From: Mick McAllister [mailto:mick.mcallister@rmfu.org]
Sent: Monday, December 28, 2009 1:48 PM
To: ATR-Agricultural Workshops
Cc: Kent Peppler
Subject: RMFU Comments on Agricultural Market Concentration

Attached is the electronic copy of comments from Kent Peppler, President of RMFU, on agricultural market concentration. We look forward to discussing this issue with the USDA and the DoJ in the coming year.

===========
Mick McAllister
Director of Communications
Rocky Mountain Farmers Union
5655 S. Yosemite Street, #400
Greenwood Village, CO 80111
Phone: 303.283.3537
Fax: 303.752.5810
Switchboard: 303.752.5800
===================

December 28, 2009

Mark B. Tobey
Special Counsel for State Relations and Agriculture
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Tobey:

Rocky Mountain Farmers Union is concerned about the current impact of concentrated agricultural markets on family farms and ranches, rural communities, and our national food security. Farmers Union has fought vigilantly to protect the family farmer and rancher from the predatory effects of market concentration, and it is a war that apparently cannot be won, no matter how many battles we win. The war itself is the conflict between powerless individuals and the powerful, with their money, their lawyers, their government allies and – when necessary – guns.

The fundamental problem of concentrated, corporate agriculture is that corporations are not humans, and they do not value the human concerns of individuals, unless those concerns can be expressed on "the bottom line." As businesses become larger, they become more distant from the people, plants, and soil that feed their employees and from the environment devastated by the costs of industrialized agriculture that are "hidden" because spreadsheets don't taste, feel, or eat. Market concentration puts wine on the tables of the privileged few, while our citizens tend and harvest the grapes of wrath.

This letter brings together our thoughts on the seven topics proposed for the DoJ/USDA listening sessions on market concentration, but we want to begin by addressing a topic not on that list: the impact of market concentration on food security.

Food Security

Food security depends upon a diversity of produce, competitive marketing, and efficient consumption. Concentrated agricultural markets put all those dependencies at risk. Corporate agriculture decrees and enforces the biological disaster of monoculture. The damage this causes has been documented, studied, and documented again for more than century. When one firm markets one (patented) strain of seed to 80% of the world's growers, then one genetic fluke – a new bacteria strain, a surge in an insect population, a drop or rise in world temperatures – can wipe out an entire crop on the local, national, and possibly even global scale. Present law does not merely condone monoculture, it favors it. Government contracts spread proprietary monocultures under the benign guise of "Green Revolutions."

Diversity of produce and competitive marketing converge in the beef industry, where unintended consequences of food safety regulations have driven small packers out of business. In 2009, enough American beef was recalled to make a Happy Meal for every child in the United States. We have recalls of 400,000 pounds of beef because we have created an industry where it is not just possible, but inevitable, that one plant kill and butcher a thousand-pound steer every two minutes, 24 hours a day. If the contaminated beef had come from one of ten plants producing 40,000 pounds a day, 360,000 pounds of good beef would not have been wasted.

The consumer who can only buy a product from one company has lost personal food security, and when a nation is dependent on three or four companies for its essential foodstuffs, that country is not free. What if that company fails? What if the price doubles? On every level of our economy, the principle of competition is fundamental. Large organizations, especially if they are vertically integrated like the predatory railroad companies of the trust-busting era, can force competitors aside with their sheer size and no other merit. Without competition, free-market capitalism degenerates into one-sided profits and losses that will gut the golden goose of agriculture.

Just as allowing a meat packer to grow so large that hundreds of thousands of pounds of meat are at risk, large corporations, by virtue of their ability to serve as a producer's entire market, can create enormous waste, often without paying financial consequences. Roughly 25% of grocery produce is discarded, not sold. This means that when the consumer buys three apples, she pays enough to cover the loss of the fourth. From the corporation's point of view, waste is a cost of doing business, and losses can be offset with large volumes. Colorado witnessed this "bottom line" attitude toward losses during the Eisenhower administration, when food retailers attempted to destroy Colorado's independent peach market by selling peaches for less than they paid for them. This back-and-forth can be seen in almost every aspect of the human food cycle, from excessive fertilizer use to extravagant dumping of wasted food. A nation that wastes food endangers its citizens; John Locke made that point more than two hundred years ago.

We must not allow our food system to depend on corporations "too big to fail." When the bankruptcy of one company, Pilgrim's Pride, can rock the entire poultry industry, what is needed is not a bailout but regulations that prevent such companies from growing so bloated they cannot function without help. Rural America, struggling to succeed on a tilted playing field, does not want to hear that any of its multi-national competitors for America's food dollar are "too big to fail." So were the dinosaurs.

Application of Antitrust Laws

An important element of the market concentration problem is the government's failure to execute existing laws and regulations. The Sherman Anti-Trust Law and the Federal Trade Commission Act of 1914 guarantee the consumer protection against large companies merging to create a monopolistic market. However, in the last few years the federal government has failed to enforce those protections across the spectrum of American business. The science of economics has provided simple, reliable yardsticks to determine if a market is too concentrated to allow healthy competition. When corporate mergers exceed those measures, they should be stopped.

