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Sex, knives and soybean politics

Full ASA petition raises laundry-list of allegations, but others question motives

By Sara Wyant

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Most of the time, people in agriculture recognize the wisdom of Ben Franklin, who told his fellow countrymen when the Declaration of Independence was signed:

“We must all hang together, or assuredly we shall all hang separately.”

However, that logic does not seem persuasive to some of the nation’s leading soybean growers when it comes to decisions about how to run their organizations and especially how to invest their checkoff dollars. Tensions have grown so high that many soybean farmers representing the American Soybean Association (ASA) won’t even talk to other soybean farmers who represent the United Soybean Board (USB) --- even though about 90% of the USB farmer leaders also belong to ASA.

The conflicts escalated to a new level last week, when ASA leaders delivered a petition to USDA’s top brass that asks for an investigation and audit of financial and other allegations surrounding the USB, the United States Soybean Export Council (USSEC) and the law firm representing both, which is McLeod, Watkinson & Miller, based in Washington, D.C. The full petition, which we obtained from an anonymous source last week, includes details of alleged use of a knife, sexual harassment, conflict of interest, and misuse of funds.

If these charges prove true, and some sources say that’s still a big “if,” the results could threaten not only the future of these national associations and their primary funding sources, but some say the concept of national checkoffs altogether.

“The timing of this petition is not lost on us,” notes legal counsel Wayne Watkinson, of McLeod, Watkinson and Miller, who represents the USB, USSEC and the majority of U.S. checkoff programs. He believes the overarching purpose is to “beat down the checkoff” which will come up for a “request for referendum” vote next spring. The request for referendum will determine whether U.S. soybean producers want a referendum on the Soybean Promotion and Research

Program. Under the Act and the Order which created the program, the Secretary of Agriculture must provide soybean producers the opportunity to petition for a referendum every five years.

The 0.5 percent checkoff is applied to the market price of each bushel of soybeans farmers sell. So as the value of the crop has increased, so has the size of the funding pool. Checkoff revenues have grown from \$41 million in 1992 to about \$140 million this year, with half of the funds going to qualified state soybean checkoff boards.

USB Chairman Chuck Myers' issued a statement in response to the allegations.

“The United Soybean Board (USB) is aware of the allegations made by the American Soybean Association against USB regarding mismanagement of farmer checkoff dollars. We have pledged our full cooperation to Secretary Schafer if the USDA Office of Inspector General (OIG) deems it necessary to undertake an investigation and audit of USB operations. Although we believe it would be premature to respond at this time, USB will respond to the OIG with respect to all of these allegations raised by ASA.

”Our 68 farmer-directors who oversee the investments of the soybean checkoff on behalf of all U.S. soybean farmers take our fiduciary responsibility very seriously and, as stipulated in the Soybean Promotion, Research and Consumer Information Act, USDA’s Agricultural Marketing Service has oversight responsibilities for our actions on behalf of USB and the soybean checkoff.”

Motives questioned

Some sources question whether or not the timing was also driven by the desire to have this investigation considered by officials who will remain in place at USDA until the inauguration, rather than a new team, appointed by President-elect Obama, who may be less familiar with the issues and the players. For example, Mike Yost, USDA’s Foreign Agricultural Services (FAS) Administrator, is Past President of the American Soybean Association and also served on the National Biodiesel Board.

Yet, others who have followed the two organizations since the inception of the checkoff suggest that the bigger struggle is really over control of a checkoff program that ASA originally helped create in 1990, with the expectation that all of the program and marketing funds would be channeled through their organization. That was the case for the first few years, until USB leaders complained about the lack of transparency and accountability and gradually moved everything related to the checkoff, with the exception of international marketing, away from ASA.

During this same period, there was a significant consolidation of the agribusinesses supporting ASA programs, but sources say that the overall level of financial support held steady. But the number of dues-paying members dropped significantly, from over 33,000 prior to inception of the checkoff to about 22,000 in recent years; even though ASA points out that these numbers represent about 7.6% of soybean farmers (1990) and 7.0% of soybean farmers (2008), respectively.

