

Seed Advisory Board Meeting  
CDFA - Plant Diagnostic Center  
3294 Meadowview Road  
Sacramento, CA  
8:30 AM, Wednesday Nov. 15, 2006

TABLE OF CONTENTS

1- Call to Order .....	1
2 - Acceptance of Minutes .....	1
3 - Seed Lab Report.....	2
4 - Seed Services Finances .....	3
5 - Seed Services ProRata.....	3
6 - Seed Services Activities.....	6
7 - County Contracts.....	11
8 - UCD Seed Biotechnology Center Update.....	12
9 - CCIA Update.....	15
10 - Legislative Report.....	15
11 - Status of Proposed Regulations for Arbitration.....	15
12 - Discussion of CSA Policy on Seed Testing for E-coli.....	16
13 - Nominating Committee Report.....	17
14 - Closed Executive Session.....	18
15 - Reconvene to Public Meeting .....	18
16 - Public Comment Period .....	18
17- Next Meeting Date .....	18
18 - Adjournment .....	18

**1. Call to Order and Time**

Chairman Keithly called the meeting to order at 8:35 am. The following members and guests were present:

Kelly Keithly	Betsy Peterson
Rick Falconer	Rich Matteis
Gabe Patin	Deborah Meyer
Marc Meyer	Kent Bradford
Ken Scarlett	Bob Stewart
Ron Tingley	Jim Effenberger
Cher Williams	John Heaton
Larry Hirahara	Sue Webster
Connie Weiner	Umesh Kodira

**2. Acceptance of Minutes for May 17, 2006 meeting**

Betsy Peterson corrected a reference in paragraph four on page twenty-seven. The text should read that information obtained during conciliation or mediation would not be admissible instead of during conciliation or arbitration. In addition, the word arbitration should be changed to mediation in the last sentence of the second paragraph.

Deborah Meyer corrected the spelling of Marian Stephenson.

Other minor changes were incorporated.

Ron Tingley motioned that the Board approve the corrected minutes.  
Ken Scarlett seconded the motion.  
Motion carried.

Additions to the agenda

Chairman Keithly requested any changes or additions to the agenda.

Heaton noted that at the last meeting, the Board tabled the topic about requesting the Secretary to make a recommendation about County Ordinances and GMO seed labeling. Heaton requested that the tabled item be added as a subtopic under agenda item number nine, the Legislative Report.

Additionally, Heaton requested that the Board add a discussion of pro-rata under agenda item number four, the Report by Seed Services. Chairman Keithly approved the changes to the agenda.

### **3. Seed Laboratory Report (Deborah Meyer)**

Deborah Meyer referenced Table 1 and Figure 1 of her handout. She noted that of the 3044 seed samples received, approximately 45% were for regulatory purposes. The regulatory samples broke down to a proportion of 35% vegetable seed samples and 65% agricultural seed. Twenty-seven percent of all samples received were service samples submitted by seed firms. Twenty-three percent of all samples were quarantine samples. Finally, 3% of all samples were for mill approval and 2% were for seed identification purposes.

Figure 2 provided a comparison of the total number of samples received from July 1 to Nov. 13 in FY 2005-2006 to the same period in FY 2006-2007. The total number of samples was less, mainly due to the reduction in the number of regulatory samples.

Figure 3 showed that although the total number of samples was down, the number of test completed in the present FY was 10% more than for the same time period in the previous FY. She attributed this increase to a request for more tests on service samples, mainly phytosanitary type tests. In addition, the lab has seen an increase in more tests for samples from the CDFA Border Stations.

Deborah Meyer reported that revenue from service samples was slightly increased from the same period of FY 2005-2006; \$8,054 versus \$7,896. Total revenue from 656 service samples in FY 2005-2006 was reported to be \$35,866.

She briefly reported that staff of the Seed Laboratory attended various professional and training meetings. Trip reports were provided. Of note was the appointment of Dr. Baalbaki as Chairperson to the AOSA Germination Research Subcommittee. Jim Effenberger continues to serve on the AOSA Executive Board and is Chairperson of the SCST Ethics Committee. Deborah Meyer finished a five year term as the Chairperson of the AOSA Rules Committee. One major accomplishment of her term was the conversion of all of the AOSA rules from hard copy to electronic copy on CD. She is currently the Chair of the Purity Research Subcommittee and is a member of the SCST Registered Seed Technologist Exam Board. More recently she has been asked to serve on a joint AOSA/SCST Committee to study the feasibility of merging the two organizations into one North American Seed Testing Organization.

A side project that the laboratory has been working on is the incorporation of two significant herbarium collections into the already extensive collection maintained by the laboratory staff. Dr. Deena Decker-Walters donated an extensive worldwide collection of seed specimens from the cucurbit family. Craig Dremann donated approximately 1,000 grass seed specimens from 130 taxa of the Poaceae family. Deborah Meyer explained that CDFA now has more than 50,000 specimens in the entire collection. These seed specimens are not used for germplasm purposes but rather for reference purposes when identification or verification of an unknown seed is needed.

Finally, staff members of the lab complex traveled to sixteen CDFA Border Stations to train inspectors on how to identify certain insects, plant diseases and seed pests. Preparation for training involved the development of a manual containing information on 148 noxious weed species. The plan is that when inspectors find one of the seed pests, they will photograph the seed and send a digital image to the lab for identification. This is much faster than the old method of sending a sample, which caused shipments to be delayed...sometimes unnecessarily.

