile of farmworker earnings. They are in the 70th percentile of farmworkers nationally *based solely on their cash monthly salary, ignoring the value of the free housing, food and other benefits provided*. Thus, one must conclude that California sheepherder's earnings are

² "Findings from the National Agricultural Workers Survey (NAWS) 1997-1998" *A Demographic and Employment profile of United States Farmworkers*. Research Report No. 8. U.S. Department of Labor, Office of the Assistant Secretary for Policy, Office of Program Economics. March 2000

not substandard relative to their peers in the labor market who are protected by the IWC's wage orders, nor of their peers in the labor market nationally.

It is also worth noting that the average annual income of a California sheepherder, including the imputed value for housing and food based on IWC allowances, of \$15,384 is well above the federal 2000 poverty guidelines for a single person of \$8350. In fact, it exceeds the federal poverty guidelines for a 3 person family unit of \$14,150. In their home countries where the families of H-2A sheepherders live, these incomes allow the herders and their families to live handsomely.

Rate of Growth in Sheepherder, Farmworker and Non-farmworker Earnings

The absence of state minimum wage protection has not hindered the rate of growth in sheepherder wages over the past two decades. California sheepherder wages have kept pace with the growth in wages of IWC-protected farmworkers generally, and of IWC-protected non-agricultural workers in California. [See Table 1.]

During the two decades from 1980 through 1999 the average hourly earnings of non-supervisory field and livestock workers in California increased from \$4.26 per hour to \$7.27 per hour, an increase of 71 percent. The prevailing monthly wage for California open range sheepherders increased from \$450 per month to \$800 per month, or 78 percent. The average hourly earnings of non-supervisory manufacturing workers in California during the same period increased from \$7.71 per hour to \$13.95 per hour, or 81 percent. In other words, sheepherder wages have kept pace with the wages of their peers and other workers in IWC-regulated occupations in California.

**TABLE 1. CAPARISON OF MONTHLY WAGER OF SHEEPHERDERS,
HOURLY WAGES OF FARM WORKERS AND HOURLY EARNINGS OF
MANUFACTURING WORKERS, CALIFORNIA, 1980-1989**

ITEM	AMOUNT		PERCENTAGE INCREASE 1980-1999
	1980	1999	

Sheepherders

Prevailing Wage	\$450/month	\$800/mo.	78%
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Farm Workers

Average Hourly Earnings	\$4.26/hour	\$7.27/hr.	71%
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Manufacturing Workers

Average Hourly Earnings	\$7.71/hour	\$13.95/hr.	81%
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Sources: Sheepherders, Western Range Association, based on U.S. Department of Labor Prevailing Wage Orders; Farm Workers, National Agricultural Statistics Service, U.S. Department of Agriculture; Manufacturing Workers, Bureau of Labor Statistics, U.S. Department of Labor

The Economic Decline of the California Sheep Industry

Advocates for terminating the sheepherder minimum wage exemption in California contend that imposing a minimum hourly wage will result in only small increases in ranchers' production costs, since sheep ranching is not a labor-intensive industry. They argue that such small increases in costs will not hurt the industry, but will merely result in sheep ranchers "sharing their wealth" with their herders. The problem with that argument is two fold. First, since there is no basis for objectively determining work hours of sheepherders, it assumes that some low number of hours of work will be imputed to the occupation or that a minimum monthly wage will be set that results in only a small increase in sheepherders wages. Secondly, it fails to recognize the fact that the sheep industry is already operating at negative returns, and that even a small increase in production costs will not result in sharing ranchers profits, but in increasing ranchers' losses.

The sheep industry in California and nationwide is, and has for a prolonged period, been in a severe economic depression. This depression has resulted from steep declines in prices for the industry's products and rising costs of production. Wool prices, in particular, have declined dramatically during the past decade. Lamb prices have failed to increase even in pace with the rise in farm production costs, much less sufficiently to offset the drop in wool prices. These economic conditions have led to a severe decline in the number of sheep and lambs on farms, and in the number of commercial sheep operations in California and the United States. However, even this decline in domestic production has not produced a recovery in product prices, due to increasing imports of both wool and lamb. Thus, California sheep ranchers are now operating at returns below their cost of production. Many producers are living off depreciation and depleting assets hoping to hang on until there is a rebound in wool and lamb prices, if it occurs. The imposition of an hourly minimum wage on the sheep

industry in California will further increase producer costs and hasten the rate at which operators are being forced out of business.

Wool and Lamb Prices

Wool and lamb meat are the two products of the sheep industry. Over the past decade the price per pound of wool at the farm level in California averaged 26 percent less than during the preceding decade. [See Table 2] The farm price for wool in California in 1999 was at its lowest level in two decades, *down 60 percent from the price in 1980!* In 1999 the market value of the wool produced by some California sheep raisers was less than the cost of transporting it to market.

Farm prices for lamb over the past decade averaged less than 11 percent higher than they did during the preceding decade. [See Table 3.] This small increase was far short of the amount necessary to offset the decline in wool prices, and far less than the amount necessary to offset increases in farm production costs. The price received by California farmers for lamb in 1999 was only 18 percent higher than it was 20 years earlier, in 1980.

Input Costs

In contrast to a meager 18 percent increase in the farm price of lamb and a devastating drop of 60 percent in the farm price of wool, prices *paid* by farmers for production inputs increased 53 percent during the two decades 1980 through 1999. [See Table 4. This table is for the United States; corresponding data is not available for individual states.] During the same two decade period, the California prevailing sheepherder wage (the minimum wage for employers of H-2A sheepherders) increased 78 percent, from \$450 per month to \$800 per month. (The California sheepherder prevailing wage increased another \$100 per month, to \$900, in 2000.) There were no

TABLE 2. FARM PRICE PER POUND OF WOOL, CALIFORNIA AND UNITED STATES, 1980-1999

YEAR	CALIFORNIA	UNITED STATES Price per pound, \$
1999	.35	.38
1998	.61	.60
1997	.79	.51
1996	.67	.78
1995	1.02	1.04
1994	.65	.70
1993	.46	.84
1992	.67	.74
1991	.56	.55
1990	.82	.80
1989	1.37	1.24
1988	1.43	1.38
1987	.87	.92
1986	.66	.67
1985	.63	.63
1984	.81	.80
1983	.57	.61
1982	.71	.69
1981	.94	.94
1980	.88	.88

Source: National Agricultural Statistics Service, U.S. Department of Agriculture

TABLE 3. FARM PRICE PER HUNDRED WEIGHT FOR LAMB, CALIFORNIA AND UNITED STATES, 1980-1999

YEAR	CALIFORNIA	UNITED STATES Price per pound, \$
1999	74.50	74.50
1998	72.30	72.30
1997	91.60	90.30
1996	89.40	88.20
1995	79.20	78.20
1994	65.60	65.60
1993	65.70	64.40
1992	62.90	59.50
1991	53.80	52.20
1990	55.50	55.50
1989	69.30	66.10
1987	74.90	77.60
1986	68.60	69.00
1985	68.30	68.70
1984	59.70	60.10
1983	56.40	53.90
1982	54.50	53.10
1981	56.30	54.90
1980	63.00	63.60

Source: National Agricultural Statistics Service, U.S. Department of Agriculture

TABLE 4. INDEX OF PRICES PAID BY FARMERS (1990-92=100)

YEAR	INDEX (1990-92=100)
1999	115
1998	115
1997	118
1996	115
1995	109
1994	106
1993	104
1992	101
1991	100
1990	99
1989	96
1988	91
1987	87
1986	85
1985	86
1984	89
1983	86
1982	86
1981	82
1980	75

Source: National Agricultural Statistics Service, U.S. Department of Agriculture

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

No. 85926

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

RESPONDENT WESTERN RANGE ASSOCIATION'S
APPENDIX VOLUME 4, PART 2

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ATTORNEYS FOR RESPONDENT
WESTERN RANGE ASSOCIATION

significant cost-saving technological changes in sheep raising during this period to offset the increased input costs and falling commodity prices. Consequently, the profitability of the sheep industry plummeted. Many ranchers abandoned or were forced out of the sheep business.

Number of Sheep Farms and Sheep Inventory

The U.S. Census of Agriculture, which is conducted every five years by the Bureau of the Census and the U.S. Department of Agriculture, dramatically tells the story of an industry in decline, both in California and the United States. [See Table 5] In the 15-year period from the 1982 Agricultural Census to the 1997 Agricultural Census, the number of farms with sheep dropped by 35 percent nationwide and by 45 percent in California. The number of head of sheep also dropped by 35 percent. Thus, the decline in the number of farms was not the result of large ranches absorbing smaller ones, but of farmers going out of the sheep business.

The number of commercial sheep operations with 1,000 head or more declined even more – by *55 percent in California in just 15 years*, and 41 percent nationwide. In 1997 the Census of Agriculture identified only 110 farms with 1000 or more head of sheep remaining in California. The Western Range Association estimates that in the year 2000 there are fewer than 80 such operations remaining in California. The sheep industry is perilously close to extinction in California.

Conclusion

There is no evidence of a need for IWC regulation of sheepherder wages in California. Sheepherder wages in California are regulated by a specific federal scheme applicable to sheepherders in all 10 Western states where open range sheepherders are employed. This scheme recognizes the unique characteristics of the sheepherding

TABLE 5. FARMS WITH SHEEP AND LAMBS, CALIFORNIA AND UNITED STATES, AGRICULTURAL CENSUS YEARS 1982, 1987, 1992 AND 1997

ITEM	CALIFORNIA	UNITED STATES
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All Sheep and Lambs
Number of Farms

1997	3014	65,790
1992	3692	80,839
1987	4602	92,489
1982	5565	101,583

Number of Head

1997	787,041	7,821,885
1992	859,835	10,770,391
1987	979,506	11,059,397
1982	1,214,585	12,438,011

Sheep and Lambs, Farms with 1000 Head or More
Number of Farms

1997	110	1306
1992	147	1906
1987	199	1955
1982	245	2205

Source: U.S. Censuses of Agriculture, U.S. Department of Commerce and U.S. Department of Agriculture

occupation. This regulatory scheme produces wages that are comparable to those of IWC-regulated peer workers in California and which have kept pace with IWC-regulated wages for at least the past 20 years. Furthermore, sheepherders under the H-2A program receive more employment benefits and protections, and are much more heavily regulated, than any IWC-regulated category of agricultural workers. Finally, to impose a minimum wage scheme on the sheepherding occupation that increased wages would further increase the losses of an industry already under severe economic stress and rapidly disappearing in California.

EXHIBIT 7



June 1, 2015

VIA WWW.REGULATIONS.GOV

Adele Gagliardi
Administrator
Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-5641
Washington, DC 20210

Re: RIN 1205-AB70
*Temporary Agricultural Employment of H-2A Foreign Workers in the
Herding or Production of Livestock on the Open Range in the United
States*

Dear Ms. Gagliardi,

Mountain Plains Agricultural Services (Mountain Plains or MPAS) and Western Range Association (Western Range or WRA) (collectively, "Commenters") submit the following comments with respect to the Notice of Proposed Rulemaking (NPRM) issued April 15, 2015, *Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Open Range in the United States*, RIN 1205-AB70 (NPRM or the "Rule"). Those two organizations represent nearly all of the U.S. employers using the H-2A program to hire foreign workers involved in the production of grazing livestock (sheep, goats, and cattle). Since there have been shortages of U.S. workers willing to perform this work since World War II and virtually no U.S. workers at all for decades, Mountain Plains and Western Range's employer members must rely on the "special procedures" under which the Department of Labor (DOL) has administered the H-2A visa program (and its predecessors) for more than 60 years. These associations, their members, the businesses that supply them and purchase the meat and wool that they produce, and the rural communities in which they operate share in the grave concern that the Rule will deeply wound or eliminate this industry and end a way of life in the American West.

RA 00627

WRA000881

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Administrator, Office of Policy Development and Research
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This grave concern stems from the numerous proposed changes to the longstanding special procedures. Each specific concern is discussed in turn – but the two most alarming changes in the Rule are the tripling of monthly wage rates in conjunction with new and unrealistic limits on work that may be performed by H-2A workers involved in the grazing production of livestock.

These two changes alone will exclude hundreds of ranchers from the H-2A program and will cause any who remain to operate at a loss, sell their herds, and go out of business. As DOL has refused multiple requests by Mountain Plains and Western Range to meet to discuss any proposed changes to the special procedures – reversing decades of valuable stakeholder-agency interaction – Mountain Plains and Western Range fear that the Department has issued the proposed Rule based on fundamental misunderstandings of the unique characteristics of the livestock grazing industry and that the resulting errors will cause the extinction of that industry.

MPAS and WRA offer these comments in response to DOL's specific questions raised in the NPRM, to better explain their industry, to identify those areas of the Rule that will cause the greatest harm, to propose alternatives to address the Department's policy concerns without inflicting that harm. Many of the rancher-members of MPAS and WRA graze their livestock on the same land that generations of their family have used since the 1800's. They work shoulder to shoulder with and treat their workers as part of the family and understand DOL's role in protecting those workers; they hope to pass the ranch on to their children and grandchildren, and they understand and support updating the H-2A rules for this industry in a way that balances those two goals.

Range Production of Sheep and Livestock

Mountain Plains Agricultural Service was created in 1988, as employers engaged in range production of livestock sought more certainty for their workforce following the enactment of the Immigration Reform and Control Act of 1986 ("IRCA"). Mountain Plains has approximately 280 members who operate in 16 states, primarily in the Rocky Mountains. Mountain Plains acts as an "agent" on behalf of its employer members who utilize the H-2A visa program to hire workers involved in the production of grazing livestock (sheep, goats, and cattle). Mountain Plains does not file a "master" application for H-2A workers; each member employer is a single employer. Mountain Plains is based in Casper, Wyoming.

Western Range Association was first incorporated in 1953, after the enactment of the Immigration and Nationality Act ("INA") in 1952. In the 60-plus years since its incorporation, Western Range has grown to include 216 members in 11 western states. Western Range files "master" applications for H-2A shepherders, who transfer between WRA members as the need for workers requires. Western Range is based in Salt Lake

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City, Utah. A more extensive history of Western Range and its role in this program and the larger H-2A program are included below as an Addendum to this document.

Roughly 40% of all sheep in the U.S. and beef cows in the Western United States are herded by H-2A workers. The notion of "open range" is antiquated and inaccurate, as discussed below, but the production of grazing livestock in the American West is performed on a combination of privately-owned and federally-owned public land for which livestock producers pay annual grazing fees. Through the grazing of sheep and cattle, these producers help the U.S. government manage more than 250 million acres of public land. Prescribed grazing is a critical conservation practice on behalf of local governments throughout the West as well.

Whether individually or as part of a team, herders can tend a large "band" or "herd" of 1,000 head of livestock or more, often in rugged high altitude terrain or dry desert conditions, hauling water for the animals, herding them to grazing areas and making sure they have enough to eat, keeping them from going astray, and protecting them from the constant threat of natural predators like coyotes, mountain lions, and wolves, harmful or poisonous plants, and man-made dangers like highways and domesticated dogs. During lambing, calving or kidding season, the herders assist the animals in the birthing process, and at all times, the herders provide for the health and medical needs of the herd.

Dating back to World War II, sheep producers found it first difficult and later impossible to find United States workers able and willing to perform the difficult work of "range" sheepherding. In recent years, the number of U.S. born sheepherders has essentially dropped to zero. For example, in 2012, Western Range's members sought to hire nearly 1,000 sheepherders. Out of that number, only 22 U.S. workers even applied, and only 2 met the qualifications and were hired. Neither completed the job contract. In 2014, Mountain Plains filed H-2A applications seeking 49 goat/sheepherders, 27 goatherders, 734 sheepherders, 235 grazing cattle herders, and 30 sheep shearers and wool graders. Of the more than 1,000 positions for which Mountain Plains' employers needed workers, exactly 2 qualified U.S. workers applied. One was not interested in the job and the other was hired but quit before completing his contract.

Even where there are "U.S." workers applying for work in the production of grazing livestock, nearly all are foreign-born, possible former H-2A workers who have obtained permanent resident status by marrying U.S. spouses. The remote and demanding nature of this work makes it unattractive to U.S. workers. Without the sheepherders hired from Peru, Mexico, and Chile, the generations' old industry of grazing livestock would disappear forever in the United States.

Even with access to the H-2A program, grazing livestock producers face an unforgiving present and an uncertain future: producers face both rising input costs (feed,

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 Administrator, Office of Policy Development and Research
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water, transportation, etc.) and a price-taking market in which more than half of the U.S. lamb supply and most of the U.S. wool supply is provided by China, Australia, and New Zealand. Prolonged droughts only compound these problems, and large, well-established sheep operations are going out of business every year. Where U.S. herds included more than 56 million head of sheep at the beginning of World War II, the current total is now less than 10% of that figure, with fewer than 5.3 million head of sheep as of the January 30, 2015 USDA NASS Sheep and Goat Report.¹ According to USDA data, lamb imports have increased from approximately 6,000 pounds per month in January 2000 to more than 20,000 pounds per month in March 2015, primarily from Australia, due in part to the increase in purchase power of the U.S. dollar vs. the Australian dollar in recent years.²

The attached report by Stephen Bronars, Ph.D., "Analysis of the Wages of H-2A Temporary Foreign Workers Employed in the Herding and Production of Range Livestock" (Bronars Report), addresses the current world market for the wool and meat produced by this industry, as well as suggesting an alternative to the NPRM's proposed wage methodology and a discussion of how that wage alternative would provide a far better standard of living for herders than that seen by other workers in this region. First, as discussed in the Bronars Report, the massive increase in mandated wages proposed in the NPRM assumes that employers would be able to pay those increased wages by raising prices, without losing their market share to foreign competitors in the global market. As shown in that report, however, U.S. producers account for less than seven tenths of one percent of the world's wool production and less than nine tenths of one percent of the world's lamb production. U.S. market share has been shrinking for decades, but United Nations data show that U.S. wool production is down 65% since 1990, while lamb production is down 56% over that same period. Beef producers in the U.S. face the same pressures, with roughly 3% of the world's beef supply produced on the range.³ The unavoidable bottom line of these market conditions is that U.S. producers will not be able to increase their prices and will, instead, be forced out of business by the tripling of their labor costs, leaving foreign competitors to slightly increase their own production to meet that demand at a lower price.

Due to the fortitude of U.S. ranchers and the hard work of the H-2A herders that they hire, some family ranches have stayed in business. The estimated value of direct production by sheep under the care of H-2A workers is \$275 million, with revenue created in indirect "upstream" and "downstream" businesses valued at more than \$665 million. The value created by H-2A workers involved in the production of grazing goats

¹ By way of contrast, in the early 1800's there were fewer than 10 million people in the United States but more than 7 million head of sheep. U.S. sheep herds stayed above that number for 200 years before dropping below 7 million head in 2003 and staying below that figure ever since.

² <http://www.ers.usda.gov/data-products/livestock-meat-international-trade-data.aspx#26050>

³ Range beef producers face competition both from foreign producers as well as U.S. feedlots. Increasing the operating costs for range producers will eliminate their remaining market share and lead to only foreign or feedlot beef.

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and cattle involves similar "multiplier" effects on local economies. This is a small industry relative to some, but it plays a significant role in the livelihood and survival prospects of small towns throughout the West. From the meat on a family's dinner table to the wool in the uniforms worn by the U.S. military, the range production of sheep and livestock contributes to the American economy and continues the American story. The Commenters respectfully urge the Department of Labor to reconsider its proposed Rule, which threatens to end this way of life.

Early Program History and *Mendoza* Litigation

The Department of Labor set forth the early history of the program to admit foreign workers to address the shortages of U.S. workers in the production of grazing livestock in Field Memorandum No. 24-01 (FM 24-01):

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 sheepherders and goatherders in conjunction with their ranching activities.

The unique occupational characteristics of sheepherding (spending extended periods of time 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 interested in 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 sheepherding" for many of these jobs. Special privileges were granted with respect to the issuance of visas which enabled the foreign 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. There were no required tests of U.S. worker availability or adverse effect at the time.

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 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

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employers and the sheep raising industry had not fully benefitted from the services of foreign shearherders, as was intended by the special legislation. The Committee recommended that no additional special legislation be enacted to admit foreign shearherders and also that the future importation of foreign shearherders 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 shearherders has been enacted to date. The labor certification program for temporary foreign shearherders and goatherders was implemented consistent with the H-2 program administered by INS (now, USCIS) and the Department.

After Congress passed the Immigration Reform and Control Act of 1986 ("IRCA"), the H-2 program was divided into the agricultural H-2A program and the non-agricultural H-2B program. With IRCA, shearherders came under the H-2A program, subject to special procedures that have been in place, in one form or another, since that time. DOL issued regulations for the H-2A program on June 1, 1987 (the "1987 Rule").⁴ In the 1987 Rule, 20 C.F.R. § 655.93(c) specifically provided for the continued use of "special procedures" in the sheep industry and the extension of such procedures to other range production of livestock.

DOL issued Field Memorandum No. 74-89 (FM 74-89), effective May 31, 1989, setting forth special procedures for temporary foreign herders. As stated in DOL's Field Memorandum No. 24-01 (FM 24-01), the 1987 Rule "was based on past experience under the shearherding program, and is consistent with the views of IRCA's Congressional sponsors." Further explaining the 1987 Rule in 2011, DOL stated that:

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 shearherders 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.

⁴ 54 Fed. Reg. 20496 (June 1, 1987).

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TEGL 32-10 (76 Fed. Reg. 47256, 47257 [Aug. 4, 2011]). On August 1, 2001, DOL issued FM 24-01, which continued the special procedures set forth in FM 74-89. DOL next issued TEGL 15-06 on February 9, 2007. This TEGL reiterated (nearly verbatim) DOL FM 24-01.

The 1987 Rule was replaced in 2008 (the 2008 Rule)⁵ and again in 2010 (the 2010 Rule)⁶ through notice-and-comment rulemaking. The 2010 Rule is currently in effect and governs DOL's administration of the H-2A program, including the special procedures. The 2010 Rule explicitly authorize the OFLC Administrator to "establish, continue, revise or revoke" special procedures in order "[t]o provide for a limited degree of flexibility in carrying out the Secretary's responsibilities under the Immigration and Nationality Act (INA), while not deviating from statutory requirements." 29 C.F.R. § 655.102. The 2010 regulations reference by name the "special procedures currently in effect for the handling of applications for sheepherders in the Western States (and adaption of such procedures to occupations in the range production of other livestock), and for custom combine harvesting crews." *Id.* The regulations further provide that "[p]rior to making determinations under this section, the OFLC Administrator may consult with affected employer and worker representatives." *Id.* After the 2010 Rule took effect, DOL issued new guidance for the special procedures at issue here in 2011 (TEGL 15-06, Change 1, "Open Range Production of Livestock" and TEGL 32-10 "Sheepherding and Goatherding").

Those two TEGLs were the subject of a lawsuit in U.S. District Court for the District of Columbia, *Mendoza v. Solis*, 1:11-cv-01790-BAH. DOL was a defendant in the *Mendoza* litigation, and MPAS and WRA intervened as defendants. While the District Court agreed with the Intervenor-Defendants that the Plaintiffs in that case lacked standing to bring the case, that decision was subsequently overturned on appeal to the U.S. Court of Appeals for the District of Columbia. The D.C. Circuit further ruled that the TEGLs issued in 2011 were "legislative rules" that required notice-and-comment rulemaking pursuant to the Administrative Procedure Act. The decisions in *Mendoza* required that the special procedures undergo notice-and-comment rulemaking to bring them into compliance with the requirements of the APA, but did not require the substance of the TEGLs be cast aside and radically re-written.

On remand, the District Court set a schedule that allowed DOL 5½ months to prepare the NPRM for issuance by April 15, 2015, with a Final Rule to be issued by November 1, 2015 and to take effect by December 1, 2015. Of the 6½ months between issuance of the NPRM and issuance of the Final Rule, DOL allotted only 30 days for public comment on the rule, later agreeing to a 45-day comment period after significant

⁵ 73 Fed. Reg. 77110 (Dec. 18, 2008).

⁶ 75 Fed. Reg. 6883 (Feb. 12, 2010).

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public outcry from the grazing livestock industry and from Congress. This is particularly ironic because the argument driving the *Mendoza* litigation giving rise to the current rulemaking was the lack of adequate opportunity for public comment on the special procedures.

Administrative Procedure Act Concerns

Beyond the disastrous substance of the rules discussed below, there are serious concerns with the procedure by which the Rule has been prepared. The truncated public comment period aside, it appears that the Department has failed to meet its procedural requirements for preparing and issuing the NPRM. The NPRM does not include a proper Initial Regulatory Flexibility Analysis (IRFA) of the Rule's impact on the regulated community (nor on other parts of the U.S. economy or other agencies of the U.S. government). See 5 U.S.C. § 603. In particular, the only "alternatives" identified in the NPRM relate to the phase-in period for the new wage methodology: immediately, over a 3-year period, or over a 5-year period. This does not come close to satisfying the requirements of Section 603(c), of describing "any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities."⁷

The new definition of range production of livestock proposed in the NPRM represents a radical departure from statutory language, previous DOL regulatory text, and a long series of DOL guidance documents with respect to the special procedures for range production of livestock. The APA requires that changes in regulatory practice be based on an agency's reasoned explanation for the change. The NPRM does not explain why a definitional change is necessary, does not identify any problem or confusion with the longstanding definition of the work covered by the special procedures, and makes no effort to explain why the particular definition chosen for the Rule is necessary or appropriate. As discussed below, the definition's reliance on "unenclosed" land is at least 100 years out of date, suggesting that the reasoned explanation for the change required by the APA is not possible.

The Department of Labor Has Not Met its RFA Requirements

The NPRM openly concedes that it "will have a significant economic impact on a substantial number of small entities." 80 Fed. Reg. 20330. The purported IRFA in the NPRM, however, contains only the most cursory analysis of the statutory factors from Section 603. The NPRM states that it is issuing the NPRM in response to the D.C.

⁷ As set forth in the comments of the American Sheep Industry Association and the Small Business Administration Office of Advocacy, all but 0.02% of the total sheep operations in the United States are small businesses. All or nearly all of the members of Mountain Plains and Western Range would meet the statutory definition of "small business" for agricultural enterprises.

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Circuit's decision in *Mendoza* and because of "the continuing difficulty the Department experiences in determining an appropriate AEWR using the current wage setting methodology." *Id.* This explains why DOL is considering taking any action, but does not explain why the Department is considering *this* particular action.

The analysis of the impact of the Rule on small businesses contains a similarly brief discussion, contains repeated underestimation of the actual costs to be imposed, and fails to include a number of significant costs. Mountain Plains and Western Range contend that the defects inherent in the NPRM's IRFA render the rulemaking invalid as contrary to the requirements of the APA and the Regulatory Flexibility Act. For example, the NPRM attaches no economic impact to the change in definition of "open range" – a change that will exclude an estimated 40% or more of the employers currently using the H-2A program in this industry, as discussed in greater depth below.

The NPRM takes the current workforce and provides a projection of the impact of the wage "transfer" from employers to workers. Unlike most economic analyses of proposed rules, this is not simply a transfer from employers to employees, normally a zero-sum prospect. Here, since very nearly 100% of the workforce consists of nonimmigrant foreign workers with little or no opportunity to spend money while in the United States, this is a transfer of tens of millions of dollars from U.S. employers to foreign markets. This is not a situation where U.S. workers would have more money in their pocket to spend within the U.S. economy, but rather, where all or nearly all of the paycheck of these workers is wired out of the U.S. to Peru or Mexico, where that money is used to build homes and buy consumer items there, a significant net loss for the U.S. economy.

The NPRM Fails to Consider the Impact of Forcing Ranches Out of Business

The NPRM does not analyze the cost to ranches of going out of business because of this massive wage increase or the change in the definitions of who may use the program, forcing them to sell their herds, their equipment, and their land into a buyer's market as hundreds or thousands of other ranches face the same plight.⁸ If the Rule were to take effect as currently written, and all of the H-2A sheep producers were forced to slaughter 40% of the country's sheep without being able to sell them to market (as would likely happen, since the world market could not absorb that influx of supply), the total loss would be \$212 million, based on the total value of the U.S. sheep supply. While these are small employers in a single part of the economy, the direct losses associated

⁸ The NPRM actually states that the Department of Labor estimates that the number of H-2A employers will increase from the current 560 to 669 by 2025 with the Rule in effect, based on "an annual growth rate of two percent." 80 Fed. Reg. 20327. This statement alone demonstrates how fundamentally wrong DOL's assumptions are and how much the Department misunderstands this industry and the terrible consequences of the Rule on these small businesses.

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with them forced out of business would be huge, to say nothing of the "upstream" or "downstream" losses that would ensue.

The NPRM does not calculate the loss to rural communities if these ranchers are forced out of business by the Rule. Each of the jobs at issue in this rulemaking in the production of grazing livestock creates at least 8 full-time U.S. jobs, upstream and downstream, from suppliers to processors, truck drivers to shearers, supermarket clerks in rural Wyoming to butchers at a natural meat cooperative in New York City. Losing 2,000 H-2A workers could mean the loss of tens of thousands of U.S. jobs. For small Western towns already battling to stay alive, this Rule could turn them into ghost towns.

Even for East Coast sheep operations that pasture-raise their sheep and cattle and do not use H-2A workers, the loss of Western livestock producers will cause shippers, shearers, and processors to go out of business, leaving them unable to continue their operations as well. No consideration is given to these workers or businesses in the NPRM, which somehow assumes (against the weight of all economic theory and the entire history of this industry) that employers have an unlimited capacity to increase wages and the economy will suffer no ill-effects from tripling or quadrupling labor costs in an industry that operates on razor-thin margins already.

Beyond the tangible economic cost of lost jobs, lost farms, and lost businesses, there would be an incalculable injury to the Western lands, themselves. Grazing livestock producers manage 250 million acres of Western land, and grazing activities contribute significantly to fire suppression, endangered species management (the protected sage grouse needs grasslands grazed to a reasonable height), and related conservation activities. The lands under the stewardship of the Department of the Interior, the Forest Service, and the Bureau of Land Management would suffer tremendously without the presence of range livestock producers.

The NPRM Fails to Properly Value the Costs of the Rule

On the more technical aspects of the Rule, beyond the two largest concerns with the definition of the job and the new wage methodology, the NPRM misunderstands and/or underestimates the impact that it will have on employers. The Rule proposes to change how camps or mobile housing facilities are used, introducing a "one worker to a camp" requirement. The NPRM does not include the cost of purchasing additional housing in its summary of costs per employer. 80 Fed. Reg. 20334. If it had, it would see that employers will have to spend \$20,000 or more to purchase each additional camp, with some operations facing a bill of \$80,000 to comply. Even that assumes that: (1) employers will be able to locate such housing in order to purchase it; and (2) they will be able to actually use the new housing. In Winter months, when the days are short and the nights are dark, it will be impossible for herders traveling on horseback and towing camp wagons to follow the sheep to be able to move the herd, move one wagon, then loop back

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to move the second wagon before nightfall. These workers often travel over terrain with no roads, and the NPRM's changes to housing create serious safety concerns. This is just one example of how the Rule will have far-reaching effects on this industry to an extent not analyzed by DOL in the NPRM (and perhaps not considered or understood by the Rule's authors).

Even without considering all of the additional or "hidden" costs built into the changes in the rule⁹, the Department estimates that the additional costs will constitute between 19.5% and 24.1% of total revenue for sheep or livestock employers with 3 workers, respectively. 80 Fed. Reg. 20334, Ex. 22. No justification is given for measuring the impact only for those employers with 3 workers, since the Colorado Wool Growers Association's 2010 study (cited in the NPRM at 80 Fed. Reg. 20309 for an unrelated issue but ignored here) showed that its members used an average of 5 workers.¹⁰ Across the entire Western portion of the U.S. the average number of workers per operation is at least 4, but even the extremely limited estimate used by DOL gives a good sense of just how costly the Rule will be. The 19.5% and 24.1% figures do not include the single largest additional financial burden of the Rule, the wage increases. The American Sheep Industry Association (ASI) estimates that labor costs make up 24% of the total operating costs for sheep ranchers. It is slightly disappointing but not ultimately surprising that the NPRM does not include a similar calculation of the percentage of total revenue that would be devoured by the new wage methodology. This is likely because the new costs and transfers proposed in the Rule will exceed total revenue for all or nearly all of the employers in this industry.

Despite having months and months to prepare the NPRM, DOL has failed to prepare a valid IRFA as required by the APA. Some of the costs of the Rule are unknowable today, given how radically the Rule proposes to change the longstanding practices of the special procedures program. Still, the Department should be expected to understand the harm that it proposes to inflict on small businesses before embarking on this course of action. To do otherwise is unwise and unlawful.

Definition of "Open Range" and Limits on "Incidental" Work

Together with the new wage methodology introduced in the NPRM and discussed below, the most devastating element of the proposed Rule is the definition of "open range" in 20 C.F.R. § 655.201 (proposed); 80 Fed. Reg. 20339. This goes to the core of

⁹ For example, the NPRM estimates the additional cost of the increased water requirements in the NPRM at \$1.0 million annually. 80 Fed. Reg. 20326-27. This estimate does not include the cost of purchasing additional trucks or water trailers (tens of thousands of dollars each), nor does it accurately estimate the average length of a trip from the ranch to a sheep or livestock camp. This estimate is extremely low and reflects the fundamental lack of understanding of the industry by the Department.

¹⁰ Colorado Wool Growers Association, *The Real Wage Benefits Provided to H-2A Sheep Herders and the Economic Cost to Colorado Ranchers* (Mar. 5, 2010).

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the special procedures and acts as a gatekeeper over whether employers may use the Rule at all or be excluded from the H-2A program altogether. The Rule states that:

These procedures apply to job opportunities with the following unique characteristics:

- (1) The work activities involve the herding or production of livestock, as defined under § 655.201. Any additional job duties performed by the worker must be minor, sporadic, and incidental to the herding or production of livestock;
- (2) The work is performed on the open range requiring the use of mobile housing, as defined under § 655.201, for at least 50 percent of the workdays in the work contract period because the worker is not reasonably able to return to his or her place of residence or to employer-provided fixed site housing within the same day. Any additional work performed at a place other than the open range (e.g., an enclosed farm or ranch) that does not constitute the production of livestock must be minor, sporadic, and incidental to the herding or production of livestock; and
- (3) The work activities generally require the workers to be on call 24 hours per day, 7 days a week.

20 C.F.R. § 655.200(b) (proposed); 80 Fed. Reg. 20339. Proposed Section 201 contains definitions of the following terms:

Herding. Activities associated with the caring, controlling, feeding, gathering, moving, tending, and sorting of livestock on the open range.

Livestock. An animal species or species group such as sheep, cattle, goats, horses, or other domestic hooved animals. In the context of this subpart, livestock refers to those species raised on the open range.

Minor, sporadic, and incidental work. Work duties and activities that are closely and directly related to herding and the production of livestock and are performed on no more than 20 percent of the workdays spent at the ranch in a work contract period.

Mobile housing. Housing meeting the standards articulated under § 655.235 that can be moved from one area to another area on the open range.

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Open range. Unenclosed public or private land outside of cities and towns in which sheep, cattle, goats, horses, or other domestic hooved animals, by ownership, custom, license, lease, or permit, are allowed to graze and roam. Animals are not meaningfully enclosed where there are no fences or other barriers protecting them from predators or restricting their freedom of movement; rather a worker must actively herd the animals and direct their movement. Open range may include intermittent fencing or barriers to prevent or discourage animals from entering a particularly dangerous area. These types of barriers prevent access to dangers rather than containing the animals, and therefore supplement rather than replace the worker's efforts.

Production of livestock. The care or husbandry of livestock throughout one or more seasons during the year, including guarding and protecting livestock from predatory animals and poisonous plants; feeding, fattening, and watering livestock; examining livestock to detect diseases, illnesses, or other injuries; administering medical care to sick or injured livestock; applying vaccinations and spraying insecticides on the open range; and assisting with the breeding, birthing, raising, weaning, castration, branding, and general care of livestock.

