

In the matter of:

Leafy Green Vegetables Handled in the United States; Hearing on Proposed Marketing Agreement No. 970

Docket No. AO-FV-09-0138; AMS-FV-09-0029; FV09-970-1

January 27, 2010

Post Hearing Brief

Submitted by:

National Organic Coalition

Carolina Farm Stewardship Association

Florida Certified Organic Growers & Consumers, Inc.

Steve Etko
National Organic Coalition
1301 Hancock Avenue
Alexandria, VA 22301

Patty Lovera
Food & Water Watch
(member of National Organic Coalition)
1616 P St. NW
Suite 300
Washington, DC 20036

Introduction

This brief in opposition to the proposed National Leafy Greens Marketing Agreement (NLGMA) is submitted on behalf of the National Organic Coalition,¹ the Carolina Farm Stewardship Association, and Florida Certified Organic Growers & Consumers, Inc. (Docket No. AO-FV-09-0138; AMS-FV-09-0029; FV09-970-1.) As described herein, the proposed NLGMA not only fails in many regards to meet the basic requirements of the Agricultural Marketing Agreement Act (AMAA), but it is opposed by a broad spectrum of organizations for the many reasons described below.

With very little notice and little orchestration, a significant number of opponents from many perspectives and vocations turned out to the NLGMA hearings to voice their concerns about the proposal. In spite of the intimidating setting and overwhelming amount of time required for individuals to participate in the process, the number of witnesses there that were willing to participate in this process demonstrates the depth and breadth of opposition to the proposal.

Our organizations – which represent leafy greens producers, consumers, environmental organizations, and cooperative food retailers – urge the Agricultural Marketing Service to deny the proposal for the creation of a National Leafy Greens Marketing Agreement.

1. The proposed NLGMA does not comply with Agricultural Marketing Agreement Act.

The intent of the Agricultural Marketing Agreement Act (AMAA) is to provide a mechanism for growers to organize and protect themselves from the market power of handlers.

This proposal is an agreement by, of, and for handlers that will dictate the terms of production and sale to farmers without providing any assurance for the salability of the affected producers' products.²

The proposed NLGMA submitted by large handlers is fundamentally flawed and legally impermissible. The Agricultural Marketing Agreement Act of 1937 (AMAA) is designed to protect producers and consumers, not handlers. The Declared Policy of the Act is quite clearly to provide for an orderly flow of commerce “in the interests of producers and consumers.”³ One searches in vain for any reference to “handlers” or “processors” in 7 U.S.C. § 602. They are not mentioned for a reason. They are not the protected class. And yet they are the ones seeking the marketing agreement, which is opposed by many producers, especially smaller and more specialized producers, and consumers. If the Secretary permits adoption of the proposed NLGMA, he would be turning a blind eye to the fact that his legal authority stems solely from the AMAA.

The legal conclusion that marketing orders and agreements “protect producers” while they “regulate handlers *only*” is supported uniformly in all case decisions.⁴ For example, one case concludes, “it is important to recall that the Act is designed to improve marketing conditions for *the benefit of producers*.”⁵ While most of the cases that discuss the Secretary’s authority under the AMAA are marketing order rather than marketing agreement cases and while because of a great deal of litigation in the milk business the case law largely involves the dairy industry, both marketing agreements and orders depend for their legality on 7 U.S.C. § 602. Thus case law discussion regarding marketing orders applies equally to marketing agreements.

To go forward on the assumption that handlers signing on to the proposed NLGMA are eligible to receive the antitrust protection offered by the AMAA is not appropriate. As was pointed out

during the hearing in Monterey, under a proposed marketing agreement under the AMAA the principle benefit to those who participate in a marketing agreement is protection from the federal antitrust laws. But if a marketing agreement is entered into, without meeting all of the requirements of the statute, this antitrust protection does not extend to signatories.⁶

The problem here is that handlers are proposing the marketing agreement over the very real objection of producers. And since a marketing agreement without an order is proposed, the producers will never get to vote on this handler-sponsored marketing agreement as would be required under 7 U.S.C. § 608c(8). In this circumstance, the handlers are attempting to end run the system and the AMAA by purportedly putting together a voluntary marketing agreement. The evidence described below is that the practical effect will be to force producers to comply with this so-called voluntary marketing agreement. This proposed result supported by the handlers is the mirror image of the powers delegated to the Secretary under the AMAA. It is not legal and cannot be condoned. There is nothing in the language of the AMAA, the case law or AMAA's legislative history that supports the kind of marketing agreement proposed to the Secretary. Given the fact that the handler-sponsored marketing agreement is opposed by a number of producers, the Secretary must reject it outright.

In addition to concerns about the applicability of the AMAA to an agreement by handlers instead of producers, the proposed National Leafy Greens Marketing Agreement fails on other grounds to achieve the purposes for marketing agreements set out by the AMAA. The stated purpose of the AMAA is to establish and maintain orderly marketing conditions and protect the interest of the consumer. The proposed NLGMA would not only fail to establish and maintain orderly marketing conditions, but would instead create confusion by establishing a system of standards for leafy greens that will compete with guidances being developed by the Food and

Drug Administration and standards that could be required by pending legislation. Adding the proposed NLGMA to the mix will only further confuse the industry, not alleviate confusion and the marketing chaos that ensues from multiple, competing standards that all claim to be the best way to foster safe production practices.

Additionally, the law does not authorize the adoption of marketing orders and agreements to address food safety. Such adoption may violate AMAA by exceeding statutory authority⁷ because the statute calls for determining which products can qualify for marketing orders and agreements based on measurable quality attributes. The USDA's own website defines quality as a measurable attribute. The definition of quality in the dictionary is an “attribute,” not a “process,” which excludes food safety practices from a marketing agreement designed to market products based on measurable quality attributes.⁸

Congress has considered such changes to USDA’s authority, but has not ultimately passed any legislation that would give the agency the authority to take on development of food safety standards through marketing agreements. Therefore, the agency is merely serving as a venue for the leafy greens industry to develop its own standards. But as many witnesses expressed, standards that will affect consumers and many small players in the industry should not be determined by the most powerful players in the industry.⁹ As Elisa Odabashian of Consumers Union stated at the Monterey hearing, “allowing the leafy green industry to set and oversee its own safety standards, without public input is undemocratic and contrary to key legal precedents in the regulatory field ...In terms of product safety, consumers are rarely benefited when industry polices itself.”¹⁰

