

UNITED STATES DEPARTMENT OF AGRICULTURE

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PUBLIC HEARING

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PROPOSED MARKETING ORDER AND AGREEMENT
FOR PECANS GROWN IN
ALABAMA, ARKANSAS, ARIZONA, CALIFORNIA, FLORIDA,
GEORGIA, KANSAS, LOUISIANA, MISSOURI,
MISSISSIPPI, NORTH CAROLINA, NEW MEXICO,
OKLAHOMA, SOUTH CAROLINA, AND TEXAS

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TUESDAY,
JULY 28, 2015

The hearing came to order at 8:00 a.m. in the Magnolia Room at the Hilton Garden Inn, located at 201 Boo Drive, Tifton, Georgia, Clay G. Guthridge, Administrative Law Judge, presiding.

BEFORE:

CLAY G. GUTHRIDGE
Chief Administrative Law Judge
Federal Maritime Commission

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1 P-R-O-C-E-E-D-I-N-G-S

2 8:04 a.m.

3 JUDGE GUTHRIDGE: This hearing will
4 come to order, Tuesday, July 28, 2015, at 8:04
5 a.m. I note counsel are present, and we're ready
6 to proceed. I see you have your first witness up
7 here.

8 Could you please raise your right
9 hand.

10 Whereupon,

11 LENNY WELLS

12 having been first duly sworn, was called as a
13 witness herein and was examined and testified as
14 follows:

15 JUDGE GUTHRIDGE: Mr. Quirós.

16 MR. QUIR S: Yes.

17 DIRECT EXAMINATION

18 BY MR. QUIR S:

19 Q Would you please state your name.

20 A Lenny Wells.

21 Q And would you please spell it, please.

22 A L-E-N-N-Y, W-E-L-L-S.

1 Q And Mr. -- Dr. Wells, where do you
2 live?

3 A I live here in Tifton, Georgia.

4 Q And, Dr. Wells, what do you do in
5 Tifton, Georgia?

6 A I'm an associate professor at the
7 University of Georgia in the department of
8 horticulture with responsibilities for pecans.

9 Q Thank you. I understand that we
10 have -- that you have provided us with your CV.

11 A Yes.

12 Q And -- which has been marked Exhibit
13 66.

14 (The document referred to was marked
15 for identification as Exhibit Number
16 66.)

17 BY MR. QUIR S:

18 Q Would you just briefly tell us
19 something about your educational background and
20 your involvement in pecans.

21 A Yes. I grew up in Cordele, Georgia,
22 and graduated from Crisp Academy in 1989. I

1 received a B.S. in biology from Valdosta State
2 University in 1994, a master's degree in biology
3 from Georgia Southern University in 1996, and a
4 Ph.D. in entomology from the University of
5 Georgia in 1999.

6 Q And what is entomology, Dr. Wells?

7 A Study of insects.

8 Q Thank you.

9 A And I then worked as post-doctoral
10 associate at the University of Georgia, Tifton
11 campus, in the department of plant pathology
12 until 2002, when I took a position as county
13 extension agent with the University of Georgia
14 Cooperative Extension in Albany, Georgia, and
15 this is where I first became experienced with
16 pecans.

17 In 2004, my job was changed to 50
18 percent county extension agent and 50 percent
19 pecan specialist. In 2006, I was hired in a
20 tenure track position as assistant professor in
21 the University of Georgia, department of
22 horticulture, with statewide responsibilities for

1 pecan extension and research, and was promoted to
2 associate professor in 2012.

3 In addition to this, I farm about 115
4 acres of pecans on my family's farm in Cordele,
5 Georgia.

6 Q Thank you, Dr. Wells. I understand
7 that you've prepared for us today a document
8 called, The Biology of Pecan, which has been
9 marked Exhibit 67.

10 (The document referred to was marked
11 for identification as Exhibit Number
12 67.)

13 BY MR. QUIR S:

14 Q Is that correct?

15 A Yes.

16 Q And you have also prepared for us a
17 document called, The Cost of Pecan Production,
18 which has been marked Exhibit 68.

19 (The document referred to was marked
20 for identification as Exhibit Number
21 68.)

22 BY MR. QUIR S:

1 Q Is that correct?

2 A That's correct.

3 MR. QUIR S: Your Honor, we would like
4 to tender at this time Exhibit 66, which is the
5 CV of Dr. Lenny Wells. We would like to tender
6 Exhibit 67, which is the biology of Pecan,
7 prepared by Dr. Lenny Wells. And we would like
8 to tender Exhibit 68, The Cost of Peach
9 Production, prepared by Dr. Lenny Wells.

10 JUDGE GUTHRIDGE: All right. Let's
11 start with 66. Does USDA have any objection?

12 MR. HILL: No, Your Honor.

13 JUDGE GUTHRIDGE: Does anyone in the
14 audience have any objection?

15 (No response.)

16 JUDGE GUTHRIDGE: No objection.

17 Exhibit 66 is admitted into the record.

18 (The document referred
19 to,

20 having been previously marked for
21 identification as Exhibit Number 66,
22 was received in evidence.)

1 JUDGE GUTHRIDGE: Regarding Exhibit
2 67, does USDA have any objection?

3 MR. HILL: No.

4 JUDGE GUTHRIDGE: And does anyone in
5 the audience have an objection?

6 (No response.)

7 JUDGE GUTHRIDGE: Hearing no
8 objection, 67 is admitted into the record.

9 (The document referred
10 to,

11 having been previously marked for
12 identification as Exhibit Number 67,
13 was received in evidence.)

14 JUDGE GUTHRIDGE: 68, does USDA have
15 any objection?

16 MR. HILL: No, Your Honor.

17 JUDGE GUTHRIDGE: Anyone in the
18 audience have an objection?

19 (No response.)

20 JUDGE GUTHRIDGE: No objection to 68.
21 68 is admitted into the record.

22 (The document referred

1 to,

2 having been previously marked for
3 identification as Exhibit Number 68,
4 was received in evidence.)

5 JUDGE GUTHRIDGE: Mr. Quirós.

6 MR. QUIR S: Yes.

7 BY MR. QUIR S:

8 Q Dr. Wells, I'd like to turn your
9 attention to the first page of what has been
10 marked Exhibit 67 and entered in this hearing,
11 The Biology of Pecan. Before we start, can you
12 tell us a little bit about what that picture
13 represents.

14 A This photo just shows a pecan nut at
15 maturity on the tree. The nut grows inside of a
16 shell, which is inside of a shuck, and the
17 picture, the shuck of this one pecan is opening,
18 and you can see the nut inside the shell inside
19 of it.

20 JUDGE GUTHRIDGE: For the record, this
21 picture is Exhibit 67, first page. Is that
22 correct?

1 MR. QUIR S: Yes, Your Honor. Thank
2 you.

3 BY MR. QUIR S:

4 Q Dr. Wells, why don't you continue with
5 your presentation.

6 A The pecan is a member of the walnut
7 family. It's a hardwood deciduous tree, native
8 to North America, and it's very closely related
9 to hickory. Yes. Next page.

10 BY MR. DAVIS:

11 Q Dr. Wells, if you'll just tell me when
12 to change, I put it on.

13 A Okay. The flowering of pecan, the
14 male and female flowers are born on the same
15 tree, and they are -- this crop is cross-
16 pollinated by wind. You need more than one
17 variety in an orchard for good pollination. The
18 male flowers are called catkins. There are many
19 of these on the tree, produced from a single bud.

20 Because the pollen is distributed at
21 random in the wind, it generates an over-
22 abundance of pollen, to ensure that the other

1 trees do get pollinated. And they're very
2 similar to people. It takes to make a seed, so
3 you have a male parent and a female parent. And
4 just as in people, all the offspring of that tree
5 are different.

6 You can take a thousand nuts from a
7 single tree, plant each one. Each one of those
8 nuts would develop into a tree that then would
9 bear fruit, none of which most likely would look
10 alike, and it would have varying characteristics.
11 Okay. Go ahead.

12 Pecan is a very adaptable species.
13 This is why we see it grown over such a wide
14 area. There's a lot of generic variation within
15 pecan. It has some requirements for growth. It
16 needs over 180 frost-free days for nut
17 production. If you look at the native range of
18 pecans, it runs from Iowa or Illinois down the
19 Mississippi River Valley to the Gulf of Mexico,
20 and then also down into Texas and Mexico.

21 But really most of the production that
22 we see is somewhere from around Oklahoma

1 southward, and the reason for that is that it
2 does take 180 frost-free days to produce the nut.
3 The tree will continue to grow fine north of
4 that, but some years or many years, the nuts
5 don't produce as well if they don't have that
6 many frost-free days.

7 Q Dr. Wells, can we stay there for just
8 one second. The pecan, it looks like its Latin
9 name indicates it's from Illinois. Is that
10 correct?

11 A That's correct.

12 Q And that's where it was first
13 identified?

14 A That's the specimens that were first
15 identified of pecan were from Illinois.

16 Q But because of the frost-free days,
17 they're not able to be commercially produced in
18 Illinois. Is that correct?

19 A That's correct.

20 Q Isn't that sort of an oddity of
21 science?

22 A It is somewhat.

1 Q Okay. As far as you know, the north
2 end of the commercial pecan production range
3 would be Kansas, Missouri?

4 A Yes. That's correct.

5 Q Okay. Thank you. Please continue.

6 A Pecan does prefer neutral to slightly
7 acidic soils, high in organic matter. There's
8 sort of a love/hate relationship with pecans and
9 water. They require 50 to 60 inches of rainfall
10 per year in the wild. We do have some that
11 survive in semi-arid locations due to periodic
12 flooding.

13 While pecans do like plenty of water
14 and soil moisture, they don't like to be in soil
15 that does not drain well, so in their natural
16 habitat in these river bottoms, they occur on
17 ridges, and as the river bottoms are flooded,
18 they get plenty of soil moisture, but the soil
19 they are on on those ridges drains very well.

20 This is why we see most commercial
21 pecan orchards need irrigation, but they don't
22 need to get what we call wet feet, where they --

1 you would have potential to drown the roots.

2 Okay.

3 With pecans or pecan production, you
4 have what we call natives or seedlings and
5 improved cultivars. Natives or seedlings
6 basically are trees or nuts that would develop --
7 or nuts that would develop from a tree that has
8 grown from a seed.

9 In the native range -- and here in an
10 area like this that would not be the native range
11 but where they do survive and grow well and
12 reproduce, most of these seedlings are dispersed
13 by animals, squirrels, birds, and you may see
14 them growing randomly. But because we are in an
15 environment in which they do produce fruit, they
16 continue to propagate themselves.

17 For an improved cultivar, you're
18 looking at a nut or a tree that has been chosen
19 or selected for its particular characteristics.
20 For pecan production, what we look for is nuts of
21 a particular size or quality, percent kernel,
22 disease resistance, the time of maturity and

1 various other characteristics that may make it
2 beneficial for the industry.

3 What you do when you propagate an
4 improved variety, as I mentioned, you -- when you
5 take a certain number of seed from a particular
6 tree and plant those, they all come up as
7 different trees or nuts. If you want to get
8 uniformity and have the same variety, you have to
9 take a twig or a branch from this variety or tree
10 that you like, that produces the nuts that you
11 like, and you have to attach that to the root --
12 what we call the rootstock, which is the tree
13 that sprouts from the seed, so you have to attach
14 that piece of wood from the tree that you want to
15 that rootstock and allow it to grow and produce
16 seeds, so this is how we -- the improved
17 varieties are propagated.

18 Many improved varieties that we have
19 were originally seedlings that someone found and
20 identified that it did have beneficial
21 characteristics, and then so they would start
22 propagating it.

1 Q Can I stop you there?

2 A Uh-huh.

3 Q When you graft an improved pecan tree,
4 does it -- the grafted tree, does it always
5 produce the same characteristics of the scion
6 that was grafted onto the rootstock?

7 A Yes. That's correct.

8 Q So those nuts will continually be the
9 same as -- they won't be different nuts all over
10 the tree; they'll be the same nut.

11 A Right. They will all be the same nut
12 on the tree.

13 Q Thank you, Dr. Wells.

14 A So with seedling trees, you may have
15 a lot of diverse nut size. In a native orchard,
16 for instance, it's composed of many native or
17 seedling trees, so each one of those is going to
18 be a little different, so there would not be as
19 much uniformity in that orchard as there would be
20 in an orchard of improved varieties. Okay.

21 JUDGE GUTHRIDGE: Can I ask a
22 question, Doctor? Do all the nuts on one tree,

1 are they identical?

2 THE WITNESS: They are.

3 JUDGE GUTHRIDGE: Appear identical.

4 THE WITNESS: Uh-huh. They have the
5 same appearance.

6 JUDGE GUTHRIDGE: Yes. Okay.

7 THE WITNESS: The development of pecan
8 varieties as we know it now, we still have
9 seedling trees or native trees that may or have
10 good characteristics that would pop up
11 occasionally that are selected and propagated.
12 But most of the active pecan breeding involves a
13 pretty long, complex process that takes many
14 years.

15 We use -- we have a pecan breeder at
16 the University of Georgia, Dr. Patrick Conner,
17 and most of the techniques that he employs in
18 developing new varieties are what we call
19 classical breeding, and I'll explain this a
20 little more in just a minute.

21 You know, you hear a lot about
22 genetically modified organisms with many crops,

1 and we don't have anything like that with pecans.
2 Pecans are really -- if you look at the research
3 that we have on pecans, you know, pecans have
4 only been a crop or a commodity for around a
5 hundred years or so, and so there hasn't been a
6 lot of time to develop many new techniques.

7 As a result of that and of the small
8 size of the industry and the lack of funding that
9 has been there over the years, we're really sort
10 of still in the Dark Ages with regard to
11 scientific research on pecans and what we know
12 about pecans, if you compare us with other crops
13 and other commodities. All right.

14 I'm going to go through a few slides
15 here that I borrowed from my colleague, Dr.
16 Patrick Conner, that kind of outlines his process
17 of breeding pecans. Basically he starts off with
18 seed production, and in doing this, as I'll show
19 you in just a minute, he has to manually, by
20 hand, take pollen from one tree and place it on
21 the female flowers of another tree, and then has
22 to grow those nuts out, collect those, plant

1 them.

2 At that point, because in his breeding
3 program one of the main focuses is to select
4 scab-resistant varieties or disease-resistant
5 varieties, he puts them through what he calls a
6 scab screening, where he places them in a
7 shadehouse and generates disease pressure on
8 them.

9 At that point, he'll take them out of
10 that, plant them in the orchard, grow them there
11 for a while, and then graft them into a yield
12 trial here at our research station in Tifton and
13 then also after that, it will go on to be trialed
14 in growers' orchards. And I'll give a little
15 more specifics on this as we move forward.

16 But you can see there's often a
17 bottleneck there. There's only so much he can
18 do, because of the limited manpower and the
19 limited money or field space that's there to grow
20 many of these new varieties or new selections at
21 one time. Okay.

22 So to begin with, this gives an

1 example of one particular variety that he was
2 developing, where he took 150 clusters of a
3 improved variety called Gloria Grande, bagged
4 those and pollinated them with the pollen from a
5 variety called Barton. Out of those
6 pollinations, he collected 141 seed. Okay.

7 He then plants these in pots and puts
8 them in the shadehouse and has overhead
9 irrigation in that shadehouse, because with pecan
10 scab, which is our major disease that we would
11 battle, it thrives in humidity, and so he wants
12 to keep that moist and wet and relatively high
13 temperatures to allow scab to thrive if it's on a
14 particular tree that is susceptible to the
15 disease. Any trees that make it through this
16 screening without developing scab are deemed
17 resistant enough to go forward in the program.
18 Okay.

19 At this point, he would take the
20 potted trees to the orchard or to the field,
21 plant them. This presentation was given in 2014,
22 I believe, and that year, he planted 2,000 what

1 he calls progenies. It would be the selections
2 from that. They spend two years in the nursery,
3 and then they're planted into the field. Okay.
4 Next.

5 And then they have to grow there for
6 seven to nine years. Some may be a little
7 earlier than that, but it takes them quite a
8 while to begin bearing fruit, and normally this
9 is seven to nine years, has occurred in six years
10 in this trial. It occurs a little earlier in an
11 improved orchard, and the reason for that is with
12 these, these are seedlings that are planted. And
13 basically these seedlings take longer than
14 grafted trees to produce fruit, because they have
15 to go through a juvenile period, just like
16 people, before they're able to reproduce. Okay.

17 So when they get to this point, if
18 they continue to go through the process and
19 develop fruit that is beneficial or looks like it
20 has beneficial characteristics for the industry,
21 he will take these, and this is -- these that
22 make it this far would then be called a

1 selection, because they do have characteristics
2 beneficial for the industry. He would take these
3 and begin doing what he calls top working, which
4 would just be grafting onto another tree or a
5 seedling rootstock. Okay. You can go forward.

6 At this point, he begins trialing the
7 selection, and what this means is that it is put
8 under commercial production practices and
9 evaluated for its characteristics, one of the
10 most important, of course, being yield. And you
11 can see for this particular selection, which is
12 called 00775 at this point, he's collected yield
13 on three trees there for about six years, and you
14 can see the yield starts to slowly progress
15 upward.

16 The big question here is how much
17 yield data is needed before we really know what
18 that tree is going to do as a mature tree. If
19 you just do it for two or three years, you really
20 don't get a good picture of what that tree does
21 as a mature tree with regard to its yield and its
22 quality, often its scab-resistance even. So it

1 has to be done for several years before there's
2 enough confidence in that data to move forward to
3 the next step. Okay.

4 BY MR. QUIR S:

5 Q Dr. Wells, we've heard a fair amount
6 about alternate bearing with regard to crops.

7 A Uh-huh.

8 Q How long before you would know whether
9 a tree had a characteristic of alternate bearing?

10 A For most trees, the yield, as it
11 starts to produce, the yield will continue to
12 rise for a number of years as that tree just
13 grows and gets bigger. But at some point as it
14 becomes a mature tree -- and this is usually
15 somewhere around 12 to 15 years, maybe a little
16 older in some cases, that characteristic or trait
17 of alternate bearing may start to kick in, and
18 you would see that then.

19 After he trials these selections on
20 the research station, they are then moved to
21 various orchards throughout the state to be
22 trialed under grower conditions, and this will

1 continue for a number of years until they're
2 ready to release that as a cultivar. What you
3 see here is the list of recommended cultivars
4 that the University of Georgia now recommends for
5 planting.

6 There are other varieties that may not
7 be on this list that are still productive
8 varieties to have in the orchard, but we may not
9 recommend planting them because we have
10 potentially better ones coming along. And then
11 this list here, it's -- we have it broken down
12 for low input, medium input, high input,
13 conditional and trial.

14 What low input means is that basically
15 these are varieties that have very good scab and
16 disease resistance and don't need a lot of
17 spraying to produce the crop. Medium input would
18 be those that are somewhat scab-resistant, but
19 under the right conditions, they can develop
20 scab, so they would need to be under a scab spray
21 program.

22 The high input varieties that you see

1 here, Desirable and Pawnee, are very productive
2 cultivars. They're very commercially attractive,
3 but they're also very high input and require a
4 lot of spraying to produce those nuts in many
5 years when the rainfall is enough to generate the
6 pressure required for disease.

7 We have conditional varieties that
8 have certain characteristics that growers just
9 need to be aware of as they plant those, because
10 they may have certain things that they need to do
11 to those varieties in order to make them
12 productive.

13 And then, of course, the trial
14 cultivars are the newer cultivars that have been
15 recently developed that we don't necessarily know
16 as much about as we know with these other
17 varieties, but we do feel that they have
18 characteristics that could be beneficial to the
19 industry, and we want to begin getting them out
20 there to the growers. Okay.

21 And this slide just simply shows the
22 growing season of pecans. You start out with

1 budbreak in April when the foliage begins to
2 develop and the flowers begin to develop.
3 Pollination occurs in May. The nuts will then
4 develop from those female flowers.

5 In about this time of year, late July,
6 early August, there's something that takes place
7 in the tree that's very important for production
8 called female flower induction. And basically
9 what that is is just that the tree is sending out
10 signals, basically it to itself, to the cells, to
11 tell them whether to develop next year's crop
12 more as vegetative or reproductive. So it's very
13 important at this time --

14 JUDGE GUTHRIDGE: What do you mean by
15 vegetative and reproductive?

16 THE WITNESS: Vegetative would be
17 where it develops more -- it would be developing
18 more leaves and foliage, rather than nuts, and
19 then reproductive would be developing a large nut
20 crop.

21 So it's very important at this time of
22 year to keep the tree as stress-free as possible.

1 Any additional stresses on the tree would limit
2 that flower induction and thereby limit the crop
3 for the next year, so that often when we're
4 growing pecans, we're not necessarily only
5 worried about this year's crop; we have to think
6 about next year's crop as well.

7 The nut then continues to develop, and
8 it gets into what we call the water stage, where
9 the kernel inside that shell is basically just a
10 sac filled with water at this point. As it
11 continues to develop, it will go into what we
12 call the dough stage -- or I'm sorry -- the gel
13 stage, where that liquid material inside there
14 will start to solidify and gel, and then it moves
15 into the dough stage, where it continues to
16 solidify and then mature.

17 Shuck split occurs in October. Many
18 times defoliation will not occur until we have a
19 freeze, usually late November or December before
20 that happens. Then it continues on. You know,
21 at that time, October through December is the
22 primary part of the year where the nuts are being

1 harvested, and then they go in -- the trees go
2 into a dormancy period throughout the winter, and
3 the buds begin to swell again in March before
4 they develop in -- before the foliage and flowers
5 develop in April. Okay.

6 MR. QUIR S: Your Honor, we have a few
7 questions of Dr. Wells.

8 BY MR. QUIR S:

9 Q Thank you, Dr. Wells, for your
10 presentation. The first question I have is a
11 little bit -- is a question about scab. We use
12 that term often, but could you describe that
13 scientifically.

14 A Yes. Pecan scab is a fungus that will
15 grow on the foliage, on the leaves, and on the
16 nuts as they are developing. And as I mentioned
17 earlier, it thrives in humid -- warm, humid
18 conditions, such as we have here in the
19 Southeast.

20 Q And when you say it develops on the
21 nuts, do you mean on the shuck?

22 A Yes. It develops on the shuck, on the

1 outside of the nut.

2 Q And from a commercial standpoint, is
3 the end result that it lowers the volume of nuts
4 and the qualify of the nut?

5 A Yes. Depending on the susceptibility
6 of a particular variety, the disease may
7 completely kill those developing nuts. It could
8 damage the foliage to the point that the foliage
9 on the tree basically drops off the tree, which
10 would limit its ability to produce, and then, of
11 course, if you lose the nuts, you're losing
12 yield. But even if you have a little -- some
13 scab on the nut, you could still -- the nut may
14 develop, but you would have losses in quality.

15 Q Thank you. You described Dr. Conner's
16 breeding program in Exhibit 67, beginning on
17 basic pecan breeding, and you had several pages
18 on that. How long does it take, from start to
19 finish, to get a -- going through those trials,
20 to get a pecan to the point that it's available
21 for propagation and for planting commercially by
22 growers?

1 A It depends a lot on the breeder, but
2 many times, you know, a breeder can spend his
3 whole career and only have a handful of varieties
4 released. It may take 20 years to develop a
5 variety.

6 Q And then additional time for
7 acceptance by the grower community?

8 A Yes.

9 Q Thank you. Have you read and received
10 what has been marked as Exhibit 1 to these
11 hearings? There's a copy, I think, on your desk,
12 Dr. Wells, which was entitled, Notice, and it
13 includes the proposed federal marketing order for
14 pecans.

15 A Yes.

16 Q Would you please turn to Section
17 986.28. It would be on page 38024 of the Federal
18 Register.

19 A Okay.

20 Q And if you would take a minute just to
21 read that definition of pecans, and I'd like to
22 ask you a few questions about that.

1 A Okay. Read it out loud?

2 Q No, sir. Read it silently to
3 yourself, and then I'll ask you a few questions.

4 A (Perusing document.) Okay.

5 Q Thank you, Dr. Wells. Dr. Wells, in
6 Section 986.28(a), do you agree as a scientist
7 that that is a good definition of pecans?

8 A Yes.

9 Q And specifically in Section
10 986.28(a)(1), is that a sufficient description of
11 native or seedling pecans?

12 A Yes.

13 Q And if you would turn to, please, to
14 Section 986.28(a)(2), improved pecans, is that a
15 fair description of improved pecans?

16 A Yes.

17 Q Let's take a moment in that section to
18 take a look at the nonexclusive listing of
19 cultivars that are listed there. Take a moment
20 to read those.

21 A (Perusing document.) Okay.

22 Q Is that an accurate list of the major

1 cultivars that commercial growers use?

2 A Yes.

3 Q Thank you. Please take a look at
4 Section 986.28(a), subsection (3), substandard
5 pecans. Look at that definition, please.

6 A (Perusing document.) Okay.

7 Q Is that a fair and accurate
8 description of substandard pecans?

9 A Yes.

10 Q Thank you.

11 MR. QUIR S: No more questions from
12 the Proponents' counsel. I would announce to the
13 audience and to the USDA that this will be our
14 last scientific witness, so to the extent that
15 there are any questions with regard to the
16 science of a pecan, this will be our last
17 opportunity to ask someone of Dr. Wells's
18 qualifications. After he finishes with
19 questions, we'll go on to cost of production,
20 which was more of an economic discussion.

21 JUDGE GUTHRIDGE: So you're giving the
22 USDA an opportunity now on Exhibit 67. You

1 intend to go to 68 a little bit later.

2 MR. QUIR S: Yes, sir.

3 JUDGE GUTHRIDGE: Okay. Does the USDA
4 have any questions?

5 MS. VARELA: Jen Varela, USDA.

6 CROSS-EXAMINATION

7 BY MS. VARELA:

8 Q Dr. Wells, thank you so much for being
9 here with us this morning, and opening yourself
10 up to all of our questions. I wanted to get a
11 little more of your perspective on some of the
12 research of developing new cultivars. I know
13 you've already testified that it can take upwards
14 of 20 years to get something in the system, and I
15 believe you're familiar with Exhibit 1, which
16 outlines the proposed order.

17 A Yes.

18 Q Have you had a chance to look at some
19 of the language that refers to the authority for
20 research and promotion?

21 A Yes.

22 Q Okay. So given your experience in

1 developing and doing some of that research, do
2 you see that language there, which gives kind of
3 a broad authority, as sufficient for creating a
4 program that would help support some of the
5 research already going on in the industry?

6 A Yes.

7 Q Okay. And given your understanding of
8 some of the proposals, is it your opinion that
9 this type of program could provide some stability
10 to the research that's going on?

11 A Yes.

12 Q Are you concerned at all that some of
13 that -- some of those long-term projects may
14 otherwise not be secured funding? We've heard
15 a couple other witnesses talk about research
16 centers losing funds. Is that something --

17 A Yes.

18 Q -- you've seen in your experience as
19 well?

20 A Yes.

21 Q And is that stable source of funding
22 something that you think is particular to this

1 industry in terms of having to have long-term
2 research and developing trees as opposed to a row
3 crop that might be able to go through many
4 iterations at kind of a quicker pace?

5 A Yes. I think just the long-term
6 aspect of the process for growing pecans and
7 developing new varieties does require more long-
8 term funding.

9 Q And to your knowledge, are there any
10 promising cultivars in the system now that might
11 be on the market in the next few years, or do you
12 think --

13 A Yes.

14 Q -- the industry is ten, 15 years away
15 from something new that, say, might be scab-
16 resistant?

17 A No. There are some coming along that
18 will probably be released in the next, say, two
19 to five years, and then, of course, there are
20 always new -- you know, more in the pipeline.

21 MS. VARELA: Okay. Those are all my
22 questions for now. Thank you.

1 MS. SCHMAEDICK: Melissa Schmaedick,
2 USDA.

3 BY MS. SCHMAEDICK:

4 Q Good morning.

5 A Good morning.

6 Q Thank you, Mr. Wells, for -- or Dr.
7 Wells, for your testimony. Could you turn to the
8 page in Exhibit 67 that is entitled UGA
9 recommended pecan cultivars. I'll show you the
10 table.

11 A How far --

12 MR. QUIR S: Way in.

13 BY MS. SCHMAEDICK:

14 Q It's the page before last in the
15 exhibit. So I want to ask you about some
16 specific cultivars that are listed on this.
17 Under the low input column, there's a cultivar
18 named Amling.

19 A Yes.

20 Q Is that currently in production?

21 A It is available. We don't have many
22 commercial growers that are growing Amling,

1 because that particular variety is very disease-
2 resistant, very pest-resistant, but its yield
3 potential is very low. So it really doesn't have
4 the qualities that we look for for commercial
5 production, but it would be good for someone who,
6 say, wants to grow a few pecans in their yard or
7 something.

8 Q Okay. And then under the column with
9 the title, Trial --

10 A Uh-huh.

11 Q -- there are three cultivars that I
12 wanted to ask you about. The first is Ellis.

13 A Uh-huh.

14 Q Is that currently in production?

15 A It's in nursery production now. There
16 are a few mature trees up near Dooly County,
17 Georgia, in a grower's orchard that are
18 producing. It seems to be a variety that has
19 very good characteristics, and it is in
20 production in the nurseries now, so it's
21 available for planting.

22 Q Uh-huh. What about Huffman and

1 Treadwell? Those are also cultivars under the
2 trial.

3 A That's correct. These are cultivars
4 that were developed by retired UGA professor Dr.
5 Darrell Sparks, and they are now in nursery
6 production. There are some in commercial
7 orchards at this point. They're still young
8 trees, probably the -- there are some in Albany
9 in orchards that are probably ten years old or
10 so, eight to ten years old maybe at the oldest.

11 Q Okay. Thank you. Now, if you could
12 keep that table up there on the screen, but then
13 if you, Dr. Wells, could look at the definition
14 of "pecan" in Exhibit 1, and it's definition
15 986.28.

16 A Okay.

17 Q If you look at paragraph (a)(2) --

18 A All right.

19 Q Towards the end of that paragraph,
20 there's a list, and I realize it says, "including
21 but not limited to." But there's a list of names
22 here.

1 A Uh-huh.

2 Q And I've compared this list of names
3 to the chart in your Exhibit 67.

4 A Uh-huh.

5 Q The names that I selected, Amling,
6 Ellis, Huffman and Treadwell, do not appear in
7 the list in the definition of pecans. And I'm
8 wondering: In your opinion, would it be helpful
9 and would it add clarity, ease of reference, to
10 include these four cultivars that UGA is
11 recommending in this list that is in the
12 definition?

13 A Potentially, but I feel that, you
14 know, if -- there are so many others out there.
15 There's over a thousand different varieties,
16 improved varieties, so you could potentially add
17 them. I don't know that it would benefit
18 anything if the language is in there, you know,
19 that says, including but not limited to.

20 Q Uh-huh.

21 A It's difficult to say at this point or
22 this stage how -- what the acceptance of those

1 varieties will be among the growers, to know how,
2 you know, widespread they'll be planted.

3 Q Uh-huh. So then following up on that
4 statement, the other cultivars that are listed
5 under, Trial, Byrd, Zinner, Lakota, Mandan,
6 Morrill and Cunard, even though they're under the
7 trial column, do you think they are -- their
8 chances for commercial production are higher than
9 Ellis, Huffman and Treadwell?

10 A Probably so, because they're a little
11 further along in the process.

12 Q Okay. All right. Thank you for that
13 clarification. You also -- you discussed the
14 issue of scab disease, and I'm just curious. Is
15 that fungus, is it airborne or soil? Where does
16 it exist in the environment?

17 A It tends to overwinter on the branches
18 of the tree as it's dormant, and then the spores
19 would be released in the spring under the right
20 environmental conditions, and then it's dispersed
21 by wind, splashing rain, you know, physical
22 dispersal.

1 Q Okay. Thank you. You also mentioned
2 that pecans are related to walnuts.

3 A Uh-huh.

4 Q So in the future, would it be possible
5 to cross a pecan and a walnut?

6 A No. I don't think that would work.
7 It's a little too distantly related to the
8 walnut. It's in the same family. Hickories,
9 pecans are in the same family with walnuts. But
10 they're a little too distantly related to be
11 crossed.

12 Q Okay. So, for example, using a walnut
13 to develop a disease-resistant strain is not
14 something that you --

15 A No. That's --

16 Q -- see a possibility.

17 A No.

18 Q Okay. My last question is related to
19 your experience working with the extension
20 service, and if you turn your attention to
21 Exhibit 1, the definition of grower, which is
22 986.16 --

1 A Okay.

2 Q So in working for the extension
3 service, what area did you cover geographically?
4 Was it just Georgia, or did you go beyond that at
5 all?

6 A Just Georgia. My responsibilities are
7 just for Georgia.

8 Q Okay. So what we're trying to
9 understand is whether or not the definition which
10 places sort of this threshold of 30 pecan acres
11 or 50,000 pounds to demark the separation between
12 commercial producers and hobby producers, so
13 based on your experience out in the field as an
14 extension service agent and working with many
15 different types of farmers, how does this
16 definition apply to your experience?

17 A I think it's a suitable definition,
18 because if you've got 30 acres, that's enough
19 that you would need mechanized equipment to do
20 the management and harvesting of the crop, and
21 that would -- then you've got all the expenses
22 involved in it, and so I think 30 acres is a fair

1 line to draw.

2 Q Thank you. There's a term in this
3 definition, "pecan acres," and it's attributed to
4 the FSA, Farm Service Agency. Are you familiar
5 with that term?

6 A Yes.

7 Q Can you describe how that term works.

8 A The FSA office would keep records of
9 FSA for a particular farm of the acreage, of
10 different crops that are grown, so the pecan
11 acreage would be the certain acreage of that farm
12 that is basically in a pecan orchard and
13 producing pecans, and that's reported to the
14 office by the grower.

15 Q And so are you familiar with the use
16 of "pecan acres" and the FSA definition in areas
17 where native production is prevalent?

18 A Not so much natives. No.

19 Q Okay. Thank you. And then if you
20 were turn your attention to a definition of
21 "region," 986.32 --

22 A Okay.

1 Q And if you could take a moment to read
2 paragraph (a)(1), (2) and (3) --

3 A (Perusing document.) Okay.

4 Q So again, based on your experience,
5 under 986.32(a)(1), it defines the Eastern Region
6 as Alabama, Florida, Georgia, North Carolina, and
7 South Carolina. Does that region make sense to
8 you in terms of similarities in production,
9 environment, and other factors that may
10 contribute to the pecan industry in those states?

11 A Yes, it does.

12 Q Okay.

13 MS. SCHMAEDICK: Thank you. I have no
14 further questions.

15 JUDGE GUTHRIDGE: Are there any more
16 USDA questions?

17 (No response.)

18 JUDGE GUTHRIDGE: Mr. Quirós?

19 MR. QUIR S: No further questions
20 about this exhibit with this witness.

21 JUDGE GUTHRIDGE: Do you want to go on
22 to the next exhibit?

1 MR. QUIR S: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. QUIR S:

4 Q Dr. Wells, you have what has been
5 marked and entered as Exhibit 68, the cost of
6 pecan production. Would you please walk us
7 through that exhibit.

8 A Yes. Now, I'll start with somewhat of
9 a disclaimer on this, that I'm a horticulturist
10 and not an economist, but I do, in my job and in
11 my role, I do have to answer many of the
12 questions that involve the topic that I'll be
13 discussing. Because we have -- as has been
14 discussed prior to this testimony, we've had many
15 new pecan acres going in to production. Much of
16 this is by people who are already growing pecans,
17 but there's a fair amount of it that's people
18 getting into the pecan business that are new to
19 it, and of course, the first question is, how
20 much does it cost. And so I've become very
21 familiar with these numbers, and hopefully it
22 will be sufficient to answer your questions.

1 Q Thank you, Dr. Wells.

2 A What you see here is a slide that
3 represents the supply --

4 JUDGE GUTHRIDGE: Right here, this is
5 the second page of Exhibit 68.

6 THE WITNESS: Yes. This represents
7 the supply, consumption and price of pecans. And
8 the black, the darker bars that you see there, is
9 the supply, and you can see that for many
10 years -- and this runs from 1989 to 2013.

11 You can see for many years there, the
12 supply is relatively stable. It's not changing a
13 lot. You have individual years that may be up
14 and down a little, but that's due to the
15 alternative bearing tendency of pecan. But when
16 we reach somewhere around 2007, we start to see a
17 little uptick in the production.

18 Consumption, as well, is pretty table
19 for this same period, and then we see a little
20 bit of an uptick, not much, but there is a little
21 bit of an uptick around 2007 or '8, and along
22 with that, we see the price during that time

1 begin to go up, and in 2010, it takes a pretty
2 big jump and then continues at somewhat of a
3 higher level. Okay.

4 JUDGE GUTHRIDGE: What does JR MAM HVS
5 mean, price of --

6 THE WITNESS: Okay. I'm sorry. Price
7 of JR MAM HVS, that's junior mammoth halves, and
8 that would be the large pecans that are most
9 desirable for consumers.

10 BY MR. DAVIS:

11 Q Dr. Wells, is that a USDA designation,
12 the junior mammoth halves?

13 A Yes.

14 Q Is that the one from 1969 that
15 we're --

16 A I believe so. Yes.

17 Q Thank you.

18 A Moving to a series of slides here
19 covering western pecan production, these slides
20 were developed by Dr. Richard Heerema, who's my
21 counterpart at New Mexico State University. He
22 and I work closely together on many things, and

1 we've given this presentation on the cost of
2 production together before. Okay.

3 Looking at labor for pecan production,
4 in the West, farm labor is becoming increasingly
5 scarce due to tighter immigration laws, oil
6 fields. Many pecans are competing in many cases
7 with oil fields for labor, so there's an issue
8 there. And growers often have to make do with
9 fewer workers. Wages continue to increase. This
10 slide was generated late in 2014, and at that
11 time, wages were 10 to \$11 per hour, and then
12 you'd have the 25 to 30 percent overhead there.

13 Pecan operations in the West are
14 highly mechanized, but they still require about
15 20 to 30 hours of labor per acre annually,
16 because you have to have someone operating those
17 machines. When it gets time for harvest, you
18 know you need people to move the limbs and sticks
19 out of the way, because when you shake a tree for
20 harvest, a lot of times, you have a lot of sticks
21 and debris and limbs that come down and get in
22 the way as well. Okay.

1 Diesel fuel, of course, is an expense
2 in pecan operations, like it is with any farming
3 operation. It powers most orchard equipment out
4 there. About 25 to 35 gallons per acre annually
5 is what's estimated to be used. At about 3.75
6 per gallon, the total cost would be about \$90 an
7 acre. Okay.

8 Irrigation is one of the biggest
9 issues, of course, facing western growers.
10 Pecans need about five to six acre feet of water,
11 and that's about 1.6 to 2 million gallons per
12 acre. In the West, the availability of that
13 water is broken up by irrigation districts, and
14 usually these irrigation districts may limit that
15 water to two to three acre feet.

16 In recent years, that amount had been
17 coming down to as little as six inches or less in
18 some areas, and it used to be cheap, but it's
19 becoming increasingly expensive to irrigate
20 orchards in the west because of the cost of that
21 water. And now it's about \$150 per acre foot.
22 Okay.

1 Q Dr. Wells, we had testimony in Las
2 Cruces from one farmer, David Salopek, that he
3 estimated it cost at least \$200 an acre to
4 purchase water from his district, and he had
5 fairly superior land rights. Does that surprise
6 you at all?

7 A No, it doesn't. Each irrigation
8 district separately come to those conclusions as
9 to the --

10 Q So it could be more or less but --

11 A Could be more or less.

12 Q -- it's an expense that --

13 A Uh-huh.

14 Q -- they -- thank you.

15 A Yes.

16 JUDGE GUTHRIDGE: Mr. Quirós, is that
17 \$2 an acre or \$2 an acre foot?

18 MR. QUIR S: \$200 an acre.

19 JUDGE GUTHRIDGE: An acre or an acre
20 foot?

21 MR. QUIR S: An acre and in some
22 places more, but he was estimating on his farm.

1 My co-counsel has a very sharp memory, and he
2 thinks it may have been acre foot, so Your Honor
3 may be correct. It might be more. I think his
4 total testimony was about \$2,500 for variable
5 costs an acre. Thank you.

6 THE WITNESS: And in the West, the
7 source of that water for irrigation, there is
8 also some groundwater that's used. It's coming
9 out of aquifers that supply some of the
10 irrigation water on these farms, on some of these
11 farms and then all the irrigation water on many
12 farms. They have to go very deep in some cases
13 for this water, as much as 3,000 feet, which is
14 very expensive to drill a well that deep and to
15 pump it from that far down.

