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Re: Investigating and Prosecuting Animal Neglect at Summit Calf Ranch

Sheriff Dion and County Attorney Reuter—

By way of introduction, I am an attorney with the Animal Legal Defense Fund—a nonprofit attorney organization formed in 1979 and dedicated to protecting and advancing the interests of animals through the legal system.

**All our clients are innocent**



Understanding that law enforcement and prosecutors often have limited resources with which to pursue many competing priorities, our Criminal Justice Program attorneys provide free and discreet legal assistance to those who are handling animal abuse or neglect cases. Included in the support services we can provide are advice regarding investigations and evidence, basic legal research and strategizing, pleadings drafting, jury selection and instructions—on through providing amicus briefs on appeal in support of the prosecution. In short, we are here to help you get the very best outcomes in these important cases—and to thereby secure justice for the animal victims of these crimes.

I write today concerning details released regarding conditions, conduct, and treatment of dairy calves which implicate violations of Nebraska’s Livestock Animal Welfare Act last winter at Summit Calf Ranch, in Rising City.<sup>1</sup>

As you know, the Livestock Animal Welfare Act (§ 54-901–§ 54-913) imposes a proactive duty on every person in Nebraska who owns a livestock animal or acts as a livestock animal’s custodian: to “provide [that] livestock animal ... with feed, water, or other care as is reasonably necessary for the livestock animal's health....”<sup>2</sup> These common-sense legal obligations are not onerous. Preventing an animal from meeting basic needs—or choosing to own an animal but refusing to be responsible for the

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<sup>1</sup> These details result from investigatory work conducted by Animal Equality, an international non-profit organization focused on public education regarding farmed animals, and the implementation of policies designed to protect those animals. Animal Equality’s investigation took place during the winter of 2018-2019, with information made available to the public in late July 2019. (Material available via Animal Equality at: <https://animalequality.org/news/investigation-animal-equality-reveals-shocking-scenes-of-neglect-at-us-calf-ranch/> ). In addition to still images, footage, and brief summaries that have been publicly released, Animal Equality has additional visual and narrative descriptions of their investigation, which were reviewed in preparing this letter. Animal Equality has indicated they can make the raw footage from their investigation—as well as their investigation team—available to your office, if you—as this letter urges—are interested in pursuing this matter further.

<sup>2</sup> NEB. REV. STAT. § 54-902 (5).

animal’s food, water, or care—is exactly what Nebraska law says it is: cruel neglect.<sup>3</sup> These protections, enshrined in criminal law, apply to cattle—including those raised as part of the dairy trade. Any person in Nebraska who is responsible for a cow’s care may not intentionally, knowingly, or recklessly prevent that cow’s basic, minimum needs to go unmet by depriving the cow of reasonably necessary food, water, or other care.<sup>4</sup> Simply put, when a person in Nebraska makes the choice to farm cows, that person also takes on the responsibility of ensuring those cows are properly fed, watered, and otherwise cared for.

Throughout the Livestock Animal Welfare Act, the people of Nebraska have balanced the state’s historical commitment to livestock agriculture and husbandry with recognition that animals should be shielded from cruelty, and that the state has an interest in their welfare.<sup>5</sup> Nebraska’s prohibition on cruelly neglecting cattle is no different. When a person fails to provide reasonably necessary food, water, and care to cattle in their care, they face criminal liability only if that failure is not a “commonly accepted animal welfare practice[.]”<sup>6</sup>

While the Livestock Animal Welfare Act does not explicitly lay out what constitutes commonly accepted animal welfare practices for dairy calves, another wing

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<sup>3</sup> See NEB. REV. STAT. § 54-902 (5) (defining “cruelly neglect”).

<sup>4</sup> NEB. REV. STAT. § 54-903 (1).

<sup>5</sup> See, e.g., NEB. REV. STAT. § 54-910 (requiring livestock animal health care professionals to report suspected abandonment, cruel neglect, and cruel mistreatment of livestock animals, and providing immunity for doing so); NEB. REV. STAT. § 54-902 (4) (defining criminally cruel mistreatment as “knowing and intentionally caus[ing] physical harm to a livestock animal in a manner not consistent with *animal welfare practices*.” (italics added)); NEB. REV. STAT. § 54-907(4) (limiting criminal exposure for livestock animal cruelty to, *inter alia*, conduct not constituting “commonly accepted animal welfare practices.”).