In conclusion, Deborah Meyer shared one example of the unusual types of request that the Seed Laboratory sometimes receives. Samples of compressed cakes of dodder seed, which is used in traditional Chinese medicine, were collected by USDA and California county inspectors. While the dodder seed is supposed to be devitalized before import, the Seed Lab found that many samples had viable dodder seed.

#### **4a. Seed Services Finances – Lic. renewal and assessments status (Heaton)**

Heaton referenced the orange handout titled Financial Status Report for Seed Services as of Nov. 9, 2006. He reported that 381 licenses have been issued and that \$1,221,548 have been collected from fees and assessments. He noted that this amount is \$146,000 less than the budget approved by the Board for FY 2006-2007 (\$1,367,461).

Heaton noted that budget projections are based on assessments from the increased value of seed sales. He hypothesized that perhaps the projected value of seed sold in 2005-2006 was too high. He suggested that perhaps sales reported by seed companies are not always accurate. He offered the following analysis for consideration and asked the Board to consider at what point he should initiate investigations, such as audits, of reported sales.

To understand why the collections were less than expected, Heaton compared the reported sales and assessments in the current year to assessments collected in the previous year. He noted that 119 companies lost sales while 150 companies had higher sales and 6 companies stayed about the same. The overall tally showed that Seed Services has actually collected approximately \$58,000 more from assessments in the current year. Heaton noted that some of the drop in expected collections may be from a decrease in reported sales since some companies were previously paying assessments on sales made outside of California. Such sales are not subject to the assessment.

Heaton told the Board that in the remaining months of the FY, he will attempt to reduce the budget deficit by pursuing collections from out-of-state sellers of seed that have not previously obtained authorization to sell seed in California. In addition, he will continue to request explanations from companies that have significant drops in reported sales and a corresponding reduction in assessments paid. He asked the Board to consider what sort of parameters he should use to initiate an audit on reported sales.

Gabe Patin asked if Heaton ever calculated how much out-of-state revenue is collected.

Heaton responded that he will provide that information at the next meeting.

#### **4b. Seed Services and Pro Rata**

Heaton referenced the blue handout and recalled that at the Board meeting of August 2005, the Board was told that future pro rata charges were expected to decrease. In the previous week however, He learned that charges for pro rata are expected to increase. He noted that for FY 2006-2007 the pro rata charge is \$38,704 but for FY 2007-2008, the pro rata charges are expected to jump to \$62,483. This is a 61.4% increase.

Heaton explained that the reason pro rata charges are increasing has to do with how pro rata charges were previously spread in the department versus how they will be spread in FY 2007-2008. The Board was directed to look at the blue handout, specifically at the pro rata charges for the department's Total Ag Fund. Heaton noted that as the Total Ag Fund increased from FY 2003-2004 through FY 2006-2007, there was a corresponding increase in pro rata charges. The pro rata allocated to Local Assistance suddenly drops to \$0 in FY 2007-2008. Heaton explained that Local Assistance is the money that the department gives to the counties from a line item on the department's General Fund Budget. Previously, that line item (Local Assistance) was allocated a pro rata charge. However since the money for Local Assistance is from the general fund, the counties should not be paying pro rata on that line item. Consequently, the department must spread the pro rata charges to the remaining programs in the department.

Matteis asked if the \$120,000 paid by Seed Services to the counties under the Seed Subvention contracts, is subject to pro rata charges.

Heaton replied that he does not believe the money from Seed Services is figured into the Local Assistance amount because he believes the money on the Local Assistance line is purely from the General Fund. He said he will attempt to find out for sure.

Heaton supported his interpretation by referencing Budget Letter 06-32 dated October 12, 2006. It stated;

“Beginning with the 2007-08 Pro Rata, the basis for allocating pro rata to each department's funding sources will change from using total expenditures (i.e., state operations, local assistance, capital outlay, and unclassified) to using only state operations expenditures. This was the method used prior to 2002-03. For more information, please refer to Budget Letter 06-30 issued on September 22, 2006”

Referencing Budget Letter 06-30, Heaton read;

“Prior to 2002-03, the allocation to the department's funding sources was based on the proportion of state operation expenditures from the fund. Beginning 2002-03, the basis of allocating pro rata was expanded to include local assistance and unclassified expenditures and then expanded again in 2004-04 to include capital outlay expenditures. The intent of the methodology change was to spread pro rata costs to special funds that received services from central service agencies but had not previously been accessed pro rata. However, the change resulted in allocating a disproportionate share of pro rata costs, which are mostly state operations driven, to funds with mostly non-state operation expenditures.”

“To resolve this problem, the methodology will be reverted back to using only state operations expenditures as a basis of allocating pro rata to the department's funding sources. This change will take effect beginning with the 2007-08 pro rata assessments. No retroactive calculations will be made.”

Heaton summarized that the Budget Letters are essentially saying that since the counties are not using state services they should not be paying pro rata on the local assistance they receive from the department's general funds. He then directed the Board's attention to page three of the blue handout, which listed the types of services provided by the state under the pro rata charges. The list included charges from general funded departments such as the Department of Finance, the Controller's Office, the Treasure's Office, the State Personnel Board, Office of Administrative Law, the State Library, Health Benefits for retired annuitants, the Bureau of State Audits and the Legislature.

Heaton stated that he believes \$60,000 per year for these services is probably not a bad price compared to what it might cost to procure the same services on the outside. Currently the cost is about 4% of the Seed Services budget. Heaton noted however, that in FY 2006-2007, the payment

of \$38,704 for pro rata by Seed Services represented about 1.3% of the department's entire pro rata cost. In FY 2007-08, the increase to \$62,483 will represent about 2% of the projected pro rata for the entire department. He stated that it will be important to monitor how much of the department's pro rata is paid by Seed Services as programs that previously paid pro rata are eliminated.