16 So the fuel costs for pumping account
17 for more than half the irrigation expense for
18 many of these growers. It's about \$4.16 per acre
19 inch to pump that water, so the total water costs
20 would be about 250 to \$300 per acre for pumping,
21 and then if they're using surface water, about
22 \$75 per acre. Okay.

1 There are a number of nutrients that
2 are required for pecan production, nitrogen being
3 one of the most important. It's critical for
4 maintaining nut quality and yields, and the
5 health of the tree. In the West, they use rates
6 of 150 to 300 units of nitrogen per acre each
7 year. Cost of that is 60 to 70 cents per unit,
8 so about a hundred to \$200 per acre.

9 Phosphorous, many growers in the west
10 apply phosphorous at rates of 50 to 150 units per
11 acre. It's about 60 cents per unit, 30 to \$90
12 per acre. Potassium is applied in some cases, up
13 to 250 pounds per acre, and that would get it up
14 to about \$50 per acre. So put all those
15 together, and it can be quite expensive, even
16 over \$300 pe acre in just the fertilizer cost in
17 some cases.

18 Pecans are unique in that they have a
19 high requirement for zinc, and it's very critical
20 for yields and the health of the tree. In the
21 West, they tend to apply this mainly by foliar
22 sprays. They spray it directly onto the tree

1 about five times each spring. Ten to 25 pounds
2 of zinc sulfate is the total amount used per
3 acre.

4 You have other micronutrients as well
5 that may or may not be applied, depending on the
6 orchard situation, but manganese, iron, copper,
7 and nickel are also included there. Total
8 micronutrient cost would be 25 to a hundred
9 dollars per acre for the material, and then 10 to
10 \$15 per acre for the application.

11 There are a number of insect pests
12 that affect pecan. In the West, pecan aphids are
13 a big issue. Cost of these -- control of these
14 insects has been going up. One reason for that
15 is that pecan aphids develop resistance to
16 insecticides very quickly, because they reproduce
17 so quickly. They would have many, many
18 generations a year, which provides opportunity to
19 evolve, to overcome the effect of these
20 insecticides.

21 And that drives up the cost of
22 controlling them, because they have to

1 continually develop new insecticides to manage
2 them with. So 75 to a hundred dollars per acre
3 in the cost of controlling aphids. There's a
4 caterpillar called pecan nut casebearer that
5 feeds on the nuts. \$50 per acre is the amount to
6 control those, so total pest management costs are
7 about \$150 per acre, 10 to \$15 per acre for the
8 application.

9 Weed management is important to keep
10 the trees from competition for water and
11 nutrients. Historically, many growers relied on
12 glyphosate or what's commonly known as Roundup,
13 and they would use about five applications for
14 that, a hundred dollars per acre. Many weeds
15 have developed resistance to that herbicide.

16 And so they're having to use other
17 materials \$70 per acre for Prowl, which is a pre-
18 emergent material which would prevent weeds from
19 developing, and then have other materials that
20 are used post-emergent, which would be after the
21 weed has come up, so then they're basically
22 killing the weed with that material, about \$110

1 per acre, so the cost of weed control is going
2 up, as well as these weeds develop resistance.

3 And then harvest and cleaning of the
4 nut, about \$420 per acre for harvest. Cleaning
5 is about \$160 per acre, so the total harvest and
6 cleaning costs there would be about \$580 per acre
7 in the West.

8 It's very important in a pecan orchard
9 operation to provide the trees with sufficient
10 sunlight. The two most important environmental
11 things for pecans is sunlight and water, and as
12 the trees grow and age, they start to shade each
13 other out, and so in the West, there's been a
14 process called hedging that's been done for a
15 number of years now, where they would severely
16 prune these trees periodically.

17 The cost of that is about \$140 per
18 acre, and then after you do this severe pruning,
19 you have all these limbs and debris on the
20 ground. You have to get rid of that in some
21 manner, so they've developed a way to shred that
22 material in place in the orchard, leaving it on

1 the orchard floor, chopped up very fine, and the
2 cost of this is about \$150 per acre, so pruning
3 and brush removal together, about \$290 per acre.

4 So the estimate for total cost to grow
5 pecans in the West is about \$2,000 per acre
6 variable costs. If you add -- he's got total
7 costs here, including variable and fixed costs.
8 I think he's referring mainly here to the cost of
9 the harvest, which would be around -- close to
10 \$600, so around \$2,600 per acre total variable
11 and fixed costs for growing pecans in the West.

12 BY MR. QUIR S:

13 Q Dr. Wells, just to interrupt you, with
14 regard to location, if we look at the map of the
15 production area in the United States, this would
16 apply from the middle of Texas to California. Is
17 that fair?

18 A Yes. The western side of Texas, New
19 Mexico, Arizona, and California.

20 Q Thank you.

21 A If you look at -- we're going to move
22 now in the cost of pecan production in the

1 Southeast.

2 Q And, Dr. Wells, when you say,
3 Southeast, do you mean from the -- in the
4 production area from the Carolinas, North
5 Carolina, South Carolina, through East Texas?

6 A Yes. Many of the conditions would
7 be --

8 Q Eastern Oklahoma as well.

9 A -- the same for --

10 Q Thank you.

11 A This just shows basically trends in
12 the Georgia pecan industry over the last few
13 years, and it mainly regards the new acreage
14 being planted. The solid line that you see there
15 is the new acres planted. From 2010 to 2014,
16 there's a gap there in 2011. This is -- these
17 are numbers that were generated from a survey
18 that we conducted, and we did it each of these
19 years. 2011, we did not do the survey.

20 But you can see the number of acres
21 went up very sharply from 2010 to 2012, and then
22 continued at a higher -- you know, at that high

1 level through 2014. And if you look at the
2 previous year pecan price, which is that -- the
3 wide dashes there, you can see that they track
4 pretty well. And that's mainly for the improved
5 varieties.

6 Another line that's hard to see there,
7 there's a finely dotted line that's the previous
8 year's pecan price for all variety or all pecans,
9 including improved and seedling and natives, and
10 you can see that tracks very closely as well.

11 Okay.

12 If you --

13 Q Dr. Wells, do you think this is
14 similar in other pecan production areas --

15 A Yes.

16 Q -- in the Southeast?

17 A Yes.

18 Q Thank you.

19 A This shows the percentage of trees
20 planted to new orchards. You can see 2010.
21 This is the percentage of nursery trees planted
22 into the orchard that were actually going into

1 new acreage and not just being interplanted in
2 existing orchards. That's the solid line that
3 you see. The finely dashed line is the average
4 size of those orchards being planted. That's
5 going up as well, Producers are planting larger
6 acreage, larger orchards. And then the heavier
7 dashed line there is tree density, and that's
8 basically the number of trees per acre, and the
9 numbers of trees per acre being planted is going
10 up as well. Okay.

11 And we've talked some already about
12 scab, but just to kind of give a little overview
13 here of disease management, pecan scab is the
14 most important pest to consider in the Southeast.
15 It thrives in warm, moist conditions. Most of
16 the commercial varieties that we have here in the
17 Southeast must be sprayed preventively with
18 fungicides, and these fungicides have to be
19 rotated and/or tank-mixed in order to prevent the
20 development of resistance, because just like we
21 see with the insects and the weeds, if you use
22 the same chemistry over and over to try to

1 control that disease, the disease will evolve to
2 overcome the mode of action that that fungicide
3 kills the fungus.

4 JUDGE GUTHRIDGE: What does tank-mixed
5 mean?

6 THE WITNESS: Tank-mixed would be
7 basically combining to fungicide chemistries in
8 the same spray.

9 And then, of course, management here
10 in the Southeast, just as disease thrives in
11 warm, humid conditions, insects thrive in warm,
12 humid conditions, so we have a few more insects
13 that we have to battle here than they have out
14 West. I listed several here. Most of the time,
15 the heaviest insect pressure occurs from July
16 through September. The number of applications
17 made varies by year, depending on the pressure
18 from different insects, but overall the cost of
19 insecticides is rising, and this can affect the
20 quality and supply of nuts.

21 Irrigation is one of the most critical
22 inputs we have for pecans, even here in the

1 Southeast, where we do get rainfall. Most years
2 we get enough rainfall to account for about half
3 of what we need for pecans. An additional
4 problem with that is that it does not always come
5 when the trees need it the most, so irrigation we
6 consider a necessity for pecan production, no
7 matter where they're grown.

8 And you can see here, this just kind
9 of shows the value of irrigation in a pecan
10 operation, based on a price of \$2 per pound for
11 that crop. And if they're getting the amount of
12 water they need, then that value is around \$1,400
13 per acre that they get back from irrigating that
14 crop. Okay.

15 And -- I'm sorry. Can you put that
16 back for me, please. You can see that the
17 picture on the bottom right shows the difference
18 in nut size basically between trees that are
19 irrigated and those that are not. Those on the
20 left that are larger, of course, are irrigated,
21 and those on the right are smaller. That's from
22 nonirrigated trees, and you can see that's a

1 pretty striking difference, and that makes a big
2 difference in the marketplace.

3 The cost -- here in the Southeast, we
4 use lot of drip irrigation, which would be
5 underground tubing that you basically have a
6 certain number of emitters at each tree that are
7 just slowly dripping water to that tree. It's a
8 very efficient method of irrigating, because
9 you're getting it right to those tree roots, and
10 you don't lose a lot to evaporation.

11 We also use another form called micro-
12 sprinklers which is very similar to drip, except
13 it puts that water above ground, but it's sort of
14 like a mist type spray. Again, it's very
15 efficient, because it's putting it close to the
16 roots and it's all at low pressure, so it's much
17 more efficient.

18 There are some older orchards that
19 still have what we call solid-set irrigation
20 sprinklers, where you would have basically
21 overhead sprinklers that are up above ground and
22 spraying large volumes of water in the orchard.

1 You can apply a lot of water quickly with these,
2 so some growers prefer those, especially for
3 older trees, because if you get behind in your
4 irrigation, you can catch up very quickly, but
5 it's not as efficient as the drip and micro-
6 sprinkler. So most of our new orchards or
7 younger orchards have drip or micro-sprinklers.

8 Most of the irrigation here in the
9 Southeast is from well water. We don't tend to
10 have the quality issues with our water that they
11 may have out West. A lot of the groundwater out
12 West, they may have some salinity issues, where
13 the sodium level of that water is high. Here in
14 the Southeast, we're blessed with a very good
15 source of high quality water.

16 The system parts and installation for
17 drip irrigation is \$800 per acre. Again, this
18 slide was generated last year sometime, and of
19 course, those prices may change. It just -- I
20 would say 800 to a thousand dollars per acre
21 would probably be accurate. And this is, of
22 course, subject to depreciation only after the

1 trees begin to bear a crop, so the grower has to
2 bear quite a burden there for a number of years
3 and the cost of that in a newly planted orchard.

4 In a small orchard, say, 25 to 30
5 acres or less, you could use a four-inch well
6 with a 5-horsepower pump. That would be about
7 \$7,800 per acre. You may have to split that into
8 multiple zones to irrigate it with that, but it
9 would be possible. For a little bit larger
10 orchard, say, 30 to a hundred acres or so, a six-
11 inch pump with a 30-horsepower pump -- or six-
12 inch well with a 30-horsepower pump would run
13 about 34,000.

14 If you go up on the acreage beyond
15 that, you're looking at very large well with a
16 very powerful pump, and that's going to get up
17 over a hundred thousand dollars in many cases.
18 The operation costs on this may be from 35 to
19 \$60 per acre, depending on the source of the
20 power.

21 BY MR. QUIR S:

22 Q Dr. Wells, is the water free?

1 A It depends on how you look at that.
2 We don't have to pay the Government for the
3 water. There is a permitting process here in
4 Georgia for wells that pump a hundred gallons per
5 minute or more, so essentially the water is free,
6 but getting the water to the trees is not free.

7 Q Thank you.

8 A I'm going to give you an idea here of
9 equipment costs, and the equipment that I have
10 listed here is what I would consider that a
11 grower of 30 acres or more would need to produce
12 pecans. You can see we've got herbicide sprayer
13 at \$6,000, and these numbers are real numbers
14 that I recently obtained from various equipment
15 dealers around the state.

16 So a herbicide sprayer would be about
17 \$6,000. And air-blast sprayer that's used to
18 throw the fungicide and insecticide, some of the
19 foliar nutrients, you know, that's used to get
20 those up into the tree, that's over a hundred
21 thousand dollars.

22 A rotary mower to mow the grass in the

1 orchard is about \$16,000. A dump wagon that's
2 used to, you know, dump the nuts out the
3 harvester into the wagon so they can be taken to
4 a cleaning plant is about 24,000. I'm sorry.
5 The dump wagon dumps -- the nuts go from the
6 harvester into the dump wagon, and then the dump
7 wagon dumps them into the harvest wagon, and then
8 that's taken to the cleaning lab. But the
9 harvest wagon would be about \$4,000.

10 Most growers would have at least one
11 tractor of about a hundred horsepower. That's
12 about 95,000. A lighter-duty tractor is usually
13 used as well for other practices, lighter
14 practices on the farm. That would be about
15 \$25,000. A truck for working on the farm, about
16 30,000. We have a blower that basically, as
17 you're harvesting or before you harvest, you come
18 through with a sweeper and a blower.

19 The sweeper is basically mounted on
20 the front of the tractor that sweeps the nuts out
21 of the way, sweeping them to one side. The
22 blower is behind the tractor, and it blows the

1 nuts to the opposite side. And so basically
2 growers create a wind row of nuts, and then the
3 harvester comes over that and picks them up, so
4 the blower is about \$7,000; the sweeper, 15,000;
5 the harvester itself, 60,000; the shaker that's
6 used to grab the tree and shake the nuts off of
7 it is about 130,000.

8 So the total costs before interest and
9 insurance is 513,000. You add interest and
10 insurance to that, and it gets up a little more,
11 so over half a million, just in equipment costs.

12 JUDGE GUTHRIDGE: Dr. Wells, at what
13 point would -- you said this is for a grower of
14 30 or more acres. At what point would they have
15 to start duplicating equipment? How many acres
16 approximately?

17 THE WITNESS: There's a --

18 JUDGE GUTHRIDGE: And I imagine it
19 would be --

20 THE WITNESS: There's a lot of
21 variation in that, but I would say if you had 200
22 acres or more, you could probably justify more

1 than one harvester, say. The shakers, the
2 sprayers -- the sprayers get to be a problem, the
3 more acres you have, because if you only have one
4 sprayer, you can only -- say, for instance, for
5 scab control, we have to spray fungicides roughly
6 every two weeks, from April to mid-August.

7 And if a grower only has one sprayer
8 and he can't cover that entire acreage in that
9 amount of time, then he can't effectively control
10 that scab, so he would need multiple sprayers.

11 JUDGE GUTHRIDGE: At what -- like
12 every --

13 THE WITNESS: I would say -- let's
14 say, for instance, maybe two for every hundred
15 acres, something like that. So there's a lot of
16 variation in that, depending on the variety
17 they're growing as well.

18 JUDGE GUTHRIDGE: Basically, though,
19 the more acreage, the more equipment?

20 THE WITNESS: Yes. More acreage, more
21 equipment.

22 BY MR. QUIR S:

1 Q And, Dr. Wells, if you have multiple
2 sprayers and multiple harvesters, you're going to
3 need multiple tractors, are you not?

4 A That's true. Yes. All right. This
5 is the cost of establishing an orchard. There
6 are certain things that you have to do to that
7 orchard, of course, to get it up and running.
8 This covers planting of the trees and managing
9 those trees through the first year that they're
10 in the orchard, so basically you have lime that's
11 applied to adjust the pH of the soil. You have
12 some fertilizer.

13 The zinc sulfate is sprayed on to the
14 tree and also applied on the ground. Herbicide
15 is sprayed to control weeds, because one of the
16 most important aspects of getting the trees to
17 grow well is to eliminate the weed competition.

18 The cost of the trees is continually
19 rising. I would say, you know, getting close to
20 \$20 per acre -- or I'm sorry -- \$20 per tree.
21 Labor for the practice of planting the trees and
22 managing them, the fuel, repairs and maintenance,

1 the irrigation system itself, operation of the
2 irrigation. All that together, you know, with
3 interest is going to be somewhere around \$2,277
4 per acre to plant an orchard and manage it that
5 first year.

6 And now we get into the variable costs
7 of Southeastern pecan production. And "variable"
8 is a very good word to use on this, because it
9 does vary quite a bit, depending on the location
10 the orchard is planted, the varieties they're
11 using. One of the biggest issues is the number
12 of fungicide sprays.

13 You can see if you look at fungicides
14 there, that's one of the more expensive costs on
15 here. Looking at this particular table shows ten
16 fungicide sprays, and ten would be probably a
17 fairly dry year, where we don't have to spray
18 quite that much, and you're looking at \$160 per
19 acre just in fungicide costs there. But if you
20 add all these costs up, it's almost \$1,500 per
21 acre, \$1,485 per acre.

22 If you go to the next slide, in a wet

1 year, we may have to spray 16 times. I know some
2 growers that have had to spray 20 times in a
3 growing season. But if you go up to 16 sprays
4 per season in a wet year, the cost of that
5 fungicide goes up by about 60 percent, so then
6 you're looking at \$256 per acre just in the cost
7 of the material. That alone gets the cost of
8 production up to \$1,628 per acre, which is about
9 9-1/2 percent higher.

10 I mentioned the process of hedging
11 that's done in the West. They've been utilizing
12 that practice there for quite a while now. It's
13 just starting to catch on here in the East. One
14 of the issues we have in the East, where they are
15 limited more so by water, our pecan production
16 here in the Southeast is more limited by
17 sunlight, and if you looked at the number of
18 cloudy days here in the Southeast versus what you
19 would have, say, in El Paso or Las Cruces, we
20 have much more cloud weather.

21 And managing sunlight in the orchard
22 has been a big issue for us for many years.

1 Historically it's always been done removing trees
2 from the orchard to open up more sunlight for the
3 remaining trees. Recently, we begin to look at
4 hedging. It's a little bit different process
5 here in the East, probably a little longer
6 rotation on the hedging. The average cost of
7 that is about \$200 per acre. Most of the hedging
8 in the Southeast is on a four- to five-year
9 cycle.

10 Many growers may hedge every fourth
11 row in the orchard, so that it would take them
12 four years to hedge the entire orchard, so you're
13 only doing about 25 percent or so of that orchard
14 in one year.

15 Q Dr. Wells, why would you only hedge a
16 quarter of your orchard a year?

17 A You wouldn't want to hedge much more
18 than that, because you would be cutting down on
19 your production, because when you hedge, of
20 course, you're taking off limbs that would be
21 producing fruit. After one year, they will --
22 those shoots that are generated or the foliage

1 that's generated from that -- after that pruning
2 will begin bearing again.

3 Some varieties will fruit on the
4 inside of the tree, so they may not be hedged
5 off, and would continue to fruit even with
6 hedging. But in general, you're going to lose
7 some production when you initially start a
8 hedging program. That's why you would only do a
9 small percentage of it and kind of gradually ease
10 into it.

11 Q Thank you, Dr. Wells.

12 JUDGE GUTHRIDGE: Do I correctly infer
13 from this photo in Exhibit 68 that it's generally
14 done in the wintertime?

15 THE WITNESS: Yes. This practice is
16 generally done in the wintertime here in the
17 Southeast. In the West, there is some summer
18 hedging that's done as well.

19 This looks at net returns per acre,
20 and it doesn't show up as well in black and
21 white, but across that horizontal axis there is
22 the yield, and then on the vertical access there

1 is the price. And where those two points meet
2 across that table tells you the net return per
3 acre.

4 And if you would look, say, at a
5 thousand pounds per acre, which would be, you
6 know, kind of a --what we would -- a decent,
7 average yield, maybe a little bit on the low
8 side, even -- you would be looking about a \$1.50
9 per pound, between \$1.40 and \$1.50 per pound,
10 before you would start to make money or break
11 even. Okay.

12 That's at \$1,485 per acre, so that
13 would be with the ten fungicide sprays.

14 JUDGE GUTHRIDGE: So the -- to clarify
15 the exhibit a little bit, the horizontal axis is
16 yield per acre in pounds?

17 THE WITNESS: Yes.

18 JUDGE GUTHRIDGE: And the vertical is
19 price per pound in --

20 THE WITNESS: Yes. That's the inshell
21 price per pound in dollars.

22 JUDGE GUTHRIDGE: Thank you.

1 THE WITNESS: And then the next slide
2 shows, if you have to go up -- if you have a --
3 you're going to have to go up to 16 sprays and
4 how that changes the net returns. If you look at
5 the same yield, say, a thousand pounds per acre,
6 you would be around \$1.60 or \$1.70 before you
7 would start to break even, so the cost of
8 production would certainly change the net return.
9 Okay.

10 JUDGE GUTHRIDGE: And the x and y axis
11 are the same as --

12 THE WITNESS: Yes. The axes are the
13 same. If you look here, this would give an idea
14 of the difference in the cost of production
15 between natives and improved varieties. This --
16 these numbers were generated by an economist at
17 Oklahoma State University. He shared these
18 numbers with me, and the operating cost is about
19 \$592 per acre. Add fixed cost to that, the total
20 cost would be about \$611 per acre to produce
21 those natives.

22 The reason for that much lower cost is

1 often these natives, you don't have all the
2 inputs that you have with these improved
3 varieties. And as you can see, the production is
4 somewhat lower as well for them.

5 Basically if you look across the pecan
6 industry, the average estimate of an inshell
7 commercial pecan harvest per acre over this 15-
8 state production area would probably be somewhere
9 around between 16- and 1,700 pounds per acre, so
10 1,666 pounds per acre would be a good average to
11 use for that when calculating any kind of
12 economic analysis there.

13 Again, these are estimates based on
14 what we know at this point, you know, between the
15 different states where pecans are grown. As has
16 been mentioned before in these hearings, the data
17 that we have available to us is not the best out
18 there, but it's what we had to work with at this
19 point, and I think if we had better data, more
20 verifiable data for a lot of this, as far as the
21 yields, storage, things like that, we would -- it
22 would benefit the industry, and we would be able

1 to come up with a more exact number if we had the
2 funding to do that.

3 JUDGE GUTHRIDGE: Dr. Wells, did you
4 say this 1,666.67 is pounds?

5 THE WITNESS: No. That's the cost --

6 MR. QUIR S: The inshell --

7 THE WITNESS: I'm sorry. Yes. That's
8 the inshell pounds, commercial harvested inshell
9 pounds.

10 MR. QUIR S: Your Honor, we have a few
11 questions of Dr. Wells.

12 JUDGE GUTHRIDGE: Certainly.

13 BY MR. QUIR S:

14 Q Dr. Wells, I want to make some
15 generalizations, because we're talking about a
16 production region of 15 states. Is that okay
17 with you?

18 A Yes.

19 Q Across the production area and all
20 three regions, Eastern, Central and Western
21 Regions, there are many similar inputs and input
22 costs. Is that correct?

1 A Yes.

2 Q There are some differences. Right?

3 A There are quite a few.

4 Q And mainly depending on the atmosphere
5 and the weather patterns in those places.

6 A Yes.

7 Q But the pecans are able to survive and
8 be commercially produced across the 15-state
9 production area.

10 A Yes.

11 Q And so some of those costs are
12 similar. Is that right?

13 A That is correct.

14 Q Okay. The -- I want to just do a
15 generalization, but help me here. The -- in the
16 West, could I generalize that there are more
17 trees per acre in most of the commercial
18 plantings?

19 A Yes, because of the high sunlight,
20 they can plant more trees per acre.

21 Q And they can also plant more trees per
22 acre because of the lack of disease pressure from

1 scab and other fungicides. Is that correct?

2 A That's correct.

3 Q But their average yields, because they
4 have greater density of trees, is averaging, I
5 think, on your slides and Dr. Heerema's slides,
6 2,000 pounds per commercial acre. Is that
7 correct?

8 A That's correct.

9 Q But from an input cost standpoint,
10 they -- so there are really more profits, if you
11 will, from the -- more pounds, relatively the
12 same quality production nut should be a higher
13 gross revenues per acre. Is that right?

14 A Yes.

15 Q But the production costs appear to be
16 higher as well between 2,000 and \$2,600 --

17 A Yes.

18 Q -- we've heard, per acre because of
19 the water costs and some things that are unique
20 to the West. Is that correct?

21 A That's correct.

22 Q So for the East, could I generalize

1 that there are fewer trees per commercial acre
2 planted?

3 A Yes.

4 Q And that's because of disease
5 pressure?

6 A Yes. And low sunlight.

7 Q Low sunlight. Lack of hedging, which
8 is the sunlight issue. Correct?

9 A Uh-huh. Yes.

10 Q And past cultural practices, just the
11 way they were planted 80 years ago.

12 A Yes.

13 Q Okay. So my average -- if you were to
14 give an average in terms of pounds per acre in
15 the eastern part of the production area, would
16 you -- this is for commercial orchards only.
17 Would you say that's 1,100 to 1,400 pounds per
18 acre?

19 A Yes.

20 Q Thank you. So less money in terms of
21 gross revenues in those acres, but the input
22 costs, the annual variable costs would be less.

1 A Yes.

2 Q Again, gross generalization, but
3 across the enter production area in all three
4 regions, the range of actually profits per acre
5 would start to equalize in that case.

6 A That's correct.

7 Q Is that right?

8 A Uh-huh.

9 Q Thank you. Just sort of as we're
10 looking into the future, which is a lot of what
11 we're doing with this proposed federal marketing
12 order for pecans, you've demonstrated that new
13 acres are being planted across the entire
14 production area.

15 A Uh-huh.

16 Q Are those new acres being planted with
17 greater density, tree density per acre?

18 A Yes. Yes. One of the slides I showed
19 demonstrated that the density of trees being
20 planted is going up.

21 Q Okay. And that's because of better
22 cultural and management practices?

1 A Yes. That's correct.

2 Q Better disease control?

3 A Yes.

4 Q And do you see in the future that the
5 average yield per acre may be increasing in both
6 the West, the Central and the East?

7 A Yes. I think there's high potential
8 for that.

9 Q Great. Thank you, Dr. Wells.

10 MR. QUIR S: We have no further
11 questions of Dr. Wells at this time. I would
12 like to announce to Your Honor and to the USDA
13 and the audience that this will be our last
14 witness that will be prepared to discuss the
15 economics of the pecan tree industry across the
16 production area, and I just wanted to give that
17 as a note before we open it up to general
18 questions.

19 JUDGE GUTHRIDGE: All right. Does
20 USDA have any questions?

21 MR. HINMAN: Don Hinman, USDA.

22 RE CROSS-EXAMINATION

1 BY MR. HINMAN:

2 Q Dr. Wells, thank you for your very
3 thorough testimony here, very insightful. We
4 appreciate it.

5 A Thank you.

6 Q Just as a general question, you gave
7 one presentation on the biology of pecans,
8 mentioning a lot about disease issues and things
9 related to that, and then a very detailed sort of
10 cost studies here. Given all of that, to the
11 extent that the market order, future market order
12 would fund future research, could you explain how
13 you think that future research, possibly funded
14 by the market order would benefit both in terms
15 of the biological aspects and then the financial
16 conditions of farmers that you have elucidated in
17 your study.

18 A Yes. As I mentioned briefly and we
19 talked about some, the funding for research is --
20 has been declining for a while. There's not a
21 lot out there right now for pecan production, and
22 if we had access to more funding, we could

1 certainly do much more work that would hopefully
2 help to get us the technological advancement of
3 our industry, our production practices, hopefully
4 we could improve upon that.

5 And that, of course, would
6 significantly affect, you know, the growers'
7 bottom line, because the work that we do is
8 basically designed to do just that. We want to
9 help pecan growers grow their crop more
10 efficiently from an economic standpoint and also
11 from a more environmentally sustainable point as
12 well.

13 So certainly if we had more money to
14 do that kind of work, we could develop better
15 cultural management practices that would help
16 them hopefully to cut their costs as well.

17 Q You specifically mentioned the
18 technological advancements. Do you have some
19 examples of what those could be?

20 A Well, for instance, with irrigation,
21 if you look at irrigation -- say, here in the
22 Southeast, we have had for -- before I came here,

1 we had a -- what we called a ballpark irrigation
2 schedule, and that irrigation schedule was not
3 really based on any scientific data. It was
4 simply what, you know, looked like a good idea to
5 try to grow pecans, and that's what was used for
6 many years.

7 In the last couple of years, I've done
8 some work to try to help determine exactly how
9 much water pecans do need to grow that crop, and
10 we were able to show that we could -- we came up
11 with a way to do it with about 40 percent less
12 water. That saves on the cost and also the
13 effect environmentally of growing pecans. But in
14 my opinion, we'd still have a long way to go with
15 that, to increasing the efficiency of that.

16 If you compare that with what they're
17 facing, say, in California, say, on almonds, they
18 have to be extremely efficient with their water,
19 and right now, with pecans, a lot of the work
20 that's done for irrigation is -- to really do
21 what we need to do is fairly expensive, and right
22 now we just don't have the funding to do that

1 kind of work, and while we have an abundant
2 supply of water here, there's increasing
3 competition for it, with more agriculture
4 developing and also the population increasing.

5 So I think we have to increase the
6 efficiency with which we irrigate, and that's
7 just one example, and there would be many others
8 for every aspect of growing pecans.

9 Q Did you mention that you'd already --
10 past research and adoption of practices has
11 already resulted in -- what was it? -- a 40
12 percent decrease in water usage?

13 A Yes.

14 Q Or -- okay.

15 A And we think there's still room for
16 improvement there.

17 Q Considerable improvement in that exact
18 area.

19 A Yes.

20 Q Thank you. Can we look at one of your
21 slides here in the cost section here.

22 MR. DAVIS: In the West or the East?

1 MR. HINMAN: In the -- well, let me
2 see.

3 MR. QUIR S: Are you referring to
4 Exhibit 68?

5 MR. HINMAN: It's the one that says,
6 Disease management, so --

7 MR. QUIR S: Is this in 68, Mr.
8 Hinman?

9 MR. HINMAN: Let's see. Yes. It's
10 after the graph, Trends in the pecan industry,
11 and then there's one on disease management, after
12 the two graphs.

13 BY MR. HINMAN:

14 Q The fourth point down there talks
15 about, "Fungicides must be rotated and/or tank-
16 mixed to prevent development of resistance." By
17 that, do you mean that the fungicides must be
18 different ones?

19 A Yes.

20 Q Is that an example of useful future
21 research, is the development of those alternative
22 fungicides?

1 A Yes. Development of alternative
2 fungicides and how we use them.

3 Q Can you give me an idea? I mean, is
4 there a very short shelf life? I mean, not --
5 shelf life isn't the right word. For many of the
6 fungicides, they can only be used a few years in
7 a row before they begin problems, so it is a
8 constant renewal.

9 A Yes. And it depends somewhat on how
10 they're used as to how long they continue to
11 work, but the fewer, you know, materials you have
12 to use, the more often you have to use them.
13 And that would affect that.

14 Q Right. Okay. Thank you. I do want
15 to go through some of the slides here and I have
16 some clarifying questions on the slides.

17 A Okay.

18 Q Starting with the second slide,
19 Consistent Supply, the graph --

20 JUDGE GUTHRIDGE: Again, this is
21 Exhibit 68?

22 MR. HINMAN: Yes. Exhibit 58. Thank

1 you, Your Honor. 68. Excuse me. Yes.

2 BY MR. HINMAN:

3 Q The question I have, you mentioned in
4 the lower left corner there, prices are
5 approximately the January contract prices, and
6 again, those are the prices for the mammoth
7 halves. Right?

8 A Yes.

9 Q Who reports these January contract
10 prices?

11 A I believe that's USDA numbers.

12 Q USDA? Okay. All right. Thank you.
13 And then moving ahead several slides to the one
14 entitled, Irrigation --

15 JUDGE GUTHRIDGE: This is irrigation
16 in the West.

17 MR. HINMAN: Irrigation in the West,
18 right.

19 BY MR. HINMAN:

20 Q We're still in the initial part of
21 the study here in the West. And you're talking
22 here about annual water needs of five to six acre

1 feet, and that a very typical condition is an
2 irrigation district which limits growers to well
3 under half that. Right?

4 A Yes.

5 Q And sometimes a tenth of that.

6 Correct?

7 A Uh-huh.

8 Q So what is -- to the extent of your
9 knowledge of the West, what is the consequence of
10 that severe water restriction?

11 A Well, certainly that would impact
12 production. You would have an effect on not only
13 the yield of the trees, but also on the size of
14 the nuts, the quality of those nuts. All of that
15 is going to affect production. In addition to
16 that, it's going to affect the ability of that
17 tree to produce the following year as well.

18 Q Do -- does this have as many years --
19 is this considered a sort of a crisis condition?

20 A Yes. And, you know, that could change
21 somewhat if they continue to get, you know,
22 snowfall or rain that would eventually generate

1 more water availability, but certainly water is
2 tight in the West.

3 Q All right. Can research help that
4 condition as well?

5 A Yes.

6 Q Research on water efficiency?

7 A Yes.

8 Q Okay. Thank you. On the next page,
9 entitled, Irrigation, still in the Western part
10 of your study here, in the -- under Pumps, you
11 have pumping fuel costs, and you -- the unit
12 you've moved from is from acre foot, I guess, in
13 terms of fuel costs. You talk about an acre
14 inch.

15 A Uh-huh.

16 Q Is 12 times that an acre foot?

17 A Yes.

18 Q Okay. So that would be -- \$4 would
19 be, you know, close to \$50.

20 A Right.

21 Q And how does that \$50 compare to then
22 the summary figure you have of total water costs?

1 Is it 50 out of the 250 to 300?

2 A Yes.

3 Q Okay. And what's most of the
4 remaining pumping costs?

5 A I would have to ask Dr. Heerema on
6 that.

7 Q Okay. Thank you. And then moving
8 ahead to -- I realize these pages are not
9 numbered. It is 14, and it is the one called,
10 Total costs to grow pecans in the West in 2014.
11 It's the graph of cost of production. I just
12 want to make sure I understand this. This
13 single-line graph here is the combined total and
14 variable/fixed costs. Is that correct?

15 A That's correct.

16 Q And the first line, you know, the
17 explanatory information above the graph, you have
18 total variable costs of 2,600, and then the 2,000
19 line above that in the graph refers to the same
20 thing, so out of the 2,600, 2,000 of that is the
21 variable cost. Is that correct?

22 A That's correct.

1 Q Okay. And so 600 is an estimate of
2 the fixed cost then.

3 A Yes.

4 Q Okay. Thank you. And then two more
5 pages later -- sorry. I won't go into that.

6 Several pages later, trends in the pecan
7 industry, the second graph, trends in the Georgia
8 pecan industry, could you explain -- I'm not sure
9 what the -- on the axis what the unit is.

10 A I'm sorry. I guess that's not a very
11 scientific graph, because it's actually
12 representing two different things there.

13 JUDGE GUTHRIDGE: For the record,
14 since there are two pages, consecutive pages,
15 trends in the Georgia pecan industry, in Exhibit
16 68, this is the second of those two pages. I
17 just want to clarify --

18 MR. HINMAN: Thank you, Your Honor.

19 JUDGE GUTHRIDGE: -- that for the
20 transcript.

21 MR. HINMAN: Thank you. That's a
22 helpful clarification. Thank you, Your Honor.

1 BY MR. HINMAN:

2 Q So the second page, the unit --

3 A Yes. It's actually each of those
4 lines represents -- is going to be different
5 units. The heavily dashed line there that's tree
6 density is going to be -- that's number of trees
7 per acre.

8 Q Okay.

9 A That would be the bottom line there.

10 Q Right.

11 A The middle line that's the lighter
12 dashed line is average orchard size planted, so
13 that would be just over 60 acres.

14 Q Okay.

15 A And then the top line is just the
16 percentage of trees planted to new orchards, so a
17 little over 90 percent.

18 Q Okay. Thank you.

19 JUDGE GUTHRIDGE: So the y axis is
20 zero to 100 percent.

21 THE WITNESS: Well, it would depend on
22 which of the lines you were looking at there.

1 It's -- on that axis, there's not actually a unit
2 designated. It depends on which of those three
3 lines you're looking at.

4 JUDGE GUTHRIDGE: Right. Okay.

5 BY MR. HINMAN:

6 Q So in the tree -- is this showing
7 looking at the tree, the average orchard size --
8 of the three lines, the one that is the dotted
9 line is the orchard size. Right?

10 A Yes.

11 Q Correct?

12 A The one in the middle. Yes.

13 Q The one in the middle there. Great.

14 And that is -- appears to have a somewhat
15 significant increase, starting around 2012.

16 A Uh-huh.

17 Q Would you say that that is a -- part
18 of that is a response to the higher prices that
19 occurred in those years? Is that much of the
20 reason for that increase in orchard planting?

21 A Very much so.

22 Q And that the orchard -- the tree

1 density seems to be on a steady trend, so that
2 did not change much. The response to the prices
3 was --

4 A Right.

5 Q -- to plant more acres. Correct?

6 A Yes.

7 Q Thank you.

8 JUDGE GUTHRIDGE: And the average
9 orchard size planted then is number of acres.

10 THE WITNESS: Yes.

11 JUDGE GUTHRIDGE: For the --

12 THE WITNESS: On the y axis.

13 JUDGE GUTHRIDGE: On the y axis.

14 Okay. Thank you.

15 MR. HINMAN: Thank you.

16 BY MR. HINMAN:

17 Q Then moving ahead about four pages to
18 the table labeled, Value of irrigation, the
19 Stuart reference there at the bottom left is
20 what?

21 A That's a pecan variety.

22 Q That's the variety. Thank you. Then

1 moving ahead to the graphs of the Southeast of
2 costs and variable costs, and again the -- after
3 the graph -- the picture on hedging, you have net
4 returns per acre.

5 JUDGE GUTHRIDGE: And this is variable
6 costs of Southeast --

7 BY MR. HINMAN:

8 Q Net returns per acre. Excuse me.
9 This was the graph -- the table that appears
10 after the hedging picture.

11 A Uh-huh.

12 Q And, again, I just want to make sure.
13 The --

14 JUDGE GUTHRIDGE: I'm sorry. Let
15 me -- as someone who's read transcripts and other
16 things for years, just making sure that somebody
17 reading the transcripts knows exactly which page
18 you're talking about, it's very helpful to give
19 the full title of the page, I think.

20 MR. HINMAN: Yes. The full title of
21 the -- it is a table, Net returns per acre
22 assumes \$1,485 per acre cost.

1 BY MR. HINMAN:

2 Q And, again, to make sure the -- across
3 the horizontal -- the top is yields. Correct?

4 A That's correct.

5 Q And then the -- and the vertical axis
6 is --

7 A That's the inshell --

8 Q -- price?

9 A -- price.

10 Q Inshell. And so every time you get --
11 you switch from -- in the 800, you go from
12 \$1.80 -- 800 pounds per acre, you go from \$1.80
13 to \$1.90, and right in there is the break-even
14 cost.

15 A Yes.

16 Q In terms of variable cost only.

17 A That's correct.

18 Q And that does not account for fixed
19 costs.

20 A That's --

21 Q That would be --

22 A That's correct.

1 Q -- many hundreds of dollars more.

2 A Yes. Probably 5- or \$600 more.

3 Q 5- or 600. In your previous example,
4 you had \$600 per acre in the West. That fixed
5 cost would be similar here. Is that correct?

6 A Yes.

7 Q Thank you. Again, thank you for that.
8 Any additional thoughts again on -- if you have
9 any other examples of useful research and
10 advancements that could occur from possible
11 funding from a future market order?

12 A There could be many. It would be hard
13 for me to sit here and keep coming up with more,
14 but there would be many examples.

15 Q All right. Thank you.

16 MR. HINMAN: No further questions,
17 Your Honor.

18 MS. VARELA: Jen Varela, USDA.

19 BY MS. VARELA:

20 Q Thank you again, Dr. Wells, for having
21 a lot of comprehensive information, some of which
22 we haven't seen before. I have a few questions,

1 just again to clarify some of the things in the
2 presentation, to make sure we're using the right
3 data.

