

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING SERVICES DIVISION

PUBLIC HEARING ON A PROPOSED RULEMAKING
ACTION TO ADOPT OR MAKE CHANGES TO
TITLE 3, DIVISION 3, CHAPTER 2,
ARTICLE 1, SECTION 1700

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
2399 GATEWAY OAKS DRIVE
HEARING ROOM 100
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 18, 2024
10:00 A.M.

Recorded by: Ramona Cota

APPEARANCESCDFA Panel

Kacie Fritz, Assistant Director
Marketing Services Division

CDFA Staff

Hardeap Badyal, Hearing Officer

Members of the Public Offering Testimony

Ron Lanza
Lanza Vineyards, Wooden Valley Winery

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Representing Foley Family Farms

Al Wagner
Foley Family Farms

Roger King
Suisun Valley Vintners and Growers Association

Tom Slater

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PROCEEDINGS

10:04 a.m.

1
2
3 HEARING OFFICER BADYAL: Good morning, everybody.
4 My name is Hardeap Badyal, I am the Chief Investigator for
5 the Market Enforcement Branch at the California Department
6 of Food and Agriculture, and I am the designated hearing
7 officer for today's hearing. The time is currently 10:05
8 a.m. on Thursday, January 18, 2024, and we are at the
9 Hearing Room located at 2399 Gateway Oaks Drive, Room 100,
10 Sacramento, California.

11 We are happy to receive public comments on a
12 proposed rulemaking action by the Department of Food and
13 Agriculture. The regulation we are concerned with today is
14 a proposed amendment to California Code of Regulations,
15 Title 3, Division 3, Chapter 2, Article 1 - Reports by
16 Grape Processors.

17 Under the rulemaking provisions of the California
18 Administrative Procedure Act, also referred to as the APA,
19 this is the time and place set for the presentation of
20 statements, arguments, and contentions, orally or in
21 writing, for or against the proposed regulatory change,
22 notice of which was previously published and sent by mail
23 and/or email to grape producers and interested parties.

24 The purpose of this hearing is only to obtain
25 public comment on the Department's proposal. The

1 Department will not respond to comments at this hearing,
2 nor will the Department engage in a discussion about these
3 regulations at this hearing, other than to seek
4 clarification of comments presented, if necessary. The
5 Department will take all oral and written comments received
6 at this hearing under submission to allow the Department to
7 thoroughly and thoughtfully evaluate to determine how the
8 Department wishes to respond. In accordance with the APA,
9 the Department will respond to all comments in writing in
10 the Final Statement of Reasons, that will be made available
11 to the public once it is completed.

12 This hearing is being recorded by a certified
13 recorder, Ramona Cota, of the firm All American Reporting
14 and Transcription Services, Inc., located in Rancho
15 Cordova, California. The transcript of this hearing and
16 all exhibits and evidence presented during the hearing will
17 be part of the rulemaking file.

18 If you brought written comments with you to
19 submit during the hearing today, please give them to our
20 staff member, Beth Jensen, who is sitting by the entrance.
21 Or she is actually up here on the left, my left.

22 As you entered the room you were all offered the
23 attendance sheet to sign your name and space to mark
24 whether you wanted to make oral comments on the proposed
25 regulation or not.

1 If you filled out the attendance sheet and
2 provided your complete mailing or email address, the
3 Department will notify you of any substantive changes made
4 to the regulation or if any new material relied upon is
5 added to the rulemaking file prior to the Board's adoption
6 of the regulation. Any such notice will be sent to
7 everyone who submits written comments during the written
8 comment period, including those written comments submitted
9 today, to everyone who testifies today, and to everyone who
10 asked for such notification. While no one may be excluded
11 from participating in these proceedings for failure to
12 identify themselves, the names and addresses on the
13 attendance sheet will be used to provide these notices.

14 If you did not sign the attendance sheet and you
15 now wish to do so, please raise your hand.

16 (No hands were raised.)

17 Chair Wasserman: Okay, everyone signed it?
18 That's good.

19 We will listen to oral comments in the order you
20 signed the attendance sheet and will call each commenter to
21 the podium. After we hear from everyone who has signed in,
22 we will hear from any latecomers or anyone else who wishes
23 to be heard. Or, if a prior commenter wishes to comment
24 further, he or she may do so if time permits.

25 As of today's date, the rulemaking file includes

1 several items, including the Notice of Proposed Action that
2 was published in the California Regulatory Notice Register
3 on June 9, 2023, the express terms of the regulations using
4 underline to indicate additions to the California Code of
5 Regulations, the Initial Statement of Reasons, the
6 documents relied upon, and the STD Form 399 required by the
7 Department of Finance.

8 The regulation was duly noticed more than 45 days
9 prior to today's hearing. The Notice was sent to all
10 interested parties who requested rulemaking notices, as
11 well as those parties required by Government Code Section
12 11346.4(a)(2)-(4). The rulemaking documents were also
13 posted on the Department's website and available upon
14 request.

15 May I please have the attendance sheet?

16 We will now take oral comments on the proposed
17 regulation. In the interest of time, if you agree with
18 comments made by a prior speaker, please simply state that
19 fact and add any new information that is pertinent to the
20 issue.

