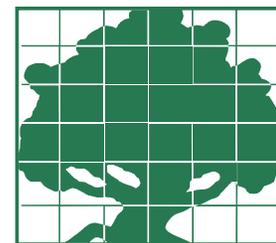


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The Supreme Court's Decision in the 'Raisin Case': What Does it Mean for Mandatory Marketing Programs?

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In *Horne et al. v. Department of Agriculture*, the U.S. Supreme Court ruled that the Raisin Marketing Order's volume-control program constituted an illegal taking of private property. We discuss the rationale for the program, the Court's opinion, and what this decision means for volume controls enacted under marketing order provisions, as well as the other functions that marketing orders commonly perform.

In a decision announced on June 23 of this year, the U.S. Supreme Court ruled on an 8–1 basis in *Horne et al. v. Department of Agriculture* [576 U.S. ____ (2015)] that the reserve requirement implemented by the Raisin Administrative Committee (RAC) under the federal raisin marketing order represented an unconstitutional taking of property. In this article, we provide some brief background on federal marketing orders and mandatory marketing programs, discuss the raisin reserve program and volume-control provisions of marketing orders generally, examine the Court's opinion, and analyze the implications for marketing programs moving forward.

Background on Mandatory Marketing Programs

The Agricultural Marketing Agreement Act (AMAA) of 1937 authorized federal marketing orders. The legislation was enacted during the Great Depression and intended to improve the economic well-being of farmers. Around this same time, most states implemented similar legislation to enable marketing programs to operate within their boundaries. For example, the California Marketing Act was also enacted in 1937. Other authorizing legislation has been passed in succeeding years. In particular, the Commodity Promotion, Research, and Information (CPRI) Act of 1996 authorizes national programs for commodity promotion and

research. Some mandatory marketing programs have also been authorized as “stand alone” pieces of legislation.

All mandatory marketing programs follow some basic principles. They are implemented voluntarily by producers and handlers (if the program's provisions impact handlers) of a specific commodity based upon a vote. Federal marketing orders require a two-thirds supermajority but the CPRI Act only requires a simple majority. Once a program is enacted, its provisions are mandatory for all producers and handlers who operate within the geographic boundaries established by the program.

Federal marketing orders operate subject to the approval of the U.S. Secretary of Agriculture while state programs are subject to the approval of the Secretary's state-level counterpart. Programs are funded by an assessment (often called a check off) on production paid by either producers or handlers, or in part by both. The programs are subject to periodic reauthorization votes and can also be terminated by a vote of producers or handlers.

Federal or state mandatory marketing programs can include a number of collective activities, with the specific purposes outlined in the program's charter. The most common activities by far are generic commodity promotion and funding for research on production and (increasingly) nutrition and health. Also common are quality standards, including the setting and administration of

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Table 1. Federal Marketing Order Provisions

Commodity	Research & Promotion	Volume Control	Grade	Size	Quality
California Almonds	E	A			E
California Dates	E	A	E	E	
California Desert Grapes			E	E	E
California Dried Prunes	A	A	A	A	A
California Kiwifruit	A		E	E	E
California Olives	E		E	E	E
California Pistachios			E	E	E
California Raisins	E	A	E	E	
California Walnuts	E	A	E	E	
Colorado Potatoes	A		E	E	E
Cranberries-10 States	E	A			
Far West Spearmint Oil	E	A			
Florida Avocados	E		E	E	E
Florida Citrus Fruit	A	A	E	E	
Florida Tomatoes	A		E	E	E
Georgia Vidalia Onions	E				
Idaho-East Oregon Potatoes			E	E	E
Idaho-Oregon Onions	A		E	E	E
Oregon-Washington Pears	E		A	A	A
Oregon/WA Hazelnuts	A	A	E	E	
South Texas Onions	E		E	E	E
Tart Cherries-7 States	A	E	A	A	
Texas Oranges & Grapefruit	E		E	E	
Virginia-N. Carolina Potatoes		E	E	E	E
Walla Walla Onions	E		E	E	E
Washington Apricots	A		E	E	E
Washington Potatoes			E	E	E
Washington Sweet Cherries	A		A	A	A

Source: USDA, Agricultural Marketing Service. 2014 “Marketing Order Commodity Index. E=In effect, A=Authorized but not in effect.

grades and minimum quality requirements. Table 1 lists the federal marketing orders in place currently and the activities they are authorized to perform. Notably, volume controls, the subject of the Court’s ruling, are infrequently authorized by federal orders and even less frequently implemented. No state program to our knowledge authorizes volume-control provisions.

In general, mandatory marketing programs have been popular with the producers who operate under their auspices. Most re-authorization votes succeed with a very high level of support, but occasionally programs are

de-authorized. For example, the California Tree Fruit Agreement, as applied to fresh peaches and nectarines in California, was terminated in 2011, following the failure of a re-authorization vote to attain the necessary supermajority.

Despite their popularity, mandatory marketing programs have long been controversial. Some producers and handlers have questioned their effectiveness or challenged them in courts as unconstitutional infringements on their liberty to make their own production and marketing decisions. Prior to the raisin case, a handful of other cases came before the U.S. Supreme Court.

The first was in 1939 (*U.S. v. Rock Royal Co-op, Inc.* [307 U.S. 533 (1939)]) where a dairy cooperative asserted the Secretary violated due process (5th Amendment) and infringed on commerce rights reserved for the states (10th Amendment) because the cooperative’s milk was not shipped out of state. The Court ruled 5-4 against the cooperative, establishing the constitutional justification for programs that would last for more than half a century. No new constitutional threat to the programs would emerge until the 1990s, when plaintiffs saw an opportunity to challenge the promotional aspects of the marketing programs.

