

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

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Elizabeth A. Brown  
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**RESPONDENT WESTERN RANGE ASSOCIATION'S**  
**APPENDIX VOLUME 5, PART 1**

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## CHRONOLOGICAL ORDER

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# **EXHIBIT 27**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ABEL CANTARO CASTILLO on )  
behalf of himself and those )  
similarly situated, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 3:16-CV-00237-RCJ-CLB  
 )  
WESTERN RANGE ASSOCIATION, )  
 )  
Defendant. )  
 )  
 )  
\_\_\_\_\_ )

ZOOM VIDEOCONFERENCE DEPOSITION OF SILVER CREEK RANCH,  
INC., 30(b)(6) PAULINE INCHAUSPE

June 14, 2021  
9:07 a.m.

Reported by:  
SHANNON STEVENSON, RPR, CCR  
Certificate No. 50461

1 behalf of Western Range. For the record, I believe that  
2 the magistrate allowed the discovery to go through  
3 December 31, 2018, so I will have a standing objection.  
4 Ms. Webber, need I make that objection each time?

5 MS. WEBBER: Happy to have that be a standing  
6 objection.

7 MS. WINOGRAD: Thank you.

8 Q BY MS. WEBBER: Does Silver Creek rely on  
9 Western Range for guidance about the H-2A process?

10 A Yes.

11 Q And does Western Range complete all of the  
12 various forms that are required to be submitted to  
13 government agencies in order to obtain H-2A herders?

14 A Yes.

15 Q Do they send those forms to you or anybody else  
16 at Silver Creek in order to review them before they're  
17 submitted?

18 A I don't know.

19 Q Okay. Do you recall ever asking Western Range  
20 to change anything that was set forth in the forms  
21 applying for approval of herders that would be working at  
22 Silver Creek?

23 MS. WINOGRAD: Objection. Lack of foundation.  
24 She just testified she doesn't know if she sees those.

25 Q BY MS. WEBBER: And there will be objections

1 A Is the next one 2013?

2 Q I'm sorry, this one is dated 2012. My  
3 understanding is that this was going to be used to  
4 request herders who would then be on annual contract so  
5 that it might be people that came later in 2012 and  
6 stayed into 2013.

7 A Yes.

8 Q Okay. Turning to the next survey we have is  
9 actually for 2014. Is that also your handwriting?

10 A Yes.

11 Q And for 2015 is that yours?

12 A Yes.

13 Q And the last one we found is actually 2018. Is  
14 that also your handwriting?

15 A Yes.

16 Q When you completed this information for master  
17 job orders, the member survey responses, were you being  
18 as accurate as you could?

19 A Yes.

20 Q Okay. And so just confirming from the survey  
21 responses, your herders always worked in Nevada, you  
22 didn't have them take a sheep into any other states;  
23 correct?

24 A Yes.

25 Q We did not find similar surveys for either



1 to 24 hours per day, 7 days a week?

2 MS. WINOGRAD: Objection. Lack of foundation.  
3 I believe that's DOL language, but go ahead and answer.

4 THE WITNESS: I believe it's written on the  
5 contract.

6 Q BY MS. WEBBER: Okay. So you were aware that  
7 that's something that is specified to the herders in  
8 terms of their work hours?

9 A Yes.

10 MS. WINOGRAD: Objection to the form of the  
11 question. It's on call, not their work hours.

12 Q BY MS. WEBBER: Turning to the fourth page of  
13 Exhibit 5, and Box 16 about halfway down the page.

14 A I don't see that. Oh, okay.

15 Q Okay. You see the box numbered 16 about  
16 halfway down the page that says "Job description and  
17 requirements"?

18 A Yes.

19 Q Have you seen that job description before?

20 A Yes.

21 Q Okay. Where would you have seen that sort of  
22 language before, understanding that you hadn't seen this  
23 particular form that's been marked as Exhibit 5 before?

24 A I believe that is in their contract.

25 Q Okay. And did Western Range ever ask you to

1 review the job description that was included in the  
2 contract to make sure it was accurate as to the herders  
3 who worked at Silver Creek?

4 A Ask me that a different way, please.

5 Q Okay. Did you ever see anything inaccurate in  
6 the job description included in the contract you had with  
7 herders?

8 MS. WINOGRAD: Objection. Lack of foundation.  
9 She didn't testify that she's seen the job description.

10 THE WITNESS: It's a general description and  
11 not everything in that description applies to our ranch.

12 Q BY MS. WEBBER: Okay.

13 A So I just assume it's generally correct. Not  
14 everything is correct.

15 Q Okay. So you never asked Western Range to  
16 change the language that was used in the contracts that  
17 your herders signed; correct?

18 A No.

19 Q Okay. And looking at the language that's  
20 contained in Exhibit 5, is there any part of it that you  
21 think is inaccurate as to the herders who work at Silver  
22 Creek?

23 A Yes.

24 Q Okay. Can you tell me which portion?

25 A Well, they're general sentences. Like guard

1 flocks from predatory animals and eating poisonous  
2 plants. We don't drench sheep. They don't give any  
3 vaccinations or medications. Carlos does all of that  
4 stuff. They don't all assist in lambing, they don't all  
5 assist in docking, they don't all assist in sheering.

6 Q Okay.

7 A It's a very vague and general job description.  
8 It's not detailed specific to our ranch at all.

9 Q All right. Well, let's start at the beginning.  
10 The first sentence is attends sheep or goat flock grazing  
11 on range or pasture. You are a sheep operation; right?  
12 So we can drop the "or goat" and just focus on the sheep.

13 A Yes.

14 Q Do all of the herders who work for Silver Creek  
15 attend sheep grazing on the range or on pasture?

16 A Yes.

17 Q And do you consider your herders to be on the  
18 range for the entire year?

19 A Yes.

20 Q And do all of your herders herd a flock of  
21 sheep and round up any strays?

22 A Hopefully they don't have any strays, yes.

23 Q Okay. Fair enough. And part of what they're  
24 doing when they herd the flock is try to make sure that  
25 the flock stays together so there aren't any strays; is

1 that right?

2 A Yes.

3 Q Do they use trained dogs to assist in the  
4 herding?

5 A They have dogs.

6 Q Okay. I understand that sometimes there are  
7 dogs that specialize in herding and other dogs that  
8 specialize in guarding. Do you have -- and maybe there  
9 are some dogs that are multitalented. Do you have dogs  
10 that you believe assist the herders with the herding  
11 portion of their duties?

12 A Yes.

13 Q Not to be dubious of the dogs expertise, but  
14 you sound a little bit hesitant. Can you elaborate on  
15 what assistance you think that the dogs provide with  
16 respect to herding?

17 A It all depends on the man. Some dogs do well,  
18 some men they're not friends, and they don't do well.

19 Q So it depends, in part, on the herder and the  
20 dog being able to work well together?

21 A Yes.

22 Q And is part of what the herders do is spend  
23 some time getting to know the dogs they're working with  
24 and sort of training with them so they communicate  
25 effectively?

1 A Yes.

2 Q Going back to Exhibit 5, the next sentence is  
3 beds down flock near evening camp site. Is that  
4 something that you expect your herders to do, is bed down  
5 the flock or band that they're herding?

6 A Yes.

7 Q And then guards flock from predatory animals  
8 and from eating poisonous plants. Is that something you  
9 expect all your herders to be responsible for when  
10 they're out on the range with their herd or their flock?

11 A I would hope so.

12 Q That is kind of core essential part of being a  
13 shepherd; right?

14 A Yes.

15 Q With respect to predators, do you provide your  
16 herders with rifles or anything else to allow them to  
17 deal with any dangerous predators?

18 MS. WINOGRAD: Objects to the form of the  
19 question.

20 THE WITNESS: Some of them.

21 MS. WINOGRAD: Or anything else, I think she  
22 already testified to dogs, but go ahead and answer.

23 THE WITNESS: Yes.

24 Q BY MS. WEBBER: And I think you said some of  
25 them?

1 A Some of them.

2 Q Okay. And how do you decide whether the herder  
3 would be equipped with a rifle or not?

4 A Would you give a gun to everybody?

5 Q I didn't know if -- I don't even know does  
6 Nevada have a licensing requirement or is it just your  
7 own judgment as to who you think is sufficiently  
8 proficient?

9 A It's our own judgment.

10 Q Those that you believe are sufficiently  
11 proficient, you provide with rifle and ammunition so that  
12 they can shoot at any predatory animals that would attack  
13 the sheep?

14 A Yes.

15 Q Any how many of your -- like, I think you said  
16 you usually have four to five herders; is that right?

17 A Yes.

18 Q How many of them when they're out on the range  
19 usually do have a rifle with them?

20 A Two always have. Sometimes we give it to a  
21 third one. Carlos and Felix always have a gun.

22 Q Okay. Then turning to the next couple ones  
23 couple sentences I think here's where you said it varied  
24 for your herders. So drenches sheep, do you not drench  
25 your sheep at all?

1 A No.

2 Q Okay. So we skip that. And then examining  
3 animals for signs of illness. Is that something you  
4 expect the herders to keep an eye on when they're out  
5 with the flock to keep an eye out for any signs of  
6 illness?

7 A Yes.

8 Q And if they see evidence of illness, what would  
9 they do? Do they have anything with them to treat  
10 illness or would they be trying to contact you or  
11 somebody else about it?

12 A They would contact me.

13 Q Okay. And would you -- do they have anything  
14 with them that you could say, well, give them this  
15 medication or that medication, or do you have to send  
16 somebody out to actually provide any medication or  
17 treatment that's needed?

18 A We don't on a normal basis have any kind of  
19 sickness out there, and when we do have a sickness, it's  
20 usually something major, and it requires corralling the  
21 sheep and all hands on.

22 Q Okay.

23 A They don't do anything out there by themselves.

24 Q Understood. And I think with respect to  
25 vaccines, did you say that Carlos was responsible for the

1 vaccines, but none of the other herders?

2 A Yes.

3 Q And with respect to lambing and docking, do all  
4 of the herders who are working for you during lambing  
5 season assist in the lambing?

6 A No.

7 Q Okay. How many herders would not be  
8 participating in the lambing?

9 A At least one.

10 Q Okay. And what are they responsible for if  
11 they're not involved in lambing?

12 A They're taking care of the ewes that don't have  
13 lambs that are not pregnant.

14 Q Okay. And then with respect to docking, how  
15 many of the herders participate in docking?

16 A At one time it's two.

17 Q Okay. And the other two herders or three  
18 herders would be out with the herds that are either  
19 already docked or don't need anybody docked?

20 A Yes.

21 Q Okay. Would every herder -- is this a rotation  
22 thing where each herder brings their lambs that need to  
23 be docked before they head out and then they are done  
24 with docking and other people are docking, or is it that  
25 some people do the docking and other herders are never



1 involved in docking?

2 MS. WINOGRAD: Object to the form of the  
3 question.

4 Q BY MS. WEBBER: That was kind of a confusing  
5 question. Let me try again.

6 I just want to make sure I understand with  
7 respect to docking. Understanding that only two people  
8 are involved at any one time, would all the herders at  
9 some point during the year or some point during docking  
10 season be involved in docking, or is it just that some  
11 people do it and some people don't do it at all?

12 MS. WINOGRAD: Same objection.

13 THE WITNESS: The herder that is with the dries  
14 doesn't do any docking. Carlos does all the dockings,  
15 and those other guys only do their band. Carlos moves  
16 the corrals to where they are at, sets them up, they come  
17 in with their sheep, we dock theirs, and then Carlos  
18 picks up the corrals, moves to the next spot, and does  
19 that docking.

20 Q BY MS. WEBBER: Gotchya. So they're  
21 responsible for basically getting their sheep into the  
22 corrals and available for Carlos to dock, but he does the  
23 actual cutting -- or, docking, excuse me?

24 A Not only him. It's a family affair and  
25 actually I do the docking, not Carlos.

1 Q Okay. He gets the corral set up?

2 A Yes. He helps the sheepherder bring the sheep  
3 to the corral and he does the docking too. I won't take  
4 that away from him. He does his share there too, but  
5 it's a family affair.

6 Q Understood. How about sheering, how many of  
7 the herders are involved with sheering?

8 A They bring the sheep to the corral, their bands  
9 to the corral, and there too, Carlos builds the corrals,  
10 but the shearers are all H-2A workers, but they come with  
11 a different boss, and they're a traveling group.

12 Q Right.

13 A So our men don't do any sheering.

14 Q Understand they don't do the actual sheering of  
15 the wool. During sheering season, are they responsible  
16 then for not only bringing the sheep in but getting them  
17 organized to go through the sheering process?

18 A Yes, that's also a family affair. They bring  
19 the sheep, but we bring all the extra help.

20 Q Okay. Are there any other farm or ranch chores  
21 related to production of sheep that herders may do?

22 A Not really.

23 Q Okay. You mentioned using temporary corrals  
24 both in connection with sheering and also if there is any  
25 illness amongst the sheep where you need them to be

1 isolated. Do you use temporary fencing or temporary  
2 corrals at any other time during the year?

3 A Not really.

4 Q Looking up at the top of this page, Box 15,  
5 titled referral instructions and hiring information. Do  
6 you see that?

7 A Yes.

8 Q This says that the employment office will refer  
9 each applicant to Western Range Association. Western  
10 Range association will conduct a full telephone interview  
11 with the applicants. Have you ever been referred a  
12 potential herder by Western Range who was not an H-2A  
13 worker but was a U.S. worker who had applied through this  
14 process described in Paragraph 15?

15 A Rephrase that.

16 Q Has Western Range ever offered you as a  
17 potential herder, sheepherder, a U.S. worker, not  
18 something through the H-2A program who applied to the job  
19 posting as described in Paragraph 15?

20 A Yes.

21 Q Okay. Have you ever hired any of those  
22 domestic herders?

23 A No.

24 Q And why was that?

25 A Honest answer?

1 Q Yeah.

2 A I don't think they're able to do that job.

3 Q Okay. Was it -- was there a particular  
4 experience with sheep herding that you thought was  
5 lacking or was there something else?

6 A It's the isolation and there's no domestics  
7 that are going to go up on the mountain and take care of  
8 sheep.

9 Q Okay. But to the extent that there were  
10 applicants from domestic workers, Silver Creek relied on  
11 Western Range to deal with them in screening and so on?

12 A Yes.

13 Q Turning to the next page of Exhibit 5 and  
14 particularly Question 18. The first sentence says that  
15 the employer must keep earning records for five years  
16 instead of three years. How long do you keep your  
17 payroll or earnings records for your herders?

18 A I haven't been keeping earning records like I  
19 should have. I always considered a canceled check as an  
20 earning record, and I have all the canceled checks. But  
21 I never until this year did pay stubs. I'm a busy woman.  
22 I don't have time for that.

23 Q I understand. But you've got all the canceled  
24 checks showing what you actually did pay?

25 A Yes.

1 you were paying back then?

2 A I have no idea.

3 Q Okay. And then the next box down, No. 9, says  
4 under compensation explain, says 24/7 hours per week,  
5 free room and board. The later part of that, I  
6 understand that under the H-2A sheep herding program, you  
7 were required to provide room and board for the herders;  
8 correct?

9 A Yes.

10 Q And with respect to the explanation 24/7 hours  
11 per week, is it correct that when the herders were out on  
12 the range they were responsible for their particular  
13 flock or band of sheep seven days a week?

14 A Yes.

15 MS. WINOGRAD: Object to the form.

16 Q BY MS. WEBBER: It wasn't as if there was one  
17 herder that worked Monday through Friday and some other  
18 herder would come and relieve them for the weekend;  
19 right? It was one person all the way through?

20 A Yes.

21 Q And they were responsible for the sheep 24  
22 hours a day --

23 A No.

24 Q -- and bring in somebody that would relieve  
25 them on the night shift?

1 corrals are for sorting; right?

2 A Yes, they're for sorting.

3 Q Gotchya. So then they're out on their lambing  
4 ground range except for the ones that are kept, as you  
5 said, on private property, the potential problem ones,  
6 and about a month between when they are sort of let loose  
7 to graze on the lambing ground and when they all finish  
8 having their lambs?

9 A Yes.

10 Q Okay. And I assume during lambing season, that  
11 as with other animals, that the sheep don't keep doctor's  
12 office hours in deciding when to go into labor, and it  
13 could be any day of the month, any time of the day?

14 A Yes.

15 Q So is lambing season one of the busier time  
16 periods for the herders as well as for the sheep, I  
17 guess?

18 A Yes.

19 MS. WINOGRAD: Object to the form of the  
20 question. I don't know what busier means, but she  
21 answered.

22 Q BY MS. WEBBER: I think in your declaration you  
23 described this as a time when the herders were working  
24 basically from dawn until dark with breaks obviously for  
25 lunch?

1 A Yes.

2 Q And then by mid May the lambing would be  
3 completed; is that right?

4 A Yes.

5 Q And what happens next after mid May?

6 A By the end of May, the sheep have started --  
7 can I explain what happens during lambing?

8 Q Sure. Please do.

9 A The sheep are moved -- the herder moves them  
10 ahead a little bit every day so that the sheep that are  
11 pregnant and having lambs are not with the sheep that  
12 have already lambed. Because sheep stay still for two or  
13 three days or three or four days with their babies  
14 without moving. They don't go anywhere for food or  
15 water, they stay there. The sheep that are pregnant  
16 move, so they're walking and so the herder just keeps  
17 them still, you know, slows them up so they're not  
18 walking across Nevada. They're staying in -- you know,  
19 they're staying slow.

20 After -- by the end of the month, those sheep  
21 that have first lambed start coming. They know the  
22 country, they know the time of year, they know what the  
23 routine is. They start coming up and to the others, and  
24 then pretty soon they're all kind of congregated in one  
25 area for that herder. When he gets done with the last

1 Q So rather than being assigned to one band  
2 himself, Carlos is moving amongst the different bands to  
3 line up everything to get set up correctly?

4 A Except at lambing. At lambing he takes care of  
5 the barn where the first lambers are and him and his  
6 brother take care of all those, and I get shoved into his  
7 jobs.

8 Q Okay. I think -- why don't we go ahead. We're  
9 making really good progress. I'm going to try to keep  
10 this as short as I can. Why don't we go ahead and take a  
11 break and hopefully I think we've gone a little less than  
12 two hours so far, but hopefully we'll come back and I'll  
13 just have no more than an hour and we'll be done. Okay?

14 A Good. Thank you.

15 MS. WEBBER: Thank you.

16 (Break taken at 11:03 a.m.)

17 (Back on the record at 11:18 a.m.)

18 Q BY MS. WEBBER: You keep any records of which  
19 days you consider the herders to be on the range versus  
20 not on the range, or do you consider them to be always on  
21 the range?

22 A Always on the range.

23 Q And you don't keep any record of hours worked;  
24 correct?

25 A Correct.



1           A     No, it's not an extended stay.

2           Q     Okay. During the time that the herders are  
3 packing when they're using the tents, I assume being in  
4 tents they don't have, you know, running water, toilets,  
5 electricity, anything like that, is that correct, as to  
6 the tents?

7           A     No, that's not correct. They are usually by  
8 mountain streams I consider that running water. The  
9 nature is their toilet, and they all have solar panels  
10 and battery packs. They have power too. It's not a  
11 correct sentence.

12          Q     Okay. I guess I had a different notion of  
13 running water, but appreciate the clarification.

14                    When they're packing tents, they still have  
15 solar panels available to charge a cell phone or other  
16 communication devices?

17          A     Yes.

18          Q     I was going to contrast that with the sheep  
19 camps where I understood that the sheep camps from your  
20 declaration have more of what we might recognize as some  
21 modern conveniences in terms of cooking with propane  
22 stoves and even including propane refrigerators to be  
23 able to keep food cold; correct?

24          A     The only difference -- they have propane stoves  
25 in the summer up on the mountain. They have portable

1 propane stoves with propane. They don't have to build a  
2 fire. I don't want them to build a fire.

3 Q I can imagine particularly in the drought you  
4 don't want a fire hazard?

5 A No. And the only danger in the wintertime they  
6 have a refrigerator that they don't have up there.  
7 That's the only modern convenience I'd see in my book.  
8 They might be a little rougher, but they have everything  
9 that they need up there in the summertime too.

10 Q In the summer without a refrigerator, how do  
11 they keep their -- and they're getting groceries once a  
12 week, how do they keep their food supply safe and edible?

13 A They're in the high country so they're not as  
14 hot as it is down in the valleys, and they get fresh  
15 meat, we butcher every week, so the fresh meat stays  
16 better than frozen meat, and we give them fresh lamb so  
17 they're not eating chicken or something that will spoil  
18 quickly. They salt a lot of it, it cures with salt. Or  
19 they roll it up. In the nighttime they hang it in a tree  
20 and so it cools off, and daytime they role it up in their  
21 beds and stash it in their tent into of a pad or  
22 something so it stays that way.

23 Q Do you have any concern about the fresh meat  
24 drawing in predators if it's hung on a tree?

25 A No. They have dogs all around them. They have

1 the Great Pyrenees and there is no predators get anywhere  
2 near those camps. It's not bear country. Coyotes are  
3 not coming there.

4 Q So in the mountains where they are for the  
5 summer, there are coyotes, but not bears; is that  
6 correct?

7 A Yes.

8 Q How about mountain lions?

9 A There's a few, but they're few and far between.  
10 There is a lot of hunters in our area, so we don't have a  
11 mountain lion problem either.

12 Q In terms of the coyotes, it sounds like you  
13 rely on the Great Pyrenees dogs to keep them away?

14 A And some of the herders shoot the coyotes if  
15 they see some during the day. And we have a government  
16 hunt tracker that comes there and helps if we have a  
17 coyote problem, and we also privately hire before lambing  
18 and during lambing a helicopter that comes in and we pay  
19 for depredation.

20 Q So and as you said, at least two of the herders  
21 have rifles to be able to drive off coyotes by shooting  
22 them; correct?

23 A Yeah. They kill them and then I give them a  
24 bonus -- cash bonus for every coyote that they kill.

25 Q Okay.

1           A     They are very proud of their coyotes that they  
2     kill.   Very proud.

3           Q     How much do you pay per coyote?

4           A     Hundred dollars.

5           Q     Definitely worth getting a coyote then?

6           A     It is in their book.

7           Q     And so it sounds like in terms of dealing with  
8     the coyote, you've got both what the herders do in terms  
9     of seeking to shoot a coyote for the bounty, I think you  
10    referred to a government trapper?

11          A     Yes, trapper.

12          Q     Trapper.   And then sort of an added layer of  
13    protection for lambing you have a helicopter come in to  
14    do a broader clearance of coyotes?

15          A     Yes.   We unlike a lot of sheep outfits that are  
16    around us have a lot better coyote control than a lot of  
17    our other -- you know, I talked to other ones and we  
18    have -- herders don't have a lot of problem with coyotes  
19    on our place.   Guard dogs help.

20          Q     If they're getting hundred dollars to shoot  
21    them, I assume they're not having a problem.   They're  
22    having a bonus.

23          A     Yeah.

24          Q     In terms of the Great Pyrenees, are they  
25    particularly used at night or is that around-the-clock

1 But we've been in a draught for so long that ever since  
2 I've been starting -- taking care of sheep only one  
3 winter have I not hauled water to the sheep. Every other  
4 day -- they water the sheep every day, but I go down  
5 there every other day to fill up the trucks and park them  
6 or move them and park them again. And the sheep come  
7 around 10:00, 11:00 to the water truck, they get a drink  
8 and lay down there until 2:00, 3:00, 4:00 in the  
9 afternoon depending on if it's cold, and then they go  
10 graze again. And that's every day.

11 Q Okay. And I assume in addition to hauling  
12 water for the sheep, you also bring water that the  
13 herders can use for their cooking and their own drinking?

14 A Yes. They have barrels inside their sheep  
15 camps and bring them potable water. The water that the  
16 sheep get is from source down there. On the winter  
17 range, spring fed, but a long-ways-away fed tank that I  
18 pump out of. We bring them potable water from water  
19 that's been tested in the wintertime in a barrel and they  
20 transfer it to their barrels, and they have potable  
21 water.

22 Q And during the time -- whether it's winter or  
23 summer range, either way, when the herders are out on the  
24 range, they're not -- you know, they're not within  
25 walking distance of, you know, town, restaurant, stores,

1 anything like that; correct?

2 A Well, all depends on where they're at.

3 Q Okay.

4 A Like summer country we've had shepherders walk  
5 to that little town that was there and spend the day at  
6 the bar, you know. So it all depends how close they are.  
7 These ones we have now, I don't worry about. But we've  
8 had trouble with them, you know. We had one shepherd  
9 pick up a bicycle going by the dump, and then he peddled  
10 to the town on his bicycle. So it all depends how close  
11 they are. To say it never happens, it can happen, but it  
12 hasn't recently.

13 Q It's a problem if it does; correct?

14 A Yes, it's a problem if it does, yes.

15 Q Because then they're not keeping an eye on the  
16 sheep like you need them to?

17 A Exactly right.

18 Q And most of the time they're in remote enough  
19 areas that they're not easy distance into town, right,  
20 other than the one or two close enough to that one town  
21 in the winter range?

22 A Or in the summer too. But they don't have to  
23 go to town. There's enough cars, you know, driving up  
24 and down every single road that they have means to go  
25 somewhere if they want to go somewhere.

1 Q And as you said, if somebody had a need to go  
2 into town, you would take them into town, but it's not  
3 something that happens that often; correct?

4 A Yes.

5 Q So when you were -- when they're on the summer  
6 range up in the mountains, then you are bringing them  
7 groceries once a week; correct?

8 A Yes.

9 Q And do you do all three bands the same day or  
10 do you do them on different days?

11 A Most of the time we do them on different days  
12 because they're -- or, I go to one and Carlos goes to the  
13 other, because the drives are a little -- they stay back.  
14 They're not on the summer range. They stay on the  
15 mountain behind our house. So most of the time Carlos  
16 either goes up there and then I go to big creek or vice  
17 versa, but they're not -- you know, they're not done at  
18 the same time. It's too far between.

19 Q Okay. And when you're doing the weekly  
20 check-ins during the summer months about what time --  
21 given the distance you have to travel and you are going  
22 to get groceries ready, about what time would you usually  
23 arrive at the herder's camp?

24 A Well, the herder goes out in the morning. We  
25 could be there at daylight, but the herder goes out in

1 you sometimes have twins?

2 A We consider it very lucky if we have one yew  
3 per lamb. This year there is more twins.

4 Q So since you separate out the dries, the bands  
5 that are out with ewes and their lambs, would that  
6 typically be about a thousand ewes and a thousand lambs?

7 A Typically, it's about 900 ewes and about 1100  
8 lambs. If I was to say we have an average, that's what  
9 it is.

10 Q Thank you.

11 A 900 ewes to the band, and I'll be real happy  
12 when they come down with 1100 lambs per band.

13 Q Okay. And that's one other thing I wanted to  
14 ask you. If the herder goes out to the summer grazing  
15 with, you know, you say about 900 ewes about 1100 lambs,  
16 when they come down from the mountain at the end of  
17 summer, and I assume you hope that they still have  
18 900 ewes and 1100 lambs?

19 A Yes. They don't. I would assume they would,  
20 but they never do.

21 Q Okay. Is that one way you sort of evaluate how  
22 good somebody is at herding is sort of how successful  
23 they are at keeping all of the lambs and the ewes alive  
24 and healthy?

25 A Yes. That's why Felix gets the bonus and the



1 rest don't.

2 Q Okay. So turning back to Exhibit 8. Mr. Holt  
3 goes on to say that "The open range sheepherder lives and  
4 travels with his band of sheep day and night, protecting  
5 the sheep from predators and from eating poisonous  
6 plants, moving the band to new grazing land each day and  
7 bedding them down at night."

8 Is that a reasonable description of what your  
9 herders do with your sheep?

10 MS. WINOGRAD: Object to the form of the  
11 question and also lack of foundation.

12 But go ahead and answer as to your band.

13 THE WITNESS: No, it's not.

14 Q BY MS. WEBBER: Okay. And what part is not?

15 A It's saying that they're with of band of sheep  
16 day and night. They're not with the band of sheep day  
17 and night. They're not with the sheep at night at all.  
18 During the day, they're not with them all day either.  
19 And protecting the sheep from predators, well, that  
20 depends. Eating poisonous plants, that depends. And  
21 they don't move the band every day to a new grazing  
22 place. You know, if they get to like now, those sheep  
23 might stay three or four days without moving an inch.  
24 They'll get in a draw and they'll stay there with their  
25 lamb. So they're not moving every day some place either.

1 but the instruction is the same.

2 Q Okay. And since you are leasing land from the  
3 forest service, I think you mentioned, and at other times  
4 BLM; is that correct?

5 A Mostly BLM, yes. Just forest in the summer.

6 Q And they have rules that you have to follow to  
7 avoid overgrazing, to avoid problems with certain water  
8 sources; correct?

9 A Yes.

10 Q Okay. And each of those rules requires making  
11 sure -- the sheep don't read the agreements with the BLM,  
12 that's the herder's job to make sure that they follow  
13 those instructions; correct?