Existing antitrust laws may address monopoly, monopsony and vertical integration in the agricultural sector, but without an executive branch exercising its constitutional obligation to enforce the law, those laws are a cynical joke on the American people. It is small businesses, small farmers, the individuals on Main Street, who are the muscle and blood and brains of our nation, not a handful of greedy, uncontrolled corporations. Government should serve all of its citizens' needs, not just those of greedy corporate executives.

Antitrust regulation does not adequately address the problem of local and regional concentration. When a single health insurance provider controls 80% of the market in one state, the consumer is at the mercy of that provider. When one company (Monsanto) controls more than 95% of the corn seed market, the farmer is at the mercy of a chemical company. When one packing plant controls most of a three-state area, the consumer as well as the livestock producer is at the mercy of a monopoly. Federal regulations must take into account the effects of local and regional and even global monopolies.

Concentration and Food Costs

Concentration has the opposite effect that you might expect on food costs. Concentrated markets allow corporations to control prices on both sides of the food transaction. They encourage food waste, and waste is used to justify predatory consumer prices. It's not the consumer who rejects 20% of the American potato crop; corporate agriculture does that for us.

As larger and larger corporations monopolize aspects of food production, prices to the consumer do not fall, and the production chains that begin on family farms generate less, not more, income for the farmer. In the meat packing industry for the last few decades, consumer prices and plant productivity have increased while farmer prices and plant employee wages have dropped. Clearly, any economies that occur as a result of concentration are reserved for the pockets of the corporate executives controlling the markets.

When a producer is dependent on a single market, the corporate master can make every human consideration secondary to the bottom line. Corporation food processors enforce wasteful standards that can only be met by a portion of the farmers crop, and non-compete clauses prevent the farmer from selling the rejected product to other markets. America discards more than 25% of all food grown in this country, and that pattern of waste begins when corporations create aesthetic standards that are meaningless to hungry Americans.

It is not in the consumer's or the nation's best interest for profitability to converge on individuals in a smaller and smaller number of businesses. In a country where 13 million children go hungry every night, it is criminal that corporate muscle is used to destroy food.

How Regulatory Statutes Effect Competition

Regulatory statutes have had the strange and persistent side effect of encouraging and rewarding concentration of agricultural markets. Long before a Secretary of Agriculture announced that farmers should "get big or get out," the government was aligned with corporate interests against the distinctly American yeoman farmer. Ignore the century-long battle to destroy cooperatives, which allowed individual farmers to compete with corporations on equal scales. Ignore the corporate talent for gaming the regulatory system, as with farm subsidies, which were intended to provide market stability for working farmers, but spend vast amounts of tax dollars to provide a work-free revenue stream for Wall Street entrepreneurs. Ignore blatant intervention of the government to protect corporate interests, such as the Johnson County War in Wyoming or the Ludlow Massacre. We only need to look at the last two decades.

For example, when the nation demanded more effective oversight of meat packing plants a generation ago, regulations were put in place that created impossible overhead and "science" burdens on small operations, while large operations were easily able to absorb these plant-wide rather than "per head" costs. Within a decade, most of America's geographically diversified and competitive packing plants were gone.

Similar favored market positions were offered to concentrated operations in the National Animal Identification System opposed so fiercely and universally by small operators. Now the government is proposing to impose unsupportable overheads on small producers in the name of "food safety." Ironically, the proposed regulations do little to control the industrial excesses that threaten food safety, and their "unintended consequence" will almost certainly be the bankrupting of small-scale operations that promote natural and local foods.

Through privileged exemptions and "one [huge] size fits all" regulation, the federal government has subsidized big companies at the expense of the small, individual producer. While individual producers "fail" daily, the government worries over the companies "too big to fail."

Patent Law and Intellectual Property

The ignorant application of patent law is allowing multi-national companies to seize control of basic food products. By "ignorant," we mean that the law does not reflect an understanding of the basic realities of food production. Under existing application of the law, a seed company controlling 80% of the market for a specific food, such as soybeans, successfully sued farmers because their crops were pollinated by plants grown from the company's patented seed. As the law is interpreted today, one such company has driven a traditional seed cleaner in Indiana out of business with ridiculous suits, on the grounds that by washing the seed produced by farmers who refused use the company's seed, he was "encouraging patent violation."

Patent law's fundamental misunderstanding of agricultural reality can be found in the tragic side effect of the latest "Green Revolution" in the Third World. For thousands of years, farmers have set aside seed for the next planting. Farmers on the Indian subcontinent were grateful to receive new, pest-resistant seed from the labs of corporate agriculture. Until they learned that the seed it grew was sterile, and they would be dependent, from that harvest forward, on the largess of a distant corporation. The effect in rural India was simple: protests, bankruptcies, starvation, and despairing suicides.

