

## NEW MEXICO LIVESTOCK BOARD

### **Investigative Review Portales Livestock Auction**

#### **BACKGROUND:**

Portales Livestock Auction (PLA) is owned and operated by Randy Bouldin of Portales NM. PLA's market niche is primarily dairy cattle, the majority of which are cull cows sold for slaughter. Approximately 700 head of cattle are sold each week through the PLA sale ring. Caviness Packing Company of Hereford, Texas has historically been a major buyer at PLA. The PLA enterprise has been in operation for approximately 25 years providing a marketing service for a large area of Texas and New Mexico producers.

The Humane Society of the United States (HSUS) describes itself as the nation's largest and most effective animal protection organization. An animal rights organization headquartered in Washington DC, the HSUS is not to be confused with local community humane society shelters. Reliant on donations, HSUS is a successful fundraiser with assets in excess of two hundred million dollars (\$200,000,000.00), of which approximately one hundred sixty million dollars (\$160,000,000.00) are in the form of cash and securities (Dec. 31, 2005 financial condition).

On June 20<sup>th</sup>, 2008 a meeting was held, per request by Animal Protection of New Mexico, at the offices of the New Mexico Livestock Board regarding alleged abuses and treatment of downer cows at the Portales Livestock Auction (PLA). The following were in attendance: Dr. Dave Fly, NM State Veterinarian; Troy Patterson, NMLB Area 1 Supervisor; Sam Wilson, NMLB Area 2 Supervisor; Michael Markarian, Executive VP, Humane Society of the United States; Elisabeth Jennings, Animal Protection of New Mexico; Heather Ferguson, Animal Protection of New Mexico; Myles Culbertson, NMLB Executive Director (by telephone).

At that meeting, Mr. Markarian indicated that HSUS undercover investigators had identified and filmed a number of animal abuse violations at PLA. Lengthy discussion followed regarding downed cattle, the appropriateness of euthanasia, and HSUS's recommended mitigation. Mr. Markarian was unclear as to any recommendation on how to reach the decision point for determining when euthanasia would be appropriate, other than to immediately shoot them using a hollow point bullet. Discussion was also had at length about the likelihood of downer cows entering the food chain. Mr. Markarian appeared to suggest that Caviness Packing Co. may be accepting downer cows.

Director Culbertson asked Mr. Markarian to immediately provide their video in order for the agency to commence an investigation. He agreed to provide it right away. NMLB did not receive the subject video immediately as promised.

A letter from Mr. Markarian, dated July 24, 2008, was received by the agency citing a number of accusations regarding treatment of animals at PLA. On June 25, 2008, HSUS distributed video footage along with press releases and public statements directed toward the incidents in question. That same week, HSUS met with USDA Secretary Shafer and provided a video to him, presumed to be the same as that received by the NMLB. By the time the NMLB received the video it was already in the hands of the news media, and various press statements had been issued by HSUS. As a result, the investigation was hampered and delayed by at least a number of days while perceptions and reactions were being formed among the public, as well as the USDA, the American Veterinary Medical Association, members of congress, and elsewhere without the benefit of objective assessment. The video used in the media releases researched by NMLB, with the exception of the Pacelle press conference in Washington DC, were apparently a mix of various livestock situations at various locations, and differed from the video received by the NMLB.

The objectives of the NMLB investigative review are as follows:

1. Analysis of the incidents in the HSUS video and any other evidence provided that may support their allegations
2. Determination of any official actions to be taken or recommendations to be made by this agency

To achieve the objectives, this investigative review consists of three subsequent components:

1. Assessment of the video footage provided the NMLB by HSUS
2. On-site interviews regarding the subject incident
3. NMLB's findings in the case

#### **ASSESSMENT OF VIDEO:**

The video provided by HSUS depicts a number of cows, presumably at PLA, in various situations and conditions. The NMLB Director, Deputy Director, State Veterinarian, and veterinary staff viewed the video and agreed as to the following observations:

1. Crippled cows: Three different cows were shown, each with conditions affecting their hind legs. Two may have been stifled, one had a swollen foot. All three were ambulatory. There is no indication of abuse at the livestock market.
2. Cow in Gate: A cow was lodged between an alley fence and gate. The gate was jammed against her ribs, immediately behind the shoulder. The worker slapped the cow in the face with his cap to get her to step backward. When that did not work, he struck her in the face several times with his foot. When she started back, he resumed using his cap. When the cow did back up, the worker ceased. The cow was unarguably in a drastic circumstance in which something needed done immediately. The worker took commensurate action, which is apparently being represented by the HSUS presentation as abuse. The action appears to have been the only alternative known to, or available to, the worker, particularly since he received no help from any other employee, including the HSUS "undercover investigator" taking the video, who was at the time also in the employ of PLA.

