

SEED ADVISORY BOARD
 California Department of Food and Agriculture
 CDFA - Plant Diagnostic Center
 3294 Meadowview Road
 Sacramento, CA
 May 9, 2007 8:15 AM

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Call to Order and Time

Chairman Keithly called the meeting to order at 8:15 am. The following members and guests were present:

Kelly Keithly – Board Chairperson
 Dennis Choate – Board Member
 Rick Falconer – Board Member
 Gabe Patin – Board Member
 Marc Meyer – Board Member
 Ken Scarlett – Board Member
 Ron Tingley – Board Member
 Larry Hirahara – Board Member
 Connie Weiner - CDFA
 Betsy Peterson - CSA

Deborah Meyer - CDFA
 Kent Bradford – UCD SBC
 Bob Stewart – UCD CCIA
 Jim Effenberger - CDFA
 John Heaton - CDFA
 Sue Webster – UCD SBC
 Umesh Kodira – CDFA
 Mike Colvin – CDFA
 Allen Van Deynze – UCD SBC

1. Acceptance of Minutes for November 15, 2006 meeting

Gabe Patin motioned that the minutes be accepted as presented. Ken Scarlett seconded the motion. Motion carried.

2. UCD Seed Biotechnology Center Report

Dr. Van Deynze reported that the SBC is continuing its efforts in research and outreach/education. Significant developments:

- a) Subsequent to an Acala Cotton Pollination Study (published in 2005) CCIA funded research to look at gene flow within Pima cottons and between Pima and Acala cottons. SBC has sampled test fields and will grow out seed, determine seed germination and spray plants to determine how

many lived or picked up the herbicide resistance trait. SBC will use this data to calculate the percent survival in order to estimate gene flow under the experimental conditions.

Member Hirahara asked Van Deynze to clarify the regulatory status of Roundup Ready Cotton, especially the Pimas.

Van Deynze explained that when Monsanto sought approval outside the U.S. for Roundup Ready Cotton, apparently they made an oversight and did not include the *Gossypium barbadense* or Pima species of cotton. Consequently you see just Roundup Ready Acala.

b.) SBC has an alfalfa pollination study being conducted on commercial scale. This study is being conducted in conjunction with Dr. Larry Teuber. First year samples have already been collected and the bioassay will be planted soon to determine the gene flow. This study will continue for another year

c.) SBC received a grant in excess of \$1 million to look at peppers. Seven vegetable seed companies are involved with numerous scientists. The thrust of the research is to look for genetic markers on a genomic scale. This will involve looking for variations in about 30,000 genes in forty different pepper varieties. The goal is to find markers for breeding and to bring the genomic information about peppers to the level of corn or better.

d.) Dr. Kent Bradford has a study looking at High Temperature Germination of Lettuce. Results indicate that one of the parents being evaluated has a mutation that allows it to germinate at temperatures above 30 degrees centigrade. This is important if you wish to grow lettuce year-round in warmer climates. Current efforts are being made to refine the location of the gene and identify useful markers.

e.) The SBC is sponsoring an international symposium about translational seed biology. The hope is that the symposium will bring together information from various model systems to find real applications in actual crops. UC Davis plans to continue this sort of international symposium as an annual event.

f.) Dr. Kent Bradford published a new book called Seed Development: Dormancy and Germination. The book is available on Amazon and on the SBC website.

g.) The Specialty Crops Initiative is proceeding. The idea is to have an IR4-type program that helps bring specialty crops through the biotechnology regulatory requirements. The USDA has hired a consultant, Kelly Eversol to help raise funds and get this program started. Dr. Van Deynze noted that the Farm Bill is proposing \$100 million per year for research in specialty crops, which is good news for California.

h.) In February Dr. Van Deynze attended a meeting in North Carolina to organize a U.S. Plant Breeding Committee that could serve as a recognized body that could actually go to Washington and seek funds for public plant breeding.

i.) Dr. Van Deynze noted that Dr. Bradford, Dr. Dan Putnam, Dr. Larry Teuber, as well as himself, have been very involved in the discussion about re-regulation of Roundup Ready Alfalfa. The SBC released a publication that summarized all of the data UC Davis developed and made public before Roundup Ready Alfalfa was approved. Apparently the 9th District Judge decided that the information, including data from a gene-flow study, wasn't good enough. Dr. Van Deynze noted that the Judge's interpretation of environmental impact to include economic impact is the main reason this ruling went the way it did.

Member Ken Scarlett asked Dr. Van Deynze if he believed the Judge read the publication.

Dr. Van Deynze answered that from the contents of the April 27th court transcripts, it appears the Judge did read the publication but that he didn't agree. Dr. Van Deynze noted that by April 27th, however, the issue was not whether re-regulation was going to occur, but rather if additional plantings of Roundup Ready Alfalfa would be allowed.

Member Mark Meyer asked about the status of current seed fields.

Member Scarlett replied that they would have to be hayed and that they cannot have pollinating insects.

Dr. Van Deynze commented that this would be consistent with the strategy to limit the propagation of Roundup Ready Alfalfa.

Member Hirahara noted that once the Environmental Impact Report (EIR) is completed in about two years, the court may still determine that there's an impact which disallows the production of Roundup Ready Alfalfa.

