

## A silver lining for California's fruits and nuts, despite the trade war

In an interview with *Agri-Pulse* last week at the World Ag Expo, Rabobank analyst David Magaña shared insights on market expectations for California's fruits and nuts. Overall demand is growing, though international competition has been catching up in some sectors. While more details remain to be negotiated, Magaña is cautiously optimistic the improvement in trade talks with the "phase one" deal with China is a good sign for California agriculture.

Almonds, of course, remain strong. Magaña said California has the advantage of being the dominant supplier of global production and the sector is estimating record supplies this year, while shipments to date are in line with previous years.

Yet the challenges are compounding when it comes to walnuts.

**"Even though production is higher than it was two years ago, we're still selling less and less every year," said Magaña.**

Adding to that, China is increasing its own walnut production. Chile has also been growing more competitive and is now the second largest exporter behind California. Yet Chile is battling a large drought and the impacts are yet unknown for its production.

Meanwhile, pistachios are dealing with an off year, since the Chinese New Year came early, narrowing the window for this top market and stagnating shipments. India is increasingly growing as a market as well. Like almonds, pistachios will be seeing increased supplies in California.

Pecans are struggling under the trade war, as China is now sourcing from Mexico instead.

"Exports are way down compared to historical average," said Magaña.



David Magaña, senior analyst for horticulture at Rabobank in Fresno

**Yet he sees a bright side overall for pecans, as commitments are up 60% for the season, according to industry estimates.**

“It's showing signs of strong demand and possibly price recovery,” he said.

When it comes to fruits, the citrus market has been under pressure for years. Magaña said the U.S. is exporting fewer oranges to Hong Kong and less to Canada, surprisingly.

California Citrus Mutual President Casey Creamer recently said the U.S.-Mexico-Canada Agreement is coming at just the right time to revive that market. Navel orange sales were down 36% in 2019 compared to the prior three-year average, while this year is already starting much lower than in 2019, according to Creamer.

Lemons, meanwhile, have been showing low prices across multiple years, with increased competition from Mexico and Chile, according to Magaña.

Similarly, some stone fruits have been experiencing prices 10-15% lower on average year-over-year. This is due to increased supplies and more competition during the summer, as well as more berries and apples available at the supermarket. Many of these growers, he noted, have been switching to tree nuts.

**Magaña cautioned that fruit consumption overall is actually growing on a per capita basis in the U.S., with berries being the fastest growing sector.** Blueberry consumption has jumped threefold over the last decade, to about two pounds per person annually. By comparison, however, strawberry consumption is at eight pounds per person. Magaña said these trends will grow, particularly since little is exported to China and would be impacted by the trade war.

With avocados, California cannot produce enough, he said. The state has averaged 70% annual growth in production. **While Mexico ships year-round – and supplies 90% of the U.S. avocados for Super Bowl guacamole – its production is down in summer, when California is peaking.** Peru, on the other hand, is rapidly planting trees and will bring increasing competition for the state.

While California growers across sectors face supply-side constraints like steep labor costs and uncertain water regulations, Magaña remained optimistic.

“There is just one California,” he said, repeating a common refrain by economists here. “There are not many regions like this in the world where you can produce all these types of commodities.”

Magaña also had high hopes for the growing global middle class, which is expected to hit 4 billion this year, about half of the world's population. In 10 years, that will be 5 billion. With the expansion comes continued demand for value-added crops like tree nuts and fruits.

## **DPR unveils hyper-localized 1,3-D rules, despite ag concerns**

The Department of Pesticide Regulation (DPR) has released new details on how it plans to reduce 1,3-D (Telone) emissions under a set of pilot programs launching this summer. The draft mitigation plan focuses on three agricultural regions of the Central Valley and aims to reduce

emissions by 60% within one year. While tarping after applications is the most promising practice for reducing emissions, DPR lists 12 options applicators can adopt.

In tandem with the pilot program, DPR is working with the Fresno County agricultural commissioner to customize a notification system for alerting residents of pesticide applications near the city of Shafter.

DPR Director Val Dolcini submitted the proposal last week to the California Air Resources Board (CARB) ahead of its meeting to adopt an ambitious new emissions reduction plan for Shafter. The CARB plan was the first of many such projects established under Assembly Bill 617 in 2017 and funded through cap-and-trade revenues.

The Shafter plan calls for spending more than \$38 million in incentives grants on clean cars, trucks, school buses, tractors, irrigation pumps and other sources of carbon emissions. Gov. Gavin Newsom, however, dropped spending from \$50 million to \$25 million in his current budget proposal. AB 617 does not include funding for DPR. But the Shafter steering committee, comprised of residents and environmental justice advocates, pushed the local air district to include strict new regulations on 1,3-D. While the plan does not obligate DPR to actions, Dolcini said at the Feb. 13 meeting he has been “personally involved” in an informal partnership with CARB on new mitigation measures.

“Pesticide exposure is a significant concern, not only for the city of Shafter but for all Californians,” he said at the meeting.

According to Dolcini’s proposal, obtained by *Agri-Pulse*, the mitigation measures mirror options presented at a DPR workshop on 1,3-D in October 2019. Along with tarping, the proposal recommends expanding buffer zones to as much as a half mile, requiring a minimum of 70% soil moisture when applying and irrigating immediately after to create a “water seal” and applying deeper injections, or using a combination of those practices. The pilot program will apply to Shafter, as well as to the towns of Parlier in the Fresno area and Delhi near Modesto.