14 A It's my responsibility to read the rules. It's  
15 my responsibility to tell the herders.

16 Q And it's the herders' responsibility to have  
17 the sheep comply; correct?

18 A Yes.

19 Q And so depending on particular location, you  
20 may have to tell them to keep the sheep away from a  
21 particular water source or, as you said, away from roads.  
22 Are there any other areas that they are required to keep  
23 the sheep away from?

24 A Not anymore. There used to be neighboring  
25 ranches and stuff, now there isn't any. Not really.

1 corralling again and doctoring again and the different  
2 outbreaks. I've been -- and then when the lambs are down  
3 there, you got to gather up the lame lambs. We spent  
4 plenty of time down there.

5           Everything I say from 11:00 to all that stuff  
6 is a generality of what happens most of the days. But  
7 every day is not the same. Not in any block of life I've  
8 ever seen. Every day is not the same, so what's good  
9 today, might not be the same tomorrow.

10           Q     And the herders have to pay attention to those  
11 changes; right?

12           A     Well, you would hope.

13           Q     And, for example, hopefully this year won't be  
14 as bad as last year, but sometimes you get wildfires  
15 breaking out; correct?

16           A     Yes.

17           Q     And that could certainly threaten your sheep;  
18 right?

19           A     Yes.

20           Q     And the herders as well?

21           A     Yes.

22           Q     And so if that happens, the herders have to be  
23 able to respond to that and make sure the sheep are going  
24 what you've decided is the safest course given whatever  
25 conditions are prevailing; correct?

1 A Yes.

2 Q And there could be snowstorms or other bad  
3 weather that comes through that could impact the sheep;  
4 relevant?

5 A Yes. I don't worry so much about snowstorms.  
6 Fires I worry about and not only in the summer. But  
7 snowstorms when the snow let's up, then they get on the  
8 telephone I don't know where my sheep are today, so then  
9 we have to go down there and spend time gathering up  
10 sheep.

11 My sister and I have done that many a time when  
12 the shepherd says I don't know where the sheep are.  
13 It snowed yesterday and they went back to camp and the  
14 sheep walked. I don't begrudge anybody that. If you  
15 can't see 2 feet in front of you, what's the use of being  
16 out there. They go back to camp and wait it out.

17 Q And although you've said that sheep tend to  
18 stick together, there's always some sheep that tend to  
19 wonder off out of any bunch; right?

20 A There's always hooligans in everything.

21 Q Right. And one of the jobs of the herder is to  
22 keep an eye out for those hooligans and bring them back  
23 to the main herd or main --

24 A You would hope. You would hope.

25 Q And the only way for the herder to do that is

1 if they're paying attention to the sheep; right?

2 A You would hope.

3 Q And just because most of the sheep are sleeping  
4 doesn't mean that all of the sheep are sleeping; right?

5 A You would hope that they would be, but that  
6 doesn't -- you are absolutely right, it doesn't mean they  
7 all are.

8 Q And --

9 A They should be, though.

10 Q They should be, but they don't always follow  
11 that instruction of when they're going to sleep; right?

12 A No. But if sheep are going to move at night,  
13 they usually all move. You know, if the sheep are laying  
14 down sleeping, they're all laying down sleeping. But if  
15 something was to rile them or the moon is out and they  
16 didn't eat enough during the day or they can get up and  
17 they can walk during the night, and they're not there  
18 when the herder gets up in the morning, and then he has  
19 to figure out which way they went.

20 But rarely, and I'm just saying this as a  
21 generality because I'm not standing there everyday  
22 watching them, but rarely do a few sheep walk away at  
23 night. They're more apt to lose them during the day when  
24 the sheep are grazing, and in the wintertime too they're  
25 going up and down gullies. Some sheep may stay grazing

1 that they lost if they don't get them all back, that  
2 could still count against them as they didn't do a good  
3 job keeping track of their sheep; right?

4 MS. WINOGRAD: Object to the form of the  
5 question.

6 Go ahead.

7 THE WITNESS: No.

8 Q BY MS. WEBBER: How would they know that?

9 A How would they know what?

10 Q How would they know that it won't count against  
11 them at the end of the year if they let their sheep  
12 wander away in the middle of the night and don't do  
13 anything about it?

14 A If sheep wander away during the night, it's  
15 because there is some kind of circumstance that's out of  
16 their control, whether it be a predator or lightning or  
17 something that riled them and they walked away. Nobody  
18 is going to punish them or penalize them or whatever for  
19 that happening.

20 Now, if they spend the whole day in camp and  
21 early in the morning and their sheep have gone 14 ridges  
22 over because they didn't get up, then they might not get  
23 a job the next go around.

24 Q If there is thunder and lightning that disturb  
25 the sheep, presumably the herders can hear the lightning

1 as well; right?

2 MS. WINOGRAD: Object to the form of the  
3 question I don't think lightning makes much noise.

4 MR. HALL: We couldn't hear the question.

5 Q BY MS. WEBBER: If there is thunder and  
6 lightning, and lightning is often accompanied by thunder,  
7 if there is thunder and lightning that could disturb the  
8 sheep, that's probably something the herder can hear as  
9 well; correct?

10 A I would hope so, but it doesn't mean he's going  
11 to go outside.

12 Q But if you have a herder who understands that  
13 his fundamental responsibility is to take care of the  
14 sheep and to deliver you the 900 ewes and 1100 lambs at  
15 the end of the season that he started with, that's  
16 something they might do to make sure that the storm  
17 doesn't scatter the sheep; right?

18 MR. HALL: Objection. Calls for speculation.

19 Q BY MS. WEBBER: Can you answer?

20 A I wouldn't know what they're going do. You  
21 would hope that they would, but I don't know what they're  
22 going to do.

23 Q And if there is a predator that comes around in  
24 the nighttime hours, the dogs, the guard dogs might bark  
25 at it; right?

1 I don't even understand what that sentence says.

2 Q BY MS. WEBBER: I'm not asking to you interpret  
3 the regulation. I'm asking -- because you previously  
4 testified that your herders are out on the range for the  
5 full year. I want to see if you would agree that when  
6 you refer to your herders being out on the range, that  
7 they are required to be available constantly to attend  
8 the livestock, your sheep, and to perform tasks including  
9 ensuring the livestock do not stray, protecting them from  
10 predators, and monitoring their health?

11 MS. WINOGRAD: Objection.

12 THE WITNESS: They're not required to be on  
13 task 24 hours a day.

14 Q BY MS. WEBBER: Are they required to be  
15 available; in other words, so that if they become aware  
16 of any issues, they have to be available to respond right  
17 then?

18 A The only circumstance that I would even  
19 consider calling them at night or telling them anything  
20 is if there was a wildfire in their vicinity and their  
21 lives were in danger. There is nothing they can do with  
22 the sheep at night anyway. If their lives were in  
23 danger, I would say, hey, there is a fire two ridges over  
24 and come down to the road or whatever. I wouldn't expect  
25 them to try to save the sheep. Save themselves, yes, but



1 that's it. That's the only thing that I can think of  
2 that I would bother them at night.

3 Q Okay. Setting aside the time at night when the  
4 herders are asleep and considering the other period of  
5 the day, would you -- do you expect your herders to be  
6 available? Even if they're not actively doing something  
7 with the sheep, do you expect them to be available in  
8 case of a predator, of a thunderstorm, or any other thing  
9 that might come up and require them to provide assistance  
10 to the sheep?

11 A I would hope that they would be available, yes.  
12 That's their job.

13 Q Absolutely. Understood.

14 And when you refer to the circumstances in  
15 which you would telephone and call the worker's cell  
16 phone, you would agree that the herders have job  
17 responsibilities even if they don't get phone calls from  
18 you; correct? There is responsibilities that you expect  
19 them to undertake without being specifically instructed  
20 each day by a phone call from you or anybody else at the  
21 ranch; right?

22 A Yes. You would hope that they would do what  
23 they have been instructed to do without being told.  
24 They're not five-year-old kids, you would hope that they  
25 would.

1 the whole duration of the day more than one time. Maybe  
2 not 365 days a year, but I've been there.

3 Q And you have not offered an estimate for what  
4 you consider to be hours worked on the winter range;  
5 correct?

6 A For my work?

7 Q No, for the herders. When the herders are on  
8 winter range, you said you did not feel comfortable  
9 providing an estimate other than you thought it was less  
10 than on the summer range; correct?

11 A That's right.

12 Q Okay. Would you agree that the herders have a  
13 tough job?

14 MS. WINOGRAD: I'm going to object to the form  
15 of the question and also borders on argumentative.

16 MR. HALL: Vague and ambiguous as to what tough  
17 is.

18 Answer if you can.

19 THE WITNESS: That's exactly what I was going  
20 to say. It all depends on what you call tough. I think  
21 that the only aspect of their job that's really tough is  
22 that they're away from their families and there's some  
23 isolation. As for the work part of it, I work harder  
24 than them any ole day of the week. I don't consider what  
25 they do a tough job. They just have to be there and the

1 loneliness of it might be the only thing. They have  
2 phones now, even that, but it's not a tough job.

3 Q BY MS. WEBBER: You said that you couldn't get  
4 domestic or you didn't think any domestic workers could  
5 do the job?

6 A No. And that's just for that reason. There is  
7 nobody that's going to stay there. They stay there  
8 because they're here because it's worse down there than  
9 it is up here. If you think you are going to get an  
10 American that has ability to go somewhere else in two  
11 minutes stay there, they're not going to stay there.  
12 They don't care.

13 MS. WEBBER: Okay. I think that's all I've  
14 got. Again, just want to make sure the record is clear,  
15 Anthony, as to whether she'll read and sign or waive.

16 MS. WINOGRAD: I'm not finished. I think  
17 Mr. Hall and I may have some questions.

18 MS. WEBBER: That's fine but this is the end of  
19 my questioning so I just wanted to check.

20 MR. HALL: We'd like to read and sign. If the  
21 court reporter would send it to my office, I will make  
22 sure the witness gets it.

23 MS. WINOGRAD: Anthony, you are up.

24 MR. HALL: I have no questions.

25 MS. WINOGRAD: I will be very brief then.

# **EXHIBIT 28**

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,

Defendant.  
\_\_\_\_\_ /

FRCP 30(b)(6) VIRTUAL ZOOM/TELEPHONIC  
DEPOSITION OF JOHN ESPIL SHEEP CO.,  
REPRESENTED BY JOHN ESPIL

Friday, July 16, 2021

Reno, Nevada

Reported by:  
Michelle C. Johnson, RPR-CRR  
NV CCR 771, CA CSR 5962

Job No. 4684471

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1 shorter, I'm not going to say every time from 2010 to  
2 the present, but as I said at the outset, all of my  
3 questions today are focused on that time period.

4 For that time period from 2010 to the  
5 present, has your ranch, John Espil Sheep Company,  
6 relied on the Western Range Association to obtain  
7 approvals for bringing H-2A herders into the United  
8 States to work at your ranch?

9 A. Approvals, you're asking about approvals to  
10 bring these people in?

11 Q. Yes, the visas --

12 A. Yes.

13 Q. -- the official certifications.

14 A. Yes.

15 Q. Okay. Are you familiar with the term "job  
16 clearance order," sometimes called a Form 790?

17 A. What was that again?

18 Q. Are you familiar with something called a job  
19 clearance order, might also be called a Form 790?

20 A. The what order? I'm sorry; I'm having  
21 trouble here.

22 Q. Sure. The job clearance order.

23 A. Clearance order. The job clearance order. I  
24 believe so. I believe I have seen that.

25 Q. All right.

1 this before. Because I don't know the Borda family or  
2 these other people. I don't know anything about their  
3 business.

4 Q. Understood. For the first portion of the  
5 form, is that something that you would have relied on  
6 Western Range to complete on behalf of the John Espil  
7 Sheep Company?

8 A. I don't understand what you mean by "first  
9 portion."

10 Q. The portion -- before we get to the  
11 attachments for the other sheep companies --

12 A. It's all stapled together, ma'am.

13 Q. Understood. But from the first page through  
14 10, is that something that you would have relied on  
15 Western Range to complete on behalf of the ranch from  
16 2010 to 2020?

17 A. It appears so.

18 Q. If you would turn to the second page of that  
19 same Exhibit 2, document C. Do you see about halfway  
20 down the page, there is a section 16 that begins "Job  
21 description and requirements"? Do you see that?

22 A. Yes.

23 Q. If you could review that paragraph and let me  
24 know when you have, I want to ask if you believe  
25 that's an accurate description of the shepherd job

1 as it pertained to your ranch.

2 A. I'm ready.

3 Q. Is the description you just read from page 3  
4 of Exhibit 2, is that an accurate description of the  
5 shepherd job on your ranch?

6 A. No.

7 MS. WINOGRAD: Objection, vague as to time,  
8 2015 job order.

9 BY MS. WEBBER:

10 Q. And what about that description is  
11 inaccurate?

12 A. I don't normally bed our sheep near the  
13 evening campsite. It's impossible to stop animals  
14 from eating poisonous plants. We don't drench sheep.  
15 We have no goats. We don't use insecticides. And  
16 this "must have three months' experience," 800 to  
17 1,000 hours (sic) worked -- the bottom "Hours worked  
18 footnote: On call for up to 24 hours, seven days a  
19 week," I have no way -- they are not required to be on  
20 call 24 hours, seven days a week.

21 Q. Anything else?

22 A. Guards flock from predatory animals, that's  
23 not -- that's only a wish. You could -- how do you  
24 guard a flock from predatory animals?

25 Q. You don't consider that to be part of the



1 herder's duty to protect the flock?

2 A. But it says guards dogs -- guards flock from  
3 predatory animals. You don't stand guard. Their  
4 presence and their attempt to -- as far as -- that's  
5 not a primary -- it's important, but once again, I'm  
6 not real crazy about that part.

7 Q. Okay. I understand that the herders might  
8 not be successful 100 percent of the time in  
9 preventing predators from attacking the flock, but to  
10 the extent they are able to do so, would you expect  
11 them to act in a way to drive off predators or do  
12 whatever they could do within reason to protect the  
13 sheep?

14 A. Yes.

15 MS. WINOGRAD: Objection, vague as to  
16 "situation," and hypothetical.

17 BY MS. WEBBER:

18 Q. Now, with respect to preventing sheep from  
19 eating poisonous plants, again, they may not be 100  
20 percent successful, but if they spot that there is a  
21 patch of something that would be unhealthy for the  
22 sheep, would you expect them to at least try to direct  
23 the sheep to graze elsewhere, rather than in the area  
24 that had something poisonous to them?

25 A. Yes.

1 Q. I understand that you don't drench the sheep  
2 or use insecticides, but do you administer vaccines  
3 and other medications, when needed, to your sheep?

4 A. Yes.

5 Q. And that's part of the herder's  
6 responsibility to do. So when they're out on the  
7 range with their flock or band, if one of the animals  
8 gets sick, they may need to administer medications?

9 A. Yes.

10 Q. Now, you said that you don't bed the sheep  
11 near the evening campsite. The evening campsite is  
12 where the herder will be sleeping for the night; is  
13 that right?

14 A. Not as a rule. It has -- we do it  
15 occasionally, but not as a rule.

16 Q. Okay, what do you mean? Where would you  
17 expect the herders to ordinarily sleep if not in a  
18 sheep camp --

19 A. You're talking about the sheep or the  
20 shepherd?

21 Q. Okay, maybe that's where I misunderstood your  
22 comment. When the job description says that the  
23 herder is to bed down the flock near the evening  
24 campsite, what was -- you said that you don't bed down  
25 near the evening campsite. What were you referring

1 to?

2 A. The sheep.

3 Q. Okay, so the sheep bed down in one location  
4 and the campsite is some distance away where the  
5 herder would sleep?

6 A. Occasionally.

7 Q. Okay. What's the norm?

8 A. It -- if the sheep are grazing, they're  
9 content in the area where they are, they're left to  
10 sleep in that area and not be herded back to their  
11 campsite, which may be some distance away.

12 Q. Okay. But would you expect the herder to bed  
13 the flock down, meaning to make sure that they were  
14 settled and not moving anymore, before heading back to  
15 a campsite?

16 A. No.

17 Q. Okay. And the herder does have a campsite to  
18 sleep in that is within walking distance of where the  
19 sheep are; is that right?

20 A. Yes.

21 Q. And that campsite will either have sheep camp  
22 or trailer or, in some circumstances, maybe a tent; is  
23 that right?

24 A. Yes.

25 Q. How far a walk is it between the campsite and

1 lambs and we have ewes with two lambs, so I can't say  
2 that most of the ewes.

3 Q. All right. While herders are out on the  
4 range, they are responsible for herding the flock,  
5 right?

6 A. Yes.

7 Q. Rounding up strays, et cetera?

8 A. Yes.

9 Q. Okay. And unlike some types of work, this is  
10 something that needs to happen seven days a week,  
11 correct? The sheep are going to get up and graze  
12 every morning, whether it's Sunday or Wednesday; is  
13 that right?

14 MS. WINOGRAD: Objection to the form of the  
15 question.

16 THE WITNESS: Repeat the question, please.

17 BY MS. WEBBER:

18 Q. Sure. The sheep need a herder looking out  
19 for them seven days a week because it's not like the  
20 sheep take weekends off and don't need somebody to  
21 make sure that they're grazing in the right area and  
22 not running off. Is that right?

23 A. Yes.

24 Q. But you would not say that the herders are  
25 required to work 24 hours a day; is that right?

1 A. Right.

2 Q. In the time period when the herders are not  
3 actively working, do you expect them to be available  
4 in case something came up and the sheep needed the  
5 herders' assistance?

6 MS. WINOGRAD: Objection, vague as to  
7 "something came up."

8 THE WITNESS: Would you repeat the question,  
9 please?

10 BY MS. WEBBER:

11 Q. Sure. When herders are not actively engaged  
12 in some duties with the sheep, do you expect them to  
13 be available so that, if you called and said, hey, you  
14 know, there's a bad storm moving through, you've got  
15 to keep an eye on these sheep, or, hey, there's a  
16 report of a wildfire, which seems to be happening more  
17 often, would you expect them to be available, ready to  
18 respond, if called upon to do so?

19 A. At least one of the two.

20 Q. And when they're out on the range, do they  
21 have any motor vehicles with them?

22 A. Yes.

23 Q. What -- what would be available at each sheep  
24 camp?

25 A. A four-wheel drive pickup with a camper.

1 Q. All right. We have marked what is titled  
2 "Information for Master Job Order Member Survey" forms  
3 for the John Espil Sheep Company. The ones we found  
4 were for the years 2010 through 2014.

5 Would you or whomever was completing these  
6 forms on behalf of the John Espil Sheep Company have  
7 given accurate, truthful information to Western Range  
8 in completing these forms?

9 MS. WINOGRAD: Objection, lack of foundation.

10 THE WITNESS: You're asking me if I would  
11 have given them accurate information?

12 BY MS. WEBBER:

13 Q. Yes. I mean, I assume you would, but I have  
14 to ask to confirm before I can rely on the documents.

15 A. Yes.

16 Q. Now, on the very first page, about two-thirds  
17 of the way down, there's a question, "Do you use open  
18 range in more than one state?" Do you see that?

19 A. Yes.

20 Q. And your answer was yes, and you identified  
21 California, it looks like zero to three months.

22 A. Uh-huh.

23 Q. Now, you're based in Nevada, correct?

24 A. Yes.

25 Q. And your sheep, and consequently your

1 shepherders, are in Nevada for most of the year; is  
2 that correct?

3 A. Most of the year, yes.

4 Q. And then there can be a period of time, it  
5 looks like between zero and three months, when they  
6 may be in California instead of Nevada. Is that  
7 right?

8 MS. WINOGRAD: Objection, vague as to time.

9 BY MS. WEBBER:

10 Q. Has that -- has the amount of time that your  
11 sheep and herders may spend in California changed  
12 since 2010; is it still in the zero- to three-months  
13 per year range?

14 A. Normally it's three to four months. I think  
15 I put the zero down at the time I was still holding  
16 some sheep back in Nevada during that year, but not --  
17 normally, no.

18 Q. And if you look at subsequent pages, I think  
19 you did usually change it to two to three instead of  
20 zero to three months.

21 A. Two to three months. Well, I was probably  
22 being -- I guess I was careless.

23 Q. That's okay, I was just trying to understand.  
24 I understand now why you had in 2010 and you didn't  
25 during the other years. But if you turn to the fourth

1 Q. And you think for most of the time period  
2 from 2010 to the present, it's been three to four  
3 months out of the year that herders and your sheep  
4 would be on the California side of the border; is that  
5 right?

6 A. Yes.

7 Q. What time of year is it that the flocks might  
8 be crossing from Nevada into California?

9 MS. WINOGRAD: Objection to the form of the  
10 question.

11 THE WITNESS: It can be May -- usually around  
12 the first of May to the first of June. Sometimes on a  
13 wet year, can be a little later.

14 BY MS. WEBBER:

15 Q. Okay. And how long -- how -- I'm sorry.

16 What month would you expect to see the sheep  
17 returning from California back into Nevada?

18 A. October, sometimes September, October,  
19 depending on the year.

20 Q. All right. Turning back to Exhibit 3, these  
21 master job surveys, and going back to that first page.  
22 Do you see at the bottom where it asks you to list the  
23 salaries of the herders for 2010?

24 A. Uh-huh.

25 Q. That was left blank on this form, but can you



1 Instructions and Hiring Information"?

2 A. Yes.

3 Q. I want to ask you about not that paragraph,  
4 but the paragraph below that begins "Western Range  
5 Association and its rancher members." Do you see  
6 that?

7 A. Yes.

8 Q. That paragraph states that "Western Range  
9 maintains a strong commitment to providing a safe,  
10 efficient, and productive work environment." And  
11 "H-2A employee involvement with alcohol and drugs  
12 could be extremely dangerous to the employee himself,  
13 to all other employees, the general public, and third  
14 parties, and it is disruptive to the workplace."

15 Do you agree that as stated as Western  
16 Range's position that you want your employees to have  
17 a safe workplace and recognize that involvement with  
18 alcohol and drugs could be dangerous?

19 A. Yes.

20 MS. WINOGRAD: Objection, compound.

21 Go ahead.

22 BY MS. WEBBER:

23 Q. The Exhibit 6 goes on to say that "H-2A  
24 herders provide the primary care for hundreds of  
25 animals and are presumed to be in safety- and

1 calls for a legal conclusion.

2 THE WITNESS: As to taking care of themselves  
3 and the animals?

4 BY MS. WEBBER:

5 Q. Yes.

6 A. I'm sorry, I'm a little bit foggy on this  
7 because it's been going back and forth with these  
8 objections. Would you repeat specifically what you  
9 want?

10 Q. Let me move on to some more specifics in the  
11 next paragraph. Exhibit 6 goes on to that "Any person  
12 who is on duty or on standby who is found to use,  
13 possess, or be under the influence of illegal or  
14 unauthorized drugs or other illegal mind-altering  
15 substances or who uses or is under the influence of  
16 alcohol to any extent that would impede his ability to  
17 perform his or her duties safely and effectively will  
18 be terminated."

19 First, do you understand what is -- that this  
20 is referring to not only when people are actively on  
21 duty but when they're on standby, when they're on call  
22 ready to be called to duty?

23 MS. WINOGRAD: Objection to the form of the  
24 question as to the use of "standby" and "on call."

25 THE WITNESS: Are you asking me specifically

1 if someone is out there on standby or hanging around,  
2 whatever, if they get drunk or get on drugs that they  
3 should be fired?

4 BY MS. WEBBER:

5 Q. That's -- yeah, let's start with that. That  
6 crystalizes it nicely.

7 Would that be inconsistent with -- strike  
8 that.

9 A. Drugs are illegal.

10 Q. Right.

11 A. I have no plan, no.

12 Q. And if you found that one of your herders was  
13 using illegal drugs, would you fire them?

14 MR. HALL: Objection, calls for speculation.

15 THE WITNESS: Drugs, yes. Yes.

16 BY MS. WEBBER:

17 Q. Okay.

18 A. Sorry.

19 Q. And if you learned that one of your herders  
20 was under the influence of alcohol to the -- you know,  
21 was drunk -- had sufficient alcohol in his system to  
22 impede his ability to perform duties safely, would  
23 that be a concern for you?

24 MS. WINOGRAD: Objection to the form of the  
25 question as to whether or not that employee was on

1 duty or off.

2 THE WITNESS: Drugs and alcohol would both be  
3 concerns to me, yes. I really have no grounds to fire  
4 anybody other than -- they need to be away from the  
5 jobsite if they're doing drugs and doing alcohol.

6 BY MS. WEBBER:

7 Q. When you say haven't had reason to fire  
8 somebody, the herders that you have hired don't engage  
9 in these sorts of behaviors that would be of concern  
10 to you?

11 A. No.

12 Q. But if somebody who came to work for you were  
13 found to be drunk on the job, that's something you  
14 would have a concern with; is that fair?

15 A. Yes.

16 MS. WINOGRAD: Calls for speculation.

17 MS. WEBBER: Then I'd like to move on to  
18 what's been marked as -- sorry, what was sent to you  
19 as document G.

20 And we're going to mark that as Exhibit 7.

21 (Plaintiff's Exhibit 7 was marked for  
22 identification.)

23 BY MS. WEBBER:

24 Q. Do you have Exhibit 7, this is a Form 790  
25 covering a period of planned employment from March

1 Q. And so in submitting this request for a visa  
2 for Mr. Alvarado Llalli, the amount of hours he was  
3 expected to work was 24/7, correct?

4 MS. WINOGRAD: Objection, misstates the  
5 document, 24 hours per week.

6 THE WITNESS: That's what I'm reading.

7 BY MS. WEBBER:

8 Q. And when you say "24/7 hours per week," what  
9 do you understand that to refer to?

10 A. I think it's a misprint. I think somebody  
11 made a mistake in their typing. I can't imagine  
12 that's what they mean. 24/7 -- 24/7 hours, 24 days at  
13 seven hours a day or what are they talking about? 24  
14 hours per week. 24 hours per week, seven hours a day.  
15 I don't know.

16 Q. You are not familiar with the expression 24/7  
17 to refer to 24 hours a day, seven days a week?

18 A. I've probably heard that, but it's confusing  
19 the way it's written, to me.

20 Q. Okay. But when you signed this document, you  
21 didn't ask for that to be changed before you signed  
22 it, correct?

23 A. No, I didn't.

24 Q. Do you track which days your herders are on  
25 the range?

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

No. 85926

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

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**RESPONDENT WESTERN RANGE ASSOCIATION'S**  
**APPENDIX VOLUME 5, PART 2**

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Nevada State Bar No. 815

JOSE TAFOYA, ESQ.

Nevada State Bar No. 16011

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**ATTORNEYS FOR RESPONDENT**  
**WESTERN RANGE ASSOCIATION**

1 A. Yes.

2 Q. How long have you been keeping track of which  
3 days your herders are deemed to be on the range?

4 A. On the ranch or range?

5 Q. On the range.

6 A. They're always on the range.

7 Q. Given that they're always on the range, do  
8 you have to keep any record to know how many days they  
9 were on the range, or is that just something you'd  
10 know?

11 MS. WINOGRAD: Objection, calls --

12 MS. WEBBER: Let me start over, Ellen, and  
13 then you can make your objection, okay? Hopefully  
14 we'll come out cleaner that way.

15 Q. Given that it's your understanding your  
16 herders are always on the range when they're at work  
17 for you, do you actually have any reason to keep any  
18 record documenting that they were on the range every  
19 day that they worked for you?

20 MS. WINOGRAD: Objection to the form of the  
21 question as to whether he has any reason to keep  
22 records.

23 THE WITNESS: I'm going to make an answer --  
24 I'm going to amend my answer somewhat. There's the  
25 30- to 45-day period every year where they're on a

1 farm. They would be on a farm, not my farm, a leased  
2 farm, grazing.

3 BY MS. WEBBER:

4 Q. Okay. Is that in conjunction with lambing  
5 season?

6 A. It's -- no.

7 Q. Okay. What's the 30- to 40-day (sic) period  
8 that they're on a farm?

9 A. For breeding.

10 Q. And generally what period of the year does  
11 that take place?

12 A. November.

13 Q. So this will be back in Nevada; this is after  
14 they have returned from California?

15 A. Yes.

16 Q. So other than that 30- to 40-day period, it's  
17 your understanding that the herders are out on the  
18 range for the rest of the year that they are working  
19 for you, correct?

20 A. Yes.

21 Q. And do you keep any paper record of the days  
22 that they are on the range or the time period when  
23 they're at that farm that you mentioned?

24 A. I pay a bill for the farm, and so I have a  
25 good, solid record of how long they're at the farm.



1 Q. Okay. But you don't have a written record of  
2 the other days saying, yes, they were on the range  
3 today or anything like that; is that right?

4 A. That's right.

5 Q. And how -- do you -- when you refer to your  
6 herders being on the range, do you understand that to  
7 be consistent with -- your use of "on the range" to be  
8 consistent with the federal regulations that govern  
9 the H-2A shepherd program?