3. Cancer-eyed cow: HSUS described “a cow with a grotesquely damaged eye”, suggesting some sort of on-site abuse. The cow shown obviously had cancer of the eye in a greatly advanced stage, a condition that plainly predated her arrival at the market. Such a cow is considered unmerchantable and would have no buyers at this market; therefore there should have been no reason for the owner to have consigned the cow to PLA. The history and origin of the cow was unknown at the time of this viewing. It was determined by the NMLB investigating officer that this cow did not sell though the auction. There is no indication of “damage” or abuse at the market.
4. Big udder: A cow is shown with an extremely large udder. The cow appears to possibly have had a rupture, causing the condition. The cow was ambulatory. There was no indication of abuse at the livestock market.
5. Dead cows: Two dead cows were shown being dragged out of the pens. Nothing else is depicted that would indicate circumstances relevant to the HSUS charges of abuse. With no evidence to the contrary, it is assumed the cows had arrived in ambulatory condition and were placed on feed and water, as is customary for all auction markets. Cause of death is not indicated. No evidence of abuse is presented by HSUS.
6. Downed cow in alley: A cow is shown to be laying down, possibly having slipped in the muddy alley. A worker applies an electric prod sparingly, but numerous times, to try to get her to stand. The worker appears to be allowing the cow to try to stand before each use of the prod. Though not approaching the threshold of malicious abuse, the worker may have used the tool beyond the point when it would have been obvious the cow was not going to get up. There is no way to know, since the video did not indicate when or if the cow finally did rise on her own.
7. Cow down in chute: A cow is shown to be down in a chute and unable to stand. With a chain attached to one leg and, and with the assistance of a small tractor known as a “Bobcat”, workers pull the cow backward in order to extract her from the chute. Being tied by only one foot and being pulled at a high and oblique angle from the chute placed extreme pressure on the cow’s leg and hip. The cow, being down and stuck in the chute, was in a critical situation in which immediate action was apparently considered by the employees to be necessary. The video fails to show whether the cow was able to subsequently stand.
8. Cow with leg through fence: A cow is shown to be down in a narrow alley, known as a walkup, and has one front leg extended through the pipes. A worker applies an electric prod to the cow’s foot to cause her to pull it back through the fence. Having succeeded, the worker then applies the tool once on the rib to get her to stand. The video fails to show whether the cow stood up. The worker does not appear to use the tool to any malicious or unreasonable degree, and may actually have prevented the cow from breaking her leg in the pipe fence.
9. Cow down outside the pens: A cow is shown to be down in an open space on the premises, outside the pens. Although there is no indication in the video as to how the cow got there, it can be assumed PLA personnel carried or dragged her to that location. Method of conveyance is undetermined. The cow is known to have been euthanized shortly after being brought to that location.

## **OFFICIAL INVESTIGATION:**

NMLB Area 1 Supervisor Troy Patterson was assigned the on-the-ground investigation of the incident. His investigation includes, but is not limited to, a thorough analysis of the subject video, on site observation of the subject facilities, interviews with available persons involved in or with the case, and actions taken. The official investigation is completed and on file at the New Mexico Livestock Board.

## **FINDINGS OF THIS INVESTIGATIVE REVIEW:**

1. The investigating officer's independent observations of the video agree with and confirm those of the agency executive and veterinary staff.
2. Of the nine cases shown in the video:
  - a. Four depicted no interaction between humans and animals, and indicated no evidence or legitimate suggestion of abuse.
  - b. Of the remaining five, three involved situations in which the employees were attempting to extricate cows from dangerous, damaging, or life threatening situations.
  - c. Of the remaining two, one was a scenario wherein an electric prod, a tool recognized by USDA as acceptable and appropriate when used correctly, was applied to get a cow to stand. The "investigator" did not video the outcome, but from the apparent non-malicious behavior of the employee, it may be assumed that he stopped using the tool when it was either no longer needed or determined not to be helpful. This tool was also used in one of the previously mentioned cases to relieve a cow from a dangerous situation.
  - d. In the final case, one involving a downed cow, too little is known or presented by the HSUS "undercover investigator" as to the circumstances, including the means of transfer; therefore, no finding is possible, other than the fact that she was euthanized at that spot, an action the photographer failed to record.
3. The HSUS photographer was, on at least one occasion, faced with the opportunity to help relieve the suffering of an animal in peril by assisting another employee. The "investigator" apparently chose not to assist, in order to take compelling but nevertheless misleading video footage. The HSUS "investigator" is therefore found to be indifferent to the suffering of the animal and to the dilemma of the PLA employee.
4. Use of a chain to drag a cow is an unreasonable means and, although not malicious in the incident in question, is in this case found to be considered cruelty derived from negligence or lack of training.
5. The cases examined by this investigation indicate insufficient, or non-existent, knowledge and training. The owner/operator of PLA had not done a sufficient job of pre-qualifying, orienting, or training the market's employees. This is particularly obvious in the case of the hiring of the HSUS "investigator", who was not interviewed, pre-qualified, trained, or oriented in any way. Cruelty, from the

