

**HASS AVOCADO BOARD
BOARD MEETING MINUTES
April 16, 2003**

A meeting of the Hass Avocado Board (HAB) was held on Wednesday, April 16, 2003 at the California Avocado Commission (CAC) office in Santa Ana, California, with the following people present:

MEMBERS PRESENT

Charley Wolk-Chairman
Scott McIntyre-V. Chair
Alva Snider-Secretary
Robert Bednar-Treasurer
George Barnes
Mark Borchard
Eric Crawford
Jim Finch
Ed Figueroa
Len Francis
Luke Sears (Alt. De Malo)

ALTERNATES PRESENT

Michael Browne
Giovanni Cavaletto
Ralph DeLeon
Bob Flack
Paul Foley
Tom Markle
Dan McGrath
Robert Perry
Don Reeder
Donna Singmaster

GUESTS PRESENT

Kari Bretschger
Irene Cabanas
Manuel Castillo
Kathleen DeFreitas
Xavier Equihua
Paul Izenstark
James McCormac
Tom Mitchell
Jerome Stehly

MEMBERS ABSENT

James DeMalo

ALTERNATES ABSENT

OFFICIALLY PRESENT

Under Secretary
Bill Hawks, USDA
Margaret Irby, USDA
Richard Pasco, MWM
Patrick Atagi, USDA

CAC STAFF PRESENT

Mark Affleck
Tom Bellamore
Betty Bohrk
Jan DeLyser
Laurie Hill
Val Weaver

CALL TO ORDER

Chairman Wolk called the meeting to order at 9:30 a.m. with a quorum present.

INTRODUCTION

Chairman Wolk introduced USDA representatives Under Secretary Bill Hawks, his assistant Patrick Atagi, and Margaret Irby, Acting Chief, Research & Promotion Branch.

BOARD ORGANIZATION AND OPERATION

Review and Approval of By-Laws

Bylaws Committee Chairman Alva Snider reported on his April 9, 2003 committee meeting and recommended the final draft for HAB approval.

The HAB discussed each line item of the Bylaws along with the Supplement to add Sections 7 and 8 to Article VI, Hass Avocado Board.

Following discussion on reciprocity of seats on HAB and association boards, this motion was offered to define the HAB member on association boards.

MOTION: *The HAB Board of Directors approves a language change in the HAB Bylaws Supplement Provision for Section 7 of Article VI, Hass Avocado Board to read, "The Designatee from this Board shall be the Chairman of the Board or his designated representative from board members or alternates."
(Finch/Francis) MSC Unanimous*

Further discussion ensued on removing the words "paying assessments under the Act" in the Section 7 supplement definition for an association designatee to sit on the HAB Board. The following motion was offered:

MOTION: *The HAB Board of Directors approves the language change in the HAB Bylaws Supplement Provision for Section 7 of Article VI, Hass Avocado Board to read, "Designatee from the association board shall be the chairperson of the association or other association board member."
(Finch/Francis) MSC with 1 nay (Figueroa)*

Irby read *Confidential Treatment* from Section 1219.63 of the Order. Following discussion, this motion regarding disclosure of information was offered:

MOTION: *The HAB Board of Directors approves exclusion from the HAB Bylaws the Supplement Provision, Section 8 of Article VI, Hass Avocado Board.
(Bednar/Francis) MSC with 2 nays (Borchard and Barnes)*

MOTION: *The HAB Board of Directors approves the addition of Section 7, as previously amended, into Article VI, Hass Avocado Board, in the HAB Bylaws. (Bednar/Francis) MSC Unanimous*

Article VIII - Meetings

Following discussion, the Board consensus was: ***“The Board shall hold its Annual Meeting before the end of each fiscal year, at the Board’s principal office, unless otherwise directed by the Board.”***

Note: The end of the fiscal year is October 31. Board members are elected prior to this date.

Article IX – Voting Procedures

Delete in **Section 2** the first sentence, “All votes shall be cast in person.”

Section 2 will read, “Any Board action shall require the concurring votes of members representing more than 50 percent of those present and voting.”

HAB Bylaws Articles II through V (2-5), and VII through XVII (7-15) were accepted by Board consent.

There being no further discussion, the following motion was offered.

MOTION: ***The HAB Board of Directors approves the Bylaws with the provision to add the official Board name in Article I, Section I, Name, when determined later in this meeting.
(Snider/Borchard) MSC Unanimous***

A copy of the Draft Bylaws of the Hass Avocado Board, are attached to the permanent copy of these Minutes and identified as EXHIBIT A.

A copy of the Bylaws of the Hass Avocado Board Draft Supplemental Provisions and the Order, Part 1219.63, Confidential treatment, read by Irby, are attached in their entirety to the permanent copy of these Minutes and identified as EXHIBITS B, 1-2.

