



IN DEFENSE OF ANIMALS

May 10, 2010

Via fax

Sen. Blanche Lincoln, Chair
Senate Committee on Agriculture, Nutrition and Forestry
325 Senate Dirkson Office Building
Washington, D.C 20510
Fax: (202) 228-1371

Sen. Saxby Chambliss, Ranking Member
Senate Committee on Agriculture, Nutrition and Forestry
416 Senate Russell Office Building
Washington, DC 20510
Fax: (202) 224-0103

Dear Senators Lincoln and Chambliss:

We write on behalf of In Defense of Animals (IDA) an international animal protection organization headquartered in California, to express our deep concern regarding the role of the U.S. Department of Agriculture (USDA) in orchestrating the move of the elephant Queenie to the San Antonio Zoo on April 21. It is our contention that this privately run zoo is a highly inadequate placement for Queenie, and that the USDA's part in getting her there was both irregular and inappropriate and constituted an abuse of agency discretion.

IDA requests that the Senate Committee on Agriculture, Nutrition and Forestry conduct an investigation into the USDA's role in facilitating the acquisition of Queenie by a zoo that was facing mounting public pressure for holding a solitary elephant in an antiquated facility. The USDA's actions raise the important question of whether the agency acted in Queenie's best interest or was more concerned with the interests of the zoo, and guided by those concerns, to her detriment. We urge that the Committee look into this matter to determine the extent to which the USDA may have abrogated its responsibility of welfare oversight in order to assist the zoo in acquiring this elephant.

Background

IDA has been working for three years to rescue Queenie and also elephants Tina and Jewel from their neglectful and abusive circus trainer Will Davenport. To compel the USDA to remove the elephants from an ever-worsening situation, IDA filed numerous complaints with the USDA for violations of the Animal Welfare Act (AWA). We were joined in our efforts by thousands of concerned citizens who contacted the agency on the elephants' behalf. In August 2009, the USDA seized Tina and Jewel, and brought them to the San Diego Zoo for what the agency stated was urgently needed specialized medical care that could best be provided in that setting.

Despite a significant history of AWA violations by Davenport, the USDA determined that it lacked sufficient grounds to seize Queenie, and she was left in his custody.

On September 25, 2009, the USDA filed formal charges against Will Davenport for 19 alleged violations of the AWA, including charges for defying federal officials during two attempts to remove Jewel and Tina from his property. The complaint stated that "the gravity of the violations alleged...is great" and that Davenport had "not shown good faith" in his repeated unwillingness to comply with the Act and regulations.

Since the seizure of Tina and Jewel, and the surrender of Davenport's USDA exhibitor's license, the USDA has consistently taken the position that they had no authority over Queenie's ongoing care, but that her sale or transfer would be subject to agency approval.

On April 14, a Consent Decree was issued for the charges filed in September. Under the terms of the settlement, Queenie was moved to the San Antonio Zoo on April 21, and the USDA levied a \$100,000 fine against Davenport, to be reduced to \$15,000 upon completion of that move.

USDA's actions raise serious questions

1. The USDA settlement deal allowed a federal law-breaker to profit.

Despite the significant charges against him for grave violations of the AWA, including defiance of federal officials in the performance of their duty, Davenport has been allowed to profit from his unlawful behavior. Not only were his fines reduced 85%, contingent on his surrender of Queenie to the San Antonio Zoo, but the Zoo has paid the \$15,000 fine that remained, **and Davenport received an additional \$20,000 from the zoo.** For the USDA to have facilitated such a deal is in contravention of the agency's obligation to protect animal welfare and hold those who violate the AWA accountable for their actions.

2. The USDA abused its discretion by imposing extraordinary conditions in the Consent Decree to obtain Queenie for the San Antonio Zoo.

It is extraordinary and possibly unprecedented for a USDA Consent Decree to specify the recipient of the animal and especially to significantly reduce a fine contingent on approval of a specific facility. Further, the USDA has repeatedly stated that the Zoo was Davenport's choice for Queenie, however, Davenport claims he was pressured by the Department to send the elephant to San Antonio. **In fact, he had turned down previous offers from the San Antonio Zoo through normal channels.** That this was not his choice is borne out by the fact that in the Consent Decree the agency reduced the \$100,000 fine to \$15,000 upon Queenie's delivery to the zoo, thus imposing an insurmountable financial hardship on a decision to place her with any other exhibitor.

We recognize that the agency has wide discretion in approving placement of an animal such as Queenie, who is the subject of an AWA action resulting in a Consent Decree. However, that discretion is abused in a situation where the USDA uses such a significant economic incentive to ensure that the animal is sent to a particular location. The fact that the location in this case was a zoo that had tried and failed to obtain Queenie through an ordinary market transaction, and that it was a zoo that offered nothing in the way of the specialized rehabilitative care needed by this particular elephant (and readily available at the PAWS Sanctuary, which had offered a home for her), renders even more questionable the way the USDA chose to exercise discretion over this transfer. It certainly appears that the agency was simply acting as an acquisition arm for the San Antonio Zoo.