20 C.F.R. § 655.201 (proposed); 80 Fed. Reg. 20339.

Understanding the need to distinguish when these "special procedures" would apply and when the general H-2A rules would apply, these definitions are inappropriately restrictive and are not a realistic reflection of the industry's labor needs. In a recent survey that Mountain Plains conducted of its members, asking them whether their ranch's operations using H-2A workers currently and for previous years would fit within the definitions quoted above. Of the 140 employer-members who responded, 45% of respondents indicated that their operation would *NOT* qualify as "open range" according to the definition in the NPRM. Of those respondents, 34% indicated that their operation would *NOT* qualify as "herding" according to the definition in the NPRM. This came as a shock to employers who have been using the H-2A special procedures program for many years and who now face the prospect of losing their workforce and, as a result, their family farm.

In place of those definitions, Commenters suggest the following:

Grazing Livestock Production System. A livestock production system that is dependent on the sustainable utilization of herbage or forage on a piece of land via grazing or supplementation. In the context of this subpart, production refers to the processes and methods used to transform tangible inputs (grasses, grazing, forage) and intangible inputs (sunshine

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and animal husbandry) into goods (protein, wool, by-products, and carbon sequestration). Resources and practices are used to create animal products that are suitable for consumption or further processing. Practices may include but are not limited to: animal husbandry, temporary fencing, permanent fencing, management of urban interface, transport of water for animal use, use of structures and corrals to facilitate production practices, assistance with production of feed sources for animals being cared for, assistance with repair and maintenance of equipment and facilities used in production practices, trailing livestock, assistance in loading and unloading animals into livestock trucks for movement.

This would address the need for a definition, make clear that feedlots and similar operations are not covered, and tie the definition to the critical component of the job, the grazing of livestock, rather than an arbitrary characterization of the housing, topography or landscape where the grazing is conducted, or where the herder's work is to be conducted. Likewise, where the term "herding" is used in Section 655.210 of the proposed Rule, Commenters suggest "herding and grazing production of livestock" to maintain consistency and more accurately describe the job to be performed.

The Term "Open Range" is Antiquated and Should be Retired

The NPRM does not suggest that there has been any confusion as to what work would be appropriately covered by the existing special procedures, nor does it communicate any concern that workers not engaged in "herding" or "production of livestock" as defined above are being improperly included in the special procedures. The most recent TEGL for sheepherders and goatherders, TEGL 32-10, made two passing references to "the open range" but did not restrict access to the program to a particular definition of that term. The most recent TEGL for those involved in grazing livestock, TEGL 15-06, Change 1, did reference the term "open range" but did not define that term.

The FLSA's exemption for this work applies to "any employee employed in agriculture ... if such employee is principally engaged in the range production of livestock." 29 U.S.C. § 213(a)(6)(E). The Wage & Hour Division (WHD) regulations interpreting this livestock production FLSA exemption (29 C.F.R. §§ 780.323 – 780.329) matches the NPRM's language on some issues (e.g., the definition of "livestock" in Section 780.328; the recognition that the job duties necessitate remaining with the herd and "make the computation of hours worked extremely difficult" in Section 780.329) but differs from the NPRM in certain critical areas. The Commenters respectfully assert that the existing WHD regulations are a better fit for the definition of the jobs that have been performed under the special procedures for decades than is the NPRM.

For example, the WHD regulations use the phrase "range" instead of "open range." Section 780.326 defines "range" as "land that produces native forage for animal

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consumption" and specifically states that the "range may be on private or Federal or State land, and need not be open." Furthermore, any part of a ranch beyond the "ranchhouse, barns, sheds, pen, bunkhouse, cookhouse, and other buildings in the vicinity... would be the 'range.'" Section 780.329(b). The WHD regulations make clear that the worker's "primary duty must be the range production of livestock" but acknowledges that "[t]he fact that an employee generally returns to his place of residence at the end of each day would not affect the application of the exemption." Section 780.329(a). The critical distinction between ordinary agricultural work and work "on the range" in the WHD regulations is that the work is sometimes "performed away from the 'headquarters'" (the specific buildings listed above) (Section 780.329(b)), and consistent with the legislative history of the exemption, it "was not intended to apply to feed lots or to any area where the stock involved would be near headquarters" but rather to situations where the herd are grazing under the supervision and protection of the workers in question. Section 780.329(c). There are times when weather conditions require that the herd be brought to the ranch for periods of time, but that does not mean that the workers caring for them and herding them are not "principally engaged" in range production of sheep and livestock.

The NPRM uses (for the first time) the requirement that the herd be grazed on "[u]nenclosed public or private land outside of cities and towns" where they are "allowed to graze and roam." 80 Fed. Reg. 20339. While that description might once have fit portions of the American West, it has no application to the present landscape. Stated simply, there is no such place. All of the land in the West (indeed, in the whole country) is owned either privately or by the Federal government or a State government. The "range" is less open every year. Fences line every highway and most roads throughout the West. Even within Federal lands, the U.S. Bureau of Land Management and USDA Forest Service have deployed fences to keep certain plant or animal species apart, to protect certain portions of that land, to keep grazing ungulates (wild or domesticated) away from rivers, streams or other riparian areas, or to restrict access for some other reason. These fences delineate boundaries and limit the access of people or certain larger wild animals, but generally do not restrict the movement of sheep. While there are still places in the West where one might not see a fence nearby, every parcel of land is bounded by fences at some point. Thus, the reference to "unenclosed" land is antiquated and would effectively eliminate this program.

Temporary Fencing Has Been Used Since the Beginning of this Program

The use of temporary fencing is an essential tool used by livestock production workers since before the beginning of the H-2A herder program and its predecessor programs, with DOL's approval. Temporary fencing neither replaces workers nor diminishes the need for those workers. The NPRM mistakenly treats fencing as a substitute for these H-2A workers, apparently operating under a misperception that a herd can be led into a fenced area and left alone for the night or for longer periods of time. Nothing could be further from the truth. Temporary fencing is used to keep sheep away

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from certain plants (either those grown by another farmer that must be protected or those that are hazardous to sheep who must be protected from the plants) and to keep them from falling into ravines or drowning in rivers. The U.S. Fish & Wildlife Service expressly requires that sheep grazing on certain U.S. Forest Service allotments be kept in "night pens" (temporary enclosures using electric fences) for purposes of "detering bears and reducing grizzly bear/sheep conflicts." A ban on the use of temporary fencing by the Department of Labor directly contradicts explicit requirements by the Department of the Interior and the Department of Agriculture.

Temporary fences are erected, taken down, and moved with the herd to avoid over-grazing a particular area of land, as many as 12 times per week in some areas. Even with fences, herders are still required to move the herd from place to place, to keep members of the herd from straying off, to tend to the medical needs of the herd and to provide adequate water, minerals, and additional feed as required, but perhaps most critically, to guard the herd from predators. Herders must be able to care for the livestock and travel through rough terrain, possibly on horseback. They may also be needed to handle a rifle when the time comes. A hungry mountain lion, coyote, or wolf (or even certain domesticated dogs) will not let a fence stand between it and a lamb dinner. The use of fencing is a valuable tool for herders but nothing replaces the watchful eyes and ears of a trained herder. Banning the use of this fencing will not protect U.S. jobs, but will make the jobs of herders far more difficult, and will result in the death of more animals and possibly more motorists.

The NPRM specifically requests comments on whether the definition of "open range" should include a minimum acreage of the land on which the animals roam. The phrase "open range" should be removed from the Rule entirely, and there should definitely not be a bright-line definition of acreage. Very often, the employer and the worker would have no way of knowing the acreage of a given parcel of land, making the application process and compliance efforts essentially impossible. In a similar vein, the NPRM asks whether the "open range" definition should take into account barriers, fences or other enclosures on the same land and, if so, under what circumstances. For the same reasons articulated above, the phrase "open range" is 100 years out of date and should be replaced with the simpler "range" definition from the WHD regulations or, better still, with a focus on the actual labor to be performed rather than on the topography of the landscape where it is to be performed, referring instead to workers involved in the production of grazing livestock.

By tying the work to "grazing," the Rule would more than adequately avoid the potential scenario of applications for H-2A workers on feedlots. The WHD regulations recognize this and the distinction drawn between work on a feedlot and grazing operations remains viable and relevant. Commenters strongly urge the Department to reconsider its proposed definition in order to align the Rule with the WHD regulations and with the reality of the modern Western landscape.

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The 50% and 20% Rules Are Arbitrary and Unworkable

As quoted above, the WHD regulation regarding work "on the range" explicitly includes range work spent herding, tending to, and caring for grazing livestock, even where the "employee generally returns to his place of residence at the end of each day." Section 780.329(a). The NPRM requires, instead, that workers must use mobile housing "for at least 50 percent of the workdays in the work contract period because the worker is not reasonably able to return to his or her place of residence or to employer-provided fixed site housing within the same day." 20 C.F.R. § 655.200(b)(2) (proposed); 80 Fed. Reg. 20339. Under this proposed Rule, a sheepherder spending 182 days each year in a camp but the remaining time in a bunkhouse during lambing, docking, or castrating season would not be eligible under the Rule but would not be eligible under the regular H-2A provisions, either, since even 1 day is spent away from fixed-site employment and housing. This would be an absurd outcome.

The better approach would be to follow the existing DOL regulations in the WHD context, which look to the "primary duty" of the employee (Section 780.329(a)) or whether the employee is "principally engaged" in the range production of livestock, including all of the duties associated with that work (Section 780.325(a)). As the WHD regulations state:

To determine whether an employee is "principally engaged" in the range production of livestock, one must consider the nature of his duties and responsibilities. To qualify for this exemption the primary duty and responsibility of a range employee must be to take care of the animals actively or to stand by in readiness for that purpose. A determination of whether an employee has range production of livestock as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the range production duties is a useful guide in determining whether this is the primary duty of the employee. In the ordinary case it will be considered that the primary duty means the major part, or over 50 percent, of the employee's time.

Section 780.325(a). Moreover, an employee spending more than 50% of his or her time during the year on the range in the production of livestock would be exempt "even though the employee may perform some activities not directly related to the range production of livestock, such as putting up hay or constructing dams or digging irrigation ditches." Section 780.325(b). That definition includes a more holistic and flexible approach to the definition – maintaining the general rule that the worker is "principally engaged" or has a "primary duty" or spends the majority of his or her time out on the range, but recognizing that other work has historically been connected to that work and must be included in the definition of the job.

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The arbitrary and artificial 50% and 20% limits proposed in the NPRM are unworkable and treat work in the production of grazing livestock as a series of discrete tasks rather than the collection of work performed in service to the livestock and their needs. The NPRM makes no attempt to explain how the 20% "incidental activity" test would help U.S. workers.¹¹ Nor does the NPRM offer any explanation of how H-2A foreign workers are being harmed by not having this 20% limit in place. What is the policy goal that this rule achieves? Without any effort to articulate a benefit to U.S. or foreign workers, the NPRM simply imposes this limit that will: (1) make it impossible for many current H-2A program users to utilize the H-2A program at all; and (2) impose tremendous recordkeeping and "HR" burdens on family farms to follow their workers and record every activity in which they engage. The work performed by these employees is often performed far from the ranch and to expect workers or ranchers to track their activities like a lawyer billing for his or her time would be impossible. Moreover, what possible benefit could result from attempting to do so? These "bright-line" limits on how and when this work should be performed demonstrate how little the Department understands this work and would be absolutely unworkable in reality.

Responses to NPRM Questions About the Work to be Performed

The NPRM solicits specific comments on a number of questions as to the season in which the work is performed, the nature of the job duties on the range vs. at the ranch, and the time period and location where such work is performed.¹² The general response is that the work is performed on an "as the need arises" basis, and there is no single description of a worker's typical day. The work is defined first and foremost by the needs of the animals in the herder's care. During lambing, kidding, and calving season, the days are longer and the work is focused on the healthy birthing of new animals. Those duties occur at certain times of the year according to the natural cycles of the seasons and the animals. In parts of the West, employers use fixed structures (known as "sheds") to keep livestock and their offspring safe and healthy during the birthing process. Other ranches perform birthing in open-air pastures. The amount of time spent assisting with this phase depends on the natural conditions of the male and female livestock.

¹¹ Of all the complaints raised by the *Mendoza* plaintiffs, none of them related to the amount of "incidental activity" that was included in the job. The job of a herder includes all of the duties related to caring for and herding the grazing animals, and there is no black-and-white distinction between what is primary and what is "incidental" work.

¹² Commenters note, as an aside, that the answers to these questions have not changed dramatically over the past 60+ years of this program and that, if the Department of Labor had been willing to follow through on its repeated promises of accepting stakeholder input and engaging with the industry, it would have all of these answers already.

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Responding to health emergencies experienced by the animals can occur at any time of the day or night, as can responding to threats from predators. The time spent in a particular grazing area before moving to another is dictated by the amount and type of forage available. Different plants grow at different rates and are consumed by the herd at different rates. The NPRM seeks specific comment on a number of issues related to the season and time spent by H-2A workers on particular tasks, and the Commenters offer the following brief responses to those requests.

With respect to the 10-month limitation for "livestock" occupations compared with the longstanding 12-month limit for sheep and goat work, the Commenters strongly urge the Department to keep those existing limits in place in the Rule. Switching the sheep and goat job orders to a 10-month limit would not fully meet the needs of those industries and would put herders and herds in jeopardy if workers were required to switch in or out during the middle of the grazing season. All of these animals require year-round care, and the 10-month limit for livestock other than sheep and goats should be extended to match the 12-month limit for workers caring for those animals.

Regarding the differing functions for sheep and goat herders in a particular region, the key distinguishing factor in any region and at any given time of year is the weather. These occupations are subject to both the expected changes in weather throughout the year as well as the unpredictable weather conditions that can change in a matter of minutes. In warmer weather, herders must transport and provide additional water to the herd, while in winter months, they must be careful of snow and ensure that the herd has sufficient food. In various climates, the work will depend on the particular reproductive cycle of the animals. The work is ongoing and while variable, it is impossible to establish definitive "seasons" due to entirely too many variables beyond the control of the employer or the herder.

The NPRM asks for the length of time within which employees are on the "open range" as opposed to being at the ranch. As discussed at some length above, the by-gone notion of the "open range" is misinformed and misleading. The location of the work is not the determining factor in defining the occupation. The occupation is defined by the care and management of grazing livestock, with all of the tasks and duties that go with that responsibility. What is best for the health and safety of the herd will dictate where and when the herd must be (and where the herder must bring them). For some operations, weather may require a sheep producer to use a fixed structure (lambing shed) to keep livestock and newborn offspring safe and healthy during and immediately following the birthing phase of production. However, the length of time that a given worker may be assisting with the birthing phase would depend on the vagaries of the reproductive cycles of the particular sheep under his care.

The description of the occupation above is linked inextricably to the care and management of grazing livestock. The NPRM seeks further information about the duties

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typically performed by these workers. Again, the specific duties will vary from day to day or month to month, but are all tied to the needs of the herd. The job orders filed by the Commenters reflect a sizable list of potential job duties to ensure that the H-2A workers are not working "out of contract" and to advise potential applicants of the nature of the work that would be performed. The following language that the American Sheep Industry Association submitted to DOL in Fall 2014 is non-exhaustive, and specific to sheep and goat herding, but gives a general sense of the work performed by herders:

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. Drenches¹³ 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.

As for the question of during what time period each duty is performed, the only real answer is "as the need arises." There is simply no way to set a specific time for these duties. Even a fairly regular event like birthing will vary depending on the particular geographic location – lambing season comes to different places at different times.¹⁴

Above all else, weather is probably the single largest factor in determining what work must be done and where it may be performed. For example, wet and rainy weather may require that the herd be moved to the ranch to separate lambs for sale. In drier conditions, this can take place at facilities out on the range. The members of the two Commenter associations are spread across thousands of miles of the American West, with extreme differences in climate and topography. These differences help dictate whether lambing can be conducted in the open air on the range or must be done in sheds. Drought conditions in certain areas dictate how often a herd must be moved and where they would be able to graze, as can excessive snow or rain. The herder understands all of these various conditions and makes daily decisions as to where and when activities will take place based on the health and welfare of the herd entrusted to his care.

Wage Methodology

The NPRM proposes an extreme departure from the wage methodology that has been in place since the beginning of this program decades ago. The result of this

¹³ A de-worming process to remove certain parasites.

¹⁴ This is one of the reasons why it is critical for Western Range to preserve its ability to transfer workers between its employer members so that they can assist with the lambing season in California and then go help with lambing operations in Wyoming or Colorado that may occur at a different time.

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departure is tripling or quadrupling the wages that must be paid by employers. Abandoning the history of the program, cutting out the role of the state workforce agencies, and ignoring the unique characteristics of the herding industry, the NPRM proposes a one-size-fits-all wage methodology taken from crop agriculture.¹⁵ Rather than continuing to honor the well-established wage methodology that looks to the wages actually earned in this occupation, the Department has pulled a wage out of thin air based on a survey of aggregated farmworker positions *except* herders. Those positions pay by the hour, and do not provide housing or food, making those rates of pay completely inapposite to the range production of livestock.

The rationale cited by the Department in the NPRM does not provide a reasoned explanation for the proposed change. Nor does the NPRM include the required analysis of alternative wage methodologies that would address the concern with the lack of survey respondents stated in the NPRM without imposing the non-herding Adverse Effect Wage Rate where it does not belong and does not work. The Commenters have provided two different alternative wage methodologies below, in addition to the proposal that was submitted to the Department in Fall 2014. Those proposals offer a better fit for this industry, solve the concern with survey responses, and even provide a future solution to prevent wage stagnation. The Department should adopt one of these alternative wage methodologies.

Proposed Wage Methodology

The Proposed Rule abandons the decades-old practice of state workforce agencies conducting surveys to determine the appropriate wages for workers involved in the production of grazing livestock under the H-2A program. 80 Fed. Reg. 20300, 20307. The reason offered for doing so is:

the dearth of information available to [DOL] through these surveys regarding the actual wages paid to U.S. workers. Often, and almost always more recently, the SWAs determine that there are no survey results or the survey does not return statistically valid results. Thus, for many years, the Department has been unable to determine a statistically valid prevailing wage rate each year in each State in which one is needed, requiring the OFLC Administrator to set the AEWR based on other data or to use the survey results from another adjoining area or State.

¹⁵ The NPRM seems to be infected by the Department's apparent decision to turn its back on decades of precedent and clear Congressional direction that range herding is to be treated differently from other agriculture and subject to different requirements. This history is included in the brief filed by Commenters with the District Court in the *Mendoza* litigation, attached hereto as Exhibit A.

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Id. The result of this lack of valid survey data in recent years is the perceived stagnation of wages, with the NPRM comparing the monthly wage rates from 1994, as taken from a 1993 memorandum from Barbara Ann Farmer, Administrator of the Office of Regional Management, and the wages in place in 2015. The NPRM notes that wages have not increased significantly during the period from 1994-2015 because new wage determinations rely on the previous year's determinations, and so forth.¹⁶ *Id.*

The NPRM does not assert that the state surveys were invalid in 1994 or previous years, simply that the more recent surveys have not produced sufficient results from which to set a higher wage level. *Id.* For what it's worth, the validity of the 1994 survey results was not challenged in the *Mendoza* litigation by Public Citizen or Legal Services; those groups argued only that the current wage levels were inappropriately low. The use of the state surveys in the early years of the H-2A herder program was part of the larger recognition that this work is fundamentally different from crop agriculture for which the overwhelming majority of H-2A visa holders are employed. For example, workers "principally engaged in the range production of livestock" are explicitly exempt from the minimum wage and overtime requirements of Section 206 of the Fair Labor Standards Act. See 29 U.S.C. § 213(a)(6)(E).

In place of the longstanding program of a monthly salary based on state surveys, the NPRM proposes to use the data from the semi-annual Farm Labor Survey (FLS) conducted by the National Agricultural Statistics Service (NASS) of the USDA. 80 Fed. Reg. at 20308. The FLS provides wage averages for four types of workers: field workers, livestock workers (primarily dairy or poultry farms or feedlots, including graders, sorters, packers, and equipment operators), supervisors, and "other" workers not included in the first three categories. The NPRM proposes to aggregate states into 15 multi-state groupings, determine the average wage level from the FLS data for that grouping, and require that workers involved in the production of grazing livestock be paid that rate multiplied by 44 hours/week and 4.33 weeks per month.¹⁷

¹⁶ Wage rates for California and Oregon are the exception, since those states' herder wages are set by statute (Cal. Labor Code § 2695.2(a)) and judicial settlement (*Zapata v. Western Range Ass'n*, Civ. N. 92-10-25, 244L (Ore. 1994), respectively. As a result of these alternative methods, California's minimum salary is \$1,600.34 per month as of July 1, 2014, set to increase on January 1, 2016 to \$1,777.98. Oregon's court-ordered minimum salary is \$1,319.07 per month in 2014 and increases each year to reflect inflation and changes in the price of food, for which each methodology allows an employer credit.

¹⁷ The NPRM acknowledges DOL's receipt of correspondence on this issue from Mountain Plains and from the American Sheep Industry Association. 80 Fed. Reg. 20309, nn. 17, 18, 20. The wage methodologies included in those documents, however, are not referenced in the NPRM and are not part of the Department's required consideration of alternatives to the proposed rule under the Regulatory Flexibility Act.

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The Proposed Wage Methodology is Misguided

The use of the generic "Adverse Effect Wage Rate" (AEWR) used for H-2A crop agriculture is inappropriate for use for H-2A workers involved in the production of grazing livestock. First, the NPRM concedes that there were no more than 18 "domestic workers performing sheepherding" in FY 2014. 80 Fed. Reg. 20314. That number has been declining steadily in past years, according to the NPRM: 30 in FY 2012 and 26 in FY 2013, so the figure for FY 2016 could be even lower still. *Id.* The danger of any "adverse effect" on this minuscule domestic workforce is beyond negligible, particularly as compared to the larger agricultural community, for whom the AEWR is most often used. Second, the FLS data reflects the full amount of "take home" pay that the average farmworker receives. From that paycheck, however, that worker must make rent or mortgage payments, must purchase food at the grocery store, and must purchase his or her own work clothes. The remaining earnings, if any, can be used as disposable income on consumer goods or to go out to dinner or a concert or a bar on the weekend.

By contrast, grazing livestock production workers receive, 100% free of charge and with no credit to the employer, housing, food, and clothing, and spend most or all of their time in remote areas and therefore do not tend to frequent stores or restaurants or bars. Many H-2A herders have 100% of their monthly salary wired home to their families in their home country. The 2010 Colorado Wool Growers Report cited earlier found that the base salary of \$750/month produces an "actual wage" of \$1,638/month when living expenses were included. The wage proposals included below, under that same analysis, would yield "actual wages" of well over \$2,000/month.

The Proposed Wage Methodology Will Destroy this Industry

The result of this proposed methodology will be to nearly double the wages of H-2A workers in the first year and more than double, triple, or quadruple those wages by 2020 when the full weight of the wage increase is imposed on employers. The NPRM forecasts monthly wage rates between \$2,125 and \$3,244. 80 Fed. Reg. 20318, Ex. 6. The NPRM identifies no other wage methodology¹⁸ as a potential solution to the concerns with the state surveys, and the only alternatives considered in the NPRM were whether to impose this massive additional wage burden on employers immediately, phased in over three years, or phased in over five years. As the least destructive option in the short-term, the five-year phase-in is the best of three terrible choices presented, but this is a false choice and ignores numerous alternatives that would achieve the Department's "competing goals" under the INA "to provide an adequate labor supply and to protect the jobs of U.S. workers." 80 Fed. Reg. at 20308. The wage methodology proposed in the NPRM neither provides an adequate labor supply nor protects the jobs of U.S. workers.

¹⁸ Again, despite Mountain Plains, Western Range, and ASI submitting specific alternatives months ago.

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Instead, the proposed wage methodology makes it absolutely impossible for U.S. ranchers to access an adequate labor supply by pricing that labor far beyond what could be paid in the current market. Even if the doubled or tripled wages would attract more workers (which they have not and will not, as discussed below), no employer could afford to pay those wages, making it impossible to use the H-2A program at all. Furthermore, the NPRM itself states that there are 18 or fewer domestic workers in this industry. *See supra*. The NPRM estimates the cost of the Rule to employers (including net costs and "transfers" of wage payments to workers) at more than \$50 million per year, on average for the next ten years based on the five-year phase-in plan. 80 Fed. Reg. 20329, Ex. 21. Once the new system is fully in place, the NPRM forecasts an annual cost of \$63.6 million per year. Even if there were still 18 U.S. workers by then (a highly unlikely scenario, given the decades-old trend), the Rule would cost employers more than \$3.5 million per year for each of those workers at that rate. That is not a "balanced" approach to resolving the Department's perceived "competing goals" under the statute.

Given the market values for the meat and wool that ranchers are able to secure for their products, the absurd result outlined above will never come to pass. This is because all or nearly all of the employers of grazing livestock will be forced to sell off their herds for slaughter, sell their family ranches, and go out of business long before those full costs could be felt. A study by the University of Wyoming, submitted with these comments, compared historic market trends for lamb and wool for the past 20 years with the labor and operation costs for ranchers on a per-ewe basis.¹⁹ Based on the current Wyoming herder minimum monthly salary of \$750, a rancher would need to have total receipts per ewe of at least \$97.85 just to cover operating costs.²⁰ Over the past 20 years, the market would have allowed the average Wyoming ranch to break even on these costs 85% of the time, resulting in a relatively stable population of employers. Under the wage rate for Wyoming set forth in the Rule, of \$2,402.96 for 2020 and subsequent years, a rancher would need to book a return of \$137.45 per ewe, something that has only happened 30% of the time during the past 20 years. Thus, for 14 years out of 20, the ranch would lose money as a direct result of the NPRM's proposed wage methodology. Factoring in ownership costs lowers the odds for the ranch by creating annual losses in 11 years out of every 12 for the average ranch. That is an extinction scenario for employers; there is simply no way for any employer to sustain losses year in and year out for that long.

Specific examples highlight how destructive the proposed wage methodology will be. This is not a situation where employers are simply taking the standard stance against increasing wages and slightly reducing their marginal profit. Rather, the proposed rule

¹⁹ As discussed above and in the Bronars Report, U.S. producers have no ability to raise their prices for meat and wool and remain remotely competitive in the world market.

²⁰ A higher return would be required to cover additional "ownership costs" such as purchasing the livestock, other overhead, and maintenance costs on housing, machinery, equipment, and vehicles.

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would completely erase any profit and force ranchers to operate at a loss almost immediately and for all years to come. For example, a rancher in Oregon, already paying wages well above those in other states, faces an increased wage bill of \$35,000 in 2015, climbing to \$66,000 by 2020. The average profit margin for the ranch has been \$25,000 for the past four years, making even the phased-in increase unmanageable with no relief in sight. In a survey of more than 200 Mountain Plains members, each of them stated that they would be forced to downsize their workforce and herd size immediately and most would be forced to sell off their operations within a few years.

The Damaging Proposed Wages Will Not Attract U.S. Workers

To the extent that the Rule is intended to increase wages in order to attract more U.S. workers into the occupation, that policy is misguided for several reasons. First, unlike some farmworker jobs in crop agriculture, for which no experience is required or a brief training session would suffice, the unique skills required of this job make it impossible for someone to walk off the street and begin working. The H-2A workers who comprise the current workforce have grown up doing this work, riding horses, tending herds, and living in the mountains. Virtually no U.S. workers can say the same.

Second, higher wages are no guarantee of more applicants. As a test for what a massive increase in wage rates would do, the Department need look no further than comparing the recruitment history of employers in Rocky Mountain states with a monthly pay rate of \$750 or \$800 with that of employers in California with a wage rate set by state law at \$1,600/month. Under the Department's theory that doubling or tripling wages would lead to more qualified, willing, and able U.S. applicants for those positions, the facts over the past 14 years since California changed its wage rules for herders simply do not support that conclusion.

In the past 4 years, dating back to March 2011, during which time the Rocky Mountain states and California have had the herder wage rates listed above, Western Range and Mountain Plains combined have received only a handful of applications from U.S. workers for more than 1,500 open positions each year. Of those applicants, an average of two or three per year have the minimum qualifications to perform the work required and are hired. During that entire 4-year time period, Mountain Plains has had a grand total of 18 applicants for approximately 400 "shepherd" or "goat/shepherd" positions in California, an average of 4 applications per year. Of those 18 prospective U.S. workers, 10 had no experience whatsoever and were not qualified for the work. The remaining 8 withdrew their applications because they were not interested in the job.

There are actually fewer applicants in California and fewer U.S. workers that take the jobs advertised there as compared to states like Wyoming or Colorado, regardless of the wage levels. Having a wage rate twice that found in most of the Mountain West for these positions has not led to an increase in U.S. workers coming forward to do this work

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in California, contrary to the arguments underlying the *Mendoza* plaintiffs' complaint or the Department's proposed wage increases. This is not a question of wage levels but one of lifestyle. Workers from Peru, Chile, Mexico, or Mongolia are familiar with this lifestyle and take work here so that their families and communities at home can have a much better life. Workers in the U.S. have, almost without exception, proven to be uninterested in this remote and rugged way of life, and year after year, they have left the occupation and taken 9-to-5 jobs in cities and towns.²¹

When California switched from a survey-based model to a much higher statutory rate, it forced livestock producers there to cut back on the size of their herds, hire fewer employees (U.S. and H-2A), and to ask their remaining workers to take on more responsibility in order for the ranch to survive. Under the NPRM's definition of the job for purposes of the Rule, workers will not be able to take on additional duties related to the production of livestock, despite the obvious economic pressures to do so. The one-two punch of the Rule will make each worker far more expensive but able to perform far less work.

If the Department wishes to increase wages for livestock production workers out of a perception that the survey-based rates in place for the past 20 years are inaccurate, the proposals identified below would address that concern. If, however, the Department aims to massively increase wages by a factor of 3x or more in the interest of bringing qualified, willing, and able U.S. workers "out of the woodwork" to take these jobs that have always been available, then that policy is misguided and directly contradicted by the reality and experience of this occupation.

To the extent that the Department is proposing to dramatically alter the longstanding rules governing this part of the H-2A program, the Commenters would propose that DOL re-visit these rules after they have been in place for a period of time, in order to determine whether the new Rule has achieved the Department's policy objectives of drawing more U.S. workers to this profession. If two or three years pass without a significant reversal of the decades-old (indeed, generations-old) trend of U.S. workers leaving or staying out of this occupation, then the Commenters would ask the Department to review the burdensome rules to be imposed and reconsider whether the balance required by the INA between providing a workforce and protecting U.S. workers has been properly struck or not.

Alternative Wage Proposals

For the reasons set forth above, the wage methodology proposed in the NPRM is grounded on poor logic and would destroy the livestock grazing industry in short order.

²¹ This is particularly true today, with high-paying jobs in the oil and gas sector throughout the West making it more difficult to fill agricultural jobs of any sort, let alone range herding jobs.

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The AEWR times 44 hours/week and 4.33 weeks/month model is unworkable, but Mountain Plains and Western Range take this opportunity to suggest alternatives. Mountain Plains, Western Range, and the American Sheep Industry Association submitted a wage proposal in October 2014 to the Department that was referenced but not analyzed in the NPRM, and we ask that the Department consider that proposal in addition to those set forth below. In response to the specific question about deducting the cost of food from wages, the ASI proposal included an excellent discussion of this point – both as to the appropriateness and the amount of such deduction – looking to the USDA “liberal” meal plan to best reflect the protein-rich diet appropriate for active young to middle-aged men working outdoors in high-altitude environments.

The wage proposals included below do not include such a deduction, but the Commenters encourage the Department to consider permitting one, or at least permitting a deduction reflecting the difference between the more extensive and more expensive food provided to these workers compared to the subsistence and meal charges that the Department uses for other workers. Allowing a partial or complete credit for the food provided would bring this part of the H-2A program in line with the rest of the program, while preserving the existing incentives to provide these workers with the best possible food.

Proposal #1 – Inflation-Updated Wage Rates

The only problem that the NPRM identifies with the state-survey-based wage methodology in place for more than 60 years for this industry is that the dwindling number of U.S. workers in the occupation has made it increasingly difficult to conduct a statistically valid survey of those workers. As a result, the once-valid survey results have become frozen in time. The NPRM offers no argument that the surveys conducted by the state workforce agencies were not valid at the time that they were prepared. The NPRM cites 1994 as the last year for which such surveys were conducted with statistically valid results, and the Department has essentially used those results for more than 20 years since that time.

Rather than scrap the old methodology that benefited from the expertise of the state workforce agencies and looked to the actual wages being paid in this occupation, a methodology that the Department of Labor recognized and relied upon, and impose a wage system better suited for crop agriculture, there is a way to update those survey results to the present day labor market and also to create a path forward to avoid future wage stagnation. The key is the Bureau of Labor Statistics’ Employment Cost Index (ECI) for wages and salaries, considered to be the most accurate measure of inflation in wages and salaries.

In the stakeholder-negotiated, bipartisan, Senate-passed comprehensive immigration reform bill in the last Congress, S. 744, agricultural employers and the

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United Farm Workers agreed to a wage methodology for nonimmigrant agricultural workers that provided for guaranteed annual increases in farmworker wages in order to eliminate the danger of wage stagnation. In Section 2232 of the Bill, a new Section 218A in the INA would have been created. Section 218A(f)(3)(B) provided an "escalator" clause tied to the ECI. After a one-time shift to a base wage rate with a multi-year phase-in, future wage rates would increase annually as follows:

- By 1.5% if the percentage increase in the ECI during the previous calendar year were less than 1.5%;
- By the percentage increase in the ECI if such percentage were between 1.5% and 2.5%, inclusive, in the previous calendar year; or
- By 2.5% if the percentage increase in the ECI exceeded that amount in the previous calendar year.

This proposal won the approval of Senators from both political parties, the UFW, and agricultural employers by providing for a guaranteed raise each year on a defined inflation "track" of between 1.5% and 2.5%.

Using that same agreed-upon methodology, it is possible to start from the highest state survey figure of \$800 and apply this inflation track from 1994 to the present to get a current version of what had been a valid monthly salary in 1994. Going forward, using that updated monthly figure as the starting point, Mountain Plains and Western Range would propose this same ECI-based inflation model for calendar years 2017 and beyond, guaranteeing consistent and predictable increases in the wage rate for years into the future. Bear in mind, ranch owners do not enjoy the same guarantee of future price increases for the meat and wool that these workers produce. By offering this proposal, they understand that they are agreeing to absorb increased risk as to future profitability in an extremely difficult international marketplace.

As set forth in the attached report of labor market economist, Dr. Stephen Bronars, taking the highest of the existing state-conducted survey results from 1994 (\$800/month)²² and updating that figure from 1994 dollars to 2015 dollars using the ECI-model described above yields a monthly wage rate of \$1,280.73 in 2015 dollars. Mountain Plains and Western Range propose that wage rate as the base wage rate for 2016.

²² As noted in the NPRM at 80 Fed. Reg. 20307, the survey-based rates for that year for monthly rates of pay were actually \$650/month for three states, \$700/month for nine more, and \$750/month for the other. The Commenters offer the \$800/month figure as the base rate, recognizing that this is higher than any of those rates and higher than the \$772.53 average of the five historic and current wage rates identified in the NPRM. They do so in the spirit of cooperation and the interest of stable future wages. The Bronars Report also includes the ECI-adjusted 2015 wage levels for those lower survey-based 1994 salaries (\$1,040.59, \$1,120.64, and \$1,200.68, respectively), and the Commenters would welcome the use of any of those figures as well.

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The following table sets forth the resulting range of wages for the upcoming years, showing the 1.5% and 2.5% increase levels with an averaged 2.0% assumption for calculating the next year's high-low range.²³ The NPRM proposes a five-year phase-in under which employers would pay 60% of the full amount in 2016, 70% in 2017, 80% in 2018, 90% in 2019, and the full rate of pay in 2020 and beyond, since "the full wage increase in a single year could lead to significant disruptions that might cause job losses that could be avoided by a gradual implementation period." 80 Fed. Reg. 20314. If DOL were willing to use this inflation-based model instead of the crop agriculture AEWR model, the full phase-in period would not be required, and Mountain Plains and Western Range would propose a shorter and more level 4-year phase-in, starting at a higher initial percentage (80%, 85%, 90%, and 100%).

	1.5%	2.5%	Phased 1.5%	Phased 2.5%
2016	\$1,280.73	\$1,280.73	\$1,024.58 (80%)	\$1,024.58 (80%)
2017	\$1,299.94	\$1,312.75	\$1,104.95 (85%)	\$1,115.84 (85%)
2018	\$1,325.94	\$1,339.00	\$1,193.35 (90%)	\$1,205.10 (90%)
2019	\$1,352.46	\$1,365.78	\$1,352.46	\$1,365.78
2020	\$1,379.51	\$1,393.10	\$1,379.51	\$1,393.10

As with Proposal #2, discussed below, this proposal involves a single national rate, subject to the exceptions for California and Oregon to the extent that those states would require a higher monthly salary under their own methodologies. Because food, housing, and clothing would already be provided by the employer, the differences in cost of living from state to state would be irrelevant and the monthly salary would effectively be 100% disposable income for the workers.

