

AB1066

Shepherd Compensation

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AB 1066

The agriculture overtime law (AB 1066) became law in 2017 and became operative January 1, 2019 for businesses with 26 or more employees and will become operative January 1, 2022 for businesses with 25 or fewer employees. Most sheep and goat producers will be impacted January 1, 2022.

AB 1066 computes shepherd compensation based on a 168 hour work week as they are on call 24 hours a day, 7 days a week. Most targeted grazing businesses have 25 or fewer employees. Based on the 168 hour work week, their labor costs will increase 38.4% in 2022 and rise to 52% in 2025.

Shepherd Duties

- Most come from outside the United States through the H2A Temporary Agricultural Worker Program
- Many come from Peru. They stay for 3 years and then return to their home country for at least 3 months. They then can choose to return for another 3 year period.
- Sheep/goat producers employ shepherders to care for their herd, on a continuous basis, often in remote grazing locations. The herds are valuable environmental assets that reduce excess fuel loads which greatly contribute to devastating wild fires in both urban and rural areas of California.

California Sheep Industry Unintended Consequences

Historically, California law pertaining to sheep/goat (herder) compensation, exempted this occupation from overtime and hourly wage requirements.

More recently, the herder exemption from overtime wages was repealed. As a result, herder wages will increase by over 50% and the California sheep industry will be substantially downsized. In fact, it is happening now. (See attached letters from producers.)

Industry Overview

- California currently ranks #1 in wool production and #2 in sheep inventory with 550,000 head.
- There are over 3,500 family operations raising sheep/goats in California who employ about 375 herders.
- These family operations depend on infrastructure (e.g. veterinarians, feed suppliers, sheep shearers, processors) provided by a sustainable commercial sheep industry.
- Consumer demand for locally raised lamb is expanding. Unless the unintended consequences are corrected, consumers can expect reduced availability of supply, higher prices, and increased dependence on imported products.
- Sheep/goat production is uniquely nomadic, requiring a mobile and skilled workforce. This unique nature of work prevents operators from mitigating this cost increase with shift work available to other agricultural sectors.
- Herders are primarily responsible for animal welfare and grazing management in remote locations where tracking hourly work is not possible. Each herder has great autonomy in decisions over their flock and workday.
- Herders working in California are the highest paid in the United States.

Human and Economic Impacts

- The impact of state law will result in compensation exceeding neighboring sheep/goat producing states by 40-80%.
- Unlike other industries, sheep/goat producers are required to provide herders with food, housing, and cell phones at no cost to the herders.

Ecological Impacts

- Sheep/goat targeted grazing aligns with Governor Newsom's Climate Change Executive Order (N-82-20). As a wildfire prevention tool, it produces a net benefit in carbon sequestration and air quality, and is especially suited to enhance carbon neutrality in situations of rural-urban interface.
- Targeted grazing provides countless environmental benefits: reduces severity of fires; promotes healthy forests by grazing vegetation harmful to trees; improves wildlife habitat; and utilized in areas too steep for people and machinery, or too close to residential areas sensitive to or restricted from chemical treatments of landscape.
- Government agencies, municipalities, homeowner associations, and nonprofit groups are increasingly using targeted grazing to manage vegetation in areas that cannot otherwise be managed. Most of these agencies require herders to be present.

PROPOSED SOLUTION

The proposed solution (see attached) will still require payment of overtime wages but will bring herder compensation back into reality. It will give producers a fighting chance to stop the downward economic spiral which has brought into sharp focus the future viability of the industry in California.

AB 1066
Unintended Consequences
(Sheep/Goat Herder Compensation)

AB 1066 threatens the economic viability of California sheep and goat production and related businesses, and the functionality of the federal H-2A program.


Administrative Relief (Options)

1. 48 hour week

The work of range herders (sheep and goat) occurs, by definition, away from the employer's headquarters and away from managers, where actual hours worked cannot be tracked. Congress recognized this in exempting range herders from both the overtime and minimum wage requirements of the Fair Labor Standards Act (FLSA). The Department of Labor (DOL) under the Obama Administration further acknowledged this in a 2015 rulemaking process and set the estimated hours worked per week at 48 hours, even though range herders are available on a continuous basis. Multiple courts have upheld this interpretation as both reasonable and well-supported by available evidence. See, e.g., Hispanic Affairs Project v. Acosta, 901 F.3d 378, 391-393 (D.C. Cir. 2018). (Merrick Garland, Presiding Judge)

California Application: 25 or less employees (compensation per month – 4.333 weeks)