3. The USDA ignored a formal offer to place Queenie at the PAWS Sanctuary.

In October the Performing Animals Welfare Society (PAWS) Sanctuary in California made a formal offer to provide retirement for Queenie. That offer, sent to Sec. Vilsack (as well as Deputy Undersecretary Ann Wright, Acting APHIS Administrator Kevin Shea and APHIS Deputy Administrator, Animal Care Dr. Chester Gipson) offered lifetime care for Queenie at no cost to the federal government. PAWS is licensed by the USDA, and the Department is very familiar with its facilities, which include a 50-acre natural habitat for its five Asian elephants, including a 20,000 square foot barn. The facility specializes in the rehabilitation and care of older and abused elephants coming from circuses and zoos. It is our understanding that the Secretary never acknowledged that offer prior to arranging Queenie's move to the zoo, a facility with less than half an acre and only a tiny barn for its elephants, and no rehabilitation program or expertise.

4. The USDA was aware that the San Antonio Zoo was unsuitable for Queenie.

When IDA learned, this past fall, that the San Antonio Zoo was attempting to acquire an elephant, possibly Queenie, we notified the USDA in a letter dated November 10 (copy attached) of our grave concerns. A Complaint filed on November 6 (copy attached) laid out our specific concerns about the Zoo's exhibit, and alleged violations of the AWA pertaining to it irrespective of the addition of another elephant. The zoo held one elephant at the time, Lucky. Our specific concerns regarding Queenie's addition were (and remain):

- a. The San Antonio Zoo is constructing an African attraction in which it plans to display African elephants, and the zoo's director has publicly stated that long-term plans do not include housing Asian elephants (such as Queenie and Lucky). It is well documented that transfers of elephants between zoos have negative animal welfare implications and contribute to early mortality. Since the Zoo would transfer the aging elephants in the not so distant future, this would be an unacceptably dangerous situation.
- b. The San Antonio Zoo elephant exhibit is antiquated, inadequate and lacks the space and natural conditions suitable for one elephant much less two. The facility is not equipped for elephant introductions, particularly between these two females who are known to have difficulty getting along with other elephants. This is likely to cause stress, trauma and possibly injuries should compatibility and aggression issues arise between the two.

Though the San Antonio Zoo, until Queenie's acquisition, held only one elephant, Lucky, it was IDA's position that bringing a second elephant into the exhibit would only worsen matters due to the extremely small and outdated facilities, and that the zoo should not be holding any elephant in such inadequate conditions.

5. The USDA orchestrated Queenie's move to the zoo.

The USDA has and will continue to take the position that this was not a "placement" by their definition, and that they had no control over Davenport's choice of facility for Queenie. This position is disingenuous at best, given the terms of the Consent Decree, which clearly impose insurmountable financial pressure on Davenport to move Queenie to the zoo.

In addition, the USDA reportedly rejected Davenport's first choices of placement for Queenie; he proposed as many as three different circuses, all of which are licensed by the USDA and presumably complaint with AWA standards. All were rejected by the agency as placements for Queenie. While IDA absolutely applauds that rejection, it completely undermines the position that the agency had no authority over Davenport's choice or that they were powerless to guide the outcome to the best possible one for Queenie.

The question remains, therefore, as to the USDA's role in brokering this deal between Davenport – a defendant in an AWA case – and a private zoo that will continue to exhibit this elephant. If the agency was willing and able to reject Davenport's choices of circuses – presumably based on welfare considerations and the notion that Queenie was in need of rest and retirement, not more travel and performance – then why was it unwilling to look to those considerations and determine that the zoo placement was unacceptable in light of the sanctuary's offer?

6. The USDA failed to serve Queenie's welfare needs by sending her to a facility that could not provide the specialized care she requires.

Elephants, like Queenie, that become the subjects of legal actions for their owners' violations of the AWA have, by definition, endured substantial hardship. They are ill or abused and neglected, and they are in need of the specialized rehabilitative care provided by the nation's two elephant sanctuaries (PAWS and The Elephant Sanctuary in Tennessee). The USDA has repeatedly stated that the specific welfare needs of individual elephants are considered when approving facilities for these traumatized animals, yet it does not always act accordingly.

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Queenie is a 53-year-old elephant who has performed under abusive conditions for nearly her entire life. Yet the USDA allowed her to be placed where the stress of intensive confinement and public exhibition would be a continuing factor in her life. Forced into a tiny space of one-half acre (versus 100 times the space at PAWS) and an inadequate and potentially dangerous social situation, clearly this placement does not meet Queenie's needs.

After a lifetime of circus performance and documented abuse, the San Antonio Zoo should not have been countenanced – much less pushed – by the agency charged with overseeing her welfare.

Clearly, the amount of pressure brought to bear on Davenport to release Queenie to the San Antonio Zoo could have, and – we urge – **should** have been focused so as to assure that the solution most appropriate to her welfare would be reached. The USDA should have used its authority to ensure that Queenie went to the PAWS Sanctuary, and its failure to do so was a clear abuse of agency discretion.

IDA therefore urges the Committee to fully investigate the agency's role in brokering Queenie's transfer to the San Antonio Zoo. It is clear that the agency imposed inappropriate pressure to obtain Queenie for this particular zoo, and that in so doing it abrogated its responsibility to ensure her welfare by directing or guiding placement to the PAWS Sanctuary, the facility best suited to providing the specialized care badly needed by this elephant who has suffered for so many years.

We stand ready to provide any additional information acquired over our three-year campaign to help rescue Queenie. We would welcome the opportunity to discuss this with you in person at your earliest convenience.

Sincerely,

Catherine Doyle
Elephant Campaign Director
(323) 301-5730
zoos@idausa.org

Deborah Robinson, Esq.
Captive Elephant Specialist
(860) 836-7761
circuses@idausa.org

Attachments:

IDA complaint filed with USDA, November 6, 2009
IDA letter to USDA, November 10, 2009