

FINAL REPORT
OF THE
SHEEP HERDER WAGE BOARD EMPLOYEE MEMBERS
ON THE ISSUES OF THE CONTINUED EXEMPTION OF
SHEEP HERDERS FROM IWC ORDER 14, AND ON
THE NEED FOR ADDITIONAL PROTECTIONS
OF SHEEP HERDERS IN CALIFORNIA

SUBMITTED
TO THE
MEMBERS OF THE INDUSTRIAL WELFARE COMMISSION

ON FEBRUARY 26, 2001
SACRAMENTO, CALIFORNIA

February 26, 2001

Mr. William E. Dombrowski, Chairman
Industrial Welfare Commission
770 L Street, Suite 1170
Sacramento, CA 95814

RE: The Final Report of the Employee Members of the Sheep Herder Wage Board

Dear Mr. Dombrowski:

Attached you will find a copy of a report outlining our recommendations regarding the two basic charges to this wage board: 1) whether the industry should continue to be completely exempt from Order 14; and 2) whether there are unique working conditions of sheep herders that require the establishment of special protective rules.

As our report makes clear, we reject the basic industry position—that the wage and work place standards of the controversial federal H-2A guest worker program—should be all that applies to sheep herders under California law. Instead, we have proposed reasonable amendments to the wage order to allow for better wages and improved working conditions. We hope you can support our position. We look forward to continuing to work with you, the staff and the industry to arrive at a fair conclusion on this issue.

Sincerely,

TOM RANKIN


Member, Sheep Herder Wage Board

ROSALINDA GUILLEN


Member, Sheep Herder Wage Board

VICTOR FLORES


Member, Sheep Herder Wage Board


CHRIS SCHNEIDER


Member, Sheep Herder Wage Board

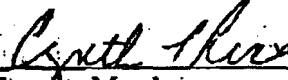
MARK SCHACHT


Member, Sheep Herder Wage Board

HERACLIO ASTETE


Alternate Member,
Sheep Herder Wage Board

CYNTHIA L. RICE


Alternate Member,
Sheep Herder Wage Board

I. Introduction and Overview

This report outlines the findings of the employee members of the sheep herder wage board on the two charges made to us by the IWC, and also provides an explanation of all of our proposed changes to IWC Order 14-2001.

This report is divided into 3 sections covering:

- 1) a discussion of our recommendations regarding wages to be paid;
- 2) a discussion of provisions of the current wage order that should also apply to sheep herders; and
- 3) a discussion of other protections which should be made available under the order.

In addition, in five appendices to the report, we provide the IWC with a variety of other information that will be of help in understanding our proposal, including:

- I. A copy of the wage order, with the specific language of our amendments written into the appropriate sections (*page 9*).
- II. Our rationale for the monthly wage to be set for sheep herders (*pg. 23*).
- III. A reprint of the recent on-line investigative report: "A WOLF IN SHEEP'S CLOTHING: Foreign Workers Are Protecting Colorado's Sheep, But Who's Protecting the Herders?" (*pg. 25*).
- IV. A representative sample of some of the recent investigative reporting on abuses in the H-2A program elsewhere in the U.S. (*pg. 35*).
- V. A short list of some other materials describing abuses found in guest worker programs in the United States and in California (*pg. 45*).

II. Recommendations Regarding Wages to be Paid to Sheep Herders

A. Sheep Herders Should Be Paid A Monthly Wage Higher Than The H-2A Program Rate, But Employers Should Also Be Able To Pay A Lower Wage If They Provide Meals And Lodging

The industry insists that the current H-2A program wage rate of \$900 a month is fair for sheep herders [who under contract must be "on call" for 24 hours a day, seven days a week, for 50 weeks per year]. The industry also says that this same rate should be applied to non-H2-A sheep herders as well.

We strongly disagree, and believe that under current California law the workers would be entitled to compensation for all of this time. (See supplemental written testimony of Cynthia L. Rice, admitted October 3, 2000.)

However, to produce an alternative compromise minimum wage for purposes of our proposal, we first reviewed testimony by industry representatives before the IWC and found that applying the minimum wage to hours they said were actually worked by sheep herders should have resulted in minimum monthly wage of about \$1,500.

We then considered the testimony of sheep herder advocates who have met extensively with California sheep herders and who had asked them to provide their best sense of hours actually worked, using the industry's prior testimony as a basis for that analysis. The conclusion of the workers was that they worked a significant amount of additional hours for which they were entitled to compensation. Indeed, the compromise we propose—a monthly wage of \$2,060—is based on fewer hours than the workers believe they work. In Appendix No. 2, we set forth the basis for our proposal.

In a spirit of further compromise with the industry, employee wage board members propose to allow employers to reduce that monthly wage by the full amount of the credits that are available under the wage order's meals and lodging section, and to eliminate—as to sheep herders only—the provisions of that section that require the employee to voluntarily agree to such credits. This will allow a reduction of \$411 per month off the \$2,060 monthly wage we propose.¹

¹ We arrive at the \$411 figure by multiplying the maximum permissible weekly rate for a room occupied alone by 4.3 weeks per month, and adding to that the maximum daily food allowance times 30 days.

In addition, our proposal allows for the reduction of an additional \$100 per month, if the employer provides a seventh day off in each week of the month.

Thus, the net minimum monthly wage could be as low as \$1,549.

Finally, we have agreed to discuss additional credits against the monthly minimum wage, specifically, the value of medical insurance benefits and the cost of transportation associated with importing sheep herder guest workers. We would hope to be able to address these issues at the forthcoming public hearing (or before, in private meetings with industry leaders), but can make no commitment because further reductions of the monthly wage may reduce it unacceptably.

B. Our Proposal Exempts The Industry From Payment Of Overtime Wages Even Though They Concede That For 6 Months Of The Year Many Sheep Herders Work 13 Hour Days, Seven Days A Week

Under the wage order, other agricultural workers are entitled to overtime pay equal to 1 and ½ times the regular rate for all hours after ten hours in a day, for the first eight on the seventh day, and 2 times the regular rate for all hours after eight on the seventh day. (See § 3(A).)

The proposal we have offered eliminates all overtime liability. This is a very significant reduction of total wages due to sheep herders because, according to testimony by the industry, sheep herders work 13 hours per day, seven days a week, for at least six months of the year.

The difference between our compromise monthly wage and that which would be due if overtime were paid amounts to thousands of dollars on an annualized basis.

III. Recommendations Regarding Provisions Of Wage Order 14 Which Provide Important Protections Afforded To Other California Agricultural Workers That Are Not Included In The Sheep Herder Rules Of The H-2A Program And Which Should Therefore Be Extended To All Sheep Herders

A. Payroll Records And Employee Pay Information Required

Section 7 requires employers to maintain basic information and time records about their employees, to provide employees with itemized pay stubs (including all deductions, such as for meals and lodging), and to keep these records for three years. Our proposal provides that sheep herders will be treated like other agricultural workers, except that the existing obligation to make and keep records

of hours worked, start and stop times, etc., has been modified so that it applies only when a worker is doing non-sheep herding work.

B. Meal Periods Required

Section 11 requires employers to provide a meal period when employees work more than 5 hours, and obligates employers who require workers to take an "on duty" meal period to count it as time worked. Our proposal retains the meal period requirement, but eliminates the provisions that deal with "on duty" meals.

C. No Deductions For Loss Of Equipment Unless Caused By Dishonesty, Willfulness, Or Gross Negligence By The Employee

Section 8 requires no amendment to apply to sheep herders, other than merely to include this section in the listing of those which apply to them. It is a basic California wage order protection enjoyed by virtually every worker in every industry and occupation.

D. Employers Must Provide Tools Or Equipment Unless Wages Are At Least Two Times The Minimum Wage

Section 9, another ubiquitous provision common through IWC orders, bars charges for tools or equipment except when workers make more than twice the minimum wage. However, it allows employers to require a reasonable deposit to serve as security for such tools (provided that no deduction can be made for normal wear and tear). Our proposal covers sheep herders under this section without change.

E. Meals And Lodging

Because employers are to be given authority to deduct for meals and lodging, our proposal applies existing Section 10 to them and treats them like any other employer under the wage order. (Note that in our new Section 14, specific housing standards are set forth for sheep herders.)