4 A Uh-huh.

5 Q In looking at this second page of your
6 presentation, labeled -- or titled, Consistent
7 supply --

8 A Uh-huh.

9 JUDGE GUTHRIDGE: Is that Exhibit 68
10 again?

11 MS. VARELA: Yes. Exhibit 68.

12 JUDGE GUTHRIDGE: Thank you.

13 BY MS. VARELA:

14 Q I just wanted to clarify whether this
15 total supply is just domestic supply.

16 A Yes. That would be domestic supply.

17 Q And you might not have the answer to
18 this, but to your knowledge, is that production
19 that was just in that year, or does it have one
20 of those rough estimates of carryover?

21 A I think based on the numbers, it
22 probably includes some carryover --

1 Q Okay.

2 A -- in there as well.

3 Q Thank you. Okay. And then my next
4 question is regarding the page, in that same
5 exhibit, titled, Pruning and brush removal. I
6 believe this was still in the Western section.
7 Here we go. And it's a more general question
8 about -- you described the shredding that goes on
9 of the material that comes down, and that was one
10 of the first times I've heard of that.

11 A Uh-huh.

12 Q Is there a potential benefit to
13 leaving that on the ground in terms of having
14 organic matter available?

15 A Yes. It does help improve the organic
16 matter and helps to provide sort of a mulch to
17 preserve the soil moisture to some extent, too.

18 Q And is that an added efficiency to
19 using --

20 A Yes.

21 Q -- hedging as a practice?

22 A Uh-huh.

1 Q So if that wasn't done, would a grower
2 have to put in some of his own organic matter?

3 A Well, pecan orchards generally
4 accumulate a fair amount of organic matter
5 anyway, because you have the leaves that
6 continually come off each year. You have a lot
7 of smaller sticks and shucks and things that get
8 left in the orchard that contribute to organic
9 matter, but certainly, the grinding up the sticks
10 and leaving them out there is a benefit.

11 Q Thank you very much. My next question
12 regards, in the same exhibit, the first trends in
13 the pecan industry. I think we're moving into
14 Georgia now. That's it. Thank you. And, again,
15 I have kind of a general question about this.
16 We've heard a few different witnesses refer to a
17 lot of production that's going to be coming
18 online in current years.

19 A Uh-huh.

20 Q And we see these increased plantings.
21 We also have evidence of increased plantings in
22 the West, even though I know this chart refers to

1 the East. In your opinion, could you give kind
2 of a rough estimate of how you think overall
3 production is going to increase in the next five,
4 ten years. I mean, are we looking at 10 percent
5 higher, or are we looking at doubling of what's
6 on the market?

7 A Well, let's look at Georgia for an
8 example. We've had roughly, say, 20,000 new
9 acres planted over the last five years. If you
10 look at, you know, those trees by year, ten
11 should be producing somewhere between 800 and a
12 thousand pounds per acre.

13 Let's say a thousand just for round
14 numbers, you know, so 20 times a thousand, that
15 would give you -- or 20,000 times a thousand
16 would give you a good estimate of how those
17 numbers would change, just in Georgia. And then,
18 of course, that would be replicated in the --
19 throughout the country.

20 Q Okay. Thank you. That's very
21 helpful. And then the last page I wanted to look
22 at is titled, Equipment costs, which again is

1 very helpful, because we've done a lot of talking
2 about that 30-acre threshold, and this helps fill
3 in some of our knowledge about what the real
4 costs are.

5 A Uh-huh.

6 Q First of all, would you say that a lot
7 of -- that the costs that are on this list in
8 particular are pretty much applicable across all
9 the growing regions, or is this Georgia-specific?

10 A Yes. I think much of the hedging
11 that's done out West is going to -- some of
12 that's going to be on a contract basis, so they
13 would not -- not every grower would have that
14 equipment cost in there. So, yes. These, I
15 would say, would be pretty --

16 Q Pretty standard?

17 A -- pretty good for the country.

18 JUDGE GUTHRIDGE: Ms. Varela, were you
19 asking the costs for the items?

20 MS. VARELA: Yes. The cost for these
21 items.

22 JUDGE GUTHRIDGE: For these items, so

1 I think was the import of the question.

2 THE WITNESS: For the items? Yes.
3 you have a limited number of dealers that handle
4 pecan equipment, and all their prices are usually
5 pretty close.

6 JUDGE GUTHRIDGE: And that's across
7 the country?

8 THE WITNESS: Across the country, yes.

9 MS. VARELA: Thank you for that
10 clarification.

11 BY MS. VARELA:

12 Q And in looking at this list --

13 JUDGE GUTHRIDGE: Or rather across the
14 production area.

15 THE WITNESS: Right.

16 JUDGE GUTHRIDGE: I think that would
17 be more --

18 MS. VARELA: Again, thank you for that
19 clarification. You're catching on.

20 JUDGE GUTHRIDGE: Thank you.

21 BY MS. VARELA:

22 Q In looking at this list and again

1 looking at these particular costs as the main
2 barriers to being a commercial entity, we've
3 heard a lot of smaller growers talk about how
4 they might have to have somebody else come in to
5 do custom work for them, because they can't
6 afford these costs.

7 A Uh-huh.

8 Q In looking at this particular list,
9 are there certain items of equipment that a
10 grower's going to -- that are particular to this
11 that a grower will have to have that he can't
12 necessarily hire from someone else. You know, is
13 everybody going to need a tractor, or can you
14 pretty much always hire somebody to do everything
15 that you need a tractor to do?

16 A Most of what you could contract to do
17 would regard the harvesting part, so the blower,
18 the sweeper, the harvester, the shaker, those
19 type things, you can still find people to come
20 and do for you. Often it may not be as
21 advantageous because your pecans may not get on
22 the market as quickly as you would like, because

1 you have to wait on them, you know, to get to
2 you.

3 In addition, if you look at the
4 spraying with the air-blast sprayer,
5 theoretically a grower could hire that done, but
6 we're getting to where there are fewer and fewer
7 people that do that commercially, and again, with
8 spraying particularly for -- well, for disease or
9 insects, it really needs to be done on a very
10 timely basis, and if you have to hire that out,
11 often you can't rely on them to get there at the
12 appropriate time.

13 Q So if I understand it correctly, if
14 you were very small, it might be difficult to
15 have somebody come, especially at a price that
16 you can afford, to come spray your limited field
17 anywhere between ten and 15 times. That kind of
18 becomes a barrier --

19 A Yes. That's --

20 Q -- in and of itself.

21 A That's correct.

22 Q Okay. Those are all my questions.

1 Thank you very much.

2 JUDGE GUTHRIDGE: Mr. Hinman?

3 MR. HINMAN: Don Hinman, USDA. Some
4 good questions, more good questions.

5 BY MR. HINMAN:

6 Q On that equipment costs page that we
7 were just on there, I recall that you had
8 mentioned, you know, this was representing 30
9 acres and above, so a commercial operation.

10 A Uh-huh.

11 Q But there were certain thresholds at
12 which this would change to needing more
13 equipment.

14 A That's correct.

15 Q And I believe at different times, I
16 heard you say 100 acres and then 200 acres. So
17 could you explain a bit more about those
18 thresholds, and also, I think you said it was
19 sprayers, so what equipment would increase --
20 would need to increase in terms of more and at
21 what acreage would that occur?

22 A Well, with the sprayer, for instance,

1 you have, say, most of these sprayers, one tank
2 will spray about ten acres. They're thousand-
3 gallon sprayers, and that will cover about ten
4 acres. That would take you roughly hour or so to
5 get that tank out maybe, so if you're spraying
6 one tank per hour for eight hours, you know,
7 you're covering -- you can cover 80 acres with
8 one sprayer in a day potentially. And that would
9 give you an idea.

10 So, you know, maybe it would be more
11 like 300 acres or something before you would
12 really need to start looking closely at adding an
13 additional sprayer, to get over in the amount of
14 time you need to.

15 Q And since the first two items on that
16 table are the herbicide sprayer and the air-blast
17 sprayer, is that both of those or one of those?

18 A Mainly the air-blast sprayer is what
19 I'm talking --

20 Q So what's that?

21 A I'm mainly referring to the air-blast
22 sprayer.

1 Q Air-blast sprayer. Okay. And when
2 you add a sprayer, you would need to add a
3 tractor. Is that correct?

4 A Yes.

5 Q Okay. Thank you.

6 MR. HINMAN: No further questions.

7 JUDGE GUTHRIDGE: And I think you have
8 a table someplace in here on labor costs. When
9 you --

10 THE WITNESS: Yes.

11 JUDGE GUTHRIDGE: -- increase your
12 amount of equipment, you're going to increase
13 your labor costs. But that cost would be
14 reflected in your labor cost table.

15 THE WITNESS: That's correct.

16 MR. QUIR S: Your Honor, this is all
17 very exciting, but -- and I know we have
18 additional questions, but our witness has been on
19 for a couple of hours, and we have too. Would
20 you mind if we take a five-, ten-minute break.

21 JUDGE GUTHRIDGE: I have no objection
22 to that. Come back at 10:20.

1 MR. QUIR S: Thank you, Your Honor.

2 (Whereupon, a short recess was taken.)

3 JUDGE GUTHRIDGE: The hearing will
4 come to order.

5 Despite the fact that I forgot to
6 mention that Ms. Wray was here to take folks who
7 sign up -- I forgot to mention that this
8 morning -- we apparently have had one person at
9 least sign up, Mr. Garrett Ganas. Are you in
10 here? We're going to finish Dr. Wells, and then
11 take one other witness who has some time
12 constraints also, and then we'll get to you,
13 hopefully before lunch. I understand you have a
14 time constraint yourself. Okay.

15 We had just taken a break, and are
16 there more USDA questions?

17 MS. SCHMAEDICK: Melissa Schmaedick,
18 USDA.

19 BY MS. SCHMAEDICK:

20 Q Dr. Wells, I just have one question.
21 That's it. Only one, I promise. I think I'm
22 correct in saying that you didn't do a cost of

1 production per pound calculation or comparison
2 between the East and the West.

3 A That's correct.

4 Q Okay. And I think there's enough
5 information in your presentation for me to figure
6 that out, but what I need is maybe a value or a
7 range of yield per acre for the West Region --

8 A Okay.

9 Q -- and then the Central Region, and
10 I'm sure that we've had that figure at some point
11 in the last few days.

12 A Uh-huh.

13 Q But just for ease of reading through
14 the transcript, do you have some numbers you
15 could give to me?

16 A I would say for the West, the yield
17 per acre is going to be somewhere 2,000 to 2,500
18 pounds per acre, you know. In the East, a
19 thousand to 1,500 pounds per acre.

20 Q And would the Central Region be any
21 different?

22 A Central would probably be fairly

1 similar to the East.

2 Q Okay.

3 MR. DAVIS: For improved varieties,
4 but --

5 THE WITNESS: For improved, and
6 then --

7 MR. DAVIS: -- in the Central we've
8 got the --

9 THE WITNESS: Natives, you've got --
10 you know, you're looking at maybe 700 pounds per
11 acre.

12 MS. SCHMAEDICK: Thank you. I have no
13 further questions.

14 JUDGE GUTHRIDGE: Any more USDA
15 questions?

16 MR. HINMAN: No.

17 JUDGE GUTHRIDGE: Mr. Quirós.

18 MR. QUIR S: Yes.

19 FURTHER REDIRECT EXAMINATION

20 BY MR. QUIR S:

21 Q Dr. Wells, in Georgia, if you were to
22 roll back the clock to 2008 and if you were to

1 compare the entire Georgia tree plantings,
2 specifically Georgia, to a machine, how would you
3 describe that machine?

4 A Pretty worn out. We've had a lot of
5 old orchards for many years, so it -- you know,
6 it would be a worn-out -- I hate to use the term,
7 piece of junk, but on the decline for sure.

8 Q And this was because of pricing?

9 A Yes. The pricing just wasn't there.
10 It wasn't profitable enough to revitalize the
11 orchard, you know, plant new varieties, put
12 irrigation in, and provide the inputs needed to
13 increase production.

14 Q If you were to estimate the age of an
15 average Georgia orchard in 2008, how old would
16 you say?

17 A Probably somewhere in the range of 60
18 years old.

19 Q Thank you, Dr. Wells. So this new
20 planting, how -- again, using our machine
21 analogy, how would you describe all of the new
22 planting that's gone on in Georgia since 2008?

1 A Yes. If you look at a machine, it
2 would be basically -- it would be like replacing
3 the parts in that machine, because when a -- in
4 an old kind of, to revitalize that orchard, you
5 know, if you put your -- if you get your
6 irrigation going like you want, the next step is
7 to begin replacing some of those poor varieties
8 of some of those worn-out trees, the trees in
9 decline, even interplanting between some of the
10 older existing trees to increase production in
11 that orchard.

12 Q Let's stay with interplanting.
13 Interplanting is the practice of planting young,
14 maybe different cultivar trees in between older
15 trees in an orchard?

16 A That's correct.

17 Q And why would a pecan grower do that?

18 A To increase production in the short
19 term. Also in the long term, they could
20 revitalize that orchard by removing those older
21 trees as the younger trees begin to produce
22 enough crop to justify removing the older.

1 Q So the farmers would continue the
2 production from the old trees, while they were
3 letting the younger trees mature.

4 A That's correct.

5 Q Thank you. Dr. Wells, this is a
6 follow-up question to Dr. Hinman's comments about
7 research. We heard testimony in Dallas with
8 regard to the USDA breeding station at Texas A&M.
9 But we also talked about Dr. Conner's station
10 here. Is Dr. Conner's breeding station the only
11 one functioning at this time with a recognized
12 pecan breeding scientist?

13 A Yes. To my knowledge, Dr. Conner's
14 breeding program here in Georgia, at the moment,
15 is the only one up and running.

16 Q Tell us what's going on at USDA
17 breeding station in College Station, Texas.

18 A USDA has had a pecan breeding program
19 for, I think, probably since the '60s or
20 something in there, and they developed a number
21 of varieties, but recently, I would say, maybe
22 within the last five years, their main breeder,

1 Tommy Thompson, who was responsible for that
2 breeding program, retired, and in the interim,
3 there's still personnel there that is carrying on
4 the evaluation of the selections that he had
5 made.

6 But I don't think there was any new --
7 development of new varieties going on. To my
8 understanding, they have hired a person for that
9 position, but we don't really know what direction
10 that program's going to take at this point.

11 Q Let's talk a little bit about
12 scientists and research throughout the production
13 area. Are you familiar with the scientists that
14 are focusing on pecans throughout the production
15 area?

16 A Yes.

17 Q Are those colleagues of yours?

18 A Yes.

19 Q Are there any states that have lost
20 their research capabilities over the last ten
21 years that you're aware of?

22 A Yes. Mississippi certainly has lost

1 personnel. Florida has lost personnel. And both
2 of these two, when I say lost personnel, I mean
3 to the point that there's not really an active
4 program focused on pecans. Alabama has lost
5 personnel. They still have somewhat of a pecan
6 program going, but it has taken a hit recently,
7 and really the numbers, in all the states
8 producing pecans, the number of people working on
9 pecans has declined over the last ten to 15
10 years.

11 Q Funding reasons?

12 A Funding primarily. When people
13 retire, those positions aren't rehired due to
14 funding.

15 Q So the proposed federal marketing
16 order and the American Pecan Council, if one of
17 its authorities was research, that would be
18 beneficial to the entire industry?

19 A I think it would be a great benefit.
20 Yes.

21 Q Across all regions.

22 A Yes.

1 Q Entire production area.

2 A Yes. The entire area.

3 Q Would it be a help if the American
4 Pecan Council just helped coordinate the research
5 and post the research amongst the various states
6 that were doing it, so that everyone could see?

7 A I think so. It would help to prevent
8 duplication of any projects that may be ongoing.

9 Q Okay. Thank you. We talked a little
10 bit about the practice in the West of shredding
11 the limbs. Is that a practice that's common from
12 the Carolinas to East Texas?

13 A No. Not at this point. You know, we
14 mentioned that hedging is a fairly new practice
15 for the Southeast in general, but one of the
16 concerns that I would have with the shredding of
17 the debris in the orchard here in the Southeast
18 would be -- we mentioned that the scab organism,
19 the fungus overwinters on the branches of the
20 trees, and I would have some concern that this
21 would allow the inoculant to stay in the orchard
22 and develop more disease problems.

1 Q So it's a more common practice in the
2 East to --

3 A To burn the -- usually that's -- that
4 material is burned.

5 Q And that's to both eliminate the
6 material and also to eliminate the inoculant or
7 scab?

8 A Yes.

9 Q Thank you. Dr. Wells, we lost a
10 witness in Oklahoma, Bob Knight, who was the
11 president of the Oklahoma Pecan Growers
12 Association. He wished to give testimony, but he
13 cancelled because he said he had to spray his
14 Pawnees all night for scab. Is that typical?

15 A Yes, yes.

16 Q That was a discussion about being able
17 to contract sprayers and spray material to come
18 into your orchard.

19 A Uh-huh.

20 Q Is the timely spraying for scab, is
21 that one of the critical elements?

22 A Yes. That's probably the critical

1 thing in managing scab. It has to be done a
2 timely basis.

3 Q So you need it when you need it.

4 A Right.

5 Q Okay. Contract harvesting the same
6 way?

7 A You'd probably have a little more
8 leeway there, but certainly with the way the
9 pecan market runs, if you don't get your crop to
10 harvest in a suitable amount of time, you could
11 potentially lose profit as the price changes.

12 Q What happens to a pecan nut when it
13 stays on the ground in the conditions of
14 approximately half of the production area?

15 A The longer that nut stays on the
16 ground, it's exposed to the elements,
17 temperature, humidity, wetness in the orchard,
18 animal predation, all these things are going to
19 affect quality and volume.

20 Q Thank you.

21 MR. QUIR S: No further questions of
22 this witness as a scientist. We would like to

1 take his testimony as a grower.

2 JUDGE GUTHRIDGE: Any USDA questions
3 right now on --

4 MS. VARELA: No further questions
5 right now. Thank you.

6 JUDGE GUTHRIDGE: I do have a couple
7 of science questions, and it might not be
8 relevant to all this. I just need to ask,
9 though. Did you say that the -- at the very
10 beginning that the male flowers are called
11 catkins?

12 THE WITNESS: Yes.

13 JUDGE GUTHRIDGE: Is there a term for
14 the female flower?

15 THE WITNESS: The pistillate flowers.

16 JUDGE GUTHRIDGE: Pistillate flowers.
17 And can the pistillate be pollinated by a catkin
18 from the same tree, or does that have to come
19 from another tree?

20 THE WITNESS: The pollen from the tree
21 can pollinate the flower on that same tree, but
22 usually when that happens, the success of that

1 pollination is not as great. There's a greater
2 potential for that nut to drop from the tree,
3 because the embryo is not fertilized as it
4 should. And also the quality, if that nut makes
5 it to maturity, there's potential for the quality
6 of that nut to not be as good, mainly just from
7 inbreeding type characteristics.

8 JUDGE GUTHRIDGE: But there's -- if
9 it's pollinated by the wind, there's really no
10 control over that.

11 THE WITNESS: Right.

12 JUDGE GUTHRIDGE: But it's just -- you
13 just -- hence, the need, though, for planting
14 trees close to each other.

15 THE WITNESS: Right. Planting
16 multiple varieties. Yes.

17 JUDGE GUTHRIDGE: And Mr. Quirós just
18 asked about the nuts sitting on the ground.

19 THE WITNESS: Uh-huh.

20 JUDGE GUTHRIDGE: When the nut -- is
21 that the nut that's been ejected from the shuck?
22 Is that correct?

1 THE WITNESS: Yes. It's --

2 JUDGE GUTHRIDGE: And except in a
3 stick-tight situation, it's only the nut sitting
4 on the ground and the shuck stays on the tree?

5 THE WITNESS: Right. The shuck may
6 come out of the tree, but it's not the shell.
7 The nut in the shell is not in the shuck.

8 JUDGE GUTHRIDGE: Except for the
9 stick-tights.

10 THE WITNESS: Right.

11 JUDGE GUTHRIDGE: Okay. Thank you.
12 That's all.

13 MR. QUIR S: Maybe a quick follow-up,
14 unless USDA --

15 BY MR. QUIR S:

16 Q We heard testimony about Type I and
17 Type II cultivars. Do you want to explain that a
18 little bit, since we were on the pistil
19 receptivity issue.

20 A Yes. The Type I and Type II refers to
21 the -- basically the flowering characteristics of
22 a particular tree or variety. With Type I,

1 basically the -- I think it's the female flowers
2 are produced first, and then the male flowers
3 release pollen. Type II would be the opposite.

4 Q So you always want to have pollen
5 released while a flower is open.

6 A That's correct.

7 Q And so in the self-pollination
8 scenario, that's not always --

9 A Yes. That's correct.

10 Q Let me take the simplest example of
11 this. In the West, all we hear about are Western
12 Schleys and Wichitas.

13 A Uh-huh.

14 Q Are they planted together because of
15 that relationship of Type I and Type II?

16 A Well, they would be compatible for
17 pollination. Yes.

18 Q Thank you. One thing that in the
19 economics that we've touched on, but I'd like to
20 turn to one more time, which was the cost of
21 planting an orchard. You had that in Exhibit 68.
22 I'm going to try to find that, anticipating a

1 question that we might get from the audience.
2 Orchard Establishment is the heading of that
3 page.

4 JUDGE GUTHRIDGE: I'm sorry. Which
5 exhibit and which page?

6 MR. QUIR S: Yes, sir. That would be
7 Exhibit 68, about two-thirds of the way through.
8 It's Orchard Establishment.

9 BY MR. QUIR S:

10 Q Take a glance at that. Dr. Wells, I
11 think that shows that the cost of orchard
12 establishment for one acre is approximately
13 \$2,277. Is that correct?

14 A Yes.

15 Q And how long before that orchard will
16 be in production?

17 A Roughly six to eight years, depending
18 on the variety and management practices.

19 Q And when will there be a break-even
20 point? Isn't that in that six to eight years as
21 well?

22 A Probably on the -- closer to the

1 eight-year end of it.

2 Q Thank you. So if you were to -- I
3 know there are different management practices and
4 different cultivars and different locations, but
5 if you were to estimate the cost during those
6 interim years, between, let's say, year of
7 establishment and break-even, what would that
8 average cost per acre of inputs be, not including
9 any fixed costs, just the inputs cost?

10 A I would say somewhere around \$6,000
11 per acre.

12 MR. QUIR S: Thank you, Your Honor.
13 No more questions at this time of this witness on
14 the cost of --

15 JUDGE GUTHRIDGE: From that same --

16 MR. QUIR S: -- pecan production.

17 JUDGE GUTHRIDGE: -- exhibit, that
18 \$2,277.29 per acre, is that a yearly cost, or is
19 that the total cost for that establishment
20 period?

21 THE WITNESS: Just that
22 establishment -- during the first year.

1 JUDGE GUTHRIDGE: Just the first year.

2 THE WITNESS: For planting the orchard
3 and managing and maintaining the trees during the
4 first year.

5 JUDGE GUTHRIDGE: That's the 2,277.

6 THE WITNESS: That's correct. Yes.

7 JUDGE GUTHRIDGE: Does that cost
8 decrease for the subsequent years then?

9 THE WITNESS: It would decrease a
10 little for -- it's going to be less than that,
11 you know, pretty well every year after that, but
12 it decreases considerably, you know, down to,
13 say, the next two or three years, maybe 6- to
14 \$800 an acre, but then as you get to the point
15 where those trees start to develop nuts, the
16 inputs start to go back up again.

17 JUDGE GUTHRIDGE: And that's the years
18 six to eight --

19 THE WITNESS: Uh-huh.

20 JUDGE GUTHRIDGE: -- when it goes back
21 up.

22 MR. QUIR S: Maybe I'll ask the

1 question another way, Your Honor, which is:

2 BY MR. QUIR S:

3 Q If you look at your cost of
4 establishment plus the inputs cost until you get
5 to break-even, that could be approximated on this
6 table as \$8,277.29?

7 A Yes. I mean, again, there's going to
8 be a lot of variation, so --

9 Q But almost \$9,000 per acre before you
10 get to break-even.

11 A Very easily could be.

12 MR. QUIR S: No further questions at
13 this time.

14 JUDGE GUTHRIDGE: Any further
15 questions from USDA? You're going to go into
16 sort of a different subject area, so why don't I
17 ask at this point if the audience has any
18 questions on his testimony on this more
19 scientific area. So are there any questions from
20 the audience on Dr. Wells' testimony so far?

21 (No response.)

22 JUDGE GUTHRIDGE: I see no, so

1 proceed, Mr. Quirós.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. QUIR S:

4 Q Thank you, Dr. Wells. You mentioned
5 at the beginning of your testimony that you're a
6 grower. Could you describe your pecan orchard
7 for us.

8 A Yes. I have about 115 acres of
9 pecans. This is on my family farm in Cordele,
10 Georgia. We have an old orchard on our farm that
11 might great-grandfather had planted. I began
12 managing that orchard in 2005. Prior to that,
13 the person who leased the row crop land just sort
14 of picked up the pecans when they were there.

15 So I started managing that orchard in
16 2005, and also that same year planted another 20
17 to 25 acres. Since that time, I've added
18 additional acreage planting, and then also I have
19 leased another orchard nearby to accumulate the
20 acreage that I have now.

21 Q And what varieties do you have on your
22 orchard?

1 A The older orchards are mainly Stuart
2 and Schley, which would be common for old
3 orchards in this area. The younger orchards have
4 Cape Fear, Elliott, Desirable, and Pawnee.

5 Q Thank you, Dr. Wells. Have you
6 received a copy of the Executive Summary of
7 Economic Analysis of the Implementation of a
8 Federal Marketing Order for Pecans, prepared by
9 Dr. Marco Palma, which has now been marked
10 Exhibit 23 in these hearings?

11 A Yes.

12 Q I'd like to ask you a couple of
13 questions about that, as well as about Exhibit 1,
14 which is the -- contains the proposed federal
15 marketing order for pecans. Could you describe
16 some of the challenges you have as a grower that
17 the proposed federal marketing order for pecans
18 attempts to address.

19 A One of the biggest issues would
20 probably be related to price. Someone who's a
21 smaller grower, such as myself, often, when you
22 go to the marketplace, because the volume

1 produced is not as great as, say, someone with,
2 say, 2,000 acres or a thousand acres, you often
3 don't have the leverage to get an ideal price in
4 some cases. Contracting would become an issue,
5 because you don't necessarily know you're going
6 to have the volume, because most of the time, if
7 you contract, it's going to be for a larger
8 volume of nuts, so that makes it an issue, so you
9 often are at the mercy of the -- what the pecan
10 market is doing. So that would be one of the
11 biggest issues.

12 You know, with research, especially
13 for a smaller grower, the input costs are very --
14 a smaller grower really has to watch the input
15 costs very closely, because a large grower may be
16 able to afford to, in some cases, overdo some
17 things, because the volume is there to generate
18 the finances to pay for that. But for a smaller
19 grower, they really have to watch what they do,
20 when they do it, and what is actually needed
21 versus what may be considered luxury treatment of
22 the trees.

1 So additional research to support
2 developing more efficient production practices
3 would be very helpful as well.

4 JUDGE GUTHRIDGE: Dr. Wells, when
5 you're using the terms "larger grower" and
6 "smaller grower" here, in your testimony just
7 then, were you meaning that to be consistent with
8 the distinction in 986.45 --

9 THE WITNESS: Yes.

10 JUDGE GUTHRIDGE: -- of 176 acres?

11 THE WITNESS: Yes.

12 JUDGE GUTHRIDGE: You're below 176?

13 THE WITNESS: Yes. I'm at 115.

14 JUDGE GUTHRIDGE: All right.

15 BY MR. QUIR S:

16 Q Why don't we stay on that topic that
17 Your Honor has raised. The Small Business
18 Administration guidelines also suggest that the
19 distinction between a large grower and a small
20 grower of pecans is a larger grower has more than
21 \$750,000 of gross revenue from the production of
22 pecans. Would you be considered a small grower

1 under that definition?

2 A Definitely.

3 Q Thank you. There are two distinctions
4 about small growers, and the Judge was raising
5 that issue. Let me take you back again to the
6 challenges that a grower faces that are attempted
7 to be addressed in the proposed federal marketing
8 order for pecans. You've talked about price
9 stability. You've talked about research. How
10 about generic promotion?

11 A Yes. I think one of the keys to
12 growing the domestic demand for pecans is
13 promotion. Of course, our Georgia Pecan
14 Commodity Commission has a promotion program at
15 this point, and they do a fine job with that.
16 But in reality, they are not able to generate the
17 funds necessary to really do a job that would
18 benefit the industry as a whole. Certainly no
19 fault of theirs, it's just the reality of
20 the economics of the situation.

21 But, you know, one issue we had with
22 pecans is that there are areas you can go to

1 within our country who don't even know what a
2 pecan is. They don't know about the health
3 benefits of pecans. They don't know it has more
4 antioxidants than any other nut. And the more we
5 can get that message out, I think we would see
6 domestic consumption rise, which, of course,
7 would help us on the pricing end.

8 Q Do you think it would help if we all
9 pronounced the word the same way?

10 A Possibly, but that's part of the
11 mystique of the culture of pecans.

12 Q I would like an official
13 pronunciation. How about data? When you look as
14 a scientist and as a grower, what's your view of
15 the quality of the data that's available to the
16 pecan industry?

17 A Well, most of the crop estimates that
18 we have, we do the best job we can with it, but
19 it's still only an estimate, based on the opinion
20 of many people who kind of pool together to
21 create these estimates. But if there were some
22 way to better quantify that, I think it would be

1 a benefit, and we can only do that, you know,
2 with better research and then better data to have
3 that.

4 And then with regard to the storage,
5 you know, volume, what's in cold storage, that,
6 as has been mentioned previously in these
7 hearings, has been an issue for many years.

8 There's no way to verify exactly what that cold
9 storage is. So if we were able to do that, I
10 think it would be of benefit to the growers and
11 the shellers, the industry as a whole, to allow
12 everyone to have better confidence in those
13 numbers, and also with each other.

14 Q Are yearly prices set off of those
15 numbers?

16 A Often. They fluctuate throughout the
17 year, but the -- certainly the volume of nuts
18 that are out there in the current year's crop and
19 the carryover in the cold storage volume play a
20 large part in the pricing.

21 Q Dr. Wells, I'd like to ask you to turn
22 to Section 968 -- I'm sorry -- 986.69 in Exhibit

1 1, please. Take a moment to review that. It's
2 entitled, Authorities regulating handling.

3 A Uh-huh. (Perusing document.) Okay.

4 Q Dr. Wells, do you think the industry
5 would benefit if the American Pecan Council was
6 able to develop and establish handling
7 requirements for minimum tolerances for
8 particular grade sizes or qualities?

9 A Yes.

10 Q How about for packaging? Would that
11 be of help?

12 A I believe very much so.

13 Q Let me ask it a different way. How
14 about for you as a farmer? Do you think that
15 would be a benefit to you?

16 A I definitely think it would be. You
17 know, if a grower knows what size and quality he
18 needs, that's going to affect the inputs that he
19 does and what he does in growing those trees, and
20 he would know that that's going to pay off in the
21 end.

22 Q Thank you. Dr. Wells, I'd like you to

1 now turn your attention to Exhibit 23, which is
2 the executive summary of the economic analysis.
3 Your earlier testimony was that you had had an
4 opportunity to review this. Is that correct?

5 A Yes.

6 Q And do you agree with Dr. Marco's
7 findings with regard to generic promotion?

8 A I do.

9 Q And do you think it's reasonable that
10 with improved varieties, that the cost is 2-1/2
11 cents per inshell pound, that there may be a
12 benefit of 6.3 cents for inshell pound? Is that
13 reasonable?

14 A Yes.

15 Q Thank you. I want you to think about
16 the balance of the burdens between the cost of 2-
17 1/2 cents and the benefits. Which outweighs
18 which?

19 A The benefits of the order versus
20 the --

21 Q Of promotion.

22 A -- assessment? I think by far the

1 benefits of this marketing order would certainly
2 outweigh the costs. If you compare us with other
3 industries, there's no question that the benefits
4 outweigh the costs, and I don't see why we would
5 not have the same result.

6 Q Thank you. Dr. Wells, you've given
7 some testimony on this as a scientist, but I want
8 your testimony as a grower. if you'd please turn
9 to the definition of grower in Section 986.16.
10 Take a moment to review that definition.

11 A (Perusing document.)

12 Q Specifically I'm asking you to look at
13 the portion of that definition after the word
14 "provided," about halfway down, where there's a
15 limitation with regard to what we consider
16 commercial growers.

17 A Yes.

18 Q Does that seem reasonable to you?

19 A It does.

20 Q In light of your experience?

21 A Yes.

22 Q Thank you. Have you had an

1 opportunity to hear presentations on the proposed
2 federal marketing order for pecans by the
3 American Pecan Board?

4 A Yes.

5 Q Have you had an opportunity to talk
6 with board members of the American pecan Board?

7 A Yes. Many times.

8 Q Are you satisfied that you've had an
9 opportunity to give them all of your input with
10 regard to the proposed federal marketing order
11 for pecans?

12 A Very much so.

13 MR. QUIR S: Your Honor, I have no
14 further questions of this witness at this time as
15 a grower. Thank you, Dr. Wells.

16 JUDGE GUTHRIDGE: Any questions from
17 USDA?

18 MS. SCHMAEDICK: Melissa Schmaedick,
19 USDA.

20 FURTHER RECROSS-EXAMINATION

21 BY MS. SCHMAEDICK:

22 Q Dr. Wells, you mentioned a term

1 "contracting." Can you -- and that's, I believe,
2 in the context of a grower contracting with a
3 handler.

4 A That's correct.

5 Q Can you describe for us, based on your
6 knowledge, how contracting works in the pecan
7 industry and how prevalent it is?

8 A the contracting basically would be
9 prior to harvest, a grower would contract with a
10 handler for a certain volume of nuts. Normally
11 it's usually as a container or load, somewhere
12 around 40- to 45,000 pounds. And it would be
13 based on a price agreed to by both parties. That
14 price would be good for a certain amount of time,
15 agreed to by both parties.

16 The last couple of years, we've seen
17 more of that than we have in the past, but still,
18 it fluctuates from year to year as regarding how
19 much contracting takes place, and that depends on
20 a lot of times the volume of the crop that's out
21 there. A grower may -- if we know the crop is a
22 small or short crop, the grower may decide that

1 he would be better off waiting and seeing what
2 the market price is going to do. If it's a large
3 crop, he may want to hedge his bets and take a
4 price that he knows he can get and plan
5 accordingly.

6 Q So in the pecan industry, is the
7 contract then a short-term relationship or is it
8 a long-term relationship?

9 A Usually a short-term relationship.

10 Q As opposed to some industries where a
11 grower and handler can contract for years and
12 years and years.

13 A Yes.

14 Q Okay. Thank you.

15 MS. SCHMAEDICK: No further questions.

16 JUDGE GUTHRIDGE: Are there any more
17 questions from USDA?

18 (No response.)

19 JUDGE GUTHRIDGE: No? Mr. Quirós?

20 MR. QUIR S: No further questions of
21 this witness, Your Honor.

22 JUDGE GUTHRIDGE: Are there any

1 questions from the audience?

2 (No response.)

3 JUDGE GUTHRIDGE: No. So, Dr. Wells,
4 you're excused.

5 THE WITNESS: Okay. Thank you.

6 (Whereupon, the witness was excused.)

7 MR. DAVIS: Your Honor, the Proponent
8 group would call as its next witness Ms. Janice
9 Dees.

10 JUDGE GUTHRIDGE: All right. And let
11 me reiterate. Ms. Wray, back there from the
12 USDA, please raise your hand. If anybody else
13 wants to testify, they should contact her.

14 (Pause.)

15 JUDGE GUTHRIDGE: While they're
16 handling that, could you please raise your right
17 hand.

18 Whereupon,

19 JANICE DEES
20 having been first duly sworn, was called as a
21 witness herein and was examined and testified as
22 follows:

1 JUDGE GUTHRIDGE: Proceed when you're
2 ready.

3 MR. DAVIS: The witness has been
4 sworn, Your Honor?

5 JUDGE GUTHRIDGE: Yes.

6 DIRECT EXAMINATION

7 BY MR. DAVIS:

8 Q Good morning, Ms. Dees.

9 A Good morning.

10 Q Thank you so much for coming. Could
11 I ask you to say your full name and spell it for
12 the record, please.

13 A My name is Janice Dees. That's J-A-N-
14 I-C-E, D-E-E-S.

15 Q And I understand that you have
16 prepared a written statement you'd like to
17 deliver.

18 A I do.

19 Q Could you deliver that, please, ma'am.

20 A Sure. My name is Janice Dees. I live
21 in Ty Ty, Georgia. I am the executive director
22 of the Georgia Pecan Growers Association and a

1 chief operating officer of the U.S. Pecan Growers
2 Council. Attached you will find my resume.

3 The goal of the Georgia Pecan Growers
4 Association is to keep growers informed of pecan
5 industry issues. We do this by publishing a
6 pecan grower magazine called The Pecan Grower,
7 and by organizing grower meetings and various
8 grower events. We also help growers pursue state
9 grants for pecans.

10 The U.S. Pecan Growers Council is
11 focused on the marketing of pecans
12 internationally. We handle and account for
13 monies received from individuals, state grower
14 associations, and commodity commissions and
15 federal marketing funds, controlled by the
16 Foreign Agricultural Service of the U.S.
17 Department of Agriculture.

18 The proposed marketing order of pecans
19 in no way interferes or competes with the work
20 and the missions of the Georgia Pecan Growers
21 Association and/or the U.S. Pecan Growers
22 Council. I am full-time professionally devoted

1 to the pecan industry. I see the problems of
2 pecan growers every day: price volatility,
3 inadequate supply, lack of reliable industry
4 data, and opportunities that cannot be seized
5 because of inadequate industry funding.

6 The proposed federal marketing order
7 for pecans is the right move for the industry
8 now. We cannot be a real player in the tree nut
9 industry if we don't get this done and get it
10 done now. I fully support the proposed federal
11 marketing order for pecans and encourage the
12 Secretary to implement the order as proposed by
13 the American Pecan Board. I will be glad to
14 answer any questions that anyone may have.

15 MR. DAVIS: Your Honor, the Proponent
16 group tenders Exhibit 69.

17 (The document referred to was marked
18 for identification as Exhibit Number
19 69.)

20 JUDGE GUTHRIDGE: Does USDA have any
21 objection?

22 MR. HILL: No objection, Your Honor.

1 JUDGE GUTHRIDGE: Does anyone in the
2 audience have an objection?

3 (No response.)

4 JUDGE GUTHRIDGE: Hearing none, I do
5 note -- I'm not sure whether the home telephone
6 number and the cellular telephone number might be
7 PII.

8 THE WITNESS: I'm sorry?

9 JUDGE GUTHRIDGE: Your home number,
10 you don't want too many telemarketers to get
11 that, do you?

12 THE WITNESS: No, sir.

13 JUDGE GUTHRIDGE: That may be redacted
14 from the exhibit. With no objection, Exhibit 69
15 is admitted into the record.

16 (The document referred
17 to,

18 having been previously marked for
19 identification as Exhibit Number 69,
20 was received in evidence.)

21 MR. DAVIS: They post our exhibits
22 online, and the USDA and the Proponent group has

1 group we're going to redact out any personal
2 information like that.

3 THE WITNESS: Okay. All right. Thank
4 you.

5 BY MR. DAVIS:

6 Q Thanks. Just to follow up a couple
7 small items, Ms. Dees. Have you attended Georgia
8 pecan growers meetings where representatives of
9 the American Pecan Board were present to talk
10 about this proposed order?

11 A Yes, I have.

12 Q Did you hear some of those
13 presentation or --

14 A I did.

15 Q Were the Georgia pecan growers given
16 an opportunity to voice their opinions or give
17 their input into this proposed order?

18 A Yes, they were.

19 Q Were there any articles about this
20 proposed federal marketing order put into the
21 magazine, The Pecan Growers?

22 A Yes, we have. Several.

1 Q And was notice about this meeting
2 published in that publication?

3 A Yes.

4 MR. DAVIS: Okay. I think I have no
5 further questions at this time, Your Honor.

6 JUDGE GUTHRIDGE: Are there any
7 questions from USDA?

8 MS. VARELA: Yes, Your Honor. Jen
9 Varela, USDA.

10 CROSS-EXAMINATION

11 BY MS. VARELA:

12 Q Thank you so much for being with us,
13 Ms. Dees.

14 A Uh-huh.

15 Q From your resume and your testimony,
16 we see that you have a lot of experience with
17 most of the major organizations, at least in this
18 part of the country.

