

WATCHING SHEEP AND WAITING FOR JUSTICE:



**AN UPDATE ON THE EXPERIENCES OF H-2A SHEEPHERDERS IN
CALIFORNIA'S CENTRAL VALLEY**

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I. BACKGROUND

A. CCLS March 2000 Issue Paper on H-2A Shepherders

1. Content of the 2000 Study

In March 2000, Central California Legal Services, Inc. (CCLS) published *Suffering in the Pastures of Plenty: Experiences of H-2A Shepherders in California's Central Valley*.¹ It publicly documented, for the first time, the story of shepherders brought to California primarily from Peru, Chile, and Mongolia through the United States Department of Labor (DOL) H-2A Program.

The 2000 CCLS report, based on a survey of forty-one shepherders, revealed the conditions under which H-2A shepherders worked and lived in Central California. Working alone and in isolation from towns, communities, and family, the shepherders had no transportation or effective means to communicate with others in case of an emergency. Shepherders had no toilets, bathing facilities, potable water, heating, electricity, or working refrigerators. Old, small, dilapidated trailers served as their living quarters.

Their employers exercised almost complete control over the shepherders' lives during three-year DOL-approved employment contracts. Workers were required to remain at the work site 24 hours per day, 7 days per week, and 365 days per year. They were paid \$900.00 per month or less. Many workers were not allowed to have magazines, newspapers, radios or televisions. Some employers prohibited their employees to have visitors or to visit with other people. Even their mail was picked up and delivered to them by the employer. The employer delivered provisions necessary for living and working. If a worker wanted to make a phone call home, or go to the doctor, he was dependent upon the employer for transportation.

None of the shepherders surveyed engaged in non-worksites activities, such as seeing a movie, watching a video, going to a party, or attending church services during their time working as shepherders. The workers spoke of their loneliness and of harsh treatment from their

¹ The 2000 CCLS report is available online at www.centralcallegal.org/news/sheep/sheepfinal1.pdf.

employers. Many, when asked to describe their best experience in the United States, simply stated that they had no good experiences.

The CCLS 2000 Report documented decades of indifference from the governmental agencies that, in theory, should protect the workers. The U.S. Department of Labor (DOL) approved the working hours, conditions, and low wages that govern H-2A shepherders. The California Employment Development Department (EDD) inspected and approved the trailers in which the shepherders lived. The California Industrial Welfare Commission (IWC) specifically excluded shepherders from minimum wage protection when the California minimum wage for other farm workers was first established. The IWC then continued that exclusion when presented with opportunities to amend the wage order.

2. The Impact of the 2000 CCLS Study

Numerous media reports about the conditions of shepherders followed the release of the 2000 CCLS Report.² The report served as a catalyst for individuals and organizations to support better treatment for shepherders in California. In 2001, Assembly Bill 1675 was introduced to provide protection for shepherders. The bill was sponsored by the California Labor Federation, the California Rural Legal Assistance Foundation, the Shepherders' Union, and the United Farm Workers, and it also gained the support of the California Council of Churches, the Teamsters Union, and others. The California Legislature passed a law to protect shepherders as part of the California Labor Code later in 2001. This report is part of a continuing effort to monitor living and working conditions, achieve improved conditions, and bring further public awareness to the issues of shepherders in California's Central Valley.

B. IWC Hearings in Fall 2000

² See e.g., *Shepherders Lack Basics: Study Says Valley Relies on Guest Workers but Many are Underpaid and Live in Deplorable Conditions*, Fresno Bee (March 16, 2000) at p. A1; Esparza Loera, *Denuncian Maltrato a Pastores*, Vida en le Valle (March 22-28, 2000) at p. A-4; *Advocates Seek to Guard Shepherders from Exploitation*, Los Angeles Times (Aug. 17, 2000) at p. A3; *Shepherds Vie for Higher Wages, Better Conditions*, The Daily Texan (April 24, 2001); *Keeping Watch: A Roaring Debate Surrounds the Quiet Lives of Valley Shepherders*, Fresno Bee (April 8, 2001) at p. A1; Nieves, *Calls for Change in an Ancient Occupation*, New York Times (July 11, 2001) at p. A1; *2000 Sheep and a Shovel Toilet*, The Community Alliance (Sept. 15, 2002).

In the Fall of 2000, the IWC conducted hearings to collect evidence and opinions on whether the California State minimum wage should be increased. The IWC also considered whether any or all of the exemptions from the minimum wage laws should be eliminated. This presented an opportunity to bring the sheepherder issue back to the IWC.

Former sheepherders and sheepherder advocates participated in each of the hearings. They presented evidence concerning the wages, hours, and the living and working conditions of the sheepherders. Some of the workers described the conditions as “slave-like.” They urged members of the IWC to extend minimum wage protection to sheepherders.