21 Okay, so our first commenter, Ron Lanza. Would
22 you please come forward to the podium.

23 Thank you, Mr. Lanza. You can go ahead and
24 provide your testimony.

25 MR. LANZA: This right here?

1 HEARING OFFICER BADYAL: Yes, sir.

2 MR. LANZA: I am Ron Lanza. My family has a
3 winery and vineyards in Suisun Valley, Lanza Vineyards,
4 Wooden Valley Winery. We have been there since the '40s
5 with fruit trees and then later planted grapes and all
6 along we have had a winery.

7 In 1982 our father, along with another fellow in
8 Green Valley, so Suisun Valley, Green Valley, the
9 Appalachians of Solano County, he petitioned to our AVA and
10 at that time we also were included in the North Coast
11 region. So, that was kind of new and our pricing was what
12 it was. But over time, we have seen the price separation
13 change. being part of the North Coast grape growing region
14 and our price throughout the county, between the other
15 regions in the county, have separated and ours has
16 increased over time. And the separation has been noticed
17 for years and years, we knew this issue has been a problem.
18 So our growers association, eventually here in 2019, I
19 think, or '20 when we put the petition together to address
20 this.

21 Our biggest concern, I mean, there are several
22 reasons that we have this great contract pricing.
23 Appraisal from land appraisals. Also, my personal biggest
24 issue is crop insurance, crop insurance pricing. A big
25 discrepancy between the western Region Solano County and

1 the eastern region when it comes to price averaging for
2 crop insurance. If there's any varieties planted in the
3 Ryer Island District that are large tonnages, when those
4 are averaged with ours in Suisun Valley it just brings our
5 average quite down. If there's no varieties, I have
6 noticed in the crop insurance side, if there's varieties
7 that aren't planted in that eastern section of Solano
8 County our price is where it is supposed to be. So for not
9 only crop insurance, my main concern crop insurance, but
10 land valuation, of course, sometimes with contract pricing.

11 So, over time we have just seen it, the
12 discrepancy widening. In fact, it's widening even since
13 this petition has been filed, so it has even deepened
14 widely inch since then. So, that's it.

15 HEARING OFFICER BADYAL: Thank you, Mr. Lanza.

16 ASSISTANT DIRECTOR FRITZ: Thank you.

17 HEARING OFFICER BADYAL: Next, on the list, John
18 Mackie. Good morning, Mr. Mackie.

19 MR. MACKIE: Good morning.

20 HEARING OFFICER BADYAL: You can go ahead and
21 provide your comments, sir.

22 MR. MACKIE: Thank you. My name is John Mackie,
23 M-A-C-K-I-E. I am a lawyer with the firm of Carle Mackie
24 Power and Ross in Sonoma County.

25 We have submitted extensive documentation to you;

1 one set of documents called a Factual Brief another a Legal
2 Brief and I will try not to spend a great deal of time just
3 reciting those for you. I commend those to your attention;
4 I believe you have gotten them. I also will introduce one
5 of our client representatives too later on to speak of the
6 specific effect that this rule could have on them. But we
7 represent Foley Family Farms and Foley Family is a vineyard
8 owner on Ryer Island, and has vineyards in the part of
9 District 5 that would be moved to District 17. They have,
10 in fact, 365 acres on Ryer Island so they would be rather
11 dramatically affected by this change, which our
12 representative will talk about in a moment.

13 The thrust of our legal argument is that we don't
14 think that this is the proper forum to address changes in
15 the boundaries of these districts. I won't spend any time
16 on that in my oral presentation. I think that is an issue
17 that we and your attorneys can discuss as far as the legal
18 issues there. What I wanted to highlight were a few of the
19 policy issues and factual issues that have been raised in
20 the petition to change this boundary.

21 You know, we, as we have thought about this and
22 we have looked over the history of boundary changes, of
23 which there have been very few, a number of things that
24 have jumped out at us is concerns.

25 Number one, we couldn't find any criteria for

1 moving the boundaries, which we think would be essential
2 for your decision-making. It would be hard to argue for or
3 against the criteria because we don't, we don't know what
4 they are. But we think that if you were to grant this,
5 that it would be precedential in the sense of inviting
6 people to petition for moves of the boundary. Particularly
7 if there are no criteria for moving boundaries. That sort
8 of would be opening the proverbial doors to floodgates of
9 petitions.

10 You know, there are a number of, again as we have
11 looked at this, perhaps unintended consequences.
12 Individual owners own land in the area that is being
13 proposed to move. And there are, as you have just heard,
14 landowners who, who would retain their, their vineyards,
15 and they will be affected differently. So, it becomes a
16 competition between groups of owners as to the economic
17 effects on them. The unintended consequences would be that
18 things like the value of the land that people have
19 purchased and planted on could be affected if the district
20 prices are changed for the area where they are. They
21 may -- those owners probably borrowed money. They probably
22 had loan covenants that were based on representations about
23 their current and projected income, which could be
24 affected. We can't say that the financial institutions
25 would or wouldn't call a loan, but we think that that is a

1 danger in this kind of process.

