

UNITED STATES OF AMERICA  
DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
ALFALFA PRODUCTION CO-EXISTENCE FORUM

Monday, December 20, 2010

The forum came to order at 12:00 p.m. in room S310 of the USDA South Building, 12<sup>th</sup> and Independence Avenue, SW, Washington, D.C. Kathleen A. Merrigan, Deputy Secretary of the Department of Agriculture, presiding.

USDA PRESENT:

SECRETARY TOM VILSACK  
DEPUTY SECRETARY KATHLEEN MERRIGAN  
DR. ROBERT BEACHY, Director, NIFA  
MAX HOLTZMAN, Senior Policy Advisor, Office of  
the Secretary  
STEVE SILVERMAN, Acting General Counsel  
REBECCA BLUE, Office of Congressional  
Relations  
MARK LIPSON, Organic and Sustainable  
Agriculture Policy Advisor  
CINDY SMITH, Administrator, APHIS  
MIKE GREGOIRE, Deputy Administrator, APHIS  
KEN WATERS, Facilitator, APHIS  
JAMES IVY, APHIS  
NEIL HOFFMAN, APHIS, BRS  
Rebecca Stankiewicz-Gabel, APHIS, BRS  
MICHAEL SCHECHTMAN, USDA  
TOM WALSH, Office of General Counsel  
SHEILA NOVAK, Office of General Counsel  
Ann Wright, Deputy Under Secretary, Marketing  
and Regulatory Programs

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

## NGOs PRESENT:

BILL FREESE, Center for Food Safety  
JAY FELDMAN, Beyond Pesticides  
FREDERICK KIRSHEMANN, Leopold Center for  
Sustainable Agriculture  
DEAN HULSE, Dakota Resource Council  
WILL FANTLE, Cornucopia Institute  
MARGARET MELLON, Union of Concerned Scientists  
KATHY OZER, National Family Farm Coalition  
GREG JAFFE, Center for Science in the  
Public Interest  
KRISTINA HUBBARD, Organic Seed Alliance  
MATTHEW DILLON, Organic Seed Alliance

## INDUSTRY MEMBERS

TOM CARRATO, Monsanto Company  
GARY HIRSHBERG, Stonyfield Farm, Inc.  
MELISSA HUGHES, United Natural Foods  
GEORGE L. SIEMON, CROPP  
WALTER ROBB, Whole Foods Market  
MARK MCCASLIN, Forage Genetics  
MIKE VANDE LOGT, Executive Vice President,  
Land O' Lakes  
RON CORNISH, Dairyland/DOW  
JEFF ROWE, Pioneer-Dupont  
PAUL FREY, CalWest Seeds

## INDUSTRY GROUPS

SHARON BOMER, Biotech Industry Organization  
ROBYNN SHRADER, National Cooperative Grocers  
Association  
DAVE MILLER, National Alfalfa & Forage  
Alliance  
RUSSELL WILLIAMS, The American Farm Bureau  
Federation  
ROGER JOHNSON, National Farmers Union  
CHRISTINE BUSHWAY, Organic Trade Association  
CHET BORUFF, AOSCA  
BERNICE SLUTSKY, American Seed Trade  
Association

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

## INDUSTRY GROUPS (CONTINUED)

CHUCK CONNER, National Council of Farm  
Operatives

DOUG GOEHRING, North Dakota Department of  
Agriculture

CARLA WEST, Ag Biotech Planning Committee

MICHAEL SLIGH, National Organic Coalition

LISA ZANNONI, Sygenta

KEITH MENCHEY, National Cotton Council of  
America

JON DOGGETT, National Corn Growers  
Association

JANE DEMARCHI, National Association of Wheat  
Growers

LUTHER MARKWART, American Sugar Beet Growers  
Association

LORENA ALFARO, American Soybean Association

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 P-R-O-C-E-E-D-I-N-G-S

2 (12:03 P.M.)

3 DEPUTY SECRETARY MERRIGAN: So the  
4 first thing is really a little logistics. We  
5 are pushing out paper to the very last minute,  
6 and we just have this package that says  
7 "Alfalfa Production Coexistence Forum."

8 It begins with the agenda, and it's  
9 stapled. We're trying to figure out how many  
10 people have yet to receive this, so if you  
11 could just raise your hands, that would be  
12 good. If you have not, so we know how many  
13 more to make. Just hold them up for a second,  
14 and Mark will get a count.

15 Okay. Thanks. So let me begin by  
16 saying happy holidays. I really am very  
17 grateful for you all coming here at the last  
18 minute. I'm Kathleen Merrigan. I'm the  
19 deputy secretary here at USDA. I will shortly  
20 be joined by my co-chair for the meeting,  
21 Robert Beachy, who is the head of the National  
22 Institute for Food and Agriculture.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           And of course, later on in the  
2 meeting, Secretary Vilsack will join us, as  
3 indicated by your agenda. This meeting is at  
4 the secretary's request. He knows that we are  
5 on schedule at USDA to make some decisions  
6 around GE alfalfa in the short term.

7           In the information that was  
8 distributed to you prior to this meeting, we  
9 provided a lot of links to APHIS documents  
10 that we think would be of interest. I'm sure  
11 many of you are well-read in these documents  
12 already, but they seemed foundational for the  
13 kinds of conversations that we needed to have  
14 today.

15           We also invited all of you to  
16 submit your own information that you might  
17 want to share with the group. And if you've  
18 brought information, and it hasn't been  
19 distributed yet, you can put it outside on  
20 these tables. And that's just a central  
21 collection place.

22           So I'm just going to kind of go

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 through headwaters. Our facilitator for the  
2 day is going to go through a lot more of the  
3 logistics, but those are just things off the  
4 top of my head.

5 My real role is just to welcome you  
6 to USDA. Some of you may not have been down  
7 here in the operations center before. It is a  
8 useful facility because you can actually hear  
9 each other, you can see each other.

10 It might get a little bit warm.  
11 And so at some point we can all forget about  
12 protocol. We can take off the suit jackets  
13 and roll up our sleeves, if need be. And we  
14 will have a break at some point for coffee and  
15 tea. But hopefully we will make it through  
16 for a short time without any of that.

17 We are really struggling with this  
18 issue. And really, why you've been invited  
19 here -- everyone keeps asking me "What's the  
20 goal of the meeting?" "What's the desired  
21 outcome?"

22 We don't have it set in stone, but

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we know that we really need collaboration with  
2 all of you. We need your input. And we're  
3 really trying to see how much of this needs to  
4 be, in terms of the future of GE alfalfa, how  
5 much of it needs to be or can be dictated by  
6 USDA, and how much it is driven by the  
7 stakeholders themselves.

8           How many opportunities can we  
9 identify here in the course of our meeting, in  
10 the course of the pre-work, as some people  
11 describe it, that you've done prior to this  
12 meeting -- how much of it can we really just  
13 solve through stakeholder action?

14           And so these are some of the issues  
15 that we want to explore today, and I think  
16 Secretary Vilsack is very charged up, and  
17 really wants to come in and hear from you in  
18 very substantive ways.

19           So without further ado, Ken, I will  
20 turn it to you.

21           MR. WATERS: Thank you. A couple  
22 of notes about the meeting. This is going to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be transcribed. We have our transcriptionist  
2 up here. And the restrooms are out this door,  
3 to the right, if you haven't found them  
4 already. The kitchen and coffee is going to  
5 be outside this door and to the left, across  
6 the hall.

7 We sent out the list of  
8 participants this morning, but we also want to  
9 be able to provide contact information. So  
10 we'll remind you about this, but we'll want  
11 you to let us know by email what you want to  
12 have in that contact column, if anything.  
13 That will be up to you.

14 I apologize for the right  
15 handed/left handed tables. If you're in a  
16 left handed and you're right handed or vice  
17 versa, our apologies.

18 Being down here in the emergency  
19 ops center, they told us that if the alarm  
20 does go off -- they're having other people,  
21 visitors, in this center today, and the alarm  
22 may go off while we're in here, but not to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 panic. If it's a real emergency, someone will  
2 come and get us and take us out.

3 One of the things I sort of like  
4 about being in an ops center like this is you  
5 get to wear cool microphones and stuff, the  
6 emergency response gear.

7 Just a couple of notes about -- we  
8 are going to have, really, a very short time.  
9 I think once it gets started it's going to go  
10 very fast -- to acknowledge that you want to  
11 be heard.

12 For those in the room, if you would  
13 just turn your tent cards on the side, we've  
14 got a few of us looking out for that, and  
15 we'll acknowledge you, hopefully in order.

16 The next thing I'd like to do is to  
17 just go over the agenda real quickly, just to  
18 see what we're going to be trying to  
19 accomplish today.

20 We'll do a quick introductions, and  
21 then we want to go over the interest, the  
22 statements that you sent to me over the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 weekend, that I compiled last night. And  
2 that's actually the main part of what's in  
3 this big stapled documents, and we want to  
4 just go over and see what's in there.

5 Then we're going to get a quick  
6 explanation about the final EIS, and an  
7 opportunity for some brief questions and  
8 answers. There won't be time for extensive  
9 commenting. We only have allotted about 15  
10 minutes for that.

11 Secretary Vilsack will come down  
12 around 1:00 and talk to us about his vision  
13 about alfalfa production coexistence. And  
14 then, when he's finished, we will have an  
15 opportunity to talk about the plans that have  
16 come up.

17 And I think there's one from NAFA.  
18 There's a couple of organic plans. One from  
19 Doug Goehring in North Dakota. And we'll have  
20 an opportunity to just briefly go over those,  
21 and see how they match up with the interest.

22 And by going through the interests

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 first, we'll be able to sort of map out where  
2 the needs are, what you're looking for out of  
3 alfalfa production coexistence, so that we can  
4 kind of use that as a test against these  
5 plans, to see if they are, in fact, meeting  
6 the needs, and where they fall short, and  
7 where we need to do more work.

8 We will have a question and answer  
9 period, and the secretary will give us some  
10 final thoughts before he has to leave at 2:30.  
11 We'll take a short break, and then come back  
12 and talk about where we go from here.

13 We have been talking about the  
14 possibility of having two meetings in January  
15 to continue this discussion, but this really  
16 is intended to be the beginning of the  
17 discussion. And we'll talk about when that  
18 might be, and how that might work, and who  
19 might want to be involved.

20 So why don't we just quickly go  
21 around the room. Just state who you are, and  
22 what organization you represent. We'll start

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 here.

2 MR. SILVERMAN: I am Steve  
3 Silverman. I am with the office of general  
4 counsel, USDA.

5 MR. WATERS: Oh, one other thing I  
6 forgot to mention. We are going to need to  
7 use the microphones. The folks on the phone  
8 won't be able to hear us -- and we'll hear  
9 from them at the end of this.

10 But also, the transcriptionist  
11 won't be able to know what you're saying  
12 without the microphone. So we'll just pass  
13 this --

14 MR. SILVERMAN: Try it again, see  
15 how that works. Is that working?

16 MR. WATERS: I think it is.

17 MR. SILVERMAN: Steve Silverman,  
18 office of general counsel, USDA.

19 MR. GREGOIRE: Mike Gregoire,  
20 deputy administrator of biotechnology  
21 regulatory services at APHIS, USDA.

22 MR. ROBB: Walter Robb with Whole

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Foods Market, retail stores.

2 MR. CARRATO: Tom Carrato,  
3 associate general counsel, Monsanto Company.

4 MR. GOEHRING: Doug Goehring, North  
5 Dakota ag commissioner, and I see also I'm  
6 representing NASDA here.

7 MR. CORNISH: Ron Cornish with Dow  
8 Agrosiences, alfalfa strategy leader.

9 MR. ROWE: Jeff Rowe, vice  
10 president of biotech affairs at  
11 Pioneer/Dupont.

12 MR. FELDMAN: Jay Feldman,  
13 executive director of Beyond Pesticides.

14 MR. FREY: Paul Frey, president/CEO  
15 of CalWest seeds.

16 MS. BOMER: Sharon Bomer, executive  
17 vice president for the Biotechnology Industry  
18 organization.

19 MS. SHRADER: Hi. Robin Shrader of  
20 the National Cooperative Grocers Association.

21 MS. HUGHES: Melissa Hughes, United  
22 Natural Foods.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MARKWART: Luther Markwart,  
2 American Sugar Beet Growers Association.

3 MR. MENCHEY: Keith Menchey,  
4 National Cotton Council.

5 MS. WRIGHT: Ann Wright, deputy  
6 undersecretary for marketing and regulatory  
7 programs here at USDA.

8 MR. HOLTZMAN: Max Holtzman,  
9 secretary's office, USDA.

10 MR. IVY: I am James Ivy, with  
11 USDA. APHIS legislative and public affairs.

12 MR. MCEVOY: I am Miles McEvoy,  
13 USDA, National Organic Program.

14 MS. BLUE: Rebecca Blue, with  
15 USDA's congressional relations.

16 MS. NOVAK: Sheila Novak, office of  
17 general counsel.

18 MR. WALSH: Tom Walsh, office of  
19 general counsel.

20 MR. SHECHTMAN: Michael Shechtman,  
21 USDA agricultural research service.

22 MR. LIPSON: Mark Lipson, USDA

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 marketing and regulatory programs.

2 MS. DEMARCHI: Jane Demarchi,  
3 National Association of Wheat Growers.

4 MS. OZER: Kathy Ozer, National  
5 Family Farm Coalition.

6 MS. ZANNONI: Lisa Zannoni, with  
7 Sygenta Seeds.

8 MR. HIRSHBERG: Gary Hirshberg,  
9 president and CEO of Stonyfield Farm.

10 MS. ALFARO: Lorena Alfaro,  
11 American Soybean Association.

12 MR. DOGGETT: Jon Doggett, with the  
13 National Corn Growers Association.

14 MR. FREESE: Bill Freese, with  
15 Center for Food Safety.

16 MR. CONNER: Chuck Conner, National  
17 Council of Farming Cooperatives.

18 MR. SLIGH: Michael Sligh, National  
19 Organic Coalition.

20 MS. SLUTSKY: Bernice Slutsky,  
21 American Seed Trade Association.

22 MS. BUSHWAY: Christine Bushway,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CEO of the Organic Trade Association.

2 MR. WILLIAMS: Russell Williams,  
3 American Farm Bureau Federation.

4 MR. SIEMON: George Siemon, with  
5 CROPP cooperative.

6 MR. MILLER: Dave Miller. I'm an  
7 alfalfa scientist with Pioneer Hybrid in the  
8 daytime, and I'm currently representing the  
9 National Alfalfa and Forage Alliance.

10 MR. JAFFE: Greg Jaffe, director of  
11 the biotechnology project at the Center for  
12 Science and the Public Interest.

13 MR. MCCASLIN: Mark McCaslin,  
14 Forage Genetics International.

15 MS. SMITH: Cindy Smith, APHIS.

16 MR. BEACHY: Robert Beachy, NIFA,  
17 at USDA.

18 MR. HOFFMAN: Neil Hoffman, USDA,  
19 APHIS.

20 MS. STANKIEWICZ: I'm Rebecca  
21 Stankiewicz-Gabel. I'm the senior  
22 environmental protection specialist at

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 biotechnology regulatory services with APHIS.

2 MR. WATERS: And the folks on the  
3 phone? Let's see. We've got Fred, want to  
4 introduce yourself?

5 MR. KIRSHEMANN: Yes, Fred  
6 Kirshenmann with the Center for Sustainable  
7 Agriculture.

8 MR. WATERS: Dean? Might be on  
9 mute. Let's go to Will. Will Fantle?

10 MR. FANTLE: Yes, Will Fantle. And  
11 for the record, the Cornucopia Institute.

12 MR. WATERS: Chet?

13 MR. BORUFF: Good morning. My name  
14 is Chet Boruff, and I'm with AOSCA, the  
15 Association of Official Seed Certifying  
16 Agencies.

17 MR. WATERS: And Carla?

18 MS. WEST: Carla West, with the Ag  
19 Biotech Planning Committee.

20 MR. WATERS: And back to Dean.

21 MR. HULSE: Dean Hulse, Dakota  
22 Resource Council.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. WATERS: Dean, could you try  
2 speaking up a little more?

3 MR. HULSE: This is Dean Hulse. I  
4 am a member of the Dakota Resource Council.

5 MR. WATERS: Okay. Anybody that I  
6 missed on the phone?

7 (No response)

8 MR. WATERS: Okay. So let's take  
9 a look at the list of interests that you sent  
10 me over the weekend. This is about midway  
11 though your packet. It does have page number  
12 one at the bottom. These were a bunch of  
13 different documents that were stapled together.  
14 I'll give you a second to find that.

15 So I tried to pull this together by  
16 production sector, and I tried to list out  
17 what the main issues were that you wanted to  
18 have addressed in some sort of coexistence  
19 policy or approach.

20 So for the organic sector -- and  
21 the way this is put together, the things that  
22 are in the dark bullets, solid bullets, are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sort of my summary of what I thought the  
2 circle bullets underneath were saying.

3 And the circle bullets are just  
4 quotes from your interest statements that you  
5 sent me. In cases where there's just a solid  
6 bullet by itself, those are mostly just your  
7 comments.

8 So here's the organic sector's  
9 interests and needs. Need to prevent unwanted  
10 gene flow. Second, having a mechanism for  
11 oversight, appraisal, and remuneration be put  
12 in place if the gene flow hasn't been  
13 prevented, and determining how the financial  
14 liability will be handled if contamination  
15 occurs.

16 The third main category is there  
17 are a variety of issues surrounding Roundup  
18 ready crops, which include alfalfa, and that  
19 they cause problems related to that particular  
20 trait of being resistant to the herbicide  
21 Roundup.

22 And then concerns about GE crops

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 affecting biodiversity. Next one was a  
2 concern about safety in general of these GE  
3 products. Next person was looking for the  
4 most sustainable method of production to feed  
5 future populations.

6 And the last one was that USDA  
7 should take more time, maybe even a year, to  
8 decide, rather than do what seems like a  
9 truncated process of deciding by January.

10 So what I'd like to hear from the  
11 organic folks, is that a fair estimate or  
12 summary of what you sent me? Is there  
13 something that's missing here, a nuance that I  
14 have not captured?

15 DEPUTY SECRETARY MERRIGAN: Can I  
16 also suggest, Ken, that you have grouped these  
17 -- and I haven't had a chance to go through  
18 all the detailed individual statements, but  
19 the organic sector, or the GE sector, or the  
20 non-GE -- they're not all one voice.

21 MR. WATERS: Right.

22 DEPUTY SECRETARY MERRIGAN: So that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you might be asking, within this array of  
2 interests, did you capture mine? But it  
3 doesn't necessarily, in its entirety, reflect  
4 each person. Is that right?

5 MR. WATERS: Right. That's exactly  
6 right. And I know some of you had things to  
7 say about more than one part of this, and I  
8 tried to capture those in the appropriate  
9 sections.

10 So maybe let's just go through the  
11 whole list here, and then be thinking about  
12 that question. What is it that's missing?  
13 What would you like to add? What nuance needs  
14 to be added here?

15 Or if there's something I've  
16 included that's just not right, let me know  
17 that too. And the idea here, I think, is that  
18 these issues are sort of the basis on which  
19 the plans will solve these needs.

20 So when we get to the plans part,  
21 we'll have some ideas of things that some of  
22 you are suggesting that should be done to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 foster or strengthen coexistence, but they  
2 need to solve some or all of these issues, as  
3 well.

4 So it's sort of -- actually, I  
5 didn't introduce myself. My name is Ken  
6 Waters. I'm with policy and program  
7 development in APHIS. And basically what we  
8 do in my staff is work on planning and work on  
9 evaluation.

10 So we're often thinking about  
11 what's the criteria on which to evaluate  
12 something, and figuring out what is the best  
13 way to go forward is. And a lot of times,  
14 those things are intertwined.

15 The way you want to evaluate  
16 something helps to inform how you're going to  
17 plan for it. So the GE sector, and again,  
18 with Deputy Secretary Merrigan's caveat here:

19 A generally effective, robust,  
20 science-based regulatory process is needed  
21 that's based on applicable law and consistent  
22 with WTO sanitary measures.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Over on page three, some sort of  
2 governance is needed for the coexistence,  
3 particularly in the context of product  
4 deregulation.