Representatives of the Western Range Association, the California Wool Growers Association, and other agricultural industry groups, as well as individual ranchers, presented strikingly different accounts of the experiences of sheepherders in the Central Valley. Industry representatives argued that the workers were from third-world countries and were accustomed to much lower wages. Therefore, they reasoned, there was no need to pay sheepherders the same wages as other California minimum wage workers. Consider the following testimony of Dennis Richards, former-president of the Western Range Association:

(826)³ . . . But from the South American countries where they don't have a lot, they're more than willing to do this to provide a living for their family.⁴

And this statement, made by Emilio Juarte of Loscotti's Sheep Company:

When they come here and -- you know, it's -- they think it's a better lifestyle to them. They're making more money. You send them back to Chile, it takes them three months to make \$200 . . .⁵

The sheepherding industry representatives also argued that the housing (such as that pictured on the next page) provided by the ranchers should be valued at \$410.00 per month.

³ Note that this document contains purple numbers. When reading this on a computer as a Microsoft Word document, CTRL + click on the purple number takes the reader to the precise paragraph in the web document cited. The numbers are generated using a program known as “PurpleSlurple,” a transcoding service that reformats web pages to create granular addressability in document elements on existing web pages.

⁴ Dennis Richards, former president of Western Range Association, IWC Hearing Transcript, Sept. 21, 2000.

⁵ Emilio Juarte, Loscotti's Sheep Company, IWC Hearing Transcript, October 5, 2000.



(1045) [w]e also give them housing, which -- in Kern County -- and I can't speak for other areas -- but the Kern County Housing Administration, under their HUD program, estimates that a one-bedroom apartment in Kern County, including utilities, would be \$410 a month.

Dominic Minaberrigarai, Bakersfield Sheep Rancher, IWC Hearing Transcript, Sept. 21, 2000.

The then-president, of the Western Range Association, and virtually all industry representatives who testified, contended that any increase in wages, no matter how minimal, would bring disastrous results to the industry:

(806) If the minimum wage is put on this, it will bankrupt the industry.⁶

Notably, an article in the March 22, 2005 *Fresno Bee* indicates that “lamb prices are at record highs, ranging from \$1.12 to \$1.15 a pound,” according to an industry marketing official. The same article reports “[w]ool prices have more than doubled in four years, to about 70 cents a pound.”⁷

The employers argued that the sheepherders do not actually perform all that much work and that they spend most of their time listening to the radio or watching television:

(881) What does he [the sheepherder] do when he's out there? He'll go in the morning and he's going to direct his sheep to a virgin piece of feed, where the lambs will gain the best. If they need water during the day, he's going to put them on water. Well, what does he do after that? Well, about nine o'clock in the

⁶ Dennis Richards, former President of Western Range Association, IWC Hearing Transcript, Sept. 21, 2000.

⁷ Pollock, *Shear Fortune, Lamb prices have increased to record highs*, *Fresno Bee* (March 22, 2005) at p. C1, C6.

morning, he'll be back at his camp eating breakfast, listening to his stereo, and maybe watching his TV -- although I think he watches TV at night.⁸

However, the ranchers acknowledged that, at least during the lambing season, the sheepherders worked a minimum of twelve hours per day.⁹

One rancher testified that the sheepherders actually want to be sent to work in the most isolated and remote areas:

(1052) And we do operate in areas where they are isolated, and we actually have herders fighting to try to get to the most remote areas because it's nice and cool up there, and they like it. It's an ideal life. I mean, all of us are trying to get out of the rat race. Well, that's where they want to go. A lot of them volunteer and then plead with us to please send them up to the higher Sierra country.¹⁰

Ranchers argued against providing cell phones for workers to use in case of medical emergencies, stating that the cell phones would "be abused:"

(968) If they need to communicate, we take their letters. If they want to use a phone, we'll take them to a phone or let them use the cell phone on the pickup. That's available to them. Most of us have cell phones now. Is there a cell phone in the camp to be used by them at will? To answer your question, no. Is it necessary? No. Will it be abused? Yes.¹¹

Another rancher testified that there was little need to provide clean drinking water since workers were free to drink water from the "fresh springs coming out of the pure rocks:"

(1057) Running water? No, they do not have running water. What we do is we provide water from our ranch in tanks, and we take that out there. It's -- depends on the size of the tank, 200-, 500-gallon tanks. It is feasibly impossible to put running water where they are at. Some of them, when they're in the higher country, drink from the fresh springs coming out of the pure rocks of the mountain.¹²

⁸ Dan Elgorriaga, Central Valley Sheep Rancher, IWC Hearing Transcript, Sept. 21, 2000.