10 MS. WINOGRAD: Objection, calls for  
11 speculation, calls for a legal conclusion.

12 THE WITNESS: I'd have to see a copy of the  
13 regulation, I guess. I'm sure I do.

14 BY MS. WEBBER:

15 Q. And we'll circle back to that.

16 Let me ask, though, do you keep track of the  
17 date that a herder arrives to work for you and the  
18 date that they stop working for you?

19 A. Yes.

20 Q. And if the worker starts in the middle of a  
21 pay period, would you prorate their pay according to  
22 how much of the pay period they worked?

23 A. Yes.

24 Q. Did you -- at any time from 2010 to the  
25 present, have you ever kept track of the hours worked

1 by your herders?

2 A. Specifically?

3 Q. Yes.

4 A. Only from experience, but not specifically,  
5 no.

6 Q. Okay. So you don't have the herders either  
7 report, you know, started at 6 o'clock this morning or  
8 anything liking that?

9 A. No.

10 Q. Okay. And the herders are all out on the  
11 range, so you don't have the opportunity to observe  
12 what time they start working or end working in the  
13 course of each day?

14 A. Correct.

15 Q. All right. When herders are out on the range  
16 with their particular band or flock, how often would  
17 they be visited by you or some other member of the  
18 ranch?

19 A. Normally five to seven days.

20 Q. And is one of the purposes of those visits to  
21 drop off groceries or other necessary supplies?

22 A. Yes.

23 Q. By the way, in terms of the groceries that  
24 you deliver, do you ever include any alcohol in the  
25 grocery deliveries?

1 A. No.

2 Q. And in addition to delivering groceries, is  
3 there anything else you do when you stop in to check  
4 on the herders?

5 A. Yes.

6 Q. What else do you do?

7 A. We visit.

8 Q. Chat with them about how things have been  
9 going, how the sheep are doing?

10 A. How their family is. I know their families.

11 Q. That's right, you said you had even some  
12 fathers, their sons have worked for you, so you've got  
13 multiple generations of the same family have worked  
14 for you, right?

15 A. Right.

16 Q. And is there anybody other than you who would  
17 be doing these every five-day check-ins or would it  
18 typically be you?

19 A. Typically me.

20 Q. Now, do you have any estimate of how long you  
21 stay at each camp when you visit the herders?

22 A. No.

23 Q. Typically, are you seeing more than --  
24 visiting more than one campsite in a given day or does  
25 it take you all day to get there, visit, and come

1 A. Additional herders, yes.

2 Q. Okay. So you said typically you would have  
3 two herders per band. During lambing season, how many  
4 herders would you expect to have with that one flock?

5 A. Six, between five and six.

6 Q. Okay.

7 A. Five or six, not between, but five or six.

8 Q. I understand.

9 A. There's no five and a half.

10 Q. I understand, some years it may be five, some  
11 years it may be six, is that --

12 A. (Nods head.)

13 Q. And how do you -- if you usually only have --  
14 actually, I'm sorry, let me back up.

15 How many bands do you divide your sheep into?

16 A. What time of year?

17 Q. Going into lambing. I think you said in the  
18 winter, roughly 2200 to 2300. Do they stay that size,  
19 that many sheep together going through lambing, or do  
20 you break them into smaller groups?

21 A. I have two bands of 22- to 2300. It could be  
22 more, it could be at less. Each band with five or six  
23 men.

24 Q. Okay. And five or six men for lambing  
25 season; is that right?

1 A. 10 to 12.

2 Q. Across both bands, you'd have 10 to 12; is  
3 that right?

4 A. Yes.

5 Q. Given that for other periods during the year,  
6 like during the winter, you would only need -- it  
7 sounds like if you have two bands in the winter and  
8 two herders per band, you would only need four herders  
9 for the winter months. Is that correct?

10 A. I need five.

11 Q. Okay. What's the fifth one do?

12 A. I have another small flock of sheep that one  
13 guy cares for part of the time when they're -- they're  
14 usually on a farm. Which means building fence and  
15 that sort of thing.

16 Q. Okay. And why are those sheep separate from  
17 the rest of the bands?

18 A. Because they're the baby lambs for the --  
19 they're the replacement sheep for the upcoming year.

20 Q. Gotcha. So it sounds like you need more  
21 herders during lambing season than you do during the  
22 winter season. Are you just bringing some people in  
23 temporarily just for that month or how does that work  
24 in terms of staffing?

25 MS. WINOGRAD: Objection to the form of the

1 and docking.

2 Q. And what does docking refer to?

3 A. Um, castration and shortening the tail and  
4 vaccinating.

5 Q. And vaccinate. So that starts two to three  
6 weeks after lambing season you start the docking  
7 process, gathering and docking?

8 A. Gathering and docking.

9 Q. And about how long does the gathering and  
10 docking take?

11 A. I can only speculate; every year is  
12 different. Docking takes one day per band. If there  
13 are four bands, that's four days. Half a days.

14 Q. Okay. Fair to say you could get -- even if  
15 you had more bands than usual, that it's no more than  
16 a week, sounds like?

17 A. For the docking?

18 Q. For the docking.

19 A. It takes -- I have, like, 30 people come from  
20 town to help me, sometimes 50, and it only takes a few  
21 hours to do the docking.

22 Q. Is more time needed when you are gathering?

23 A. Several days before the docking is complete.

24 Q. Is there more time to do the docking or is  
25 that included in the four days?

1 Q. Okay. If a herder -- well, I guess if two  
2 herders are out on the range with a band of 2200  
3 sheep, how many sheep do you expect them to have when  
4 they are done at the end of their contract?

5 MS. WINOGRAD: Objection, calls for  
6 speculation.

7 BY MS. WEBBER:

8 Q. In other words, is the goal to come back with  
9 all the sheep?

10 A. The goal is to come back with all the sheep.

11 Q. And is that one way you evaluate a good a  
12 herder is how much of the flock they keep?

13 A. Not always.

14 Q. But is that something you would consider?

15 A. It's not their fault if the coyotes are  
16 eating their sheep.

17 Q. Okay. What instructions do you give to  
18 herders when they first come to work for you?

19 MS. WINOGRAD: Objection, asked and answered.

20 THE WITNESS: I usually give them training in  
21 safety, firearms. I advise them on what clothing they  
22 may need or shoes to wear, what cold weather gear, et  
23 cetera, a good sleeping bag.

24 BY MS. WEBBER:

25 Q. Do you advise them as to how to deal with

1 Q. It sounds like it's relatively rare to get  
2 somebody transferred from another ranch. But when you  
3 do have somebody like Elvis come in, do you have to  
4 give them any further instructions from what they were  
5 trained at the prior ranch?

6 MS. WINOGRAD: Objection, calls for  
7 speculation as to his knowledge of what they were  
8 trained at their prior ranch.

9 But go ahead.

10 THE WITNESS: Not much.

11 BY MS. WEBBER:

12 Q. What -- do you tell the herders who come to  
13 work for you how quickly you expect them to respond if  
14 they see or hear that something is amiss with the  
15 flock?

16 A. No.

17 Q. Given their experience as sheepherders, is  
18 that something you leave up to their experience and  
19 judgment?

20 A. Yes.

21 Q. When the herders are in Nevada as opposed to  
22 California, is there housing for the entire part of  
23 the year they're in Nevada in sheep camps or trailers?

24 A. Yes.

25 Q. And do all of your sheep camps have a stove



1 for them to use for cooking?

2 A. Yes.

3 Q. And do they have refrigeration?

4 A. Yes.

5 Q. Is that propane-powered refrigerators?

6 A. Yes.

7 Q. Do they have any sort of toilet or shower  
8 facilities?

9 A. Showers, we carry -- it's a -- I can't think  
10 of the name. It's a company. It's called a bag  
11 shower. It holds like three gallons of water, it's a  
12 black plastic, hang it in the pine tree and the sun  
13 warms it. In the afternoon, you can take a nice  
14 shower.

15 Q. Oh, you get the sun to heat up the water.  
16 That is very clever. I was thinking you would have to  
17 heat the water up on the stove. That's nice.

18 MS. WINOGRAD: Eco-friendly too.

19 BY MS. WEBBER:

20 Q. In the sheep camps, do they have electricity  
21 for lights or anything else?

22 A. Yes.

23 Q. And how is that powered?

24 A. Solar panels.

25 Q. And at least since 2010, your sheep camps

1 have been equipped with those sorts of solar panels?

2 A. I believe so, yeah.

3 Q. So do you have an understanding of what time  
4 of day herders begin their work? And I should say  
5 focusing for now just on the period when they're in  
6 Nevada, so from September-October to May or early  
7 June.

8 MS. WINOGRAD: Object to the lack of  
9 foundation that it's all uniform.

10 Go ahead and answer.

11 THE WITNESS: Why don't you ask one more  
12 time, please.

13 BY MS. WEBBER:

14 Q. Sure. For the portion of the year that  
15 herders are in Nevada -- so from your prior testimony  
16 I understand that would be September-October to May or  
17 June -- during that portion of the year, do you have  
18 an expectation as to when the herders will begin their  
19 workday?

20 MS. WINOGRAD: I'm going to object. That's a  
21 different question: expectation versus understanding.  
22 I don't know which one he's supposed to answer.

23 MS. WEBBER: When you objected as to the form  
24 of the question, Ellen, I took an opportunity to  
25 rephrase the question in a way I thought might be more

1 Q. And I assume that the herders are responsible  
2 for making sure that the dogs get fed.

3 A. Yes.

4 Q. You don't want them to get so hungry that the  
5 lambs look like food; you want to make sure they keep  
6 fed?

7 A. Right.

8 Q. And once the herder has the sheep up, are  
9 they moving them to a fresh area for grazing?

10 A. That's fair to say, yes.

11 Q. And under the terms of your leases with the  
12 forest service and BLM one of your obligations is to  
13 make sure you avoid overgrazing any one area; is that  
14 right?

15 A. That's right.

16 Q. So the herder sort of maneuvers the sheep to  
17 go in the right direction so they don't trample down  
18 what they have already been feeding on and they move  
19 to fresh grass each day?

20 A. Yes.

21 Q. And how long -- once the sheep have gotten up  
22 and moving to the right direction and are grazing, how  
23 long will the herder be staying out with the sheep?

24 MS. WINOGRAD: I'm going to object to the  
25 form of the question just because of grazing and the

1 anticipating it. I reserve the right to call this  
2 witness back, but I think for John's sake, I think I  
3 have no questions at this time.

4 MS. WEBBER: I just want -- I apologize, I  
5 don't want to prolong this, but I heard, I thought,  
6 slightly different explanations of how the pay rate  
7 changed.

8 FURTHER EXAMINATION

9 BY MS. WEBBER:

10 Q. When you have individuals on the border where  
11 they're back and forth within the course of a week, I  
12 understood at first for you to say that they stayed on  
13 the Nevada rate until they were completely crossed  
14 over and were solidly in California. Is that correct?

15 A. That's what we just said.

16 Q. I thought so, but then I thought I heard it  
17 phrased differently by Mr. Hall, so I just wanted to  
18 make sure. Thank you for clarifying that --

19 A. I'm talking about -- we're talking about the  
20 past. Historically, that's how we did it.

21 Q. Okay.

22 A. Now once they cross back and forth and  
23 they're staying in California even for a day, we've  
24 switched over to paying full-time California wages at  
25 that time.

# **EXHIBIT 29**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ABEL CANTARO CASTILLO on )  
behalf of himself and those )  
similarly situated )  
 )  
Plaintiff )  
 )  
vs. )  
 )  
WESTERN RANGE ASSOCIATION )  
 )  
Defendants )  
 )  
\_\_\_\_\_ )

Case No. 3:16-cv-  
00237-RCJ-CLB

DEPOSITION of SIERRA KNUDSEN, taken remotely  
via Zoom videoconference, commencing at 9:42 a.m., on  
Monday, February 1, 2021, before Marlene Duron, RPR, CSR  
No. 13333 and CCR No. 958.

1 Q And you were members prior to 2010, correct?

2 A Yes.

3 Q And you stayed members from 2010 until you  
4 ended your goat operation and -- and moved to the cattle  
5 ranch?

6 A Yes.

7 Q And I understand that you were actually members  
8 of Western Range even earlier, but my questions for you  
9 are -- to the extent you can remember any differences --  
10 are really focused on that time period from 2010 until,  
11 it looks like, your last herder left in early 2016,  
12 okay?

13 A Okay.

14 Q And did you join Western Range in order to  
15 obtain access to H-2A herders?

16 A Yes.

17 Q And did you rely on Western Range for  
18 understanding the H-2A rules?

19 A Yeah. They -- they explained that and sent out  
20 paperwork to be able to go over.

21 Q Okay. And did you rely on Western Range to  
22 submit the necessary paperwork to the government for  
23 getting approval of those H-2A herders?

24 A Yes.

25 Q Are you familiar with the term "job clearance

1 order"?

2 A I am not.

3 Q Okay. Were you aware that there was a rule  
4 that any -- any job, including a shepherding job, had  
5 to be posted for U.S. workers to have the chance to  
6 apply before the government would approve bringing in an  
7 H-2A worker from outside the U.S.?

8 A Yes, I vaguely remember having to put an ad in  
9 the paper.

10 Q Okay. And was that posting -- was that job  
11 posting something that Western Range assisted you with?

12 A I -- I don't remember.

13 Q Okay. Do you recall that there was a formal  
14 application to the Department of Labor to approve  
15 bringing in an H-2A worker?

16 A Can you say that again? I'm sorry.

17 Q Sure. Do you recall that there had to be a  
18 formal application for a -- an employment certification  
19 from the Department of Labor to authorize bringing an  
20 H-2A worker into the United States?

21 A Vaguely, yes.

22 Q Okay. Okay. Was that the sort of thing you  
23 relied on Western Range for taking care of for you  
24 rather than completing those forms yourself?

25 A Yes.



1 Q And were you familiar with visa applications,  
2 Forms I-129, that were made in connection with bringing  
3 H-2A herders to work for you?

4 A Vaguely, yes.

5 Q And, again, were those forms that you relied on  
6 Western Range to complete and understand the  
7 requirements for?

8 A Yes.

9 Q Do you recall if you ever had to review or sign  
10 any of the forms that Western Range submitted to the  
11 government in connection with obtaining H-2A workers for  
12 you?

13 A Yes, and I think some of those were some of the  
14 files that you sent that had my signature that I signed  
15 through. I had forgotten about those until I saw those.

16 Q Do you remember receiving a copy of a member  
17 manual from Western Range?

18 A Yes, I believe so.

19 Q Okay. Are you able to open Exhibit 2, which is  
20 a member's manual that was produced to us?

21 And, Ellen, if this helps you, it's marked WRA  
22 000691.

23 MS. WINOGRAD: Thank you.

24 (Deposition Exhibit 2 marked.)

25 THE WITNESS: Okay. Does it have 47 pages to

1 don't remember going through the whole 50-page rule deal  
2 every time. I believe they just sent out updated  
3 records, if they got them.

4 Q So you -- you have Exhibit 2 -- you have the  
5 members's manual for, sort of, the things that didn't  
6 change. And then, you'd get periodic updates for things  
7 that did change, like the wage rates that were listed?

8 A I believe so, yes.

9 Q And again, you relied on Western Range -- the  
10 information provided to you by Western Range to be sure  
11 you were doing what was required with respect to the  
12 H-2A workers who worked for you?

13 A Yes.

14 Q So turning back to page WRA 700 in Exhibit 2,  
15 that says, at the top, "Wage rate 2010-2011."

16 Do you have that?

17 A Yes.

18 Q Okay. And it actually -- and there's -- about  
19 halfway down the page, there's a row for Nevada.

20 Do you see that?

21 A Yes.

22 Q I should first confirm, is it correct that when  
23 you were running goats, that -- that for the entire time  
24 you were doing that, the goat -- or, I should say, at  
25 least between 2010 and 2016, when you were running

1 goats, that they were always in Nevada and not in other  
2 states?

3 A Yes.

4 Q So it was your understanding that the row for  
5 Nevada would have provided the wage rates that you were  
6 supposed to be paying, at least for the years that are  
7 covered by this page of Exhibit 2?

8 MS. WINOGRAD: I'm going to object --

9 THE WITNESS: Yes.

10 MS. WINOGRAD: -- this is Ellen Winograd --  
11 objecting to the -- calls for a legal conclusion, for  
12 lack of foundation.

13 MS. WEBBER: I'm asking only for the witness's  
14 understanding.

15 BY MS. WEBBER:

16 Q Can you answer that, Ms. Knudsen?

17 A Yes.

18 Q So you understood that in 2008, 2009, if you  
19 had an H-2A herder working for you, you had to pay them  
20 at least \$875 a month?

21 A Yes.

22 Q Okay. And it looks like, in the following  
23 year, that actually decreased to \$800 a month, correct?

24 A Yes.

25 Q And when you hired new H-2A workers -- when

1 A Yes, it just came up.

2 Q Great.

3 And so it asks for your name and address and,  
4 you know, contact information, correct?

5 A Correct.

6 Q Okay. And it asks some basic information about  
7 what -- what lands you have. And it refers to sheep,  
8 but you -- I assume you were answering this with respect  
9 to your goats, the same as other ranchers might have  
10 been for sheep?

11 A That's correct.

12 Q About halfway down the page, there's a  
13 question: "Do you use sheep camps all year or do you  
14 pack it sometime during the year?" And you answered,  
15 "Yes." And so when -- when it refers to using "sheep  
16 camps," can you describe, briefly, what facilities --  
17 what sort of facilities you're referring to as sheep  
18 camp as opposed to packing?

19 A Yeah. It's sheep camps we have that are used  
20 by most of our herders there. It's got a full fridge.  
21 It had a wood stove. It had beds. It had storage,  
22 cooking -- cooking stove, a table to eat on. They  
23 actually make them pretty nice.

24 Q So was this, like, a cabin or some permanent  
25 structure or was this, like, a trailer that could be

1 Exhibit 7 --

2 And, Ellen, this is Bates No. WRA 8339.

3 -- do you see at the top of the page, there's a  
4 section for wage rates?

5 A Yes, I see that.

6 Q And the amount listed is \$750 monthly. Was  
7 that a number that you provided to Western Range, or is  
8 that a number that Western Range decided to include in  
9 this form?

10 A I do not know that.

11 Q Okay. Do you have any recollection of ever  
12 telling Western Range what wage rate you wanted them to  
13 post for the positions you were filling?

14 A No.

15 Q On the first page of Exhibit 7, in box No. 11,  
16 sort of on the right-hand side, the top half, next to  
17 No. 11, it has the anticipated number of hours of work  
18 per week.

19 Do you see that?

20 A I see that, yes.

21 Q Okay. And they're listed as "on-call up to" --  
22 I assume it's -- was supposed to be up to 24 hours per  
23 day, seven days a week; is that correct?

24 A I see that, yes.

25 Q And was it -- was that your understanding, that

1 those were the expectations for the herder positions  
2 filled through Western Range?

3 A I understand that just because I've worked with  
4 agriculture.

5 Q Sure. And that's -- that -- that's what you  
6 need, right? You need somebody who can be there when  
7 the goats need them?

8 A Correct.

9 Q Looking further down the page to box No. 15,  
10 the bottom half of the page, where it says, "Job  
11 Specifications" --

12 Do you see that?

13 A Yes.

14 Q -- if you can review the paragraph in English  
15 underneath that section, and let me know if you think  
16 that's a fair description of the job responsibilities  
17 that your herders had.

18 MS. WINOGRAD: I'm going to object to the form  
19 of the question. Is it fair or is it accurate is -- I  
20 think, is -- is what you're asking her?

21 MS. WEBBER: I'm asking her if it's a fair  
22 description.

23 MS. WINOGRAD: Well, then, I'm not quite sure I  
24 understand what a "fair description" is. I would  
25 certainly understand what an accurate description is.

1 BY MS. WEBBER:

2 Q Ms. Knudsen, have you had the chance to read  
3 that paragraph?

4 A I'm still going through it. Thank you.

5 Q Oh, sorry. Go ahead.

6 (Pause in the proceedings.)

7 THE WITNESS: Okay. That would describe  
8 some -- yeah, I would think that would be fair.

9 BY MS. WEBBER:

10 Q Okay. Let me just break this out a little bit.  
11 The first sentence refers to:

12 "Attending the sheep or goat flock  
13 grazing on range or pasture. Herds  
14 flock and rounds up strays, including  
15 trained dogs."

16 First, it's correct that you expected your  
17 herders to attend -- attend the flock on the -- while  
18 they are grazing and round up any strays; is that  
19 correct?

20 A That's correct, but also when they were out  
21 grazing. I mean, they weren't there at all times. I  
22 mean, there was times when they -- I don't know how best  
23 to describe it other than that flock gets to know that  
24 shepherd or that herder, and they -- they get to a point  
25 where those sheep or goats know where that herder is,

1           A     Yes, they did.

2           Q     Now, do the -- do predators only come out at  
3     night, or did the herders also have to deal with coyotes  
4     or other predators when the goats were grazing during  
5     the day?

6           A     Again, that kind of depends on where we were at  
7     in the time of the season. When we're kidding and when  
8     there's -- so when we kid goats, a lot of times you'll  
9     have to leave those that have kidded behind, and the  
10    rest of the herd keeps moving. And so there is always  
11    that danger that there are goats that are left behind,  
12    that they are taking care of their young. And so, you  
13    know, that will attract predators. But a lot of times  
14    we were able to have enough of the guardian dogs that  
15    they were able to kind of spread out and be able to try  
16    and get a handle on that, also.

17          Q     But it's something you'd say herders and -- and  
18    the dogs need to be alert to over the course of the day  
19    to make sure that the flock of goats is safe,  
20    particularly when there's young kids with them?

21          A     Yeah. You know, there's -- that's always a --  
22    a danger. You just never know.

23          Q     Okay. Turning back to Exhibit 7 in the job  
24    description, after referencing "guarding the flock from  
25    predatory animals," it goes on to reference, "guarding



1       them from eating poisonous plants." Now, I -- I've  
2       heard that goats can eat almost everything, but are  
3       there some things -- some plants that would be bad for  
4       goats to eat?

5             A     Yes.

6             Q     And one of the responsibilities of your herders  
7       is to make sure, when the goats are grazing, that they  
8       don't go into areas with plants that would be poisonous  
9       for them?

10            A     That's correct. And a lot of the times, on  
11       areas that -- where we were, where we grazed, that's  
12       something that my husband would look at. And he's very  
13       familiar with, you know, anything that could be a danger  
14       or if anything was of feed value to use. And so he had  
15       a pretty good idea of that before and was able to let  
16       the herders know so they'd be aware what part --

17            Q     But where --

18                    I'm sorry. I apologize. I didn't know you  
19       were still speaking. Go ahead.

20            A     No, that's okay.

21                    Just, kind of, give them a warning, if there  
22       was one. Off the top of my head, I can't remember  
23       having incidents where we really ran into that problem.  
24       We had with cattle, but not when we were with the goats.

25            Q     So your husband was able to identify to the

1           A     When we would work our goats and, you know, get  
2 things to be able to ship out and that -- I can recall  
3 giving them, like, a pour-on for worms. And we were  
4 able to give them a vaccination. But when we did those  
5 big days, when we did administer those vaccines, me and  
6 my husband were there and usually were the ones that did  
7 that. And the herders were the ones that would usually  
8 work them up the alley and be able to, you know, keep  
9 that flow coming to where we could get them all  
10 finished.

11           MS. WINOGRAD: We should put you to work on  
12 vaccine distribution here now, because that's something  
13 you could --

14           MS. WEBBER: That's -- that's what we need. We  
15 need more herders to get people through the lines more  
16 quickly.

17           MS. WINOGRAD: I think she said it was their --  
18 the members, not the -- the herders themselves. But  
19 anyway, thank you.

20           MS. WEBBER: Well --

21           MS. WINOGRAD: That's all. You can leave that  
22 on the record, but I was just joking.

23           MS. WEBBER: I -- I understood.

24           BY MS. WEBBER:

25           Q     Turning back to Exhibit 7 and the position

1 description, it also lists, "assisting in lambing,  
2 docking, and sheering." Since you ran goats, I assume  
3 that the proper term is "kidding" rather than "lambing";  
4 is that right?

5 A That's correct. That's correct.

6 Q But -- but the herders did assist in that; is  
7 that right?

8 A They did, yes.

9 Q Okay. And "docking," is that the -- I think  
10 you referred to clipping the ears. Is that what the  
11 docking refers to or does docking involve the tail?

12 A No. That -- sorry. That's referring to tails  
13 on lambs. So docking and sheering were not -- not  
14 relative to what we did with goats.

15 Q Understood.

16 But were the herders involved in -- in  
17 castrating the male kids and clipping the ears?

18 A Yes.

19 Q All right. Do you have Exhibit 9, which is --  
20 hold on, let me get the right title. It's the 2011 -- I  
21 have it short-formed as "2011 cert." It's the 2011  
22 application for temporary employment certification.

23 And, Ellen, the first page of the exhibit is  
24 Bates No. WRA 8320, although I'm going to actually start  
25 questions, probably, on 8323.

1 Q Okay. Now, during the time that you had H-2A  
2 herders working for you, did you ever keep track of the  
3 number of hours they worked each day or each week?

4 A No. And I don't think there's any way you  
5 could do that, just because of -- in agriculture, it's  
6 kind of impossible. And it just -- it's -- it's so  
7 dependent on weather. It's dependent on where they are  
8 at in location. Every operation is different on what  
9 they expect. We never -- we never had that expectation  
10 or -- or anything like that with them.

11 Q And were you aware that, in fact, for herders,  
12 unlike for other H-2A workers, that tracking hours was  
13 not required?

14 A Can you say that again? I'm sorry.

15 Q Sure. Were you aware --

16 MS. WINOGRAD: There's a double-negative --  
17 there was a --

18 MS. WEBBER: -- there might be -- I --  
19 understood. Understood. I'm going to reword that.

20 BY MS. WEBBER:

21 Q Were you aware that there were special rules  
22 for herders who worked under the H-2A program different  
23 from the rules applicable to other H-2A workers?

24 A Yes.

25 Q Okay. And were you aware that one of those

1 kidding, when there are extra herders, you know, they  
2 learn to kind of switch around to where some are  
3 preparing meals, you know. They all, kind of, have  
4 their jobs, and they would switch off.

5 Q So some -- they'll take turns cooking dinner  
6 for everybody, for example?

7 A Yes..

8 Q Okay. But you said that the kidding, though,  
9 was not taking place near where your ranch is located,  
10 but they'd be -- they'd be out, depending on -- on  
11 what -- where they were in the cycle in terms of what  
12 patch of land they were on. But it wouldn't be taking  
13 place back at the ranch, correct?

14 A That's correct. Most of the time they would  
15 have -- like, during kidding they would -- their camp  
16 would not be moved as often, just because they would  
17 have -- they would set up some, oh, like, little pens  
18 where they can have those nannies that were needing help  
19 with extra babies or trying to graft them on other  
20 mothers who were right there by the camp. So to have to  
21 keep moving all that and all the equipment would be  
22 quite a headache. So there were times that they were,  
23 you know, stationed in one place for quite a while, just  
24 for that to be a little bit easier.

25 Q Sure. And some of those kids -- some of those

1 kids would have to be bottle-fed, if their -- if their  
2 mother wasn't taking care of them or, maybe, had too  
3 many kids to take care of; is that correct?

4 A On occasion, yes. And one thing that'll they  
5 do a lot with goats is, if they find, like, a baby that  
6 might have gotten left that would have been a twin or  
7 whatever, they're weak, and so a lot of times they would  
8 make a bottle when they went out to check the health and  
9 stuff. And if they found some that looked like they  
10 need it, they would give it a little bit, just to keep  
11 it going, and then bring it into camp. And if there  
12 were other nannies that -- that would have extra milk,  
13 then they would try to graft those babies on those  
14 mothers.

15 There's just -- there's just a lot going at  
16 that time, when they have so much confusion. And, you  
17 know, they're there to keep things alive. And they did  
18 a really good job at it, because they put the effort  
19 into trying to find a mom instead of to keep making  
20 bottles and that. They -- they knew that the mothers  
21 would do a lot better than having to feed bottles all  
22 the time.

23 Q Sure. And so it sounds like kidding season was  
24 sort of all hands on deck. And as you said, your  
25 husband usually spent the whole kidding season out there

1 with them, correct?

2 A Correct. And my kids did, too. It can be a  
3 busy time, but a lot of that depends on the weather,  
4 too. You know, I can remember some years when there was  
5 a storm that'd come through with winter, and it was a  
6 lot more -- I don't know if it would be considered more  
7 work, but it was just more stress, because when they're  
8 cold and they're wet, just barely born, it's -- it's  
9 that much harder to keep them alive.

10 Q Sure. And are there -- are there typical hours  
11 when you'd expect the work to begin during kidding  
12 season, particular time of day?

13 A Oh, I -- they take the nights off, you know.  
14 We don't make them work through the night. And if  
15 there's anything that happens during the night, they  
16 clean it up in the morning. If there's stuff left, they  
17 take care of it. It -- it just depends on your herders.  
18 And -- and the ones that we had were good at that and  
19 being able to read that to where they could take care of  
20 everything and also get to sleep and rest, if they  
21 needed to be able to go on the next day.