With the creation of USSEC in 2005, responsibilities for international marketing were also moved away from ASA to the new entity, which has members from ASA, USB and industry.

However, USDA foreign market development funds still flowed through the association and ASA receives payments for use of their name in the marketing efforts.

The straw that broke the proverbial camel’s back, they say, was when the USSEC board voted this fall, during a meeting in Puerto Rico, to remove ASA as the cooperator of record---essentially taking the association out of the decision-making process altogether.

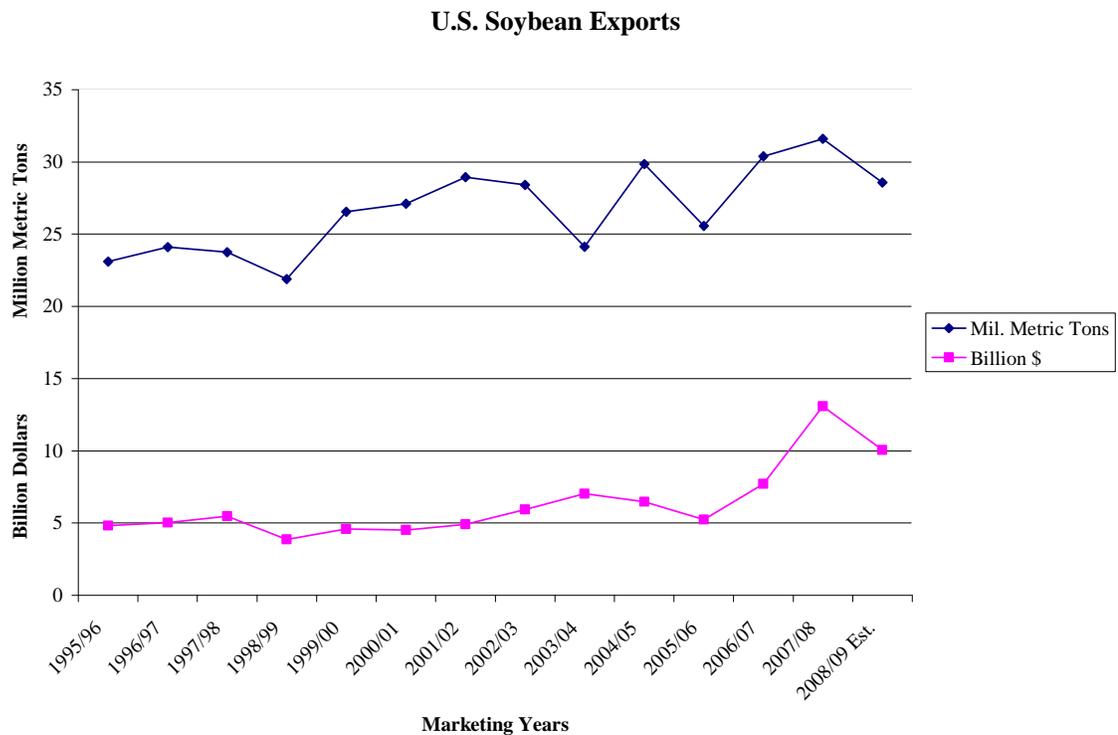
The motion, made by USB Director Terry Ecker and seconded by USB Director Greg Anderson, was as follows: "I move that USSEC shall start the process to become the cooperator of record with FAS for international soybean marketing activities and therefore would apply to be the recipients of all FAS programs for international soybean marketing. In conjunction with this, USSEC should also begin conducting all of its activities globally using the name US Soybean Export Council. It would be my hope that this would be done as soon as possible, but at least by the start of the fiscal year 2010."

The motion passed 8 to 6. Voting in favor of it were all seven USB Directors on USSEC, plus Alex Stemme, with the Missouri QSSB.

That motion has since been rescinded by USSEC Chair Scott Fritz, in a memo in which he said “proper procedures” were not followed when the board voted.

In fact, one of the allegations of “wasteful” spending by USB cites creation of USSEC and the petition says that analysis is needed to determine the total amount of resources spent to create the new export entity.