The first case to reach the Supreme Court concerned the advertising of peaches, plums, and nectarines. In *Glickman v. Wileman Brothers & Elliott, Inc.* [521 U.S. 457 (1997)], the Court ruled that the advertisement was part of a larger regulatory scheme and not unduly violative of the plaintiff’s First Amendment rights. The Court ruled four years later in *United States v. United Foods, Inc.* [533 U.S. 405 (2001)] that the federally mandated mushroom advertising program was not part of a larger regulatory scheme, and was, in this case, unconstitutional.

The 1997 and 2001 rulings created confusion, as programs sought clarification on just what constituted the extent of regulation. In 2005, the Court ruled the beef promotion program to be constitutional because it was a form of government speech (*Johanns v. Livestock Marketing Association* [544 U.S. 550 (2005)]). Unlike private speech, government speech is not subject to the First Amendment. This ruling effectively silenced First Amendment challenges to all of the programs.

None of the cases that reached the Supreme Court examined volume control. However, both the 1997 Glickman case and the 2001 United Foods case did note volume control as a criterion for determining whether a program was heavily regulated.

Some Basic Economics of Volume-Control Programs

Agriculture is unique among industries in that producers ordinarily do not know in advance the level of their production, given its dependence on weather conditions, infestations of pests, natural disasters, etc. This characteristic, in conjunction with demands where prices are very sensitive to the volume produced, can lead to highly volatile farm prices and “boom and bust” cycles.

Marketing orders were authorized and first implemented to promote “orderly marketing.” The primary interest in the early years of such programs was in volume controls. This was the depression era, and it was well understood that demand for most agricultural products was unresponsive (inelastic) to price. This meant that reducing volumes produced would raise producer revenues and most likely also lower costs. Thus, volume controls could be an effective way to increase producer profits in the short run without overt government intervention in the form of price supports.

Another basic economic fact for many farm products is that the price responsiveness of demand differs depending upon the market outlet. For example, it is generally true that demand in export markets is more price sensitive than domestic (U.S.) demand and that for products with fresh and processed outlets (dairy is a prime example), the demand in the fresh outlet will be less price sensitive than in the processing outlets.

Of course, differing sensitivities to price across market segments applies to a great many products and services and businesses often exploit this fact in their pricing decisions. For example, strategies such as discounts for students and senior citizens are predicated on subgroups being more sensitive to prices than others.

Thus, volume controls or restrictions on sales of products into particular

market segments have a strong basis in economic theory as a tool to increase producer incomes, which was the intent of the AMAA and its state-level counterparts. Attempts by individual producers to exploit these basic economic facts of agricultural markets would be futile, given the competitive nature of agricultural production. Any volume controls must be accomplished at the industry level, and federal marketing orders provided a platform to implement them.

The Raisin Case

California raisins have operated under both federal and state marketing programs in most years. The state program, which included both growers and handlers, was terminated based upon handler vote and then reconstituted to involve only growers. The state order assesses producers based on tonnage—primarily to fund research on production, post-harvest activities, nutrition, and marketing and communications for consumer education, trade and industry relations, and market development.

The federal order also supports research and promotion but, in addition, includes the volume regulation provisions that were at issue in *Horne*. The order mandates that the RAC set free and reserve tonnage for each crop year on a formulaic basis, considering production relative to trade demand by varietal type of raisin. The RAC held the title to the reserve and disposed of these raisins in “noncompeting” market outlets—mainly exports, charitable programs, and government food programs. Neither producers nor handlers received direct payment for reserve raisins, although a payment was often received if revenues from sale of the reserve raisins exceeded the RAC’s costs of administering the program.

The raisin reserve program thus embodied elements of both a strict volume-control program and a market allocation program. It intended to divert raisins from the primary domestic market, where demand is inelastic, by

funneling them in large part to existing and emerging export markets where demand is more elastic. Thus, new consumers could be created by introducing them to the product on a low-cost basis.

Marvin and Lena Horne and their family were both raisin growers and handlers, and they objected to the reserve program as an illegal taking of their property. They refused to comply with the program and were subjected to fines and civil penalties for their noncompliance. In the ensuing litigation, the government’s position was upheld by the Ninth Circuit Court but was reversed by the Supreme Court, with the majority opinion written by Chief Justice Roberts. Only Justice Sotomayor dissented in the entire opinion. Justices Breyer, Ginsburg, and Kagen concurred in part and dissented in part.

The Court’s Opinion

In reaching the court’s opinion, the Chief Justice answered three questions: First, did the Fifth Amendment, which prohibits government taking of private property without compensation, apply only to real property and not to personal property? The Court found readily that it applied to personal property and, hence, to the Hornes’ raisins.

Second, did the government, operating through the RAC, avoid the requirement to pay just compensation because the owners of the reserve raisins retained a contingent interest in them even after the RAC took possession, i.e., a return most often was eventually paid on the raisins? The majority answered this question in the negative, arguing that the contingent interest did not mean no taking had occurred, since the payment was at the RAC’s discretion and on some occasions no payment had been made.

Finally, the Court answered in the affirmative (“at least in this case”) the question of whether the requirement to relinquish property (i.e., reserve raisins) as a condition to engage in commerce (i.e., producing and handling raisins)

constituted a per se taking. Here, the Court distinguished *Horne* from two prior cases relied upon by the dissenters in *Horne*. In *Ruckelshaus v. Monsanto Co.* [467 U.S. 986 (1984)], the Court had ruled that requiring chemical companies to disclose trade secrets, in complying with disclosure requirements for health, safety and environmental considerations, did not constitute a taking because the companies received a valuable government benefit in exchange—the right to sell dangerous chemicals. The Court called raisins a “healthy snack” to distinguish the *Horne* and *Monsanto* cases.

Similarly inapplicable in the Court’s eyes was *Leonard & Leonard v. Earle* [279 U.S. 392 (1929)], wherein the requirement that oyster packers remit 10% of their marketable harvest to the government did not constitute a taking because oysters were the property of the state (Maryland) under the law. Thus, the 10% assessment was viewed as compensation to the state for the privilege of extracting the oysters. Raisins, reasoned the Court, were private property, unlike the Maryland oysters.