This proposal still constitutes a massive increase in wage costs for ranchers – hundreds of dollars per worker per month – but is at least potentially a burden that some ranchers can survive, unlike the AEWR approach proposed. As set forth in the University of Wyoming study discussed above, wages in this range will be difficult for ranchers to absorb and may put many out of business. Ranches still have no better than a 60% chance of breaking even in any given year, but it offers more years in the black than years in the red, and that may be enough to keep this industry alive. Wages under this methodology at least give the majority of ranchers a fighting chance to survive them and to preserve their family farms. The same is not true of the rates proposed in the Rule.

²³ The actual wage levels will obviously be slightly different, particularly in later years, depending on the actual ECI rates in the early years, but this offers a reasonable forecast of the range of wages in the next five years.

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This model also squarely addresses the concerns raised by the *Mendoza* plaintiffs. The only monthly salary proposed by the Plaintiffs in the *Mendoza* litigation came from lead plaintiff Reymundo Zacarias Mendoza, who submitted a sworn declaration stating that "I would be willing to work as a herder if the employer paid \$1,300 to \$1,500 per month."²⁴ This model meets that requirement. It also addresses the concern that DOL raised in the NPRM regarding wage levels: the nearly complete absence of U.S. workers in this occupation makes state surveys impossible and current wages are out-of-date and frozen in place as they rely on the valid 1994 surveys. By updating the 1994 wage rate to present dollars and setting a course for guaranteed future increases, this model solves that problem while retaining the program's roots in valid state surveys rather than abandoning the history of the program and looking to irrelevant and inaccurate outside data.

The proposal to base the herder salaries on FLS data fails to recognize that herders receive housing, meals, transportation, clothing, and utilities for free from their employers. The Bronars Report compares the disposable income of herders with that of other blue collar workers in various cities throughout the Mountain West, using the earning levels of workers moving freight, stock and materials by hand and data taken from the U.S. Department of Housing and Urban Development, USDA, and DOL's Bureau of Labor Statistics. The amount of "disposable income," *i.e.*, what is left in the worker's pocket after paying for rent, food, utilities, and transportation (which would be an H-2A herder's entire pay check), varies slightly, but is between \$308.01 in Flagstaff, Arizona and \$815.75 in Boise, Idaho, with the differences relating to income levels and fair market rental values. At either end of that range, the herder wages proposed above would be two to four times those levels, as compared to three to eight times those levels in the NPRM's proposed methodology. This does not account for the huge increase in spending power of these U.S. dollars in rural Peru, where the money will actually be spent, but even for the rare U.S. worker willing and able to do this job, the wage rates proposed by the Commenters would lead to a significant increase in his or her standard of living, as compared to similar jobs in this area.

Proposal #2 – FLSA Rate in place of AEWR

If DOL is determined to transition away from a survey-based monthly salary in favor of a monthly salary using the 44-hour week estimate and a base wage rate, Commenters submit that the Federal Minimum Wage of \$7.25/hour is a more reasonable starting point than the Farm Labor Survey based AEWRs, which are projected to range from \$11.19 to \$17.02/hour in the states in which this work would be performed by the time of full implementation. Unlike the ASI proposal from 2014, this proposal would not follow the California and Oregon model and give credit for food and housing. The

²⁴ This statement appears at ¶ 11 of his Declaration, Doc. 26-1, filed in opposition to Intervenor-Defendants' Motion to Dismiss, and is dated January 27, 2012.

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\$7.25/hour in the FLSA was intended by Congress to serve as a living wage, and those paid at that rate must purchase their own food, housing, and clothing from those earnings. Thus, paying that full amount to workers involved in the production of grazing livestock amounts to double-pay of thousands of dollars per season worked. Still, this is a more reasonable approach than that proposed in the NPRM.

Using the NPRM's estimate of hours worked and the FLSA hourly wage rate results in a monthly salary of \$1,381.27. Since many of these herds and workers travel across state lines, because food, housing, and clothing are already provided for free, and in order to create a more uniform process, Commenters would propose this single monthly rate in all states, except to the extent that the California or Oregon state statutes or judicial settlements require a higher rate already. While this will place a greater burden on employers in some states more than others, the FLSA wage rate applies uniformly across the nation and serves as a model for this proposal. As the NPRM observes, "[e]stablishing a single set of procedures for these occupations will create administrative efficiencies for the Department." 80 Fed. Reg. 20303.

If DOL were willing to change the base rate to the FLSA rate, Commenters would welcome the change and would even propose a shorter phase-in period of 4 years, with annual phased-in rates of 75% in 2016, 80% in 2017, 90% in 2018, and 100% by 2019 and thereafter. Using the \$1,381.27 figure as the 100% mark and this four-year schedule, the monthly phased-in rates of pay would be \$1,035.95 for 2016, \$1,105.02 for 2017, \$1,243.14 for 2018, and \$1,381.27 for subsequent years.²⁵ As recognized in the NPRM, the phase-in period would allow employers who have built their businesses around a starting wage level²⁶ of \$750 to \$800 for the most part to adjust to the significantly higher wage levels.

Labor costs under this model will nearly double for ranchers – hundreds of dollars per worker per month, even without considering the increased cost of workers' compensation insurance that is tied to wages – but it is at least potentially a burden that some ranchers can survive, unlike the AEWI approach proposed. Looking to the University of Wyoming study referenced above, using the phased-in FLSA-based wage methodology instead of the NPRM's wage methodology would mean that ranches could break even perhaps 56% of the time, on average. That's not much better than a flip of the coin for survival, but at least offers a chance at staying alive that the NPRM does not. Moreover, as quoted above, this proposal meets the monthly salary request of the

²⁵ To the extent that the Department is concerned with "stagnation" at this new level, the use of the ECI "inflation track" agreed to by employers and the United Farm Workers in S. 744, as discussed in Proposal #2, could be used to address that concern.

²⁶ The special procedure wage rates for H-2A workers constitute a wage floor, but many of the H-2A workers have been returning to the same ranches for years or decades and are paid significantly higher amounts than this minimum requirement. Increasing the minimum will create pressure to increase those already higher wages as well.

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plaintiffs from the *Mendoza* litigation, who sought \$1,300 to \$1,500 per month. If the purpose of an “adverse effect wage rate” is to be the level of pay at which qualified, willing, and able U.S. workers (which the D.C. Circuit believed the *Mendoza* plaintiffs to be), would take the job, then this proposal meets that test. As discussed above in Proposal #1, the Bronars Report demonstrates that the resulting level of disposable income for herders under this proposal would be several times higher than that earned by their non-herding counterparts in the Mountain West.

Other Specific Concerns with the Rule

If the definition of “open range” were corrected and one of the alternative wage methodologies outlined above were adopted, ranchers could live with most of the changes from the longstanding special procedures to the Rule, particularly the retention of the experience requirements and seasons for sheep and livestock production. Not all of those changes are realistic, however, and the Commenters wish to discuss some of those changes below.

Contents of Job Orders

Section 655.210 sets forth the contents of the H-2A job order for this occupation. The job qualifications continue over from the TEGLs and are essential for identifying and hiring workers who possess the requisite skills for this special work. It would be a disaster to send 1,000 head of sheep or cattle off to the range with a new worker, only to have that worker decide that he or she did not really enjoy the work as much as he thought he or she might or to find out that the worker did not know how to care for the animals' needs or to protect them from harm.

The use of the phrase “on call for up to 24 hours per day, 7 days per week” is potentially misleading, and might be better phrased as being “available” for that period – making more clear that work is not performed during that entire period but, rather, sporadically and as needed.

As discussed above with respect to the definitions of the job from Section 655.201, the focus in Section 655.210 (b) on whether the work performed by herders is “closely and directly related to herding or the production of livestock” and the 20% hard cap on performing such work do not address any concerns with such work identified in the NPRM and would lead to confusion and substantial inefficiency. First, the 20% limit is worded such that “[w]ork that is closely and directly related to herding or the production of livestock must be performed on no more than 20 percent of the workdays spent at the ranch in a work contract period.” Section 655.210(b). The limit is not on the total workdays in the work contract period spent doing this work, but only on how the days spent at the ranch are used. Is the goal to have one day out of five spent at the ranch spent working and the other four resting, since work that is not “closely and directly”

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related to livestock production almost certainly falls outside the scope of the job order? Is some other purpose intended by this provision? This wording is confusing.

Second, the grazing production of livestock definition that already exists in the WHD regulations discussed above offers a less confusing and more workable approach to defining the job. Instead of arbitrary percentages and percentages within those percentage directing how the worker may spend a particular day, focusing on the larger picture of the "primary duties" or whether the worker is "principally engaged" in the grazing production of livestock makes more sense and would be better understood (and complied with) by employers.

The NPRM asks five related questions regarding keeping hourly records for work performed at the ranch and on the range: (1) is it reasonable to keep such records; (2) how could such records be maintained and submitted; (3) is it reasonable to keep daily records of work performed on the range; (4) how could those records be maintained and submitted; and (5) is there another recordkeeping method by which employers could assure DOL that employees are meeting the 50% and 20% requirements in the Rule? Mountain Plains and Western Range would respond to all five questions by referring to the two proposed alternative wage methodologies already discussed above, as well as their comments regarding the use of the WHD regulations' model for describing the job rather than the 50%/20% requirements proposed in the NPRM. By making those two changes, it would be an unnecessary waste of time to track the workers' hourly or daily activities. If such a recordkeeping requirement were imposed, the Commenters would contend that many of their members do not currently possess the human resources capacity to create or maintain such records and doing so would place an enormous and unreasonable burden on them. As these associations' members are already the subject of frequent and exhaustive audits by the Department of Labor, the reference to "submitting" the records is also confusing. If the employer is required to attest in the job order that certain arbitrary percentage targets must be met, why would records be "submitted" and to whom?

Housing

The NPRM proposes certain changes regarding mobile housing that require some clarification. In Section 655.210(c), the "employer must specify in the job order mobile housing will be provided." For purposes of advising prospective job seekers of the availability of mobile housing, this makes sense. For some employers, however, this requirement would be inaccurate and misleading. While virtually all of the employers that would be covered by this Rule use the traditional means of mobile housing, there are a limited number of employers using remote fixed site bunkhouses for their livestock workers. In particular, some operations in Montana and Texas graze cattle over vast areas of land but maintain fixed wooden structures at points throughout that land and have employed H-2A workers under the special procedures for many years. Read

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together, Sections 655.200(b)(2) and 655.210(c) would require these employers to include incorrect statements in their job order and could potentially bar them from this program altogether.

The NPRM specifically asks whether, if a worker desires to live in a mobile housing unit while on the ranch, should that be allowed? The answer is, of course. It would be unreasonable and inhumane to mandate that a worker move out of the home that he has made in a mobile unit for the short time that work is performed at the ranch if the worker did not wish to do so. The related question asked in the NPRM is, if a worker prefers to live in fixed-site housing while on the ranch, should the employer be required to provide separate fixed housing? Again, if the worker prefers to continue living in the home that he has made, why should a separate housing structure be built or set aside simply to remain vacant. However, if the worker preferred to live in fixed housing while working at the ranch, then that would be a different question, but requiring an employer to maintain two sets of housing per worker is unreasonably burdensome.²⁷

The NPRM proposes new restrictions on "sleeping facilities" in Section 655.235(f). This definition is unclear, however, since many of the mobile camps that have been in use for years include separate beds or bunks with a shared kitchen. Since workers must be available to assist the herd on a 24/7 basis and often trade shifts to ensure full coverage, it is somewhat rare that both members of a team would be sleeping in the camp at the same time. Requiring each worker to haul his own camp would be unrealistic and unnecessary, particularly during Winter months, as described above. The phrase "sleeping facility" is not defined and is confusing as to whether it means a bed or the entire camp structure? Instead, the Commenters propose replacing that subsection with the following language: "*Sleeping unit.* A separate sleeping unit must be provided for each person, except in a family arrangement. A sleeping unit is a comfortable bed, cot, or bunk with a clean mattress." This definition would achieve the goal of preserving separate sleeping units for each worker, while providing clarity and efficiency with respect to the number of camps and kitchens required.

Water

Employers already supply water to herders in the camps, hauling it in by truck or four-wheeler where possible, or on horseback when necessary.²⁸ During winter months,

²⁷ The NPRM also asks specifically about the cost of providing room on the ranch vs. on the range. The 2010 study by the Colorado Wool Growers Association, referenced earlier, estimated the monthly cost of providing housing on the range at \$425 (\$288 for rental value and \$137 for maintenance and utilities). No estimate for providing housing at the ranch was provided in that study, but similar fixed-site housing was estimated at \$350-\$450/month up to \$600/month in certain areas. This question may best be answered by way of individual comments.

²⁸ The NPRM requires employers to provide water with which workers can do their own laundry in the camp. Many employers will bring the workers' dirty laundry back from the camp, wash it properly in a

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large tanks of water quickly turn to large blocks of ice. Under those conditions – as well as during warmer months when spending time in remote locations – there is abundant water at hand, from streams or rivers or by melting freshly fallen snow and hauling water to snowed-in camps can be difficult or impossible. While a survey of ranchers turns up no accounts of workers becoming sick from these longstanding practices, treating or filtering this water to local health standards can be affordably and safely achieved – often far more safely than having to haul the water over rugged trails. Providing the tablets or osmosis filters used by hikers and backpackers would cost pennies per day and have a proven track record of success. The exact method of achieving the requirement of potable water should best be left to the rancher and/or workers to assess what works best under the conditions in which they will be operating and what the worker's personal preference is for ease of use.

Food and Refrigeration

Section 655.235(h)'s requirement of butane or propane refrigerators in the tents used in the Summer months is not feasible. This equipment cannot be packed onto horses to be carried over rough mountain trails. Other methods of food preservation and storage have been used successfully for years, but this new requirement will simply not work and should be eliminated.

The NPRM asks what constitutes a sufficient meal and what constitutes adequate food provision. These questions are related and can be addressed together here. The most common refrain heard from employers in preparing these comments is "my workers eat better than I do!" The physical demands of the job call for a protein-rich diet for the hearty men that perform this work, and that is precisely what these employers provide. There is no clear way to draw a line or set a standard for a "sufficient" or "adequate" meal. Setting an arbitrary calorie count or menu would violate the workers' choice of food and would be unnecessary. These workers ask for certain food items that are part of their traditional diet in their native country, and the employers purchase and deliver that food to them on the range. Each worker has his own preference for food, and a "one size fits all" approach to mandating a particular diet would violate those preferences and be a logistical nightmare for the Department and employers to enforce and comply with.

Communication Devices and Equipment

The most recent TEGLs introduced the requirement of a cell phone, satellite phone, or two-way radio by which workers could communicate with the ranch in case of emergency. In the years since then, employers have adapted to the requirement. In

machine, and bring the clean clothes back to the workers to exchange for dirty clothes. This system works better than trying to hand-wash clothes in the backcountry (particularly during colder months), and the NPRM should be updated to permit this practice to continue, requiring water for laundry only where the workers prefer to wash their own clothes.

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response to specific questions in the NPRM regarding contact between workers and the employer, the Commenters would state that employers have a strong interest in tracking the health and well-being of their employees, as well as the health and well-being of the herd — *in that order*. To that end, employers travel hundreds of miles to visit with their employees on the range, checking that their needs are met, delivering mail, food, and supplies, and conveying any instructions needed for moving the herd to another location. Having communication devices assists in this, but never takes the place of face-to-face communication. At the same time, however, mandating a specific interval of time between such meetings or calls is problematic, given the unpredictable nature of terrain, weather, and cellular telephone signals. Employers literally go to great lengths to maintain communication, and micromanaging that interaction is neither necessary nor feasible.

With respect to the NPRM's question about the tools, supplies, and equipment that are required to work safely and effectively, the best answer is that "it depends." The items suggested in the NPRM are among those used on the range, binoculars, firearm, boots, rain gear, an ATV or four-wheeler, and/or a horse, but this list should not be considered exhaustive nor mandatory. During different times of the year or in different parts of the West, some or all of these items would be strictly necessary while others would be entirely useless. Contrary to what Public Citizen and Legal Services are likely to claim, the employers in these two associations care deeply for their workers and provide them all of the tools needed to perform the job safely and effectively. Additional specific requirements will not increase job safety or efficiency but would simply provide a "gotcha" opportunity for ambitious plaintiffs' lawyers.

Joint-Employer Status of Western Range

The Rule does not specify (as the TEGLs and previous DOL guidance documents had previously) that Western Range may continue to operate as a joint employer for its members H-2A herders or maintain the ability to transfer workers between member employers as needed. The NPRM references the ability to file a "master application" and other provisions related to the filing of the application, but not specifically to the ability to transfer workers. This ability is already built in to the INA (8 U.S.C. § 1188(d)(2)), and does not necessarily require explicit regulatory permission to continue, but Western Range would take this opportunity to ask that the Department's Final Rule clarify that this longstanding arrangement (dating back to the earliest days of the foreign sheepherder program) is to continue under the new Rule. For example, in the most recent iteration of the special procedures, TEGL 32-10, the Department stated as follows:

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

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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.

76 Fed. Reg. 47260-61 (Aug. 4, 2011).

Transition Rule and Retroactivity

The District Court's schedule from *Mendoza* addresses *when* the Rule will take effect (December 1, 2015), but is silent as to *how* the Rule will take effect. The NPRM also does not articulate how the Rule will take effect. The concern of the Commenters is that the Department will apply the new substantive requirements of the Rule to the employment of H-2A workers approved by DOL prior to the December 1 effective date of the Rule. This retroactive effect of the Rule would violate longstanding legal principles. See, e.g., *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208-209 (1988) ("Retroactivity is not favored in the law."). The Rule should apply only to those applications for labor certifications filed on or after the effective date of the rule.

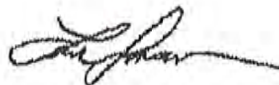
Conclusion

Mountain Plains and Western Range welcome the opportunity to provide comments with respect to the NPRM and trust that the Department of Labor will sincerely consider the comments included herein and change the proposed Rule to avoid the disastrous impact on this industry that the rule, as currently written, would have. With the changes suggested above, this program and this industry can remain a viable part of the American economy for generations to come. Getting this rule wrong – particularly the definition of the work and the wage methodology – will spell immediate extinction for a way of life that spans the past two centuries of this country's history and has come to define our image of the American West. The current Rule would be a death sentence for H-2A employers, and the multiplier effect of those employers on small businesses in rural communities would create a wave of ghost towns throughout the Mountain West. We urge you to take to heart the longstanding history of this industry and this program and to craft a rule that allows them to continue.

Very truly yours,



Erik Lehfelddt
Chairman
Mountain Plains Agricultural Services



Lane Jensen
Chairman
Western Range Association

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Addendum – Western Range Association

As an original participant in the H-2A shepherd program, Western Range Association feels compelled to speak on the proposed changes to the shepherd program on a historical and goal-driven level because this issue speaks to some of the core principles of who we are as an industry and as a nation.

For over 60 years, the shepherd program, not originally known as the H-2A shepherd program, was started by a group of tenacious, innovative, and forward thinking sheep men known as the California Range Association, later to become the Western Range Association. They were immigrants or sons of immigrants, embodied with a spirit of hard work and a sense of duty to family and country. They were driven by what some people called ambition, one-on-one relationships and goal-driven zeal that was evidenced by the way they lived.

They were complimented by a group of Congressmen who looked at them and their efforts not as a threat or annoyance but as a group of idea driven and nation building citizens looking for help. Congress viewed their request for help as an opportunity to create a guest worker program that had Congressional authority and administrative oversight of the former Immigration and Naturalization Service. There was a time when representatives from California Range Association and Western Range could pick up the phone and call high-level administrative representatives to discuss issues or problems with a degree of consensus that a workable and program-sustainable solution could be obtained.

This relationship resulted in a dialogue and joint effort to address problems and create solutions. It is because of that relationship that we even have a program to discuss today. There was a time when dialogue and discussion were solicited not mandated by the courts and, yes, even back then, herders used fencing. It also resulted in a program that was not a threat to domestic workers, but did the opposite and resulted in the net creation of jobs and growth. Local businesses, regional trucking companies, national meat companies, and national woolen mills were created and supported because men came to this country to herd sheep when no one else would.

The effort to sustain this program was not viewed as a threat to be diminished by making it so onerous that it could not longer function but as an endeavor worthy of promulgation.

These thoughts would be remiss without some reflections on the herders themselves. The relationship that exists between the employer and the herder is one of the closest that exists in the workplace. Employers buy herders groceries, send money home, take herders to the doctor, guarantee employment, supply a place to live, guarantee a wage rate, supply transportation, and even transfer herders to another employer when

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

No. 85926

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

RESPONDENT WESTERN RANGE ASSOCIATION'S
APPENDIX VOLUME 4, PART 3

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For over 60 years, the shepherd program, not originally known as the H-2A shepherd program, was started by a group of tenacious, innovative, and forward thinking sheep men known as the California Range Association, later to become the Western Range Association. They were immigrants or sons of immigrants, embodied with a spirit of hard work and a sense of duty to family and country. They were driven by what some people called ambition, one-on-one relationships and goal-driven zeal that was evidenced by the way they lived.

They were complimented by a group of Congressmen who looked at them and their efforts not as a threat or annoyance but as a group of idea driven and nation building citizens looking for help. Congress viewed their request for help as an opportunity to create a guest worker program that had Congressional authority and administrative oversight of the former Immigration and Naturalization Service. There was a time when representatives from California Range Association and Western Range could pick up the phone and call high-level administrative representatives to discuss issues or problems with a degree of consensus that a workable and program-sustainable solution could be obtained.

This relationship resulted in a dialogue and joint effort to address problems and create solutions. It is because of that relationship that we even have a program to discuss today. There was a time when dialogue and discussion were solicited not mandated by the courts and, yes, even back then, herders used fencing. It also resulted in a program that was not a threat to domestic workers, but did the opposite and resulted in the net creation of jobs and growth. Local businesses, regional trucking companies, national meat companies, and national woolen mills were created and supported because men came to this country to herd sheep when no one else would.

The effort to sustain this program was not viewed as a threat to be diminished by making it so onerous that it could not longer function but as an endeavor worthy of promulgation.

These thoughts would be remiss without some reflections on the herders themselves. The relationship that exists between the employer and the herder is one of the closest that exists in the workplace. Employers buy herders groceries, send money home, take herders to the doctor, guarantee employment, supply a place to live, guarantee a wage rate, supply transportation, and even transfer herders to another employer when

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June 1, 2015
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irreconcilable differences arise. This all results in herders sending money home to raise families, build homes, start businesses, buy property, put children and family members through college, and secure a retirement. The attestation to the success of the program is that many herders return, time after time, on renewed contracts. Before IRCA, in previous generations, the early program was so successful that some sheepherders were able to use their earnings to move to the U.S. to build businesses of their own.

These comments would also be remiss if the issue of noncompliant members in the sheep industry who choose to work outside the rules of the H-2A program was not addressed. Although they amount to a very small part of growers, they have become the subject of attention, being portrayed as representing the entire industry. Western Range, because of its status as a joint employer, monitors, investigates, sanctions, and in some cases debars members because of program violations. The status as a joint employer creates more liability and a more financially punitive exposure for Western Range but has been accepted by its members in order to preserve the integrity of the program.

This is an overview and background of where the H-2A sheepherder program came from and where it is today. The result has become a template for other groups to follow. The H-2A sheepherder program has had the net effect of creating jobs not taking them away. It represented and represents a group, which in conjunction with a willing and helpful DOL, helped create and mold a guest worker program that became an answer and example to others not only for addressing a need but also as a way for government and the private sector to work together to address a problem.

The program was viewed as a means to achieve the goal of maintaining the viability of the sheep industry which added to and was a part of what made us a great nation.

These comments are not only designed to be an appeal for prudence in rule making but also a reminder of the longstanding ideals and historical context that brought us to this point, encouraging us to proceed in this exercise in the same context and intent in which the H-2A sheepherder program was conceived and administered.

WRA is proud of who we are and grateful to the efforts of those all who preceded us, as well as the American Sheep Industry Association, Mountain Plains Agricultural Services, and stakeholders who join us now. Never before has such a concentrated effort been mounted to sustain the range production of sheep, goats and livestock as the one evidenced now, attesting to the paramount nature of our resolve to protect our livelihoods. We are mindful that over the years, with the help of Congress and DOL, we have been able to create and maintain a program which doesn't pose a threat to domestic workers but fills a need, creates domestic jobs and overcomes obstacles resulting in

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equitable solutions. We invite DOL to work with the sheep industry and continue that effort.

Western Range Association

EXHIBIT 8

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

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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 sheepherder 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; sheepherder 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 sheepherders.

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 sheepherder 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 sheepherder 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 sheepherding or any other activity, is occupation-specific. There's a prevailing wage for picking strawberries, and a prevailing wage for sheepherding, 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 sheepherders and very few domestic people wanting to be sheepherders, 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 sheepherders?" 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.

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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 shepherders 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 sheepherder program, which is checking the knowledge of these people in the sheepherder 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 sheepherder

PC000676

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 sheepherders 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 sheepherder 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 sheepherder 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.

RA000397

EXHIBIT 9



July 18, 2019

Dear _____,

Thank you for your interest in becoming a Member of Western Range Association (WRA).

We are anxious to help you. There are many benefits to becoming a member of WRA, these are just a few.

- Trained and knowledgeable staff to help you thru the H-2A process;
- WRA will make all the travel arrangements to get your workers into the country and to your ranch;
- Your workers are provided with a life insurance policy with no premiums.

WRA functions as a Joint Employer for Ranchers with wool growing operations and Agent for Ranchers with other livestock operations.

As a Joint Employer, WRA can provide you with the added benefit of transferring workers from one wool-growing operation to another.

Enclosed is the Membership Application package. Please complete all the documents using the **full legal name** of your ranch. Please note that it is important for the Member name to match on all the documents included with this packet as well as the documents you provide to us.

A fully completed package must be received and reviewed before your temporary membership can be approved. After returning your application to Western Range Association, please allow a minimum of three weeks processing for membership consideration. Once approved for membership, a minimum of three months may be required for worker processing.

Thank you,

A handwritten signature in black ink that reads 'Monica Youree'.

Monica Youree
Western Range Association, Executive Director

WRA000679

WESTERN RANGE ASSOCIATION NEW MEMBER CHECKLIST

MEMBERSHIP APPLICATION PACKET		
Complete and Return to the WRA Office		Date Completed
Documents included with this packet	Application and Membership Agreement	
	Business Information and References	
	Assurances	
	Letter of Assurance	
	Appointment of Agent with Cover Letter	
	Job Order for Prospective Member of WRA (4 pages)	
	Worker Request (if applicable)	
	Member Contact and Preferences table	
Provide and Send to the WRA Office		Date Completed
Documents NOT included with this packet	Certificate of Auto Liability	
	Certificate of Farm Liability	
	Certificate of Worker's Compensation Insurance	
	Housing Inspection	
Retain these Documents for your Information		Date Completed
Informational Documents included with this packet	General Rules and Ordering H-2A Workers	
	Job Types and Basic Job Descriptions	
	Auto, Farm and Workers Compensation Insurance Notice	
	EEO Member Notice	
	Notice of Obligations of H-2A Employers	
	Range Housing Standards	
	Cost Information	
	Examples of Costs for H-2A Workers	
	Related Links and Guidance	
Comments		

WESTERN RANGE ASSOCIATION APPLICATION AND MEMBERSHIP AGREEMENT

The undersigned hereby applies for membership in Western Range Association, a nonprofit corporation, incorporated under the General Nonprofit Corporation Law of the State of California; and hereby agrees to be bound by the By-Laws of the Association as they now exist or may hereafter be amended.

In conformity with and subject to the By-Laws of the Association, undersigned hereby agrees to pay all membership dues, fees, and assessments, in the amounts and at the times specified by the Board of Directors of the Association.

This application, when accepted by the Association, shall constitute the Membership Agreement between undersigned and the Association. Such Membership Agreement shall continue in effect until terminated by delivery of written notice of termination by undersigned to the Association; provided, however, that undersigned shall remain a member of the Association so long as he/she employs any contract workers imported to the United States through or with assistance of the Association.

Employer shall hold Western Range Association harmless and indemnify Western Range Association of, from, for and against all loss, damage, costs and expenses, including attorney fees, and all other sums which Western Range Association might hereafter incur, pay, be required or become obligated to pay on account of any and all demands, claims or suits by or on behalf of Employee against Western Range Association for any loss or damage, breach of contract, injuries to or the death of any person as provided in this Release, enforcement of liens, or for any contest or attempt to modify, reform, break, set aside, nullify, cancel or negate this Release or any part or provision of said Release for any reason whatsoever. Any action at law or equity brought by the undersigned, the Association, or any other person to enforce or otherwise interpret the Membership Agreement between undersigned and the Association may be commenced and maintained (except for any appeal in such action) in a federal or state court located within the County of Sacramento, California. The undersigned hereby consents to the assertion of personal jurisdiction over the undersigned in the State of California.

Membership Name	
Authorized Signature and Title	
Print Name	
Date	
Authorized Signature and Title	
Print Name	
Date	
Authorized Signature and Title	
Print Name	
Date	

WRA USE ONLY	
Application Reviewed By	Date
Membership Approved ☐ Yes ☐ No	Date Reported to Board

Business Information	
Business (Ranch) Name <i>(must be the same on all legal documents, housing, work comp, etc.)</i>	
Mailing Address	
Email Address	
Business Structure	☐ Individual ☐ Partnership ☐ Corporation ☐ LLC ☐ *Other *If Other, specify business structure _____
Business Officers <i>(list all officers and their titles)</i>	
Name of Person Financially Responsible	
Annual Sales <i>(estimated gross income)</i>	
Business Federal Tax ID Number	
Have you or any officer been a member of WRA in the past?	☐ *Yes ☐ No *If yes, what year(s) were you a member? _____ What is the reason for your lapse in membership? _____
How would you like to receive communications from WRA regarding regulations, office procedure changes, and best practices?	☐ Mail Address _____ _____ ☐ Email Address _____ _____

References — *Include a Letter of Recommendation from each *category below	
*Bank References	
Deposit Account Bank Name and Address	
Lending Institution Name and Address	

*Trade References (WRA may contact them as a reference, additional references can be added below)			
Company 1 Name	Address	Phone	Contact Name
Company 2 Name	Address	Phone	Contact Name
Company 3 Name	Address	Phone	Contact Name

*Personal References (Preferably a WRA Director or Member)	
Name and Address	

Additional References

--

Membership Name	
Authorized Signature and Title	
Print Name	
Date	

ASSURANCES

The Western Range Association Member/Employer, whose name and signature appear below, hereby assures the following:

Job Assurances

The Western Range Association Member/Employer will abide by the following conditions listed in subpart 655.135 – Assurances and obligations of H-2A employers and subpart 655-210 Contents of herding and range livestock job orders.

Non-discriminatory hiring practices. The job opportunity is, and through the period set forth in paragraph (d) of this section must continue to be, open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship. Rejections of any U.S. workers who applied or apply for the job must be only for lawful, job-related reasons, and those not rejected on this basis have been or will be hired. In addition, the employer has and will continue to retain records of all hires and rejections as required by § 655.167.

No strike or lockout. The worksite for which the employer is requesting H-2A certification does not currently have workers on strike or being locked out in the course of a labor dispute.

Recruitment requirements. The employer has and will continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply (or on whose behalf an *Application for Temporary Employment Certification* is made) for the job opportunity until the end of the period as specified in paragraph (d) of this section and must independently conduct the positive recruitment activities, as specified in § 655.154, until the date on which the H-2A workers depart for the place of work. Unless the SWA is informed in writing of a different date, the date that is the third day preceding the employer's first date of need will be determined to be the date the H-2A workers departed for the employer's place of business.

Fifty percent rule. From the time the foreign worker(s) depart for the employer's place of employment, the employer must provide employment to any qualified, eligible U.S. worker who applies to the employer until 50 percent of the period of the work contract has elapsed. Start of the work contract timeline is calculated from the first date of need stated on the *Application for Temporary Employment Certification*, under which the foreign worker who is in the job was hired.

Compliance with applicable laws. During the period of employment that is the subject of the *Application for Temporary Employment Certification*, the employer must comply with all applicable Federal, State and local laws and regulations, including health and safety laws. In compliance with such laws, including the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, [18 U.S.C. 1592\(a\)](#), the employer may not hold or confiscate workers' passports, visas, or other immigration documents. H-2A employers may also be subject to the FLSA. The FLSA operates independently of the H-2A program and has specific requirements that address payment of wages, including deductions from wages, the payment of Federal minimum wage and payment of overtime.

Job qualifications and requirements. The job offer must include a statement that the workers are on call for up to 24 hours per day, 7 days per week and that the workers spend the majority (meaning more than 50 percent) of the workdays during the contract period in the herding or production of livestock on the range. Duties may include activities performed off the range only if such duties constitute the production of livestock (which includes work that is closely and directly related to herding and/or the production of livestock). All such duties must be specifically disclosed on the job order. The job offer may also specify that applicants must possess up to 6 months of experience in similar occupations involving the herding or production of livestock on the range and require reference(s) for the employer to verify applicant experience. An employer may specify other appropriate job qualifications and requirements for its job opportunity. Job offers may not impose on U.S. workers any restrictions or obligations that will not be

_____ **Member initial**

imposed on the employer's H-2A workers engaged in herding or the production of livestock on the range. Any such requirements must be applied equally to both U.S. and foreign workers. Each job qualification and requirement listed in the job offer must be bona fide, and the Certifying Officer (CO) may require the employer to submit documentation to substantiate the appropriateness of any other job qualifications and requirements specified in the job offer.

No recent or future layoffs. 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 for Temporary Employment Certification* to those laid-off U.S. worker(s) and the U.S. worker(s) refused the job opportunity, was rejected for the job opportunity for lawful, job-related reasons, or was hired. A layoff for lawful, job-related reasons such as lack of work or the end of the Employment Agreement period is permissible if all H-2A workers are laid off before any U.S. worker in corresponding employment.

No unfair treatment. The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge 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:

- (1) Filed a complaint under or related to [8 U.S.C. 1188](#), or;
- (2) Instituted or caused to be instituted any proceeding under or related to [8 U.S.C. 1188](#) or this subpart or any other Department regulation promulgated thereunder;
- (3) Testified or is about to testify in any proceeding under or related to [8 U.S.C. 1188](#) or this subpart or any other Department regulation promulgated thereunder;
- (4) Consulted with an employee of a legal assistance program or an attorney on matters related to [8 U.S.C. 1188](#) or this subpart or any other Department regulation promulgated thereunder; or
- (5) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by [8 U.S.C. 1188](#) or this subpart or any other Department regulation promulgated thereunder.

Notify workers of duty to leave United States.

- (1) The employer must 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 paragraph (i)(2) of this section, unless the H-2A worker is being sponsored by another subsequent H-2A employer.
- (2) As defined further in DHS regulations, a temporary labor certification limits the validity period of an H-2A petition, and therefore, the authorized period of stay for an H-2A worker, see [8 CFR 214.2\(h\)\(5\)\(vii\)](#). A foreign worker may not remain beyond his or her authorized period of stay, as determined by DHS, nor beyond separation from employment prior to completion of the H-2A contract, absent an extension or change of such worker's status under DHS regulations. See [8 CFR 214.2\(h\)\(5\)\(viii\)\(B\)](#).

Comply with the prohibition against employees paying fees. The employer and its agents have not sought or received payment of any kind from any employee subject to [8 U.S.C. 1188](#) for any activity related to obtaining H-2A 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. This provision does not prohibit employers or their agents from receiving reimbursement for costs that are the responsibility and primarily for the benefit of the worker, such as government-required passport fees.

_____ **Member initial**

Contracts with third parties comply with prohibitions. The employer has contractually forbidden any foreign labor contractor or recruiter (or any agent of such foreign labor contractor or recruiter) whom the employer engages, either directly or indirectly, in international recruitment of H-2A workers to seek or receive payments or other compensation from prospective employees. This documentation is to be made available upon request by the Certifying Officer or another Federal party.