⁹ *Id.*

¹⁰ Minaberrigarai, Bakersfield Sheep Rancher, IWC Hearing Transcript, Sept. 21, 2000.

¹¹ Elgorriaga, Central Valley Sheep Rancher, IWC Hearing Transcript, Sept. 21, 2000.

¹² Minaberrigarai, IWC Hearing Transcript, September 21, 2000.

While shepherding industry representatives painted a picture of idyllic pastoral working conditions and happy workers, employee representatives described the actual working conditions that shepherders endure, perhaps most notably, the lack of toilet facilities:

(1083) This, to a shepherder, is a bathroom. This is the "amenity" that the shepherders have for a bathroom. They're given a shovel. Not in all, but in most cases, they're given a shovel to bury their excrement.¹³

Victor Flores, then-president of the fledgling Shepherders' Union, and a shepherder for many years, testified as follows:

(1097) I first have to tell you what we have lived in our own flesh and blood. I came in 1991 for a boss who was named Arturo Fernando Sheep Company -- Antero. He's one of the companies that more or less doesn't have his workers in very good conditions. He's a "more or less" employer; we suffer psychological abuse for having asked for better food, because they'd only give us two cans of milk per week, they give us five pounds of potatoes per week, they give us canned beans, all expired dates. They gave us contaminated water that they took from the irrigation wells. They didn't give us clean water. And as a result, many of the shepherders, Peruvians, Chilenos, Mexican, Spanish, suffer from stomach illnesses.¹⁴

(1110) We don't have water to bathe ourselves. We bathe ourselves in the water that we bring for the sheep to drink, contaminated with pesticides and microbes. During the cold periods, we don't have any heating. We don't have air conditioning to help us get through the hot times. We don't have a toilet to be able to go and do what is necessary. And when we complain, the grower calls the Western Range Association and says, "This worker complains too much; we don't want him any more."¹⁵

Flores urged the IWC:

(1111) We ask the Commission to have the compassion to analyze this situation, the suffering of the shepherders that are exploited like slaves of centuries past. In future hearings, we'll have injured workers to talk about what they have suffered.¹⁶

¹³ Chris Schneider, Executive Director of Central California Legal Services, Inc., IWC Hearing Transcript, September 21, 2000.

¹⁴ Victor Flores, Shepherder, IWC Hearing Transcript, September 21, 2000.

¹⁵ *Id.*

¹⁶ *Id.*

On December 5, 2000, the IWC voted to raise the California minimum wage. It also voted to remove the exemption of other workers who had previously been excluded from minimum wage protection. However, the IWC refused to remove the shepherd exemption or provide any other relief for California's lowest paid workers. Instead, the Commission voted to appoint a wage board to further study the issues of shepherd wages and working conditions.¹⁷

C. IWC Shepherd Wage Board Proceedings in 2001

On January 9, 2001 the IWC convened the "shepherd wage board," composed of equal numbers of employer and worker representatives.¹⁸ The industry representatives maintained the position that there should be no increase in wages. Shepherd representatives offered various compromises on wages and conditions, all of which were rejected by the employer representatives. Ultimately, there was no agreement amongst the wage board members concerning recommendations to the IWC.

Following the impasse of the wage board, IWC then held public hearings on March 2, 2001, April 9, 2001 and April 24, 2001, concerning shepherd wages and working conditions. Each side presented testimony similar to that which they had been presented the previous year during the minimum wage hearings.¹⁹ The sheep industry representatives argued that the H-2A program protected those workers and that the handfuls of non-H-2A domestic workers were the only individuals needing additional protection. The ranchers also continued to argue that they could not afford *any* increase in the wages. At the final hearing on April 24, 2001, several motions to establish a higher wage rate for shepherders failed. The IWC then passed a motion that any California shepherd who was not an H-2A worker would be guaranteed at least the same wage as H-2A shepherders. The result of the vote was to adopt the industry position, affirm the *status quo*, and provide absolutely no wage increase for shepherders.

¹⁷ IWC Hearing Transcript, Dec. 5, 2000, available at www.dir.ca.gov/IWC/Minutes120500.html.

¹⁸ IWC Hearing Transcript, Jan. 9, 2001, available at <http://www.dir.ca.gov/IWC/pubmt010901.htm>.

¹⁹ IWC Hearing Transcript, January 9, 2001, available at: <http://www.dir.ca.gov/IWC/Transcripts.htm>.

