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THE CALIFORNIA AGRICULTURAL PRORATE ACT

by

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THE CALIFORNIA AGRICULTURAL PRORATE ACT

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The Agricultural Prorate Act, passed by the California State Legislature in the spring of 1933, is really the culmination of a half century of experience with cooperative marketing and other schemes designed, in part at least, to serve the purpose of controlled marketing. Like many of the other western states, California is dotted with valleys, large or small, in which special crops are produced for shipment to distant markets. By special crops I mean crops other than the regular grain crops grown on very large areas throughout the country. Even a widespread general crop at times may assume the status of special crop under such situations as obtain in the western states; for example, the Gravenstein apple crop is a special crop because, in the first place, it is produced before other apples are on the market and in a restricted area. Similarly, Kern County potatoes are early potatoes produced in a concentrated area for shipment to relatively distant markets during a very short season. Such other crops as Imperial Valley lettuce or Salinas Valley lettuce are, of course, specialties in the more real sense of the word.

Throughout the period of half a century, many groups of California producers have faced chronic conditions of overproduction in the sense that at almost any time there were excess acreages in many crops. With plantings of fruit increasing rapidly, even a year of normal yield was a year in which the chauvinistic booster of western America might point with pride to "the biggest shipments on record." But if production was increasing more rapidly than demand, such shipments invariably meant a loss to the producers since markets were being crowded beyond their capacity at prices satisfactory to producers. A characteristic of the market for perishables produced at a distance from the point of consumption is violent price fluctuations. Thus, although a bumper crop reduces wholesale prices in New York or Chicago but 30 per cent, prices in California may fall 66 per cent and producers' net returns may actually vanish.

Discussions of market control have featured every move to form a statewide or regional organization since the establishment of the California Fruit Union in 1885. A study of the history of cooperative marketing in the raisin industry, in the prune industry, in fact in almost every industry in which there has been an attempt at widespread cooperation, reveals this motive for controlled markets.

Out of the recognition that cooperative marketing cannot accomplish the desired control, came the so-called clearing house movement, an elaboration of the cooperative idea for the inclusion of shippers and packers. These movements were to be industry-wide. Some did and some did not include provisions for surplus control, although the motivation back of most of these movements was the desire to control. Usually there was the naive notion that mere holding for a price would get it.

In recent years there have been a number of attempts at surplus control by the disposition of part of the crop. Among these were the Sun-Maid Raisin Growers' attempt to manufacture surplus raisins into syrup, the plan followed

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by the California Fruit Growers' Exchange for the manufacture of surplus lemons into by-products, and the cling peach and grape plans of allowing part of the crop to remain in the field. Each of these plans brought into clear relief the advantageous position of the noncooperator. This point was brought out with special clearness in the case of the Tokay grape control plan set up in the fall of 1932. The Tokay plan, in fact, deserves a bit more discussion because it is in reality the "jumping off place" for the Prorate Act.

These grapes are produced principally in a small area in the region of Lodi, California. In the spring of 1932 a group of growers had asked the Giannini Foundation to make a study of the Tokay grape marketing problem. Later in the summer of 1932 while this study was going on it became fairly obvious that returns would be unsatisfactory because the crop was large. Growers recalled that the 1930 shipments of 7,670 carloads sold at an average of \$1.14 a package, and that the smaller crop of 4,109 carloads in 1931 sold at \$1.59. With marketing and harvesting expenses averaging about \$1.03 a package, this meant that the large crop in 1930 netted producers approximately \$750,000, while the small crop of 1931 netted more than \$2,000,000.

In the meantime, plans were developed for a voluntary prorate of shipments during that season. Shippers, representing 85 per cent of the crop, agreed to cooperate on the plan. The scheme worked well during the first three weeks, but operations were given up at the end of the fourth week because by that time the noncooperating shippers, who had but 15 per cent of the tonnage, were actually making 50 per cent of the shipments.