5 Next is: people are still looking  
6 to fulfill the promise of biotechnology.  
7 Farmers and consumers have the right to choose  
8 from a variety of products and production  
9 methods. Coexistence is in the best interests  
10 of American farmers and consumers.

11 And then finally, the conventional  
12 non-GE sector is saying you need to prevent  
13 unwanted gene flow, and again, coexistence is  
14 in the best interests of the American farmer  
15 and consumer.

16 So we have about 20 minutes here  
17 for discussion. So who wants to start off  
18 here?

19 (Off-mic comment)

20 MR. WATERS: Oh, wait. We're going  
21 to need to have the microphones.

22 MR. SIEMON: George Siemon. Just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the organic part -- we're concerned about the  
2 lack of advancement in implementing some of  
3 the regulations that have come from the Farm  
4 Bill and some of the other acts. So I would  
5 like to see that added to a concern involving  
6 regulations.

7 MR. WATERS: Anyone on the phone?  
8 Somebody's speaking, but we can't hear you.  
9 I'm still not hearing you.

10 DEPUTY SECRETARY MERRIGAN: We need  
11 to work out that technology. Let's try a  
12 different track, please. And if people would  
13 just like to share what they hope to achieve  
14 out of this meeting.

15 Why would you give up your holiday  
16 week -- what are you hoping USDA is going to  
17 deliver on here, today, at the end of the  
18 meeting?

19 You know, as you come into it, what  
20 are you hoping to get from the secretary? How  
21 about that? Let's just get it all out there.  
22 Mr. Robb?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. ROBB: We appreciate the chance  
2 to be here, along with this group. And I  
3 think ours just is -- we are concerned about  
4 the length of the time that's been set aside  
5 prior to January 24th to complete this  
6 process.

7 And we are, as we have been,  
8 willing to -- we want to participate in a  
9 full-throated discussion and dialogue about  
10 the potential for meaningful coexistence. And  
11 we think that -- we have not even had a chance  
12 to read the whole thing over the weekend.

13 So I'd like to see that there be a  
14 meaningful period of time to be able to  
15 participate and discuss this, so there can be  
16 -- coexistence is a big idea that should be  
17 followed through.

18 So these comments here -- I think  
19 the USDA label, that means something. It's  
20 been -- it was ten years in the making, as you  
21 all know, and there's a lot of investment in  
22 that label.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           And that hasn't really be spoken to  
2 here in this list of issues here. The  
3 investment that USDA has in that label, the  
4 investment that our sector and others have in  
5 this brand, and also that the customer now has  
6 in it, as well.

7           I'm suggesting there might be a  
8 fourth option, not just to take a year, but a  
9 year to actually do some trials, with USDA  
10 facilities, so that you could actually look at  
11 these questions of cross-contamination and  
12 gene flow in a more real way.

13           And then, I think, also the role of  
14 market forces. I think the question here  
15 about where are the costs allocated in the  
16 system -- the costs right now, in the current  
17 system, are all on the organic producer to  
18 verify, and so forth.

19           And it seems like if those costs  
20 could be reallocated, market forces could,  
21 perhaps, help us sort out the farmer choice a  
22 little bit. That might be the right

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 combination, along with a clear government  
2 role in terms of the rules of the road.

3 So that, to me, seems like a good  
4 combination. But you know, we're here to  
5 participate, to contribute. We think this is  
6 an opportunity to create a broader, wider,  
7 deeper discussion about GE crops. I'm not  
8 sure that can be accomplished by January 24th.

9 DEPUTY SECRETARY MERRIGAN: Could  
10 someone in the alfalfa growing business, walk  
11 us through the calendar? Why are there these  
12 time pressures?

13 MR. MCCASLIN: Mark McCaslin,  
14 Forage Genetics. So alfalfa's planted  
15 primarily in two times of the year, in the  
16 spring and the fall. So in some geographies -  
17 - the spring in California, obviously, is  
18 different from the spring in Wisconsin or  
19 Minnesota.

20 But there's essentially two  
21 planting seasons. And the spring planting  
22 season typically would be April/May, would be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 typical for much of the U.S. And the fall  
2 planting season would be August/September,  
3 roughly.

4 So the spring planting season is  
5 the big one. It probably represents -- maybe  
6 two thirds to three quarters of all the seed  
7 that's planted is planted in the spring in the  
8 United States. So those planting decisions --  
9 even though those seeds are planted in April  
10 or May, those planting decisions are made over  
11 the wintertime.

12 So they are being made as we speak,  
13 really in December and January. So the  
14 January timing is really critical. If there's  
15 going to be a spring planting season this  
16 year, getting a USDA decision in January is  
17 very important in terms of farmers making  
18 decisions about their planting intentions for  
19 the next year.

20 I'll say one more thing, if I can,  
21 and that is when, in 2007, Judge Breyer  
22 ordered an EIS, the timetable that was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 projected for an EIS was two years. So we're  
2 going on almost four years, now.

3 And in the meantime, as part of  
4 that decision, Judge Breyer left in existing  
5 acres, both of seed and -- so the injunction  
6 didn't apply to existing acres of seed and  
7 forage.

8 So based on USDA's estimate of a  
9 two-year turnaround on an EIS, rather than pay  
10 our seedgrowers to take out those Roundup  
11 ready acres, we left those in. We honored  
12 those contracts. And we harvested that seed  
13 that we had paid the growers for.

14 So that seed that was produced in  
15 2007, 2008, 2009, according to Judge Breyer's  
16 ruling, is in storage. It has been in storage  
17 since that time. So the owners of that seed  
18 are the 350,000 farmer members of Land O'  
19 Lakes. So this -- is the Land O' Lakes  
20 cooperative made the decision to pursue  
21 Roundup ready alfalfa.

22 We produce the seed. We own the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 seed, and it's stored in our warehouses. And  
2 that's a risk to our farmer members. So we  
3 feel pretty strongly about an expeditious  
4 decision on this issue, because our grower  
5 members have seed dollars at risk.

6 DEPUTY SECRETARY MERRIGAN: Someone  
7 wanted to respond.

8 MR. FREESE: Yes. I'm Bill Freese  
9 with the Center for Food Safety. And like  
10 others here, we haven't had time to adequately  
11 examine the final EIS. And like others here  
12 also, we still have gene flow concerns.

13 But what I'd like to address here is  
14 the risk of Glyphosate resistant weed  
15 evolution, which is greatly fostered by  
16 Roundup ready crops, such as Roundup ready  
17 alfalfa. What we're seeing is an epidemic of  
18 Glyphosate resistant weeds, which are imposing  
19 incredible costs on growers, in some cases  
20 threatening their livelihoods, increasing  
21 pollution of the environment as a response to  
22 control these resistant weeds.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           And these are problems that,  
2 unfortunately, APHIS has not even begun to  
3 take seriously. And it's evident in this  
4 Roundup ready alfalfa EIS that they're not  
5 being taken seriously.

6           One reason alfalfa's important is  
7 because it's a crop that's grown almost  
8 without herbicide use presently. And many  
9 growers rotate it with corn, soybeans, crops  
10 that are mainly Roundup ready. So alfalfa  
11 often provides a break from Glyphosate  
12 selection pressure.

13           With those farmers who adopt  
14 Roundup ready alfalfa into a continuous  
15 Roundup ready system, we're going to have even  
16 more selection pressure for more weeds.

17           So this is not analyzed in the EIS.  
18 And to my knowledge -- I've dealt a lot with  
19 APHIS decision-making documents, and I've  
20 never seen a decent treatment of this issue.  
21 Meanwhile, these weeds are spiraling out of  
22 control, and in three years they're projected

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to infest one of every four row crop acres.

2 I could go on, but I'll leave it at  
3 that. And I just hope we can have serious  
4 dialogue on this issue.

5 MR. WATERS: Is there someone up  
6 here?

7 MR. ROBB: We've had our own  
8 challenges with the government processes in  
9 the last year, so I understand what you're  
10 saying.

11 DEPUTY SECRETARY MERRIGAN: I know  
12 the issue that's going to get you all to get  
13 along. Beating up the government. Go ahead.

14 MR. ROBB: But I guess I'm really  
15 trying to -- help me to understand that, given  
16 that this particular issue is going to be the  
17 proxy for how we think about GE approval going  
18 forward, just because of the way it's landed,  
19 and given the potential impact that if you  
20 take us at our word, which we take you at your  
21 word, that this potentially has on our  
22 livelihood, our industry -- I'm trying to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 understand the rush for these seeds this year,  
2 given the longer term potential impacts on the  
3 whole industry and producers.

4 I appreciate that some people have  
5 risked money on seed, and it's sitting in  
6 warehouses, et cetera. But I'm trying to  
7 balance that with the fact that this process  
8 is going to guide the evolution of GE crops  
9 coming to market.

10 And it seems to me that -- I'm  
11 trying to balance that. So help me understand  
12 how you think about that. Please.

13 MR. MCCASLIN: So maybe the cat's  
14 out of the bag, right, that you see this, and  
15 maybe everybody does, that this is a proxy for  
16 some larger process about coexistence and  
17 biotech crops.

18 Our understanding was this meeting  
19 was about alfalfa and this particular  
20 deregulation decision that's going to be made.  
21 And I think one of the things that we're going  
22 to share -- to the extent it sets a precedent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it may be, but I guess our view is that this  
2 is part of an ongoing decision, part of an  
3 ongoing process at USDA to conduct a court-  
4 ordered EIS, use that to make a deregulation  
5 decision on alfalfa.

6 And I think that one of the things  
7 that we're going to be sharing a little bit  
8 later on today is the really extensive efforts  
9 that alfalfa stakeholders have been working on  
10 over the last almost decade to understand gene  
11 flow, to design stewardship programs to manage  
12 gene flow under the umbrella of the National  
13 Alfalfa and Forage Alliance, which is a grower  
14 and industry group.

15 So there's been a phenomenal amount  
16 of work developing coexistence strategies  
17 outside of what's happened at USDA, and I  
18 think one of the things that we're here to  
19 share is how extensive that's been, how open  
20 the process has been. We've got third-party  
21 verification of various of those steps that  
22 show that these processes are working.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           So I think our -- part of our  
2 message today is we've got a program on  
3 stewardship, managing coexistence, today that  
4 was put together by alfalfa stakeholders. And  
5 that it, in our view, has proven to be  
6 sufficient.

7           MR. WATERS: Next is Keith.

8           MR. MENCHEY: Keith Menchey with  
9 the National Cotton Council. Kathleen, I  
10 think you posed the question of what we hope  
11 to achieve here. First of all, I know this is  
12 being couched as an alfalfa issue, but I  
13 differ in that opinion.

14           USDA is going into uncharted  
15 territory, really setting a precedent with  
16 these decisions here. And I think these will  
17 have implications on future biotechnology  
18 decisions. So although this is being couched  
19 as an alfalfa decision, the National Cotton  
20 Council sees this as having a far greater  
21 potential in future decisions.

22           In terms of what I'd like to learn

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 here today, a couple of things. First of all,  
2 I'd like to get some clarification on the  
3 legal authority that's taken place within this  
4 decision making process.

5 Because it seems to me -- and  
6 again, I'm asking for clarification here. But  
7 it seems to me that there's a blurring of NEPA  
8 and Plant Protection Act decisions. My  
9 understanding of NEPA is that it's not a  
10 decision making process. It simply forces  
11 federal agencies to look at environmental  
12 impacts, but that it does not have a decision  
13 making authority to it.

14 So it seems like we're looking at  
15 NEPA and then we're blurring that into the  
16 Plant Protection Act, which says that APHIS is  
17 supposed to determine whether or not a trait  
18 is a plant pest. So I would like to get some  
19 clarification on the legal aspect of this.

20 And I'd also like to get a better  
21 feeling for harm. What actual harm is going  
22 on here? You're going to hear from the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 alfalfa guys a little bit later that their  
2 isolation systems are working well within  
3 their seed industry. I haven't -- I'd like to  
4 see some documentation of actual economic harm  
5 that we're talking about.

6 It seems right now we're looking  
7 for a solution to a problem that we haven't  
8 yet defined. So those are my two questions.  
9 That's what I'd like to see.

10 MR. WATERS: Kathy, and then Doug.

11 MS. OZER: I'm Kathy Ozer with the  
12 National Family Farm Coalition. And I think  
13 that adding into this discussion is not just  
14 the harm to organic farmers, but the harm to  
15 farmers who've chosen not to use GE seeds, and  
16 are producing conventionally but not  
17 necessarily marketing -- are using non-GE  
18 seeds, but not necessarily marketing through  
19 organic channels.

20 And that's been a concern from the  
21 very beginning within the Family Farm  
22 Coalition. I think the issue about economic

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 impacts is a very real issue. Future Markets  
2 and FFC has on most issues been very critical  
3 of the administration for pushing so much on  
4 export solutions.

5 This is a case where there is very  
6 real issues about who are buyers of some of  
7 these products, of which some of the  
8 opposition for the benefit of farmers in their  
9 own countries for not wanting to accept GE  
10 products applies both to alfalfa and to other  
11 products as well.

12 So I think being clear, and  
13 expanding that discussion and that analysis,  
14 and I think this issue of not rushing to move  
15 forward on something simply because there is  
16 seed in stock, or seed in reserve, is an issue  
17 that's got far greater implications. Thank  
18 you.

19 MR. WATERS: Doug?

20 MR. GOEHRING: Thank you. I find  
21 it interesting and I think you raised a good  
22 question about what our expectations -- Doug

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Goehring, North Dakota Ag commissioner. I  
2 probably have quite a bit of expectations out  
3 of this, but for the most part I'm here to  
4 gain some insight and understand some other  
5 perspectives.

6 Because quite frankly, this is a  
7 little confusing to a lot of us in the ag  
8 community, because we practice what we  
9 consider to be a good, neighborly fashion out  
10 on the farm.

11 That doesn't mean everybody does,  
12 and maybe we've got to hold more people  
13 accountable and share more, and help them  
14 understand what they're doing that may be  
15 somewhat of an irritant to our neighbors.

16 For example, if your bull gets out  
17 and gets in the neighbors' cows, you've got a  
18 little bit of an issue. You've got to put up  
19 a better fence. Maybe you've got to establish  
20 two fences on both sides.

21 In the same respect, we have a lot  
22 of producers out there, because they know that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 someone else is producing seed across the road  
2 there, both of them consider how they're going  
3 to move forward if they're planting the same  
4 crop, the same like species, to mitigate that  
5 risk of having some cross-contamination.  
6 Depending on what that species is, too.  
7 Whether it's wheat, whether it's corn, whether  
8 it's soybeans, there's different factors  
9 there.

10 So this is kind of interesting to  
11 see how we can move forward, and to address  
12 the issue. There was a USDA report out in  
13 2008. I didn't have a chance to actually read  
14 it, but I got a chance to scan it this  
15 morning.

16 And I think it's pretty  
17 interesting, because it's the USDA advisory  
18 committee on what issues should USDA consider  
19 regarding coexistence among diverse  
20 agricultural systems in a dynamic, evolving,  
21 and complex marketplace.

22 And I hope to get a chance, when we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 finish today, to get through this tonight and  
2 find out exactly what was all said. But I  
3 kind of like some of the stuff that I see so  
4 far. So in reality, I hope that we come up  
5 with a common sense solution to how we address  
6 this.

7 I know the gentleman spoke about  
8 resistant weeds. For many years, we, as  
9 farmers -- and not all farmers -- have  
10 understood that certain chemistries only  
11 address certain types of weeds. Roundup was  
12 always a great grass herbicide, but it was  
13 never a good broadleaf herbicide.

14 One thing that we've continued to  
15 do in the last several years, as most  
16 producers have become aware, is have multiple  
17 chemistries to address the different issues  
18 you have. 2,4-D only addressed a few of the  
19 broadleaf weeds, and everybody said "Well, we  
20 still have other weeds out here we need to  
21 deal with."

22 They weren't resistant, they just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 weren't susceptible. So it's a matter of  
2 going after that. And we are doing a better  
3 job, I would say, in the ag community. But we  
4 still have issues in the ag community where  
5 producers are not aware of what they need to  
6 do, or else, because it's cost-prohibitive,  
7 aren't moving forward to address it.

8           And I know with alfalfa -- I've  
9 raised alfalfa. In the past, I was subjected  
10 to using Pursuit. Well, that always stunted  
11 it, held it back. It did control some of the  
12 issues I had out there, and addressed them,  
13 but it was kind of a hindrance at times, too.  
14 Because maybe I didn't get an alfalfa crop  
15 that year after I used it.

16           So I understand that side of it,  
17 but I do think that one of the things that was  
18 raised -- and the gentleman from the Cotton  
19 Council certainly pointed it out. The  
20 challenge is, how does this affect us as we  
21 move forward with all biotechnology? What's  
22 that message?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           And I think that's certainly a  
2 concern. What do we want to do here? So I'm  
3 hoping that we certainly get to a better place  
4 when we're done. And I'll share any insights  
5 I have, and I'm certainly interested to hear  
6 the others that exist out there. Thank you.

7           MR. WATERS: Thanks, Doug. Sorry,  
8 we're going to have to move on to the next  
9 part of the agenda. We're going to hear from  
10 Rebecca Stankiewicz-Gable, to talk a little  
11 bit about the EIS.

12           MR. KIRSHENMANN: Excuse me, can  
13 you hear me on the phone?

14           MR. WATERS: Yes.

15           MR. KIRSHENMANN: Can you tell us  
16 what the process is for getting into the queue  
17 on the phone for comments?

18           MR. WATERS: Next time around I'll  
19 give you -- we'll take a brief break, and just  
20 ask for who needs to get in the queue.

21           MR. KIRSHENMANN: Thank you. By  
22 the way, Kristina Hubbard from Organic Seed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Alliance is on the call, but she was not able  
2 to get through with the sound. So just to let  
3 you know.

4 MR. WATERS: Okay. Thanks. Go  
5 ahead.

6 MS. STANKIEWICZ: Hi. So, as I  
7 said, my name is Rebecca Stankiewicz-Gable,  
8 and I am a senior environmental protection  
9 specialist at biotechnology regulatory  
10 services with APHIS, USDA. And I had the -- I  
11 was assigned the project of finishing the  
12 alfalfa final EIS.

13 So I'm here today to just talk to  
14 you a little bit about what the alternatives  
15 are that are in the final EIS. We'll run  
16 through them really quickly, and then there  
17 will be a couple minutes for questions. Thank  
18 you.

19 So there's a handout in your  
20 packet. It looks like a PowerPoint.

21 MR. WATERS: On the right hand side  
22 of your blue packets.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. STANKIEWICZ: So in the final  
2 EIS there were three alternatives analyzed.  
3 The first alternative was to deny the  
4 petition, so that alfalfa, glyphosate tolerant  
5 alfalfa, or Roundup ready alfalfa would remain  
6 a regulated article.

7 The second alternative that we  
8 considered was to approve the petition in  
9 full, and that would be to grant non-regulated  
10 status to glyphosate tolerant alfalfa. Those  
11 were the two alternatives that were considered  
12 in the draft EIS.

13 Based on public comments we  
14 considered a third alternative in the final  
15 EIS, and that was to approve the petition in  
16 part, with geographic restrictions and  
17 isolation distances.

18 So the first alternative, to deny  
19 the petition, served as our no-action  
20 alternative, and that would be the baseline.  
21 Under this alternative, permits would still be  
22 required for the introduction of glyphosate

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 tolerant alfalfa. So you would need permits  
2 to import it, move it interstate, or release  
3 it into the environment.

4 The second alternative, which is to  
5 approve the petition or grant non-regulated  
6 status -- in this case, permits would not be  
7 needed for introduction. So you wouldn't need  
8 permits to move it through the environment,  
9 release it into the environment, import it, or  
10 move it interstate.

11 When we considered this alternative  
12 in the final EIS, we looked at it and  
13 evaluated it in the context of current  
14 stewardship programs that are required for  
15 both hay and seed for glyphosate tolerant  
16 alfalfa.

17 The third alternative, which is to  
18 approve the petition with conditions, was  
19 designed to address economic impacts, as the  
20 USDA was mandated by the courts to consider.  
21 So based on public comment, we brought this  
22 third alternative into our analysis for the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 final EIS.