F. Rest Periods Required

Section 12 mandates 10 minutes of rest for every 4 hours of work, "which insofar as practicable shall be in the middle of each work period." All other agricultural

employers must provide such rest periods; there is no reason to exempt employers of sheep herders.

G. Suitable Seats On Or At Machines

Section 13 requires that "when the nature of the work reasonably permits the use of seats, suitable seats shall be provided for employees working on or at a machine." Our proposal includes this protection for sheep herders.

H. Wage Order 14 Civil Penalties

Section 17 currently mandates modest penalties for failing to pay workers wages that are owed to them, and our proposal insures that sheep herders have this protection for the new provisions that are applicable to them.

IV. Recommendations Regarding Additional Protections That Should Apply To All Sheep Herders In California

Our proposal includes a new Section 14 which sets forth a few modest protections applicable to all sheep herders working in California.

A. Housing Protections

Our proposal provides different housing protections for the three most common situations:

- 1) *on the open range*, where mobile sheep camps cannot be moved, we will accept application of the H-2A program standards in effect as of July 1, 2001;
- 2) *on the open range where sheep camps can be located*, we identify six basic standards –from toilets (including portable ones) to adequate cooking facilities– which should be the minimum provided to each sheep herder; and
- 3) *for fixed site housing*, we propose identical coverage as that which applies to other agricultural employees under California law.

B. Other Work Place Protections

Our proposal, in Section 14 (D), specifies 4 new protections for sheep herders under this wage order:

1) the right to regular mail services;

2) the right to a means of communication through telephone or radio (which the employer is permitted to charge for if there is non-emergency use);

3) the right to receive visitors of their choice; and

4) the right of access to transportation for shopping, as well as access to medical or cultural facilities.

APPENDIX NO. 1

Compromise Proposal Of Employee Members of the Sheep Herder Wage Board To Provide Better Wages, Working Conditions and Labor Standards For All Sheep Herders In California

[The specific changes to Wage Order 14-2001 proposed by the employee members of the sheep herder wage board on February 22, 2001, are below inserted into the text of the current order. Additions to the text are underlined and bolded; deletions are stricken.]

1. **Applicability of Order.** This order shall apply to all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis, except that:

(A) No provision of this Order shall apply to any employee who is engaged in work which is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment, and for which the remuneration is not less than two times the monthly State minimum wage for full-time employment.

(B) No provision of this Order shall apply to any individual who is the parent, spouse, child, or legally adopted child of the employer,

(C) Section 5 of this Order shall not apply to any employer who employs fewer than five (5) persons covered by this Order. If at any one time during a calendar year an employer has five (5) or more employees covered by this Order, every provision of this Order, including Section 5, Reporting Time Pay, shall apply to that employer throughout that calendar year.

(D) No provision of this Order shall apply to any employee covered by Order No. 8-80 or Order No. 13-80, relating to industries handling products after harvest.

(E) The provisions of this Order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code § 1171.)

(F) The provisions of Sections 1, 2, 4(E), 7(D), 8, 9, 10, 11(B), 12, 13, 14, 15, 16, 17, 18, 19 and 20 of this Order shall not apply to shepherders.

(G) Section 3 of this Order shall not apply to an employee licensed pursuant to Article 3 (commencing with § 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code who serves as a crew member on a commercial fishing vessel.

2. Definitions.

(A) No provision of this Order shall apply to any employee who is engaged in work which is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment, and for which the remuneration is not less than two times the monthly State minimum wage for full-time employment.

(B) "Division" means the Division of Labor Standards Enforcement of the State of California.

(C) "Employ" means to engage, suffer, or permit to work.

(D) "Employed in an agricultural occupation," means any of the following described occupations:

(1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;

(2) The sowing and planting of any agricultural or horticultural commodity;

(3) The care of any agricultural or horticultural commodity, as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers

or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;

(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment.

(E) "Employee" means any person employed by an employer.

(F) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(G) "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

(H) "Minor" means, for the purpose of this Order, any person under the age of eighteen (18) years.

(I) "Outside Salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.

(J) "Piece rate basis" is a method of payment based on units of production or a fraction thereof.

(K) "Primarily" as used in Section 1, Applicability, means more than one-half the employee's work time.

(L) "Sheep herder" means any individual who tends flocks of sheep grazing on range or pasture; who moves sheep to and about an area assigned for grazing; who prevents sheep from wandering or becoming lost, using trained dogs to round up strays and protect sheep against predators and the eating of poisonous plants; who assists in the lambing, docking and shearing of sheep; who feeds sheep supplementary rations; and who waters sheep.

(M) "Shift" means designated hours of work by an employee, with a designated beginning time and quitting time.

(N) "Split shift" means a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.

(O) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(P) "Workday" means any consecutive 24 hours beginning at the same time each calendar day.

(Q) "Workweek" means any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

3. Hours and Days of Work.

(A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school: such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed thirty (30) and the total hours of employment in any one workday thereof do not exceed six (6).

(C) The provisions of subsection (A) above shall not apply to an employee covered by this Order during any week in which more than half of such employee's working time is devoted to performing the duties of an irrigator.

(D) The provisions of this section are not applicable to employees whose hours of service are regulated by:

(1) The United States Department of Transportation Code of Federal Regulations, title 49, sections 395.1 to 395.13, Hours of Service of Drivers; or

(2) title 13 of the California Code of Regulations, subchapter 6.5, sec. 1200 and following sections, regulating hours of drivers.

(E) This section shall not apply to any employee covered by a collective bargaining agreement if said agreement provides premium wage rates for overtime work and a cash wage rate for such employee of not less than one dollar (\$1.00) per hour more than the minimum wage

4. Minimum Wages.

(A) Every employer shall pay to each employee wages not less than six dollars and twenty five cents (\$6.25) per hour for all hours worked, effective January 1, 2001, and not less than six dollars and seventy five cents (\$6.75) per hour for all hours worked effective January 1, 2002, except:

(1) LEARNERS. Employees during their first one hundred and sixty (160) hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than eighty-five percent (85%) of the minimum wage rounded to the nearest nickel.

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

(E) (1) For a sheep herder employed on a regularly scheduled 24 hour shift on a seven day a week "on call" basis, an employer may as an alternative to paying the minimum wage for all hours worked, instead pay a monthly minimum wage of \$2,060.00. All employers of sheep herders, including those who hire sheep herders pursuant to the federal H-2A program, may pay a lower monthly wage that reflects the full amount of applicable credits for meals and lodging available under this Order without regard to the voluntary written agreement requirements of Section 10(C), provided that (i) such lodging and meals meet the minimum standards of this Order and (ii) that all other conditions of the H-2A program in effect as of July 1, 2001 are met with respect to both H-2A and non-H-2A sheep herders.

(2) The monthly minimum wage established under Section (E)(1) is reducible by \$100 for any calendar month in which the employer provides the sheep herder with one regularly scheduled 24 hour period off in each seven day work week in that month. In order for a 24 hour period to be considered a day off, the employer must allow the sheep herder to leave the premises during that time if desired.

(3) Any sheepherder who performs non-shepherding agricultural or other work on any work day shall be fully covered by the provisions of this Order for the work week or the remainder of the worker's contract term, whichever is longer.

(4) The amount of the monthly wage required in (E)(1) shall be increased each time the state minimum wage is increased. The amount of the increase shall be determined by calculating the percentage increase of the new rate over the previous rate, and then by applying the same percentage increase to the minimum monthly wage rate."

5. Reporting Time Pay.

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. Licenses for Disabled Workers.

(A) A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any.

(B) A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

(C) All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division.

(See California Labor Code, Sections 1191 and 1191.5.)

7. Records.

(A) Every employer shall keep accurate information with respect to each employee I including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft,

or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Every employer of sheep herders shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation, and social security number (if applicable).

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records, when the sheep herder is engaged in non-shepherding work, showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded during such times. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay, when the sheep herder is engaged in non-shepherding work. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(7) Every employer of sheep herders shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the

name of the employee or the employee's social security number (if applicable); and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(8) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

8. Cash Shortage and Breakage.

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

9. Uniforms and Equipment.

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear.

All items furnished by the employer shall be returned by the employee upon completion of the job.