2 The way that this has sort of evolved also
3 concerns us. Rather than sort of rulemaking in a sense of
4 what is the public policy, we are concerned that what you
5 are inviting growers to do is sort of engage in an
6 adversarial process in which one group of growers talks
7 about the impact of lines moving on them economically and
8 another group says, but if you do that we are going to
9 lose. And that becomes a different kind of dynamic and
10 context than I think you intended, or the rulemaking
11 process is made up to, to deal with.

12 Another policy that we think is important is this
13 sort of invites gerrymandering. You know, one of the legal
14 analyses that we have done, we pointed to a requirement
15 that the lines be contiguous with county lines and other
16 lines; and that if you allow for small variations, suddenly
17 we are going to have more and more districts. And by the
18 way, there are already districts that don't conform to
19 those lines. We are going to have more and more districts
20 that are detached, if you will, from any of the required
21 lines.

22 Now, as far as a second area of concern for us,
23 is the evidence that was presented by the Petitioners.
24 Climate was recited as important. The claim was made that
25 the district after the line is moved was going to be more

1 like a coastal district. But, you know, when we think of
2 Napa, or Sonoma and Marin District 3, or Santa Barbara, San
3 Luis Obispo, District 8, there are certainly at least as
4 much climatic variation within those districts as there may
5 be now within District 5, so we don't think that that is a
6 compelling argument.

7 As far as geography. Again, there are many
8 districts throughout the state that have at least as much
9 or more geologic or geographic variance than Ryer Island
10 and the rest of District 5.

11 And as far as geologic differences, we have
12 engaged Paul Anamosa, who is well known in the world of
13 vineyards, to look at the soils, and he has concluded that
14 the soils of Ryer Island, the portion of Solano County,
15 that would be moved, are more similar to the soils to the
16 west of Ryer Island than they are to the soils to the east
17 of Ryer Island. It is my opinion here, obviously, I am
18 quoting him: It is my opinion that soil type is not a
19 sufficient reason to change the boundaries of the two grape
20 price districts.

21 There was another argument that was made that
22 these lines should conform to AVA boundaries. Well,
23 throughout the state, of course, they don't conform. There
24 are single vineyard AVAs, there are huge areas that are
25 AVAs, and those don't conform to pricing districts.

1 The third area that I wanted to talk about is
2 really the statistical financial comparison. There was
3 some fairly high level analysis of variations of grape
4 prices within the district, which was used as basis to say,
5 well, there is such variation that we really need to change
6 the line to try to conform the pricing that we would, would
7 be paid. Well, you know, we, again, had to hire our own
8 analyst to look at these. The initial question is, where
9 did the data come from? Because we think that the data is
10 supposed to be confidential. But let's assume that the
11 data, which I believe was from 2018, is accurate data. We
12 compared the District 5 variation. Let's see. The
13 variation is about 12,700 a ton. Actually, I should refer
14 you to our brief because it is a little -- I don't think it
15 is worthwhile to just sort of throw out a bunch of numbers,
16 except to say that District 3, that's Sonoma and Marin, has
17 a much greater variation. District 4 Napa has a huge
18 variation. And District 8, Santa Barbara, San Luis and
19 Ventura, also has a huge variation. And what I mean by
20 that is the variation of what some vineyards are getting
21 for their grapes and other vineyards in the same district
22 are getting for their grapes. So, we conclude, we commend
23 to you the argument that variations of price, is fairly
24 inherent in many districts the way that these districts are
25 set out, and that wouldn't be a justified basis for

1 changing the boundaries.

2 So, we think that the criteria, which as I said,
3 aren't clear, but the factors used in the petition are not
4 well founded. We think that there are arguments, public
5 policy arguments, there are factual errors, and we think
6 there is a legal basis to object to this forum being the
7 forum in which this line would be moved. We use the term,
8 slippery slope. And that's what we, I guess, when it comes
9 down to what we are most concerned about is that this is an
10 invitation for any vineyard for any particular reason, or
11 group of vineyard owners, to petition to change a line if
12 they think it is going to benefit them economically.

13 Now, we have, we have Al Wagner representing our
14 client who would like to talk about the specifics of Foley
15 and how this could or might have affected them
16 economically, so you at least know how that would compare
17 with other vineyards. Now, he may not be the next on the,
18 on the --

19 HEARING OFFICER BADYAL: He is, actually.

20 MR. MACKIE: Okay, great.

21 MR. WAGNER: Good morning.

22 HEARING OFFICER BADYAL: Good morning,

23 Mr. Wagner.

24 MR. WAGNER: All right. Good morning and thank
25 you for letting us have the opportunity to speak. My name

1 is Al Wagner, W-A-G-N-E-R, and I am the Director of
2 Governmental Affairs for Foley Family Farms. Foley Family
3 Farms owns vineyards in 8 of the 17 districts, including
4 District 5 on Ryer Island. That is the part of Solano
5 County that the Petitioner has asked to move into District
6 17. We have vineyards in District 1 Mendocino, 2 Lake, 3
7 Sonoma, 4 Napa, 5 Solano, 7 Monterey, 8 Santa Barbara, and
8 11 Sacramento.

