

# Minutes

## LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY

Louisiana Agricultural Commodities Commission

Veterans' Memorial Auditorium

5825 Florida Blvd.

Baton Rouge, LA 70806

March 26, 2010

9:30 a.m.

### I. Call to Order

Mr. Robert Hanks called the meeting to order at 9:30 a.m.

### II. Roll Call and Declaration of Quorum

#### Commission Members Present

Mr. Robert Hanks  
Mr. Filmore Bordelon, III  
Mr. Mr. Donald Berken  
Mr. Lee Carter  
Mr. Ryan Ellington  
Mr. Kenny Self  
Mr. Donald Zaunbrecher

#### Absent Members

Mr. Kevin Adams  
Mr. Keith Hensgens  
Commissioner Mike Strain

There were seven (7) members present at the meeting.

#### Staff Members Present

Assistant Commissioner, Benjy Rayburn  
Director of the Louisiana Agricultural Commodities Commission, Ashley Dupree  
Assistant Director of the Louisiana Agricultural Commodities Commission,  
Kyra Holden  
Executive Counsel, Tabitha Gray  
Louisiana Department of Agriculture & Forestry Auditor, Robert Johnston  
Louisiana Department of Agriculture & Forestry, Agricultural Specialist  
Program Manager, Len Sanders

### III. Adoption of Minutes – December 11, 2009

A motion was made by Mr. Filmore Bordelon and seconded by Mr. Donald Berken to approve the minutes as read. The motion carried unanimously.

#### IV. Old Business

1. LACC Budget Discussion by Craig Gannuch, Assistant Commissioner

Mr. Gannuch, Assistant Commissioner of the Office of Management & Finance, at the Department was unable to attend the meeting. Mrs. Dupree stated that this item would be deferred until the next meeting when Mr. Gannuch would be able to give his presentation.

2. Update on Central Louisiana Grain and the Grain and Cotton Indemnity Fund (GCIF) Payments

Mrs. Dupree gave a report on the Grain & Cotton Indemnity Fund's current balance relative to the claimant payouts. She stated there were five claimants whose claims were approved. Mrs. Dupree reported there is a total of \$872,903.80 worth of claims. She stated that \$400,000 was paid out of the GCIF fund. Mrs. Dupree stated approximately one half of the claims have been paid out of the fund. She stated the Louisiana Department of Agriculture & Forestry did deny two claimants. Mr. Dewitt Matthew Vandeveld's claim was based upon dividend payments he didn't receive from the Cooperative and Douglas Farms claim was based upon Mr. Douglas' forward contracts and an ongoing dispute with Central Louisiana Grain.

Mrs. Dupree stated that Mr. Douglas had two soybean contracts of which he delivered a partial delivery on one contract and nothing on the other contract to Central Louisiana Grain. She stated Mr. Douglas made a delivery on a contract he had with Central Louisiana Grain for corn that he fully delivered and Central Louisiana Grain withheld \$160,000, to offset against the soybean contracts he did not fulfill.

The Department staff met with the Department attorney and discussed the purpose of the GCIF Fund and who should be eligible. The conclusion was that the purpose of the GCIF fund was to assist producers of grain and cotton by ensuring payment to the producers if they are not paid for grain delivered. Mrs. Dupree stated it was not appropriate to pay Mr. Douglas from the GCIF fund due to his claim not being for non-payment for grain delivered. The Commission agreed that the Department staff had made the right decision.

Mrs. Dupree stated she would notify the Commission if there was an appeal from Douglas Farms. She said Mr. Douglas had until April 1, 2010 to file an appeal and he would have to come before the Commission at a later date.

Mrs. Dupree reported that there were no new changes regarding the bankruptcy. She stated she contacted the bankruptcy trustee of the payout but she has not received a reply. Mrs. Dupree stated that all of the clients who had claims with the GCIF fund also had claims in the bankruptcy. She told the Commission she would keep them informed of any new results.

Mrs. Dupree reminded the Commission they had given the Department staff the authority for payments up to \$25,000 for legal fees. She told the Commission she received a bill for legal services in the amount of \$13,000 which was paid out of the GCIF Fund.

3. Discussion of the balances of the GCIF fund and Monthly Assessments

Ms. Kyra Holden, Assistant Director of the Louisiana Agricultural Commodities Commission, stated that there was a \$400,000 pay out to claimants and there is now a balance in the GCIF fund of \$201,213, which is accumulating each month. She stated there are approximately 22 assessments that have not been put in the system.

Ms. Holden stated that in January 2010 twenty-five letters were sent out for late payments of GCIF and LACC assessments. In February of 2010 there were twenty-six letters sent out for late payments of GCIF and LACC assessments.