10. Meals and Lodging.

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) "Lodging" means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

Effective Dates:	January 1, 2001	January 1, 2002
Lodging:		
Rooms occupied alone	\$29.40 per week	\$31.75 per week
Room shared	\$24.25 per week	\$26.20 per week
Apartment-two thirds (2/3) of the ordinary rental value, and in no event more than	\$352.95 per month	\$381.20 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than	\$522.10 per month	\$563.90 per month
Meals:		
Breakfast	\$2.25	\$2.45
Lunch	\$3.10	\$3.35
Dinner	\$4.15	\$4.50

(D) Meals evaluated as part of the minimum wage must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received nor lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

11. Meal Periods.

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

(B) No employer of sheep herders shall employ a sheep herder for a work period of more than five (5) hours without a meal period of less than thirty (30) minutes, except that when a work period of not more than six (6) hours will complete a day's work the meal period may be waived by the mutual consent of the employer and the sheep herder.

12. Rest Periods.

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted, as hours worked for which there shall be no deduction from wages.

13. Seats.

When the nature of the work reasonably permits the use of seats, suitable seats shall be provided for employees working on or at a machine.

14. Other Working Conditions Applicable to Shepherders.

(A) During such times as a sheep herder is engaged in the herding of sheep in open range locations where it is not feasible to provide lodging that meets the minimum standards established by this Order, due to lack of practicable access for mobile housing units, the standards of the federal H-2A program that are in effect as of July 1, 2001 shall be applicable in such circumstances.

(B) During times when a sheep herder is not engaged in the herding of sheep in open range locations, and is lodged in mobile housing units and not fixed site housing, the lodging provided must be annually inspected by the Housing and Community Development Department, meet the

requirements of this Order, and shall include at a minimum all of the following:

(i) toilets (which may include portable toilets) and bathing facilities

(which may include a portable shower facility);

(ii) heating;

(iii) inside lighting;

(iv) running potable hot and cold water;

(v) adequate cooking facilities and utensils; and

(vi) a means of refrigerating perishable foodstuffs (which may include ice chests, provided that ice is delivered to the sheepherder, as needed, to maintain a continuous temperature required to retard spoilage and assure food safety).

(C) During times when a sheep herder is lodged at fixed site housing, all employee housing laws and regulations shall apply, without regard to numerical coverage limitations, and such lodging shall be annually inspected by the Housing and Community Development Department.

(D) All sheep herders shall be provided with all of the following at each work site:

(i) regular mail service;

(ii) a means of communication through telephone or radio. If communication is provided by telephone, the sheep herder may be charged the actual cost of non-emergency telephone use;

(iii) visitor access to the housing; and

(iv) access to transportation to and from the nearest locale where shopping, medical or cultural facilities and services are available on a weekly basis.

(E) For purposes of this section, "open range" is defined generally as land that is not cultivated. It is land that produces native forage for animal consumption, and includes land that is revegetated naturally or artificially to provide a forage cover that is managed like range vegetation. "Forage" as used here means "browse" or herbaceous food that is available to livestock or game animals. The range may be on private or Federal or State land, and need not be open. Typically it is not only noncultivated land, but land that is not suitable for cultivation because it is rocky, thin, semiarid, or otherwise poor. Typically, also, many acres of range land are required to graze one animal unit (five sheep or one cow) for 1 month. By its nature, range production of livestock is most typically conducted over wide expanses of land, such as thousands of acres.

145. Exemptions.

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provisions in Section 7, Records; Section 11, Meal

Periods; Section 12, Rest Periods; or Section 13, Seats, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective any may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application is filed with the Division.

156. Filing Reports. (See California Labor Code, Section 1174(a))

167. Inspection. (See California Labor Code, Section 1174)

178. Penalties. (See California Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation -- \$50.00 for each underpaid employee for each pay period during which the employee was underpaid, or for any violation of Section 14, in addition to an amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations -- \$100.00 for each underpaid employee for each pay period during which the employee was underpaid, or for any violation of Section 14, in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

(B) The Labor Commissioner may also issue citations pursuant to Labor Code Section 1197.1 for payment of wages for overtime work in violation of this order.

189. Separability.

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

1920. Posting of Order.

Every employer shall keep a copy of this Order posted in an area frequented by employees where it may be easily read during the work day. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this Order and make it available to every employee upon request.

APPENDIX NO. 2

RATIONALE FOR THE AMOUNT OF MONTHLY MINIMUM WAGES SET FORTH IN OUR PROPOSAL TO THE INDUSTRY

In their October 3, 2000 testimony in San Francisco, representatives of the industry stated that the average California sheep herder working as a lamber had a work year divided into roughly three periods where the hours worked ranged from 3 to 13 hours per day. The testimony [see *Transcript for October 3, page 26, Testimony of Mr. D. Indart*] was that hours worked during those periods were as follows:

THE INDUSTRY'S STATEMENTS REGARDING A LAMBER'S 'AVERAGE' WORK YEAR

HEAVY LAMBING	LIGHT LAMBING	REMAINING 6 MONTHS
45 Days @ 13 hrs	136 Days @ 13 hrs	180 Days @ 3hrs

This work year= totals 2,893 hours; multiplied by \$6.25 it yields an annual rate of: \$18,081.25 (which does not count either overtime wages or "on call" hours).

WORKER ADJUSTMENTS TO THE INDUSTRY'S 'AVERAGE' WORK YEAR

In our discussions with sheep herders following the San Francisco hearings, workers were literally outraged when told about the low number of hours the industry claimed they worked during the non-lambing times of the year. In addition, they argued convincingly to us that the hours worked were substantially higher than 13 hours per day during many days during the lambing periods. Based on the workers' sense about what was fair, we augmented the industry's claims by additional hours during both the heaviest periods, as well as during the lightest periods. Those adjustments are set forth below:

HEAVY LAMBING	LIGHT LAMBING	REMAINING MONTHS
(45 Days)	(136 Days)	(180 Days)
1 additional hr for 1/2 of the days= 23 hrs;	1 additional hr for 1/2 of the days= 68 hrs;	5 additional hours for all of the days = 900 hrs
2 additional hrs for 1/5 of the days=18 hrs	2 additional hrs for 1/5 of the days=54 hrs	

This is a total of 1,063 additional hours. Multiplied by \$6.25 = \$6,643.75.

THE 'AVERAGE' WORK YEAR, AS ADJUSTED, SHOULD PAY A TOTAL OF \$24,725; AND THE MONTHLY MINIMUM WAGE SHOULD BE \$2,060

At a minimum, if sheep herders are not to be fully compensated for their 24 hr/7 day schedule (as they would if they were treated like most other workers under California law), they should AT LEAST be paid for each hour the industry admits they 'work,' adjusted upward by whatever additional reasonable number of hours that the workers convincingly assert they actually work.

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APPENDIX NO. 3

"A WOLF IN SHEEP'S CLOTHING

Foreign Workers Are Protecting Colorado's Sheep, But Who's Protecting the Herders?

BY Stuart Steers

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"Last May, a sick and injured Peruvian shepherd showed up on the doorstep of a rancher near Meeker. The herder, Remigio Inga Damian, had spent several days walking from the remote backcountry pasture where he'd been tending a herd of 1,000 sheep. Exhausted and feverish, he'd hidden in an abandoned house for four days as he looked for help. Damian told the rancher that his boss had flown into a rage and thrown him to the ground, injuring his neck. He said he felt severe pain in his head and neck and a tingling sensation in his arms, hands and legs; he also had a fever and an upset stomach. The rancher, John Halandras, noted that Damian had no appetite and looked gaunt and dehydrated.

Halandras took Damian to his personal physician, who wrote that the patient suffered "pain in his head, hot neuritis-type pains on his scalp, pain in his posterior neck, periods of shaking, and periods of carpal pedal spasm associated with an apparent assault." Afterward, Halandras drove Damian to the emergency room at St. Mary's hospital in Grand Junction, where he was examined again and given prescription painkillers.

A letter from Halandras (who wouldn't comment for this story), a police report and a record of the medical exam were forwarded to the office of the Peruvian consul in Denver. The consul then forwarded the information to the U.S. Labor Department's regional office in Salt Lake City, where the name of the rancher accused of beating Damian — Louis Peroulis — was immediately recognized.

For years, the department had been hearing complaints from the shepherders who worked for the Peroulis family, which owns hundreds of acres and thousands of sheep in Colorado and Wyoming. Many of them told horrifying stories of beatings, verbal abuse, a lack of food and water, and an atmosphere of constant humiliation that one former employee compared to slavery. One herder said the family had even burned a Bible he was using to teach himself English.