DPR Dir. Val Dolcini

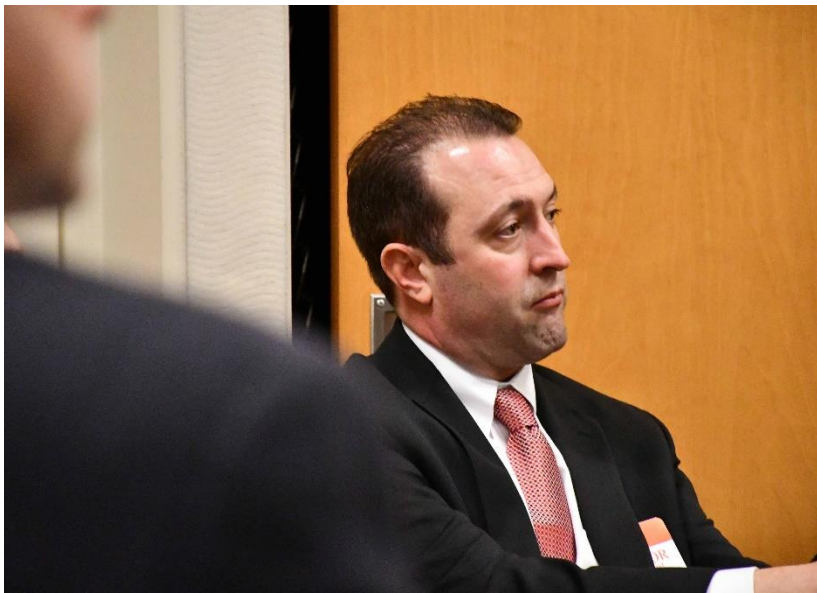
Dolcini did acknowledge that farmers have significantly reduced pesticide use in the state over the decades and would rather not rely on expensive chemical inputs if they could avoid them.

The meeting ran to 10 p.m. and raised concerns from a number of farmers, pest control advisors and trade groups, as environmental justice advocates and residents called for even tighter restrictions on pesticide use and dust emissions. Samir Sheikh, who directs the San Joaquin Valley Air Pollution Control District, said the project has come a long way but acknowledged the first meetings of the steering committee last year were “messy and controversial.”

DPR’s proposal for a notification system, however, was not without controversy.

“This is far and away the toughest element of our engagement with this community, and candidly we’ve got a lot of work to do here,” said Dolcini.

Kern County Farm Bureau’s Jesse Rojas encouraged Dolcini not to implement the new



notifications at all. Instead, Rojas said DPR should apply those funds towards educating local residents about the existing notification system for schools, as well as the many rules and training requirements already in place for applicators.

“We strongly believe the notification pilot is not necessary and will not help with the reduction of emissions, which was the original intent of AB 617,” he said.

Matthew Allen of Western Growers

Rojas added that the Farm Bureau is already planning a Spray Safe event specifically to

address the concerns of Shafter residents and provide this needed education.

Taylor Roschen, a regulatory affairs director for the California Farm Bureau Federation, said the pilot, the notification system and other DPR actions on 1,3-D send a false signal that the traditional regulatory process does not work and the rules are ineffective, adding that farmers should be at the table on this.

“We need to have earnest engagement of the farming community,” she said. “Not one or two meetings to see if something that works on a pilot setting is scalable to our 400 different commodities in California.”

Matthew Allen, who directs legislative affairs for the Western Growers Association, echoed that comment, adding that growers have been carefully following the DPR label on 1,3-D and guidance from the county ag commissioners.

Fresno PCA Jeff Rasmussen said the state’s actions undermine his own consistent and meaningful discussions with the local community, in which he engages everyone “to get to know their neighbors.”

“The people farming and the residents should have those discussions and come up with those local solutions,” he said.

Rasmussen also called DPR and the UC IPM Program “the true heroes” in having reduced pesticide use over the years and changing the farming culture. But he cautioned these tools are still needed for both conventional and organic farming.

Allen Butterfield, a farmer, PCA and crop advisor, worried about a larger trend of taking more agricultural tools away.

“If you can imagine trying to build your house without hammers or nails, it's the same exact situation for the farmers,” he said.

Butterfield added that deeper injections for 1,3-D would not get rid of the devastating nematodes that live six inches deep.

Another PCA, Robert Dow, referred his comments to a spike in 1,3-D emissions in 2018, which DPR said had exceeded its threshold by just 1 part per billion and triggered more regulations.

“One accident doesn't necessitate having more restrictions added onto farmers, when they're already dealing with a mountain of them,” said Dow. “The steering committee should focus on other areas that contribute to bad air pollution and leave farmers alone.”

It was a sentiment echoed by other PCAs.

With incentives funding for upgrading ag equipment, local farmer Michell McManus shared her discouragement over time lags. It takes as much as six months for the district to review an application and 18 months for a farmer to actually receive a check.