Despite conflicts between ASA and USB over whether or not oilseed industry members should be involved in export promotion efforts via the USSEC, soybean exports have continue to grow in volume and value. This year over 1.5 billion bushels of soy were exported from the United States, and these exports are valued at more than \$12 billion. Source: USDA/ERS.



“State and national soybean leaders have asked for information on the amount of funds spent to create the new international marketing entity, but USB officers have refused to provide any details on the amount of funds spent,” according to the petition. The USSEC board is composed of 7 members from ASA, 7 members from USB, and industry members.

USDA meeting

ASA President Johnny Dodson says his organization’s ultimate goal is to make sure that “our checkoff is transparent and is responsible to producers. He believes “the petition will speak for itself.” (For more on Dodson, listen to Open Mic on www.Agri-Pulse.com)

Leaders of the American Soybean Association (ASA), including Chairman John Hoffman, President Johnny Dodson, former President Rick Ostlie, along with CEO Steve Censky, Washington lobbyist, John Gordley and legal counsel, Gary Baise, met with Agriculture Secretary Ed Schafer and Under Secretary for Marketing and Regulatory Programs Bruce Knight on Friday afternoon. They discussed a 13-page petition, addressed to both Schafer and Inspector General Phyllis Fong, which asks for an investigation and audit of the USB, the U.S. Soybean Export Council (USSEC) and the law firm representing both: McLeod, Watkinson & Miller. As *Agri-Pulse* met them leaving the meeting, ASA President John Hoffman would only say: “It’s in the Secretary’s hands.”

However, the OIG statute makes Fong independent - the secretary can suggest but not order an investigation, and Fong is free to do it or not, or to launch the investigation on her own. So while the secretary is not responsible for OIG, he is, of course, responsible for Agricultural Marketing Service (AMS) oversight of the checkoff and for Foreign Agriculture Service (FAS) oversight of Foreign Market Development Program and Market Access Program funds given to the soybean groups.

Watkinson says that USDA’s AMS, along with the ASA and USB board members who serve on the USSEC board already received a report on many of these charges, dealing with the knife incident and another on sexual harassment, which he says proved that there is no substance to the allegations.

The petition also includes new allegations regarding feeding trials, and what ASA described as “potential evasion” of salary and administrative caps, along with “excessive spending.”

Congressional hearings may also be on the horizon.

“The allegations against the United Soybean Board are disturbing and farmers deserve to know the truth about what transpired. We need multiple discoveries into the allegations, which the Senate Agriculture Committee will pursue, and which may also include an inspector general investigation at the USDA,” according to Sen. Tom Harkin (D-IA), Chairman, Senate Committee on Agriculture, Nutrition and Forestry.

A spokesperson for House Agriculture Committee Chairman Collin Peterson (D-MN) declined comment at this time.

Dissecting the petition

ASA released a summary of the petition last Wednesday, but later in the day, *Agri-Pulse* received a copy of the full petition, from sources who asked not to be identified. This 13-page document provides significant details, but makes reference to several “exhibits” which we have not yet obtained.

Here are the allegations included in ASA’s petition and some additional background and reaction on each:

Allegations concerning the use of a weapon:

“Mr. Richard Ostlie, an ASA director serving on USSEC's Board and a member of the USSEC Executive Committee witnessed the following incident that occurred in November 2007 in Branson, Missouri in connection with the Executive Retreat. He described the incident as follows: Mr. Rick Ostlie, Mr. Mark Pietz (USB director serving as Chair of USSEC), Mr. Miguel Escobar (USSEC Executive Director) and Mr. Dan Duran (USSEC CEO) attended dinner at a restaurant at the resort where they were staying for the Executive Retreat.....