19 A Right.

20 Q And you mentioned that there is
21 insufficient funding, for one, for promotion. I
22 wonder if you could speak to the efficiency of

1 the existing programs in securing their funding.
2 Is it your opinion that sometimes it's difficult
3 to collect those funds, even when programs
4 already exist?

5 A Are you requesting from the Georgia
6 standpoint?

7 Q Just in all of the different
8 associations you've been involved in, I know
9 there are a couple different avenues for those
10 funds to come together. What are some of the
11 challenges they've had in using them?

12 A Well, the biggest thing for us in
13 marketing is, you know, obviously you can do
14 things collectively when you have more funds
15 gathered together than doing solely, so trying to
16 collect funds from the Georgia side, you know, we
17 have an assessment in Georgia. Georgia Pecan
18 Growers solicits funds through a couple of
19 different grants that we do, that we do marketing
20 from, developing websites, doing grower meetings.
21 We do one with risk that tries to give risk
22 options and tells growers what they need to do as

1 far as, you know, growing, insuring their crop.

2 From the international side, from the
3 U.S. pecan point, we do solicit funds currently
4 from the different states, and that is hard,
5 because each state currently has their own
6 projects they're doing. So it is a challenge to
7 get those funds to do what we need to do
8 sometimes.

9 Q Okay. And also just to follow up on
10 a statement you made here that kind of intrigued
11 me a little, you mentioned being a real player in
12 the tree nut industry.

13 A Right.

14 Q Can you expand on that a little and
15 describe to us, first of all, what you see
16 happening in the tree nut industry that isn't
17 happening with pecans, and how you think you
18 could get there through the marketing order.

19 Q Okay. Well, obviously if you watch TV
20 at all or pick up any newspaper at all, you
21 continually see the little green guy from the
22 pistachios. You continually see things with

1 almond milk. There's so much more funding
2 available to them than we currently as being in
3 15 states.

4 So to be a player, to be able to get
5 on the international and the domestic front from
6 this marketing order, from the domestic side, we
7 need funding to be able to do the same things
8 they're doing. Currently that's not an option
9 for us.

10 Q And so when you say, not an option,
11 you mean that right now, there's not --

12 A There's not funding.

13 Q -- a program in place that works at
14 that level.

15 A Exactly.

16 Q Even though there are some smaller
17 programs.

18 A Right. We're restricted. I mean, you
19 really can't play on that field unless you have
20 proper funding.

21 Q And given your experience with some of
22 those marketing efforts, can you describe to us

1 if you see a complementarity between the existing
2 programs and a potential federal program.

3 A Can you clarify that just a little
4 bit?

5 Q Well, there are already some projects
6 going on, and we assume that you don't want those
7 to go away.

8 A Are you talking about the
9 international projects?

10 Q Either the international project or
11 the state-level projects.

12 A All right. Right. And I do not want
13 those to go away. Yes. Currently Georgia, I
14 guess, is one of the two states who has an
15 assessment that we do some marketing. But,
16 again, we're restricted to what we can do,
17 because of funding is limited. I mean, we don't
18 have enough funds to really play on the big
19 field, and we are restricted.

20 Q And do you see a role, let's say, for
21 the Georgia marketing in particular, to still be
22 the voice for local marketing effort?

1 A Oh, I absolutely. I mean, we would
2 want to continue our own program. I mean,
3 there's a lot of things we can do outside the
4 federal side for just our state, so absolutely we
5 want to continue our own marketing for our own
6 state.

7 Q Thank you so much. And then to flip
8 over to your work with the U.S. Pecan Council,
9 you know, how could having a domestic program
10 work in concert with the international marketing
11 that you're currently involved with?

12 A Well, currently, I guess from my
13 standpoint, I've been doing it for about five
14 years, and I see the marketing efforts that the
15 U.S. pecan team has put in and what the ability
16 for us has happened internationally, and that's
17 not been a focus of for us domestically. We
18 can't do that domestically because of funding.

19 So, you know, just as Dr. Wells
20 mentioned earlier, there are many people in the
21 northern part of the U.S. that have no idea the
22 nutritionist points of a pecan. They don't even

1 know what a pecan is.

2 So, you know, obviously doing
3 marketing outside the U.S. has grown the
4 industry. I've seen what that's done for the
5 industry in the last five years, and there really
6 is no reason for us not to have the same ability
7 to do that in our own country. And we fall short
8 of that right now.

9 Q Great. Thank you very much.

10 MS. VARELA: No further questions from
11 me.

12 THE WITNESS: You're welcome.

13 JUDGE GUTHRIDGE: Are there any more
14 questions from USDA?

15 (No response.)

16 JUDGE GUTHRIDGE: Mr. Davis?

17 MR. DAVIS: Yes, Your Honor. I'll
18 just follow up very quickly on Ms. Varela's
19 comment and to make sure it's clear what we're
20 talking about here.

21 REDIRECT EXAMINATION

22 BY MR. DAVIS:

1 Q The Georgia Pecan Commodity Commission
2 has a one-cent-per-pound assessment on Georgia
3 pecans. Is that correct?

4 A That's correct, for anyone having more
5 than 30 acres.

6 Q You anticipated my next question.

7 A I thought so.

8 Q It only applies to farmers that have
9 more than 30 acres. Is that correct?

10 A That's correct.

11 Q Do you have any idea how they arrived
12 at that threshold of 30 acres?

13 A That was before my time. It's in the
14 Commission rules. I don't know what made up that
15 decision.

16 Q But it really only applies to farmers
17 that have more than 30 acres.

18 A Exactly.

19 Q All right.

20 MR. DAVIS: I don't think I have
21 anything further, Your Honor.

22 JUDGE GUTHRIDGE: Anything else from

1 USDA?

2 MR. HILL: No, Your Honor.

3 JUDGE GUTHRIDGE: Does anyone in the
4 audience have any questions?

5 (No response.)

6 JUDGE GUTHRIDGE: No? Ms. Dees,
7 you're excused.

8 THE WITNESS: Thank you.

9 (Whereupon, the witness was excused.)

10 JUDGE GUTHRIDGE: Mr. Ganas, I think
11 it's your turn.

12 (Pause.)

13 JUDGE GUTHRIDGE: Mr. Ganas, you made
14 your own sign.

15 MR. GANAS: No. She made it for me in
16 the back, compliments of the USDA.

17 JUDGE GUTHRIDGE: Could you raise your
18 right hand, please.

19 Whereupon,

20 GARRETT GANAS

21 having been first duly sworn, was called as a
22 witness herein and was examined and testified as

1 follows:

2 JUDGE GUTHRIDGE: All right. Could
3 you please state again your name and spell it.

4 THE WITNESS: Garrett Ganas, G-A-R-R-
5 E-T-T, G-A-N-A-S.

6 JUDGE GUTHRIDGE: And what's your
7 address?

8 THE WITNESS: [REDACTED]
9 Waycross, Georgia [REDACTED]

10 JUDGE GUTHRIDGE: And what is your
11 occupation?

12 THE WITNESS: A farmer of pecans.

13 JUDGE GUTHRIDGE: Of pecans.

14 THE WITNESS: Yes, sir.

15 JUDGE GUTHRIDGE: Pecans, whatever.

16 All right. And what would you like to tell us?

17 DIRECT TESTIMONY

18 THE WITNESS: I'm also as a
19 representative of Georgia Farm Bureau, as the
20 chairman of pecan advisory committee, and here to
21 say that Farm Bureau supports the right of the
22 producers to vote in a national promotion

1 program, and that we do recognize the many
2 benefits that can come from such a program, the
3 multiple benefits.

4 And as a producer, as a small
5 producer, I grow 150 acres, and we do some custom
6 work for some other growers. As a young
7 producer, this is the future of our industry, and
8 I believe that as a unified industry, we'd better
9 gain funding for research, for the information
10 that as Dr. Wells said, we are in the infancy
11 pretty much of what we know about pecans and
12 where we're going, where we can go with the
13 knowledge of pecans.

14 I am probably considered one of the
15 younger producers around. I am 35 years old, and
16 I have children. This is something that I would
17 like to be able to hand down to the children and
18 better -- I just feel like that through national
19 promotion, through better research, better price
20 support, we just stand a better chance of
21 competing in a national market against other tree
22 nuts.

1 JUDGE GUTHRIDGE: All right.

2 THE WITNESS: Thank you.

3 JUDGE GUTHRIDGE: Is that what you
4 want to tell us?

5 THE WITNESS: That's pretty much it,
6 and if they have any questions on being a smaller
7 grower, I'm open to any questions.

8 JUDGE GUTHRIDGE: Mr. Davis, Mr.
9 Quirós?

10 MR. DAVIS: I think no questions, Your
11 Honor.

12 JUDGE GUTHRIDGE: Does USDA have any
13 questions?

14 MS. SCHMAEDICK: Melissa Schmaedick,
15 USDA.

16 CROSS-EXAMINATION

17 BY MS. SCHMAEDICK:

18 Q Thank you for your testimony, Mr. --
19 is it Ganas?

20 A Yes, ma'am.

21 Q -- Ganas. Thank you. So if I
22 understood you correctly, are you representing

1 the Georgia Farm Bureau today?

2 A Yes, ma'am.

3 Q So you're speaking on behalf of that
4 organization?

5 A Yes, ma'am.

6 Q Okay. And you started out by stating
7 that the Georgia Farm Bureau supports the right
8 of a grower to vote.

9 A Correct.

10 Q Okay. So when you say that, are you
11 talking about all growers, or growers as defined
12 in Exhibit 1?

13 A The growers that the council deems to
14 be able to vote. All growers as in Georgia, once
15 you drop under 30 acres, you're probably entering
16 into more of a hobby type acre.

17 Q Uh-huh. Okay. Great. So --

18 JUDGE GUTHRIDGE: So by the Council,
19 you meant the proposal that was published in the
20 Federal Register, as defined there?

21 THE WITNESS: Yes, sir.

22 JUDGE GUTHRIDGE: Exhibit 1.

1 BY MS. SCHMAEDICK:

2 Q So then, would it be correct to draw
3 the conclusion that the Georgia Farm Bureau
4 supports the delineation between a commercial
5 grower at 30 acres or 50,000 pounds, that the
6 difference between a commercial grower and a
7 hobby farmer, for example, is that definition of
8 30 acres or 50,000 pounds is appropriate as far
9 as the Georgia Farm Bureau's opinion is
10 concerned?

11 A For voting purposes, yes.

12 Q Thank you.

13 MS. SCHMAEDICK: I have no further
14 questions. Thank you.

15 JUDGE GUTHRIDGE: Are there any more
16 USDA questions? They all get a shot.

17 MS. VARELA: Jen Varela, USDA.

18 THE WITNESS: That's fine. That's
19 fine.

20 BY MS. VARELA:

21 Q Thank you for being with us, Mr.
22 Ganas. I just have a few questions about the

1 committee that you have at the Farm Bureau
2 dealing with pecans in general.

3 A Yes, ma'am.

4 Q About how many members are part of
5 that committee?

6 A It's a ten-member committee.

7 Q And do you have any meetings of your
8 own, or do you typically just gather when other
9 events are going on? For example, did the
10 American Pecan Board speak directly to your
11 committee at any time?

12 A No, they did not. We are simply an
13 advisory committee for policy production and
14 where Farm Bureau should stand on their policy,
15 and to advise them of happenings in the industry,
16 and to keep them abreast of what's going on.

17 Q So would you say most of your
18 committee members were aware of this proposal
19 being developed?

20 A Yes, they were.

21 Q And even if they didn't come to your
22 committee meeting, the board was probably

1 communicating with a number of the members of
2 your committee.

3 A Yes, they were.

4 Q Great. Thank you. And just overall
5 again, about how many members -- about how many
6 pecan growers would you estimate are members of
7 the Georgia Farm Bureau?

8 A That would be a hard one for me to
9 guess.

10 Q Is that hard to do?

11 A Yes.

12 Q That's fine. You don't have to know.
13 Is there any limitation to being a Farm Bureau
14 member? Do you have to have a certain acreage,
15 or do you represent anyone who wants to be
16 involved?

17 A Farm Bureau is an open membership, and
18 you can have any -- anybody can be a member of
19 it. We have different classifications, one of
20 them being a farmer member, which is just one of
21 several small classifications.

22 Q All right. Thank you very much.

1 A Yes, ma'am.

2 MS. VARELA: Those are all the
3 questions from me.

4 JUDGE GUTHRIDGE: Are there any more
5 USDA questions?

6 (No response.)

7 JUDGE GUTHRIDGE: No?

8 MR. DAVIS: Your Honor, we'd just
9 thank Mr. Ganas for driving up from Waycross, and
10 we appreciate your time.

11 THE WITNESS: Thank you very much.

12 JUDGE GUTHRIDGE: Does anyone in the
13 audience have any questions for Mr. Ganas?

14 (No response.)

15 JUDGE GUTHRIDGE: No? You're excused.

16 THE WITNESS: Thank you.

17 (Whereupon, the witness was excused.)

18 JUDGE GUTHRIDGE: Ms. Wray, is there
19 anyone else who has signed up?

20 MS. WRAY: No, Your Honor.

21 JUDGE GUTHRIDGE: Okay.

22 MR. DAVIS: Your Honor, the Proponent

1 group calls Mr. Thomas Mason.

2 (Pause.)

3 JUDGE GUTHRIDGE: While they're
4 handling that, if you could raise your right
5 hand, please.

6 Whereupon,

7 THOMAS L. MASON

8 having been first duly sworn, was called as a
9 witness herein and was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. DAVIS:

13 Q Good morning, Mr. Mason. Thank you so
14 much for being here. Again, for the record,
15 please state your name and spell it for the
16 record.

17 A Thomas L. Mason, T-H-O-M-A-S, L, M-A-
18 S-O-N.

19 Q And, Mr. Mason, do you have before you
20 Exhibits 1 and 23 to these proceedings?

21 A Yes, sir.

22 Q And have you -- Exhibit 1 being the

1 proposed -- the notice and the proposed marketing
2 order, and Exhibit 23, being the executive
3 summary of the economic analysis of Dr. Palma.

4 Have you had an opinion to review those?

5 A Yes, I have.

6 Q Okay. Thank you. I may ask some
7 things about that. I understand you have some
8 prepared testimony you'd like to give.

9 A Yes, sir.

10 Q Please proceed.

11 A My name's Thomas Mason, and I live in
12 Kathleen, Georgia. My family and I farm 2,600
13 acres of improved pecans in Middle Georgia. I
14 was in the construction business for over 30
15 years, but I've been in the pecan business since
16 the late 1990s, became a full-time pecan grower
17 business on July 4, 2007.

18 We would be classified as a large
19 pecan grower under the Small Business
20 Administration definition of more than \$750,000
21 in gross pecan revenues. I've read the proposed
22 marketing order for pecans as published in the

1 Federal Register, and I agree with the goals and
2 the direction of the proposed American Pecan
3 Council.

4 We need a ship and need to set sail.
5 It will be up to us, a pecan industry, where we
6 go from here. In Georgia, we assess one cents a
7 pound on all inshell pecans grown by farmers with
8 more than 30 acres. This assessment was voted on
9 by Georgia growers and is collected by the
10 Georgia Department of Agriculture, and the
11 amounts collected are used as determined by the
12 Georgia Commodity Commission for Pecans.

13 I'm currently chairman of the Georgia
14 Commodity Commission for Pecans, and I've served
15 on the Commission since 2009. Our focus is
16 research, promotion and development. We've
17 historically collected between 400,000 and
18 \$700,000 per year, and we use the money to
19 support organizations that try to sell pecans
20 internationally and domestically.

21 The bulk of our budget recently has
22 been spent on trying to get pecans tested for

1 users' ingredients or other processed products.
2 An example of these are pecan butter, like peanut
3 butter; pecan milk, like soy or almond milk;
4 candy bars or cereals, et cetera. It takes years
5 for manufacturers to commit to using pecans as
6 part of an ingredient recipe or the base for a
7 stand-alone project.

8 Of course, besides the receipts of
9 consumer acceptance factors, pecan prices and
10 pecan supplies are also issues for food groups,
11 but overall our budget is just too small to solve
12 our problems. The proposed American Pecan
13 Council would have some authorities that are
14 similar or the same to those of the Georgia
15 Commodity Commission for Pecans.

16 I do not view this as a conflict for
17 several reasons. First, from my vantage point, I
18 absolutely welcome the new revenue for promotion
19 from the American Pecan Council. We really do
20 not have enough for the Georgia Commodity
21 Commission for Pecans to make a significant
22 marketing impression on domestic consumers, but

1 the money from the American Pecan Council might.

2 Second, with American Pecan Council in
3 place, what I would like to see is the Georgia
4 Commodity Commission for Pecans redirect its
5 efforts and funds towards more Georgia-specific
6 research. Finally, it will be up to the Georgia
7 growers whether they want to continue the one-
8 cent assessment after the American Pecan Council
9 is in place.

10 I say, let the Georgia growers decide
11 what they want to do, but overall, I say this as
12 chairman of the Commission. It is more important
13 get the American Pecan Council up and running and
14 focused on pecan promotion. In recent years,
15 I've seen wide variations in prices that we have
16 received on our crop, our pecan crop. Such wide
17 variation in pricing market is extremely
18 difficult to plan for the future operations of
19 our farms.

20 While prices for pecans go up and down
21 dramatically from year to year, our cost of
22 production has steadily increased. Further, the

1 lack of accurate market information on the
2 anticipated size of the pecan crop in any given
3 year also makes it difficult for me to negotiate
4 a fair price for our crop and to make reasonable
5 business decisions about investments and our
6 farms.

7 Increased price stability and more
8 accurate market information would greatly benefit
9 our farms. I think our farm and industry would
10 also benefit in the future from grade, size,
11 quality, packaging, shipping, protocols, and
12 other handling requirements, as we compete with
13 other tree nuts for consumer attention.

14 I also understand that under the
15 proposed order, only growers with more than 30
16 acres of pecans or more than 50,000 pounds of
17 average production per year over the last four
18 years will be allowed to vote on the proposed
19 order. In my opinion, this threshold is
20 reasonable, because a grower that does not meet
21 this threshold is not a commercial grower. Any
22 grower that is smaller than the proposed

1 threshold could not justify the cost inherent in
2 such a small production.

3 I am not aware of a single pecan
4 farmer in my area who has a commercial farm that
5 is smaller than 30 acres or produces less than
6 50,000 average pounds per year. As I testified
7 earlier, we use 30 acres in Georgia as the
8 dividing line between hobby and yard farmers and
9 commercial pecan growers, so I'm comfortable with
10 these metrics.

11 I reviewed the economic analysis, the
12 summary prepared by Dr. Marco Palma, specifically
13 the projected average price increase from
14 promotion of 6.3 cents per inshell pound versus
15 average of 2.5 cents per inshell pound cost. I
16 agree that promotion will increase prices.

17 Overall I'm aware of these costs that a federal
18 marketing order may impose on my farm, and I do
19 not believe that these costs are unduly
20 burdensome.

21 Further, I believe that the benefits
22 of the federal marketing order to my farm will

1 greatly outweigh the costs associated with it.

2 The American Pecan Board has kept our
3 organization informed about these efforts to
4 propose federal marketing orders.

5 Representatives of the American Pecan Board
6 regularly attend our growers meetings to listen
7 to us, to answer our questions. I also know
8 personally several members of the board of the
9 American Pecan Board.

10 In conclusion, I fully support the
11 proposed federal marketing order for pecans, and
12 encourage the Secretary to implement the order as
13 proposed by the American Pecan Board. And I'd be
14 glad to answer any questions or --

15 Q Let me ask one question before we
16 tender. Attached to your written statement, do
17 you have -- is there a letter from the Georgia
18 Agricultural Commodity Commission for Pecans to
19 the Secretary of Agriculture?

20 A There is.

21 MR. DAVIS: Your Honor, the Proponent
22 group tenders Exhibit 70.

1 (The document referred to was marked
2 for identification as Exhibit Number
3 70.)

4 JUDGE GUTHRIDGE: Is there any
5 objection from USDA?

6 MS. CHILUKURI: No objection, Your
7 Honor.

8 JUDGE GUTHRIDGE: Any objection from
9 anyone in the audience?

10 (No response.)

11 JUDGE GUTHRIDGE: No objection.

12 Exhibit 70 is admitted into the record.

13 (The document referred
14 to,

15 having been previously marked for
16 identification as Exhibit Number 70,
17 was received in evidence.)

18 BY MR. DAVIS:

19 Q Mr. Mason, let me refer you to the
20 letter that you just referred to in Exhibit 70,
21 and you'll notice I put it on the overhead here.
22 Could you read the salutation and the body of

1 your letter into the record, please.

2 A Yes, sir. "Dear Secretary Vilsack:
3 The Georgia Agriculture Commodity Commission for
4 Pecans is writing you in support of the federal
5 marketing order for pecans currently being
6 promulgated by the American Pecan Board.

7 "Our industry has and continues to
8 face issues of price and supply, instability in
9 the market. This situation inhibits our effort
10 to provide a constant quality supply of pecans to
11 domestic consumers at a price that supports a
12 profitable return to producers and processors.

13 "We believe the federal marketing
14 order will contribute to a more stable market
15 environment that is favorable to growers, buyers,
16 shellers and consumers. The Georgia Agriculture
17 Commodity Commission for Pecans goes on record in
18 favor of the order and greatly appreciates your
19 support."

20 Q Thank you, Mr. Mason. Let me go back
21 to just one thing that you said in your
22 statement, and that is that, referring to the

1 assessment in Georgia on farmers, and I believe
2 you noted that only farmers that have more than
3 30 acres in production are assessed under that
4 program. Is that correct?

5 A That's correct.

6 Q And you heard -- you may have heard me
7 ask Ms. Dees if she knew how that number was
8 arrived at, and she said that might have been a
9 little before her time. Do you have any idea how
10 that --

11 A Well, it -- this board was started
12 several years before I went on, so it was before
13 my time, too. But my understanding of it is that
14 it was basically a mutually agreed upon standard.
15 I mean, that was about the break point of what
16 would be considered less than that's kind of
17 hobby, hard nut farming, it's kind of referred
18 to, a lot of times the way it is, versus
19 commercial farming.

20 And, you know, why it was 30 instead
21 of 25 or 35, I think they just had to settle on
22 something, and there it got playing on words, but

1 30 acres just turned out to be the standard that
2 was agreed upon back at that point in time when
3 the original commodity commission was being voted
4 on.

5 Q So approximately how long has that
6 standard been in place, as far as you know?

7 A Twenty years, 30 years, 25 or 30
8 years.

9 Q During the time that you've been
10 involved with the commission, has there been any
11 controversy about that? Has that been a source
12 of irritation or trouble to anybody?

13 A I think it made the 30 acres or less
14 happy, and the 30 acres or more happy. I mean,
15 it -- we were glad to pay the one cent, because
16 we knew we needed some promotion, and the people
17 picking up hard nuts didn't really feel like they
18 needed promotion.

19 MR. DAVIS: No further questions at
20 this time, Your Honor. Thank you.

21 JUDGE GUTHRIDGE: Does USDA have any
22 questions?

1 MS. SCHMAEDICK: Melissa Schmaedick,
2 USDA.

3 CROSS-EXAMINATION

4 BY MS. SCHMAEDICK:

5 Q Thank you, Mr. Mason, for your
6 testimony. Thank you for joining us today. So
7 in your testimony you talked about pecans and the
8 potential for pecans to be used in new products,
9 and I think you referred to testing of other
10 products. Can you tell us about, I guess, that
11 process?

12 A For so many years, pecans have been
13 looked at as -- in the South as a chef's
14 ingredient or something that we do here in the
15 South, and they're not really -- hadn't really
16 been noted or promoted as a United States-wide
17 product or even a domestic product, and recently
18 the commodity commission has changed the
19 direction in our marketing with limited funds.

20 And we've gone out to a company out of
21 Atlanta called Object 9, and they gave a
22 presentation to us, and showed 75 to 85 percent

1 of the market out there was in ingredients, and
2 then there's some in snack foods and grocery. So
3 we've changed our direction, and again, as our
4 funds are so limited, but you have to get on
5 these --

6 And I can't use really names that
7 we're working with right with companies, but you
8 can't get on an R&D board, which is a research
9 and development, so they do a lot of testing of
10 how a pecan's going to fit in a certain type
11 candy or a mix or a trail mix, or how the milk
12 may turn out or, you know, you make butter out of
13 pecans.

14 And so how is it going to -- is it
15 going to be able to merge with a Reese's Cup,
16 which is -- you know, I mean, and replace peanut
17 butter with pecans. So all of his is an
18 innovation, and it requires testing, but it
19 requires testing by the companies that want to
20 use it, so we've got to reach out, and we sent
21 enormous samples with the limited money we have,
22 fish batter, bread batter, beer, you know.

1 And all this has to get on their
2 testing tables, and, you know, I just mentioned,
3 we got a 400- to \$700,000 a year. We're also
4 charged to do research. We've got to do
5 promotion, you know, and it just doesn't go that
6 far.

7 And this order could really put this
8 particular track -- I feel like that Georgia's
9 kind of been on the front run of and take it
10 countrywide, and have the money to do what really
11 needs to be done, that we're just trying to do
12 here in Georgia.

13 Q So taking what you just said and
14 then -- and linking that to your statement about
15 pecan prices and supplies impacting perhaps those
16 groups' decisions to use pecan as an ingredient,
17 can you talk about how that works.

18 A Well, you know, when we first changed
19 our direction three years ago, the issue at the
20 time was that domestic consumption was actually
21 dropping. All the records and indicators showed
22 that domestic consumption of pecans was dropping,

1 and we had an overburden of pieces, and everybody
2 wanted the mammoth half that Dr. Wells was
3 talking about. I mean, they're easy to sell.

4 But every mammoth half you start
5 shelling and getting, you start getting pieces,
6 and these pieces accumulate, and someone -- and
7 the pieces was just stockpiling, and they stayed
8 on the market, so we started having -- trying to
9 find -- and the pieces were driving the prices
10 down. I mean, you know, there were so many
11 pieces there, when my pieces come on this year,
12 I'm competing with pieces from last year, because
13 a pecan will keep two years at zero degrees.

14 And so you're competing with pecans
15 that were maybe in a zero-degree temperature for
16 two years are still fine to eat, but the color
17 may be not as pretty. But I got new ones that I
18 want X for, and someone's selling old ones, and
19 they're going to chop them up and put them in
20 candy or some product. So we had to get these
21 off of the shelves.

22 And consumption has picked, I'd like

1 to say is from this program that we're on. I
2 will say it's from this program we're on. But we
3 do think it has helped. We've reached -- I think
4 we've reached 300-and-something individual
5 companies in three years, and all of those
6 companies, I think, are taking product that I
7 would safely say that I think about 30 to 40
8 percent of them are working on some sort of
9 ingredient to use up this type of the market, the
10 nuts that are there. And taking that with more
11 money, you know, what could we do?

12 Q Thank you. That's very helpful. I
13 know you mentioned here in your testimony the
14 lack of accurate market information, and that
15 part of your testimony made me recall a meeting
16 that I attended in Alabama, and I believe you
17 were present. Do you remember that meeting?

18 A Yes, ma'am.

19 Q And the topic was trying to
20 forecast -- not even forecast -- trying to figure
21 out what production was. Can you -- do you
22 recall that conversation and the approach that

1 was used to try to figure out what that number
2 was?

3 A Well, you know, you've got
4 professionals that can tell you what crops are on
5 the trees. I can ride my orchard right now and
6 tell you I've got a good crop, but I can't tell
7 you if it's 2 million pounds or 3 million pounds
8 or a million-five. Or I can tell you I got 4
9 million pounds out there, but I can't tell you
10 how many I'm going to get in the cleaning plant
11 and get sold.

12 So there's got to be a more accurate
13 way to have money to do this -- you know, someone
14 go out and see more farms. I mean, I don't know
15 how many farms they see before they make a
16 determination of what the average crop's going to
17 be. It seems like they do a -- somehow do a
18 pretty good job, but it's still to me a little
19 bit like we're shooting from the hip.

20 I know people will come out, and
21 they'll want to contract nuts from us, and, you
22 know, you want a -- and you'll get a price that

1 you think's a good price and you can make money
2 at, but the thing is, if you contract them,
3 you've got to have them. And if you don't have
4 them and the market changes, you're going to go
5 buy them off the open market, and then that helps
6 drive the price up, not to your advantage.

7 So having an accurate understanding of
8 what's on the market and what's out there would
9 be very beneficial to all of us growers.

10 Q Would you agree that the current
11 method for predicting production is less -- is a
12 less than accurate science?

13 A I would say the science may be less
14 than accurate, but I'm not smart enough to tell
15 you what science would be accurate. You know,
16 it's easy to criticize something when somebody
17 else is doing it, but their averages seem to
18 be -- I mean, last year we thought we had 110
19 million and we had 70 million, and the science
20 changed pretty quick.

21 So early on we're telling you, you
22 know, if I had some nuts in the freezer, you

1 know, that I needed to go ahead and be selling
2 them. But yet as the crop disappeared, I should
3 have been saving them, because this crop's not
4 going to be as long as I might could have got
5 more.

6 So I think the science is subject to
7 change as the nuts grow more. You can see the
8 size of them. You can get the people in Texas
9 together with the people in Georgia. Now, you're
10 going to have them on a council, where they're
11 sitting in the same room with each other, and our
12 representatives will be there. Their
13 representatives will be there.

14 And 17 or 18 people will be able to
15 sit around the room, and they could have talked
16 to everybody in their area and said, Well, these
17 farms right now have this and this, and I think
18 that could help the science more so than saying
19 the science is just wrong. I think it could
20 enhance it.

21 Q Okay. Thank you. I want to shift
22 gears and talk about your experience as the

1 chairman of the Georgia Commodity Commission for
2 Pecans. So a couple of questions. I'm not real
3 familiar with how the state commission operates,
4 so I'm trying to ask some questions to figure
5 that part out.

6 So you mentioned that -- it's on the
7 first page of your statement. You said that the
8 state assessment is voted on by Georgia growers,
9 so when you -- can you tell me about that
10 process. Like how do you go about identifying
11 the assessment rate and then --

12 A Well, the assessment rate was a half
13 a cent a pound when it first came in, and every
14 four years, the growers of 30 acres or more vote
15 on the re-up of the assessment, so the assessment
16 could be voted out at any time, or it could be
17 continued on.

18 Well, we in the Georgia growers, we
19 did a promotion, and the Georgia growers
20 consented to -- on their last vote was we voted
21 on the half a cent, but then we voted separately
22 to increase it half a cent, because we didn't

1 want to shoot ourselves in the leg, if one of
2 them gets voted out, votes the other one out. So
3 we voted for half a cent increase is the way it
4 was worded.

5 And the growers vote on that, and I
6 guess at any time if the growers become
7 disgruntled with the direction they think the
8 money's going, they still have complete control
9 of this, because they can vote it out, and then,
10 you know, I guess if we wanted to put it up for
11 vote, we could ask for more money, but, you know,
12 we just -- we try to get what we can to keep the
13 research development promotion at least out
14 there.

15 We've tried to -- you know, we've
16 helped fund money for domestic. We've helped
17 fund money for American Pecan Council. You know,
18 we're trying to do research promotion, and so
19 it's -- us being there has helped all the way
20 around, but again, we're just limited -- you
21 know, you take \$700,000 and go spreading it where
22 all I've just said, and you just don't have the

1 money you need.

2 Q Right. Thank you. I'm also wanting
3 to focus on the process. So if I understood,
4 based on what you just said, the way the
5 commission operates is that there's a vote every
6 four years --

7 A Yes, ma'am, I believe that's correct.

8 Q -- for the assessment. Right? And
9 that's to continue the existing level.

10 A Continue or do away with if --

11 Q Or do away with. Okay. Or you also
12 said that there was a second issue that was voted
13 on, and that was an increase in the assessment.

14 A Well, we voted for -- we originally
15 had one cent, and the last assessment, the last
16 vote, we increased it a half a cent, voted for
17 half a cent increase, and so that made it the one
18 cent that we have now.

19 Q Okay. And under the commission
20 guidelines, can a vote occur less than four
21 years?

22 A No. It's set up as a state -- it's

1 all a set-up formality, just like the vote is
2 here. I don't remember what it goes back to the
3 growers, but it goes back to the growers for a
4 vote, and where they can take it in, take it out,
5 or -- and it's the same type situation.

6 The first handler pays the fee, you
7 know, or I could deduct a fee. It's audited by
8 the State. The State does a state audit of
9 mainly the first handlers and the growers that
10 take their own fee out. And some of the growers
11 are selling direct, so that, therefore, makes
12 them the first handler. And then the state
13 auditors go around, and they'll audit, and see,
14 you know, where everybody's at, and that also
15 helps to the records of what was, you know,
16 produced that year.

17 Q Uh-huh. So if I'm understanding,
18 again, what you just said, the State has an
19 active role in terms of overseeing how that
20 program is run.

21 A No. The board -- you know, the State
22 has guidelines, just like this program has

1 guidelines. And the commodity commission -- it's
2 almost a -- I mean, to it's a complementary thing
3 of what we're doing right now. I mean, this is a
4 federal marketing order. It's got American Pecan
5 Board. This is Georgia pecan -- so the -- the
6 State, and it's got the Georgia Commodity
7 Commission.

8 And we're made up of five growers,
9 Farm Bureau, and a representative from the
10 commissioner's office. Normally since I've been
11 there, I don't ever remember seeing the
12 commissioner's representative or the Farm Bureau
13 representative really going out of their way to
14 cast a vote or influence anything. I can
15 honestly say since 2009 that I've been there,
16 that it's been a grower board that makes the
17 decisions on where all the funds are spent,
18 what'd one, and, you know --

19 But we're under state laws of what it
20 takes to apply for the money to be paid, things
21 like that, you know, so we fall under state
22 criteria for things like that. The checkbook's

1 out of our hands. The vote is, of how we spend
2 it is, but the checkbook's not.

3 Q Thank you. And I believe you said
4 that you understand that this program would
5 operate similarly, so that's a state program, but
6 this is a federal program.

7 A I think they'd certainly complement
8 each other. I think there's going to be some
9 things that we've done that we could relax on,
10 and one of the biggest things facing us right now
11 is scab disease. Well, that's not a problem out
12 West. It's a Georgia problem, so they could let
13 us start taking our funds and start concentrating
14 on some Georgia problems.

15 I mean, really it'd almost be like a
16 little relief. I mean, it gives us -- you know,
17 we can say, Okay, you all kind of got this, and
18 then we can come back in and kind of do what the
19 Georgia growers are wanting to do. But this --
20 you know, we've had to support everything that we
21 could up to now, but I think they would enhance
22 each other.

1 Q And also in your opinion, it would be
2 very important for the Georgia commission to
3 continue that -- to focus on Georgia issues.

4 A Well, I think it'd be important for us
5 to focus on Georgia issues, and it'd be up to the
6 voters, the Georgia voters, to see if they wanted
7 to continue, I think was part of your question,
8 but, I mean, I think that certainly everybody --
9 Georgia's been real progressive right now and the
10 farmers have been real progressive. I couldn't
11 imagine us not having the commodity commission,
12 to go ahead and start doing more Georgia-related
13 items.

14 Q Okay. Thank you.

15 MS. SCHMAEDICK: I have no further
16 questions.

17 MS. VARELA: Jen Varela, USDA.

18 BY MS. VARELA:

19 Q Mr. Mason, I also -- oops, I just lost
20 my name tag. I also wanted to ask you a few
21 questions from the perspective of serving on the
22 commission, and specifically in the way that some

1 of those funds are used. So, first, could I have
2 you look at Section 986.57 from Exhibit 1.

3 That's the proposal that went out.

4 A 9867 --

5 Q .57. It's titled, Funds and other
6 property.

7 A Yes, ma'am.

8 Q And, again, I'm not exactly familiar
9 with the way the funds are held in the
10 commission. I believe you said that the
11 checkbook's not in your hands.

12 A The State collects the funds and holds
13 the funds.

14 Q They hold that. Okay. In looking at
15 paragraph (a) here, is it your understanding, in
16 looking at that language there, that those funds
17 are going to go directly to the council?

18 A (Perusing document.) Yes. The way
19 it's worded there, it looks like to me it's going
20 straight -- going to the council.

21 Q Okay. Thank you very much. And then
22 as a follow-up to that, I'd like you to move down

1 just a little to Section 986.64. And I know
2 that's kind of a long section. I'm just going to
3 look at paragraph (a)(1) -- I'm sorry -- (1) and
4 (2).

5 A (Perusing document.)

6 Q And I bring this up, because I know
7 you mentioned that sometimes there's a range in
8 the assessments that you've seen coming in in
9 your experience on the commission, and the
10 language here describes some of the possibilities
11 that could happen if there are too many
12 assessments.

13 And looking specifically at number (2)
14 there, I'm looking especially at the proviso that
15 says, "Funds already in reserve" -- or sorry. I
16 should read the whole thing. "The council, with
17 the approval of the Secretary, may carry over
18 excess funds into subsequent fiscal periods as
19 reserves, provided that funds already in reserves
20 do not equal approximately three fiscal years'
21 expenses."

22 In your experience as someone who's

1 handled funds that are coming from growers that
2 are there for a specific purpose, does it seem
3 reasonable to you that the council might need to
4 carry over some of those reserves? And if so, is
5 this, in your opinion, a reasonable amount to be
6 able to build up?

7 A Yes, because our previous boards, when
8 pecans, you know, weren't doing so good, the
9 promotion and all wasn't, you know, needed as
10 much as it is now. I mean, prices were low, it
11 seemed like, and we may even actually needed it
12 more. But they built up a reserve, and, you
13 know, as one of the board members that's been
14 responsible on trying to get this done, we've
15 gone into those reserves and just about used them
16 up.

17 And if those reserves would have not
18 been there and been in place, we would have
19 probably had a year or two that we wouldn't have
20 had any funds to meet anything, any requests.
21 Even if with a half-cent assessment increase this
22 year, we didn't collect enough off the low crop

1 to carry this year's budget, so part of this
2 year's budget was right at the line of going into
3 the reserves.

4 And so, yes. I think that the reserve
5 is needed, and I think that a there-year reserve
6 limit would give you something you know you had
7 to fall back on.

8 Q Okay.

9 A Some of your obligations, you know,
10 like where our budget is from year to year, but
11 some of your obligations -- I'll give you an
12 example, like on scab. I mean, you know, the
13 program's a three-year program that Dr. Katherine
14 Stevenson is doing, and to get students in, she
15 needs a three-year commitment, and, you know, we
16 can't give a three-year commitment, but we can
17 give a vote we're going to fund the first year
18 with a hard look at the second year.

19 And, now, does that obligate us or is
20 that necessarily -- we need the scab improvement.
21 We need the scab studies, a place that the
22 farmers can go, and what it is is determined that

1 the more you use a chemical, the more resistant
2 that disease becomes to that chemical. It gets
3 used to it, and we have nothing out there to
4 replace the sprays that we have out there for
5 that now.

6 And so Dr. Stevenson is trying to
7 figure out if we cut back -- if people have cut
8 back too much, not used the full rate and allowed
9 this, and right now in Georgia, I would say
10 that's one of the number one things we have. And
11 so you're going to have commitments that you're
12 going to have to fulfill that you need to keep
13 going down the road.

14 Q And does the fact that the pecan tree
15 itself and farming pecans is such a kind of long-
16 term process that -- I think we've had a lot of
17 testimony that an application one year or some
18 sort of disease one year can have a multi-year
19 impact. Is that part of why these projects have
20 to be multiple years long?

21 A Well, you know, the studies that are
22 being done -- I mean, I know Dr. Wells mentioned

1 the scab, how it carries over into bark, and, you
2 know, you can have this clarified with the next
3 witness because he does the spraying and all,
4 but -- takes care of all of that, but if I'm not
5 mistaken, we came out there one year and just
6 sprayed dead wood, trying to kill scab before it
7 got on any leaves and anything popped out there,
8 you know, so I think there is carryover, you
9 know, to -- for problems, and then I also think
10 the farmers are trying different things to
11 eliminate their problems.

12 Q Okay. And when you said that you
13 could only commit -- you could only usually
14 commit to one year of funding a project, why is
15 that?

16 A Well, we're on a physical year, and
17 it's hard to spend money next year that you
18 haven't got yet. The commissioner frowns on
19 that.