Matteis asked if page three of the blue handout was a complete reconciliation of all pro rata charges paid by the department.

Heaton replied that page three was given to him by a Financial Analyst in the department at the last minute. Consequently he was unsure how the numbers reconcile with the department's overall pro rata. He was not sure how the amounts were generated or used to calculate the pro rata charges to Seed Services.

Matteis noted that the single biggest category of increase with in the pro rata charges is the Health Benefits for Retired Annuitants. He expressed concern that Health Benefits will continue to skyrocket at the rate of approximately 30 to 35% a year and will concomitantly cause the pro rata to increase.

Matteis asked how much Seed Services budgeted to pro rata for FY 2007-2008.

Heaton responded that the Board approved \$30,500 for pro rata.

Matteis noted that if pro rata charges are now expected to be \$62,483, the expenditures by Seed Services will obviously be over budget. In addition, if that deficit is added to the projected deficit mentioned earlier in agenda item 4a, the Seed Services Program will be substantially over budget.

Heaton noted that if the projections and pro rata estimates hold true, the Board may be looking at an assessment increase.

Scarlett asked if there is any way to reduce expenditures before the next cycle.

Heaton could not identify any specific line items but he noted that some belt tightening could occur. He stated however, that the bulk of expenditures are for personnel services.

Marc Meyer asked if there was a way to audit some of the reported sales and assessment payments to determine if that is why revenue collected was less than expected.

Heaton responded that an audit would involve contracting with an outside provider or perhaps a program in the Market Enforcement Branch and then cover their costs through an exceptional time report. He wasn't sure if the costs incurred for an audit would offset the additional revenue that might be obtained.

Heaton clarified that the collection of assessments hasn't actually dropped, in fact it was \$58,000 more, but rather the collections were less than projected. He noted that not only did personnel services increase, but now Seed Services is giving more money to the UCD Seed Biotechnology Center and is paying more of the expenditures that were previously charged to the Seed Lab Ag Fund (20.30.16). He suggested that the combination of those additional charges pushed expenditures by Seed Services to a higher level than projected revenue could cover.

Scarlett asked how much the assessment would have to be increased to cover the shortfall.

Heaton recalled that an analysis performed in the previous year indicated that a two cent increase in the assessment will generate approximately \$70,000.

Cher Williams asked if the deficit could be covered in the present year.

Heaton responded that the program has adequate cash reserve.

Matteis asked what the total value of California seed sales were.

Heaton reviewed the record of the November 17, 2005 meeting and replied that it was noted during that meeting that an increase in the assessment rate from 32 cents to 33 cents, would generate about \$36,000.

Scarlett noted that to cover the shortfall, the assessment would have to be raised to the maximum amount of 40 cents per \$100 value of seed sold.

Heaton agreed and noted that a decision would have to be made at the May meeting, just before the renewal period. Of course he will provide new facts and figures to the Board before the meeting.

Chairman Keithly expressed hope that more revenue could be collected in the remaining seven months.

## **5. Report on Seed Services Activities (Heaton)**

- Border Inspections and Out-of-State Labelers - Heaton reported to the Board that he recently acquired a database from the CDFA Border Inspections Unit. The database contains records of seed shipments into California. Since December of 2004 there have been approximately 12,150 shipments of seed into California. These represented about 221 million pounds of seed. Heaton intends to cross reference the names of firms shipping seed into California with the license database in order to determine if any of the shippers have failed to obtain authorization to sell seed. He is hopeful that his efforts will result in additional revenue for the Seed Services Program as well reduce the number of calls from counties finding seed of unregistered labelers.

Heaton further explained that since the counties are no longer collecting seed samples, they have more time to evaluate labels. Consequently they have already identified a number of firms not authorized to sell seed in California. There is some confusion at the county level however, about germination test dates. The Federal Seed Act requires that most kinds of seed in interstate commerce have a germination test date that was conducted within the last five months. The California Seed Law however, requires seed sent to a dealer to have a test date within the last eight months and seed at retail to have a germination test date within the last fifteen months. The counties are gradually understanding these subtle nuances of the law and will be notifying the Seed Services Program when they find violations. Since the Seed Services Program has a cooperative agreement with the Federal Seed Regulatory and Testing Branch, Heaton will notify the Federal authorities when counties find seed out of compliance with the Federal Seed Act.

Heaton commented that sometimes it's difficult for the county inspectors to determine if seed is going to a retailer, in which case it needs a germination test date within the last fifteen months, or to a wholesaler/dealer, in which case it needs a germination test date conducted within the last eight months.

Heaton explained that it is also difficult to determine if labelers who provide seed to multiple retailers, are indeed paying the assessments for seed sold by each retailer. He conjectured that it might be possible to track assessments by lot numbers but he quickly retreated from that idea because it would likely become a bookkeeping nightmare for producers and regulators.

Matteis noted that the Department of Pesticide Regulation figured out a way to hold retailers responsible for the assessments of pesticides sold. He suggested that research be done to determine exactly how those sales are being monitored and assessments are being collected.

Several members suggested that perhaps some random audits would help to alleviate the problem of assessments not being paid.

Matteis noted that for the egg program, the law was changed so that out of state egg companies can now be audited. The expense of the audit is borne by the producer.

Tingley commented that there would probably have to be a pretty good reason to do the audit.

Matteis explained that for Texas, they have a similar law and they don't wait for any reason. They simply group producers in an area and split the costs of the audit. In California, the audits of egg labelers are not conducted on a regular basis but just the possibility of being audited caused the assessments to increase by about 25%.