Dr. Van Deynze commented that he believes the SBC needs to be more proactive with these types of summary publications. He noted that the USDA did not know of the UCD studies when they went to court to defend USDA's approval of Roundup Ready Alfalfa. He stated that a group called CAST (Council for Agricultural Science and Technology) frequently generates summary publications and distributes them to policy makers.

j.) Dr. Kent Bradford was elected to a three year term on the Plant Variety Protection Board. At a recent meeting it was announced that the PVP Office is only going to give an applicant two tries to obtain certification. In addition, a 20% increase has been proposed on top of the 15% fee increase over the last three years.

k.) The Seed Production course offered last February had seventy-three attendees, including three students from foreign countries. Dr. Derek Bewley, from the University of Guelph, helped Dr. Van Deynze and Dr. Bradford teach the course.

l.) A Breeding with Markers course is scheduled for February 2007.

m.) The Plant Breeding Academy had fifteen students which will be attending until 2008. The next session is in early June when a trip is scheduled to breeding stations in Salinas. The first week of the course reviewed the basics and by the second week, students were moving on to graduate level material. The students can now apply what they've already learned from SBC at their regular jobs.

n.) The search process for a new director of SBC is down to two candidates. Dr. Van Deynze encouraged the Board to offer continued support to help the Director be successful.

o.) The SBC has added the following staff: Cathy Glaeser has been hired to run the Plant Breeding Academy and act as Academic Director. Jeanette Martins is a volunteer and is helping with outreach. She has a degree in Agricultural Education. In addition, several Masters and PhD students will be joining the efforts of SBC in the fall.

Sue Webster provided a brief overview of the SBC's financial status. She noted that revenue was better than previously projected. She attributed the increase to good attendance at courses and the excellent work by Dr. Van Deynze in obtaining grants. Dr. Van Deynze has been able to charge part of his salary toward multiple grants. In addition, she thanked the Seed Advisory Board and stated that the industry's support has been critical to providing funds for baseline operations of the SBC.

John Heaton asked when the Executive Director would be hired and begin to draw a salary that would affect the budget.

Sue responded that once the Executive Director is selected, it will depend on their schedule and previous commitments. Since one candidate is from the academic environment, Sue speculated that he would probably want to finish the academic year. The other candidate is from the private sector and could start sooner. Dr. Van Deynze commented that he did not believe either candidate would be able to start before the end of summer.

3. Seed Laboratory Report

Deborah Meyer reported that the seed lab received more seed samples than the previous fiscal year-to-date period. She also noted that the lab has conducted fewer tests, which is a reflection of the requests received from clients. The quarantine and service samples remained relatively unchanged with each representing about 25% of the samples received. The regulatory samples have dropped as a result of counties no longer submitting samples. There was a significant increase in the number of identification samples, which is primarily due to an increase of enforcement efforts at the border stations. Part of this effort involves the border stations submitting email photographs of suspicious seeds needing identification. When noxious weed seeds are found by the lab, the border station is quickly informed at which time they will either turn the truck around or allow it to proceed to its destination with specific instructions and notification sent to the County Agricultural Department. Ms. Meyer noted that in the past, the lab received forty-eight requests for this type of identification but has received three hundred and eighty five requests year-to-date.

Meyer commented that she was pleased with the numbers but stated that she would like to see an increase in the number of service tests requested. She stated that it is difficult to increase revenue from service tests because the lab is not allowed to advertise. Currently the lab has collected about \$27,000 from service tests, which is less than the \$31,000 collected at the same time last year. She was not optimistic that the gap would be completely closed in the remaining two months of the fiscal year.

Three lab personnel will be attending the AOSA/SCST Annual Meeting in Cody, Wyoming during July. Dr. Riad Balbaki will be an instructor at the statistics workshop. He is also Chair of the Seed Germination and Dormancy Research Committee for AOSA.

Jim Effenberger is serving as a member on the AOSA Executive Board. He is also Chair of the SCST Ethics Committee.

Deborah Meyer will be a speaker at the Native Seed Quality Symposium immediately prior to the meetings. She also administers the exam to certify Registered Seed Technologist (RST).

In April, the CDFA Laboratory Staff conducted an annual workshop for twenty-six attendees. Paul Peterson provided an extensive presentation and workbooks on vegetable seed germination. Dr. Balbaki provided a similar presentation for grass seed germination and gave each student a CD with photographs depicting all sorts of abnormalities of grass seed. Ms. Meyer noted that Dr. Balbaki was a coauthor for a recent AOSA publication about moisture determination methodologies.

The seed lab has also provided individualized training throughout the year to persons that were previously RSTs, but let that accreditation lapse and are now trying to obtain enough hours to get new RST credentials.

Deborah Meyer has also been working on a committee that is studying the feasibility of merging AOSA and SCST into one organization. The advantage of such a merger is the ability to pool resources and become a more prominent player in global issues of seed testing. The findings of the committee will be presented at the AOSA annual meeting and in the SCST Annual Newsletter.

4. Status of Seed Sampling

John Heaton recognized the CDFA Biologists for their excellent work and successful efforts in collecting all of the seed samples that were assigned. He noted that the percentage of samples

collected was 106% of the targeted amount. He also reported that with a reduced number of samples to collect, the Biologists have been able to juggle their work and assist him at critical times. For example, during the previous week, he received a call about a possible seed complaint in Lake County. A grower was alleging that there were undeclared weed seeds in his planting seed. Heaton requested the CDFA Biologist in Redding to investigate the complaint in Lake County. The Biologist met with the grower and informed him of the process for seed complaints, while simultaneously initiating an investigation. Within one hour of receipt of the lot number, Heaton searched the lab's database for samples. Although no samples with the exact lot number were identified, Heaton identified locations where samples of the same kind of seed with similar lot numbers were taken in previous years. Within hours of receiving the information, CDFA Biologists stationed in Fresno, Sacramento and Redding, had adjusted their schedule to begin searching for unsold inventory of the seed lot named in the potential seed complaint. Heaton was very pleased at how quickly the CDFA Biologists got results. Within one week samples of related lots were collected. Although seeds of the exact lot were not found, if the lab did find weed seeds in related lots, the grower's contention of a problem may have been supported. If, on the other hand, no weed seeds were found, then the findings might support the overall quality of products sold by the labeler.