9 I am here to talk about the property value
10 problems that will happen with the change in district
11 boundaries. So, I have worked in the vineyard and wine
12 industry now for almost 30 years and I have worked on the
13 purchase and sale of over 40 vineyard and agricultural
14 properties.

15 I know the pricing of vineyards in and out, of
16 farm ground up and down the state. When you are in the
17 middle of the due diligence process on a vineyard property,
18 the one thing I look at is the property district averages.
19 The bank also looks at these when you are trying to obtain
20 financing. I worked on the purchase of the Steamboat
21 Vineyard on Ryer Island, and I helped negotiate the price
22 of the property that we purchased for 8.3 million, which is
23 public record. If that property was in District 17, I
24 would have valued it at far less. I would have valued it
25 at about 7.1 to 7.3; and that is almost a 14 and a half

1 percent difference in price of real estate. That means the
2 government can just take away 14 and a half percent of
3 property value because someone wants to make a change in
4 district pricing from one boundary line to the next and
5 they want the line to be where they want it to be.

6 All of that is before we even get to the issue of
7 expected return on investment. Not only does the property
8 itself have a value, but the vineyard has a yearly expected
9 return based on the grape sales. And with the change in
10 district and grape purchase contracts based on district
11 average price, it will be recalibrated. It will now be
12 based on the average of the new district. And since that
13 change in district boundary would be to push out some of
14 the others that others don't want and pushed into a lower
15 district. This is just another hit for vineyards that are
16 experiencing a tough grape market and now that ends up in a
17 different district through the state's actions.

18 I know that others here will say yeah, that is a
19 bad deal for Ryer Island. But it makes sense for me
20 because it could raise the vineyard and grape prices on the
21 other side of District 5. But that is not just trading
22 vineyard economic loss for someone else's benefits and that
23 is not fair. And CDFA should not have to do the math each
24 time about whether a loss of one vineyard owner is made up
25 by the gains of another, and that is not supporting

1 agriculture as a whole.

2 This probably won't be the last request that the
3 district line changes. And if the current group can do it,
4 then so can everyone else. And that's how people are. I
5 understand that there isn't even a list to let people know
6 what issues the state looks at to change district
7 boundaries. And that means that the property valuation
8 problem will happen repeatedly. Not only is there a
9 problem with property values and the yearly return on
10 investment, but there is an issue with the banks. For many
11 other vineyard owners, they have loans with the banks that
12 are secured by either crops or real estate value. If the
13 land or crop value was to decrease because it is now a
14 different district, the borrower could be, we could be out
15 of covenants with the bank. The loan could be called, and
16 the bank could even ask for more collateral. This could be
17 a major problem.

18 So, in summary, here is what I want to say. Yes,
19 this seems to be just a District 5 and 17, but it is not.
20 It could affect a large number of vineyards throughout the
21 state who haven't done anything wrong. This is just a
22 neighbor or two that want people out of the district. But
23 the state should not be in the business of changing the
24 value of people's real property and if there is any way
25 around it. It just makes sense not to change district

1 boundary lines for District 5 and 17. And I ask that not
2 only for our Ryer Island vineyards, but for the vineyards
3 that we have all over in every other district, and all
4 districts actually. Please deny the Petitioners request
5 and thank you.

6 HEARING OFFICER BADYAL: Thank you, Mr. Wagner.
7 Roger King.

8 MR. KING: Good morning.

9 HEARING OFFICER BADYAL: Good morning, sir.

10 MR. KING: I apologize for not being able to
11 enunciate a lot of things this morning. But I do feel it
12 is important that I make some comments here today.

13 I guess I am the Darth Vader of this entire
14 thing. I was the person that brought the petition from
15 Suisun Valley Vintners and Growers Association to CDFA via
16 Jeff Cesca and that dates back quite a while.

17 Along those lines the first thing I would like to
18 do is to provide a copy of actual meeting notes held
19 between Jeff, who was Director of Division of Marketing
20 Services and myself back on January 29, 2-19, here in this
21 building upstairs. This has -- was edited by Jeff
22 before -- himself. He has seen everything involved in what
23 we put together here.

24 A couple of the things I want to point out or
25 that, one, he did admit to me there was no process to do

1 this. Absolutely. And so we sat down and we spent the
2 better part of an afternoon, me taking notes and him
3 basically weighing out, here is the things you are going to
4 have to try and address before you bring anything in to us.
5 And I have read through these things and I am kind of
6 surprised that we actually did pretty much go down the
7 list. So, do I give that to you?

8 ASSISTANT DIRECTOR FRITZ: Thank you.

9 MR. KING: My opening with this really comes from
10 the start at board meetings at our Suisun Valley Vintners
11 and Growers Association, where every year when the crush
12 report would come out there would be quite a bit of
13 discontent and concern about the averages that we were
14 seeing. And the understanding that, that we were in a
15 situation where these averages actually are taking two
16 disparate sets of numbers and putting them together to a
17 common number and we were not the beneficiary of that. We
18 were the one that was basically taking the back end of it.