Finally, in a portion of the case decided in favor of the plaintiffs on only a 5–4 basis, the Court rejected the government’s contention that, upon ruling that an illegal taking had occurred, the case should be remanded to the Ninth Circuit to calculate what compensation should be due the Hornes. Here, the Court finally addressed, albeit in passing, the fundamental purpose of the reserve program, namely to increase returns to raisin growers through “orderly marketing.” In reality, the marketing order was implementing a third-degree price discrimination scheme intended to support domestic prices by diverting raisins to alternative outlets better able to absorb them without impacting prices.

The Court seemed receptive to such arguments, noting that “the best defense may be a good offense,” but chided the government for providing no evidence regarding the benefits that

the petitioners might have received from the RAC’s reserve program. Such benefits, however, might have been estimated rather easily using standard tools of economic analysis.

Discussion: Implications for Mandatory Marketing Programs Moving Forward

As we noted, volume-control programs conducted under the auspices of federal marketing orders have waned over time, even though volume-control provisions are authorized in several orders. Even the raisin order had not implemented a reserve program since 2009.

Reluctance to implement volume controls may be due to several factors. In some cases, growers are philosophically opposed to volume controls to the point where boards are unwilling to recommend them. In other cases, with California almonds representing a prime example, demand growth and favorable prices have eliminated the need to even consider volume controls. In another instance, the Cranberry Marketing Committee voted to implement volume control for the 2014 crop, but the Secretary of Agriculture rejected the plan because the proposal involved Canadian growers who were outside the auspices of the order. The tart cherry marketing order, however, had a volume-control policy in place as recently as the 2014/15 crop year.

Notably, the U.S. Department of Agriculture does not believe that the Court’s opinion in *Horne* applies to any other federal marketing order that contains volume-control provisions. In a communication to the boards operating such orders, the department wrote the following:

“The Supreme Court’s decision in *Horne* addresses a narrow situation where, under the Raisin Marketing Order, the government, through an administrative committee, takes title to a crop held in reserve and may physically appropriate that

crop. The decision does not address other types of volume controls or reserve programs. Because no other administrative committee physically appropriates and takes title to the agricultural product as part of a volume-control program, the Court’s analysis in *Horne* will not affect the current operation of USDA’s other marketing orders, which help to stabilize market prices and are tailored to an individual industry’s marketing needs.”

Implementing a volume-control program has most often been controversial even prior to the *Horne* decision. Our guess is that boards will be reluctant to recommend them to the Secretary in the aftermath of *Horne*, and any that are implemented will be challenged under *Horne*. However, the important takeaway from *Horne* is that the Petitioners challenged successfully a volume-control program that had unique features relative to other authorized volume-control provisions. Further, based on the court’s opinion, the government failed to support an argument regarding the benefits Petitioners and other raisin growers likely derived from the program that might have found favor with the court. Most importantly, the court’s opinion does not challenge in any way the existence of mandatory marketing programs and the functions they most often perform, such as funding research and promotions, and implementing grades and standards.

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California Farm Labor: Jobs and Workers

Brandon Hooker, Philip Martin, and Andy Wong

The combination of labor-intensive crops, tighter border controls, and new programs that may give some unauthorized foreigners a temporary legal status has increased interest in the number of farm workers and their stability. During the 1990s, there were an average three unique farm workers or Social Security Numbers reported by California farm employers for each year-round equivalent farm job. Analysis of data for 2007 and 2012 find two workers per job, a significant increase in stability. The ratio of workers to jobs may fall further as farmers mechanize, offer higher wages and benefits to retain current workers, or turn to guest workers.

California has led the nation in farm sales since 1950, largely because of the state's specialization in high-value fruit and vegetable crops. California's farm sales of \$45 billion in 2012 included \$17.2 billion worth of fruits and nuts, \$6.8 billion worth of vegetables and melons, and \$3.5 billion worth of horticultural specialties such as greenhouse and nursery products. The value of field crops such as cotton, hay, and rice was \$5 billion, making crop sales \$32.5 billion or 73% of the state's farm sales.

Livestock and poultry sales were \$12.1 billion, including \$6.9 billion or 57% from milk. Fruit, vegetable, and horticultural (FVH) crops accounted for 85% of the state's crop sales and 61% of farm sales.

The production of many fruits and vegetables is labor-intensive, meaning that labor represents 20–40% of production costs. In the 2012 Census of Agriculture, California farmers reported paying \$5.9 billion for workers they hired directly and \$3.3 billion for contract labor; that is, workers

brought to farms by nonfarm entities such as farm labor contractors. California, which accounted for one-eighth of U.S. farm sales, accounted for a quarter of U.S. farm labor expenses.

Hired workers do most of the work in labor-intensive FVH agriculture. According to the National Agricultural Workers Survey, over 85% of the state's farm workers were born in Mexico, and over 60% of crop workers employed on the state's crop farms have been unauthorized for the past decade—10 percentage points higher than the U.S. average of 50%. Farm employers say that farm workers present seemingly valid documentation and SSNs when they are hired.

The state's Employment Development Department (EDD) obtains data on farm workers and their wages when it collects unemployment insurance taxes from employers. Employers who pay more than \$100 in quarterly wages are required to register with the EDD and pay taxes of up to 6% on the first \$7,000 in earnings of each worker's earnings to cover the cost of unemployment insurance benefits for laid-off workers.

We extracted all SSNs reported by agricultural employers (NAICS 11) to EDD in 2007 and 2012, and tabulated their farm and nonfarm jobs in California. This allowed us to assign

workers with more than one job to their primary commodity and county; that is, to the NAICS code and county of the employer(s) where they had their maximum earnings. We excluded about 2,337 SSNs from 2007 and 892 from 2012 because of data concerns.