Gabe Patin noted that many of the packages in the large box stores have seed that identifies the packer. For example the packaging may say packed for XYZ store by ABC Company in Oregon or some other state. He expressed concern that since so much seed is sold through these large-box stores, it is important that we collect the assessments from the supplier.

Scarlett asked if it's possible to get information about how much seed was imported by big box retailers and then check that amount against the assessment paid by the supplier.

Heaton stated that he believes that is the battle that the Department of Pesticides fought, namely getting information about suppliers. He suggested that large box stores may be more compliant and willing to provide the information to the Seed Services Program since their fight with the Department of Pesticide Regulation.

Heaton said he would look into the cost of conducting audits, paying particular attention to return on investment.

Matteis stated that the Feed Program started auditing companies with reported sales that didn't make sense. The Feed Program simply reimburses the CDFA Market Enforcement auditors for the cost of the audit. He noted that just by notifying firms that the Feed Program believed there has been substantial under-reporting and that audits will be forthcoming, the reported tonnage increased from 14.18 million tons of feed to 16.2 million tons of feed in one year.

Scarlett asked if Heaton periodically speaks with industry about reduced sales in any particular seed crops.

Heaton replied that he does speak to industry representatives to get an estimate of their market. He stated that he recently learned cotton seed sales were down due to so many farmers switching to orchards. He suggested that this may be one reason that assessment collections are down. He explained that he does compare that assessments paid by each company over years and will ask them to explain in writing, any significant declines in reported sales.

Marc Meyer asked if it would be possible for the Board to look at reported sales for each kind of crop.

Heaton explained that companies only report sales in the broad categories of agricultural, vegetable and grass seed. He told the Board that he will provide those values.

Heaton concluded his Border Inspections report by informing the Board that he is developing a flowchart to assist Border Inspectors and County Inspectors. The flowchart will walk them through the state and federal regulations in a logical way when they inspect seed shipments. It is about 80% complete but will require testing with select counties before it is finalized.

- CDFA Associates performing seed sampling – Heaton referenced the yellow handout. The handout showed that CDFA samplers were at twenty-three percent of their annual goal of 600 seed samples collected. Heaton stated that by November he hoped to see the sampling effort at thirty-three percent but he felt the twenty-three percent figure was adequate for several reasons. He explained that three members of his staff required surgery during the fall and one more was scheduled for surgery around Thanksgiving. Another reason for the deficiency was the fact that his staff had to attend Federal Seed Sampler Training during September. The training required four days from each staff member's schedule. Those four days were essentially the entire amount of time some of the staff could allocate for seed activities during the month. Since Seed Services only pays part of their salary, we only get part of their work week. One biologist is paid one-hundred percent by Seed Services but the other biologists have to also perform Nursery Inspections and Registration/Certification activities. If Seed Services only pays twenty-five percent or fifty percent of a salary, we can only expect five to ten days a month in seed related activities.

Heaton stated that he was not too concerned about the deficit because his staff has assured him they will make up the deficit as more seed becomes available near the spring planting season.

Member Scarlett asked how soon the test results come from the lab. He added that a sample was taken from his warehouse in March 2006 but he has not received any results. Heaton inquired if he was referring to service samples or regulatory samples?

Scarlett clarified that he meant regulatory samples.

Heaton explained that Seed Services does not typically send out results from regulatory samples unless there is a problem. He added that a company can request the results if they are critically important.

Scarlett stated that the seed was probably sold the next week and the results wouldn't mean a whole lot.

Heaton commented that the regulatory samples are really for compliance monitoring.

Effenberger offered that the turn-around time is much shorter because the number of regulatory samples has been reduced. He added that all regulatory samples submitted to the lab so far, have been finished or at least started.

Deborah Meyer added that the flow of samples is better now than when the counties were submitting samples. She reminded the Board that the counties typically sent the bulk of their samples in the spring or towards the end of their contract.

- Tally of label violations – concentrate on areas?  
Heaton referenced the white handout with two pie charts. He noted that about 35% of the regulatory samples were vegetable seeds and 65% were agricultural seeds. The top pie chart showed that 83% of the regulatory samples analyzed were in compliance and 13% failed. Four percent were still being processed. Heaton speculated that if only one-half the 4% still in testing were able to pass, the overall compliance would be at the target of 85%.

The second pie chart graphically displayed the reasons that 15% of the samples failed. Twenty-five percent of the failures were due to poor germination of agricultural seed.

Seventy-two percent were due to misstatement of the pure seed components and about 3% were due to miscellaneous factors such as not stating the kind of seed. Only about 12% of the failures were vegetable seed.

Gabe Patin asked what happens to the seed once CDFA determines the stated purity is not accurate.

Heaton replied that the company receives a letter informing them of the results. He added that this is analogous to the procedure at the Federal Seed and Regulatory Testing Branch. Basically, a company receives three warning letters before they usually implement punitive measures.

Patin asked if a stop-sale is issued.

Heaton explained that it is usually too late to issue a stop sale. Instead the warning letter is issued. The hope is that the warning letter will compel greater efforts toward compliance.

- Seed Complaint Activities- county flyers

During September, Seed Services mailed seed complaint pamphlets in English and Spanish, to each of the counties. The idea is that the pamphlets will be available to county agricultural staff in case someone wishes to file a seed complaint.