Ms. Holden stated there are four cotton merchants that will no longer be licensed this year. She said two have been absorbed into one company, two have dissolved, and there are eleven licensees remaining.

Ms. Holden reported that the LACC assessment balance as of today is, \$878,000. She stated with four more months remaining in the season. It is uncertain how much more money will be accumulated in addition to the current amount.

4. Dr. Kurt Guidry's Report on GCIF Fund Projections

Dr. Kurt Guidry was unable to attend the LACC meeting and Mrs. Dupree spoke on his behalf. She discussed Dr. Guidry's projections which were shown in Table #1, Estimated 2009 Louisiana Crop Acreage and Value, Selected Commodities; Table #2, Projected 2010 Louisiana Crop Acreage and Value, Selected Commodities, 10 Year Average Yields; and Table #3, Projected 2010 Louisiana Crop Acreage and Value, Selected Commodities, 10 Year Average Yields.

Mrs. Dupree stated the United States Department of Agriculture (USDA) will publish the official projections at the end of the year and these numbers are subject to change.

5. Discussion of Destination Weight vs. Origination Weight

Mr. Robert Hanks stated he was contacted by the chairman of the Rice Driers Association after the association held its annual meeting. He stated the Rice Driers Association was considering some legislative action regarding giving deference to origination weight when disputes arise. Mr. Hanks informed the Association that before the Commission could recommend, approve, or support any change in the legislation, the Commission needed to have a better understanding of the problem. He stated the rice buyers, mills, and other dealers

are going to send representatives to the next Rice Driers Association meeting to hear what the issues are.

Mr. Hanks told the Department staff and the other Commission members that he would like to form a working group outside of the Rice Drier's Association to address the concerns. Mr. Carter recommended Mr. John Owen, a well respected person in the rice industry who has shown interest in assisting the Commission in this issue, attend the meeting.

Mr. Hanks asked Mrs. Dupree to report back to the Rice Driers Association and inform them that the Commission did address the issue and that members of the Commission and staff would like to attend the next Rice Driers Association meeting. He also asked her to draft a summary of the discussion between the Commission and staff regarding the Rice Driers Associations' issues pertaining to origin weight vs. destination weight during this meeting and to present it to the Rice Driers Association at their next meeting.

Mrs. Dupree stated in conjunction with the issue at hand, the Rice Drier's Association had an issue with the Prompt Payment Law.

Mr. Hanks explained when a settlement is complete between a rice drier and a farmer, the farmer faxes a load summary sheet to the rice drier. He stated within 48 hours of the last load at a mill or a barge or vessel, the summary sheets should be faxed over to the drier. Mr. Hanks stated if this is not done, under subject of penalties of Louisiana state law, that person would be subject to a fine.

Mr. Hanks also asked Mrs. Dupree to do research on the Uniform Commercial Code Law (UCC 9), which was passed in approximately 1985 or 1986, to unify all states in order to have the same commercial law protecting the Rice Drier's lien rights. He stated it was very critical to get information regarding the law on lien holders and who has ranking. Mr. Hanks told Mrs. Dupree the Commission would appreciate her opinion on the law regarding rice driers.

Mrs. Dupree informed the Commission that she would notify them when the next Rice Drier's Association meeting is scheduled.

## **VI. New Business**

### **1. Introduction of the new LACC Auditor, Robert Johnston**

Mrs. Dupree introduced Mr. Robert Johnston to the Commission. Mr. Johnston gave a brief summary of his background. The Commission welcomed Mr. Johnston.

2. Discussion of Regulation Amendments to LAC 7:XXVII. Agricultural Commodity Dealer and Warehouse Law Regarding Penalties

Mrs. Dupree stated the Commission, through an adjudicatory hearing, has the ability to impose penalties on any entity that breaks a rule or regulation that the Commission regulates. She stated at the last meeting the suggestion was made to institute a late fee for anyone submitting a late application as opposed to a penalty by way of bringing them to an adjudicatory hearing. Mrs. Dupree stated the problem at present is that due to the mindset this legislative session, it is difficult to have any fee instituted as this time.

Mrs. Dupree told the Commission that the staff previously sent out letters to all applicants stating applications must be sent by April 30, or the applicant will be subject to a fine. She stated that the applicants have been forewarned.

3. Discussion of the Emergency Rule on Aflatoxin Testing

Mrs. Dupree stated that Commissioner Strain issued an emergency rule to begin testing for Aflatoxin. She stated that one grain client expressed interest in having the testing performed and two of the inspectors are now certified to perform the tests.