Farm Jobs and Farm Workers: 2012

Average employment on the state's farms is derived from employer reports of workers on the payroll for the pay period that includes the 12th of the month. Most farm workers are paid weekly, so 412,000 workers employed in 2013 is the average employment of workers on the payroll during the second week of the month. If employment surges or falls in the third or fourth weeks, these additional workers are not included in the average employment data, which is a monthly snapshot, summed, and divided by 12 months. However, our analysis captures these additional workers.

Figure 1 shows two major changes in average farm employment since 1990. First, average employment in agriculture rose 10%. Second, there was a change in who employs farm workers; a decline in direct employment on crop farms (NAICS 111), stable employment of direct-hire workers in animal agriculture (NAICS 112), and a 50% increase in crop support employment

Figure 1. Average Employment in California Agriculture, 1990–2013

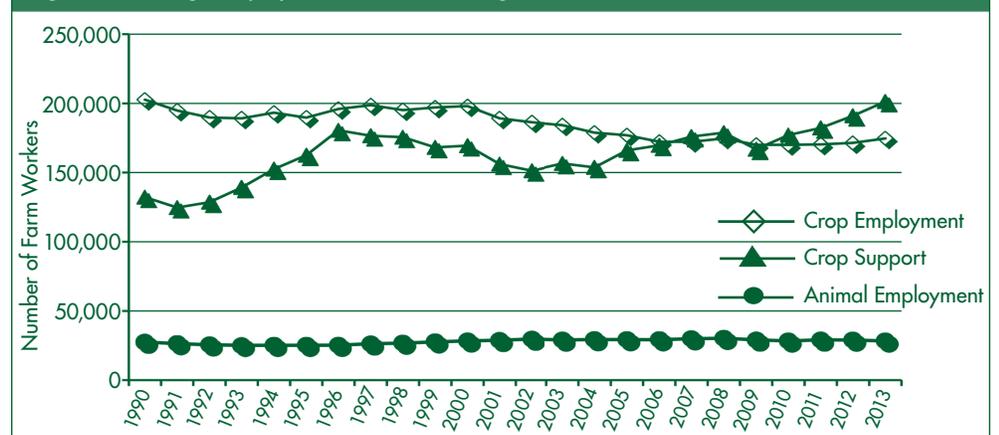
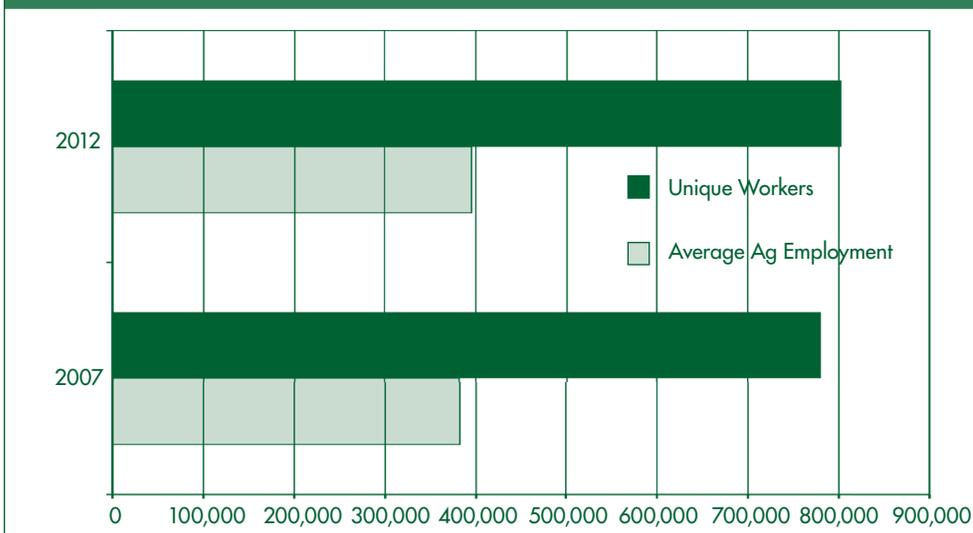


Figure 2. Average Agriculture Employment and Unique Workers, 2007 and 2012



(1151), most of which represents workers brought to farms by farm labor contractors. Since 2010, average employment by crop support establishments has been rising by 10,000 a year. In

2013 crop support firms brought more workers to crop farms—an average of over 200,000—than the 175,000 workers that crop farms hired directly.

How many unique farm workers are

hired during a year? Average employment is an estimate of full-time equivalent jobs, not the total number of farm workers. Figure 2 shows that when average employment in California agriculture was 399,000 in 2012, there were 803,000 unique SSNs reported by agricultural establishments—a two-to-one worker to job ratio. In 2007 when average employment was 386,000, there were 780,000 unique SSNs—also a two-to-one worker to job ratio.

The 803,000 farm workers in 2012 earned a total \$14.1 billion, including \$10.3 billion or over 70% from agricultural employers (NAICS code 11). Average earnings for all workers with at least one farm employer were almost \$18,000 in 2012 while average earnings for primary farm workers, defined as those who had their maximum earnings in agriculture, were \$15,000.

Workers can be assigned to the primary NAICS or commodity in which they had the highest earnings. For example, 675,000 of the 803,000 farm workers had their highest earnings from a farm employer, and 491,000 of these primary farm workers had only one agricultural employer in 2012.

Table 1 shows that 56% of the primary farm workers in 2012 were employed by crop support employers (NAICS 1151), followed by 23% who were employed by fruit and nut farming establishments (NAICS 1113). These two sectors had the lowest average earnings, explaining why overall average earnings for primary farm workers were only \$15,000 even though all commodities except crop support and fruit and nut had higher average earnings.