22 Q Right. So that's why I was -- or I was  
23 assuming that they were getting to sleep at least some  
24 at night, and that's why I was asking you about what  
25 time in the morning you'd expect work to begin during

1 kidding season.

2 A Oh, during kidding they usually -- if it's  
3 usually colder, they're going to start a little later in  
4 the morning, just because it takes them that much longer  
5 to kind of warm up and decide to go in -- in the  
6 morning. And I'm referring to the goats, not the  
7 herders. But usually the sun comes up, it will warm  
8 them up. And, you know, when they're ready to graze or  
9 when they're ready to go with their kids, if they're big  
10 enough, then -- then that's -- I wouldn't say there's a  
11 set time. If it's cold in the winter, warming up might  
12 be 8 o'clock, it might be 10 o'clock, depending on what  
13 the weather is that day.

14 Q And you said that during kidding season, often  
15 you'd keep the sheep camps in one location. So when you  
16 talk about the -- the goats going -- are they -- are  
17 they going far enough away from the sheep camps that  
18 they need to -- you know, they need to be followed or  
19 are they within sight, still, of -- of where the herders  
20 are based from at the sheep camp?

21 A Well, basically, during that time of the year,  
22 there's enough herders that when they do start going,  
23 somebody is with them. But then, there's also those  
24 that are in the back that are taking care of those that  
25 got left, and there are those that are probably making



1 herders and the working dogs for some of them. Was one  
2 of the responsibilities of the herder to make sure the  
3 dogs got fed and had access to water?

4 A Yes.

5 Q Were herders ever responsible for putting up  
6 temporary fencing in any of the areas where they might  
7 be bringing the flock?

8 A In kidding season, I can remember one year we  
9 were on pivots. And so when we had the extra herders,  
10 or when me and my children were there, or husband, we  
11 would go and set a fence to where it was kind of set up  
12 in a clock pattern to where once you were done with one  
13 area, it can open in and go to the next one. And so we  
14 had a lot of that set up prior, so it was just a matter  
15 of moving them to the next -- the next section.

16 Q So when they're -- but when they're out with  
17 the goats, aside from kidding season, is setting up  
18 fencing something you would typically have your herders  
19 do at any of the places they're located?

20 A Just when they had, like, the night pen that  
21 they would bring them into at night. That was the only  
22 fencing that would be set up, other than when we were on  
23 pivots and rotating them like that.

24 Q And while the herders were out with the flock  
25 grazing, how far would they be from, you know,

1 nearest -- the nearest town?

2 A Oh, so we've never been closer than an hour.  
3 And so it would -- all the areas that they were at, it  
4 would probably be an hour, an hour and a half, at most,  
5 to the nearest town.

6 Q Okay. And that's an hour, hour and a half  
7 driving, correct?

8 A Correct.

9 Q So while the herders were out with the goats,  
10 they wouldn't be able to -- if they were -- they  
11 wouldn't have a car to drive off and go into town or,  
12 you know, go to any other part of the state to -- to  
13 visit friends or anything like that. They'd -- they'd  
14 really only be able to leave the sheep camp area when  
15 your husband or somebody else came and gave them  
16 transportation, correct?

17 A That's correct. Other than the one time that  
18 one -- the cell phone got used. You'd be amazed at how  
19 fast they can get a car to show up to pick them up. So  
20 there is that, but it's not very common.

21 Q So it -- it's not too many Uber drivers or  
22 taxicabs waiting on call out in Ruby Valley, correct?

23 A No. And I don't think there was even Uber back  
24 then. That's -- that's pretty new. So it's --

25 Q And you're only aware of one time when somebody

1 was able to get a ride when they were supposed to be out  
2 with the flock and instead got a ride someplace else,  
3 correct?

4 A As far as us, yes. But I know of other  
5 businesses that -- that ran into that same problem.

6 Q All right. Now -- and I'm -- for my own  
7 memory, I'm just going to refer back to Exhibit 3,  
8 although you don't need to look at it, unless you need  
9 to refresh your own memory. I wanted to go through some  
10 additional details on the sheep camps.

11 (Interruption in the proceedings.)

12 BY MS. WEBBER:

13 Q Sorry, there's a bit of a beeping.

14 A I'm sorry. My phone was low, and the only way  
15 I could charge it was to get in my car. So I had to get  
16 in my car and start it.

17 Q Okay. I'm sorry. I've got it. Before, the  
18 beeps were people joining or leaving, and I wasn't sure  
19 what to make of that beep.

20 A I'm sorry.

21 Q No problem, at all. And we'll try and keep  
22 things moving along before your phone runs down any  
23 further.

24 So in the sheep camps, you said that they had  
25 the -- the 55-gallon drum of water that they could use

1 for cleaning or bathing, correct?

2 A Correct.

3 Q And so if they -- if they wanted hot water,  
4 they would have to heat that up on the stove?

5 A Yes.

6 Q Okay. Was there -- was there any kind of a  
7 shower or would it be something where they have to heat  
8 up water and sort of have a -- what I used to call a  
9 sink bath, but sort of wash up that way?

10 A Actually, some of our camps had bathtubs in  
11 them, so they had that. Also, we have some big tubs  
12 that are big enough to do a bath in, that we do  
13 supplement a mineral in. And so they're able to use  
14 that. When they were close to the house or close to  
15 where, you know, we were in Ruby Valley, they came and  
16 used our house when they -- you know, when they had a  
17 break or when they had their time off at the house.

18 Q Understood.

19 I -- I wanted to focus on -- on what -- what  
20 they had available to them at the sheep camps. And so  
21 those -- those bathtubs they would have available, that  
22 would be something they would fill -- they presumably  
23 would want to heat the water on the stove and use that  
24 to fill the tub; is that correct?

25 A Right. Unless it was in the summer, and I

1 think they really didn't care if it was warm then.

2 Q I was going to say, Nevada in the summer, I'm  
3 sure there -- I'm sure there were times they were happy  
4 for it to be as cold as possible.

5 A Exactly, yeah.

6 Q Now, at the sheep camps, they did not have  
7 inside toilets, correct?

8 A They did not.

9 Q So did they -- what did -- what did they do?  
10 Did they dig a latrine? Or what was their -- what was  
11 their instruction for how to handle waste?

12 A I actually never asked them that or knew that.  
13 They just took care of it on their own, and I --

14 Q Okay.

15 A -- I never inquired.

16 Q Okay. In the sheep camps, they didn't have  
17 electricity, correct?

18 A Most of our camps had solar panels, and so they  
19 were able to run a lot on that. And some of the lights  
20 and that to some of our camps were run on propane, which  
21 we switched out and filled and brought those when we  
22 brought groceries and -- and other supplies.

23 Q So although they weren't wired for electricity,  
24 the solar panels, at least weather cooperating, would  
25 allow them to run lights; is that right?

1           A     Yeah, lights and -- and a lot of times, their  
2     electronics and stuff. They -- they were very creative  
3     in -- in finding ways to charge their phones and the  
4     electronics they were able to get, also.

5           Q     I was going to ask that, because you'd  
6     mentioned their cell phones. I was going to ask if  
7     that -- that was how they charged their cell phones,  
8     using the solar power.

9           A     Yes, it was.

10          Q     Okay. Now, you said they did have  
11     refrigeration. Was that -- was that also solar-powered?  
12     Or what did you do for the refrigeration?

13          A     Those also ran on propane, I believe.

14          Q     Okay. I assume -- well, I shouldn't assume.  
15     Let me -- let me ask you this way: Given the -- the  
16     limited electricity -- electrical situation and the lack  
17     of connection to the grid, generally, I assume, no cable  
18     TV, no DIRECTV, stuff like that?

19          A     Actually, the one herder that we did have,  
20     the -- Percy, he did have a Dish TV, I can remember, but  
21     that was all his doing. And I don't know how that all  
22     worked, but he was smart enough to get it done.

23          Q     Okay. And that was something he -- then he --  
24     he paid the contract with Dish TV to pay for the  
25     service?

1           A     He paid for the service. I -- I have no idea  
2           what it costs or -- I have no details other than I know  
3           he had it.

4           Q     Okay. But the sheep camps didn't come equipped  
5           with a television set, correct?

6           A     No. That was something else that he bought  
7           later on with the -- the money that he got from work.

8           Q     Okay. And since they were an hour away from --  
9           or more, away from the nearest town, I assume, you know,  
10          nobody -- nobody's doing pizza delivery or anything like  
11          that. They're -- they're preparing all their own meals?

12          A     As far as I know, yes, unless I was out there.  
13          And then, if me or my husband were there, we did a lot  
14          of the cooking.

15          Q     And except for what you've identified with  
16          the -- the kidding seasons or when they were getting the  
17          goats weaned and ready for sale, the herders would --  
18          would have been by themselves, correct? So there --

19          A     Correct.

20          Q     -- wouldn't have been other people there?

21          A     No.

22          Q     When herders started working for you, the new  
23          ones first coming to work at your -- at your ranch, what  
24          instructions did you give to them?

25                   MS. WINOGRAD: I'm going to object to the form

1 of the question. It's actually range herding, not ranch  
2 herding. But anyway, go ahead.

3 BY MS. WEBBER:

4 Q I -- I'm sorry, I meant ranch as -- in terms of  
5 your operation, K&N Livestock. When they first came to  
6 K&N Livestock to work for you, what instructions were  
7 they given?

8 A Well, that would have been mainly my husband  
9 because he's the one that speaks Spanish, and he knows  
10 more about livestock and -- and area grazing and that.  
11 But basically, kind of an understanding of the area,  
12 boundaries, perimeters, where they needed to stay in,  
13 the medicine and what was needed to care for the  
14 animals, kind of what was expected as far as watching  
15 them and being with them, letting us know, you know, if  
16 anything arises that they needed help with or -- or just  
17 kind of what the situation was where they were at.

18 Q And can you tell me any details about what --  
19 what their instructions would have been in terms of  
20 their responsibility to watch over the herd and -- and  
21 what sorts of things they should deal with or alert you  
22 about?

23 A As far as those areas where they can graze,  
24 like, boundaries -- if you've got neighbor fences, they  
25 would have to stay on whichever side of the fence we



1 there with that consistence to be able to, you know,  
2 know a regular schedule for them. That would be  
3 something my husband probably would know, but I do not.

4 Q Okay. And -- and unlike -- unlike some of us  
5 who get to work a regular workweek and take weekends  
6 off, I assume when the herders are out with the -- with  
7 the goats, that they're -- they're working, you know,  
8 every day, including the weekends, unless it's one of  
9 those instances where they've -- they've gotten a break  
10 or vacation time. But when they're out with the goats,  
11 then that's seven days a week, correct?

12 A That's correct.

13 Q And you talked about them taking a break for  
14 lunch, but even when they're eating their lunch, they've  
15 got to keep an eye on the flock, correct?

16 A Correct. But a lot of times goats, they  
17 will -- they will kind of bed down and take a nap, also.  
18 And they usually do that in the heat of the day, so it's  
19 usually about that time. So a lot of times, if you show  
20 up at lunch, they're all going to be bedded down, taking  
21 a nap, and they don't get up and start it out until the  
22 herder comes out and -- and starts them out again,  
23 usually.

24 Q Okay. And you don't know how many times during  
25 a given week or month that a herder's out there, that

1 BY MS. WEBBER:

2 Q So in the summer --

3 A No -- go ahead.

4 Q I was going to say, in the summer, where it  
5 would stay light later, are there other responsibilities  
6 that the herder would have after bringing the -- the  
7 herd settled down for the evening and making his own  
8 evening meal? Is it -- is there anything else that the  
9 herder would be responsible for, other than just the  
10 general keeping an eye out for predators or things of  
11 that nature?

12 A Yeah, I can't think of anything. Usually  
13 those -- those goats get so used to a routine that when  
14 they do it every day, when they come in for the night,  
15 you know, they find their spot for bed that night and  
16 they stay there until the next morning, unless you have  
17 outside predators or whatever that might change that.  
18 But they get into a routine and so do those herders.

19 Q You had mentioned earlier that as the herders  
20 worked with the flock, that the herders would get to  
21 know the animals, the animals would get to know the  
22 herder, and they sort of have an understanding of what  
23 they each were supposed to be doing. How long does it  
24 take the -- the herd to develop that kind of  
25 understanding with the herder?

# **EXHIBIT 30**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

-----x

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

Plaintiff, : Case No.

vs. : 3:16-cv-00237-RCJ-CLB

WESTERN RANGE ASSOCIATION, :

Defendant. :

-----x

VIRTUAL DEPOSITION OF GARY SNOW

Reno, Nevada

Monday, August 9, 2021

1:15 p.m.

Job No.: 4710362

Pages 1 - 115

Reported by: Cappy Hallock, RPR, CRR

1 THE WITNESS: Okay.

2 BY MS. WEBBER:

3 Q This is a three-page document and I'm  
4 just wondering if that signature on the last page  
5 is yours.

6 A Yes, ma'am.

7 Q Okay.

8 During the time of 2010 to 2016 that  
9 you were a member of Western Range did you rely on  
10 Western Range to assist you in obtaining H-2A  
11 herders?

12 A I don't know exactly what you mean  
13 there.

14 Q Okay.

15 A I have had no -- go ahead.

16 Q Do you recall that you employed some  
17 sheepherders who had H-2A visas?

18 A Yes.

19 Q And did Western Range Association  
20 assist you by completing the necessary paperwork  
21 to obtain visas for those herders?

1           A       Yes, with the exception of the Social  
2 Security Number.

3           Q       Okay.

4                    And are you familiar with the term job  
5 clearance order?

6           A       No.

7           Q       Did you ever review the documents that  
8 Western Range Association filed as part of the  
9 process of obtaining H-2A herders?

10          A       No. My secretary did that.

11          Q       Okay.

12                   And did you rely on Western Range to  
13 file the correct paperwork to obtain the herders?

14          A       Yes.

15          Q       Did Western Range Association also  
16 arrange travel to transport the herders to Nevada?

17          A       Yes.

18          Q       And sometimes your herders would  
19 return to you from one year to the next; is that  
20 right?

21                   MS. GUNDERSON: Objection to form.

1 writing, no.

2 Q I see the contact person listed is  
3 Ellie. Is Ellie the lady who used to work for  
4 you?

5 A Yes, ma'am.

6 Q One of the things that is asked on the  
7 survey is whether you use sheep camps all year or  
8 if you pack at some time during the year. Between  
9 2010 and 2016, did you have your herders in sheep  
10 camps year-round or were they packing tents at  
11 some part of the year?

12 A They were in sheep camp year-round.

13 Q Okay.

14 And they also ask in the surveys if  
15 you had herders on the range in more than one  
16 state. Throughout the year were your herders and  
17 your sheep always located in the state of Nevada  
18 or did you have any part of the year when they  
19 would be out-of-state?

20 A Not in every year but in drought years  
21 when there was no feed we had the sheep in Utah.

1           Q       And do you know was there a particular  
2 time period in the year when you sometimes went to  
3 Utah? Was that in the summer or in the fall?

4           A       That would have been in the summer to  
5 the fall.

6           Q       Okay.

7                    Do you recall if any of the years  
8 between 2010 and 2016 were such a drought year  
9 where you had to send your sheep into Utah?

10          A       Yes, but I do not recall what years.

11          Q       When your sheep were in Utah, were  
12 they on private land or was it BLM or other public  
13 lands?

14          A       They were on private land.

15          Q       Now, in completing surveys for Western  
16 Range would you have expected your assistant,  
17 Ellie, to complete documents like that if you were  
18 sent them from Western Range?

19                   MS. GUNDERSON: Objection to form.  
20 Calls for speculation.

21          A       Repeat that question again.



1 Q Did you have a recollection of whether  
2 your herders were on the range for most of the  
3 year they were with you?

4 A Repeat that one again.

5 Q Do you have a recollection of whether  
6 your herders spent most of their time on the range  
7 during the year they were with you?

8 A Yes, they did.

9 Q Was there any period of time that your  
10 herders would not be out on the range during a  
11 year working for you?

12 A Yes, there was a period of time.

13 Q Okay, and was that a particular time  
14 of year when they might not be on the range?

15 A They were on alfalfa pivots.

16 Q Okay.

17 A And they got time off to play  
18 volleyball or whatever you call it, kickball, and  
19 they still got paid, so I don't know if that  
20 answers your question or not.

21 Q Was there a particular season or

1 months when they were on, I think you called them  
2 alfalfa pivots did you say?

3 A Probably a period from November or  
4 maybe September -- or October, November, December.

5 Q Okay. And when they were, when the  
6 sheep were on the alfalfa pivots were the herders  
7 still living in the sheep camps nearby?

8 A Yes, ma'am.

9 Q But was that a location that was close  
10 to your home ranch?

11 A I don't know what you're talking  
12 about, my home ranch where I live or my home ranch  
13 where my camp tender lived.

14 Q Fair question. Was it near the home  
15 ranch where your camp tender lived?

16 A Yes.

17 Q Okay, and so for that period of time  
18 you don't consider the herders to be out on the  
19 range when they are -- the sheep are on the  
20 alfalfa?

21 A No. They are on -- no.

1           Q       Okay. And how about the rest of the  
2 year? If it's January through September, would  
3 you consider the herders to be out on the range  
4 that part of the year?

5           A       Yes, ma'am.

6           Q       Okay.

7                    You also mentioned herders having some  
8 time off to play sports of some kind. Does that  
9 relate to whether they are on the range or off the  
10 range or is that something they only had a chance  
11 to do when they were on the alfalfa?

12          A       It's only when they were probably on  
13 alfalfa pivots. Otherwise they weren't close to  
14 each other.

15          Q       Got it.

16                    When you decide whether the herders  
17 and the sheep are out on the range or not, is  
18 that -- is that based on, I don't know if you are  
19 aware there is a federal regulation that defines  
20 on the range. Is that something you keep in mind  
21 when you provided the information about when they

1 Q But when they are on the BLM land in  
2 the hills that's further from town, correct?

3 A Correct.

4 Q Did you keep -- during the 2010 to  
5 2016 period did you keep track of how many days  
6 per month the herders were working?

7 MS. GUNDERSON: Objection to form.  
8 Vague.

9 A No.

10 Q Okay.

11 Is it the case that the herders were  
12 working seven days a week when they were working  
13 with you?

14 MS. GUNDERSON: Objection to form.

15 A Yes. Okay, I'm sorry.

16 Yes.

17 Q Thank you.

18 Did you do anything to keep track of  
19 the number of hours worked by the herders when  
20 they were working for you in the 2010 to 2016 time  
21 period?

1           A       I don't think I kept track of it with  
2 a piece of paper but I can tell you what I did. I  
3 can tell you what they did.

4           Q       Okay. Let me just take it one step at  
5 a time. So you didn't keep track, you didn't have  
6 anybody write down the hours worked, right?

7           A       No.

8           Q       And you didn't have the herders check  
9 in with you each day to tell you what time they  
10 were starting work and what time they were done  
11 for the day, did you?

12          A       No, but I know that.

13          Q       Okay.

14                   Do you recall previously saying that  
15 it would be difficult for you to say how many  
16 hours a shepherd worked?

17          A       No.

18          Q       You don't recall including that in the  
19 statement that you signed in March?

20                   MS. GUNDERSON: Objection to  
21 foundation.

1           A       No, ma'am. I knew what they worked.

2 I know it. I didn't write it down.

3           MS. WEBBER: Let's go ahead and mark  
4 Exhibit 3, which is going to be, it's what we sent  
5 to you as Document C.

6                   (Snow Deposition Exhibit No. 3 was  
7 marked for identification.)

8 BY MS. WEBBER:

9           Q       And this is an H-2A application from,  
10 actually beginning for June 10th, 2016. Hold on  
11 one second. And what I'm going to ask you about,  
12 I'm going to read this to you. For everybody else  
13 you may want to read along. It's from the page  
14 that is numbered in the lower right-hand corner  
15 9472 and there is a job description stated.

16                   And Mr. Snow, I'm just going to read  
17 you what this document has as the job duties for a  
18 shepherd and I just want to ask you to let me  
19 know, and I will just take it sort of one sentence  
20 at a time, and I want to find out if that was  
21 something that your herders were expected to do or

1 not. Okay?

2 A All right.

3 Q So the description begins, "Attends  
4 sheep and/or goat flock grading on range or  
5 pasture: Herds flock and rounds up strays using  
6 trained dogs."

7 Is that a very general description of  
8 what your herders were expected to do?

9 A Yes.

10 Q And did you have herding dogs who the  
11 sheepherders worked with?

12 A Yes.

13 Q The description continues, "Beds down  
14 flock near evening campsite. Guards flock from  
15 predatory animals and from eating poisonous  
16 plants." Were those --

17 A No.

18 Q Let's take it one at a time. The  
19 bedding down the flock near the campsite, is that  
20 something that the herders would do?

21 A Yes.

1           Q       And guarding the flock from predatory  
2 animals and from eating poisonous plants, were  
3 those among the things that the herders were  
4 expected to do in your ranch?

5           A       No.

6           Q       Okay.

7                    Is that true as to the poisonous  
8 plants and the predatory animals both?

9           A       To the plants.

10          Q       Okay.

11                   So you did not expect them to try and  
12 keep sheep from any poisonous plants that he might  
13 see?

14          A       No.

15          Q       Were your sheep -- I mean, I can  
16 understand that on the alfalfa. When the sheep  
17 were out on the range were they in an area that  
18 you didn't believe had any poisonous plants?

19          A       Correct.

20          Q       So as far as you were concerned that  
21 just wasn't a risk that your sheep were exposed



1 to; is that right?

2 A That's correct.

3 Q Okay, but in terms of guarding the  
4 flock from predatory animals, is that something  
5 that you would expect the sheepherders to do?

6 A I expect my night guard dogs to do  
7 that job.

8 Q So in addition to having herding dogs  
9 you sent some guard dogs out with them?

10 A Yes. White Pyrenees. Always had them  
11 with them.

12 Q Did your herders also have a rifle  
13 with them?

14 A Yes.

15 Q And you gave the herders that rifle so  
16 that they would have something, a tool to use if  
17 there were attacks on the sheep from a coyote or  
18 other predators?

19 A Yes.

20 MS. GUNDERSON: Objection to form.

21 Calls for speculation.

1 A Yes.

2 Q Okay.

3 Turning back to the job description  
4 given in Exhibit 3 it says, "Drenches sheep and/or  
5 goats." Did you drench your sheep?

6 A No.

7 Q I would have to say I don't think I  
8 have talked to anybody yet who drenches the sheep.  
9 Somebody should amend this job description.

10 The job description goes on to state,  
11 "May examine animals for signs of illness and  
12 administer vaccines, medications and insecticides  
13 according to instructions."

14 A No.

15 Q Did your herders examine the animals  
16 and look for any signs of illness?

17 A Yes.

18 Q And if there were signs of illness  
19 that they reported to you, would you have them  
20 administer any medication?

21 A Yes. Antibiotics only.

1 Q Were the herders ever involved in  
2 vaccinating any of your animals?

3 A No, ma'am.

4 Q So no on the vaccines but yes on  
5 medications; is that right?

6 A Yes.

7 Q And did your -- I'm sorry, let me go  
8 to the job description that says, "May assist in  
9 lambing, docking and shearing." I will break that  
10 down.

11 Did your herders assist in lambing?

12 A Yes.

13 Q Did they also assist in docking?

14 A Yes.

15 Q And did they assist in shearing?

16 A No.

17 Q Did you have a specialty crew come to  
18 do the shearing?

19 A Yes.

20 Q Were your herders needed to round up  
21 their flock and get them organized to go in to

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 5, PART 3**

ELLEN JEAN WINOGRAD, ESQ.

Nevada State Bar No. 815

JOSE TAFOYA, ESQ.

Nevada State Bar No. 16011

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Nevada State Bar No. 5977

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**ATTORNEYS FOR RESPONDENT**  
**WESTERN RANGE ASSOCIATION**

1           Q       Were the herders ever involved in  
2       vaccinating any of your animals?

3           A       No, ma'am.

4           Q       So no on the vaccines but yes on  
5       medications; is that right?

6           A       Yes.

7           Q       And did your -- I'm sorry, let me go  
8       to the job description that says, "May assist in  
9       lambing, docking and shearing." I will break that  
10      down.

11                   Did your herders assist in lambing?

12          A       Yes.

13          Q       Did they also assist in docking?

14          A       Yes.

15          Q       And did they assist in shearing?

16          A       No.

17          Q       Did you have a specialty crew come to  
18      do the shearing?

19          A       Yes.

20          Q       Were your herders needed to round up  
21      their flock and get them organized to go in to

1 where the shearing crew was working?

2 A Yes.

3 Q So they were still working on the  
4 herding part but not the actual cutting of the  
5 wool; is that right?

6 A Correct.

7 Q Okay.

8 Going back to the job description in  
9 Exhibit 3 it states, "The work activities involve  
10 the herding or production of livestock (which  
11 includes work that is closely and directly related  
12 to herding and/or the production of livestock)."

13 Were there other duties that we  
14 haven't discussed that are, you know, related  
15 somehow to herding or production of sheep that  
16 your herders were involved in?

17 A The only other thing they were  
18 involved in was the period of time when they were  
19 on the pivots, they put up electric fence around  
20 the pivots.

21 Q And --

1           A       Otherwise, no.

2           Q       Okay. Was that electric fence  
3 something that they just had to put up once at the  
4 beginning of the time period when they were on the  
5 pivots or is that something where they would move  
6 the sheep from one part of the alfalfa to the  
7 other by moving the fence?

8           A       They had to be moving the fence where  
9 the feed was.

10          Q       Okay.

11          A       Maybe every fifth or seventh day. Not  
12 all the time. On occasion.

13          Q       And then when they were out on the  
14 range, the rest of the year they wouldn't be doing  
15 any temporary fencing or anything like that?

16          A       None. No.

17          Q       How about during lambing season? Did  
18 they set up, I think I have heard them called  
19 jugs, little sort of bits of shelter to use going  
20 into lambing? Did you have them do anything like  
21 that?

1 shouldn't say traditionally -- in some cases on  
2 call meant you had to respond if you got a call,  
3 like on a beeper or a cell phone. Is that what  
4 you were referring to with hospital workers being  
5 on call?

6 A Something like that. Something  
7 similar to that, yes. Maybe not exact. You want  
8 me to tell you how the shepherders were on call,  
9 where they worked, or you don't want to know that?

10 Q I do, but I just want to take it  
11 through one question at a time.

12 Did you have an expectation that your  
13 herders would be, you know, at the campsite with  
14 the sheep during the week that they were working  
15 with the sheep? Is that all seven days that you  
16 would expect them to be at that campsite in the  
17 area of the sheep?

18 MS. GUNDERSON: Objection to form.

19 A No. No.

20 Q Okay. As you said, when the herders  
21 were on the range they were far apart from each



1 other and far away from town. Where would you  
2 expect the herders to be other than, you know, in  
3 the area of the campsite and where the flock was?

4 A I would expect that my camp tender  
5 came and picked them up, took them to the ranch  
6 house to shower and get cleaned up, wash their  
7 clothes and maybe pick up some food.

8 Q And that's something that happened  
9 once a week; is that right?

10 A I don't know that for sure. It could  
11 happen every four days. It could happen four days  
12 for one, seven for another. So I have to say no.

13 Q Okay.

14 When the camp tender picked up one of  
15 the herders to bring them to the ranch house for,  
16 as you said, a shower, clean clothes, et cetera,  
17 and then they would drive them back to the range,  
18 correct?

19 A Yes, ma'am.

20 Q How many hours would you think that  
21 might take that they would be gone from the range

1 then?

2 A Probably seven to eight hours. Seven  
3 hours anyway.

4 Q And during that time were the sheep  
5 that they usually herded left unattended?

6 A Yes, ma'am, other than the dogs and  
7 they were at the water.

8 Q Okay.

9 And other than that opportunity at  
10 least once a week to spend several hours back at  
11 the ranch house, would you expect your herders to  
12 be out on the range with the flock of sheep that  
13 they were responsible for?

14 A Yes.

15 Q Okay.

16 And would you -- when you say that  
17 they were not on call then, let me ask you, did  
18 you have communication by cell phone with your  
19 herders when they were on the range?

20 A Yes, ma'am.

21 Q Okay. About how often --

1 Q Okay.

2 And is one of the things you do during  
3 that time, check and see how the sheep were doing  
4 that that herder was herding?

5 A Yes, I did.

6 Q Okay, and how large were your flocks?  
7 How many ewes would one herder be responsible for?

8 A About a thousand in each bunch.

9 Q So that would be a thousand ewes plus  
10 all their lambs?

11 A That's it. Thousand ewes plus their  
12 lambs.

13 Q So that would be two thousand or so?

14 A Yes, two thousand plus.

15 Q And when your herder set out with a  
16 thousand ewes, I assume that you want them coming  
17 back with a thousand ewes; is that right?

18 A That's correct.

19 Q And they understood that was the goal,  
20 to get all the sheep healthy and through the  
21 season; is that right?