On a similar note, Manuel Cunya of the Nisei Farmers League pointed out that the almond industry is already investing in low-dust harvesters and developing off-ground harvesting technology. Cunya said he met with NRCS State Conservationist Carlos Suarez the previous week to discuss adding up to \$3 million to fund this equipment specifically for the Shafter area. He also noted that county ag commissioners from across the valley are meeting in March to educate first responders on how to deal with drift issues. A drift incident last summer raised alarms when hazmat teams responded as if it were a toxic waste spill.

Almond farmer Kent Stenderup highlighted a new initiative by the Almond Board of California that aims to reduce harvest dust by 50% within the next five years.

Following the lengthy testimonies, Dolcini said the comments were instructive and will factor into DPR's next steps going forward, but he defended the plan.

“It's not an over-response but an appropriate way to address the public health concerns that many communities have, without crippling our all-important ag community,” he said.

Board member Judy Mitchell recommended DPR include the ag commissioners, Farm Bureau and PCAs in that conversation going forward.

Before approving the emissions reduction plan, CARB penciled in a requirement that it revisit the plan every six months to revise as needed.

## **Hemp rollercoaster ride expected to continue**

Many new and emerging industries can face a rollercoaster ride with a lot of ups and downs in the marketplace. Hemp appears to be no exception.

Still, the news that GenCanna, one of the largest processors of CBD oil in the state of Kentucky, recently filed for Chapter 11 bankruptcy, was a “gut punch” says Kentucky Ag Commissioner Ryan Quarles. “For hemp this year, there appear to be some strong headwinds nationally.”

Industry analysts say GenCanna may be the first but likely not the last to file for bankruptcy as key players struggle with a wide variety of issues — not the least of which is oversupply of cannabidiol (CBD). As the firm described in its bankruptcy filing:

*“Beginning in the summer of 2019, pricing in the industry plummeted across all CBD product categories. By the end of the year and through today, bulk product prices in nearly all categories have dropped by as much as 80%. This dramatic plunge in pricing also correlated to the large drop in the public capital markets for cannabis companies in both the US and Canada.”*

The filing also noted that GenCanna had a multitude of other challenges, including a facilities fire, construction delays at a new harvesting facility, and a new Chief Financial Officer who failed to win the confidence of some investors and made business dealings more difficult.

However, GenCanna President and Executive Chairman Steve Bevan insists the biggest obstacle is not the market. It’s not USDA or the Risk Management Agency, which approved a pilot crop insurance product for hemp within a year. Rather, “It’s the FDA.

**“We are in purgatory right now. The FDA does not have a pathway to characterize a product that was considered a drug a few years ago,”** Bevan said during the Crop Insurance and Reinsurance Bureau (CIRB) meeting last week. “The reality of what’s happening is that farmers who are producing in a compliant manner and processors who are working in a compliant manner are being damaged economically because of FDA’s outdated rules.”

Quarles agrees. “The biggest obstacle holding back the hemp industry in America is the FDA,” he noted. On Jan. 29, he visited with FDA Deputy Commissioner Frank Yiannas as part of a NASDA leadership meeting in Washington, D.C.

“We are entering year number 7 of legal hemp production in America and a lot of these hemp-derived products such as CBD and other cannabinoids have been on the market for 5 years now,” Quarles said. “I’ve been asking the FDA to be a constructive partner with us to help develop the regulatory framework.



Ryan Quarles

**“I understand the FDA needs to balance the need for public protection as they make their decisions. But at the same time, the industry is wanting to comply with federal and state rules and they are anxiously waiting for the FDA to at least give the market an indication of which direction they're going to head with regulation. That’s what’s holding a lot of hemp processors behind.”**

Quarles says there are a lot of companies that would like to sell CBD as a food additive, a healthcare supplement and even prescription products. Some companies that are experiencing cash-flow issues right now may have already developed these products, but they're waiting so they can follow the law, he added. **“And then there's some hemp companies that**



**are not following the law that are already selling these products — despite the fact that FDA has not approved them.**

“So, it really is imperative that the FDA work with the hemp industry to at least start giving us indications on which direction they're going to head.”

The FDA notes on their [web site](#) that “any substance that is reasonably expected to become a component of food is a food additive that is subject to premarket approval by FDA, unless the substance is generally recognized as safe (GRAS) among experts qualified by scientific training and experience to evaluate its safety under the conditions of its intended use, or meets one of the other exclusions from the food additive definition in section 201(s) of the Federal Food, Drug, and Cosmetic Act (FFDCA).”

Last fall, [FDA warned consumers](#) that it could not conclude CBD is safe for use in human or animal food, and warned companies against violating the law. **FDA is "working diligently to consider whether and how legal pathways might be established to allow the safe marketing of certain dietary supplements and/or food products containing CBD,"** Douglas Throckmorton, deputy director for regulatory programs in FDA's Center for Drug Evaluation and Research, [told](#) the House Energy Committee's subcommittee on health last month.

Prior to filing for bankruptcy, GenCanna was in the process of collecting data to obtain GRAS status.

**“Positive results from recent oral toxicity studies of substantiated bulk ingredients, forthcoming shortly, will bring GRAS recognition that will open domestic and international opportunities,”** the bankruptcy filing noted.

However, that information may not be available for another 3-6 months, according to Bevan. And the lack of a clear pathway from FDA “has put the investment community at a stop.” Even though the company has filed for bankruptcy, Bevan said that until two weeks ago, GenCanna “was up to date on payments to all farmers” and “it is our express intent to make everyone whole.”