<sup>6</sup> NEB. REV. STAT. § 54-907(4). Note, commonly followed practices vis-à-vis slaughtering animals for food or byproducts is also exempt. NEB. REV. STAT. § 54-907(5). The slaughter exemption, however, is inapplicable here, as the dairy calves in question are not being slaughtered for food or byproducts.

of the Nebraska state apparatus—the University of Nebraska<sup>7</sup>—illustrates these practices in some detail. The University of Nebraska’s Dairy Extension explains that dairy calves must “always ... have access to clean water .... Water needs to be *provided free choice to all calves*....”<sup>8</sup> Moreover, the University’s Dairy Extension directs that “during cold winter months it is important that the calves are dry at all times ... if possible house them inside a barn with clean, dry straw for bedding ... if outside hutches are used, face hutches to the south, set up a wind block, and use calf blankets to help maintain their body temperature.”<sup>9</sup> Similarly, the Nebraska Beef Quality Assurance Program goes into some detail regarding accepted care for dairy cattle in the *Dairy Animal Care: Quality Assurance* manual.<sup>10</sup> For example, the state Quality Assurance Program indicates that at a minimum all ages and classes of dairy cattle should be covered by

a plan and protocols for handling disabled or down cattle, including calves. The plan should include: 1. Proper methods of movement so animals are not dragged. 2. Care and husbandry that provides shelter, water, feed, and isolation from other cattle and protection from predators. 3. Appropriate medical care. 4. Euthanasia, if warranted.<sup>11</sup>

The manual goes on to explain that “reasons for euthanasia include: ... severe, debilitating pain [and] compound (open) fracture.”<sup>12</sup> Additionally, the manual notes

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<sup>7</sup> See NEB. REV. STAT. § 85-101 (establishing the University of Nebraska).

<sup>8</sup> CALF NUTRITION BASICS, University of Nebraska-Lincoln & Iowa State University, 1–2, available through the University of Nebraska Dairy Extension at <https://dairy.unl.edu/category/calf-heifer-management> (last accessed December 24, 2019) (italics and underlining in original). See also Dr. Peter S. Erickson, *Feeding the Preweaned Calf* (presentation), available through the University of Nebraska Dairy Extension at

[https://dairy.unl.edu/documents/DrPeteErickson\\_Feeding\\_the\\_Preweaned\\_Calf\\_Feb\\_2016.pdf](https://dairy.unl.edu/documents/DrPeteErickson_Feeding_the_Preweaned_Calf_Feb_2016.pdf) (last accessed December 24, 2019) (describing continual access to water as “A MUST!! ... Provide clean, fresh water at all times.”).

<sup>9</sup> UNIVERSITY OF NEBRASKA et al., CALF CARE & HANDLING TRAINING: HEAT AND COLD STRESS, 2:45–3:12, Dec. 2018, available at <https://mediahub.unl.edu/media/10387> (last accessed December 24, 2019).

<sup>10</sup> See, generally, University of Nebraska-Lincoln, *Dairy Animal Care: Quality Assurance*, NEBRASKA BEEF QUALITY ASSISTANCE PROGRAM (2010), available at <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1005&context=nbqa> (last accessed December 30, 2019).

<sup>11</sup> *Dairy Animal Care: Quality Assurance*, supra note 10 at 37–38.

<sup>12</sup> *Dairy Animal Care: Quality Assurance*, supra note 10 at 67.

euthanasia is called for in cases where calves are unable to stand or walk.<sup>13</sup> In terms of euthanasia methods, the manual lays out five possible options,<sup>14</sup> noting that the option selected must involve a consideration of the animal’s welfare: “any euthanasia method utilized should produce a quick and painless death.”<sup>15</sup>

These boundaries illustrating what constitutes accepted animal practice are particularly relevant here. Based on information regarding conditions at Summit Calf Ranch, it appears that calves were routinely denied access to drinkable water overnight—with their water buckets either freezing or being emptied by staff, who were instructed to do so in response to freezing weather. The decision on the part of Summit Calf Ranch to leave calves with either empty or frozen water buckets falls far short of the conduct the Livestock Animal Welfare Act requires of calf owners and custodians. Given that it appears a directive was given that water buckets be emptied for the night, this decision constitutes a knowing—if not intentional—failure to meet the Livestock Animal Welfare Act’s requirements. In the case of water buckets that were permitted to freeze overnight, this at a minimum substantially risked leaving calves without access to liquid water. Disregarding this risk surely constitutes a gross deviation from the conduct a “law-abiding person would observe”,<sup>16</sup> given the well-known fact that water freezes when the temperature hits 0°C (32°F) and known temperatures at the time. Nor does this failure seem to be an exempted commonly acceptable animal husbandry practice: empty or frozen water buckets cannot be reconciled with the directive that calves have access to water at all times. In short, the failure on the part of staff at Summit Ranch to provide their calves with access to water (whether by deliberately emptying water buckets, or

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<sup>13</sup> *Dairy Animal Care: Quality Assurance*, *supra* note 10 at 94.