2 It's designed to reduce potential  
3 cross-pollination between GT and non-GT  
4 alfalfa, and promote the availability of non-  
5 GT alfalfa seed and hay for GE-sensitive  
6 markets.

7 Under this alternative, basically  
8 there are three tiers. They are geographic  
9 areas, and they are based on the amount of  
10 seed production that is in each of those  
11 states. We used the 2007 NASS census of  
12 agriculture to identify those states.

13 So tier one are states that don't  
14 have seed production. And in those states,  
15 under this alternative, no isolation distances  
16 were required for growing alfalfa as hay.

17 In tier two, we used a cutoff of  
18 one percent seed production for our tier two  
19 states. And if you look in your packet,  
20 you'll see there's a piece of paper and a  
21 table that looks like this. So the  
22 alternative that's considered in the final

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 EIS, the top nine states in this table, are  
2 what -- I'm sorry, the top nine states in this  
3 table are what's in tier three, and the  
4 remainder are in tier two. So these are  
5 states that produce seed.

6 I'd like to mention that we also --  
7 during the course of this, we received a  
8 petition for partial deregulation, and that  
9 also used a tiering system. The states are a  
10 little different. It uses a different cutoff  
11 point, and so that's available on our website.  
12 But if you look at that one, it's the top 11  
13 states that end up in tier three. So that's  
14 one of the distinctions between those two  
15 proposals.

16 So in tier two there are isolation  
17 distances for hay. It's 165 feet between  
18 glyphosate tolerant hay and any conventional  
19 seed production. And there's also a mowing  
20 requirement, 10 percent bloom. And that's  
21 similar to the technology use agreement that  
22 Monsanto currently has in place for Roundup

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ready alfalfa.

2 In addition to that, there's also  
3 an isolation distance between GT alfalfa seed  
4 and conventional seed. And that's five miles  
5 in both tier two and tier three.

6 In the tier three states -- these  
7 are states, as I mentioned, that produce more  
8 than one percent of the U.S. alfalfa seed  
9 production. And so there are nine states in  
10 that tier. And in these states, in counties  
11 where seed is produced, GT alfalfa hay is not  
12 allowed. But GT alfalfa hay is allowed in the  
13 other counties.

14 And in any situation where you,  
15 perhaps, are on a county line, or close to  
16 another field, you'd still have that 165 foot  
17 isolation distance between the hayfield and  
18 the conventional seed field. And then, for  
19 the remainder, there would be, again, five  
20 mile isolation distances for seed.

21 Part of the alternative described  
22 for alternative three, the partial

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 deregulation alternative, also includes  
2 mandatory education for growers. There's no  
3 seed to be harvested from foraged fields.  
4 There's labeling of seed bags and seed  
5 identification -- so perhaps a seed colorant  
6 or some type of identification on the seed  
7 itself -- and developer reporting  
8 requirements.

9 So the producer and the marketer  
10 would be required to report certain aspects,  
11 and those are outlined in the EIS. I also  
12 want to point out that, the way this is  
13 described in the EIS, it's meant to be  
14 reviewed periodically. And so as more data  
15 comes in, the alternative itself could be  
16 adapted to meet the goals of coexistence.

17 So does anyone have any questions?

18 MR. WATERS: And this time, let's  
19 start with folks on the phone. Any questions  
20 from folks on the phone?

21 MR. KIRSHENMANN: This is Fred  
22 Kirshenmann, and one of the things that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concerns me in the conversation is that -- and  
2 I don't mean this in any critical way, but I  
3 think a lot of times we operate on the basis  
4 of theory rather than what happens on an  
5 actual farm.

6 And as a farmer, some of these  
7 protections that you're talking about don't  
8 always work that way. It's assumed, and this  
9 is true of many of my friends who are forage  
10 breeders, who simply operate on the assumption  
11 that if you're harvesting alfalfa for hay,  
12 then there isn't a problem with contamination,  
13 because you harvest the alfalfa before it goes  
14 to bloom.

15 That's generally true, but on a  
16 real farm there are at least two exceptions to  
17 that. One is if you happen to get a lot of  
18 rain and a low area of your field is in water,  
19 and you can't get in to harvest it, it's going  
20 to go to bloom.

21 And second is, a lot of times  
22 farmers, including myself, we don't want to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 cut that third cutting of alfalfa because we  
2 want to allow it to go to full maturity so  
3 that it increases the alfalfa yield the  
4 following year. And so again you're going to  
5 have some of that alfalfa go to bloom.

6 So there are those kinds of issues  
7 that concern me on a real operating farm. And  
8 the one thing I haven't heard in any of this,  
9 any of the discussion or any of the  
10 conversation about all of this over the years,  
11 is where is the evidence that coexistence has  
12 been possible with existing GEO crops?

13 And the rule is, primarily, that  
14 contamination happens. And we've seen it in  
15 rice, now. We've seen it in -- most of the  
16 corn and soybean seeds have some level of GMOs  
17 now in them.

18 So how are we making this case? I  
19 need to have more assurance that somehow we  
20 have found the magic bullet, the way to, in  
21 fact, ensure that contamination won't happen.

22 And on my farm, when contamination

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 happens, there's an economic loss. We had to  
2 stop raising canola, for example, because  
3 there was simply no way that we could keep it  
4 from becoming contaminated. And that was a  
5 60,000 dollar a year net income loss to us.

6 It continues to happen, now, where  
7 we're going to be in a position where we can't  
8 farm the way we're farming anymore. And I  
9 absolutely agree with what our secretary of  
10 agriculture from North Dakota said, and that  
11 is that it is true that we have always  
12 maintained this notion that every farmer  
13 should be free to farm the way he or she wants  
14 to farm.

15 But there's always a second  
16 provision to that, and that is that if any  
17 other farmers are hurt by that way of farming,  
18 then they have to take responsibility for  
19 that. And his example of the bull getting out  
20 -- you know, no matter how good your fence is,  
21 sometimes your cattle get out.

22 And we have always maintained

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 liability insurance in case our neighbors are  
2 harmed by our bull getting out or by other  
3 animals getting out. And I haven't heard any  
4 of that in our conversations on this issue.

5 MR. WATERS: Okay. Thanks, Fred.

6 MR. WILLIAMS: Russell Williams,  
7 American Farm Bureau Federation. One specific  
8 question on the EIS is the five mile distance.  
9 I have yet to wade through the 2,000 pages,  
10 but is there a full scientific writeup of the  
11 legitimacy of why the five miles was chosen?

12 And then I'll make a comment, and  
13 I'll let you have it. You know, farmers have  
14 coexisted for a very long time on their own  
15 operations. I mean, this isn't new to  
16 biotechnology. We've been doing identity-  
17 preserved corn for decades.

18 You know, waxy maize, popcorn,  
19 these individual types of corn that are grown  
20 in close circumference with other corn  
21 products. I mean, there are ways that farmers  
22 do this.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   We have farmers that are members of  
2 Farm Bureau that do all three types of  
3 agriculture on their same operation. They've  
4 never lost their NOP certification, and they  
5 continue to make profits.

6                   I think one thing that we also have  
7 to remember here is that for fifteen years,  
8 farmers have changed their operations a great  
9 deal to take advantage of this technology.  
10 They've invested in machinery. They've  
11 invested in different types of production on  
12 their land. So that there would also be a  
13 huge economic cost to farmers if you go the  
14 other route.

15                   So we have to also consider that  
16 these farmers have made great investments, and  
17 going back on fifteen years of investment on  
18 these operations could severely impact the 90  
19 percent of acres that are grown in corn, and  
20 the 95 percent that are grown in soy, and 86  
21 percent that are grown in cotton.

22                   So people need to realize that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there's an alternate side to this economic  
2 harm issue.

3 MS. STANKIEWICZ: To answer your  
4 first question about the five mile isolation  
5 distance, the five mile isolation distance was  
6 chosen to attempt to find a distance that  
7 would be a no-detect alternative. So it would  
8 be -- there's reasonable certainty that anyone  
9 in that area who was not growing GE alfalfa  
10 could harvest their crop and it would not have  
11 detectable levels of GT alfalfas.

12 And that's based on the -- there's  
13 limited evidence at this point, and when we  
14 analyzed, we analyzed the alternative based on  
15 what information was available of having  
16 alfalfa out on the landscape, the 200,000  
17 acres that are out there.

18 So the five miles is based, in  
19 part, on a no-detect alternative or a  
20 production alternative that was developed in -  
21 - I believe it's still in draft -- by the  
22 National Alfalfa Forage Alliance, as well as

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 some information that came out during the  
2 supreme court litigation. So that's where the  
3 five miles comes from.

4 In terms of the other issues of  
5 economic impact on both sides, those are  
6 analyzed in the EIS. We look at the economic  
7 impact that we can, because again, there is  
8 limited data on this. But we do look at the  
9 costs of having unintended presence, but we  
10 also look at the costs of having growers who  
11 are not able to use the technology in the  
12 areas where they would be restricted, as well  
13 as the potential for a concentration of seed-  
14 growers in particular areas to meet that five  
15 mile isolation distance.

16 And also, for the person who was on  
17 the phone earlier, I did want to mention that  
18 the alfalfa EIS does actually analyze  
19 different production practices, including  
20 letting hay go to seed, and it also takes into  
21 account issues with the weather and harvesting  
22 of hay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. WATERS: Do we have time? The  
2 secretary's due.

3 MR. SILVERMAN: I will let Jay go.

4 MR. FELDMAN: I have a procedural  
5 question. The EIS identifies a number of  
6 uncertainties, and really classifies and  
7 categorizes these different aspects of the  
8 review as likely to occur, unlikely to occur,  
9 not expected to occur. The issue of GT  
10 alfalfa becoming invasive, not likely to occur  
11 is one example.

12 Because of the degree of  
13 uncertainty associated with some of these  
14 effects that would be considered harmful, I'm  
15 uncomfortable with the idea of ceding  
16 authority to the technology use agreement  
17 relationship that the manufacturer has with  
18 the grower, and taking USDA out of that  
19 discussion long-term as new information that  
20 was unlikely becomes more likely, or that was  
21 not expected becomes expected.

22 And is that something that we can

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 expect will get addressed over time? Or how  
2 would you see the Department dealing with  
3 events that are now not expected, but  
4 certainly we see in the scientific literature,  
5 as Bill mentioned, and in operational issues  
6 around resistance, that are deemed not likely  
7 in the document, or not expected, but indeed  
8 we do expect, and many others expect?

9 So concern about relying on the  
10 contract relationship with the grower to  
11 substitute for ongoing regulatory review and  
12 oversight and management as new information  
13 becomes available

14 DEPUTY SECRETARY MERRIGAN: Do you  
15 want to hand me that? I'll let Rebecca off of  
16 the hotseat on that one. Just going through  
17 process, just so everyone's clear, Rebecca was  
18 the person spearheading the EIS. It is what  
19 it is, 2,300 pages of it, with a 200 page  
20 executive summary and a summary of the  
21 summary. Something like that. I don't know.

22 There's a lot of information out

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there, but it only gets USDA partway there.  
2 The actual decisional moment in time is the  
3 Record of Decision, that's what they call it.  
4 The ROD. We will issue that no sooner than 30  
5 days after the EIS gets notice in the Federal  
6 Register, which is happening sometime this  
7 week.

8 MS. STANKIEWICZ: On Friday -- or  
9 Thursday, you're right. It's a holiday on  
10 Friday.

11 DEPUTY SECRETARY MERRIGAN: So on  
12 Thursday it will be noticed in the Federal  
13 Register, and that's when the clock ticks.  
14 And it has to be available for public review  
15 for 30 days. USDA needs to come to a  
16 decision. The EIS informs our decision, as  
17 does the conversation that we are having with  
18 you today.

19 I don't see my secretary quite here  
20 yet, so are there other questions about the  
21 EIS?

22 MS. SLUTSKY: Yes, I have a -- it's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Bernice Slutsky from American Seed Trade  
2 Association. I have one specific question on  
3 the EIS. And you mentioned labeling of seeds,  
4 possibly colorants. Could you explain how  
5 that labeling would fit in with the general  
6 labeling requirements under the Federal Seed  
7 Act? Are we looking at superimposing other  
8 labeling requirements on seed?

9 MS. STANKIEWICZ: The types of  
10 labeling requirements -- this is labeling the  
11 bag, clearly labeling it as being Roundup  
12 ready alfalfa or glyphosate tolerant alfalfa.  
13 And the seed colorants are -- they're actually  
14 used now by the industry in order to  
15 distinguish between varieties. The types of  
16 things that are already in place and are used  
17 voluntarily.

18 DEPUTY SECRETARY MERRIGAN: Okay.  
19 A man who needs no introduction, our 30th  
20 secretary of agriculture, Tom Vilsack. Mr.  
21 Secretary, because we have some people on the  
22 telephone and because it's being transcribed,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they're going to hand you the mic.

2 SECRETARY VILSACK: Thank you all  
3 very much for being here today and  
4 participating. Those of you who could not  
5 make it but are participating by phone, I  
6 certainly appreciate the fact that all of you  
7 have made an extraordinary effort to be here  
8 at a very difficult time of the year. I know  
9 that everybody's terribly busy, so first and  
10 foremost thank you all for being here.

11 I thought I'd make just a couple of  
12 introductory remarks that give you a sense of  
13 where we are relative to these very difficult  
14 issues that we're talking about today,  
15 specifically as it relates to alfalfa, but  
16 even more generally as it relates to  
17 agriculture in America.

18 And I want to first of all say  
19 that, in my view, U.S. agriculture is strong.  
20 It is dynamic. And it is diversified. And  
21 the rise and growth of biotechnology speaks to  
22 the interest and the willingness of U.S.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 agriculture and farmers to grow and to change  
2 with technological advances. And we believe  
3 that has contributed significantly to what  
4 will likely be a record ag export year in  
5 America.

6 There's also been strong growth in  
7 organic and the identity-preserved production.  
8 And we view this as speaking to the  
9 adaptibility of U.S. agriculture to meet a  
10 growing and diversified demand from consumers  
11 both here in the United States and abroad.

12 Our view is that both trends must  
13 be considered successes for U.S. agriculture.  
14 These successes, however, pose a challenge for  
15 our regulatory system. And I would suspect  
16 that very few times in the history of the U.S.  
17 Department of Agriculture has the regulatory  
18 system been as challenged, as it tries to keep  
19 up with the rapid pace of adoption of GE  
20 products by the market at the same time as  
21 there is rapid growth of the organic and  
22 identity-preserved non-GE sectors.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           This situation has increased the  
2 complexity of the issues we face here in USDA,  
3 and it's obviously spawned a number of legal  
4 challenges to the decisions that we have made.

5           As it relates specifically to  
6 alfalfa, this development has affected all  
7 segments of alfalfa in the industry, alfalfa  
8 producers, and of course animal producers who  
9 depend on alfalfa, they too have been impacted  
10 and affected, and all are facing a tremendous  
11 uncertainty about whether or not there will be  
12 a growing season, and if so, when will it  
13 begin, and how this is all going to relate  
14 specifically to their individual operations.

15           So it's important for all of  
16 agriculture that we have this discussion, and  
17 I suspect that it's also important for  
18 consumers as well. This is our view. If we  
19 are forced to leave this to the courts to  
20 decide biotechnology policy, the relationship  
21 between biotechnology and organic, identity-  
22 preserved, non-GE crops, that situation in our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 view is untenable. It's untenable because,  
2 ultimately, the courts, a judge, will decide  
3 who farms and who doesn't.

4 Litigation will likely last for  
5 years, will impose extraordinary and  
6 unnecessary costs, will perpetuate  
7 uncertainty, and in the long run will be  
8 harmful to business and consumers alike. So  
9 our view is that we all lose in the end if  
10 this is the ultimate direction.

11 Without regulatory certainty, no  
12 one can be sure of meeting their individual  
13 market's needs or demands. This is affecting  
14 the biotechnology industry. It's also  
15 affecting the organic industry. And it's also  
16 affecting the non-GE conventional industry  
17 right now.

18 Left to the courts, we will see  
19 conflicts pitting farmer against farmer,  
20 faction against faction, for years to come.  
21 And we can easily imagine conflicting  
22 decisions from different judges in different

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 court systems that will make it even more  
2 difficult for everyone to understand what the  
3 rules are.

4 We want, at USDA, and we believe we  
5 need to reach a place in this country where  
6 all forms of agriculture can thrive and  
7 prosper together. And we can't allow a  
8 situation to develop where it's so difficult  
9 for biotechnology-derived products to be  
10 approved, because if that happens, it's our  
11 view that technology grinds to a halt in this  
12 country.

13 We see biotechnology as a key  
14 component of U.S. ag production, and a  
15 powerful means to increase agricultural  
16 productivity, as well as sustainability and  
17 resilience to climate. At the same time,  
18 there must be a recognition that the organic  
19 sector is one of the fastest growing segments  
20 of U.S. agriculture. And that is especially  
21 true over the last fifteen years.

22 And so it contributes vitally to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rural development and income opportunities for  
2 small and medium-sized landholders. It  
3 provides a certain vitality, and innovation,  
4 and entrepreneurship to American agriculture,  
5 allowing us to adjust to the multiple  
6 challenges that we will face in this industry  
7 for years to come.

8 It is our view that farmers,  
9 together, must work to meet the growing  
10 demands of the 21st century. And if they are  
11 not working together to meet market demands,  
12 our ability as a country to continue to be a  
13 major food producer domestically and  
14 internationally is going to be compromised.

15 So this is relatively serious  
16 business from a USDA perspective. What we're  
17 trying to do today is to facilitate a  
18 conversation, one that involves, ultimately,  
19 all of those who are here in the room and  
20 those on the phone. And our hope is that this  
21 conversation has a constructive outcome.

22 I want to emphasize, this is in a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sense the beginning of a much larger  
2 conversation that will take place over time.  
3 During this particular meeting, what we hope  
4 is a focus on what's achievable, what's  
5 practical, and what can work in this  
6 particular area of alfalfa.

7 But it will obviously have impacts  
8 on future areas. As regards the regulatory  
9 process, it's our intent to make a final  
10 decision sometime early in the next year. You  
11 all have seen the final EIS on GE alfalfa,  
12 which was posted on the web last week, and I  
13 think you've already had a brief presentation  
14 about it today.

15 As you know, we have analyzed three  
16 alternatives that range from no action, to  
17 full deregulation, to deregulation with some  
18 conditions. Today what I hope will happen, as  
19 I listen and observe, is that we talk to one  
20 another and not past each other.

21 It's up to us to find a path  
22 forward that allows every agricultural sector

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 represented here to thrive. I want us to  
2 focus on practical approaches to coexistence,  
3 and not on the relative merits of one kind of  
4 production or another.

5 I was thinking about this group  
6 that was meeting today, looking at some of the  
7 biographical information about the folks here.  
8 And to paraphrase something that John Kennedy  
9 once said when he was meeting with a group of  
10 scientists and artists at the White House, he  
11 said there hadn't been this much intelligence  
12 in the White House since Thomas Jefferson was  
13 there by himself.

14 It occurred to me, we haven't had  
15 this much of intelligent folks in the USDA  
16 probably since Henry Wallace was up in my  
17 office opining about the future of agriculture  
18 in the 1930s.

19 I know that all of you are  
20 committed. And we are too. Our job here is  
21 not to pick winners or losers, it's to figure  
22 out how everybody can be a winner. And that's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 why we have prompted this conversation today.

2           And I know that there are leaders  
3 in this room, who if you work hard enough and  
4 long enough, we can find a way in which all  
5 aspects of agriculture can thrive. So I'm  
6 asking for folks to engage in this process in  
7 a significant way, and we will not only make a  
8 decision on this particular issue, but we  
9 will, over time, come out with a view that  
10 will be informed by this process as to what  
11 coexistence should and ought to look like.

12           One final thing. I started out my  
13 public career as a small-town mayor and a  
14 state senator, having been through the farm  
15 crisis of the '80s in my state. And I dealt  
16 with farmers who were losing their land and  
17 losing their farms, and in some cases losing  
18 family members because of the distress and the  
19 emotional feelings about debt.