**Quarles says a lot of these companies simply want to know what research the FDA needs.**

“I point-blank asked the FDA a couple of weeks ago what they need to help them with their decision-making process. They said we need more research, more data. I asked: How can we be of assistance to you? What data do you need? And they said they would get back with us.”

The regulatory uncertainty makes planning for 2020 that much more difficult for growers and processors. Quarles says his message for 2020 is the same as it's been for years: **“Proceed with caution. If you grow or process hemp in Kentucky, you are more than welcome to do it, just apply and be aware of the risks involved with an emerging industry.** He says every single farmer and processor in Kentucky must attend an orientation session and that includes an emphasis on the financial risks involved.

For Kentucky farmer Ron Conyea, who also spoke at CIRB, the sooner FDA can approve regulations for CBD, the better, but he also sees great potential for seed and fiber. He plants hemp as a rotational crop, in between corn and tobacco, starting with transplanting GenCanna's varieties in the field and selling the finished crop to the firm for processing. Conyea told CIRB

participants that he was very thankful that the Risk Management Agency quickly approved AgriLogic's "bare bones" crop insurance policy for hemp.

**"Bankers either want the deed to my farm or they want crop insurance"** to cover hemp, he added. He's bullish about the potential for hemp, a crop that was grown on about 26,500 acres in Kentucky last year with thousands more acres in dozens of other states, "so long as farmers put it in perspective as a rotational crop and risk management tool, not a home run."

Quarles also remains optimistic for the long-term potential of hemp.

"We do know that in other states, there's been hemp processors that have overextended themselves financially, but there are also dozens of companies here in Kentucky that are doing just fine."

He hopes to see more emphasis on the grain and fiber side of hemp. Kentucky is the third-biggest automobile producing state in the nation and **"it's my vision that one day perhaps, some car parts can have hemp fibers in them. We understand a large emphasis in the past two years has been put on cannabinoid production. But we do believe there will be a long-term hemp market in Kentucky just like we had back in the 1800s when Henry Clay grew it."**

## **Ag groups betting on Peterson to run and win. Will he?**

To say that a lot of people in agriculture want Chairman Collin Peterson to run for re-election would be an understatement.

Industry groups are going all in to raise money for his re-election and in sugar beet country, American Crystal Sugar and other groups launched "The Committee for Stronger Rural Communities," a super political action committee that will only focus on re-electing Peterson this cycle. The groups have already raised over \$500,000.

**He is an experienced and steady hand at the helm of the House Agriculture Committee, where the Blue Dog Democrat is known for his straightforward "tell it as I see it" delivery and willingness to buck his own party when he sees fit.**



*Rep. Collin Peterson*

He has been a staunch defender of crop insurance and is one of the few Democrats who will argue against tightening payment limits on commodity programs. And even if ag industry groups don't agree with him, they know where he stands. That might not be the case, they fear, with the next Democrat running the committee, who could have far less experience.

But there's only one concern at this point. He's publicly told some supporters he's running but is now being coy about whether or not he's running — even though several ag groups are ready to put their bets down.

**"We've only got one horse in this game and we're putting all of our dollars on him to win,"** said a crop insurance industry source who asked not to be named.



That could lead to fewer donations for others who may succeed him if he doesn't run. That potential list includes Democrats Jim Costa of California, Reps. David Scott of Georgia, Marcia Fudge of Ohio, Jim McGovern of Massachusetts and Filemon Vila of Texas.

The Crop Insurance and Reinsurance Bureau hosted a PAC fundraiser for Peterson last Thursday night at their annual meeting in Bonita Springs, Fla., raising thousands of dollars for Peterson's re-election.

But as he walked out the door when the event ended, *Agri-Pulse* asked Peterson if he was definitely running. "I'm still mulling the situation," he said with a smile. When pressed, he was even more unclear about his end game.

**"I tell people I'm running until I'm not."**

Peterson reportedly told a source that if he voted for impeachment, it would be a sign he would be retiring. As it turns out, he was one of two Democrats to vote against both articles of impeachment.

When *Agri-Pulse* asked when he was going to decide about running again, Peterson said he does not have to file until May.

"I'm still sorting through things. I'm looking at this presidential thing to see where it ends up."

**Later in the conversation, he said that he might decide after Super Tuesday, March 3, the day when the highest number of U.S. states hold primaries or caucuses.**

"I know I can win. That's not the issue. That's the problem. I'm not sure that I want to win," he said, chuckling.

**Asked what would happen if President Trump shows up to campaign in your district? "Then I might not win," he responded. "Who knows?"**

Peterson has represented Minnesota's 7<sup>th</sup> District, which stretches from Canada to Iowa on the western side of the state, since 1991. In 2018, he had one of his tightest races, but still beat Republican Dave Hughes with 52.5 percent of the vote, compared to Hughes with 47.9 percent. The district voted twice for Obama before flipping to Trump in 2016.

The National Republican Congressional Committee lists Peterson and his district as one of 55 Democratic seats that they hope to flip in 2020. NRCC's Chairman Rep. Tom Emmer, who represents Minnesota's 6<sup>th</sup> district, recruited Michelle Fischbach to challenge Peterson.