Member Scarlett asked how many regulatory samples are currently being collected by CDFA Biologists each year.

Heaton replied that the CDFA Biologists are currently collecting six hundred seed samples per year. He noted that this number was decided upon last year mainly to help the program get caught up and to provide the Seed Services Program with the flexibility it needed to deal with other situations.

Member Hirahara asked if there was any intent to increase the number of regulatory seed samples.

Heaton stated that he has no intent to increase the number of regulatory samples. He explained that the amount of seed samples collected directly impacts him and his ability to complete other essential issues, such as seed complaints and bill analyses, areas that he believes need thorough attention.

Deborah Meyer commented that an increase in the number of regulatory samples would not present a problem for the lab. She noted that there are fewer errors now that CDFA Biologists are submitting samples instead of county biologists. She hastened to add however, that the CDFA biologists don't just collect seed samples. They do have other assigned activities that are unrelated to seed.

Heaton explained that the CDFA biologists also serve as a first point of contact for counties that find problems with seed labels. They spend a lot of time just dealing with labeling problems identified by counties. The utilization of county staff for label inspection has been very successful. The Seed Services Program has identified numerous unregistered labelers, which has increased the revenue to the program. Heaton believes that the new work assignments helped to prevent the need to increase in the assessment rate while still maintaining the 85% compliance level.

One shortfall Heaton would like to address, however, is the turnaround time for sending lab results to the labeler. He admitted that too much time elapses from the time the lab finishes an analysis to the time he can determine compliance and generate a letter. One thing he would like to do is to develop a more automated process to generate letters. He added that it would take a significant amount of time to develop such a system.

Member Scarlett asked what the breakdown was for field seed samples versus vegetable seed samples.

Heaton replied that he reported that number at the last meeting but doesn't have that number for this year. His recollection was that it was 50/50.

Member Patin clarified that it was reported last time to be 35% of the regulatory samples were vegetable and 65% were agricultural.

Heaton added that seed complaints take a huge amount of staff time and it's worth having flexibility in duties so that seed complaints can be headed-off as early as possible. He stated that sometimes it's just a matter of having someone from CDFA talk to the grower and discuss the dispute resolution process in order to establish jurisdiction and help clarify the situation for both sides.

Member Hirahara asked if lab analyses of regulatory samples show whether each county has maintained 85% compliance.

Heaton explained that his analysis has only looked for statewide compliance of 85%. He said he could look at compliance in each county, but that would take more time to analyze the data and generate the report. He added that of the 15% out of compliance, about half are out of compliance for being slightly off on germination percentage and about half the samples are out of tolerance on the purity percentage for the components. Very few samples have germinations or purity statements that are out of tolerance by large values.

Member Mark Meyer asked what the lab's capacity is for both regulatory and service samples.

Heaton deferred to Deborah Meyer.

Ms. Meyer replied that the capacity depends on the resources. If more samples come to the lab, the lab will add more seasonal help which means the capacity goes higher. She does not believe therefore, that the lab has ever reached maximum capacity. She stated that the current level is a comfortable working level, not requiring additional seasonal or professional staff.

Mark Meyer expressed concern that the overall volume has gone down.

Heaton stated that part of the decrease in volume was due to a reduction in regulatory samples. Part of his decision to reduce the number of samples was to accommodate the change in staff in the laboratory, particularly the departure of Dr. Marian Stephenson.

Deborah Meyer noted that the lab continued to process all of the submitted samples even during the staff transition.

Heaton commented that if the Board wants to increase the number of regulatory samples to bring the lab's volume higher, he could do that, but he suggested the Board consider some of the other issues that will be discussed later in the meeting.

Member Patin asked what the rationale would be to increase the number of regulatory samples.

Member Hirahara asked if the main concern is compliance, would we expect to see less than 85% compliance if we take more samples?

Dr. Van Deynze suggested that it might be worth focusing on counties that have lower rates of compliance. Heaton agreed.

Member Scarlett commented that there might not be a problem by county, but perhaps certain regions have less than 85% compliance.

Heaton hastened to remind the Board that the CDFA biologists don't just sample seed. When biologists are in a warehouse sampling seed and they find something out of compliance, they will spend a considerable amount of time discussing the situation and bringing the labels into compliance. Sometimes it may be just a simple labeling issue, while other times it may involve lack of labeling for treated seed or PVP or even seed certification. All of these require remedy and follow-up visits.

Member Patin noted that the new assignments seem to be making the whole process much more efficient.

Heaton explained that the CDFA biologists are frequently asked to help companies when county staff are not able to collect official samples for Federal Seed Analysis Certificates. The case has even occurred where Heaton has traveled to warehouses to pull seed samples so companies can move forward with seed shipments. Heaton urged the Board to retain flexibility so that CDFA biologists can continue to assist him in other important activities. He informed the Board that some of the county staff trained in September 2006 to collect samples for submission to the Federal Seed Lab, have already moved on. When counties lose seed samplers, the burden falls back onto CDFA until the Federal Seed Lab offers the training again for county employees.

Heaton then directed the Board's attention to a second issue related to seed sampling. He referenced the grey handout titled "Sampling for Seed Analysis Certificates versus ISTA Requirements for Seed Health Samplers for Import Permits." This handout was developed because Imperial County and Fresno County recently contacted Heaton about seed certificates and phytosanitary requirements.