She stated as a Federal designee, it is the Department's responsibility to charge fees that are approved by FGIS. Mrs. Dupree stated we had submitted a \$30.00 testing fee to FGIS for approval. Mrs. Dupree stated the Department had to amend the rules in order to collect the fee and the intent is for all of the inspectors to be able to test for Aflatoxin in the future. She explained to the Commission that FGIS allows the Department to do the testing in its lab in order to be more time efficient for the grain clients to receive the results.

Mr. Rayburn stated that the Louisiana State University, Ag Chemistry Division, provides aflatoxin testing services for farmers, but it is not an official test.

4. Discussion of the 2010 – 2011 License Applications

Mrs. Dupree stated renewal applications were mailed out on March 1, 2010 to 89 applicants consisting of 37 warehouses, 56 grain dealers, 12 cotton merchants and nine new applications. She stated the new applications were based on inquiries from over the past year and the majority of them were grain dealers. Mrs. Dupree stated eight applications have been received back in the office.

5. Discussion of the Annual Moisture Meter Inspections

Mrs. Dupree stated the Department is responsible for the annual inspection of moisture meters used in the chain of commerce for discount purposes. She stated there is a particular brand called Motomco which the FGIS previously endorsed for official moisture meter readings.

However, in the last 8 or 9 years Motomco has stopped issuing calibration charts. Mrs. Dupree stated the charts were used for the purposes of our inspectors ensuring the accuracy of the machines.

Mr. Rayburn stated it is the responsibility of the Department to test the accuracy of the machines to insure the producers are being charged the right amount. He stated the Department's ability is hindered if the calibrations are no longer being updated with these devices.

Mr. Rayburn stated the Agricultural Commodities Division uses a brand called the DICKEY-john which is the requirement of FGIS. Mr. Rayburn stated the grain inspectors take moisture readings on the machines and go out in the field to see if the commercial devices are accurate as compared to a standard.

Mr. Rayburn stated the Agro Consumer Services staff has discussed the calibration problems with the Motomco users and the fact that they are becoming obsolete. He stated the Department staff recommends that when these machines start failing, the users will be required to replace them with one of the NTEP machines. Mr. Rayburn stated the NTEP is a national type evaluation program. The Commission agreed it was best to move to the new technology that was uniform.

Mrs. Dupree stated that the moisture meter certification process will start next week, April 1, 2010, and end May 15, 2010. She stated all of businesses that use certified moisture meters will receive the list of NTEP approved machines.

It was also agreed on by the Department staff and the Commission that the users will be allowed 30 days within the failing of the machines to purchase a new machine from the NTEP list.

6. Legislation: HB 1183 and SB 147

Mrs. Dupree stated that the Department's legislation is essentially Senate Bill 147, which is a bill to change the language and technical wording of the Louisiana Agricultural Commodity Dealer and Warehouse Law that affects the Commission's jurisdiction.

Mrs. Dupree stated that House Bill 1183 is not a Department bill. She stated that from a procedural perspective the first two statutes were put in Title 3 and was placed in close proximity to the Commodities Marketing Law. Mrs. Dupree stated this could possibly fall under the enforcement of the Ag Commodities Commission.

She stated this bill allows communication between the person that is lending the money, the producer and the grain dealer or persons purchasing the farm product. Mrs. Dupree stated it allows communication regarding the producer's obligations relative to the lien holder's rights.

The pros and cons were discussed by the Commission regarding this bill and it was the consensus of the Commission that this bill would not be beneficial.

A motion was made by Mr. Donald Zaunbrecher and seconded by Mr. Lee Carter to voice their opinion to the opposition of the House Bill 1183 and to notify Commissioner Strain. Mr. Filmore Bordelon voted no, but the motion carried.

Mrs. Dupree asked the Commission to please take this information to their associations and memberships because it may affect each respective industry. Mrs. Dupree stated that the Department will not take a position on this until it has been discussed with Commissioner Strain. Mrs. Dupree told the Commission she would report back to Commissioner Strain to inform him of the decision of the Commission.

### **Other Business**

Mrs. Dupree asked the Commission to fill out the enclosed questionnaire and assured the Commission that the personal information collected would not be given out to the public.

### **VII. Public Comment**

Mr. Kyle MCann, Louisiana Farm Bureau, commented that the Louisiana Farm Bureau has the same concerns as the Commission regarding HB 1183.

### **VIII. Date for next meeting**

The next Louisiana Agricultural Commodities Commission meetings will tentatively be held on May 28, 2010 and June 28, 2010.

### **IX. Adjournment**

A motion to adjourn was made by Mr. Donald Zaunbrecher and seconded by Mr. Lee Carter. The motion carried unanimously.

---

Mr. Robert Hanks, Chairman