19 I do recall when I started this process, and I
20 did as much research as I possibly could do. There is not
21 much, there was not much out there. Yes, the code has been
22 changed three times. I asked Jeff Cesca repeatedly; do you
23 have the documents? What was the rationale? How did that
24 happen? And the response was basically, we don't have it.
25 I was incredulous. We traded back and forth. And

1 basically, we have moved seven times and every time we move
2 records disappear. So, he suggested maybe to check
3 archives. I did check archives, and I got back from
4 archives the actual stamping documents for the changes to
5 CCR 3 on the definition of Section 1700 boundaries. With
6 no rationale, no comment, no nothing, they were just
7 stamped. So, at some point, somehow, this had gone
8 through. How that process took place we really don't know
9 but it did take place.

10 Part of my research was to try and understand the
11 origin and nature of the Berryhill Act. And I spent a lot
12 of time talking with one of the scions of Clare, Bill
13 Berryhill, and said, what, what was your dad thinking about
14 what was going on, all these types of things. And he kind
15 of threw up his hands and said, my dad really wasn't a
16 notetaker, he didn't do those kinds of things, and, you
17 know, I don't know, I wasn't there. You can talk to some
18 people. Everyone I talked to, it was the same thing. We
19 have no notes or anything like that. So there -- I did at
20 one point come across something in writing, I have yet to
21 ever been able to find it again, it was something that came
22 up in Google searches that I was doing. But it was
23 commentary to what Clare Berryhill was thinking about when
24 he was pushing through the legislation that created the
25 Grape Crush District Program. And that was he was aware as

1 a grower in the valley that a number of other commodity
2 associations, which basically we all are, existed and
3 allowed for an ability to discover price at some point, as
4 to what was happening.

5 I remember reading in there, and I just will put
6 it down as hearsay right now because I can't give you a
7 document and I know that would be the first thing that I
8 would be challenged on. That his attempt was to simply
9 allow a neighbor to have in a area, to have a general
10 understanding of what his other neighbor might be seeing in
11 terms of realized pricing for the grapes being delivered.
12 You know, in the early days, that was pretty much, you
13 deliver your fruit, you have a price, you get paid. You
14 don't know what happened elsewhere in the state. You could
15 ask a lot of questions, you could dig around, but there was
16 really no formal mechanism to understand that. And so what
17 I had read suggested to me the Clare's motivation was
18 simply to get to a common understanding of price across
19 multiple areas in the state.

20 The originalist station started out with 11
21 districts. There was no rhyme or reason to how they were
22 put together whatsoever. There is no rationale anywhere in
23 the legislation or the following rulemaking that ever
24 defined what, how -- what and how these districts were
25 delineated, other than the repeated reference to a USDA

1 newsletter map that the Berryhill folks had found in the
2 pre-1976 period when they were building the legislation
3 that had 11 districts subdividing the state. And the first
4 one started in the top right-hand corner -- the left-hand
5 corner of the state, which would be up around Del Norte,
6 and went all the way down to basically I think where kind
7 of LA is now. Made a U-turn and went right back up to the
8 top of the state but on the interior this time. It came
9 right down through the center of the state and stopped.

10 Since then, those 11 districts have been modified
11 into 17 districts. Of fascination to me, this would be the
12 fourth attempt to modify the legislation. Fascinating to
13 me, Clarksburg has been involved in three of the four.

14 I took that information back to the people that
15 we knew in Clarksburg at the association and said, what
16 were you guys, what was your involvement? How did this
17 happen? This was back in the '80s. And universally, from
18 their executive director through their board chair and
19 president, the response was, we don't know. We have, we
20 have no records, we have no idea what happened there.

21 So, it is an enigma, at best, what we are
22 tackling here. It has a lot of consequences to a lot of
23 people. But if the hearsay of the simplicity of what Clare
24 Berryhill was trying to get to in his '76 election, or
25 through the legislation, was to simply get to price

1 discovery on a price per ton, number of tons delivered from
2 these districts, that would be shared universally.
3 Somewhat, I guess we could say, in a blind. To everyone
4 not only in the state but everyone in the world. Anybody
5 can look at the crush report and understand it or try to
6 understand it. That at least we would have some framework
7 of understanding as to whether we are way out of bounds,
8 way in bounds or kind of right down the middle.

9 Along the lines of doing this, in interviews with
10 the largest growers in that region, starting with the
11 Ledbetter family, the Lange family, that have been growing
12 grapes in that region and on Ryer Island for a long, long
13 time. There was a common refrain that I would constantly
14 get from them. And I would say, you know, looking at 5 we
15 see these numbers, we see this radical variation in
16 reported pricing by lot. And the response would be, yeah,
17 that is the unspoken line. It is well known within the
18 confines of this portion of the state of California among
19 the primary contractors of wine grape fruit that there is
20 an unspoken line out there. That fruit from that region is
21 going to be priced relevant to the dynamics out there,
22 regardless of what might be being seen elsewhere in Crush
23 District 5. It is not in writing. It is not documented,
24 but it exists. So, it is not something new to anyone that
25 has ever been involved in looking at the dynamics of Ryer

1 Island, you will come across it sooner or later. And that
2 is underlying a lot of this.

3 We can debate, we can throw numbers at each
4 other, we can throw juxtaposition arguments constantly, but
5 who the buyer is really is the defining arbiter on what
6 price is. The Berryhill effort was simply an effort to
7 capture those pricing elements and bring them forward so
8 people could kind of see what was going on.