Heaton referenced a publication from the Australian Quarantine Inspection Services (AQIS) called Recognition of Overseas Seed Analysis Certificates [pink handout]. He identified the requirement in the AQIS publication for a seed analysis certificate to be issued by an ISTA accredited seed testing laboratory or equivalent, and to be endorsed that the sample has been drawn in accordance with ISTA rules from an identified lot, and by a person licensed by the seed laboratory to obtain samples for submission to the seed lab. Heaton commented that the CDFA samplers do not use the ISTA sampling method but instead use a very comparable method taught by the Federal Seed Regulatory and Testing Branch (FSRTB). The FSRTB has not been able to get recognition that the Australians, or any other country, will recognize the FSRTB sampling protocol and their AMS accreditation, as well as the USA Accredited Labs, as being equivalent to ISTA methods and accreditation.

Heaton explained that this is an important issue because the requirement for utilization of ISTA guidelines is starting to appear for collections of seed health and the issuance of phytosanitary certificates. The counties frequently access the EXCERPT database to learn what the requirements are for importing various kinds of seeds to different countries. Frequently however, county inspectors are finding that the import permit has additional requirements that are not found in EXCERPT.

Counties have reported that some import permits require a sample of seed to be taken for seed health testing by a USDA agent, such as a county inspector authorized by APHIS, in accordance with ISTA rules [blue handout]. Counties are confused because if an inspector draws a sample for the FSRTB to test for purity and germination under ISTA rules, the sample size is smaller than what is needed for seed health testing under ISTA rules. In essence then, if the sampler follows the ISTA guidelines for seed sampling, their sample will be inadequate for seed health testing under the ISTA rules. Heaton emphasized that county inspectors are not trained in ISTA sampling methods. They have only been trained to sample for the FSRTB which then tests the seed samples for purity and germination using ISTA rules.

Instructions on the import permits are also found on the internet. Heaton directed the Board's attention to a handout of instructions on a website about seed shipments to Australia. The instructions require county inspectors to put the following statement on the phytosanitary certificate; "Samples from the consignment were taken by USDA according to ISTA sampling procedure." This has caused some serious concern among county inspectors.

Faced with these requirements, counties have contacted Heaton and requested more training of county inspectors to meet the needs of seed companies who request official samples be pulled using ISTA sampling methods, so that phytosanitary certificates can be endorsed accordingly. After some clarification, Heaton usually learns that these requests are for seed health testing requirements and not purity or germination testing. Heaton noted that the Board paid for training of inspectors to meet requirements needed to submit seed samples to the FSRTB. He believes that APHIS needs to train counties to meet sampling requirements for seed health testing or urge countries to make changes to their import requirements.

Heaton believes a dangerous precedent is being set by the requirement to have seed samples pulled by inspectors using only ISTA methods or by persons affiliated with only ISTA accredited labs. Heaton knows of only two private labs in the U.S. that are accredited by ISTA for purity and germination and he knows of no labs in the U.S. accredited by ISTA for pathology testing.

Gabe Patin asked if shipments have been denied entry.

Heaton replied that he believes the issue is so new that it's just surfacing as a concern by certain county inspectors and a few companies. He noted that even the EXCERPT database is now specifying that in lieu of an ISTA Orange Certificate or Blue Certificate, a seed analysis certificate can be issued by a seed testing lab if it conforms with certain requirements, including that the certificate be endorsed or it states that the sample was officially drawn in accordance with ISTA rules from an identified seed lot [purple handout]. Heaton believes that seed analysis certificates issued by the CDFA lab comply with this EXCERPT requirement and are within ISTA rules because ISTA Blue Certificates can be issued for seed samples drawn by anyone. He stated that since ISTA rules allow anyone to draw a sample for the ISTA Blue Certificate, the CDFA analysis certificate can be endorsed to state that the sample was drawn in accordance with those same ISTA rules.

Heaton requested that the Board consider making a motion such as:

The California Seed Advisory Board formally recognizes that the seed sampling method taught by the USDA Federal Seed Regulatory Testing Branch is substantially equivalent to the sampling methods used by individuals using ISTA guidelines and affiliated with ISTA accredited labs. Furthermore, the California Seed Advisory Board directs John Heaton to contact USDA APHIS and any relevant organizations and regulating agencies, informing them of the Board's position and urging them to

1. formally recognize the equivalence of sampling by methods taught by the USDA FSRTB to the guidelines for sampling used by ISTA accredited labs.
2. advocate against the implementation of sampling methods for seed health testing that require the use of ISTA guidelines by USDA as a condition for fulfillment of conditions on an import permit or issuance of a phytosanitary certificate.
3. advocate for acceptance of seed sampling methods used by the USDA FSRTB because they are substantially equivalent to the seed sampling methods specified under ISTA guidelines.

Kelly Keithly requested that Heaton also contact the American Seed Trade Association (ASTA) about this issue.

Ron Tingley asked what the specific differences are between USDA sampling and ISTA sampling.

Heaton replied that ISTA has smaller lot sizes. They also require that the lot be sealed and treated when the inspector arrives for collection of any sample indicated on an Orange ISTA certificate.

Betsy Peterson stated that Tom Moore of Harris Moran is on the ASTA Phytosanitary Committee. They recently had a workshop with APHIS and she suggested that Heaton contact Mr. Moore.

Heaton noted that one big concern is that small shipments of seed, perhaps even breeder's seed, may be hung up because the import permit is requiring the seed be sampled in accordance to ISTA guidelines.

Deborah Meyer commented that the Seed Health System has also been struggling with seed sampling protocols.

Heaton reminded the Board that the idea of sending county inspectors to the seed sampling training taught by the FSRTB in September was to put into place, an accredited system that is equivalent to ISTA, instead of having to rely just on people trained by ISTA labs. He expressed concern that this concept seemed to be losing momentum.

Bob Stewart asked about the sentiment at the FSRTB regarding this issue.