In addition to concerns about the Agricultural Marketing Service (AMS) marketing agreement process serving as a vehicle for the largest players in the leafy greens industry to

develop their own standards, some smaller producers expressed concern that the mission of AMS makes it impossible for the agency to fulfill a food safety role. The department's charge is the efficient, fair marketing of U.S. agricultural products. Several witnesses expressed concern that the agency cannot both promote the leafy greens industry and help them market their products as well as be as strong regulator for safety standards.¹¹ Because of the marketing mission and expertise of AMS, the agency's staff is made up of economists and marketing specialists, not food safety scientists.¹² AMS is tasked with marketing agriculture and promoting industry; "for that reason USDA is neither wholly independent nor the most appropriate overseer of leafy green safety."¹³ Several witnesses pointed out that even the Administrator of AMS has publicly made this point, when testifying to Congress that "AMS is not a food safety agency."¹⁴

2. The proposed NLGMA improperly treats food safety as a marketing issue.

Marketing agreements are designed to manage the sale of products with measurable attributes and communicate differences between products in the marketplace by making claims about attributes such as size, variety, and appearance. Because food safety, which is described in the proposed NLGMA as process-based, is not a measurable "quality" trait, food safety does not fit into the framework of a marketing agreement.¹⁵

As one witness stated, food safety is "an ongoing process...based on standards that are fully protective of public health."¹⁶ Therefore food safety should not differ between growers or brands on the basis of whether or not they participate in a program such as the NLGMA. Consumers regard food safety as something that is pre-competitive, that is, something that is a baseline requirement for all products, not something to be used to gain an advantage in the

marketplace.¹⁷ Several witnesses explained why it is inappropriate to treat food safety as something to be promoted with labels or claims. As one pointed out, choosing the “wrong” brand should not result in an increased risk of illness.¹⁸

While proponents of the NLGMA tried to dismiss worries that a marketing agreement approach would transform food safety into a marketing issue, other evidence from the proceedings provides reason for concern.

The Market Review Board in the proposed NLGMA is intended to instill “consumer confidence through market acceptance on recognition of the program.”¹⁹ The fact that this board of the NLGMA is charged with explaining and promoting the program to consumers makes it hard to believe proponent claims that food safety is not being turned into a marketable characteristic under this program.

One witness noted that “no serious retailer would ignore the potential to market ‘safer food.’”²⁰ And because the creation of the NLGMA establishes food safety as something for sellers to use to market their products, the establishment of the NLGMA could actually fuel the growth of supermetrics instead of slowing it because retailers could use their requirement of supermetrics as a marketing strategy, arguing that their product is better because it exceeds USDA standards.²¹

As one witness familiar with the existing Arizona LGMA, the Arizona Attorney General’s office, explained, under the Arizona LGMA there was an interest in using the LGMA seal to directly market products to consumers, but the idea was tabled.²² In addition to proposing that the language regarding use of the seal be used in other ways under the NLGMA, the Attorney General’s office also wants to allow voluntary financial contributions to LGMA market promotion research.²³ This level of interest in the marketing aspects of existing agreements adds

to our concern that a national LGMA would shift the safety of leafy greens into the marketing arena.

Finally, as discussed during several hearings, while the proposal language for the NLGMA calls for the use of the LGMA certification mark on bills of lading and manifests, but not on consumer level packaging, the language does not preclude “other” uses of the mark in the future. Combined with the existing evidence of interest in using the certification mark to market both the LGMA program itself and the product it certifies, this flexibility in the proposal language causes concern that the NLGMA would inappropriately shift food safety to the marketing arena.²⁴

3. The proposed NLGMA is a flawed approach to food safety.

Creating a national version of the California and Arizona Leafy Greens Marketing Agreements would expand a flawed regional program without dealing with the inherent problems of addressing food safety through a commodity-specific industry-led program. The NLGMA is duplicative of other government programs on food safety, including commodity specific guidance currently being created by the Food and Drug Administration (FDA) as well as potential regulation for produce required by pending food safety legislation.²⁵ Several witnesses stated that the House and Senate food safety bills could, depending on their final form, require the development of produce safety standards that could conflict with the developments of NLGMA.²⁶

In addition to existing and potential government regulation of leafy greens, the LGMA will also be duplicative of existing industry requirements, including audit and metric programs

required by buyers. Many witnesses at the hearings spoke about their belief that a national LGMA will create another unnecessary layer of inspections. The LGMA will create different standards for leafy greens growers, in contrast to the single science-based food safety standard applied broadly to farm operations that many producers advocate. Failure to achieve this whole farm approach will drive “audit fatigue” for diverse growers.²⁷ Witnesses at many hearings expressed their frustration with the already long list of inspections and standards they contend with, including standards developed by FDA, USDA, ISO 65, Canada, Primus Labs, AIB, organic certification, and assorted private buyer requirements.²⁸

Even with its authority to create marketing agreements and orders, USDA lacks the authority to prohibit supermetrics, and there is nothing in NLGMA that would prevent companies from requiring growers to follow metrics that exceed or differ in some way from LGMA metrics. Some retailers could use their requirement of “supermetrics” as a marketing strategy and claim that their product is better because it exceeds USDA standards.²⁹ Even proponent spokesman Hank Giclas of the Western Growers Association acknowledged during an August 19, 2009 webinar discussion of the proposed NLGMA that supermetrics are “likely” to continue, even if the NLGMA is adopted. This would not simplify the regulatory landscape for growers – it would complicate it.

Finally, we question the appropriateness of dealing with food safety through a process other than federal regulation. In its process of considering the proposed NLGMA, USDA does not have to follow the established conventions for creation of federal regulation. The lack of transparency and accountability to the public in the NLGMA process leave citizens and the consuming public without the same level of information and input than they would have in a traditional regulatory process. Many witnesses expressed concern about how public notice and

comment would work during the LGMA process.³⁰ This is in contrast to the rulemaking process for a regulation that has specific opportunities for public comment and input into the standards required for a regulated food. The proposed LGMA will allow public comment only after the standards have been developed by industry.³¹

Many witnesses expressed their belief that food safety should be developed in an open, public process, with FDA taking the lead role.³² The proposed NLGMA is in direct conflict with this approach.

4. The marketing agreement model established in California and Arizona has not achieved the goals set for these programs and should not be expanded to cover the entire nation by the proposed NLGMA.