With the discontinuance of this plan, discussion immediately was renewed as to the possibility of handling the small percentage of non-cooperating growers or shippers. There had repeatedly been discussions of compulsory cooperative marketing. This was renewed during the summer of 1932. The question was repeatedly raised as to why a small minority should be permitted to do in the marketing field what it would never be permitted to do in such a program as road building or public school building; namely, refuse to participate, and in fact benefit by refusing to cooperate. Finally, two requests were made of the University that the whole problem be studied. Dr. E. A. Stokdyk was assigned to the job and early in 1933 published a report entitled "Economic and Legal Aspects of Compulsory Proration in Agricultural Marketing." Publication of this report and the ensuing discussion of the suggested law led to its enactment by the California State Legislation late in the session of 1933.

WHAT THE ACT PROVIDES

The Act provides for restriction of marketings of a given crop in any given area when two-thirds of the farmers controlling two-thirds of the acreage involved are in favor of control, and provided, further, the

✓ First issued in mimeographed form in March 1933 and later published as Bul. 565 of the California Agricultural Experiment Station.

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Prorate Commission approves thereof. The Act is distinctly different from compulsory cooperation schemes in that both private and cooperative marketing agencies are free to operate as they please except as to quantity shipped.

Grower's approval may take the form of a sign-up by two-thirds of the growers controlling two-thirds of the acreage, as has been done in the various plans so far set up, or by a two-thirds vote of all the producers concerned in the proposed zone.

A word might be said as to the constitution of the Prorate Commission. It consists of nine members. Four of them are producers of agricultural commodities, one is an experienced commercial handler of fruits and vegetables, another a cooperative marketing handler, one an agricultural economist, and one an agriculturalist employed by a metropolitan chamber of commerce. The last two supposedly represent consumers. The appointments are made by the Governor for a term of four years, the terms being staggered so that not all of the appointments expire at one time.

Upon presentation of a petition for the institution of a program of prorated marketing with respect to any variety or kind of agricultural commodity, the Commission is required to hold a hearing at some central point at which it will receive and hear the evidence offered by the petitioners and by any interested person in opposition. These hearings may extend over such time and may be adjourned from place to place as circumstances may require. The Commission is particularly instructed to ascertain the following:

"(1) That the petition is signed in person or by proxy by the required number of producers and by the owners of the required number of producing factors; (2) that the economic stability of the agricultural industry concerned is being or is about to be imperiled by the prevailing market condition; (3) that agricultural waste is occurring or is about to occur; (4) that the institution of a program of prorated marketing will conserve the agricultural wealth of the state and will prevent such economic waste; (5) that the institution of a proration program as proposed in the petition will advance the public welfare without injustice to any producers; (6) that the proposed program may be instituted and conducted without permitting unreasonable profit to the producers and that the commodity named in the petition cannot be marketed at a reasonable profit otherwise than by means of such a program; (7) that the proposed zone of proration includes all of the producing territory within this state reasonably necessary to render the proposed program feasible."

If all of the above are found to be part of the situation, the Commission is required to call an election for the proposed zone, if an election is requested, to ascertain whether in fact two-thirds of the pro-

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ducers are in favor of such a program. If, however, it is shown that two-thirds or more of the producers controlling two-thirds or more of the producing acreage have in fact signed the petition, no election need be held. When the Commission finds that the necessary conditions have been met, it declares such program adopted. Any interested party who feels that the plan will injure him may obtain a court review of his case up to thirty days after the effective date of such order.

When the Prorate Commission has approved of the institution of a prorate program, the next job is that of selecting a proration program committee of five producers and two handlers operating within the zone. If any marketing agency controls more than one-fifth of the production within a zone, it is to be entitled to name such proportion of the members of said committee as its control of production, except that it may not name more than three of the producer members. It is further provided that if the commodity is largely to be processed before consumption, one of the producer members of said program committee shall be a processor. The program committee, in turn, must appoint an agent approved by the Commission, who is to administer the proration program in that zone on behalf of the committee.