1           A       Yes, ma'am.

2           Q       And did you ever have any herders who  
3 you thought, you know, didn't do as good a job and  
4 lost too many of the sheep because they weren't  
5 doing as well as the other herders?

6           A       Yes.

7           Q       Did you ever decide not to invite them  
8 to come back for another year and work with you?

9           A       Yes.

10          Q       Did you ever have to ask Western Range  
11 to send somebody away?

12          A       Repeat that, please.

13          Q       Did you ever have to ask Western Range  
14 to send somebody away in the middle of the year?

15          A       No. No.

16          Q       But there were some that you said you  
17 don't want them to come back?

18          A       Yeah, for the next three-year session,  
19 yes.

20          Q       Okay.

21                   We have talked about the general

1 starting to get warmer, is that when they are  
2 moving back up into the hills?

3 A They move back to Eureka, up in the  
4 hills above the pivots.

5 Q And to get back to Eureka, do you also  
6 truck them for that or are they walking?

7 A Truck them. I have to truck them.

8 Q Okay.

9 So you mentioned in December that you  
10 will start to get snow. Are there anything  
11 different that the herders have to do when there  
12 is snow on the ground to make sure the sheep are  
13 still able to get access to feed?

14 A When the snow gets deep and they can't  
15 get to the feed I pick them up and move them to  
16 Pumpernickel Valley.

17 Q They don't have to deal with snow  
18 there?

19 A There is very little. They don't have  
20 to deal with it.

21 Q And you said there may have been

1 drought years where you have to send your herd  
2 into Utah. Were there particular months of the  
3 year when that would be happening?

4 A Well, I know it already because I  
5 don't move them twice. On the 15th of June, if it  
6 has not rained in Eureka where the feed is  
7 starting to grow, like it isn't going to happen,  
8 then they go to Utah or have went to Utah. Only  
9 twice I think.

10 Q Okay.

11 And when that did happen did they stay  
12 in Utah until it was time to go on to the alfalfa  
13 again?

14 A Yes, ma'am.

15 Q Okay.

16 Now, when the herd is on the range,  
17 even -- we talked about, you know, when they are  
18 in the valley, when they are in the hills, but  
19 even when they are in the hills they are not  
20 always in the same spot, correct?

21 A No.

1 Q And they are moving the campsite,  
2 moving where the sheep bed down every two days,  
3 every week?

4 A Every couple weeks. It's according to  
5 how soon they eat the feed up. So when they get  
6 through the feed, my camp tender comes, hauls  
7 their house and they move their sheep a little  
8 ways.

9 Q And the land in the hills, that's BLM  
10 land; is that right?

11 A Yes, ma'am.

12 Q Do you have an obligation to make sure  
13 there is no overgrazing?

14 A Yes, ma'am.

15 Q Is that one of the terms of the BLM  
16 lease?

17 A Yes, ma'am.

18 Q So that's something that you expect  
19 your herders to keep an eye on?

20 A Yes, ma'am.

21 Q And similarly when they are down in

1 the valley they are also moving from area to area  
2 to make sure they've got fresh feed?

3 A When they are on the pivots are you  
4 talking about?

5 Q When they are in Pumpernickel Valley.

6 A Oh, when they are in Pumpernickel  
7 Valley, yes, we move them to make sure they have  
8 feed there. We may only move a couple miles.

9 Q Sure.

10 We have talked a bit about the  
11 trailers that get moved. I want to talk about  
12 them a little bit. I don't know if it has changed  
13 over time but I'm focused, of course, on the 2010  
14 to 2016 time period. Did those trailers or sheep  
15 camps, did they have stoves for cooking?

16 A It has stoves for cooking, yes.

17 Q Did they have any way to refrigerate  
18 food to keep it fresh?

19 A Yes, ma'am. They had gas ice boxes.

20 Q And in terms of plumbing, did they  
21 have toilets?



1           A        There was toilets in the house but we  
2 did not basically use those.

3           Q        Okay. When they were in the sheep  
4 camps, would they need to just use the great  
5 outdoors as the sheep were doing?

6           A        I will tell you what I tell them  
7 shepherders. The door to your shit house is a  
8 shovel. Does that explain that?

9           Q        So they were expected to dig and bury  
10 the waste?

11          A        Ma'am?

12          Q        Would you expect them to bury their  
13 waste?

14          A        That's what we had the shovel for.

15          Q        And what about for bathing or washing,  
16 was there any kind of shower --

17          A        No. I took them to the ranch to  
18 shower. They had water to wash their face and  
19 hands and so forth in the trailer, and also  
20 drinking water.

21          Q        And did they have electricity in the

1 trailers for lights?

2 A No, ma'am.

3 Q Okay. Kerosene lanterns or something  
4 like that?

5 A No, ma'am. Maybe a flashlight.

6 Q Flashlight. Okay.

7 And in the winter months were the  
8 trailers heated?

9 A Yes, ma'am.

10 MS. WEBBER: You know, we have been  
11 going just over an hour. Let's go ahead and take  
12 a short break and I'm going to try and get myself  
13 organized and keep us moving along as quickly as  
14 we can. Would ten minutes suit everybody?

15 THE WITNESS: Suits me. See you in  
16 ten minutes.

17 (Recess taken -- 2:23 p.m.)

18 (After recess -- 2:42 p.m.)

19 BY MS. WEBBER:

20 Q Mr. Snow, you talked about the fact  
21 that the camp tender would make sure your herders

1 would have groceries. I assume the herders would  
2 then prepare their meals from the groceries that  
3 were provided?

4 A Say that again? I didn't hear just  
5 the last.

6 Q I think you mentioned the camp tenders  
7 make sure that the herders had groceries.

8 A Correct.

9 Q Am I correct in assuming that the  
10 herders would then prepare their meals from the  
11 groceries, they would do their own cooking?

12 A Yes, ma'am.

13 Q In terms of the food or the groceries  
14 that were provided to them, did you have any rules  
15 about whether those groceries could include  
16 alcohol?

17 A No alcohol whatsoever.

18 Q Okay, and that's because you don't  
19 want the herders to be drunk when they are  
20 responsible for your sheep; is that right?

21 A That's correct, plus I don't want to

1 be buying them liquor when they don't need it.

2 Q Was there anything else in terms of  
3 food or beverage that they were -- that you would  
4 generally not let them have at the sheep camps?

5 A No.

6 Q Now, you did talk about the fact that  
7 the sheep camps didn't have electricity, didn't  
8 have lights, so this may be an obvious question  
9 but I want to confirm, no electricity, no lights,  
10 I assume there was no television, no satellite  
11 dish bringing in world cup matches or anything  
12 like that?

13 A Well, I don't know about all the  
14 little devices, but I do know that they had  
15 something that they could watch a movie on and  
16 then they could trade those back and forth if they  
17 had an opportunity. So yes, they did have  
18 something, and radios that were battery operated  
19 to look at, yes, ma'am.

20 Q So they had battery operated radios  
21 and they had something -- when you say trade, like

# **EXHIBIT 31**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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

Plaintiffs,

vs.

Case No.:  
3:16-cv-00237-RCJ-CLB

WESTERN RANGE ASSOCIATION,

Defendant.  
\_\_\_\_\_ /

TELEPHONIC FRCP 30(b)(6) DEPOSITION OF  
NEED MORE SHEEP COMPANY, LLC,  
REPRESENTED BY HENRY VOGLER, IV

Tuesday, June 1, 2021

North Spring Valley, Nevada

Reported by:  
Michelle C. Johnson, RPR-CRR  
NV CCR 771, CA CSR 5962

Job No. 4593878

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1 the time period 2010 to the present. I understand you  
2 have been a member for a considerably longer period of  
3 time, but if you could focus in your responses on your  
4 experience with Western Range starting with 2010, that  
5 will keep us in the relevant time period, okay?

6 A. Yes.

7 Q. As a member of Western Range, did you rely  
8 upon Western Range Association for bringing in H-2A  
9 herders to work for Need More Sheep?

10 A. Yes.

11 Q. And you relied on Western Range to complete  
12 all of the forms and government paperwork to get  
13 authorization for those herders?

14 MS. WINOGRAD: Objection to the form of the  
15 question and foundation.

16 BY MS. WEBBER:

17 Q. And Mr. Vogler, there will be objections from  
18 time to time. And once the objection is completed,  
19 unless your counsel, Mr. Snyder, instructs you not to  
20 answer, then you can go ahead and answer the question.

21 A. They filled out most of the relevant  
22 paperwork.

23 Q. Okay. Did you -- did you review forms before  
24 Western Range submitted them to the government?

25 A. Yes. The ones that I had access to through

1 are some that get extra for their years of dedication,  
2 their loyalty to the company, and their ability to do  
3 their job. A good shepherd never costs you  
4 anything; a poor shepherd can cost you everything.

5 Q. And what do you mean by a poor shepherd  
6 costing you everything?

7 A. Ones that sit in their camp and feel sorry  
8 for themselves, don't do their job, don't watch their  
9 sheep, let them stray off, let the coyotes eat them.  
10 There's many people -- not many people that herd  
11 sheep, ma'am; it takes a special individual. And when  
12 you've got that special individual, you take care of  
13 them.

14 Q. And when you have a good shepherd, like  
15 looking back to your 2014 list on Exhibit 3, are there  
16 any of the names listed there that you recall as one  
17 of your long-time, better shepherders?

18 A. Luis Rivas Reyes; his brother Leonet Eldorado  
19 Rivas Reyes; Percy Orihuela, Wilmer Chambergo. By the  
20 way, some of these people have also exited by the  
21 glory and glamour of the city. Alan Toralba, Lucio  
22 Marcelino Vicente Tixe. He's now a coyote who comes  
23 around and steals shepherders.

24 Q. I'm sorry, Alan Toralba Rodriguez, that was  
25 one of the ones who was one of your long-time



1 noticed that you listed June, July, August, September.

2 Do those four months generally cover the time  
3 when the herders are packing up in the mountains with  
4 the sheep?

5 A. The forest opens on the 15th of June, some of  
6 them open the 1st of July; some of them end 30th of  
7 September, some of them even go into the 15th of  
8 October. We generally try to get out of the forest  
9 before the hunters arrive, which is sometime in the  
10 first part of October, depending on weather, depending  
11 on a lot of things.

12 There's only two bunches that are not  
13 attended by Wilson Camps with refrigerators, stoves,  
14 solar panels, everything. Only two of them go into  
15 the camps in the wilderness.

16 Q. Okay. So you have two herders during those  
17 summer months who are in the wilderness where they  
18 need to pack in tents. The other herders, even during  
19 the summer months, are able to make use of the sheep  
20 camps; is that correct?

21 A. That is correct. The only exception is there  
22 are some areas where there is no road access for the  
23 camps, so they may have to tent out for two or three  
24 days to get to their destination, to their sleep camp.

25 But other than that, or if they're having

1 predator problems and the trapper has just been there  
2 and left -- and I had one boy, Jose Cordova, the night  
3 the trapper left, he had a lion killed. He took a  
4 knife and slept in the sheep for two nights and killed  
5 two lions. But other than that, they are in Wilson  
6 Camps that are modern, well-insulated, and annually  
7 inspected, with water hauled from the ranch.

8 Q. Okay. When you talk about the sheep camps  
9 having to be parked some distance from the sheep, so  
10 how far is that? Is it something that's walkable?  
11 Are your herders out there with horses for  
12 transportation? What's the distance we're talking  
13 about?

14 A. 99.9 percent of the time, it would be less  
15 than a mile. Sheep bed on the top at night. They go  
16 up -- they go up in the day -- down in the day to  
17 water and up at night. So they're a little ways away.

18 But a good shepherd wants to make sure his  
19 animals are well tended, and if the lambs are being  
20 killed, they take it personal. So they'll night tent  
21 out if they want. It's not commanded of them and they  
22 don't do every night.

23 But the trapper is coming by every three days  
24 and he just left, they have a rifle, they have all the  
25 accoutrements, they have guard dogs hopefully to keep

1 the sheep alive to get them on the truck to pay the  
2 bills, including their wages.

3 Q. And in the winter months that you described,  
4 I assume that -- I don't want to assume. In the  
5 winter months that you described, is it correct that  
6 all of the herders working for you would be staying in  
7 sheep camps when they're on the range during the  
8 winter months?

9 A. In the wintertime before it snows -- and in  
10 the last couple years, it hasn't snowed -- there's a  
11 water truck driver, there are two full beds in each  
12 sheep camp. Water truck driver usually does the  
13 cooking also.

14 The herder spends a couple hours in the  
15 morning. Sheep are cold; in daylight, they get them  
16 up off the bed ground, they fan them out, kind of turn  
17 them towards the water truck. And then they've got  
18 five to six hours to do as they wish. Animals that  
19 are on fresh feed don't go anywhere. Predators leave  
20 them alone, they don't go anywhere. Most of the time,  
21 it's a few moments of excitement and hours and hours  
22 of sheer boredom. That's why nobody wants to do the  
23 job.

24 Q. I appreciate that, sir.

25 My question was really -- at this point, I

1 camp, and even the extra camps during lambing, there  
2 are some that are single camps. They all are Wilson  
3 sheep camps, top of the line. I just paid for one the  
4 other day, \$27,000.

5 Q. And so I understand that it certainly  
6 wouldn't have been the case that you could just buy  
7 all new sheep camps at once in 2010 -- I'm trying to  
8 think how far back solar panels were even a technology  
9 that was available.

10 But can you tell me sort of when was the last  
11 year, to the extent you can recall, when was the last  
12 year that you had an older camp that was in use that  
13 didn't have some of the extras of the electricity and  
14 so on from the solar panels?

15 A. Ha. I feel like I'm teaching a class in  
16 shepherding. You have no idea in the spring when  
17 we're lambing, those sheep are scattered everywhere  
18 and the herders go around and tuck them in. They  
19 might have a night camp that was one of the old camps  
20 that we haven't retired that they go over there and  
21 they maybe check four different bunches of sheep. And  
22 they get to the other end and it might be four or five  
23 miles back on horse and it's dark. There's a camp  
24 there with provisions. It's not the terribleist cold  
25 time of the year. We get lots of weather events but

1 they're in camp that may not be a Cadillac. They're  
2 out there right now.

3 And as they come with everything together,  
4 then they go back to base camp when they circle back  
5 the next day and check the 250 head, 260 head in that  
6 bunch, whatever, they get back to the main camp where  
7 there's maybe two or three Wilson camps setting there  
8 with the jugs for the ones that go nursing their lambs  
9 to the water truck drivers and all of that.

10 But over the years, I have sacrificed my  
11 family and myself to keep this operation together and  
12 to provide them with the best opportunity to take care  
13 of what pays the bills; i.e., the sheep.

14 Q. And I believe you said that your lambing  
15 season is in May. Is that correct?

16 A. We're just about to get through. May to the  
17 15th of June.

18 Q. Okay. When it's lambing season, what -- it  
19 sounds like -- is that when you said the sheep are all  
20 scattered everywhere. You don't bring them all  
21 together for lambing?

22 A. They say it's as dry as it's been in 1200  
23 years here. We made the decision to move them to  
24 three different areas because the season is so short.  
25 Those animals don't want to stay together unless they

1 24/7/365 and nobody's moving them. They stay right in  
2 an area until they move or die. Wonderful management.

3 Q. Yeah. And understanding that they're eating  
4 up a lot of the feed, do they also do anything that  
5 disrupts or bothers your sheep other than eating what  
6 your sheep should be eating?

7 A. Well, doesn't bother them to just come  
8 running right straight through a band and knock over  
9 lambs and kill them. They destroy water holes. They  
10 destroy vegetation.

11 Q. When your herders are out with the sheep, is  
12 that something that they have to keep an eye out for  
13 is approaching horses that could, as you say, could  
14 step on a lamb or otherwise cause injury to your band?

15 A. I believe in that job description, which is I  
16 believe in their native language, when we sign up for  
17 the program, all the issues are out there, they're out  
18 there to protect the sheep. They're out there to  
19 practice good animal husbandry, whether it's a  
20 poisonous plant, a predator, or finding the sheep good  
21 feed and water. It's not a surprise for them.  
22 They're even supposed to know what they're doing;  
23 they're supposed to have herded sheep. I don't  
24 believe I've ever had one.

25 Q. In terms of the prior experience, is that

1           Nobody applies for the job, ma'am. That's  
2 why, since 1952, this program was started by sheep  
3 people.

4           Q. Okay. Moving down to section 16, the bottom  
5 half of that same page where it says "Job description  
6 and requirements." Do you see that?

7           A. Yep.

8           Q. And if you could review the description  
9 listed there and tell me if you think that's an  
10 accurate description of what you expect your herders  
11 to work on.

12          A. Yeah, that's I guess where you'd start.

13          Q. Okay. Are there additional tasks that the  
14 herders have to perform that aren't listed on that  
15 description?

16          A. There are many tasks. What happens when they  
17 get a flat tire halfway across the ranch? Are they  
18 supposed to get on the cell phone -- oh, by the by,  
19 we're out in the dead zone. Are they going to fix the  
20 truck, just walk away and abandon the truck, or get  
21 out and change the tire? What happens if the truck  
22 radiator gets full of dirt?

23                 There's -- this is a ranch. This is not some  
24 sort of a platooned, regimented group of people. They  
25 know what they're getting into it.

1 their contract or went home early or whatever, it's  
2 easier to have a couple extra guys than it is, as this  
3 year is proving to be, the nightmare of not being able  
4 to get them out of Peru because of the COVID. Yeah,  
5 it's absolutely gotten out of hand in every direction.

6 BY MS. WEBBER:

7 Q. So that -- thank you, Mr. Vogler, that got to  
8 my point, which was, from what you described in terms  
9 of the number of separate bands that you had the sheep  
10 divided into, with the water truck drivers in the  
11 winter, et cetera, it wasn't adding up to 20 people on  
12 the ground, so I was wondering if you basically  
13 brought in more than you needed or maybe you needed  
14 them all for herding and -- excuse me -- maybe you  
15 needed that many people for lambing and shearing and  
16 docking, but the year around, it didn't seem like you  
17 necessarily had that many herders out on the range,  
18 but that would have been because of some absconding or  
19 their contracts ending and they had to go back to Peru  
20 or something; is that right?

21 MS. WINOGRAD: Object to form of the  
22 question, it was compound.

23 THE WITNESS: We did not get enough help  
24 during shearing. You've got to feed the ones that's  
25 been shorn until you get the band together. You've to



1 separate out all the late lambers; you've got to do  
2 lots of things. You can't have enough help. Lambing  
3 is the same way. If everybody is focused, it comes  
4 together.

5 The shearers shear 2,000 head a day, 2500  
6 some days, the logistics of getting them to them and  
7 getting them back out, it's a nightmare. Lambing,  
8 same way. After lambing, you've got to dock, you've  
9 got to get everybody to the mountain.

10 Well, they get on the mountain range where  
11 they can get hold of Cousin Leroy working in Jerome  
12 Idaho at some dairy, the neighbor calls up and says  
13 "Your man's gone." Then you've got to go up there  
14 with a couple of guys, circle them up, count them, and  
15 put a new herder there. Yeah, extra is way easier  
16 than not having enough.

17 BY MS. WEBBER:

18 Q. Understood. So I just realized, I don't  
19 think I asked you about when you do shearing. Can you  
20 tell me when that is?

21 A. 1st of April. Depending on the weather.

22 Q. So basically, April you're doing shearing and  
23 then May you get into lambing. At the end of lambing,  
24 you're doing the docking before you send them back  
25 out; is that right?

1 your operation as to whether herders were permitted to  
2 have alcohol when they were at the sheep camps or  
3 packing?

4 A. I have never --

5 MS. WINOGRAD: Object to the form of the  
6 question. It says "while working."

7 THE WITNESS: I'm not their babysitter.

8 MS. WEBBER: Ellen, I --

9 THE WITNESS: I had some gentleman several  
10 years ago that took a truck, drove off 82 miles away,  
11 got 94 of them -- 96 cans of beer on video at the  
12 place they purchased it. Tipped over the truck and  
13 there were four cans left in the truck, three of them  
14 had never been opened.

15 Now, did I authorize that? Absolutely not.  
16 But I'm not their babysitter. They're grown men when  
17 they get here. They have taken a job. They're  
18 supposed to have some responsibility. I've never  
19 caught one drinking on the job, and I dang sure  
20 wouldn't tolerate any drug use.

21 BY MS. WEBBER:

22 Q. Okay. When -- that's what I wanted to ask  
23 you about is the drinking-on-the-job part. When  
24 they're out on the range with the sheep staying at  
25 night either in the sheep camps or, as you said some

1 do in the summer, in tents occasionally, do you have  
2 any expectation that they will refrain from drinking  
3 because that could then leave them incapacitated when  
4 a coyote, the four-legged kind of coyote, comes and  
5 disturbs the sheep?

6 MS. WINOGRAD: Objection, calls for  
7 speculation.

8 MS. WEBBER: I have asked what his  
9 expectation is, and he's allowed to set rules and  
10 expectations with his employees. It's not  
11 speculative.

12 MS. WINOGRAD: And I'm allowed to make  
13 objections.

14 THE WITNESS: Those men are on their own  
15 honor. If I catch them doing something like that, we  
16 have a conversation. And if they didn't straighten  
17 up, they would be terminated.

18 BY MS. WEBBER:

19 Q. Okay.

20 A. Like I say, the only time I ever ran into it  
21 was on their own dime, their own time, and when they  
22 stole a truck.

23 Q. Understood. But do you -- when herders come  
24 to work for you, do you give them any instructions or  
25 explain to them what your expectations are for their

1 to go fill up the water, correct?

2 A. Two or three hours, yeah.

3 Q. Okay. Understanding there might be an  
4 emergency in which they would use the water truck to  
5 get back to camp, otherwise the expectation is that  
6 the water truck is staying at the sheep camp and not  
7 being used for, you know, joy rides into town or  
8 anyplace else; is that right?

9 A. These are surplus Army vehicles. They're  
10 deuce-and-a-halves and 5 tonners. If they pulled out  
11 on the highway, I would be getting them out of jail.

12 Q. So then I think that they certainly should  
13 not be using those water trucks for riding into town.  
14 Correct?

15 A. I think --

16 Q. That would be illegal?

17 A. I think they would be pretty remiss in even  
18 trying to do something like that.

19 Q. I understand. I just wanted to confirm.

20 Okay, now turning back to Exhibit 5 and part  
21 16, the bottom half of the page. I apologize. I  
22 forgot to ask you one question.

23 We were talking about the commissary. With  
24 all the things that you stock in the commissary that  
25 get delivered out to your herders, do you stock any

1 alcohol that they can request?

2 A. Ha ha. Nope. But, hey, they're grown men.  
3 They get to town, if they sneak a bottle back and put  
4 it in their camp and it's 25-30 below zero in the  
5 wintertime and they knock a shot down, I'm not going  
6 to stop them. If they're staggering drunk, they're  
7 not going to work here anymore. Can't have it. A  
8 good herder means everything, a poor herder could ruin  
9 you in a minute. That's my job.

10 Q. Understood. And if somebody is getting  
11 drunk, they're not being attentive to the duties of  
12 their job, right?

13 A. That would pretty much be it.

14 Q. All right. So now moving on to No. 16 on  
15 Exhibit 5, the "Job description." I think it's pretty  
16 similar to what we looked at before. Do you see that  
17 there?

18 A. Yep.

19 Q. So one thing I hadn't asked you about when we  
20 looked at the job description language is language  
21 from the very first sentence. It says, "Attends sheep  
22 and/or goat flock grazing on range or pasture."

23 What's your understanding of the term "on  
24 range"? If you say your herders are out on the range,  
25 what do you mean by that?

1           A. Well, without trying to sound too terribly  
2 braggadocios, in the last 36 years that I've been  
3 here, I've put a few things together. I believe my  
4 men are on over about a million acres. Is that rangey  
5 enough for you?

6           Q. I'm not questioning. I'm just trying to find  
7 out what your understanding of the term is; I'm not  
8 questioning you or whether a million acres is range.  
9 I'm asking how you use the term.

10          A. In the summertime, the range is in the  
11 mountains, pretty much. There's streams, there's  
12 creeks, there's mostly a grass base.

13                 In the wintertime, the range is usually  
14 desert, which can go anywhere from White Sage to Black  
15 Sage to Bud Sage to Big Sage to Pigmy Black Sage to  
16 Indian Rice Grass to Needle-and-Thread Grass, but it's  
17 on a desert so it's a little flatter country.

18                 In the spring during lambing, they're on kind  
19 of rolling hills. But it's range. It's wide-open.  
20 There's very few fences, very few roads. Shoe leather  
21 express.

22          Q. And if a herder is with you for a full year,  
23 are they spending the entire year on the range or are  
24 there some periods when they're in an environment that  
25 you would not describe as being out on the range?

1 MS. WINOGRAD: Object to the form of the  
2 question.

3 THE WITNESS: Everything here is out on the  
4 range. Now, if they come to the bunkhouse to take a  
5 shower, if they come to the bunkhouse when we're  
6 shearing, if they come to the bunkhouse because they  
7 want to go to town and we have an extra guy that can  
8 go out and take care of the sheep for a couple of  
9 days, okay. I mean, we don't have platoons of men.  
10 Range is -- you know, to make this narrow definition  
11 alone ends the sheep industry as I know it.

12 BY MS. WEBBER:

13 Q. When they're shearing, is that something  
14 that's done near the ranch, near the bunkhouse?

15 A. Yes.

16 Q. Okay. So during shearing season, are your  
17 herders generally, then, sleeping at that nice  
18 bunkhouse you described?

19 A. Or in their camp.

20 Q. Okay.

21 A. The facilities, there's three bathrooms,  
22 there's a recreation room with wide-screen TV,  
23 couches, DISH TV so they can watch soccer, a  
24 commissary, doors open, no restrictions. Yeah,  
25 it's -- you know, pretty miserable here.

1 and then about halfway down the page, section F says  
2 "Job Offer Information."

3 A. Okay, yep.

4 Q. Within this section, the second line has  
5 "Number of hours of work per week" and "Hourly Work  
6 Schedule." For Hourly Work Schedule, the a.m. is  
7 blank and the p.m. says 12. Do you know what is  
8 intended by that way of filling out the work schedule?

9 A. I do not.

10 MS. WINOGRAD: Object to the extent it calls  
11 for speculation.

12 BY MS. WEBBER:

13 Q. Okay. Under "Number of hours of work per  
14 week," it says 40. Do you know how it was determined  
15 to put 40 in that spot on the form?

16 MS. WINOGRAD: Object to the extent that it  
17 calls for speculation.

18 THE WITNESS: I do not know where that came  
19 from.

20 BY MS. WEBBER:

21 Q. And you don't track the hours that your  
22 herders are working, correct?

23 A. I wouldn't mind running my ranch. That would  
24 be a full-time job. I can't hire anybody to come out  
25 here and do that kind of thing. We're 51 miles from



1 town; there's no facilities for family. How in the  
2 world would you ever get anybody to come out here on  
3 the other side of nowhere to walk around and write  
4 down on a piece of paper hour by hour where  
5 everybody's at? Come on.

6 Q. Again, not arguing with you about it, just  
7 trying to confirm that that's the case, that there  
8 aren't any records.

9 A. If you don't have the papers, you don't get  
10 them in. It's like the Godfather: either your  
11 signature or your brains go on this thing. You want  
12 men, you fill out these papers and sign them and you  
13 go on. You do the best you can.

14 Q. I understand. And do you recall ever  
15 receiving one of these forms from Western Range to  
16 review that included that reference to 40 hours a  
17 week?

18 A. Probably did. Probably got a bucket full of  
19 them.

20 Q. Okay. But you don't remember ever seeing it  
21 and asking somebody from Western Range how they  
22 decided to put that number?

23 A. I needed men to help me work, and if this is  
24 what I had to do to get them, there were no Americans  
25 banging on my door begging for a job.

1           A. Not a clue. Couldn't give it to you.  
2           Wouldn't be worth it. This guy might be working more  
3           than another; if ewes are complicated, that might take  
4           a little more experience.

5                     You know, good judgment comes from  
6           experience; experience comes from poor judgment.

7           Q. And as you said, you have lambing take place  
8           wherever the good feed is that year, not back at the  
9           ranch, correct?

10           A. The only ones that land here at the ranch are  
11           the ones that are in the artificial insemination  
12           program with Australian blood.

13           Q. Yep.

14           A. Dohne, D-o-h-n-e.

15           Q. So the herders are scattered all over during  
16           lambing season; they're not all where you can even see  
17           them, right?

18           A. That is correct.

19           Q. But would you agree that lambing season is  
20           relatively busy in terms of the number of things that  
21           herders need to be taking care of?

22                     MS. WINOGRAD: I'm going to object to the  
23           form of the question, use of the word "busy."

24                     THE WITNESS: Lambing time is a critical  
25           time.

1 BY MS. WEBBER:

2 Q. Understanding it's a critical time, would you  
3 agree that it is also a busy time?

4 A. Yes.

5 Q. Okay. Now, one thing I remember you  
6 mentioned with respect to not the sheep camp itself,  
7 but that wagon -- I think you called it a commissary  
8 that was hitched along behind it -- in addition to  
9 supplies for the herder and dog food, you also  
10 mentioned -- I think you said hay and grain. I assume  
11 that hay and grain are for the lambs -- or the sheep,  
12 excuse me.