The proposed NLGMA is modeled on the California LGMA and Arizona LGMA. But these programs have not yet achieved their goals. If serious concerns with the regional agreements remain after several years in effect, this model should not be expanded to the entire country.

Throughout the NLGMA hearing process, many proponent witnesses argued that CALGMA metrics and their implementation were not relevant to the NLGMA process, because an entirely new set of audit metrics were envisioned under the NLGMA. In contrast, many opponent witnesses drew upon the example of metric implementation under the CALGMA to explain their concerns about the metrics and implementation procedures that would likely be developed under the NLGMA.

It is difficult to see the NLGMA proposal as anything but the progeny of the CALGMA experience. Not only does NLGMA borrow the same name as its California counterpart, but the list of proponents is very similar as well. In addition, the governance structure of the proposed NLGMA continues to place the power in the hands of conventional handlers of leafy green vegetables, and to a lesser extent, conventional growers of leafy green vegetables, with only small lip-service to inclusion of interests of organic or small-scale producers or handlers, or to consumers. Indeed, there is nothing in the proposed NLGMA that would dictate that the outcome would be significantly different than the CALGMA experience. To ask the Secretary to ignore that obvious linkage and the relevance of the CALGMA outcome is disingenuous at best. A serious concern for consumers is the fact that several recalls of leafy greens produced under the California LGMA took place after the agreement was in effect.³³ And many witnesses explained at the Monterey portion of the hearing that the California agreement has failed to curb the use of private supermetrics.³⁴

But perhaps the most notable impact of the state agreements has been the growing controversy over the environmental damage triggered by changes in production in the leafy greens industry to comply with food safety programs. One witness characterized this pressure by saying that “Growers...are put in the awkward position of choosing between selling their crop or removing vegetation.”³⁵ This impact will be discussed further in section 8, but must be pointed out here as one of the most significant failures in the California and Arizona experience and ample reason not to go forward with a national version of the LGMA.

5. The consolidated nature of the leafy greens industry creates the potential for the proposed NLGMA to have unequal impact on different sectors of the industry.

The leafy greens industry is highly consolidated, with the majority of the volume produced by a small number of large firms. But it is not homogenous – a large number of small-to-medium sized firms produce the rest of the volume and these firms are very different from the largest players in the industry who are pushing the NLGMA. Any national proposal must consider the impact on small-to-medium-sized producers outside major production states and these producers are overwhelmingly opposed to the proposal.

The proponent group includes associations representing the biggest players in the industry.³⁶ The vast majority of outreach on the proposal has been from these major industry groups to their constituents.³⁷ One witness pointed out that at least 38 organizations representing small, diversified and organic agriculture interests submitted comments recommending changes to or opposing the proposed agreement, which in his opinion were ignored by the proponent group.³⁸

Two firms controlled almost eighty percent of the fresh-cut bagged leafy greens market in 2008.³⁹ The less than 150 signatories that comprise the California and Arizona state leafy greens marketing agreements already represent close to 90 percent of U.S. leafy greens production.⁴⁰ These signatory handlers to the California LGMA represent 99 percent of the state's leafy greens production.⁴¹

But despite the fact that most of the volume of production comes from a small number of producers, data presented in the Monterey testimony of proponent expert witness Diane Wetherington of Intertox demonstrated that the number of small leafy greens producers far

outweighs the numbers of large producers—10 to 1 in some regions.⁴² Nationally, more than 9000 farms in America are growing leafy greens⁴³ and their marketing methods range from direct sales to consumers to sales to restaurants, institutions and retailers.

In addition to the differences in volume of leafy greens produced by large and small operations, small-to-medium sized producers differ from larger operations in the way they grow, harvest, package and market their products. These differences could cause dramatically different impacts of the proposed NLGMA on small and medium producers than large producers.

Proponents of the NLGMA repeatedly tried to deal with witnesses' concern about the potential impact of the proposed NLGMA on small and medium farms by assuring them that they would not have to participate in the agreement if they did not want to. But several witnesses pointed out that the proposed NLGMA is not really voluntary for growers if a large percentage of buyers and handlers sign on to the agreement under pressure from their competitors and the marketing efforts of the NLGMA. Further, if producers choose to not participate in the NLGMA because it is not workable for their operations, they could lose important school and institutional markets for their produce,⁴⁴ an important and growing marketing option for smaller farms. And several witnesses representing businesses that deal with small growers of leafy greens also expressed opposition to the NLGMA, saying that the regional-based food system they endorse, which depends on supporting small, medium, and organic farmers, would be threatened by the proposed NLGMA.⁴⁵

6. The proposed NLGMA would impose a disproportionate burden on small-to-medium scale, diversified producers; a full Regulatory Flexibility Act analysis is respectfully demanded.

A great deal of testimony was presented throughout the NLGMA hearing process with regard to concerns about the burdens of the NLMGA on small-to-medium scale and diversified farming operations.

As described in the Monterey hearing testimony of Dr. Shermain Hardesty, Director of the University of California's Small Farm Program, the per-acre costs of implementing the CALGMA metrics were higher for small-and-medium-sized farms than for larger farms. This finding related to the significant economies of scale enjoyed by larger operations and their related ability to absorb costs over their large volumes, such as those of hiring designated food safety professionals for their operations. Dr. Hardesty's testimony was based on a survey of leafy greens growers in California during 2008 and 2009 regarding their CALGMA compliance costs.⁴⁶

Commodity-specific metrics, such as those proposed by the NLGMA, benefit large-scale monocultural farming operations. Many small-to-medium-scale farms grow dozens of different vegetables and fully embrace a diversity of crops,⁴⁷ which demands different agricultural practices than the monoculture cropping typical of larger operations. The burdens of complying with commodity-specific food safety metrics are much higher for a farmer growing 40 crops on 100 acres than for a grower producing 4 crops on 500 acres. Food safety metrics should be written in a way that addresses the needs of diversified farms, by addressing the farm system in a holistic manner, as opposed to viewing each crop in isolation.⁴⁸

Adding another layer of auditing and recordkeeping through the proposed LGMA will have a more severe impact on small farmers. Small farmers growing multiple vegetables can trigger different regulatory demands than large-scale monocultures of leafy greens. One farmer testified that while growing 65 different crops he was told by USDA auditors that there was no way to certify his farm as following Good Agricultural Practices (GAPs) beyond certifying each vegetable individually at \$92/hour.⁴⁹