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
(IWC Standard)	\$1955.74	\$2133.52	\$2311.24	\$2489.02	\$2666.81	\$2666.81	\$2666.81
(48 Hour Week)	\$1955.74	\$2133.52	\$2311.24	\$2489.02	\$2666.81	\$2750.15	\$2889.05
(AB1066)	\$1955.74	\$2133.52	\$2311.24	\$3444.64	\$3730.37	\$3777.05	\$4381.20

38.4% Increase  52% increase

California Application: 26 or more employees (compensation per month – 4.333 weeks)

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
(IWC Standard)	\$2133.52	\$2311.24	\$2489.02	\$2666.81	\$2666.81	\$2666.81	\$2666.81
(48 Hour Week)	\$2133.52	\$2311.24	\$2566.81	\$2889.05	\$2889.05	\$2889.05	\$2889.05
(AB 1066)	\$2952.64	\$3232.98	\$3518.71	\$4381.20	\$4381.20	\$4381.20	\$4381.20

52% Increase

- Credit sheep and goat producers for meals provided to range herders: \$400 per month value established by the Obama Administration

Impacts

- No change to AB1066 168 hour sheepherder work week
 - Bids per acre will need to increase 38.4%/52% to maintain current economic and financial levels for existing targeted grazing businesses
 - Targeted Grazing Business absorbs all or part of the cost and becomes less economically viable.
 - Rise in bid costs may result in less acres contracted for fuel load reduction and increase fire risk
- Local targeted grazing businesses impacted

Impacts

2020-21 California Woolgrowers Targeted Grazing Survey

- 32 respondents
 - 12 had < 500 head
 - 9 had 500 – 2,4999 head
 - 11 had - \geq 2,500 head
- 75,714 total paid acres grazed in California
 - 74% of paid acres were for fuel load reduction – 55,794 acres
- Businesses with \geq 2,500 head
 - 68,580 paid acres grazed – 90.6% of total paid acres
 - 90.5% of paid acres for fuel load reduction – 50,521 acres

Resolution Text

- WHEREAS, the production of sheep and wool are important to the economy of California with wool production ranking #1 and sheep inventory ranking #2 in the United States, and over 3,500 family farms raising sheep and goats throughout California, and
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- WHEREAS, sheep and goat production is uniquely nomadic requiring a mobile and skilled workforce of herders to care for and manage movement of flocks whether located in distant areas grazing agricultural land or serving as four-legged fire fighters in our forests and wildland-urban interface by reducing fire fuel vegetation, and
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- WHEREAS, sheep and goat grazing aligns with Governor Newsom's Climate Change Executive Order (N-82-20) as a wildfire prevention tool which produces a net benefit in carbon sequestration and air quality, and is especially suited to enhance carbon neutrality in situations of rural-urban interface, and
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- WHEREAS, the economic and environmental benefits this industry provides California is in jeopardy because of the unintended consequences brought on by a newly adopted California law in 2016 (AB 1066) which affects overtime pay requirements of the agricultural sector, and which will increase sheep and goat herder pay by an economically unsustainable 50 percent, and
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- WHEREAS, prior to adoption of this law, California herders were already the highest paid in the nation and paid as much as 80 percent more than herders in some other states, and
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- WHEREAS, in 2015 the federal Department of Labor determined that herder work hours cannot be tracked because of the remoteness of their work, and that 48 hours of work per week was a reasonable estimate, and further, federal courts have upheld this determination as both reasonable and well supported by available evidence, and, therefore,
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- BE IT RESOLVED, that the Fresno County Board of Supervisors strongly urges Governor Newsom to use his administrative authority to adopt the federal weekly hours work standard for herders in California, to which overtime pay would apply as currently required in California statutes.

Resolutions Passed

- Fresno – 3/23/21
- Madera – 4/20/21
- Merced- 4/27/21
- Kings– 4/27/21
- Tulare – 4/27/21
- Kern – 5/06/21

In Process

- Mariposa
- San Benito
- El Dorado

Next Steps

Request Nevada County Board of Supervisors pass resolution in favor of the Administrative Solution California Woolgrowers is proposing for the sheep herder wage issue.

The Resolution:

1. Maintains the complete integrity of the AB 1066 legislation
- 2. Calculates sheep and goat herder wages based on the Federal definition as determined in 2015 and supported by then Judge, Merrick Garland as a 48 hour work week. The issue is that our state labor agency has decided to use 168 hours as the work week (24/7) .**
3. Does require the payment of overtime when it applies at greater than 45 hours at full implementation.

Asks the Governor to direct his labor agency to do #2 above and adopt the 48 hour work week definition for shepherders as determined in 2015.