Heaton noted that Dr Richard Payne has been trying to talk to the seed health regulators but has not had much success in getting them to recognize the new accreditation system.

Stewart wondered how it would be possible to get USDA and ISTA to cooperate if USDA APHIS and USDA FSRTB can't agree. He noted that this issue has been circulating for at least twenty years. As a sidebar, he noted that the OECD program has also asked for accredited labs and accredited samplers too. He wasn't sure how ISTA and FSRTB fit into the OECD scheme.

Deborah Meyer commented that ISTA would prefer everybody to comply with them.

Stewart commented that he didn't believe OECD was too concerned about AOSCA (Association of Seed Certifying Agencies).

Deborah Meyer noted that OECD did recognize AOSA rules for testing and the RSTs as accredited people to do the testing. She noted that OECD has therefore, recognized some North American protocols and they recognize that North America has a position in this issue.

Heaton noted that the concept of USDA employees having to be accredited by some international organization does not sit well politically. He believes this was part of the impetus for USDA FSRTB to put its own quality management system in place and obtain its own accreditation. Heaton acknowledged that the methods taught by the FSRTB are not exactly the same as methods used by ISTA because they are tailored to the way business is conducted in the United States.

Gabe Patin motioned that the Board support Heaton's outreach plan to regulatory agencies and various seed organizations as presented. Ron Tingley seconded the motion. The motion carried.

6. Status of county seed subvention contracts

Heaton reported that the Seed Services Program made three payments to the counties in the last fiscal year, thus bringing CDFA current with respect to payments for seed law enforcement work by counties. He is presently calculating payments for work done during fiscal year 2005-2006. He expects payment to be made by June 31, 2007.

Heaton next reported about AB856. He explained that the law currently states CDFA shall pay a seed subvention of \$100 to counties for seed law enforcement work. AB856 changes that language to "may pay." The intent of this bill is to prevent counties from having to incur expenses greater than what they receive each time they process paperwork for the \$100 seed subvention.

Heaton reminded the Board that section 52323 of the California Seed Law, which pertains to the Board's obligation to annually pay \$120,000 in seed subvention to counties, will sunset in July 1, 2009 and will be repealed January 1, 2010. If the Board wishes to continue seed subvention, the Board will have to find a legislator to sponsor a bill to that notion.

Heaton added that the counties have been doing a very good job enforcing the seed labeling requirements of the California Seed Law. He has worked with many counties during the past year to identify unregistered seed labelers, particularly from out-of-state.

7. Follow-up to information requested at previous meetings

Heaton referenced the beige handout to provide follow-up information on items discussed at previous meetings.

Gabe Patin previously asked Heaton to determine how much revenue was collected from out-of-state labelers in the 06-07 renewal cycle.

The amount collected from out-of-state labelers in FY 06/07 was very close to \$500,000.

Matteis asked at a previous meeting if the \$120,000 paid as a subvention to the counties for seed law enforcement is subject to pro rata charges.

Heaton determined that pro rata charges are assessed on the \$120,000, but he advised the Board to not pursue a request to end the practice. He believes other programs would quickly copy such a request and they could exempt much greater proportions of their budgets, thus leaving a larger Department-wide pro rata charge to be distributed to all programs. He calculated that the Seed Services Program would incur a substantially larger pro rata bill under such a scenario and he recommended that the Board not pursue the matter.

Marc Meyer previously asked if it would be possible for the Board to look at the reported sales for each category of seed.

Heaton reported that during the 2006/2007 renewal cycle, firms reported the following sales in California for FY 2005/2006.

Agricultural Seed Sales	Vegetable Seed Sales	Grass Seed Sales
\$128,288,894	\$222,064,015	\$49,415,526

Gabe Patin asked Heaton if he could provide the sales by category for the last two years. Heaton reported the following values.

As of April 30, 2007 the values are:				
Fiscal Year	Ag Sales	Veg Sales	Lawn Sales	Total Sales
2005-2006	\$128,288,894	\$222,064,015	\$49,415,526	\$399,768,435
2004-2005	\$124,332,841	\$201,589,171	\$43,431,011	\$369,353,023
Increase or Diff.	\$3,956,053	\$20,474,844	\$5,984,515	\$30,415,412
% Increase	3.18%	10.16%	13.78%	8.23%

The assessment collected in FY 2006/2007 for total sales made in FY 2005/2006 was \$1,279,259.

Marc Meyer asked if these collections included collections on sales to other states. Heaton responded that assessments are only collected on sales of seed intended for planting or distribution in California. Assessments are not collected on seed sales to other states or countries.

The Board previously asked Heaton to explore the possibility of having some audits performed on questionable reported sales.

Heaton reported that he contacted the CDFR Agricultural Marketing Services (AMS). The Chief of the Audits Branch informed Heaton that the Audits Branch of the AMS can request a firm to complete an obligatory Internal Control Questionnaire before committing to a full audit. If the AMS follows-up with a full compliance audit, the cost is about \$60 per hour, plus travel.

The Board suggested that Heaton remind firms during the renewal period that the Seed Services Program has the authority to conduct audits and has been urged by the Board to investigate any unreported sales, or suspicious drops in reported sales, including the use of possible audits.

8. Summary of enforcement activities on interstate seed shipments.

Heaton reported that border inspection records indicated at least one hundred seventy two firms made multiple seed shipments into California in recent years, but were unauthorized to sell seed. He sent each firm a letter in early January and informed them of the requirement to obtain authorization from the Secretary before selling agricultural, vegetable or grass seed in California.

As a result of those letters, the Seed Services Program received requests from about sixty firms to sell seed in California and collected about \$40,000. Heaton praised the efforts of the CDFA Border Inspections unit and he emphasized that the program can expect to collect similar amounts in the upcoming years.