She's served in the Minnesota Senate from 1996 to 2018 and became lieutenant governor to Democratic Gov. Mark Dayton in 2018, when the governor named Tina Smith to the U.S. Senate following Sen. Al Franken's resignation. Fischbach was former Gov. Tim Pawlenty's running mate in 2018 during his unsuccessful primary bid for governor. **Her husband, Scott Fischbach, is executive director of Minnesota Citizens Concerned for Life, giving her a strong platform to reach the anti-abortion community of advocates.**

She's not the only Republican in the race, but she has garnered the most publicity and support from the NRCC. David Hughes, who challenged Peterson the last two cycles, is also running in the GOP primary, along with three others.

The Cook Political Report changed its rating of the race from "Lean Democratic" to "Toss Up" after Fischbach entered the race — in part due to her "strong backing from the NRCC."

David Wasserman, House editor for the Cook Political Report, spoke at the Crop Insurance Industry convention today and said he wouldn't run again if he were Peterson. For one thing, Minnesota will likely lose a House seat after the 2020 census, potentially leaving Peterson without a seat in 2022. Peterson has said he won't run in 2020 unless he's sure he will run in 2022 as well. There's no point in running for re-election unless he stays long enough to oversee the writing of the next farm bill, which is due in 2023, he said.

The second factor against Peterson, said Wasserman, **"is that we are seeing a huge decline in the amount of split ticket voting in this country. It's really, really hard to get elected if you are wearing the wrong color jersey in your district — no matter how personally popular you are."** In 2016, President Donald Trump carried Peterson's district by 61% to 31%. No other House member has a district where the other party's presidential candidate got more than 54% of the vote.

**"I would put his chances of running at 50-50 at best and put his chance of winning if he were to run at 50-50 at best,"** Wasserman said. **"That would be a big, big sea change in the ag policy world."**

But Kevin Price, vice president for government affairs for American Crystal Sugar, thinks Peterson will run and win because of what Price describes as "the Collin brand."

**"He's never been one to let his representation remove him from his roots and he's always stayed close physically and philosophically to the 7th district,"** Price told Agri-Pulse. **"When folks are looking at what they need, they look for someone who reflects their beliefs and gets the job done like Collin."**

Peterson left the CIRB meeting last week to speak in nearby Naples at a Minnesota breakfast, a weekly event for Minnesotans who overwinter in Florida. He still didn't announce but had all the swagger of a confident candidate. Peterson said Trump is "still very popular in my district ... like 57%" approval.

**"The good news is that I'm more popular than he is,"** he said. **"I was Trump before Trump existed. I just don't tweet."**

Peterson said the problem for his party is that, "People are fed up with the Democrats.... They see Democrats as elitist who want to take their guns away and Trump tapped into that."

"But I'm the only one left like me. I'm the only pro-gun, A-Plus rating (from the National Rifle Association) left in Congress. There are two of us that are pro-life. When I came (to Congress) there were 85. And they are trying to get rid of us.

"I thought this impeachment thing was a big mistake. Nancy told me they wouldn't do it unless that had public support and some Republicans," he said of House Speaker Nancy Pelosi. "They

did it anyway. People in my district say this is BS. If Trump gets reelected, it will be because of impeachment.”

Peterson left the breakfast meeting early in order to travel to the Virgin Islands for a day of meetings with another Democrat on his committee, Rep. Stacey Plaskett. **Then he was headed back to his district, “So I can figure out if I’m going to run for re-election,” he added.**

### **Peterson on the presidential candidates**

House Ag Committee Chairman Collin Peterson shared some thoughts with *Agri-Pulse* about the Democratic presidential candidates. He said Minnesota Sen. Amy Klobuchar probably doesn't have "enough money to survive.”

And neither Klobuchar nor former South Bend, Ind., Mayor Pete Buttigieg have enough support among African-Americans to win the Democratic nomination, he said.

Peterson said that the Democratic nominee could be former New York Mayor Mike Bloomberg, who has Rep. Bobby Rush as the head of his African-American caucus. “What does that tell you? ... He’s got good support in the black community.”

Peterson didn’t rule out that former Vice President Joe Biden could make a comeback but so far, “he just doesn’t look good.”

### **Ahead of visit to India, Trump insistent on trade deal**

President Donald Trump says he wants a trade agreement with India, but suggested Tuesday that a partial pact will come first, followed by a more comprehensive deal later this year or after the election.

The president and First Lady Melania Trump are scheduled to visit New Delhi and Ahmedabad, India next Monday and Tuesday.

**“Well, we can have a trade deal with India, but I’m really saving the big deal for later on,” Trump said Tuesday, ahead of his trip there next week. “We’re doing a very big trade deal with India. We’ll have it. I don’t know if it’ll be done before the election, but we’ll have a very big deal with India.”**

It’s unclear if agriculture would be part of that initial deal, but Senate Finance Committee Chairman Chuck Grassley says it may be.

**He said he expects a “mini trade agreement” that will get some additional market access, perhaps for U.S. ag and medical technology, but added that it won’t be a “big deal” like the recent U.S.-China pact or the U.S.-Mexico-Canada Agreement.**

Meanwhile, negotiations are underway ahead of Trump’s visit to the country early next week. A trade agreement with the second-most populous country in the world offers holds the potential for billions of dollars in new U.S. ag trade, but there are signs that talks are not going smoothly.