BOARD ORGANIZATION & OPERATION (continued)

Review and Approval of Program Management Agreement

Chairman Wolk noted that a contract is required by law to engage the California Avocado Commission (CAC) in HAB program management. The CAC prepared the proposed document for discussion and approval.

Detailed discussion and responses ensued on the following:

Section 2, page 1, Responsibilities of Commission.

Definition of HAB board responsibilities.

The Board’s responsibilities are defined in other documents, but will not be outlined in this agreement.

Section 2, page 2

- 1) Change "fiscal period" to "fiscal year."
- 4) Change "the Secretary" to "the U.S. Secretary of Agriculture, hereafter referred to as "Secretary."

Section 3, page 2

Clarification of fees.

Wolk explained that the 10% fee of the program budget paid to the CAC excludes any fee on the "out of pocket expenses" associated with HAB Board activities.

Section 4, page 2, Term.

Change "period" to "year" and date to current year: ***"The term of this Agreement shall be for the fiscal year commencing April 16, 2003 and terminating on October 31, 2003."*** The Secretary must approve the Agreement.

Section 7, page 3, Proprietary Information of BOARD.

"COMMISSION employees and contractors who have access to proprietary information of BOARD shall agree not to share or disclose such information except in summary or aggregate form (e.g. AMRIC), to anyone, including but not limited to COMMISSION board members and alternates."

CAC President Affleck noted that the proprietary information is referring to informational, not strategic. He noted that the California Avocado Commission (CAC) has the same confidentiality agreement for its own board as is in CAC's proposal to the HAB.

Section 9, page 3, Insurance.

Wording of insurance coverage in this section was discussed and clarified. By Board consent, the wording of this section was changed to: ***"The parties agree that each shall have in place during the term of this Agreement a general liability insurance policy with coverage limits no less than \$2,000,000 per occurrence, and at least a \$3,000,000 umbrella provision, for a total coverage of no less than \$5,000,000."***

There being no further discussion, the following motion was offered:

MOTION: ***That the HAB Board of Directors approves the Program Services Agreement to be entered into with the California Avocado Commission (CAC) on April 16, 2003 through October 31, 2003. The services to be provided by CAC are described in the Program Services Agreement, which is attached in its entirety. (Francis/Snider) MSC Unanimous***

A copy of the *Billing HAB for CAC Program Implementation, Sections 1 and 2, dated April 16, 2003, is attached in its entirety to the permanent copy of these Minutes and identified as EXHIBIT C.*

Certification Regarding Lobbying

All HAB members and staff were requested to read and return their signed *Certification Regarding Lobbying* to Laurie Hill, as requested by USDA.

A copy of the *Certification Regarding Lobbying* is attached in its entirety to the permanent copy of these Minutes and identified as EXHIBIT D.

ANNOUNCEMENT

Update on Lawsuit Against USDA/Hass Avocado Promotion Order

Irby reported on April 11, 2003 the District Court Judge in Washington D.C. issued a ruling that said the litigants had not exhausted all their administrative remedies. CAC Senior Vice President Tom Bellamore added that the Court had essentially dismissed the constitutional issues and that the matter will now be sent back to the USDA where it will come before an administrative law judge.

*Change in the ORDER Wording for Importer Eligibility
Public Comment Period Ends May 19, 2003*

Wolk noted that USDA published a Proposed Rule terminating the definition of "substantial activity" as it pertains to importer board members. The Order currently states that the importer, to be eligible to sit on the Board, must have over 50% of his business in imports (into the U.S.).

The deadline for public comment is May 19, 2003. He asked that the HAB think about submitting comments.

*Accrual of Revenues and Projection of Volume, Cash Flow, & Fees
Planning Cycle for 2003-04*

It was noted that both of these reference documents were included in the Board's packet at this meeting.

Copies of the *January 2003-October 2003 Projected Aggregate Hass Volume; HAB Revenue & Expenditure Projections; Cash Flow Projection; CAC Administration Service Fees; and the Planning Cycle for 2003-04* are attached to the permanent copy of these Minutes and identified as EXHIBITS E, 1-5, and F, 1-2.

USDA Under Secretary Bill Hawks took the floor for a moment stating that he stood here today with great pride watching this new board come together. He announced that he wants to continue supporting the Hass Avocado Marketing

Order and, now that there is a “roadmap,” he would help work through the Board’s problems “to protect the integrity of the program.” He urged the Board to have patience with the USDA and reassured the Board that they will work together.

ADJOURN FOR LUNCH

The Board adjourned for lunch at 12:00 p.m. and reconvened at 12:35 p.m.

DISCUSSION OF ADMINISTRATIVE ISSUES

Review/Approve Administrative Services Agreement

HAB Treasurer Bednar reviewed Section 1 of the Billing for CAC Administrative Services, which covered current year projections and an estimate of administrative costs based on a partial-year budget of \$2.13 million, including USDA support costs.