“The four individuals were waiting for a hotel shuttle to return to the rooms when Mr. Ostlie began speaking with a fifth individual also waiting for the shuttle. This individual was intoxicated. Mr. Ostlie engaged this individual in a conversation regarding renewable energy which led to a disagreement between Mr. Ostlie and the fifth individual concerning ethanol and biodiesel. There were no raised voices, but at some point the person with whom Mr. Ostlie was speaking swore about farmers and renewable energy. At that point Mr. Duran removed a knife that he carried in his boot. He put the knife between the man's legs for a time and then held it against his neck. The man never showed any physical aggressiveness towards Mr. Ostlie or anyone else prior to that, his aggressiveness being limited to cursing about farmers. Mr. Ostlie, Mr. Pietz and Mr. Escobar were able to remove Mr. Duran from the man and proceeded to try to diffuse the situation. Both Mr. Duran and the other individual were kept separated, although each apparently remained hostile for some time following the incident. Mr. Ostlie and Mr. Pietz subsequently took the knife from Mr. Duran and did not return it until the next day.

“Mr. Pietz and Mr. Ostlie had a meeting with Mr. Duran the following day to discuss the situation with him. They also discussed the situation between each other and decided not to inform legal counsel, although Mr. Pietz agreed to tell Mr. Alan Kemper (an ASA director serving as USSEC Vice Chair but who was not present to witness the incident), but insisted on waiting until a later date.

“Mr. Ostlie further stated that he realized in hindsight that the Executive Committee and legal counsel should have been informed immediately: "I made a poor judgment at the time by not going to the rest of our committee right away, but having been in leadership roles in the past, I know how important it is to try and support the decisions of your leader to keep an organization running smooth."

According to the petition, the only action taken in a 9-8 vote by USSEC directors, together with the help of attorneys from McLeod, Watkinson & Miller regarding the matter was to "advise Mr. Duran that he shall not carry weapons while conducting his duties as CEO of USSEC, subject to certain exceptions (for foreign travel in particular regions or countries)" and for USSEC to develop a comprehensive policy to prohibit individuals from carrying weapons.

Dan Duran has not returned our calls for comment, but Wayne Watkinson says that when the incident was first reported to his firm, it was described as a situation where Duran was protecting Rick Ostlie because he was being threatened by this unnamed Florida resident and that the event didn't become a problem until several months later. *Agri-Pulse* was unable to find a Branson, MO. police report of this incident.

The ASA petition also alleges problems with international offices in Japan and Turkey and notes that the country directors there have been fired after bringing up complaints.

According to the petition, there was an "alleged inappropriate relationship by the USSEC CEO with a member of USSEC's Japan Office female staff that has disrupted the Tokyo Office and threatens U.S. soybean sales in Japan and in which the misuse of checkoff and federal funds to perpetuate that relationship has been alleged.

"The making of this allegation to the USSEC Board resulted in the dismissal of the Country Director for Japan and has the potential for serious repercussion and damage to American soybean exports to Japan."

In addition to the petition, we also obtained a copy of a memo sent by Country Director Tom Nishio to Rick Ostlie and Mark Pietz, in which he said he "desperately need your recognition and support to this matter in order for me to continue conducting my duties and responsibilities as Japan Country Director and for all of us to prevent further damages and staining the reputation of the name of ASA-IM, which has been built up over a half century in Japan."

Watkinson says that this allegation was also previously investigated and that there was no proof that any inappropriate behavior occurred. "We investigated this fully and hired a human resources specialist and another expert from a St. Louis firm," he added. "She denied it, he denied it and several of the details just didn't jive."

The legal counsel's report was presented to the USSEC board in July. According to ASA's petition, the report advised that the issue surrounding Tom Nishio "should be handled by management as a personnel matter." Nishio had served as country director for about six years, but was dismissed after bringing these charges forward.

In Turkey, the ASA petition states that USSEC's Middle East Country Director Director, Chris Andrew, was terminated after raising complaints that Duran was unwilling to comply with Turkish law (and therefore, U.S. government requirements to comply with local laws) over salary increases to staff. It was only after USDA's Foreign Agricultural Service became involved, the ASA petition states, and required the Soybean Export Council to comply with the law that the correct action was taken.

Duran filed a defamation lawsuit against Andrew for allegedly making false statements about him and has secured a protection order against the former employee, according to Watkinson. The USSEC board has approved, but not yet paid for, additional security for Duran's home.