The expenses of the Prorate Commission, of the program committee, and of the agent and his helpers, are to be met by charges levied on prorate certificates which are to be issued so that each commodity under control will presumably bear its entire expense and carry its share of the expenses of the Commission as well. In order to make sure that the Commission is not pestered with petitioners whose requests could under no circumstances be granted, each petition must be accompanied by a substantial deposit sufficient to cover the cost of hearings (and elections, if requested). This provision doubtless explains the fact that all of the petitions so far presented have contained sufficient signatures to avoid an expensive election.

Two lines of action are open to the Commission in connection with the enforcement of any program approved and made effective by its action. One of these is the provision that any violator may be enjoined in the Superior Court for the county in which the violation is alleged to be occurring. In the second place, any violator is liable to fine in the civil courts to the amount of \$500 for each and every violation.

Once a proration program has been instituted it remains in effect unless there is filed with the Proration Commission an application for its termination signed by not less than 40 per cent of the producers or of the production of the prorated commodity. Or the Commission itself may at any time initiate an investigation on its own motion to determine whether or not the conditions, on the basis of which the program was initiated, still obtain. Presumably, any objector might raise the question with the Commission, and if it felt any merit lay in the objection, it could, through its executive secretary, make a sufficiently care-

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ful investigation as the basis upon which to decide whether or not to discontinue the proration plan in a particular case.

PROCEDURE IN PRORATING A CROP

The first job of the proration program committee is to formulate a proration program which must meet the approval of the Commission and can be amended only with the approval of the Commission. The committee must determine what is the size of the crop and what is the proportion which can be marketed. The programs thus far formulated have been sufficiently general to permit modifications as conditions have changed. Following is the program for prorating potato shipments:

PROGRAM FOR PRORATED MARKETING OF POTATOES

1. Each grower must forthwith obtain a primary certificate covering all acreage of potatoes which he proposes to harvest during the current season. No secondary certificates shall be issued except to holders of primary certificates.

2. Each grower shall at such times as may be prescribed by the program committee, furnish such committee with an estimate of the potatoes which he will have available for shipment during an ensuing designated period. Such estimates shall be subject to an independent check.

3. The program committee shall have the power from time to time to determine what proportion of his crop each individual grower may be permitted to market, but any proration applied shall be limited to intrastate marketing only.

4. Each regulation governing proration shall apply proportionately and without discrimination to all growers.

5. The program committee shall have power to proscribe reasonable proration periods.

6. The program committee shall have power to order shutdowns of one, two, or three days upon giving 24 hours notice, when in the opinion of the committee such shutdowns are necessary to prevent market gluts and prevent waste.

7. The program committee shall have the power to issue secondary certificates on a daily basis if necessary.

8. Each shipment of potatoes shall be accompanied by a secondary certificate.

The method of controlling the crop is by the issuance of certificates which must accompany each shipment or sale. The general plan is

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for each producer to be given one certificate covering the appraisal of his entire production. Then there is a secondary certificate which authorizes the harvesting or preparation for market of a certain quantity of a crop, and this certificate must accompany any shipments to market. Following are the forms used in the second lettuce zone established:

PRIMARY PRORATION CERTIFICATE

NO.

193

Issued to _____ covering _____ acres as per list on reverse side. This certificate is transferable. Secondary proration certificates will be issued only to an authorized holder of this primary certificate upon its presentation.

Note: It is a misdemeanor to harvest, pack or ship lettuce produced within Lettuce Proration Zone No. 2 unless the required Secondary Proration Certificates have been issued authorizing the same.

Zone Agent

SECONDARY PRORATION CERTIFICATE

NO.

193

This Certificate, issued under Primary Proration Certificate No. _____, entitles _____ to harvest, pack and ship _____ crates of lettuce (dry pack) (under ice) on _____ only.
Date _____

This Certificate must accompany the shipment.