The herders had all been allowed into the United States under a little-known government program that permits ranchers and farmers to hire foreigners for agricultural jobs that Americans don't want. Under the program, known as H-2A, employers pay the workers a set amount of money and are required to provide food, water and shelter. In return, the workers agree to a specific and often quite rigorous set of duties.

The Peroulises pay their herders the federally set wage of \$650 per month to tend flocks of sheep for 24 hours a day, seven days a week. The men, who often work alone, live in sheep wagons or trailers scattered around the vast spread owned by the Peroulis family, which extends from Moffat County all the way into Wyoming. Since they don't speak English and live in isolated spots on the open range, the herders are completely dependent on their employers for food, housing, supplies and medical care.

The H-2A program has been criticized for making workers so dependent and therefore vulnerable to exactly the sort of abuse alleged by Damian.

The Department of Labor organized a surprise sweep of the Peroulis property that included agents from the FBI and the Immigration and Naturalization Service. They interviewed the Peroulises and their employees and inspected the books, which angered the family, according to affidavits written by Labor Department agents. The department then filed suit in U.S. District Court against John Peroulis and his sons, Louis Peroulis and Stan Peroulis, accusing them of violating the federal labor laws that govern working conditions for H-2A employees.

The Peroulises have denied the charges of abuse and insist that the stories come from a handful of disgruntled former workers. At an October hearing in which the government requested a preliminary injunction that would force the family to treat its employees better, seven former herders testified in Spanish about their treatment by the family. Five Labor Department investigators also submitted affidavits to the court that showed complaints against the Peroulises dating back to 1990.

Almost all of the men who went to work for the Peroulis family had wives and children in Peru who depended on the money they sent home to survive. Leaving behind all their loved ones, the herders ventured to a land thousands of miles from home, where they didn't speak the language or understand the customs. And what they found in Colorado, many of them say, was hell on earth.

For over a century, sheepherding has been a way of life in northwest Colorado. Between the sage-covered bluffs and mesas that fill that part of the state, trailers or wagons can be seen tucked away in remote valleys, each surrounded by hundreds of sheep. For decades, foreigners have worked as herders here, since the long hours and low pay don't appeal to many native-born workers. Many of the early herders were Basque, and a good number of Western Slope families can proudly trace their heritage to a Basque shepherd.

Since the 1950s, though, most sheepherders in Colorado have come from Latin America. Many are from countries such as Peru that share a mountainous terrain and sheepherding tradition with Colorado. There are hundreds of Peruvian sheepherders now working around the West, and most ranchers in Colorado pride themselves on taking good care of them, especially since the shepherds are safeguarding flocks that can be worth tens of thousands of dollars.

The work is demanding. Not only do the flocks have to be moved to fresh grassland, but a herder has to make sure the sheep don't eat poisonous plants and must guard against attack by

coyotes and other predators. During the lambing season, the herders assist with the births and help protect the newborn lambs from the elements. Many herders go to work well before dawn and don't come off the range until after dark. A government nutritionist testified during the October hearing that young men engaged in active, physical work need 2,800 calories a day, and that working without adequate nutrition would eventually weaken the immune system and put them at risk of serious illness.

But many of the men who tended sheep for the Peroulises say hunger defined their experience – along with fear.

"Sometimes we were hungry for days and didn't have food," testified Lolo Casas, a 22-year-old Peruvian who worked for the family for eight months in 1998 and now works for another rancher. "A week or seven days, we didn't have food to eat. We would have a tortilla and water."

Like the other herders who appeared in court, Casas said the Peroulises would bring cans of beans, rice, pasta and other supplies periodically, but it was never enough to last. The only meat he got from his employer was a sheep's head and liver, and he told the court that his requests for more food were ignored. Casas lost about twenty pounds during the time he worked there: "They saw there was no food, but they would leave and not come back. How were we supposed to sustain ourselves?" At one point, Casas walked into town looking for help, a foray that earned him an angry rebuke from Stan Peroulis. "When I came back, Señor Stan told me it was my fault he couldn't get any more men," he recalled.

"I was hungry, especially in the winter, because there were two people, and the food they gave us was not sufficient," testified Onofre Bruno, a 24-year-old who worked for the Peroulises for six years. "In the winter they brought us food every ten days. It was not constant."

"With a cup of coffee in the morning, we had to work all day until the evening," said Fredy Casa, 29, who worked for the Peroulises from 1997 to 1999. "They would say, 'All you guys think about is food. You don't think about work.' Casa said he was afraid to eat in front of his bosses. Several former Peroulis herders said that requests for more food were often met with anger and even physical violence.

"The problem was when I was first starting to work," says Mauricio Quiñones, a 28-year-old Peruvian who worked for the Peroulises for three years. "It happened when I went to help a Mexican bring his lunch and I went back to the trailer. Señor Louis got very angry when he saw me carrying some food. He told me all I could think about was my fucking belly, and he punched me in the belly." Quiñones testified that he was assaulted again by Peroulis after he was accused of coming back to the ranch too soon from tending the herd. "He said, 'Why weren't you looking after the sheep?' He threw me against the stable wall. He had me up against the stable wall. He had me by the jacket. He threw my jacket and said, 'Take your fucking stuff with you.'"

In the herders' testimony and the affidavits filed by Labor Department investigators, there are repeated accounts of beatings and assaults by Louis Peroulis.

"When I started working there, Señor Louis bit me," said Celso Bruno, another former herder. "When I was working with the ewes, he told me I didn't need to be there and he knocked me over. He knocked me to the ground."

Several men said their mail from Peru was often open when they received it, and although their families said they wrote frequently, many letters didn't turn up. The herders said they were often berated for writing too many letters. "Sometimes I sent two or three letters," said Lolo Casas. "They told me I was spending more time on the letters than on my work."

Bruno's young wife in Peru died while he was working for the Peroulises. He told the court that his family had tried to reach him when his wife became ill. "My father told me he tried to contact me with the phone number I had given him. He said he didn't get through. My wife, when she was sick, wrote a letter in June, and I didn't get that letter until September."

Bruno learned of his wife's death through a relative who was also working in Colorado. He said the Peroulises then gave him permission to return to Peru for a few weeks.

All of the herders who testified said they were afraid of the Peroulises, even though they no longer worked for them. One even refused to name his current employer, saying he feared the Peroulises could still make trouble for him.

And allegations like these are nothing new. Affidavits filed in court by Labor Department investigators show that herders have been complaining about the Peroulises since 1990.

"I determined that the Peroulises failed to pay wages when due, took illegal deductions from the herders' wages for transportation and supplies in the amount of around \$4,100 and knowingly provided false information to the Department of Labor," wrote investigator Joseph Doolin about a 1990 visit to the ranch. Doolin also said he met with Stan Peroulis after his investigation to discuss the H-2A law and how it applied to his employees.

Doolin investigated the ranch again in 1993, 1996, 1997 and 2000 and recounted numerous conversations with employees who told him they'd been abused. In 1996 he said that two sick herders had "asked the Peroulises for medicine but were told by Stan and Louis Peroulis to die. They were not provided with any medicine."

Investigator George Peters said he interviewed a herder this year who told him he'd lost 22 pounds while working for the family. Another "told me that when he met some people who gave him a Bible and books to learn English, Louis and Stan Peroulis took the books away from him and burned them." Peters recounted other stories of herders being punched, kicked and spit at by Louis Peroulis. He also said several herders feared the repercussions of talking to Labor Department investigators. One herder told him that after he spoke to an investigator in 1993, "the Peroulises got angry at him for doing this and mistreated him even more, giving him less food and more work."

A third Labor Department investigator, Xochitl Muñoz, interviewed several herders last September. She said one told her that "he is consistently verbally and emotionally abused by the

Peroulis family. He said that he was told by the Peroulises, at the time he was picked up at the airport, that he was not allowed to leave his sheep camp at any time and could not have any contact with the outside community until after his three-year contract is fulfilled. He is consistently threatened that if he does not perform work according to the Peroulises' satisfaction, he could be deported to Peru and would be prohibited from ever working in the United States again. He was also told he would not be paid if he did not fulfill his three-year H-2A contract."