U.S. negotiators “have been working like crazy on this for several months,” one government source tells *Agri-Pulse*, but U.S. Trade Representative Robert Lighthizer has not yet traveled to India ahead of Trump as planned. Lighthizer was scheduled to arrive in New Delhi early last week, but as of late Thursday he was still in Washington and on Tuesday of this week he was in Utah for a speaking engagement.

Lighthizer’s planned arrival in India early last week was supposed to mark the end of successful preliminary talks and the next higher-level talks on the ministerial level. The fact that that hasn’t happened yet is troubling, said one U.S. industry source who still hopes a new trade pact can be reached.

**Tree nuts, apples, dairy, ethanol, distiller’s grains, poultry, pulses and other U.S. commodities could gain large new markets in the Asian country of 1.3 billion people, but the barriers may be too big for negotiators to crack anytime soon, say doubters such as National Farmers Union President Roger Johnson.**

“I would hope that we enter into negotiations with India,” Johnson said. “I’m skeptical that we’d have something that will be durable before the election. ... India is just a big question mark.”

The potential trade is enormous, but the obstacles negotiators must overcome include a complex web of tariffs, domestic subsidies and non-tariff barriers such as the country’s dysfunctional biotech approval process.

**One of the biggest barriers to securing regulatory reform in India is the way it approves — or more appropriately, does not approve — new genetically modified traits.**



*Roger Johnson, NFU*

Perhaps one of the biggest losers now is distiller’s grains. Industry sources say the U.S. could easily be exporting 700,000 metric tons of it to India every year, but the country hasn’t approved the biotech corn that is used to make fuel ethanol and distiller’s grains, a byproduct of the distillation process that is used as livestock feed.

Until recently, biotech approvals were the responsibility of India’s Genetic Engineering Appraisal Committee — an agency that is often underfunded or hobbled during periods of political control by parties that oppose biotechnology — to approve biotech commodities or products that contain biotech material. But in 2017, India’s Supreme Court threw another wrench into the works, decreeing that all approvals had to be reassigned to the country’s Food Safety and Standard Authority of India.

Applications for approval to import distiller’s grain, soybeans, soymeal, and soy oil have been made to the GEAC, according to USDA’s Foreign Agricultural Service. The GEAC has referred all of them to the FSSAI, which has essentially done nothing. That’s because the “FSSAI is still in the process of making regulations for approval of GE food products,” says FAS in one analysis. “Until the FSSAI regulations are formulated, approved and implemented, the approvals of GE food products are currently on hold in India.”

India's tariffs are even bigger obstacles for U.S. agriculture.

Trump has called India “the king of tariffs” and the impact of the country’s often shifting import taxes have hit American ag exporters hard. Earlier this month, the country announced its most recent increase in tariffs on butter, cheese and peanut butter, even as U.S. and Indian negotiators were discussing a deal to end the import taxes and return duty-free trade for many Indian exporters.

Perhaps the biggest blow came last June when India retaliated against a U.S. decision to revoke India’s designation under the Generalized System of Preferences (GSP). The program gave India tariff-free access to the U.S. market for about \$5 billion worth of its products. India pushed tariffs up on almonds, walnuts, apples and pulses, all commodities that had been enjoying rising exports to the country over recent years.

**The blow was especially hard for U.S. walnut growers, said Pam Gravier, senior marketing director for the California Walnut Commission.**

“We see tremendous opportunity in India as Indian consumers are demanding more walnuts,” she said, pointing out that U.S. exports there had been rising for five years. **“India was one of our fastest growing markets, but it was still a very young market. We’ve seen more than a 50% decline in shipments when we compare prior years to after the change in tariffs.” Indian importers now pay a 120% tariff on in-shell walnuts from the U.S.**



Pam Gravier, California Walnut Commission

And Indian tariffs are particularly high for U.S. poultry. Three years after the U.S. won a legal battle in the World Trade Organization over India’s ban on U.S. poultry, trade is still blocked by steep duties.

**Grassley said Tuesday he believes U.S. negotiators will be successful in getting at least some of India’s barriers removed in return for returning GSP rights to the country, but he stresses that he doesn’t believe it will be a big win.**

**A major focus of negotiators who continue to talk ahead of Trump’s visit to meet with Prime Minister Narendra Modi are focused on dairy, government and industry sources tell *Agri-Pulse*. India is the largest dairy-producing country in the world, and it also has the potential to be a major importer from the U.S., but most U.S. product is blocked by tariffs and non-tariff barriers.**

When it comes to dairy, India says barriers to U.S. product are primarily based on “religious and cultural grounds” that insist products be derived from animals that have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin, according to a USTR analysis. USTR calls the requirement onerous. The U.S. Dairy Export Council and National Milk Producers Federation say it’s unscientific.

## Following \$265M peach farm verdict, dicamba litigation may expand

Thousands of producers who have filed complaints with state agencies or the EPA about off-target dicamba damage could end up as plaintiffs following a federal jury's decision to award \$265 million to a Missouri peach farm, plaintiffs' attorneys say.