On a different note, Heaton reported that enforcement activities in other states often result in much greater penalties than in California. He referenced a recent article in Farm Press which reported that Texas will assess a \$2,000 penalty for violations of the Plant Variety Protection Act. He reminded the Board that the California Seed Law does require PVP varieties to be labeled with notification of PVP status. While CDFA can assist labelers if they believe someone is illegally labeling their PVP varieties, Heaton suggested that the PVP provisions of the California Seed Law might be more effective if California had similar penalties as Texas. He suggested that perhaps if penalties from PVP violations were shared with the counties, the county inspectors would be more vigilant in finding PVP violations and enforcing intellectual property rights.

Heaton commented that he believes PVP is a very important issue. He noted that intellectual property rights are a topic at almost every industry meeting he attends. He believes that intellectual property rights and PVP are critical for the survival of smaller companies because they represent the only inexpensive way they can recover their costs of developing new varieties. If smaller companies cannot protect their varieties, they will simply stop developing new varieties and seed tradesmen, as well as farmers, will be forced to only choose from varieties offered by the largest companies.

9. Out of State Travel Proposals for FY 2008-2009.

Heaton explained it is necessary to approve a recommended budget for FY 2008-2009 at the current meeting because the Department will be asking for budget proposals before the next Board meeting.

He referenced the pink handout and noted that it had brief descriptions of each trip requested for FY 2008-2009. He explained that the trips are essentially the same as in previous years and that not all trips will be used by staff. As an example, he noted that in the present year, the spending authority for Deborah Meyer’s trip to the ISTA meeting in Brazil was actually used by the Secretary to travel to Mexico with the Governor’s Office. Heaton emphasized that the Board does not pay for such trips but only provides spending authority from the Program’s list of approved trips. He believes it is useful to have all potential trips in the travel blanket in case the Department has the need for an unexpected trip and needs spending authority. Heaton clarified that the program does not pay for trips unless staff in Seed Services use them. He provided the following history of travel expenditures by the Seed Services Program.

Fiscal Year	Approved	Amount Used	% Used
04-05	\$18,555	\$9,751	53%
05-06	\$15,550	\$7,079	51%
06-07	\$18,000	YTD=\$500	NA
07-08	\$18,594	NA	NA

The trips proposed for FY 2008-2009 were expected to cost \$22,788.

Ron Tingley motioned the Board approve the out of state travel proposal. Rick Falconer seconded the motion. Motion carried.

10. Fund Conditions for Seed Services Program and the Seed Lab Ag Fund

Heaton reported that year-to-date collections in FY 2006/2007 were \$1,340,428 while expenditures were estimated to be \$1,287,944, which was less than the revenue collected.

He requested that the Board revisit one line item of the budget approved for FY 2007/2008. He stated that the Board previously approved \$393,930 for the Seed Lab to use in FY 2007/2008, but he now believes that estimate is low and would like the Board to adjust that figure upward. He explained that his initial estimate was low because he previously straight-lined the lab expenditure with a 3%

adjustment. In reality, the adjustment should have been higher, bringing the Seed Lab MOU to \$410,228 as presented on the second page of the golden-rod handout. He stated that he would further clarify this increase during the discussion of the next agenda item.

Heaton noted that total revenue is still expected to be greater than total expenditures in FY 2007-2008.

Page one of the handout showed that without an adjustment for the lab, the program's revenue is about \$60,000 greater than projected expenditures in FY2008/2009. Page two showed that if lab expenditures are adjusted upward and revenue remains the same, the revenue would only be about \$11,000 greater than expenditures in FY 2008-2009.

11. Seed Laboratory Memorandum of Understanding for FY 2008-2009

A green handout provided a summary of the Seed Lab MOUs from FY 2004-2005 through subsequent fiscal years, ending with a projection for FY 2008-2009. In order to understand the problem with simply straight-lining the Seed Lab MOU at 3%, Heaton prepared the following analysis to demonstrate the historic percent increase in the Seed Lab MOU.

FY	Lab Exp	% Inc w/o adj up	If Adjusted	New % Inc	MOU Paid	% Inc MOU	If Adj MOU	New % Increase MOU
04/05	\$601,597	-			\$313,268	-		
05/06	\$673,109	11.9%			\$311,270	0.1%		
06/07	\$763,800	13.5%			\$366,900*	17.9%		
07/08	\$785,571	2.9%	\$855,456	12%	\$392,786*	7.1%	\$410,228	11.8%
08/09	\$958,111	22.0%		12%	\$461,556*	17.5%		12.5%
Avg. Annual Increase (4 yr.)		12.6%		12.4%	* estimate	10.6%		

He noted that if the Board adjusts the projected lab expenditures for FY 2007/2008, the new percent increases for expenditures and the MOU are more in line with what has historically occurred.

Ron Tingley asked if this increase in expenditure for the Seed Lab MOU can be achieved without increasing the assessment rate.

Heaton replied that the figures show it can. He further noted that even if his projections are wrong, the Seed Services Program has about \$931,000 in the Ag Fund Balance.

Larry Hirahara noted that there has been an increase of approximately \$50,000 in the Seed Lab MOU each year. He asked Heaton if he could explain the cause of that increase.

Heaton replied that he attributes the majority of the increase to personnel services, including increases in salaries for merit salary adjustments as well as increases in the cost of benefits.

Umesh Kodira noted that the lab actually did not recover the full amount of the MOU approved by the Board in the previous year. The lab only uses what it needs to cover one-half of its actual expenditures.