13 A. For the horse.

14 Q. For the horse. Forgot there was a horse. I  
15 just knew that the dogs and the people were probably  
16 not eating the hay.

17 So does each herder have a horse with him out  
18 on the range?

19 A. The ones that need them.

20 Q. Okay. How do you decide if they need one?

21 A. If they can ride a horse. We call him  
22 Hercules. Hercules, ha ha ha. He don't want to ride  
23 a horse. And I'm sure the horses are glad, he's a  
24 pretty good-sized fella.

25 Q. Do most of the herders go out with a horse?

1 Q. It's truly seeking information and not at all  
2 argumentative to ask.

3 A. I didn't understand the question.

4 Q. Sure. You have made references to how many  
5 hours a day or a week that you think herders are  
6 working, and you specifically then made reference to  
7 not all of the time that they're out on the range with  
8 the sheep as time where there's, I think, sweat  
9 pouring down their back as opposed to sitting around  
10 being bored.

11 So my question to you was, in your estimate  
12 of what counts as time worked, are you counting only  
13 the sorts of things that could make somebody, you  
14 know, break out in a sweat?

15 A. I'm counting the fact that I am paying them  
16 to go bored out their gourds for about 20 hours a day  
17 and then getting out and tending the sheep, and on  
18 different days, it's a little longer one way or the  
19 other. That's what I am paying them for.

20 Q. You think that a good shepherd is actually  
21 only out with the sheep for four hours out of the day?

22 A. Some of them spend their entire day out there  
23 walking around picking up elk horns for something to  
24 do. Plus it supplements their income.

25 Q. Okay, but, sir, my question --

1 before we started. So I want to do what works for all  
2 of you. But would you like 30 minutes for lunch?

3 MR. SNYDER: How much more do you have?

4 MS. WEBBER: Um --

5 THE WITNESS: Before we start, give me the  
6 opportunity to get my other cell phone because this  
7 one's about out of juice. Because if I go away, we're  
8 going to have to start from scratch, okay?

9 MS. WEBBER: Sure, let's do that.

10 MR. SNYDER: How much more time do you have?

11 MS. WEBBER: We're getting close. We're  
12 making good progress. But -- and I need to go through  
13 my notes and see what's left. But my guess is maybe  
14 45 minutes.

15 THE REPORTER: Can we go off the record for  
16 this discussion?

17 MS. WEBBER: I'm sorry, yes. Off the record.

18 MS. WINOGRAD: Yes.

19 (Discussion off the record.)

20 (Lunch recess taken at 1:36 p.m.)

21 AFTERNOON SESSION

2:11 P.M.

22 EXAMINATION (RESUMED)

23 BY MS. WEBBER:

24 Q. Mr. Vogler, would it be fair that -- to say  
25 that one of the ways you judge herders, how good a

1 herder they are, is whether they bring back as many  
2 healthy sheep as they are sent out with?

3 A. That's kind of the criteria.

4 Q. Okay. And as you said, the best herders  
5 think of them as my sheep, refer to them as my sheep,  
6 and take care of them as if they were their own sheep,  
7 right?

8 A. That's a correct answer.

9 Q. Okay. And the herders know that the goal is  
10 to bring back a full count of healthy sheep, right?

11 MS. WINOGRAD: Objection, calls for  
12 speculation as to what they know.

13 THE WITNESS: That's what you hope.

14 BY MS. WEBBER:

15 Q. And is that what you communicate to the  
16 herders?

17 A. You better bet you. (Not speaking English.)

18 Q. What's that?

19 A. You have to focus. What's good for me is  
20 good for the banker is good for you; we're all in this  
21 together. That's what you tell them.

22 Q. So a diligent herder, a focused herder who  
23 wants to be successful in bringing back a full count  
24 of healthy sheep, may spend more time watching the  
25 sheep, making sure they're healthy, making sure

1 they're eating the right stuff and not too much of the  
2 wrong stuff, may spend more time watching the sheep  
3 than somebody who's maybe not so well cut out for this  
4 work and not so attentive to the sheep?

5 MS. WINOGRAD: Objection, calls for  
6 speculation.

7 MR. SNYDER: (Unintelligible.)

8 (Reporter clarification.)

9 MR. SNYDER: I said objection, calls for  
10 speculation.

11 THE WITNESS: I've already said it twice, the  
12 same thing -- I should send you guys a bill for a  
13 tutorial in the sheep business -- good judgment comes  
14 from experience, experience comes from poor judgment.

15 It's not the hours that they spend with the  
16 sheep, it's how they spend their hours. And once they  
17 figure it out, they don't have to be out there 24/7.  
18 Most of the time, they're doing something to occupy  
19 their time like horn hunting. And all I ask is they  
20 take their rifle with them when they're horn hunting.  
21 That's what they do.

22 BY MS. WEBBER:

23 Q. And you ask them to take the rifle with them  
24 in case they see a --

25 A. If they know what they're doing and they get

1 it down to a routine and a science, the number of  
2 hours that they have to spend out there is not that  
3 long.

4 But the whinny guy, he's setting in his camp,  
5 he gets caught up real quick, and he gets moved  
6 somewhere else. Because we count the sheep on a  
7 regular basis to see where he's at and how he's doing.

8 Q. So herders know if they're not successful.  
9 Because you're counting the sheep, they'll get moved  
10 to some other ranch, you'll tell Western Range to take  
11 them away and assign them elsewhere, right?

12 MS. WINOGRAD: Objection, calls for  
13 speculation.

14 THE WITNESS: If they're Mountain Plains,  
15 they get a bus ticket back to wherever they came from.  
16 There's no transfers in Mountain Plains.

17 Western Range will transfer them if they have  
18 somebody who will take them. But generally, when they  
19 start jumping from contract to contract, to other  
20 people, they -- it doesn't work.

21 BY MS. WEBBER:

22 Q. So the herders know that if they lose too  
23 many sheep, they could be out of a job, right?

24 A. That is correct.

25 Q. And you ask the herders to carry the rifle if



1 they're out walking around so that if they see a  
2 predator, they can take care of it, right?

3 A. That would be the idea. I'm not there to  
4 know that they even do that. I ask them. I ask them  
5 to keep camp clean. I ask them to do lots of things.  
6 But eventually, it all catches up with them if they're  
7 not toeing the mark.

8 Q. So as you said, you're not there with them,  
9 so what basis -- actually, let me back up.

10 You're not there with them when they're out  
11 on the range with the sheep. Even when you're  
12 spending more time with them, when we asked about  
13 shearing or lambing, you couldn't provide estimates of  
14 the number of hours they're working per day. Right?

15 A. They lamb in three different areas. There's  
16 not enough hours in that 24-hour period that you are  
17 trying to justify for me to go around to check on  
18 everybody. It's impossible.

19 Q. I'm not disputing that it's impossible for  
20 you to have been in all those places at once. And you  
21 testified previously, you could not provide an  
22 estimate for the number of hours worked per day,  
23 correct, during lambing season?

24 A. That is correct.

25 Q. And so it's equally true that you're not

1 right in here right amongst us. The poisonous weeds  
2 can advance. Other than my house, bunkhouse, and  
3 other outbuildings, it's as open range as anywhere on  
4 this earth. This is the wild west.

5 Q. And every place where you have herders  
6 working is a place where they are required to perform  
7 those tasks of ensuring the livestock don't stray,  
8 protecting them from predators, and monitoring their  
9 health, right?

10 A. To a level, yeah.

11 Q. And specifically under this definition,  
12 they're required to be available constantly to attend  
13 to the livestock and to perform those tasks, right?

14 A. After a fashion.

15 Q. Okay. I think then the only question I have  
16 that I don't think we got a definite answer to before  
17 is are you able to estimate how many times per year a  
18 herder may ask to be relieved from duty to come into  
19 town, spend some time away from their work with sheep?

20 A. I have no idea. It varies.

21 Q. Okay. What's the most number of days you  
22 have permitted a worker to spend away from their  
23 duties in order to take care of personal business in  
24 town?

25 A. Not a clue. Guy comes in, says I want to go

1 to town. I got my wife, whatever, my son. One guy,  
2 his kid was in a real friendly position in Peru; he  
3 went to town for a couple days, came back. I had a  
4 herder one time that used to have a birthday about  
5 every three months.

6 Q. Was that -- was the one who had a birthday  
7 every three months, that's about four times a year he  
8 was asking to take off and go to town?

9 A. Jaime Pena Taquia.

10 Q. I'm sorry -- oh, was that his name?

11 A. Yep.

12 Q. Okay. But was that on the high side,  
13 somebody who was asking for time four times a year?

14 A. The money they stick in their pocket becomes  
15 a mathematical equation, and they find out very  
16 rapidly that town is expensive. And if they love  
17 their family and if they want to get them out of  
18 abject poverty or at least get a window or a door on  
19 the portal, they get over it real quick.

20 Q. Uh-huh.

21 A. They want to make money.

22 Q. And given that it's not all that common --  
23 it's not all that many days per year that the herders  
24 are taking off away from their duties to go into town,  
25 right? Because as you say, it's too expensive a

1 habit.

2 A. That is correct.

3 MS. WEBBER: Okay. Well, thank you,  
4 Mr. Vogler. I don't have any other questions for you.  
5 I think Ms. Winograd and possibly your counsel may  
6 have some questions they want to ask. So turn it over  
7 to them.

8 THE WITNESS: Thank you.

9 MS. WINOGRAD: Thank you. I'd actually like  
10 about a five-minute break just to go over my notes so  
11 that I don't duplicate anything you already asked.

12 MS. WEBBER: Okay.

13 MS. WINOGRAD: Jerry and Mr. Vogler, is that  
14 acceptable?

15 MR. SNYDER: Yes, fine with me.

16 THE WITNESS: Where do I have a choice? I  
17 think that was kind of an order to be here present and  
18 accounted for.

19 MS. WINOGRAD: No, no, what this is,  
20 Mr. Vogler, the plaintiffs' counsel, the one who is  
21 suing Western Range Association, is asking you  
22 questions, and I get a chance to do some follow-up  
23 questions on it. I won't take very much of your time.

24 MS. WEBBER: So if we meet back at 2:45,  
25 would that give you what you need, Ellen?

1 tasks might take?

2 A. It depends on the feed you're on. If you're  
3 on good feed, it's absolutely to the point you have to  
4 find something to do. Wander around, do something, go  
5 fishing.

6 There's an outfit in Eastern Idaho. They  
7 have trouble getting herders because it was so boring  
8 herding sheep there because the feed base was so  
9 large, several of them committed suicide.

10 Just absolutely -- you just don't understand  
11 until you wake up at 2 o'clock in the morning and you  
12 hear chuh-chuh-chuh and it's the blood coursing  
13 through your veins. And you hear doop-doop-doop.  
14 That's your heartbeat. And you tell me you're  
15 working? The next day you're darn sure going to put  
16 in some time to stop that crap or you'll go nuts. You  
17 get sagebrushed, as it's called in the industry. A  
18 good herder, the better the herder, the easier it is  
19 for everybody.

20 Q. I'm not trying to put words in your mouth  
21 here, but I think you testified earlier that you  
22 expected your herders would work maybe five or six  
23 hours some days during the summer --

24 MS. WEBBER: Objection.

25 BY MR. SNYDER:

# **EXHIBIT 32**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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

Plaintiffs

vs.

Case No.:  
3:16-cv-00237-RCJ-CLB

WESTERN RANGE ASSOCIATION

Defendants

---

TELEPHONIC FRCP 30(b)(6) DEPOSITION  
OF ELLISON RANCHING COMPANY,  
REPRESENTED BY IRA WINES

Wednesday, June 2, 2021

Tuscarora, Nevada

Reported by:  
Michelle C. Johnson, RPR-CRR  
NV CCR 771, CA CSR 5962

Job No. 4614126

Pages 1 - 115

1 Q. Do you rely on Western Range Association to  
2 complete all of the paperwork for obtaining H-2A  
3 herders?

4 MS. WINOGRAD: Objection, vague as to time.  
5 BY MS. REIF:

6 Q. As I said, all of these questions, unless  
7 otherwise specified, pertain to the 2010 to present  
8 time period.

9 A. Could you repeat the question?

10 Q. Yes, of course.

11 Does Ellison Ranching Company rely on Western  
12 Range Association to complete all of the necessary  
13 paperwork in order to obtain H-2A herders?

14 MS. WINOGRAD: Objection, vague as to form,  
15 "all of the necessary paperwork."

16 BY MS. REIF:

17 Q. You can answer.

18 A. Yes.

19 Q. Do you or anyone else at Ellison Ranching  
20 Company review the forms that Western Range  
21 Association submits to obtain herders for you?

22 A. Yes.

23 Q. Do you know which forms you review?

24 A. Arlene Ratliff, our bookkeeper, reviews the  
25 forms and has the authority to sign them. I don't



1 A. No.

2 Q. No.

3 Is there anything else that goes into  
4 determining how much people are paid based on  
5 experience?

6 A. Herders that are good at their job get paid a  
7 little more than herders that aren't good at their  
8 job.

9 Q. And how do you evaluate whether someone is  
10 good at their job?

11 A. What kind of shape their sheep are in, what  
12 kind of shape their lambs are in, what their death  
13 loss is.

14 Q. Okay. Is about a thousand sheep a typical  
15 amount in a band?

16 A. It varies with each band, there's no set  
17 number. We've got a band that's got 500 ewes in it,  
18 we've got a band that's got 700 ewes in it, and then  
19 add lambs to that.

20 Q. Okay. Could you give me an example of what  
21 would be considered a good, I think you said death  
22 rate, or bad death rate?

23 A. A death loss under 4 percent on the lambs, a  
24 death loss under 2 percent on the ewes.

25 Q. Perfect, thank you.

1 A. No.

2 Q. What do you mean by that?

3 A. We don't anticipate them working 24 hours a  
4 day.

5 Q. Do you anticipate that they are on call for  
6 up to 24 hours a day, seven days a week?

7 MS. WINOGRAD: Objection, form of the  
8 question as to what "on call" means.

9 MS. REIF: Strike that.

10 Q. What is your understanding of what "on call"  
11 means?

12 A. They live with these sheep and so they're  
13 there 24 hours a day. We don't expect them to work 24  
14 hours a day. They live in a camp and the sheep are  
15 right there, so they do live with them 24 hours a day,  
16 but we don't expect them to work 24 hours a day.

17 Q. Understood. Do you expect them to be  
18 available, if they're needed at any time, during the  
19 24-hour period?

20 A. Yes.

21 Q. Okay. If you could scroll down -- or maybe  
22 you have paper copies, but I'm scrolling -- to No. 15.  
23 It says "Referral Instructions."

24 Do you understand that these 790s host  
25 herders that are already in the United States who

1 Q. What about during downtime?

2 MS. WINOGRAD: Object to the form of the  
3 question. I'm not sure, based on his testimony, what  
4 "downtime" is.

5 BY MS. REIF:

6 Q. Fair enough. Is there any time that herders  
7 are allowed alcohol?

8 A. No.

9 Q. Okay.

10 A. But that's not to say that -- I'm not with  
11 them all the time. They're grown men. What they have  
12 access to, I don't -- I can't control that.

13 Q. I understand. Is the reason they're not  
14 allowed alcohol because it could impair their judgment  
15 while they're supposed to be on call with the sheep?

16 A. That and -- yes. Alcohol creates a lot more  
17 problems than just that.

18 Q. Understood.

19 If you go down to No. 16, the job  
20 description. If you could just take a moment to read  
21 that first paragraph to yourself.

22 A. This is in E, as in echo?

23 Q. Yes.

24 A. Mine ends at 13. Okay. All right.

25 Q. It's the third page, I believe. At the

1 bottom.

2 A. Yep, I've got it.

3 Q. Great. If you could just read that --

4 A. The first paragraph?

5 Q. Yes. To yourself.

6 A. Okay.

7 Q. Is that consistent with your understanding of  
8 the expectations for your herders?

9 A. Yes. However, there are some of them come  
10 with less experience, and we -- we teach them how we  
11 want sheep herded. There is not a band of sheep in  
12 Peru that is a thousand head, so finding somebody with  
13 that much experience is going to be hard to do coming  
14 from Peru.

15 Q. How large are the bands of sheep in Peru that  
16 you are familiar with?

17 A. Visiting with these herders, 50 head would be  
18 a big number.

19 Q. Oh, wow.

20 A. There are ranches that do have more sheep  
21 than that. We don't -- I have never talked to one of  
22 our herders that came from one of those places.

23 Q. Okay. So what kind of training do you need  
24 to do with the herders to familiarize them with a  
25 larger band of sheep?

1 BY MS. REIF:

2 Q. If you look in the middle it says January  
3 10th, 2014 through June 9th, 2015. Do you see that?

4 A. Yes.

5 Q. If you scroll down to the fourth page, it  
6 says "F. Job Offer Information."

7 A. Yes.

8 Q. Oh, I'm sorry. Wait. I lost my place. It's  
9 above that, apparently Job Offer Information  
10 continues. Halfway down. I'm sorry.

11 A. Okay.

12 Q. Under "Hourly Work Schedule," box 3, a.m.  
13 appears to be left blank and p.m. says 12:00.

14 Do you know what that means?

15 A. No.

16 Q. And then under "Number of hours of work per  
17 week," it says "Basic: 40."

18 Do you know what that means?

19 A. No.

20 Q. Ellison Ranching Company does not track the  
21 hours worked of your herders, correct?

22 A. Correct.

23 MS. REIF: I think now would be a good time  
24 to take about a ten-minute break.

25 THE WITNESS: Okay.

1 with the shed lambing?

2 A. Six.

3 Q. What are the duties of herders assisting with  
4 shed lambing?

5 A. There is a day crew and a night crew. It's  
6 ewes that are having their first lambs and they  
7 require quite a bit more help because they have never  
8 done it before, they don't know what -- they get  
9 scared and don't know what's going on. So it  
10 requires -- they require more help, that's why we lamb  
11 them inside so we can watch them closer. So we split  
12 the crew up into daytime and nighttime.

13 Q. Okay. So is it like 12 hours for the day  
14 crew, 12 hours for the night crew?

15 A. Yeah. Not --

16 Q. Does the night crew stay up all night or do  
17 they wake up if there is a sound?

18 MS. WINOGRAD: I'm sorry. He didn't finish  
19 his answer.

20 MS. REIF: Oh, I'm sorry.

21 THE WITNESS: The 12 hours is probably split  
22 a couple of times. Morning duties, afternoon duties.

23 BY MS. REIF:

24 Q. Okay.

25 A. We feed sheep --

1 Q. What are examples --

2 A. -- at night, they lamb in the morning. So  
3 they're busy in the morning, but then things will  
4 taper off towards the afternoon. The night crew stays  
5 up all night.

6 Q. Okay. So you said about morning duties and  
7 then you said they lamb in the morning. Were there  
8 other morning duties you were thinking of?

9 A. Feeding.

10 Q. Feeding.

11 A. Uh-huh.

12 Q. Anything else?

13 A. No.

14 Q. Is it quite labor intensive for the herders  
15 to assist the sheep who have never lambed before to  
16 give birth?

17 MS. WINOGRAD: Objection to the form of the  
18 question, "labor intensive."

19 THE WITNESS: I wouldn't -- no, it's not  
20 labor intensive. It's just they stay busy making sure  
21 ewes aren't having any trouble.

22 MS. WINOGRAD: Might be labor intensive for  
23 the ewes.

24 THE WITNESS: Yes.

25 MS. REIF: Literally labor.

1 Q. And you said there were three big bands --  
2 I'm sorry.

3 A. Yeah. When we're all done, we'll try to have  
4 one herder -- there will be one herder with each lamb  
5 band.

6 Q. I think I read in the declaration, in the  
7 summer range you have nine bands. So it's after  
8 lambing that they're broken into these nine bands; is  
9 that correct?

10 A. You have eight -- eight bands.

11 Q. Eight bands.

12 A. Eight, yep. One's a dry band. Means there's  
13 no lambs with them.

14 Q. What is a dry band?

15 A. Means there's no lambs with them. They're  
16 yearlings.

17 Q. I see. And how long did you say lambing  
18 takes in total; was it four to six weeks?

19 A. The ones we lamb inside start in March and we  
20 lamb for 45 days. And then the older ewes start the  
21 15th of April and we're done with that by the 15th of  
22 June.

23 Q. 15th of June, okay.

24 And so when the eight bands go out onto the  
25 summer range, they are each with one herder, correct?



1           A. The less they have to travel, the more the  
2 lambs are going to weigh in the fall. So you want  
3 them to kind of work through the country with the  
4 least amount of travel that they can.

5           Q. I see. And if they're moving to a new  
6 grazing area every day, does that also mean that  
7 they're moving the sheep camp or the tents every day?

8           A. No. No.

9           Q. How often do they move that?

10          A. Probably every five days. And they'll work  
11 the country around their camp and then they'll move  
12 their camp; then they'll work the country around their  
13 camp, then they'll move their camp.

14          Q. Okay. How do they move the sheep camp from  
15 location to location; do they use a truck?

16          A. There are part of the bands that the camp  
17 tender will move their camp with a pickup. There are  
18 a couple of bands that they have to move their camps  
19 with pack horses just because of the remoteness of it.

20          Q. Okay. And you pack for part of the year,  
21 correct?

22          A. "Pack," what do you mean?

23          Q. Like with a tent.

24          A. Yes. In the summertime, yes.

25          Q. Okay. Does everyone pack or is it only just

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

No. 85926

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

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**RESPONDENT WESTERN RANGE ASSOCIATION'S**  
**APPENDIX VOLUME 5, PART 4**

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Nevada State Bar No. 815

JOSE TAFOYA, ESQ.

Nevada State Bar No. 16011

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**ATTORNEYS FOR RESPONDENT**  
**WESTERN RANGE ASSOCIATION**

1 some of the herders?

2 A. All of them.

3 Q. All of them.

4 A. All of them are living in a tent in the  
5 summertime.

6 Q. Okay. You previously said the summer for you  
7 is July through September. Is that correct for  
8 packing as well?

9 A. Yes.

10 Q. Okay. So you said it wasn't very far. Could  
11 you put a timestamp on it; how long does it take to  
12 get the sheep up from where they're bedded down to  
13 where they're going to graze; are you talking ten  
14 minutes, 30 minutes?

15 A. Between 30 minutes and an hour.

16 Q. Okay. So you said the camp tender comes to  
17 move the sheep camp with a pickup truck. How often  
18 does the camp tender come?

19 A. Every five days.

20 Q. And is that also when he brings groceries?

21 A. Yes.

22 Q. Does the camp tender stay with the herder for  
23 any period of time to help them with anything or  
24 observe?

25 A. Yes. If there's lambs that are sick, he'll

1 Q. Okay. And when the herders are using tents  
2 in the summer and they're moving them with horses,  
3 they don't need a pickup to help them. But  
4 regardless, is someone coming with groceries every  
5 five days and checking on them?

6 A. Yes.

7 Q. Okay. We can talk about something that you  
8 enjoyed talking about: predators. When they're on the  
9 range, it's the herder's responsibility to respond to  
10 threats from predators, correct?

11 A. Yes, if they can. We also employ a private  
12 trapper that spends the summer with them. He camps  
13 right with the sheep. And, yeah, they're in  
14 communication. He's probably in communication with  
15 them more than anybody about the predators.

16 Q. How do they communicate; do they have cell  
17 phones or something?

18 A. Yeah, cell phones. He goes to their camps.  
19 He's probably at each herder's camp at least once a  
20 week.

21 Q. Oh, okay. So they just talk?

22 A. Uh-huh.

23 Q. So I'm a city girl; I'm not sure what private  
24 trapping entails. Is he setting like snares or what  
25 is he doing exactly?

1 would have to get the root. And sheep don't pull the  
2 plants out by the root, they just eat the flowers off  
3 of them. So poisonous plants are not a problem with  
4 sheep.

5 Q. Okay. And I should have asked this earlier.  
6 I know you said all of your locations are in Nevada,  
7 but all of the range land that you use is also only in  
8 Nevada, correct?

9 A. Yes.

10 Q. Okay. Is there any concern about invasive  
11 species that might be coming into the areas that you  
12 use for the range in terms of poisonous plants?

13 A. No.

14 Q. Are wild fires a concern in the area of  
15 Nevada that you use for the range?

16 A. Yes.

17 Q. How often would you say?

18 A. We used to have --

19 MS. WINOGRAD: I'm going to object to the  
20 form of the question. How often are they of concern  
21 or how often do they occur?

22 MS. REIF: Fair enough.

23 Q. How often are there wild fires on the range  
24 that you have to deal with?

25 A. Well, there's four seasons: there's winter,

1 identification.)

2 THE WITNESS: Okay.

3 BY MS. REIF:

4 Q. At the bottom of that page, it says "Range,"  
5 and there is a paragraph that continues on to the next  
6 page. Could you just read that to yourself?

7 A. Okay.

8 Q. Okay, is that paragraph consistent with your  
9 understanding of what the term "on the range" means?

10 MS. WINOGRAD: I'm going to object to the  
11 extent that it calls for a legal conclusion.

12 BY MS. REIF:

13 Q. You can answer.

14 A. Yes. It's -- yes.

15 Q. Okay. Does Ellison Ranching Company track  
16 what days the herders are on the range?

17 A. Yes. I mean, as far as having a spreadsheet  
18 with days written down on it, no, we don't. But we  
19 know where the sheep are at and where the herders are  
20 at every day.

21 Q. Okay. Could you give me an estimate of what  
22 percentage of the time the sheep are on the range as  
23 opposed to at one of the ranching facilities?

24 A. We bring them into the ranch to shear them  
25 and they're there for a couple days, the older ewes.

1 And beyond that, they would be on the range for a year  
2 minus 45 days. We lease some alfalfa in the fall to  
3 put sheep in when we're putting rams with them.

4 So it would be 365 days minus 45 days, 320  
5 days that they're on the range.

6 Q. Okay.

7 A. There's the younger band that we lamb inside  
8 that would be -- and when I say "inside," that means  
9 the ranch -- they would be there for two months. And  
10 other than that, they would be on the range.

11 Q. Okay. Maybe you already said this and I may  
12 have forgotten. But when you are transitioning the  
13 sheep from the summer to the winter range, they are  
14 walking that distance, correct?

15 A. Yes.

16 Q. How long does that take?

17 A. A month.

18 Q. A month.

19 A. A month and a half. It varies.

20 Q. Okay. And is that like walking every day or  
21 is there pausing in between?

22 A. No, there are pauses in between. Sheep  
23 wouldn't be able to walk every day for a month.  
24 They've got to stop and eat along the way.

25 Q. So of that month or month and a half, what

1 housing that the herders have. We already spoke about  
2 how they pack with tents for months in the summer.

3 The rest of the time, are they in sheep camps?

4 A. Yes.

5 Q. Is there any time when they're in fixed  
6 housing on the ranch?

7 A. Yes.

8 Q. When is that?

9 A. When they're lambing.

10 Q. Okay.

11 A. And there's some of the herders that aren't  
12 with sheep in the wintertime; they're staying in  
13 housing at the ranch.

14 Q. Okay. Do the sheep camps have, I guess,  
15 running water or toilets or anything like that?

16 A. No.

17 Q. I believe you said that the camp tender  
18 brings water to the herders. Is that right?

19 A. Yes.

20 Q. Okay. Do they have electricity of any sort?

21 A. They've all figured out how to charge a cell  
22 phone and that's all the electricity they have.

23 Q. Okay. Is that through solar panels, or do  
24 you know?

25 A. Yes.



1 Q. Yes, it's through solar panels?

2 A. Yes.

3 Q. How do they cook food?

4 A. There's a propane stove in the camp.

5 Q. Okay. Is there a propane refrigerator?

6 A. No.

7 Q. No. And I'm assuming they don't have  
8 anything like television or laptops. Correct?

9 A. No.

10 Q. Okay.

11 A. They all buy a laptop when they go back to  
12 Peru, though. Because most of them have a kid in  
13 college and laptops are easier to come by here than  
14 they are in Peru.

15 Q. With no running water, do they have to dig a  
16 latrine to keep things sanitized?

17 A. Like an outhouse?

18 Q. Oh, they use an outhouse?

19 A. No.

20 Q. I'm sorry, maybe I phrased that wrong.

21 Do they have an outhouse?

22 A. No.

23 Q. No, okay.

24 Do you know what they use?

25 A. The great outdoors.

1 Q. Okay. When you have gone to check up on the  
2 herders, have you noticed if they've dug any latrines?

3 A. No.

4 Q. Okay. You mentioned before that most of  
5 these places are quite remote, so I just want to  
6 confirm. The places they're camping are not close  
7 enough to get anything delivered to them -- correct --  
8 like food?

