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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	AO Docket No. 20-J-0011
Walnuts Grown in California	)	AMS-SC-19-0082
	)	SC-19-984-1
	)	

ORDER CERTIFYING TRANSCRIPT

Appearances:

On Behalf of the U.S. Department of Agriculture:

Rupa Chilukuri, Esq., and Tracy McGowan, Esq., Trial Attorneys, Office of the General Counsel, United States Department of Agriculture; and

Melissa Schmaedick, Senior Marketing Specialist, Agricultural Marketing Service ("AMS"), United States Department of Agriculture.

On Behalf of the California Walnut Board:

Michelle Connelly, Executive Director, California Walnut Board.

Pursuant to 5 U.S.C. § 553 and notices published in the Federal Register,[1] a hearing on proposed amendments to the marketing order that regulates the handling of walnuts grown in California, Federal Marketing Order No. 984 (7 C.F.R. § 984), was held remotely via ZOOM audio-video conferencing system on April 20 and 21, 2020.[2]

On May 7, 2020, the Agricultural Marketing Service ("AMS") filed proposed corrections to the record transcript of the hearing, which it states incorporate the proposed corrections of the California Walnut Board. No other proposed corrections have been filed or otherwise received

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[1] Walnuts Grown in California; Hearing on Proposed Amendment of Marketing Order No. 984, 85 Fed. Reg. 7669 (Feb. 11, 2020); Walnuts Grown in California; Hearing on Proposed Amendment of Marketing Order No. 984; Correction, 85 Fed. Reg. 20202 (Apr. 10, 2020).

[2] The online hearing location was at https://www.zoomgov.com/s/1601790781.

from any participant, and no objections have been raised as to the proposed corrections. Upon my review those proposed corrections, except where changes from the proposed changes are noted parenthetically, are hereby **ADOPTED,** as follows:

April 20, 2020

Page	Line	Correction
8	5	Strike "gathering" insert "governing"
11	14	Strike "regulation" insert "regulations"
14	16	Strike "summary" insert "some more"
18	5	Strike "walnuthearing@usda.gov" insert "walnut.hearing@usda.gov "
21	3	Strike "is" insert "If" and insert period after first "hearing reporter" (small modification of, but same substance as, proposed correction)
26	6	Strike "Connolly" insert "Connelly"
29	17	Strike "his" insert "this"
36	14	Insert "the" between "rescheduled" and "in" (the proposed correction stated an incorrect page number)
39	8-9	Insert "of" between "notice" and "hearing"
42	16	Insert "he" between "Podesta" and "contacted"
44	11	Strike "we'd" insert "you'd"
55	18	Strike "the fence (phonetic)" insert "this"
64	11	Strike "a"
65	22	Strike "products" insert "product"
68	10	Strike "market", insert "markets"
70	22	Strike "smaller" insert "small"
74	19	Strike "unshelled", insert "inshell"
87	2	Strike "cropping" insert "crop"
90-91	22-1	Strike "with this stuff" insert "on the record"
91	18	Strike "Chilukuri" insert "Connelly"
97	5	Strike "'19" insert "2019"
98	6-7	Strike "farm fresh hammer size, SBA definitions" insert "Farm/Handler Size (SBA definitions)" (slight modification of, same substance as, proposed correction)
99	5	Strike "microeconomic" insert "macroeconomic"

100	22	Strike "micro-cluster"
102	8	Strike "maybe" insert "may be"
104	11	Strike "130 thousand" insert "630 thousand"
105	9	Strike “exit” insert “exhibit”
108	10	Strike "Cain” insert "Crain” (slight correction to proposed correction)
109	13	Strike "nationally" insert "nominally"
110	21	Strike "climates" insert "formulations"
114	19	Strike "maybe" insert "may be"
118	2	Strike "problem" insert "program"
119	5	Strike "unshelled" insert "inshell"
119	6	Strike "unshelled" insert "inshell"
121	3	Strike “through” insert “throughout”
125	17	Strike “then” insert “than”
129	3	Strike “15” insert “14”
130	7	Strike "Walnuts" insert "Walnut"
145	18	Strike "with pre-" insert "increasing"
160	10	Strike "up" insert "for"
160	18	Insert "budget" after "Board"
174	10	Strike “right, to” insert “write to”
174	16	Strike “sable” insert “able”
179	14	Strike "somebody" insert "something"
181	17	Strike "Walnut" insert "walnuts" (slight correction to proposed correction)[3]
187	16	Strike "unmuted" insert "muted"
187	17	Strike "mute" insert "unmute"
193	3	Strike "credible" insert "creditable"
198	5	Strike "Market" insert "Marketing"[4]

[3] The proposed correction to page 182, line 16, did not match the text appearing at that place in the transcript, or in nearby test not otherwise corrected.

[4] The proposed correction to page 212, line 17, is rejected. To the best of the undersigned's recollection, the witness simply pronounced the word “almonds” in two different ways—“al-monds” and “am-monds.” The undersigned's understanding of the oral testimony is that the same written word, “almonds,” was intended by the witness in each instance.