(This Certificate is subject to cancellation upon 24 hours notice by Zone Agent)

Zone Agent

Transferable by Assignment on Reverse Side

PRORATION ACTIVITIES UNDER THE ACT THUS FAR

The first instance of actual proration under the Prorate Act was inaugurated for the Imperial Valley lettuce crop. In January 1934 it became evident that the supposed marketing agreement under the Agricultural Adjustment Act would not be made effective, and that markets were becoming more and more demoralized as the lettuce season got into full swing. A petition for a prorate program for Imperial Valley lettuce was presented to the Commission on January 9 and a hearing was promptly set for January 22. It was shown that two-thirds of the growers and two-thirds of the acreage favored the institution of a proration program, and that, further-

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more, the market could not absorb all of the lettuce which would be available during the remainder of the season at prices which would permit the growers to break even. There was some objection to the program at the hearing but no formal opposition developed. On January 23 the Commission approved the findings of Chairman McFadden, who had held the hearing, and immediately appointed a proration program committee, naming the men whom the growers had previously selected at a mass meeting.

The proration program committee at once formulated a program which was approved by the Commission. It then appointed a zone agent to handle the administrative job as well as a number of inspectors to check up on crop estimates of producers.

The program approved by the Commission provided that there might be a complete shutdown, and this was the policy adopted in order to clear the eastern market where cars had accumulated on railway tracks. An interesting problem of enforcement immediately arose when one of the shippers announced that he would continue to ship in spite of the shutdown order. Upon the authority of the Commission, the program committee went to the Superior Court of Imperial County and obtained a temporary restraining order prohibiting the shipper from violating the proration program, and ordering him to show cause at a later date why the temporary order should not be made permanent.

The order was granted on the twenty-seventh of January, and on March 1 and 2, after a trial, was made permanent. This was the first test of the constitutionality of the Act. During the rest of the program, curtailments ran as high as 70 per cent. The unusually heavy curtailment program became necessary because, while Imperial Valley weather conditions were unusually favorable, the East was suffering from a severe blizzard, a most unusual coincidence, well illustrating the type of situation for which a proration program offers a remedy.

In addition to the lettuce prorate plan in the Imperial Valley, a prorate plan was later adopted in the Santa Barbara and San Luis Obispo counties' lettuce producing region, in the Kern County potato shipping region, and will soon be in operation in the Gravenstein apple district in the Sebastopol-Santa Rosa region.

The plan has not actually functioned in the Kern County area because prices of potatoes have held up well thus far. The committee is ready, however, should any action be needed.

An interesting feature of the Gravenstein apple scheme is the arrangement for coordinating it with the proposed marketing agreement under the Agricultural Adjustment Act. The plan is for the program committee to act also as the control board provided for under the marketing agreement. As a result, both the intrastate and the interstate aspects of apple distribution can be handled by the same group of men. It is not likely that much use will be made of either plan this year because the

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crop of Gravenstein apples will be very short.

WHAT MAY BE EXPECTED OF THE PRORATE ACT

The Prorate Act apparently offers a solution for the sorts of problems involved where special crops are produced in concentrated areas and shipped to distant markets. In most such instances there are wide variations from year to year in total production, wide variations in market demand, and frequent peaks in rate of shipment when markets become badly demoralized. Such situations can be handled under the Prorate Act and the burden of control shared equally by all members of the group.

I doubt whether the Prorate Act will be applicable to crops produced in small, scattered units, particularly if they also have a fairly substantial local outlet. The Act was discussed last fall by a group of Youngberry producers. The group finally decided that it was hopeless to consider a proration program for this crop because there are large numbers of small patches of berries scattered over much of several counties in the valleys and on the coast above Los Angeles. Many of the growers sell directly to retail grocers, many sell at roadside markets, and many sell small lots to jobbers in Los Angeles and San Francisco. It has been estimated that as much as one-third of the crop in one of the major districts is at times sold at roadside markets. With such a large number of such small producers scattered over considerable areas, the job of policing would be unduly expensive, if not utterly impossible, except for berries sold through fairly large jobbers and retailers.