standpoint of negligence on the part of the management, is found to exist in this context and a citation for violation of *30-18-1 NMSA, Cruelty to Animals* is appropriate.

6. In its public information campaign, HSUS simultaneously made and denied oblique references to the possibility that Caviness Packing Company was accepting and processing downer cattle. As a result, a perception was created, among at least some in the public, that it was indeed taking place. This investigative review reveals no evidence or reason to believe that such a practice was, or would have been, employed. The theory of downer cattle at PLA being lifted, forced through the sale ring, transported to a processing plant in Hereford Texas, and accepted into a line that processes 950 head of cattle per day, would defy logic and practicality as well as be economically irrational. HSUS offered no evidence or information to the contrary.
7. There was no response to the NMLB investigating officer's repeated attempts to interview the HSUS "undercover investigator"; therefore, further examination of the charges made by HSUS was impossible. Without his testimony, any evidence, in addition to the video, to support charges put forth in the HSUS commentary and correspondence is nonexistent. Having not responded, the HSUS "undercover investigator" is found to be uncooperative, and credibility of any allegations in addition to the video is unsupported.
8. The perceptions created by the HSUS media releases and press conferences of malice, extreme cruelty, or illegal marketing of downer cows are not found to match the reality of the subject video. No other credible evidence was offered to this agency.
9. The so-called HSUS investigator was hired by PLA in good faith to perform duties and carry out responsibilities, including care of animals, in the interest of his employer. Neither HSUS nor the person who took the video ever reported any abuse or concerns to PLI personnel or NMLB inspectors during the period time that the video was taken. This is found to be a breach of the individual's responsibility to his employer (PLI), and a conscious decision to allow the suffering of the affected animals as a result.

#### **CONCLUDING REMARKS:**

The video presented to this agency is a record of harsh circumstances that can conveniently fit in the context of a speech about malicious animal cruelty. In this particular case the viewers were told in advance by "the nation's largest and most effective animal protection organization" what they would see; and afterward, told what they had just seen, embellished by suggestions of children subjected to unsafe food. When that same video is broken into its component parts and dispassionately analyzed, it yields findings of a very different nature; nevertheless, they are findings that require the attention of the livestock industry.

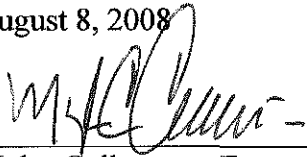
Although the credibility and conduct of the HSUS is questionable in this case, the incident does offer the opportunity for the industry to re-examine its supply chain and the role of livestock markets in it. The livestock market is a key component and step prior to

slaughter and processing of cattle. Proper culling practices at the herd are necessary and must be observed in order that only healthy, useful cattle are presented to those markets. The livestock markets should not be treated as drop-offs for unmarketable livestock, even in the knowledge that they will not enter the food chain. Such animals should be humanely dealt with at the farm, ranch, or dairy. Good management practices (GMPs) must be the norm for the source operations as well as for the livestock markets. In the case of downers and other unmerchantables, policies and practices must be in place at the livestock markets for immediate decisions concerning the choice between veterinary care and euthanasia.

It is also important to recognize that basic initial knowledge of livestock handling is increasingly rare among potential livestock market employees. Proper training must take place in order for workers to effectively carry out their duties with sufficient understanding of, and attention to, the requirements for humane treatment of animals in their charge. Training and education must be a primary responsibility of the operator of the livestock market.

The New Mexico Livestock Board, having the support of the New Mexico beef and dairy industries in this matter, will be engaged and vigorous in expecting and encouraging appropriate management practices and policies as they apply to humane treatment of animals at the livestock markets and source operations.

August 8, 2008



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Myles Culbertson, Executive Director  
New Mexico Livestock Board