215	10	Strike “no” insert “new”
215	11	Strike “,” insert “?”; strike “but anything” insert “Anything”
247	18	Strike second “grower” insert “handler”
263	3	Strike "confectional" insert "confectionary"
264	8	Strike "Walnut Marketing Board" insert "California Walnut Board"
279	19	Strike “CWC” insert “CWB”
287	20	Strike “Review” insert “Revision”
297	16	Strike "Special" insert "official"
297	21	Strike “a.m.” insert “p.m.”
304	2	Strike "raison d’etres" insert "reasons"
307	1	Strike "squares" insert "answers"
314	4	Strike "programs'" insert "prevent"
316	21	Strike "Maybe" insert "Ms. Schmaedick"
359	Column 4	Strike "Connolly" insert "Connelly"

April 21, 2020

Page	Line	Correction
9	21	Strike "I" insert "you"
27	13	Strike "October 1" insert "September 1"
30	13	Strike "annual life" insert "annualized"
31	18	Strike "that"
31	20	Strike "exception" insert "exceptions"
34	11	Strike "filed had"
34	11	Strike "Listed" insert "list"
36	5	Strike "SCHMAEDICK" insert "CHILUKURI" (slight modification of, same substance as, proposed correction)
56	7	Strike “credible” insert “creditable” (slight modification of, same substance as, proposed correction)
76	1	Strike “reg” insert “regulatory”
76	11	Strike "year" insert "years"
76	17	Strike “your,”
77	12	Strike "handlers" insert "claim"
80	18	Strike “it” insert “is”

83	7	Strike “would,”
91	4	Strike "Walnuts" insert "Walnut"
92	3	Strike “they” insert “the”
93	17	Strike “the,”
96	15	Strike "Connolly" insert "Connelly"
97	13	Strike "Connolly’s" insert "Connelly’s" (slight modification of, same substance as, proposed correction)
97	17	Strike “cross” insert “cross examination”
97	18-19	Strike "process of" insert "processor"
97	21	Strike "Connolly" insert "Connelly"
98	14	Strike "Walnuts" insert "Walnut"
99	19	Strike "Connolly" insert "Connelly"
101	4	Strike "1920" insert "2019/20"[5]
102	21	Strike "Connolly" insert "Connelly"
106	16	Strike "Connolly" insert "Connelly" (two times)
118	22	Strike “our,”
120	13	Insert "a" between "be" and "qualified"
120	14	Insert "a" between "be" and "qualified"
121	6	Strike "practices" insert "activities"
122	17	Strike "asked you" insert "was asked"
122	22	Strike “reg” insert “regulatory”
126	8	Strike “your,”
127	4	Strike "Carrier" insert "Carriere"
137	5	Strike “the,”
139	12	Strike "the" insert "then"
139	22	Strike “appeals” insert “appeal”
183	11	Strike "Walnuts" insert "Walnut"
189	16	Insert "I appreciated" before "admonishment"

[5] There were two nearly identical proposed corrections to page 101, line 4. This correction reflects the second proposal. The first proposed correction (“Strike ’19-20’ insert ‘2019-20’”) is not adopted.

190	9	Strike “change” insert “changed”
194	8	Strike "it’s guessed" insert "encountered"[6]
202	10	Strike “tune’ insert “ton”
207	9	Strike "Connelly" insert "Chilukuri" (slight modification of, same substance as, proposed correction)
207	14	Strike "Connelly" insert "Chilukuri" (slight modification of, same substance as, proposed correction)
208	9	Strike “a”
219	5	Strike "people," and insert "simple" before "a legal brief"
227	2	Insert "days" between "calendar" and "from"
234	Column 1	Strike "Connolly" insert "Connelly"

The undersigned has, *sua sponte,* identified additional corrections to be made to the record transcript, which are hereby **ADOPTED** as follows:

April 20, 2020

Page	Line	Correction
18	14	Strike “even if -- if" insert “USDA will”
18	15	Strike “it looks like --” insert “be able to ”
20	8	Strike “-- base regarding proposed”
30	15	Strike “there”
128	1	Strike “witness’” insert “witness’s”
128	16	Strike “Walnuts” insert “Walnut”
159	22	Strike “That is” insert “Those are”
256	7	Insert “witness” after “Board”
294	11	Strike “.” insert “?”
352	13	Insert “I” between “Again,” and “encourage”

April 21, 2020

Page	Line	Correction
5	8	Strike “CLJ’s” insert “OALJ’s”

[6] There were two nearly identical proposed corrections to page 194, line 8. This reflects the second proposal. The first proposed correction (“Strike ‘it’s guessed’ insert ‘addressed’”) is not adopted.