Sustainable practices employed on many small farms like biodiversity, crop rotation, organic pest control may be threatened by the demands of the NLGMA.⁵⁰ Metrics that dictate arbitrary and, in some cases, unscientific buffers between crop fields and wildlife habitat, compost piles, and livestock operations disproportionately burden smaller farms, which have smaller fields and a higher edge-to-field ratio. These factors translate into more fencing and vegetation removal costs for smaller farms, as well a significant loss of usable acreage for these farms.⁵¹ Large producers are more likely to grow in large fields, giving them both economies of scale with fencing and lower material costs through their diminished fence-to-field ratio. Small producers encourage and depend on the use of natural buffers and other growing practices distinct from large-scale monoculture operations. As examples, opponents to the proposed NLGMA testified that existing state-level LGMA establish buffering requirements that would result in loss of available acreage to small farms under 50 acres.⁵²

The documentation requirements of the proposed NLGMA would make it difficult for small growers to participate because they don't have the personnel to maintain extensive records.⁵³ Small growers generally operate with few if any hired hands, unlike large producers, which, for example, can hire food safety specialists dedicated to adapting to the agreement.⁵⁴ When small farmer Richard Bonanno testified that his 15-acre leafy greens production does not

have “the additional resources to become certified and keep up with all the paperwork,”⁵⁵ he echoed a sentiment heard throughout the hearings. Even a witness for the proponent group acknowledged that most farmers are already complying with 70 to 80 percent of food safety requirements, but they are not documenting it because they don’t have the resources.⁵⁶

As noted throughout this filing, the proposed NLGMA is not in economic reality voluntary. The agreement will in reality regulate the actions and behaviors of handlers and producers. Thus, a final Regulatory Flexibility Act (RFA) analysis should be required as required in 5 U.S.C. § 605. Especially since the AMAA is designed to protect the interests of producers, ignoring the differential impacts on small- and medium-sized producers would be a significant error by the agency. Indeed, AMS appeared to recognize the importance of the RFA issues in its repeated questioning of witnesses regarding whether or not they qualified as small businesses under the Small Business Administration definition.

7. The proposed NLGMA is in conflict with USDA’s organic standards and is burdensome for organic producers.

In addition to the burdens put on small-to-medium scale, diversified producers, organic producers face specific burdens under the proposed NLGMA, which apply across all scales of organic operations. Throughout the hearing process, witnesses raised concerns that the metrics established under the CALGMA, and the interpretation of those metrics by auditors, have resulted in conflicts with national organic standards and imposed heavy and disproportionate burdens on organic producers. Similarly, witnesses also raised concerns about how the proposed NLGMA metrics and their interpretation by auditors could also burden organic growers.⁵⁷

For example, in order to become and remain certified as organic, farms must have an organic systems plan (OSP) that includes measures to promote biodiversity on their farms. Based on the experiences with the CALGMA, organic producers, retailers and consumers expressed strong concerns that the metrics developed under the NLGMA would create strong incentives to remove wildlife habitat, in direct conflict with USDA organic standards, which require the incorporation of wildlife habitat into farm operations.⁵⁸

Organic producers are also prohibited from using synthetic pesticides on their farms, with few exceptions. Instead, organic producers rely heavily on beneficial insects as part of their organic pest management strategy. To promote beneficial insects, farmers must maintain wildlife habitat within reasonable proximity to their farm fields.

In addition, organic producers are prohibited under USDA organic standards from using synthetic fertilizers on their farms, and rely on composted animal manure, compost and/or nitrogen-fixing crops to provide part of the nutrient balance needed by their crops. Many witnesses raised concerns that the CALGMA bias against the use of animal manure on farm fields would be replicated in the NLGMA metrics as well, ignoring the strict standards with which organic producers must already comply regarding use of animal manure and compost on their fields. One witness noted that in the past, a farm could have compost delivered and stacked in a pile on-farm. In contrast, under the California LGMA, farms must now pay to have the compost spread directly on the farm fields because the metrics penalize farmers who have compost piles stacked next to farm fields.⁵⁹

Even a proponent witness acknowledged that organic and sustainable farmers are disadvantaged by the CALGMA metrics, and urged greater inclusion of these farmers in the NLGMA process.⁶⁰

Throughout the NLGMA hearing process, peer-reviewed research was referenced that demonstrates that organic farming systems, which rely on building microbial activity in the soil through the use of non-synthetic chemical farming systems, do in fact provide a significant defense against pathogens in the soil and uptake by the crops grown in that soil. These organic and sustainable systems rely heavily on wildlife habitat, buffer strips, animal manure, and compost as vital parts of a holistic pest and nutrient management systems. Despite the growing science in support of the use of these tools,⁶¹ CALGMA metrics and private supermetrics have targeted these tools as food safety culprits that must be eliminated or avoided.

As will be discussed in greater detail below, the proposed Administrative Committee and Technical Review Board are structured in a way to give control of metrics development and administration of the program to those that have a conventional approach to food safety questions, very much in the vein of the control structure used under the CALGMA. This is true both under the Committee/Board structure laid out in the original industry NLGMA proposal and in the modified proposal present by the testimony of proponent witness Charles Hall at the Charlotte, North Carolina hearing. Nowhere does the proposed Committee/Board power structure offer any hope that the growing body of science in favor of organic and sustainable farming systems will be adequately considered as part of the NLGMA metrics development process. Indeed, this science flies directly in the face of the farming systems used by most conventional leafy greens operations, and would likely be suppressed under a NLGMA governance structure dominated by conventional interests and their handpicked food safety experts.⁶²

Finally, we believe that AMS lacks the legal authority to approve a NLGMA that runs counter to existing statutory and regulatory programs designed for the organic food industry.

8. The USDA is required to prepare an environmental impact statement on the NLGMA.

Witnesses at every hearing location provided testimony about concerns about potential negative impact of NLGMA metrics on conservation efforts on farms. These concerns are based in large part on the experiences of farmers required to comply with CALGMA metrics and “supermetrics” imposed by private buyers.

Proponents have argued that CALGMA metrics did not explicitly “require” wildlife habitat and other conservation measures to be removed. Many witnesses, however, noted that the strong warnings of CALGMA metrics regarding the pathogen dangers of wildlife have been interpreted by CALGMA auditors to require farmers to remove wildlife habitat and other conservation measures.⁶³ The pathogen risk of wildlife is assumed as fact under the CALGMA, in spite of recent research from the California Department of Fish and Game showing that less than half of one percent of fecal samples from mammalian wildlife in the California Central Coast counties tested positive for *E. coli* 0157:H7.⁶⁴ The resulting negative environmental impacts in California were raised repeatedly in testimony during the Monterey hearing, including in the neutral testimony provided by the California Environmental Protection Agency and the U.S. Environmental Protection Agency. Witnesses at other hearing sites also made reference to the potential negative environmental impact of a NLGMA.