20 Q Is there a state requirement that
21 makes you do that?

22 A I would think so --

1 Q Or is it just a practical --

2 A -- yes. I mean, I just think it's
3 just good business, I mean, if nothing else,
4 but --

5 Q Understood.

6 A -- I'm sure it's a requirement. Yes.

7 Q Understood. And if you don't mind,
8 I'd like to circle back to some of your
9 experience with providing pecans for research and
10 development. Ms. Dees testified earlier that
11 some of your promotion efforts have done well in
12 promoting Georgia pecans specifically. In your
13 discussions with some of these ingredient
14 developers, would you say that it's not as
15 important to them to have a product that's tied
16 to a particular state or region? Are they
17 looking for something that is a little more
18 generic?

19 A I don't really, you know, think that
20 what's driving it is where -- what state it's
21 from. It's the price and availability of the
22 region. And, you know, so, you know, if -- I

1 mean, it's just too easy to ship pecans and move
2 them around. You know, the only thing that gets
3 into specific is your domestic market. That gets
4 into a little bit more specific.

5 I mean, I'm not going to buy a
6 Desirable half and chop it up and put it in a
7 candy bar. I'm going to coat it in chocolate or
8 send it in a gift pack or -- so you're going
9 to -- the nuts that are out there that we're
10 trying to move right now are kind of byproducts
11 left over, and it doesn't matter which part of
12 the region it comes out of.

13 Q And you made an interesting
14 distinction in saying that if there was national
15 research going on, that would, in essence, free
16 up the Georgia funds through the commission to do
17 Georgia-based research. Is it going -- I'm going
18 to try to connect some dots here. Is it going
19 too far to say if you could on a national scope
20 provide enough nuts to get the ingredient market
21 supplied, that that would, in a similar way, free
22 up your promotion money to still work on Georgia-

1 specific promotion?

2 A Well, you know, I'm not sure I really
3 understand what you're asking.

4 Q Let me --

5 A If you'll try it one more time, and
6 I'll --

7 Q -- try to straighten that out a
8 little. If the ingredient buyers or the raw
9 product buyers don't have an interest in where
10 those pecans are produced, but you still see that
11 there's value in promoting a Georgia-specific
12 product, you still see -- or at least Ms. Dees
13 said --

14 A Yes. Definitely, I mean, you know --
15 yes.

16 Q So if getting ingredient makers to
17 want to buy pecans overall, regardless of where
18 they're from, could be done by somebody else with
19 this generic funding, because it's a generic
20 product, does that make it easier for your
21 Georgia marketing efforts to focus on things that
22 are specific to you, rather than having to kind

1 of lose a little bit of that branding, of being a
2 Georgia pecan, and going to somebody who's not
3 going to identify it as a Georgia pecan?

4 A Well, what I see it could do for us is
5 it could pull us out of the marketing side that
6 we're charged with and let us go over to research
7 and -- pull us out of promotion, and let us move
8 over to research. I mean, the Byron [phonetic]
9 Station is needing funding, is talking about
10 closing down.

11 We had some \$300,000 worth of requests
12 from different doctors around the state this
13 year, and I think four of them, we were able to
14 grant them sort of money, so it could certainly
15 let us refocus our direction of the other items
16 we're charged for in our guidelines.

17 Q That's very helpful. Thank you very
18 much for all of your testimony.

19 MS. VARELA: I have no further
20 questions.

21 JUDGE GUTHRIDGE: Are there any more
22 USDA questions?

1 MR. HILL: No, Your Honor.

2 JUDGE GUTHRIDGE: Mr. Davis?

3 MR. DAVIS: Your Honor, if I could
4 elaborate just on one or two items --

5 REDIRECT EXAMINATION

6 BY MR. DAVIS:

7 Q You -- Mr. Mason, thank you so much
8 for your testimony. The -- let's talk about that
9 2014 crop estimate. You alluded to that, and I
10 believe you were talking about the Georgia crop
11 estimate. Is that correct?

12 A Well, the -- yes.

13 Q The one where you said it was 110
14 million.

15 A That dropped. It was a hundred, and
16 it dropped to 70 or 80. Yes.

17 Q And, again, for everyone's benefit
18 here, at what time of the year were there
19 publications estimating that the Georgia crop in
20 2014 was going to be about 110 million pounds?

21 A Well, this year -- I'm trying to
22 think, relate this year to that year. I think

1 we've already got two reports out from Texas and
2 Georgia, with reports, you know, estimating this
3 year's crop. So I would say, you know, June
4 maybe was the first one; maybe July, something
5 like that, is the second one.

6 Q Around this time, as late as --

7 A Yes.

8 Q -- July of 2014, the estimate for the
9 Georgia crop was about 110 million pounds.

10 Correct?

11 A Oh, for the first one was probably up,
12 and then it was down, and, you know, I want to
13 say maybe we settled out at about 85 million,
14 something like that.

15 Q And then at one point there was an
16 estimate that it was going to be 70 million. Is
17 that --

18 A There was one time we were thinking 65
19 million.

20 Q And then the actual crop turned out to
21 be around 80 million. Is that --

22 A 85 or so. Yes.

1 Q 85 million. Okay.

2 A What's hard to tell is you've still
3 got some in cold storage. We don't have the
4 records to track cold storage, so that's another
5 problem in itself that needs, you know, to track
6 what we got in cold storage. I mean, so when you
7 go to try to add that all up, I'm trying to get
8 this report out and got these numbers in. I
9 mean, where are all the numbers at, so it's just
10 hard to get an accurate count.

11 Q Well, you actually raise -- you raise
12 an interesting issue. If there were reports that
13 the crop was going to be 110 million pounds, that
14 would lead a farmer to believe that the price was
15 going to be kind of low, wouldn't it?

16 A Certainly.

17 Q So that might encourage a farmer to
18 put more in cold storage. Correct?

19 A Correct.

20 Q And then that, of course, then led to
21 finally the conclusion that only about 80 million
22 pounds were for sale.

1 A Well, you wouldn't have the chance to
2 put them in cold storage until after the crop
3 came in, you know, so you could amend your
4 thoughts, but you may have missed a contract
5 price, because -- or you may have taken a
6 contract price because it was low. I mean, you
7 thought it was going to be high, but then it
8 turned out being low when the crop dropped,
9 because certainly a lesser crop means a higher
10 price.

11 Q Uh-huh. Okay. And, again, I think
12 you touched on this, but I wanted to make clear,
13 the Georgia pecan commodity -- or the Georgia
14 Commission for Commodities for Pecans has five
15 farmers on it. Is that correct?

16 A That's correct.

17 Q And one representative from the
18 Commissioner's office. Correct?

19 A Correct.

20 Q And one representative from the
21 Georgia Farm Bureau.

22 A That's correct. We're appointed by

1 the growers, so we're, you know, in tune from the
2 growers. I mean, the growers board votes on us.
3 They nominate us to go up, and then the
4 Commissioner selects. For every place that comes
5 open, there's two names sent in for every
6 vacancy, and like mine's a three-year term.

7 All of them are three-year terms, and
8 so then maybe three of us come up one year and
9 then two another year, and so on the three
10 vacancies, there'll be six names sent up from the
11 growers.

12 Q Thanks. And then you weren't able to
13 visit with us in Texas, but for those of us that
14 were there, I believe there was some erroneous
15 testimony put in the record that Texas pecans are
16 superior to Georgia pecans. Would you like to
17 correct the record?

18 A Oh, I'd have to counter that. You
19 know, Georgia's got the finest, you know. That
20 was both my hats, the farmer and the commodities
21 commission chairman.

22 Q All right. Thank you for clarifying

1 that for us.

2 MR. DAVIS: No further questions, Your
3 Honor.

4 JUDGE GUTHRIDGE: Any more USDA
5 questions?

6 (No response.)

7 JUDGE GUTHRIDGE: Are there any
8 questions from the audience?

9 (No response.)

10 JUDGE GUTHRIDGE: All right. Mr.
11 Mason, you're excused.

12 (Whereupon, the witness was excused.)

13 MR. DAVIS: Your Honor, I see we're
14 right at the lunch hour, and our witnesses are
15 available after lunch, so it's okay with USDA.

16 JUDGE GUTHRIDGE: Well, it's 12:01
17 right now. Shall we come back at 1:00? Is that
18 along enough to --

19 MR. DAVIS: That's fine with us. Yes,
20 Your Honor. That's fine.

21 JUDGE GUTHRIDGE: All right. We're in
22 recess.

1 (Whereupon, at 12:01 p.m., the hearing
2 in the above-entitled matter was recessed, to
3 reconvene at 1:00 p.m., this same day, Tuesday,
4 July 28, 2015.)

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A F T E R N O O N S E S S I O N

(1:00 p.m.)

JUDGE GUTHRIDGE: You are our next witness, I guess, so if you would raise your right hand, please.

Whereupon,

TRENT MASON

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE GUTHRIDGE: All right.

D I R E C T E X A M I N A T I O N

BY MR. DAVIS:

Q Good afternoon, Mr. Mason. Thanks for coming in today. Would you please state your name and spell it for the record.

A My name is Trent Mason. It's spelled T-R-E-N-T, M-A-S-O-N.

Q And do you have before you Exhibit 1, the proposed order, proposed marketing order?

A Yes.

Q And Exhibit, I think in this record,

1 23, the executive summary of the economic
2 analysis? Look under that -- I think it's right
3 there.

4 A This was -- yes, I do.

5 Q You do have. We may refer to those.
6 Is it my understanding that you've prepared some
7 written testimony you'd like to deliver?

8 A I have.

9 Q Why don't you do that.

10 A My name is Trent Mason. I live in
11 Kathleen, Georgia. My family started buying
12 orchards in the late 1990s. In 2003, when I
13 returned home from college, we had 400 acres in
14 production, and today we have 2,600 acres of
15 improved pecans in various stages of growth and
16 production. A copy of my resume is attached.

17 We would be considered a large pecan
18 grower under the Small Business Administration.
19 In recent years, I have seen wide variation in
20 the prices we have received from our pecan crop.
21 Such wide variation in pricing makes it extremely
22 difficult to plan for the future operation of our

1 farm. While prices for pecans go up and down
2 dramatically from year to year, our cost of
3 production has steadily increased.

4 Today and historically, the entire
5 pecan industry guesses at production numbers and
6 prices. We have to do better at this. The lack
7 of accurate market information on the anticipated
8 size of the pecan crop in any given year makes it
9 difficult for us to negotiate a fair price for
10 our crop and to make reasonable business
11 decisions about investments in our farm.

12 Increased price stability and more
13 accurate market information would greatly benefit
14 my farm. I am very hopeful that the
15 implementation of the federal marketing order for
16 pecans will provide price stability through
17 better market information for the industry. I
18 think my farm and the industry would also benefit
19 in the future from grade, size, quality,
20 packaging, shipping protocols, and other handling
21 requirements as we compete with other tree nuts
22 for shelf space and consumer attention.

1 I also understand that under the
2 proposed order, only growers with more than 30
3 acres of pecans or more than 50,000 pounds of
4 average production per year over the last four
5 years will be allowed to vote on the proposed
6 order. In my opinion, this threshold is
7 reasonable, because a grower that does not meet
8 this threshold is not a commercial grower. Any
9 grower that is smaller than the proposed
10 threshold could not justify the cost inherent in
11 such a small production.

12 I am not aware of a single pecan
13 farmer in my area who has a commercial farm that
14 is smaller than 30 acres or produces less than
15 50,000 average pounds per year. I have reviewed
16 the economic analysis summary prepared by Dr.
17 Marco Palma, specifically the projected average
18 price increase from promotion of 6.3 cents per
19 inshell pound versus the average 2-1/2 cent
20 inshell pound cost.

21 Overall I am aware of the cost that a
22 federal marketing order may impose on my farm,

1 and I do not believe these costs are unduly
2 burdensome.

3 Further, I believe that the benefits
4 of the federal marketing order to my farm will
5 greatly outweigh the costs associated with it.
6 We support the Georgia one-cent-per-pound
7 assessment but this by itself will not produce
8 enough money to effectively market the entire
9 pecan crop, along with other research objectives
10 and goals for this same money.

11 Better marketing and more marketing is
12 key. When you look at what other tree nut groups
13 spend on marketing, we are not in the game, and
14 it's time that we get in the game.

15 Also, we do not have an organization
16 that listens to, responds and leads on pecan
17 issues. The American Pecan Council will be that
18 organization. We really need the unity of one
19 organization that addresses all pecan industry
20 issues, not simply regional grower and sheller
21 organizations.

22 The American Pecan Board has kept our

1 organization informed about its efforts to
2 propose a federal marketing order. They have
3 attended our grower meetings, and I know several
4 board members of the American Pecan Board. I am
5 vice president of the Georgia Pecan Growers
6 Association, and I am deeply committed to the
7 success of our farms and the whole industry.

8 I fully support the proposed federal
9 marketing order for pecans, and I encourage the
10 Secretary to implement the order as proposed by
11 the American Pecan Board. I'll be glad to answer
12 any questions at this time that anyone may have.

13 MR. DAVIS: Your Honor, the Proponent
14 group tenders Exhibit 71, the testimony of Mr.
15 Trent Mason.

16 (The document referred to was marked
17 for identification as Exhibit Number
18 71.)

19 JUDGE GUTHRIDGE: Does USDA have any
20 objection?

21 MS. CHILUKURI: No objection.

22 JUDGE GUTHRIDGE: Does anyone in the

1 audience have an objection?

2 (No response.)

3 JUDGE GUTHRIDGE: No objection.

4 Exhibit 71 is admitted into the record.

5 (The document referred
6 to,

7 having been previously marked for
8 identification as Exhibit Number 71,
9 was received in evidence.)

10 MR. DAVIS: And we will reserve any
11 questions, Your Honor.

12 JUDGE GUTHRIDGE: All right. Does
13 USDA have any questions?

14 MS. SCHMAEDICK: Melissa Schmaedick,
15 USDA.

16 CROSS-EXAMINATION

17 BY MS. SCHMAEDICK:

18 Q Thank you, Mr. Mason, for your
19 testimony. I kind of have a hypothetical
20 question for you. We've heard quite a bit of
21 testimony about why the proposed program is
22 important and the anticipated benefits of the

1 program, but I'm wondering if you could tell us:
2 What do you think would be the experience of the
3 industry if the program were not implemented?

4 A I can gladly answer that. I'm 32, and
5 I've been on the Georgia grower board since I was
6 22. When I walked in, they said, If we wanted
7 youth, then we got it. And the whole time, our
8 fear -- and it's becoming more and more
9 constant -- is what will happen if we don't start
10 marketing our product.

11 If you look at any other industry --
12 to be honest with you, I don't know how we've
13 survived as long as we have. In any other
14 industry, you spend money on marketing. I think
15 our industry currently doesn't even spend one-
16 tenth of 1 percent as a whole on marketing, so
17 how we've survived for as many years as we have
18 must be just the Good Lord looking out after us,
19 because going forward, we've increased --

20 We've seen an increase in price, so
21 we've planted so many more trees. We've seen
22 diesel fuel rise to all-time highs. We've seen

1 fertilizer -- all our prices have gone constant,
2 so on our farm, for instance, if we didn't have
3 the order and saw this new production come in, it
4 scares me. Like I hear a lot of growers talk
5 that you could see prices go back to where they
6 were in the '60s or '70s.

7 And for me personally, like I get to
8 live my dream every day. Somehow when I came
9 home in my early twenties and started farming, I
10 fell in love with it. It's been a passion. It
11 comes easy for me. The thought that keeps me up
12 at night, though, is what are we going to do with
13 all these pecans if we don't have a market for
14 them in the future.

15 And it's really shameful. Like a year
16 ago, I flew to Cleveland, and the guy at the
17 airport security asked me, he goes, What do you
18 do for a living. And I told him I farmed for
19 pecans. And he goes, Well, what are pecans. My
20 friends might think that's funny that you
21 explain -- but to me it's really embarrassing.

22 And like we have a great story to

1 tell. We're very prideful of our industry. We
2 have a great group, but we really just have to
3 get that message out domestically, and so I hope
4 I've touched on your topic, but it just --
5 without it I don't see how we can go forward,
6 because our costs are rising every day.

7 And now that we've experienced a
8 little bit of higher prices and all these extra
9 nuts been planted, then if it goes back, our
10 prices aren't coming down on fertilizer and
11 diesel fuel, and all these constant inputs, so I
12 don't know where our industry would be in the
13 future, but it really frightens me to know where
14 we will be without this order.

15 Q Thank you. And that kind of brings me
16 to another hypothetical question. So you're --
17 from what I can tell, you're a pretty large
18 grower. You have 2,600 acres of improved pecans,
19 according to your testimony. So in the proposed
20 order, which is in Exhibit 1, a grower is
21 identified as someone having a minimum of 30
22 acres --

1 A Uh-huh.

2 Q -- or 50,000 pounds of production. If
3 you're concerned about potentially having to go
4 out of business with 2,600 acres, I'm wondering
5 how much more significant that potential for
6 being put out of business due to low prices would
7 be for the much smaller farmers.

8 A I would think it would -- we have
9 1,700 acres in production, and our thoughts were,
10 as we planted more, wasn't necessarily to get a
11 higher price. It's that if I had more volume, I
12 might could hang on at a lower price, just like
13 you hit on. So if you're a smaller grower or on
14 that size, then like Dr. Wells touched on
15 earlier, your inputs and you have to watch
16 everything a lot closer. It would be
17 detrimental, because you're counting almost
18 pennies. I mean, the difference between one or
19 two cents a pound can really make or break you,
20 so I think it would be detrimental to the smaller
21 grower as well.

22 Q Thank you. And we've talked a lot

1 about cost benefit analysis and whether the cost
2 of the program outweigh the benefits. So I'm
3 wondering if you can tell me whether or not the
4 benefits might, in your opinion, be even more
5 proportionately significant for those tiny
6 producers versus a grower of your size in terms
7 of the impact that it could potentially have on
8 just the ability to stay on the farm.

9 A I definitely believe for the smaller
10 growers, it could help increase their capital,
11 which could increase them expanding, and actually
12 the opportunity for them to expand their
13 operations would probably be more, say, for them
14 than it would be for a larger grower. So, yes.
15 I definitely feel like the marketing order and
16 the increase of the price that they would get
17 would definitely help their operations.

18 Q Thank you. And then let's just
19 explore the idea of the hobby farmer, the farmer
20 that has less than 30 acres. Would they benefit
21 as well?

22 A I would think they would see a benefit

1 as well, because their prices on the yard crop,
2 as I call it, would probably have more of a
3 value, so on the front side, I would think they
4 may be against it, but -- even though they don't
5 have a vote, but in the end result, they would
6 definitely get more money for their yard crop.

7 But also the hobby farmer doesn't have
8 the inputs that a smaller grower or grower of --
9 we've very large input, and without significant
10 prices on a high-input farm, which anything 30
11 acres and under is just not experiencing the
12 stress of a high input, so it's -- but to answer
13 your question, I do believe it would benefit them
14 as well.

15 Q Would it be appropriate to conclude
16 from your statement that the marketing order may,
17 in fact, help the smallest farms stay in business
18 in the event that this large production were to
19 flood the market with a supply of pecans?

20 A Most definitely, because they probably
21 don't have the volume that a larger grower would,
22 so, yes, definitely it would help them as much as

1 anyone.

2 Q Okay. Thank you.

3 MS. SCHMAEDICK: I have no further
4 questions.

5 THE WITNESS: Thank you.

6 MS. VARELA: Jen Varela, USDA.

7 BY MS. VARELA:

8 Q Mr. Mason, I have a couple different
9 things I'd like to get your input on.

10 A Okay.

11 Q First, I noticed and we heard in
12 earlier testimony that you are involved day to
13 day in a lot of applying of those inputs to your
14 farm. You're having to make decisions on
15 spraying, fertilizing. And Dr. Wells gave us a
16 good range of how often some of those things have
17 to do.

18 And two of the examples we looked at
19 were having to -- costs having to spray ten times
20 versus having to spray, I believe it was, 16
21 times. In your experience, do you tend towards
22 the upper part of that range, or what is the

1 range for you over the last few years? How many
2 times are you having to do that?

3 A Four years ago, we were probably only
4 spraying ten times a year. In the past two
5 years, not counting this year, I probably sprayed
6 40 times, 38 times in two seasons. We were
7 spraying every ten days. I can remember having
8 an airplane and sprayers in the field at the same
9 time, and the crews asked me, had I gone crazy on
10 the schedule, and I said, No; scab's just that
11 bad; we'll be fine.

12 But, yes. It definitely depends on
13 the weather. And typically we have to cover --
14 you have more scabbing to varieties which are
15 like Desirable. We're predominantly Desirable on
16 our farm. On a minimum, it's every 14 days, and
17 when it's raining, seven to ten, so you figure
18 you start in April, and all the way to the end of
19 August, so every seven to ten days, it definitely
20 adds up to 20 -- 18 to 20 sprays.

21 And the thing is if you miss one,
22 though -- I think it was Paul that said earlier,

1 the guy I had to miss testifying, one spray
2 missing may not seem like a lot, but if you miss
3 that one spray, what you've spent the money on
4 the previous three or four months in growing can
5 be pretty much gone, once you get the infectious
6 disease.

7 Q So even though it's a variable cost,
8 in a sense, once you've started, you can't really
9 stop, or you're risking --

10 A Especially on Desirable, too. I'm
11 sure Lenny would agree with that, that you can't
12 really -- even if it's dry, you can't really --
13 and especially a lot of acres. Like we just
14 ordered our fifth sprayer, so I might can cover
15 400 to 500 acres a day, but I can't --

16 Once I get to 14 days out, I can't
17 really afford to take the chance that it's going
18 to be dry for another seven days, because at best
19 case, it takes me five or six days to get back
20 over everything, and if it starts raining, then
21 I'm behind.

22 So we pretty much stick to a 14-day

1 spray interval. So our sprays pretty much are
2 constantly, always -- if I can spray 12 to 13
3 times, I consider that minimal, and we spray up
4 to 20.

5 Q Thank you. That's really informative.
6 And kind of along those same lines, we've heard a
7 good amount of testimony about a lot of research
8 being done into those fungicides and into the
9 most efficient uses. Do you feel that some of
10 the research this council might propose could
11 help get some of that information out to both
12 large and small growers?

13 A Most definitely. There's not really
14 enough money to attract new interest in the
15 pecan, so we're using the same chemicals that was
16 said earlier, and they're really becoming immune
17 to those chemistries that we have, so three or
18 four years from now, if we don't have new
19 technology and new research from a large --

20 From a commercial standpoint, I don't
21 know what we're going to do as an industry,
22 because, like I said, the chemistries, like with

1 what Dr. Katherine Stevenson's doing and stuff,
2 the stuff now is just not working, and it's
3 becoming immune to it, so it's really a -- just a
4 scary time for our industry.

5 The pretty weather bailed us out this
6 year, but next year, if it's a rainy season, then
7 I couldn't tell you what boat we'll be in.

8 Q Thank you so much for that. I want to
9 switch track a little now, and I'm going back to
10 a section in your testimony where you were
11 talking about leading on pecan issues. And it's
12 on page 3 here, if you have it in front of you.
13 You mentioned the need of one organization to
14 address all industry issues. Can you tell me a
15 little bit more about what you think those issues
16 might be and what you think the role of this one
17 voice would be, how it would be effective.

18 A Sure. I think it's multiple things,
19 like from crop estimate, typically -- like I've
20 told you, I've been involved in it for -- we go
21 in a room in April, and it's the board members,
22 and we take a guess on our farms what the crop

1 is, so we never a accurate understanding of the
2 crop size, and we would have people in the same
3 rooms from the Central Region and the Western
4 Region, all working together to know what's on
5 each individual farm.

6 I don't know what the issues --
7 they're facing the drought in the Western Region.
8 We have the scab issues here, so just pulling all
9 the resources together and being able to be one
10 unity versus individual states or individual
11 Southern Region and the Western Conference, just
12 as an industry coming together, all as one, would
13 be very helpful from a growing and from the
14 industry standpoint as a whole.

15 Q You said something that just caught my
16 attention there, that you might not know -- in
17 dealing with a crop size, you might -- not only
18 is there not a good of your region, but you might
19 not know what's happening, say, in the Central
20 Region.

21 A Most definitely.

22 Q Do you -- in your experience, are you

1 competing with those regions as well? I mean, do
2 those -- does the --

3 A Most definitely.

4 Q -- overall production number impact
5 your price?

6 A The overall production number does
7 affect our price, but do I view it as competition
8 as my neighbor? No, I don't. I consider -- I
9 just want to move pecans, and I want us all to
10 move pecans together as one. And so --

11 But, yes, the overall number does
12 affect that I'm paid, the production numbers, and
13 we need accurate production numbers. Like what
14 comes out -- and it's good for the shellers and
15 the growers to have accurate numbers, because
16 it's quite embarrassing.

17 Like last year, if we turn in -- and
18 I was a part of that. We turn in early, thinking
19 it's going to be a hundred, 110 million, and it
20 turns out to be 75 or 80. It's just very hard to
21 predict what's on a tree, much less in the state,
22 in April or May, and then we just need more

1 accurate accounting.

2 Q And just to follow up on what I was
3 kind of getting in earlier, in describing
4 somebody as your competition. I appreciate that
5 you want everyone to succeed. That's great, and
6 that's definitely something we've seen in this
7 industry. But is it possible that a sheller,
8 whether it's in the East or in Central, might be
9 buying pecans from multiple states?

10 A Yes. They could buy pecans from
11 multiple states.

12 Q So do you consider yourself as selling
13 into a national market, not just a Georgia-
14 specific market?

15 A Yes. I take pride in selling it to a
16 national market. We try to do the best -- grow
17 the best product that we can do, and we take
18 pride in that, but we take pride in being a
19 unified industry. And we have -- this industry's
20 very unique, because everybody wants to help
21 others. It's not very individualized. It's
22 teamwork.

1 Q Thank you very much for giving us that
2 additional information.

3 MS. VARELA: I have no further
4 questions.

5 BY MR. HINMAN:

6 Q Good afternoon. Don Hinman, USDA.

7 A Good afternoon.

8 Q Thank you for your testimony. I want
9 to -- referring to your resume here, I see that
10 you were grower of the year, so I congratulate
11 you for that.

12 A My family was. It actually came in
13 the year when there was a lot of scab, and I
14 broke my femur wakeboarding, so it was a very
15 special year. I did it early in spray season, so
16 you can imagine, but a family operation, we
17 definitely came together and worked it out, so
18 thank you.

19 Q That's great. In your -- in the
20 category where you have work experience, you
21 mentioned, "Implement and maintains compliance
22 with H2A Program." Could you explain what that

1 is, please.

2 A I could probably talk for two days
3 about that program if you wanted me to, but I'll
4 keep it -- that is where we have a shortage of
5 workers in our area. We get our workers under
6 temporary visa. It's a government program. We
7 open up our books and our records to the Homeland
8 Security and the Government. We provide housing
9 for these men.

10 We have a job order open for 20
11 workers. We hire any local domestic worker
12 that's willing and wants to work. We keep our
13 job open to them. We just can't ever fine bodies
14 that want to come work and do this type of work,
15 so most of our men come from Mexico. That's
16 where we recruit them from, and we house them,
17 and they just do all the work on the farm. It's
18 a lot of recordkeeping, but it's a really good
19 program.

20 And I hope -- I know there's been a
21 lot of criticism about going forward about the
22 program, and I know that doesn't really have a

1 lot to do with here, but it's an amazing group of
2 men that do a lot for not just us but for the
3 agriculture industry as a whole, and they're a
4 very humble group of employees and individuals.

5 Q Thank you. And further down in your
6 work experience, you talk about, I guess, on
7 behalf of your Mason Pecans, you interact with
8 brokers and sellers. Could you shed some light
9 on what that process is like.

10 A Yes. From contracts and just once we
11 see the size of the crop, I deal with mostly one
12 family's accumulator, and we contract the crop or
13 we're in contact each day. We sell like off of
14 loads, so if we have something that comes up in
15 the field, it's like on a lot number, so it might
16 be lot number 1 through 200. We have a sheet,
17 and we just go through that lot number. We touch
18 daily, and if we want to sell, it's up to us to
19 sell, and if we don't, we want to hold the nuts,
20 we hold the nuts. But mostly the past few years,
21 we've done a lot of contracting.

22 Q In a typical year, would you have the

1 contracts, you know, in advance of the harvest
2 for a large portion of the crop, or were you
3 going to save a certain portion of it to sell
4 into the open market?

5 A Generally as a rule of thumb, it's
6 tough looking at a tree and telling what you
7 have, so I'd always contract less than what I
8 think I have, just to be on the safe side, but we
9 generally contract 60 to 65 percent of our crop,
10 and then at that point, we can either hold or
11 sell the crop.

12 Q Okay. Thank you. And then I want to
13 focus on one of the benefits that you mentioned.
14 You mentioned your support for the marketing
15 order and several benefits, and in particular, on
16 the page 2, you mention the benefit, top of page
17 2, the first full paragraph, the benefits from
18 future garde, size, quality, packaging, shipping
19 protocols. So could you comment -- and that
20 refers to -- does that refer to -- it's 986.69,
21 Exhibit 1, authorities regulating handling.

22 A 986. --

1 Q 69. And in that -- in the middle
2 column there, if you could just look at paragraph
3 1 there, it says, you know, "establishing
4 handling requirements and minimum tolerances,
5 particularly grades, sizes or qualities." And it
6 goes on from there. Could you mention examples
7 of how you think establishing uniform grade,
8 sizes, and qualities would help your farming
9 operation.

10 A I mean, I guess you're getting a
11 certain amount of B grades and cracks, and there
12 just needs to be uniformity within the cleaning
13 process there. Also, sometimes when you see
14 like --

15 JUDGE GUTHRIDGE: What do you mean by
16 B grades?

17 THE WITNESS: B grades are what we
18 call like blowouts. When you're running them
19 through the cleaning plants, you get a certain
20 amount of B grades.

21 JUDGE GUTHRIDGE: I don't recall
22 having heard that expression before, so --

1 MR. QUIR S: Philip Arnold testified
2 to As and Bs, Philip Arnold in Las Cruces.

3 JUDGE GUTHRIDGE: But there's just a
4 lack of uniformity. That was a week ago.

5 THE WITNESS: Your percent kernel on
6 a B grade might be somewhere 28 to 35 percent,
7 versus on the improved varieties, they're 45 to
8 60 percent, so it's just the light meat that once
9 the sheller or whoever gets the meat doesn't want
10 the -- it's not very proportional.

11 JUDGE GUTHRIDGE: Okay. Thank you.

12 THE WITNESS: Also personally, like I
13 feel like the grades would be beneficial. We
14 don't want -- the last thing we want in the
15 grocery store or on the market is inferior
16 quality, so just the -- I hadn't read completely
17 over the paragraph here. I don't know if there
18 was -- which particular one you're talking about,
19 (1), (2), (3), (4) or --

20 BY MR. HINMAN:

21 Q No. That's fine. Your answer is
22 helpful, and I do appreciate that.

1 A Yes.

2 Q And since you underwent such a large
3 expansion starting in 2003, what were some of the
4 general factors you looked at, you expected in
5 the future that initiated your expansion?

6 A From my family, our close friends has
7 been the Evans, and I would consider them
8 probably one of the largest growers in the world,
9 who's been an extreme mentor to me, and every
10 time I've turned around, he's been planting more
11 trees. But I'm very passionate about what we do.
12 I love it. I don't feel like I've reached my
13 maximum work capacity as our family, so we've
14 been blessed and fortunate to be able to expand.

15 I take just as much pride off
16 harvesting a four- or five-year-old acre block
17 than I do the older, mature ones. I enjoy seeing
18 something start from seed to come into maturity.
19 It's a special feeling when you're the one that
20 are handling that. But -- and also just worried
21 about the future. Like in my mind, I always
22 thought that if pecans went from \$2 to a dollar,

1 if I had more volume, then I could make a living.

2 So for me, it's not been about how
3 much more money I could make. It's just about
4 what I got to do to stay in business, so I needed
5 more volume to work maximum my equipment and the
6 people, so that's had a lot to do with our
7 expansion.

8 Q Thank you for your response and for
9 those insights.

10 MR. HINMAN: No further questions.
11 Thank you.

12 JUDGE GUTHRIDGE: Are there any more
13 USDA questions?

14 (No response.)

15 JUDGE GUTHRIDGE: None? Mr. Davis?

16 MR. DAVIS: Just a couple follow-ups.

17 REDIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q One thing to expand on, it may
20 particularly help some folks here that did not
21 live through this time. But when you were
22 talking about the increase in the number of

1 sprayings, would you say it would probably be
2 fair to say that in around 2010, '11, and '12,
3 the Georgia pecan belt was undergoing a drought?
4 It was a pretty dry period. Right?

5 A That would be fair to say.

6 Q And did those conditions change in and
7 around in 2013?

8 A They did. I --

9 Q Does that year stick out in your mind
10 for anything?

11 A The year we -- 2012 or '13 -- I can't
12 remember -- we had 69 inches, I think it was,
13 just -- and that was halfway -- and generally for
14 the year, Georgia only gets 52 inches, so that
15 was through midsummer, we had already received 69
16 inches, so almost -- a year and a half's worth of
17 rainfall in a six-, seven-month period.

18 Q So, again, to tie these points
19 together, scab thrives in humid weather.
20 Correct?

21 A It does. Crowded, humid orchards --
22 or crowded orchards with severe humidity and

1 rainfall and cloudy weather is a disaster for
2 scab, and that was our weather pretty much for
3 that two years straight.

4 Q Right. And then although we had that
5 extremely rainy year in 2013, did that extreme
6 condition seem to also adversely affect the crops
7 in 2014?

8 A It did, and like Lenny was saying,
9 whatever happens this year or now is affecting
10 what's going to take place next year. So if I
11 have a scabby year this year, then the scab goes
12 into the wood, and when I start out early spring,
13 if you mix that with a rainy spring, then it's a
14 very serious concern, because the scab is there.
15 The spores are there. A little bit of rain
16 inoculates it, and, boom, it's spread all over
17 the leaves and the nuts.

18 Q So those conditions are what led to
19 this dramatic increase in the number of times
20 that you had to --

21 A Most definitely.

22 Q And then, of course, the more of those

1 inputs, that eats into your profit margin on what
2 you're making on that crop.

3 A Yes. Our chemical bill almost
4 doubled, which was very significant.

5 Q You've talked about you were a
6 thoughtful young person working on your farm and
7 how you realized you had to invest in that to
8 maintain your business. Do you have some of
9 those similar thoughts about the workers and the
10 employees that you have on your farm, and how
11 it's important that we maintain the industry for
12 those workers?

13 A Yes. For -- I realize that I couldn't
14 be where I'm at if it wasn't for our employees or
15 our men, so I'm very passionate about the guys
16 that work for us. I stand up for them. I want
17 them to be happy with their job. We don't try to
18 have a lot of turnover, and it scares me, not
19 only what it would do to us, but the families
20 that it would affect, not just on our farm, but
21 all the other industries in the pecan industry
22 that if we didn't have this order, what will

1 happen if prices get cheap, because if prices get
2 cheap, I can't keep as many employees.

3 And I know most of their families and
4 have a special relationship. I try to be a
5 friend and a boss. And so, yes, it definitely
6 scares me going forward what would happen to the
7 amount of workers that we have on our farm and
8 what would happen in return with their families.

9 MR. DAVIS: I have nothing further,
10 Your Honor.

11 JUDGE GUTHRIDGE: Any more questions
12 from USDA?

13 (No response.)

14 JUDGE GUTHRIDGE: No? Does anyone in
15 the audience have any questions?

16 (No response.)

17 JUDGE GUTHRIDGE: No? Mr. Mason,
18 you're excused.

19 THE WITNESS: Thank you, all.

20 (Whereupon, the witness was excused.)

21 JUDGE GUTHRIDGE: Ms. Wray, has anyone
22 else signed up?

1 MS. WRAY: No, Your Honor.

2 JUDGE GUTHRIDGE: Thank you. Next
3 witness?

4 MR. QUIR S: Your Honor, we call Homer
5 Henson.

6 JUDGE GUTHRIDGE: While he's getting
7 that, if you could take a seat and raise your
8 right hand, I'd appreciate it.
9 Whereupon,

10 HOMER HENSON
11 having been first duly sworn, was called as a
12 witness herein and was examined and testified as
13 follows:

14 JUDGE GUTHRIDGE: If you could get
15 about, oh, four inches from the microphone, I
16 understand the sound man wants us --

17 THE WITNESS: All right.

18 JUDGE GUTHRIDGE: Mr. Quirós, is this
19 your witness?

20 MR. QUIR S: Yes, it is, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. QUIR S:

1 Q Mr. Henson, thank you for driving from
2 Alabama today.

3 A You're welcome.

4 Q Before we begin your testimony, I have
5 a couple of questions, just as a basis. Have you
6 had an opportunity to read and receive what's
7 been marked Exhibit 1, which is a notice from the
8 USDA, which has, in part, the proposed federal
9 marketing order for pecans in it?

10 A Yes.

11 Q Thank you. And if you received
12 Exhibit 23, which is the executive summary of the
13 economic analysis of the implementation of a
14 federal marketing order for pecans, prepared by
15 Dr. Marco Palma.

16 A Yes.

17 Q Thank you. I understand that you have
18 a -- some testimony that you prepared for this
19 hearing, if you'd like to deliver it now. Thank
20 you.

21 A Okay. My name is Homer Henson. It is
22 spelled H-O-M-E-R, H-E-N-S-O-N. I live in

1 Louisville, Alabama, a small town in southeast
2 Alabama. I, along with my wife Rhonda, own
3 Louisville Pecan Company, Incorporated, and I am
4 also the president of the company. Attached is
5 my resume.

6 Louisville Pecan Company has an annual
7 gross revenue of less than \$7 million, and
8 therefore, under the Small Business
9 Administration guidelines, it is considered a
10 small business. Louisville Pecan Company shells
11 approximately 1,750,000 pounds of pecans each
12 year. We are a sheller as defined in Section
13 986.35. We shell pecans six to seven months of
14 the year, but buy and sell pecans 12 months of
15 the year.

16 I am also a partner in Hurst Pecan
17 Company, also located in Louisville, Alabama. My
18 family and I own 50 percent of this business.
19 Hurst Pecan Company is an accumulator, as defined
20 in Section 986.1.

21 I have been on the American Pecan
22 Board since May of 2014. I have had input into

1 the federal marketing order draft since that time
2 and fully support its adoption. I have reviewed
3 the summary economic analysis prepared by Dr.
4 Marco. I am aware that the proposed order may
5 impose some direct costs on my operations, such
6 as the one to three cents per pound assessment.

7 I'm also aware that there may be some
8 indirect costs, such as the obligation to keep
9 records of the amount of the product I handle and
10 the remission of assessments. Also there will be
11 the added work and inconvenience of having keep
12 records and books available for inspection. I
13 believe these costs and time obligations will not
14 be unduly burdensome.

15 Furthermore, I am aware of the
16 benefits that will flow from the increased
17 marketing and promotion efforts: improved
18 research and more accurate more market data that
19 will result from the order and believe that these
20 benefits will greatly outweigh the cost to my
21 business.

22 I fully agree with Dr. Palma's

1 analysis and believe that the pecan industry as a
2 whole will benefit from more accurate and timely
3 data concerning crop sizes and availability.

4 This data helps the business owner make better
5 financial decisions. A small sheller does not
6 have the means or the expertise to develop
7 detailed data. Overall, the benefits of the
8 federal marketing order outweigh the costs.

9 In conclusion, I strongly support the
10 proposed marketing order and encourage the
11 Secretary to adopt and implement the order. I am
12 currently a member of the American Pecan Board
13 and am testifying in its behalf in support of the
14 federal marketing order. I am also testify in my
15 individual capacity as a small sheller in support
16 of the federal marketing order. I will be glad
17 to answer questions.

18 MR. QUIR S: Your Honor, we tender
19 this document as Exhibit 72.

20 (The document referred to was marked
21 for identification as Exhibit Number
22 72.)

1 JUDGE GUTHRIDGE: Is there any
2 objection from USDA?

3 MS. CHILUKURI: No objection, Your
4 Honor.

5 JUDGE GUTHRIDGE: Any objection from
6 the audience?

7 (No response.)

8 JUDGE GUTHRIDGE: No objection.
9 Exhibit 72 is admitted into the record.

10 (The document referred
11 to,

12 having been previously marked for
13 identification as Exhibit Number 72,
14 was received in evidence.)