Following the vote, Victor Flores, president of the Shepherders Union, addressed the Commissioners:

(462) MR. FLORES: (Through Mr. Schneider, interpreting) I want to thank the members of the Commission and those present. In terms of the basic rights living in this country, where there's supposed to be justice, when, for the first time in the history of this Commission, shepherders came before this Commission and talked about their conditions, it was our hope that the Commission, for the first time in the history, would listen to shepherders, that the Commission, made up of human beings like us, would understand that we deserve better conditions and better wages.²⁰

(463) I would have appreciated it if maybe one of the commissioners would have come out to a sheep camp to visit the trailers where we live and see how we live, in conditions that were slavery in the past.²¹

(464) We have workers, human beings, who come from far countries -- Chile, Peru, Mexico, Mongolia -- whose rights are being violated all the time, and we hoped that this Commission would hear and would do something.²²

(465) I hope that the commissioners realize that the workers are out there 24 hours a day, creating production and wealth for the industry. And we should have rights.²³

After this testimony, Commissioner Dombrowski immediately called for a short recess. Following the recess the IWC adopted amendments to Wage Order 14 in relation to shepherders. "Effective July 1, 2001 the minimum wage for all shepherders shall be \$1,050.00 per month; effective July 1, 2002 the minimum wage for all shepherders shall be \$1,200.00 per month."²⁴ The new wage rates are less than half that which other farm workers earn for working the same number of hours.

Victor Flores was not the only person to express anger with the IWC action. Tom Rankin, Executive Director of the California Labor Federation, addressed the Commissioners as follows:

(448) The IWC's mission is to protect the workers of California. You apparently are failing to protect the most vulnerable of all workers, the most exploited of all workers in the state. And since

²⁰ IWC Hearing Transcript, April 24, 2001, available at <http://www.dir.ca.gov/IWC/PUBMTG424.htm>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Wage Order 14-2001, Part 4(E), available at www.dir.ca.gov/IWC/iwcarticle14.html.

that's your decision, all we are left with is the alternative of going to the Legislature and doing it that way.

(449) That's not what the IWC is set up to do. The Legislature set you up to do this job. If you can't do it, we have to go back to them and we have to go back to them and look at your whole mission and what you're doing and whether or not it's worth continuing an IWC.

(450) I want to remind you that you did not wait for federal action on the minimum wage for all workers. Why in the world are you waiting for federal action to deal with these workers who need a raise more than anyone else?²⁵

D. California Legislative Action in 2001

Tom Rankin kept his promise to go to the California Legislature. On April 30, 2001, California State Assembly member Paul Koretz (D-West Hollywood) amended Assembly Bill 1675 to designate it as a bill to regulate shepherders' working and living conditions. Assembly Bill 1675 also provided for monetary penalties against employers who fail to act in accordance with its provisions. On September 13, 2001, the California Senate passed the bill, which was presented to the Assembly for concurrence.

On October 14, 2001, then Governor Gray Davis signed AB 1675 into law. Assembly Bill 1675 provides specific requirements "with regard to shepherd wages, hours, breaks, housing, tools, and working conditions" to be included in Division 2, Part 12, Section 2695 of the California Labor Code.²⁶ "In enacting this legislation, it is the intent of the Legislature to codify certain labor protections that should be afforded to shepherders, as defined." Cal. Lab. Code §2695(a). The provisions of the law "are in addition to, and are entirely independent from, any other statutory or legal protections, rights, or remedies that are or may be available under this code or other state law or regulation to shepherders either as individuals, employees, or persons." Cal. Lab. Code § 2695(a). The bill incorporated the wage rules set by the IWC on April 24, 2001, and provided for wage increases for shepherders each time the California minimum wage increased. It also set minimum standards for working conditions.

²⁵ IWC Hearing Transcript, April 24, 2001, available at www.dir.ca.gov/IWC/PUBMTG424.htm.

²⁶ California Assembly Summary, 2001-2002 session, AB 1675 Shepherders, Paul Koretz (D).

Section 2695.2(a)(1) provides that “for a shepherd 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 no less than the monthly minimum wage adopted by the Industrial Welfare Commission on April 24, 2001.” The IWC Wage Order 14-2001 prescribes the minimum wage as \$1,051.00 effective July 1, 2001, and \$1,200.00 per month, effective July 2, 2002.²⁷ Further, any shepherd who performs non-shepherding, non-agricultural work on any workday shall be fully covered for that workweek by the provisions of any applicable laws or regulations relating to that work. Cal. Lab. Code § 2695(a) (1). After July 1, 2003, the amount of the monthly minimum wage permitted under 2695(1), “shall be increased each time that the state minimum wage is increased and shall become effective on the same date as any increase in the state minimum wage.” Cal. Lab. Code § 2695(a)(2). The new law further provides that shepherders must receive a meal period of no less than 30 minutes for a work period of more than five hours. Cal. Lab. Code § 2695(c). The law also mandates rest periods for shepherders, as practicable. Cal. Lab. Code § 2695(d).