As an example, Heaton noted that for FY 2005/2006 the Board approved an MOU of up to \$347,000 but the lab only recovered \$311,270 from Seed Services. The point being that the MOU is an "up to" amount. Heaton requested approval of a new Seed Lab MOU up to \$410,228 to make sure that the Seed Lab did not come up short in FY 2007/2008.

Heaton added that some of the additional expenses to the Seed Lab are due to the fact that the Board previously decided to shift all of the expenditures in the Seed Lab Ag Fund to the Seed Lab General Fund.

A golden-rod colored handout was provided to review the fund condition of the Seed Lab Ag Fund. Heaton pointed out that the balance for 2004/2005 was about \$5,000 higher than expected and he projected revenue collections for the lab in 2006/2007 will be \$36,855, also higher than expected.

A major point of interest on the handout was the Bond Debt Repayment for the Meadowview building. Heaton noted that he requested payment figures from CDFA Financial Services and they provided the following figures:

2004/2005	2005/2006	2006/2007	2007/2008	2008/2009
\$21,468	\$31,346	\$25,000	\$0	\$0

When he inquired about the \$0 estimates beyond FY 2005/2006, he was told that the \$0 estimate is due to increased General Fund Lease Bond Budget.

Heaton said he will try to verify this information because he was previously told that the Board had eight more years to pay the Bond Debt. He wants to make sure the Board is truly off the hook, in terms of future payments toward the Bond Debt.

As a result of these changes, the Seed Lab Ag Fund appears to be recovering by FY 2008/2009 with a projected cash balance of \$119,157.

Gabe Patin noted that the handout showed total program expenditures of \$34,178 in FY 2007/2008 yet the terms in that calculation were all zero. Heaton recognized that he made an error in straight-lining the total program expenditures from the previous year and should have instead dropped the bond debt term from that total. The correct projection for total cash balance in FY 2008/2009 would therefore be higher at \$144,907.

Larry Hirahara motioned that the Board recommend the Seed Lab MOU for 2007/2008 be adjusted to \$410,228. Dennis Choate seconded the motion. The motion carried.

12. Seed Services proposed budget for FY 2008-2009

The canary yellow handout showed budget expenditures for the prior prior year, the prior year, the current year, the expected expenditures approved for the 2007/2008 fiscal year and the proposed expenditures for FY 2008/2009. Heaton noted that the Seed Services Program used approximately 89% of the \$1,198,509 budget approved for FY 2004/2005 and approximately 91% of the \$1,206,227 budget approved for FY 2005/2006. For the current fiscal year, the approved budget was \$1,367,461 and Heaton projected that final expenditures would be approximately \$1,282,188 or about 7% under budget.

The budget for FY 2007/2008 was approved May 15, 2006 for a total of \$1,400,028. Heaton explained that this amount was estimated before the increase in the Seed Lab MOU from \$392,786 to \$410,228. In addition, the pro rata estimate in the budget approved for FY 2006/2007 was low at \$30,500 and will actually be more like \$62,000. Both of these increases to the approved 2007/2008 budget will cause the previous approved estimate to be lower than what the Seed Services will probably see. Heaton was not too alarmed though because the Program is historically under budget anyway. He stated that he believes these increases can be absorbed within the budget already approved for FY 2007/2008.

For fiscal year 2008/2009, the proposed budget has expenditures that are greater than the projected revenue. The proposed budget is \$1,553,629 and the expected revenue is estimated to be \$1,408,254. Heaton explained that the main reason for this difference is because he used an increase factor of 3.5% to liberally project expenditures for fiscal year 2008/2009 and then used a conservative factor of 2% to conservatively estimate the revenue for the same year. He added that even if the expenditures do exceed the revenue, the Seed Services Program has ample money in the Ag Fund Balance to cover any shortfall.

Gabe Patin wanted to know approximately how much money would be generated by increasing the assessment rate by one cent or by two cent.

Heaton referred to the minutes of a previous meeting and determined that a one cent increase in the assessment rate will generate about \$30,000 and a two cent increase will generate about \$60,000.

Patin noted that increasing the assessment rate to the maximum of forty cents per one hundred dollars of seed sold, would generate about \$250,000.

Heaton commented that he did not see it would be necessary to increase the assessment rate in the near future because the Program has strong reserves.

Tingley noted that after the last attempt by the State to use those reserves, it became an objective of the Board to keep the reserves from getting too high.

Ken Scarlett asked if there is any current threat of someone raiding the reserve.

Program Supervisor Mike Colvin stated that he did not believe there are any current threats mainly because of the raucous that was raised the last time an attempt was made. He added however, that it is not really possible for a Program Manager to foresee such a threat in advance.

Rick Falconer motioned that the Board recommend to the Secretary, a budget of \$1,553,629 for the Seed Services Program in fiscal year 2008/2009. Ron Tingley seconded the motion. Motion carried.

13. Recommendation for assessment rate on sales made in FY 2007/2008

Gabe Patin motioned that the Board recommend the Secretary maintain the assessment rate at thirty-two cents per one hundred dollars of agricultural, vegetable or grass seed sold in California.

Dennis Choate seconded the motion. Motion carried.

14. Status of Arbitration Regulations

Betsy Peterson reported that Richard Matteis was previously instructed by the Board to meet with CDFA Counsel to address their concerns. A meeting was set with CDFA Counsel, John Dyer, however that meeting was canceled due to scheduling conflicts. Matteis is presently attempting to reschedule that meeting.

Heaton added that CDFA has a new legal counsel. She briefly reviewed the proposed regulations in anticipation of the Matteis/Dyer meeting and met with Heaton about some additional concerns that were previously not identified. Heaton requested that she meet with Matteis and Dyer about those concerns. He noted that Matteis is aware of some of those new concerns and Heaton believes that Matteis is trying to set aside an appropriate amount of time to address the issues.