20           I have a strong, strong, feeling  
21 for people who live in rural America. And if  
22 we can't figure this out, the people I care

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about, and hopefully you all care about, will  
2 suffer. And that is something that I don't  
3 want to have happen. We need all types of  
4 agriculture to thrive, and there has got to be  
5 a way for smart people to figure that out. So  
6 with that, I'll turn it back to you.

7 DEPUTY SECRETARY MERRIGAN: Ken, I  
8 see Gary's card is up. And I'm also going to  
9 ask Chuck Conner to say a word, and for Doug  
10 to say a word. Because Chuck, you're my  
11 predecessor, and you know what it's like to be  
12 in these chairs. So a little perspective from  
13 you.

14 And Doug, also, you're representing  
15 -- you have a state of both kinds of farmers,  
16 so if we could sort of get Gary, and then  
17 Chuck, and then Doug, and then we'll see what  
18 cards go up.

19 MR. HIRSHBERG: Mr. Secretary,  
20 before you came in we had some dialogue. And  
21 Kathleen asked the opening question, which is  
22 what are our expectations for this process.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And I think it's clear from your remarks,  
2 certainly they echo what you said on the  
3 telephone last week, that this is a much  
4 bigger process than just the resolution of the  
5 alfalfa issue, though that is the immediate  
6 one upon us.

7 And really, what we're seeking  
8 here, is an alternative to endless litigation.  
9 And I hope lawyers present don't take offense  
10 to this, more lawsuits is a good job-creation  
11 program for lawyers, and I think most of us  
12 would probably agree, this is not the future  
13 that we all want, to resolve this in the  
14 courts.

15 And that's why I'm here, and that's  
16 why I think most of us are here. This  
17 invitation is unprecedented, and really  
18 important. And it's a real opportunity to  
19 resolve a much bigger issue than the one  
20 immediately upon us.

21 My concern is that I doubt anybody  
22 here has read the 2,000-plus pages. And we'll

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 all slog our way through in the next weeks, of  
2 course, but there's real serious and deep  
3 economic concerns, as you pointed out.  
4 There's consumer concerns, there's farm  
5 concerns, there's science-based concerns.

6           And these are all going to be a  
7 place where the concept of coexistence is  
8 really going to be tested and defined. And so  
9 my question, and Walter Robb echoed the same  
10 question earlier, is why do we reasonably  
11 think that a process of this importance and  
12 this magnitude can be accomplished by January  
13 24th?

14           I understand the reasons for this  
15 season, but this is not just about the alfalfa  
16 planting concerns of this season, or the seed  
17 stock and the decreased viability. But we're  
18 not just asking the question that pertains to  
19 this season.

20           You've invited us, and we are here,  
21 and certainly I can speak for the organic  
22 sector, we are enthusiastic about

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 constructively, in a data-based, intelligent  
2 way, going through a very important dialogue  
3 that's going to, we think, define the future  
4 of American agriculture. Maybe global  
5 agriculture.

6 And to compress it into a couple of  
7 meetings in January -- and again, with all due  
8 respect, there isn't even really an  
9 opportunity for a significant dialogue today.  
10 When I looked at the agenda over the weekend,  
11 I assumed it was an introduction.

12 You, Kathleen, indicated that  
13 there's thoughts about two meetings to come in  
14 January, but I severely doubt that, as you  
15 say, this level of talent and smarts and  
16 knowledge, can really be adequately exchanged  
17 on that kind of timeline.

18 So I would just ask -- certainly I  
19 think I speak for my colleagues in saying  
20 we're here, we're all in, we appreciate the  
21 opportunity, but we believe that this is going  
22 to take longer than a month to make real

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 progress.

2 MR. CONNOR: Mr. Secretary, Chuck  
3 Connor. I represent the National Council of  
4 Farmer Co-ops. I appreciate this opportunity  
5 for you and the Deputy to hear our concerns.  
6 In the case of the Co-ops, obviously we have a  
7 very direct interest in the outcome of this  
8 particular decision. And it's hard to address  
9 this issue without really breaking it into  
10 first there's the alfalfa decision and then  
11 obviously there is the broader decision in  
12 terms of the future of biotech in general.

13 And perhaps the latter question  
14 first, let me just say generally speaking that  
15 we would be in a world of hurt in terms of  
16 food production in this country without having  
17 been very, very proactive in taking what I  
18 guess we would now call option two, the option  
19 two approach, to the approval of past GE  
20 events. And I don't think we would even want  
21 to think about the consequences.

22 The past several years we've seen

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 relatively stable production to meet the  
2 growing demand that it is out there both in  
3 terms of export as well as domestic  
4 consumption. It's been a remarkable thing.  
5 So I hope in this process that we weigh very,  
6 very carefully anything that changes that  
7 course of action because the implications will  
8 be dramatic.

9 In terms of the alfalfa case in  
10 particular there's certainly the precedent  
11 involved here. But I would really encourage  
12 you to look at the impact of a very, very  
13 timely decision. And we talk about 30 days  
14 not being enough. I look at this more as --  
15 I've dealt with this for several years you  
16 know when I was in your seats. And this has  
17 been around a long time. It's time to finalize  
18 this decision on behalf of the growers out  
19 there that are caught up in the economics of  
20 this, sitting on stocks that they are  
21 wondering "Am I going to be able to pay this  
22 in March and April and May" or "Am I not?"

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           And I think the information is  
2 there. The economic data is very, very sound.  
3 And I think you have an industry in the  
4 alfalfa industry that is willing to talk about  
5 it. Okay. The last thing in the world we  
6 want to do is leave our consumers behind in  
7 this process. That's the last thing you do as  
8 a sales agent.

9           But at the same time, too, the  
10 decision that you need to make relative to  
11 approval of this process I think really needs  
12 to go to that tradition that we've had in GE  
13 events. Is it safe? And I don't think  
14 anybody's throwing any evidence out there  
15 throughout this whole five, six, almost seven  
16 year process now to raise any question about  
17 that whatsoever.

18           So I hope that fundamental fact  
19 enables us to make a timely decision here  
20 while the industry proactively, and I think  
21 they're better equipped to state this than me,  
22 goes forward with working with their consumers

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and their customers about how do we co-exist  
2 together.

3 MR. Goehring: Thank you. Mr.  
4 Secretary, thank you for this opportunity.  
5 Our state is very diversified in North Dakota  
6 from east to west, north to south, as you're  
7 very well aware. You've visited there. You  
8 have visited with producers. You've heard  
9 about practices and systems and the multiple  
10 crops. We're No. 1 in the 14 different crops  
11 in the U.S. And everybody puts forth best  
12 management practices concerning their  
13 operation, concerning the soils they work  
14 with, the environment they have to deal with,  
15 the crop they raise and grow.

16 So I found it very interesting as  
17 we move forward concerning this issue and  
18 there's multiple issues there. And I know  
19 that there was one thing that did come forward  
20 from our conversation back in September. And  
21 although you initiated this work the concept  
22 paper that I move forward to you came from our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 discussion and all the information that you  
2 shared with me some things that you'd like to  
3 see happen to address some of the issues with  
4 the injunctions that are being granted by the  
5 courts concerning these issues on  
6 biotechnology.

7 I can see by your passion and  
8 wanting to address it that I took from that  
9 all of the key things that you talked about  
10 and sought a crop insurance developer to try  
11 and come up with some ways of addressing this.  
12 And there's a handful of solutions there that  
13 possibly everybody can take, turn inside out,  
14 determine if that's even a direction.

15 But because of your willingness to  
16 put that on the table and say this is  
17 something we need to do I felt privileged that  
18 you shared that with me and gave me the  
19 opportunity to work on that and at least get  
20 it out here in front. You truly did move that  
21 in the direction that we have a ability to  
22 address one side of it which is what can we do

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concerning a grower's situation where he needs  
2 to be compensated or could be compensated in  
3 the event of a loss or a problem. What kind  
4 of risk does actually need to be addressed  
5 there with that individual?

6 I know the other issues we can  
7 certainly work on, work through. But I do  
8 appreciate that conversation because it did  
9 help us in so many ways. And I also  
10 appreciate the work that has been done by USDA  
11 previously concerning this issue with co-  
12 existence. And I'm looking forward as I  
13 stated earlier when you weren't here about  
14 reading through that tonight because I think  
15 that will probably help us in our ability to  
16 address some of these issues as we move  
17 forward.

18 Thank you.

19 DEPUTY SECRETARY MERRIGAN: Mark,  
20 do you want to talk a little bit about what's  
21 on the agenda?

22 MR. McCASLIN: Sure. So I have to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 admit I'm not all that knowledgeable about the  
2 -- soybean and cotton and canola industries  
3 and that history. So I am pretty  
4 knowledgeable about the alfalfa industry.  
5 I've been in it for over 30 years. And the  
6 company I work for, Forage Genetics  
7 International, sells to diverse markets as  
8 does most all the alfalfa companies that I'm  
9 aware of have an interest in selling biotech  
10 traits. They have an interest in selling  
11 conventional varieties. They sell to export  
12 markets.

13 I know we do and I think most of  
14 the other companies also sell to organic  
15 markets. So we get co-existence. It's part  
16 of our culture. It's part of our business.  
17 And so we've been committed right from the  
18 start in developing principles of stewardship  
19 that allow co-existence.

20 I think the alfalfa industry and  
21 I'm not trying to compare ourselves to the  
22 other seed industries, but I think we can be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proud of the proactive measures we've taken to  
2 address these co-existence issues. A real  
3 concerted effort in the early part of this  
4 decade in the early 2000s was made to get a  
5 better understanding of gene flow in alfalfa.  
6 So it was a combination of industry  
7 scientists, public scientists. Crop  
8 Improvement Association was actively involved  
9 in this. Did a whole series of pollen flow  
10 studies, looking at potential gene flow from  
11 seed field to seed field, from seed field to  
12 hay, from hay to seed field.

13 Work with also looking at feral  
14 plants and what impact that has. So many,  
15 many studies were done in the early 2000s  
16 which was finally sort of codified in a review  
17 publications by CAST. Gene flow in alfalfa,  
18 biology mitigation potential impact of  
19 production. So it's a peer reviewed article  
20 that pulled together probably 10 or 15  
21 research studies and summarizes that. So we  
22 talk about science based solutions for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 stewardship that the science is really based  
2 on this CAST publication.

3 So, having said that, we also have  
4 the luxury and I'm sure most crops -- We are  
5 maybe a latecomer to this party, but alfalfa  
6 has a grower association, NAFA, National  
7 Alfalfa and Forage Alliance, that has  
8 established an umbrella for this co-existence  
9 discussion within our state -- group.

10 So in late 2007 NAFA convened a co-  
11 existence symposia I think they called it or  
12 workshop. We had representatives from seed  
13 exporters, hay exporters, the organic  
14 community, breeding companies. So really a  
15 very diverse range of stakeholders. And based  
16 on that work groups were established. There's  
17 a core committee that was responsible for  
18 defining work products.

19 Based on that, NAFA has on their  
20 website you can find NAFA developed co-  
21 existence strategies for all these GE  
22 sensitive markets or AP-sensitive markets, so

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 organic, export A, export C and so forth. And  
2 again those were vetted them back to the NAFA  
3 membership which again is a range of various  
4 growers both organic, conventional and  
5 biotech. I think a very transparent, very  
6 nuance approach to science-based to try and  
7 figure out co-existence strategies.

8 In addition to that, then the  
9 industry again in concert with NAFA and AOSCA  
10 has developed specific plans to implement  
11 those co-existence strategies. The first one  
12 is NAFA best practices for Roundup-Ready  
13 alfalfa seed production. So there are  
14 established principles of isolation,  
15 management, education, a lot of things that  
16 are described in the EIS Alternative 3  
17 actually that are mandated and are NAFA best  
18 practices.

19 So the isolation distances is not  
20 five miles. It's based on pollen flow  
21 studies. It's different for different seed  
22 pollinators. But those have been accepted.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So those isolation standards are part of NAFA  
2 best practices. They come out of this  
3 publication and these pollen flow studies.

4 And part of the NAFA best practices  
5 requires that not only do the State  
6 Improvement Association people verify that  
7 those isolation distances are followed. So  
8 that's mandated. But there's also a group  
9 that looks at efficacy of those standards on  
10 an annual basis. So the three companies that  
11 make up the NAFA germ plasma supply sample,  
12 all of their conventional alfalfa plots test  
13 for AP.

14 That's sent to a third party AOSCA  
15 group. And they look at that. Then they say  
16 either the standards are working or they're  
17 not. So it's a dynamic process. It's  
18 reviewed on an annual basis.

19 So the question was and I think  
20 actually Fred Kirshenmann was one of the  
21 organic members of the core group of that co-  
22 existence. And he brought up a good point

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that became part of the rule going forward and  
2 that is shouldn't you -- So we may be  
3 comfortable with these isolation standards now  
4 and Roundup-Ready alfalfa is five percent of  
5 the total seed production. What happens when  
6 it becomes 50? Do those same numbers -- So  
7 how do we field validate on an annual basis  
8 and have an ability to adjust if we need to?  
9 So that sort of field validation happens every  
10 year now. It's part of the NAFA best  
11 practices.

12 So the NAFA best practices were  
13 developed based on talking to our customers  
14 and asking them so for seed that's sold in the  
15 U.S. that we would call non AP-sensitive, so  
16 that part of the market, what's a reasonable  
17 threshold for us to build isolation  
18 requirements. So it's a pretty tight range we  
19 heard back from customers, about between a  
20 half of percent and one percent. And we  
21 adopted the half of percent standard and all  
22 of the isolation standards in NAFA best

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 practices are based on that half of percent.

2 So having said that it could be  
3 that a large part of the U.S. market is  
4 comfortable with that low level presence. But  
5 there's a segment of the market that's not.  
6 So there's an organic segment. There's an  
7 export segment. And so there's a separate  
8 program in addition to NAFA best practices  
9 that is not as far along but is being led by  
10 AOSCA. And it's developing a process-based  
11 certification program for AP-sensitive seed  
12 predominantly targeting export markets but  
13 also for AP-sensitive domestic markets.

14 In that process, there is  
15 extraordinary isolation compared to the NAFA  
16 best practices. You know it takes another  
17 level and, Rebecca, that is five miles. And  
18 there's also additional practices of managing  
19 feral plants and so forth. So that process is  
20 going on. We're talking about AP-sensitive  
21 zones where there would be no round of seed  
22 productions. So you're carving zones

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 specifically for production for markets that  
2 are AP-sensitive.

3           So that's a process that's also  
4 moving along well. I guess my argument is we  
5 take this -- Our industry takes this  
6 seriously. We worked hard for the last decade  
7 developing internal standards for co-  
8 existence. They've been implemented. We've  
9 involved third -- First of all, the design of  
10 the programs has been transparent. It's been  
11 across a whole range of stakeholders. There's  
12 third party verification for all these things.

13           And they're designed to do two  
14 things, to be effective and have a minimal  
15 impact on growers that would be impacted by  
16 the program. And I think that's my problem  
17 with the plan C is that in our estimation,  
18 Rebecca, there is roughly 20 percent of the  
19 alfalfa hay acres are in those no plant zones.  
20 So that's 20 percent of the alfalfa producers  
21 in the United States that would be  
22 disenfranchised from the benefits of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 biotechnology and alfalfa because of the  
2 accident of where they happen to be farming.

3 MS. STANKIEWICZ: Right.

4 MR. McCASLIN: So I think a more  
5 nuanced approach is the approach that our  
6 industry is taking in designing something that  
7 we think can be effective without the impact  
8 on the farmers that wish to plant GE traits.

9 DEPUTY SECRETARY MERRIGAN:  
10 Comments on that? Other proposals?

11 MR. MILLER: Mr. Secretary, my name  
12 is Dave Miller. I'm the Chair of the Board of  
13 Directors of the National Alfalfa and Forage  
14 Alliance. And the Alliance is a group of  
15 organizations comprised of alfalfa seed  
16 growers, alfalfa hay growers, seed product  
17 developers, seed marketers and affiliated  
18 industries as well as a scientific component.

19 You know, as I look around the room  
20 today, obviously it's been talked about that  
21 there's two issues that we're dealing with  
22 here is the alfalfa specific issue and the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 larger GMO issue. I'm an alfalfa guy. So  
2 there's not that many alfalfa people here. So  
3 I think I know what the bigger issue is that's  
4 on the table. But I think it behooves us at  
5 least as a representative of this organization  
6 to be talking about the alfalfa specific  
7 situation.

8 Our job at NAFA is to ensure that  
9 all segments of the alfalfa and forage  
10 industry can compete and compete effectively.  
11 And our objective is to be a forum for  
12 consensus building. And as Mark has outlined,  
13 I think we've done that.

14 Alfalfa has played a key role in  
15 the U.S. agriculture over the last century and  
16 more. It's grown on over 20 and 25 million  
17 acres, consistently ranks third or fourth in  
18 crop acreage, valued at over \$9 billion. It's  
19 a component and crop rotation. It has  
20 significant environmental benefits in regard  
21 to nitrogen fixation, soil erosion, water  
22 quality. It's a great companion crop.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           Now in light of the benefits we  
2 think that alfalfa should have a long-term  
3 role in U.S. agriculture. The problem is the  
4 acres of alfalfa keep getting chipped away at  
5 by essentially value propositions from other  
6 crops. And the lack of the ability to adopt  
7 technology has a severe negative impact on  
8 that value proposition. When we talk about  
9 the impact on farmers I think I could probably  
10 bring a few farmers here from our affiliation  
11 that would tell you they have significant  
12 investment in the long-term value proposition  
13 associated with alfalfa.

14           And to kind of top that off there's  
15 a vast disparity, both public and private, in  
16 the research investment in alfalfa. And so we  
17 kind of see that value proposition. So NAFA's  
18 biotechnology resolution strongly supports the  
19 responsible use of biotechnology. We think it  
20 should be a tool in the toolbox for alfalfa  
21 growers and that they should be allowed to  
22 choose that technology.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           Mark's outlined the documents. We  
2 had hoped, we had planned, to have the NAFA  
3 documents regarding co-existence in the packet  
4 and obviously we weren't successful at that.  
5 But those can and will be made available to  
6 anybody who wants them.

7           To close, we think that the action  
8 of our industry in the last several years  
9 indicates our respect for various markets,  
10 that we've made a significant effort to  
11 accommodate those differences through the  
12 development of principles and strategies and  
13 then actually monitoring our situation as we  
14 can. We expect NAFA to play a significant  
15 role going forward and continuing to address  
16 these issues as it evolves.

17           And I think our lingering question  
18 getting back to the two, the small and big,  
19 issues on the table today is for our growers  
20 why is alfalfa being treated differently than  
21 other crops when it comes to these GMO  
22 standards. The issues, many of the issues,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that are being raised are out there with other  
2 GE crops. And we just again want to be able  
3 to compete effectively.

4 MR. FREESE: I would like to thank  
5 you, Secretary, for the invitation to come.  
6 My name is Bull Freese. I'm the science  
7 policy analyst of Center for Food Safety. And  
8 CFS appreciates I can assure you your deep  
9 concern with the economic welfare of American  
10 farmers.

11 And it may surprise you to learn  
12 that we're not only concerned about the  
13 welfare of organic and conventional growers,  
14 but also that of the biotech growers. We're  
15 interested in more sustainable approaches to  
16 the planting of biotech crops such as Roundup  
17 Ready alfalfa and to other roundup ready  
18 crops.

19 One of the issues that we see and  
20 we didn't see it taken seriously in the EIS is  
21 that Roundup Ready alfalfa will exacerbate a  
22 growing threat to American agriculture and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that is weeds developing resistance to both  
2 glyphosate and multiple herbicides. Resistant  
3 weeds are already imposing severe and growing  
4 costs on U.S. farmers.

5 Just in 2009, a survey in Georgia  
6 found that half a million acres of cotton were  
7 weeded by hand. Chopping cotton it's called  
8 and it hasn't been seen for decades. Their  
9 costs to these growers was \$11 million. Per  
10 acre weed control costs went from \$25 to \$60  
11 to \$100 per acre.

12 And according to Stanley Culpepper  
13 who's an expert at the University of Georgia,  
14 a cotton specialist, he said some growers are  
15 not going to survive this. Glyphosate-  
16 resistant pigweed is the cause of this. And  
17 it's again threatening the existence of these  
18 farmers' livelihoods.