Notice of worker rights. The employer must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary in English, and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers employed pursuant to [8 U.S.C. 1188](#).

The worker(s) will be provided with a copy of the Employment Agreement containing all provisions of 20 CFR 655.135.

The worker(s) will be paid at least twice per month.

The worker(s) will be furnished each payday with one or more written statements showing;

- Employer's name, address and FEIN
- Worker's name, home address and job title
- Monthly pay rate
- Beginning and end dates of the pay period
- Total days of work offered and actual days worked
- Workers total earnings for the pay period
- Total net pay

Provided the worker(s) meet(s) the requirements outlined in the Employment Agreement, the worker(s) will be offered employment for at least three-fourths of the workdays for the total period of employment.

Should an Act of God make impossible the fulfillment of the Employment Agreement, the worker(s), with the permission of the DOL ETA Regional Administrator, Employment and Training Administration, shall be transferred to other comparable and acceptable employment or returned to the place of recruitment and the reimbursed salary deductions made for transportation and subsistence from the place of recruitment to the place of employment.

Hours and Earnings Statements

655.210(f)-(h):

(f) Hours and earnings statements.

(1) The employer must keep accurate and adequate records with respect to the worker's earnings and furnish to the worker on or before each payday a statement of earnings. The employer is exempt from recording the hours actually worked each day, the time the worker begins and ends each workday, as well as the nature and amount of work performed, but all other regulatory requirements in §655.122(j) and (k) apply.

(2) The employer must keep daily records indicating whether the site of the employee's work was on the range or off the range. If the employer prorates a worker's wage pursuant to paragraph (g)(2) of this section because of the worker's voluntary absence for personal reasons, it must also keep a record of the reason for the worker's absence.

(g) Rates of pay. The employer must 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.

(1) The offered wage shall not be based on commissions, bonuses, or other incentives, unless the employer guarantees a wage that equals or exceeds the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, or

Member initial

any agreed-upon collective bargaining rate, whichever is highest, and must be paid to each worker free and clear without any unauthorized deductions.

(2) The employer may prorate the wage for the initial and final pay periods of the job order period if its pay period does not match the beginning or ending dates of the job order. The employer also may prorate the wage if an employee is voluntarily unavailable to work for personal reasons.

(h) **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. Employers must pay wages when due.

Housing Assurances

Range Housing. The employer must specify in the job order that range housing will be provided. The range housing must meet the requirements set forth in §655.235.

Employer Provided Items

Employer-provided items.

(1) The employer must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required by law, by the employer, or by the nature of the work to perform the duties assigned in the job offer safely and effectively. The employer must specify in the job order which items it will provide to the worker.

(2) Because of the unique nature of the herding or production of livestock on the range, this equipment must include effective means of communicating with persons capable of responding to the worker's needs in case of an emergency including, but not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems. The employer must specify in the job order:

(i) The type(s) of electronic communication device(s) and that such device(s) will be provided without charge or deposit charge to the worker during the entire period of employment; and

(ii) If there are periods of time when the workers are stationed in locations where electronic communication devices may not operate effectively, the employer must specify in the job order, the means and frequency with which the employer plans to make contact with the workers to monitor the worker's well-being. This contact must include either arrangements for the workers to be located, on a regular basis, in geographic areas where the electronic communication devices operate effectively, or arrangements for regular, pre-scheduled, in-person visits between the workers and the employer, which may include visits between the workers and other persons designated by the employer to resupply the workers' camp.

Meals. The employer must specify in the job offer and provide to the worker, without charge or deposit charge:

(1) Either three sufficient meals a day, or free and convenient cooking facilities and adequate provision of food to enable the worker to prepare his own meals. To be sufficient or adequate, the meals or food provided must include a daily source of protein, vitamins, and minerals; and

(2) Adequate potable water, or water that can be easily rendered potable and the means to do so. Standards governing the provision of water to range workers are also addressed in §655.235(b).

Workers Compensation Assurances

Member will maintain Worker Compensation Insurance for all employees for their entire period of employment.

Member initial

Additional Assurances

Member will ensure proper training for workers that are required to operate a vehicle. Additionally, all vehicles will be properly maintained and safe and only licensed drivers will be allowed to operate a vehicle if a license is required.

Member agrees to comply with the requirements of [Title 20 Chapter V Part 655.210 \(d\)\(2\)](#). Employer must provide to worker, without charge or deposit, an effective means of communicating with persons capable of responding to the worker's needs in case of an emergency including, but not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems.

I have read and I certify that I will comply with the above assurances in regards to applications made by Western Range Association on my behalf for the certification of temporary foreign workers who will enter the country for the purpose of employment at my place of business.

Membership Name	
Authorized Signature and Title	
Print Name	
Date	

LETTER OF ASSURANCE

Create a Letter of Assurance specific to your operation and return a signed copy with your application packet. A sample **Letter of Assurance** is provided below.

Bo Peep Sheep Company

Attachment to Form ETA-790 & Form ETA-9142A

Physical Address:

*Bo Peep Sheep Company
13 East County Road 12
Nowhere, Utah 84000*

Bo Peep Sheep Company uses both fixed site range housing, and mobile range housing. The following housing inspections are current: Two (2) mobile sheep camps with a capacity of two workers each, four (4) mobile sheep camps with a capacity of one worker each, and a fixed site range unit with a capacity of six workers. The total housing capacity is fourteen (14) workers.

Range Housing:

Bo Peep Sheep Company will provide range housing (sheep camps, tents- appropriate for the weather conditions, and Fixed site range housing) that will meet the requirements set forth in sections 655.235, 655.230(c)(2), and 655.122(d)(2) of 20 CFR 655, and the housing is available, and sufficient to accommodate the number of workers being requested for labor certification.

Range Housing is located on Bureau of Land Management leases, State of Utah leases, USDA Forest Service leases, and private rangelands in Box Elder County, Cache County, Weber County, Wasatch County, and Duchesne County in Utah, and on USDA Forest Service leases in Elko County in Nevada.

Employer provided items:

Bo Peep Sheep Company will provide workers, without charge or deposit, the following items:

- 1) Tools, supplies & equipment – Includes horse and tack, dogs, binoculars, shovel, axe, sleeping bag, rain gear, insulated coveralls, winter boots, stocking hat, and gloves. In addition to these items, the worker(s) is provided other tools, supplies, and equipment, as required by law, and to work safely and effectively.*
- 2) Cell phones – 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.*
- 3) Room & Board – All meals and housing are provided without charge or deposit. Convenient cooking facilities, and adequate provisions of food, are provided to the worker(s). Also, the worker(s) is provided adequate potable water per section 655.235 of the regulations.*
- 4) Earnings Statement – Workers will be provided, on each payday, a Statement of Earnings, and will be paid the monthly AEWR, as specified in section 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, and workers will be paid semi-monthly (twice monthly).*

Assurances:

- 1) Should Bo Peep Sheep Company's Employer Liability Insurance Certificate, or Workman's Compensation Certificate expire during the period of stay set forth in the ETA-790, Bo Peep Sheep Company assures that the policy will be renewed and in force before the date of expiration.*
- 2) Should Bo Peep Sheep Company's Housing Inspection expire during the period of stay set forth in the ETA-790, Bo Peep Sheep Company assures that a new inspection will be completed before the expiration date, and 30 days prior to the next date of need.*

*Bo Peep, President
Bo Peep Sheep Company*

WESTERN RANGE ASSOCIATION

161 Fifth Ave South Suite 100
Twin Falls, ID 83301
Phone (208) 595-2226 Fax (208) 595-2275

RE: APPOINTMENT OF AGENT DOCUMENTATION

Dear Prospective Member,

The Department of Labor has regulated that the Association must have a Power of Attorney from each member in order to do business on the member's behalf.

Enclosed is a copy of a letter referencing the following:

Appointment of Agent in Accordance with 20 C.F.R. Part 655 Subpart B

The letter with your authorization will allow the Association to file the necessary paperwork on your behalf.

Please sign and return the letter below to our office along with your membership application package. This Power of Attorney for Western Range Association is limited to the completion of documentation to order and transfer H-2A workers.

Sincerely,

WESTERN RANGE ASSOCIATION

WESTERN RANGE ASSOCIATION

161 Fifth Ave South Suite 100
Twin Falls, ID 83301
Phone (208) 595-2226 Fax (208) 595-2275

United States Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
536 S. Clark St. Federal Building
9th Floor
Chicago, IL 60605

Re: Appointment of Agent in Accordance
With 20 C.F.R. Part 655 Subpart B

To Whom It May Concern:

The undersigned seeks to become the employer of certain nonimmigrant aliens entering the country for the purposes of temporary agricultural employment in accordance with 8 U.S.C. 1101(a) (15) (h) (ii) and 1184(c). The employer is also a member of the Western Range Association (hereinafter the "Association").

The employer has appointed the Association as its agent to act on its' behalf with regards to the Labor Certification Procedures as describe in 20 C.F.R. Part 655 Subpart B.

Notwithstanding the agency described hereinabove, the Employer acknowledges that it remains fully responsible for: (1) the accuracy of all information contained in any application for labor certification filed on the Employer's behalf by the Association: (2) the truth of all representations made by the Association on the Employer's behalf in the course of the said Labor Certification Procedure: and (3) compliance with all valid and applicable provisions of 20 C.F.R. Part 655 Subpart B.

Membership Name	
Authorized Signature and Title	
Print Name	
Date	
Authorized Signature and Title	
Print Name	
Date	

JOB ORDER

The information on the pages below is required when placing a job order with the Department of Labor. Please complete all the information and return to us with your packet. If you have additional information that you feel would be helpful, please include it with your packet.

Information for Job Order for Prospective Member Of WRA	
Business (Ranch) Name <i>(must be the same on all legal documents, housing, work comp, etc.)</i>	
Referred By	
Livestock / Workers	
Type and Numbers of Livestock	☐ Sheep number _____ ☐ Goats number _____ ☐ Cattle number _____ ☐ Other specify type _____ number _____
Seasons and Number of Workers needed for each season <i>(see job descriptions above, enter the season dates for each job type and the number of workers anticipated for each season)</i>	Sheep Herder Season 364 days # of Workers needed _____ Cattle Herder enter month season begins and season ends (max 10 mos) Begin _____ End _____ # of Workers needed _____ Range Calver enter month season begins and season ends (max 10 mos) Begin _____ End _____ # of Workers needed _____ Livestock Worker enter month season begins and season ends (max 10 mos) Begin _____ End _____ # of Workers needed _____
Prefer to Hire from Which Country(ies)	☐ Peru ☐ Chile ☐ Mexico ☐ Other, please specify _____
Will you accept a Transferred Worker?	☐ Yes ☐ No
What date would you like to receive your first worker(s)?	
Do you currently have non-WRA H-2A Workers?	☐ *Yes ☐ No *If yes, please specify the number of non-WRA H-2A workers _____ *Organization name _____
Have you had a domestic worker working in the H-2A job description you are seeking in the last 12	☐ *Yes ☐ No

months? <i>(Do not list those workers who were dismissed for cause or who abandoned the worksite.)</i>	*If yes, please specify the number of Domestic workers and complete the information below _____ Domestic Worker Name _____ Most Recent Address _____ Email _____ Phone _____ Domestic Worker Name _____ Most Recent Address _____ Email _____ Phone _____
--	---

Locations	
Ranch physical address <i>(required for labor certification processing)</i>	Address _____ City _____ State _____ ZIP _____
In which state(s) do you operate?	☐ Arizona ☐ Montana ☐ Utah ☐ California ☐ Nevada ☐ Washington ☐ Colorado ☐ Oregon ☐ Wyoming ☐ Idaho ☐ South Dakota ☐ North Dakota ☐ *Other *If other, please specify _____
Preferred Airport <i>(include city and state)</i>	
Preferred Bus Depot <i>(include city and state)</i>	

IMPORTANT NOTE ABOUT WORK SITES: Provide addresses for ALL locations that may be used in a 12 month period. Notify WRA immediately of any new locations that may be used or acquired after the initial packet is completed.

Physical Address of Work Site(s) <i>(physical directions to provide to H-2A workers, enter all work sites including the state - if additional space is needed, attach another page)</i>	County _____ State _____ Description _____ _____ How many months at this location? _____
Additional Work Site	County _____ State _____ Description _____ _____ How many months at this location? _____
Additional Work Site	County _____ State _____ Description _____ _____

	How many months at this location? _____
Type of land on which you run your livestock (please be specific, ex: deeded land, land leased from private property, land leased from government entity)	
Housing	
Type of Housing (complete for all types, attach additional pages if needed)	☐ *Fixed ☐ **Mobile
*Fixed	Do you have fixed: Cooking facilities? _____ Bathing facilities? _____ Laundry facilities? _____ How many workers does your fixed housing accommodate? _____
**Mobile	How many workers does your mobile housing accommodate? _____
Identify each Housing Unit (provide a description or number of each housing unit; attach additional pages if needed)	Type _____ Date of Last Inspection _____ Description _____
	Type _____ Date of Last Inspection _____ Description _____
	Type _____ Date of Last Inspection _____ Description _____
	Type _____ Date of Last Inspection _____ Description _____
Do you use range camps all year?	☐ Yes ☐ No
Do you pack at some time during the year?	☐ *Yes ☐ No *If yes, what time of year do you pack? _____
Name and Address of your local State Employment Office	Name _____ Address _____ Contact _____ Phone _____

Water Supply	
Water Supply for Fixed Housing Units	☐ Delivered at regular intervals
	☐ *Natural
	*If natural, describe source. _____
	When is the source available? (list months) _____
	Is the source potable and how is it tested? _____

Water Supply	
Water Supply for Mobile Housing Units	☐ Delivered at regular intervals
	☐ *Natural
	*If natural, describe source. _____
	When is the source available? (list months) _____
	Is the source potable and how is it tested? _____

If there is additional information we need to best serve your needs, please include that information on another sheet of paper. Also, if you have seasonal locations, please include that information.

INCOMPLETE APPLICATIONS WILL BE RETURNED, PLEASE COMPLETE ALL AREAS.

WORKER REQUEST

Dear Prospective Member:

In anticipation of the approval of your membership, complete the following information if you will be requesting a specific worker. Make additional copies if more than one worker is being requested. If you do not have a name of a worker, we can provide you with a list from the coordinator's office.

Please keep in mind the process for a new worker may take 3 to 6 months after approval of your membership.

ATTENTION COORDINATOR: THIS IS A REQUEST FOR A POTENTIAL MEMBER AND CAN ONLY BE SUBMITTED UPON APPROVAL OF MEMBERSHIP.

All of the following information is REQUIRED:

Worker Request	
Worker First Name	
Worker Middle Name	
Worker Last Name	
Home Address	
Date of Birth	
Sponsor Rancher <i>(if worker is currently in country with a different ranch)</i>	
Destination	
Date Requested to Travel	
Telephone Number in Home Country	
Source of Name <i>(rancher, worker, embassy coordinator)</i>	
Proof of Prior Experience <i>(attach copies if available)</i>	

GENERAL RULES AND ORDERING H-2A WORKERS

There are three methods of receiving H-2A Workers from Western Range Association:

New Orders: If you do not have a name of a worker, we can provide you with a list from the coordinator's office. The documentation and interview process for bringing a new H-2A worker into the U.S. can take several months. Please allow a minimum of 3 months.

No documentation will be processed until membership is approved. If your first request is for a new worker, the process could take up to 6 months.

Transfer of H-2A Worker: Members of Western Range Association employing workers as sheep or goat herders may request a worker transfer from the Western Range Association Office. Based on availability and member compliance, a transfer may be granted as soon as 7 days from the date of request. If a worker is transferred to you, you are responsible for the cost of transportation to your ranch. Transportation for transfers is in addition to the regular monthly travel charges and will be billed to you on a per transfer basis. All responsibility and costs associated with the worker will transfer to you upon the arrival of the transferred worker. No transfer will be made until membership is approved. Employment Agreements must be signed for transferred workers. All transfers must be completed through the Western Range Association office.

Domestic Worker: Any time there is a domestic worker available for a position they take priority over any H-2A temporary foreign worker on order or H-2A temporary foreign worker that has not completed at least 1/2 of their Employment Agreement period. Please be prepared at all times to take a domestic worker. Domestic workers may be employed whether or not you are a member of Western Range Association. Any H-2A temporary foreign worker that is employed less than 1/2 of their Employment Agreement period may be displaced by a qualified domestic worker.

Members hiring workers to work with livestock other than sheep or goats are required to define a season for each job type and in each state in which they operate. Each season must remain consistent year after year and may not exceed the work authorization periods for each job type listed below.

JOB TYPES AND BASIC JOB DESCRIPTIONS

Western Range Association supports member's needs with the following job types.

In addition to the minimum basic requirements outlined below, all applicants are required to have at least three (3) months experience working with the livestock they will be required to tend in the U.S.

If you have additional duties that are required of your workers, please attach a separate page and provide those additional duties so they can be included on the labor certification applications.

SHEEP HERDER – Work Authorization up to 364 days

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 sheepherder.

Hours worked footnote: On call for up to 24 hours 7 days a week

CATTLE HERDER – Work Authorization up to 10 months

Worker must have at least 3 months of experience with herds of 200 head of livestock or larger on the open range or pasture. One reference required. Attends cattle herd grazing on range or pasture. Will perform tasks at the direction of the employer. Attend to cattle grazing on the range to include: Herding cattle on the range or in pastures while riding on horseback, riding ATVs, or walking on foot. Protect cattle from attack of predatory animals, i.e. coyotes, mountain lions, bears, wolves, etc. Observe and/or examine animals to detect illness or injury; treat ill or injured cattle as directed by employer; Assist with weaning, trailing, sorting and loading cattle onto trucks for transfer to new range or transport to market. Maintain meadows and repair/maintain fences to keep animals in the assigned range/pasture and to protect them from dangers such as roads, noxious weeds and poisonous plants. Must be able to saddle and ride a horse in a safe and effective manner such as to avoid injury to self, coworkers, bystanders, and the horse itself. As needed, worker will be required to shoe horses. Must be able to care for the needs of horses and dogs entrusted to the worker by the employer. May assist in the range production of sheep and/or goats. This may include but not limited to docking, shearing, herding, trailing, vaccinating, sorting and loading onto trucks for transporting to a new range or transport to market. Some work/tasks may occur off the range, but more than 50% of the work will be performed on the range. Worker will live in the employer provided mobile range housing. Worker must be able to work alone for extended periods of time and complete tasks as instructed by the employer in a safe and timely manner without direct supervision.

Hours worked footnote: On call for up to 24 hours 7 days a week

RANGE CALVER - Work Authorization up to 10 months

Workers must have at least 3 months of experience birthing livestock with herds of 200 head or larger on the open range or pasture. One reference required. The following seasonal duties will need to be performed. Herder will need to move pregnant cows from winter grazing grounds to calving grounds. Be able to identify signs of cows going into labor and identify potential problems during the labor process. Know how and when to assist during difficult births. Be able to properly constrain cows for difficult births and able to graft orphan calves to mothers. Ability to identify herd health issues including but not limited to malnutrition of cows and calves, prolapse and mastitis. Provide water to animals, including minor maintenance of water troughs and water lines. May need to haul water in truck to supplement animal water needs. May need to provide supplement feed for the cows and calves if the range has insufficient forage. Disperse livestock on the range to reduce overcrowding and increase the success of mother and calf bonding. Protect vulnerable livestock (calves & cows in labor) from predators. Move cows and calves to branding grounds and assist in Branding, Castrating, Vaccinating, tagging, and worming. Ability to safely rope and or catch calves with a hook. Move cows and calves to summer range grounds.

May assist on an incidental basis in the range production of sheep and/or goats. This may include but not limit to docking, shearing, herding, trailing, vaccinating, sorting and loading onto trucks for transporting to a new range or transport to market. The worker must be able to saddle and ride a horse or mule in a safe and effective manner such as to avoid injury to self, coworkers, bystanders, or the animal itself. The worker may be required to shoe horses for his use. The worker must also be able to use a 4-wheeler in a safe and effective manner.

Western Range and its member ranches facilitate practices of good animal husbandry. Employees that are found abusing, neglecting or abandoning livestock entrusted to their care may be terminated for cause. If the negligent/abusive actions of an employee result in the loss/death of livestock/animals or cause harm to another person, the employee may be held accountable for these actions.

The worker will live in the employer provided range housing for an extended period of time. Said housing will be clean and in good repair at the time it is provided to the employee. The employee is responsible to maintain the housing unit in a reasonable level of cleanliness in order to avoid flies, mice or other vermin. The employee is responsible to alert the employer of damage to the housing unit within a reasonable amount of time. The employee may be held accountable for damage to the housing unit that is the result of negligence on the part of the employee (normal wear and tear excepted).

Some work/tasks may occur off the range, but more than 50% of work will be performed on the range.

Hours worked footnote: On call for up to 24 hours 7 days a week

RANGE LIVESTOCK WORKER - Work Authorization up to 10 months

Attends livestock grazing on range or pasture: Herds and rounds up strays using trained dogs. Beds down livestock near evening campsite and moves portable fence to avoid animals over grazing. Guards livestock from predatory animals and from eating poisonous plants. Drenches livestock. May examine animals for illness and administer vaccines, medications and insecticides according to instructions. May need to work around and with tractors to assist in providing supplemental feed. May assist with irrigating forage for livestock and weed control. Providing water to animals, including minor maintenance of water troughs and lines. May perform duties including but not limited to herding, trailing, sorting and loading on to trucks for transport to a new range or market. May perform general repairs on fence and livestock facilities, and general ranch maintenance closely and directly related to herding and/or the production of livestock. Some work/tasks may occur off the range, but more than 50% of work will be performed on the range. Must have 3 months experience with at least 200 head of livestock on the range. One reference required. The worker must be able to saddle and ride a horse in a safe, effective manner such as to avoid injury to self, coworkers, bystanders, or the animal. The worker may be required to shoe horses. The worker must also be able to use a 4-wheeler in a safe manner. Workers must be able to work alone for extended periods of time, complete tasks as instructed by the employer in a safe and timely manner without direct supervision. Employees that are found abusing, neglecting or abandoning livestock entrusted to their care may be terminated for cause. If the negligent/abusive actions of an employee result in the loss/death of livestock/animals or cause harm to another person, the employee may be held accountable for these actions. The worker will live in the employer provided range housing which will be clean and in good repair at the time it is provided to the employee. The employee is responsible to maintain the housing unit in a reasonable level of cleanliness in order to avoid flies, mice or other vermin. The employee is responsible to alert the employer of damage to the housing within a reasonable amount of time. The employee may be held accountable for damage to the housing unit that is the result of negligence (normal wear and tear excepted).

Hours worked footnote: On call for up to 24 hours 7 days a week

WESTERN RANGE ASSOCIATION

161 Fifth Ave South Suite 100
Twin Falls, ID 83301
Phone (208) 595-2226 Fax (208) 595-2275

TO: All Prospective WRA Members

Auto and Farm Liability Insurance

A certificate of insurance coverage for a minimum of \$500,000, valid for 1 year, is required and must be included in your application package to be considered for membership. The certificate will need to include Western Range Association as a Certificate holder. Western Range Association must be notified of any changes, deletions, or renewals affecting this coverage.

Worker's Compensation Insurance

Worker's Compensation insurance is required by U.S. Department of Labor Regulations. It is the Members responsibility to provide Worker's Compensation for all workers. You must return a Certificate of Insurance showing Worker's Compensation coverage with your membership application package. The Certificate of Insurance must show the policy to be in force for a minimum of one year from the date of application, renewable annually, and state that it covers your H-2A workers provided by Western Range Association. Filing must be completed as required by your state Worker's Compensation Law.

NOTE: It is the Member's responsibility to provide this document on or before expiration of the current certificate. If time permits, WRA will send reminders to Members whose insurance certificates are due to expire soon. Some states DO NOT automatically send new certificates annually, in these cases, the Policy Holder must request a new certificate. Please make note of your certificate expiration date and request a new certificate with Western Range Association as a CERTIFICATE HOLDER.

If the Certificate of Insurance is not submitted with the membership application package, the membership request will not be processed.

Worker's Compensation must be continuous, uninterrupted, non-canceled insurance. If lapse occurs, your membership will be terminated immediately, no exceptions. Members must have an active Work Comp policy whether they have workers or not. IF you have no H-2A workers employed, process payroll reporting with \$0.00 payroll for your H-2A workers.



Equal Employment Opportunity

Western Range Association (WRA) prohibits workplace discrimination and harassment based on any of the following protected classes as listed and outlined in [Title VII of the Civil Rights Act of 1964](#).

- Race
- Color
- Religion
- Sex
- National Origin
- Age
- Disability
- Genetic information (including family medical history)

Reasonable accommodations may be made to applicants and employees who need them for medical or religious reasons, as required by law.

Examples of Discrimination or Harassment

Discriminatory or Harassing behavior may include, but is not limited to, the following:

- Slurs, epithets or any other vulgar or offensive remarks that pertain to any protected class;
- Jokes, photographs, or videos either written, oral, or electronically transmitted, that pertain in any way to a protected class. This includes jokes, photographs, or videos whether or not directed to, at, or about any person whether that person is an employee;
- Verbal, graphic, or physical conduct or gestures.

Examples of discriminatory or illegal behavior.

Age Discrimination		Sex Discrimination	
Illegal	A worker, who is 65 years of age, is denied a job as a Range Cattle Herder. They have sufficient experience and recommendations but are denied the position based on their age.	Illegal	An employer posts a job for a sheep herder and indicates that only male applicants are eligible for the job.
Legal	A worker, who is 65 years of age, is denied a job as a Range Cattle Herder for which they do not have sufficient experience. Age is not a consideration in the decision.	Legal	An employer posts a job for a sheep herder and encourages all experienced applicants to apply.

Report Discrimination or Harassment

If you feel you have been discriminated against or have been a victim of harassment, **report the incident immediately to your supervisor or manager.**

WRA strictly prohibits retaliation against anyone who reports discrimination or harassment, or anyone who participates or assists with an investigation.

If your supervisor or manager is not able to resolve the issue or if the supervisor or manager is part of the issue, report the complaint to the WRA office.

Report complaints to the WRA office by one of the following methods	
Phone	1-208-595-2226 to Gaby Paz or Monica Youree
Emergency after-hours English	1-208-731-5443
Emergency after-hours Spanish	1-208-731-3485
Email	Comments@WesternRange.net
Mail	Western Range Association, 161 5 th Ave S Ste 100, Twin Falls ID 83301

NOTICE OF OBLIGATIONS OF WESTERN RANGE ASSOCIATION MEMBERS AS EMPLOYERS OF H-2A SHEEPHERDERS

You are receiving this notice as a member of Western Range Association who is employing shepherders under the H-2A agricultural worker program. As an employer of H-2A shepherders, you are responsible for complying with all federal laws and regulations that govern the H-2A temporary agricultural worker program. Failure to do so may result in fines and penalties, including debarment from the H-2A Program. This notice includes some, but not all, of your obligations as an H-2A shepherd employer.

Qualifying work

- You may not employ H-2A shepherders to work primarily in non-range, agricultural activities. The “Range” is any area located away from the ranch headquarters where the shepherd is required to constantly attend to the livestock.

Wage requirements

- Since January 1, 2019, H-2A shepherders must be paid at least \$1,633.33 per month in all states except California and Oregon.
- California wages effective January 1, 2019 are *\$1,955.74 a month for employers with less than 26 employees* and *\$2,133.52 for employers with 26 or more employees*.
- Oregon wages effective July 1, 2018 for those in the *Standard Oregon Counties* is *\$1,863.33*, those located in the *Non-Urban Oregon Counties* is *\$1,820.00* and those located in the *Portland Metro Counties* is *\$2,080.00*.
- The required wage rate for shepherders varies by state. If H-2A shepherders perform work in more than one state with different offered wage rates, you must pay the correct wage rate of each state for the time period worked in each state and maintain adequate records to identify shepherd time spent in each state.
- You must pay H-2A shepherders at least twice monthly during the entire certified period of employment.

Prohibition against shepherders paying fees

- You must not seek or receive any payment or reimbursement from H-2A shepherders for costs associated with participating in the H-2A Program, including: application fees, recruitment costs, visa costs, fees for medical exams or background checks, or transportation costs associated with shepherders' travel to the U.S.

Housing and working conditions

- You must provide housing at no cost to shepherders that complies with the standards outlined by the Department of Labor.¹
- You must provide food for shepherders free of charge. You must either provide three prepared meals a day when shepherders are in camp, or free and convenient cooking facilities and food for the shepherders to prepare their own meals while in camp or on the range.
- You must provide to shepherders free of charge, all necessary tools, supplies and equipment required to complete their jobs.
- You must provide shepherders with effective means of communicating with persons capable of responding to the shepherders' needs in case of emergencies.

Transportation

- You must provide safe transportation. You must ensure vehicles meet safety standards outlined by the Department of Labor and comply with all applicable federal, state, and local laws.²
- You must verify that drivers have valid applicable driver's licenses and the ability to drive.
- You must maintain adequate insurance on each vehicle.

¹See https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3042

² At a minimum, you must provide the same transportation safety standards, driver licensure, and vehicle insurance required by 29 U.S.C. § 1841, 29 C.F.R. § 500.105 and 29 C.F.R. §§ 500.120 to 500.128.

RANGE HOUSING STANDARDS

U.S. Department of Labor Range Housing Standards are outlined in the H-2A Small Business Guide, Appendix B. Range Housing Standards.

The website to the H-2A Small Business Guide is listed in the attached Related Links and Guidance document. Please read the guidelines and be informed as to the regulations regarding range housing.

These guidelines became effective November 16, 2015 and replace the previous guidelines.

Housing inspections must be done each year. Fixed housing will be certified by the state housing inspector each year. Mobile housing is required to be inspected each year, but will only be certified by the state housing inspector every three years. The other two years the rancher must complete a self-certification on each mobile unit and provide a copy to WRA and the state housing inspector. In addition, there are special guidelines for the state of California that can be accessed at [IWC order 14-2001](#).

If you need a self-certification form to complete the inspection, please contact the WRA office.

IMPORTANT

If a Rancher/Wool Grower gives false information on the self-certification form and the Department of Labor determines that this was in violation of the regulations, the Department of Labor will not certify any worker(s) for the Rancher/Wool Grower for a period of one year.

It is very important that the Rancher/Wool Grower gives correct information as the house or camp can be inspected at any time by an inspector and if it is found out-of-compliance, the certification will be pulled. H-2A workers MUST reside in inspected housing ONLY. Do NOT place workers in housing that has not been inspected.

Please read the enclosed guidelines carefully and contact the WRA office if you need clarification.

YOU ARE REQUIRED TO COMPLY WITH THE FEDERAL MINIMUM STANDARD OR YOUR STATE GUIDELINES WHICHEVER PREVAILS

COST INFORMATION

MEMBERSHIP: Assessed monthly per member regardless of the number of workers employed for duration of membership.

ADMINISTRATIVE: Assessed monthly per worker for the duration of employment.

INCOMING AND DEPARTING COSTS: Pro-rated monthly for each worker over the period they are approved to stay in country at the current travel rate.

EARLY DEPARTURE FEE: If assessed, is the pro-rated monthly travel costs that have not yet been assessed for the remaining period, up to 36 months.

LABOR CERTIFICATION FEE: Billed for each labor certification. Must have a current, valid labor certification for each worker.

I-94 (I-129): Required Notice of Action for each H-2A temporary foreign worker issued by USCIS and paid by the member. A Notice of Action is required for each new Employment Agreement period, typically annually.

WRA is responsible for the following:

- Complete all paperwork to certify a member with the Department of Labor;
- Advertise in all required locations to comply with Department of Labor Regulations;
- Secure work visas (I-94 Notice of Action) for workers;
- Maintain the legal stay of the worker during the Employment Agreement period; and
- Complete all necessary filings of Labor Certifications and work VISA extensions for each additional year (*up to a maximum of 36 months*).

WRA is not responsible for securing or assisting in the filing for temporary or permanent residence for the worker.

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

No. 85926

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

RESPONDENT WESTERN RANGE ASSOCIATION'S
APPENDIX VOLUME 4, PART 4

ELLEN JEAN WINOGRAD, ESQ.

Nevada State Bar No. 815

JOSE TAFOYA, ESQ.

Nevada State Bar No. 16011

WOODBURN AND WEDGE

6100 Neil Road, Suite 500

Reno, Nevada 89511

Tel: 775-688-3000

Fax: 775-688-3088

ewinograd@woodburnandwedge.com

jtafoya@woodburnandwedge.com

ANTHONY HALL, ESQ.

Nevada State Bar No. 5977

JONATHAN McGUIRE, ESQ.

Nevada State Bar No. 15280

SIMONS HALL JOHNSTON, P.C.

690 Sierra Rose Drive

Reno, Nevada 89511

(775) 785-0088

ahall@shjnevada.com

jmcguire@shjnevada.com

ATTORNEYS FOR RESPONDENT
WESTERN RANGE ASSOCIATION

EXAMPLE OF COSTS FOR H-2A WORKER(S)

IMPORTANT NOTE

The information below is an example. Other fees, not included below, may apply. All charges are subject to change without prior notice.

MEMBERSHIP:

Due each month whether you have a worker(s) or not \$100.00

ADMINISTRATIVE:

Administrative Costs per month / per worker \$50.00

Reserve Assessment per month / per worker \$40.00

INCOMING AND DEPARTING COSTS:

Travel Costs – per month / per worker, pro-rated over Employment Agreement period and based on the Country (*this is an example for a worker from Peru, see table below*) \$63.75*

Travel Costs – per month / per worker

Country	10 Months	36 Months
Mexico	\$64.80	\$18.00
Peru	\$229.50	*\$63.75
Chile	\$275.40	\$76.50

LABOR CERTIFICATION FEE:

Each Labor Certification \$100.00

Plus \$10 per worker \$10.00

Up to 10 workers may be requested per Labor Certification, they must all have the same employment dates and be entering from the same country.

Labor Certifications are good for a maximum of 364 days for Sheep Herders or up to 10 months for other job descriptions.

I-129 Worker Petition:

One-time fee for each NEW worker,
797 work petition approval issued by USCIS \$575.00

One-time fee for each EXTENDED worker,
797 work petition approval issued by USCIS \$460.00

OTHER FEES:

Other fees may be applied based on the activity for the month. Some examples include:

Transfer costs – If a transfer is requested, the member receiving the worker is responsible for the costs associated with travel to the new member.

Early Departure costs – If a worker departs the country prior to the end of the Employment Agreement, you may be charged the travel costs for the remainder of the agreement period.

Delinquent Accounts – will be charged 18% per annum for account balances over 60 days past due.

RELATED LINKS AND GUIDANCE

Department of Labor H-2A program and Herder rules. If you do not have access to the internet, contact WRA and we will assist you further.

1. DOL Foreign Labor Certification Home Page

http://www.foreignlaborcert.doleta.gov/h-2a_herders.cfm#

Contains updates and releases concerning the herder rule.

2. Small Business Guide to the H-2A Visa Program: Herding or Production of Livestock on the Range

https://www.foreignlaborcert.doleta.gov/pdf/H-2A_Small-Business-Compliance-Guide_Herder_Final_Rule.pdf

Handbook published by the DOL for users of livestock herders. Appendix B outlines the range housing standards.

3. H-2A eCFR Rule

<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=d36c41551bb59289227d347d3e5b0979&mc=true&n=pt20.3.655&r=PART&ty=HTML>

The H-2A federal code in its entirety. The specific herder provisions are in section 200, yet all foreign workers are subject to the complete regulation.