Heaton reported that there were two seed complaints in the FY 05-06. Both complaints required formation of an Investigative Committee that met with all of the parties. After the Investigative Committee meeting the originator of one complaint decided to not pursue the matter further. He dropped his complaint. The originator of the second complaint was not happy with the findings of the Investigative Committee and requested mediation. The respondent chose not to participate in mediation and both parties were released from further participation in the seed complaint process, thus allowing them to seek other legal remedy. Currently there are no seed complaints.

Heaton also reported that he presented a PowerPoint presentation about the seed complaint process at the CSA midyear meeting in Monterey.

Gabe Patin asked if any of the Board members participated in the Investigative Committee Meeting.

Heaton replied that the Board members are not required to participate and would only participate if they are party to the complaint.

Patin offered that he and Larry Hirahara previously participated in the seed complaint process. He expressed his satisfaction with the process.

Heaton volunteered that after his presentation at the CSA midyear meeting, an attorney in the audience commented that he was impressed at the thoroughness of the CDFA investigation. He also stated that for him to have access to the kinds of resources that CDFA was able to draw upon, including field biologists that collected soil samples and seed botanists that identified weed seeds in the lab, would have cost his client about \$65,000. While these investigations turned out in favor of the labelers, Heaton noted that under different circumstances, an investigation may just as easily favor a grower's position.

Patin related that from the cases he has witnessed, the grower or complainant were very impressed at the fact that eight or ten people would come and listen to the complaint. He suggested that sometimes just being able to verbalize the situation to others is enough to defuse the situation.

Heaton added that he believes it is valuable for the disputing parties to see how their arguments are received by neutral parties. Sometimes that alone is enough to make parties want to settle the dispute.

- Federal Seed Sampler Training

Heaton commended the County Ag Commissioners for their cooperation, with only short notice, to send county staff to training in Oxnard and Woodland during September 2006. Dr. Richard Payne and Roger Burton of the Federal Seed Regulatory Testing Branch (FSRTB) trained forty-three people in the proper methods to collect seed samples. Beginning January 2, 2007, all samples that are listed as being an “Official Sample” on USDA Seed Analysis Certificates, must be drawn by an authorized sampler that has successfully completed the training.

Heaton noted that the trainees each received a booklet with guidelines for collecting seed samples to be submitted to the USDA –FSRTB. He also noted that the Association of American Seed Control Officials (AASCO) has recently published a new seed sampler’s booklet. He explained that the two booklets are slightly different in that the AASCO methods are used to collect regulatory samples, while the booklet from the FSRTB is more comparable to methods used by the International Seed Testing Association (ISTA).

Cher Williams asked if labelers in each county know that people in their county are authorized to pull official samples for the Federal Seed Lab.

Heaton replied that he does not know of any direct announcements, but stated that he would be announcing it at CSA meetings and that the CCIA stated they would also let seed handlers know. He believes that labelers who export seed to countries requiring a Federal Seed Analysis Certificate will likely contact their County Ag Commissioners with a request for such sampling.

Several participants requested that Seed Services add a link to the list of approved samplers.

Heaton asked the Board how much support, in terms of providing booklets and seed sampling equipment, should Seed Services provide to the counties?

The suggestion was made that counties could either charge companies enough to cover the cost of sampling equipment and collecting service samples or the companies could provide the equipment themselves. This suggestion was supported by the Board.

Deborah Meyer asked if any CDFA Biologists received the Federal Training.

Heaton replied that they did.

Bob Stewart asked if this Federal Sampling was different than the sampling done by private labs that issue ISTA certificates.

Heaton replied that they are different. The county inspectors are only authorized by the Federal Lab to collect samples for the Federal Lab, not for private labs.

Cher Williams noted that ISTA sampling is very extensive, including sealing the bins. She stated it is a lot more work for the labeler.

Bob Stewart commented that the two entities do not recognize each others protocol as equivalent.

Cher Williams noted that most countries will accept a USDA Federal Seed Analysis Certificate.

Bob Stewart noted that having only forty-four approved samplers for the whole state is not very many.

Heaton noted that counties with a large number of seed firms were strongly urged to send more than one person to the training and they did. Yolo, Monterey, Yuba, Ventura and Fresno had multiple attendees.

## **6. Status of Seed Subvention Contracts and payment to counties (Heaton)**

Heaton reported that Seed Services made three annual payments to counties during FY 2005-06. The Seed Services Program is now caught-up on payments to the counties. Because of the new directive from the Board, for counties to not collect seed samples any longer, Heaton developed a new Report 6 for counties to report seed law enforcement activities. He explained that each county submits a Report 6 each month so that he can measure their performance toward fulfillment of the contracted scope of work. He noted this year he was able to get an accounting from all of the counties by October 31. Consequently he was able to tally all of the variables across all counties. The results of the tally are represented on the Report 6 handout. This handout was also presented to the County Ag Commissioners during their annual meeting. The handout was used to demonstrate that based on the total of 1848 hours reported, the counties were paid about \$65 per hour. Heaton's impression from County Ag Commissioners was that they were agreeable to that amount.

- Adequacy of current funding for county seed subvention (Heaton)  
Several counties previously told Heaton that the \$100 base amount for participating in the Seed Subvention program, especially for counties with no labelers, is hardly worth the cost and effort to process the contract. Heaton asked if the Board if felt it might be appropriate to increase the base amount, perhaps to \$200.

Rich Matteis noted that the strategic plan recommended that the Board eliminate all of the \$100 payments.

Ron Tingley suggested that if counties don't have any measurable work and they don't believe it's cost effective to participate at the \$100 level, perhaps they should just not participate. They have that option.

Heaton noted that there are four counties that do opt-out of the seed subvention program. He further explained that the seed subvention contracts are a bit problematic for some counties because Seed Services does not state a contract amount up front. Payments are made in arrears. Sometimes this makes it difficult for county agricultural departments to get approval from their Board of Supervisors for the seed contracts.

