



CALIFORNIA WALNUT COMMISSION

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Issues Management Committee Meeting Minutes

Thursday, April 25, 2013

The California Walnut Commission Issues Management Committee held a teleconference meeting on Thursday, April 25, 2013, at the California Walnut Commission office in Folsom, California. The meeting was called to order by Committee Chair Jack Gilbert at 11:30 a.m. Ms. Steindorf called the roll and informed the Chair that a quorum was present. Committee members present were:

Jack Gilbert, Chairperson
Jack Mariani, Vice-Chairperson
Bill Carriere
Bob Lea

Committee member Bob Lea attended in person; the other members participated via telephone. Committee member Jerry Siebert was absent. Also participating via telephone were George Soares and Katherine Underwood of Kahn, Soares and Conway. CWC staff members Dennis Balint, Carl Eidsath and Dana Steindorf were also present.

The first order of business was the approval of the minutes from the previous Issues Management Committee meeting held on February 14, 2013. Mr. Mariani made a motion to approve the minutes as mailed, Mr. Lea seconded the motion and it carried unanimously.

The next item on the agenda was the CWC law as it relates to theft (proof of ownership). Mr. Balint stated that we are concerned about walnut theft for several reasons – loss of revenue, accurate reporting and food safety. Through the discussion today, he stated that we are going to try to address the problems that relate to grower theft and product that ultimately ends up in the channels of commerce through road side stands, accumulators and other avenues.

Mr. Balint asked Mr. Soares to give an update of the research his firm has done on this issue. Mr. Soares stated that they have engaged with the head of Market Enforcement at CDFA and have been working with three agricultural commissioners in the San Joaquin valley (Fresno, Tulare and Kern Counties). Tulare County has adopted a local ordinance to try to deal with the issue of walnut theft. Mr. Soares and his staff researched the state statutes and on the surface they are adequate because they require proof of ownership if you are buying, selling or transporting product. However, the practices that occur in the field are not adequately addressed in the law.

Mr. Soares stated that the options to the CWC are to amend the state law, amend the CWC law, and also to educate the sheriff's and ag commissioners. First, in terms of state law, there is a 25 pound starting point that he would recommend taking to zero as they did in Tulare County. The penalties associated with theft could also be modified. As far as the CWC law, there is the issue of accumulators, who in some cases are dealing in stolen property. Mr. Soares stated that the CWC law could be modified the definition of growers to include accumulators; if accumulators were the equivalent of a grower then they would be required to sell to handlers, keep records, and pay assessments.

Mr. Carriere asked if most of the accumulators are associated with a handler. Mr. Balint stated that they usually have a relationship, but they are separate businesses. If the CWC law is changed as Mr. Soares is suggesting, the accumulator will have to show proof of ownership of product when selling to a handler. Mr. Carriere asked how we get proof of ownership from growers now; Mr. Balint stated that we do not. Mr. Soares stated that we need to determine if modifying the law will be an additional burden on current growers, or is it an administrative action that can be done without much disruption to the process. Mr. Balint commented that if everyone is doing what they should be doing, it is not a disruption. Mr. Soares stated that there may need to be more research done.

Mr. Soares stated that education of law enforcement is a valuable tool that is currently missing. Mr. Balint commented that he talked to the sheriff in Fresno County and the problem they have is that people steal product in Tulare County and sell it in Fresno County where there is no ordinance. We do know that there is language in the state law that would allow enforcement of penalties against the thieves. Mr. Balint stated that there also has to be, along with the education of law enforcement, the motivation of law enforcement. Changing the CWC law would reduce the market for stolen walnuts in the field, solidify reporting of product from accumulators, and keep accumulators from circumventing the payment of assessments. Mr. Eidsath stated that it would help the field compliance work to be able to see proof of ownership. Mr. Carriere asked if the accumulators will have to collect information from the sellers of product (name, address, etc.) in order to prove that they purchased the product from a grower. Mr. Balint confirmed that the accumulator will need to collect information from the seller and the handler who purchases the product from an accumulator will have to withhold assessment from payment. Also, CDFA Market Enforcement will require that roadside stands show proof of ownership.

Mr. Soares stated that one big hurdle we have is the lack of local funding and lack of staff to enforce the law. Mr. Carriere asked if Mr. Don Henry, our field consultant, has the authority to go to a roadside stand and ask for proof of ownership. Mr. Balint stated that no, he does not, however, he can alert CDFA. Mr. Henry's focus in the field is on direct sales - sales from a grower to a buyer who is not a handler.

The Committee then discussed incentives to law enforcement, i.e. stiffer penalties. Mr. Soares stated that he would do some research to find out where the money flows to when there are fines – to the county or to the state. Ms. Underwood commented that it is her understanding that the money goes to the state and the violation penalty can be anywhere from \$50 to \$1,000.

Mr. Balint asked the Committee how they would like to proceed. Mr. Carriere stated that he would be in favor of proposing the change to CWC law to define an accumulator as a grower. He also suggested that Mr. Soares do some more research and provide some draft language to the Committee for amending the state law. Mr. Soares stated that he could have something back to the Committee within a couple of weeks. Mr. Balint stated that staff will draft an education plan for law enforcement and ag commissioners.

Ms. Underwood commented that one of the problems with Section 861 is the proof of ownership; while it sounds good, in practice, it does not work because there is no standardized

proof of ownership. Potentially a state-wide solution to this issue would be a standardized proof of ownership which could be likened to a license from the DMV. This would be something that a grower would have to obtain – it could be a tiered system based on cost per volume, etc. CDFA would govern the program and it could be monitored through the county ag commissioner offices. This could help with the burden of proof that law enforcement needs when it comes time to prosecute people for trespass and stealing product. If a processor gets audited and cannot show proof of ownership for the purchase of product, there could be a presumption in the law that they purchased stolen property.

Mr. Carriere commented that an additional license for a grower is not going to go over well. The Committee agreed that more research is necessary and that the first step should be to institute higher penalties for possessing stolen product.

Mr. Lea made a motion to recommend to the CWC that the Commission law language be modified to include the definition of accumulators as growers. Mr. Carriere seconded the motion and it carried unanimously. The Committee directed staff to conduct more research on the modification of state law and the proof of ownership issue.

Mr. Gilbert commented that it is his understanding that possessing more than \$100 worth of walnuts (or any crop) that are not your own constitutes a felony. Ms. Underwood is not sure of that and will look into it.

There being no other business, Chairperson Gilbert stated that the time and place of the next meeting will be left to the discretion of the chair. There was no need for a closed session. The meeting adjourned at 12:07 p.m.