MEMBER CONTACT INFORMATION AND PREFERENCES	
Member Name	
Physical Address	
Mailing Address <i>(if different)</i>	
Billing Address <i>(if different)</i>	

List all contacts for your company and check the appropriate topic(s) for each contact		
Contact Name	Preferred Contact Method	Topic(s)
	☐ Email _____ ☐ Phone _____ ☐ Fax _____	☐ Herder Relations ☐ Billing ☐ Insurance/Housing ☐ Travel ☐ Emergency
	☐ Email _____ ☐ Phone _____ ☐ Fax _____	☐ Herder Relations ☐ Billing ☐ Insurance/Housing ☐ Travel ☐ Emergency
	☐ Email _____ ☐ Phone _____ ☐ Fax _____	☐ Herder Relations ☐ Billing ☐ Insurance/Housing ☐ Travel ☐ Emergency
	☐ Email _____ ☐ Phone _____ ☐ Fax _____	☐ Herder Relations ☐ Billing ☐ Insurance/Housing ☐ Travel ☐ Emergency
	☐ Email _____ ☐ Phone _____ ☐ Fax _____	☐ Herder Relations ☐ Billing ☐ Insurance/Housing ☐ Travel ☐ Emergency

EXHIBIT 10

CONFIDENTIAL

United States Department of Labor

Wage and Hour Division
Alan Bible Federal Building
600 South Las Vegas Blvd., #550
Las Vegas, NV 89101-6654



| 4 March 2016

CERTIFIED MAIL: 7012 3460 0000 3445 9280

To: John Espil Sheep Co., Inc.
400 Meadow Road
Lovelock, NV 89419

Western Range Association
161 Fifth Ave., Suite 100
Twin Falls, ID 83301

Subject: Department of Labor's Notice of Determination of Back Wages and
Assessment of Civil Money Penalties against John Espil Sheep Co., Inc.
(Espil) and joint employer Western Range Association (WRA)

Case Reference Number: 1649438 / 1672903

Dear Mr. John Espil and Western Range Association:

An investigation conducted by this office of Espil relating to the requirements applicable to the employment of H-2A and other workers under the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act (IRCA) (8 U.S.C. 1101(a)(15)-(H)-(ii)-(a), 1184(c) and 1188) in Lovelock, NV, covering the period from 5/15/10 to 5/15/12, disclosed that Espil failed to comply with Section 218 of the INA and applicable regulations at 20 C.F.R. Part 655 and 29 C.F.R. Part 501 (2010).

| As a consequence of these H-2A violations, \$21,134.12 in unpaid wages is owed to 17 H-2A workers. Please note that the specific violations and the wages owed associated with them are set forth in the attached matrix entitled *Summary of Violations*.

In addition, pursuant to Section 218 of the INA and its implementing regulations at 29 C.F.R. Part 501, civil money penalties are hereby assessed in the amount of [REDACTED] for Espil and \$8,100 for WRA. The specific violations and the civil money penalties associated with them are set forth in the attached matrix entitled *Summary of Violations*.

Both parties are jointly and severally liable for the back wages of \$21,134.12 and they may be paid by either party, Espil or WRA. However, each is responsible for the civil money penalties found due: [REDACTED] for Espil and \$8,100 for WRA. These amounts are due and payable within 30 days to "Wage and Hour Division, U.S. Department of Labor." Payments by certified check or money order should be delivered or mailed to:

WRA003497

RA 00710

CONFIDENTIAL

U.S. Department of Labor
Wage and Hour Division
Regional Office
90 7th Street, #13-100
San Francisco, CA 94103-6714

The fact that the above sanctions/remedies are being imposed for the H-2A violations found at this time does not preclude the taking of other enforcement action as is deemed appropriate by the Department of Labor, or the additional assessments of back wages or civil money penalties for violations of the H-2A provisions found at some future time. Such other enforcement action may include the pursuit of unpaid wages, injunctive action, specific performance of the work contract, and denial or revocation of temporary alien agricultural labor certification.

The dollar amount(s) reflected above constitute a debt owed to the Federal government. This debt is subject to the assessment of interest, administrative cost charges and penalties in accordance with the Debt Collection Act of 1982, and departmental policies. Interest will be assessed at the Treasury Tax and Loan Account Rate on any balance outstanding from the date of this notice, accruing from the notice date. Administrative cost charges will be assessed to help defray the Government's cost of collecting this debt. A penalty at the rate of 6% will be assessed on any portion of the debt remaining delinquent for more than 90 days. In order to avoid these charges, forward payments to the office listed above by the indicated due date.

You have the right to request a hearing on the determination that any or all of the violations occurred. Such request must be dated and in writing; must contain specific reasons why you believe that the violations for which you have been charged did not occur; and must be received within 30 days from the date of this letter by the Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-3502, Washington, D.C. 20210, with a copy to this office. The procedure for requesting a hearing is provided in Section 501.33 of the regulations at 29 C.F.R. Part 501. If a request for a hearing is not received within the time specified, the determination of the Administrator shall become the final and unappealable Order of the Secretary.

We would like to call to your attention that when a request for a hearing is filed with the Wage and Hour Administrator, the matter is referred to the Chief Administrative Law Judge. A formal hearing is then scheduled for a final determination with respect to the alleged violations. At such hearing you may, by yourself or through an attorney retained by you, present such witnesses, introduce such evidence and establish such facts as you believe will support your position.

Copies of Section 218 of the INA and Regulations, 20 C.F.R. Part 655 and 29 C.F.R. Part 501 are also enclosed for your reference and assistance.

Finally, we wish to point out that there may be a question as to the deductibility of civil money penalties paid as a business expense under the Internal Revenue Code. In this regard, you may wish to contact the Internal Revenue Service.

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Sincerely,


Gaspar Montanez
District Director

cc: Regional Administrator, Ruben Rosalez

Enclosures: Section 218, INA
Reg. 655/501
Summary of Violations

EXHIBIT 11

**WESTERN RANGE ASSOCIATION
BOARD OF DIRECTOR MEETING
AGENDA**

JANUARY 28, 2015

7:00 a.m. Buffet Breakfast – Room: Bonanza C

- Peter Orwick - American Sheep Industry

8:00 a.m. Board of Directors Meeting - Room: Bonanza B

- Call to Order – Roll Call; Lane Jensen, President

Introduction – invited guests:

Peter Orwick – Executive Director, American Sheep Industry

Jim Richards - Partner, Cornerstone Government Affairs

Marcia Gary – LATAM Airlines

Larry Williams – WRA Legal Counsel

Vernon Hill - Financial Advisor, Premier Consulting

- Review and Vote on Minutes of the June 2014 Board Meeting

- Summer 2015 Board of Directors Meeting

Location:

Date:

- Adjourn to Executive Session – Board of Directors

- Reconvene – Regular Session

- President's Remarks – Lane Jensen

- Executive Director Report – Dennis Richins

- Larry Williams, Legal Counsel

- DOL Audits

- WRA Contracts

- Oregon Wages

- Update on H-2A Special Procedures

11:30 Adjourn Morning Session

12:00 Noon Lunch – Room: Bonanza C

1:00 p.m. Begin Afternoon Session

- LATAM Airlines
- Appoint Nominating Committee
- Vernon Hill, Financial Review of Association
- Medical Bills – Macario Llacuameza
- Accounts Receivable Aging
- Approval of New Members
- Termination of Members
- Membership Problems
- Discussion of Outside Services
- Adjourn to Executive Session – Board of Directors
- Reconvene – Regular Session
- Old Business
- New Business
- Member Comments
- Adjourn Meeting

EXHIBIT 12

Clerk

From: Macias, Francisco@EDD [Francisco.Macias@edd.ca.gov]
Sent: Monday, July 27, 2015 11:25 AM
To: 'Clerk'
Subject: RE: Housing Inspections

Hi Dianna,

I'm not sure if I responded to this email from you back on July 15. If I didn't, I apologize for the late response. Nonetheless, here is the information you had requested. See email below.

Thanks.

Francisco Macias Jr.
EDD-WSB-Agricultural Services Unit
Ph. (916) 654-9742
Fax (916) 654-8752
francisco.macias@edd.ca.gov

From: Clerk [mailto:clerk@westernrange.net]
Sent: Wednesday, July 15, 2015 10:48 AM
To: Macias, Francisco@EDD
Subject: Housing Inspections

Francisco,

Would you be so kind as to provide me with the following most recent housing inspections on these ranches?

			Date of Inspection	Capacity	Deficiencies
02225	CA	[REDACTED]	7/3/15	1	No
02185	CA	[REDACTED]	1/21/15	8	No
02110	CA	[REDACTED]	1/22/15	1	No
01991	CA	[REDACTED]	6/3/15	3	No
01470	CA	[REDACTED]	1/22/15	14	No
01285	CA	[REDACTED]	7/2/15	6	No
01060	CA	[REDACTED]	1/27/15	6	No
00941	CA	El Tejon Sheep Company	1/26/15	14	No
00915	CA	[REDACTED]	7/7/15	6	No
00909	CA	[REDACTED]	7/7/15	5	No
00365	CA	[REDACTED]	7/14/15	3	No

*7/22/15: Employer, [REDACTED], contacted our office and requested no follow-up inspection since employer stated he will no longer be in business for the upcoming season.

EXHIBIT 13



United States Dept. of Homeland Security
California Service Center
Attn: Div X/BCU ACD
P.O. Box 30050
Laguna Niguel, CA 92607-3004

Dear Sirs:

Please be advised that we are placing the following named individual under the jurisdiction of the Bureau of Citizenship and Immigration Service as of this date **June 11th, 2014**. We did remove him from our list of contract herders working for Western Range Association. He has violated the terms of his contract and is in the United States in violation of his status.

NAME: **Abel Cantaro Castillo**
DATE OF BIRTH: **10/26/1968**
ARRIVAL DATE: **10/26/2013**
SSN: [REDACTED]

FILE# **WAC13 181 50859**
PLACE OF BIRTH: **Peru**
I-94: **09939600030**

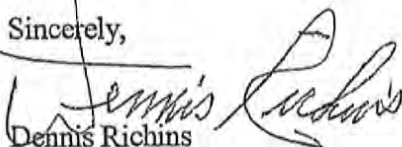
Last assigned member of Western Range Association:

EL TEJON SHEEP CO
13950 OLD RIVER ROAD
BAKERSFIELD, CA 93311

Other comments: This worker abandoned his place of employment without notifying his employer or Western Range Association on **June 8th, 2014**.

Your prompt attention to this matter will be greatly appreciated.

Sincerely,


Dennis Richins
Executive Director

cc: State Office- California
Region- Chicago
USCIS- Laguna Niguel

CONFIDENTIAL

EXHIBIT 14

From: Lane Jensen <lane.jensen@westernrange.net>
Sent: Thursday, March 03, 2016 2:43 PM
To: evaluator.jlc@hotmail.com
Cc: Ellen Jean Winograd

March 3, 2016

Dear Mr. Calle:

When we spoke last week, I informed you that there was a complaint that a \$1,000 "fee" was being "charged" to employment applicants, by "Western Range" in Lima, Peru to place H-2A employees within the program. As you know, it is absolutely inappropriate and unlawful for anyone to charge a fee to the employees being recruited or to accept such a fee. The information from an attorney in Idaho indicated that the "Western Range office" in Lima, Peru had an employee "Ms. Rocio" who accepted this fee. I mentioned this to you when we spoke last week and you denied it.

Let me remind you: you act as an independent Coordinator for Western Range; neither you nor any of your office employees are Western Range Association "employees." You do not have permission to use the Western Range name on any "office." Your Agreement with Western Range states:

3.01 Calle is an independent contractor and is not an employee, servant, agent, partner or joint venturer of Western Range. Calle shall determine the legal means by which it accomplishes the work described above. Western Range shall not be responsible for any employment taxes, workers' compensation fees or value added taxes that may be assessed to Calle because of the work performed pursuant to this Agreement. Neither Calle, nor any of his employees shall be entitled to receive any benefits which employees of Western Range are entitled to receive and shall not be entitled to workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or United States Social Security or any foreign employment benefits on account of work performed pursuant to this Agreement.

* * *

7.01 Calle represents that he will comply with all laws, rules and regulations regarding permits and licenses that may be required to carry out the work to be performed in Peru under this Agreement.

If Western Range receives any more complaints or any information that you or anyone on your staff is charging *any* fees to potential applicants, Western Range will have no choice but to sever all ties with you. Our inquiries will be ongoing until this matter is resolved. If you receive any information that fees are being charged to H-2A applicants, by anyone, please let me know immediately. Thank you.

Lane Jensen
President, Western Range Association

From: evaluator jlc [mailto:evaluator.jlc@hotmail.com]
Sent: Tuesday, March 15, 2016 3:12 PM
To: Lane Jensen <lane.jensen@westernrange.net>
Cc: JLC [REDACTED] <assistant.jlc@hotmail.com>; JLC [REDACTED] <consultant.jlc@hotmail.com>
Subject: Re: Aclarations about the sheep herder program

Dear Mr. Lane Jensen,

Your Email mentions a serious accusation to my person and people at my office about collection of money. To those accusations or insinuations I have the following comments:

1. I have never charged any money to the herders. I deny all those false accusations. These accusations affect my moral and professionalism, something that I have demonstrated unblemished through time to WRA, and that the US Consulate officials know very well.
2. You also mentioned someone under the name of Ms. Rocio of my office that charged money. We don't have anyone under that name neither we had in the past.
3. The issues related to "money collection within herders", is an old problem, now fortunately more controlled. We are working strong against it, this affects the program reputation. This was longtime investigated by US Consulate intelligence service. They are working on that, and they could give you plenty information and names.
4. Sheep Herders involved in charges of money, usually they blame it on us or other people, in order to not reveal their illegal procedure and partners (sometimes their wives). It is important to realize that herders know beforehand that this is illegal and still do it, and wait to arrive to US to complain. We also know some cases, that the herder and their families are

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RA 00722

WRA000574

threatened if they reveal names, so the easy way is to lie and accuse someone else. In addition, there has been cases of people outside my office that "uses our names and in our behalf" collect money. This sounds naive but happens

5. Please send me the information of who accuses us, and proofs of this accusations in order to defend myself. Otherwise the herder is slandering and is unlawful. We need this information to make our own investigation.
6. At my office, knowing that this problem has become common upon some herders, we do the following procedures; we mention to all herders several times verbally and by written, that all documentation, visas and paperwork is "completely FREE of charge". Furthermore, they sign a document, where they take acknowledgment that in our office, we don't charge any money, and also that they don't have to pay anyone inside or outside my office, or at USA, or at their hometowns. The US Consulate also warns the herder about this, and performs a thorough investigation. We are enclosing this document that herders have to sign at my office warning them about this situation and make them understand that they DO NOT HAVE PAY ANY MONEY TO ANYONE.
7. If WRA continues receiving complaints on charges of money, this should be investigated first, and not just take this information as truth. I will appreciate if you let me know about these issues in order to do my investigations, and defend myself in case we are accused; I think this is something fair and legal. We will send you all the pertinent information we have.
8. Finally to clarify, we don't use the name of WRA in our operations or in any other circumstances, although some herders still think we work for WRA, and not that we are an independent contractor that gives WRA a service. So, don't worry about this. In case of the legality of our operation, we comply with Peruvian regulation, permits, and US Consulate approval.

Please don't hesitate to call me at any time, my Mobil phone is: +51 997409383. Sorry about my poor English, hope you are all doing well. My best regards.

Sincerely,

José Calle
Evaluator JLC
Telef. (511) 639-3220
Fax: (511) 2559511
email: evaluator.jlc@hotmail.com

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RA 00723

WRA000575

EXHIBIT 15

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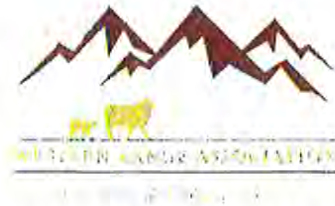
Board of Directors Meeting

January 22-23, 2020

**The Scottsdale Plaza Resort
Paradise Valley, AZ**

WRA003225

RA 00725



2020 Board Meeting Tentative Agenda
The Scottsdale Plaza Resort
7200 N. Scottsdale Rd., Paradise Valley, AZ

Wednesday, January 22, 2020

- 12:00 p.m. Executive Session (WRA Board Members only) – Lunch Provided.....Grande Ballroom A
- 1:30 p.m. Board of Directors Meeting (All WRA Members Invited).....Grande Ballroom B
Call to Order – Roll Call – Ryan Indart President
Invocation
Flag Salute
Introduction of Guests
 Ellen Winograd – Woodburn and Wedge, Legal Counsel
 WRA Staff – Debbie Brito, Olenka Bacanu
Review of Minutes of the June 2019 Board Meeting
President's Remarks – Ryan Indart
Executive Director's Report - Monica Youree
- 2:30 p.m. Peru Trip Presentation – Ryan Indart, Henry Etcheverry, and Monica Youree
- 3:00 p.m. Break
- 3:15 p.m. Legal Update – Ellen Winograd, Woodburn & Wedge
- 4:00 p.m. Financial Report – Monica Youree
 Financial Statements
 Budget to Actual
 Accounts Receivables Aging
 Report of Expenses to send all herders home
 Return on Investments
 WRA Fee Structure
- 5:00 p.m. Recess for Evening
- 6:30 p.m. Dinner (RSVP'd WRA Members & Family).....Grande Ballroom B

Revised 1/17/2020

Thursday, January 23, 2020

- 7:00 a.m. BreakfastGrande Ballroom E
- 8:15 a.m. Board of Directors Meeting (All WRA Members Invited)Grande Ballroom F
Call to Order – Roll Call – Ryan Indart President
Invocation
Flag Salute
- 8:30 a.m. Morning Session
Old Business
Absconding Herders Report
Approval of New Members & Member Cancellations
Bylaws Update
- 9:00 a.m. Legislation & Regulation
State Issues & Minimum Wage:
Ryan Indart, Andree Soares, Erica Sanko - California
Bonnie Brown, Ernie Etchart, Steve Raftopolous – Colorado
HAP vs. DOL – Change to Seasonality - Chris Schulte, CJ Lake
Farmworker Modernization Act - Jim Richards/Chase Adams (ASI)
- 10:00 a.m. WRA Discussion on Job Descriptions
1) Review our current descriptions and discuss how they need change to meet the seasonality requirements of HAP vs. DOL.
2) Board approval on doing hourly jobs
3) Discuss solutions to the CA issue including a potential hybrid position.
- 10:30 a.m. Break
- 10:45 a.m. New Business
Donation Requests
Guard Dog Fund – ASI
- 11:00 a.m. Member Comments
Discussion/Resolution on # of Board Members
Nominating Committee
Date & Location of Next Board Meeting
- 11:30 a.m. Executive session (WRA Board Members Only)
- 12:00 p.m. Adjourn

Revised 1/17/2020

EXHIBIT 16

PRE-EMPLOYMENT NOTICE OF RIGHTS AND OBLIGATIONS

This document is to be signed by each potential employee prior to commitment of work for a member/employer of Western Range Association. Before travel arrangements can be finalized this document, original form, is to be in the possession of Western Range Association ON BEHALF OF YOUR EMPLOYER, A MEMBER OF WRA.

NOTIFICATION, PRIOR TO EMPLOYMENT AND TRAVEL, OF RIGHTS AND OBLIGATIONS IN ORDER TO BE EMPLOYED BY A MEMBER OF WESTERN RANGE ASSOCIATION AND TRAVEL ON AN H-2A SHEEPHERDER WORK VISA

You are being interviewed for the position of an open range shepherd. In order to qualify for the position you must have 1 year experience in herding 1000 sheep, or more, on the open range; be able to pack and ride a horse and be able to work on various terrains. In this position you will be on call 24 hours a day, 7 days a week and in most cases will be alone.

The wages of the position vary with a minimum of \$750.00 per month. Wages are paid twice a month unless agree, in writing, to be paid monthly. You will sign an employment contract with your employer upon arrival for the contract period, renewed yearly for up to 36 months stay in the U.S.A. You are NOT employed by Western Range Association but by a MEMBER of Western Range Association (WRA)

Transportation for travel to and from your home country are paid if you complete the contract terms. Travel for transfers, arranged by Western Range Association, is paid. Personal travel to relocate, or for vacation, is not reimbursed.

All tools required for the position will be supplied, but are the property of the employer. All tools should be returned to the employer upon completion of the job.

Housing is supplied, free of charge. Housing varies from tents, to mobile trailers or wagons, to permanent housing. Food and cooking facilities are supplied, free of charge. You will be provided food to cook for yourself or prepared food by the employer. (This may differ by employer, but food will be supplied)

All H-2A shepherd's are subject to transfer. If a member no longer needs your services, you will contact the Western Range Association Office and at the next available transfer will be moved to a new employer. The H-2A shepherd program guarantees 3/4 time employment.

All H-2A shepherd's are sent an insurance enrollment card, immediately complete this form and return it with your contract. Health Insurance goes into effect on the first day of employment but has limited coverage until the enrollment form is returned to Western Range Association. Further insurance information is provided upon arrival. There is a minimum monthly charge for Health Insurance deducted from your payroll.

Employers may deduct, and hold in trust, a deposit paid by you, until 1/2 of your contracted time is completed. At that time the deposit will be refunded to you. If you leave before 1/2 of your contract is completed you may forfeit the deposit and could be responsible for additional transportation money for incoming and departure travel.

If you leave before completing the contract, but after 1/2 of the contract is completed you may have to pay your return travel cost back to your home country.

Be advised that if you are having any problems or are unemployed please contact your employer and the Western Range Association office immediately. United States Department of Immigration and Naturalization (INS) has very strict rules of reporting to immigration and if we cannot locate you we are required, on behalf of your employer, to report you to immigration within 24 hours. If you are between jobs you cannot perform any other job duties and must be available for work only for a member/employer of Western Range Association. Contact phone numbers and addresses are required. After supplying a copy of your I-94 and passport to your employer, retain the original documents in your possession at all times. You will be required to make sure your I-94 is extended before it expires.

Upon acceptance of your application for the position you will receive instructions on documentation and travel arrangements. After you arrive in the United States and are employed by a member of Western Range Association you will receive a package of documents that will include further information, contract and health insurance enrollment cards. If you do not receive this documentation within 3 weeks of employment please ask your employer and if you still do not have the documentation contact your employer and they will notify Western Range Association.

I have read and understand that I must be an open range shepherd, as described above, in order to get an H-2A VISA to work for my employer a member of Western Range Association. I have read the above statement and understand what it says.

Signed: _____

Date: 12 de Octubre 2010

(print full name here)-

CANTARO CASTILLO, Abel

78 936

On behalf of your Employer _____

By WESTERN RANGE ASSOCIATION _____

DENNIS RICHINS, EXECUTIVE DIRECTOR

DATE

REV 11/09

CONFIDENTIAL

RA 00729

WRA000012

NOTIFICACION DE PRE-EMPLEO DERECHOS Y OBLIGACIONES

Antes de aceptar un puesto de trabajo con un miembro de Western Range Association, este documento debe ser firmado por cada empleado/miembro potencial. Antes de hacer arreglos de viaje, el documento original tendra que estar en la oficina de Western Range Association para finalizar su viaje POR MEDIO DE SU EMPLEADO, UN MIEMBRO.

NOTIFICACION, PREVIO DE EMPLEO, VIAJE, DERECHOS Y OBLIGACIONES PARA PODER SER EMPLEADO POR UN MIEMBRO DE WESTERN RANGE ASSOCIATION Y VIAJAR CON VISA DE PASTOR H2-A.

Usted sera entrevistado para una posicion de pastor de ovejas de terreno abierto. Para poder calificar por esta posicion debe tener un ano de experiencia pastoreando 1000 ovejas o mas en terreno abierto. Poder empacar, montar caballo y trabajar en varias regiones. En esta posicion, usted estara dispuesto las 24 horas al dia, 7 dias a la semana. La mayoria de los casos estar solo.

El sueldo de estas posiciones cambian con un minimo de \$750.00 por mes. El sueldo se les pagara dos veces al mes a menos que este de acuerdo. Pago mensual solo por escrito. Usted firmara un contrato de empleo con su empleador a su llegada por el periodo de contrato, renovado anualmente hasta por 36 meses de estadia en Los Estados Unidos. Usted NO esta empleado por la Western Range Asociacion sino por un MIEMBRO de la Western Range Asociacion (WRA).

Transportacion de viaje de ida y vuelta a su pais de origen sera pagado al cumplir el termino de su contrato. Arreglos de viaje seran pagados por Western Range Association cuando sean transferido de un rancho a otro. Viajes personales para relocalizarse o para vacaciones no se les reembolsara.

Toda herramienta requerida para la posicion se provera pero sera propiedad del empleador. Toda herramienta debera ser devuelta al empleador despues de cumplir la labor.

La vivienda se provera sin ningun costo. La vivienda varea desde carpas, casa-remolque, vagon, a establecimiento permanente. Las provisiones y un lugar donde poder cocinar los alimentos se provera sin ningun costo. Los alimentos seran preparados por usted mismo o por el empleador. (Esto puede diferir de un empleador a otro, pero los alimentos seran proporsionados).

Todo pastor de ovejas H-2A, puede ser sujeto a ser transferido. Si el empleador (miembro) no necesita sus servicios, usted se pondra en contacto con la oficina de Western Range Association y la proxima transferencia disponible sera transferido a otro miembro. El Programa de pastores H2-A garantiza ¼ de empleo.

Todo pastor de ovejas H-2A se les cmbiara una tarjeta de inscripcion para empleados del seguro medico. Rellene este formulario de inmediato y devuelva con el contrato. El seguro medico sera efectivo el primer dia de empleo. Tendra cubrimiento limitado hasta que la tarjeta de inscripcion sea devuelto a Western Range Association. Mas informacion acerca de seguro de salud sera proporcionado a su llegada. Habra un cobro minimo del seguro medico y se le descontara de su nomina de pago cada mes.

El empleador puede deducir y mantener un deposito de seguridad pagado por el pastor hasta que haya cumplido ½ del contrato. Cuando haya cumplido ½ del contrato sera reembolsado. Si se regresa antes de cumplir ½ del contrato puede perder el deposito y ser responsable por los costos adicionales del viaje de ida y vuelta. Si se regresa antes de cumplir el contrato, pero despues de cumplir ½ del contrato puede pagar el costo de su regreso a su pais de origen.

Si tiene problemas o esta fuera de trabajo, favor de comunicarse con el empleador y con la oficina de Western Range Association de inmediato. El Departamento de Inmigracion y Naturalizacion de Los Estados Unidos (INS) tiene reglamentos extrictos, por medio de su empleado, se le hara un reporte a Inmigracion si no podemos localizarlo dentro las 24 horas. No puede desempeña otro tipo de trabajo, amenos que sea trabajo de pastor y con un miembro/empleador de Western Range Association. Numeros de telefono y direcciones son requeridos. Despues de proporcionar una copia de su I-94 y pasaporte a su empleador, mantenga el documento original en su posesion a todo momento. Usted sera reponsable mantener su I-94 extendida.

Una ves que hayamos aseptado su application para la posicion, usted recibira instrucciones como rellenar los documentos y arreglos de viaje. Despues de su llegada a los Estados Unidos y sea empleado con el miembro de Western Range Association, usted recibira un paquete de documentos y informacion que incluye, el contrato, tarjeta de inscripcion del seguro medico. Si no recibe estos documentos dentro de 3 semanas de empleo, favor de preguntar a su empleador y si todavia no tiene los documentos pongase en contacto con su empleador y ellos notificaran a la Western Range Association.

He leído y comprendo que debo tener experiencia en terreno abierto como pastor de ovejas, como se describe hacia la parte de arriba a fin de obtener una VISA H-2A para tabajar para mi empleador un miembro de Western Range Western Range Asociacion. He leído la declaracion hacia arriba y comprendo el contenido.

Firma Fecha: 12 de Octubre 2010

(Imprima nombre completo aqui): CANTARO CASTILLO, Abel 78936

Por medio de su Empleador

Por WESTERN RANGE
ASSOCIATION

DENNIS RICHINS, EXECUTIVE DIRECTOR

DATE

RA 00730

CONFIDENTIAL

REV 11/09

WRA000013

EXHIBIT 17

PRE-EMPLOYMENT NOTICE OF RIGHTS AND OBLIGATIONS

This document is to be signed by each potential employee prior to commitment of work for a member/employer of Western Range Association. Before travel arrangements can be finalized this document, original form, is to be in the possession of Western Range Association ON BEHALF OF YOUR EMPLOYER, A MEMBER OF WRA.

NOTIFICATION, PRIOR TO EMPLOYMENT AND TRAVEL, OF RIGHTS AND OBLIGATIONS IN ORDER TO BE EMPLOYED BY A MEMBER OF WESTERN RANGE ASSOCIATION AND TRAVEL ON AN H-2A SHEPHERDER WORK VISA

You are being interviewed for the position of an open range shepherd. In order to qualify for the position you must have 1 year experience in herding 1000 sheep, or more, on the open range; be able to pack and ride a horse and be able to work on various terrains. In this position you will be on call 24 hours a day, 7 days a week and in most cases will be alone.

The wages of the position vary with a minimum of \$750.00 per month. Wages are paid twice a month unless agree, in writing, to be paid monthly. You will sign an employment contract with your employer upon arrival for the contract period, renewed yearly for up to 36 months stay in the U.S.A. You are NOT employed by Western Range Association but by a MEMBER of Western Range Association (WRA)

Transportation for travel to and from your home country are paid if you complete the contract terms. Travel for transfers, arranged by Western Range Association, is paid. Personal travel to relocate, or for vacation, is not reimbursed.

All tools required for the position will be supplied, but are the property of the employer. All tools should be returned to the employer upon completion of the job.

Housing is supplied, free of charge. Housing varies from tents, to mobile trailers or wagons, to permanent housing. Food and cooking facilities are supplied, free of charge. You will be provided food to cook for yourself or prepared food by the employer. (This may differ by employer, but food will be supplied)

All H-2A shepherders are subject to transfer. If a member no longer needs your services, you will contact the Western Range Association Office and at the next available transfer will be moved to a new employer. The H-2A shepherd program guarantees 3/4 time employment.

All H-2A shepherders are sent an insurance enrollment card, immediately complete this form and return it with your contract. Health Insurance goes into effect on the first day of employment but has limited coverage until the enrollment form is returned to Western Range Association. Further insurance information is provided upon arrival. There is a minimum monthly charge for Health Insurance deducted from your payroll.

Employers may deduct, and hold in trust, a deposit paid by you, until 1/2 of your contracted time is completed. At that time the deposit will be refunded to you. If you leave before 1/2 of your contract is completed you may forfeit the deposit and could be responsible for additional transportation money for incoming and departure travel. If you leave before completing the contract, but after 1/2 of the contract is completed you may have to pay your return travel cost back to your home country.

Be advised that if you are having any problems or are unemployed please contact your employer and the Western Range Association office immediately. United States Department of Immigration and Naturalization (INS) has very strict rules of reporting to immigration and if we cannot locate you we are required, on behalf of your employer, to report you to immigration within 24 hours. If you are between jobs you cannot perform any other job duties and must be available for work only for a member/employer of Western Range Association. Contact phone numbers and addresses are required. After supplying a copy of your I-94 and passport to your employer, retain the original documents in your possession at all times. You will be required to make sure your I-94 is extended before it expires.

Upon acceptance of your application for the position you will receive instructions on documentation and travel arrangements. After you arrive in the United States and are employed by a member of Western Range Association you will receive a package of documents that will include further information, contract and health insurance enrollment cards. If you do not receive this documentation within 3 weeks of employment please ask your employer and if you still do not have the documentation contact your employer and they will notify Western Range Association.

I have read and understand that I must be an open range shepherd, as described above, in order to get an H-2A VISA to work for my employer a member of Western Range Association. I have read the above statement and understand what it says.

Signed: [Signature] Date: 10 DEC-2014

(print full name here)- ALANIA LOREANO, Florencia 70742

On behalf of your Employer Boffer Seven Herries Inc / Hilford Rick Power

By WESTERN RANGE ASSOCIATION [Signature]
DENNIS RICHINS, EXECUTIVE DIRECTOR DATE

Este documento debe ser firmado por cada posible empleado antes de comprometerse a trabajar para un miembro/empleador de Western Range Association. Antes de hacer los arreglos de viaje, este documento en original tendrá que estar en la oficina de Western Range Association A NOMBRE DE SU EMPLEADO, UN MIEMBRO DE WRA.

NOTIFICACION, PREVIA AL EMPLEO Y VIAJE, SOBRE DERECHOS Y OBLIGACIONES PARA PODER SER EMPLEADO POR UN MIEMBRO DE WESTERN RANGE ASSOCIATION Y VIAJAR CON VISA DE PASTOR H2-A.

Se le entrevistará para una posición de pastor de ovejas a terreno abierto. Para poder calificar para esta posición debe tener un año de experiencia pastoreando 1000 ovejas o más en terreno abierto, saber empacar, montar a caballo y trabajar en varios tipos de terreno. En esta posición, usted estará disponible las 24 horas al día, 7 días a la semana, y en la mayoría de los casos estará solo.

El sueldo para estos empleos varía con un mínimo de \$750.00 al mes. El sueldo se le pagará en dos partes al mes a menos que por acuerdo escrito, el pago se haga mensualmente. Usted firmará un contrato de empleo con su empleador a su llegada a los Estados Unidos, por el periodo del contrato, renovado anualmente hasta por 36 meses de estadía. Usted NO está empleado por la Western Range Association sino por un MIEMBRO de la Western Range Association (WRA).

El transporte de viaje de ida y vuelta a su país de origen será pagado si usted cumple con los términos del contrato. Los arreglos de viaje serán pagados por Western Range Association cuando sea transferido de un rancho a otro. Los viajes personales por reubicaciones o por vacaciones no serán reembolsados.

Toda herramienta requerida para el empleo se proveerá pero será propiedad del empleador. Toda herramienta deberá ser devuelta al empleador después de concluir el trabajo.

La vivienda se proveerá sin ningún costo. La vivienda varía desde carpas, casa-remolque o vagón, hasta vivienda permanente. Los alimentos y un lugar donde poder cocinarlos se proveerán sin ningún costo. Los alimentos serán preparados por usted mismo o por el empleador. (Esto puede diferir de un empleador a otro, pero los alimentos le serán proporcionados).

Todo pastor de ovejas H-2A, está sujeto a ser transferido. Si el empleador (miembro) no necesita de sus servicios, usted se pondrá en contacto con la Oficina de Western Range Association y en la próxima transferencia disponible será transferido a otro miembro. El Programa de pastores H2-A garantiza el empleo en un 75%.

A cada pastor de ovejas H-2A se le envía una tarjeta de inscripción al seguro médico. Llene este formulario de inmediato y devuélvalo con su contrato. El seguro médico es efectivo desde el primer día de empleo, pero tiene una cobertura limitada hasta que la tarjeta de inscripción sea devuelta a Western Range Association. Mas información acerca del seguro de salud le será proporcionada a su llegada. Habrá un cobro mínimo por el seguro médico y se le descontará de su pago cada mes.

El empleador puede deducir y mantener un depósito de seguridad pagado por usted hasta que haya cumplido la mitad del contrato. Cuando haya cumplido la mitad del contrato le será reembolsado. Si usted se regresa antes de cumplir la mitad del contrato puede perder el depósito y será responsable por los costos adicionales del viaje de ida y vuelta. Si se regresa antes de finalizar el contrato, pero después de cumplir la mitad del contrato usted puede tener que pagar el costo del regreso a su país de origen.

Se le informa que si tiene problemas o no tiene trabajo, favor de comunicarse con el empleador y con la oficina de Western Range Association de inmediato. El Departamento de Inmigración y Naturalización de Los Estados Unidos (INS) tiene reglamentos estrictos, de reportarlo a inmigración si no podemos localizarlo, debemos, a nombre de su empleador reportarlo a inmigración dentro de 24 horas. Si se encuentra entre trabajos no puede desempeñar ningún otro tipo de trabajo, y debe estar disponible para trabajar únicamente para un miembro/empleador de Western Range Association. Se requiere números de teléfono y direcciones. Después de proporcionar una copia de su I-94 y del pasaporte a su empleador, mantenga el documento original con usted en todo momento. Usted será responsable de que su I-94 sea extendida antes de que expire.

Una vez que hayamos aceptado su solicitud para el empleo, usted recibirá instrucciones respecto al llenado de los documentos y sobre los arreglos de viaje. Después de su llegada a los Estados Unidos y de que sea empleado por un miembro de Western Range Association, usted recibirá un paquete de documentos que contendrán más información, el contrato y la tarjeta de inscripción al seguro médico. Si no recibe estos documentos dentro de las 3 primeras semanas de empleo, favor de preguntar a su empleador y si todavía no tiene los documentos póngase en contacto con su empleador y ellos le notificarán a la Western Range Association.

He leído y comprendo que debo tener experiencia como pastor de ovejas a terreno abierto, tal como se describe en la parte superior a fin de obtener una VISA H-2A para trabajar para mi empleador, miembro de Western Range Association. He leído la declaración anterior y comprendo el contenido.