15 MR. QUIR S: Reserve questions at this
16 time, Your Honor.

17 JUDGE GUTHRIDGE: All right. Does
18 USDA have any questions?

19 MS. SCHMAEDICK: Melissa Schmaedick,
20 USDA.

21 CROSS-EXAMINATION

22 BY MS. SCHMAEDICK:

1 Q Thank you, Mr. Henson, for your
2 testimony. Thank you for joining us today. You
3 mentioned that you are a sheller but also an
4 accumulator. Can you tell us about those two
5 operations and, I guess, how they differ
6 specifically, but then also spend some time
7 talking about accumulators and the role of
8 accumulators in your state and in your part of
9 the industry.

10 A All right. I'd be glad to. I guess
11 I'm first a sheller. My father started the
12 business in 1945, and I grew up in it, and I
13 became a partner in '71. And we bought our
14 pecans from dealers and other people, and up
15 until about '81, '82, my father had the idea of
16 forming a partnership with a cousin of mine. And
17 he was already an accumulator, so that's where
18 the 50-50 split of my accumulator business came
19 in.

20 And it's worked out real well for us,
21 and it's worked out good for the Hurst Pecan
22 Company, too. The accumulator, we -- in my

1 situation, we buy pecans from mainly our area
2 there in Alabama, and we'll have small dealers
3 that come in, and we'll buy them up. We'll
4 gather up trailer loads, and we'll sell to large
5 shellers, and then, of course, I buy all of my
6 pecans through the Hurst Pecan, too. So that's a
7 ready market for him.

8 And so -- but then the shelling plant,
9 we -- it's completely separate, of course. It's
10 two different people own it, and we shell -- we
11 buy the pecans, shell them. I do not grow them.
12 I have no trees, more except just what personal
13 small amount of trees that I have. And we do --
14 we shell -- usually start in October. We have a
15 fundraising list that we sell on, and then we do
16 a lot of wholesale. We have a lot of rebaggers,
17 and we stay real busy up till Christmas, and
18 we're buying and selling.

19 And then we do most of our wholesale
20 after Christmas. We shell on until about March.
21 The accumulator will start buying whenever the
22 pecans come in, and they don't operate year round

1 like we do, but they'll -- we'll reach out and
2 buy pecans wherever we can. The last few years
3 have been short, real short, so hasn't been near
4 as busy in the accumulator side. But they'll
5 usually close down around February and March.
6 Just depends on how big the crop is and when it
7 stops.

8 Q Thank you. And I'm confused. Did you
9 say you as an accumulator buy pecans from other
10 smaller accumulators?

11 A That's correct.

12 Q Okay.

13 A We also buy from growers, too, but we
14 buy from growers and smaller dealers.

15 Q So given your work with the American
16 Pecan Board, can you talk about the concept of
17 inter-handler transfer and why an inter-handler
18 transfer is important, specifically in the
19 context of the small accumulator going to the big
20 accumulator going to the sheller and so on and so
21 on.

22 A I think the inter-handler transfer is

1 a great idea. I have always pushed it on the
2 board. What it does is there's a lot of pickup
3 buyers in our area especially that will go --
4 they will go out or either they'll have a little
5 feed store or something, and they'll buy a pickup
6 load of pecans, and then they'll bring them to
7 us, and we'll buy them and pay them, and they'll
8 take that money and go back and do it again.

9 And a lot of their transactions are
10 probably cash, and -- but I think that it gives
11 those type people an opportunity not to have to
12 be tied down with recordkeeping. I think it also
13 will help the compliance of the American Pecan
14 Council, make it easier. They won't have to
15 reach out to the real smallest dealers.

16 There's all sizes of pecan dealers out
17 there, and so the really small ones like that
18 would be -- it would take a big burden off of
19 them to be able to do that.

20 Q So if I understand you correctly, the
21 inter-handler transfer would relieve the burden
22 on the smaller businesses, but it would also

1 facilitate or perhaps enhance the compliance
2 efforts under the program.

3 A Yes. I believe it'll make it easier,
4 and the compliance -- there's going to be
5 paperwork that goes along with that, and so some
6 people may think that, well, it gives people an
7 opportunity to get by and not pay the assessment,
8 but still that paperwork will be there anyway,
9 and they won't have to.

10 Q Thank you. You used a couple of
11 terms. The pickup buyers, I think you did
12 explain that that's literally a person with a
13 pickup that buys pecans.

14 A That was my first introduction to the
15 pecan business. I went with my granddaddy over
16 to Georgia. We were 30 miles from Georgia, and
17 we would ride around in a pickup, and we had a
18 scale in the back of the truck. And I'd have to
19 hold the bar while he weighed the pecans, and he
20 went around and bought and sold to his brother-
21 in-law, who had the dealership at that time.

22 Q Okay.

1 A But, yes. They just -- some do. Now,
2 that's not as big a item as it used to be now,
3 but --

4 Q Okay. Thank you. You mentioned that
5 in your business -- and correct me if I'm wrong,
6 but I think you said that you start your selling
7 season out with fundraising and rebagging.

8 A Yes.

9 Q Can you talk about those activities?

10 A Sure. My fundraising business is --
11 we have a price list that we send out, and it
12 goes to clubs, you know, Lions Clubs or whatever,
13 and churches and that type thing. And we take
14 preorders. They'll order before the season even
15 starts, because mine is done all on new crop.

16 Now, there's -- we have done some old
17 crop fundraising, too, but all of my customers
18 that have been with us for so long are used to
19 new-crop pecans. So we have to buy the pecans as
20 early as we can, because they -- we're in a time
21 crunch, because they like -- the fundraiser likes
22 to get their pecans by Thanksgiving or before

1 Thanksgiving, the peak time to sell, resell them.
2 So we start as quick as we can with new-crop
3 pecans.

4 And the first two or three weeks of
5 that, of our shelling, is devoted to that. And
6 then the rebaggers are people -- at least what
7 I'm calling rebaggers are people that will buy my
8 shelled pecans, and then they'll put them in
9 their bags and sell them, or they'll use them as
10 corporate gifts and that type of thing.

11 But they use a high-quality pecan.
12 Our fundraising is also a high-quality pecan, so,
13 you know, you have to get it early, so there's a
14 lot of competition for the price. Trent was
15 talking about contracting. We -- you know, we've
16 been on that end, and we've been on the end of
17 buying, you know, of contracting some pecans. We
18 don't do it that often, but we do it when we feel
19 like the market dictates us to do it.

20 Q And just to be clear, when you say,
21 fundraising, if I understand you correctly, your
22 company provides pecans to clubs, like a Lions

1 Club, I think you mentioned, and that Lions Club
2 then sells those pecans as a fundraising effort
3 for that club.

4 A That school, club, whatever. Yes.
5 That's correct.

6 Q Okay. So you're not fundraising
7 yourself.

8 A No, no. I'm sorry. I'm so used to
9 using that term, I can see where it would confuse
10 you. But, no. I'm not trying to raise funds for
11 myself. I'm selling them the pecans, and
12 they're, in turn, reselling them.

13 Q Okay. Thank you. And then you also
14 used the terms "new crop" and "old crop." And
15 we've touched on that in previous testimony, but
16 in your mind, can you tell us, what do you mean
17 when you say "new crop" or "old crop"?

18 A The new crop of pecans would be the
19 pecans that are raised -- in America it starts
20 in October, September or October, and so we call
21 them new crop up until Christmas, and then --
22 well, really they're new crop all the way around

1 to the following year. But you can take pecans
2 that you buy in November or December of one year.
3 You can put them in the freezer and, you know,
4 store them, and then you pull them out and shell
5 them when you want to, or you shell them and put
6 them in the freezer, and then they're -- they
7 would be old crop.

8 You know, and you can -- you know,
9 those are perfectly good pecans, and people sell
10 them all the time. But it's the fresher taste.
11 You know, it's just who -- what market you're
12 going after, you know. We've just kind of done
13 it so long that we're tied in to doing it now.

14 Q Thank you. And so now sort of
15 shifting back to your work with the American
16 Pecan Board, do you recall discussing what has
17 previously been referred to as the August 31
18 rule?

19 A Yes.

20 Q Okay. So can you talk about how that
21 August 31 date fits into this concept of old
22 crop/new crop, and how it helps the market by

1 having that designation. So for the record, it's
2 986.61, paragraphs (h) and (I). And I'm not
3 necessarily asking you to go over a detailed
4 analysis of the language. What I'm more
5 interested in is the board's philosophy on why
6 this August 31 date was important, and why the
7 differentiation is important in the market.

8 A All right. I'm not a -- you know, I'm
9 not a scholar on this part, but I do remember a
10 discussion all on this. I believe they're
11 wanting to know -- they're wanting to know if
12 there's any pecans left, and then they want to
13 know how many there is at that point, and
14 therefore, that would be the -- like the 2014,
15 2015 crop, and on August 31, whatever --

16 And, of course, the reason they do it
17 is to get the assessment on it at that point, and
18 they -- it's kind of a cut-off point to where it
19 would be. I may have to call on counsel to help
20 me there, explain that a little bit.

21 Q Well, let me ask you one more
22 question.

1 A Okay.

2 Q So I'm assuming that there are -- will
3 probably be some reporting attached to it. Okay?

4 A Right. Yes.

5 Q Right. And so for you, as a buyer --

6 A Uh-huh.

7 Q -- because you say you don't grow any
8 pecans; you just buy pecans. So for you as a
9 buyer, would it be helpful to have more accurate
10 information about what is left that is old crop
11 and what is coming in as new crop?

12 A Sure. It would definitely

13 Q And would that help you make purchases
14 maybe with a little bit more information or
15 confidence in the data that you're getting?

16 A Yes. No doubt. Like a lot of the
17 other talkers -- I mean, witnesses that talked
18 about the better data we have, the better off
19 we'll be. And it's always good to have good
20 data, and so at that point -- I think the main
21 thing was the -- to clear up the inter-handler
22 transfer, too.

1 Q Uh-huh.

2 A That was the main part of that August
3 31, that date, that it would clear that up, and
4 you wouldn't have to worry about doing that
5 anymore after that point.

6 Q Thank you. And the reason I'm asking
7 you a slightly different twist on this particular
8 section is that I believe you are our first
9 witness who has mentioned this issue of
10 fundraising and the importance of having new crop
11 available to purchase for that purpose.

12 A Uh-huh.

13 Q So it's interesting to learn about
14 your position in the market and how you make your
15 decisions on what you want to buy when, and for
16 which purposes. So thank you for that.

17 A Yes, ma'am.

18 Q If you could look at Section 986.69,
19 and I'll just read it aloud for you, so that I
20 can follow up with a question. But 986.69 says,
21 "Authorities regulating handling," and paragraph
22 (c) says, "The authority to regulate as put

1 forward in this section shall not in any way
2 constitute authority for the council to recommend
3 volume regulation such as reserve pools, producer
4 allotments or handler withholding requirements
5 which limit the flow of product to market for the
6 purpose of reducing market supply."

7 So can you talk about the significance
8 of this paragraph in terms of your interaction
9 with your industry counterparts and why you felt
10 it was necessary.

11 A Sure. Yes. I had -- being a sheller,
12 of course, I do a lot of talking with other
13 shellers, and back in -- when I came on the
14 board, I started having people mentioning to me,
15 Well, now, we're not going to not be able to buy
16 pecans when we want to buy pecans are we. And,
17 you know, I said, No, I don't think so. You
18 know, I'll definitely check into that. So I did
19 in some of the meetings. I brought this idea up,
20 and so this paragraph pretty well nails it down.

21 I know -- I don't know all about the
22 almonds and all, but I know in other marketing

1 orders, they do have set-asides or volume
2 control, and so I guess it's the key issue --
3 it's a key issue to both, as far as growers and
4 shellers. There's no grower that wants not to be
5 able to sell its pecans, so it's across the
6 board. It's an issue that's definitely across
7 the board. But the other shellers were
8 mentioning that to me.

9 Now, we want to be able to buy pecans.
10 You know, we don't want to get told we can't buy
11 pecans. And so I'm -- that's the reason I'm glad
12 to see this authority in there.

13 Q Thank you. And so when you were able
14 to answer those questions from other shellers and
15 reassure them that volume regulation was not a
16 component of what the American Pecan Board was
17 drafting, did that offer them additional
18 assurance and confidence in terms of the program,
19 that they wouldn't be surprised with something
20 that they didn't want?

21 A Yes. Definitely. They were glad to
22 hear it was in there, and they, you know,

1 mentioned that to me anyway.

2 Q Thank you. And just for me, I'd like
3 to say that you also picked up on another issue I
4 was going to bring up, that you as a sheller are
5 concerned about having as much supply available
6 as possible, but you also recognize that the
7 grower has that concern as well. So really the
8 entire industry is unified in terms of not
9 wanting to limit supply.

10 A Right, right. Yes. I remember Mike
11 bringing that up early on in some of our sheller
12 and grower meetings, you know, that it was an
13 idea everybody thought needed to be in there.

14 Q Okay. Thank you.

15 MS. SCHMAEDICK: I have no further
16 questions. Thank you.

17 MS. VARELA: Jen Varela, USDA.

18 BY MS. VARELA:

19 Q Thanks for giving us your perspective
20 today, Mr. Henson.

21 A Thank you.

22 Q We really -- I especially appreciate

1 hearing from a small sheller in this area, and
2 one of the things you said in here in page 2 of
3 your testimony -- I'll read it back to you. You
4 said, "A small sheller doesn't have the means or
5 expertise to develop detailed data." And we've
6 heard a lot of people say that they could benefit
7 from having a lot of this data that the potential
8 council wants to put out there.

9 Do you feel -- which leads me to ask
10 you: Do you feel that right now, with the
11 limited information that's out there, is a small
12 sheller at a real disadvantage?

13 A Oh, I think so. I mean, and, you
14 know, not that the whole industry is not
15 disadvantaged. I think the whole industry is,
16 but the small sheller's especially in trouble
17 with this idea, because, you know, we don't even
18 have -- we don't have like the pecan buyers to
19 put out on the road to go look and test the --
20 you know, to try to estimate the crop.

21 To me, one of the most important
22 things is having that number of last year's crop

1 that will, you know, be pretty well nailed down
2 now, and, you know, then, of course, the other
3 numbers that they'll be able to get, you know,
4 that the council will be able to get, too, about
5 the cold storage reports and all that, you know,
6 are really going to help.

7 But, you know, I go to the national
8 pecan sheller meetings, and, you know, we'll have
9 the larger shellers up giving the numbers, you
10 know, of our other nuts and the consumption
11 figures and all that, and, you know, they've got
12 a good feel for it. You can tell. They know
13 what they're talking about, and, of course,
14 they're dealing with millions and millions of
15 dollars, so they have to.

16 But it just gives us a good listen
17 point inside into that and the American Pecan
18 Council, you know, will amplify that, and then
19 make it even a better idea. I think what it
20 does, it takes a lot of the risk out. That seems
21 to be our -- the other comment I hear from other
22 shellers a lot, is that they -- you know, we got

1 to do something; we got to do something.

2 And we have so much risk involved,
3 just naturally, of course, but because of these
4 estimates, and like Trent and the others have
5 talked about, being here, there and the other,
6 you know, how do you plan. We're already at a
7 disadvantage. We have to buy a whole year's
8 supply of pecans, you know, in three or four
9 months, and then we've got to sell it the rest of
10 the year.

11 Q Uh-huh.

12 A You know, so when we get these numbers
13 back, I mean, I think it's going to make more
14 difference than a lot of people realize right
15 now.

16 Q And something you just said led me to
17 this next question. As a smaller sheller, I
18 believe you just said -- you were talking about
19 the time period in which you have to actually buy
20 the pecans, that it's kind of short there. Given
21 that you're one of the smaller shellers, is that
22 window even shorter for you, because you're --

1 As other witnesses have described the
2 season beginning in the East and kind of running
3 later in the West --

4 A Yes. Well, being --

5 Q Is it your -- do you have kind of a
6 narrower window to buy?

7 A Well, I have a real narrow window on
8 the fundraising part that we were talking about
9 before. And I guess that I might have said that
10 a little wrong. I mean, you can buy pecans year
11 round, but when they're coming off the tree, when
12 gathering them and all, then you have, of course,
13 a lot better opportunity to do it. And then they
14 get in, you know, what you call strong hands
15 after about January or February, you know, unless
16 there's a really super big crop or something.

17 Q Uh-huh.

18 A So you don't have the opportunity to
19 buy them as much.

20 Q Thank you for that. And, again, kind
21 of circling back to the importance of the
22 fundraising business and wanting to have a new

1 crop on the market, I think -- I don't think
2 you're the first one to mention that getting
3 those pecans earlier helps you have something on
4 the market with a fresher taste.

5 A Correct. Yes.

6 Q Is it your impression that most people
7 don't know what that fresh taste is?

8 A Probably not, because everybody
9 doesn't buy my pecans. But we can send some out
10 if we need to. No. You're right. The majority
11 of the people, even in the United States, you
12 know, doesn't know what a fresh pecan is, you
13 know, and -- because they -- you know, I keep
14 hearing it, and I hear stories like somebody
15 said, you know, Trent maybe about the guy in
16 Texas not even knowing what a pecan was. You
17 know, you hear stories like that all the time.

18 But that fresh taste -- you know, we
19 get comments a lot, and I'm not the only one that
20 does this new crop fundraising. But we get
21 comments a lot, you know, that they say, Oh, your
22 pecans are just so much better than everybody

1 else's, you know. But it's just because they're
2 used to the ones that's been on the store -- you
3 know, in the store for six or eight months, and
4 they've never got them.

5 Q And in your opinion, would making
6 those pecans available and educating people on
7 what a fresh pecan really could taste like, is
8 that a major goal for some of your -- some of the
9 marketing efforts? Do you see that that's
10 something that this council could work towards?

11 A Oh, yes. Sure. You know, that, and
12 then, of course, the research, learning how to
13 keep them tasting fresh, too. But, yes. That's
14 a good point for the council to work on.

15 Q And if you could get people across
16 this country to see that or to sample some of
17 that, do you think that would make a big change
18 in the number of pecans that you all are selling
19 each year?

20 A I think the demand would go sky high.

21 Q All right. Thank you very much for
22 that information.

1 JUDGE GUTHRIDGE: Are there any more
2 USDA questions?

3 MR. HILL: No further questions.

4 JUDGE GUTHRIDGE: Mr. Quirós?

5 MR. QUIR S: No further questions of
6 this witness, Your Honor.

7 JUDGE GUTHRIDGE: I have a question,
8 if I may. When you're operating as an
9 accumulator, you deal with, I assume a relatively
10 larger number of accumulators who come to you to
11 sell the product. Is that right?

12 THE WITNESS: Yes. We have
13 accumulators that come to us to buy the pecans.
14 Yes.

15 JUDGE GUTHRIDGE: And each of those
16 accumulators may be dealing accumulators or
17 growers.

18 THE WITNESS: Well, it's possible. I
19 mean, you know, you don't just get them lined up
20 in a -- you can only go so far, you know.
21 There's only so much profit, you know, in the
22 pecan.

1 JUDGE GUTHRIDGE: But still it could
2 be the pecans procured by a number of
3 accumulators that eventually come to you as, say,
4 an ultimate accumulator.

5 THE WITNESS: Uh-huh.

6 JUDGE GUTHRIDGE: And then do you
7 shell all those pecans in your own plant?

8 THE WITNESS: Oh, no. No. That's --
9 no. I buy -- what Hurst Pecan buys, we resell,
10 and I buy a good part of that, but that's the way
11 it works, is that he gets the benefit of my
12 business, you know, and they get a commission off
13 of that. But then I get the benefit of his extra
14 business that he sells, up and beyond what I buy.
15 They buy a lot more pecans than what I shell.

16 JUDGE GUTHRIDGE: But then with -- if
17 the order were to go into effect under 986.62, it
18 would really be -- you as an accumulator would be
19 the first handler of the pecans originally
20 procured by a number of accumulators.

21 THE WITNESS: Well, yes. They may be
22 the second one. You know, they may buy some

1 other than that, but --

2 JUDGE GUTHRIDGE: And so you with
3 first handler status would be the one person
4 responsible for the assessment, and relieving
5 those accumulators from having to do the
6 assessment --

7 THE WITNESS: Right. The ones that
8 wanted to apply for the inter-handler transfer.

9 JUDGE GUTHRIDGE: Yes.

10 THE WITNESS: We will buy pecans from
11 dealers that have already paid it, too, I'm sure.

12 JUDGE GUTHRIDGE: And then all whose
13 first handler status, you assume they also would
14 not have to deal with the American Pecan Council
15 and the USDA.

16 THE WITNESS: The ones that chose to
17 do the inter-handler wouldn't have to.

18 JUDGE GUTHRIDGE: All right. Thank
19 you.

20 MR. QUIR S: Maybe just to clear that
21 up, Your Honor --

22 JUDGE GUTHRIDGE: Yes.

REDIRECT EXAMINATION

BY MR. QUIR S:

Q If you buy from a farmer, you're the first handler. Is that correct?

A That's correct.

Q And if you buy from another accumulator, even a -- you called it a pickup handler --

A Pickup buyer. Yes.

Q -- pickup buyer -- thank you -- you would then be the second handler. Is that correct?

A Yes.

Q They would be the first handler from buying it from a grower, and you'd be the second.

A Right. If they're the first handler and they pay the assessment, then we would be the second handler, and we would not pay the assessment.

Q That's right. Unless they did not pay the assessment, and --

A Then we would be --

1 Q -- you all signed an inter-handler
2 transfer.

3 A Right. We would become the first
4 handler.

5 Q And pay the assessment and file the
6 recording with them.

7 A Right.

8 Q Thank you. Appreciate it.

9 MR. QUIR S: No further questions,
10 Your Honor.

11 JUDGE GUTHRIDGE: Any more USDA
12 questions?

13 (No audible response.)

14 JUDGE GUTHRIDGE: Does anyone in the
15 audience have any questions?

16 (No response.)

17 JUDGE GUTHRIDGE: All right. Mr.
18 Henson, you're excused.

19 (Whereupon, the witness was excused.)

20 MR. DAVIS: Your Honor, the Proponent
21 calls as its next witness Mr. Brad Ellis.

22 (Pause.)

1 JUDGE GUTHRIDGE: And while they're
2 dealing with that paperwork, Mr. Ellis, if you
3 could raise your right hand.

4 Whereupon,

5 BRAD ELLIS

6 having been first duly sworn, was called as a
7 witness herein and was examined and testified as
8 follows:

9 JUDGE GUTHRIDGE: Mr. Davis.

10 MR. DAVIS: Thank you, Your Honor. '

11 DIRECT EXAMINATION

12 BY MR. DAVIS:

13 Q Good afternoon, Mr. Ellis. Thanks so
14 much for coming in today. Do you have -- I think
15 for your convenience, there may be some
16 questions. Do you have Exhibit 1, the proposed
17 order in front of you, and then also Exhibit 23,
18 which is the executive summary of Dr. Palma's
19 economic analysis.

20 A Yes.

21 Q You have those before you. I also
22 understand that you have a written statement

1 you'd like to give.

2 A Yes, sir.

3 Q Could you go ahead and do that.

4 A My name is Brad Ellis. It is spelled
5 B-R-A-D, E-L-L-I-S. I live in Cordele, Georgia.
6 I am an owner, manager and CFO of Ellis Brothers
7 Pecans and co-owner of Ellis Farms. I'm a third
8 generation owner-manager and have been working
9 with my family business in every aspect since
10 1979. Attached is my resume.

11 Ellis Brothers Pecans and Ellis Farms
12 are located in Vienna, Georgia. Ellis Brothers
13 Pecans is a retail, wholesale, and mail order
14 business. Ellis Farms is in the production side,
15 supplying the retail, wholesale, and mail order
16 part of our business.

17 I have over 1,200 acres of pecans
18 currently in production. Last year we produced
19 over a million pounds of pecans. Since 2007, we
20 have planted around 1,300 acres of new pecan
21 trees, which are coming into production each
22 year. The most recent planting will be in

1 production about 2018. On our farm, we grow
2 mostly improved varieties of pecans. We shell
3 approximately 25 percent of our crop.

4 Ellis Brothers Pecans, a handler under
5 the proposed federal marketing order, is a large
6 business, and Ellis Farms is a large you know
7 under the Small Business Administration
8 guidelines. Over the past two years, the
9 American Pecan Board representatives have
10 attended the Georgia Pecan Growers Association
11 meetings and have solicited our input. I feel
12 like I have been informed about the process of
13 securing a federal marketing order and have been
14 given an opportunity to participate in this
15 process.

16 I have reviewed the economic analysis
17 summary prepared by Dr. Marco Palma.
18 Specifically the projected average price
19 increased from promotion of 6.3 cents per shell
20 pound versus the average 2-1/2 cents per shell
21 pound cost. Overall, I'm aware of the costs the
22 federal marketing order may impose on my farm,

1 and I do not believe the cost is unduly
2 burdensome.

3 Further, I believe that the benefits
4 of the federal marketing order to my farm will
5 greatly outweigh the costs associated with it.
6 In recent years, I have been -- I have seen wide
7 variations in the prices I have received from my
8 pecan crop. Before any marketing efforts, we
9 were on a pricing system below cost and were
10 considering cutting back on our production acres.

11 Since the marketing efforts of the
12 Georgia Pecan Commission and the U.S. Pecan
13 Council or National Pecan, as it was, we have
14 seen an increase in the price, and we have
15 doubled our production acres. This has allowed
16 my family to bring in to our business three new
17 employees, representing the fourth generation of
18 our family.

19 Such wide variation in price makes it
20 extremely difficult to plan for the future
21 operation of my farm. While the prices for
22 pecans go up and down dramatically from year to

1 year, my cost of production has steadily
2 increased. The cost of fertilizer, insecticide,
3 equipment have all increased in recent years,
4 regardless of the price I receive for my crop.

5 Further, the lack of accurate market
6 information on the anticipated size of the pecan
7 crop in any given year also makes it difficult
8 for me to negotiate a fair price for my crop and
9 to make reasonable business decisions about
10 investments in my farm.

11 Increased price stability and more
12 accurate market information would greatly benefit
13 my farm. I think my farm and the industry would
14 also benefit in the future from grade, size,
15 quality, packaging, shipping protocols, and other
16 handling requirements as we compete with other
17 tree nuts for shelf space and consumer attention.

18 I understand that under the proposed
19 order, only growers with more than 30 acres of
20 pecans or more than 50,000 pounds of average
21 production per year over the last four years will
22 be allowed to vote on the proposed order.

1 In my opinion, this threshold is
2 reasonable, because a grower that does not meet
3 this threshold is not a commercial grower. Any
4 grower that is smaller than proposed threshold
5 will not qualify -- or will not justify the cost
6 inherent in such a small production.

7 I am currently the president of the
8 Georgia Pecan Growers Association. I have been
9 authorized by the board of the Georgia Pecan
10 Growers Association to testify on its behalf in
11 support of the federal marketing order for
12 pecans, and I have a written letter on behalf of
13 my organization, the Georgia Pecan Growers
14 Association to the Secretary of Agriculture.
15 Attached is that letter of support.

16 I'm also testifying in my individual
17 capacity in support of the federal marketing
18 order for pecans. The Georgia Pecan Growers
19 Association mission is to encourage research,
20 education, health benefits, promotion of all
21 phases of production in the market in the
22 interest of our pecan growers and increasing

1 global market.

2 Recognizing the contribution to the
3 pecan industry made by other pecan organizations,
4 the Georgia Pecan Growers Association shall aid
5 these organizations in every way possible.

6 Georgia Pecan Growers has about 456 members. A
7 number of our members are classified as small
8 businesses under the guidelines provided by the
9 Small Business Administration.

10 The American Pecan Board has kept our
11 organization informed about its efforts to
12 propose a federal marketing order.

13 Representatives of the American Pecan Board
14 attended a meeting of the Georgia Pecan Growers
15 Association back in March, and we passed it on
16 June 16 to support it, and provide us for the
17 information soliciting our input. Randy Hudson
18 and Larry Wilson, members of our organization,
19 are on the board of the American Pecan Board.

20 In conclusion, I fully support the
21 proposed federal marketing order for pecans and
22 encourage the Secretary to implement the order as

1 proposed by the American Pecan Board, and I'll
2 try to answer any questions. I make no promises.

3 MR. DAVIS: Your Honor, the Proponents
4 tender Exhibit 73.

5 (The document referred to was marked
6 for identification as Exhibit Number
7 73.)

8 JUDGE GUTHRIDGE: Is there any
9 objection from USDA?

10 MS. CHILUKURI: No objection, Your
11 Honor.

12 JUDGE GUTHRIDGE: Is there any
13 objection from the audience?

14 (No response.)

15 JUDGE GUTHRIDGE: No objection.
16 Exhibit 73 is admitted into the record.

17 (The document referred
18 to,

19 having been previously marked for
20 identification as Exhibit Number 73,
21 was received in evidence.)

22 MR. DAVIS: Let me just ask one or two

1 follow-ups, Your Honor.

2 BY MR. DAVIS:

3 Q Mr. Ellis, you mentioned that the
4 Georgia Pecan Growers Association has written a
5 letter in support of the proposed marketing
6 order. Is that correct?

7 A That's correct.

8 Q And it's attached to Exhibit 73?

9 A I think so.

10 Q I'm going to put that up on the
11 overhead, and for the benefit of our audience,
12 would you read that letter into the record,
13 please, sir.

14 A "To Whom It May Concern: It is my
15 privilege to inform you that the board of
16 directors of the Georgia Pecan Growers
17 Association has unanimously voted to support the
18 efforts toward the federal marketing order for
19 pecans. Georgia Pecan Growers Association
20 members are excited about the opportunities this
21 assessment to the marketing order will afford the
22 trade, promotions and activities for the

1 prevention, modification and removal of trade
2 barriers which restrict the normal flow of the
3 agricultural commodities.

4 "We're also excited about the ability
5 to present and promote facts that will assist in
6 negotiating the state, federal and foreign
7 government agencies on matters which affect the
8 marketing of pecans. The market order is a
9 testimony to the pecan industries working
10 together for a common goal. Respectfully, Brad
11 Ellis"

12 Q Thank you, Mr. Ellis.

13 MR. DAVIS: We'll reserve further
14 questions, Your Honor.

15 JUDGE GUTHRIDGE: Are there any
16 questions from USDA?

17 MS. SCHMAEDICK: Melissa Schmaedick,
18 USDA.

19 CROSS-EXAMINATION

20 BY MS. SCHMAEDICK:

21 Q Thank you, Mr. Ellis, for your
22 testimony. I was hoping to talk to you about the

1 operations of Ellis Brothers Pecans. You
2 mentioned that it has retail, wholesale and mail
3 order sales.

4 A That's correct.

5 Q Is that correct? My first question
6 is: Does the mail order business, does that
7 include fundraising, in your opinion, or -- I'm
8 trying to figure out where fundraising fits in.

9 A We do fundraisings also.

10 Q Uh-huh. So is that -- would that be
11 a wholesale activity or a mail order business
12 activity?

13 A We can -- we list it under our
14 wholesale part of our business.

15 Q Okay. Thank you. So I'm trying to
16 figure out how to ask this question. Well, first
17 of all, can you describe in general the mail
18 order business? Maybe not necessarily
19 specifically yours, but the whole concept of the
20 mail order business, like who are the customers,
21 how do you get the information product to the
22 customers, and what's the typical size or amount

1 or volume that is sent through the mail?

2 A We're probably on the smaller side of
3 mail order, because we're diversified. We're in
4 all aspects of the industry, but not big in any
5 part of the industry. Our mail order has been
6 pretty much built on customers who have stopped
7 in our store, signed our lists, and we send out a
8 brochure once a year, and they order from us or
9 they have ordered from us in the past.

10 Now, we are on the, you know, the web
11 now, and that has become a lot more of our mail
12 order business. We probably mail order 25
13 percent of our gross -- I mean, our retail gross
14 sales at this point.

15 Q And so in terms of -- what's a fairly
16 common amount of -- or volume of pecans that is
17 sent through the mail? Is it a pound or five
18 pounds or --

19 A Anywhere from a pound to a pallet.

20 Q To a pack?

21 A To a pallet.

22 Q Oh, okay. To a pallet. Okay.

1 A I mean, sometimes we load the whole
2 UPS truck in the fall, but -- and they send
3 another, you know, U-Haul, but this time of year,
4 it's, you know, slow.

5 Q To one person? You send a whole
6 pallet to one person?

7 A Well, some of our fundraiser type
8 things, you know, is a pallet, but one person,
9 you know, usually two or three 30-pound boxes
10 would be, you know, max.

11 Q Okay. Thank you. And is it your
12 understanding --

13 JUDGE GUTHRIDGE: Did you say two or
14 three 30-pound boxes?

15 THE WITNESS: Uh-huh.

16 JUDGE GUTHRIDGE: That's a yes?

17 THE WITNESS: That's correct.

18 BY MS. SCHMAEDICK:

19 Q Is it your understanding that under
20 the proposed order, pecans that are sent through
21 the mail order business, would they also be
22 assessed?

1 A They will have already been assessed
2 long before they get to that part.

3 Q Okay. But it is your understanding
4 that they're part of the --

5 A Uh-huh.

6 Q -- collection that is subject to
7 assessment.

8 A Yes.

9 Q Okay. Thank you.

10 MS. SCHMAEDICK: I have no further
11 questions. Thanks.

12 THE WITNESS: Thank you.

13 BY MS. VARELA:

14 Q Good afternoon, Mr. Ellis. I'm
15 interested, because you're involved in so many
16 aspects of the industry. We've heard from a few
17 witnesses who are excited about the possibility
18 of more market information because they just
19 don't interact in all of those places.

20 As a business that has kind of an
21 inside eye on the growing and the shelling and
22 the retailing, can you give us your perspective

1 on why you -- even you know, knowing all these
2 different pieces, how it's going to help you to
3 have better information, better data?

4 A Well, seeing both sides of the fence,
5 from the grower and the sheller, and them not
6 getting along in the past but, you know, coming
7 together now, it's a -- I just see it as a
8 benefit of getting the pecan crop on to market,
9 and having the information, a lot of the -- I
10 mean, not being in the clique with the big
11 shellers, we don't get that information, so we're
12 like the last guys, you know. Accurate
13 information is good.

14 I attribute it to like the gas prices.
15 Every time the refinery catches on fire, the
16 price goes up, so just rumors in the market
17 affect the market, and getting those rumors out
18 of the market, I think, helps everybody.

19 Q Uh-huh. Great. Thank you. And now
20 I want to ask you a little bit kind of more in
21 your role as the president of the growers
22 association, as opposed to Mr. Ellis, the person

1 business man. We understand from your testimony
2 that you did have a lot of communication with the
3 American Pecan Board, and they made a number of
4 presentations.

5 Can you tell me a little bit of how
6 the members of your association may have
7 initially looked at the process. Was there a
8 change in the way that they viewed it, or -- I
9 saw your letter of support where they clearly are
10 in favor of it now, but was that more of a
11 growing process?

12 A Well, it was more of not knowing how
13 it was going to be set up, and it's a structure
14 and issues, but those were all addressed and
15 worked out, and I think that really helped it
16 along. I mean, some growers don't want anybody
17 looking at their books, and they don't want to
18 pay any extra money, but I think everybody in the
19 industry's seeing the benefit this way.

20 Q Understandable. That's
21 understandable. So there was plenty of
22 opportunity to ask questions.

1 A Oh, yes.

2 Q And it sounds like they got a lot of
3 answers to their questions as well.

4 A That's true.

5 Q So you would -- would you characterize
6 them as having made a pretty informed decision
7 when they decided to vote in favor of official
8 supporting?

9 A Yes, I was.

10 Q Okay. And you also gave us a little
11 information about your membership. I thought I
12 underlined the number. Oh, there we go. There
13 are over 450 members of your association.
14 Correct?

15 A That's correct.

16 Q And you noted that most of them are
17 small businesses under the Small Business
18 Administration guidelines. But do you think of
19 them would fall the small category as defined by
20 the order language, the threshold we had of 176
21 acres?

22 A I think there's only about 15 percent

1 that fall under the small, somewhere in that
2 range.

3 Q So would you think -- would they
4 characterize themselves as mostly midsize
5 growers?

6 A Pretty much. I mean, everybody's in
7 that thousand acres range, one side or the other.

8 Q Thousand acre range? Okay. That's
9 very helpful. Thank you very much for your
10 testimony and for being here today. I have no
11 further questions.

12 JUDGE GUTHRIDGE: Any more questions
13 from USDA?

14 MR. HILL: No, Your Honor.

15 MR. DAVIS: Nothing further from the
16 Proponent, Your Honor.

17 JUDGE GUTHRIDGE: Anyone in the
18 audience have any questions?

19 (No response.)

20 JUDGE GUTHRIDGE: No. Mr. Ellis,
21 you're excused.

22 (Whereupon, the witness was excused.)

1 MR. QUIR S: Your Honor, before we
2 call our next witness, should we take a five-
3 minute break?

4 JUDGE GUTHRIDGE: I see you have two
5 more witnesses scheduled for today.

6 MR. QUIR S: Yes.

7 JUDGE GUTHRIDGE: Are they going to
8 take about equal lengths of time as these first
9 two gentlemen?

10 MR. QUIR S: I think that Mr.
11 Easterlin may take a little longer.

12 JUDGE GUTHRIDGE: All right. So take
13 a break now then. Okay.

14 (Whereupon, a short recess was taken.)

15 JUDGE GUTHRIDGE: Back on the record.

16 Whose turn is it? Mr. Quirós.

17 MR. QUIR S: Thank you, Your Honor.
18 Has Mr. Easterlin been sworn, Your Honor?

19 JUDGE GUTHRIDGE: Not yet.

20 MR. QUIR S: Okay. So --

21 JUDGE GUTHRIDGE: Mr. Easterlin, could
22 you please raise your right hand.

1 Whereupon,

2 J.B. EASTERLIN

3 having been first duly sworn, was called as a
4 witness herein and was examined and testified as
5 follows:

6 JUDGE GUTHRIDGE: Mr. Quirós.

7 MR. QUIR S: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. QUIR S:

10 Q Mr. Easterlin, before we begin, I'd
11 like to set a bit of a foundation for your
12 testimony. Have you received what's been marked
13 as Exhibit 1? It was a notice from the USDA
14 which was published in the Federal Register that
15 contains as a portion of it the proposed federal
16 marketing order for pecans?

17 A I have.

18 Q And have you also received Exhibit 23,
19 which has been marked -- which is entitled the
20 Executive Summary of Economic Analysis of the
21 Implementation of Federal Marketing Order for
22 Pecans, prepared by Dr. Marco Palma?

1 A I have.

2 Q Thank you. I understand you have
3 prepared testimony for us today.

4 A Correct.

5 Q Would you please read it into the
6 record.

7 A My name is J.B. Easterlin. It's
8 spelled J, B, E-A-S-T-E-R-L-I-N. I live in
9 Macon, Georgia. I'm the president of Easterlin
10 Pecan Company, and a copy of my resume is
11 attached.

12 My grandfather started this business
13 in 1942. He was a farmer and a produce broker.
14 The business became more focused on pecan
15 accumulation and brokerage in the early 1970s,
16 and four generations of Easterlins have worked in
17 this business. We're now one of the largest
18 accumulators in the East Region under the
19 proposed federal marketing order for pecans.

20 Our business as an accumulator is
21 buying pecans directly from growers or small
22 accumulators and selling them to shellers,

1 processors, and for export around the world.

2 There are many small accumulators throughout the
3 pecan production area, and most small towns where
4 pecans are grown, someone will put up a sign
5 during the fall or winter, We buy pecans.

6 This is often a hardware store, auto
7 repair center or other business that may
8 accumulate pecans from people in their area that
9 bring them in garbage sacks or in the bed of a
10 truck. It is a part-time, seasonal business for
11 these accumulators. Some collect as little as
12 25,000 pounds of inshell pecans and up to 30 to
13 40 tractor-trailer loads. But very often, they
14 will call on us to grade them for size and
15 quality and to buy them.

16 We deal with a lot of small
17 accumulators on one end, large accumulators and
18 growers on the other. I've read the proposed
19 federal marketing order for pecans as published
20 in the Federal Register, and I especially focused
21 my attention on issues related to accumulators,
22 handlers, the meaning of "to handle," the

1 portions of the proposed order on assessments and
2 inter-handler transfers.

3 Before I discuss the proposed federal
4 marketing order specifically, I should mention
5 that Georgia has a one-cent per pound inshell
6 check-off program, the accumulated money,
7 approximately 500- to \$650,000 last year spent by
8 the Georgia Commodity Commission on pecan
9 industry promotion and research.

10 This program is similar to the
11 proposed federal marketing order for pecans. As
12 part of this state program, we track the nuts we
13 buy into the purchases into our computer system,
14 set aside the check-off amounts and pay those
15 amounts once a month. Georgia Department of
16 Agriculture sends out an auditor annually to
17 review our books and go through each purchase
18 ticket.