Several environmental and conservation agencies appeared as witnesses at hearings on the proposed NLGMA and expressed concern that any new agreement would not be able to curtail the use of supermetrics and other practices that have impacted environmental quality. In recounting the experience with the leafy greens industry in California, the U.S. EPA told of a

complaint of a wetland being inappropriately filled and reported that the U.S. Army Corps of Engineers have dealt with similar complaints.⁶⁵

To begin to quantify the environmental harm of the CALGMA, a grower survey by the Resource Conservation District of Monterey County was presented at the Monterey hearing regarding the environmental impact of the CALGMA. The survey showed that 91 percent of the farmers surveyed had previously adopted one or more conservation practices on their farms aimed at improving water quality or wildlife habitat. Of those, 32 percent said that they had removed non-crop vegetation in response to California LGMA or supermetric audits, 7 percent had removed water bodies, and 40 percent had removed wildlife.⁶⁶

Not only is the removal of on-farm conservation measures counterproductive from an environmental standpoint, but it is also counterproductive from a food safety standpoint as well. A growing body of research demonstrates that conservation measures at field edge help filter out pathogens from neighboring property.⁶⁷

Even a proponent witness acknowledged that the interpretation of CALGMA metrics by auditors has inappropriately resulted in farmers being required to remove wildlife habitat and conservation practices.⁶⁸

Because of the great potential for environmental harm of the proposed NLGMA, a full Environmental Impact Study (EIS) should be conducted. The National Environmental Policy Act (NEPA) requires an environmental impact statement on any “major Federal actions significantly affecting the quality of the human environment.” The NLGMA meets all parts of this requirement, and therefore the USDA must prepare an environmental impact statement before deciding on the proposed NLGMA.

The NLGMA is major, as it covers food safety practices for all leafy greens in the United States, and despite the proponents claim that the program is voluntary, many witnesses testified that in order to keep their customers, participation would be essentially mandatory.

The NLGMA is also federal. The Council on Environmental Quality, created by NEPA and responsible for ensuring that Federal agencies meet their obligations under NEPA, defines federal, among other things, as “potentially subject to federal control and responsibility.” While the industry initially requested the proposed agreement, the USDA is responsible for accepting the agreement, overseeing the development of the committees and metrics established by the agreement, and providing the employees to audit signatories to the agreement. Without USDA participation and approval, the NLGMA will not exist in its proposed form.

The NLGMA is an action. CEQ has defined “action” in its regulations as “significantly affecting (the) human environment.” As the earlier discussion clearly demonstrates, there is ample evidence from California and Arizona Leafy Greens Marketing Agreements, the models for the NLGMA, that the environment has been impacted. And as the testimony of various state and federal environmental agencies demonstrates, any NLGMA that leads to metrics that do not include a charge to minimize environmental and wildlife impacts could be detrimental. Finally, the evidence that participation in the LGMA could chill participation by growers in other government programs designed to protect the environment, such as the Environmental Quality Improvement Program and other water and habitat protection programs, also point to the potential for the NLGMA to have significant impact on the environment.⁶⁹

Therefore it is necessary for the Secretary to conduct an Environmental Impact Statement before deciding on the fate of the proposed NLGMA.

9. The proposed NLGMA fails to focus on areas of highest risk.

Part of the analysis of food safety risk should also be recognition that scale and type of operation play an important role in determining risk. Testimony was presented throughout the NLGMA hearing process that farms that grow leafy greens to be co-mingled, washed, and processed with produce from other farms in preparation for distribution as fresh-cut or “ready-to-eat” product stored in sealed bags to retail facilities in multiple states pose much greater food safety risk than those producing whole-head or bunched product, or salad mixes that are not comingled and shipped long distances in sealed packages.

Compelling evidence compiled from FDA foodborne illness outbreak data associated with lettuce or spinach and *E. coli* 0157:H7 for the period of 1993 to 2008 was presented at the Monterey hearing. These data show that most of the documented cases of *E. coli* 0157:H7 illness outbreaks for lettuce or spinach during this time were associated with bagged/fresh-cut product, not fresh whole head or bunched product. In some cases, the source of the contamination was not known.⁷⁰

As described by California leafy greens grower Dale Coke at the Monterey hearing, growing, handling and marketing procedures for bagged/fresh-cut/ready-to-eat leafy greens products are significantly different, and riskier from a food safety context, than those harvested and sold as fresh, whole-head or bunched product, and present many more opportunities for pathogen contamination.⁷¹

The NLGMA proposal acknowledges that there is a relevant food safety difference between manufactured, fresh-cut, leafy green vegetables and other forms of leafy green vegetables. In Section 970.40(b) of the industry proposal, the section establishing the

requirements for the Administrative Committee, it dictates “at least four handler members must be engaged in the manufacturing of fresh-cut leafy green products.” Such a distinction suggests that the proponents recognize that the food safety implications of that manufacturing process are unique from that associated with fresh, whole or bunched product.

Therefore, we argue that large-scale operations involved with the production, handling, manufacturing and distribution of fresh-cut or ready-to-eat greens in sealed bags should be the focus of greatest scrutiny with regard to food safety regulations, including any kind of industry metrics program or the NLGMA.

10. The proposed NLGMA is too narrowly focused on microbial contamination.

Microbial pathogen contamination in produce is a valid concern, but it is not the only food safety concern for produce. The NLGMA’s narrow focus on microbial contamination is a result of the marketing focus of the proposal and efforts by the leafy greens industry to restore consumer confidence in the aftermath of the 2006 *E. coli* outbreak in spinach and other subsequent outbreaks. It is reasonable and rational for an industry to take proactive steps to address consumer confidence problems given these circumstances. However, from a public policy and food safety science standpoint, food safety must be viewed through a different lens than marketing.