The same herder told her that he was allowed to write to his family only if the Peroulises gave their permission, and that he wasn't allowed to call his family or take calls from them. He said his mail "is usually mutilated, damaged and opened by the time it reaches him. He does not complain to the Peroulises about the mail because he is afraid of being yelled at or beaten."

The Peroulises were fined by the Labor Department for violations of labor codes and paid \$1,200 in 1995. They agreed to pay back wages owed to employees in 1990, 1993, 1995, 1997 and 1998. In 1997, they also agreed to maintain lists of the food and supplies they gave to the herders.

In all of the affidavits submitted as part of the case, the herders' names are withheld (although those who testified in court were required to give their names). Dean Campbell, the district director for the Department of Labor, says he decided to withhold the names because he feared for the men's safety.

"I believe strongly that revealing the names of the H-2A herders who provided information to the Department of Labor would result in serious harm to these individuals," Campbell wrote in a statement given to the court.

"In light of the history of the Peroulis investigations, and of the fear exhibited by the current herders who spoke to Wage-Hour investigators during the recent sweep, I believe that these herders, who have acted as government informants, could be subjected to further abuse by the Peroulises before any protection could be afforded to them or before the Wage-Hour investigators could monitor the Peroulises' compliance with any order the court may issue. This is especially true because the herders work in such remote areas that are difficult to reach, and because they have no access to telephones or other means of communicating with our office."

The sorts of abuses alleged to have taken place on the Peroulis ranch are almost inevitable under the H-2A program, say advocates for migrant farm workers. In fact, they say, the people who come into the country legally under this program have even fewer rights than those who are here illegally.

"They're vulnerable to abuse for a number of reasons," says Kimi Jackson of Colorado Legal Services, which provides legal help to people who can't afford it, including migrant workers. "The employer has the ability to get them deported. He controls their right to stay in the country. If you or I had an employer who abused us, we would quit and find another employer. If an H-2A worker quits, they immediately lose their immigration status." In addition, the employer usually pays for the workers' transportation costs into the country and often holds their passports

while they are here.

Jackson says the H-2A regulations covering shepherders allow working conditions that most Americans would find intolerable. "They have special rules for shepherders, which are even more outrageous and have less protections than for other agricultural workers," she says. "For most workers, the employer has to keep track of the hours they work every day. For shepherders, there's no requirement like that. They're basically on call 24 hours a day for 52 weeks a year. I don't think anyone would work under those circumstances unless that was the only way they could get a visa."

If H-2A employees organize or try to stand up for their rights, Jackson says, the employer can always find an excuse to get them thrown out of the country. "If workers in one country organize," she says, "the employer can go to another country to get workers. They can always switch to another source of labor."

There are currently 246 people certified to work under the H-2A program in Colorado. They work for 102 different employers, indicating that most of them are hired hands on scattered ranches and farms around the state. This is a small percentage of the thousands of H-2A employees nationwide. The largest numbers of such employees are found in states like Florida, North Carolina and California, where farmers grow crops like tobacco, sugar cane and strawberries that are harvested by hand. The biggest crops in Colorado are corn, hay and wheat, which are usually harvested by machine, so most of the H-2A workers here tend livestock.

There is enough local demand for Peruvian shepherders that as many as 100 of them work in northwest Colorado, says Carlos Velasco, the Peruvian consul general in Denver, and a total of about 1,000 Peruvians work in agriculture in the western United States. "There is a tradition of taking care of sheep in Peru," he says. "They're some of the best workers out in the field. They herd sheep and llamas all over the Andes."

Cynthia Rice, an attorney with California Rural Legal Assistance, has worked with several Peruvian shepherders in California. She says that because of special provisions that were included in the law at the behest of former Wyoming senator Alan Simpson, shepherders receive fewer protections than other H-2A employees. For instance, while most H-2A contracts are for a year or less, shepherders typically sign three-year contracts. Rice also says the legal standards for housing for the shepherders are much more lax than for other workers. "Shepherders are exempted from most regulations because of this incredibly powerful [sheep industry] lobby." A group of Peruvian shepherders in California even filed a complaint over their treatment with the Peruvian Human Rights Commission, she adds, and there is now an effort under way to organize the shepherders in California into a union.

"The government of Peru is very concerned about the treatment of the Peruvian shepherders," says Velasco, adding that his office was contacted by several Peruvians about the Peroulis ranch. "Mr. Damian was battered," he says. "We proceeded according to international law and notified the Labor Department."

Jose Cabada, the editor and publisher of the *Peru News Review* in the Los Angeles area,

says the president of the Human Rights Commission of the Peruvian Congress came to California last year to talk to Peruvian sheepherders. "He was surprised how many sheepherders don't see their paychecks and don't have enough food," Cabada says, adding that he believes about 10 percent of the ranchers who hire Peruvian sheepherders abuse or exploit them in some way. "The best solution would be if they published a list of the ranchers who abuse the sheepherders," he says.

"These ranchers have a lot of power," Cabada continues. "They work with the INS and police. It's like the old Western movies. They own the sheriff and the whole town. It's like the Old West, the same thing."

The H-2A program is named after a section of the Immigration Reform Control Act of 1986. It was created after farmers and ranchers claimed there were jobs going unfilled because Americans didn't want them. The law mandates certain minimum standards that employers must meet when hiring foreign workers under the program. This was partly to defuse criticism that H-2A was simply a continuation of the notorious "bracero" program that brought millions of Mexican farmworkers into the country beginning in the 1940s. The braceros were often treated little better than slaves, and, like the H-2A employees, they were bound by contracts. The program ended after Edward R. Murrow's famous 1960 CBS documentary "Harvest of Shame" exposed the appalling conditions of farmworkers in Florida.

Two government studies have noted the potential for abuse of H-2A employees and criticized federal agencies for failing to enforce legal protections for those workers. In 1997, the General Accounting Office concluded in a report that "H-2A guest workers may be less aware of U.S. laws and protections than domestic workers, and they are unlikely to complain about worker-protection violations fearing they will lose their jobs or will not be hired in the future."

The Labor Department's own watchdog, the Office of Inspector General, concluded in a separate 1997 report that the department had done a poor job of policing the program. It faulted the department for rarely fining employers who violated the law and noted that farmers and ranchers were almost never suspended from the program, even after a pattern of abuse had been established.

Under H-2A rules, farmers and ranchers are required to prove that they have tried to recruit domestic employees but failed to find anyone interested in the work. But the report found that many agricultural employers make only a halfhearted attempt to find local help and turn to the H-2A program because foreign labor is cheaper. It also contradicted the claim that there aren't enough legal workers in rural areas to fill the open jobs, adding that "a sudden widespread farm-labor shortage requiring the importation of large numbers of foreign workers is unlikely to occur in the near future."

Despite the criticism, the program has been growing quickly; last year more than 41,000 people were admitted to the U.S. under H-2A. There was even an unsuccessful effort in the last session of Congress to boost the number of people allowed into the country under the program to one million. And Colorado ranchers continue to insist that they can't find Americans willing to

accept the demanding conditions that sheepherders endure.

"The sheepherders that come over here have special skills; they're familiar with livestock," says Tom Kourlis, a former executive director of the Colorado Department of Agriculture who runs an 8,000-acre ranch near Craig.

"It takes a certain kind of person to enjoy being alone in a remote area," he adds. Kourlis has four H2-A herders now working on his ranch. He says most ranchers take good care of their sheepherders, and the job makes a huge difference in the lives of the herders and their families. "It's a way for them to improve their quality of life," he says. "We've had herders who send their kids to school because of this or buy a house. It's a way for them to get ahead."

Charles Ryden runs 300 cows on his ranch near New Castle. He says the two H2-A men he employs from Mexico are indispensable. One of them, Jesús, has come to New Castle to work for Ryden for several years in a row. He stays seven months through spring and summer before returning to Mexico for the winter.

"We couldn't make it without Jesús because of the cost of labor for local employees," Ryden says. Jesús helps with calving in the spring and then puts up hay in the summer, he adds. "His work ethic is outstanding. I try to make them stop working for one or two days a week, but they're on a mission to work. They want to work so they can go home."

Ryden pays the men \$800 a month and gives them a bonus every year. He sends Jesus to the grocery store to buy his own food. "I sign a check for him, and he goes down to City Market because he knows what he likes to eat," says Ryden. "We have to take care of him."