19 I think having this audit process is
20 important for all handlers, including growers
21 that are handlers. It preserves the integrity of
22 the process , and the audit or threat of audit

1 keeps every handler in compliance. I think the
2 Georgia program works well, and we're glad to
3 participate in it, because it benefits the pecan
4 industry of which we're a part.

5 I think the proposed federal marketing
6 order for pecans assessment, recordkeeping and
7 payment system will be very similar compliance
8 program for us, and again, we're glad to
9 participate in it because it benefits the pecan
10 industry.

11 I have a couple of specific comments
12 on the proposed federal marketing order for
13 pecans. First, the definitions of "accumulator,"
14 986.1; "blowouts," 986.4; "crack" or "cracks,"
15 986.9; "handler," 986.18; "to handle," 986.19;
16 "handler inventory," 986.20; "handler clean
17 production," 986.21; and "inter-handler
18 transfers," 986.25," and "stick-tights," 986.37,
19 all are either defined in the way that they are
20 commonly used in the industry or are defined in a
21 way that makes them understandable to an
22 accumulator or other handler.

1 Second, 986.61, assessments, makes
2 sense to us as an accumulator, given the relative
3 value of improved, native/seedling, and/or
4 substandard pecans.

5 Third, inter-handler transfers in
6 986.62 properly reflects the industry practice
7 between accumulators, and we agree that it will
8 be useful in tracking nuts and the collecting
9 assessments. As I mentioned earlier, many of the
10 small accumulators are part-time seasonal
11 business, and it will be important to them to
12 pass the recordkeeping and collection
13 responsibilities to larger accumulators who do
14 this all the time.

15 Finally, we're very pleased that the
16 council has agreed to keep individual handler
17 information confidential, in 986.81. We would
18 not be comfortable for our company's information
19 or our customers' information to be shared within
20 the industry or to be made public.

21 We certainly agree that all handler
22 information should be aggregated and presented to

1 the council, the USDA and the industry, just not
2 in such a way that individual handler's company
3 records or customer information be open for
4 review within the industry or to the public.

5 We agree with the structure of the
6 council with nine grower seats, six shellers, one
7 accumulator, and one public person, plus
8 alternators. There are many issues that the
9 council may face, and this seems like a good
10 representation of the pecan interests on the
11 council. Let me say specifically we're very
12 pleased that the proposed federal marketing order
13 for pecans has an at-large accumulator member and
14 alternator seats as part of the council's
15 composition in 986.45.

16 Accumulators serve growers, but we are
17 handlers that have a slightly different view of
18 the industry that would be different from most
19 shellers or growers on the council. We agree
20 that to maintain the integrity of the marketing
21 order, it is very important that a two-thirds
22 vote on the board be required for any major

1 changes to the federal marketing order.

2 I have reviewed the economic analysis
3 summary by Dr. Marco Palma, specifically his
4 projected average price increase from promotion
5 of 6.3 cents per inshell pound of improved
6 varieties and 3.6 per shell pound of native
7 seedlings versus the average 2.5 and 1.5 per
8 inshell pound cost.

9 I'm also aware of Dr. Palma's
10 evaluation of the financial impact on handlers.
11 Additionally I'm aware of the costs that the
12 federal marketing order may impose on our
13 business and the indirect costs of recordkeeping,
14 remittance, and auditing, and I do not believe
15 these costs are unduly burdensome.

16 Further, I believe that the benefits
17 of the federal marketing order to our business
18 will greatly outweigh any costs associated with
19 it. In recent years, we have seen wide variation
20 in prices received for pecans. Such wide
21 variation in prices makes it extremely difficult
22 for growers and handlers to plan for the future

1 and make financial commitments.

2 While prices for pecans go up and down
3 dramatically from year to year, our costs have
4 steadily increased. We could use more stability
5 in pecan prices. A lack of accurate market
6 information on anticipated size of pecan crop in
7 any given year also makes it difficult for us to
8 negotiate to buy and sell pecans, and to make
9 reasonable business decisions about future
10 investments in pecans. More accurate market
11 information would greatly benefit our business
12 and the industry.

13 I also understand that the proposed
14 order, only growers with more than 30 acres of
15 pecans or more than 50,000 pounds of average
16 production per year over the last four years
17 would be allowed to vote under the proposed
18 order. In my opinion, this threshold is
19 reasonable, because a grower that does not meet
20 this threshold is not a commercial grower. Any
21 grower that is smaller than the proposed
22 threshold could not justify the costs inherent in

1 such a small production.

2 The American Pecan Board has kept our
3 company informed about its efforts to propose a
4 federal marketing order. Representatives of the
5 American Pecan Board attended a Southeastern
6 Pecan Growers Association and Georgia Pecan
7 Growers Association meetings the last two years,
8 and have provided us with information and
9 solicited our input.

10 In conclusion, we fully support the
11 proposed federal marketing order for pecans and
12 encourage the Secretary to implement the order as
13 proposed by the American Pecan Board. I'd be
14 glad to answer any questions.

15 Q Thank you, Mr. Easterlin.

16 MR. QUIR S: We would like to tender
17 what has been marked Exhibit Number 74 at this
18 time.

19 (The document referred to was marked
20 for identification as Exhibit Number
21 74.)

22 JUDGE GUTHRIDGE: Is there any

1 objection from USDA?

2 MS. CHILUKURI: There's no objection.

3 JUDGE GUTHRIDGE: Any objection from
4 the audience?

5 (No response.)

6 JUDGE GUTHRIDGE: No objection.

7 Exhibit 74 is admitted into the record.

8 (The document referred
9 to,

10 having been previously marked for
11 identification as Exhibit Number 74,
12 was received in evidence.)

13 BY MR. QUIR S:

14 Q Mr. Easterlin, we know that you're one
15 of the larger accumulators, as you said, in the
16 Eastern Region under the proposed federal
17 marketing order for pecans. Why don't you maybe
18 give us a little bit more detail about your
19 business, how it's run, cash needs, cycle of the
20 year, other things that might be helpful to the
21 audience.

22 A We, you know, basically buy pecans

1 from accumulators and growers, and the word
2 "accumulator" is a pretty accurate description of
3 our business. We take the pecans we buy, and we
4 accumulate them and make truckload lots for
5 resale. And what we try to do is to take the
6 poorer quality, the better quality, the medium
7 quality, the bigger, the smaller, and allocate
8 them into different size -- not different size
9 but different tractor-trailer loads of resale.

10 And so the person who wants, you know,
11 extremely good quality, high-yielding large
12 pecans, we can, you know, provide that for the
13 sheller or processor, and -- which also allows us
14 to pay market price to the grower for each
15 different kind of pecan he might have, whether it
16 be a good one, a small one, a big one, large one,
17 different quality.

18 And we buy basically from all the
19 growers in the state of Georgia. We have what we
20 would call is a road man who would go to a
21 cleaning plant throughout the state of Georgia,
22 pull a sample, bring it back to our warehouse.

1 We run the sample, look at it and decide, you
2 know, what we want to offer price per pound, and,
3 you know, have that and represent that to the
4 buyer as what the size and quality is.

5 And, you know, through the years have
6 built up a reputation where the sheller or
7 processor can depend on what we say the product
8 will be, as there is no really strong guidelines
9 for that information.

10 We do a lot of export, which has been
11 a big thrust of the pecan industry in the last
12 ten years, 12 years. And, again, the biggest
13 thrust of that has been to the Chinese market,
14 and basically do the same thing. We can
15 accumulate a volume of a particular kind of nut
16 that a customer might want, and sell it to them
17 at market price, get the grower a market price
18 for all his different grades of pecans. That's,
19 you know --

20 Q Tell us a little bit about the cycle
21 in your year, cash needs, et cetera. How does
22 that work?

1 A You know, we basically start in late
2 September, early October, and we will buy on
3 until generally the first of March. It is
4 basically a cash business. We, you know -- when
5 we buy the pecans from the grower, he can pick up
6 a check that day or the next day, you know, if he
7 so desires. We do buy some pecans, if a grower
8 happens to put some on cold storage, throughout
9 the summer.

10 You know, that's become a little bit
11 more useful since the Chinese market -- since the
12 Chinese do use pecans year-round now and
13 beginning to do that on a more regular basis. So
14 there is a demand -- more of a demand throughout
15 the year than there has been in the past.

16 Q That portion of time between when you
17 buy the pecans for cash and they're sold, what
18 kind of gap period is that, and what kind of risk
19 do you take?

20 A When we buy the pecans, we actually
21 take title to them. It's very different than,
22 say, an almond or walnut brokerage, or really any

1 other type of brokerage business. In the pecan
2 business, when you buy them, you own them, and so
3 we do try to turn around and sell them as quickly
4 as possible, which, you know, sometimes may be in
5 the next five minutes, sometimes may be a day,
6 sometimes may be a week. But we try to turn them
7 over as fast as we can.

8 Q Thank you, Mr. Easterlin.

9 MR. QUIR S: No further questions at
10 this time of this witness.

11 JUDGE GUTHRIDGE: Does USDA have any
12 questions?

13 MS. SCHMAEDICK: Melissa Schmaedick,
14 USDA.

15 CROSS-EXAMINATION

16 BY MS. SCHMAEDICK:

17 Q Thank you, Mr. Easterlin, for your
18 testimony. You just stated that an accumulator
19 is different from a broker, because you take
20 title. Do you want to expand on that any more?

21 A We actually, when we buy the pecan
22 from the grower -- then if you are a broker, the

1 grower still has the responsibility, if there are
2 any problems with the load of almonds or walnuts
3 or, you know, whatever. In the case of taking
4 title to them, and we buy the pecans, and if
5 there's an issue, then I'm responsible for the
6 issue and making it right with the buyer.

7 Q Thank you. On page 4 of your
8 testimony, you state that it's important to have
9 an accumulator on the proposed council, because
10 accumulators have a different view than other
11 handlers. And you've gotten a little bit into
12 that, but can you maybe further explain what
13 exactly is your different view.

14 A Well, it's -- I guess the different
15 view is that we're actually, you know,
16 accumulating pecans and putting them in truckload
17 lots, and while a sheller is buying for a
18 specific need, we are buying to try to get the
19 grower a market price, and we're also trying to
20 sell to the sheller at market price, so the
21 grower gets a fair price and the sheller buys at
22 a fair price.

1 So if you are a grower, you want the
2 highest price, and if you're a sheller, you want
3 to buy them as cheap as you can. And so it's
4 just a little bit different perspective, and, you
5 know, it's more of a service to both sides, and I
6 think that's just one of the things that is a
7 little bit different about the pecan industry
8 than other produce items in the industry.

9 Q So you take title of the pecans, but
10 you also view yourself as offering a service.

11 A Correct.

12 Q Okay. That's interesting. Thank you.
13 you also just said that you try to give growers
14 the highest price possible, and then you try to
15 give the shellers the best -- lowest price
16 possible. Seems like there's not a lot of room
17 between the highest price and the lowest price,
18 so --

19 A Well, that's what's called my job, to
20 make everybody satisfied. And, again, we are,
21 you know, I hope, viewed as treating everybody
22 fairly. And, you know, the grower, in dealing

1 with us, I hope, feels that he gets treated
2 fairly and he gets a fair price, and the sheller
3 feels like he's getting treated fairly, where
4 he's not over-paying, and it's just a little bit
5 unique to the pecan business, and that's kind of
6 where we fit in the scheme of things.

7 Q And so why would a sheller decide to
8 buy from an accumulator rather than buy from a
9 grower directly?

10 A Well, a grower generally will have
11 some very large, good high quality pecans. He'll
12 have some small pecans. He'll have some poor
13 quality. He'll have some blowouts. He'll have
14 some of everything, and we try to take everything
15 the grower has and get him, again, a market price
16 for his, you know, blowouts, for his large ones,
17 big ones, small ones, medium, because we are
18 familiar, been dealing with the customers long
19 enough, we know the people who like the small
20 ones; we know the people who like the cracked
21 ones.

22 And a sheller, if he's in a bid

1 situation from a grower, the grower has five
2 different kinds. He puts them up for bid. He
3 wants to buy the pecans. He will end up and have
4 to pay a very top price for all of those pecans,
5 and he's also buying some pecans that he doesn't
6 particularly want. And if he is a smaller
7 sheller, he's not set up to handle blowouts, or
8 he's not set up to handle medium size. He
9 doesn't have the market for that product.

10 So we can be of service to the grower
11 and pay him a market price for all five different
12 kinds of pecans he has, and then the sheller on
13 the other hand can buy just what he wants. He
14 can buy the big ones. He doesn't have to buy the
15 blowouts. He doesn't have to buy the medium. He
16 doesn't have to buy the small.

17 So, again, we're trying to -- we may
18 not get the grower the very top, top price for
19 all five kinds, but when you put them all
20 together and add them all up, he's going to get a
21 better price or as good a price in dealing with
22 us if we handle it all.

1 Q Thank you. That makes sense. So
2 maybe another way to describe your service is
3 you're kind of a clearinghouse. You receive, you
4 know, the bulk package from the grower, and then
5 you sort it out, and then you sort of channel by
6 size or whatever character is --

7 A Right.

8 Q -- demanded by your customer.

9 A That's correct.

10 Q Uh-huh. Okay. Thank you. You stated
11 that you're one of the largest, if not the
12 largest, one of the largest in the Eastern
13 Region. I'm just curious. We've heard a lot
14 about accumulators and how they can be anything
15 from a hardware store or a pickup truck, all the
16 way up to someone who's fairly sophisticated like
17 yourself. And we've also heard that some of them
18 are only in business for a little bit, and others
19 are in business year round.

20 If you had to describe just the
21 accumulator community inside the larger community
22 of handlers, how many -- and I apologize for

1 putting you on the spot here, but in your opinion
2 how many accumulators kind of exist as a
3 permanent, year-round business, across the
4 production area?

5 A You know, number-wise, I'm not that
6 familiar with states like Texas. I mean, Texas
7 is a huge state and a huge number of
8 accumulators. You know, probably in the state of
9 Georgia, not very many, you know, maybe a
10 handful. You know, and again, you have people
11 like Homer Henson who is a sheller and involved
12 with an accumulator, and so, you know, whether
13 you classify him as being year-round, you know,
14 just in how you want to count that.

15 But it is a seasonal business, and it
16 does go up and down with the -- you know, weather
17 has a big effect on it, and it can limit the
18 number of pounds that, unless you are a larger
19 grower, you may not have -- you know, the last
20 two years, accumulators have had -- smaller
21 accumulators have done, you know, very little.
22 So it'd be very difficult for them to stay in

1 business year-round. But they'll be back this
2 year. They'll pop back up.

3 Q Uh-huh. Thank you. On page 2 of your
4 testimony, you're making a comparison between the
5 Georgia Commodity Commission and the federal
6 marketing order for pecans, and you state, "This
7 program is similar" -- this program, meaning the
8 Georgia Commission -- "is similar to the federal
9 marketing order for pecans." And then you go on
10 to describe how the Georgia Department of
11 Agriculture is involved in terms of auditing,
12 periodically auditing, sort of overseeing some of
13 the activities.

14 So -- and then you conclude by saying,
15 "I think the Georgia program works well, and we
16 are glad to participate in it, because it
17 benefits the pecan industry of which we are a
18 part." So I just want to be sure that I'm
19 interpreting this correctly. So I'm assuming
20 you've had a chance to read Exhibit 1, which is
21 the proposed marketing order.

22 A I have.

1 Q So in these statements, are you saying
2 that you understand the program as it is intended
3 to operate, with all of the different functions
4 involved, the decision-making processes, the
5 auditing and compliance issues, the assessment
6 mechanism, and that you're comfortable with these
7 types of systems because you're comfortable with
8 the Georgia Commission?

9 A You know, I think that's correct. And
10 I certainly haven't studied it in depth, but I've
11 certainly read it more than one time, and I think
12 I'm familiar with it, and it basically does work
13 very similar to the Georgia program. The Georgia
14 program probably does not have the flexibility
15 that a federal marketing order has, but as far as
16 it working, internal workings of it, the money is
17 collected basically the same, you know, and
18 compiled and sent in, and, you know, all of that
19 is very similar in my estimation. So --

20 Q Uh-huh. And so if the federal
21 marketing order were to be implemented, then you
22 would be comfortable with the way it's proposed

1 to function.

2 A We would. Yes.

3 Q Okay. And you would anticipate that
4 it would be a positive thing.

5 A Sure.

6 Q Okay. Thank you. Just out of
7 curiosity, do you have any experience interacting
8 with the organic pecan sector?

9 A There's actually a grower in Fort
10 Valley that has some organic pecans or markets
11 what he calls an organic pecan, so, you know, I'm
12 a little bit familiar with that, but you would
13 have to have a variety that would not require
14 any -- I'm going to say, spray, and I'm certainly
15 not a grower, so I may stand corrected.

16 Q Uh-huh.

17 A There are a few varieties that would
18 meet that criteria, but not very minute at this
19 point in time. We may have more of that in the
20 future, but --

21 Q So I'm sorry. I didn't catch where
22 that person is located.

1 A In Fort Valley.

2 Q Fort Valley?

3 A Right.

4 Q That's here in Georgia?

5 A Yes.

6 Q Okay. So when you receive the organic
7 pecans, do you keep them separate?

8 A I don't handle his pecans.

9 Q Oh, you don't.

10 A He has a small shelling plant, and he
11 shells a small quantity of pecans that he markets
12 as organic pecans.

13 Q Okay.

14 A So I'm not involved with that at all.

15 Q Okay. I misunderstood you.

16 Q Right.

17 JUDGE GUTHRIDGE: Would they be mostly
18 native pecans? I think --

19 THE WITNESS: He has a variety called
20 an Elliott pecan, which is a small nut, and it
21 does not require any spray, and that's what he
22 uses and markets as an organic. And I think he's

1 certified as being --

2 JUDGE GUTHRIDGE: And I see the
3 Elliott is one of those listed in 986.28(a)(2) as
4 an improved pecan.

5 THE WITNESS: Correct.

6 MS. SCHMAEDICK: Thank you. I have no
7 further questions.

8 BY MS. VARELA:

9 Q Good afternoon, Mr. Easterlin. Thank
10 you so much for giving us so much information
11 about your particular and unique role. We've
12 certainly learned a lot about accumulators in the
13 last few days, and you're helping us fill in some
14 of these gaps and questions that we have.

15 I was really interested in your
16 explanation of how you might have multiple types
17 of pecans coming in, and that role that you play
18 in helping differentiate that part of the market.

19 In a previous hearing, one of the
20 things we were trying to get to the bottom of was
21 how different types of varieties, which might
22 look the same, would be separated, and how easy

1 it would be to track those pecans as they went
2 through the system, given that we have this
3 assessment structure that is also a little bit
4 unique in the proposed order.

5 Do you feel that in your role, in
6 particular, you can speak to how easy or
7 difficult it is to know the difference between
8 improved or native pecans as they're moving
9 through the market system?

10 A In our particular case, I mean, I
11 think it's fairly easy to determine that, and
12 there may be some native pecans that end up in an
13 improved lot of pecans, and there may be some
14 improved pecans that end up in a native lot of
15 pecans.

16 And if they come in mixed, then, you
17 know, you basically -- when there are small
18 quantities and then there are these small
19 handlers, they're buying the pecan, you know, and
20 determining the variety or where it may fall by
21 eyesight. And -- you know, so that's, you know,
22 to be determined and when they come to me, you

1 know, I basically can look at them, and I can
2 tell the difference in what's a native and what's
3 not a native, you know.

4 And I would think that there would
5 probably be some crossover, but it would be
6 pretty much a wash as to which -- you know, which
7 way that might fall.

8 Q Thank you. And if I understand you
9 correctly, it sounds like that determination is
10 made pretty early on. I mean, you're doing some
11 sorting, some grading at the grower level.

12 A Right. Sampling.

13 Q Sampling.

14 A Right.

15 Q Thank you for that clarification.
16 I'll try to remember that one. And on the flip
17 side, the shellers that you're dealing with,
18 would you say that they have confidence that
19 they're getting exactly what they're looking for
20 when they know that something --

21 A I hope so.

22 Q -- has already been sampled?

1 A They might not agree with you all the
2 time, but I hope so. Yes, they do.

3 Q For the most part?

4 A Right.

5 Q And there's been, you know, a good
6 deal of discussion about how the U.S. standards
7 are not necessarily the most useful or up-to-
8 date. If the board -- or if the proposed council
9 did recommend some new standards, is that
10 something that would make your day-to-day
11 operations easier?

12 A You know, we pretty much, you know,
13 look at it and represent it for what it is, and,
14 you know, as far as making it easier, it might
15 give you some guidelines, and from an export
16 standpoint, sometimes you're selling to somebody
17 who is not that familiar with pecans. You know,
18 they may be a little bit more at ease with it.

19 Q So but would you characterize that as
20 maybe just a -- it could be a frame of reference
21 there --

22 A I would. Yes.

1 Q -- that might be useful? And then I
2 also wanted to go to back to some of your
3 comments and the testimony about the structure of
4 the council. And I have to thank you for really
5 reading through things, because you did note a
6 number of definitions that we wanted to make sure
7 somebody in your position could understand, so
8 thank you for making your comments there.

9 I wonder -- I know that there was
10 probably some discussion in the industry in terms
11 of how that seat would be determined, and in the
12 proposed order, the council once seated of
13 growers and shellers will nominate an accumulator
14 at large. In your opinion, is that the most
15 effective or most representative way to choose
16 someone for that seat?

17 A I would think it would be the most
18 knowledgeable way to do that. I mean, I feel
19 like you need somebody that is knowledgeable of
20 the accumulator process and how it works, you
21 know, in that seat, and they would be familiar
22 with that, I think.

1 Q So in -- and I know you can't speak
2 for all other accumulators, but you yourself, you
3 would be comfortable in letting a smaller group
4 of people make that decision versus trying to
5 have a nationwide election for an accumulator.

6 A Yes. I mean, that --

7 Q Would that be really difficult to
8 identify all of the people?

9 A You know, probably not difficult, but,
10 I mean, it --

11 JUDGE GUTHRIDGE: By all the people,
12 you mean all of the accumulators who might --

13 BY MS. VARELA:

14 Q Oh, all of the qualified accumulators.

15 A Right, right. You know, again, it
16 might be fine. I don't want to, you know -- I
17 mean, you could put a poundage on it or, you
18 know, just like you do with the sheller deal. I
19 mean, it could be structured in a way that --
20 where you had a qualified accumulator in that
21 position, I think.

22 Q Okay. Thank you very much. That was

1 informative. We appreciate your testimony.

2 JUDGE GUTHRIDGE: Are there any more
3 questions from USDA?

4 MS. SCHMAEDICK: Yes. Melissa
5 Schmaedick, USDA.

6 BY MS. SCHMAEDICK:

7 Q Mr. Easterlin, I just started thinking
8 about your operation and how you receive pecans
9 that come from native trees or improved
10 cultivars. It's a mix. Right? And you talked
11 with Ms. Varela about how you go through the
12 process of sorting the different pecans, and I
13 believe you said that the way -- one of the
14 primary ways of identifying a native pecan versus
15 an improved pecan is by the size, as well as some
16 other visual attributes. Is that correct?

17 A That's one of the ways. I mean, some
18 years, if we have an extreme drought, you may
19 have a Stuart pecan, which is normally a 60-count
20 pecan, be a 90-count pecan, if it's in somebody's
21 yard that doesn't irrigate their yard.

22 JUDGE GUTHRIDGE: By 60-count and 90-

1 count, do you mean 60 pecans per pound or 90
2 pecans per pound?

3 THE WITNESS: That's correct. Right.
4 Most of the time, an experienced accumulator can
5 look at the pecan itself, and say, this is a
6 seedling; this is a Stuart. The Southeast, we
7 call our -- and they're, you know -- we call them
8 seedlings. Out West, they call them natives.

9 And they are a little bit different in
10 that they have -- state of Texas may make --
11 let's say, Oklahoma has a crop size of 30 million
12 pounds. Probably 20 to 25 million pounds of
13 those pecans will be natives. And they're a
14 pecan that counts 110 to 150 to the pound. And,
15 you know, so they're buying just straight
16 natives, nothing else mixed in.

17 And in the Southeast, we are buying
18 pecans out of people's yards that may have five
19 seedling trees and two Stuart trees, and the
20 person picking up pecans may not know the
21 difference when they put them all together, and
22 when they come to my warehouse, if the majority

1 of them are seedlings, we put them with the
2 seedlings. If the majority of them are Stuarts,
3 we might put them with the Stuarts.

4 And so, I mean, it is kind of done by
5 eyesight, but, you know, as I said, I feel like
6 that, you know, is going to wash, and I don't
7 anticipate -- and I don't know if your question
8 is an assessment related with the difference
9 between a seedling and an improved variety or
10 not, but I don't think that that small amount of
11 money over a few -- you know, I don't think
12 that's an issue, I guess I'm trying to say.

13 And I'm not sure that's the way your
14 question was --

15 BY MS. SCHMAEDICK:

16 Q Thank you for that response. And, no.
17 My --

18 JUDGE GUTHRIDGE: Could I clarify
19 something on the counts --

20 MS. SCHMAEDICK: Sure.

21 JUDGE GUTHRIDGE: -- that occurred to
22 me. You used the term, 60-count and 90-count,

1 meaning number of pecans per pound, and another
2 part of the hearing, I think we had some
3 testimony about measuring in sixteenths of an
4 inch, like there's an 8, a 12 might be native,
5 and then 13 to 16 would be improved. How does
6 the 60-count relate to that other way of
7 measuring size?

8 THE WITNESS: Well, a 60-count
9 pecan -- and, again, this is in general terms --
10 would probably be 90 percent 14 and up. A 90-
11 count pecan would probably be 90 percent 12s and
12 smaller. So just, you know, being in the
13 business and, you know, you look at enough of
14 them, and you can -- 90-count versus 60-count,
15 they're easy to distinguish where they might
16 fall, I guess.

17 JUDGE GUTHRIDGE: So it's just two
18 ways of measuring essentially the size of an
19 individual pecan.

20 THE WITNESS: Well, when you're
21 buying, you know, 25 pounds from somebody, a more
22 sophisticated grower runs his pecans through a

1 sizer, and so he eliminates all the small
2 seedings and has just the big pecans. Somebody
3 picking them up in the yard, they may be mixed a
4 little bit, and really, you don't make enough
5 money per pound to do anything but look at them
6 and say, These are seedlings and these are
7 Stuarts, and, you know, the customers usually are
8 aware of that, and they're satisfied.

9 JUDGE GUTHRIDGE: So it might be that
10 when you're dealing in a smaller -- when a
11 handler or somebody has a smaller number of
12 pecans, you're doing it by weight, but if you're
13 a large enough operation, that you can size them.
14 I think we heard testimony about electronic
15 measurements and everything, and I guess they
16 must go whizzing by at a pretty high rate. There
17 they could do the eight to 12 or 14 or 16 --

18 THE WITNESS: Right. That's correct.

19 JUDGE GUTHRIDGE: -- in that
20 situation.

21 THE WITNESS: You're doing them by
22 eyesight, not by weight, but by eyesight. But,

1 yes. I mean, that's -- big growers have the
2 sophisticated equipment.

3 JUDGE GUTHRIDGE: Okay. Thank you.
4 Sorry.

5 MS. SCHMAEDICK: That's okay.

6 BY MS. SCHMAEDICK:

7 Q So you asked if I was asking that
8 question because I was concerned about how the
9 assessment was applied?

10 A Right.

11 Q So that's not exactly where I'm trying
12 to go, and I realize I'm probably going to ask
13 you some technical questions, and at the end of
14 my questions, I'll tie it all together --

15 A Okay.

16 Q -- and try to -- so that you know what
17 I'm getting to. But I also want to say that, you
18 know, I think given your position and your role
19 in the industry, you will help me understand the
20 answers to my questions, but I also want to get
21 the question out there, sort of on the record at
22 this point, so that if it's a question that needs

1 further thought and needs to be addressed later,
2 that we have the opportunity to do that.

3 So let me try to make this work.

4 Okay. So under the proposed program, there is
5 authority to create handling regulation, and as
6 it's proposed and as I understand it, based on
7 the testimony, that would be authority to create
8 grade or size regulation or some other type of
9 quality regulation. Right?

10 A (No audible response.)

11 Q So my first --

12 JUDGE GUTHRIDGE: You're nodding yes.

13 Is that correct?

14 THE WITNESS: Yes. That's correct.

15 JUDGE GUTHRIDGE: The nod doesn't pick
16 up on the transcript.

17 BY MS. SCHMAEDICK:

18 Q So my first question is: There's been
19 a lot of discussion about creating handling
20 regulation that I'm understanding would be
21 applied to the improved varieties. In your
22 opinion, would handling -- or could handling

1 regulations be put into effect for native and
2 seedling pecans as well?

3 A And you're just -- these are just
4 general regulations and just the --

5 Q Right. Do you see a situation in the
6 future where you say there could be a regulation
7 that says, Native pecans can't be smaller than X
8 size, or they can't have a certain color or
9 whatever?

10 A All right.

11 Q But that that rule or that regulation
12 would be specific to native and seedlings,
13 because that regulation may not apply to the
14 improved varieties.

15 A I'm not saying that it couldn't
16 happen. I think it would be most unusual if that
17 were to take place. You know, I would think that
18 whatever is good for one is going to be good for
19 the other. I don't know if that -- you know, I
20 don't know why you would do --

21 JUDGE GUTHRIDGE: Could you get a
22 little closer to the microphone.

1 THE WITNESS: I don't know why you
2 would do natives in one way and improveds in
3 another way. I can't think of an instance where
4 that would --

5 BY MS. SCHMAEDICK:

6 Q So based on my understanding, natives
7 are typically smaller than your improved
8 varieties, so if you had a minimum size
9 regulation, it may not be appropriate to subject
10 the native and seedlings to the same size
11 regulation, because you might be, you know,
12 placing an extra burden or disenfranchising that
13 particular classification of nut.

14 Let me give you another hypothetical
15 situation. Let's say, 15 years from now, native
16 pecans, you know, everybody's talking about
17 native pecans, Dr. Oz, Rachael Ray, whoever.
18 It's on Top Chef. You know, the world loves
19 native pecans. And you want to say, Okay, well,
20 to avoid having poor quality native pecans on the
21 market, we're going to make sure that native
22 pecan meats that are black can't go out. I mean,

1 it's totally made up.

2 A Right.

3 Q But -- so my question is -- and I
4 know -- I apologize for putting you in this
5 situation, but could you foresee future customers
6 wanting to have specific grades -- grade
7 regulation in place for natives and different
8 grade regulations in place for improved?

9 A I do not. I think that issue is
10 solved at the shelling level. Any pecans, when
11 they go into shelling plant, the first thing they
12 do is they size the pecans from 7, 8, 9, 10, all
13 the way up to size 16, and separate them into
14 different bags, so --

15 Q Uh-huh.

16 A And they run them through the plant,
17 and they eliminate the -- you know, all the brown
18 ones or, you know, whatever rejects or whatever
19 that is. You know, I think all of that is done
20 at a level -- you know, not at the accumulator
21 level, I guess is what I'm trying to say. I
22 think that's being done now. I mean, you know,

1 that's not to say that -- I think there was a
2 paragraph that you all referenced earlier when
3 Mr. Henson was here about changing -- I'm not
4 sure what -- Paul, do you know what paragraph
5 that was?

6 JUDGE GUTHRIDGE: Changing what, Mr.
7 Easterlin?

8 THE WITNESS: They was -- Homer was
9 referring to about grading standards or whatever
10 it is.

11 MR. QUIR S: Right. That's in 69.
12 And he was referring to, I think, subsection (c),
13 which was the volume regulation. But it is the
14 same section, I guess, Ms. Schmaedick is
15 referring to, the authority regulating handling.
16 Is that correct, Ms. Schmaedick?

17 MS. SCHMAEDICK: Yes. That's correct.

18 MR. QUIR S: If you'd like to take a
19 look at that, we'll be glad to put it on the
20 screen.

21 THE WITNESS: Okay. What's the --

22 MR. QUIR S: Paragraph 69, 986.69.

1 MS. SCHMAEDICK: Specifically, I'm
2 working up to asking a question on 986.69 in
3 paragraphs (a)(1), (2), and then tying that to
4 language in paragraph (a)(4). 986.69(a)(1), (2)
5 and (4).

6 MR. QUIR S: Take your time to read
7 those, Mr. Easterlin.

8 THE WITNESS: (Perusing document.)
9 And tell me the question again.

10 BY MS. SCHMAEDICK:

11 Q Well, let me ask you another question.

12 JUDGE GUTHRIDGE: Ms. Schmaedick, do
13 you want to take a moment to think about that,
14 because I think I can play off your question
15 about the specific standards for native pecans
16 with one of our exhibits from yesterday, if I
17 could -- if you -- would you mind if I did that?

18 MS. SCHMAEDICK: Oh, you have
19 another -- a different question?

20 JUDGE GUTHRIDGE: Well, relating to
21 that one, but sort of putting it in context of
22 one of our exhibits from yesterday, and this is

1 Exhibit 64. It was the testimony of Jeb Barrow.

2 And, Mr. Easterlin, in his testimony,
3 he stated -- and I'm quoting him -- "Can you
4 imagine a promotional campaign where native
5 pecans are described as what they are?" And then
6 an internal quote: "Wild pecans growing
7 naturally in the river bottoms of the American
8 heartland, prized by American Indians for
9 thousands of years, naturally nutritious, and
10 packed with antioxidants." End of quote.

11 And I think if I understood your
12 question correctly, you were wondering whether
13 that would -- might require regulations under
14 (a)(1) that would -- under 986.69(a)(1),
15 specifically addressing those kind of pecans.

16 MS. SCHMAEDICK: Yes. Thank you.
17 That's good --

18 THE WITNESS: You know, I mean, I
19 think that would be entirely possible to have
20 some type of handling requirements, you know. I
21 don't know what that might be, but, you know,
22 possibly, yes.

1 BY MS. SCHMAEDICK:

2 Q Right. Okay. Thank you. So hold
3 that thought.

4 A Okay.

5 Q And now, I want to go to the
6 definition of pecans. Definition of pecans is
7 986.28.

8 MS. SCHMAEDICK: And, Mr. Davis, if
9 you could leave the handling reg section on the
10 overhead, that would be helpful.

11 MR. DAVIS: Okay. Remind me again.

12 MR. QUIR S: 69.

13 MS. SCHMAEDICK: 69(a)(1).

14 BY MS. SCHMAEDICK:

15 Q Okay. Now, Mr. Easterlin, again, I
16 apologize for getting technical on you here, but
17 if you look at the definition of pecans, I'll
18 read this into the record so we have it out
19 there. 986.28, paragraph (a)(1) simply says:
20 "Native or seedling pecans harvested from
21 nongrafted or naturally propagated tree
22 varieties." Okay?

1 So native and pecan seedlings,
2 according to the testimony we've heard and his
3 definition, is defined not necessarily by variety
4 but whether or not it was grafted. Is that your
5 understanding?

6 A That's correct. Yes.

7 Q Okay. And is that common in the
8 industry? You don't refer to native trees by
9 variety. They're just natives.

10 A Either natives or seedlings. Yes.

11 Q Okay. So here's my concern. Well,
12 let me just make one more step. So if you go to
13 paragraph 2, it says, "Improved pecans," and then
14 it says, "grafted from tree varieties," and it
15 gives out a whole bunch of varieties. Do you see
16 that?

17 A Uh-huh.

18 Q Okay.

19 JUDGE GUTHRIDGE: That's yes?

20 THE WITNESS: Yes.

21 BY MS. SCHMAEDICK:

22 Q Okay. So my concern is, if you look

1 at 986.69 -- it's up there on the screen behind
2 you.

3 A Okay.

4 Q So paragraph 986.69(a)(1) says,
5 "Establishing handling requirements or minimum
6 tolerances for particular grades, sizes or
7 qualities or any combination thereof, or any" --
8 that should be "for any or all varieties of
9 pecans during any period."

10 So the authority to set, if I
11 understand things correctly, the authority to set
12 minimum tolerances for grade, size, quality is
13 only tied to varieties. So my question is: If
14 it's important to be able to set minimum
15 tolerances for natives and seedlings, then maybe
16 this language should be cleared up a little bit.

17 And so my question to you is: Is
18 there a potential in the future to need to have
19 minimum grade standards for natives and
20 seedlings? That's my question.

21 A Is there a need for it?

22 Q Potential, potential need in the

1 future.

2 A My answer would be no. I mean, I
3 think that there's a need and a use for all
4 pecans, and, you know, I mean, I don't see a
5 reason to have a standard for one without the
6 other.

7 Q Okay. Well, I apologize for taking
8 you through that long exercise, but --

9 A That's quite all right.

10 Q -- I did think it was important, given
11 the context of talking about separating improved
12 and native, and trying to meet consumer demand,
13 so thank you for your patience.

14 A You're welcome.

15 MS. SCHMAEDICK: No further questions.

16 JUDGE GUTHRIDGE: Ms. Schmaedick, you
17 did say -- make a comment partway through that,
18 that the word after "thereof," where it says "of
19 any" -- did you mean -- say that that should be
20 "for any"?

21 MS. SCHMAEDICK: Let me reread that.
22 "Establish handling" --

1 JUDGE GUTHRIDGE: I'm sorry. After
2 "qualities," I believe.

3 MS. SCHMAEDICK: (Perusing document.)

4 JUDGE GUTHRIDGE: It says, "Establish
5 handling requirements or minimum tolerances for
6 particular grades, sizes, or qualities" -- and I
7 thought you said that next "or" should be "for."

8 MS. SCHMAEDICK: No. I think it's
9 correct. I just confused myself when I was
10 reading aloud. it is correct.

11 JUDGE GUTHRIDGE: It is correct as
12 "or."

13 MS. SCHMAEDICK: Yes. Thank you. My
14 apologies. No further questions.

15 JUDGE GUTHRIDGE: Are there any more
16 USDA questions?

17 MS. VARELA: Yes. Jen Varela, USDA.

18 BY MS. VARELA:

19 Q Mr. Easterlin, I want to go back a few
20 steps to some of your descriptions of how
21 different groupings of pecans may be sold. And
22 in earlier testimony when we were talking about

1 the different types or different tiers of
2 assessments, we've had a few different witnesses
3 talk about substandard pecans.

4 And I was just curious to hear a
5 little bit from you, as someone who probably
6 deals a lot with trying to find a market for
7 those. I know in some industries, your bottom
8 tier that you take out of whatever crop might
9 just be not useful. But so far we've heard a few
10 people say that there is some value to even the
11 pecans that might otherwise be called rejects.
12 Can you speak a little to your experience with
13 those.

14 A Generally, through the cleaning
15 process of improved varieties, a pecan grower
16 would run pecans through his cleaning plant, and
17 he would blow them very hard to try to get the
18 top quality nuts to be able to get the top price.
19 And then he may take -- he might blow them
20 extremely hard, and he may be blowing out some
21 good pecans or they may not be top quality
22 pecans, but they would certainly be sellable

1 pecans, while doing that process.

2 So they catch those pecans, and then
3 at a given time, he would rerun them through his
4 cleaning plant, to come up with what would be
5 called a reject or B grade or substandard, or
6 whatever you want to name it. And there is a
7 need, you know, or a place or a demand for that
8 pecan.

9 It is usually sold at a, you know,
10 discounted price, because the yield of the pecan
11 that you run through your plant, say, it
12 yields -- good pecan yields 50 percent; a poor
13 pecan yields 35 percent. So when you run it
14 through your plant, you're going to get a lot
15 less pounds of finished product on the back end
16 of the 35 percent nut versus 50 percent nut. So,
17 therefore, it is bought at a cheaper price.

18 And there are not, you know -- the
19 whole industry doesn't like to shell that, so
20 there's kind of limited market for that, so --
21 but it is sellable, and it is -- you know, does
22 add to the bottom line, and, you know, it does

1 reach a point, if it were to yield 20 percent,
2 then it would not have a value, and, you know,
3 that does happen from time to time, but --

4 Q So just to wrap that up, in your
5 experience, are a lot of those substandards kind
6 of being -- are they not as desirable, more
7 because of the limited yield, the amount of work
8 that goes into getting that relatively small
9 amount of meat versus quality as we would look at
10 it in terms of maybe color or some of those other
11 things? is It really more of just the cost of
12 processing it?