15. Legislative Report

Betsy Peterson provided a copy of the most recent CSA newsletter. One bill that was not present on the CSA newsletter was AB856. This bill is a spot bill to address the removal of language that states that in no case shall a county with registered seed labeler operations receive less than \$100. Since the bill is a spot bill, additional language, such as fines of PVP violations, could possibly be added.

Heaton commented that he believes the Board needs to further discuss the matter. In addition, he would also like to confer with the Department's Counsel to discuss the nuisances of establishing fines in statute for violation of the agricultural code.

Peterson agreed and noted that AB856 could possibly be the vehicle to achieve such a new provision.

Peterson moved to AB541 which was a bill about strict liability. She noted that it was recently defeated in the Assembly Agricultural Committee and that it is presently on hold. One reason it was defeated is that the bill would require growers of biotech crops to register, which they consider to be an invasion of privacy and which also imposes additional biosecurity problems for them. Another problem with the bill is that it would prohibit the open-field cultivation of drug producing agricultural crops. This was a concern because there already are species commonly used to produce such compounds for humans and animals.

Heaton asked for clarification and inquired if the AB541 was indeed dead. Peterson explained that it was not completely dead and explained that it must pass the Assembly Agricultural Committee before it can move ahead. She did not believe that would occur.

Heaton informed the Board that a strict liability bill was passed by the Vermont Legislature last year and had to ultimately be vetoed by the Governor of Vermont. He commented that the experience in Vermont is an indication of how serious this issue is.

Peterson announced that CSA is also opposing SB180 which is also called the Card Check Process. The bill would allow farm workers to merely sign cards for union representation instead of having to participate in a secret ballot election.

SB200 provides for extensive new quarantine authority. CSA believes this bill creates additional bureaucracy and that adequate authority is already present.

SB201 codifies best management practices for leafy green vegetable production. Currently about 91% of the produce industry already participates in a marketing agreement to follow good agricultural practices. Peterson noted that in all of the good agricultural practice guidelines floating about, none make reference to the seed. Instead the focus is appropriately placed on other and more realistic possible sources of contamination.

SB202 is a trace-back bill. It would require employers, growers and processors of leafy green vegetable to employ a Julian number to trace back product. This bill has successfully moved out of the Senate Agricultural and Senate Health Committees. There was to be a vote in the Appropriations Committee later in the week.

CSA has joined forces with Farm Bureau, Western Growers and other groups to opposing SB200, SB201 and SB202.

CSA also opposes SB974, which is a bill that imposes fees on shipping containers leaving California ports. A particular concern is that the bill imposes charges at the port of Oakland, which handles a lot of agricultural products for export.

Finally Peterson noted that there are several bills related to biofuel that the Board can read about in the CSA newsletter.

Heaton noted that the present agenda revisits a topic tabled by the Board during the May 2006 meeting. It pertains to the Board making a recommendation to the Secretary about county ordinances, particularly anti-GMO ordinances. Heaton recalled that Matteis commented at the previous meeting that he did not believe the current political environment was appropriate to make such a recommendation. Since the topic was previously tabled, Heaton wanted to know if the Board wants to pursue the recommendation or if the Board wanted to dismiss the topic.

Dr. Allen Van Deynze commented that he believes the rulings of current court cases will fuel more ordinances and he suggested that it is better to be proactive about such matters rather than reactive. Dr. Van Deynze is in favor of asking Matteis to reconsider the political environment.

Gabe Patin noted that in a previous discussion, the Board seemed agreeable to supporting the payment of up to \$10,000 for work towards coexistence. He wanted to know if there have been any advancements in the concept of coexistence.

Sue Webster commented that she believes Rich Matteis was encouraging the Board to channel their efforts through a coexistence concept rather than making a recommendation to the Secretary about county ordinances.

Gabe Patin suggested that the Board should wait and see how the coexistence concept develops before pursuing a recommendation to the Secretary.

Ron Tingley suggested that the Board get Rich Matteis' input about the benefits and drawbacks of the two strategies.

Chairman Keithly asked Betsy Peterson and Heaton to speak with Matteis about the situation.

Larry Hirahara commented that Ray Green of CDFA will be conducting a meeting of the California Organic Products Advisory Committee (COPAC) in a week. Since Larry is on the Committee, he will try to initiate a discussion about coexistence once again. He noted, however, that the concept has not been well received in the past. He stated that parts of the COPAC Board are agreeable to the concept of coexistence, but others on the COPAC Board have a zero tolerance position.

Heaton commented that when he analyzed the strict liability law, AB541, he wondered if people who support zero-tolerance realize that such a law may become a double-edged sword. He could conceive of liability for organic growers if their pollen contaminated a conventional hybrid seed production field.

16. Nominating Committee

Chairman Keithly announced that he is appointing Ron Tingley, Marc Meyer and Gabe Patin to the serve on the Nominating Committee with Gabe Patin serving as Chairman of the committee. He requested the Committee provide a report at the November meeting. Chairman Keithly noted that the following Board members have terms approaching expiration:

Bill Van Skyke
Kelly Keithly
Dennis Choate

George Hanson
Rick Falconer

Heaton noted that Ron Tingley will be retiring as of June 30, 2007 and therefore the Nominating Committee will also need to find an eligible candidate for the Secretary to appoint to the remainder of Ron's term.

17. Closed Executive Session

None of the Board members requested a closed executive session.

18. Other Items – Next Meeting

Chairman Keithly set the next meeting for Thursday, November 15, 2007.

19. Additional/Public Comments

Chairman Keithly asked for any additional comments or public comments. None were made.

20. Closing Comments and Adjournment

Chairman Keithly adjourned the meeting at 11:15 am.