Sections 2695.2(f) and (g) of the California Labor Code mandate minimum standards of the living conditions that must be provided to shepherders, as follows:

Section 2695.2(f): After January 1, 2003, during times when a shepherd is lodged in mobile housing units where it is feasible to provide lodging that meets the minimum standards established by this section because there is practicable access for mobile housing units, the lodging provided shall include at a minimum all of the following:

- (1) Toilets and bathing facilities, which may include portable toilets and portable shower facilities.
- (2) Heating.
- (3) Inside lighting.
- (4) Potable hot and cold water.
- (5) Adequate cooking facilities and utensils.
- (6) A working refrigerator, which may include a butane or propane gas refrigerator, or for no more than a one-week period during which a nonworking refrigerator is repaired or replaced, a means

²⁷ The new legislation, including Section 2695.2 and IWC Wage Order 14-2001 incorporated by reference, become effective in two delayed stages. The delayed implementation was in response to wool industry representatives who argued that the time was needed for two reasons. The first was to lessen the economic impact on the industry. The second reason for the delayed effect was to allow employers sufficient time to come into compliance with the new requirements.

of refrigerating perishable food items, which may include ice chests, provided that ice is delivered to the shepherd, as needed, to maintain a continuous temperature required to retard spoilage and ensure food safety.

Section 2695.2(g): After January 1, 2003, all shepherders shall be provided with all of the following at each worksite:

- (1) Regular mail service.
- (2) A means of communication through telephone or radio solely for use in a medical emergency affecting the shepherd or for an emergency relating to the herding operation. If the means of communication is provided by telephone, the shepherd may be charged for the actual cost of non-emergency telephone use. Nothing in this subdivision shall preclude an employer from providing additional means of communication to the shepherd which are appropriate because telephones or radios are out of range or otherwise inoperable.
- (3) Visitor access to the housing.
- (4) Upon request and to the extent practicable, access to transportation to and from the nearest locale where shopping, medical, or cultural facilities and services are available on a weekly basis.

Section 2695.2(h) provides for specific monetary sanctions and “civil penalties provided by law” for an employer’s violation of the statute. Section 2695.2(j) further mandates that “[e]very employer of shepherders shall post a copy of this part in areas frequented by shepherders where it may be easily read during the workday.” If posting is impractical, section 2695.2(j) mandates that “employers shall make a copy of this part available to shepherders upon request.” The posting must be available in the language understood by the shepherd. Cal. Lab. Code §2695.2(j). As an alternative to posting the full provisions of Part 12 of the Labor Code (commencing with section 2695.1), employers may post a copy of the IWC Wage Order 14-2001 and a “sufficient summary of each of the provisions in this part.” Cal. Lab. Code § 2695.2(j).

E. Bedoya Silva-Santisteban Study

During the summer of 2002, Harvard student Alvaro Martín Bedoya Silva-Santisteban interviewed thirty-five H-2A California shepherders. The interviews served as the basis for his undergraduate thesis entitled: *Welcome to the First World: The Exploitation of Peruvian Shepherders in the American West*. Bedoya found that “regardless of whether or not the herder was housed in a trailer or a tent, not a single herder interviewed was provided with a toilet; every

single herder was given a shovel with which to bury his excrement.” Bedoya’s study revealed that shepherders continued to suffer from lack of hygienic accommodations, acceptable food, drinking water, heating or cooling systems, and lacked any reliable means of communication.²⁸ Bedoya found that some shepherders were paid the wage of \$750.00 per month, rather than California’s mandated wage of \$1,200.00 per month. It appeared doubtful that there would be substantial compliance once the effective date of the legislation was reached.

II. CCLS 2004 FOLLOW-UP STUDY ON SHEEPHERDERS’ CONDITIONS

Because it appeared unlikely that the shepherding industry was in compliance with the California Labor Code, CCLS conducted a survey in mid-2004, one-and-one-half years after all protective provisions of the law became effective. The survey was coordinated by a Great Valley Fellow, Fabiola González.

Over an eight-day period, CCLS survey teams traversed 2,512 miles of highways and country roads in Fresno, Kern, Kings, Merced, and Tulare counties searching for sheep camps that are virtually invisible to the untrained eye. When a sheep camp was located and the survey team members could gain access to the site, they attempted to make contact with the shepherd. Each herder contacted was offered an opportunity to participate in the survey. At the conclusion of the study, twenty-two shepherders, employed by twelve different companies, in five counties participated. Several shepherders declined to answer the survey questions. Of the twenty-two workers surveyed twenty-one were participants of the H-2A guest worker program recruited from Peru. One herder was from Mexico and was working without a contract.