He next reviewed Section 2 of the Billing for CAC Administrative Services document which included a draft of the proposed Administrative Services Agreement. He prefaced the review by stating that the Executive Committee’s recommendation was that the CAC be the Administrator of the HAB.

Detailed discussion and responses ensued on the following:

Section III, page 1, Item A. 1. – Compensation for Services and Out-of-Pocket Expenses.

Clarification of “monthly rate of \$18,000 per month”: This is only for administrative and accounting fees. A description of administrative services to be provided is outlined in *Attachment A* of the *Administrative Services Agreement*. A breakout of estimated costs for Out-of-Pocket Expenses is detailed in the previous EXHIBIT E-5.

Section III, pages 1-2, Item 2. (a) – Out-of-Pocket Expenses.

Correct to read, “Board agrees to reimburse Commission for reasonable out-of-pocket expenses authorized by **Commission Board** in carrying out the services conducted pursuant to this Agreement in regard to auditing costs, consulting fees, legal costs, travel, meeting expenses, bank fees, courier charges, postage, printing, fulfillment charges, and other direct expenses that may be incurred. Such actual out-of-pocket expenses shall be billed to the Board as part of the invoices required, pursuant to Section III, B.

Legal expenses were defined as those required when answers on an issue would be required from a lawyer.

Clarification of handling out-of-pocket expenses apportionments: For efficiency on expenses other than those that are documented, a fixed amount could be allowed instead of documenting.

Section IV, page 3, MISCELLANEOUS, Item D. – Insurance

Use same language as in the Program Services Agreement:

“The parties agree that each shall have in place during the term of this Agreement a general liability insurance policy with coverage limits no less than \$1,000,000 per occurrence, and with a general aggregate limit of no less than \$2,000,000. Parties also agree that each shall have in place during the term of this agreement an excess/umbrella policy with coverage of no less than \$5,000,000 per occurrence, with an aggregate limit of no less than \$5,000,000.”

Section IV, page 4, Item E., 1. (1) - Termination

Clarification of material breach: This Item refers to the procedure for a “breach” situation and is further referenced on page 3, Item C., **Indemnification. 1.** Bellamore noted that a “breach” is well defined in case law.

Wolk noted that HAB is *required* by law to contract with CAC for program management. HAB, according to law, *may* contract with CAC for administrative management. He explained that if the HAB is unhappy with CAC’s administrative management, the HAB could look elsewhere for administrative services.

Section V, Item J. – Influencing Legislation or Governmental Policy.

Add permissible language at end of sentence:

“No funds advanced or paid by Board to Commission shall be used in any manner for the purposes of influencing legislation or governmental policy except which are in violation of the Order and the Act.”

There being no further discussion, the following motion was offered:

MOTION: *The HAB Board of Directors approves the Administrative Services Agreement to be entered into with the California Avocado Commission (CAC) on April 16, 2003 through October 31, 2003. The services to be provided by CAC are described in the Administrative Services Agreement, which is attached in its entirety. (Francis/Snider) MSC Unanimous*

A copy of the *Billing HAB for CAC Administrative Services, Sections 1 and 2, dated April 16, 2003, is attached to the permanent copy of these Minutes and identified as EXHIBIT G.*

Accounting Contractor Scope of Work

Treasurer Bednar reviewed the accounting details for HAB. It was announced that CAC agreed to do the administration and accounting. Bednar noted that the CAC auditing firm confirmed there is no conflict of interest. He also reported that

a search would be conducted for a new independent auditing firm for HAB that would be separated from CAC.

APPROVAL OF MARCH HAB MINUTES

Minutes of the first HAB meeting, held in Washington, D.C., were approved with the removal of Robert Flack from the Finance Committee listing on page 5.

MOTION: *The HAB Board of Directors approves the March 18, 2003 Minutes as corrected. (Snider/Borchard) MSC Unanimous*

EXECUTIVE COMMITTEE HIGHLIGHTS

Chairman Wolk noted the Executive Committee meeting that was held earlier today. He recapped some of the topics that were discussed and the need for action.

CAC Start-up Support Costs

CAC costs associated with startup of the HAB are \$60,000, which includes attorneys' fees, counting the election ballots by Moreland & Assoc, printing, mailing, and other expenses. Chairman Wolk noted that it is appropriate to reimburse CAC for the start-up cost immediately, because HAB incurred these costs and would have had to pay whoever provided the services

MOTION: *The HAB Board of Directors approves reimbursement to CAC for start-up expenses incurred in the estimated amount of \$60,000 to be paid by September 1, 2003. (Francis/Barnes) MSC Unanimous*

Irby noted that once the CAC has signatures to set up the HAB bank account, the monies collected by U.S. Customs will be transferred from USDA to the HAB account every month.