Consumers are of course interested in the question of whether or not they are to be overcharged. Presumably, they have protection in that certain members of the Prorate Commission are not producers, and are supposedly selected to represent consumers. They, likewise, have protection in that producers have volume to sell and, in most cases, can market fairly substantial volumes at low prices more profitably than they can sell a small volume at high prices. There are, therefore, limits to even the short-time exploitation of the consumer. The long-time question concerns the extent to which production will be increased, if prices are maintained at unduly profitable levels. If such a procedure remains permanently available to California producers or to those of any other state, the policy will very definitely have to be one of establishing prices at such a point as not to increase production by making controlled crops unduly profitable compared with other crops or products, either in the state concerned or in other states.

The experience with surplus control elsewhere is that producers are likely to overemphasize the so-called "sunk costs," that is, their overhead in a particular situation. They commonly fail to recognize the fact that they must meet the competition of producers in newer sections operating on cheap land, or those anywhere adopting improved varieties, improved methods, or machine production with large-scale operation.

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CONFLICTS OF INTEREST

It has been interesting to see the extent to which California farmers are being educated in the economics of price. It is not uncommon to have them discuss prices and shipments in terms of supply-price schedules, shifts in supply-price curves, or total value curves. The application of statistical method to the analysis of such problems and the presentation of the results in understandable form should do much to avoid application of such plans to impossible situations, abuse of plans by over-restriction, or continuance when breakdown is threatened.

An interesting aspect of proration control arises out of the conflict in point of view between producers, on the one hand, and shippers and packers on the other hand. This is brought out clearly in Dr. Stokdyk's analysis of the Tokay grape-price relationship.^{2/}

TABLE I

Probable Prices and Total Returns by Shipping Various
Quantities of Tokay Grapes in 1933

Assuming demand as the same average for the 1932 season

Weekly shipments for state		Weighted average delivered auction price per lug	Net to grower on vines per lug	Not to com- munity per lug	Total returns to growers	Total returns to com- munity
Cars	Packages					
200	176,400	\$1.43	\$0.41	\$0.71	\$72,324	\$125,324
250	220,500	1.35	0.33	0.63	72,765	138,915
300	264,600	1.28	0.27	0.57	71,442	150,822
350	308,700	1.22	0.21	0.51	64,827	157,437
400	352,800	1.16	0.16	0.46	56,448	162,288
450	396,900	1.09	0.09	0.39	35,721	154,791
500	441,000	1.03	0.04	0.34	17,640	149,940
550	485,100	0.98	-0.01	0.29	- 4,841	140,679

The study of the supply-price relationship on a weekly shipment basis is indicated in table I. The last two columns show, respectively, total returns to growers and total returns to the community. These are obtained by multiplying the respective schedule items for number of packages shipped by the schedule items for average net returns to growers

^{2/}Stokdyk, E. A. Marketing Tokay grapes. California Agr. Exp. Sta. Bul. 558. September 1933.

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and the f.o.b. prices. It will be noted that the highest estimated return to the growers is obtained by shipping 250 cars a week, whereas the highest return to the community is obtained by shipping 400 cars a week. Since the shipping firms to a very considerable extent ship on a consignment basis, usually on the basis of 7 per cent of the returns at destination or 10 per cent of the f.o.b. returns, it is to their interest to adopt the community point of view which would give them the highest total commission, whereas the growers are likely to favor the smaller volume.

The same divergence in point of view exists in connection with the proposed pear-control plan. Analysis indicates that growers may expect that highest returns for fruit on the ranch might be obtained in a particular season by restricting shipments to a given number of cars for the season, whereas shippers, operating on a basis of 7 per cent of delivered prices, would get highest gross commissions and doubtless highest net returns by shipping much larger quantities.

An analysis of the operating costs of a large pear-shipping association indicates that the same reasoning applies in that case.

Some divergence in point of view has developed between large and small producers. A part of this has been based upon the assumption that the little fellow should be given some preference because he needs it. I am inclined to believe there is an economic divergence in point of view here resembling that between shipper and producer above-mentioned. The small producer who depends entirely upon family help finds that a curtailment program leaves him with unused labor which must nevertheless be clothed and fed -- a sort of overhead cost.