²⁸ Bedoya Silva-Santisteban, Alvaro M. “Welcome to the First World: The Exploitation of Peruvian Shepherders in the American West.” B.A. Diss., March 2003. Silva-Santisteban’s thesis won the Alexis de Tocqueville Award in Social Studies, see www.fas.harvard.edu/-secfas/Prize_Winners2002-2003.html. Bedoya’s findings were published in the article *Captive Labor: The Plight of Peruvian Shepherders Illuminates Broader Exploitation of Immigrant Workers in U.S. Agriculture*, Dollars & Sense: The Magazine of Economic Justice (Sept./Oct. 2003).

The survey instrument was composed of 58 questions. It took approximately twenty minutes to complete interviews with each worker. The majority of the questions sought “yes” or “no” answers. Questions at the conclusion of each survey allowed for open-ended answers.

Teams interviewed shepherders at different times of the day while they tended to the flock. Some workers displayed apprehension as they answered the questions. All of the shepherders wanted assurances that their names would not be used. Many would not allow their picture to be taken, even when told that the pictures would not be published. At times, the answers given by workers concerning the condition of the sheep camps appeared to be visibly contradicted. For example, some herders reported that their trailers had toilets and/or showers. A look at the trailer with a shovel leaning against it and no water hook-up belied their response. The survey team recorded the answer given by the worker.

On one occasion, after survey team members completed the interview, a shepherd volunteered additional information. He stated that his last boss had told him that, a few years earlier, some workers got into trouble for talking to reporters. He continued, stating that his boss told him that if anyone ever came around and asked how things were, he should say that things are “fine.” He then thanked the team for interviewing him and said he hoped they could get the truth out to the public.

The 2004 survey sought answers to the following questions:

- ❑ To what extent has there been industry compliance and enforcement of California’s new law concerning shepherd wages and living conditions?
- ❑ To what extent do government agencies protect and enforce the rights of shepherders?
- ❑ What are the best experiences of the shepherders?
- ❑ What are the worst experiences of the shepherders?

III. DEGREE OF COMPLIANCE WITH THE NEW LAW

The 2004 survey results revealed some improvements, but also demonstrated extremely high levels of non-compliance with the law.

A. Working Conditions

Effective July 2002, all shepherders in California were required to receive wages of \$1,200.00 a month, pursuant to Wage Order 14-2001 and California Labor Code section 2695.2(b)(2). All workers interviewed in the Summer of 2004 stated that they received a monthly wage of \$1,200.00. While the shepherders reported earning the mandatory state minimum wage, members of the survey team observed that the minimum wage laws pertaining to shepherders were not posted, as required by section 2695.2(j) of the Labor Code.

As with the 2000 survey, the shepherders were asked if they had gone to church, shopping, restaurants, the park, a fiesta, or to the library. Twenty reported they had not attended church services. Nine workers had visited a park, thirteen had not. Seven workers had attended a fiesta, but fifteen had not. Only two workers said they had visited the library, while twenty had not done so.

The law requires that, “to the extent practicable,” shepherders must be provided access to shopping, medical, and cultural facilities on a weekly basis. When the shepherders responded that they did not engage in activities such as church, shopping, restaurants, the park, a fiesta, or the library, our survey workers inquired whether the workers had asked their employers for time to attend these activities, and if not, why they did not ask. Below are some of the shepherders’ responses:

“There’s no time.”

“Because I already know they won’t take me.”

“Because of the work.” (Response of two shepherders)

“We are occupied 24 hours, we don’t have time.”
Response of shepherd when asked why he did not ask to engage in nonwork activities.

“I didn’t want to upset the foreman.”

“Because I’m afraid something will happen to the sheep.”

“I work 24 hours.”

“To stay in the good graces of the boss.”

“Because of the work I can’t leave. If anything happens, the boss will make me responsible.”

“I didn’t want to upset the foreman.”

Response of shepherd when asked why he did not ask to engage in non-working activities.

B. Living Conditions

All of the shepherders interviewed in 2004 lived in small trailer units, generally in isolated fields, such as those shown in the photographs below:



Pursuant to California Labor Code section 2695.2(f) and (g), where shepherders are housed in mobile housing units, after January 1, 2003, the lodging must provide minimum requirements, including but not limited to, the following:

- **Toilets:** 91% of shepherders surveyed in 2004 had no toilet facility and instead were provided with only a shovel. In most sheep camps, a shovel leaned against the worker’s trailer demonstrated the industry’s unwillingness to provide even the most basic dignity to its employees. (See picture on next page.)



- **Showers/Bathing Facilities:** 77% of shepherders surveyed had no shower or bathing facilities.
- **Heating:** 64% of shepherders had no heating in their trailers.
- **Potable water:** Most shepherders had water delivered for storage in a container by their employers on a once-a-week basis.