**The \$15 million in compensatory damages and \$250 million in punitive damages came after a three-week trial featuring experts on both sides who testified as to whether Bader Farms was damaged by dicamba drift from 2015 through 2018.**

The seven-person jury made the connection between exposure to the herbicide and Bader Farms' — the operation involved in the case — significant loss in yield, despite arguments by Bayer that the yield losses were due to a fungal disease, not dicamba, and that Bader Farms had actually continued to make a profit.

**Monsanto, bought by Bayer in 2018, and BASF, the defendants in the case, said they would appeal.**

The jury found for the plaintiffs on claims that Monsanto negligently sold dicamba-tolerant seed in 2015 and 2016 before its low-volatility dicamba herbicide, Xtendimax, was available, and had failed to provide adequate warnings about the dangers of off-target movement. The jury also found both defendants had failed to adequately issue adequate warnings from 2017 to the present. They also were found to have engaged in a joint venture and conspiracy to benefit from the commercialization of the Xtend cropping system.

Asked why the jury ruled against Bayer, outside counsel Christopher Hohn of Thompson Coburn in St. Louis said he could not "speculate as to what was going through the jurors' minds" and that Bayer had presented "substantial evidence" to rebut Bader's claims.

Monsanto released dicamba-tolerant cotton seed in 2015 and dicamba-tolerant soybean seed the next year, even though its and BASF's new low-volatility dicamba herbicides had yet to gain EPA approval. Some producers applied older, more volatile versions made by BASF until Monsanto's Xtendimax and BASF's Engenia were approved for use in 2017.



Don Downing

Still, with widespread adoption of dicamba-tolerant soybeans, complaints to state pesticide agencies of dicamba damage skyrocketed, said Don Downing, an attorney with Gray, Ritter & Graham in St. Louis who heads up a plaintiffs' leadership team in multidistrict dicamba litigation.

**The multidistrict litigation currently involves about 30 lawsuits and 170 plaintiffs but eventually could include many others.** Downing points to more than 6,000 complaints filed with state agencies and

EPA over dicamba drift damage. Weed scientists he has spoken with say that could cover only a fraction of the amount of acreage actually damaged.



In a statement after the trial's conclusion, Bayer said it stood "firmly behind the company's Roundup Ready Xtend Crop System and Xtendimax herbicide with VaporGrip technology," calling them "valuable tools for growers who need effective options to increase yields and combat resistant weeds." There also is no "unreasonable risk of off-target movement when used according to label directions."

The company said it had "invested substantially in training, nozzles and other resources to help growers best use the technology" and has seen a "marked improvement, as acreage has increased and the number of off-target movement inquiries to our call centers have gone down."

The Bader trial is a bellwether case for other dicamba damage cases, providing a good indication of how other juries might rule in similar cases, Downing said.

Bader Farms attorney Bev Randles of Randles & Splittgerber agreed, saying farmers who filed complaints can "absolutely" become plaintiffs.

Randles said the 170 plaintiffs involved in the multidistrict litigation "aren't the only plaintiffs out there — a number of other folks have signed up."

Downing says he's aware of state actions filed in Tennessee and Missouri, adding, "this [litigation] can proceed on multiple fronts."

Another attorney with experience in similar cases, Michael Klenov of KoreinTillery, said bellwether cases are often "a prelude to a global settlement."

That happened in the Syngenta Viptera litigation. After a federal jury awarded \$217 million to Kansas farmers damaged by the commercialization of genetically modified corn that was not approved in China, Syngenta eventually agreed to a settlement of about \$1.5 billion.

Following the Bader trial, Downing said the parties, including Bayer, BASF and plaintiffs' lawyers, will work on a scheduling order for U.S. District Judge Stephen Limbaugh to deal with the remaining cases that are part of the MDL. Then more bellwether cases will be selected to go to trial.

"Parties use bellwether trials to see how juries react," Downing said, so they can determine whether to keep litigating or settle.

Bayer officials stressed on their conference call with reporters Saturday that all elements of the Xtend cropping system would be available this growing season. Bayer attorney Hohn said the company can file post-trial motions seeking to overturn the verdict for up to 28 days after the trial concluded Feb. 15. Once those are ruled upon, Bayer can appeal. BASF has also said it would appeal.

## News Briefs

**California's snow accumulation behind schedule.** USDA meteorologist Brad Rippey says there has been very little snow added to the overall Sierra Nevada snowpack since late December and "we've had almost no addition to the snowpack at all since mid-January." In an interview on USDA's Newsline, he notes that we're (who is "we" in this case? I would suggest either putting that in quotes if appropriate or being more specific) past the two-third's mark on typical snow accumulation. "We see the average water equivalency of the Sierra Nevada

snowpack stuck at right around 12 inches” even though “we should be well over 20 inches at this point. I like to remind people we like to get near 30 inches by the end of March. It looks increasingly unlikely we will be able to attain that level this year,” Rippey says. The fact that the accumulation of snow has effectively stopped in California does not bode well for spring runoff, he adds. “The saving grace in California is that reservoirs are still in good shape from last year, so it will take awhile for the effects to be felt.”