Firma: [Firma] Fecha: 10 DIC. 2014
(Escriba su nombre completo aquí): ALANIA LAUREANO, Florencia 70742
A nombre de su Empleador: Rafter Seven Herinos Inc / Milford Rick Power
Por WESTERN RANGE ASSOCIATION: [Firma]
DENNIS RICHINS, DIRECTOR EJECUTIVO FECHA

PRE-EMPLOYMENT NOTICE OF RIGHTS AND OBLIGATIONS

This document is to be signed by each potential employee prior to commitment of work for a member/employer of Western Range Association. Before travel arrangements can be finalized this document, original form, is to be in the possession of Western Range Association ON BEHALF OF YOUR EMPLOYER, A MEMBER OF WRA.

NOTIFICATION, PRIOR TO EMPLOYMENT AND TRAVEL, OF RIGHTS AND OBLIGATIONS IN ORDER TO BE EMPLOYED BY A MEMBER OF WESTERN RANGE ASSOCIATION AND TRAVEL ON AN H-2A SHEEPHERDER WORK VISA

You are being interviewed for the position of an open range sheepherder. In order to qualify for the position you must have 1 year experience in herding 1000 sheep, or more, on the open range; be able to pack and ride a horse and be able to work on various terrains. In this position you will be on call 24 hours a day, 7 days a week and in most cases will be alone.

The wages of the position vary with a minimum of \$750.00 per month. Wages are paid twice a month unless agree, in writing, to be paid monthly. You will sign an employment contract with your employer upon arrival for the contract period, renewed yearly for up to 36 months stay in the U.S.A. You are NOT employed by Western Range Association but by a MEMBER of Western Range Association (WRA)

Transportation for travel to and from your home country are paid if you complete the contract terms. Travel for transfers, arranged by Western Range Association, is paid. Personal travel to relocate, or for vacation, is not reimbursed.

All tools required for the position will be supplied, but are the property of the employer. All tools should be returned to the employer upon completion of the job.

Housing is supplied, free of charge. Housing varies from tents, to mobile trailers or wagons, to permanent housing. Food and cooking facilities are supplied, free of charge. You will be provided food to cook for yourself or prepared food by the employer. (This may differ by employer, but food will be supplied)

All H-2A sheepherder's are subject to transfer. If a member no longer needs your services, you will contact the Western Range Association Office and at the next available transfer will be moved to a new employer. The H-2A sheepherder program guarantees 3/4 time employment.

All H-2A sheepherder's are sent an insurance enrollment card, immediately complete this form and return it with your contract. Health Insurance goes into effect on the first day of employment but has limited coverage until the enrollment form is returned to Western Range Association. Further insurance information is provided upon arrival. There is a minimum monthly charge for Health Insurance deducted from your payroll.

Employers may deduct, and hold in trust, a deposit paid by you, until 1/2 of your contracted time is completed. At that time the deposit will be refunded to you. If you leave before 1/2 of your contract is completed you may forfeit the deposit and could be responsible for additional transportation money for incoming and departure travel. If you leave before completing the contract, but after 1/2 of the contract is completed you may have to pay your return travel cost back to your home country.

Be advised that if you are having any problems or are unemployed please contact your employer and the Western Range Association office immediately. United States Department of Immigration and Naturalization (INS) has very strict rules of reporting to immigration and if we cannot locate you we are required, on behalf of your employer, to report you to immigration within 24 hours. If you are between jobs you cannot perform any other job duties and must be available for work only for a member/employer of Western Range Association. Contact phone numbers and addresses are required. After supplying a copy of your I-94 and passport to your employer, retain the original documents in your possession at all times. You will be required to make sure your I-94 is extended before it expires.

Upon acceptance of your application for the position you will receive instructions on documentation and travel arrangements. After you arrive in the United States and are employed by a member of Western Range Association you will receive a package of documents that will include further information, contract and health insurance enrollment cards. If you do not receive this documentation within 3 weeks of employment please ask your employer and if you still do not have the documentation contact your employer and they will notify Western Range Association.

I have read and understand that I must be an open range sheepherder, as described above, in order to get an H-2A VISA to work for my employer a member of Western Range Association. I have read the above statement and understand what it says.

Signed: *Alberto Rodriguez* Date: 16 FEB. 2015
 (print full name here)- ALBERTO RODRIGUEZ, Isaac 76714
 On behalf of your Employer DUFUR RENA SHEEP COMPANY, BUSIER DUFUR RENA
 By WESTERN RANGE ASSOCIATION *Dennis Richins* DATE
 DENNIS RICHINS, EXECUTIVE DIRECTOR

Este documento debe ser firmado por cada posible empleado antes de comprometerse a trabajar para un miembro/empleador de Western Range Association. Antes de hacer los arreglos de viaje, este documento en original tendrá que estar en la oficina de Western Range Association A NOMBRE DE SU EMPLEADO, UN MIEMBRO DE WRA.

NOTIFICACION, PREVIA AL EMPLEO Y VIAJE, SOBRE DERECHOS Y OBLIGACIONES PARA PODER SER EMPLEADO POR UN MIEMBRO DE WESTERN RANGE ASSOCIATION Y VIAJAR CON VISA DE PASTOR H2-A.

Se le entrevistará para una posición de pastor de ovejas a terreno abierto. Para poder calificar para esta posición debe tener un año de experiencia pastoreando 1000 ovejas o más en terreno abierto, saber empacar, montar a caballo y trabajar en varios tipos de terreno. En esta posición, usted estará disponible las 24 horas al día, 7 días a la semana, y en la mayoría de los casos estará solo.

El sueldo para estos empleos varía con un mínimo de \$750.00 al mes. El sueldo se le pagará en dos partes al mes a menos que por acuerdo escrito, el pago se haga mensualmente. Usted firmará un contrato de empleo con su empleador a su llegada a los Estados Unidos, por el periodo del contrato, renovado anualmente hasta por 36 meses de estadía. Usted NO está empleado por la Western Range Association sino por un MIEMBRO de la Western Range Association (WRA).

El transporte de viaje de ida y vuelta a su país de origen será pagado si usted cumple con los términos del contrato. Los arreglos de viaje serán pagados por Western Range Association cuando sea transferido de un rancho a otro. Los viajes personales por reubicaciones o por vacaciones no serán reembolsados.

Toda herramienta requerida para el empleo se proveerá pero será propiedad del empleador. Toda herramienta deberá ser devuelta al empleador después de concluir el trabajo.

La vivienda se proveerá sin ningún costo. La vivienda varía desde carpas, casa-remolque o vagón, hasta vivienda permanente. Los alimentos y un lugar donde poder cocinarlos se proveerán sin ningún costo. Los alimentos serán preparados por usted mismo o por el empleador. (Esto puede diferir de un empleador a otro, pero los alimentos le serán proporcionados).

Todo pastor de ovejas H-2A, está sujeto a ser transferido. Si el empleador (miembro) no necesita de sus servicios, usted se pondrá en contacto con la Oficina de Western Range Association y en la próxima transferencia disponible será transferido a otro miembro. El Programa de pastores H2-A garantiza el empleo en un 75%.

A cada pastor de ovejas H-2A se le envía una tarjeta de inscripción al seguro médico. Llene este formulario de inmediato y devuélvalo con su contrato. El seguro médico es efectivo desde el primer día de empleo, pero tiene una cobertura limitada hasta que la tarjeta de inscripción sea devuelta a Western Range Association. Mas información acerca del seguro de salud le será proporcionada a su llegada. Habrá un cobro mínimo por el seguro médico y se le descontará de su pago cada mes.

El empleador puede deducir y mantener un depósito de seguridad pagado por usted hasta que haya cumplido la mitad del contrato. Cuando haya cumplido la mitad del contrato le será reembolsado. Si usted se regresa antes de cumplir la mitad del contrato puede perder el depósito y será responsable por los costos adicionales del viaje de ida y vuelta. Si se regresa antes de finalizar el contrato, pero después de cumplir la mitad del contrato usted puede tener que pagar el costo del regreso a su país de origen.

Se le informa que si tiene problemas o no tiene trabajo, favor de comunicarse con el empleador y con la oficina de Western Range Association de inmediato. El Departamento de Inmigración y Naturalización de Los Estados Unidos (INS) tiene reglamentos estrictos, de reportarlo a inmigración si no podemos localizarlo, debemos, a nombre de su empleador reportarlo a inmigración dentro de 24 horas. Si se encuentra entre trabajos no puede desempeñar ningún otro tipo de trabajo, y debe estar disponible para trabajar únicamente para un miembro/empleador de Western Range Association. Se requiere números de teléfono y direcciones. Después de proporcionar una copia de su I-94 y del pasaporte a su empleador, mantenga el documento original con usted en todo momento. Usted será responsable de que su I-94 sea extendida antes de que expire.

Una vez que hayamos aceptado su solicitud para el empleo, usted recibirá instrucciones respecto al llenado de los documentos y sobre los arreglos de viaje. Después de su llegada a los Estados Unidos y de que sea empleado por un miembro de Western Range Association, usted recibirá un paquete de documentos que contendrán más información, el contrato y la tarjeta de inscripción al seguro médico. Si no recibe estos documentos dentro de las 3 primeras semanas de empleo, favor de preguntar a su empleador y si todavía no tiene los documentos póngase en contacto con su empleador y ellos le notificarán a la Western Range Association.

He leído y comprendo que debo tener experiencia como pastor de ovejas a terreno abierto, tal como se describe en la parte superior a fin de obtener una VISA H-2A para trabajar para mi empleador, miembro de Western Range Association. He leído la declaración anterior y comprendo el contenido.

Firma: *Alberto Rodriguez* Fecha: 16 FEB. 2015
(Escriba su nombre completo aquí): ALBERTO RODRIGUEZ, Isaac 70714
A nombre de su Empleador: DUFURRENA SLEEP COMPANY / BUSTER DUFURRENA
Por WESTERN RANGE ASSOCIATION: *Dennis Richins*
DENNIS RICHINS, DIRECTOR EJECUTIVO FECHA

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NOTIFICATION, PRIOR TO EMPLOYMENT AND TRAVEL, OF RIGHTS AND OBLIGATIONS IN ORDER TO BE EMPLOYED BY A MEMBER OF WESTERN RANGE ASSOCIATION AND TRAVEL ON AN H-2A SHEEPHERDER WORK VISA

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All H-2A sheepherder's are subject to transfer. If a member no longer needs your services, you will contact the Western Range Association Office and at the next available transfer will be moved to a new employer. The H-2A sheepherder program guarantees 3/4 time employment.

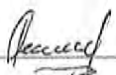
All H-2A sheepherder's are sent an insurance enrollment card, immediately complete this form and return it with your contract. Health Insurance goes into effect on the first day of employment but has limited coverage until the enrollment form is returned to Western Range Association. Further insurance information is provided upon arrival. There is a minimum monthly charge for Health Insurance deducted from your payroll.

Employers may deduct, and hold in trust, a deposit paid by you, until 1/2 of your contracted time is completed. At that time the deposit will be refunded to you. If you leave before 1/2 of your contract is completed you may forfeit the deposit and could be responsible for additional transportation money for incoming and departure travel. If you leave before completing the contract, but after 1/2 of the contract is completed you may have to pay your return travel cost back to your home country.

Be advised that if you are having any problems or are unemployed please contact your employer and the Western Range Association office immediately. United States Department of Immigration and Naturalization (INS) has very strict rules of reporting to immigration and if we cannot locate you we are required, on behalf of your employer, to report you to immigration within 24 hours. If you are between jobs you cannot perform any other job duties and must be available for work only for a member/employer of Western Range Association. Contact phone numbers and addresses are required. After supplying a copy of your I-94 and passport to your employer, retain the original documents in your possession at all times. You will be required to make sure your I-94 is extended before it expires.

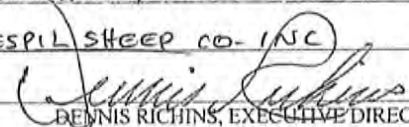
Upon acceptance of your application for the position you will receive instructions on documentation and travel arrangements. After you arrive in the United States and are employed by a member of Western Range Association you will receive a package of documents that will include further information, contract and health insurance enrollment cards. If you do not receive this documentation within 3 weeks of employment please ask your employer and if you still do not have the documentation contact your employer and they will notify Western Range Association.

I have read and understand that I must be an open range sheepherder, as described above, in order to get an H-2A VISA to work for my employer a member of Western Range Association. I have read the above statement and understand what it says.

Signed:  Date: _____

(print full name here) ALCANTARA ARO, Vides 79637

On behalf of your Employer JOHN ESPIL SHEEP CO- INC

By WESTERN RANGE ASSOCIATION  DENNIS RICHINS, EXECUTIVE DIRECTOR DATE _____

REV 11/09

NOTIFICACION DE PRE-EMPLEO DERECHOS Y OBLIGACIONES

Antes de aceptar un puesto de trabajo con un miembro de Western Range Association, este documento debe ser firmado por cada empleado/miembro potencial. Antes de hacer arreglos de viaje, el documento original tendra que estar en la oficina de Western Range Association para finalizar su viaje POR MEDIO DE SU EMPLEADO, UN MIEMBRO.

NOTIFICACION, PREVIO DE EMPLEO, VIAJE, DERECHOS Y OBLIGACIONES PARA PODER SER EMPLEADO POR UN MIEMBRO DE WESTERN RANGE ASSOCIATION Y VIAJAR CON VISA DE PASTOR H2-A.

Usted sera entrevistado para una posicion de pastor de ovejas de terreno abierto. Para poder calificar por esta pocicion debe tener un ano de experiencia pastoreando 1000 ovejas o mas en terreno abierto. Poder empacar, montar caballo y trabajar en varias regiones. En esta posicion, usted estara dispuesto las 24 horas al dia, 7 dias a la semana. La mayoria de los casos estar solo.

El sueldo de estas posiciones cambian con un minimo de \$750.00 por mes. El sueldo se les pagara dos veces al mes a menos que este de acuerdo. Pago mensual solo por escrito. Usted firmara un contrato de empleo con su empleador a su llegada por el periodo de contrato, renovado anualmente hasta por 36 meses de estadia en Los Estados Unidos. Usted NO esta empleado por la Western Range Asociacion sino por un MIEMBRO de la Western Range Asociacion (WRA).

Transportacion de viaje de ida y vuelta a su pais de origen sera pagado al cumplir el termino de su contrato. Arreglos de viaje seran pagados por Western Range Association cuando sean transferido de un rancho a otro. Viajes personales para relocalizarse o para vacaciones no se les reembolsara.

Toda herramienta requerida para la posicion se provera pero sera propiedad del empleador. Toda herramienta debiera ser devuelta al empleador despues de cumplir la labor.

La vivienda se provera sin ningun costo. La vivienda varea desde carpas, casa-remolque, vagon, a establecimiento permanente. Las proviciones y un lugar donde poder cocinar los alimentos se provera sin ningun costo. Los alimentos seran preparados por usted mismo o por el empleador. (Esto puede diferir de un empleador a otro, pero los alimentos seran proporcionados).

Todo pastor de ovejas H-2A, puede ser sujeto a ser transferido. Si el empleador (miembro) no necesita sus servicios, usted se pondra en contacto con la oficina de Western Range Association y la proxima transferencia disponible sera transferido a otro miembro. El Programa de pastores H2-A garantiza ¾ de empleo.

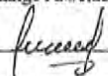
Todo pastor de ovejas H-2A se les embiara una tarjeta de inscripcion para empleados del seguro medico. Rellene este formulario de inmediato y devuelva con el contrato. El seguro medico sera efectivo el primer dia de empleo. Tendra cubrimiento limitado hasta que la tarjeta de inscripcion sea devuelto a Western Range Association. Mas informacion acerca de seguro de salud sera proporcionado a su llegada. Habra un cobro minimo del seguro medico y se le descontara de su nomina de pago cada mes.

El empleador puede deducir y mantener un deposito de seguridad pagado por el pastor hasta que haya cumplido ½ del contrato. Cuando haya cumplido ½ del contrato sera reembolsado. Si se regresa antes de cumplir ½ del contrato puede perder el deposito y ser responsable por los costos adicionales del viaje de ida y vuelta. Si se regresa antes de cumplir el contrato, pero despues de cumplir ½ del contrato puede pagar el costo de su regreso a su pais de origen.

Si tiene problemas o esta fuera de trabajo, favor de comunicarse con el empleador y con la oficina de Western Range Association de inmediato. El Departamento de Inmigracion y Naturalizacion de Los Estados Unidos (INS) tiene reglamentos estrictos, por medio de su empleado, se le hara un reporte a Inmigracion si no podemos localizarlo dentro las 24 horas. No puede desempeña otro tipo de trabajo, amenos que sea trabajo de pastor y con un miembro/empleador de Western Range Association. Numeros de telefono y direcciones son requeridos. Despues de proporcionar una copia de su I-94 y pasaporte a su empleador, mantenga el documento original en su posesion a todo momento. Usted sera reponsable mantener su I-94 extendida.

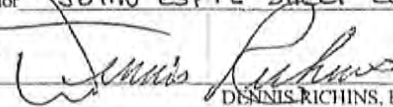
Una ves que hayamos aceptado su aplicacion para la posicion, usted recibira instrucciones como rellenar los documentos y arreglos de viaje. Despues de su llegada a los Estados Unidos y sea empleado con el miembro de Western Range Association, usted recibira un paquete de documentos y informacion que incluye, el contrato, tarjeta de inscripcion del seguro medico. Si no recibe estos documentos dentro de 3 semanas de empleo, favor de preguntar a su empleador y si todavia no tiene los documentos pongase en contacto con su empleador y ellos notificaran a la Western Range Association.

He leído y comprendo que debo tener experiencia en terreno abierto como pastor de ovejas, como se describe hacia la parte de arriba a fin de obtener una VISA H-2A para tabajar para mi empleador un miembro de Western Range Western Range Asociacion. He leído la declaracion hacia arriba y comprendo el contenido.

Firma  Fecha: 03 MAY-2012

(Imprima nombre completo aqui): ALCANTARA ARO, Vides 79637

Por medio de su Empleador JOHN ESPIL SHEEP CO- INC

Por WESTERN RANGE ASSOCIATION 
DENNIS RICHINS, EXECUTIVE DIRECTOR

DATE

Antes de aceptar un puesto de trabajo con un miembro de Western Range Association, este documento debe ser firmado por cada empleado/miembro potencial. Antes de hacer arreglos de viaje, el documento original tendra que estar en la oficina de Western Range Association para finalizar su viaje POR MEDIO DE SU EMPLEADO, UN MIEMBRO.

NOTIFICACION, PREVIO DE EMPLEO, VIAJE, DERECHOS Y OBLIGACIONES PARA PODER SER EMPLEADO POR UN MIEMBRO DE WESTERN RANGE ASSOCIATION Y VIAJAR CON VISA DE PASTOR H2-A.

Usted sera entrevistado para una posicion de pastor de ovejas de terreno abierto. Para poder calificar por esta posicion debe tener un ano de experiencia pastoreando 1000 ovejas o mas en terreno abierto. Poder empacar, montar caballo y trabajar en varias regiones. En esta posicion, usted estara dispuesto las 24 horas al dia, 7 dias a la semana. La mayoria de los casos estar solo.

El sueldo de estas posiciones cambian con un minimo de \$750.00 por mes. El sueldo se les pagara dos veces al mes a menos que este de acuerdo. Pago mensual solo por escrito. Usted firmara un contrato de empleo con su empleador a su llegada por el periodo de contrato, renovado anualmente hasta por 36 meses de estadia en Los Estados Unidos. Usted NO esta empleado por la Western Range Asociacion sino por un MIEMBRO de la Western Range Asociacion (WRA).

Transportacion de viaje de ida y vuelta a su pais de origen sera pagado al cumplir el termino de su contrato. Arreglos de viaje seran pagados por Western Range Association cuando sean transferido de un rancho a otro. Viajes personales para relocalizarse o para vacaciones no se les reembolsara.

Toda herramienta requerida para la posicion se provera pero sera propiedad del empleador. Toda herramienta debiera ser devuelta al empleador despues de cumplir la labor.

La vivienda se provera sin ningun costo. La vivienda varea desde carpas, casa-remolque, vagon, a establecimiento permanente. Las proviciones y un lugar donde poder cocinar los alimentos se provera sin ningun costo. Los alimentos seran preparados por usted mismo o por el empleador. (Esto puede diferir de un empleador a otro, pero los alimentos seran proporsionados).

Todo pastor de ovejas H-2A, puede ser sujeto a ser transferido. Si el empleador (miembro) no necesita sus servicios, usted se pondra en contacto con la oficina de Western Range Association y la proxima transferencia disponible sera transferido a otro miembro. El Programa de pastores H2-A garantiza 1/2 de empleo.

Todo pastor de ovejas H-2A se les embiara una tarjeta de inscripcion para empleados del seguro medico. Rellene este formulario de inmediato y devuelva con el contrato. El seguro medico sera efectivo el primer dia de empleo. Tendra cubrimiento limitado hasta que la tarjeta de inscripcion sea devuelto a Western Range Association. Mas informacion acerca de seguro de salud sera proporcionado a su llegada. Habra un cobro minimo del seguro medico y se le descontara de su nomina de pago cada mes.

El empleador puede deducir y mantener un deposito de seguridad pagado por el pastor hasta que haya cumplido 1/2 del contrato. Cuando haya cumplido 1/2 del contrato sera reembolsado. Si se regresa antes de cumplir 1/2 del contrato puede perder el deposito y ser responsable por los costos adicionales del viaje de ida y vuelta. Si se regresa antes de cumplir el contrato, pero despues de cumplir 1/2 del contrato puede pagar el costo de su regreso a su pais de origen.

Si tiene problemas o esta fuera de trabajo, favor de comunicarse con el empleador y con la oficina de Western Range Association de inmediato. El Departamento de Inmigracion y Naturalizacion de Los Estados Unidos (INS) tiene reglamentos estrictos, por medio de su empleado, se le hara un reporte a Inmigracion si no podemos localizarlo dentro las 24 horas. No puede desempeña otro tipo de trabajo, amenos que sea trabajo de pastor y con un miembro/empleador de Western Range Association. Numeros de telefono y direcciones son requeridos. Despues de proporcionar una copia de su I-94 y pasaporte a su empleador, mantenga el documento original en su posesion a todo momento. Usted sera reponsable mantener su I-94 extendida.

Una ves que hayamos aseptado su aplicacion para la posicion, usted recibira instrucciones como rellenar los documentos y arreglos de viaje. Despues de su llegada a los Estados Unidos y sea empleado con el miembro de Western Range Association, usted recibira un paquete de documentos y informacion que incluye, el contrato, tarjeta de inscripcion del seguro medico. Si no recibe estos documentos dentro de 3 semanas de empleo, favor de preguntar a su empleador y si todavia no tiene los documentos pongase en contacto con su empleador y ellos notificaran a la Western Range Asociacion.

He leido y comprendo que debo tener experiencia en terreno abierto como pastor de ovejas, como se describe hacia la parte de arriba a fin de obtener una VISA H-2A para tabajar para mi empleador un miembro de Western Range Western Range Asociacion. He leido la declaracion hacia arriba y comprendo el contenido.

Firma: [Signature] Fecha: 25 Oct- 2013

(Imprima nombre completo aqui): ALONZO HUARE, Marbyn Roy 70107

Por medio de su Empleador: Eureka Livestock LLC / Jim Etcheverry

Por WESTERN RANGE ASSOCIATION

[Signature]
DENNIS RICHINS, EXECUTIVE DIRECTOR

DATE

This document is to be signed by each potential employee prior to commitment of work for a member/employer of Western Range Association. Before travel arrangements can be finalized this document, original form, is to be in the possession of Western Range Association ON BEHALF OF YOUR EMPLOYER, A MEMBER OF WRA.

NOTIFICATION, PRIOR TO EMPLOYMENT AND TRAVEL, OF RIGHTS AND OBLIGATIONS IN ORDER TO BE EMPLOYED BY A MEMBER OF WESTERN RANGE ASSOCIATION AND TRAVEL ON AN H-2A SHEEPHERDER WORK VISA

You are being interviewed for the position of an open range sheepherder. In order to qualify for the position you must have 1 year experience in herding 1000 sheep, or more, on the open range; be able to pack and ride a horse and be able to work on various terrains. In this position you will be on call 24 hours a day, 7 days a week and in most cases will be alone.

The wages of the position vary with a minimum of \$750.00 per month. Wages are paid twice a month unless agree, in writing, to be paid monthly. You will sign an employment contract with your employer upon arrival for the contract period, renewed yearly for up to 36 months stay in the U.S.A. You are NOT employed by Western Range Association but by a MEMBER of Western Range Association (WRA)

Transportation for travel to and from your home country are paid if you complete the contract terms. Travel for transfers, arranged by Western Range Association, is paid. Personal travel to relocate, or for vacation, is not reimbursed.

All tools required for the position will be supplied, but are the property of the employer. All tools should be returned to the employer upon completion of the job.

Housing is supplied, free of charge. Housing varies from tents, to mobile trailers or wagons, to permanent housing. Food and cooking facilities are supplied, free of charge. You will be provided food to cook for yourself or prepared food by the employer. (This may differ by employer, but food will be supplied)

All H-2A sheepherder's are subject to transfer. If a member no longer needs your services, you will contact the Western Range Association Office and at the next available transfer will be moved to a new employer. The H-2A sheepherder program guarantees 3/4 time employment.

All H-2A-sheepherder's are sent an insurance enrollment card, immediately complete this form and return it with your contract. Health Insurance goes into effect on the first day of employment but has limited coverage until the enrollment form is returned to Western Range Association. Further insurance information is provided upon arrival. There is a minimum monthly charge for Health Insurance deducted from your payroll.

Employers may deduct, and hold in trust, a deposit paid by you, until 1/2 of your contracted time is completed. At that time the deposit will be refunded to you. If you leave before 1/2 of your contract is completed you may forfeit the deposit and could be responsible for additional transportation money for incoming and departure travel. If you leave before completing the contract, but after 1/2 of the contract is completed you may have to pay your return travel cost back to your home country.

Be advised that if you are having any problems or are unemployed please contact your employer and the Western Range Association office immediately. United States Department of Immigration and Naturalization (INS) has very strict rules of reporting to immigration and if we cannot locate you we are required, on behalf of your employer, to report you to immigration within 24 hours. If you are between jobs you cannot perform any other job duties and must be available for work only for a member/employer of Western Range Association. Contact phone numbers and addresses are required. After supplying a copy of your I-94 and passport to your employer, retain the original documents in your possession at all times. You will be required to make sure your I-94 is extended before it expires.

Upon acceptance of your application for the position you will receive instructions on documentation and travel arrangements. After you arrive in the United States and are employed by a member of Western Range Association you will receive a package of documents that will include further information, contract and health insurance enrollment cards. If you do not receive this documentation within 3 weeks of employment please ask your employer and if you still do not have the documentation contact your employer and they will notify Western Range Association.

I have read and understand that I must be an open range sheepherder, as described above, in order to get an H-2A VISA to work for my employer a member of Western Range Association. I have read the above statement and understand what it says.

Signed: Alonso Huare Date: 25 Oct-2013

(print full name here)- ALONZO HUARE, Marlyn Roy 70107

On behalf of your Employer Eureka Livestock LLC / Jim Etcheberry

By WESTERN RANGE ASSOCIATION Bernis Richins DATE

Antes de aceptar un puesto de trabajo con un miembro de Western Range Association, este documento debe ser firmado por cada empleado/miembro potencial. Antes de hacer arreglos de viaje, el documento original tendra que estar en la oficina de Western Range Association para finalizar su viaje POR MEDIO DE SU EMPLEADO, UN MIEMBRO.

NOTIFICACION, PREVIO DE EMPLEO, VIAJE, DERECHOS Y OBLIGACIONES PARA PODER SER EMPLEADO POR UN MIEMBRO DE WESTERN RANGE ASSOCIATION Y VIAJAR CON VISA DE PASTOR H2-A.

Usted sera entrevistado para una posicion de pastor de ovejas de terreno abierto. Para poder calificar por esta pocicion debe tener un ano de experiencia pastoreando 1000 ovejas o mas en terreno abierto. Poder empacar, montar caballo y trabajar en varias regiones. En esta posicion, usted estara dispuesto las 24 horas al dia, 7 dias a la semana. La mayoría de los casos estar solo.

El sueldo de estas posiciones cambian con un minimo de \$750.00 por mes. El sueldo se les pagara dos veces al mes a menos que este de acuerdo. Pago mensual solo por escrito. Usted firmara un contrato de empleo con su empleador a su llegada por el periodo de contrato, renovado anualmente hasta por 36 meses de estadia en Los Estados Unidos. Usted NO esta empleado por la Western Range Asociacion sino por un MIEMBRO de la Western Range Asociacion (WRA).

Transportacion de viaje de ida y vuelta a su pais de origen sera pagado al cumplir el termino de su contrato. Arreglos de viaje seran pagados por Western Range Association cuando sean transferido de un rancho a otro. Viajes personales para relocitarse o para vacaciones no se les reembolsara

Toda herramienta requerida para la posicion se provera pero sera propiedad del empleador. Toda herramienta deberra ser devuelta al empleador despues de cumplir la labor.

La vivienda se provera sin ningun costo. La vivienda varea desde carpas, casa-remolque, vagon, a establecimiento permanente. Las provisiones y un lugar donde poder cocinar los alimentos se provera sin ningun costo. Los alimentos seran preparados por usted mismo o por el empleador. (Esto puede diferir de un empleador a otro, pero los alimentos seran proporcionados)

Todo pastor de ovejas H-2A, puede ser sujeto a ser transferido. Si el empleador (miembro) no necesita sus servicios, usted se pondra en contacto con la oficina de Western Range Association y la proxima transferencia disponible sera transferido a otro miembro. El Programa de pastores H2-A garantiza 1/2 de empleo.

Todo pastor de ovejas H-2A se les embiara una tarjeta de inscripcion para empleados del seguro medico. Rellene este formulario de inmediato y devuelva con el contrato. El seguro medico sera efectivo el primer dia de empleo. Tendra cubrimiento limitado hasta que la tarjeta de inscripcion sea devuelto a Western Range Association. Mas informacion acerca de seguro de salud sera proporcionado a su llegada. Habra un cobro minimo del seguro medico y se le descontara de su nomina de pago cada mes.

El empleador puede deducir y mantener un deposito de seguridad pagado por el pastor hasta que haya cumplido 1/2 del contrato. Cuando haya cumplido 1/2 del contrato sera reembolsado. Si se regresa antes de cumplir 1/2 del contrato puede perder el deposito y ser responsable por los costos adicionales del viaje de ida y vuelta. Si se regresa antes de cumplir el contrato, pero despues de cumplir 1/2 del contrato puede pagar el costo de su regreso a su pais de origen.

Si tiene problemas o esta fuera de trabajo, favor de comunicarse con el empleador y con la oficina de Western Range Association de inmediato. El Departamento de Inmigracion y Naturalizacion de Los Estados Unidos (INS) tiene reglamentos estrictos, por medio de su empleado, se le hara un reporte a Inmigracion si no podemos localizarlo dentro las 24 horas. No puede desempeñar otro tipo de trabajo, amenos que sea trabajo de pastor y con un miembro/empleador de Western Range Association. Numeros de telefono y direcciones son requeridos. Despues de proporcionar una copia de su I-94 y pasaporte a su empleador, mantenga el documento original en su posesion a todo momento. Usted sera repousable mantener su I-94 extendida.

Una vez que hayamos aseptado su aplicacion para la posicion, usted recibira instrucciones como rellenar los documentos y arreglos de viaje. Despues de su llegada a los Estados Unidos y sea empleado con el miembro de Western Range Association, usted recibira un paquete de documentos y informacion que incluye, el contrato, tarjeta de inscripcion del seguro medico. Si no recibe estos documentos dentro de 3 semanas de empleo, favor de preguntar a su empleador y si todavia no tiene los documentos pongase en contacto con su empleador y ellos notificaran a la Western Range Association.

He leído y comprendo que debo tener experiencia en terreno abierto como pastor de ovejas, como se describe hacia la parte de arriba a fin de obtener una VISA H-2A para tabajar para mi empleador un miembro de Western Range Association. He leído la declaracion hacia arriba y comprendo el contenido.

Firma:

Fecha: 11-03-11

(Imprima nombre completo aqui): AQUINO PINO, Hernan Mamerto 79127

Por medio de su Empleador:

Por WESTERN RANGE ASSOCIATION

DENNIS RICHINS, EXECUTIVE DIRECTOR

DATE

PRE-EMPLOYMENT NOTICE OF RIGHTS AND OBLIGATIONS

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Signed: [Signature] Date: 11-03-2011

(print full name here) AQUINO PROO, Hernan Mamerto 79127

On behalf of your Employer JOHN ESPIL SHEEP CO., INC-NV/JOHN ESPIL

By WESTERN RANGE ASSOCIATION

[Signature]
DENNIS RICHINS, EXECUTIVE DIRECTOR

DATE

EXHIBIT 18

WESTERN RANGE ASSOCIATION
1245 E Brickyard Rd., Suite 190
Salt Lake City, Utah 84106
(801) 486-2004, fax (801) 486-2315

January 11, 2013

Dear Employer/Member:

This letter is to provide you with important information about Workers Compensation Certificate of Insurance and the guidelines to follow in the event of any injury pertaining to workers under the H-2A program.

Please remember that all employers should renew their insurance certificates according to the agreement previously made between Western Range Association and the US Department of Labor. If such agreement is not kept by any employer, the employee (s) will be removed from the employer's location and the employer's membership with Western Range Association may be terminated.

It is your responsibility to provide your insurance agent the address of Western Range Association and to request they provide us an updated certificate of insurance automatically each time the policy renews.

Injuries-

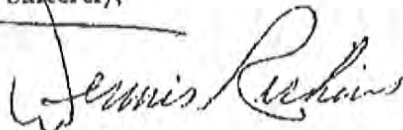
According to the U.S. Citizenship and Immigration Services (USCIS), any time a worker is injured and not able to perform his duties as a sheepherder, an I-129 form must be submitted to change the workers status from an H-2A to a different status. This must occur the very same week of the injury, otherwise the case would be denied and it would bring consequences to the worker's legal status.

The following are steps to take in the event of an injury:

- Report the accident by contacting your state workers compensation office, they will provide you with the necessary paperwork to submit the claim.
- Contact Western Range Association and speak with the Legal Documentation desk to report the injury. The Legal Documentation desk will conduct a list of questions in order to determine if the case requires that the workers status be changed through the U.S. Citizenship and Immigration.
- Submit a copy of the claim to Western Range Association
- Continue to report the worker's recovery to Western Range Association

We hope this information will help each employer prevent any future issues pertaining to Workers Compensation Insurance.

Sincerely,



Dennis Richins
Executive Director

ETSR0003743

EXHIBIT 19

**El Tejon Sheep Co.
MELCHOR GRAGIRENA
P.O. Box 80715
Bakersfield, CA 93380-0715
(661) 393-5161**

Attachment to Form ETA-790 & Form ETA-9142A

Physical Address:

El Tejon Sheep Company
13950 Old River Road
Bakersfield, CA 93311

El Tejon Sheep Company uses both fixed site range housing and mobile range housing:

El Tejon Sheep has the following housing under current inspection:

- 10 sheep camps with a capacity of 1 herder each (California)
- 1 sheep camp with a capacity of 1 herder (Nevada)
- 1 fixed site range unit with capacity of 3 workers (California)
- 1 fixed site range unit with capacity of 5 workers (Nevada)

The total housing is nineteen (19) workers.

El Tejon Sheep Company will provide range housing (sheep camps, tents – appropriate for weather conditions and fixed site range housing that will meet the requirements set forth in Sections 655.235, 635.230 (c) (2), and 655.122 (d) (2) of 20 CFR 655, and the housing is available and sufficient to accommodate the numbers of workers being requested for Labor Certification.

Range Housing is located on privately leased grazing land and BLM Grazing Allotment land located in Kern County, California and privately leased grazing land, BLM Grazing Allotment land, USDA Forest Service Grazing Allotments located in Elko County in Nevada.

El Tejon Sheep Company (employer) will provide workers without charge or deposit the following items:

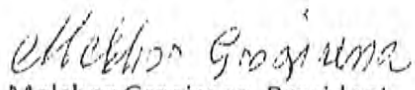
1. Tools, supplies and equipment, including but not limited to:
Sleeping bag, rain gear, water boots, gloves, pliers, jacks, wrenches, etc.
2. Cell phones : The cell phones are provided without charge or deposit to the workers during their entire period of employment. The plan has sufficient minutes of use for communication. In the rare instance where the worker(s) is/are 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 2nd or 3rd day) if not more regularly. Camps are moved by the employer's or camp tender's pickup, thus assuring personal contact with the worker(s) at least once every 2 - 3 days.