19 In Illinois, a very recently-  
20 published paper talks about a very threatening  
21 relative of this pigweed species that's  
22 emerging rapidly in the Midwest and it's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 called tall waterhemp. And this weed is  
2 developing resistance to glyphosate and two or  
3 three other completely different families of  
4 herbicides. And these weed scientists are so  
5 concerned that they've said, "Herbicide  
6 resistance appears to be on the threshold of  
7 becoming an unmanageable problem in soybeans."  
8 And also that "If the last herbicide mode of  
9 action that's available to growers to control  
10 these populations, if that's lost to  
11 resistance, then soybean production may not be  
12 practical in many Midwest fields."

13 Okay. This is not CFS or  
14 GreenPeace. This is scientists from the  
15 University of Illinois. And Michael Owen from  
16 IOC University has said with respect to  
17 glyphosate-resistant weeds that we're on the  
18 edge of a precipice that we could step off of  
19 in the next two years. I could go on. There  
20 are multiple. There's a tremendous amount of  
21 concern in the weed science community about  
22 the glyphosate-resistant weed issues. And

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 also a consensus view that Round-up Ready  
2 crops, the way they're being used now  
3 unsustainably is what's causing and driving  
4 these problems.

5 So with Roundup-Ready alfalfa, at  
6 present alfalfa offers a great break from the  
7 use of glyphosate in rotations that are often  
8 otherwise completely Round-up Ready. With  
9 adoption of Roundup Ready alfalfa we'll lose  
10 that advantage, that resistant management  
11 advantage, on many acres. And this  
12 unfortunately is not reviewed well in EIS and  
13 we feel very strongly that it needs to be.

14 And I'll just close. I've taken a  
15 lot of time. I apologize. But there's a lot  
16 of reference in the EIS to best managements  
17 practices and recommendations from the  
18 registrant and others. What we've seen with  
19 other Roundup Ready crop systems is that this  
20 approach is not adequate. It's not working.  
21 And we need to consider unfortunately  
22 regulatory approaches I think.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           One of the problems is that the  
2 registrant has misguided many farmers and  
3 given them the wrong advice which actually  
4 exacerbates glyphosate-resistant weeds rather  
5 than preventing them. So I hope that we can  
6 talk about this important issue. I realize it  
7 doesn't fit into the co-existence framework so  
8 well, but it is an important issue and I hope  
9 it can get the attention it deserves.

10           Thank you.

11           MR. WATERS: Next is going to be  
12 Michael and Mike and then George and Walter.  
13 Is there somebody on the line that wants to  
14 get in the queue?

15           MR. DILLION: Yes. Matthew  
16 Dillion, Organic Seed Alliance.

17           MR. WATERS: Okay. I'll put you  
18 third after Michael and Mike.

19           MR. SLIGH: Yes. Good afternoon.  
20 Thank you for this opportunity. I'm Michael  
21 Sligh with the National Organic Coalition.  
22 And we also put in a paper to this dialogue as

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 well to lay out what we thought it would take  
2 to actually address GMO contamination  
3 prevention and to create market fairness.  
4 Because I think we're stuck at this place  
5 where unless we address the issues of  
6 liability and accountability and who pays when  
7 something does go wrong because our history of  
8 date has shown that it does go wrong and harm  
9 is done. But there's no mechanism there for  
10 being made whole.

11 I agree with the analogy about the  
12 bull getting out. But we have to look at who  
13 owns the bull. And we have to look at that  
14 situation and say "Who owns that bull does  
15 need to also take responsibility."

16 And I don't think we'll get where  
17 we want to go unless we put together a  
18 comprehensive approach. Because I think we've  
19 tried a lot of kinda halfway approaches over  
20 the last 15 years. And I don't think that  
21 without taking a look at really the whole  
22 thing, how do we address the consumer choice,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 how do we address the consumer right to know,  
2 how do we address the issues of fairness,  
3 liability, precaution, sustainability, parity,  
4 transparency and diversity that if we can put  
5 together a package that addresses these issues  
6 then I believe these three or four different  
7 markets could indeed find a way to move  
8 forward.

9 So I'm here to argue, yes, we had a  
10 dialogue during the Clinton Administration.  
11 We've had dialogues and I came to each of  
12 those. And I support these as well. And  
13 we're here to roll up our sleeves. But I  
14 think we will continue to do regulation by  
15 litigation unless we take a comprehensive  
16 approach to this thing once and for all and  
17 take the bull by the horns. And let's get to  
18 the bottom of it.

19 Thank you.

20 DEPUTY SECRETARY MERRIGAN: Let me  
21 just before the next comment. Michael, thank  
22 you for that comment. It's just encouraging

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 people, yes, you've been in dialogues for  
2 years. I've been in dialogues for years in  
3 biotech, too. And now what the Secretary and  
4 I need is we really need some specific plans.  
5 We need some specific advice.

6 I joked earlier many we could all  
7 agree that the government is not doing  
8 everything they need to do and the old joke  
9 from the government is we're here to help. We  
10 really mean to help. And we're asking you  
11 sincerely to put your ideas on the table and  
12 as specific as you can be will help us as we  
13 negotiate the road to that record of decision.

14 MR. VANDE LOGT: Thank you, Mr.  
15 Secretary. My name is Mike Vande Logt. I'm  
16 the seed leader for the Land O'Lakes seed  
17 business. And I'm here representing our  
18 350,000 farmer/grower/owners of our company.  
19 And in that group of farmers we have dairy  
20 farmers, we have crop producers, we have  
21 organic producers and we have producers using  
22 the technology and modern agriculture.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   And we're very committed. We want  
2 to be able to sell into all those markets.  
3 And we're very committed into the whole co-  
4 existence conversation proven by the fact that  
5 we sell organic and our WL organic brands.  
6 And we sell biotechnology to other farmers as  
7 well.

8                   So this is a real important topic  
9 for our organization. And looking back at our  
10 dairy group there was a concern in that group  
11 that because alfalfa is a small crop that the  
12 kind of investments weren't going to be made  
13 into bringing newest technologies into  
14 alfalfa.

15                   So our farmer/owners are basically  
16 the ones who made the investment to bring  
17 Roundup Ready alfalfa forward. And it's their  
18 investment that we're talking about here. And  
19 in their opinion there really hasn't been good  
20 weed control in alfalfa and they see this as  
21 their first opportunity to really have the  
22 kind of agronomic opportunities that other

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 crops have.

2 So as we look forward our total  
3 base to farmers, again both organic and the  
4 users of modern technology, are really  
5 concerned that sound science and good  
6 methodologies are used to make sure all  
7 markets can be met as we're very much about  
8 choice. And we want that choice to be both  
9 organic and the methodology of modern  
10 agriculture.

11 MR. WATERS: Next is Matthew on the  
12 phone.

13 MR. DILLION: I'm Matthew Dillion,  
14 Organic Seed Alliance. I want to clarify in  
15 the packets you sent out you put Organic Seed  
16 Alliance industry organization. We're  
17 actually an NGO. We are not funded by the  
18 organic industry or by another industry,  
19 rather through private foundation and public  
20 grants. Our mission is to the ethical  
21 stewardship and development of seeds to work  
22 with farmers through our plant feeders, seed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 growers and seed savers.

2 I also wanted to say beginning  
3 with, Secretary Vilsack, I appreciate your  
4 comments and I, too, come from the Midwest  
5 from a Nebraska farm family, a conventional  
6 farm family. I remember the '70s and '80s  
7 well and the difficulties that family farmers  
8 experienced during that time. And I also  
9 remember well walking the soybeans fields in  
10 the heat of Nebraska summers with machetes to  
11 get rid of weeds. I'm sure the fire  
12 department's been quite grateful.

13 All of that said, I also know now  
14 many organic farmers including organic farmers  
15 who have had their loads rejected because of  
16 high levels of contamination, particularly in  
17 corn, soy, canola as Mr. Kirshenmann mentioned  
18 earlier. And I believe as Michael mentioned  
19 our putting the cart in front of the horse.

20 I mean we're talking about letting  
21 the bull out of the corral before we have  
22 developed ways to discuss the state of impacts

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of that bull getting out. And we do know that  
2 the bull does get out. Until we can talk  
3 about liability and indemnity it's very  
4 difficult for us to discuss co-existence and  
5 deregulation in any kind of meaningful way.

6 You asked for very specific  
7 recommendations and I think to begin with an  
8 indemnity fund for the existing deregulated  
9 biotech crop that would pay funds through the  
10 patent holders' fees would pay for testing of  
11 corn, soy, canola and crops that are already  
12 deregulated which we are carry in the organic  
13 community the burden for testing, the burden  
14 for building the tall fences and for suffering  
15 the damages. Even with your best effort,  
16 contamination spill does happen.

17 So until this is done it's very  
18 difficult to sit down and have a meaningful  
19 discussion about deregulation. I also think  
20 it's too narrow of a, too short of a, runway  
21 here in the next month to talk about this.  
22 You yourself have admitted that, yes, this is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about alfalfa. But this is also about a  
2 longer conversation. And obviously the  
3 implications of what we all discuss here will  
4 impact other crops as well. It would be  
5 disingenuous to call this a broad stakeholder  
6 discussion without involvement from farmers in  
7 the sugar beet industry and other industries  
8 that are at the risk of contamination from  
9 crops that are on their way to be deregulated  
10 or in that process of deregulation.

11 So I encourage in terms of  
12 specifics a longer period for discussion. We  
13 need a longer runway. I understand the costs  
14 of having seed sitting on the shelf. But  
15 those cannot outweigh the potential impact of  
16 an entire industry and the reputation of a  
17 government label when it comes to negative  
18 impacts that I mentioned.

19 I thank you for your time today.

20 MR. WATERS: In the queue from  
21 there will be George, Bernice, Walter. We'll  
22 give another opportunity to the phone then.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Russell and Doug. So next would be George.

2 MR. SIEMON: Thank you, Mr.  
3 Secretary. I really appreciate this  
4 opportunity to be here and very impressed by  
5 the alfalfa people and what they've said so  
6 far. And I see some genuineness. But what I  
7 would like to ask is about your plan and your  
8 thoughts in co-existence about the long-term  
9 seed. And I'm very concerned taking a 20 year  
10 window that what are we going to do to keep  
11 two different seed sources, biotechnology and  
12 not iotechnology.

13 And my real specific question is  
14 what is the role of the USDA in that. And I  
15 really believe the USDA has to have an active  
16 role in trying to maintain the alternative to  
17 biotechnology. And as biotechnology succeeds  
18 I need to understand how are we assuring. And  
19 I don't -- Despite the good efforts, I'm not  
20 so sure that that's a private role.

21 So my question is 20 years out how  
22 are we assuring where we're going to be on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 having seed that's not been contaminated.

2 DEPUTY SECRETARY MERRIGAN: Okay.  
3 Well, I will take a stab at that tough  
4 question, George. I think that we've been  
5 going around and around already today about is  
6 this a conversation about GE alfalfa  
7 specifically or is this the broader discussion  
8 about co-existence. And when the Secretary  
9 made the announcement on the EIS last week, we  
10 did get a barrage of phone calls from people  
11 wondering are we on a slippery slope to a  
12 larger discussion on co-existence.

13 We will. We need to have that  
14 larger discussion on co-existence. I don't  
15 think that's a surprising statement to anyone  
16 in this room. We are trying to be very  
17 specific about GE alfalfa here today. Because  
18 20 years from now, George, whether it be  
19 alfalfa or any other crop that we produce in  
20 this country we do want to preserve the right  
21 of farmers to choose.

22 SECRETARY VILSACK: George, you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 raise a good question and we're going to get  
2 you a specific answer which I don't have right  
3 as I sit here today. But I guarantee we'll  
4 get it to you.

5 MR. McCASLIN: I do. Great.

6 SECRETARY VILSACK: Again, remember  
7 he asked about what USDA's role is not  
8 necessarily what the private sector role is.

9 MR. McCASLIN: So George and I  
10 talked about this and -- So we have an organic  
11 brand. Waterman-Loomis alfalfa is an organic  
12 brand of alfalfa. And we've offered all of  
13 our distributors a supply agreement for 10  
14 years, 20 years, 30 years, they name it, that  
15 we contractually bind ourselves to supplying  
16 seed for that marketplace.

17 Honestly, the assumption that that  
18 sort of contamination is inevitable and  
19 irreversible is just not true. It's just not  
20 true. So the only way we can sort of stand  
21 behind that sort of statement is to say that  
22 we'll contractually obligate ourselves to a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 supply agreement that would guarantee that  
2 market.

3 MR. SIEMON: And my only point is  
4 I'm not sure that should be left to the  
5 private sector to make that assurance.

6 MR. WATERS: Bernice is next.

7 MS. SLUTSKY: Good afternoon,  
8 Secretary. The American Seed Trade  
9 Association represents a real diverse set of  
10 members. We have over 750 members  
11 representing organic, conventional and  
12 companies that use the new technologies.

13 Underlying all of our companies is  
14 the ability to innovate. It doesn't matter  
15 whether you're using biotech, whether you're  
16 using organic seed. Innovation is key to all  
17 of that.

18 And so co-existence is very  
19 important to us. And we've been over the last  
20 year internally discussing co-existence within  
21 the context of the seed industry. And we're  
22 in the process of laying down some of our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 common practices which haven't been compiled  
2 and put down in one place. Many of them are  
3 very similar to what Mark McCaslin has already  
4 described to you in terms of co-existence  
5 among the different sectors of the seed  
6 industry.

7 Another common denominator among  
8 our companies is how we used the regulatory  
9 process and maintaining the integrity of our  
10 regulatory process. And we don't really view  
11 this as a biotech issue. We think it's  
12 extremely important that the regulatory  
13 process within USDA and in particular within  
14 APHIS because that's what we're talking about  
15 now focus on safety issues.

16 This isn't to say that the issues  
17 surrounding co-existence aren't important  
18 ones. It's just how you use the regulatory  
19 process in addressing them or if you do use  
20 that regulatory process in addressing them.

21 What we don't want to happen is  
22 that we undermine the integrity of our system.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I think many people around this room have  
2 faced nontariff trade barriers in a number of  
3 different ways. We're dealing with an issue  
4 for organic seeds in Mexico for example. It's  
5 a barrier that's not based on science and on a  
6 robust regulatory process in Mexico.

7 So we think however USDA moves  
8 forward maintaining that integrity of that  
9 regulatory system is key. And if that  
10 integrity is lost, then we lose a lot more  
11 than with respect to innovation in the biotech  
12 area.

13 SECRETARY VILSACK: I wish I lived  
14 in a world like that. I don't live in a world  
15 like that because I have Federal judges all  
16 over the country telling us what to do. And I  
17 think we have to be very cognizant of the  
18 direction and the imperative of those  
19 directions reached from Federal judges.

20 And what we have now is a  
21 circumstance where you speak of the integrity  
22 of the regulatory system. When judges are not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 as convinced as you are that it is a system of  
2 integrity and so they are essentially telling  
3 us in no uncertain terms that what we're doing  
4 is not satisfactory from a standard that  
5 they've established, my fear is I can find a  
6 judge probably all over this country if I'm  
7 the most conservative person in the world or  
8 I'm the most progressive and liberal person in  
9 the world. I can find me a judge that will  
10 agree with me.

11 And the chances are very good that  
12 we will get very inconsistent decisions from  
13 courts. And the chances are quite good based  
14 on the current status that courts have limited  
15 options. And the option that they have is to  
16 say you can farm and I can't.

17 And I'm going to tell you. From  
18 where I am, the seat that I have, and you all  
19 can talk about the past and that's great, I  
20 don't know if you have Federal judges telling  
21 you what these judges are telling us now.

22 So we can't ignore that. We have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to respond to it. And it seems to me that we  
2 can certainly do it and we will do it because  
3 we have to do it. But it would be better if  
4 there was a consensus if that's possible  
5 within the conflicting interests here. I  
6 think we are responding to this integrity  
7 issue. But I think we have a slightly  
8 different challenge.

9 The second point I would make is  
10 all of you have mentioned science. I wish  
11 science was as clear as you all have suggested  
12 it. I keep hearing this and I suspect that  
13 every single group here has a different study  
14 that they can point to in response to or in  
15 support of their position which would suggest  
16 that often times science is not as clear as it  
17 is represented to be. So that's a concern.  
18 Right. That's a concern.

19 But I just want to make very clear.  
20 We feel a responsibility from a Federal court  
21 to be responsive. And the question is are you  
22 going to let us do it or can we figure out a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 way in which you all can be part of this.

2           And then the third thing I would  
3 say is just to amplify what the Deputy  
4 indicated. We are here obviously specifically  
5 for alfalfa. And the reason we are here on  
6 alfalfa is not that we're picking on alfalfa.  
7 It's that a Federal judge is telling us we've  
8 got to act on alfalfa. The Federal judge  
9 didn't tell us we had to act on every other  
10 crop. We have another court case where  
11 they're telling us we have to act on sugar  
12 beets. And we've got one recently filed on  
13 eucalyptus trees.

14           And there's a pattern here. And  
15 the industry needs to -- The industry at large  
16 needs to understand this pattern, getting back  
17 to Gary's point. If you want lawyers and  
18 lawsuits and litigation to decide this, I  
19 guarantee you. You're not going to have a  
20 system that's got integrity.

21           You're going to have a system  
22 that's just totally confusing because there

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are going to be different decisions in  
2 different districts. Eventually the Supreme  
3 Court will take them up and by then you've got  
4 six, seven, eight, nine years of  
5 uncertainties.

6 And it seems that we would serve  
7 all of those of you who say we represent  
8 growers, farmers. All of those growers and  
9 farmers are better off with certainty than  
10 they are uncertainty it seems to me. So we're  
11 here because there's a specific court case  
12 that's directed us to do a certain thing and  
13 we are required by law to do it.

14 And we are also here to tell you  
15 that no matter how this gets resolved there is  
16 a larger conversation which will in part be  
17 informed by the process. But there's no --  
18 There's really not a finality to this in the  
19 sense that we're going to get it 100 percent  
20 right. But I think we need to create some  
21 process by which we take a step in the right  
22 direction.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           And if these decisions got any  
2 easier by waiting, I'd be more than happy to  
3 wait because that's what bureaucracies usually  
4 do. But they don't. They get more difficult  
5 and they get more confusing. So there has to  
6 be some forward movement here and again we can  
7 do it. But our preference is to have you all  
8 help us do it as best we can. But if that's  
9 not possible, then we'll do the best we can.

10           MS. SLUTSKY: And if I can just  
11 follow up because we're not suggesting that we  
12 want the courts to dictate what our regulatory  
13 process is. And we completely agree that we  
14 have to think collectively outside the box to  
15 try to address some of these issues. Our only  
16 -- My only point is that as we do that keeping  
17 in mind how we use that regulatory process  
18 will be important.

19           MR. WATERS: Walter.

20           MR. ROBB: Mr. Secretary. You  
21 asked for specifics and I'm going to end with  
22 those. But I'm going to start more with this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 idea about kind of a reset. The regulatory  
2 process to date has at least in my view fallen  
3 a little short of embracing a wider set of  
4 concerns beyond just safety.

5 But stakeholder process that you  
6 have invited here today essentially means as  
7 we try to operate a company in that fashion is  
8 if you have a number of legitimate  
9 stakeholders around the table each of them  
10 have a legitimate point of view about the  
11 subject you're discussing and you're actually  
12 trying to understand that and find a newer  
13 place that's a synthesis of those points of  
14 views.

15 It's not business as usual. But  
16 it's actually an openness and willingness to  
17 listen to different points of view. And I  
18 think we need to start here with a reset  
19 around just trotting out traditional points of  
20 view. I mean we sell conventional as well as  
21 organic agricultural products. But one size  
22 does not fit all. I agree with alfalfa is one

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 crop. It's it's own crop. And we see that in  
2 business. You have to figure out different  
3 ways.

4 But the fact is that GE levels are  
5 rising. Contamination levels are rising. The  
6 consumer concern is rising. We've already  
7 seen some farmers choose not to employ it,  
8 California rice growers, being an example,  
9 where there has been economic impact.