There is significant variance in earnings by sector. Workers whose maximum earnings were with crop support firms (NAICS 1151) earned an average \$11,700 in 2012 while those employed in animal agriculture earned over \$25,000. Average earnings for directly hired workers on crop farms varied from a high of \$23,500 in

Table 1. California Farm Workers and Earnings, 2012

	Primary Workers	Earnings (\$mil)	Average Earnings (\$)	Only Job	Share
NAICS Agriculture	674,645	10,324.30	15,303	490,615	73%
1111 Oilseed/Grain Farming	4,625	114.8	24,825	3,299	71%
1112 Vegetable/Melon Farming	47,254	1,028.80	21,733	32,250	68%
1113 Fruit/Tree Nut Farming	152,542	2,441.80	16,007	103,708	68%
1114 Greenhouse/Nursery Production	34,953	821.1	23,494	27,139	78%
1119 Other Crop Farming	18,161	461	25,389	13,241	73%
1121 Cattle Ranching and Farming	25,662	705.1	27,480	20,728	81%
1123 Poultry and Egg Production	2,879	76.8	26,689	2,171	75%
1129 Other Animal Production	2,804	70.8	25,270	2,169	77%
1151 Support Crop Production	378,960	4,337.30	11,709	280,606	74%
1152 Support Animal Production	3,114	77.2	24,795	2,593	83%
Nonfarm	127,977	3,798.10	29,678	1,849	1%
All Workers with One Ag Job	802,622	14,122	17,595		

Primary workers are SSNs with maximum earnings in this NAICS sector. 674,645 or 84% of the 803,514 unique SSNs reported by agricultural employers had maximum earnings in ag NAICS sectors. Table excludes 2,187 workers employed in forestry, fishing, and hunting.

greenhouses and nurseries to \$21,700 on vegetable farms and \$16,000 on fruit and nut farms. Average worker earnings were lowest in sectors with the highest share of seasonal jobs.

Three-fourths of the \$10 billion in agricultural earnings were from three NAICS codes: 1151 crop support activities, \$4.3 billion, 1113 fruits and nuts, \$2.4 billion, and 1112 vegetables, \$1 billion. Other major sources of agricultural earnings were NAICS 1114 greenhouses and nurseries, \$821 million, and NAICS 1121 cattle and dairy, \$705 million.

If the state's 800,000 farm workers are assigned to the NAICS code where they had maximum earnings in 2012, several groups of workers can be identified. Almost 675,000 or 84% of farm workers had their maximum earnings from agricultural establishments, including:

- 379,000 or 56% whose maximum earnings were from NAICS 1151 crop support establishments
- 153,000 or 22% whose maximum earnings were from NAICS 1113 fruit and nut establishments
- 47,000 or 7% whose maximum earnings were from NAICS 1112 vegetable establishments.

Among the 675,000 primary farm workers in 2012, over 85% were employed by crop support firms (often labor contractors), fruit and nut farms, and vegetable and melon farms.

Second, there were 491,000 farm workers who had only one job in one NAICS sector in 2012; that is, three-fourths of workers whose maximum earnings were from agricultural establishments worked in only one agricultural NAICS sector such as fruit and nut farming. These "one-farm employer" workers were in the same three sectors:

- 281,000 or 57% were in NAICS 1151 crop support
- 104,000 or 21% were in NAICS 1113 fruits and nuts
- 32,000 or 6% were in NAICS 1112 vegetables and melons.

Table 2. Workers with Farm and Nonfarm Jobs, 2012

	2 Ag Earners	Share	1 Ag, 1 Nonag	2 Ag, 1 Nonag
Primary Ag Workers	99,247	15%	61,467	23,316
1111 Oilseed/Grain Farming	645	14%	542	139
1112 Vegetable/Melon Farming	9,153	19%	3,816	2,035
1113 Fruit/Tree Nut Farming	30,607	20%	11,757	6,470
1114 Greenhouse/Nursery Production	2,969	8%	4,028	817
1119 Other Crop Farming	2,799	15%	1,534	587
1121 Cattle Ranching/Farming	1,788	7%	2,603	543
1123 Poultry/Egg Production	144	5%	494	70
1129 Other Animal Production	228	8%	348	59
1151 Support Crop Production	50,416	13%	35,493	12,445

There were 99,247 unique SSNs with maximum earnings from ag employers and with two or more ag employers.

A closer look at workers whose maximum earnings were with farm employers finds that two-thirds of directly hired fruit and vegetable workers were employed by one fruit or vegetable establishment, and three-fourths of crop support workers were employed by one crop support firm. Over three-fourths of workers in livestock production were employed by one livestock establishment.

Third, there were 99,000 primary farm workers, one-sixth of those whose maximum earnings were from agricultural establishments, with at least two farm employers in 2012. Of primary farm workers with at least two farm employers, one-half had their maximum earnings from NAICS 1151 crop support establishments, but only one-seventh of crop support workers had two farm employers. About 20% of those whose maximum earnings were from fruit and vegetable farmers had at least two farm employers, as did one-eighth of those with maximum earnings from crop support establishments.

Over 61,000 farm workers had at least one farm and at least one nonfarm employer, and over 60% of these farm and nonfarm workers had their maximum earnings from NAICS 1151 crop support establishments, followed by 20% whose maximum earnings were from fruit farmers. The most

common nonfarm jobs were in waste management and manufacturing.

There were 23,000 primary farm workers with at least two farm employers and at least one nonfarm employer. Half of these workers had their maximum earnings in crop support services and a quarter in fruit and tree nut farming. Their nonfarm employers were in waste management, manufacturing, and trade.