Patent law and intellectual property rights must be revisited with representatives at the table who understand the organic, natural sciences at the foundation of agriculture. Corporations' vast financial resources can destroy an individual farmer with nothing more than the threat of a lawsuit. In such a world, the law must take away ridiculous grounds for suit like "accidental pollination" and structure transactions in such a way that both parties get fair and equal treatment.

Market Practices:
Price Spreads, Forward Contracts & Transparency

Many food growers are faced with a single market for them to purchase seed and other inputs and a single market when it comes time to sell their produce. It doesn't take an economics degree to understand that this means higher input prices, greater risk, and lower profits for the actual food producer. Food is wasted and overpriced to balance against these problems.

Price spreads monitored by the USDA graphically demonstrate the difference between "added value" and "increased price." Ten pounds of potatoes earn a farmer 60 cents; the consumer pays four dollars for them a few days later. Does anyone seriously think that the retailer has added nearly three and half dollars of value to that sack of potatoes? In fact, the consumer is not even paying for the "added value" of the retailer culling the produce, because the retailer's contract generally allows him to do that before buying it.

Food processors must not be allowed to force unbalanced forward contracts on family farmers and ranchers with no other market for selling their product. If a processor contracts to purchase 10,000 bushels of wheat, the contractor's obligation to buy the wheat should be at least as firm and binding as the farmer's obligation to deliver it. The federal government must also strengthen the law to protect farmers and ranchers from onerous confidentiality agreements that forbid them to compare notes while weighing offers from the limited market for their product.

Retailer Concentration

Increasing food retailer concentration is a problem nationally and globally. In addition to controlling markets, concentration fosters a level of food waste that is criminal in a starving world.

Currently, 80% of beef packing belongs to four companies. The situation is similar in almost every agricultural market, from poultry to fertilizer. The individual companies may change from one market to another, but even that isn't necessarily true. The largest packing plant in the world recently attempted to become one of the largest beef ranchers. Tyson is one of four companies controlling 80% of beef packing, one of four controlling 65% of pork packing, and one of four controlling 60% of poultry packing. Cargill is among the controlling companies for beef, pork, turkeys, fertilizer, and flour

The Department of Justice is current reviewing an attempt by the largest beef packer in the world to purchase the (bankrupt) largest poultry producer. Studies have demonstrated that on a local level, concentration is even more extreme, with producers facing a single buyer within reach.

Companies like JBS and ConAgra pursue a policy of vertical integration that threatens consumers and the small producers, whose work these companies hire at share-cropper wages. The nation has seen the risks of letting banks and other institutions become "too big to fail." In the background, the bankruptcy of Pilgrim's Pride, the collapse of the dairy industry, and the rapid decrease in the international food surplus as corporations pursue "the bottom line" all show how vulnerable we are to similar disasters in our food economy. You can't "bail out" starvation.

Vertical Integration: Packer Ownership of Livestock

Vertical integration is a vague phrase referring to a process that can be positive. It can refer to a citizen farmer following the traditional practice of setting seed aside from the harvest, rather than purchasing sterile seed, year after year, from a corporate giant that controls 80% of the market. It can refer to a farmer who uses a compost heap rather than chemical fertilizer purchased from a corporate giant controlling 50% of the market. It can also be a deadly process, when vertical integration extends the advantages that sheer size gives to corporate agriculture. It can create a monolithic, anti-competitive atmosphere with one predatory individual in control. There's no better illustration of the risks than packer ownership of livestock before slaughter. This continues to be a kind of vertical integration government regulators review carefully.

The poultry industry, less well regulated, also illustrates the risks. Effectively, the corporate giant owns the chickens from egg to nugget, with the individual producer simply tending them for a few weeks of their lives. If the packing plant had similar control, it has been demonstrated time and time again that the result would be to drive competitors into bankruptcy and meat prices higher with no benefit to consumers or the individual ranchers "share-cropping" the industry's meat supply. Livestock owners who formerly worked in the disadvantages of a single market would find themselves with, effectively, no market. The packing industry can manipulate prices even more effectively with a pool of their own livestock to draw upon, by releasing their own stock for slaughter to close the "free" market. The history of American agriculture shows this happening time and again.

Listen to the People

American consumers have demonstrated that they don't want to buy their food from corporate giants who consider accountability a "cost of doing business." They don't want their backyards polluted by factory farms and CAFOs; they don't want produce bred for durability rather than taste and nutrition. They are willing to pay more for safe, nutritious food. The federal government's blind eye to agricultural market concentration has forced them to shut up and eat. No one knows better than the American farmer what's wrong with corporate agriculture. It's time for the government to listen to us.

We look forward to working with the Department of Justice and the USDA to help inform the public and our elected leaders about this issue and to develop rules and regulations that ensure the safety of our food supply, the profitability of family agriculture, and the sustainability of our rural communities.

Kent Peppler

Kent Peppler, President
Rocky Mountain Farmers Union