The proposed NLGMA and the California and Arizona agreements upon which it is based, focus exclusively on food safety risks posed by pathogens, and ignore other threats to human health that can be posed by leafy greens production. This incomplete scope means that the NLGMA misses the opportunity to address legitimate threats to public health and incorrectly

puts producers who minimize those non-pathogen threats at a disadvantage. Some of the food safety impacts the NLGMA model fails to address include uses of agrochemicals, non-therapeutic antibiotics in livestock production, and water pollution from concentrated animal feeding operations (CAFOs).⁷² CAFOs generate massive amounts of animal waste and high percentage of the animals in CAFOs harbor and shed *E. coli* O157:H7. The proposed NLGMA does nothing to address the contamination emanating from CAFOs and focuses solely on practices on individual farms.⁷³ Even FDA's new draft guidances consider other impacts such as pesticide and chemical residues and the NLGMA's failure to do so makes it an incomplete way to address food safety.

There are other food safety concerns with leafy green vegetables that must be part of the equation, and the myopic focus on pathogens alone may have negative consequences elsewhere in the food safety equation. For instance, creating metrics that pressure farmers to eliminate wildlife habitat and non-crop vegetation near their fields based on limited and conflicting research about pathogen contamination related to wildlife also has the effect of driving farmers toward greater pesticide use on their crops. Pesticide residue on crops is a significant public health concern for workers, surrounding communities, and consumers of the product.

Most organic and sustainable produce farmers use wildlife habitat to encourage beneficial insects that help to fend off harmful insects, and preclude or reduce the need for spraying pesticides on their fields and crops. By viewing food safety as a marketing problem, the tendency will always be to jump haphazardly from one crisis to another, with the outcome being to address one food safety problem while exacerbating others. Unless food safety policies focus holistically on the entire farming system and the interactions therein, the ultimate goal of safer food will be elusive.

Even within the narrow focus of microbial contamination, the NLGMA approach is ignoring the science about how beneficial microbes in the soil can be an important tool to address problems with pathogenic microbes. A sterilization model aimed at killing all microbes creates an environment whereby pathogenic microbes can take over, unchecked by natural beneficial microbial processes. The science in this area is in its infancy, and more must be done on an iterative basis to understand these natural interactions. But research and testimony were presented through the hearing process to point out the counterproductive nature of a sterilization model of agriculture, and the food safety benefits of farming practices that foster robust microbial activity in the soil.⁷⁴

11. Food safety expertise is under-represented within the proposed NLGMA structure.

Under the proposed NLGMA, the Leafy Green Vegetable Administrative Committee is charged with the authority to make the final decisions about the food safety metrics that are put forward to the Secretary of Agriculture for his review and final action. However, the proposed Administrative Committee membership does not include any food safety expertise. To respond to this criticism raised in testimony throughout the NLGMA hearing process, the proponents pointed out that the proposal also calls for the establishment of a separate Technical Review Board to make recommendations to the Administrative Committee regarding the metrics. However, even the proposed Technical Review Board is greatly limited in food safety expertise. Of the 14 members of the original proposed Board, 5 are required to be “food safety expert(s) from a land grant university within each zone elected by the producer and handler members from the corresponding zones.” The likely result of these limitations will be to have 5 food safety

experts whose scientific opinions support the views and needs of the handler and producer Committee members who are electing them. The science of food safety is complex, evolving, and in many cases, conflicting. To limit the food safety expertise only to those scientists hand-picked by the regulated industry is neither good policy on how to deal with emerging science nor adequately protective of consumers.

In addition, the original proposal would also require that the Board include two representatives from the Food and Drug Administration, nominated by the agency's Commissioner. The inclusion of FDA staff could be helpful to add some scientific independence to the Board. However, there is no specific requirement that the FDA representatives be food safety experts.

It should be noted that the final proponent witness, Charles Hall of the Georgia Fruit and Vegetable Growers Association, proposed a modification to the Technical Review Board in his testimony at the Charlotte, North Carolina hearing, and did so on behalf of the full proponent group. The new proposal would:

- 1) increase the number of members on the Board to 21,
- 2) add a small producer as defined by Small Business Association,
- 3) add a USDA-certified organic grower,
- 4) require the Board to appoint subcommittees to facilitate input and review from regions throughout the production area, and
- 5) require the Board to seek input from other governmental agencies.

While we understand that this proposal attempts to provide a small minority voice for some of the groups that have raised concerns about the proposed NLGMA, this expansion also has the effect for further diluting the food safety expertise of this Board.

The bottom line is that the governance and advisory board structure of the proposed NLGMA, which purports to address food safety problems, actually includes very little food safety expertise at all. The focus on the NLGMA is to address a marketing problem for the leafy greens industry, and the governance structure of the proposal reflects that priority.

12. The proposed NLGMA gives undue power to handlers, while producers and consumers are not adequately represented.

The governing power under the proposed NLGMA is with the Administrative Committee. Under the proposed structure of that Committee, handlers dominate the membership and therefore the votes. Of the 23 members of the Committee, the membership criteria require 13 handlers, 6 producers, 1 retailer, 1 food service representative, 1 importer, and 1 undefined “public member.” In fact the only designated role for a specific consumer representative is on the Market Review Board.⁷⁵

Under this structure, handlers can always outvote the other members of the Committee. Committee representation for producers is token, and there is no explicit representation at all for organic producers/handlers or for consumers. Establishing producer and consumer advisory subcommittees for the Technical Review Board, which itself has no direct governing power, is mere lip service to the inclusion of these critical groups.

The nation’s largest leafy greens handlers operate in key production areas of each zone and will therefore be able to choose which zone to vote in, further solidifying their market power.⁷⁶

Further, even the few producers that are given seats on the governing Administrative Committee are required under the proposed NLGMA to be tied to a NLGMA signatory handler.

Under the Section 970.20 of the proposal, the definition of “producer” is:

“synonymous with grower and means any person engaged in a proprietary capacity in the production of leafy green vegetables for sale or delivery to a signatory of this agreement.”

This requirement even further diminishes the independent voice of producers, many of whom may be serving on the Committee with the very handlers that control their livelihoods. The zones established under Section 970.28 of the proposal for purposes of selecting Administrative Committee members are illogical from an agricultural or climatic perspective, and appear to be based more on assuring strategic voting power for certain states, instead of being drawn to reflect common growing season or agronomic zone characteristics. For example, the proposal places Wisconsin and Alabama together in the zone 4, and places Vermont and Florida together in zone 5. These states have very little in common with each with regard to the production of leafy green vegetables.⁷⁷

Both in Administrative Board membership and in zone line delineations, the goal would seem to be to assure that the power for the proposed national LGMA rests with the large-scale handlers of a few dominant states. At the final hearing site, the proponents sought to amend their original proposal to include a definition of “region” distinct from the term “zone” within the proposal, in recognition of the concerns and confusion over the zone concept of the proposal. The modification of the original proposal does not negate our concerns about the zone structure and its use within the NLGMA governance structure.

