UNITED STATES DEPARTMENT OF AGRICULTURE BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 20-J-0011 AMS-SC-19-0082; SC-19-984-1

In re:

Walnuts Grown in California; Hearing on Proposed Amendment of Marketing Order No. 984

NOTICE REGARDING EX PARTE COMMUNICATIONS

Pursuant to 5 U.S.C. 557(d)(1)(D), counsel for USDA is filing with the Hearing Clerk notice regarding various ex parte communications by interested parties. In addition to this filing, pursuant to 7 CFR 900.16, these ex parte communications will also be discussed briefly on the record at the upcoming amendatory hearing. These ex parte communications are attached:

• Attachment 1: Memorandum regarding April 8, 2020, telephone conversation between Michelle McNeil Connelly, Executive Director & CEO at California Walnut Board & Commission and Terry Vawter, Regional Director of the California Marketing Field Office and a related April 8, 2020 email exchange between Ms. Connelly, Ms. Vawter, Andrew Hatch, Chief of the Rulemaking Support Branch, Marketing Order and Agreement Division (MOAD), and Melissa Schmaedick, Senior Marketing Specialist, MOAD, regarding potential witness testimony during the April 20 and 21, 2020, public hearing. Note that the email exchange redacts additional emails between a third party and Ms. Connelly in order to protect that person's privacy.

 Attachment 2: Email exchange on April 10, 2020, between James Bremner of Bremner Farms, Melissa Schmaedick, Senior Marketing Specialist, MOAD, and

Andrew Hatch, Chief of the Rulemaking Support Branch, MOAD, regarding Mr.

Bremner's opinion of the proposed amendments to marketing order 984.

• Attachment 3: Email exchange on April 10, 2020, between Leon Etchepare of

Emerald Farms, Melissa Schmaedick, Senior Marketing Specialist, MOAD, and

Andrew Hatch, Chief of the Rulemaking Support Branch, MOAD, regarding Mr.

Etchepare's opinion of the proposed amendments to marketing order 984.

• Attachment 4: Memorandum regarding April 13, 2020, telephone conversation

between handler Mr. Craig Podesta and Andrew Hatch, Chief of the Rulemaking

Support Branch, MOAD regarding Mr. Podesta's opinion of the proposed

amendments to marketing order 984 and his potential testimony for the April 20

and 21, 2020, public hearing and a related email exchange regarding procedural

requirements.

Respectfully submitted,

/s/

RUPA CHILUKURI
TRACY MCGOWAN
Attorneys for AMS, USDA
Office of the General Counsel



1400 Independence Avenue, SW. Room 1510-S Washington, DC 20250-0242

Subject: Phone and mail exchanges between the California Walnut Board and Commission

and the Agricultural Marketing Service

In connection with the Federal Register Notice published February 11, 2020 (85 FR 7669), Mrs. Terry Vawter, Regional Director, California Marketing Field Office of the Marketing Order and Agreement Division, Specialty Crops Programs, AMS, USDA, received a phone call on April 7, 2020 from Ms. Michelle McNeil Connelly, Executive Director and CEO, California Walnut Board and Commission (CWB). Ms. Connelly shared her concerns with Ms. Vawter regarding the potential participation of a California walnut handler as a hearing witness. Following this phone conversation an email exchange ensued. Note that the email exchange has been redacted to remove the email exchange between the California walnut handler and Ms. Connelly to protect the handler's privacy, as the handler did not commit the ex parte breach. The email exchange is appended hereto.

-AMS balls S; Chilukuri, Rupa - OGC, Washinston, DC; Bennett, Pathy - AMS; Vaveter, Terry - AMS; Dana Hull

Hatch, Andrew - AMS: Chilukuri, Rus RE: Statistics Frakey, April 10, 2020 5:47:39 PM

Dear Mrs. Connelly

Thank you for your email. Under or parte regulation 7 CFR \$500, 16, USDA employees involved in this rulemaking proceeding may not ducuss the ments of proposed amendments, including receiving statements in favor or opposed to the amendments or references to third party testimony and

As a representative of the California Walnut Board (CWB) and sponsor of the proposed amendments, USDA encourages you to discuss all substantive questions and discussions about the merits of the proposeds with industry stakeholders directly.

In addition, USDA encourages all industy stakeholders to omisider toutifying during the hearing to share their perspective on the proposals. To testify and present evidence to the providing judge, stakeholders are requested to send their name, phone number and omail address to myself or Andrew Hatch at the omails above to pre-register as a witness. Electronic copies of a prepared statements or supporting documents should be sent to walnuthering it undo gos to 5 p m. Eastern Time April 15, 2020, so that they can be made publis at the time of the hearing.