Because they come from rural areas, the Mexican workers know how to do basic ranching tasks like building fences and plowing, he says. "I've had some tremendous American workers, but when they get married, they have to make more money. A lot of Americans don't know what farming is. These guys come up here and know what to do."

The Peroulises have denied all of the allegations made by their former employees and say they have always followed the law. Their attorney, Lee Christian, insists there have been no beatings or violence against the herders. "We categorically deny that," he says. "There may have been raised voices, but never any physical abuse."

Christian also questions the herders' motivations for testifying. "Most of these guys walked off the job or were fired," he claims. "The testimony was often inconsistent. They said they were starving, but they were allowed to purchase food at any time." He says that although the visas of many of the former herders have now expired, the men have been allowed to stay in the United States in return for cooperating with the Labor Department.

None of the Peroulises would return phone calls for this story.

One witness at the hearing, Eddie Lopez, spoke in defense of the family. Lopez works for an association of ranchers in southern Wyoming that includes the Peroulis family. His job was to

monitor the range land where the sheep are kept, and he said none of the Peroulis herders ever complained to him about being hungry or abused.

The Peroulises are being persecuted by the government, says Christian. "The Department of Labor doesn't like my clients because they stand up to them. The Peroulises have spent a bloody fortune trying to clear their name."

In a response to the Labor Department motion filed with the court, Christian noted that the Peroulises have many herders who have been with the family for years, including some relatives of the herders who testified against them. He also noted that Damian -- the herder who was allegedly beaten by Louis Peroulis -- wouldn't be appearing in court since he has returned to Peru. (Peruvian Consul-General Velasco says Damian is still recovering from his injuries in Peru and was too ill to come to Denver to testify in court about his treatment.) Damian had abandoned his camp and cruelly left his horse tied up to the sheep wagon, Christian claimed, then sought shelter with a rancher in competition with the Peroulis family.

U.S. District Court Judge Richard Matsch rejected the Department of Labor's request for a preliminary injunction against the Peroulises in October, saying it was too vague, and instead ordered the family to submit a plan demonstrating how they would comply with laws covering H-2A workers in the future. The Peroulises filed a preliminary plan with the court in December, and Christian says the two sides are now in negotiations over a possible settlement. An agreement would likely include detailed, step-by-step instructions about exactly how much food the herders will receive, how their hours will be counted, what can be deducted from their paychecks and other guidelines.

The Moffat County Sheriff's Office investigated the alleged beating of Damian, and the case is still open. However, no charges have been filed.

"It's a hard case for us because the Peroulises are a good family," says Moffat County undersheriff Jerry Hoberg. "Any time you have employees, they may have sour grapes. It's unfortunate it happened, but it's something that needs to be looked into." Hoberg says his office has investigated three other incidents involving the Peroulis family and their employees over the last eight years and that none of those investigations resulted in criminal charges being filed. "Usually the victim is unavailable," says Hoberg. "They go home or get another job. They just don't want to deal with it."

David Waite, chief deputy district attorney for Moffat County, says he couldn't file charges in the Damian case unless the victim was in the country. Even if Damian was here, Waite says, it would be difficult to press charges against the Peroulises: "It would be his word versus theirs. It would be a difficult case to prosecute."

That won't be much comfort to the men who herded sheep for the family.

Celso Bruno, a 32-year-old Peruvian, testified that he had worked for the Peroulis family for ten years before leaving in 1999. He said he had been hit by Louis Peroulis after he began working there, and suffered without adequate food and water when he took the herds into remote

desert land. He says he eventually quit working for the Peroulises because he "couldn't take it anymore."

Like most of the other former Peroulis employees who testified, Bruno now works for another local rancher and says he is treated well.

So why, asked an attorney at the October hearing, did he work at the Peroulis ranch for so long?

"I wanted to work and look out for my family," he told the court. "I had to support my family in Peru. We are a big family -- twelve brothers and sisters and my father and my wife."

Why didn't he try to find another job?

"Because I didn't know. I thought here in the United States all the ranchers would treat you the same."

APPENDIX NO. 4

Charlotte Observer; October 3, 1999

"Desperate harvest

N.C. growers' trade in foreign farm workers draws scrutiny

The temperature had climbed to 95 degrees, but humidity made it feel like 105 the day Carmelo Fuentes fell in an Eastern North Carolina tomato field.

Fuentes, then 36, had been picking most of the day. Though weak and dehydrated, he said he only wanted a short break, according to his employer. "That boy said he was fine and just needed to rest," said Brent Jackson, owner of the Sampson County farm.

But state investigators found a supervisor dangerously ignored the first signs of heat stress. Heat stroke soon shut down Fuentes' internal organs, causing severe brain damage.

Today - 14 months later - Carmelo Fuentes lies mute and motionless on a rusted bed at home in central Mexico. He breathes through a tube in his neck. Doctors say his chances of recovering normal brain function are poor.

"I begged him to be careful of the heat," said Porfirio Fuentes, his father.

Nobody can know exactly what Carmelo Fuentes said about how he felt that July day in 1998. But as a veteran working his third N.C. harvest, he likely understood what some say are the unwritten rules of the government program that brought him to an N.C. farm 2,000 miles from home.

Work fast, or lose your job to somebody who is faster. Complain about your living or working conditions, and you're sent back to Mexico. Get sick or injured, and you're off the list of workers invited back next season.

An estimated 10,000 foreign farm workers - most from Mexico and all, like Fuentes, legal immigrants - will work in N.C. fields this year in the federal H-2A program. North Carolina has become the largest user of H-2A "guestworkers" under a 1986 immigration law that allows U.S. growers to import temporary farm labor when U.S. workers are in short supply.

Fuentes' injury and the deaths in North Carolina of at least two H-2A workers since 1995 have intensified debate about the program. Farm worker advocates say H-2A workers, with fewer rights than U.S. workers and even other migrant workers, live and work under conditions that recall a similar farm worker program outlawed 35 years ago. Critics also say H-2A growers use blacklists and other tactics to keep workers silent and productive.

They cite reports from two federal watchdog agencies that conclude the H-2A program leaves workers vulnerable to health and safety risks and exploitation.

Growers' supporters in Congress are pressing a proposal that would expand the use of legal foreign farm workers. Its impact on H-2A is unclear.

In this battle, no one has more at stake than Stan Eury and the N.C. Growers Association. Eury founded it in 1989 and has built a multimillion-dollar business that supplies foreign labor to 1,050 N.C. growers, as well as those in 16 other states, aided in part, say two federal investigations, by weak government oversight.

Eury said opponents of the H-2A program try to paint the association "as the big bad grower. But we have thrived because we are a progressive employer. This is the best thing that ever happened to farm workers," he said.

From headquarters in Vass - halfway between Sanford and Pinehurst - Eury's association and an affiliated company now control half the 30,000 H-2A workers imported each year.

In North Carolina, the association has expanded H-2A hiring to 10,500 last year from 168 in 1989. S.C. growers began using H-2A workers this year for the first time, ordering 800 from a for-profit company Eury runs called International Labor Management.

"We're serving a need," said Eury, who says that growers can't find enough U.S. workers willing to do bend-and-stoop field work.

He said H-2A workers fare better than undocumented foreign workers or U.S. migrant workers because they have workers' compensation, earn more than the minimum wage and are provided with housing and transportation.

Growers like David Sherrill of David's Produce in Ellerbe pay the association \$498 per worker plus a \$200 annual membership fee. Sherrill's crew members say they like working for him; more than a few H-2A workers ask to return to the same farm each year.

Sherrill once hired only U.S. workers. "You'd look out on the fields and they'd be leaning on their hoes.

"But Jessie," he said, referring to 53-year-old Jesus Patino Rojas, "Jessie is a machine in the fields."

But Rojas' government is concerned about North Carolina's H-2A workers. In June, the Mexican Embassy in Washington sent two investigators to the state to look into alleged abuses.

"We have had good experiences in Georgia and Virginia and very ill experiences with North Carolina," said Gustavo Mohar, director of political and congressional affairs for the embassy.

"In North Carolina, private interests have built an infrastructure that was not really the intention of the legislation."

In many ways, federal investigators and some immigration experts say, H-2A bears troubling resemblance to an earlier program with Mexico, set up in 1942 to ease a wartime labor shortage.

Congress shut down the bracero program in 1964 after Edward R. Murrow's legendary "Harvest of Shame" television documentary exposed squalid living conditions and abuse in Florida.