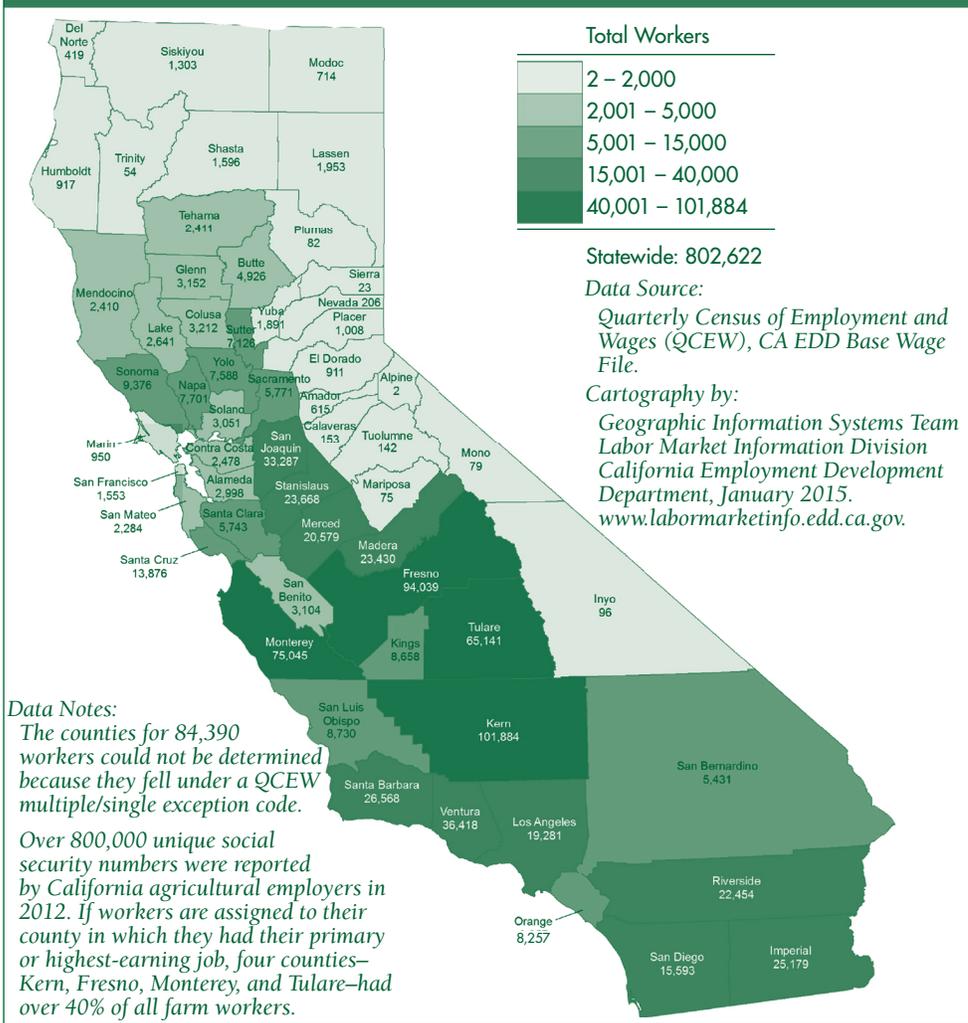
Earnings of Farm Workers: 2012

The average earnings of primary farm workers varied by NAICS or commodity, and median earnings were significantly lower than mean earnings, reflecting high-paid supervisors and managers included in the data. The highest average earnings in sectors with at least 1,000 workers were the \$27,600 in cattle ranching and farming (NAICS 1121).

Mean annual earnings were generally higher in animal than in crop agriculture, likely reflecting more hours of work each year. Indeed, if mean earnings are divided by average hourly earnings in 2012, as determined by a separate survey of agricultural employers, workers whose maximum earnings were in animal agriculture generally averaged close to 2,000 hours a year, compared with 500 to 1,500 hours in most crop activities.

There was a wide variance in average

Figure 3. Where Workers' Primary Jobs Are Located, 2012



earnings; the standard deviation was generally larger than mean earnings. If workers are ranked by their earnings from lowest to highest, the 25th percentile marks the earnings, \$1,125, at the top of the lowest quarter of workers earners, meaning that one-fourth of those employed by labor contractors in 2012 earned less than \$1,125. Similarly, a quarter of workers in fruit and nut farming earned less than \$3,700. The 75th percentile marks the earnings of three-fourths of workers ranked from low to high, so that a quarter of FLC employees earned more than \$12,700 and a quarter of fruit and nut farming employees earned more than \$20,700 in 2012.

Conclusions

Average monthly employment of hired workers in California agriculture rose

10% over the past decade, reaching almost 412,000 in 2013. Analysis of the unique social security numbers (SSNs) reported by agricultural establishments in 2007 and 2012 suggests that there were an average two workers for each year-round equivalent job, making the total farm workforce twice the average employment or about 800,000.

Of these 800,000 farm workers:

- Three-fourths had their maximum earnings with an agricultural employer, and these primary farm workers earned an average \$15,000 in 2012.
- Over 85% of the 675,000 primary farm workers were employed by crop support firms (often labor contractors), fruit and nut farms, and vegetable and melon farms.
- Three-fourths of the primary farm workers, 490,000, had only

one farm employer in 2012 and fewer than 100,000 had two or more farm employers.

- Four counties—Kern, Fresno, Monterey, and Tulare—had over 40% of all primary farm workers.

These data suggest a more stable workforce than is sometimes assumed, with most farm workers attached to one farm employer, often a labor contractor.

Three-fourths of farm workers had their primary or maximum earnings from agricultural employers, and one sector, crop support services, accounted for 56% of the 675,000 primary farm workers. In 2012 three-fourths of workers in crop support services were hired by farm labor contractors.

An earlier study reported almost three workers for each year-round farm job in the 1990s, and more workers with more than one farm job. The reduction from three to two farm workers per average job in California agriculture could reflect fewer false SSNs, more stability in worker-employer relationships, or a combination of both.