Please note that under exparte regulation, your email and this response will be made a part of the rolemaking record for the purpose of curing an exparte breach

Thank you for your interest in this proceeding and your involvement in the California walnut industry

Melissa Schmaedick. Senior Marketing Specialist

US Department of Agriculture Agricultural Marketing Service Specialty Crops Program Marketing Order and Agreement Division

— Grijald Massage—
From Michelle Gestlift; "Me'nendly d'Walsatz org
Sent Workstaft, April 8, 2020 12 28 194

To Vaster, Teny, "AAS "Frany Vaster auda gov
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C s. Schmaedisk, Melissa - AMS "Melissa Schmaedisk d'unda gov
Shaper FW, Statisk

Terry,
As decimized please see the below correspondence from a handler. It appears the handler may be wanting to use the upcoming hearing as forum to air grievances which would not be appropriate. I wanted to make you aware as prevent any undue distraction from the purpose of the hearing.
Regards,
Subshells

Mischelle McNeil Connelly Executive Director & CEO at California Walnut Board & Commission

IMINETANT: The contents of this email and any attachments are confidential. They are intended for the named racipient(s) only. If you have received this email by mirtake, please notify the sender immediately and do not due loss the contents to anyone or make copies thereof

The CWB CWC offices remain upon with lumited staff to ensure minimal interruption to essential operations. Most staff are toleworking therefore e-mail is the preferable method of contact and or mobile phone. Thank you for your understanding and wishing you good health

--- Original Message---From Michelle Connelly Sent: Wednesday, April 08, 2020 10:48 AM

Michelle McNeil Councily Executive Director & CEO at California Walnut Board & Commission

A 101 Parkshore Drive, Suite 250, Folson, CA 9560 P 916-932-7071 F 916-932-7071 E moormethy in valuus org. Whitps: geoDasifelinks protection onthook com?

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INDING LANT: The contents of this email and any attachments are confidential. They are intended for the named recipient(s) only. If you have received this email by mintake, please notify the sender immediately and do not ducline the contents to anyone or make copies thereof

The CWB CWC offices remain open with limited staff to ensure minimal interruption to essential operations. Most staff are teleworking therefore e-mail is the preferable method of contact and or mobile phone. Thank you for your understanding and wishing you good health.

From: Schmaedick, Melissa - AMS

To: Bremner Farms; Hatch, Andrew - AMS

Cc: Chilukuri, Rupa - OGC, Washington, DC; McNeil Connelly, Michelle; Dana Hull; Bennett, Patty - AMS

Subject: RE: Comment regarding proposed credit for "market promotion" by individual handlers

Date: Friday, April 10, 2020 3:43:00 PM

Dear Mr. Bremner:

Thank you for your email. Under ex parte regulation under 7 CFR §900.16 USDA employees involved in this rulemaking proceeding may not discuss the merits of proposed amendments from the issuance of the notice of hearing to the issuance of the Secretary's decision, including receiving statements in favor or opposed to the amendments outside of the hearing. As such, I am not able to accept your email as evidence. Substantive questions and discussions about the merits of the proposals can and should be addressed to the California Walnut Board (CWB), as they are the sponsors of the proposed amendments. I have cc'd the CWB on this message.

We encourage you to consider testifying during the hearing. To testify and present evidence to the presiding judge, we request that you send me or my colleague, Andy Hatch (cc'd above) an email with your full name, phone number and email address so that we may pre-register you and schedule your testimony. If you would like to submit an electronic copy of a prepared statement or supporting document, please send that information to walnut.hearing@usda.gov by 5 p.m. Eastern Time April 15, 2020, so that they can be made public at the time of the hearing.

Please note that under ex parte regulation, your email and this response will be made a part of the rulemaking record for the purpose of curing an ex parte breach.

Thank you for your interest in this proceeding and your involvement in the California walnut industry.

Respectfully,

Melissa Schmaedick, Senior Marketing Specialist

US Department of Agriculture

Agricultural Marketing Service Specialty Crops Program Marketing Order and Agreement Division

From: Bremner Farms <bre> <bre>bremnerfarms@hotmail.com>

Sent: Friday, April 10, 2020 11:17 AM

To: Schmaedick, Melissa - AMS < Melissa. Schmaedick@usda.gov >; Hatch, Andrew - AMS

<Andrew.Hatch@usda.gov>; AMS - WalnutHearing <Walnut.Hearing@usda.gov>
Subject: Comment regarding proposed credit for "market promotion" by individual handlers

This eliminates their need to contribute assessments to the general marketing fund. This will cause smaller handlers, who cannot afford individual promotion of their "brands", to pay more of the ongoing promotions carried on by the California Walnut Board. There would be significant advantage for large handlers.