9 As a grower, I have been a grower for 30 years, I
10 know that what you are going to get on a price per ton
11 basis is what you negotiate, period. There is no magic
12 rule that says, oh, here is the crush district, with the
13 exception of Napa, and it is not a written dead thing. But
14 in Napa, a lot of people constantly refer to just set my
15 contracted NVA, Napa Valley Average. And that has been in
16 place for schematically for a long time over there. I have
17 been aware of it since the 19, the 1990s, that Napa Valley
18 Average was basically the framework under which pricing
19 would be considered and then you could go up and go down
20 from there. If you look at the crush report, Napa has
21 ample fruit at very low pricing. And that allowed Fred
22 Franzia to make a Napa Valley wine at 5.99 a bottle and not
23 break any rules because he was buying very low-priced fruit
24 out of Napa. At the same time, we see \$50,000, \$70,000 a
25 ton fruit in Napa. And those are those -- their issues to

1 resolve and deal with internally.

2 When we get to the broader impacts of the
3 California industry, which are truly commodity driven. You
4 know, 70%, I believe 70, 75% of all our grapes in the state
5 are from what we would call the Central Valley and are
6 contracted into what we would call commodity wines. And we
7 know who the producers are of that. It brings you to a
8 realization that there is going to be inequity and there is
9 going to be disparity across the board.

10 Everything that we had put together in the
11 original presentation to Jeff Cesca in Market Division is
12 the fervent belief of the people that are members of my
13 association hold that we are being disadvantaged through
14 the current averaging. And it shows up as previously
15 stated to in three different areas and probably more. But
16 structurally, it shows up in price per ton for sure on an
17 average basis.

18 It shows up in crop insurance. And it -- there
19 it is a -- it is an up and a down. A smart grower dealing
20 with his crop insurance company understands that there is a
21 box in the top hand right corner of the crop insurance form
22 where crush district average is placed. That box is left
23 blank, unless when you file for your insurance, you bring
24 in your contract. And if you have a contract, let's say
25 for Pinot Noir, that would be \$3,000 a ton. And you

1 deliver the contract to the insurer and say, here is what I
2 am being paid. Instead of crush district average for Pinot
3 being put into that box, the contract price will be put in
4 the box.

5 I would venture without knowing for sure, and
6 again hearsay, that the majority of most growers don't pay
7 any attention to that, don't realize the importance of that
8 box, don't realize establishing that number in advance.
9 But when a crop failure or a reason for insurance comes up,
10 the reality is that if that was not addressed, you are
11 going straight to crush district average. And it is not
12 necessarily representative of what the averages really
13 might be.

14 In Napa, you know, if we have a crush district
15 average of \$8,000 a ton for Cabernet, which is about where
16 it is right now, for the guys that are selling their fruit
17 for you know, 1,500, 2,000 a ton, and I guarantee you,
18 every winemaker in Napa knows where those vineyards are.
19 They get a great benefit on crop insurance and probably in
20 many regards would hope that the crop failed. And for
21 people that are on the other side of the extreme, up to the
22 50 to \$70,000 a ton range, it is a detriment to them. But
23 I would personally challenge the veracity of a \$70,000 a
24 ton number as truly being market driven. In many regards
25 it could be, in many regards it could be an accounting

1 exercise. We don't know. And so again, this is just
2 hearsay on my part to look at it that way.

3 The underlying reality is our group fully
4 supports the thinking and the work that we brought to CDFA
5 and filed with them in, I guess it was August of 2-19. And
6 since then, we have, you know, properly gone through the
7 steps to try and push this through.

8 Unfortunately, we have had some external issues.
9 The most notable one started with COVID, which truncated
10 all work totally almost throughout the state and has left
11 time delays and things like that in there.

12 The next one was Jeff Cesca retired after the 12-
13 17 public workshop that was held in Sacramento, in 2-19,
14 where this all was put on the table. And he, he did
15 comment to me that after that, I am retiring, and the
16 process will move forward. There are people that have
17 worked with me in the division that understand everything
18 that you have brought forward and so you can rest assured
19 that at least there is an understanding of what has taken
20 place here.

21 But that left a gap in an environment where it
22 was virtually impossible to communicate a lot. I think the
23 offices had been functionally closed, staff were working
24 out of house, things like that. And at the same time the
25 state had run into one of their periodic \$70 billion budget

1 shortfalls and random or wholesale reductions in expense
2 for being rattled through every department in the state at
3 the same time. So, effort being put forward to continue
4 this process was impacted.