9 MS. WINOGRAD: I'm going to object to the  
10 question. Delivered by whom?

11 THE WITNESS: Yeah.

12 BY MS. REIF:

13 Q. For example, could you get a pizza delivery?

14 A. No.

15 Q. No. That's what I thought. I just wanted to  
16 be sure.

17 And we spoke a bit earlier about when herders  
18 are staying on the ranch, they can get transportation  
19 into town on payday. When they are out on the range,  
20 do they have access to transportation into town at any  
21 point?

22 A. Yes. Sheep boss will take them to town about  
23 once a month.

24 Q. Okay. And when the sheep boss takes someone  
25 into town, who watches that herder's sheep?

1           A. One of the herders that's not on a band that  
2 is at the ranch, in the wintertime. In the  
3 summertime, it will be the leadoff guy that we have,  
4 he'll watch them for an afternoon while the sheep boss  
5 takes them to town.

6           Q. Okay. So a visit to town would be just an  
7 afternoon, correct?

8           A. Yes.

9           Q. Okay. I believe the declaration states that  
10 herders are responsible for buying their own clothing.  
11 I just want to clarify, is that all clothing or just  
12 their personal clothing?

13          A. All clothing.

14          Q. There is not any specialized clothing like  
15 boots or coats that they need for the job that's  
16 provided by Ellison Ranching?

17          A. No.

18          Q. Okay. Is there any other method of contact  
19 besides the cell phones that the herders have access  
20 to? For example, a radio.

21          A. No.

22          Q. No, okay.

23                 How is the cell service in the areas that the  
24 herders are on the range?

25                 MS. WINOGRAD: Object to the form of the

# **EXHIBIT 33**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ABEL CANTARO CASTILLO on )  
behalf of himself and those )  
similarly situated, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WESTERN RANGE ASSOCIATION, )  
 )  
Defendant, )  
 )  
 )  
\_\_\_\_\_ )

Case No. 3:16-cv-  
00237-RCJ-CLB

·REMOTE DEPOSITION OF KERRI WRIGHT  
CONDUCTED VIA ZOOM VIDEOCONFERENCE  
Friday, April 30, 2021  
10:04 A.M.

Job No.: 4557423

Reported by: Marlene Duron, RPR,  
CSR No. 13333, CCR No. 958

1 that was?

2 A I do not recall.

3 Q Okay. What was your understanding of the role  
4 Western Range played in obtaining H-2A herders?

5 MS. WINOGRAD: Object to the extent that it  
6 lacks foundation.

7 BY MS. WEBBER:

8 Q You can go ahead and answer.

9 A Can you repeat the question?

10 Q Sure. What's your understanding of the role  
11 that Western Range played in obtaining H-2A herders?

12 MS. WINOGRAD: I'm going to object to the form  
13 of the question to the extent "obtaining" is vague.

14 THE WITNESS: I believe that Western Range and  
15 Southern Nevada Water Authority acted as joint  
16 employers, is my understanding.

17 BY MS. WEBBER:

18 Q And did you rely on Western Range to complete  
19 all of the various government forms and procedures that  
20 were required in order to have H-2A workers come in and  
21 work for Southern Nevada Water Authority?

22 MS. WINOGRAD: Object to the form of the  
23 question as to all of the "various ... forms." I don't  
24 know what that means, but if -- if she can answer, she  
25 can go ahead and try.

1 THE WITNESS: We did rely on them for the  
2 applications and things like that, with review.

3 BY MS. WEBBER:

4 Q Did you rely on Western Range Association for  
5 understanding what the H-2A rules required?

6 A Yes.

7 Q Are you familiar with the term "job clearance  
8 order"?

9 A Yes.

10 Q And what's your understanding of job clearance  
11 order?

12 A When an employee -- employer is cleared through  
13 Department of Labor to -- to bring foreign workers.

14 Q Do you understand that before -- as a necessary  
15 prerequisite to getting such clearance, that the  
16 position has to be posted so that persons already based  
17 in the U.S. have the opportunity to apply?

18 MS. WINOGRAD: Objection; lack of foundation,  
19 calls for a legal conclusion.

20 THE WITNESS: Do I answer?

21 MR. HALL: Answer it, if you can.

22 THE WITNESS: I do understand that the job had  
23 to be posted.

24 THE REPORTER: Can I interrupt really quick?

25 MS. WEBBER: Yes.

1 sent to review?

2 A I reviewed them for accuracy.

3 Q Okay. And would you e-mail back to confirm  
4 that it was okay to submit, or would you only e-mail  
5 back if there was something that you wanted to correct?

6 A I do not remember.

7 Q Do you recall ever seeing anything in one of  
8 the -- one of the Form 790s that were submitted by  
9 Western Range -- do you recall ever seeing anything that  
10 you felt was inaccurate and needed to be corrected?

11 MS. WINOGRAD: Objection; vague as to time.

12 THE WITNESS: I do not recall.

13 BY MS. WEBBER:

14 Q Turning to the third page of Exhibit 7, about  
15 halfway down the page there's a job description.

16 Do you see that?

17 A I do.

18 Q And is the job description that's included  
19 there an accurate description of the job  
20 responsibilities for the herders who were paid by  
21 Spring Valley?

22 A Yes, it is.

23 Q You indicated that -- that you were not  
24 somebody who went out with the herders, that if -- if  
25 there was somebody out on the range, that would be



1 managed a ranch a long time ago. We have -- have a  
2 lifetime of experience with livestock. I learned about  
3 shepherding through -- through other ranches, and so --

4 Q Have you ever -- have you ever spent a season  
5 out on the range with a herd of sheep?

6 A No.

7 Q Okay. When you refer to you and your husband  
8 managing a ranch, what was the timeframe when you were  
9 managing a ranch?

10 A Oh, like, 2000 -- sorry, I have to think.  
11 2000 -- 2001 to 2005, approximately.

12 Q Okay. And -- and was that a sheep ranch?

13 A It was not. It was a cattle ranch.

14 Q Okay. Prior to the Spring Valley operations  
15 that, I think you said, started in 2007, prior to that  
16 did you have any experience with sheep ranching?

17 A No, I guess not.

18 Q Okay. Have you spoken to Mr. Peterson or other  
19 members of the management team for the Southern Nevada  
20 Water Authority, slash, Spring Valley operations about  
21 the duties that were expected of shepherders?

22 A I have spoken to them about it.

23 Q Okay. And is what you learned from them  
24 consistent with what's set forth in Exhibit 7?

25 A Yes.

1 reported in the survey that was marked as Exhibit No. 4?

2 A Yes, I guess so.

3 Q You never signed any of the job clearance  
4 orders, the Form 790, such as Exhibit 7, correct?

5 A Correct. I don't believe so, anyway.

6 Q The herders who worked -- or who were paid  
7 through Spring Valley, who worked for Southern Nevada  
8 Water Authority, did they ever perform duties outside  
9 the state of Nevada?

10 A No.

11 Q How -- we were just looking in Exhibit 4 at  
12 this range of pay rates you had for herders. How did  
13 you determine what rate to pay each shepherd?

14 A There was a lot of variable factors in that,  
15 including job performance, the number of sheep that they  
16 come in off the range with, the length of time with the  
17 company, whether they indicated that they wanted to  
18 return to us and keep working or not.

19 Q Anything else?

20 A Not that I can think of.

21 Q Okay. Were -- when you had a new herder, did  
22 you have a practice of setting them at the minimum start  
23 before -- you know, until you could see what their job  
24 performance would be?

25 MS. WINOGRAD: Objection; vague as to time.

1 A No.

2 Q Do they need to drive in order to haul hay out  
3 to the sheep?

4 A It's possible.

5 Q Did you ever pay herders -- between 2010 and  
6 2016, did you ever pay herders any kind of bonus in  
7 addition to their salary?

8 A I don't recall paying any bonus.

9 Q How much of the year were herders out on the  
10 range?

11 A They're on the range most of the year, only in  
12 for maybe two months in the spring and approximately one  
13 month in the fall.

14 Q The two months in the spring, would that be for  
15 lambing season?

16 A Correct.

17 Q And what -- what two months do your sheep  
18 typically lamb?

19 A April and May.

20 Q So they're -- they're in midst of lambing  
21 season right now?

22 A Yes.

23 Q And so for those two months, the herders would  
24 be based at the ranch headquarters?

25 A They're not based right at the headquarters,

1 Q Okay. And then, the other part of the summer,  
2 when they're -- the -- other than the few weeks when  
3 they're packing, you indicated they'd be in sheep camps,  
4 correct?

5 A Yes.

6 Q And -- and that's basically a trailer that can  
7 be moved from place to place?

8 A Correct.

9 Q Okay. The trailers don't have hot and cold  
10 running water, correct?

11 A Correct.

12 Q They don't have indoor toilets, correct?

13 A Correct.

14 Q No bathing facilities?

15 A No, no bathroom.

16 Q Do the trailers have electricity?

17 A No. They have propane and solar and battery  
18 power.

19 Q And propane, does that provide the ability to  
20 cook?

21 A Yes.

22 Q Can the propane be used for anything else?

23 A Heating water, washing, and washing dishes,  
24 bathing.

25 Q Do they have any form of refrigerated food

1 storage in the sheep camps?

2 A They have refrigerators.

3 Q And how are the refrigerators powered?

4 A Propane.

5 Q Okay. And you mentioned batteries. What kind  
6 of batteries do they have? Just your basic Duracel that  
7 you may bring with you, or is this some sort of storage  
8 battery -- battery?

9 A More like a car battery, storage-type battery.

10 Q Okay. And what does that power?

11 A Lights and electronics that they might have.  
12 That's all I can think of.

13 Q Okay. And I assume the sheep camp has a bed?

14 A Yes.

15 Q You referred to electronics, that -- that these  
16 would be personal devices of the shepherders?

17 A Correct.

18 Q So basically a cell phone?

19 A They have cell phones, computers, DVD players.

20 Q How's the cell signal in the area when  
21 they're -- where they're out on the range?

22 A Pretty good in a lot of places, not so good in  
23 others.

24 Q You'd say that's -- that's fairly variable?

25 A Very, very variable.

1 kept track of it on a calendar. And I -- yes, I believe  
2 it was at the end of when they would finish one year.  
3 Then we would pay it and -- and kind of keep track  
4 yearly from there.

5 Q Okay. And did they actually take two weeks off  
6 or did they just take the two weeks' pay and -- and  
7 continue working their regular schedule?

8 A They just took the two weeks' pay.

9 Q Did you ever track hours worked?

10 A No.

11 Q Did that ever change? Like, after 2016, at  
12 some point did you start tracking hours worked?

13 A I did.

14 Q Okay. When did you start tracking?

15 A At the end of 2016.

16 Q And why did you make that change?

17 A Based on going to conferences and learning more  
18 about the program and finding that there was a need for  
19 that and that that was something Department of Labor  
20 wanted.

21 Q And did you track hours for the shepherders --  
22 actually, let me back up. Sorry. Is it correct that  
23 Spring Valley has workers engaged in agricultural  
24 activities other than the sheep ranching, shepherding?

25 A Yes --

1 MS. WINOGRAD: Object to the form of the  
2 question. It calls for speculation.

3 MR. HALL: I second that objection.

4 BY MS. WEBBER:

5 Q You can still -- the objection's being made for  
6 the record. You can still answer.

7 A I'm sorry. You'll have to repeat the question  
8 now.

9 Q Sure. Given that herders -- you've testified  
10 that herders are evaluated in part on how well they do  
11 at bringing back as many sheep as they head out with.  
12 Would that not incentivize herders to get up when they  
13 hear the dogs barking in the middle of the night, to  
14 make sure that they're not going to lose more sheep than  
15 necessary?

16 MS. WINOGRAD: Same objection.

17 THE WITNESS: I would hope it would give them  
18 some incentive to watch them closer, but I -- I don't  
19 know whether they do it or not. No one knows but them,  
20 whether they're doing it or not.

21 BY MS. WEBBER:

22 Q Do you keep any -- or I should say in the 2010  
23 to 2016 period, did you keep any official record of when  
24 the herders were on the range versus the two to three  
25 months you indicated they spent based at the home ranch?

1 Q And the sheep are still prohibited from going  
2 into the national park areas, even on Sundays, right?

3 A Yes.

4 Q So you still have herders watching the sheep no  
5 matter what day of the week it is, correct?

6 A Yes.

7 Q And the -- just like you need two -- two  
8 herders to keep eyes on the sheep every other day of the  
9 week, you also need two herders generally keeping eyes  
10 on the sheep on Sundays, correct?

11 A Correct.

12 Q And you have no record of how often any herders  
13 were permitted to leave their sheep camp on the range to  
14 visit town or visit the ranch headquarters, correct?

15 A Correct.

16 Q And if herders were calling to either request a  
17 ride to the ranch or town or to request permission to  
18 make such a trip, would those calls go to you or would  
19 they go to somebody else?

20 A They would probably go to Nati or Bernard.

21 Q And did you ask Nati or Bernard how often that  
22 happened?

23 A I did not.

24 Q Have you ever had a conversation with Nati or  
25 Bernard about how often it happened that you had herders



1 during lambing season?

2 A I do not.

3 Q Do you know what time they typically stop  
4 working during lambing season?

5 A I do not.

6 Q During lambing season, what are the  
7 responsibilities of the herders?

8 A To tend to all the sheep, to help with the baby  
9 lambs, to pick up the bummer lambs and get them on feed,  
10 to watch for illness. We range lamb. So they have to  
11 be out watching them and watching for birthing and  
12 making sure that they're getting paired up.

13 Q When you refer to being "paired up," you mean  
14 the lambs paring up with the ewe to --

15 A Correct.

16 Q -- to suckle?

17 A Correct.

18 Q When you refer to picking up bummer lambs, what  
19 are -- what are bummer lambs?

20 A A lamb that doesn't have a mother.

21 Q When you say "doesn't have a mother," is  
22 that -- the mother doesn't make it through childbirth --  
23 not childbirth -- through lambing?

24 A Well, the mother may not be able to feed as  
25 many lambs as she has. If --

1 anyway. So -- so no, they're not working overnight.

2 BY MS. WEBBER:

3 Q Okay. I figured with having all the herders  
4 together, that you might be able to have one or two of  
5 them on night duty while the rest are -- are covering  
6 the days, but you -- that's not your understanding?

7 A That's not my understanding.

8 Q But you don't know how late they may be staying  
9 up working with the -- working with the sheep and lambs  
10 during the lambing season?

11 A Not without review of the records.

12 MS. WINOGRAD: Are we going to take a break  
13 soon for lunch? Just because we haven't eaten here.

14 MS. WEBBER: Yeah. If you just give me a  
15 couple minutes, I'll be able to wrap up this -- wrap up  
16 this topic.

17 BY MS. WEBBER:

18 Q Would it be fair to say that during lambing  
19 season, the herders are pretty busy?

20 MS. WINOGRAD: Objection to the form of the  
21 question. "Fair to say" or accurate?

22 Go ahead and answer.

23 THE WITNESS: I would say they're busy.

24 BY MS. WEBBER:

25 Q Do your -- are your herders involved in any

1 have to have them on call at all, correct?" And then I  
2 heard a partial objection, and then you started the next  
3 question.

4 MR. HALL: All right.

5 THE WITNESS: Yes, I said correct.

6 BY MR. HALL:

7 Q All right. So the next context with regard to  
8 the specific training and expectations of SVA, what are  
9 your shepherders trained with regard to their  
10 obligations after they have bedded down the sheep?

11 A After they have bedded down the sheep, they are  
12 able to do their evening chores and they're off duty and  
13 free to do whatever they want, once the sheep are bedded  
14 down for the night.

15 Q And are they required or expected to respond to  
16 a predator or other noises that a sheep may make at that  
17 time?

18 A They are not.

19 Q And is that what you confirmed, as part of your  
20 obligation as the person most knowledgeable and your  
21 investigation in that role, as the policy and practice  
22 of SVA?

23 A Is that what I confirmed? Is that what you  
24 said?

25 Q Is that what you confirmed? Yes.

1 MS. WEBBER: This was my last -- this was my  
2 last question.

3 MS. WINOGRAD: Okay.

4 MS. WEBBER: So if we can just get an answer.

5 BY MS. WEBBER:

6 Q Do you want me to repeat?

7 A Please. My brain is fried.

8 Q All right. You don't actually know that any  
9 shepherd took any number of hours or days away from  
10 work based on your testimony, correct?

11 A Correct. The only way to know would be to ask  
12 the herder.

13 MS. WEBBER: I -- well, I could ask a couple  
14 more questions, but I want to respect -- be respectful  
15 of the court reporter's time and end here.

16 THE REPORTER: Thank you.

17 Ms. Winograd, do you want a copy?

18 MS. WINOGRAD: Yes, please. Yes, please.

19 THE REPORTER: Thank you.

20

21 (Proceedings concluded at 5:02 p.m.)

22

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24

25

# **EXHIBIT 34**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

19 ABEL CÁNTARO CASTILLO on behalf of himself  
and those similarly situated,

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

20  
21 Plaintiff,

22 vs.

23 WESTERN RANGE ASSOCIATION  
Defendant.

**DECLARATION OF MELCHOR GRAGIRENA**

24  
25  
26 1. My name is Melchor Gragirena. I am over the age of eighteen years old and am  
27 competent to testify as to the following facts based upon my personal knowledge, or where  
28 indicated, upon business records.

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2. I am the President of El Tejon Sheep Co. a California Corporation.

3. El Tejon is a small, family-owned and operated business and has been a member of Western Range Association (“WRA”) from 1958 to the present.

4. Western Range Association handles all the paperwork involved in obtaining H-2A herders for El Tejon, including filing Form 790 (job clearance order), Form 9142/9142A (application for certification), and INS Form I-192 (visa application). WRA also arranges travel between herders’ home country and the United States. I have no first-hand knowledge of how WRA recruits and brings the herders to Bakersfield, CA or Elko, NV.

5. El Tejon supplies information on the number of herders, where they will be working, and whether housing is a permanent structure or mobile/tents to Western Range Association so that they may fill out the H-2A paperwork. WRA is supposed to fill in the relevant rate of pay on all H-2A paperwork. The pay rate was not one of the pieces of information El Tejon provided to WRA because the rate is set by the federal government. In addition, El Tejon independently decided to pay the California rate to its employees even when they worked in Nevada. The housing is inspected in each state by Department of Labor housing inspectors— the shepherds cannot live in uninspected housing.

6. Since May 2010, El Tejon has employed approximately 38 different shepherds through Western Range Association.

7. El Tejon is based in California, which is where El Tejon shepherds work approximately six (6) months—typically, early October until early April—of each year. The other six (6) months of each year are spent in Nevada.

8. During the six months shepherds were working in Nevada, at all times they were “on the range” as El Tejon does not maintain a ranch in Nevada.

9. While on the range in Nevada, herders were provided with a trailer or teepee that was accessible by road, but were in locations without electricity or running water. Although the herders lacked electricity, many of them have solar powered batteries they use to charge their phones and other devices.

10. Lambing season takes place approximately October 10 through April 10, during

1 which time the herders and sheep are back in California.

2 11. El Tejon paid its shepherds based on a monthly wage rate established for California,  
3 including when they were in Nevada. Prior to June 1, 2014, I do not have records for the rate of  
4 pay for each of the herders. From June 1, 2014 to August 31, 2014, the monthly salary for each  
5 herder was \$1,422.52 plus vacation \$54.56; for September 1, 2014 to December 31, 2015 it was  
6 \$1,600.34 plus vacation \$61.38; from January 1, 2016 to 2017 it was \$1,777.98; 2018 increased  
7 to \$1,866.88 per month; 2019 increased to \$1,955.74 per month; 2020 increased to  
8 \$2,133.52/month. Because El Tejon chose to pay the California rate year-round, regardless of the  
9 herder's location, I did not keep detailed records of when shepherds were located in each state.

10 12. El Tejon gives many of its herders a discretionary bonus each year. The amount of  
11 the bonus depended on the quality of work done by the employee and how long the employee  
12 had been with the company. This bonuses varied widely from \$1,000 to \$5,000. The pay  
13 records should reflect these bonuses. Additionally, in some past years El Tejon gave each herder  
14 two weeks of paid vacation time each year. The herders are also provided room and board as  
15 part of their wages. The herders are permitted to slaughter a lamb to eat as well, which is also a  
16 part of their wages.

17 13. To the extent that records have been retained by El Tejon from 2015– present, El  
18 Tejon has produced payroll records and written policies and procedures from its business  
19 records, true and correct copies of which are attached to this declaration.

20 14. From 2010 – present, the only time that health insurance was provided to herders was  
21 through the Western Range Association-sponsored plan from approximately 2010 through the  
22 end of 2013. El Tejon did not independently provide health insurance to its herders at any point  
23 during the relevant time period.

24 15. To the best of my recollection from 2010 – present, Western Range Association, with  
25 the concurrence of El Tejon, has certified that the job description for El Tejon's herders aligns  
26 with the job description set forth in the relevant H-2A regulations and Special Procedures. Thus,  
27 herders were responsible for attending sheep grazing on the range, herding the flock and  
28 rounding up strays, bedding down the flock, guarding the flock from predatory animals and from



1 eating poisonous plants, drenching the sheep, examining sheep for signs of illness and  
2 administering vaccines, medications, and insecticides, and assisting in lambing, docking, and  
3 shearing. During some parts of the year shepherds may need to transport water to the sheep; and  
4 ensure sheep are able to get sufficient food.

5 16. In addition to written policies and procedures that have been produced, El Tejon also  
6 orally informed its herders of its expectations. From my experience as a herder, then a camp  
7 tender, then foreman and the owner, I am familiar with our operations and the expectations we  
8 set for our herders. The sheep have never been monitored by herders at night. The herders are  
9 not responsible for and are not trained by El Tejon to monitor the herd at night. Further, no  
10 herder has informed me that he was monitoring the sheep at night. This type of monitoring by  
11 the herders was unnecessary for El Tejon's herders because El Tejon employs specially trained  
12 Great Pyrenees dogs to watch over the herd at night and during mid-day. The dogs scare off or  
13 attack predators that come near the sheep. This has been the practice for over the last ten years.

14 17. To the best of my knowledge, from 2010 – present, El Tejon has not tracked  
15 sheepherders' hours worked, as the governing regulations do not require that. While El Tejon  
16 did not record hours worked, it did obtain declarations from six of its then-currently employed  
17 herders in 2016: Cesario Yauri Garcia, Elias Maximo Ascanoa Alania, Elmer Alcides Cantaro  
18 Oteo, Filomeno Leonardo Lapa Pomahuali, Gilmar Jhonny Melo Castillo, and William Archi  
19 Lozano. Based upon my 59 years of experience as a herder, camp tender, foreman and president  
20 of El Tejon, I believe that these declarations fairly and accurately describe the general daily  
21 routines of El Tejon herders out on the range.

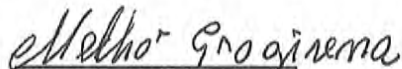
22 18. While in Nevada, supervisors bring food to herders two to three times per week,  
23 and typically stay with the herder for two to three hours. The supervisors come at different times  
24 and on different days depending upon where they are needed. While a supervisor will come  
25 check on them periodically, supervisors do not spend enough time with the herders to observe all  
26 of their work hours.

27 19. El Tejon strives to employ qualified herders; however, sometimes certain herders will  
28 need more guidance and coaching than others. I can tell by looking at a flock of sheep whether

1 they are being adequately tended to. If I learn that a herder has not been attending the herd as  
2 required, then we do not invite the herder to return for another season, or we request a transfer  
3 for that herder. I do not believe we have ever terminated a herder mid-season or sent any herder  
4 home who did not ask to be sent home.

5  
6 I hereby declare under penalty of perjury under the laws of the United States and the State of  
7 California that the foregoing is true and correct to the best of my knowledge.

8 Date: 12/28/2020

9   
10 Melchor Gragirena

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# **EXHIBIT 35**

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16 Attorneys for Third Party Ranches

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 CONNIE  
OLAGARAY**

1 I am a co-owner of Five-O Ranch ("Five-O") in Lodi, California; with  
a ranch address in Imlay, NV 89418.

2 Five-O Ranch grazes sheep on private land and public grazing  
allotments in Pershing and Humboldt Counties, Nevada and on primarily leased  
land in Solano County, California. We employ temporary, non-immigrant guest  
workers pursuant to the H-2A program. Western Range Association administers

1 many aspects of member participation in the H-2A program. Our ranch is a  
2 member of Western Range Association.

3 3. Five-O employs four or five H-2A workers at a time.

4 4. Western Range Association handles all the paperwork involved in  
5 obtaining H-2A herders for our ranch, including filing Form 790 (job clearance  
6 order), Form 9142/9142A (application for certification), and INS Form I-192 (visa  
7 application). WRA also arranges travel between Peru (the herders' home country)  
8 and the United States.  
9

10 5. When we need to hire a new herder, we select a herder based on  
11 references from our existing herders. On one occasion, we have hired a herder  
12 from a list provided by Western Range's contact in Peru. Otherwise, we have  
13 hired based solely on referrals from current herders.  
14

15 6. Our payroll records for 2020 are attached hereto as **Exhibit 1**. Our  
16 payroll records for 2019 are attached hereto as **Exhibit 2**. Our payroll records for  
17 2018 are attached hereto as **Exhibit 3**.  
18

19 7. Prior to and during the time for which we have records, it is my  
20 recollection that we paid the H-2A range herders a monthly wage rate based  
21 upon a directive from the Federal Department of Labor, Wage and Hour Division,  
22 that dictates wages and hours for each state in which H-2A range herders are  
23 employed, including Nevada. It is my understanding the Department of Labor  
24 refers to this rate as the AEWR. We advise Western Range of the rates that we  
25 pay our herders, and Western Range includes that information in the contracts.  
26  
27  
28

1           8.     We have always used the DOL's AEWB as the base rate of pay  
2 which we pay to my H-2A employees. With respect to two of our H-2A workers,  
3 who have been working for us for 18-20 years, we pay the California AEWB. The  
4 remaining workers are paid the California AEWB when they are working in  
5 California and the Nevada AEWB when they work in Nevada. We do not pay  
6 bonuses.  
7

8           9.     The Western Range Association Range Shepherd Employment  
9 Agreement provides an accurate description of the herder's job duties. However,  
10 not every element of that job description applies to our operation. For example,  
11 we do not use horses in our operation. In addition, our winter range does not tend  
12 to have the more extreme cold conditions contemplated in the job description in  
13 the contract.  
14

15           10.    During the fall and early winter we graze sheep on alfalfa stubble in  
16 Kings River Valley and Lovelock, Nevada. During this time, the herders are  
17 responsible for moving the sheep, administering vaccines and medications as  
18 needed, making sure the sheep have access to food and water, feeding the sheep  
19 dogs and guard dogs, and looking out for any health problems or risks that the  
20 sheep encounter.  
21

22           11.    In Mid-February, the sheep are shipped by truck to Solano County,  
23 California for shearing (done by a shearing contractor) and lambing. When the  
24 sheep are lambing, they are grouped according to the term of their pregnancy. As  
25 they lamb, bands are grouped according to lambed twins and singles and are  
26 managed by four herders and moved from area to area according to feed. The fifth  
27  
28

1 herder remains in Nevada with a band of yearlings. During this time, the herders  
2 perform their usual duties, as described above, as well as assist in setting up  
3 temporary corrals and electric fences as needed to manage the sheep in the  
4 shearing and lambing process. The herders also keep a close eye on lambing ewes  
5 to provide assistance with birth as needed.  
6

7 12. In late April and May, after all lambs are born and the sheep are  
8 docked, we move them (via truck) to the Nevada ranges. At this point, the sheep  
9 are divided into bands of approximately 800-1000 ewes. Each band is  
10 accompanied by a single herder. The sheep graze in the high country throughout  
11 late spring and summer; in the fall, they move into valleys and graze on desert  
12 ranges and on alfalfa stubble.  
13

14 13. The Months of February, March, and April, when the herds are in  
15 California, are the busiest time; during these months, the herders work 10 to 12  
16 hours days, seven days per week. During the rest of the year, the herders work  
17 approximately 5 hours per day, or 35 hours per week. The herders work 7 days a  
18 week, but are able to take time as needed to do errands, wash clothes, etc.  
19

20 14. My estimate of the amount of time the herders work is based upon  
21 my experience and knowledge of the business. The herders do not punch a time  
22 clock; the amount they work is dictated by the needs of the herd. Sheep naturally  
23 graze in the early morning and late afternoon; the rest of the time they bed down  
24 to sleep. While the sheep are grazing, the herder can be actively engaged in  
25 moving the sheep where forage is available and making sure that the sheep have  
26 access to water. The remainder of the day, (except during lambing and shearing  
27  
28

1 season, or when the sheep are loaded into trucks to move) the herder has free  
2 time for himself.

3 15. We provide the herders with room and board. In both California and  
4 Nevada, the herders live in camp trailers which are equipped with propane  
5 stoves, refrigerators, and solar panels to charge their phones and other personal  
6 electronic devices. These camp trailers have a large fresh water tank to provide  
7 water for drinking, cooking, and washing. The trailers are not equipped with a  
8 toilet. Camp trailers are inspected annually by EDD.