13 A Well, the cost would be the main
14 thing, but it, you know, is not probably as good
15 a pecan as -- probably the color may not be as
16 good or, you know, it's a thinner meat or, you
17 know, it's just not as good, and it costs more to
18 run it, so you're just limited on the number of
19 people who can use something like that.

20 Q Okay. Thank you very much for
21 clearing that up for me.

22 MS. VARELA: I have no further

1 questions.

2 JUDGE GUTHRIDGE: Are there any more
3 USDA questions?

4 MR. HILL: No, Your Honor.

5 JUDGE GUTHRIDGE: Was this Mr. Quirós?

6 MR. QUIR S: Yes.

7 JUDGE GUTHRIDGE: I forget who was
8 doing the --

9 MR. QUIR S: I know. We're getting
10 confused. We just look alike.

11 JUDGE GUTHRIDGE: Getting more and
12 more so every day.

13 REDIRECT EXAMINATION

14 BY MR. QUIR S:

15 Q Mr. Easterlin, are most of the pecans
16 that are run through cleaners mechanically sized?

17 A Yes.

18 Q And so do you actually have a cleaning
19 plant or access to a cleaning plant for the
20 pecans that you take in?

21 A I would have access to one, but I do
22 not have one.

1 Q Okay. And so those are sized
2 oftentimes then at the grower level, and then at
3 the sheller level or the processor level.

4 A Correct.

5 Q Some accumulators might or you might
6 from time to time.

7 A Might.

8 Q Any question in your mind that it is
9 a correct statement that there are no mixed or
10 blend loads recognized in the proposed federal
11 marketing order for pecans?

12 A Not to my knowledge.

13 Q That's right. And isn't it correct
14 that handlers are going to be held responsible
15 for paying assessments by improved, native,
16 seedling, and substandard?

17 A Correct.

18 Q Okay. So with regard to a load that
19 may have a mix of some seedlings that just happen
20 to get mixed in, you don't want to pay for
21 those -- you're not going to pay improved prices
22 for those seedlings, are you?

1 A Not knowingly. No.

2 Q Yes, sir. And so you have every
3 incentive not to mix those loads, do you?

4 A Correct.

5 Q But it's absolutely the handler's
6 responsibility to make sure they're paying the
7 assessments properly, even as they're buying
8 properly. Is that correct?

9 A Correct.

10 Q Thank you. There was a question about
11 20 percent nut. Could that be used for oil stock
12 or is there -- for feed or for anything else that
13 you know of?

14 A Possibly for feed. I'm not familiar
15 with oil stock.

16 Q Right. Crushed to make oil.

17 A Yes. I mean, I know what oil stock
18 is, but I'm not familiar with that process.

19 Q Right, right. I just did not know if
20 you knew. You think that nut may have such a
21 small density of meat that it would not be useful
22 in oil stock. Thank you.

1 MR. QUIR S: We have no further
2 questions of this witness at this time, Your
3 Honor. Thank you, Mr. Easterlin.

4 JUDGE GUTHRIDGE: At the risk of
5 beating a dead horse, given the definition of
6 native or seedling pecan and 986.28(a)(1) does
7 not include the word "variety" in it, whereas the
8 definition of improved pecans in 986.28(a)(2)
9 does include the word "variety" in it, is it --
10 do you think that the word "varieties" used in
11 986.69(a)(1) on establishing handling
12 requirements would prevent the council from
13 establishing requirements for those wild pecans
14 growing naturally in the river bottoms of
15 American heartland, as I read earlier from Mr.
16 Barrow's testimony, Exhibit 64 --

17 THE WITNESS: So you're --

18 JUDGE GUTHRIDGE: -- page 3.

19 THE WITNESS: The question is, if I
20 understand it correctly, is in one place it says,
21 native or seedling variety, and in another place
22 it says --

1 JUDGE GUTHRIDGE: Well, no. The word
2 "variety" is not -- oh, I'm sorry. It does say
3 "varieties" in -- I'm sorry. So I withdraw my
4 question. I'm sorry. So I have no further
5 questions. Does anyone in the audience have any
6 questions?

7 (No response.)

8 JUDGE GUTHRIDGE: No? So, Mr.
9 Easterlin, you're excused.

10 (Whereupon, the witness was excused.)

11 MR. DAVIS: Your Honor, the Proponent
12 group calls as its next and hopefully last
13 witness of the day Mr. Lamar Jenkins.

14 JUDGE GUTHRIDGE: All right. Why
15 don't you have a seat there, and while they're
16 handling those documents, if you could raise your
17 right hand, please.

18 Whereupon,

19 LAMAR JENKINS

20 having been first duly sworn, was called as a
21 witness herein and was examined and testified as
22 follows:

1 JUDGE GUTHRIDGE: Thank you.

2 MR. DAVIS: I think we'll make up a
3 sign for you.

4 THE WITNESS: I don't mind being
5 incognito.

6 JUDGE GUTHRIDGE: The regulation do
7 not permit that. But we'll have your name.

8 DIRECT EXAMINATION

9 BY MR. DAVIS:

10 Q And in that regard, so we make sure we
11 get your name right, would you please introduce
12 yourself and spell your name, please.

13 A My name is Lamar Jenkins, L-A-M-A-R,
14 J-E-N-K-I-N-S.

15 Q And, Mr. Jenkins, do you have before
16 you Exhibit 1, the notice and proposed -- of
17 these hearings and the proposed marketing order?

18 A Yes, I do.

19 Q And Exhibit 23?

20 A That's correct.

21 Q And that's the economic -- a summary
22 of the economic analysis by Dr. Palma. Have you

1 had an opportunity to review those two --

2 A Yes, I have.

3 Q -- documents? And I understand that
4 you may have a written statement you'd like to
5 deliver.

6 A Yes, I do.

7 Q Would you please do that, Mr. Jenkins.

8 A I've already introduced myself. I
9 live in Albany, Georgia. I'm currently the
10 president of the Southeastern Pecan Growers
11 Association which is a regional growers
12 association. I've been authorized by the board
13 of the Southeastern Pecan Growers to testify on
14 its behalf in support of the federal marketing
15 order for pecans, and I have written a letter on
16 behalf of the Southeastern Pecan Growers
17 Association to the Secretary of Agriculture.
18 Attached is the letter.

19 I am also testifying in my individual
20 capacity as a grower in support of the federal
21 marketing order for pecans.

22 Since 1935, the Southeastern Pecan

1 Growers has had an annual convention. The
2 organization is comprised of seven states. It
3 would be Alabama, Florida, Georgia, Mississippi,
4 North Carolina, South Carolina and Louisiana.
5 The association has experienced considerable
6 growth in its hundred years of existence.

7 The objectives include the promotion
8 of interest in the pecan industry, discussions
9 involving problems of production, management and
10 marketing of pecans. Scientists and growers from
11 the Southeastern states, as well as visitors from
12 other areas present papers and statistics on a
13 wide variety of topics at meetings.

14 Membership is composed of pecan
15 growers or other persons or firms who are
16 interested in and will lend assistance to the
17 promotion of the objectives and purposes of the
18 association. The association has over 150
19 members, the vast majority of those members being
20 classified as small businesses under the
21 guidelines provided by the Small Business
22 Administration.

1 The American Pecan Board has kept our
2 organization informed about its efforts to
3 propose a federal marketing order.

4 Representatives of the American Pecan Board
5 attended a meeting of the Southeastern Pecan
6 Growers Association in 2015, February of 2015,
7 and the previous year before that, and provided
8 us with information and solicited our input.

9 Members of the Southeastern Pecan Growers
10 Association are on the board of the American
11 Pecan Board.

12 I have reviewed the economic analysis
13 of the proposed order by Dr. Marco Palma, and the
14 Southeastern Pecan Growers Association is fully
15 aware of the anticipated costs that will be
16 incurred by its members if the federal marketing
17 order for pecans is implemented, and we do not
18 believe that these costs will be unduly
19 burdensome on our members, regardless of their
20 size.

21 Further, we believe that the benefits
22 of such an order will result in increased

1 marketing, more accurate data on crop production
2 and increased domestic demand for pecans, and
3 will greatly outweigh any burdens that would be
4 placed on our members.

5 The Southeastern Pecan Growers
6 Association does not believe that the American
7 Pecan Council will be -- does not believe that
8 the American Pecan Council that will be formed as
9 a part of the federal marketing order will in any
10 way conflict with the goals and purposes of the
11 Southeastern Pecan Growers Association. To the
12 contrary, we believe that the American Pecan
13 Council will complement our efforts.

14 Finally, we understand that under the
15 proposed federal marketing order, only growers
16 with more than 30 acres or an average of 50,000
17 pounds of pecans during the last four years will
18 be eligible to vote to approve or disapprove the
19 proposed order. We believe that this is a
20 reasonable and fair classification, because any
21 grower that is smaller than this would not be a
22 commercial entity and would not be economical

1 viable.

2 In conclusion, the Southeastern Pecan
3 Growers Association fully supports the proposed
4 federal marketing order for pecans, and I will
5 encourage our members to vote in favor of it. As
6 a grower myself, I personally endorse the
7 proposed order and encourage the Secretary to
8 implement it as soon as it is approved.

9 MR. DAVIS: Your Honor, the Proponent
10 grope tenders Exhibit 75 to these proceedings.

11 (The document referred to was marked
12 for identification as Exhibit Number
13 75.)

14 JUDGE GUTHRIDGE: Is there any
15 objection from USDA?

16 MS. CHILUKURI: No objection, Your
17 Honor.

18 JUDGE GUTHRIDGE: Is there any
19 objection from the audience?

20 (No response.)

21 JUDGE GUTHRIDGE: With no objection,
22 Exhibit 75 is admitted into the record.

1 (The document referred
2 to,

3 having been previously marked for
4 identification as Exhibit Number 75,
5 was received in evidence.)

6 BY MR. DAVIS:

7 Q Mr. Jenkins, you have before you
8 Exhibit 75. Is the final page of that exhibit
9 the letter that you mentioned in your written --

10 A Yes, there is.

11 Q I'm going to put that up on the
12 overhead projector, and if you have that letter
13 before you, would you mind reading the greeting
14 and body of that into the record.

15 A Certainly. "Dear Secretary: The
16 Southeastern Pecan Growers Association is writing
17 you in support of the federal marketing order for
18 pecans currently being promulgated by the
19 American Pecan Board. Our industry has and
20 continues to face issues of price and supply
21 instability in the market.

22 "This situation inhibits our efforts

1 to provide a consistent quality supply of pecans
2 to domestic consumers at a price that supports a
3 profitable return to producers and processors.
4 We believe that a federal marketing order will
5 contribute to a more stable market environment
6 that is favorable to growers, buyers, shellers
7 and consumers. The Southeastern Pecan Growers
8 Association goes on record in favor of the order
9 and greatly appreciate your support."

10 Q Mr. Jenkins, in our conversations
11 before -- outside these proceedings, you told me
12 a little bit about your family's background in
13 pecans and how that -- how you kind of immigrated
14 from Mississippi Delta. Perhaps you could tell
15 us that for the record.

16 A I'm kind of a man of many countries,
17 I suppose. I can reach back to the Central zone
18 if you'll back to your hearing you just had in
19 Dallas. My farm is -- I do have a farm that is
20 in the northwest corner of Mississippi in the
21 delta, situated about six miles from the
22 Mississippi River.

1 My granddaddy turned in his cotton
2 allotment in the '40s and said he could make more
3 money on pecans, and I was born into the pecan
4 business as a grower, and also he was an
5 accumulator in that area, probably at that time,
6 he was maybe the accumulator in that area. We're
7 no longer there as an accumulator at all. Those
8 pickup buyers that that man back there mentioned
9 kind of took that away as the acreage in
10 Mississippi shrank because of Mother Nature.

11 And I have been a pecan producer and
12 grower up until this last year, and a lot of my
13 acreage has been put into WRP because of drainage
14 problems and because I couldn't count on the
15 prices that I could get. Hopefully this will fix
16 this for the next person.

17 Q Let me interrupt you just for the
18 record. WRP, that's the --

19 A It's the Wildlife Protection Act that
20 takes a lot of that marginal ground that my
21 granddaddy took in there on the end as kind of
22 marginal, maybe it shouldn't be cleared, maybe it

1 should be, and his time frame with hand labor and
2 all, he could see it, and now I can't. And
3 that's why I have chosen to sort of sit mine in
4 federal -- and it will be there forever. It
5 probably should have never been cleared.

6 But had I had prices that were -- that
7 I could count on, I might would have gone in
8 there and replanted some varieties that I could
9 have counted on, to be able to get up in a timely
10 manner and be able to market, and I might could
11 have stayed in business. However, that was
12 already in the works by the time the price
13 increases happened in 2010, somewhere along in
14 there.

15 I was already in the process of moving
16 on out, and I had some talents that are -- that
17 were needed over here, or I felt like they were
18 needed, and I could make a decent living over
19 here in the propagation of the pecan trees that
20 these growers that are putting out these extra
21 acres are going to need.

22 Just so you'll know, a pecan when it's

1 planted does not come up that variety. It has to
2 be propagated in some form individually, and
3 that's where you get your varieties.

4 JUDGE GUTHRIDGE: Would WRP be
5 Wildlife Refuse Protection?

6 MR. DAVIS: Program.

7 THE WITNESS: That's right. It's
8 mostly for waterfowl. It's -- their big emphasis
9 is duck hunting. There's plenty of people that
10 will give me more money to duck hunt on my place
11 than I got out of pecans over the year. However,
12 I'm hoping that that's going to change for other
13 people, and I'm in the role of encouraging those
14 people that are still --

15 And I have a small acreage now still
16 there, but I was at 3-, 400 acres, 250 to 400
17 acres at that time, and I couldn't sustain it
18 where I was under the conditions I was in. And
19 that's caused me to take some of the other
20 talents that God gave me that's needed now, and I
21 came on over here to Georgia, and I have -- I'm
22 engaged in mostly the nursery end of it, growing

1 trees for the boom.

2 BY MR. DAVIS:

3 Q That was helpful. Your business
4 migrated from Mississippi where you were growing
5 pecan trees. You're not growing them there now,
6 and you're in the nursery business now in
7 Georgia.

8 A Yes. I still have some -- I still
9 have a little bitty small acreage left, and I
10 still retain ownership of my land and hunting
11 rights and all that, but none of my trees were in
12 a row, so you can see how that would be kind of
13 hard to implement some of the cultural practices
14 you've heard over here.

15 I, however, had some advantages. I
16 didn't have the scab problems they have over here
17 now, to the extent that they do. And the insects
18 were lighter. But then when it came time to
19 harvest, these guys get a two-inch rain today.
20 Tomorrow, they're back out there harvesting, and
21 I might not get back in there for ten days, and
22 it might rain three more inches until then, see.

1
2 So it's a whole different ball game,
3 and most people that are in that area over there
4 are not going to qualify to vote for this, but
5 there will be some that will, and I think it will
6 benefit even the ones that can't vote.

7 And I know personally for me, if the
8 grower here or the grower there doesn't make any
9 money, he sure can't buy any trees, so I'm going
10 to be unemployed once more. So I'm in favor of
11 it any way you go. If you ask me as a grower,
12 yes, I'm in favor of it, because I think it'll
13 benefit everybody.

14 If you ask me in an industry support,
15 I'm still in favor of it, because I can't be
16 there if the grower's not. And if the sheller
17 doesn't stay, then the grower can't be.
18 Everybody's kind of intermingled.

19 MR. DAVIS: We have no further
20 questions then, Your Honor.

21 JUDGE GUTHRIDGE: Does the USDA have
22 any questions?

1 MS. SCHMAEDICK: Melissa Schmaedick,
2 USDA.

3 CROSS-EXAMINATION

4 BY MS. SCHMAEDICK:

5 Q Thank you, Mr. Jenkins, for your
6 testimony. So let me just clarify what I think I
7 understood you said. So you are a grower here in
8 Georgia.

9 A No, ma'am. I don't have any acreage
10 in Georgia.

11 Q You have acreage in Mississippi.

12 A All the acreage I have is in
13 Mississippi. I just came over here -- you know,
14 it's kind of interesting. Willie Sutton from the
15 '30s, he was a bank robber. he said -- they
16 asked him why he robbed banks, and he said,
17 Because that's where the money is. I came to
18 Georgia, because that's where the trees are for
19 me to work on, and that's what I'm doing for a
20 living now.

21 Q Okay. So your testimony says that
22 you're a grower, but you're a grower in

1 Mississippi.

2 A That's correct.

3 Q But you live in --

4 A Albany, Georgia.

5 Q Right. Okay. All right. I'm getting
6 there. And in Albany, Georgia, you're a
7 nurseryman. You propagate trees.

8 A That's my main -- seems to be my main
9 benefit for being on the earth. Yes.

10 Q Okay. So --

11 A Did I complicate it for you?

12 JUDGE GUTHRIDGE: So your pecans that
13 you grow are in the Central Region, but you're
14 working here in the Eastern Region.

15 THE WITNESS: That's correct. And my
16 income, I have to hasten to say, my income comes
17 from this area over here, and I am --

18 JUDGE GUTHRIDGE: This area over here,
19 meaning --

20 THE WITNESS: Meaning the Eastern.
21 But Mississippi's still in the southeastern part.
22 I mean, we still recognize Mississippi as a

1 Southeastern state in our organization.

2 JUDGE GUTHRIDGE: And your
3 organization, meaning your private -- the
4 Southeastern Pecan Growers Association.

5 THE WITNESS: The Southeastern Pecan
6 Growers. That's right.

7 JUDGE GUTHRIDGE: But under the
8 proposal, they would be in the Central Region --

9 THE WITNESS: That's correct. Yes.

10 JUDGE GUTHRIDGE: -- not the Eastern
11 Region.

12 BY MS. SCHMAEDICK:

13 Q So do you currently still have more
14 than 30 acres in Mississippi?

15 A No. That's going to be the irony of
16 it.

17 Q Okay.

18 A My grandfather was involved in most
19 all of the marketing order efforts up until this
20 time, and there's ben a few through the years. I
21 could even remember some of them. And by now, we
22 might have one that might pass, and I won't be

1 eligible to vote. But that's okay. I can spread
2 the word to the ones that can, and tell them why
3 I think they should.

4 Q Okay. Thank you. I think you said
5 that in your opinion -- and this now clearly does
6 apply to you -- that even though you don't
7 qualify to vote, you feel like you personally
8 will benefit, and --

9 A Certainly.

10 Q And then -- so in your conversations
11 with others that are in that same situation, have
12 they had that same sentiment? Have they shared
13 that same sentiment with you?

14 A Some of them have. I think over here
15 in the Georgia area, I think this marketing order
16 has been more understood from the get-go. Over
17 in my part of the world where I came from, I
18 think that was less so. I think they're kind of
19 getting on board now, and they're understanding,
20 thanks to Mike Adams and some other people that
21 have been there to explain it to them at every
22 turn, because you don't always get the same group

1 at every meeting. I mean, there's always
2 somebody different that's saying, What are you
3 talking about.

4 But I think that you're going to see
5 the unity there this time, just simply because
6 they understand they have to be in a group now.
7 They can't be every little doggie for theirself
8 anymore like it was.

9 Q You mentioned that applying the
10 cultural practices that exist today would be
11 difficult on your farm, because your trees aren't
12 in nice little rows. I believe you said
13 something to that effect. Does that mean that
14 you have a native orchard?

15 A That's odd, because I've been sitting
16 back there, listening to this back and forth.

17 Q Uh-huh.

18 A A lot of the seedling -- a lot of
19 the -- and I'm going to complicate this a little
20 minute, but I don't mean to. Okay?

21 Q Okay.

22 A A lot of these varieties you see here

1 were selected seedlings originally. Somebody saw
2 them, and they said, I believe I could sell that
3 pecan. So they got wood off that tree, that
4 particular tree, that one tree, and spread it
5 around. That's how you got some of these
6 varieties that's listed here.

7 A true seedling would be one that's
8 not repeated anywhere in nature, and it doesn't
9 matter whether it's grown in the West or the
10 East. It's like a fingerprint. There's not
11 another one like it, and some of them's big; some
12 of them's small; some of them's in between. But
13 there you go on how you tell the difference. You
14 can tell the difference between the variety that
15 somebody will name, and that's what he was
16 talking about doing it by eye.

17 Q Thank you for that, and I think your
18 testimony does fall in line with what we've heard
19 from other individuals. I'm going to try to
20 formulate this in a question.

21 A But my acreage did have improved
22 varieties on it, in that some of those selected

1 seedlings were part of it, but they were grafted
2 or budded. And the reason mine are not in line,
3 not in rows that I would love to have is because
4 that ground was cleared, and then we just budded
5 them, propagated them where they came up, so you
6 may have ten trees on this acre and 40 trees on
7 that acre.

8 And they might all be just exactly
9 whatever granddaddy decided put there, and that
10 was whatever they came back from a meeting,
11 saying that was the greatest thing today, so you
12 just don't know what it might have been. And I
13 have a wide variety of varieties over there. But
14 that's why they're not in rows, to explain to
15 you.

16 Q Okay.

17 A But had I had this, I might would have
18 gone in there and started making me some more
19 acres of Pawnee that would come off early.

20 JUDGE GUTHRIDGE: This meaning the
21 FMO.

22 THE WITNESS: The marketing order.

1 Yes. Had this been in place and I would have
2 been more able to count on prices, then maybe I
3 could have seen my way to go in there and
4 completely reconstruct mine, and it would have
5 been a good place to do it. But it didn't happen
6 in time, so it just didn't.

7 BY MS. SCHMAEDICK:

8 Q Based on your testimony and other
9 testimony, it appears that clearly capturing the
10 complicated family network of pecans and what's a
11 native and what's an improved, that's a difficult
12 thing to do. Would you agree?

13 A Not really. I mean, a lot of the new
14 varieties that we have now -- and you can tell
15 them by their Indian name -- they were all hand-
16 crossed at Brownwood, so you know those are
17 improved already, so that takes a lot of those
18 out. Most of the ones that you're going to look
19 at that's still a recognized variety, and
20 Desirable being one of them, which is the
21 standard now over here, started out as a selected
22 seedling, but it is a recognized variety now, and

1 I don't think you could hardly ever call that one
2 a seedling.

3 The only thing that I think you're
4 going to be able to call a seedling is something
5 that's taken in due to size, or it has not even
6 been seen before ever, classified as a seedling.
7 And I don't think you should complicate that too
8 much.

9 JUDGE GUTHRIDGE: What is Brownwood?

10 THE WITNESS: Brownwood -- I'm sorry.
11 Brownwood is the place in American that we have
12 that's -- it's at the University of Texas in
13 College Station, Texas, and they --

14 JUDGE GUTHRIDGE: Texas A&M
15 University?

16 THE WITNESS: Texas A&M. Right. I'm
17 sorry. I got the wrong one. I know that sounds
18 bad, but I did. They do -- their sole existence,
19 that one department over there, their sole
20 existence is to find new varieties for us, and
21 they actually take two parents and cross them.
22 And they plant that, and then they get a variety

1 from that.

2 And that's where all of your Indian
3 name varieties are going to come from. Creek,
4 Kiowa, any of them. Those are not selected
5 seedlings. Those are hand-crossed, if that makes
6 sense.

7 BY MS. SCHMAEDICK:

8 Q Yes. I -- thank you for that
9 explanation. I think I'm -- okay. Let's look at
10 it this way. You said fingerprints. Right?

11 A Correct.

12 Q Okay. So natives and seedlings, they
13 all have their own fingerprint.

14 A That's correct.

15 Q Okay. So if you go to an improved
16 variety --

17 A The only way you can get that is to go
18 to that tree.

19 Q Right.

20 A Even if it's one somebody saw
21 somewhere that's a selected seedling, and they
22 take wood off that tree, and they put it on some

1 more trees.

2 Q Uh-huh.

3 A That's the only way you can have that
4 variety tree. So a native would be exclusive in
5 itself --

6 Q Right.

7 A -- because it's -- there's nobody else
8 out there with that fingerprint. There's no
9 other tree out there that makes that nut exactly.
10 But on the rivers there in that part of the
11 country that the pecan is native to, you're going
12 to have literally hundreds of thousands of those.

13 Q Right.

14 A And they might be -- hard to count.
15 I mean, they could be -- I've seen them as little
16 as 2-, 300 count, you know, to make a pound, or
17 you could have a native that could be that long,
18 or it could be, you know, a large nut.

19 JUDGE GUTHRIDGE: By, that long, you
20 mean like two inches --

21 THE WITNESS: About two or three
22 inches long. I mean, I've seen them that long.

1 BY MS. SCHMAEDICK:

2 Q So does Pawnee have its own
3 fingerprint?

4 A Well, Pawnee is a hand-cross.

5 Q Right.

6 A It had two parents that they crossed
7 manually, by hand.

8 Q And so the very first Pawnee then
9 became the great, great, great, great, great,
10 great, great-grandpa --

11 A That's correct.

12 Q -- of --

13 A And then somebody like me took that
14 wood off --

15 Q -- all other -- right. And they all
16 have the same fingerprint.

17 A Those do, yes. That Pawnee does.
18 Yes.

19 Q Okay. I think I got it.

20 A Okay.

21 Q Thank you.

22 A But you have to go -- you have to do

1 each tree that way individually, because if you
2 plant a seed, it doesn't make any difference what
3 kind of seed it is, they're all going to come
4 back up different, with their own fingerprint --

5 Q Uh-huh.

6 A -- to make them a variety, such as
7 Pawnee. You must propagate it in some fashion or
8 form to get it to Pawnee.

9 Q Okay. Thank you. That is helpful.

10 In the states that the Southeastern Pecan
11 Association represents, are you familiar with the
12 work of the Farm Service Agency and the term,
13 pecan acre? Is that familiar to you at all?

14 A I don't -- maybe not.

15 Q Okay. Thank you.

16 MS. SCHMAEDICK: I have no further
17 questions. Thank you.

18 JUDGE GUTHRIDGE: Are there any more
19 questions from USDA?

20 MS. VARELA: Jen Varela, USDA.

21 BY MS. VARELA:

22 Q Mr. Jenkins, I have two trains of

1 thought I'd like some of your input on, if that's
2 okay. First is, in your role at the Southeastern
3 Pecan Growers Association, it seems to me from
4 your testimony that that association in
5 particular, a lot of your activities are centered
6 around the convention that you have and putting
7 already existing research out there for people to
8 learn about.

9 A That's correct.

10 Q Is that correct?

11 A That's correct.

12 Q But as an organization, you don't go
13 so far as to fund or direct any particular
14 research?

15 A We have in the past --

16 Q You have some?

17 A -- done a good bit of that. At one
18 time, we had a chemical company that kind of gave
19 us rebates back that the grower bought, and then
20 we, as the Southeastern board and organization
21 took that money and funded as much research as we
22 could. I don't know -- I don't really know what

1 happened to that money, but it discontinued
2 coming.

3 Q Okay.

4 A Now the only money that we would have
5 as an association would be what we collect as
6 membership dues, and what little we would make in
7 excess at our conventions, and our sole purpose
8 is to present a format, a convention, a place
9 that people can come and meet and discuss their
10 ideas of what they want to do and what they would
11 like to do and what everybody -- and listen to
12 what other people do.

13 Sometimes we would have some excess
14 money, although with the prices getting the way
15 they are on conventions, that's getting to be
16 less and less, but we do try to give money to the
17 American Pecan Board. We do try to give money to
18 the shellers that are funding some of these
19 promotional ideas, and we try to be a help and
20 try to be part of that as members of that.

21 So we wouldn't have a lot of money to
22 disburse, nothing like the Commodity Commission

1 or even the Georgia people. They've got a lot
2 more members and got a lot bigger association
3 than we do. We're more of a regional -- and our
4 members overlap with them a lot, you know. I
5 would say probably three-quarters of the members
6 in the Southeastern are Georgia growers. They're
7 the biggest contributor of members.

8 But we do have the other side of that,
9 you know, growers from Alabama and Mississippi
10 and Louisiana and Florida and the Carolinas that
11 are smaller, and a lot of those guys are -- you
12 know, that's maybe one of the only places they
13 can come and hear -- or they can come to the
14 Georgia meeting, but -- and it's kind of a
15 repeat. You hear a lot the same at the
16 Southeastern you do the Georgia, but you have a
17 different crowd every one.

18 Every one of those meetings has a
19 different crowd, and one that don't make this
20 one, that does make that one, and usually you
21 have a good exposure across the board.

22 Q Okay. Thank you for that. My other

1 line of thinking is that as someone who's working
2 in the nursery, trying to propagate new trees,
3 and I think your testimony lines up with a lot of
4 other people, saying that there are a lot of new
5 plantings, there have been a lot in the last few
6 years.

7 I'm kind of also crossing this idea or
8 this question with some of my experience in
9 Florida, where there's a big push to have new
10 varieties because you need disease resistance,
11 and we've heard a lot about scab. So as somebody
12 who's working on propagating trees, do you think
13 there's a need for even more trees because you're
14 trying to fight scab in this area? Is there a
15 need for more research for additional varieties
16 in addition to what you already kind of have out
17 there?

18 A Absolutely. I'll make a real bold
19 statement. You really can't spray yourself out
20 of scab. I think they're going to have to plant
21 theirself out of it. And I know that's going to
22 be hard for some of them to do, but I think

1 there's a lot of varieties out there that we can
2 look at. Some of them are going to be keepers,
3 and some of them are not.

4 The problem with this deal is it takes
5 so long to look at them, to discern which ones
6 are keepers and which ones are not. That's a
7 biggie there. But to give you some idea, year
8 before last, the nursery that I was connected to
9 then, we propagated 26,000 Desirables. last
10 year, it was about 8,000. So you can see the
11 difference of the thinking in Joe Customer here.

12 Middle Georgia, they can still have a
13 Desirable. They can still spray it. It's still
14 a viable commercial production variety that -- in
15 the Albany area where I'm at now, I am down
16 there, I'm already starting to get calls to
17 change over the Desirable to something else.

18 Q Uh-huh.

19 A So you can see the change in thinking,
20 just because of that one disease. And if we
21 don't get a handle some way to spray it, frankly,
22 it's going to be out, I believe. But there'll be

1 something there to replace it, but it sure won't
2 be cheap to do.

3 Q And your answer there brought another
4 question to mind. We've heard a lot about how
5 long it takes to develop something new, and that
6 it's going to take another while longer for it to
7 be accepted commercially.

8 Just within your part of that process,
9 within that time frame where you're looking at
10 what kind of trees you do want to propagate, how
11 many more years does it add to that process
12 between a research station, releasing a new
13 variety, and you being able to test it out on
14 your own farm and figuring out how easy it is to
15 propagate? How much time and effort --

16 A You're asking how long we have to look
17 at it?

18 Q Right. How long do you have to --

19 A In my opinion --

20 Q -- look at it before you can sell it
21 to somebody else?

22 A In my opinion, it's 25 years.

1 Q Wow.

2 A Yes. Now, there's a lot of varieties
3 that's coming out there a lot quicker than that.
4 Some of them are going to work out, and some of
5 them are not. At the very first, Desirable in
6 Georgia here didn't scab. It took it a long time
7 to do that. You're seeing evolution taking on
8 here. it takes time for things to evolve, and in
9 the pecan industry, it does it very, very, very
10 slowly.

11 That's why this is -- this marketing
12 order is paramount in what's going on right now,
13 because to stay in business long enough to make
14 the changes to stay, you got to be able to make
15 it -- you got to be able to go to your banker and
16 explain that to him now.

17 And if you told them -- well, I can
18 remember when I was growing, you know, back
19 before prices got better, I mean, if I'd go in
20 there and tell my banker I was going to get 85 or
21 90 cents, man, I was doing good. But then what
22 about that year that it fell to 55 cents right

1 after Thanksgiving, and I had to go back and
2 explain to him, you know, I lost 30 cents in one
3 day.

4 This is the kind of thing that I think
5 that this marketing order might stabilize and
6 keep some people in business to where we could
7 have some growers that could benefit from this.
8 Did I answer your question?

9 Q Yes, you did. Thank you. I
10 appreciate all of your information. I really do.

11 MS. VARELA: And I have no further
12 questions.

13 JUDGE GUTHRIDGE: Are there any more
14 USDA questions?

15 THE WITNESS: Come on. This is
16 getting fun now.

17 MR. DAVIS: We don't want you to have
18 too much fun.

19 BY MS. CHILUKURI:

20 Q Mr. Jenkins, I'll ask a question. So
21 in your letter to Secretary Vilsack, you state,
22 "This situation inhibits" -- I think you're

1 referring to -- when you say, this situation,
2 you're talking about price and supply instability
3 in the market. So, "This situation inhibits our
4 effort to provide a consistent quality supply of
5 pecans to domestic consumers at a price that
6 supports a profitable return to producers and
7 processors."

8 So you mentioned the quality supply of
9 pecans to domestic consumers, so can you talk
10 more about other benefits that you see that the
11 proposed marketing order would bring to
12 consumers. Does that make -- am I being clear?

13 A Yes. It makes good sense. I think,
14 heretofore, there've been a lot of quality issues
15 with pecans nationwide to the end user. You have
16 a lot of people in this America that does not
17 know that a pecan's grown on a tree. They think
18 it's grown under the ground like a peanut.

19 I have had several people tell me that
20 they eat peanuts and other things because the
21 pecans they got weren't very good, and then they
22 get a good pecan, and it's a whole different

1 product. Education is always necessary in these
2 things, and as long as you're limiting how much
3 that guy can make that's growing or accumulating
4 or shelling, it doesn't matter what place he has
5 in the cycle. As long as you're capping what he
6 can make or capping what he can do, he has to
7 play lowball down here to stay in business.

8 Then you're going to see problems with
9 education about what people should eat and what
10 they should have out of the grocery store or what
11 they shouldn't have. Now, down here, it's a
12 little better, because, you know, everybody's
13 great-granddaddy always grew a few in the back
14 yard, and they kind of know what a pecan's
15 supposed to look like.

16 But there's a lot of places in the
17 nation that -- and a lot of our customers or that
18 should be our customers that don't have any
19 education on that, and I think you're going to
20 see a better swing in education, just from
21 advertising and marketing. And --

22 But you're going to have to raise some

1 money to do that, and if you don't, then you're
2 going to have -- my dad always said, If you do
3 like you've always done, you'll have what you've
4 always had. So you've got to move your
5 perspective a little bit to be able to change how
6 you market your pecans.

7 And in this case, might near every
8 time you can go back to the money, and if you
9 don't have the money to do that, then you're not
10 going to be able to make that effort, and I think
11 that just that one thing right there can help us
12 market our pecans domestically particularly
13 better.

14 Q Thank you, sir.

15 JUDGE GUTHRIDGE: Are there any more
16 USDA questions?

17 (No response.)

18 JUDGE GUTHRIDGE: Any follow-up?

19 MR. DAVIS: Just a follow-up, Your
20 Honor.

21 REDIRECT EXAMINATION

22 BY MR. DAVIS:

1 Q Mr. Jenkins, thank you so much for
2 your testimony and your time. I think you gave
3 us some helpful background information maybe on
4 the history of where nuts came from, but let me
5 bring you back kind of to the current market.
6 You'll see here in Section 28, we're defining
7 pecans generally, and then we're going to
8 classify them as natives or seedlings.

9 And then under paragraph (2),
10 "Improved pecans harvested from grafted tree
11 varieties, bred or selected for superior traits
12 of nut size, ease of shelling, production
13 characteristics and resistant to certain insects
14 and disease." You see that.

15 In the current market, you're a
16 nurseryman. You are selling improved pecans.
17 Correct?

18 A Yes.

19 Q Or pecan trees.

20 A That would be over there in those --
21 in that list there that would say, you know --

22 Q Included but not --

1 A -- it's a variety.

2 Q Right.

3 A Yes.

4 Q And because in the market -- let me
5 just ask for the benefit of the record. You're
6 not selling anybody any native or seedling pecan
7 trees, are you? Nobody wants to buy those from
8 you.

9 A Very few.

10 Q Right.

11 A There are a few that think they can
12 save some money, but that's -- I think they're
13 quickly dispelling that. I can grow them and
14 graft them cheaper than they can.

15 Q And the reason in the market today
16 people are buying improved pecans, because
17 improved pecan sell for more. Correct?

18 A That's exactly right. They're what
19 the market wants. And, frankly, with a -- a
20 seedling tree might be worth a couple of dollars,
21 and one of those varieties there, if it's eight-
22 foot tall, it might be worth \$20. So without the

1 propagation part, you just -- you have a mess
2 still.

3 Q So you would agree in kind of a big
4 picture item in Exhibit 1 where we say, we're
5 going to have a lower assessment on native trees
6 than we have on the improved --

7 A Oh, absolutely.

8 Q -- tree. That's fair and reasonable
9 to do, is it not?

10 A Fair and reasonable.

11 Q Okay. Thank you.

12 MR. DAVIS: I have no further
13 questions, Your Honor.

14 JUDGE GUTHRIDGE: Any more USDA
15 questions?

16 (No response.)

17 JUDGE GUTHRIDGE: No? Any questions
18 from the audience?

19 (No response.)

20 JUDGE GUTHRIDGE: No? Mr. Jenkins,
21 you're excused.

22 (Whereupon, the witness was excused.)

1 JUDGE GUTHRIDGE: Ms. Wray, do we have
2 any other sign-ups?

3 MS. WRAY: No, Your Honor.

4 JUDGE GUTHRIDGE: No. You have no
5 more witnesses today.

6 MR. QUIR S: Your Honor, that's all
7 the witnesses we have for the day, and perhaps we
8 can talk about the schedule for tomorrow off
9 record.

10 JUDGE GUTHRIDGE: Actually I'd like to
11 handle one thing on record first.

12 MR. QUIR S: Yes, Your Honor.

13 JUDGE GUTHRIDGE: I see you have six
14 entities scheduled for tomorrow.

15 MR. QUIR S: Yes, sir.

16 JUDGE GUTHRIDGE: And you have no
17 witnesses scheduled for Thursday. Is that
18 correct?

19 MR. QUIR S: That's correct, Your
20 Honor. That's what we were going to take off
21 record. If you'd like to talk about it on
22 record, that'd be fine.

1 JUDGE GUTHRIDGE: I would, because we
2 may end up eliminating that possibility of the
3 extra day, and I'd like to do that on the record.
4 The Federal Register did -- Exhibit 1, first
5 page, scheduled hearings July 27 through July 29,
6 2015, Tifton, Georgia. It goes on to say, "If an
7 additional hearing session is necessary at this
8 location, the hearing will continue on July 30,
9 2015." And I'm wondering if we can eliminate
10 that possibility at this time, so some of us
11 might make adjustments to their travel plans.

12 MR. QUIR S: Your Honor, we do not --
13 we have no intention of calling more witnesses
14 than through midday tomorrow, so unless somebody
15 shows up in the public that wants to extend the
16 hearing, we don't know why it should go past
17 tomorrow midday. But that's --

18 JUDGE GUTHRIDGE: You think you can do
19 all six witnesses by midday?

20 MR. QUIR S: We may choose to do one
21 or two after lunch, depending on the length of
22 the questions, but there's some very interesting

1 witnesses that have different perspectives from
2 anybody else that's testified that will be on
3 tomorrow. We think they should be heard. But
4 after that, we -- no, sir. I don't think that
5 we'll go much past midday, maybe early afternoon.
6 That would be my -- that's our -- Mr. Davis' and
7 my current thinking, and Ms. Myers'.

8 JUDGE GUTHRIDGE: Mr. Hill, you're the
9 first among equal counsel anyway, I think we
10 established the other day. What are your
11 thoughts as the attorney for USDA, whether at
12 this point we can decide that there will not be a
13 necessity for an overflow day?

14 MR. HILL: While I would love to knock
15 out the day right now, I'm a little bit nervous
16 that something happens, and we've already said
17 that we don't have a Thursday, then we're --

18 JUDGE GUTHRIDGE: If anything can go
19 wrong, it will go wrong?

20 MR. HILL: Anything can go wrong.

21 JUDGE GUTHRIDGE: Okay. So we'll not
22 make that decision at this time then.

1 MR. HILL: Not that I'm contemplating
2 it. I'm just, you know --

3 JUDGE GUTHRIDGE: If it can go wrong,
4 it will go wrong. Okay. So given that, then
5 we'll recess till eight o'clock tomorrow morning,
6 and so we're off the record now.

7 (Whereupon, at 4:30 p.m., the hearing
8 in the above-entitled matter was recessed, to
9 reconvene at 8:00 a.m., Wednesday July 29, 2015.)

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This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: USDA

Date: 07-28-2015

Place: Tifton, Georgia

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Court Reporter

NEAL R. GROSS

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