3. Room and Board: All meals and housing are provided without charge or deposit. Convenient cooking facilities and adequate provisions of food are provided to the worker(s). The worker(s) is/are provided adequate potable water per Section 655.235 of the Regulations

4. Earning Statement: Workers will be provided, on each payday, a Statement of Earnings, and will be paid the monthly AEWR, as specified in Section 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, and workers will be paid semi-monthly (twice monthly).

Assurances:

1. Should El Tejon Sheep Company's Employer Liability Insurance Certificate, or Workman's Compensation Certificate expire during the period of stay set forth in the ETA-790, El Tejon Sheep Company assures that the policy will be renewed and in force before the date of expiration.
2. Should El Tejon Sheep Company's Housing Inspection expire during the period of stay set forth in the ETA-790, El Tejon Sheep Company assures that a new inspection will be completed before the expiration date and 30 days prior to the next date of need.


Melchor Gragirena, President
El Tejon Sheep Company



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/24/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0E02096
DiBuduo & DeFendis Insurance Brokers, LLC
P.O. Box 5479
Fresno, CA 93755-5479

CONTACT NAME: Cathie Pipo
PHONE (A/C, No, Ext): (559) 432-0222 FAX (A/C, No): (559) 431-7941
E-MAIL ADDRESS:

INSURED

El Tejon Sheep Company
P.O. Box 80715
Bakersfield, CA 93380

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Farmland Mutual Insurance Company	13838
INSURER B: State Compensation Insurance Fund	35076
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER: 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:			CPP125808A	06/30/2016	06/30/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS			CPP125808A	06/30/2016	06/30/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			CU125808A	06/30/2016	06/30/2017	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	906331816	06/30/2016	06/30/2017	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Insured operates in California and Nevada

CERTIFICATE HOLDER

Western Range Association
161 5th Avenue, Suite 100
Twin Falls, ID 83301

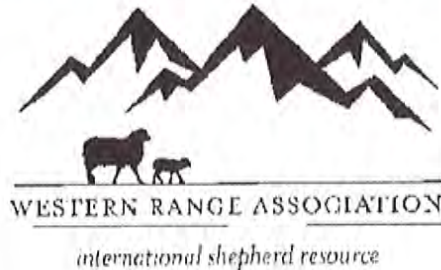
CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

RA 00747

EXHIBIT 20



February 12, 2014

Attn: Members of Western Range Association

In an effort to improve the communication between the membership and the board of directors, I am writing a summary of discussed issues during the board meeting that took place on January 23, 2014.

1) Early Departure Fees

Everyone should be aware that one of our assurances to the Department of Labor is that travel for each herder, to and from their home country, is provided. WRA purchases these tickets and prorates the cost thereof over 36 months (the maximum time a man could stay). The first 18 months represent the incoming ticket, while the last 18 months represent the ticket home. As airfare rates fluctuate relative to time of year and demand, as an association, all members pay an equal amount. This amount is represented on you bill in the herder travel column. The current rate is \$63.75 (Peru), \$18.00 (Mexico) and \$76.50 (Chile) per man per month. Periodically this rate is reviewed to insure that overall travel costs have been met. Additionally, in times when there is a "surplus" at the fiscal year-end members are not charged travel.

If a man absconds, only the cost of the inbound ticket is collected. Example: a herder runs off after 12 months of work, the member is responsible for 6 months of prorated travel. If a man runs off after 18 months no travel is due.

If a man goes home early, the full cost of travel is still due. Unfortunately, if a man were to only work a few months and decide to return home the entire cost of both the inbound and outbound ticket is due (both tickets were used).

The Department of Labor's ninety day out of country stay requirement has forced many of us to send men home before the 36 month work period is over. For example, I have men arrive the first of March to be here in time for shearing and lambing. In order to meet the out of country stay and allow time for the new visa to be processed these men must return to Peru the preceding November. This leaves a gap of 4 months in travel fees that I am responsible for. I view this as a cost of doing business to insure that I have experienced men here when I need them.

2) Visas

The best advice I can give regarding visas is to be proactive. Know when the visas of your employees expire. Plan ahead. Expect the paperwork (on the government side) to be slow. Call the office frequently. Submit all requests for new visas, travel, cancellations, etc. in writing. Confirm with the office that your records and theirs match. If you have a problem with the office, speak to Dennis. If you're still not happy call myself.

3) Health Insurance

Currently herders have no health insurance. The office is looking into available options. Currently a financially viable one has not been found.

4) Herder Runaways

A significant effort was made jointly between Western Range and Mountain Plains last summer to locate and deport herders that had jumped their contract as well as to penalize those that

assisted contract breakers in finding employment. While the effort succeeded in locating runaways, there was no assistance from Immigration officials or the Department of Labor to penalize, deport, or even make contact with known jumpers even though assurances were made by government agents that they could help. Currently the only option would be to bring a civil case against an individual or employer. After consulting with attorneys, it was determined that such an action would be costly and even if judgment were favorable to the range associations, little compensation would result and the jumper would still be under the jurisdiction of a federal agency.

Our best hope is that Congress will enact immigration reform that will contain enforcement provisions to deal with the problem. We need to let our legislators know what our problems are. I would urge you all to contact legislators in your home state and let them know the impact that a lack of action is having. Let them know how important the sheepherder program is to our industry and your local communities.

5) Finances

WRA has been under financial strain for several years. The major contributors to this are the herder health insurance program and lawsuits brought against the Association.

The herder health insurance was a self funded program. Meaning that WRA paid 100% of all claims up to \$30,000. Rising medical costs, increases in the number of claims and many large claims i.e. appendicitis and cancer depleted all of the insurance fees and forced WRA to use their reserve savings to cover the medical claims. Even though coverage terminated on September 30, 2013 a significant number of claims have yet to be paid.

WRA tries to operate as a "non-profit" association. However, it is necessary for WRA to maintain a savings reserve for several reasons. First of all WRA must guarantee three quarters of the work (and pay) and provide return transportation for all herders. It was determined long ago the WRA would generate a savings reserve account to cover these guarantees should a ranch go broke or if the entire program were shut down.

Lawsuits have become a constant in recent years. The Board of Directors has chosen to defend our program when legal actions have threatened it. An example of this happened last year when the DOL issued new wage orders that doubled wages in Nevada and Arizona. Nevada sheep man David Little took charge and both WRA and MPAS contributed to correct wrong doing. Other legal expenses result when herders sue their employers for any number of reasons. WRA as a joint employer is named as a defendant in these actions and regularly pays tens of thousands of dollars in attorney fees simply to be dismissed from the case.

In order to replace money taken from reserves and to rebuild the reserve fund the board decided to continue the \$60 per man fee until June 2014.

Sincerely,

Western Range Association

Lane Jensen
President

ETS000116

EXHIBIT 21



February 9, 2015

Western Range Members,

There is a need to explain to you adjustments that appear on this billing statement.

As you are aware, WRA has been collecting assessments to hold in reserve. These Reserve accounts serve to provide the means to meet our obligation to the Department of Labor should WRA cease operations. And, to have funds for legal fees to defend our program.

Our Association operates on a fiscal calendar (April 1 – March 31) and 2014 has been a good year for the Association financially. There were no large legal fees and all of the past losses from the terminated insurance program have been recovered. These factors have allowed the reserve accounts to grow more rapidly than expected.

The board would like to minimize the tax liability of the Association. Therefore, the billing statements for the months of January, February, and March will be subject to the following temporary changes.

1. Membership fees will be suspended.
2. No charges for herder travel.
3. No administrative charges per herder.

The normal billing amounts for these categories will return on the April billing statement.

Additionally, I would like to point out that the reserve assessment fee has been reduced from \$60./herder/month to \$30/herder/month. The board feels it is necessary to continue to maintain and/or increase the reserve accounts yet, at a reduced rate.

If you have questions on these or any other matters please contact Dennis Richins or Sarah Peters at the office or me.

Thank you,

Lane Jensen

ETS000107

EXHIBIT 22

00941
El tejan Sta
CO-NU



October 27, 2010

Dear Member:

During the last several months the U.S. Department of Labor has been conducting audits on many of our members. They have brought to our attention the procedure that needs to be implemented by all H-2A employers concerning travel subsistence. You are required to pay two days subsistence to each herder upon arrival and two days subsistence to each herder upon departure.

Western Range Association was required to provide the Department of Labor a list of all herders who arrived and departed the U.S. from August 2008 thru August 2010. The subsistence amount per day ranges from \$9.90 - \$10.45 per day depending when your herder traveled. To make things easier we are asking you to use \$11.00 per day for reimbursement.

Attached is a list of all herders that you need to issue a check to. Please review this list against your payroll records and adjust accordingly if any herders do not appear on this list. Keep one copy for your records and send the second copy back to the office with check copies and original checks attached.

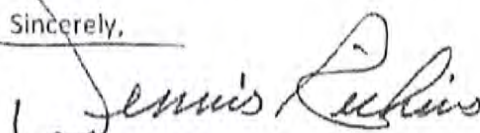
We are required to provide evidence to the Department of Labor that the herders have been compensated for two days subsistence; therefore, we are asking you to follow the steps below by November 15, 2010. If you have already made payment to your herders by some other means, please provide documentation to us.

- **New/Active Herders** - Issue a check for \$22.00 to each herder and send Western Range Association a copy of the check.
- **New Herders that have been transferred from your employment** - Issue a check for \$22.00 to the herder and mail to WRA and we will forward it to the member who currently has the herder.
- **Herders that returned home** - Issue a check for \$22.00 to the herder and mail to WRA. We will attempt to find the herder and mail the check to him.

Please contact the office with any questions that you may have.

In the future please remember to pay your herders when they arrive and depart the U.S. two days subsistence.

Sincerely,


Dennis Richins
Executive Director

RA 00754

WRA000295

EXHIBIT 23

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

Plaintiff,

vs.

Case No.:

3:16-cv-00237-RCJ-CLB

WESTERN RANGE ASSOCIATION,

Defendants.

FRCP 30(b)(6) TELEPHONIC DEPOSITION OF
BORDA LAND & SHEEP CO., LLC,
REPRESENTED BY TED BORDA

Friday, August 20, 2021

Gardnerville, Nevada

Reported by:
Michelle C. Johnson, RPR-CRR
NV CCR 771, CA CSR 5962

Job No. 4765137

Pages 1 - 110

RA 00756

1 have 11 herders, never here at one time. I have six
2 herders here now, and they will all go home
3 December 1st and five will come back. So we do --
4 it's basically a six-month rotation. And their
5 fathers -- I have a father with three sons, I have two
6 brothers, and I have another father and son, and all
7 11 are related. So that's -- that's how I recruit
8 them. I recruit them and then I, of course, use
9 Western Range as a legal way of bringing them in.

10 Q. Great, thank you for that explanation.

11 Do you also rely on Western Range Association
12 for understanding the H-2A rules?

13 A. I do.

14 MS. WINOGRAD: Object to the form of the
15 question and object to the timeframe as to at what
16 time the H-2A rule was or what you are referring to,
17 foundation.

18 BY MS. REIF:

19 Q. Okay. And then in paragraph 4 of your
20 declaration, you state that Western Range Association
21 handles paperwork for you, including Form 790, Form
22 9142, INS Form I-192, and that they also arrange
23 travel from Mexico.

24 And I just want to check that that is all
25 still accurate.

1 A. Yes.

2 Q. Great. And do you -- is it Borda's practice
3 to review these forms that Western Range Association
4 completes before they are submitted?

5 MS. WINOGRAD: Objection, lack of foundation.

6 THE WITNESS: It -- it is not my practice to
7 review them before they're submitted, no.

8 BY MS. REIF:

9 Q. Okay. And so just to check, have you ever
10 reviewed a form and asked Western Range Association to
11 change anything on the form?

12 MS. WINOGRAD: Objection to the form,
13 compound.

14 THE WITNESS: Not that I can remember ever
15 doing that, no.

16 BY MS. REIF:

17 Q. Okay. And is there anything else that
18 Western Range Association does for you in order to
19 obtain H-2A herders?

20 MS. WINOGRAD: Objection, calls for
21 speculation.

22 THE WITNESS: Not that I can think of right
23 now, no.

24 BY MS. REIF:

25 Q. Understood.

1 MS. WINOGRAD: Objection, calls for a legal
2 conclusion.

3 THE WITNESS: I believe at that time, that
4 was the case, yes.

5 BY MS. REIF:

6 Q. Great, thank you.

7 And have you ever been approached by a
8 domestic herder seeking to work for you?

9 A. No.

10 Q. Have you ever been approached by Western
11 Range Association seeking to refer a domestic herder
12 to you?

13 A. No.

14 Q. Okay. If you go down to the second half of
15 that page, box 16, "Job description," there is a job
16 description written in bold.

17 If you could just take a moment to read that
18 to yourself. When you're done, my question will be,
19 is that job description consistent with your
20 expectations for the job your herders will perform?

21 MS. WINOGRAD: I'm just going to object. In
22 2014 or currently?

23 MS. REIF: Thank you for that clarification,
24 Ellen.

25 Yes, this is on a 2014 form, so I do mean for

1 2014.

2 THE WITNESS: To my best recollection -- I
3 mean, 2014 is a long time ago, so -- but yes.

4 BY MS. REIF:

5 Q. Great.

6 For the time period of 2010 to the present,
7 would you say that this job description is accurate
8 for your expectations for your herders?

9 MS. WINOGRAD: Objection to the form of the
10 question, overbroad.

11 THE WITNESS: Well, it's only comprehensive,
12 it's not accurate.

13 BY MS. REIF:

14 Q. In what ways is it not accurate?

15 A. Well, my guys are not on call 24 hours, seven
16 days a week. That's just not true.

17 Q. Could you define for me what you mean by "on
18 call"?

19 A. Well, for example, during lambing time, my
20 guys split up into shifts and they work -- they work
21 different shifts. When they're done, they're done.
22 So they're not on call. When they go to bed -- when
23 their shift's over, they're done.

24 When, example, right now, right now my guys
25 are bored to death. They are absolutely bored to

1 Q. For that period?

2 A. Yes.

3 Q. For the rest of the year, are they within
4 walking distance of a town?

5 A. No.

6 Q. Okay.

7 A. I mean right now, they're almost at 9200
8 feet; there's no towns up there.

9 Q. Right. So if a herder wanted to go into town
10 during that time when they're not within walking
11 distance, they would need to contact you to get
12 transportation, correct?

13 A. Sure.

14 Q. Okay. Has that ever happened?

15 A. No. We bring those guys -- when there's two
16 herders together, we'll bring one into the ranch, they
17 can shower, and take him back the next day, bring the
18 other guy in so he can shower and stuff.

19 Even the scenario where there's only one guy
20 up there, Baggie Valley, the guy that we're going to
21 take to the doctor next week, we'll go get him and
22 bring him down. And his brother will come and shower
23 at the ranch, maybe share a meal together or
24 something, and take him back at the end of the day or
25 something. But usually not, you know. Usually

1 they're just happy being where they're at, other than
2 wanting to change clothes and take a shower once in a
3 while. If we can do that for them, we do.

4 Q. Okay, so -- sorry, what was that?

5 A. I mean, there are situations where we can't
6 do it. We have a guy on the top of Mt. Rose. We
7 would not be able to do that. It would take us five
8 hours to get there in a car, five hours to get back to
9 town, so...

10 Q. Right. So what you're describing about
11 picking them up and letting them have a shower and
12 then taking them back, how often does that happen?

13 A. For some -- one guy, it might happen once a
14 month or so. For another guy, it might not happen at
15 all or it might happen twice every two weeks, some
16 guys, and the other guys not. It's all on them, what
17 do they want. They know it's available, they know
18 it's there.

19 During the wintertime, those guys, it will
20 happen once a week at least probably that we'll bring
21 them back to the ranch. Or the one guy -- one guy on
22 the ranch there, there's a bunkhouse he goes to
23 regularly; he uses that facility there on a daily
24 basis. On the other ranch, there are no facilities,
25 so we'll bring them home every once in a while.

1 Q. I think I missed your answer.

2 A. Obviously I did in 2000- -- in 2014. That's
3 all I can say.

4 Q. Okay. Can you recall ever reviewing a Form
5 I-129 and asking Western Range Association to change
6 anything that they had filled in on the form?

7 A. I have never asked them to change anything,
8 no.

9 Q. Okay. It's correct that your herders are
10 expected to work seven days a week, correct?

11 A. Correct.

12 MS. WINOGRAD: Objection to the form of the
13 question and the definition of "work."

14 BY MS. REIF:

15 Q. Sorry, I think I missed your answer again.

16 A. Again, that goes back to the question you
17 asked me earlier about the contract. The contract
18 says we expect them to work seven days a week. That
19 may not be true all the time, no. I was saying to you
20 that there was days where they don't.

21 Q. Sure. The majority of the time, would you
22 say your herders are expected to work seven days a
23 week?

24 A. Yes.

25 MS. WINOGRAD: Objection, vague as to

1 A. Okay.

2 Q. When they are doing the sheep camps, do they
3 have some sort of refrigeration?

4 A. Yes, every camp has an icebox and freezer in
5 it.

6 Q. Okay. And that's true from 2010 to the
7 present?

8 A. Yes.

9 Q. Okay. What is the plumbing situation?

10 A. There is no plumbing.

11 Q. Okay. Do they have to haul water for
12 themselves?

13 A. No, we haul water in to them.

14 Q. Okay. Do they ever have to haul water for
15 the sheep?

16 A. During the wintertime, there are some times
17 that they are required to do that, yes.

18 Q. Okay. And so it says in your declaration the
19 herders are provided food at least once a week or
20 every four to five days. Is it you who provides that
21 food or do you have some sort of a camp tender or
22 someone else?

23 A. I have a camp tender that assists me, but I
24 do 90 percent of that.

25 Q. Okay.

1 we go into lambing time, go into marking time, when
2 we -- shearing time and stuff, we'll review policies
3 and stuff.

4 I'm a member of RWA. Actually, I was the
5 first certified person in the United States to be
6 that, to do that. So there's a lot of conversations
7 that incorporate all of us together at one time. My
8 phone is a great source of translation, so I use that
9 often if the camp tender is not around. So we have a
10 couple ways to communicate.

11 Q. Okay. I think you said something about
12 getting them all together to give instructions. What
13 specific things are you giving them instructions on
14 that you are alluding to?

15 A. For, you know, when we're all there and we
16 begin lambing time, for example, we'll get together,
17 just talk about expectations, about how to handle
18 sheep, how to handle lambs, what's not acceptable,
19 what is our expectations for day guy, night guys. So
20 we have it all written down, the policy is all written
21 down, and we'll go through it.

22 When they go out, before the first guy leaves
23 to go out to the band, the first band out goes in
24 April, we'll all get together and we'll talk about
25 expectations in the hills. You know, all the trash

1 makes it out of the mountains: no paper, no cans, no
2 nothing going underneath any sagebrush or anything.
3 We make sure they know how to contact us. We send
4 every band out the first couple weeks with two guys.

5 Again, it's just -- the first -- the toughest
6 part of the whole 12 months herding sheep will be the
7 first two weeks you leave the ranch, and so we always
8 send two guys out those first two weeks, sometimes
9 three weeks. So those are some examples of when we'll
10 have a group meeting.

11 Q. Okay. Does all of your lambing take place in
12 California?

13 A. Yes.

14 Q. Okay. And, sorry, what does RWA stand for?

15 A. Responsible Wool Certification.

16 Q. Ah.

17 A. It's about humane treatment of our animals
18 and the appropriate treatment of our herders.

19 Q. Oh, that's great to hear.

20 You talked about checking in with them on the
21 cell phone. If there is an emergency, is it your
22 expectation that they would call you and inform you
23 about that?

24 A. I can't think of too many emergencies in the
25 last 20 years. But, yeah, absolutely. If they need

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

No. 85926

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

RESPONDENT WESTERN RANGE ASSOCIATION'S
APPENDIX VOLUME 4, PART 5

ELLEN JEAN WINOGRAD, ESQ.

Nevada State Bar No. 815

JOSE TAFOYA, ESQ.

Nevada State Bar No. 16011

WOODBURN AND WEDGE

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SIMONS HALL JOHNSTON, P.C.

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(775) 785-0088

ahall@shjnevada.com

jmcguire@shjnevada.com

ATTORNEYS FOR RESPONDENT
WESTERN RANGE ASSOCIATION

1 couldn't find them anymore; we walked all the canyons.
2 And you know what, over the next two weeks, they all
3 showed up.

4 Q. Lucky.

5 A. No, they know where home is. They don't want
6 to be there by themselves. They're social animals.

7 Q. Uh-huh. So the herders understand through
8 discussions and instructions from you that the goal is
9 to bring back as much of the herd as possible,
10 correct?

11 A. They know two things: bring back as many of
12 the animals as you can as healthy as you can. They
13 know that sheep will die. They know that sheep will
14 get sick. They know that they will -- at times, they
15 will lose some sheep. And when they do, I can say
16 we'll go find them. But it's going to happen. It's
17 not something to lose sleep over. We'll take care of
18 it.

19 Sheep get sick, they're given LA300. They're
20 given directions and they've been taught how to give
21 the animals shots. So sometimes they'll catch the
22 animal themselves when they see a sheep that's not
23 doing well, is doing poor, or has a real snotty nose
24 or something. So a lot of times they can give the
25 injection themselves and keep an eye on the animal.

1 Sometimes they'll call us and say, hey, I've
2 got this sick sheep here, and we need to come get it
3 and take to it the ranch. We always have a little
4 bunch at the ranch that we call the hospital bunch,
5 and we'll bring them home and we'll doctor them up.

6 Q. All right. Have you had the misfortune to
7 have any herders from 2010 to present who were not
8 attentive enough and came back with far fewer sheep
9 than you would have expected?

10 A. No, I really haven't.

11 Q. That's good. I'm glad.

12 Do you track when your herders are on the
13 range versus off the range?

14 A. Well, I keep a diary that I write in every
15 day. So I can go back into it and I can tell you
16 where they were just about any time of the year. But
17 do I keep -- that's all. I do that, yes.

18 Q. Okay. Based on that, are you able to
19 estimate what percentage of the year the herders spend
20 on the range?

21 A. I can do that, yes.

22 Q. Could you do it right now without looking at
23 your notes or no?

24 A. In December, I'll have five herders here, in
25 February, two more come, so I'll have seven herders.

1 A. We prorate it out of the month.

2 Q. Got it. And besides prorating at the
3 beginning or perhaps the end of the herder's contract,
4 do you keep track of what days of the month they are
5 and are not working?

6 A. No. No, we pay them that -- it's a salary,
7 it's a contracted salary. We pay them that salary
8 regardless of how many hours or days that they have
9 worked.

10 Q. Gotcha.

11 A. It might happen that so-and-so came to town
12 or something, but the pay would be the same.

13 Q. Got it.

14 And do you track hours worked?

15 A. No, no.

16 Q. Okay.

17 A. I mean, we -- not specific hours.

18 Tentatively we know. We know that when we're in the
19 ranch that the guys need to get up, start feeding at
20 6:00, they'll take a break after that. They'll clean
21 out the sheds and go to lunch for an hour and then
22 they'll clean out the second shed, and then they'll
23 feed again, and then by 5 o'clock, they're done,
24 they're off duty, they go -- and the other crew comes
25 on.

1 MS. WINOGRAD: I'm going to object to the
2 form of the question. Are we talking about California
3 or Nevada?

4 MS. REIF: That's an excellent clarification,
5 Ellen. Thank you.

6 Q. If you are able to, when they are in Nevada,
7 what percentage of that is on the range?

8 A. So -- so I'm going to put that back on you.
9 What does it matter if it's California or Nevada? If
10 the question is when are they on the range, my
11 question to you is how do you define "on the range"?
12 So if I'm in a hayfield with no fences around it,
13 that's defined as on the range, isn't it?

14 MS. REIF: I know what we can do. We can
15 mark Exhibit 9, which is document K, as kangaroo.

16 (Plaintiff's Exhibit 9 was marked for
17 identification.)

18 THE WITNESS: I don't mean to get testy with
19 you. I'm sorry.

20 But, okay, Exhibit K, is that what you said?

21 BY MS. REIF:

22 Q. K, as in kangaroo.

23 A. Okay.

24 Q. If you go to the box, at the very bottom,
25 there is a paragraph that starts "Range" and it gives

1 a definition that goes on to the next page.

2 If you could just read that to yourself, and
3 then when you're done, my question is, is that
4 consistent with your understanding of what it means to
5 be on the range.

6 A. Wow, so, like, you know what, it says here
7 "The range also does not include any area where a
8 herder is not required to be available constantly to
9 attend livestock and perform tasks."

10 Well, so, my herders are never -- my herders
11 are never required to constantly be in attendance. So
12 I guess I'm never on the range, then, according to
13 that one statement.

14 Q. Okay.

15 A. But if you leave off part of the statement,
16 then I'm on the range ten and a half months a year.

17 Q. Okay. And is that including California and
18 Nevada?

19 A. Yes.

20 Q. Okay.

21 After lambing season, do you perform docking
22 while you're still in California or do you do that in
23 Nevada?

24 A. I do that in California before I leave the
25 ranch.

1 guys are just picking their nose all day.

2 And let's see, the other band is going to be
3 doing a fuels reduction project here for the forest
4 service the last couple years. But, yeah, there's no
5 additional duties. It's a piece of cake when there's
6 no lambs.

7 Q. Okay. And I imagine the answer is no, but I
8 just want to be sure. Do you pay any bounties to your
9 herders for killing predators?

10 A. No, there's no -- we don't kill predators
11 so -- I mean, they all have rifles because we don't
12 know when something may occur. The rifles -- you
13 know, the last time a guy shot a rifle, that was about
14 three years ago, and that's when he was walking up to
15 the top of the hill that we use for cellphones, and
16 the dog chased off the bear cub but the mother came
17 after the herder. He said he about had a heart
18 attack, but he got a round chambered fast enough to
19 shoot at the bear, and the bear turned around and ran
20 off. So that was the last time any of our guys shot a
21 rifle, probably. No, no bounties.

22 Q. I'm scared from hearing that story.

23 A. It's scary all right.

24 Q. Yeah. Yikes.

25 Do the -- so I hear what you're saying about

1 the infrequency of certain predators, but is it still
2 your herder's responsibility to keep an eye out and to
3 inform you or the government trapper if predators are
4 becoming a problem?

5 A. Of course. Of course. They'll notify me if
6 a lion came in. The dogs will chase them off and
7 they'll tell me. You know, we don't use guard dogs
8 when we're by the city. When we're by Reno or Carson
9 City, we don't have guard dogs, so we've had kills in
10 there and notified the state trapper.

11 Last time, I think it was a bobcat that came
12 in and killed us, and the trapper explained to us how
13 he's very territorial. We moved the herder's camp
14 down the road about half a mile and never had a
15 problem again, when the trapper explained that would
16 probably solve the problem.

17 So, yeah, when we're by the city, we don't
18 have guard dogs, so we're a little more vulnerable.
19 When we're up in the high country, if there is an
20 issue, they'll let me know right away. A lot of times
21 the easiest thing is to move over the mountain to the
22 other side. Usually solves that problem --

23 Q. Okay. And --

24 A. -- if it's a lion --

25 Q. I'm sorry.

EXHIBIT 24

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

Plaintiff,

vs.

Case No.:
3:16-cv-00237-RCJ-CLB

WESTERN RANGE ASSOCIATION,

Defendants.

_____ /

VIRTUAL ZOOM/TELEPHONIC
FRCP 30(b)(6) DEPOSITION OF DUFURRENA SHEEP COMPANY,
REPRESENTED BY HANK DUFURRENA

Friday, August 6, 2021

Reno, Nevada

Reported by:
Michelle C. Johnson, RPR-CRR
NV CCR 771, CA CSR 5962

Job No. 4684477

1 Q. Are there any other owners or operators?

2 A. My mother is the owner. That's pretty much
3 it.

4 Q. Your mother is the only owner and you manage
5 it?

6 A. Right.

7 Q. And so as the manager, I assume you are
8 actively involved in the management of the company,
9 and it's based on that knowledge that you are prepared
10 to testify on those topics. Is that right?

11 A. That's right.

12 MS. REIF: I would like to mark as Exhibit 2
13 document B, as is boy.

14 (Plaintiff's Exhibit 2 was marked for
15 identification.)

16 BY MS. REIF:

17 Q. And I just want to confirm that you recognize
18 this document.

19 A. Yes.

20 Q. And we'll refer to this throughout. It says
21 "Hank," so this is you, Hank, who signed this
22 declaration, correct?

23 A. Right.

24 Q. And to the best of your knowledge, is
25 everything contained in this declaration still

1 accurate?

2 A. No, I wouldn't say so. On here I put -- on
3 question 6, I put 10 to 12 hours per day worked during
4 the lambing season, but that is not correct, I don't
5 believe.

6 Q. Okay. What is correct?

7 A. It would be very hard, every day varies so
8 much. Would be more of a seven- to eight-hour day in
9 the lambing season. But that's only part time. That
10 wouldn't be every day. If we had a real tough day, it
11 could be up to ten hours. So it's not wrote proper.

12 Q. So just to summarize what you said, it varies
13 quite a bit. Sometimes it could be 10 to 12 hours,
14 other times it can be 7 to 8 hours. Do I have that
15 right?

16 A. Or less. It would be rare to be 10 to 12
17 hours.

18 Q. Okay. And was there something that made you
19 realize that this statement wasn't accurate and you
20 needed to correct it?

21 A. Yes. I just read it again.

22 Q. Just now?

23 A. Yes.

24 Q. So you didn't speak to anyone about this
25 prior to the deposition?

1 Q. Okay. So from your perspective, you call
2 them and tell them you need a new herder and then they
3 take over from there?

4 A. Pretty much.

5 MS. WINOGRAD: Objection, that misstates his
6 testimony. He said "a certain person."

7 BY MS. REIF:

8 Q. I'm sorry; I think we talked over each other.

9 What was the last thing you said,
10 Mr. Dufurrena?

11 A. I request a certain person to get, to send to
12 me to get the paperwork, and that's how we go about
13 it.

14 Q. Okay, got it. And do you rely on Western
15 Range Association for understanding the H-2A rules and
16 the H-2A program?

17 MS. WINOGRAD: Object to the extent that it
18 calls for a legal conclusion.

19 THE WITNESS: Yeah, pretty much. I -- yes.

20 BY MS. REIF:

21 Q. And I see in your declaration in paragraph 3
22 it says that Western Range Association handles the
23 application process, including Forms 790, 9142, and
24 I-192, and that it also arranges travel. I just want
25 to check that that is all accurate.

1 A. Yes, that is accurate.

2 Q. Did you ever review these forms that Western
3 Range Association completed for you before they were
4 sent out?

5 A. Sure.

6 Q. How often would you say you reviewed them?

7 A. Oh, I -- usually when they send them to me, I
8 review them.

9 Q. Okay.

10 A. Best I can.

11 Q. Sure. And did you ever ask Western Range
12 Association to change any of the information that had
13 been filled out on the forms?

14 A. I know we've changed some of it to job
15 orders, different job orders, but that's it.

16 Q. Could you explain a little more what you mean
17 about changing different job orders?

18 A. Yes, the job order has been changed several
19 times throughout the years as to what the job
20 pertains.

21 Q. Okay. And so then what changes did you
22 request be made in relation to that?

23 A. I don't really recall all of it. Some of it
24 went from a sheepherder to a range livestock worker in
25 the later years.

1 A. I wasn't involved in it if there had been.

2 Q. Okay. I just want to confirm your herders
3 work only in Nevada from 2010 to the present.
4 Correct?

5 A. Yes.

6 MS. REIF: Okay. I'd like to mark Exhibit 3,
7 which is document C, as in cat.

8 (Plaintiff's Exhibit 3 was marked for
9 identification.)

10 THE WITNESS: Okay.

11 BY MS. REIF:

12 Q. Do you recognize this collection of
13 documents?

14 A. No.

15 Q. No, okay.

16 A. I don't believe I signed this. Did I?

17 Q. I don't believe there are signatures on
18 these. But do you recognize the handwriting? Is it
19 perhaps your father's handwriting?

20 A. Yes, it is. It's not mine.

21 Q. Got it. And these surveys, I only have in
22 front of you 2011, 2013, and 2018 because that is all
23 that was produced to us.

24 Understanding that you did not fill out these
25 forms, do you know whether anyone at your ranch filled

1 call. They're not on call.

2 Q. Could you define for me how you're using the
3 term "on call" so we're on the same page?

4 A. Yes, that they're expected to jump up and do
5 anything 24/7. That's how I would expect it to mean.
6 They're not, no.

7 Q. Okay. And when you say expected to jump up
8 and do something, do you mean at your request or based
9 on their own observations of the sheep?

10 A. Either.

11 Q. Either, okay.

12 And then I think you said you expect them to
13 perform their duties when you ask them. Can you
14 elaborate on that a bit?

15 A. Yes. So they know kind of what needs to be
16 done, and I explain to them as far as where to move
17 the sheep and what to do. That's a long ways from
18 24/7 or on call. So that's morning, noon, pretty much
19 that's it.

20 Q. Okay.

21 A. And it differs, ma'am, very much on the
22 season or the feed or whatever happens, so...

23 Q. Okay. If there were to be some sort of an
24 emergency -- for example, a wildfire -- is it your
25 expectation that the herders would be available to

1 take care of the sheep in the event of that emergency?

2 MS. WINOGRAD: Objection to the form of the
3 question as to what "available" means.

4 MR. HALL: And I object as to speculative,
5 incomplete hypothetical.

6 THE WITNESS: Well, I wouldn't want to think
7 of that. But, yes, that would be -- the only one
8 would be a wildfire. But I would be there also, so
9 couldn't tell you that.

10 BY MS. REIF:

11 Q. Typically, how far away are the bands of
12 sheep from where you are that prompt you to say, if
13 there was a wildfire, you would be there as well.

14 MS. WINOGRAD: Objection to the form of the
15 question and the variance depending on where the bands
16 of sheep are.

17 But go ahead and answer.

18 MR. HALL: Object that it's speculative.

19 THE WITNESS: Yeah, it varies very much. I
20 couldn't tell you that one. That could change every
21 day, so...

22 BY MS. REIF:

23 Q. I understand. I'm trying to understand why
24 you're saying, if there was a wildfire, you would be
25 there. Could you explain to me what the process would

1 wondering if that's consistent with your understanding
2 of how domestic herders are referred for jobs.

3 MS. WINOGRAD: Objection, lack of foundation
4 in terms of a 2014 790.

5 THE WITNESS: I couldn't answer that. I'm
6 not aware of that. I don't...

7 BY MS. REIF:

8 Q. Have you ever been approached by Western
9 Range Association to be referred a domestic herder?

10 A. No, I have not.

11 Q. Okay. And have you ever been approached
12 independently by someone seeking a domestic herder
13 job?

14 A. No.

15 Q. Okay, that's great.

16 If we go down to, the same page, box 16, "Job
17 Description." If you could just take a moment to read
18 that job description to yourself.

19 A. Okay.

20 Q. Would you characterize that as an accurate
21 description of the job your herders perform?

22 MS. WINOGRAD: Objection, lack of foundation
23 as this is a 2014 form.

24 THE WITNESS: Yeah, mine is different. I --
25 no.

1 BY MS. REIF:

2 Q. In what way is it different?

3 A. Well, what I'm aware of is different. We do
4 no pesticides or -- I guess that covers the basic,
5 but...

6 Q. So the main thing you disagree with is the
7 pesticides?

8 MS. WINOGRAD: Objection to the form of the
9 question and the words "disagree with."

10 THE WITNESS: Well, that wasn't -- I don't do
11 that, I would guess.

12 BY MS. REIF:

13 Q. Is there anything else in this description
14 that you would not characterize as an accurate
15 description of the job your herders perform?

16 MS. WINOGRAD: Objection, vague as to time.

17 THE WITNESS: Well, I'm not sure about the on
18 call part of it. Yes, that is not -- I don't require
19 on call.

20 BY MS. REIF:

21 Q. Okay. Is there anything --

22 A. I don't ask them for that. Excuse me.

23 Q. Understood. Is there anything that you would
24 add to this job description to accurately describe the
25 job that your herders perform?