<sup>14</sup> Those five options being appropriate application of: gunshot, captive bolt, barbiturate overdose, exsanguination, or electrocution. *Dairy Animal Care: Quality Assurance*, *supra* note 10 at 95.

<sup>15</sup> *Dairy Animal Care: Quality Assurance*, *supra* note 10 at 94.

<sup>16</sup> NEB. REV. STAT. § 28-109 (20).



simply allowing water buckets to freeze) strongly implicates criminal cruel neglect.<sup>17</sup> To the degree that this neglect resulted in serious injury or death to calves, it rises to the level of a Class IV felony.<sup>18</sup> Otherwise, this neglect constitutes a Class I misdemeanor, on the simple fact of calves being denied “water ... as is reasonably necessary for [their] health”—regardless of presence or absence or resulting injury.<sup>19</sup>

Based on the same released information, it appears that Summit Ranch has also failed to live up to the Livestock Animal Welfare Act’s care requirements in at least one additional way: that regarding ill or “disabled or down cattle.”<sup>20</sup> It was Summit Ranch’s practice to deposit ill and injured calves in the ranch laundry room or an indoor garage. Whether in the laundry room or garage, ailing calves were not provided with individualized care. Despite many calves languishing in these rooms until their death, euthanasia was rarely applied. Even when euthanasia was carried out, it often took place too late to prevent suffering. Calf #1578’s case is illustrative: the calf was lying on the concrete laundry room floor and was unable to stand as a result of hooves which had become detached from the calf’s legs. The calf remained in that state—without apparent access to food or water—for three days before being euthanized.<sup>21</sup> That leaving calves to suffer and die—or failing to euthanize a non-ambulatory calf for three days—could be construed as “reasonably necessary for the [calf’s] health” beggars belief.<sup>22</sup> Moreover, it appears that this conduct is not a commonly acceptable animal husbandry practice—failing, as it does, to provide euthanasia (or ameliorative pain relief) to calves with open fracture-type wounds, inability to walk, and other severe ailments. As with

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<sup>17</sup> NEB. REV. STAT. § 54-903 (1).

<sup>18</sup> NEB. REV. STAT. § 54-903 (1).

<sup>19</sup> NEB. REV. STAT. § 54-902 (5); NEB. REV. STAT. § 54-903 (1).

<sup>20</sup> *Dairy Animal Care: Quality Assurance*, *supra* note 10 at 37.

<sup>21</sup> Note, this failure to provide access to food and water also implicates a violation of NEB. REV. STAT. § 54-903 under a deprivation of food or water theory, as laid out above. *See* notes 16 to 19 and accompanying text.

<sup>22</sup> NEB. REV. STAT. § 54-902 (5).



the failure to provide water, this denial of care seems reckless—if not knowing or intentional. Most notably, the ranch manager himself indicated knowledge that downed calves needed to be euthanized, but put off doing so because he found the duty personally distasteful. As with the failure to provide calves with water, as outlined above, the failure to provide reasonably necessary care to ailing calves implicates either a Class I misdemeanor or Class IV felony.

In summary, available information strongly suggests that one or more staff at the Summit Calf Ranch (i.e. those with custodial responsibility for the calves, as well as the owner of the calves) have—by depriving calves of water, and allowing non-ambulatory calves to languish in pain—engaged in multiple episodes of cruel neglect rising to a misdemeanor level, felony level, or both. These failures to provide reasonably necessary care to dairy calves not only stand in violation of the Livestock Animal Welfare Act, but also tarnish the efforts of responsible farmers and the state of Nebraska itself to promote lawful dairy practices that are cognizant of animal welfare. This is a particularly pointed matter, given that this cruel neglect seems to have been part and parcel of the operational plan at Summit Calf Ranch. This systemic issue not only implicates potential criminal exposure for those responsible for Summit Calf Ranch’s operational plan, but indicates that without intervention, it is unclear if conduct at the ranch will change. This of enhanced concern, given that much of the reported cruelty seems to have been linked to frigid wintery conditions—and the winter season has returned.

I thank you for attention to this case, and gladly offer our free legal assistance towards this matter or any other animal cruelty case your office may be working. If we can be of assistance, please feel free to contact me—and know that we would be honored to help.

**All our clients are innocent**



With sincere thanks for all you do on behalf of your community—human and animal,

A handwritten signature in black ink, appearing to read "D. B. Rosengard". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David B. Rosengard  
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