Gabe Patin asked if a Board action was needed to eliminate or change the \$100 minimum.

Heaton noted that even though counties may not have labeler firms, the county staff can still perform seed law enforcement activities when they inspect imported seed for compliance to the seed law. Those shipments are flagged by CDFA Border Inspectors in the 008 report for counties to evaluate.

Matteis noted that the statute stipulates that no county shall receive less than \$100.

On a related matter, Heaton reported that the cost for counties to attend the Federal Seed Sampler Training was about \$6,500. He noted that the cost for training will be deducted from the \$120,000 before the subvention funds are allocated to the counties for work performed in 2006-07. Some counties have expressed concern that there will not be enough money to pay them comparable to

previous years. Heaton explained that he does not contract the entire \$120,000 but instead holds back a small amount to serve as a kitty, which is ultimately divided between counties that do extra work.

## **7. Seed Biotechnology Center Report (Bradford)**

Dr. Kent Bradford reported that Dr. Allan Van Deynze finished major research projects involving molecular marker development in cotton and tomato. The SBC has been working on a study of pollen-flow between Acala and Pima type cottons. This year's efforts involved a lot of sampling in fields and preliminary results identified eight of the twelve combinations that were sought. The four missing combinations were due to the lower acreage of the Roundup Ready Pima.

A recent meeting of UC Extension Specialists and Farm Advisors was held to discuss various outreach and education issues. Of note was Mary Bianchi's contribution from her experience with the initiative to ban genetically engineered organisms in San Luis Obispo. She shared her experience and observations of working with a community committee that was formed to address the issue of coexistence.

Gabe Patin asked if the initiative passed.

Bradford reported that the initiative failed in San Luis Obispo, but the activity that came from the discussions has continued with the community committee. He noted that their main concern seems to be about field trials and sources of contamination that other people may not know about. It appears that they are trying to implement some sort of voluntary system or network to let people know the kind of crop someone intends to grow... biotech or organic. He commented that it sounds a lot like the seed industry model. Bradford was optimistic that people have gotten to the point that they think it is valuable to find a way to coexist. He hastened to add however, that there are counties that have not arrived at that point or even started that discussion.

Sue Webster commented that the hope is that University Extension and Farm Advisors can build on Mary Bianchi's model and share it with growers in other counties.

The Chair recognized a request from Matteis to briefly comment about efforts toward coexistence.

Currently CSA, the Farm Bureau and others are exploring what their approach will be to the whole biotech issue being addressed in the legislature next year. The issue to be addressed is the concern that opponents have for any bill that preempts counties from regulating biotech on a county by county basis. A key part to drafts being developed is the whole concept of coexistence. The drafts will try to provide a more formal role for the Department of Food and Agriculture in dealing with biotech. This might include a Life Sciences Office or a position within CDFA with a statutory requirement that they evaluate all new biotech projects in the state. Matteis noted that CDFA already does this but it is not a role in statute.

The second part is to have a committee that works with Seed Services to deal with coexistence issues. He anticipated that such a development would require some staff support, in terms of time and money, to do this. Matteis envisions that the committee would have some people from academia, some organic growers and some people from the seed industry, to deal with some of the coexistence issues. The hope is that the committee could possibly come up with a list of good agricultural practices related to coexistence of conventional, organic and biotech. The reason that this concept is important to the Board is because any costs related to implementing such a law would fall on the Seed Services Program.

Matteis explained that the proposal is being written in this manner because if it's a general fund expenditure, it's more difficult to get it through the legislature. If the industry agrees to pick-up the cost, it's possible to even skip hearings. These ideas were never put forward last year, but

Matteis thinks they might be part of a concept that gets pursued in the 2007-2008 legislative session.

Matteis asked the Board if they supported these concepts and if they would approve paying to implement such a program. He added that once the good agricultural practices are developed, the cost could perhaps be reduced because those methods will have been developed and will only require periodic update once they are in place.

Gabe Patin asked if there has been any effort to have a statewide law defining biotech.

Matteis explained that there was a statewide pre-emption bill that would have prevented each county from making their own regulations concerning this. He explained that Senate President pro Tem Don Perata, would not allow the bill to go forward or be heard, so it just kind of fizzled-out in the Senate. The bill actually passed the Assembly with fifty-one votes, which was higher than the forty-one he expected.

Matteis noted that the recent situation with the Liberty Link rice may make it difficult to pass any legislation for a while. He explained that due to the situation, the rice industry has to test every load of rice going to Korea, Taiwan or Japan, even though the Liberty Link trait is not in California rice.

Dr. Kent Bradford asked why Senator Perata did not move the bill forward. Matteis replied that he believed members of Senator Perata's staff are not comfortable with biotech.

Larry Hirahara noted that a California Certified Organic Farmers (CCOF) newsletter claimed CCOF was partly responsible for blocking the preemptive bill.

Matteis noted that a lot of people claimed victory and that he felt CSA had a victory because the bill got fifty-one votes in the Assembly.

He then asked the Board again, if they would be o.k. with adding a more formal role for CDFA to review biotech projects.

Bradford noted that the San Luis Obispo group working on coexistence, wanted to know if the state gets notified of biotech trials. Do they get a copy of the Federal documents and would the person that reviews these projects be able to send that information to voluntary coexistence networks in counties?

Matteis replied that he knows the state gets notified and reviews biotech projects but he wasn't sure what access they have to all of the Federal documents. He stated that there were approximately 367 projects in the previous year and the California Department of Agriculture evaluated and commented on every one of them. He added that the department is not required to do that, but they are allowed to. The department routinely calls interested parties for input.