10 The credibility of the organic  
11 label is as we sit here right now on the line.  
12 There is testing that's been done that shows  
13 that that's the case. It's a very slippery  
14 slope for that impact on us and a number of  
15 other people in this room with respect to  
16 that.

17 And whether you like it or not unfortunately  
18 your timing of this, it is a proxy for we know  
19 more now. We're sitting at a different point  
20 in history now where this awareness and these  
21 concerns are part of what we have to discuss.  
22 I guess a decent respect for the legitimate

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concerns of all the parties here.

2 But to end with some sort of  
3 specifics, I think we've got to get at least a  
4 better framework for co-existence in place  
5 before making in my view the alfalfa decision  
6 or at least simultaneously. And those would  
7 include but not excluding accountability  
8 through the full chain of custody in the  
9 organic system, the producer all the way  
10 through the retailer. We are certified as an  
11 organic handler. Okay. So chain of custody.

12 Second of all is compensation.  
13 There are damages that are happening right  
14 now. They've been referenced by several  
15 people on the phone. We've got to deal with  
16 that and not sweep it under the rug.

17 Third is accountability in terms of  
18 the chain of custody.

19 Fourth would be the -- It's hard to  
20 read my own notes here -- the seed diversity  
21 issues that George spoke to. There's got to  
22 be some acknowledgment that there's going to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be some protection or continuation of the seed  
2 diversity. And we all have seen the data on  
3 the national seed banks and so forth. That's  
4 a concern in terms of protecting genetic  
5 diversity which is a concern for food security  
6 in this country which is one of the  
7 objectives, Mr. Secretary, you outlined in  
8 your comments.

9 And the government's role. I mean  
10 what is your role and responsibility? It  
11 seems to me that I would like to see the  
12 minimum that you embrace of a regulatory  
13 process going forward that accepts a wider set  
14 of values for making your decisions and making  
15 this decision in terms of the regulation of GE  
16 crops.

17 So those are some specific  
18 examples. There are more in the paper that we  
19 put in the thing here. But I think that if we  
20 get that sort of framework flushed out  
21 simultaneously with this decision, then I  
22 think these two can move.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           And I think we've got to move past  
2 business as usual. We've got to move to a new  
3 way of synthesizing these things in a way that  
4 will create a way forward to your point.

5           MR. WATERS:           Let's give an  
6 opportunity to the folks on the phone. Is  
7 there anybody wanted to make a comment?

8           MR. KIRSHEMANN:       Yes, this is  
9 Fred. Let me just add a couple of other  
10 points that I think are important. Again, my  
11 points are primarily from my 30 plus years of  
12 experience as an organic farmer. In terms of  
13 -- First of all, it's impossible for me to  
14 talk about alfalfa in isolation from other  
15 crops because as an organic farmer one of the  
16 main challenges I have to constantly face is a  
17 crop rotation that works. And that's a  
18 diversity of crops that provide different  
19 ecosystem services that work. And so alfalfa  
20 is a critical part of that rotation in that it  
21 is the way we fix nitrogen. We restore  
22 biological health of our soil, provide feed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for our animals. You know, it's all part of  
2 the way the whole system works. So it just  
3 doesn't work for me to talk about alfalfa in  
4 isolation from the system that we have to  
5 maintain.

6 Secondly, in terms of loss to our  
7 farm, I mean we're already very clear about  
8 the market losses that we're going to face if  
9 we continue to move down this path without  
10 addressing the co-existence issue in a way  
11 that's believable. Now let me just give you  
12 one example.

13 We have been informed for the last  
14 15 years by our markets in Europe that if GMO  
15 wheat is even introduced into North Dakota,  
16 they are no longer going to buy wheat from us  
17 because they don't believe that we can  
18 maintain purity of our crops. And given the  
19 history, it's a reasonable belief on their  
20 part. So we have to constantly face that as  
21 we think about our own future.

22 Thirdly, you know there's been a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 lot of talk about science-based and it's  
2 usually kinda connected with the most recent  
3 technology is the most science-based. But  
4 there's a new science that's emerging that has  
5 gotten very little support in terms of  
6 research, etc., and that's the science of  
7 ecology as it's applied to agriculture.  
8 Individual farmers have applied that science  
9 at least many of us believe with some very  
10 innovative directions that enable us to reduce  
11 our cost, maintain resilience and all of the  
12 other kind of other benefits that we need from  
13 farming.

14 So there's another science there, a  
15 science which C.S. Holling referred to as  
16 ecological resilience back in the 1970s. So  
17 it's an idea. The concept has been around and  
18 it's a new science in terms of agriculture,  
19 but it has been applied. So we need to look  
20 at these alternative sciences that haven't  
21 gotten the kind of attention that  
22 technological sciences have.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           And then we have to I think also  
2 look at the issue of the legal system. And I  
3 fully agree. I don't like lawyers telling me  
4 what to do either. And my wife's a lawyer.  
5 So I understand the legal system pretty well.

6           (Laughter.)

7           But you know one of the things that  
8 the judicial system is required to do in our  
9 democracy is to protect the rights of the  
10 minority against the tyranny of the majority.  
11 And it seems to me that that's the role that  
12 the legal system is being asked to play in  
13 this.

14           And so I don't think that we want  
15 to take the position that the legal system  
16 ought to be taken out of this. I'm all for  
17 helping us for working together to find a  
18 solution that's going to work for everybody.  
19 But if the tyranny of the majority is going to  
20 impinge upon the rights of the minority as  
21 farmers, then the legal system is probably  
22 where we're going to have to go unfortunately.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MR. WATERS:    Okay.    Thanks.    The  
2                   queue from here is Russell, Doug, Paul, Sharon  
3                   and Robyn.

4                   MR. WILLIAMS:    Russell Williams,  
5                   American Farm Bureau Federation.    In the  
6                   interest of full disclosure, today's my last  
7                   day at Farm Bureau and I'll be a full-time  
8                   farmer in my family's farm in West Texas on  
9                   Friday.    So I take all of this discussion very  
10                  seriously.    We're a modern operation.    So  
11                  these decisions specifically impact us.

12                  In terms of regulatory uncertainty,  
13                  I think that I may argue the opposite side of  
14                  that if option three is chosen.    Farmers may  
15                  see, well, they've done it to alfalfa.    Who is  
16                  next?    Does that create a system where each  
17                  commodity is scared?    It's like I'm not going  
18                  to be able to grow cotton in West Texas if  
19                  these new changes come into play.    Will I be  
20                  able to grow corn in West Texas?    We have a  
21                  lot of wind in West Texas.    And stuff blows.

22                  Our operation is concerned that we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 heard about glyphosate resistance. And it's  
2 true. We're beginning to see that glyphosate  
3 resistance. But we've hoed cotton. We use  
4 mechanical cultivation to manage things. And  
5 so there are ways around it. It may be more  
6 costly. But that's what farmers do. They  
7 find the best solution that works for them and  
8 they go for it and do it.

9           You know I also don't think that  
10 anything that we can agree to here is going to  
11 stop litigation. You're always going to have  
12 groups who oppose the technology and then they  
13 won't stop until it's not grown anymore. In  
14 fact, I think that you may potentially  
15 increase the pool of plaintiffs if you go down  
16 an opposite road as people look at the  
17 regulatory authority that is being used and  
18 how it is impacting their own operations and  
19 how it is impacting groups. So that's also  
20 something that we have to be concerned about.

21           Also this notion of indemnity fund.  
22 You know a surcharge placed on biotech

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 companies, no offense to the biotech companies  
2 in the room, but that's going to go directly  
3 to a farmer. So you're pushing cost from one  
4 farmer to another farmer. And that doesn't  
5 solve any problems either. It just pushes the  
6 problems away from you and on to your  
7 neighbor. So we have to be conscious that  
8 each decision that we make here is going to  
9 have a negative impact on somebody and then it  
10 comes down to you know how much negative  
11 impacts are we willing to accept as a society  
12 or as an industry before we say enough is  
13 enough.

14 Thank you very much. I appreciate  
15 it.

16 MR. GOEHRING: Doug Goehring,  
17 Agricultural Commissioner from North Dakota.  
18 I probably misread my queue earlier when I had  
19 an opportunity to talk about this and it's  
20 come up several times. So maybe I'll go into  
21 it just a little bit here just to mention some  
22 f the concepts.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   In your packets, I apologize.  
2                   There is a document that looks like this. It  
3                   says "Docket Points for Risk Management  
4                   Solutions for Biotech, Organic and  
5                   Conventional Producers." If you want to flip  
6                   to the second page in there, it gets into a  
7                   little bit about it. It talks about the  
8                   problem. It talks about solving the problem.

9                   This was what I was conveying when  
10                  I spoke about the Secretary's conversation and  
11                  mine concerning how do we compensate or how do  
12                  we look at compensating those producers that  
13                  have the inability to market their commodity  
14                  in the event of contamination. And I think  
15                  some of the things that the Secretary shared  
16                  with me was not only are we looking at maybe a  
17                  cross pollution issue, but in the event that  
18                  you have a hurricane or tornado come through,  
19                  move plant material from one field to the  
20                  next, what kind of issues do you have to  
21                  contend with if you didn't sort through it and  
22                  get it removed.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           But I broaden the scope on this to  
2 address not only as a biotech issue but also a  
3 seed producer's issue. I have been a seed  
4 producer myself and you have to manage certain  
5 things about that field. And that means also  
6 not only addressing the weeds in that field,  
7 but it also means making sure that the purity  
8 is there for the market that you sell into  
9 because you're only allowed a certain  
10 percentage of foreign material so to speak.  
11 So there is a standard that is present. It  
12 has to meet 99 percent purity.

13           But some of the things that are  
14 identified in here are the establishment of a  
15 risk retention group which should be a member  
16 organization that would look at for organic  
17 and seed producers. You could also establish  
18 a risk retention group for biotech producers  
19 also.

20           The other thing would be a USDA RMA  
21 solution which is to possibly potentially have  
22 this built into the system that every producer

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be buying some type of coverage. Maybe  
2 it could be marketed directly to those that  
3 have specialty markets. Maybe they are seed  
4 producers. Maybe they are organic producers.  
5 Maybe they have a specific type of high  
6 amylase corn that they market in that product  
7 or that market -- In reality they already have  
8 a different pricing structure and it would  
9 have to be addressed.

10 The other would be looking at a  
11 developmental or non reinsured supplemental  
12 policy. This would just be marketed through  
13 all those companies out there.

14 There are challenges with each one  
15 of these. First of all, you'd have to decide  
16 which way do you want to go, how many options  
17 should be available to those producers. And  
18 secondly, is it a no fault basis? If you're  
19 buying the insurance yourself, you could  
20 certainly look at a no fault provision in  
21 there. If you start looking at others that  
22 you're going to attach this to, then you have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issues with trace back liability. How far do  
2 you go? How do you adjust on those? What  
3 standards are going to be in place to address  
4 that?

5 Multiple things here certainly  
6 start to compound the issues. So then there  
7 are a lot of ideas going to first deciding  
8 what you want and then at that point how are  
9 you going to structure it. How are you going  
10 to move forward that everybody feels  
11 comfortable?

12 Because every time that you built a  
13 layer of, let's say, a protection into the  
14 system much like we've seen with crop  
15 insurance and our challenges with crop  
16 insurances, there does tend to be those one or  
17 two individuals where you'll have abuse,  
18 you'll have fraud, you'll have misuse. So  
19 then you have to have some way to catch that,  
20 stop it or just pure laziness.

21 In the event that you have cross  
22 pollination, there might be an issue there

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that you're addressing. But what happens when  
2 inadvertently product ends up in that sample?  
3 Who's liable? What's the issue? Did somebody  
4 not clean out a truck? Maybe borrowed the  
5 neighbor's truck and he's a conventional  
6 producer or maybe he's a biotech producer.  
7 Maybe he produces something, another weed seed  
8 variety, that all of a sudden you produced  
9 weed seed that is -- All of a sudden you've  
10 got something that's contaminated. So it's an  
11 issue.

12 There are a lot of things here to  
13 think about, but it still comes back to  
14 personal responsibility. And we never want to  
15 eliminate that factor in all those. So going  
16 forward and building something or building out  
17 from this has to take so many of those things  
18 into consideration.

19 I think that's why I invited  
20 anybody who has comments to certainly submit  
21 those and maybe get a feel from where  
22 everybody would like to go or what they want.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I know that's certainly the conversation that  
2 the Secretary and I had which actually  
3 prompted a lot of this. It's a long ways to  
4 go but it is some solutions. And it's the  
5 ability to resolve some of this issue about  
6 compensation for those that are hurt in their  
7 ability to not market their product.

8 MR. WATERS: Thanks, Doug. We have  
9 about 10 minutes left. So these will be the  
10 last three. Paul, Sharon and Robyn.

11 MR. FREY: Yes. Good morning. And  
12 thank you, Mr. Secretary, for this  
13 opportunity. My name is Paul Frey. I'm the  
14 President and CEO of CalWest Seeds. We are a  
15 farmer-owned cooperative and alfalfa is our  
16 main crop. Unlike some of the other main  
17 players in alfalfa, we don't have a bigger  
18 crop that we depend on. Alfalfa is -- Our co-  
19 op is dependent on alfalfa.

20 You've asked, both of you have  
21 asked, very specifically for pragmatic  
22 recommendations on what you can do. I think

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you have the workings of that as I look at it.  
2 You have a petition for deregulation in part.  
3 It has a lot of good stuff in it. Excuse me.  
4 I'm not going to use big words. Good stuff in  
5 there.

6 You have your options that you  
7 considered. A lot of great stuff in there. I  
8 think you've got the makings of a solution.  
9 You've just got to bring it together. And I  
10 think the industry wants to do it. Wants to  
11 do it right. Would like to do without  
12 government intervention.

13 But I think we need governance very  
14 candidly because we have commercial interests.  
15 We're businesses and we compete against each  
16 other. So I would hope that the government  
17 could find a way to provide a forum whereby  
18 the science comes out, the issues come out and  
19 you have all the information you need to make  
20 well informed decisions.

21 I can tell you that there's enough  
22 empirical evidence now from the past five

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 years since Roundup Ready has been out there  
2 to know a lot more about the science, the  
3 isolation distance science. We don't have to  
4 depend just on the research studies. We've  
5 got real information. And I think that's  
6 important to look at.

7 I think that some form of -- and  
8 I'm probably going to use the wrong words here  
9 for some people in the room -- but  
10 deregulation in part is the solution in my  
11 mind. I think that if that can be done by  
12 private industry that's the best for everyone.

13 I think that I grew up on a corn  
14 production farm in Iowa. I understand corn.  
15 And there's a big difference between corn and  
16 alfalfa. And I think one of the reasons we're  
17 in this room if I can speak candidly is  
18 there's been a tendency to treat alfalfa like  
19 all the other crops and it's quite different.  
20 I think it's those differences -- the  
21 differences between the crops need to be  
22 recognized and embraced.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           And I know that there's fear in  
2 this room that what's done with alfalfa  
3 affects other crops. I recognize that. And I  
4 think we need to embrace that and deal with  
5 that. And I think the fact that alfalfa is  
6 peak pollinated makes it unique. The fact  
7 that it's perennial makes it unique.

8           There's a number of things about  
9 this crop that I think are the very basis of a  
10 lawsuit that brought us to this room. I think  
11 we need to recognize those differences and  
12 one-size-fits-all regulatory process doesn't  
13 necessarily work. I think that's why we're  
14 here.

15           So I think the answer is fairly  
16 simple. And I tend to simplify things.  
17 Segregate, isolate and concentrate the seed  
18 production. That's the solution.

19           Now how we get there is not for me  
20 to say. But that in essence is the solution.  
21 Because having been in the industry like Mark  
22 and several others for really our whole

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 careers I think those of us in the alfalfa  
2 industry recognize it. The solution lies in  
3 the west in the seed production areas. That's  
4 where we'll solve the problem.

5 And I'd like to make one maybe  
6 50,000 foot comment if I could. I'd like to  
7 see the USDA play a very, very prominent role  
8 in leading the world really to accepting low  
9 level presence of biotech trades because that  
10 would solve so many problems. Not easy. But  
11 that's really ultimately the solution.

12 So whatever can be done by the  
13 American Seed Trade Association which we  
14 actively support or by NAFA which we actively  
15 support, I think that's where we as an  
16 industry need to go. And I think that's --  
17 I'm going to give to somebody else now.

18 MS. BOMER: Thank you. Sharon  
19 Bomer with Bio and after that I'm not sure I  
20 have much to add. But I'll reinforce some  
21 things.

22 Kathleen, you asked for real

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proposals and I think NAFA and Forage Genetics  
2 have put some on the table to respond to. But  
3 like other organizations here, we also see  
4 some concerns about precedential nature for  
5 other crops. And that's where I guess my main  
6 concern also is.

7           And to repeat what others have said  
8 on the legal side we are very sympathetic and  
9 empathetic with the challenges on the legal  
10 side. We get wrapped up in those as well  
11 frequently. And I guess I am not optimistic  
12 that the lawsuits will ever stop. There are  
13 organizations that their sole goal is to top  
14 the technology and they will find one reason  
15 or another to sue and the challenges hopefully  
16 that USDA or other regulatory agencies can win  
17 the suit by doing a better job. And I think  
18 APHIS has come a long way over the year to  
19 help do a better job in the documentation of  
20 their analyses and their work that's  
21 represented by this EIS.

22           So short term we have some things

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on the table for alfalfa. If we look longer  
2 term, I guess I'd just put some cautionary  
3 notes out. The United States is the leader in  
4 biotechnology. I came out of board meetings  
5 two weeks ago where the hallway talk was the  
6 USDA regulatory system is not working.  
7 Investment has dried up for our small member  
8 companies. We know public researchers have  
9 trouble bringing products to market because of  
10 the regulatory system. And we have some of  
11 our large members who are opening operations  
12 in other countries rather than here in the  
13 United States.

14 So how USDA moves forward in its  
15 regulatory process affects jobs and the  
16 economic well-being and the competitiveness of  
17 America's farmers with other countries that  
18 are fastly adopting. Brazil now approves  
19 products much more quickly than we do in the  
20 United States. So we have a competitiveness  
21 issue that we also have to deal with.

22 And then finally I would just note

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 like Bernice and I know your frustration with  
2 this but we do look at the agency's regulatory  
3 authority. The EIS has been very  
4 enlightening. I haven't read it all or most  
5 of it. But it will be a good document to  
6 place. So when it comes down to making a  
7 decision on alfalfa it's important for USDA to  
8 look at its regulatory authority and make  
9 those decisions based on that. If the United  
10 States do what you do will have reverberations  
11 around the world and not just for  
12 biotechnology in this country but countries  
13 like Africa that desperately that need the  
14 technology.

15 Thank you.

16 MS. SHRADER: Hi. I'm Robyn Shrader  
17 from the National Cooperative Grocers  
18 Association. And I do want to thank you for  
19 bringing us altogether. I'm not going to try  
20 to go into the bigger global issues of co-  
21 existence. I will stick to alfalfa.

22 My organization's specific interest

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in this is the relationship alfalfa has to  
2 organic dairy. And in all those stores that  
3 we have in 36 states around this country owned  
4 by one million consumers the number one item  
5 sold in and out of those stores is gallons of  
6 organic milk. So dairy is extremely important  
7 in the organic movement. It is the entry  
8 category for new consumers to organic in most  
9 cases. So I think credibility of the USDA  
10 organic program here is going to hinge on how  
11 this is treated because of that significant  
12 relationship.

13 And I just want to echo what my  
14 friends Walter and Gary have already said that  
15 we don't believe that this can be done in 30  
16 days in a way that provides stakeholders the  
17 meaningful participation that they want to  
18 have and that consumers are going to view that  
19 as a lack of credibility of the program,  
20 specifically the organic program. So I  
21 recognize that we've got a growing season  
22 that's going to force some economic harms and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 maybe that has to be folded into the longer  
2 conversation of how do we deal with the short  
3 term losses when we were dealing with a much  
4 longer term picture of how alfalfa and organic  
5 dairy are going to hold this together.

6 MR. WATERS: Okay. Thanks.

7 Mr. Secretary, do you want to make  
8 some closing comments?

9 SECRETARY VILSACK: The Deputy  
10 indicated that I'm to take an opportunity to  
11 throw out some concluding comments and then  
12 you all are going to break and there are less  
13 than nutritious snacks outside which I'm  
14 surprised the Deputy authorized chocolate chip  
15 cookies instead of fruit. But that's another  
16 issue. And then you all are going to come  
17 back for next steps.