A water container of the kind generally found outside each shepherd camp.



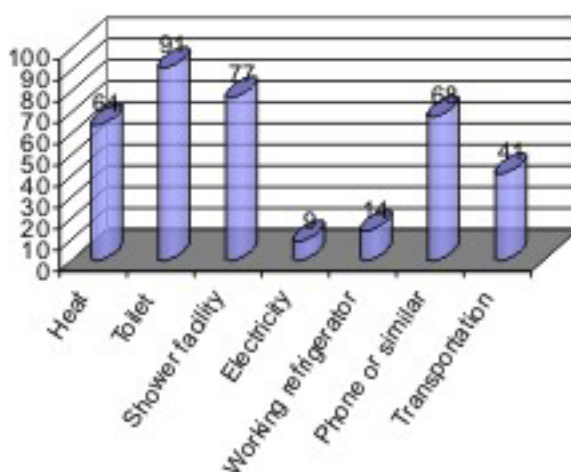
The inside of a water tank at a shepherd camp. The water in the tank was used by the worker for the purpose of cooking, bathing, and drinking. The tank emitted a rancid odor.

- **Refrigeration:** 14% of shepherders had no working refrigerator.
- **Electricity:** 9% of shepherders had no electricity in their trailers. Those that did usually had only a single car battery to which they connected a T.V. or radio.
- **Transportation:** 41% of shepherders had no access to transportation.

- **Cell phone/Similar:** 68% of the sheepherders surveyed lacked a cell phone or other means of communication via telephone or radio for use in medical emergencies.

Many herders reported that their camps had been inspected and approved by government agents. That fact begs the question: “On what basis do these camps pass inspection?”

Non-Compliance with the California Labor Code



(805) . . . These people are happy with the wage that they're getting and the working conditions. Dennis Richards, former president of Western Range Association, IWC Hearing Transcript, Sept. 21, 2000.

C. Employer Control

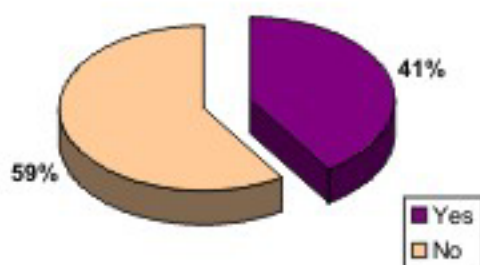
1. Contact with Others

In the 2004 survey, over 95% of sheepherders interviewed reported being allowed to have visitors, to have magazines, and access to a television or a radio. In addition, 19 of the 22 workers reported that they were allowed to talk to other people outside work, as opposed to a just a few in the 2000 survey. While sheepherders reported that they were allowed to talk with others, our survey teams noted that the majority of workers showed apprehension as they were being interviewed, and replied to the open ended questions with short answers.

2. Transportation

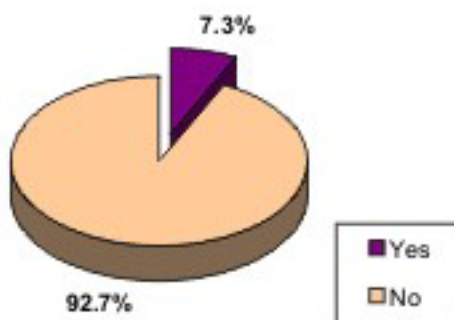
Shepherders in 2004 reported a small increase in access to transportation compared to workers surveyed in 2000. Nine of 22 workers in the 2004 survey stated they had access to transportation (41%) compared to 7% of workers interviewed in 2000. However, as discussed earlier in this report, shepherders rarely had time away from work to utilize transportation to engage in shopping, recreational activities, or cultural activities.

Availability of Transportation in 2004



Note: 22 workers surveyed.

Availability of Transportation in early 2000



Note: 41 workers surveyed.

3. Documents Retained by Employer

In many instances, a shepherd's employer holds possession of the official documents issued by the Immigration and Naturalization Service that show that the herder is legally in the United States as an H-2A worker. This presents problems for the worker if he becomes temporarily separated from the employer and is without his documents. Worse still are situations in which the employer retains possession of the worker's documents as a control tactic over the

worker if there are employment problems. Such cases necessitate intervention by advocacy organizations and legal professionals.

IV. COMMENTARIES: IN THE SHEEPHERDERS' OWN WORDS

As in the original study, the 2004 survey teams asked H-2A shepherders in California's Central Valley what they considered to be their best and worst experiences while living and working in the United States. The following statements are some of their responses:

A. Worst Experiences

- "To be alone for so long."
- "To be away from my family."
- "To work more than ten hours straight per day."
- "When I lost some sheep."
- "The cold experienced while working in the mountains."
- "To work in Nevada in the middle of storms and freezing temperatures."
- "To have spent the night outside in the middle of the snow in Wyoming because I couldn't see my camp."