Despite attempts by the proponents during the hearings to reassure opponent witnesses that there was potential to address their concerns in the proposed structure, there is an enormous

amount of distrust among small-to-medium, diversified and organic growers that this process will serve them well. One witness summed up the inherent flaw in asking small-to-medium, diversified and organic growers to trust this process, in which they are not adequately represented and for which standards are not yet developed. He said:

“One of the farmers who is very upset about this, they called me. They said talk about buying a pig in a poke. And, you know, I’ve heard that expression and I really had to look it up, because what it means is, that somebody’s trying to sell you what they’re calling is a piglet in a bag that’s tied. And, back when that was common, sometimes what was really in that bag was a scrawny cat. And so the expression letting the cat out of the bag, was actually in reply to the pig in the poke.

“And so I think letting the cat out of the bag about this, the way it is presented, you can present all the, if this was changed, would you agree, the fact is that isn’t the deal.”⁷⁸

13. The proposed NLGMA undermines efforts to re-establish regional and non-industrial food systems at the same time that USDA is trying to promote such efforts.

Testimony was heard at multiple hearing sites from farmers, consumers, and food cooperative representatives that the proposed NLGMA would undermine efforts to develop community-based marketing pathways for local and organic food. Proponents responded to these concerns by arguing that direct marketing arrangements, such as those used at farmers markets, could be exempt from the requirements of the NLGMA, because the agreement is “voluntary” for handlers, and that farmers involved in direct marketing would be considered their own handlers.

While direct marketing is an important avenue for many organic and sustainable leafy greens growers, it is certainly not the only avenue. To relegate organic, sustainable, and smaller-scale farms to direct marketing channels alone undermines the growing trends and complexity of

alternative marketing chains, such as those being promoted by USDA itself through the “Know Your Farmer, Know Your Food” campaign.⁷⁹

Throughout the NLGMA hearing process, testimony was heard from farmers, consumers, and retailers expressing strong opposition to the type of farming practices that have resulted from the CALGMA metrics and private buyer “supermetrics,” and concerns about similar results from the proposed NLGMA. In fact, many of the consumers and retailers testifying during the NLGMA hearing process expressed a belief that the CALGMA metrics and those proposed for development on the NLGMA would actually exacerbate food safety problems, for the reasons discussed above. Under the NLGMA proposal, the ability of these consumers and retailers to source product using non-NLGMA approved farming practices would be greatly constrained.⁸⁰ As has been stated in proponent testimony, handlers representing 99 percent of the leafy greens grown in California have signed onto CALGMA, and thereby have agreed to only source leafy greens from growers following the CALGMA metrics. Signatory handlers to the proposed NLGMA would similarly pledge to source product only from growers following the LGMA prescribed farming practices. For the growers selling to these handlers, the metrics are not at all voluntary. If the type of market control demonstrated through the CALGMA example is replicated on a national scale, the supply of “alternative” sources of product will be greatly reduced and efforts to create alternative supply chains and re-establish regional food systems greatly impeded.

Conclusion

The proposed National Leafy Greens Marketing Agreement is an inappropriate way to address produce food safety. Not only does the proposal wrongly attempt to fit the square peg of public health into the round hole of marketing and promotion, it also attempts to establish a governance and scientific structure that assures a continuation of the large scale, monocultural model of agriculture that we believe greatly contributes to the very food safety concerns at hand. Our organizations are acutely concerned about produce safety and are engaged in the raging practical and scientific debates about the sources of and solutions to the problem. But we unanimously and wholeheartedly agree that the NLGMA is the wrong vehicle to address this critical public health concern, and strongly urge its rejection.

¹ The members of the National Organic Coalition are Beyond Pesticides, Center for Food Safety, Equal Exchange, Food & Water Watch, Maine Organic Farmers and Gardeners Association, Midwest Organic and Sustainable Education Services, National Cooperative Grocers Association, Northeast Organic Dairy Producers Alliance, Northeast Organic Farming Association – Interstate Council, Organically Grown Company, Rural Advancement Foundation International – USA, and Union of Concerned Scientists.

² Roland McReynolds. Charlotte, North Carolina. October 22, 2009.

³ 7 U.S.C. § 602(4) (2010)

⁴ Lamers Dairy Inc. v. U.S. Dept. of Agric., 379 F.3d 466, 469 (7th Cir. 2004) (emphasis added)

⁵ Friendship Dairies, Inc. v. Butz, 432 F. Supp. 508 (E.D.N.Y. 1977) (emphasis added) citing Waddington Milk Co. v. Wickard, 140 F.2d 97, 101 (2nd Cir. 1944); Lewes Dairy, Inc. v. Freeman, 401 F.2d 308, 311 (3rd Cir. 1968).

⁶ Charles English. Monterey, California. September 22, 2009.

⁷ Charles English. Monterey, California. September 22, 2009.

⁸ Charles English. Monterey, California. September 22, 2009.

⁹ Marty Mesh. Jacksonville, Florida. October 1, 2009; Chris Blanchard. Columbus, Ohio. October 6, 2009.

¹⁰ Elisa Odabashian. Monterey, California. September 23, 2009.

¹¹ Elisa Odabashian. Monterey, California. September 23, 2009.

¹² Steve Etko. Monterey, California. September 23, 2009.

¹³ Elisa Odabashian. Monterey, California. September 23, 2009.

¹⁴ Steve Etko. Monterey, California. September 23, 2009; Chris Blanchard. Columbus, Ohio. October 6, 2009; Roland McReynolds. Charlotte, North Carolina. October 22, 2009.

¹⁵ Charles English. Monterey, California. September 22, 2009.

¹⁶ Steve Gilman. Syracuse, New York. October 20, 2009.

¹⁷ Patty Lovera. Monterey, California. September 23, 2009.

¹⁸ Chris Blanchard. Columbus, Ohio. October 6, 2009.

¹⁹ National Leafy Green Marketing Agreement Proposal. At Definitions: § 970.46 Market Review Board.