18 My first observation is that this  
19 has been a good introductory conversation.  
20 The next conversation I think has to be even  
21 more productive. And I'm assuming that there  
22 will be an opportunity for next conversation.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           You all have done a good job of  
2 staking your interests today which is a good  
3 place to begin a conversation. But I really  
4 do think there needs to begin to be more an  
5 intersection of these conversations. Mr.  
6 Secretary, I think you've tried to lead us in  
7 that effort today and I appreciate your  
8 comments and your work.

9           Secondly, I realize that folks are  
10 dubious about the ability to prevent further  
11 litigation. I am a licensed lawyer. I was a  
12 trial lawyer for 23 years and proud of it. I  
13 continue to keep my law license in effect with  
14 continuing legal education. I know a little  
15 something about the litigative system.

16           You may not be able to prevent  
17 somebody from filing a lawsuit. But you can  
18 sure get it resolved quicker if judges don't  
19 have the latitude that they have today and the  
20 absence of some direction. And you can also  
21 give judges a lot more options to choose from  
22 other than you get the farm or you don't get

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the farm.

2 And part of this process I think  
3 will do both. It will create options for  
4 courts. And it will provide a clear roadmap  
5 for judges which may result in quicker  
6 resolution of cases which may over the long  
7 haul discourage some from proceeding. So I  
8 think there is an impact on litigation. And I  
9 think in doing that you do provide parameters.  
10 You do provide a greater level of certainty  
11 than exists today.

12 And I appreciate the concerns of  
13 those who say this specific decision has to be  
14 wrapped up into a broader conversation or it  
15 has to parallel a broader conversation. I  
16 want to reflect on that. But I also feel a  
17 responsibility to those growers whose  
18 livelihood and whose potential opportunity to  
19 keep their farm is somewhat dependent on us  
20 being able to make a decision. And I think  
21 that whatever that decision could be or might  
22 be doesn't necessarily have to preclude it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from being part of a larger conversation nor  
2 does it preclude it from being consistent with  
3 a larger conversation. Nor does it  
4 necessarily preclude it from providing a level  
5 of protection in the short term while longer  
6 term protections are discussed potentially  
7 along the lines that the Secretary has  
8 suggested as an example. So I think there is  
9 more flexibility on all of this than some may  
10 believe.

11 I appreciate the need to stay  
12 consistent with authority. But I would just  
13 make this observation which is no indication  
14 of what my thought process is on this. But  
15 I'm just going to make this observation. I  
16 don't know that the law is as clear as folks  
17 think it is in terms of what that authority  
18 is. And because I've seen at least two or  
19 three different arguments that I've read from  
20 presentations that folks around this little  
21 circle here have submitted to us at some point  
22 in time about what the legal authorities are,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 how narrow they are or how broad they are.  
2 And there are a lot -- As with the science  
3 that you all are talking about, there seems to  
4 be a divergence of opinion about what the law  
5 is. And so we have to sort of work our way  
6 through all of this.

7           And I appreciate the comments that  
8 suggest that perhaps by making decisions like  
9 this that we create great uncertainty. That's  
10 obviously something we need to be sensitive  
11 to.

12           But agriculture is in my view the  
13 most complex business in America. And it's  
14 going to continue to be the most complex.

15           And my deep concern is how we  
16 preserve the capacity of operations of all  
17 sizes to have a shot at success in  
18 agriculture. To be honest with you as I  
19 listen to this conversation today, one thought  
20 crept into my head and that was the sad  
21 reality that it's going to be ever  
22 increasingly more difficult for those

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 struggling folks in the middle under any  
2 scenario no matter how we talk about this to  
3 be able to cope with agriculture as it will  
4 likely become. And I just desperately fear a  
5 rural America that has very large operations  
6 and very, very small operations and nothing in  
7 between. I'm really concerned about that.

8 I don't know that I have the answer  
9 to that. But I tell you we'd better be  
10 concerned about it because we're seeing a  
11 shrinking number of farmers in this country.  
12 We have lost 90 percent of our pork producers  
13 in 30 years. We've lost one-third of our  
14 cattle producers. We've lost nearly half of  
15 our dairy producers just in the last ten  
16 years.

17 So part of what we're thinking  
18 about here is how do we create options and  
19 opportunities and value-added opportunities  
20 that will give people a range of chances to  
21 succeed and to stay in business and to be able  
22 to pass their farms on. And it's complicated

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and I don't know that we've got answers here.

2 But I want you to know what the  
3 concerns that help drive this conversation.  
4 And at the time all this is going on, farmers  
5 represent less than one percent of the  
6 population and the farmers that produce 85  
7 percent of what we consume represent one tenth  
8 of that one percent. And I'm not sure we've  
9 done a particularly good job of talking to the  
10 other 99 percent about what we do. And as  
11 rural America shrinks in size and political  
12 power, we'd better figure out a way to talk to  
13 those other 99 percent because they're going  
14 to be making the rules by which all of us are  
15 going to play.

16 And whether it's a farm bill as  
17 Secretary Connor knows full well, it isn't the  
18 farm legislators that ultimately decide the  
19 fate of the farm bill. If that were the case,  
20 we'd probably have a substantially different  
21 arrangement. It is folks from urban centers  
22 who ultimately are the deciding votes of a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 farm bill. Do they know about farming? What  
2 do they know about farming?

3 And I frankly want to get away from  
4 a conversation where it is all about subsidies  
5 and get it to the point where it's about jobs  
6 and it's about economic opportunity and it's  
7 about diversification and it's about meeting  
8 the nutrition needs of folks and being able to  
9 export aggressively all kinds of agriculture.  
10 So this is complex, folks. Just really,  
11 really complex.

12 And we're trying to deal with all  
13 of these issues simultaneously at USDA. I  
14 wish I could just focus on this issue, but we  
15 have all of these issues. And we have a farm  
16 bill coming up. And that has a tendency to  
17 get everybody all stirred up about what's the  
18 farm bill going to look like and who is going  
19 to craft it and what issues are going to be in  
20 it.

21 And we've got a different Congress  
22 coming in and you have to think about that in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 terms of the direction of all this.

2 And we have a budget crisis which  
3 makes it really difficult for Cindy Smith to  
4 do the integrated and comprehensive review  
5 that is required by any decision we make here.  
6 Cindy can tell you. I'm more frustrated than  
7 you are about the time it takes for this thing  
8 to work

9 And, in fact, I asked her to lay  
10 out the process in a schematic drawing of how  
11 complex this is. It's almost from me to Gary  
12 Hirshberg. I mean it's that long an  
13 evaluation. So we're going through an  
14 improvement process designed to try to speed  
15 that process up without sacrificing the  
16 quality of the process. But it requires  
17 resources at a time when we're going to be  
18 told by Congress and by the President "You're  
19 going to have to do with far less than what  
20 you've been accustomed to" which makes it even  
21 more complex.

22 So having said all of that which

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 may be somewhat of a not-too-focused set of  
2 concluding remarks, this has provided at least  
3 as I listen to this some clarity in my head  
4 about next steps. And we want to visit with  
5 the team about this and we want to get your  
6 concluding thoughts.

7 But my hope is that after the first  
8 of the year we can reconvene and that we can  
9 continue this conversation and get it more  
10 refined. Because I think the longer we talk  
11 the greater the opportunity is there for that  
12 moment that Walter talked about where you all  
13 of a sudden see the intersection and it gives  
14 you a clear path forward.

15 So thanks again for taking the  
16 time. We are taking this very, very  
17 seriously, as seriously as all of you are  
18 taking it and have been taking it for some  
19 time. We understand what's at stake here, all  
20 the various interests and the issues involved  
21 and the importance of it. And that's why  
22 we're taking this as seriously as we are and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 why we're going to spend a lot of our time  
2 over the holiday thinking and reflecting on  
3 all of this while you all read the 2300 pages.

4 (Laughter.)

5 DEPUTY SECRETARY MERRIGAN: Thank  
6 you, Mr. Secretary. So there are refreshments  
7 right out here. Let's take a 15 minute break.  
8 Go talk to someone you've never talked to  
9 before and we'll reconvene and Roger will kick  
10 us off and we'll try to -- We won't go a  
11 minute over 3:30 p.m. But please stick around  
12 and help me figure out the pathways forward.  
13 Thanks.

14 (Whereupon, a short recess was  
15 taken.)

16 MR. WATERS: In the last half hour,  
17 we want to try to sort of map out a way  
18 forward here. And a few opening remarks?

19 DEPUTY SECRETARY MERRIGAN: No, I  
20 just want to acknowledge some people that came  
21 in late.

22 MR. WATERS: Oh, right. Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   DEPUTY SECRETARY MERRIGAN:    So Max  
2 Holtzman was here.    Then he walked back with  
3 the Secretary.    He's the senior advisor to the  
4 Secretary that deals with this.    And he'll  
5 probably be coming back in.

6                   And we have Margaret Mellon from  
7 the Union of Concerned Scientists in the far  
8 back.

9                   We have Roger Johnson, who is way,  
10 way,    back    the    National    Farmers    Union  
11 President.

12                   Mike, you came in late but we heard  
13 from you.

14                   And then Roger Beachy came a little  
15 late.    So there's your introduction.

16                   DR. BEACHY:    That's not a good  
17 sign.

18                   (Laughter.)

19                   DR. BEACHY:    Before I turn this  
20 over to our moderator today, I'll just pass  
21 along a couple of comments after the  
22 discussion.    First, I will join the Deputy

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Secretary and the Secretary in thanking you  
2 for being here.

3 And the comments that were made  
4 were much appreciated throughout. The  
5 Secretary has made a number of comments. One,  
6 that this is an issue that he wants it to be  
7 dealt with as much as possible outside of the  
8 Department but having some way that everyone  
9 can decide on how this moves forward.

10 Second, it's a reaffirmation that  
11 this is not an issue of safety of the product.  
12 He never questioned the safety of this  
13 product. And he mentioned that several times  
14 in his remarks last week. It's an issue of  
15 how these products are used to the best  
16 advantage for all parts of the agriculture  
17 sector, the farming sector in the U.S.

18 And a reminder from him and from  
19 others that this is, while it's a precedent-  
20 setting meeting perhaps, the issue really that  
21 we're dealing with in this group today is  
22 about alfalfa, how to move the alfalfa agenda

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 forward so that all sectors of the economy --  
2 of the agriculture economy can have their  
3 needs met.

4 And it's tempting for those of us  
5 who like to look forward to seeing how these  
6 discussions might inform subsequent  
7 discussions. But let's keep ourselves focused  
8 on the issues that are here today.

9 We heard a number of very fine  
10 comments from everyone. It's been helpful for  
11 me to hear it. My background is in science  
12 and technology and having been involved in the  
13 underlying science of biotechnology for nearly  
14 25 years now, so I come from a perspective of  
15 the science side. And the Deputy comes from a  
16 background that's more on the agriculture side  
17 and an industry side that has a stake in this  
18 game.

19 So we are complementary in many  
20 ways to this task. And our goal is to use  
21 those paths of each of us to help and listen  
22 to what you all would like to do going forward

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because we have a certain period of time. And  
2 the intention is to have the record of  
3 decision read in not less than 30 days after  
4 the release of the EIS.

5 And a reminder that we've had  
6 nearly four years of comments on alfalfa and  
7 the preparation of the EIS. There's not a lot  
8 new that we're hearing. And we've had a lot  
9 of time and comment.

10 So if we remember that part, we  
11 then can focus ourselves on the issue at hand  
12 of listening to you all about how you think  
13 this might best be agreed upon so that your  
14 industry can have the benefit of your  
15 consumers' markets and the technology or  
16 whatever it is that drives your sector.

17 So I'm going to turn this back over  
18 to our moderator and ask you if you can help  
19 to outline a pathway forward. We have some  
20 suggestions but it would be far greater, far  
21 better, far more meaningful if those  
22 suggestions were made by you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           We have members in this group who  
2 would agree to take leadership positions in  
3 convening subsets of you to provide new  
4 guidelines or next ideas for us to deal with.  
5 And I'll turn it over and see how you all feel  
6 about one or more or none of those and see  
7 where we want to be.

8           We would like to hold several more  
9 meetings in January. We'd like you to decide  
10 when they are if possible and help to set the  
11 agenda so that we can hear from those  
12 perspectives.

13           MR. WATERS: So what are some ideas  
14 for how to proceed here?

15           MR. MILLER: So speaking strictly  
16 about alfalfa and trying to understand -- I've  
17 never been in a room with this many people who  
18 are involved in the organic community, as I  
19 think we listen -- as we in the National  
20 Alfalfa & Forage Alliance have spoken, we've  
21 outlined some very specific processes by which  
22 we're willing to address issues of low-level

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 presence and to address different markets.

2           So I've heard comments from some of  
3 you about the National Organic Program label  
4 standard being compromised and that milk being  
5 an entry point to the marketplace. And so I  
6 don't really have an understanding of the  
7 process by which you would go through to  
8 reject a load of milk, for example.

9           I don't have a sense -- if  
10 coexistence, by its very name, means that GMO  
11 products exist, okay, so if that's the case,  
12 then the idea of, you know, them never  
13 existing isn't part of a coexistence  
14 discussion.

15           So if it is to coexist, then there  
16 must be a spec somewhere to what level is  
17 alfalfa seed supposed to be produced to meet  
18 the spec that makes it still qualify as  
19 organic?

20           And so I would find it helpful  
21 moving forward to have the -- your organic  
22 community, if you will, tell us what some of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 those specs are, tell us what their process  
2 is. How does that rejection take place? What  
3 can we do to meet those standards?

4 DR. BEACHY: Would that be best  
5 done as a document? I mean we have a certain  
6 length of time here.

7 DEPUTY SECRETARY MERRIGAN: Well,  
8 let me just quickly tell you what the rule is.  
9 I think a lot of people know what the rule is  
10 but the reality is -- I don't know if Miles is  
11 still here, our National Organic program  
12 manager now -- so there's the reality of what  
13 the federal rule is for organic and then  
14 there's the reality of the marketplace. And  
15 those are two different things.

16 Because the marketplace is a much  
17 rougher deal if you're in this game. So when  
18 we wrote the final rule for organic, it was  
19 one of the few issues that went to the West  
20 Wing. I think it was the only issue that went  
21 to the West Wing. It was how were we going to  
22 deal with biotech within organic.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           And we came up with a definition.  
2           It's called excluded methods. There can be no  
3           excluded method, which is really biotech,  
4           there can be no excluded methods in organic.  
5           But we didn't put a threshold. It's farmers  
6           aren't supposed to use it but we didn't have  
7           akin to pesticide residues a threshold at  
8           which it could no longer be considered  
9           organic.

10           And the reason then, at that time,  
11           was nobody wanted to define low-level presence  
12           thresholds issues within the context of an  
13           organic rulemaking. And we always thought  
14           someday when the federal government and the  
15           international community comes together in some  
16           sort of threshold, it will de facto probably  
17           back into organic. But that was the wrong  
18           forum.

19           Well fast forward ten years. And  
20           we're still here. But that's just what the  
21           rule is. But the reality is that people are  
22           getting their crops rejected. And I need one

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of the people in the organic world in the  
2 marketplace to sort of express that reality,  
3 what the specs are.

4 MR. KIRSHEMANN: Yes, this is  
5 Fred. And I can, to some extent, address that  
6 based on our own experience. And that is that  
7 there are some companies now, Deep Foods,  
8 which a large organic company that we sell our  
9 durum wheat to, they now routinely test all of  
10 their crops that come into the company's  
11 processing plant when there are GMO varieties  
12 of that crop out.

13 Now with durum wheat, we don't have  
14 to worry about that yet because there isn't  
15 any GMO durum wheat out there. But -- and  
16 they test to the lowest level possible with  
17 the current technology. And if it shows up,  
18 they reject it because they know that their  
19 customers expect that. And so that's  
20 increasingly what we're starting to see in the  
21 marketplace in this country.

22 And they're exactly correct if you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 know the history of this, it's exactly how it  
2 happened. Those of us who have been exporting  
3 our products to other countries, particularly  
4 Europe and Japan, they have had that testing  
5 routine since Day One. So we've had to abide  
6 with it from the beginning.

7 MR. WATERS: I'd just like to point  
8 out something here. We probably can't -- we  
9 just don't -- we have about 20 minutes left  
10 today. And I think the best we can do is  
11 figure out how we're going to proceed from  
12 here.

13 And maybe that's some topics that  
14 need to be talked about and some people who  
15 need to be involved in them. But we're not  
16 going to be able to solve or resolve any of  
17 these issues in 20 minutes.

18 So I think what we're really  
19 looking for is when we say way forward, is  
20 some kind of process for meeting together and  
21 trying to iron out, you know, looking for the  
22 nexus of things that -- you know, where

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there's some common ground to build on.

2 MR. ROBB: It seems to me that one  
3 idea is that, you know, I was talking to the  
4 gentleman from CalWest there, you know a lot  
5 of you I've never met before and your points  
6 of view. If you could set up as part of this  
7 next 30 days some small group telephone calls  
8 that you guys could perhaps assemble groups  
9 around topic areas that were on the interest  
10 list and you could grind through some of  
11 these. You might get some movement just on  
12 the fact that you are actually directors here  
13 and different points of view.

14 So I mean I continue to say there's  
15 no -- you know this idea of you trying to do  
16 it all and not deal with the larger issues,  
17 I'm not sure that that works. But that's a  
18 point of view. You know you guys have to  
19 figure that out.

20 But I think you could have two big  
21 meetings like this probably in January. But I  
22 think you should have some small groups with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 three, four people that are around a  
2 particular interest and see what they can  
3 generate as a result of meshing these  
4 different viewpoints together. So I would  
5 include that in the runway, so to speak.

6 MR. McCASLIN: I agree. I was  
7 going to suggest specifically that we do one  
8 that talks about managing gene flow. And it's  
9 -- whoever is interested but --

10 DEPUTY SECRETARY MERRIGAN: I don't  
11 think you're mic is on.

12 MR. McCASLIN: Oh, I'm sorry. My  
13 suggestion is we have a focus group on  
14 managing gene flow. So very specific  
15 recommendations about a path forward to manage  
16 gene flow, recognizing that there's various  
17 targets for various markets. And that that's  
18 probably a smaller group but open to whoever  
19 wants to participate.

20 But it's a roll-up-your-shirt  
21 sleeves, let's get into the details kind of  
22 stuff that could report back to a larger

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 group.

2 MR. WATERS: Robyn, I think you had  
3 your hand up.

4 MS. SHRADER: I would like to see a  
5 very specific group get together of alfalfa  
6 growers and dairy farmers, organic dairy  
7 farmers. And specifically talk about in a  
8 world of coexistence, how do both sides get  
9 what they need? And feel secure about it.

10 And I think if there's real -- you  
11 know, I have to go back at the end of the day  
12 and kind of sell this to consumers, that this  
13 is a workable situation. And I think that  
14 really happens when we've got dairy farmers  
15 and alfalfa farmers talking together.

16 MR. WATERS: Go ahead.

17 MR. FANTLE: I think if we talk  
18 about the type of process that's needed that a  
19 couple of things come to mind. This meeting,  
20 for example, here I am in Wisconsin, unable to  
21 get to D.C. I don't know how realistic it was  
22 to plan something on a business and a half

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 days' worth of notice.

2 My recommendation going forward  
3 would be that you would have a process that is  
4 orderly, that is planned, well known in  
5 advance, and inclusive. I know other parties  
6 that were unable to participate because of the  
7 short notice.

8 Our farmer representative who has  
9 been involved belongs to the beef farmers.  
10 They're very concerned about this type of new  
11 product, potentially on his ability to market  
12 these organic cattle. And I think dairy is  
13 subject to other issues as well.