"H-2A absolutely echoes bracero," said Joel Najar, an immigration expert for the National Council of La Raza, a Washington organization that provides legal advice for and advocates on behalf of Hispanics.

Najar said bracero - which means "arm man" in Spanish - protected workers on paper but not in reality.

"It was killed (by Congress) because it was so inhumane. H-2A is the same."

Bury said there is no comparison. He said H-2A employees are not intimidated or coerced, and that federal regulations are stronger now than in the days of bracero.

"We have to have these guys as employees. We don't want them to be disgruntled workers. We do warn them verbally and in writing of our rules. But we don't just terminate at will," he said.

There's no reason for growers to worry about getting enough H-2A workers. Economic desperation in Mexico keeps the pipeline full.

Workers pay up to \$500 to a recruiter for the chance to earn up to \$330 a week in North Carolina, far more than they could earn at home.

In Tamazunchale, 192 miles southeast of Fuentes' home of Ciudad del Maiz, so many men leave for N.C. farms the city is called "el segundo Carolina del Norte" - the second North Carolina.

Workers arrive expecting a guaranteed wage set by the government - \$6.54 an hour this year - and payment for at least three-quarters of their contract period. Workers can earn more by accepting a piece rate, and most do.

The longest contracts run from April through November. If they stay until the end, workers can earn \$9,600, although advocates say most workers earn far less because work is not consistently available and many don't finish the contract.

Filomeno Carreon, a friend of the Fuentes family, said he has no choice but to try for an H-2A job. "My family can't live here on 200 pesos a week (about \$20)," he said, leaning against a storefront in Ciudad del Maiz, awaiting a local recruiter's call.

North Carolina's demand for foreign workers is not expected to diminish, despite setbacks from hurricane-related flooding. And many growers, facing lower tobacco subsidies, already are switching to other crops such as sweet potatoes.

The power of 'el patron'

East of Raleigh, where Spanish billboard slogans tout Mexican beer, most Latino farm workers are migrants - U.S. workers who follow the harvest from state-to-state. H-2A guestworkers, though, are the fastest-growing segment of Latino farm workers. While the N.C. migrant labor force dropped 1 percent in 1998, the H-2A work force shot up 49 percent.

In exchange for work on an H-2A farm, workers give up considerable control over their lives.

Most don't see their contracts until they arrive in North Carolina. Unlike migrant workers, H-2As can't choose their employer - they are assigned by the Growers Association. H-2A rules don't let them negotiate wages and hours.

Unlike migrant workers, H-2As are not protected under N.C. laws governing landlord-tenant contracts. It took a legal challenge this year to win N.C. H-2A workers the right to invite guests to their quarters after hours.

And unlike migrant workers, they are not covered by the federal Migrant Seasonal Worker Protection Act. That could change under new legislation introduced last week, which would extend the migrant protection law to cover H-2A workers.

The Migrant Protection act requires substantially more documentation from growers than the H-2A program, such as hours to be worked, crops to be picked and place of employment. Growers who violate the act are subject to civil and criminal penalties.

H-2A workers must depend on their employer - "el patron" - for transportation to the store and church, and loans when they are short of cash.

In the field, they can be fired for taking an unauthorized break, according to association rules.

"We don't control them, we protect them," said Eury.

The power of "el patron" makes H-2A workers especially vulnerable to mistreatment, two independent federal investigations found.

"H-2A guestworkers may be less aware of U.S. laws and protections than domestic workers, and they are unlikely to complain about worker protection violations fearing they will lose their jobs or will not be hired in the future," the General Accounting Office, Congress' investigative arm, concluded in a December 1997 report.

A 1998 report by the Office of the Inspector General for the U.S. Labor Department described H-2A workers as "malleable and less likely to voice complaints about wages and working conditions."

N.C. Labor Commissioner Harry Payne also said H-2A workers are reluctant to complain. "Plus, they come here and are willing to work 24 hours a day, which puts them at risk."

Ten- to 12-hour days are the norm, and 14-hour days are not uncommon when crops hit peak

harvest.

Housing can be crude. At one Nash County farm, workers live in a converted chicken coop with tiny screened slats for windows and a tin roof that on hot days turns it into an oven.

Last year at a farm in Wilson, state inspectors found 30 workers in quarters meant for 24. The men were exposed to live electrical wires; smoke detectors didn't work and there was one toilet and sink.

The minimum is one toilet and sink for 20 workers.

Eury says the H-2A program treats farm workers better than migrants who work for crew leaders whom he says can be exploitive. He also says the H-2A program is better because growers provide free housing.

Fear of the blacklist

Guestworkers learn quickly that job security depends on silence and obedience.

Workers at a Nash County farm, for example, received information pamphlets from farm worker lawyers at the U.S.-Mexico border at Laredo, Texas. When they arrived in Vass, they said the association told them they would be sent back to Mexico if they kept the pamphlets. Workers said association employees watched as they threw them into trash cans. Eury said the workers threw the pamphlets out voluntarily.

The pamphlets are dedicated to Carmelo Fuentes and tell his story. They show workers how to figure their wages and make sure growers live up to a guarantee that they will be paid for at least three-quarters of their contract period if they stay until the end.

The growers' message - don't complain, don't seek legal help - is hammered home when workers arrive for orientation inside the association's warehouse in Vass in Moore County. From a balcony above the recruits, association employee Jay Hill forbids them from associating with Legal Services of North Carolina, whose farm worker unit provides free legal advice.

The price of disobedience: "He's telling us we will be sent back to Mexico," said Luis, 33, an H-2A worker who speaks some English.

Eury says workers don't need legal advice. In Georgia, H-2A recruiter Dan Bremer said he regularly invites lawyers to orientations to tell workers their rights.

Recently at the Nash County farm - far from the eyes of the grower - workers welcomed lawyers from Legal Services.

They told the lawyers they had to drink from a pipe attached to a water tank, each putting his mouth to the source. "One guy has a cold, but he needs water, too," said a worker, who asked not to be identified. Growers are required to provide individual cups.

The workers said they were afraid to ask for cups, fearing the grower would not invite them

back. One lawyer, Alice Tejada, persuaded them to complain anonymously to the N.C. Labor Department.

To date, no H-2A farm worker in North Carolina has personally filed a complaint with government regulators, records show. The state and federal governments receive complaints about growers, but they originate with farm worker advocates or church groups.

The code of silence follows workers back to Mexico.

Two workers who spoke to an N.C. investigator in Carmelo Fuentes' case are from Naranjo, Mexico, not far from his home.

Porfirio Fuentes, Carmelo's father, tried without success to talk to the men about what happened to his son. "They were told to say nothing or they could never come back," Porfirio said.

Luis Torres, who has interviewed 700 guestworkers for a Ford Foundation study in Mexico, said blacklists are used to punish workers. He said he saw one blacklist on a visit to central Mexico last year.

Torres said a recruiter in Mexico showed him a blacklist that represented about 8 percent of the workers that had been sent to the United States under H-2A. "The explanation from the recruiter was that these workers had jumped the contract," Torres said.

Workers' fears of ending up on such lists are widespread.

In a 1995 case, N.C. farm worker lawyers represented an H-2A worker who said he was blacklisted because he had been injured on the job and requested medical attention. He was not rehired the next season and sued the Growers Association under the N.C. Retaliatory Employment Discrimination Act.

The judge entered a default judgment against the association for failing to comply with a discovery order. Just before a jury trial on damages, the association settled.

Eury denies blacklists exist, though he says growers can ask for "preferred workers." He said the association keeps track of "ineligibles," those with substance-abuse problems or poor work habits.

Official report on collapse

Carmelo Fuentes had hoped to earn enough so his sister Yolanda could have cataract surgery.

The circumstances of his collapse late that afternoon on July 10, 1998 - six days shy of his 37th birthday - are described in an N.C. Labor Department report.

A few men carried Fuentes to the end of a row after he fell; then they returned to their work, the report said. About 15 minutes later, the field supervisor told them to carry him back to his quarters.

Sometime later - the report doesn't state exactly when - a truck driver for Jackson's Farming found Fuentes semi-conscious. Brent Jackson dialed 911 at about 6:10 p.m. The report is based on interviews with the Jacksons and Fuentes' co-workers.

Debbie Jackson, named as the field supervisor in the report, said she didn't act immediately.