Regards,

James Bremner Bremner Farms 530-345-3771

From: Schmaedick, Melissa - AMS

To: Leon Etchepare

Cc: Hatch, Andrew - AMS; Bennett, Patty - AMS; Chilukuri, Rupa - OGC, Washington, DC; McNeil Connelly, Michelle;

Dana Hull

Subject: RE: Walnut marketing order comments

Pate: Friday, April 10, 2020 5:09:00 PM

Dear Mr. Etchepare:

Thank you for your email. Under ex parte regulation under 7 CFR §900.16 USDA employees involved in this rulemaking proceeding may not discuss the merits of proposed amendments from the issuance of the notice of hearing to the issuance of the Secretary's decision, including receiving statements in favor or opposed to the amendments outside of the hearing. As such, I am not able to accept your email as evidence. Substantive questions and discussions about the merits of the proposals can and should be addressed to the California Walnut Board (CWB), as they are the sponsors of the proposed amendments. I have cc'd the CWB on this message.

We encourage you to consider testifying during the hearing. To testify and present evidence to the presiding judge, we request that you send me or my colleague, Andy Hatch (cc'd above) an email statement indicating that you would like to testify along with your full name, phone number and email address so that we may pre-register you and schedule your testimony. If you would like to submit an electronic copy of a prepared statement or supporting document, please send that information to walnut.hearing@usda.gov by 5 p.m. Eastern Time April 15, 2020, so that they can be made public at the time of the hearing.

Please note that under ex parte regulation, your email and this response will be made a part of the rulemaking record for the purpose of curing an ex parte breach.

Thank you for your interest in this proceeding and your involvement in the California walnut industry.

Respectfully,

Melissa Schmaedick, Senior Marketing Specialist

US Department of Agriculture Agricultural Marketing Service Specialty Crops Program Marketing Order and Agreement Division

----Original Message----

From: Leon Etchepare < leon@emeraldfarms.farm>

Sent: Friday, April 10, 2020 5:04 PM

To: Schmaedick, Melissa - AMS < Melissa. Schmaedick@usda.gov >

Cc: Hatch, Andrew - AMS < Andrew. Hatch@usda.gov>

Subject: Walnut marketing order comments

Melissa,

I'm not sure how I would voice my concerns during the zoom meeting, but I have some significant issues with the way the order changes are written and who it benefits.

Regards,

Leon Etchepare c: 530-845-2791

e: leon@emeraldfarms.farm

Please update my email address as it has changed



1400 Independence Avenue, SW. Room 1510-S Washington, DC 20250-0242

Subject: Phone and email exchange between Mr. Podesta and the Agricultural Marketing

Service

In connection with the Federal Register Notice published February 11, 2020 (85 FR 7669), Mr. Andrew Hatch, Rulemaking Support Branch Chief of the Marketing Order and Agreement Division, Specialty Crops Programs, AMS, USDA, received a phone call on April 13, 2020 from California walnut handler Mr. Craig Podesta. Mr. Podesta shared his concerns with Mr. Hatch regarding the proposed amendments to federal marketing order 984 and his desire to participate in the public hearing scheduled for April 20 and 21, 2020. Following this phone conversation Mr. Hatch emailed Mr. Podesta with information regarding pre-registration to testify at the upcoming hearing. That email is appended hereto.

 From:
 Hatch, Andrew - AMS

 To:
 danamarkg@gmail.com

 Cc:
 Schmaedick, Melissa - AMS

 Subject:
 April 20-21 Walnut Hearing

 Date:
 Monday, April 13, 2020 11:00:39 AM

 Attachments:
 Apr 10 Federal Register Notice.pdf

Mr. Podesta:

Thank you for calling about the process USDA is following for accepting evidence and registering people wanting to testify at the hearing next week related to the walnut marketing order. Attached is a notice that USDA published in the Federal Register last week. It includes instructions on how to submit your evidence as well as how to get your name on the list to testify.

Andy Hatch
Marketing Order and Agreement Division
202.720.6862
andrew.hatch@usda.gov

CERTIFICATE OF SERVICE

Walnuts Grown in California

Docket: 20-J-0011

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct and this is to certify that a copy of the NOTICE REGARDING EX PARTE COMMUNICATIONS has been furnished and was served upon the following parties on April 7, 2020 by the following:

USDA (OGC) - Electronic Mail
Rupa Chilukuri, OGC
Rupa.Chilukuri@usda.gov
Tracy McGowan, OGC
Tracy.McGowan@usda.gov
Joyce McFadden, OGC
Joyce.McFadden@usda.gov
Carla Wagner, OGC
Carla.Wagner@usda.gov

USDA (AMS) - Electronic Mail
Melissa Schmaedick, AMS
Melissa.Schmaedick@usda.gov
Andrew Hatch, AMS
Andrew.Hatch@usda.gov
Patty Bennett, AMS
Patty.Bennett@usda.gov

Respectfully Submitted,

Caroline Hill, Hearing Clerk

USDA/Office of Administrative Law Judges

Hearing Clerk's Office, Rm. 1031-S

1400 Independence Ave., SW. Washington, DC 20250-9203