In addition to charges related to personnel and management, the ASA petition alleges several other potential problems, including:

“Allegations have been made concerning the awarding of "no competitive bid" \$200,000 contract to a friend of the USSEC CEO, and work performed outside the scope of approved contracts. A thorough investigation to determine if other no-bid contracts were awarded, or if work was done and paid for outside the scope of the contracts, was not done. The McLeod, Watkinson & Miller Report. concluded that the failure to bid the service contract appears to have violated the Internal Operating Policies which require service contracts in excess of \$2,500 to have a minimum of three competitive written bids, the Report recommended that: "No disciplinary action should be taken."

- “Alleged improper and wasteful expenditure of checkoff and government funds. Allegations have been made that feeding trials carried out by the Europe Office may not be fully carried out and/or costs are grossly over inflated, that the trials being conducted are repetitive of those done previously, and are being repeated despite negative results from previous year.”

“For example, the FY07 Unified Export Strategy (DES) document submitted to FAS contained three identically-worded projects to conduct nine feeding trials in Europe to demonstrate differences in amino acid digestibility between U.S. and South American soybean meal. An amendment was later submitted to add another \$104,500 in funding to one of the projects, giving rise to a grand total of \$731,500 for these feeding trials. The FY08 DES again contains very same identically-worded projects and amendments to again carry out these trials in Europe and the Maghreb, for a grand total of \$452,000. And yet again the FY09 UES contains the same identically-worded or almost identically worded projects to again carry out these trials in Europe and the Maghreb, for a grand total of \$490,000.

“In totality, it has been alleged that nearly \$1.7 million is being spent over a three year period to carry out the same trials. A careful audit of all records associated with the trials should be carried out to determine if they were actually completed, whether they were redundant, whether the costs were over-inflated, whether the results were published and translated in various European languages as promised, etc.

- “Allegations on the use of checkoff funds by USB to influence government action and the use of checkoff funds to set up entities that have as one of their goals the influencing, of government action and policy. The soybean checkoff Act and Order prohibit the use of checkoff funds from being used in any manner for the purpose of influencing legislation or government action or policy.

“For example, the USB Chairman attended and spoke at The Farm Journal Forum in Washington, D.C. in December of 2004. His speech was a highly policy-oriented speech in which he advocated various agricultural and trade policy positions that were inappropriate to be

given by a chairman of a checkoff organization that is statutorily prohibited (from) undertaking policy-related activities.”

- “Alleged conflicts of interests at USB involving an employee of USB's largest contractor serving as the accountant that oversees billings and payments to contractors.”
- “Potential evasions by USB of caps established in the soybean checkoff act and order on salary and administrative costs. By placing USB office staff on the "books" of contractors and potentially misclassifying other administrative expenses, USB may be evading statutory limits on spending.”
- “Other allegations needing investigation including the awarding of no-competitive bid contracts, wasteful and excessive spending by USB, and other possible acts of mismanagement, etc.”

As an example of “excessive spending” the petition cites communication back to farmer/growers, as well as legal fees.

“Analysis is needed to determine the total dollar amounts and percentage of total funds spent by USB on an annual basis since 1991 in communication activities to farmer audiences. It is believed that the amount of spending on self-promotion is high and disproportionate in relation to spending on actual demand-building activities for U.S. soybeans (e.g., domestic and international marketing activities) or production research spending to increase soybean yields and disease resistance. Funds spent for USB and checkoff self-promotion and "backsell" activities do nothing to increase the consumption, utilization or production of soybeans, but rather serve only to build name-recognition and support among farmers for USB and the checkoff.

ASA officers says that they had no intention of releasing the full petition to the public, but hope that, by presenting the information to USDA, they will be able to obtain an independent, objective investigation of the allegations. No word yet from USDA on how the agency will respond to their request.

For a closer look at USB programs and spending, go to their 2007 annual report:

http://www.unitedsoybean.org/FileDownload.aspx?File=Final_2007_Annual_Financial_Report.pdf

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