14 But clearly a process that is  
15 designed to be all inclusive that allows for a  
16 longer planning step.

17 MR. WATERS: Okay.

18 COURT REPORTER: I'm sorry. Who  
19 was that on the telephone?

20 DEPUTY SECRETARY MERRIGAN: Will  
21 Fantle with Cornucopia.

22 COURT REPORTER: Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. WATERS: Other comments?

2 MR. MILLER: I just didn't want to  
3 lose my point. You asked if that should be a  
4 document. I just didn't want to lose that  
5 point. You asked if that should be a  
6 document. I think that would be a great tool  
7 to build on having discussions in the future.  
8 So yes.

9 MR. WATERS: Okay.

10 MS. OZER: Kathy Ozer, National  
11 Family Farm Coalition. And I know this date  
12 of not before January 24th has come up. I  
13 think this question of just why is there such  
14 a push to sort of even send a message that it  
15 could potentially be January 25th or February  
16 5th or that date.

17 I mean I've heard the concern about  
18 the seed that's in the stocks or in reserve.  
19 But it feels like we're talking about a lot of  
20 issues that need a lot more time than three to  
21 four weeks over a holiday period.

22 And so I just would ask if those of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 us around this room are thinking about how to  
2 commit resources and time to be part of a  
3 process of being really clear that it's not  
4 going to be a process under that type of time  
5 frame.

6 DEPUTY SECRETARY MERRIGAN: Let me  
7 answer that. I think that the Secretary and I  
8 intend on asking you to put a lot of time into  
9 this in the next 30 days. I mean why we say  
10 it that way, not, you know, how everyone would  
11 say it -- anyhow, we have to put this out for  
12 public review for 30 days.

13 We couldn't act before 30 days.  
14 Hence that's why the lingo comes out that way.  
15 We are not suggesting necessarily that we're  
16 going to come out with some decision the day  
17 after or two days after. But we're very  
18 mindful of the crop cycle and when people need  
19 to get seed in the ground.

20 There are different ways of  
21 sequencing things. But our intention is to  
22 move forward. Believe me when I go around my

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 office and they say what kind of meeting are  
2 you going to, I walk over there and they just  
3 go GE alfalfa. They don't even have to ask  
4 what the title of the meeting is at this  
5 point.

6 We are all investing a great deal  
7 of time. The Secretary, the leadership team,  
8 I've got our Acting General Counsel, I've got  
9 all of APHIS leadership, I've got a Deputy  
10 Under Secretary. It's a major lift and we're  
11 really committed to rolling up our sleeves and  
12 working as hard as we can over this next short  
13 period of time.

14 And so I know that time is not on  
15 our side is what I'm saying. And I hear from  
16 Walter and Kathy -- I hear from a number of  
17 you that ideally we'd have a lot more time.  
18 We're not feeling that.

19 So I just want to -- when you are  
20 asking the question how to allocate your time,  
21 I'm giving you the frankest answer I can.  
22 Reorganize if you can. When you get the call,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 if you're going to be a participant in a  
2 subgroup, ideally it would be great if we came  
3 back mid-January and there was a proposal on  
4 how to move forward that went to the Secretary  
5 that just didn't come from the GE technology  
6 innovator side but it was something that came  
7 from a bunch of different sides.

8 Because I don't even see this as a  
9 two-sided monster. There's multiple sides  
10 here.

11 PARTICIPANT: Thanks a lot, by the  
12 way. Monster.

13 (Laughter.)

14 DEPUTY SECRETARY MERRIGAN: That's  
15 what I call a problem that's killing me right  
16 now. But anyhow, I think that's really where  
17 we're seeing this. And I rambled there. But  
18 I'll give it back to Ken.

19 MR. ROBB: I think that's a good  
20 suggestion of subgroups.

21 MR. WATERS: Yes, Keith?

22 MR. MENCHEY: Keith Menchey,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 National Cotton Council.

2 Kathleen, I'll apologize in advance  
3 as I don't have the gift of eloquence of  
4 speech like many of them around here. And I  
5 tend to be rather blunt and I will be here.

6 The Secretary's closing remarks I  
7 thought were rather alarming. And it sounds  
8 to me that this is almost a foregone  
9 conclusion of how the Department is going to  
10 go.

11 It seems like the decision to  
12 option three has already been determined --

13 OPERATOR: If you would like to  
14 make a call, please hang up and try again. If  
15 you need help, hang up and then dial your  
16 operator.

17 DEPUTY SECRETARY MERRIGAN: You  
18 shouldn't take on my Secretary, Keith.

19 MR. MENCHEY: Hello?

20 (Laughter.)

21 MR. MENCHEY: So I guess I'd like  
22 to pose that question. For some of us around

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this room that perhaps aren't as enamored with  
2 option three -- I personally think you're  
3 opening Pandora's box -- that's not the  
4 official Council position, that's my personal  
5 observations just from this meeting.

6 So my question is are there  
7 opportunities to talk about option two in  
8 these further discussions? Because otherwise  
9 it seems like some of us will be kind of  
10 wasting our time, to be quite frank.

11 DEPUTY SECRETARY MERRIGAN: Let me  
12 say directly to your blunt question, Keith,  
13 because you and I have known each other for a  
14 lot of years, I'm blunt, too. Well, there you  
15 go. I don't know how -- this one doesn't have  
16 a button.

17 PARTICIPANT: Push that button on  
18 the bottom.

19 DEPUTY SECRETARY MERRIGAN: Oh, I  
20 see. This one doesn't have a button on the  
21 bottom. Okay, sorry, but I can't figure out  
22 the technology.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           We've not made a decision. Option  
2 two and option three, as Rebecca laid out, are  
3 co-preferred. That's a tidal wave there  
4 because we don't normally do co-preferred.  
5 And that is because of the time we dealt with  
6 this big EIS and topically with the Secretary,  
7 that's where we're at.

8           And we could go out and at the end  
9 of the day, we could go -- and I've got my  
10 Counsel here, he's going to step on my toe  
11 here before I get myself too much out on the  
12 limb -- you want my toe a little closer -- I  
13 mean we could two, we could do three. We  
14 could do some hybrid.

15           I mean we're not locked in stone  
16 here. We have time. And we want, during this  
17 period of public review, to think a little bit  
18 more about this, see what the public reaction  
19 is. And frankly, and perhaps most  
20 importantly, hear what this room can do. Hear  
21 what this room can do to get us to where we  
22 need to be in the rock.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MENCHEY: So you truly are open  
2 to all options?

3 DR. BEACHY: Absolutely.

4 MR. MENCHEY: Okay. Thank you.

5 DR. BEACHY: Absolutely.

6 MR. WATERS: Gary?

7 MR. HIRSHBERG: So I think you all  
8 are taking inventory of some questions. And I  
9 would add two.

10 One would be -- it would be helpful  
11 to me at least, and I suspect some of my  
12 colleagues, to understand the financial  
13 liability that is causing the duress. You  
14 know in other words, conceptually we've  
15 understood the problem. But what exactly is  
16 the pressure? So that would just be a piece  
17 of data, just the analysis so we understand.

18 The second is that the  
19 Commissioner's presentation before was  
20 certainly interesting to me. And I think it  
21 would be helpful, maybe perhaps along the  
22 lines of Walter's suggestion of a small work

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 group but, you know, you've invited -- you did  
2 months of work here and you've invited a bunch  
3 of us to consider this as a point of starting  
4 off a discussion.

5 And I think a work group around  
6 those suggestions, because certainly however  
7 we shake out here, I think all of you have  
8 heard that at least on the organic side, the  
9 liability questions are real. And this might  
10 come out of the dairy and alfalfa team. I'm  
11 not sure how -- you know, I can't think  
12 organizationally. But I think a baton has  
13 been handed and I think we ought to grab it  
14 and work with that.

15 DR. BEACHY: You mentioned that you  
16 had two possible -- two suggestions? You had  
17 the first one on -- you'd like just the  
18 numbers on financial analyses of losses in the  
19 seed industry.

20 MR. HIRSHBERG: Yes.

21 DR. BEACHY: And presumably by the  
22 alfalfa growers. More than just seed? Or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 just seed? There are two contexts there  
2 because --

3 MR. ROBB: I'm trying to understand  
4 why you've got to go so quickly on this. The  
5 only reason that's been advanced is the cost  
6 of the loss to them. So what is it? We don't  
7 know it. Nobody has put that forward.

8 MR. HIRSHBERG: Yes, the question  
9 here is that given an openness to two or  
10 three, but also a sense that the USDA is  
11 trying to respond to a severe time pressure  
12 here, I think for all of us to participate  
13 meaningfully, it would be helpful to  
14 understand exactly what is the liability.

15 What is the nature of -- because  
16 certainly on the organic side, we see enormous  
17 liabilities also. And I think we need to  
18 match those up.

19 DR. BEACHY: I guess I was going to  
20 ask if it's just the sale of the seed or the  
21 guys who don't grow the Roundup seed would --  
22 and what the implications for them over the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 next two or three years of cropping would be.

2 So I'm asking -- I guess I'm  
3 looking at the same thing that you're looking  
4 at in dairy, this magnifier effect, which is -  
5 -

6 MR. HIRSHBERG: Right. But I think  
7 my answer is that if this -- in my mind, to  
8 compress this process into 30 days is a lot  
9 less realistic than to compress it into 180  
10 days. And I recognize the four years. And  
11 I'm not certainly trying to throw time blocks  
12 up.

13 DR. BEACHY: Right.

14 MR. HIRSHBERG: But the point is it  
15 might be just one year as opposed to three  
16 years. But the question is what's the  
17 urgency? Just the financial requirement for  
18 this year.

19 And then secondly, because  
20 inevitably this issue is -- however it is  
21 resolved, is tied to a larger framework,  
22 which, again, we might all debate right now.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 But I think we understand that it is an  
2 approach.

3 Then that's why I think that at  
4 least picking up the baton and getting some  
5 work done on this, on the liability question,  
6 at the same time would be important.

7 DEPUTY SECRETARY MERRIGAN: So the  
8 reality is if we went to alternative three, as  
9 I understand it, some of that is preexisting,  
10 some elements of it and some of the  
11 stewardship, common stewardship arrangements,  
12 some of it is not.

13 And the question I guess also for  
14 this group to contemplate is to what extent  
15 are you going to -- is the expectation, if we  
16 wanted to go toward three or something like  
17 three, that USDA would drop the hammer or to  
18 what extent can industry -- and industry, I  
19 use that in the broader term -- really come  
20 together, marshal forces and come up with  
21 something alternative three-like, as has been  
22 put out in various papers and in the petition

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for partial deregulation, and really say this  
2 is the pathway forward.

3 I think that's really one of the  
4 big questions on the table, is it not?

5 MR. HIRSHBERG: Hi, it's Gary  
6 again, for those on the phone, Gary Hirshberg.  
7 I agree. I think it is.

8 And, again, I have concerns about  
9 how much -- that's a big a question. And it's  
10 an important question. I have concerns about  
11 -- I mean I'm sure I speak for everybody in  
12 this room that January's booked. It's already  
13 full.

14 But one thing I would suggest is  
15 that we could self-appoint a smaller group of  
16 representatives of points of view which might,  
17 at least, be a little bit more practical under  
18 the circumstances.

19 And I don't know how you split it  
20 because I agree with your point earlier,  
21 Kathleen, I don't think there's -- I doubt  
22 there's a BIO view. I doubt there's an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 organic view. But at least somehow perhaps we  
2 could work with those of you who convene this  
3 meeting to figure out a smaller representative  
4 group.

5 And some of it might be phone. But  
6 obviously it's better face to face.

7 MR. WATERS: Bernice?

8 MS. SLUTSKY: If we are truly  
9 thinking about only the alfalfa decision, and  
10 my understanding is that's what we're thinking  
11 about, then I would very strongly recommend  
12 you get the alfalfa people around the table to  
13 talk this out. And to, again, as Mark was  
14 saying, what are the specs? What are, you  
15 know, what are the demands, both the market  
16 demands that we have to meet both domestically  
17 and internationally, both from a seed  
18 perspective, and I think a lot of those are  
19 from a seed perspective.

20 But again, purely from an alfalfa -  
21 - you know purely with regard to alfalfa. And  
22 then look at what industry can do. And my

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 hope -- our hope would be that industry could  
2 do most of it. And not put it into a  
3 regulatory process. But, you know, have that  
4 group work through all that and look at, in a  
5 stepwise fashion, what can be done from the  
6 private sector point of view.

7 But it has to be alfalfa specific.  
8 Otherwise we'll get nothing done.

9 MR. WATERS: So we are just about  
10 out of time.

11 DR. BEACHY: We've had a couple of  
12 good suggestions here about having small  
13 groups of the people who are really involved,  
14 the alfalfa growers/producers. We had a  
15 suggestion of cross-linking to a specific  
16 cattle and dairy -- I mean cattle and  
17 livestock issue.

18 We need -- it would be very helpful  
19 if someone would step us and say they would  
20 convene that group and begin an activity or a  
21 couple of groups. Do we have some volunteers?

22 MR. SIEMON: I would be glad to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 work with the Land O'Lakes people. But is  
2 there a group -- would there be a larger group  
3 that you could pull together? I mean it's  
4 more than just several, I think. But --

5 DR. BEACHY: Are you talking about  
6 organic dairy and alfalfa, right?

7 MR. SIEMON: We'll find some people  
8 to join with us, you know, let's define what  
9 we need and we'll get a group there.

10 PARTICIPANT: Mr. Frey, would there  
11 be a section of this that you could see also  
12 convening?

13 MR. FREY: Well, the four main  
14 alfalfa companies that are represented in the  
15 room already have a working group. All we  
16 would have to do would be expand the people  
17 that attend those meetings and we would need  
18 to have representation from all of the  
19 different concerns.

20 I mean, yes. That group is already  
21 meeting. We are working on a lot of details  
22 that we think are going to solve a lot of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concerns. We just -- we haven't gone public  
2 with any of this yet because we're not ready.  
3 But we're working on it.

4 MR. McCASLIN: We have a meeting  
5 scheduled for the fifth of January, I think,  
6 already.

7 MR. WATERS: And what is that  
8 group, Mark?

9 MR. McCASLIN: Well, it's  
10 essentially the alfalfa seed producers and  
11 marketers talking about AP-sensitive markets.  
12 And just where we'd produce seed in non-tech  
13 standards.

14 DR. BEACHY: And are there any  
15 organic growers and farmers as well?

16 MR. McCASLIN: Well, currently  
17 there aren't any organic seed growers in the  
18 U.S. So this is a seed production issue. But  
19 we could certainly --

20 MR. KIRSHEMANN: Those of us on  
21 the phone can't hear this conversation.

22 DEPUTY SECRETARY MERRIGAN: Okay,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 so --

2 MR. SIEMON: I was going to suggest  
3 we have a seed -- a long-term seed working  
4 group, which is what I just heard. And as far  
5 as alfalfa only, I understand this problem but  
6 I also understand that this is about all the  
7 things.

8 So it would seem to me when you  
9 talk about long-term seed, you can talk easily  
10 about alfalfa and other things. So I would  
11 rather we broaden that one to be a bigger  
12 conversation. Because one of the big  
13 questions that I need is to know that this is  
14 an ongoing process. And January 24th, it  
15 doesn't end. And that's something the  
16 Department can give us an assurance of that  
17 would help in this process.

18 DEPUTY SECRETARY MERRIGAN: Well, I  
19 think that the Secretary and myself and  
20 perhaps Roger, I know for sure the Secretary  
21 and I for a year and a half have been talking  
22 about coexistence. You may have heard him

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 talk about I have two sons. And I want them  
2 both to thrive and I don't want to choose.  
3 And they're different guys. So you've  
4 probably heard that speech.

5 I got a son and a daughter so I'd  
6 maybe have to rev them up. But I've spoken to  
7 BIO, I've talked to your Board chairman, and  
8 I've talked to a lot of industry groups, I've  
9 talked to soybean -- a lot of the people  
10 around the room. And I've mentioned we've got  
11 to take the bull by the horns, going back to  
12 your bull, and do something about this.

13 So I think, George, you do have the  
14 Department's commitment that we need to have a  
15 broader conversation about coexistence. But  
16 we're on a short timeline here on GE alfalfa  
17 and we have to deal with it.

18 So there seems to be some groups  
19 that are emerging. We will help in a  
20 secretariat way, I suppose, at USDA, to move  
21 some paper around and move some addresses,  
22 contact information around as you authorize us

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to do that.

2 But we're really hoping to the  
3 extent possible that people can self organize  
4 and have this stakeholder led. And then  
5 report back to the Secretary with your ideas  
6 and with any kind of comings together that  
7 might be available to reach in the short term.

8 George, what was the last comment?  
9 Closing words?

10 MR. SIEMON: My third -- no, I was  
11 trying to think of working groups because the  
12 thing we haven't addressed yet and our hardest  
13 subject is this issue of contamination and  
14 financial damage. I mean we can't not say  
15 that doesn't need to be addressed.

16 And several of the groups here in  
17 the technology business, they're aware of  
18 things going on in the world, there already  
19 are programs in the world and what the  
20 significance of those are or are not. And I  
21 just can't see how we can't have a working  
22 group to address that issue because it keeps

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 coming up and it needs to be addressed.

2 MR. WATERS: So would you do that  
3 in one group?

4 MR. SIEMON: I would suggest that  
5 was a third group.

6 MR. WATERS: Okay so a  
7 contamination or a gene flow and --

8 MR. SIEMON: Gary will set up a  
9 long-term seed and --

10 MR. WATERS: Okay.

11 Keith, yes?

12 MR. MENCHEY: I think since option  
13 two is a co-preferred option, would I suggest  
14 we have a fourth working group that would  
15 analyze the second option then?

16 MR. WATERS: So one on  
17 deregulation, is that what you're suggesting?

18 MR. MENCHEY: What? I'm sorry.  
19 One on deregulation?

20 MR. WATERS: Yes.

21 Cindy, did you want --

22 MS. SMITH: Well, I guess my point

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 here in closing is that --Well, I was just  
2 going to say just real quick since we have  
3 2,300 pages of analysis, what are you thinking  
4 that group is going to focus on? The  
5 deregulation group, Just generally looking at  
6 --

7 MR. MENCHEY: My understanding that  
8 the EIS has two preferred --

9 DEPUTY SECRETARY MERRIGAN: Right.

10 MR. MENCHEY: -- options. And like  
11 I said earlier, it seems like everything is  
12 being focused on option three, this partial  
13 deregulation. I'm suggesting that since they  
14 are the preferred options, that we have  
15 another equal working group that would look at  
16 the disadvantages and advantages of just going  
17 with a straightforward deregulation --

18 DEPUTY SECRETARY MERRIGAN: Okay.

19 MR. MENCHEY: -- as we're  
20 accustomed to.

21 DEPUTY SECRETARY MERRIGAN:  
22 Advantages, disadvantages, okay. That's fine.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DR. BEACHY: Any closing comments  
2 from anyone?

3 MR. WATERS: So I'm -- the only  
4 thing I'm not clear about is how this is going  
5 to occur. Is somebody going to take care of  
6 that in terms of talking to each other?

7 MR. SLIGH: Well, it seems like  
8 we're agreed on these breakout groups, You  
9 could circulate that, let people sign up, sort  
10 of the self select to be a part of a group,  
11 give us some mandate about timeline and  
12 product. I think that would help.

13 In terms of dates, I think clearly  
14 some dates need to be circulated sooner than  
15 later because Gary's right. We're all  
16 probably double booked for January already.

17 But we all would try to do what we  
18 could to make room. Just because we do  
19 recognize that this is a crisis all the way  
20 around.

21 So I think there is energy to try  
22 to give this a go. But I think you're going

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to have to do some of this secretariat work  
2 for us offline because we're, you know, we're  
3 not going to figure out that level of detail  
4 out today.

5 DR. BEACHY: Thank you. I think I  
6 just join the Deputy and the Secretary again  
7 for thanking you for being here. This has  
8 been the start to a good conversation.

9 We have great confidence in those  
10 of you in this room that can help us to come  
11 up with a solution one, that meets your needs,  
12 one that lies within all the authorities that  
13 we have, and one that can help us to move  
14 forward and make this record decision to be  
15 one that is meaningful and useful. Thank you  
16 all for coming.

17 Kathleen, did you want -- I leave  
18 it to you. Otherwise, safe travels back and  
19 happy holidays to everybody.

20 (Whereupon, the above-entitled  
21 meeting was concluded at 3:38 p.m.)  
22

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)