"Mrs. Debbie Jackson stated immediate cooling procedures and other first aid procedures were not initiated until the arrival of the Sampson County E.M.S. sixty minutes after initial symptoms were reported to supervisor Mrs. Debbie Jackson," the report states.

Fuentes was flown to University of North Carolina Hospitals in Chapel Hill where doctors diagnosed a severe neurological disorder.

Brent Jackson, in a recent interview, said he expects to prevail in a pending workers' compensation case filed on behalf of Fuentes.

The state assessed Jackson a fine of \$875 under N.C. Labor Department laws. The maximum fine is \$7,000. Other violations found in the investigation were dropped from the settlement - including a finding that the men had to share a single water cup.

"Everything in that state report is a lie," Jackson said. He said he paid the fine to avoid a long legal fight.

Those who maintain that a pattern of subtle coercion underpins the H-2A program don't doubt Fuentes insisted he just needed to rest. Mary Lee Hall, a veteran farm worker lawyer, said workers who complain about sickness risk not being invited back next season.

Betsy Richards, a nurse practitioner at the Harvest Family Health Center in Wilson, was alone one night at the clinic when 27 tobacco workers showed up with nicotine poisoning. She said some men - all H-2A workers - said they had symptoms early in the week but told her they were afraid to complain until it was too late.

Nicotine poisoning occurs when green, wet leaves transfer nicotine onto the skin. Victims become dizzy, develop cramps and headaches and vomit.

"It was wretched. They were throwing up all over the lobby," Richards said.

Although the program allows "el patron" almost absolute control over H-2A workers, federal officials say it's virtually impossible to keep abusive employers out.

"(U.S. Labor Department) field officials expressed concern about the difficulties of ensuring that abusive employers do not participate in the H-2A program, where they believe the chance for abuse is much greater," investigators wrote in the 1997 GAO report.

Mexican recruiters in Tamazunchale, (pronounced TAH-mah-soon-CHA-lay), acknowledge as much. "There are good patrons and bad ones," recruiter Isidro "Cholo" Rios said.

To U.S. farm worker advocates who say Mexican recruiters should take responsibility for sending workers to abusive growers, Rios says: "You take care of your troubles on your end and I'll take care of mine."

Investigating complaints

Investigators from the GAO and the Labor Department's watchdog - the Office of the Inspector General - say the government has a poor record of policing the H-2A program. U.S. Labor Department records show only a handful of H-2A complaints were investigated in the last two years, resulting in either no action or marginal fines.

Until two months ago, the Labor Department had never denied any N.C. grower an order for H-2A workers - a significant club it can wield to weed out abusive employers.

A July 1998 incident, now well-known in Eastern North Carolina's Latino community, illustrates a type of problem with the H-2A program and the vulnerability of workers, according to federal investigators and critics.

At the Pink Hill farm of Anthony Smith, 15 H-2A workers left during the night and went to a Kinston church.

At the time, Lee Albritton was the manager of the Kinston office of the Employment Security Commission, which tries to place U.S. workers in farm jobs. The church minister called Albritton, knowing he spoke Spanish.

Albritton, now a recruiter for Bojangles', said the workers told him they suspected they weren't getting paid properly.

Instead of receiving the customary tokens for each bucket of cucumbers picked, the workers said a supervisor kept track of their productivity by making them wear caps with numbers and recording them as they dumped buckets into a truck.

Without tokens, the men wouldn't have any leverage when it came time to figure their pay, Albritton said. "Basically, they didn't trust the supervisor to count right."

Albritton also said that workers told him their crew supervisor threw cucumbers at them if they were not working fast enough.

Sonia Smith, Anthony Smith's wife, said union organizers incited the workers, causing them to leave. She said the workers did get tokens and denied that the cucumber incident took place. "That's all untrue," she said.

Albritton said he called his supervisor, Bubba Grant, to report the incident. In a few days, Grant, U.S. Labor official Carl Miller and Albritton met. Albritton said he wanted to complete an investigation of the incident and file a report but that Miller told him he was outside his jurisdiction.

Miller said he notified U.S. wage and hour investigators of the incident. But by the time they

looked into it, they could not find the workers, said Carolyn Riddle of the U.S. Labor Department in Atlanta.

Eury said the probe is an example of how state and federal investigators harass growers. "They investigated Anthony Smith for six months and couldn't come up with a thing on that."

Records show the farm did pay a state fine last year for not having a portable toilet in the fields. Smith said it was a minor infraction. "We thought they were close enough to (the toilets in the camps.) Besides, they don't use them anyway," she said.

To Albritton, the case shows the vulnerability of H-2A workers. By leaving the farm, the workers broke their contract, making them undocumented workers subject to deportation. Under the contract they also forfeited their bus fare home and certain pay guarantees.

Eury has given varying accounts of how the association disciplines its members in different interviews. When first asked last spring, Eury said no one had ever been kicked out of the Growers Association. Later, he said "three or four" growers had been denied membership. Most recently, he upped the number to 12. He wouldn't explain the discrepancy or identify growers who are no longer members.

Eury said he doesn't always know what's going on among the association's 1,000-plus growers. State labor officials don't keep a watch list of growers with records of violations, which might help the Growers Association improve its own monitoring.

For example, Eury said he didn't know that the state Department of Agriculture last year investigated Pilot Mountain tobacco grower Jimmy Pike for pesticide violations, following up on worker complaints passed on by farm worker lawyers.

Pike settled the case earlier this year, agreeing to pay a fine of \$500 - the maximum pesticide fine under state law. The pesticide board, which grants pesticide licenses, denied Pike his applicator license and suspended his wife's license for one year.

Separately last year, the state Labor Department fined Pike \$250 for not providing toilet or hand-washing facilities for men working in the fields longer than five hours. The department also said Pike violated regulations by failing to provide transportation to such facilities.

Pike, who continues to use workers supplied by the Growers Association, declined comment.

A father cares for his son

The day his son fell, Carmelo Fuentes' father got the news from the local recruiter in Ciudad del Maiz. Porfirio Fuentes decided he had to go to Chapel Hill, where Carmelo was hospitalized.

Nurses at the hospital taught Porfirio how to bathe his son in bed. Back home in October 1998, Porfirio showed his family.

A year later, the daily ritual is familiar. The family team massages Carmelo's lifeless limbs

and washes his skin under the light of a single bulb hanging from the ceiling. An old shoebox serves as a makeshift lampshade.

After the bath, Yolanda covers him with a clean sheet donated by friends in North Carolina.

Sometimes, Carmelo's eyes seem to catch the dance of light and shadow as family members move around him. Porfirio insists it's a good sign: "My son, my son," he repeats from the end of the bed, wiggling his fingers to coax recognition from Carmelo.

At dusk, Porfirio places a Bible under each corner of Carmelo's mattress and begins the nightly reading, this time from the Old Testament's Song of Solomon.

Nightfall cools the concrete-block hut. As he does every night, Porfirio drags an old mattress from a corner of the room so he can sleep next to his son. He wants to be here in case Carmelo's condition changes.

Porfirio hopes his son will recover but succumbs to sadness in the dark.

"I cry every night. Every night." "

APPENDIX NO. 5

There is a substantial body of work that addresses issues raised by current and past guest worker programs in the United States and in California. Below is a very short list.

–Craig, Richard B. *The Bracero Program: Interest Groups and Foreign Policy*, 1971, U. Texas Press.

–Galarza, Ernesto. *Merchants of Labor: The Mexican Bracero Story*, 1964, Rosicrucian Press (a classic)

–Gamboa, Erasmo. *Mexican Labor and World War II : Braceros in the Pacific Northwest, 1942-1947*, 2000, Columbia Classics reissue.

–Herrera-Sobek, Maria. *The Bracero Experience : Elitlore Versus Folklore*, 1979 & 1987, UCLA Latin American Studies V 43.

–Kirstein, Peter N., *Anglo over Bracero: A History of the Mexican Worker in the United States from Roosevelt to Nixon*, 1977, R & E Associates.

–Reisler, Mark. *By the Sweat of their Brow: Mexican Immigrant Labor in the United States, 1900-1940*, 1976, Greenwood Press, 1976.

–Wilkinson, Alec. *Big Sugar: Seasons in the Cane Fields of Florida*, 1989, Alfred A. Knopf (originally in New Yorker magazine; won RFK Memorial Book Award).