5 This finally has worked its way through, through
6 some very dedicated efforts on the part of staff inside of
7 Market Division to deal with this and to bring this
8 forward. Jeff made it painfully clear to me, you have no
9 right to petition the state on this. The only thing you
10 can do, the way it works inside of the state, the only
11 petitions to these types of things have to come from a
12 state agency. CDFA is yours. This is, this is the channel
13 you are going to have to walk through. And so did
14 everything possibly could do to find as much information as
15 possibly can, to produce that information in a universal
16 fashion that was totally transparent, was public in nature.
17 It has all been posted to the public nature of this entire
18 proceeding on the CDFA website. It has been there since
19 2019, I believe. And so everybody has had fundamental
20 equal opportunity to understand this was going through, see
21 what was happening.

22 I have to think back years ago to when I was
23 first doing this. I remember at a unified session years
24 ago I came across Dale Stern, who was an attorney for Dean,
25 Doyle, I forget the name of the firm. But anyway, he was a

1 very good attorney. He had been longtime retained by
2 California Association of Winegrape Growers, has legal
3 support to them. And I walked up to Dale and I said hey,
4 do you guys have anybody inside your firm that can define
5 boundaries? Can put together the legal descriptions of
6 boundaries and things of that nature? Because my group
7 wants to take a hard look at this. And he said, sure we
8 do. More than happy to get you -- we have got three or
9 four people on staff that do nothing but this, more than
10 happy to hook you up with them.

11 I got a phone call back from him about six weeks
12 later. And I think this would easily have been 2018 if not
13 late 2017. And he's going, Roger, I just need to let you
14 know I can't, neither I or anyone in the firm can deal with
15 you because we have been retained by a buyer, a buyer of
16 major acreage on Ryer Island. There was no disclosure
17 whatsoever of who, why, what, all that kind of stuff, other
18 than his firm now had a conflict. And it was based upon a
19 new buyer of land on Ryer. And the only reason I bring
20 that up is to help support the notion that this has been
21 transparent all the way through. And possibly people that
22 had purchased land then that were not visible were not
23 totally in the loop of all of the communication,
24 conversations, discussions we were trying to have with
25 every impacted party out there. I did my absolute level

1 best to locate everyone that had what we thought was a oar
2 in the water or a position here to get their feedback to
3 let them know.

4 The current objection would suggest to the
5 otherwise. I became very, it became very difficult for me
6 to continue to read a lot of that objection because there
7 was a total fundamental misunderstanding of the work that
8 had been done. Having gone through law school and bailed
9 out, not wanting to be an attorney, this was things that I
10 was taught is to do those kinds of things.

11 So, I understand why we are being challenged now.
12 I understand the nature of it, and I also understand the
13 seriousness of it. And I hope that there is a way in which
14 we can get to a better position here because the ultimate,
15 I would hope the ultimate goal CDFA, of every person in
16 agriculture in the state, kind of gets back to the original
17 premise that somehow I found something that suggested to me
18 that Clare Berryhill simply wanted two neighbors side by
19 side with each other that had no idea what was happening
20 when they sold the commodity into a processor, on a price
21 basis, have some degree of understanding of where they sat
22 within a relative region, and how that played against how
23 they might negotiate. Because I come back to, you are
24 going to negotiate your price, period.

25 The last part of this actually gets into the land

1 valuation and things like that. And we never gave that any
2 consideration until a number of years ago in processes of
3 some of our landowners refinancing land or acquiring new
4 land under new financial vehicles. We became aware that
5 the bank was actually using crush district average
6 information for valuation. How they go about doing that,
7 how they assign the value, how they do all those types of
8 things. We have no comment on because we really don't know
9 how that takes place.

10 If this is to proceed forward and find a proper
11 resolution, it is incumbent on all of us to step back and
12 look at these things again.

13 And to conclude where I am at with this. A
14 associate of mine, Jeff Bitter at Allied Grape Growers, has
15 recently submitted another letter of support from Allied in
16 his position as president and he raised two fundamental
17 issues that have not gotten out of my head since I saw
18 them. One is the discussion of a Pandora's Box. In other
19 words, you do this and you open up the world to everything
20 else. My first comment I have already testified to, it has
21 already happened. It has been changed three times. This
22 is not somebody walking in for the first time ever in the
23 history of the state of California with a desired effort to
24 try and look at a modification to the original definitions
25 presented on that 11 District map. And that was it. They

1 were all based on county lines because there is no other
2 way to describe it other than as county lines. His comment
3 is, in reality, it is a very good thing for Crush District
4 boundaries to be reviewed periodically by industry
5 interests. To suggest otherwise is to suggest that the
6 California wine industry should not evolve.

7 And it implies that administrative structure put
8 in place decades ago, which is 40 plus years now, should be
9 indefinitely, legitimate for our industry. He concludes
10 there is no logic in that argument and I support that. I
11 support the conclusion and concur in it fully.

12 As a businessperson, as a marketer. As a
13 marketer specifically you are trained that conditions
14 change every day. Nothing is static. And that if you
15 continue to think that you just proceed under one direction
16 forever, regardless of what has changed in the marketplace,
17 in other words, buggy whips don't exist anymore because we
18 created something called an internal combustion engine and
19 a car. And that is a, it is a failed argument.