-
- ²⁰ Chris Blanchard. Columbus, Ohio. October 6, 2009.
- ²¹ Roland McReynolds. Charlotte, North Carolina. October 22, 2009.
- ²² Casey Cullings. Yuma, Arizona. October 14, 2009.
- ²³ Casey Cullings. Yuma, Arizona. October 14, 2009.
- ²⁴ Patty Lovera. Monterey, California. September 23, 2009.
- ²⁵ Steve Etko. Monterey, California. September 23, 2009.
- ²⁶ Charles English. Monterey, California. September 23, 2009; Michael Hanson. Syracuse, New York. October 20, 2009.
- ²⁷ Steve Etko. Monterey, California. September 23, 2009; Bu Nygrens. Monterey, California. September 23, 2009.
- ²⁸ Garth Kahl. Monterey, California. September 23, 2009; Marty Mesh. Jacksonville, Florida. October 1, 2009; Kevin O'Dare. Jacksonville, Florida. October 1, 2009.
- ²⁹ Roland McReynolds. Charlotte, North Carolina. October 22, 2009.
- ³⁰ Charlotte Vallaey. Syracuse, New York. October 20, 2009; Michael Hansen. Syracuse, New York. October 20, 2009.
- ³¹ Charlotte Vallaey. Syracuse, New York. October 20, 2009.
- ³² Steve Etko. Monterey, California. September 23, 2009; Michael Hansen. Syracuse, New York. October 20, 2009.
- ³³ Patty Lovera. Monterey, California. September 23, 2009.
- ³⁴ Joe Pezzini. Monterey, California. September 22, 2009; Jo Ann Baumgartner. Monterey, California. September 23, 2009; Patty Lovera. Monterey, California. September 23, 2009; Garth Kahl. Monterey, California. September 23, 2009; Allen Hardison. Monterey, California. September 23, 2009; David Runsten. Monterey, California. September 24, 2009; Bu Nygrens. Monterey, California. September 24, 2009.
- ³⁵ Jill North and Michael Thomas. Monterey, California. September 24, 2009.
- ³⁶ Exhibit 16.
- ³⁷ Exhibit 16.
- ³⁸ Gary Scott. Charlotte, North Carolina. October 22, 2009.
- ³⁹ Patty Lovera. Monterey, California. September 23, 2009.
- ⁴⁰ Diane Wetherington. Monterey, California. September 22, 2009; Arizona Leafy Greens Marketing Agreement. "Arizona LGMA Certified Members." Available at http://www.azlgma.gov/members/membership/certified_members.asp. Accessed January 25, 2010; California Leafy Greens Marketing Agreement. "Certified Members." Available at http://www.caleafygreens.ca.gov/members/certified_members.asp. Accessed January 25, 2010.
- ⁴¹ Diane Wetherington. Monterey, California. September 22, 2009.
- ⁴² Diane Wetherington. Monterey, California. September 22, 2009.
- ⁴³ Suzanne Dash. Monterey, California. September 22, 2009.
- ⁴⁴ Chris Blanchard. Columbus, Ohio. October 6, 2009.
- ⁴⁵ Bu Nygrens. Monterey, California. September 24, 2009; Josh Hinerfeld. Monterey, California. September 24, 2009.
- ⁴⁶ Exhibit 43.
- ⁴⁷ Dave Runsten. Monterey, California. September 24, 2009.
- ⁴⁸ Kate Mendenhall. Syracuse, New York. October 20, 2009.
- ⁴⁹ Kate Mendenhall. Syracuse, New York. October 20, 2009.
- ⁵⁰ Torey Ligon. Yuma, Arizona. October 15, 2009.
- ⁵¹ Chris Blanchard. Columbus, Ohio. October 6, 2009.
- ⁵² Roland McReynolds. Charlotte, North Carolina. October 22, 2009.
- ⁵³ Beth Bland. Jacksonville, Florida. September 30, 2009.
- ⁵⁴ Exhibit 43.
- ⁵⁵ Richard Bonanno. Syracuse, New York. October 20, 2009.
- ⁵⁶ Beth Bland. Jacksonville, Florida. September 30, 2009.
- ⁵⁷ Garth Kahl. Monterey, California. September 23, 2009; Steve Etko. Monterey, California. September 23, 2009.
- ⁵⁸ Roger Medina. Monterey, California. September 22, 2009; Steve Etko. Monterey, California. September 23, 2009; Steve Shimek. Monterey, California. September 23, 2009; Elisa Odabashian. Monterey, California. September 23, 2009; Josh Hinerfeld. Monterey, California. September 24, 2009.
- ⁵⁹ Roger Medina. Monterey, California. September 22, 2009.

-
- ⁶⁰ Rob Faurot. Monterey, California. September 24, 2009.
- ⁶¹ Exhibits 72, 117, 121, and 123.
- ⁶² Patryk Battle. Charlotte, North Carolina. October 22, 2009; Roland McReynolds. Charlotte, North Carolina. October 22, 2009.
- ⁶³ Paul Robbins. Monterey, California. September 24, 2009; Kathy Means. Syracuse, New York. October 20, 2009; Exhibit 23.
- ⁶⁴ Exhibit 24B.
- ⁶⁵ Jovita Pajarillo. Monterey, California. September 22, 2009.
- ⁶⁶ Exhibit 23.
- ⁶⁷ Kate Mendenhall. Syracuse, New York. October 20, 2009.
- ⁶⁸ Kathy Means. Syracuse, New York. October 20, 2009.
- ⁶⁹ Patty Lovera. Monterey, California. September 23, 2009.
- ⁷⁰ Dave Runsten. Monterey, California. September 24, 2009.
- ⁷¹ Dale Coke. Monterey, California. September 23, 2009.
- ⁷² Lisa Bunin. Monterey, California. September 23, 2009.
- ⁷³ Joseph R. Martin. Charlotte, North Carolina. October 22, 2009.
- ⁷⁴ Exhibits 72, 117, 121, and 123.
- ⁷⁵ LGMA Proposed Marketing Agreement, Amended.
- ⁷⁶ Steve Warshawer. Yuma, Arizona. October 15, 2009.
- ⁷⁷ Chris Blanchard. Columbus, Ohio. October 6, 2009.
- ⁷⁸ Steve Gilman. Syracuse, New York. October 20, 2009.
- ⁷⁹ Chris Blanchard. Columbus, Ohio. October 6, 2009; Denise Morse. Yuma, Arizona. October 14, 2009.
- ⁸⁰ Torey Ligon. Yuma, Arizona. October 15, 2009.