Gabe Patin asked who enforces county ordinances against GMOs and have there been any violations.

Matteis stated that he believes the County Ag Commissioners enforce the ordinances. He added that he is certain that there have been violations, but whether they have been caught is another matter.

Gabe Patin then asked if there have been any enforced violations.

Matteis responded that he did not know of any.

Heaton asked if part of the impetus for the formation of such a committee is that the counties believe the state does not adequately review or regulate these biotech projects?

Matteis clarified that they are really arguing that there is no role for the state and that they would prefer an entire regulatory framework. Matteis noted that there are some things that could be done to address some of those issues, including strict liability.

Heaton wanted to know if the committee would have to review all 367 biotech projects.

Matteis clarified that the committee would not be doing reviews, but instead would develop good agricultural practices for coexistence of conventional, organic and GMO crops.

Larry Hirahara commented that coexistence is a nice term, but for some individuals in the organic community, coexistence means zero contamination.

Ken Scarlett asked if there would be any cost once these good agricultural practices were incorporated into the seed law.

Matteis said there would be some costs to add staff and implement the law.

Kent Bradford commented that he believes it makes a lot of sense to put the emphasis on coexistence.

Sue Webster noted that the seed industry could provide great expertise and a model for coexistence since they have cooperated for so many years in this manner.

Ron Tingley stated that he supports the concepts that Rich Matteis presented because he believes it's in the best interest of the industry in California and the nation.

Heaton noted that it would be helpful for the Board to go on record with a recommendation supporting any future legislation along this line.

Matteis added that he believes it might cost about \$10,000 per year.

Chairman Keithly asked if everyone agreed.

Nobody disagreed.

Chairman Keithly instructed Rich Matteis to proceed and report back later.

Kent Bradford resumed his report of the Seed Biotechnology Center.

He announced that a Seed Biology and Production Quality Class will be offered in February 2007. In addition, the SBC and the Plant Sciences Department will be offering a Seed Workshop or Symposium from September 17-20, 2007. This symposium will have high level science as well as industry participation. There will be extensive interchange between scientific people working on model systems, and people that use that information to develop products related to seed. Bradford believes this will be an excellent symposium and it appears to be the first of many annual symposiums the Plant Sciences Department will be funding. He noted California will benefit from the contributions of many scientists attending the symposium.

Gabe Patin asked if there would be a fee to attend.

Bradford replied that there would be a registration fee, but he is seeking additional funding from UC, USDA, NSF and perhaps some sponsorship from industry. He does not believe it will be expensive to attend.

Bradford reported on the progress of the Plant Breeding Academy. The first session had fifteen participants representing thirteen different crops they breed. He noted that the attendees are the people actively doing plant breeding for their companies. He also announced that Cathy Glaeser was appointed as coordinator for the Plant Breeding Academy. She started work the first week of September.

There is some recent progress in the search for an Executive Director for SBC. After five months of developing the position description, Bradford was happy to report that as of yesterday the position was approved. He was pleased that he was able to get a position in the management services series and at the highest level possible. He noted that the position is still lower than many on the Advisory Committee thought the SBC would need, but it was the best that could be done. Bradford expects the position to be advertised immediately and it will be open until filled. He noted that the candidates will have to demonstrate skills of fundraising, strategic planning and be a good communicator. It is not necessary that they be a scientist because there are already so many scientists at the SBC.

Sue Webster noted that one benefit of SBC being within the Plant Sciences Department, is accessibility to a graphic artist. She shared a recent newsletter that the department's graphic artist helped to develop.

#### **8. CCIA Update (Heaton)**

Heaton explained that this item was placed on the agenda because tomorrow there will be a CCIA Board meeting. He noted that some people in the seed industry have expressed concern about the many recent changes at the CCIA. He placed this item on the agenda so that the CSA Board would have an opportunity to communicate any messages to the CCIA Board, since Heaton will be attending the CCIA meeting.

Matteis stated that the CSA has an interest in making sure that the operations of the CCIA are running smoothly and that they are adequately staffed. CSA has been in discussion with Larry Teuber and the Dean about these issues. His main concern at the present time is that there is enough support staff there to get the job done.

#### **9. Legislative Report (Matteis)**

Rich Matteis stated that most of the legislative report was covered during discussion in item #7. He noted however, that there was one change to the seed law that would go into affect on January 1, 2007. The change was in section 52455 which now states For vegetable seed sold in containers of one-half pound (227 grams) or less, the viability assurance statement may read "Packed for (year) season" as an alternative to the "SELL BY (month) (year)" statements referenced in subdivision (a).

#### **10. Status of Arbitration Regulations (Matteis/Peterson)**

Matteis noted that the purple handout is the latest draft of the regulations for arbitration. At the top of the document is a summary of concerns that the CDFA legal counsel has noted. The concerns relate to the industry's desire to have timeframes and the department's desire to have more flexibility. The next step is for Matteis to meet with the department's legal counsel and try to incorporate some of their concerns or develop some amalgamation of the two positions.

## 11. **CSA Policy on E.coli and seed testing (Matteis/Peterson)**

Betsy Peterson passed out a handout of the CSA Policy of E. coli. Matteis reported that the seed industry has concern about the request for testing of leafy vegetable planting seed, as well as the potentiality for seed testing of any produce product. Betsy has done much research on the subject and at this point cannot find any clear evidence that this is a seed-borne type of problem that gets internalized. The position of the CSA is that they don't support seed testing. This position was communicated in a letter to the company involved. The letter also talks about other probable sources of contamination, including wild animals and the water supply.