1 MS. WINOGRAD: Objection, vague as to time.

2 THE WITNESS: This is an older one, this is
3 not what I work under myself, so I'm not sure.

4 BY MS. REIF:

5 Q. Okay.

6 A. Mine has changed, so -- the new rules.

7 Q. Well, can you tell me what ways yours has
8 changed?

9 A. Yes, my guys are livestock workers now.

10 Q. Oh, I understand. I mean specifically for
11 sheepherders, and I understand you said earlier that
12 you stopped using sheepherders about two years ago.
13 From 2010 to roughly 2018, is there anything you would
14 add to this job description to accurately describe the
15 job that your herders were performing?

16 A. I don't believe there is anything I would add
17 to it.

18 Q. Okay. Do you speak Spanish?

19 A. Yes.

20 Q. Okay.

21 A. Somewhat.

22 Q. Well, we can only ask for your best. We've
23 got the Spanish right below that, and at the very end
24 there's three asterisks and it says "Nota." Do you
25 see that?

1 one, lists 40 hours a week in the number of hours?

2 A. I can't say. I really don't read through
3 them that much.

4 Q. I understand. And then just right below that
5 we've got box 5, "Job duties," and here's another job
6 description. Since we were just looking at the 2014
7 and you said you really only know the 2016, this is a
8 2017 form, so could you please take a look at that and
9 let me know if it is an accurate description of the
10 job performed by your herders?

11 A. It's an overall view of it, yes.

12 Q. Okay. Is there anything that you would add
13 to this job description to make it a more accurate
14 description of the job that your herders perform?

15 A. Not at that time. It's since changed, yeah.

16 Q. And you're speaking about the range livestock
17 classification, correct?

18 A. Correct.

19 Q. Just so we understand each other.

20 You do not track hours worked by your herders
21 at any point from 2010 to present, correct?

22 A. Well, I would say from 2016 to present is all
23 I can speak for. And, no, I do not track hours, but
24 in my mind I have an idea more or less what they do.

25 Q. Okay. If you go to page 7 of the PDF, which

1 Q. If you go to page 10 of the PDF, which is
2 Bates No. 8235. At the top there it says "Addendum."
3 Can you see that?

4 A. Yes.

5 Q. And then it looks like maybe it got cut off a
6 bit, but it says "of alcohol, illegal drugs or misuse
7 of prescription medication is cause for termination."

8 Are your herders allowed alcohol?

9 A. No.

10 Q. No.

11 And is that because alcohol may impair their
12 ability to be available to respond to emergency the
13 sleep may encounter?

14 A. No.

15 MS. WINOGRAD: Objection to the form of the
16 question and lack of foundation.

17 BY MS. REIF:

18 Q. No.

19 Why is it that they're not allowed to have
20 alcohol?

21 A. I just don't allow alcohol on my ranch, so
22 that's how it is.

23 Q. Are they allowed alcohol while they are on
24 the range, not on the ranch?

25 A. No.

1 declaration in paragraph 7 and 8, you describe the
2 housing situation, and I just have a few follow-up
3 questions.

4 Do your herders have refrigerators in their
5 sheep camps?

6 A. No.

7 Q. Is there some other way that they can keep
8 food cold?

9 A. They have no need to keep food cold.

10 Q. Okay.

11 A. In the wintertime, yeah, they keep stuff out
12 and whatnot, but if you're talking in the summer, we
13 do not take that type of stuff to them. They don't
14 need that.

15 Q. Understood. What is the plumbing situation
16 with the sheep camps?

17 A. As you mean, a sink?

18 Q. Yeah, is there a sink, is there a shower, is
19 there any plumbing at all?

20 A. No. There is a sink and that's all.

21 Q. Okay. Do your herders have to haul water for
22 their personal use?

23 A. I haul them water.

24 Q. Okay. Did they have to do anything to heat
25 the water for their personal use?

1 A. If they want to heat it, yes.

2 Q. Would that be like --

3 A. Camp stove.

4 Q. On the stove, okay.

5 And then the surveys that we looked at
6 earlier -- you're welcome to refer back, if you need
7 to -- they listed different months for packing in each
8 year. So in 2011, it listed May to September; 2013,
9 it said May to October; 2018, it was April to
10 November. So I'm wondering about the other years,
11 what months of the year you packed.

12 MS. WINOGRAD: That's Exhibit 3?

13 MS. REIF: It is Exhibit 3, yes. Thank you.

14 Q. I guess let me ask a more foundational
15 question.

16 From 2010 to present, have your herders
17 packed some part of the year every year?

18 MS. WINOGRAD: Objection, lack of foundation.

19 THE WITNESS: I would speak for the later
20 years. But, yes, they do pack, if that's what you
21 mean.

22 BY MS. REIF:

23 Q. Yes.

24 From 2016 to present I assume is what you
25 mean. What months do you typically pack?

1 A. That varies on where we're at, the feed
2 conditions and everything, where I can get with the
3 camp on roads. But it would be April, maybe May, to
4 October. Could be any of them months.

5 Q. Okay. And is it all of your herders who are
6 packing at that time or only some of them?

7 A. It could be. We move around a lot, yes.

8 Q. I understand. And then in paragraph 8 of
9 your declaration, you also state that you check in on
10 a nearly daily basis with the herders. Is that by
11 cell phone?

12 A. Cell phones and I'm there quite often with
13 them.

14 Q. How often are you there, typically?

15 A. That's a pretty wide range there, ma'am, but
16 it could be every day, it can be every five days.

17 Q. Okay. And so if you are not there in person
18 to check in with them, is it your expectation that
19 they will call you on the cell phone to check in?

20 MS. WINOGRAD: Objection, calls for
21 speculation as to his expectation and as to what they
22 would do.

23 BY MS. REIF:

24 Q. I am asking for your expectation, so it's
25 impossible for you to speculate about yourself.

1 them to any of that. That's how they are. They call
2 all the time.

3 Q. You rely on their judgment to determine
4 whether they need to alert you to a situation?

5 A. I rely on knowing the guys more than
6 anything, yes.

7 Q. Okay, great. While the herders are on the
8 range with the sheep, are they allowed to go into
9 town?

10 A. No, they don't have a way to get to town.

11 Q. Okay. If they wanted to go to town, are they
12 permitted to call and ask for transportation to go
13 into town?

14 A. Um, depends on the time of the year. There's
15 a lot of variances there.

16 Q. Is there a particular time of year in which
17 it would be more likely?

18 A. Yes, it would be in the -- probably in the
19 early fall.

20 Q. Early fall. And is there a particular reason
21 for that? Is it weather --

22 A. And the roads. We're closer to the roads. I
23 have yet to have one do it, ma'am, so I don't know. I
24 can't answer what we're talking about there.

25 Q. So to be clear, you cannot recall a time in

1 which your herders did ask for transportation to go
2 into town?

3 A. No, I cannot.

4 Q. Okay, okay. I'm glad you clarified that for
5 me. Thank you.

6 What about when the herders are on the ranch,
7 are they then permitted to go into town?

8 MS. WINOGRAD: Objection, lack of foundation.

9 THE WITNESS: I wouldn't say they're not
10 permitted to go to town. But none of them want to go
11 to town.

12 BY MS. REIF:

13 Q. Okay.

14 A. They're happy where they're at.

15 Q. Okay. And I assume the answer is no, but I
16 just want to be clear. Typically, the places that
17 your herders are camped with the sheep are too remote
18 to be accessed by someone, for example, delivering
19 pizza. Correct?

20 A. Ha-ha. Depends on the time of the year,
21 ma'am.

22 Q. Okay. Can you think of a time in which your
23 herder ordered delivery pizza?

24 A. That's somewhat of a foolish question out
25 where I live 100 miles from the town. No, they

1 wouldn't do that.

2 Q. Okay. Well, you said time of year it might
3 be more accessible. I just wanted to make sure.

4 A. It would be cold pizza by then.

5 MS. WINOGRAD: Hank, I don't think she's ever
6 been to Winnemucca.

7 THE WITNESS: Let alone Denio.

8 BY MS. REIF:

9 Q. In paragraph 8, you said you delivered
10 groceries every few days. You spoke earlier about how
11 there's a range and it varies how often you visit
12 town -- or visit the herders, I'm sorry.

13 Would it be accurate that the range is, as
14 you said before, sometime between every day and every
15 five days, you deliver groceries?

16 A. If needed, yes.

17 Q. Do you go to the campsite to check on herders
18 at times when you are not delivering groceries?

19 MS. WINOGRAD: Objection, asked and answered.

20 THE WITNESS: Definitely. I go to the camp a
21 lot. I also keep an eye on the sheep and the herders.

22 BY MS. REIF:

23 Q. And to be clear, you do not have a camp
24 tender, correct?

25 A. No, I do not. I am the camp tender.

1 and have a beer every couple days. Does that answer
2 it?

3 Q. Sure. If you send your herders out with a
4 band of approximately 800 sheep, which is I think what
5 you testified to earlier, how many sheep do you expect
6 them to come back with?

7 A. That's a pretty rough question there; I
8 couldn't answer that. Depending on the kind of sheep
9 I send them with. I don't take it either way. I know
10 what they're coming back with. They're going to lose
11 a few.

12 Q. Okay. If a herder were to lose more sheep
13 than you expected, would that affect your evaluation
14 of their performance and possibly your inclination to
15 invite them to continue working with you?

16 MS. WINOGRAD: Object to lack of foundation
17 as to what number he expects them to lose.

18 MR. HALL: I'm going to object that that
19 calls for speculation.

20 THE WITNESS: I haven't been in that
21 situation, so I couldn't tell you that.

22 BY MS. REIF:

23 Q. Okay. Do you keep track of when your herders
24 are on the range versus at the home ranch?

25 A. No, not completely. They're really not at

1 the home ranch. I do have a calendar that says
2 somewhat where they were that I keep up. But, no,
3 they're not at the home ranch. Most of my guys are on
4 the range or the alfalfa fields, which is considered
5 range.

6 Q. Okay. Maybe I misunderstood earlier, but I
7 thought you did lambing at the ranch. Is that
8 incorrect?

9 A. At the barn, which is not right at the
10 headquarters, no.

11 Q. Okay. So would you characterize your herders
12 to be on the range 100 percent of the time?

13 A. I would say -- well, on the range or in the
14 fields, yes. Which is the range, I consider range,
15 yes.

16 MS. REIF: Okay. Well, maybe I can
17 standardize this. I want to mark Exhibit 8, which is
18 document K, as in kangaroo.

19 (Plaintiff's Exhibit 8 was marked for
20 identification.)

21 BY MS. REIF:

22 Q. At the bottom of that first page it says
23 "Range" and there is a paragraph that goes on to the
24 second page. If you would just take a moment to read
25 that to yourself.

1 A. Okay.

2 Q. And is that definition consistent with your
3 understanding of what it means to be on the range?

4 A. Um, no, I guess not. Because the feed lot,
5 that says a feed lot in there. And they are there for
6 maybe a month and a half, around that.

7 Q. I just want to make sure I understand. So
8 your sheep are on the feed lots for about a month and
9 a half, that's what you said?

10 A. I call it the feed lot. But, yeah, that's
11 where we lamb, which is not in the headquarters.

12 Q. Got it. Okay.

13 MS. WINOGRAD: I'm going to have an objection
14 to his reviewing Mountain Plains documents as opposed
15 to Western Range. To the extent it only applies to
16 Mountain Plains, I'm going to object, foundation.

17 MS. REIF: Ellen, I'm not sure I understand
18 your objection.

19 MS. WINOGRAD: Foundation.

20 BY MS. REIF:

21 Q. Mr. Dufurrena, do you have any Mountain
22 Plains herders or have you ever from 2010 to present?

23 A. Yes.

24 MS. REIF: Okay. Is that what you meant,
25 Ellen?

1 MS. REIF: Thank you, Ellen. We knew what we
2 meant.

3 THE WITNESS: I was in trouble.

4 BY MS. REIF:

5 Q. So according to your declaration, lambing
6 happens in March and early April. What are your
7 herders' responsibilities during lambing?

8 A. That varies quite a bit. They all have a
9 little bit different jobs through there. But we move
10 the lambs into the barn. Some of them feed them, some
11 of them watch the different ones. There's a big
12 variance in there of what they do.

13 Q. Do you have a day crew and a night crew?

14 A. Yes, I do.

15 Q. Okay. How many on the day crew versus the
16 night crew?

17 A. They're all on the day crew except one, maybe
18 two a night. When I say "crew," I mean a couple hours
19 a night. They don't stay all night with the sheep.

20 Q. To be clear, the night crew does not stay up
21 all night?

22 A. No.

23 Q. Okay. So what they do is they attend to the
24 sheep at night for two hours; is that right?

25 A. No, probably four hours, couple hours at 9

1 Q. Okay, that's fine. Is it your expectation
2 that the herders will stay at the campsite every
3 night?

4 A. That is where their bed is. Yes, I would
5 guess so.

6 Q. Okay.

7 A. Not that they have to, but I'm thinking they
8 would.

9 Q. They don't have to. Have you given them
10 instructions that they do not have to?

11 A. No. I have not given them instructions that
12 they have to.

13 MS. REIF: I think it might be good to take
14 about a ten-minute break. We've been going about an
15 hour. Is that okay with everyone?

16 MR. HALL: It's okay with me.

17 MS. REIF: Okay, we can go off the record.

18 (Recess taken.)

19 BY MS. REIF:

20 Q. So I just have a couple of follow-up
21 questions just to make sure I'm understanding you
22 correctly. So I apologize if it seems like I'm
23 jumping around topics just a little bit.

24 To clarify, is it correct that your herders
25 work seven days a week?

1 A. Yeah.

2 Q. Okay. And when you --

3 A. Most of the time.

4 Q. Sorry, most of time?

5 A. Most of the time.

6 Q. When would be the exception?

7 MS. WINOGRAD: I'm going to object to the use
8 of the word "work."

9 BY MS. REIF:

10 Q. You can go ahead.

11 A. Yeah, if -- I guess some of them are
12 working -- somebody is working seven days a week. It
13 doesn't necessarily mean all of them are seven days a
14 week. They're there, yes.

15 Q. Okay, I understand you. Thank you.

16 When we spoke earlier about transferring the
17 sheep from where you're lambing to the spring range,
18 do you begin the spring range in the same place every
19 year?

20 A. No, that varies. That varies on the feed and
21 the year all the time. It's close by, but yes.

22 Q. So for the years in which you trail them to
23 the beginning of the spring range, maybe I misheard
24 you, did you say it only took an hour to trail them to
25 the beginning of the spring range?

1 them will stay longer, some stay later. I don't know
2 how to go about that.

3 Q. Okay. We also spoke earlier about how you
4 couldn't put a number on how many sheep you expect to
5 come back in the band off the range at the end of the
6 year. And I totally understand that.

7 It is, of course, your expectation that the
8 herders will try to come back with as many sheep as
9 they possibly can, correct?

10 A. Yeah, that's what they're there for.

11 Q. Right. And they understand that?

12 A. Yeah.

13 MS. WINOGRAD: Object to the extent that
14 their understanding calls for speculation.

15 BY MS. REIF:

16 Q. Have you given them instructions to that
17 effect?

18 A. No, I don't. I just -- no, they -- as long
19 as they bring them in, I've never had a problem, so
20 no.

21 Q. Okay. It's nice to hear you've never had a
22 problem.

23 Is it the herders' responsibility to ensure
24 that the sheep will stay away from any poisonous
25 plants on the range?

1 MS. WINOGRAD: I'm going to object to the use
2 of the word "ensure."

3 THE WITNESS: No, that isn't. They just do
4 their best. If they see there is a spot or two where
5 there are some poisonous weeds and they see it, they
6 just move to a different spot.

7 BY MS. REIF:

8 Q. Okay, so if they do see a poisonous plant,
9 you do expect them to move the sheep away from the
10 poisonous plant?

11 A. I hope that they do. I don't direct them
12 that way, no.

13 Q. I get it. And we also spoke a bit about how
14 the herders have medications that they can administer
15 to the sheep. Is it your expectation that the herders
16 will monitor the health of the sheep while they're on
17 the range and, in their judgment, administer
18 medications when needed?

19 A. To a point, yes, they do. Yeah, they're very
20 good about it.

21 Q. What do you mean by --

22 A. We're not talking about a lot of medicine.
23 You might give one a shot today and probably not for
24 another month. Who knows?

25 Q. Okay. Are the herders responsible for

EXHIBIT 25

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17 UNITED STATES DISTRICT COURT
18 DISTRICT OF NEVADA

19 *****

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

23 Plaintiff,

24 v.

25 WESTERN RANGE ASSOCIATION,

26 Defendant

27 Case No.: 3:16-cv-00237-RCJ-CLB

28 **DECLARATION OF RICK
POWERS**

1. I am a shareholder and President of Rafter 7 Merinos, Inc., a sheep
producer in Nevada.

2. Rafter 7 grazes a sheep herd in and around Diamond Valley,
Nevada. The University of Nevada, Reno purchased the herd recently, but Rafter
7 continues to manage the herd and labor under the direction of, and in contract
with, the University.

1 3. We employ temporary, non-immigrant guest workers pursuant to
2 the H-2A program. Western Range Association administers many aspects of
3 member participation in the H-2A program. Rafter 7 is a member of the Western
4 Range Association.

5 4. Rafter 7 typically employs five to six H2A workers at a time, and
6 sometimes as few as four – depending on the time of year.

7 5. Western Range Association handles all the paperwork involved in
8 obtaining H-2A herders for our ranch, including filing Form 790 (job clearance
9 order), Form 9142/9142A (application for certification), and INS Form I-192 (visa
10 application). WRA also arranges travel between the herder's home country and
11 the United States.

12 6. Attached hereto as **Exhibit 1** are payroll records showing pay for
13 January and December of the past three years. The records for remaining months
14 of each respective year will be functionally identical. If needed, we are able to
15 supply full payroll records for the past three years. Prior to and during the time
16 for which we have records, it is my recollection that we paid the H-2A range
17 herders a monthly wage rate based upon a directive from the Federal
18 Department of Labor, Wage and Hour Division, that dictates wages and hours for
19 each state in which H-2A range herders are employed, including Nevada. It is my
20 understanding the Department of labor refers to this rate as the AEWR.

21 7. We have always used the DOL's AEWR as the base rate of pay
22 which we pay to my H2A employees. We do not typically pay more than this base
23 rate.
24

1 8. We currently graze 1800 to 2000 ewes on public land and private
2 alfalfa fields in and around Diamond Valley, near the town of Eureka, Nevada.
3 From October to December, the sheep graze on alfalfa stubble from fields in
4 Diamond Valley. The remainder of the year, then are on public land allotments.
5 We do not graze outside of the State of Nevada.
6

7 9. Depending on the time of year and the availability of forage and
8 water, we will divide these in to 2 to 4 bands.
9

10 10. Rafter 7 does not own any land. Previously, we lease a corral facility
11 on property that is adjacent to the grazing allotments that the University has
12 assumed.
13

14 11. Our ewes lamb on the range and in confinement in April and May.
15 During these months, the herders can work up to 12 hours per day. During the
16 remaining part of the year, the herders are occupied with their duties four to five
17 hours per day.
18

19 12. Throughout the year, the herders live in either sheep camp trailers
20 or travel trailers which are subject to annual inspection by the State of Nevada.
21 These trailers have a cookstove, and heating stove, and a refrigerator. The
22 herders are provided camp gear, gloves, boots, and have access to a washing
23 machine at the corral facility.
24

25 13. The herders are provided food and other supplies every week by a
26 camp tender. The supplies include canned goods, fresh meat and fruits and
27 vegetables. The herders supply a list of provisions that they would like, and these
28

1 are provided. In addition, we keep a supply of staples in a commissary at the
2 Diamond Valley base.

3 14. We provide the herders with guard dogs and sheep dogs. The
4 number of guard dogs with each band varies according to the degree of predation
5 from two guard dogs to as many as 5. While the guard dogs do not prevent all
6 predation, they are a more effective preventive measure at night than a human is.
7 If there are particular severe predator problems, we ask for assistance from the
8 United States Department of Agriculture's Wildlife Services (commonly called the
9 "government trapper.")
10

11
12 15. We provide our herders with boots and rain gear. We also provide
13 the sheep herders with the tools they need, including a sheep hook, shovel, knives,
14 veterinary supplies, camp supplies, bedding, a tent, and a cell phone, and all the
15 other supplies needed for them to perform their job duties.
16

17 16. The foregoing is true and made under penalty of perjury under the
18 law of the State of Nevada.

19 DATED: March 15, 2021

20
21 
22 Rick Powers

EXHIBIT 26

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

-----:
ABEL CANTARO CASTILLO on :
behalf of himself and those :
similarly situated :
Plaintiffs :
vs. : Case No.:
WESTERN RANGE ASSOCIATION : 3:16-CV-00237-
Defendant : RCJ-CLB
-----:

Remote Zoom Deposition of

EUREKA LIVESTOCK, LLC

Washington, D.C.

Monday, July 12, 2021

2:00 p.m.

Job No. PA-4684450

Pages 1 - 135

Reported by: Robert M. Jakupciak, RPR

1 Q No. Do you know who was?

2 A My step mom.

3 Q Okay. Did you speak to her at all about
4 that process?

5 A Yeah. I asked her to print out the checks
6 for me so I could give them to, I don't know, Mr.
7 Snyder.

8 Q Okay.

9 A I mean I guess I gathered them. She gave
10 them to me. But, yeah.

11 Q Understood. Yep. So we are going to
12 speak a little bit about the paperwork and your
13 interaction with Western Range Association. So does
14 Eureka rely on Western Range Association in order to
15 obtain sheepherders for you?

16 A Yes.

17 Q I should say in the past, because you said
18 you no longer have sheep?

19 A Yes.

20 Q And did you rely on Western Range
21 Association for understanding the rules of the H-2A
22 Program?

1 A Yes.

2 Q Okay. And then I believe you said in your
3 declaration, paragraph four -- if you want to, feel
4 free to refer to it -- but it says that Western
5 Range handled the application process, including
6 Form 790, Form 9142, INS Form I-192, and arranged
7 travel.

8 And that's all accurate; correct?

9 A Yes.

10 Q Okay. Was it your practice or anyone else
11 at the ranch to review any of these forms before
12 they were submitted?

13 A Not really. No.

14 Q Okay. So then I suspect the answer is no,
15 but I will ask anyway. Did you ever ask Western
16 Range Association to made any modifications to how
17 they had filling out these forms?

18 A No. Your suspicion was right.

19 Q I'm trying to have a clean record and make
20 sure everything is clear when reading back through
21 it. Did Western Range Association do anything else
22 besides what we discussed in connection with

1 they are any that are sick in there. I don't have
2 it in front of me. I can't exactly remember.

3 Q That's fine. I fully appreciate your best
4 memory.

5 Do I understand -- sorry. Did I miss
6 something?

7 A Mr. Hall sneezed.

8 Q Bless you. Do you recall whether you gave
9 some months of like what the season for your summer
10 herder description would be?

11 MS. WINOGRAD: Objection. Vague as to
12 type of livestock.

13 BY MS. REIF:

14 Q We are still talking about sheep.

15 A So it would be April/May is when we would
16 get to Nevada from California. And then they would
17 go until like October, November.

18 Q Okay. And did you write these
19 descriptions of the jobs at Western Range
20 Association's request?

21 A I think at the Department of Labor's
22 request.

1 A It's a lot of not my handwriting.

2 Q It's not your handwriting?

3 A No. A lot of it is not.

4 Q That's always good to know. Have you seen
5 this document before?

6 A I just saw mine. I haven't seen any of
7 this front stuff.

8 Q Okay. So are you referring to the second
9 page of the PDF that says U.S. Department of Labor
10 on the top?

11 A Yeah.

12 MR. HALL: This one.

13 THE WITNESS: This one, right? No.

14 Second one, third one, no. Do you want me to flip
15 through it.

16 Q You can flip through it, but it sounds
17 like you are not familiar with this document. Is
18 that right?

19 A No. Yes. I'm not familiar with it.

20 Q Okay. That's fine. I have still just a
21 few questions. On the second page that has DOL at
22 the top, box nine about halfway down the page says

1 anticipated period of employment. That's August 1,
2 2014 to July 31, 2015. Do you see that?

3 A I do.

4 Q I just want to make sure we are on the
5 same time, we understand what time period this
6 document refers to, 2014, 2015.

7 And then below that, box eleven says
8 anticipated hours of work, and it says, "on call for
9 up to 24 hours per day, seven days per week." Is
10 that -- sorry.

11 A I see that.

12 Q Is that consistent with your expectations
13 for your herders?

14 A No.

15 Q Can you elaborate on that?

16 A I don't -- are we talking about -- what
17 are we talking about?

18 Q Is it your expectation that your herders
19 are on call for up to 24 hours, seven days per week
20 to respond to the needs of the sheep?

21 A Not really at night, no. I don't -- they
22 don't go back to them. The sheep are far away. How

1 are they going to know anything. That's why I have
2 the dogs.

3 Q How far away are the herders from the
4 sheep?

5 A A mile.

6 Q A mile. If there were some sort of
7 emergency, would it still be your expectation that
8 they would be on call at night to respond to that?

9 MS. WINOGRAD: Objection. Asked and
10 answered.

11 A Okay. Yeah. No. I would, the only thing
12 I would think is if there is a fire, and then their
13 life is at risk probably more, you know.

14 Q Right.

15 A That would probably be the only thing.

16 Q So if there was a fire, it would be your
17 expectation they would respond to that emergency
18 regardless of what time it was?

19 A Or call me. Because I'm sure they would
20 be trying to get themselves, you know. It depends
21 where they were. If they are in the wilderness,
22 they have to walk.

1 Q Has Western Range ever approached you
2 about referring a domestic sheep herder?

3 A I don't know.

4 Q All right. That makes it is easy. We can
5 skip to the next one.

6 Go down to box 16. It's a job
7 description. Take a second and read that bold job
8 description to yourself.

9 A Okay.

10 Q Okay. Is that an accurate job description
11 of the expectations that you have for your herders
12 at your ranch?

13 A I mean they don't need to be on call for
14 24 hours.

15 Q Is there any other parts of that
16 description that you would modify or add to?

17 A Not really.

18 Q All right. Is there any additional tasks
19 that you would add to that?

20 A I don't have them drench the sheep. We
21 would probably have no drenching.

22 Q Does someone else do the drenching?

1 A I do.

2 Q Then it says basic 40, overtime zero. Do
3 you see that?

4 A I do.

5 Q Did you -- I'm just, I know we are
6 reviewing what we already talked about. Did you
7 fill out this form or look at this form?

8 A I did not.

9 Q Okay. Do you know why it says basic 40,
10 overtime zero?

11 A I don't.

12 Q Okay. That's fine. We just want to
13 establish on the record that everything is clear.
14 And then right next to that it's got Hourly Work
15 Schedule and it says A.M.: N/A; P.M.: 12:00. Do you
16 know why it says that?

17 A I don't.

18 Q Okay. Did you track hours worked for your
19 herders at any point from 2010 to 2020?

20 MS. WINOGRAD: Objection to the form of
21 the question, the word "track."

22 A No.

1 water truck up and you don't have to move it for a
2 few days. I mean it's even more laxed work when
3 they're on the farm field.

4 It's the lambing. I mean lambing,
5 everybody's lambing is going to be intense. Because
6 that's, you know, the babies are where the whole
7 year is about. It's about the babies. So if you
8 have a bad lambing and a bunch of babies die, I mean
9 that's going to be a bad year.

10 Q Got it.

11 A And the men know that and that's why they
12 are there. And we try to get a couple more guys
13 sometimes, or if one guy wants to go home, you are
14 like no, don't go home. Stay and help me lamb for
15 two months and then you can go home.

16 They are really pro sheep and what's going
17 on and pro, you know. They are happy to be here.
18 That's for sure.

19 Q Okay. I guess if you flip to that last
20 page. No. Wait. Page 14. 13. So the second form
21 page. I'm just trying to verify that that's your
22 signature under Part C there?

1 so if they want to go do something, that's fine.

2 But if they are in the wilderness, it's a pretty far
3 walk.

4 Q That was my question as well. Typically
5 are they camped somewhere where they could
6 realistically walk to town if they wanted to?

7 A No.

8 Q No?

9 A It would be 50 miles.

10 Q Okay. Has a herder ever called you like
11 you said and said I want to go in to town overnight,
12 is that okay with you?

13 A Yeah.

14 Q How often would you say that happens?

15 A Oh, not that often. I let them go during
16 the afternoon or something, or at noon, during the
17 day. That's when they would go, because stores are
18 opened. They're not going to drink.

19 Q So if they wanted to go in to town, they
20 would need to call you for a ride; is that right?

21 A There is only one that has a drivers
22 license.

1 Q So he could drive himself?

2 A Huh?

3 Q So he could drive himself?

4 A He could.

5 Q And everyone else would call you; is that
6 right?

7 A I mean I don't -- they don't do that. You
8 are just kind of, you are guessing, giving me
9 hypothetical stuff.

10 Q Yeah.

11 A They don't call me and tell me they want
12 to go to town.

13 Q Is there any way for them to get to town
14 besides calling you for a ride I guess is what I'm
15 asking?

16 A They could ask the camp tender and the
17 camp tender would have to agree. I mean I'm not
18 going to tell him you have to take -- I mean unless
19 the guy, the herder needs to. But if he just wants
20 to go to town, he wants to go to town, I mean that's
21 my fuel.

22 Q Right. Okay. How often would you say a

1 herder, any given herder is going in to town? Is
2 this like a once a year occurrence or is this like
3 once a month?

4 A I would say it depends on where they are
5 located.

6 Q Okay. Specifically asking about Nevada,
7 is there a certain month or season where they are in
8 a more accessible location and going more often?

9 A Yes.

10 Q What month or season would that be?

11 A October.

12 Q October.

13 A The town is a small town and it's like
14 three to ten miles depending on where they are.

15 Q If it's three to ten miles, could they
16 walk?

17 A They could, but they don't. They have
18 access to the pickup.

19 Q Okay.

20 A With the guy with the license, you know.

21 Q Got it.

22 A I have more with a license now. It's like

1 I'm just asking if you have given them instructions?

2 If you haven't, that's fine.

3 A No. No instructions.

4 Q No instructions. Is that just for the
5 mountains or all the times?

6 A All the time. I don't.

7 Q Okay. I get it. So let me talk just a
8 little bit about the housing, sheep camps and
9 packing and things like that. You said that they
10 pack from July through September. Has that been
11 true for the full-time period from 2010 to 2020?

12 A The whole time.

13 Q Great. And when they are in the sheep
14 camp, what is the plumbing situation?

15 A It depends. So when they are in the sheep
16 camps in April and May and June, they are in a
17 wagon. They are in like one of the
18 home-on-the-range wagons. So the plumbing situation
19 in those would be that there is no plumbing.

20 Q Do they dig latrines or anything like
21 that?

22 A I think so. I don't know. You would have

1 to ask them.

2 Q Do the sheep camps have like a bathtub or
3 anything like that?

4 A Not the home-on-the-range ones, but the
5 other ones in the valley do, because they are more
6 of a travel trailer, camper, refrigerator, stove,
7 bathroom. But it gets cold. So when they are in
8 the valley, they have access to a new house. When
9 did I do it? '16, '17. But they can all go right
10 there and use it. It's got full amenities.

11 Q Okay. And for how long -- what span of
12 time do they have access to the new house you are
13 just describing? Like a month?

14 A There is two houses. There is one that's
15 at the sheep where they are in the mountains. And
16 depending on how close they are, I mean the camp
17 tender will go get them so they can come back to the
18 house at night. Because at night they can do what
19 they want.

20 And then in the valley they are much
21 closer to -- sometimes they are at that farm is
22 where the house is. The sheep are within, you know,

1 a hundred yards, a quarter mile, half mile, one
2 mile, two miles. So they -- and that's what it's
3 for. That's why I made it.

4 So there is a house at the sheep ranch, a
5 house up there, and then there is mobile camps at
6 each. But when they are in the forest, it's
7 wilderness, so there is no -- they are in tents.

8 Q Okay. So the times you were just
9 describing where the camp tender would go get them
10 and bring them for the night, how long of a time
11 period is that they take them --

12 A They have the ability to do that?

13 Q Uh-huh.

14 A It depends on the year. Sometimes we get
15 there April 10th, sometimes we get there April 20,
16 and then July 8th we go to the forest.

17 Q Okay.

18 A So I mean a couple months.

19 Q Okay. Would you say during that time
20 period typically everyone is coming back to stay at
21 the house?

22 A I don't know.

1 Q Okay.

2 A I mean some of the guys, they don't -- I
3 don't know how well you know the Peruvians. If you
4 gave them a shower and a bath every day, they will
5 use it maybe once a week if it's right there.

6 Q But there is room if everyone wanted to do
7 that that they could; right?

8 A Yeah. In mine, because there is only like
9 four or five shepherders.

10 Q I got it. You just don't know whether
11 they are all doing it?

12 A Oh, they are not doing it every night. I
13 encourage it, because I shower twice a day.

14 Q Okay. Got it. So when they are packing,
15 what is the electricity situation? Do they have
16 batteries or something?

17 A They do. They have a little solar
18 battery. I don't know if it's legal, because the
19 Forest doesn't want you to have anything in there
20 because it's deemed wilderness, so there is not
21 supposed to be any mechanized things.

22 Q Is that solar battery sufficient to charge

1 their electronics?

2 A Their phone? That's what they have, yes.

3 Q Is a phone the only electronics they have?

4 A It seems like to me. I mean I don't dig
5 through their stuff, but the phone is pretty much
6 what they have.

7 Q Okay.

8 A I think there is one guy with a computer.

9 Q One guy has a computer?

10 A Well, he is gone. I have only seen one
11 guy that has a computer. One or two.

12 Q Is that a computer that he will take with
13 him out into the wilderness?

14 A I don't think he took it in the wilderness
15 because it could break. A mule accident and then,
16 you know.

17 Q So then I assume they don't have like a TV
18 or anything?

19 A Yeah. Two tepees.

20 Q Oh, they do? Okay.

21 A Yeah. Yeah.

22 Q At the permanent structure or in the sheep

1 A I mean they are herding. It's just a
2 different herding.

3 Q So when you switch to 1,500, do you have
4 you two herders on a band of 1,500?

5 A No. They are only on 40. It is easier
6 than anything. One guy can watch two bunches if you
7 wanted him to. But...

8 Q So understanding that the size of the band
9 changes over time, if you were to send out a herder
10 with a band of say a thousand sheep, approximately
11 how many would you expect him to come back with?

12 A A thousand and 10.

13 Q Okay. So that means no loss?

14 A Somebody had been babies. Yeah. No. I
15 don't know. I mean you would want him to come back
16 with all the sheep.

17 Q Do you have an estimate of how many sheep
18 you typically lose to predators per year?

19 A I don't think we lose really any to
20 predators.

21 Q Really?

22 A No.

1 are in mobile housing, they are out there with them.
2 To someone else it would be like no, that's not the
3 range. I'm like, well, I don't see any houses, I
4 don't see any condos, I don't see any apartments.
5 To me that's the range.

6 Q Okay. But when you refer to that, you
7 mean in California; right?

8 A I do. Or down there in Eureka when we are
9 on the pivots. To me they are not on the
10 headquarters.

11 Q Okay. Do you consider them to be on the
12 range the entire time they are in Nevada?

13 MS. WINOGRAD: Objection. Calls for a
14 legal conclusion.

15 A I do to me. I mean they are not at the
16 ranch.

17 Q Okay. What is the split of the amount of
18 months you're in California versus Nevada?

19 MS. WINOGRAD: I'm sorry. I didn't hear
20 that question.

21 BY MS. REIF:

22 Q What is the split of the amount of months

1 safe to fly.

2 A Yeah. I've been flying.

3 Q I haven't. So when you are checking in on
4 the sheep often on your cell phone, have they ever
5 told you about times in which they have responded to
6 a threat from a predator at night or a bark alerting
7 them to a threat from a predator at night?

8 MS. WINOGRAD: Object to the form of the
9 question. It's compound.

10 A No. Not really in Nevada, no. California
11 more so.

12 Q Okay. Is it the herder's responsibility
13 to make sure that the sheep are not eating any
14 poisonous plants?

15 A I think it would be the herder's
16 responsibility to try to not allow the sheep to eat
17 poisonous plants.

18 Q Are there often poisonous plants in the
19 areas that you graze in Nevada?

20 A Sometimes. I had a herder came down and
21 my old guy, he knew better. He was an old Frenchman
22 that worked for us for 50 years. And he told the