Payback Schedule for Start-up Costs

Bednar announced that the startup costs for USDA are currently \$340,072. This includes overhead and the AMS agency but does not include the litigation charges. It was recommended that the HAB pay back \$9500.00 per month over the next three years beginning November 2003.

MOTION: *The HAB Board of Directors approves a three-year payback schedule to the USDA, beginning November 2003, for start-up costs incurred on behalf of HAB in the amount of \$340,072. (Bednar/Snider) MSC Unanimous*

Strategy Committee

Wolk recommended a specific Strategy Committee to provide a pathway for domestic and offshore producers to review the strategic process for the future

and then report back to the full Board. His appointed members are: HAB Vice Chairman Scott McIntyre to act as Chairman, George Barnes, Giovanni Cavaletto, Ralph De Leon, Ed Figueroa, Jim Finch and importers Ross Wileman. More members can be added later, possibly some from outside this HAB board for well-rounded input to the issues.

McIntyre said if there no objections, he would proceed. None heard.

New Appointment to Executive Committee

Wolk also appointed Eric Crawford to sit on the Executive Committee. Board concurrence on this appointment.

The HAB Board may have the Chairperson of the CAC as an ex-officio member. Approval was requested.

MOTION: The HAB Board of Directors agrees to have the CAC Chairperson serve as an ex-officio member of the HAB Board. (Bednar/Snider) MSC Unanimous

Check Signatures

According to the HAB Bylaws, two signatures are required for any check over \$1,000 and the Board agreed to add that HAB 85% rebate checks and payments to CAC would require at least one signature of the HAB officers.

MOTION: The Board of Directors of the Hass Avocado Board (HAB) authorizes the HAB Chairperson of the Board; the HAB Vice Chairperson; the HAB Treasurer; the California Avocado Commission (CAC) President Mark Affleck; the CAC Senior Vice President Tom Bellamore; and the CAC Vice President Finance/Administration Valetta Weaver; as official signers to manage all HAB financial accounts, including but not limited to any two persons above for amounts over \$1,000, in the opening of bank accounts; withdrawing, transferring or investing funds; paying bills; receiving and depositing funds; borrowing funds; contracting for services for HAB; and performing all other acts which are necessary for the proper conduct of HAB's financial and administrative affairs; and

That all HAB 85% rebate checks and all payments to CAC require at least one signature of the HAB officers noted above. (Barnes/Borchard) MSC Unanimous

Importer Certification

Wolk asked USDA to clarify the process used to certify importer associations. He distributed a list of procedures gleaned from the Order. Hawks said that, in principle, he saw nothing wrong with an action sheet like Wolk's where procedures are outlined, except for "Number 8." USDA will use this procedural outline when involved in the certification process with new importer associations.

On page 2 of Wolk's handout, the following items were identified as possible deficiencies in the Chilean application for certification:

1. Documents of incorporation.
2. Change to By-Laws to require 10-day notice of Board meetings.
3. Record of importer member's acceptance of membership and levy for administrative expenses.

Discussion followed with a recommendation to have future associations comply with USDA certification procedures.

A copy of Wolk's USDA Procedures Outline and the Chilean Association Deficiencies is attached in its entirety to the permanent copy of these Minutes and identified as EXHIBIT H.

DISCUSSION OF BOARD NAME & LOGO

Board Name

Approval was required to formalize the Board name in order to conduct business and sign contracts. Affleck noted that until the Board runs through all the strategic filters, it wouldn't know what the identity would really be for marketing and program purposes. It could possibly change in a few months.

**MOTION: *The HAB Board of Directors approves the Hass Avocado Board (HAB) as the official name of the Board in order to conduct business and enter into contracts.
(Francis/Barnes) MSC Unanimous***

Discussion /Development of Board Logo

Staff will bring creative concepts for the HAB to the May meeting. The Board will discuss at that time.

BUDGET

Provide Preliminary Guidance to Staff/Approve Interim Budget

Wolk explained that staff is required to send notification to the Secretary in order to run the business side of HAB. Preliminary budget approval action was requested.

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MOTION: *The HAB Board of Directors approves the preliminary HAB budget ending fiscal year October 31, 2003 in the amount of \$2,139,625. (Bednar/Francis) MSC Unanimous*

MEETING ADJOURNMENT

The next HAB Board meeting will be held on Wednesday, May 14, 2003, 9:30 a.m. at the new CAC office location: 38 Discovery, Suite 150, Irvine, CA 92618. The June HAB meeting was planned for Wednesday, June 18, 2003.

Chairman Wolk adjourned the CAC Board meeting at 2:40 p.m.

Respectfully submitted,

Alva Snider, HAB Board Secretary