Describe your worst experience as a shepherd in the U.S.
"To be alone for so long."

"...they're used to the lifestyle, they're used to being in a solitude place." Emilio Juarte, Loscotti's Sheep Company, IWC Hearing Transcript, October 5, 2000.

"To work in the cold winter with no heat."

"[To have gotten] lost in the middle of the night along with the sheep."

B. Best Experiences

- "I have none." (Response of 34% of workers).
- "To work – to know more about sheep."
- "To have gone into town."
- "To say that I'm in the United States."
- "That my current boss treats me well."
- "To have come to the United States."

- “My work is my best experience, the fact that I have a job.”
- “The money that I earn working.”
- “That my boss is legalizing my status.”

“And we do operate in areas where they are isolated, and we actually have herders fighting to try to get to the most remote areas because it’s nice and cool up there, and they like it. It’s an ideal life. I mean, all of us are trying to get out of the rat race. Well, that’s where they want to go. A lot of them volunteer and then plead with us to please send them up to the higher Sierra country.” Dominic Minaberrigarai. Bakersfield

Describe your best experience as a shepherd in the U.S. **“To have gone into town.”**

“To have learned about lambing sheep.”

“I have none.” (Response of 7 workers)

V. CONCLUSIONS

The Central Valley’s shepherders still labor under many of the same conditions documented in our 2000 issue paper. While the ranchers receive record high prices for their product, the living and working conditions of the shepherders are still austere, at best, and are not in compliance with California law. The historic abuse of agricultural guest workers which began with the much decried bracero program continues today with California shepherders. Ninety-one percent of shepherders have no toilet facilities. Sixty-four percent have no heat in their lodging places. Seventy-seven percent lack shower or bathing facilities. Sixty-eight percent of shepherders also lack a reliable means of communication in case of emergency. Most shepherders remain isolated, seldom able to leave their worksite. Some even fear asking their employer for permission to leave the worksite. Many shepherders lack regular mail service to communicate with family members and friends.

While all of those interviewed reported a wage of \$1,200.00 per month, the living and working conditions detailed in this report indicate that employers are not complying with the California Labor Code. Governmental officials fail to enforce the law. Many shepherders were apprehensive about answering the survey questions, and thus may not have fully disclosed their true work situation. Most shepherders reported having permission to talk to others outside their work, but they limited comments and short answers, indicating an uneasiness to speak about their conditions.

The Universal Declaration of Human Rights²⁹, at Articles 23 and 24, states that every person has the right to “just and favourable conditions of work,” living conditions that are “worthy of human dignity,” and the opportunity for “rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.” Adequate food, clothing, housing, and medical care are also basic human rights that are too often denied to shepherders working in this country.³⁰ This report reveals that the shepherding industry consistently disregards the human rights of shepherders while those governmental agencies responsible for enforcing the law turn a blind eye.

For Central California Legal Services, achieving improved working and living conditions for shepherders in the San Joaquin Valley is an ongoing commitment. This study demonstrates that the mere passage of legislation in California has not achieved the hoped for significant change in most areas of their working and living conditions. Further efforts are needed. CCLS will continue to monitor shepherders’ conditions, demand enforcement of the law by regulatory officials, and pursue litigation to enforce shepherders’ rights. Proper attention must be provided by local, state, and federal officials, as well as the public, to ensure that California shepherders gain basic living and working conditions that not only comply with the law but also conform to our society’s standards of decency and fairness.

²⁹ Universal Declaration of Human Rights, G.A. Res. 217A(III), Doc A/810 at 71 (1948).

³⁰ *Id.* at Article 25(1).

VI. RECOMMENDATIONS

The authors of this report recommend several actions to improve shepherders' working and living conditions. Due to the lack of employer compliance with existing law and the failure of governmental agencies to enforce the law, we are required to repeat three of the recommendations made in the CCLS 2000 Report.

- State and Federal officials must enforce the existing laws protecting shepherders' working and living conditions by conducting meaningful and timely inspections of shepherd camps.
- At a time when proposals are being made for the expansion of the H-2A and guest worker program, it is imperative that any new legislation includes protections for workers to prevent the abuses documented in this report.
- The Department of Labor should initiate an outreach program to ensure that shepherders are informed of their rights and have an effective enforcement mechanism available to them.
- Responsible members of the shepherding industry must take the lead in demanding that all employers discontinue the illegal practices revealed in this study.
- Members of the public should demand that public officials carry out their charge of protecting the rights of workers.