20 Number two, again under the Pandora's Box, is the
21 argument is easily made that averages are just that and
22 only that, averages, and they exist in all crush districts.
23 But from an analytical perspective, it is important to
24 understand the implication of data ranges that create those
25 averages, as well as practical market application and use

1 of such averages. The average price of 1500,
2 theoretically, not applying to anything involved here, but
3 applying to what is involved here. The average price of
4 1500 means a lot more, when the range is 1200 to 1800,
5 theoretically, than when the range is 500 to 2500, which is
6 more specific to the existing reality in Crush District 5.

7 And as the range of grows more disparate, the
8 average becomes less meaningful to stakeholders on each end
9 of the spectrum. That does not concur with my hearsay
10 observation and research that would suggest that Clare
11 Berryhill was simply trying to get price discovery so that
12 everyone had the ability to have a fundamental concept of
13 what was out there and that you could then negotiate from
14 that. I further recall that it was his estimation that it
15 basically exists in the majority of commodity crops in
16 California through various associations that have been
17 formed and things of that nature.

18 So, as we move forward with this, I don't know if
19 we resolve this in this process. There is a need to find a
20 better position. We are forty-plus years into a set of
21 codes. And trust me, the task, you know as well as I do,
22 the task of changing California state code is monumental.
23 And rightfully it should be because you are changing the
24 law. And that is the process that we are involved in right
25 now is that this change would, in fact, change CCR 3, which

1 is law. And we have to be very judicious in looking at
2 that from both sides of the equation. From both sides of
3 the harm, from both sides of the benefit. And I hope that
4 possibly there might be a better longer-term outcome.

5 I have commented to people inside of CDFA that
6 one of the underlying fallacies in the existing code right
7 now, if you actually read it, it is in two different
8 components. It is over in the CCR 3 in the Ag Code and
9 then sitting over in Section 1700 which is the definition
10 of the 17 boundaries. And to this day, the USDA Newsletter
11 Map is the common reference on both sides of that code.
12 That map has been modified multiple times now. But what is
13 being referenced was the original map. And that needs a
14 hard look at. That possibly is a legislative change, it is
15 possibly an administrative change. I don't know, that is
16 for, for people above me to figure out.

17 But clearly, we are sitting on a piece of code
18 that has structural dated issues in it that needs to be, as
19 Jeff Bitter said, periodically reviewed by the industry.
20 And I hope that that can be accomplished over the process
21 of doing all this. And if not, I will probably go to my
22 grave thinking that the current legislation is not serving
23 everyone. It can be serving certain people on both sides
24 of any equation. But the current code is not serving
25 everyone, with the framework understanding that I have that

1 Mr. Berryhill's objective was to get to a point of price
2 discovery, period. Not just make judgments on who gets
3 what. What the values are based upon here, there and
4 everywhere. It is just discovery of price that is being
5 paid based upon how negotiations take place. And with
6 that, I will conclude.

7 HEARING OFFICER BADYAL: Thank you, Mr. King.

8 Is there anyone else who wishes to speak
9 concerning the Department's proposed regulation amendment
10 at this time?

11 (No response.)

12 HEARING OFFICER BADYAL: No? All right, the
13 time is now 11:00 a.m., and there are no further speakers
14 present. To ensure that there are no latecomers we will
15 take a brief 30-minute recess to see if anyone else
16 arrives. So, we will reconvene at 11:30 a.m. Thank you.

17 (Off the record at 11:00 a.m.)

18 (On the record at 11:31 a.m.)

19 HEARING OFFICER BADYAL: Okay, everyone, we are
20 going to go ahead and reconvene. The time is now 11:31
21 a.m. We just took a brief 30-minute recess. Is there
22 anyone else at this time that maybe wasn't here earlier
23 this morning that would like to provide any comments or
24 anyone from this morning that may have any additional
25 comments? Come on up, sir.

1 MR. SLATER: Thank you. Mine are just -- I'm Tom
2 Slater and I'm a farmer in District 17 so I just wanted to
3 make the comment orally. Everything is being referred to
4 as a change on Ryer Island. That's true, of course, but
5 that does extend up north from there across Minor Slough
6 into the Clarksburg area or District 17. The Solano County
7 line is in our district as well, so this change would
8 affect coming up our way. I don't offer an opinion one way
9 or another, I just want to make sure people know it is not
10 just Ryer Island. It extends into what we call the Holland
11 Island or Netherlands District to the Solano County line.
12 And there are a few hundred acres of grapes in that Solano
13 region that would be affected. Right across the county
14 line, several thousand more acres would remain in District
15 17. So, whether that is impactful or not, I just kept
16 hearing Ryer Island and it does go further than that.

17 HEARING OFFICER BADYAL: Thank you, Mr. Slater.

18 MR. SLATER: Thank you.

19 HEARING OFFICER BADYAL: Is there anyone else
20 that wishes to provide any comments at this time?

21 (No response.)

22 Hearing no requests I hereby close this hearing.
23 Thank you to those of you who attended this morning. We
24 appreciate your assistance in developing this regulation
25 amendment.

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CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Department of Food and Agriculture public hearing and thereafter transcribed the recording.

I further certify that I am not of counsel or attorney for any of the parties to said public hearing or in any way interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of February, 2024.



RAMONA COTA, CERT**478