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The Evolving Legal Organization of California Farms: Corporations and LLCs

Hoy F. Carman

California corporate farms continue to grow in terms of numbers, share of all farms, acreage, and product sales. The average California corporate farm is larger than the average single proprietor and partnership farm, but all three organizational forms are represented in each of the size, asset and product sales categories from smallest to largest. Many California farms now realize some corporate advantages through organization as a Limited Liability Company.

The legal organization chosen for a farming business can have many implications. While any organizational model may be chosen at any stage in a firm's life cycle, most farms begin as single proprietor or family operations with some evolving into other forms as circumstances change. In general, income tax complexity, managerial requirements, and reporting rules increase as one moves from single proprietor to partnership to Limited Liability Company (LLC) to corporation.

Farm businesses typically have specific reasons to incorporate or become an LLC. For an LLC, the major reason is to gain limited liability by separating farm business operations and assets from personal assets. When a single proprietor or partnership changes to an LLC, their income tax treatment does not change and they have considerable flexibility in specifying firm management and allocation of revenues. Farm firms that incorporate typically do so for risk management and legal liability, separation of ownership and management, other management considerations, income taxation, employee benefit programs, inter-generational transfers of farm assets, and ownership of assets.

The Census of Agriculture, conducted on a five-year interval, presents annual data on farms by legal organization, including single proprietor or family farms, partnerships, corporations and others (cooperative, estate, trust, institutional, etc.). For the first time in 2012, the Census also counts the number of California farms registered as Limited Liability Companies (LLCs), often referred to as Limited Liability Corporations.

Corporate Farm Changes

California corporate farms continue to grow in both numbers and as a proportion of total farms. There were 6,361 corporate farms in 2012, a gain of 611 farms from 5,750 corporate farms reported in the 2007 Census (Table 1). The corporate gain of just over 1% of all farms, from 7.1% in 2007 to 8.2% in 2012, was the largest census-to-census percentage gain for corporate farms since 1978. Much of the growth in corporate farm numbers occurred between 1969 and 1982. There were 1,212 corporate farms in 1969 and 2,601 in 1974.

California farm corporations are characterized as being closely held by family members. Family members hold all the stock in 5,345 out of the total 6,361 farm corporations (84%), and 5,081 of these 5,345 farms have 10 or fewer stockholders. Overall, 93% of California's corporate farms (family and other than family

held) have 10 or fewer stockholders.

While one must be careful about generalizations based on averages, California corporate farms can be characterized as having more land and other resources, and higher product sales, than individual or family farms and partnerships. In aggregate, corporate farms accounted for 21% of California's 25.6 million acres of land in farms and 35.3% of California's 2012 agricultural product sales.

Data on average farm characteristics in Table 2 illustrate the larger size of corporate farms. Corporations have the largest number of acres per farm at 843 acres, more than four times larger than the average 201 acres per farm for individual or family farms. Corporate average sales per farm are almost 11.6 times larger than average sales for individual or family farms. The corporate estimated market value of land and buildings, almost \$6.3 million per farm, is more than five times the average for individual and family farms while the average value of machinery and equipment is six times higher for corporations.

However, all individual proprietor and family farms are not small, and not all corporate farms are large. For example, there are 1,020 individual and family farms with an estimated market value for land and buildings of over \$10 million, and another 3,283 valued from \$5 million to \$10 million. There were 902 farm corporations with an estimated market

Table 1. Number of California Farms, Number of Corporate Farms, and Corporate Farms as a Proportion of Total Farms, Census Years 1978 through 2012

	Census Year							
	1978	1982	1987	1992	1997	2002	2007	2012
Total Farms	73,194	82,463	83,217	77,669	87,991	79,631	81,033	77,857
Corporate Farms	3,871	4,849	5,367	5,067	5,504	5,070	5,750	6,361
Corporate Farm Percentage	5.3%	5.9%	6.5%	6.5%	6.3%	6.4%	7.1%	8.2%

Source: USDA, Census of Agriculture for each year noted.

value for land and buildings of over \$10 million, and another 684 valued from \$5 million to \$10 million. At the other end of the distribution, there were 3,768 individual and family farms and 198 corporations with an estimated value of land and buildings of less than \$50,000.

Comparison of 2012 with 2007 corporate farm data shows some interesting changes. The average corporate farm increased from 784 to 843 acres, average product sales increased from \$2,187,321 to \$2,374,644, and the average value of machinery and equipment increased from \$396,451 to \$409,873. Despite increased acreage, the estimated market value of land and buildings for the average corporate farm decreased from \$6,315,180 in 2007 to \$6,255,875 in 2012. However, the corporation share of farms by number, with a value of land and buildings over \$10 million, increased from 27.3% in 2007 to 29.8% in 2012. Conversely, the individual or family farms' share decreased from 39.4 to 33.7%.

Classification of Corporate Farms by Major Product

The Census of Agriculture uses the North American Industry Classification System (NAICS) to classify farms by the commodities that constitute a majority of the sales for the operation. One-half of California's corporate farms (3,187 out of 6,361) are fruit and tree nut farms. Corporate farms are 8.2% of all farms (Table 2) and 8.9% of all fruit and nut farms. Other NAICS farm classifications that include more than 8.2% corporate farms include greenhouse, nursery and floriculture farms (20.9%), cattle feedlots (12.8%), vegetable and melon farms (12.7%), dairy cattle and milk production (9.0%), and oilseed and grain farms (8.8%).

There is substantial variation in the market value of corporate farm sales, as well as the proportion of total sales by product category. Overall, the total market value of agricultural products

sold and government payments for California farms was \$42.6 billion in 2012. Of this total, family or individual farms accounted for \$12.2 billion, (28.6 %); partnerships, \$14.0 billion (32.8%); other farms, \$1.4 billion (3.2%); and corporations, \$15.1 billion (35.4%).