**Democrats demand publication of tariff report.** The Trump administration continues to argue that it can use the threat of auto tariffs as a tool in negotiating trade agreements, but House Democrats are demanding that the Commerce Department report that supposedly justifies the threat be released publicly. Democratic and Republican lawmakers have suggested recently that the threat is actually a bluff and the report itself fails to rationalize the claim that car and car part imports are a national threat — the basis of levying Section 232 tariffs. “As members of the New Democrat Coalition Trade Task Force, we once again want to reiterate that we do not believe that imported automobiles and auto parts and the hard-working Americans in the auto sector are a national security threat,” the nine House Democrats say in a letter to Trump. “In fact, your abuse of the Section 232 tariff process jeopardizes our national security by alienating our allies and threatening the economic security of American workers.” The fiscal 2020 appropriations law required Trump to release the results of the report on Jan. 19, but that hasn’t happened. Senate Finance Committee Chairman Chuck Grassley said Tuesday he believes it is very unlikely that the Trump administration would be able to follow through on its threat to hit the EU with auto tariffs. The reason the administration doesn’t release the Commerce Section 232 analysis is because “it’s an embarrassing report,” he told reporters.

**General CRP sign-up deadline looms.** Producers have just under two weeks to apply under the general sign-up for the Conservation Reserve Program. The application deadline is Feb. 28. Landowners who are enrolling for the first time or re-enrolling 10- to 15-year contracts may apply. According to USDA’s Farm Service Agency monthly enrollment summary, 13.2 million acres across 118, 295 farms are enrolled in general CRP with an average payment of \$51.92 per acre. Total CRP enrollment, which includes the continuous sign-up, now stands at 21.9 million acres. The 2018 farm bill increased the acreage cap to 27 million acres over the course of the five-year bill. The program was capped at 24 million acres in 2014, but the limit increased to 24.5 million acres for fiscal 2020 and then rises to 25 million in FY21. General CRP contracts control things like soil erosion, improve water quality, and wildlife habitat development on marginally productive farm ground. Contracts accepted for the enrollment period will become effective Oct. 1 of this year. FSA plans to open enrollment soon for the Soil Health and Income Protection Program, a conservation pilot program.

## **Farm Hands West: Borchard added to CFFA**

The California Fresh Fruit Association (CFFA) has hired **Adam Borchard** as the new director of government and public policy. Borchard comes to CFFA after serving as a regulatory advocate at the Association of California Water Agencies. Borchard is a graduate of University of California, Davis where he earned his bachelor’s degree in environmental sciences management. He earned his Juris Doctorate with a certificate in public law & policy and environmental law from University of the Pacific, McGeorge School of Law.

Bobalu Berries in Oxnard, Calif., has added **Tom O'Brien** to the staff as the new sales account manager. O'Brien is the former president and founder of Florida based C&D Fruit and Vegetable Co. Inc. Bobalu Berries also promoted **Ashley Viveros** to sales coordinator.

President **Donald Trump** announced his intent to nominate **Douglas Benevento** to serve as the deputy administrator of the Environmental Protection Agency. Benevento currently serves as associate deputy administrator of the EPA. Before that, Benevento served at the EPA as senior counselor for Regional Management and State Affairs and as Region 8 Administrator. He has also worked on energy and environmental issues at Xcel Energy.

President Trump has also nominated **Mark Wesley Menezes** to serve as the deputy secretary of energy. He currently serves as undersecretary of energy at the Department of Energy and is the principal adviser on energy policy and emerging energy technologies. Before coming to DOE, Menezes served as an executive with Berkshire Hathaway Energy in its Washington, D.C., office. He has also served as chief counsel of energy and environment for the United States House of Representatives Committee on Energy and Commerce, where he was chief negotiator in the enactment of the Energy Policy Act of 2005.



Ryan Jackson

**Ryan Jackson's** last day as chief of staff at EPA is Feb. 21, when **Michael Molina** will serve as the acting chief of staff. It has been widely reported that **Mandy Gunasekara** will be the next chief of staff, but EPA would not confirm.

**Michael Abboud's** last day at EPA was Friday, Feb. 14. Abboud was the senior adviser in the Office of Public Affairs.

The White House Office of Management and Budget has added **Denzel McGuire** as the new program associate director for education and labor. She previously worked for the Grocery Manufacturers Association as the executive vice president of government relations.

**Kevin McNamara** has added the role of vice chairman of the board for Tyson Foods. McNamara currently serves as the lead independent director for the company.

National Farmers Organization has reelected **Paul Olson** to serve a four-year term as president. **Bruce Shultz** of Montana was elected vice president of the organization. Olson is a third-generation farmer from Taylor, Wis., and joined National Farmers in 1969 as a high school senior.

**Taylor Wiseman** has been hired as the new staff assistant and legislative correspondent for the Senate Agriculture Committee. Her first day with the committee was yesterday.

**Christine Sur** now serves as the senior adviser of natural resources for Rep. **Jared Huffman**, D-Calif. Sur covers the portfolio for animal welfare, environmental protection, trade, public lands, natural resources, science and technology, and telecommunications. She previously served as a legislative assistant.

**Amy Lawrence** has been promoted to communications director for Sen. **Martha McSally**, R-Ariz. Lawrence previously served as the press secretary.

**Claire Kaliban** has been hired as the new staff assistant for the Senate Energy and Natural Resources Committee. She previously served as an intern on the committee.

**Best regards,**

**Sara Wyant**  
**Editor**

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