57	13	Insert "and" between "Board" and "the"
82	4	Strike "." insert "?"
87	22	Strike "%"
91	9	Strike "Walnuts" insert "Walnut"
143	6	Strike "appeals" insert "appeal"
179	13	Strike "witness" insert "witnesses"
193	16	Strike "HOAGLUND" insert "HOAGLAND"
193	18	Strike "secretary" insert "Secretary"
219	13	Strike "HOAGLUND" insert "HOAGLAND"
219	14	Strike "Hoaglund" insert "Hoagland"
221	7	Strike "HOAGLUND" insert "HOAGLAND"
224	11	Strike "Hoaglund" insert "Hoagland"
224	13	Strike "HOAGLUND" insert "HOAGLAND"
224	16	Strike "HOAGLUND" insert "HOAGLAND"
225	10	Strike "we could" insert "they can"
225	14	Strike "HOAGLUND" insert "HOAGLAND";
225	16	Strike "HOAGLUND" insert "HOAGLAND"
226	14	Strike "administrator" insert "Administrator"
228	10	Strike "administrator" insert "Administrator"
234	Column 1	Strike "Connolly's" insert "Connelly's"
238	Column 4	Strike "Hoaglund" insert "Hoagland"

I hereby certify that to the best of my knowledge and belief, the transcript of the testimony given during the hearing is a true rendition of the testimony, except for any remaining obvious or immaterial spelling and any typographical or grammatical errors, and with the corrections as adopted hereinabove.[7]

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[7] Given the circumstances of this proceeding, I find that it would be counterproductive for the Hearing Clerk to note the corrections on the "hard copy" of the transcript; therefore, I find the Hearing Clerk need not follow the specifications set forth to that effect in 7 C.F.R. § 900.10. The above-referenced corrections that are adopted herein are deemed to be a part of the transcript as if the Hearing Clerk had actually noted those corrections on a hard copy, and a copy of this

I further certify that the record includes the following exhibits,[8] which were each received into evidence at the indicated transcript page, as follows, and that these exhibits are all of the exhibits as introduced at the hearing:

April 20, 2020

Exhibit	Description	Marked	Received
1	Notice of Hearing	31	36
2	Notice of Hearing: Correction	31	37
3	Certificate of Mailing: Notice	32	37
4	Certificate of Mailing: Correction	33	37
5	Certificate of Press Release: Notice	33	38
6	Certificate of Press Release: Certification	33	39
7	Certificate of Notification of Officials: Notice	34	39
8	Certificate of Notification of Officials: Correction	34	39
9	Notice of *Ex Parte* Communications 1	41	43
10	Notice of *Ex Parte* Communications 2	43	44
11	Don Hinman USDA Walnut Testimony	47	59
12	Don Hinman USDA Walnut Tables 1-5	49	59
13	Don Hinman USDA Walnut Table 6	53	59
14	Chuck Crain CWB Testimony	129	129
15	Chuck Crain CWB Testimony Exhibit: PowerPoint Industry Overview	129	129
16	Chuck Crain CWB Testimony Exhibit: University of California, Cooperative Extension, Agricultural and Natural Resources, Agricultural Issues Center, 2018 Sample Costs to Establish and Produce English Walnuts Study	129	129

Order Certifying Transcript shall accompany any and all official copies of the transcript in this matter.

[8] Although it appears in the official bound volume of exhibits provided by the hearing reporter on file with the Hearing Clerk, Proposed Exhibit 27 was withdrawn by Michelle Connelly of the California Walnut Board and is therefore not a part of this certified record. *See* April 21, 2020 Tr. Volume II at 24:4-10.

17	Jack Mariani CWB Testimony	132	183
18	Jack Mariani CWB Testimony Exhibit: PowerPoint Industry Overview of the Proposal, Program Communication Samples	131	183
19	Bill Carriere CWB Testimony	215	216
20	Rachael Goodhue CWB Testimony	217	256
21	Rachael Goodhue CWB Testimony Exhibit: Kaiser Economic Analysis	217	256
22	Bill Toss CWB Testimony	256	273
23	Robert Driver CWB Testimony	276	296
24	Donald Norene CWB Testimony	299	332

April 21, 2020

Exhibit	Description	Marked	Received
25	Michelle Connelly CWB Testimony	24	99
26	Michelle Connelly CWB Testimony Exhibit: PowerPoint with Activity Types, Sample Calculations of Creditable Expenditures, Sample Calculation of Handler Share of Available Dollars	24	99
28	Heather Donaho CWB Testimony	138	149
29	Testimony of Eric Heidman, Diamond Foods, Inc.	335	348
30	Testimony of John MacTavish	7, 206	206

Pursuant to the schedule established at the hearing, all briefs shall be filed with the Hearing Clerk by 4:30 p.m. (Eastern) on **Friday, May 22, 2020**, which is 14 calendar days after this certification.[9]

Copies of this Certification of Transcript shall be served upon the parties by the Hearing Clerk. The Hearing Clerk shall also email copies to the following persons:

Rupa Chilukuri, Esq.
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Tracy McGowan, Esq.
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[9] *See* April 21, 2020 Tr. Volume II at 225.

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[redacted]

Ms. Erin Hoagland, Attorney Advisor to the undersigned, will this same date also email copies of this Order Certifying Transcript, time-stamped as received today by the Hearing Clerk's Office, to the above persons so that each is aware and on notice that the record has been certified this same date.

Done at Washington, D.C.,
this 8th day of May 2020

[redacted]

Channing D. Strother
Chief Administrative Law Judge

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