Matteis noted that the Western Growers were originally calling for keeping a voluntary system of good agricultural practices and compliance. More recently however, they are calling for the establishment of a Federal and State Marketing Order which will prescribe standards and methods of growing and handling. It appears that the leafy vegetable industry is now going in the direction of some type of mandatory good agricultural practices and standards. Compliance would be required to produce those crops. In addition, there will be assessments that will have to be collected to fund those activities.

Matteis added that Senator Florez held a hearing on the situation and the possible empowerment of the Department of Health Services to set regulations. Matteis expects that after January, there will probably be at least one bill from Senator Florez about this situation. In addition, those that represent agriculture will likely have their bills to support the industry's concept of addressing the situation through the regulatory process under a marketing act.

Matteis didn't believe there is anything specific that the Seed Services Program can do to help the current E-coli situation. He noted however that the whole controversy has probably impacted the Seed Services Program through a reduction of spinach seed sales and assessments. He concluded that the CSA's concern is that standards for mandatory seed testing do not get developed without scientific justification.

George Hanson asked Deborah Meyer if there were any established protocols for testing of E-coli on seeds if mandatory testing were implemented. He believes the state seed lab would be the place that people would look for a protocol.

Rick Falconer added that one company was requesting that every container on the pallet be sampled and tested.

Marc Meyer added that he heard the sampling protocol requested by one company would result in a three hundred pound sample.

Betsy Peterson read a proposal from a private laboratory that outlined a sampling protocol which required sixty randomly selected specimens at five grams per unit of seed from each bin or an equal number of samples from each bag on a pallet to compromise at least sixty specimens.

George Hanson asked Deborah Meyer if the CDFA Seed Lab has even thought of establishing such a protocol.

Her reply was that she hasn't because the CDFA Seed Lab doesn't do pathogen testing. She stated that the CDFA Pathology Lab could probably answer his question. She noted however, that for seed borne pathogens, the protocol is not nearly that extensive. She added that usually the sampling protocols are based on statistics and desired confidence levels.

Matteis commented that he believed this protocol is based on the desire of the lab to have a very high level of confidence because they fear liability. If another incident were to happen, even though the E-coli has not been shown to be seed-borne, they might have a problem.

Larry Hirahara asked if the American Seed Trade Association (ASTA) has helped during this situation.

Matteis stated that ASTA has actually visited with USDA APHIS on the matter and APHIS is not calling for seed testing at this time, because it appears from all of the literature and science there is only a very, very, remote chance that the seed could contribute to the problem we've seen.

Rick Falconer expressed frustration with continued references in the media that seem to implicate the spinach seed.

Matteis speculated that the media is probably speculating there's a link because they've read articles on the internet about contamination in the sprouting industry. He added that they fail to realize the growing medium and environmental conditions are entirely different.

Marc Meyer agreed and clarified that some literature states that under very high inoculum levels there can be some internalization of the pathogen, however those were under artificial conditions in a lab and not under normal field conditions.

Chairman Keithly asked the Board if they thought the CSA policy was a good start to head off somebody else coming along and telling the seed industry how to do its business.

Rick Falconer commented that he thought it was a good start.

Chairman Keithly felt it was very important to be proactive about public safety and the measures being taken by the seed industry. He added that it's very important for the industry to be present whenever meetings and discussions about this topic are occurring.

Marc Meyer noted that before the E-coli contamination incident with spinach, the industry and APHIS were continually working to improve agricultural practices. He expressed concern that since the E-coli contamination, the FDA has become involved and he's not sure they're familiar with agricultural practices. He asked if ASTA has been in touch with FDA.

Matteis noted that in California, the Department of Health Services (DHS) has been working very closely with CDFA, to make sure they can contact knowledgeable people. He offered to talk with ASTA about the need to make sure FDA has the names of experts they can contact.

## **12. Nominating Committee – Board vacancies - (Falconer, Hansen and Meyer)**

Chairman Keithly noted that Cher Williams will be leaving the Board. He thanked her for her years of participation and contribution to the Board.

Board Member Cher Williams expressed her pleasure with serving and thanked the Board.

Heaton reminded the Board Members that when their employment situation changes, such that they are no longer affiliated with a labeler, they need to let him know. He noted that recently he checked with CDFA legal counsel about whether someone could continue to serve if they were affiliated or employed with a labeler at the time of their appointment, but are no longer employed with a labeler. The legal counsel said "no, the person needs to be a labeler or employed by a labeler."

Chairman Keithly asked the Nominating Committee if they had a recommendation to fill Cher Williams vacant position on the Board.

Marc Meyer stated that the Committee would like to make a motion that Dennis Choate of Harris Moran Seeds, be recommended to the Secretary for appointment to the Board.

The motion was seconded by George Hanson. Motion carried.

**13. Closed Executive Session pursuant to G.C. Section 11126**

Offered by the Chair, but not requested by any Board Members

**14. Reconvene of Public Meeting – Not applicable**

**15. Public comment period – time limit of 3 minutes**

Chairman Keithly asked if anyone in the audience wished to make any public comments. None were made.

**16. Other items – next meeting date.**

The next meeting date was set for May 9, 2007.

**17. Closing Comments and Adjournment**

Chairman Keithly requested a motion for adjournment.

Motion for adjournment was made by Gabe Patin and seconded by Rick Falconer

Motion carried. Meeting adjourned at 11:35 am.

Respectfully submitted by John Heaton, CDFA Secretary to the California Seed Advisory Board