9  
10 16. When the sheep are in California, John Olagaray (my husband and  
11 the other owner of Five-O Ranch) works with the herders on close to a daily basis  
12 to be certain that the sheep are being cared for, have access to water, and that  
13 the herder is performing his duties. When the sheep are in Nevada, Mr. Olagaray  
14 works with and checks on the herders once every four or five days and is in  
15 contact with one or more herders on a daily basis.

16  
17 17. While in the high country ranges during the summer, two of the  
18 herders sleep in tents for a period of about 30 days. During this time, the herders  
19 have portable solar panels to charge their personal electronics.

20  
21 18. The herders are provided food and other supplies every 4-5 days,  
22 which includes a supply of fresh vegetables, meats, and staples.

23  
24 19. We provide the herders with guard dogs and sheep dogs. The  
25 herders accompanying sheep in the high country and BLM allotments pack in  
26 with a pack mule. The herders are responsible for feeding the dogs, but little  
27 training is required.  
28



1           20.    While the guard dogs are fairly effective at keeping predators away,  
2 we also provide our herders with a rifle. If the herders are having problems with  
3 coyotes, they report this to us and we call the federal trapper. The herders are  
4 not required to look out for predators at night.  
5

6           21.    We provide our herders with boots and rain gear. We also provide  
7 the sheep herders with the tools they need, including a sheep hook, shovel, knives,  
8 veterinary supplies, camp supplies, bedding, a tent, and a cell phone, and all the  
9 other supplies needed for them to perform their job duties.  
10

11           22.    We have never asked WRA to re-assign a herder or chosen to not  
12 have a herder return after the end of their yearly contract.

13           23.    The foregoing is true and made under penalty of perjury under the  
14 law of the State of Nevada.  
15

DATED: April 2, 2021

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19 Connie C. Olagaray  
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# **EXHIBIT 36**

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16 Attorneys for Third Party Ranches

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 JOHN  
ESTILL**

1. I am a member and manager of Estill Sheep Co., LLC ("Estill")  
Estill raises sheep on public land grazing allotments in Northwestern Nevada  
and Northeastern California.

2. We employ temporary, non-immigrant guest workers pursuant to  
the H-2A program. Western Range Association administers many aspects of

1 member participation in the H-2A program. I am a member of the Western Range  
2 Association.

3 3. I typically employ about 5 herders in the winter and 8 to 10 herders  
4 in the spring and summer. Western Range Association handles all the paperwork  
5 involved in obtaining H-2A herders for our ranch, including filing Form 790 (job  
6 clearance order), Form 9142/9142A (application for certification), and INS Form  
7 I-192 (visa application). WRA also arranges travel the herder's home country and  
8 the United States. While we try to get the same herders back every year, we are  
9 not always able to do so. When we need a new herder, we try to rely on  
10 recommendations from our existing herders.  
11

12 4. Estill pays the H-2A range herders a monthly wage rate based upon  
13 a directive from the Federal Department of Labor, Wage and Hour Division, that  
14 dictates wages and hours for each state in which H-2A range herders are  
15 employed, including Nevada. It is my understanding the Department of labor  
16 refers to this rate as the AEWR.  
17

18 5. Estill uses the DOL's AEWR for the state of Nevada as the base rate  
19 of pay which we pay to my H2A employees. However, approximately one-half of  
20 our herders are paid an amount in excess of the AEWR. Attached hereto as  
21 **Exhibit 1** are payroll records for the past 3 years.  
22

23 6. We run a herd of approximately 3500 ewes. During the winter, these  
24 ewes are usually broken into two or three bands, each band is accompanied by a  
25 herder. Our winter range is Pershing and Washoe County, Nevada.  
26  
27  
28

1           7.     We shear the sheep in March. Our ewes begin lambing in March. All  
2 of our ewes lamb in lambing sheds.

3           8.     During most of the year (from mid-May through February), herders  
4 typically work around 6 hour per day and has the rest of his time to himself.  
5 Somedays may be longer, based on the weather, the availability of water, etc., but  
6 a relatively short day is typical. When we are shearing and lambing in March,  
7 April, and part of May, the herders work 10 to 12 hours per day.

8           9.     For nine months out of the year all our herders live in sheep camp  
9 trailers. These trailers are equipped with a propane stove, and some also have a  
10 propane refrigerator. While on the summer range, some of the herders live in  
11 canvas tents. We have a camp tender who sets the camps and moves them as  
12 necessary.

13           10.    At all times of the year, the camp tender resupplies the herders with  
14 food and other supplies every 5-7. We supply staples, to the herders and provide  
15 other food and supplies upon request. The herders usually prepare their own food.  
16 However, during lambing season, we occasionally provide prepared meals for  
17 them.

18           11.    I supply the herders sheep dogs and and guard dogs, as well as a  
19 firearm, to assist in controlling predators. I also herders all the camp equipment  
20 and supplies that they need, as well as the all the tools that they need to do their  
21 jobs. I also provide a monthly stipend for a cell phone. We provide boots and  
22 gloves. The herders are responsible for buying the rest of their clothing.  
23  
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1 12. The foregoing is true and made under penalty of perjury under the  
2 law of the State of Nevada.

DATED: March 15, 2021

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JOHN ESTILL

# **EXHIBIT 37**

UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Western Region  
90 7th Street, Suite 13-100  
San Francisco, California 94103

Southwest Region  
Federal Building, Suite 800  
525 S. Griffin Street  
Dallas, Texas 75202-5007



In the Matters of:

WESTERN RANGE ASSOCIATION;  
[Insert Member Ranches]

**BACK WAGES AND CIVIL MONEY PENALTY PAYMENT  
AND ENHANCED COMPLIANCE AGREEMENT**

The Secretary of Labor, United States Department of Labor ("Secretary"), Western Range Association ("Western Range"), and [REDACTED] (collectively, the "Parties") enter into this Back Wages and Civil Money Penalty Payment and Enhanced Compliance Agreement ("Agreement") to resolve the 16 cases below involving Western Range as a joint employer with the Settling Member Ranches:<sup>1</sup>

	Case Names	Case Nos.
1.	Western Range and	[REDACTED]
2.	Western Range and	[REDACTED]
3.	Western Range and	[REDACTED]
4.	Western Range and	[REDACTED]
5.	Western Range and	[REDACTED]
6.	Western Range and	[REDACTED]
7.	Western Range and	[REDACTED]
8.	Western Range and	[REDACTED]
9.	Western Range and	[REDACTED]
10.	Western Range and	[REDACTED]
11.	Western Range and	[REDACTED]
12.	Western Range and	[REDACTED]
13.	Western Range and	[REDACTED]
14.	Western Range and	[REDACTED]
15.	Western Range and	[REDACTED]
16.	Western Range and	[REDACTED]

This Agreement also resolves Western Range's civil money penalty ("CMP") liability for Case Nos. [REDACTED]

<sup>1</sup> The case numbers listed are those assigned by the U.S. Department of Labor, Wage and Hour Division ("WHD"). Where only one case number is listed, the matter has either already been resolved with the member ranch or will not be resolved with the member ranch through this Agreement.



In order to resolve these matters without further burden, expense and delay of further litigation, the Parties to this Agreement stipulate and agree to the following:

**GENERAL STATEMENTS**

1. Upon written notices in accordance with 29 C.F.R. §§ 501.16, 501.19, and 501.31-32, the Secretary notified Western Range and Settling Member Ranches of the alleged back wages found to be due and CMPs assessed for alleged violations of the H-2A implementing regulations.

2. Within thirty (30) days of receipt of the aforesaid alleged back wages and CMP notices, Western Range made requests for a hearing on such back wages and CMPs in accordance with 29 C.F.R. § 501.33.

**ENHANCED COMPLIANCE PROVISIONS**

**I. NOTICES TO SHEEPHERDERS REGARDING RIGHTS**

3. Western Range must take the following steps to ensure that sheepherders and potential sheepherders are aware of their rights:

a. Western Range and the Settling Member Ranches shall provide the Secretary with the most recently updated contact information for the sheepherders listed in Exhibit A, including any telephone numbers and addresses, for the sheepherder and his last known address in his home country, in their possession within thirty (30) days of the execution of this Agreement by all Parties;

b. Western Range shall distribute the following "Notice of Wages Due" attached hereto as Exhibit B to the sheepherders listed in Exhibit A. This Notice should be distributed to the sheepherders in Exhibit A within thirty (30) days of the execution of this Agreement by all Parties. The sheepherder shall sign the verification form attach to Exhibit B and return the verification form to Western Range. Western Range shall keep the verification forms for two (2) years and make them available to the WHD if requested.

i. If the sheepherder is located in his home country, but will be returning to work with a Member Ranch, then Notice shall be distributed to the sheepherder at the time the sheepherder receives his contract in his home country;

ii. If the sheepherder is located in his home country, the sheepherder will not be returning to work with a Member Ranch, and neither Western Range nor its recruiter(s) are able to contact the sheepherder, then Western Range shall make a list of these sheepherders and email the list to:

Veronica Melendez at [melendez.veronica@dol.gov](mailto:melendez.veronica@dol.gov)

c. Western Range shall distribute the attached Exhibit C to all H-2A shepherders being transferred to another ranch. Exhibit C must be provided at least seven (7) business days before the shepherd is transferred. In the case that a shepherd must be transferred immediately and it is not feasible to provide the shepherd with Exhibit C at least seven (7) business days prior to the transfer, then Exhibit C should be provided to the shepherd at the same time he receives the work contract for the other member ranch or within one (1) business day of being transferred, whichever is earlier;

d. Within one hundred twenty (120) days of the execution of this Agreement by all Parties, Western Range shall create a video in Spanish that includes the following talking points:

i. Applicants do not need to pay to get a job as shepherd with a Western Range Member Ranch;

ii. Western Range/Member Ranch reimburses the shepherd for his visa interview and travel expenses (apart from those already covered);

iii. Western Range picked the applicant because of his experience and skill as a shepherd; if a shepherd finds himself doing mostly non-shepherding work, then he should call Western Range;

iv. Shepherders cannot be charged for housing, transportation, food or water;

v. Vehicles used during work must be safe and properly maintained, and operated by a licensed and/or trained driver;

vi. Contact information for shepherders to call, i.e., Western Range, Department of Labor, Consulate Offices; and

vii. Before getting their visa, shepherders must receive information regarding the working conditions and terms of their employment.

e. Western Range shall provide the video referenced in paragraph 3(d) to its foreign coordinators to show to all potential H-2A shepherders before the shepherd attends a visa interview with the consulate;

i. Before Western Range creates the video, Western Range shall provide a transcript of the video to Verónica Meléndez by e-mailing it to

[melendez.veronica@dol.gov](mailto:melendez.veronica@dol.gov). The Secretary shall provide any feedback on the transcript within ten (10) days of receipt of the transcript;

ii. If and when Western Range creates a website or a social media profile, this video should also be posted in the website or social media profile. Western Range shall also have its Member Ranches inform shepherders that the video is available for shepherders to see and provide the website;

f. Western Range shall distribute the following "Notice of H-2A Sheepherder's Rights under Federal Law" attached hereto as Exhibit D, to all Member Ranches employing H-2A shepherders for whom Western Range petitioned the Employment & Training Administration for entry into the United States. Member Ranches shall distribute this Notice to all H-2A shepherders currently residing in the U.S. within thirty (30) days of execution of this Agreement by all Parties and distributed to each sheepherder when he signs his contract, extension contract and/or transfer contract. In addition, Western Range shall also distribute this Notice to its foreign coordinator(s) for dissemination to all new potential H-2A shepherders, before each attends a visa interview with the consulate. The foreign coordinator(s) shall similarly provide this Notice to all returning shepherders before each sheepherder returns. Western Range shall also distribute this Notice to its Member Ranches to post and maintain in a location frequented by shepherders. Western Range shall provide this Notice to the Member Ranches to distribute to sheepherders for two (2) years from the date this Agreement is executed, with the Notice being distributed annually to each sheepherder and when each sheepherder signs his contract, extension contract and/or transfer contract.

g. Western Range shall not be held liable for a breach of this ECA based on a Member Ranch's failure to comply with Sections 3(a)-(f) above, unless Western Range actively participated in the Member Ranch's non-compliance. Paragraph 3 does not change Western Range's and Member Ranches' duties, responsibilities, and liability under 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

## II. NOTICES TO MEMBER RANCHES

4. For two (2) years from the date this Agreement is executed, Western Range shall distribute the "Notice of H-2A Employer's Obligations under Federal Law" attached hereto as Exhibit E, to its Member Ranches, as well as provide this Notice on a semi-annual basis to its Member Ranches through its

electronic and hard-copy newsletters and/or through materials provided at annual meetings. This Notice shall initially be distributed within thirty (30) days of execution of this Agreement by all Parties; within thirty (30) days thereafter, Western Range shall provide Verónica Meléndez at [melendez.veronica@dol.gov](mailto:melendez.veronica@dol.gov) with proof that this Notice was distributed to its Member Ranches.

### III. SHEEPHERDER SAFETY

5. Western Range shall require, as set forth herein, its Member Ranches' to provide shepherders with communication methods in remote areas. Because of the unique nature of shepherding or range production of livestock, this equipment must include effective means of communicating with persons capable of responding to the shepherders' needs in case of an emergency. These communication methods include, but are not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of communication systems. The employer must specify in the job order:

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

b. If there are periods of time when the shepherders 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 shepherders to monitor the shepherders' wellbeing. This contact must include either arrangements for the shepherders 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 shepherders and the employer, which may include visits between the shepherders and other persons designated by the employer to resupply the shepherders' camp. Whenever a Member Ranch visits a shepherd stationed in an area known or believed to be out of cell phone coverage, the Member Ranch must maintain a written log recording each check-in, including the date, time, location and welfare of the shepherd. The Member Ranch should provide the log to Western Range on a quarterly basis. This log shall be maintained for two years and be made available to the WHD upon request.

c. Western Range shall require that its Member Ranches disclose their individual communication plans to Western Range. Western Range shall make those communications plans available to the WHD upon request.

d. Western Range shall not be held liable for a breach of this ECA based on a Member Ranch's failure to comply with Sections 5(a)-(c) above, unless Western Range actively participated in the Member Ranch's non-compliance. Paragraph 5 does not change Western Range's and Member Ranches' duties, responsibilities, and liability under 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

6. Western Range shall require, as set forth herein, its Member Ranches' to confirm that H-2A shepherders who operate vehicles as part of their jobs are properly trained in the operation of the vehicles before using them. Western Range to confirm compliance shall require, as set forth herein, its Member Ranches to acknowledge in writing their responsibility to train or instruct shepherders on how to properly operate any vehicles needed as part of their jobs. The Member Ranch shall also ensure that the vehicles are adequately maintained and safe and that shepherders are licensed by the applicable state or county code to operate vehicles (if required by law) or are adequately trained to drive if no license is required.

a. Western Range shall not be held liable for a breach of this ECA based on a Member Ranch's failure to comply with paragraph 6 above, unless Western Range actively participated in the Member Ranch's non-compliance. Paragraph 6 does not change Western Range's and Member Ranches' duties, responsibilities, and liability under 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

7. Western Range shall require its Member Ranches' compliance in immediately notifying Western Range of any shepherder fatality or of any shepherder who suffered serious bodily injury. Within one (1) business day of Western Range's notification of a death or serious bodily injury, Western Range must notify the WHD regarding said fatality or serious bodily injury by e-mailing Richard Longo in San Francisco at [longo.richard@dol.gov](mailto:longo.richard@dol.gov).

#### IV. REPORTING AND MONITORING PROGRAM

8. Within thirty (30) days of the execution of this Agreement by all Parties:

a. Western Range shall establish a phone number that is available exclusively for shepherders to call anonymously to raise concerns or complaints about their working conditions, including claims of H-2A violations;

b. Western Range shall return each shepherder's call within a reasonable time, but no later than three (3) business days from the date of the call;

c. Western Range must keep a written record of the date each shepherd called, the date that each call was returned and the response provided to each shepherd;

d. Western Range shall provide Verónica Meléndez at [melendez.veronica@dol.gov](mailto:melendez.veronica@dol.gov) with the phone number.

9. Within ninety (90) days of execution of this Agreement by all Parties, Western Range must designate (a) staff member(s) ("Designee(s)") whose job duties will include monitoring Member Ranch compliance with the regulatory requirements of the H-2A program. No adverse action may be taken against the Designee(s) for his or her monitoring activity.

a. The Designee(s) may be a Western Range staff member;

b. WHD may provide specific H-2A annual training at the Western Range Association office, to be attended by all Western Range employees and the Designee(s);

c. For each year Western Range performs such monitoring, the Designee(s) shall call or visit at least 15% of those Member Ranches with which Western Range is a joint employer and speak to as many shepherders jointly employed by Western Range as is practicable. The calls and in-person interviews shall be private and confidential. The Designee(s) shall notify the shepherders that the interviews are being conducted confidentially, and that their identities will not be shared with Western Range or Member Ranches, but might be shared with the Department of Labor upon the Department's request. The Designee(s) shall maintain interview notes in place, whether electronically or on paper, that are not accessible to the Member Ranches or other Western Range staff, employees, or board members, except for Western Range management that is reviewing the Designee's(s') job performance in complying with this Agreement. The investigating Designee(s) will ask employees, in a language that each employee understands, the name of the Member Ranch they work for, the shepherders' home country, current address and personal telephone number. The Designee(s) shall ask the shepherd about the following categories:

- employee's duties
- areas of employment
- housing
- travel to the United States
- transportation on the job
- deductions
- meals and food
- kickbacks

Inquiries shall include the questions attached in Exhibit F;

d. The Designee(s) will disclose in writing to Western Range management, any claimed potential H-2A violations revealed while maintaining the anonymity of employees providing information. The Designee(s) must make any such disclosures as soon as practicable after becoming aware of claimed potential violations. Western Range shall maintain the written reports for two (2) years and supply copies to the WHD if requested;

e. If the Designee(s) identify(ies) claimed potential H-2A violations, Western Range shall inform the Member Ranch of the alleged violations and steps needed to remedy the alleged violation. Western Range shall make all reasonable efforts to maximize its Member Ranches' compliance regarding the correction of alleged violations within thirty (30) days. In the case that a shepherd is performing work outside of the state initially listed in the labor certification, Western Range will make all reasonable efforts to verify that the Member Ranch is, at a minimum, paying the shepherd the higher Adverse Effect Wage Rate and that the Member Ranch seeks guidance from DOL's Employment and Training Administration if needed, to amend the application for certification. In the event that the Member Ranch has not made the appropriate corrective actions within the timeframe stated above, the Designee(s) shall send a letter or otherwise communicate with Richard Longo within five (5) business days after the expiration of the corrective action timeframe. The corrective action will identify the claimed potential violations and the corrective actions recommended, and will include supporting documentation;

f. No adverse action may be taken against any shepherd or Western Range representative who cooperates with the Designee(s) or who provides information about claimed potential violations of the H-2A program.

g. Western Range shall maintain this monitoring program as set forth in paragraph 9 for two (2) years from the date the Designee begins to fulfill his or her duties as provided above.

h. Western Range shall not be held liable for a breach of this ECA based on a Member Ranch's failure to comply with Sections 9(a)-(g) above, unless Western Range actively participated in the Member Ranch's non-compliance. Paragraph 9 does not change Western Range's and Member Ranches' duties, responsibilities, and liability under 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

**V. TRAINING PROGRAM**

10. Western Range agrees to provide training materials to its Member Ranches that are involved in the H-2A program and to provide training at its annual meetings. This training will be done no less than annually for two (2) years and Western Range will maintain records of Member Ranch representatives attending the annual meetings and will provide these records to the WHD within thirty (30) days if requested. Materials for this training may be found at the WHD's website: [https://www.dol.gov/whd/ag/ag\\_h-2a.htm](https://www.dol.gov/whd/ag/ag_h-2a.htm).

11. The WHD may conduct the first annual training. For subsequent annual trainings, Western Range may independently select its facilitator(s).

12. Western Range agrees to take all reasonable measures to maximize Member Ranch compliance with providing H-2A training.

13. On at least an annual basis, Western Range will provide training covering the applicable regulatory requirements, including:

- a. General H-2A labor certification obligations under the program;
- b. Obligation for recruitment of corresponding U.S. workers;
- c. Provision of safe housing free of charge;
- d. Provision of safe transportation;
- e. Payment of recruitment fees and costs, including visa fees, visa interviews, visa applications, medical exams and background checks;
- f. Shepherd performance of non-shepherding work, including agricultural work and open range work;
- g. Shepherd transfers between states and amendment of the labor certification and paying the proper wage rate;
- h. Regulations regarding corresponding U.S. workers;
- i. Obligation to provide meals free of charge;
- j. Allowable and prohibited payroll deductions; and
- k. Kickback or incentive prohibitions.

14. Western Range further agrees to distribute to its Member Ranches the following materials within thirty (30) days of execution of this Agreement by all Parties:

- Fact Sheet #26: <https://www.dol.gov/whd/regs/compliance/whdfs26.pdf>



- Fact Sheet #77D: <https://www.dol.gov/whd/regs/compliance/whdfs77d.pdf>

15. Western Range shall not be held liable for a breach of this ECA based on a Member Ranch's failure to attend the training referenced in this Section unless Western Range actively participated in the Member Ranch's non-compliance. This does not change Western Range's and the Member Ranches' duties, responsibilities, and liability under 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

**MONETARY PAYMENTS**

16. Western Range agrees to pay the WHD the sum of \$100,755 in CMPs in full and final settlement. Western Range also agrees:

a. - Not to further contest the calculation of CMPs owed in these cases and not to further contest the WHD's assessment of CMPs;

b. To pay the compromised \$100,755 CMP payments monthly, within one (1) year of execution of this Agreement by all Parties, with monthly payments to begin within thirty (30) days of execution of this Agreement by all Parties. The Secretary agrees not to impose a pre-payment penalty;

c. To send or deliver required payments in the form of cashier's checks or money orders, payable to "Wage & Hour Div., Labor". Western Range shall designate "Civil Money Penalties - WRA" in the memo section of each cashier's check or money order. Western Range shall also include a coupon or cover page with each cashier's check or money order that includes the table on pages 1-2 of this Agreement and a short explanation that the check enclosed is for the 16 cases listed in the table; the WHD shall provide coupons or cover pages for such payments. The payments should be sent or delivered to Rich Longo at:

U.S. Department of Labor  
Wage and Hour Division, Regional Office  
90 7<sup>th</sup> Street, Suite 13-100  
San Francisco, California 94103

d. The CMPs paid under paragraph 16 by Western Range, do not release any of the Member Ranches listed in the table above from their liability for CMPs, if any.

17. The Settling Member Ranches agree to the following terms regarding payment of CMPs:

a. [REDACTED] agrees to pay the sum of \$2,205 in CMPs in full and final settlement within thirty (30) days of execution of this Agreement by all Parties;

b. [REDACTED] agrees to pay the sum of \$1,485 in CMPs in full and final settlement within thirty (30) days of execution of this Agreement by all Parties;

c. [REDACTED] agrees to pay the sum of \$3,960 in CMPs in full and final settlement within thirty (30) days of execution of this Agreement by all Parties;

d. [REDACTED]

e. Not to further contest the calculation of CMPs owed in these cases and not to further contest the WHD's assessment of CMPs;

f. To send or deliver required payments in the form of cashier's checks or money orders, payable to "Wage & Hour Div., Labor". Each Settling Member Ranch shall designate "Civil Money Penalties - [Name of Settling Member Ranch]" in the memo section of each cashier's check or money order. Payments should be sent or delivered to Rich Longo at:

U.S. Department of Labor  
Wage and Hour Division, Regional Office  
90 7<sup>th</sup> Street, Suite 13-100  
San Francisco, California 94103

18. Western Range agrees to pay the WHD the sum of \$35,769.70 for alleged back wages due jointly by the Settling Member Ranches and Western Range under Case Nos. [REDACTED]

[REDACTED] Western Range will make full payment of the alleged back wages owed within thirty (30) days of execution of this Agreement by all Parties. Western Range and Settling Member Ranches further agree:

a. To send or deliver one payment of \$35,769.70 in the form of a cashier's check or money order, payable to "Wage & Hour Div., Labor". Western Range shall designate "Back Wages - Western Range Association" in the memo section of the cashier's check or money order. Western Range shall also include a coupon or cover page with the cashier's check or money order that contains the names and case numbers of the cases listed in paragraph 18 and a short explanation that the payment is for the six (6) cases listed in paragraph 18. The payment should be sent or delivered to Rich Longo at:

U.S. Department of Labor  
Wage and Hour Division, Regional Office  
90 7<sup>th</sup> Street, Suite 13-100  
San Francisco, California 94103

b. To not further contest the calculation of alleged back wages claimed to be due to the H-2A shepherders under this subsection and to not further contest the Secretary's authority to collect back wages on behalf of H-2A shepherders under the *Immigration and Nationality Act* and its associated regulations, provided that the WHD performs on the terms of this Agreement;

c. That Western Range, its officers, agents, employees, Member Ranches, and those persons in active concert or participation with Western Range and the Settling Member Ranches, shall not in any way directly or indirectly, demand, require or accept reimbursement for any of the back wages or charge any shepherders under this paragraph. Western Range and the Settling Member Ranches shall not threaten or imply that adverse action will be taken because of the payments made under this Agreement;

d. That this payment of \$35,769.70 does not resolve any Member Ranch's liability for back wages not jointly and severally resolved by Western Range. Nor does this Agreement resolve any back wage liability in Case Nos. [REDACTED]

**DEFAULT**

19. Western Range and the Settling Member Ranches agree that the Secretary may file an Order of Reference for Matters 1-13 listed in the table above with the Office of the Administrative Law Judges ("OALJ"), should Western Range or any Settling Member Ranch fail to comply with this Agreement and fail to correct its non-compliance within thirty (30) days of written notice. As to Western Range, if filing an Order of Reference becomes necessary, the Secretary will attach the respective 13 determination letters. However, if Western Range shows within thirty (30) days of written notice that the non-compliance was caused by a Member Ranch and Western Range did not participate, had no knowledge of, or did not have any reason to know of the non-compliance, then the Secretary will not file the Order of Reference for all 13 matters. If a Settling Member Ranch solely caused the claimed non-compliance, the WHD will file the Order of Reference against that Member Ranch only. As such, Western Range and the Settling Member Ranches agree:

- a. To withdraw their Requests for Hearing and Appeals;
- b. That the Order for these 13 Determination Letters shall be enforceable to the extent allowable by law or regulation;

c. To waive any further proceeding before the OALJ and the Administrative Review Board regarding all matters which are the subject of this Order; and

d. To waive the right to challenge or contest the validity of the Order entered in accordance with this Agreement, to the extent allowable by law or regulation.

**MISCELLANEOUS PROVISIONS**

20. All obligations set forth herein shall continue for a period of two (2) years, unless otherwise stated. If any party to this agreement believes that a subsequent change in law alters obligations imposed by this agreement, that party may seek appropriate relief through a proceeding before the Office of Administrative Law Judges.

21. Nothing contained within this Agreement is automatically binding on any government agency other than the U.S. Department of Labor, Wage and Hour Division.

22. Nothing contained within this Agreement is to be construed as resolving or dismissing any of the CMPs or back wages individually assessed against the following Member Ranches:

- a.
- b.
- c.
- d.
- e.



23. Each party agrees to bear its own costs, attorneys' fees and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to attorneys' fees and other costs authorized pursuant to the *Equal Access to Justice Act*, as amended.

24. Should Western Range or the Settling Member Ranches believe the Secretary to be in non-compliance with this Agreement and if the Secretary fails to correct this non-compliance within thirty (30) days of notice, Western Range and/or the Settling Member Ranches may proceed in a court of competent jurisdiction to address the alleged WHD non-compliance. If the Secretary is held by that court to be in non-compliance, any previously filed Requests for Hearing and Appeals pertaining to the party claiming non-compliance shall then be revived.

25. Western Range and the Settling Member Ranches understand and agree that neither the Secretary nor WHD waive the right to conduct future investigations in new matters and take appropriate enforcement action.

26. This is a good faith settlement of contested matters and this Agreement may not be used as evidence or an admission of liability or damages.

27. The Secretary, Western Range and [REDACTED] agree to enter into the Consent Findings attached as Exhibit G to resolve the administrative proceedings for Case No. [REDACTED]  
[REDACTED]

28. The Secretary and Western Range agree to enter into the Consent Findings attached as Exhibit H to resolve the administrative proceedings for Case No. [REDACTED]  
[REDACTED]

*[Remainder of Page Intentionally Left Blank; Signature Pages to Follow]*

Western Range Association

Monica Younce  
SIGNATURE  
Monica Younce  
PRINTED NAME  
Executive Director  
TITLE  
October 26, 2018  
DATED

United States Department of Labor  
Wage and Hour Division

Richard Longo  
SIGNATURE  
Richard Longo  
PRINTED NAME  
Deputy Regional Administrator  
TITLE  
October 26, 2018  
DATED



PRINTED NAME

owner \_\_\_\_\_

TITLE

11/06/2018 \_\_\_\_\_

DATED