It has been a matter of common observation that, although most of the curtailment activities in the past have been on the part of the large shippers, many of the shippers have continued to ship as long as there was a reasonable certainty that they would not get what is called "red ink," i.e., bills indicating insufficient returns to cover marketing costs. The result was that the markets were crowded with so much stuff that in many years the producers got very little in the way of net returns, whereas of course the shippers got their packing charges, made their profit on boxes and shock, and generally utilized their plants to capacity, in addition to having received their commission charges. It is not surprising, therefore, that these alignments have stood out rather frequently in discussions to develop restriction programs.

It has repeatedly been proposed that restriction of shipments be based largely upon the quality of the product. This does not seem feasible nor fair, however, because there are many producers who have relatively low-grade products produced on cheap land, making these producers a reasonable living, and produced where first-grade stuff could not be produced. Curtailment, which would eliminate number two stuff from the market, would bar the entire crop of such producers. It would be particularly unfair in the case of such commodities as walnuts, where the matter of grading is on the basis of appearance. One of the heaviest elements

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of weight in the grading of walnuts is the matter of color of kernels; while a kernel is just as edible if a bit dark in color, the market does not take it at as high a price. Likewise, the market will not pay as high a price if the percentage of blank kernels or shriveled kernels is large. The good nuts in low-grade stuff are, however, just as edible as the better nuts and just as attractive to many consumers, provided they can be purchased cheaply enough to offset the comparatively higher percentage of blank ^{meats} shells, and provided, further, that the purchaser is not particular that they be light amber colored. There is no justification, therefore, for the exclusion from the market of the producers of low-grade stuff, provided it is sold according to grade.

The certificate plan for surplus control provided by the Act eliminates the question of quality, provided the certificates are freely interchangeable. Assume, for example, that a producer of lettuce finds that his quality is running low, whereas another finds that his quality is running high. Each, let us say, has certificates covering 80 per cent of his crop. One has shipped 80 per cent of his crop and still has another 10 per cent of high-quality stuff suitable for shipment. The other has shipped 70 per cent of his crop and has no more high-quality stuff available, but has certificates to cover another 10 per cent. The man with a superior quality could very easily afford to buy for a few cents a package the certificates of the producer with the poor-quality stuff. Normally, this poor-quality stuff would be shipped, even if it were to bring back only 10 cents a package. The man with the better supply might, however, be willing and able to pay 20 cents and still make an additional profit.

In discussions of the certificate plan, many growers have apparently thought of this extra payment as a tax of some sort. In reality, it would constitute a sort of rent.

A free exchange of certificates was opposed by some of the producers and others in the discussion on the ground that the man who had certificates for sale should never have been granted certificates, that he must have reported his crop at too high a figure, etc. This, of course, gets back to the basis of proration and to such questions as to the treatment to be accorded to the man whose crop was partially destroyed by frost, hail, or other damage. It should be clear, for example, that if the appraisal is made at the beginning of a season it may be widely in error either because of purposeful overestimation, erroneous overestimation, or overestimation because between the time of the estimation and the time of harvesting, insect pests, disease, or drought have decreased the yield. There appears, therefore, to be a possibility of including in the certificate plan of proration an element of crop insurance. This would be the case, for example, if the crops were estimated on the basis, let us say, of the past three years' average production. The whole question of prorating is a mixture of problems of determining (1) how much to market at any one time, (2) how to appraise specific fields, and (3) how to allocate shipping rights. I shall not have time to discuss these in this

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paper. An error in the first may be serious even if the divergent points of view were not involved. Errors or bungling administration of the others may lead to failure of otherwise good plans by setting up too much irritation of liberty-loving human beings. The problem is far from simple, and needs even more careful consideration from the point of view of farm practices resulting from the adoption of alternative plans, no plans, or uncertainty as to what plans are likely to be used.

The basic philosophy of the Act also needs further examination and explanation. There is validity in the criticism as applied to the Act that "we cannot get more by producing less" if done by every one. But how far is this true if the plans are used only to correct errors of judgment or the vicissitudes of weather, insect pests, or disease? Again, how would an enlightened and public-spirited Prorate Commission fit into a "planned economy" for a state or a region? I shall not try to answer these questions -- at least not today.