The product categories that have the largest proportion of corporate farm sales include: greenhouse, nursery, floriculture and sod (74.8%); vegetables, melons, potatoes and sweet potatoes (50.8%); berries (44.5%); cotton and cottonseed (36.9%); and fruit and tree nuts (36.8%). Farm product categories with the largest 2012 corporate farm sales included: fruit and tree nuts, \$5.8 billion; vegetables, melons, potatoes and sweet potatoes, \$3.2 billion; greenhouse, nursery, floriculture and sod, \$1.9 billion; and cattle and calves, \$1 billion.

Corporate Farm Operations

Census data provide some interesting observations on California corporate farm operations. While corporate farms had about 21% of California's land in 2012, they accounted for 30.3% of the irrigated land in farms. Almost 18% of all California farms enrolled just over 4.9 million acres of land in crop insurance programs during 2012. While partnerships had the highest participation (34.5%) and acreage enrolled (36.5%), just over 31.9% of California farm corporations accounted for 26.0% of the total acres enrolled in crop insurance programs.

Not surprisingly, corporate farms are an important employer for full- and part-time farm workers. The census reported that 4,167 farm corporations hired 92,613 workers for 150 days or more during 2012. This was about 45% of all farm workers who worked for 150 days or more during the census year. Farm corporations also hired about 35% of the 259,571 farm workers who worked less than 150 days during 2012. Almost 80% of California corporate farms reported hired farm labor in

2012, accounting for about \$2.7 billion of the total payroll of \$5.9 billion.

California farm corporations' role in organic farming is growing. The 2012 census reported a total of 3,008 California farms with organic sales totaling almost \$1.4 billion. This compares with 3,515 farms with \$656.8 million organic sales in 2007. There were 367 corporate farms with total organic sales exceeding \$272 million in 2007. During the next five years, this increased to 482 corporate farms with total organic product sales of almost \$686 million. Thus, corporate farm sales of organic products in 2012 were greater than total California farm sales of organic products by all farms in 2007.

Corporate farms accounted for about 41% of total organic product sales in 2007; this increased to 50.6% of California's organic product sales in 2012. The average corporate organic producer reported over \$1.4 million of organic product sales in 2012. In contrast, 1,994 family or individual proprietor farms with organic production had average organic sales of \$146,970 and accounted for just 21.6% of total 2012 organic sales.

California LLCs

The Census of Agriculture counted the number of California farms organized as LLCs for the first time in 2012, but did not report any details on their characteristics, size distribution, or operations. There were 4,453 California farms organized as LLCs in 2012. Of these, 2,096 (3.5%) of California's 59,732 family or individual proprietor farms were organized as LLCs, 2,111 (23.5%) of 8,984 California farm partnerships, and 246 (12.6%) of 1,949 other farms (cooperative, estate, trust, institutional, etc.) were LLCs in 2012.

A major reason for organizing a farm business as a corporation or LLC is that both offer "limited liability" to the business owners. This means that if the business has debts or faces a

lawsuit for some other reason, only the business assets are at risk. With limited liability, creditors usually cannot reach the personal assets of the business owner. Since an LLC is sometimes described as offering the best features of a partnership and corporation, the legal organization of 23.5% of California's partnerships as LLCs is not surprising. LLCs offer considerable flexibility as to number and classes of owners, management, operations, and tax treatment.

According to California's Franchise Tax Board, forming an LLC in California is easier and faster than forming a corporation. In addition, LLCs do not issue stock and are not required to hold annual meetings or keep written minutes, which a corporation must do in order to preserve the liability shield for its owners.

For income tax purposes, an LLC is treated as a pass-through entity with a single member treated as a sole proprietor while an LLC with more than one member is treated as a partnership. Note that an LLC with either single or multiple members may elect to be taxed as a corporation by filing IRS Form 8832. Thus, an LLC can elect to be taxed as an S-corporation if the tax benefits of an S-corporation are considered advantageous. California LLCs are subject to an annual tax of \$800 on California form 568, and may be subject to an additional LLC fee based on total income.

Concluding Comments

California corporate farms are growing both in numbers and relative to other organizational choices. They are also getting larger, in terms of total acreage and acreage per farm, in per farm product sales, as well as share of total farm product sales.

One must be careful about general statements regarding corporate vs. individual proprietor or family farms. While the majority of California's farms with the smallest average land holdings and product sales are individual proprietor

Descriptive Characteristic	Legal Status for Tax Purposes				
	All California Farms	Individual or Family	Partnership	Corporation	Other (coop, estate, trust, etc.)
Number of Farms	77,857	59,732	8,984	6,361	2,780
Percent of Farms	100	76.7	11.5	8.2	3.6
Average Size (Acres/Farm)	328	201	772	843	458
Average Sales/Farm	\$549,397	\$204,901	\$1,565,016	\$2,374,644	\$492,826
Value of Land & Bldgs/Farm	\$2,061,792	\$1,228,827	\$4,539,424	\$6,255,875	\$2,355,712
Average Value Machinery & Equipment	\$124,720	\$67,055	\$308,970	\$409,873	\$116,232

Source: USDA, Census of Agriculture for each year noted.

or family farms, some of these smallest farms are also partnerships and corporations.

There is substantial variation in crops grown and crop sales for different farms by legal organization. While involved in production of all California commodities, corporate farms tend to be most prevalent in some of the more capital intensive operations such as greenhouse, nursery and floriculture production, vegetable and melon farming, berry farms, and large fruit and tree nut farms.

Individual and family farms and partnerships tend to have more involvement in livestock and grain farms. Corporate farms account for over half of all California sales of organic products and their share is growing. Corporate farms are also a major employer for both full and part-time farm labor.

A relatively large number of California's family and individual farms and partnerships have recently organized as LLCs. This has probably reduced the number of farms that might have organized as corporations since organization as an LLC is an easier and less expensive option to gain limited liability protection for nonfarm assets. The

future rate of incorporation of California farms is also expected to decline as the comparative features of LLCs and corporations become better known.

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